

(2010) 06 MAD CK 0077

In the Madras High Court

Case No : W.A. No"s. 401 of 1998, 535 to 539, 540 to 543, 544 to 548, 571, 572, 1456 and 1690 to 1703, C.M.P. No. 4381 of 1998 and W.P. No"s. 19322 of 1997 and 9246, 24057 and 24233 of 2009

Nadippisai Pulavar K.R. Ramasamy Co-operative Sugar Mills
Cane Growers Association

APPELLANT

Vs

Union of India (UOI) and Shree Ambika Sugars Limited

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 19(1), 226, 254(2)

Essential Commodities Act, 1955 — Section 10, 11, 12, 13, 16

Madras Sugar Factories Control Act, 1949 — Section 3

Madras Sugar Factories Control Rules, 1949 — Rule 3

Citation : (2010) 06 MAD CK 0077

Hon'ble Judges : T.S. Sivagnanam, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : N.G.R. Prasad, for T. Ravikumar, for the Appellant; M. Nirmala Devi, ACGSC for Respondent 1, P.S. Raman, General for G. Desingu, Spl. G.P. for Respondent 2 and C. Natarajan for N. Inbarajan, for Respondents 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—The challenge in W.A. Nos. 540 to 543, 544 to 548, 571, 572 and 1690 to 1703 of 2009 is to the common

order of the learned Single Judge dated 20.04.2009, in W.P. Nos. 19350 of 2008 etc., batch.

entrusted to it u/s

2. W.A. No. 401 of 1998, is directed against the interim Order dated 27.02.1998, made in W.M.P. No. 30285 of 1997 in W.P. No. 19322 of

1997. The challenge in W.P. No. 19322 of 1997 is to the order of the Commissioner of Sugar and Cane Commissioner dated 04.12.1997, in Rc.

No. 23364/D1/94, in and by which, certain sugarcane areas pertaining to N.P.K.R.R. Co-operative Sugar Mills was withdrawn and allotted in

favour of Thiru Aruran Sugars Limited. By an Order dated 27.02.1998, passed in W.M.P. No. 30285 of 1997, the learned Single Judge

dismissed the W.M.P. by which stay to the Order dated 04.12.1997, was sought for.

3. As against the said order, writ appeal came to be filed. In the Writ Appeal an interim order was passed on 23.03.1998, to the following effect:

The Writ Appeal and WP. No. 19322/93 are directed to be listed for hearing in the week commencing on 8th June, 1998.

The growers will be at liberty to enter into an agreement with the Co-operative Sugar Mills or with the third respondent according to their free will.

Parties are directed to produce the records at the time of hearing of the Writ Appeal and the Writ Petition.

The said interim order continue to remain in force even as on date. The writ petitions challenging the order of the Cane Commissioner came to be

subsequently allowed by the learned Single Judge by an order dated 20.04.2009, and the Cane Commissioner was directed to give an opportunity

to the cane growers before passing any order of demarcation of cane areas to different new mills.

4. As far as W.P. No. 19322 of 1997 is concerned, since the said writ petition was tagged along with W.A. No. 401 of 1998, the same was kept

pending and was heard along with other writ appeals in W.A. No. 535 of 2009 etc., batch.

5. In W.P. No. 9246 of 2009, the petitioner which is an association of cane growers seeks for issuance of Mandamus to direct the Commissioner

of Sugar and Cane Commissioner by way of a direction to ensure that Tirupattur Co-operative Sugar Mills Limited and the Kallakurichi-I Co-

operative Sugar Mills Limited do not register the sugarcane in respect of cane growers who were allotted to M/s. Bannari Amman Sugars Limited

other than the writ petitioners in W.P. Nos. 18153, 18930, 21006 and 26517 of 2008.

6. In W.P. No. 24233 of 2009, the challenge is to the order of the Commissioner of Sugar and Cane Commissioner dated 03.06.2008, in R.C.

No. 5972/Cane-1/2008, in and by which, the said writ petitioner who is a cane grower and whose cane area was allotted to the 4th respondent in

that writ petition which is a newly started Sugar Mill, while the petitioner's cane area was originally allotted and registered with the third respondent

in that writ petition, which is a Co-operative Sugar Mill.

7. In W.P. No. 24057 of 2009, an association representing cane growers seeks to challenge G.O. Ms. No. 468, Industries (MICI) Department

dated 06.12.1993 and G.O. Ms. No. 217, Industries (MICI) Department dated 18.08.1997 of the State of Tamilnadu and the order dated

03.06.2008, in R.C. No. 5972/Cane-1/2008 of the Commissioner of Sugar and Cane Commissioner demarcating the cane areas of the said writ

petitioner's members from the Salem Co-operative Sugar Mills to M/s. Dhanalakshmi Srinivasan Sugars (P) Ltd., who are 4th and 5th

respondents respectively in the said writ petition.

8. G.O. Ms. No. 468, dated 06.12.1993, was issued by the State Government by which the State Government which had earlier constituted a

Committee to revise the area of operation of each sugar mills for getting sugarcane from the farmers in the State of Tamilnadu, constituted a

modified committee with a direction to submit its recommendations within six months from the delimitation of area of operation of the sugar Mills in

Co-operative, Public and Private Sectors.

9. By G.O. Ms. No. 217, dated 18.08.1997, the State Government after examining the proposals of Director of Sugars passed orders restoring

the power relating to demarcation of areas between the existing sugar mills as per the provisions of the Sugarcane Control Order, 1966. In the

same G.O., the State Government directed the Area Delimitation Committee to continue to examine the area demarcation proposal in respect of

new sugar mills and sugar mills in private sector. The above said two G.Os. as well as the ultimate order of the State Government delimiting the

areas of Co-operative Sugar Mills in favour of a new and private sugar mills is under challenge.

10. By the order impugned in the writ appeals as also the common order of the learned single Judge dated 20.04.2009, passed in W.P. 19350 of

2008 etc., batch. the challenge is however in respect of that part of the order of the learned Single Judge by which the learned Single Judge has

held that the writ petitioners did not challenge the validity of G.O. Ms. No. 468, dated 06.12.1993 and G.O. Ms. No. 217, dated 18.08.1997.

11. W.A. Nos. 1690 to 1703 of 2009, has been preferred by the State of Tamil Nadu challenging the common order of the learned Single Judge

dated 20.04.2009, passed in W.P. No. 19350 of 2008 etc., batch.

12. From the challenges made before the learned Single Judge, which is subject matter of challenge in some of the writ appeals as well as the other

challenges made in the writ petitions dealt with by us, the issues to be decided are:

(a) Whether G.O. Ms. No. 468, dated 06.12.1993 and G.O. Ms. No. 217, dated 18.08.1997 are valid in law?

(b) Whether the order of the Commissioner of Sugar and Cane Commissioner dated 04.12.1997, in R.S. No. 23364/D1/94 and order dated

03.06.2008, in R.C. No. 5972/Cane-1/2008, in and by which certain cane areas of Co-operative sugar mills were allotted in favour of certain

new sugar mills was justified, especially when such orders were passed without giving an opportunity to the concerned cane growers?

(c) Whether the Commissioner of Sugar and Cane Commissioner had jurisdiction to delimit the cane area of Co-operative Sugar Mills and allot the

same in favour of new sugar mills of private sector based on the recommendations of Area Delimitation Committee?

(d) Whether the Madras Sugar Factories Control Act, 1949 conflicts with the Sugar Control Order, 1966 and thereby can it be held that there

was inconsistency as between those two set of provisions and in which circumstances which should prevail?

13. On the above issues, we heard the arguments of Messrs. R. Muthukumarasamy, Aravind P. Dattar, C. Natarajan, AL. Somayaji, learned

senior counsel and the learned Advocate General for the State along with Mr. Satish Parasaran who appeared for some new mills.

14. We also heard Mr. K. Doraisamy, learned senior Counsel, Mr. N.G.R. Prasad, Mr. C. Prakasam, Mr. R. Rajarajan for Mr. G. Rajan and

Mr. Udayakumar for the cane growers.

15. The sum and substance of the submissions of the learned senior counsel who appeared for the private new mills are that the Sugar Cane

Control Order, 1966 which is covered by Section 3 of the Essential Commodities Act, 1955 empowers the Cane Commissioner as well as the

State Government for delimiting the cane areas in accordance with the provisions

contained in the Sugarcane Control Order and that such power

exercised under the Sugarcane Control Order is in the nature of a legislative function to which the principles of Natural Justice have no application.

16. It is further contended that, it was not a quasi judicial function and therefore the principles of Natural Justice have no role to play in exercise of such powers.

17. The functions of Cane Commissioner and the State Government by virtue of the power delegated to them under the Sugarcane Control Order, being a legislative mandate, there was no scope for extending any opportunity of hearing to the cane growers while passing orders of delimitation of cane areas.

18. According to the learned senior counsel, having regard to the contents of the order passed by the Cane Commissioner, there being no prejudice caused to the cane growers, the order of delimitation of cane areas by bifurcating the area from Co-operative Sugar Mills to the newly started private Sugar Mills cannot be found fault with.

19. It is the contention of the learned Counsel that the centric issue while passing orders of delimitation is public interest and the focus was on the functioning of the sugar factories in the larger interest of the public and therefore there was no question of hearing the individual cane growers and that the hearing afforded to the concerned Co-operative sugar mills took care of the interest of its individual members.

20. According to the learned Counsel having regard to the scheme of Essential Commodities Act, and Clause 6(1)(a) of the Sugarcane Control Order, what is considered is a factory and its requirements which is paramount for reserving the cane area effacing the claim of individuals.

21. It is also contended that Section 3 of the Essential Commodities Act provides a key to public-good and public interest as against the claim of individual cane growers. It is therefore contended that the authorities were entitled to pass orders keeping public interest in mind and the requirements of factories, that there was no question of providing opportunity to individual cane growers while making reservation of cane areas and that the exceptional circumstances are only where the claims are as between two factories.

22. It is contended that since notice was issued to the concerned Co-operative

Societies before passing the order of delimitation, the grievance of individual cane growers who are all members of the Co-operative Societies cannot claim a right of opportunity.

23. It was contended that by virtue of Section 6 and 16(b) of the Essential Commodities Act read with Sugar Cane Control Order, the provisions contained in the Sugar Cane Control Order would prevail as against the provisions contained in the Madras Sugar Factories Control Act, 1949.

24. It was then contended that when the Co-operative Sugar mills have chosen not to challenge the order of delimitation of cane areas, the individual members who were not in any way prejudiced by such delimitation can be heard to state that the impugned order should be set aside.

25. The learned Advocate General in his submissions contended that while the land owners may have the fundamental right either to grow

sugarcane or some other crop, once they choose to grow sugarcane, then they are bound by the statutory restrictions including the area

delimitation. According to him, when Clause 6 of the Sugar Cane Control Order was not under challenge, the order of area delimitation passed in

consonance with the said provision cannot be questioned. According to him, what was relevant was proximity, prompt payment and proper

weighment and so long as those matters are duly taken care of and the cane growers are not put to any serious prejudice, no fault can be found

with the orders of the Cane Commissioner. According to him, the cane growers are not the affected parties and therefore they have no locus.

26. The learned Advocate General also contended that they were not affected because there was no civil consequence pursuant to the order of

area delimitation in as much as the statutory minimum price as well as the statutory additional price is fixed and the payment is also ensured by

virtue of the specific provisions contained in Clauses 3, 3A, 5 and 6 of the Sugar Cane Control Order.

27. The learned Advocate General in his submissions stated that while the decision cannot be questioned and if at all any challenge can be made it

can be only with regard to the decision making process and only if there was any serious flaw committed in that process.

28. The learned Counsel appearing for the appellants relied upon the following decisions in support of their submissions:

1. The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others,
2. Aligarh Muslim University and Others Vs. Mansoor Ali Khan,
3. Union of India (UOI) and Others Vs. Indian Jute Mills Associations and Others,
4. Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc.,
5. A.K. Jain and Others Vs. Union of India (UOI) and Others,
6. M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others,
7. Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others,
8. U.P. Co-operative Cane Unions Federations Vs. West U.P. Sugar Mills Association and Others etc. etc.,
9. Daman Singh and Others Vs. State of Punjab and Others,
10. AIR 2007 SC 1723 (Chandigarh Housing Board v. Devinder Singh)
11. Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others,
12. R.M.D. Chamarbaugwalla Vs. The Union of India (UOI),
13. Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others,
14. Thirumuruga Kirupananda Variarthavathiru Sundara Swamigalme Vs. State of Tamil Nadu and Others,
15. Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others,
16. Aligarh Muslim University and Others Vs. Mansoor Ali Khan,
17. (2009) 2 CTC 185 (Uma Nath Pandey v. State of U.P.)
18. Government of India and another Vs. Maxim A. Lobo and another,
19. State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others,
20. The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others,
21. State of T.N. represented by Secretary, Housing Deptt., Madras Vs. K. Sabanayagam and Another,
22. Commissioner of Income Tax, Shimla Vs. Greenworld Corporation, Parwanoo,
23. G.M. Haryana Roadways Vs. Jai Bhagwan and Another,
24. Prestige Lights Ltd. Vs. State Bank of India,
25. Coal India Ltd. and another Vs. M/s. Continental Transport and Construction Corporation and others,
29. As against the above submissions the counsel who appeared for the cane

growers submitted that the cane growers who have got major share in the Co-operative Sugar Mills i.e. to an extent of 73%, in order to ensure that the mills in which they are members are supplied with sufficient sugarcane and thereby continue to maintain the viability in the operation of the mill.

30. It is also contended that if the cane area is allotted to new mills, a cane grower who is a member of the Co-operative mill may cease to be a member of the Society by virtue of certain provisions contained in the bylaws as well as the Tamil Nadu Co-operative Society Rules.

31. It was also contended that since the State and Central Government periodically announce waiver of loans of Co-operative Societies, the cane growers who are members of the Co-operative Society may be deprived of such benefit if their cane area is allotted to new mills.

32. It is also contended that when the Area Delimitation Committee choose to hear the representatives of new mills, there was no reason why the concerned cane growers should not be heard. It was also contended that under the Essential Commodities Act as well as the Sugar Cane Control Order, while delegation is made to the Cane Commissioner and the State Government, there is no provision providing for constitution of a Committee and therefore orders passed based on the report of the Committee cannot be sustained.

33. It was then contended that a reading of Clause 6 of Sugarcane Control Order reveals that there was no statutory exclusion from giving opportunity of hearing and in such circumstances, it should be held that the growers who were directly affected by the area delimitation should have been offered an opportunity of personal hearing. By referring to the counter affidavit filed on behalf of the State Government it was contended that the area delimitation would cause serious prejudice to the cane growers and therefore an opportunity of hearing should have been afforded to them. It was contended that the area delimitation has resulted in diversion of developed areas in favour of the private mills and if an opportunity of hearing had been extended to the cane growers, they would have been in a position to highlight the same.

34. It was pointed out that the provisions contained in the Sugarcane Control Order is not general in nature, on the other hand, it refers to specific

areas within the State and therefore it cannot be called as one of general in character. It was therefore contended that diversion of sugarcane area

offended Article 19 of the Constitution of India and consequently the farmer is entitled to a personal hearing. It was therefore contended that

consequence of area delimitation is purely quasi-judicial function and administrative in character and not legislative.

35. The learned Counsel refuted the contention that Rule 11(2) of the Sugarcane Control Order can be invoked to redress the grievance. It was

also contended that under the Tamil Nadu Act, 1949 in Section 3 and Rule 3 it is specifically provided for Constitution of Committee whereas

under the Central Act as well as the 1966 Order except delegation to Cane Commissioner and State Government, there is no specific provision for

constitution of Committee. In the said circumstances there being no inconsistency and repugnance and the State Act being Pre-Constitutional one,

by virtue of Article 372 of the Constitution, in the absence of a specific provision repealing the Act, the State Act would continue to prevail. It is

therefore contended that even going by the State Act, there should have been an opportunity of personal hearing and on that ground also the order

of the Cane Commissioner is liable to be set aside. Having regard to the specific provisions contained in the said Act in particular Section 9 of the

Act, an opportunity of personal hearing to the growers of sugarcane ought to have been provided.

36. The learned Counsel also referred to the various circumstances to show the civil consequence that will follow because of the area delimitation

and therefore on that ground also an opportunity of personal hearing should have been extended.

37. By referring to the demarcation of sugar area for the new sugar mills, it was pointed out that there is likelihood of Co-operative sugar mills

being closed due to non-viability.

38. It was contended that even if individual cane growers were not heard at least the association of cane growers should have been given an opportunity.

39. The learned Counsel appearing for the respondents relied upon the following decisions in support of their submissions:

1. Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others,

2. U.P. Co-operative Cane Unions Federations Vs. West U.P. Sugar Mills Association and Others etc. etc.,
3. Rajesh Kumar and Others Vs. D.Commissioner of Income Tax and Others,
4. The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.,
5. Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc.,
6. M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others,
7. Swadeshi Cotton Mills Vs. Union of India (UOI),
8. AIR 1963 SC 351 (Ram Bux v. State of Rajasthan)
9. Mathra Prashad and Sons Vs. State of Punjab,
10. Rustom Cavasjee Cooper Vs. Union of India (UOI),
11. Bennett Coleman and Co. and Others Vs. Union of India (UOI) and Others,
12. The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others,
13. M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others,
14. (2009) 5 SCC 641 (Bihar State Electricity Board v. Pulak Enterprises)
15. (2009) 2 LW 435 (Nagarajuna Construction Co. Ltd. v. Government of Andhra Pradesh)
16. (2009) 2 CTC 185 (Uma Nath Pandey v. State of U.P.)
17. (2009) 2 LW 448 (Pattammal (deceased) and Anr. v. Arulmighu Sarntharaikatha Samy Koil and Anr.)
40. Before we delve into the core questions to be answered as set out in paragraph No. 12, we deem it appropriate to refer to certain provisions in the Essential Commodities Act, 1955 as amended from time to time (hereinafter called the "E.C. Act") as well as the provisions contained in the Sugarcane Control Order, 1966, the Madras Sugar Factories Control Act, (Madras Act XX of 1949) (hereinafter called the "Madras Act") and the Madras Sugar Factories Control Rules, 1949 (hereinafter called the "Madras Rules").
41. u/s 2(b) and 2(A) read along with item 7(i) of its Schedule, crops of sugarcane falls within the definition of Essential Commodity under the E.C. Act. Sections 3(1) and 3(2)(b) of the said Act empowers the State to have control over sugarcane cultivation in order to ensure equitable distribution and availability at fair price. By virtue of the powers vested with the

Central Government to control the production, supply and distribution of sugarcane and sugar as an "Essential Commodity" various regulatory measures were formulated under the Sugarcane Control Order, 1966.

42. Section 6 of the E.C. Act makes it clear that the Sugarcane Control Order formulated u/s 3 should have effect notwithstanding anything inconsistent therewith contained in any enactment other than the E.C. Act or any instrument having effect by virtue of any enactment other than the E.C. Act.

43. u/s 16(1)(b) of the E.C. Act, all other laws in force in any State immediately before the commencement of the E.C. Act, in so far as, such law controls or authorises the control of the production, supply and distribution of, any trade and commerce in, any essential commodity stood repealed.

44. Clause 3 of the Sugarcane (Control) Order, 1966 empowers the Central Government to fix the minimum price of sugarcane in consultation with such other authorities, bodies or associations as it deem fit having regard to the cost of production, the availability of sugar to the consumer at a fair price, the sale price of sugar, the recovery of sugar from sugarcane and such other allied matters.

45. Under Clauses 3(8), (9) and (10), it is provided that the value of sugarcane is promptly paid to the sugarcane growers and in the event of any failure on the part of manufacturer, appropriate machinery and procedure for recovery in order to ensure due payment to the concerned sugarcane grower.

46. Under Clause 6(1)(a) by issuing appropriate Notification in the Official Gazette, the Central Government is empowered to reserve any area where sugarcane is grown for a factory, having regard to its crushing capacity, the availability of sugarcane in the reserved area and the need for production of sugar with a view to enable the factory to produce the quantity of sugarcane required by it.

47. Once such reservation of area of sugarcane vis-a-vis any factory is made under Clause 6(1), such reservation is made binding on the sugarcane grower or sugar growers Co-operative Society, the concerned factory as prescribed under Clause 6(2) of the order.

48. Clause 11 of the Sugarcane (Control) Order empowers the Central Government to delegate its powers subject to such restrictions, exceptions and conditions by any officer or authority of the Central Government and by the State Government or any Officer or Authority of the State Government.

49. Under Clause 11(2) it is provided that where such delegation has been made to any officer or authority of the State Government, every order or direction issued by such officer or authority can be amended, varied or rescinded by the State Government to whom the officer or authority is subordinate and such power to be exercised by the State Government shall be made either suo motu or on an application made within a period of thirty days from the order or direction. Proviso to Clause 11(2) makes it clear that no order revoking a licence or a permit issued to a persons should be made without giving such person an opportunity to make a representation.

50. Prior to coming into force of the E.C. Act, there was a State Enactment relating to the production of Sugar in the State of Tamil Nadu which was called the Madras Sugar Factories Control Act, 1949 (Madras Act XX of 1949). The object of the Act was to provide for the licensing of factories and regulating the supply of price of sugarcane used in such factories and for other incidental matters. It was a pre-constitutional enactment. u/s 3 of the Madras Act, the State Government was empowered by Notification to constitute an Advisory Committee which should consist of representations of all those interested for the purpose of advising the Government in respect of matters for which consultation is obligatory under the Act and on such matters on which the Government may refer to it.

51. Under Rule 3 of the Madras Sugar Factories Control Rules, 1949, it is stipulated that the Advisory Committee apart from official members, in the composition of non-official members it should have two representatives of sugarcane growers and jaggery manufacturers nominated by the Government.

52. While the Statutory provisions stood thus, the Central and the State Governments issued certain orders to reserve sugarcane areas and allied matters for the purpose of fixation of price of sugarcane. The Central

Government published a Notification in the Gazette of India dated 04.06.1977, in G.S.R. 267 in exercise of the powers conferred by Clause 11 of the Sugarcane Control Order, 1966 by which it directed that the powers conferred on it by Clauses 6, 7, 8 & 9 shall also be exercisable by the Cane Commissioner (Director of Sugar, Tamil Nadu) and also ordered for necessary amendments in its earlier Notification dated 16.07.1966 in G.S.R. 1127, by which the Cane Commissioner (Director of Sugar, Tamil Nadu) was also inserted along with the Director of Industries and Civil Supplies of Rajasthan.

53. The State Government issued G.O. Ms. No. 468, dated 06.12.1993, by which a Committee was constituted to revise the area of operation of

each sugar mills for getting sugarcane from the farmers in the State of Tamil Nadu. The reconstituted Committee was directed to submit its

recommendations within six months on the delimitation of area of operation of sugar mills in the Co-operative, Public and Private Sectors.

54. Subsequently, in G.O. Ms. No. 270, dated 18.08.1997 in modification of its earlier G.Os. in G.O. Ms. No. 101, dated 09.08.1992 and G.O.

Ms. No. 468, dated 16.12.1993, a modified procedure as proposed by the Director of Sugar was accepted by the Government. As per the said

G.O. the State Government directed that the power relating to demarcation of area between the existing sugar mills in Co-operative and Public

sector sugar mills was restored to the Director of Sugar cum Cane Commissioner as per the provisions of Sugarcane Control Order, 1966. It also

directed that the Area Delimitation Committee can continue to examine the area demarcation process in respect of new sugar mills and sugar mills

in private sector.

55. By G.O. Ms. No. 362, dated 27.11.2006, the Government of Tamil Nadu issued six guidelines for area demarcation of new sugar mills to be

established in the State of Tamil Nadu. The Area Delimitation Committee in its meeting held on 25.03.2008, considered the request of M/s.

Dhanalakshmi Srinivasan Sugars Pvt. Ltd., for allotment of cane areas for establishment of new sugar mills at Udumbiyam Village in Vengalam

Firka of Veppanthattai Taluk, Perambalur District. After considering the application and after interacting with the representatives of the applicants

who is stated to have agreed to abide by the conditions laid down by G.O. Ms.

No. 362, dated 27.11.2006, recommended to the Government to allot 19 firkas, which were originally allotted to Perambalur Sugar Mills and Salem Co-operative Sugar Mills to the proposed new sugar mill of M/s Dhanalakshmi Srinivasan Sugars Pvt. Ltd., by imposing two conditions. The first condition related to compliance of all the guidelines stated in G.O. Ms. No. 362, dated 27.11.2006 and the second one related to acceptance of performance bank guarantee of Rs. 1.00 crore by the Chief Director (Sugar), Government of India.

56. The Commissioner of Sugar and Cane Commissioner in its order dated 03.06.2008, considered the recommendations of the Area Delimitation Committee as well as the Guidelines issued in G.O. Ms. No. 362, dated 27.11.2006, directed the publication of a Notification in the State Government Gazette by which the cane areas recommended by the Area Delimitation Committee were allotted to M/s. Dhanalakshmi Srinivasan Sugars Pvt. Ltd., subject to compliance of the conditions imposed in G.O. Ms.362, dated 27.11.2006, and after taking note of the compliance of acceptance of the performance bank guarantee by the Government of India.

57. In the above stated statutory provisions and the proceedings and orders of the State and Central Government, the issues that arise for consideration have to be examined.

58. In the first place, the question that arises for consideration is whether G.O. Ms. No. 468, dated 06.12.1993 and G.O. Ms. No. 217, dated 18.08.1997, are valid in law?

59. According to the sugarcane growers, the constitution of the Area Delimitation Committee to consider delimitation of the sugarcane area for the existing private and public sector and co-operative mills as well as the new sugar mills could not have been made. The contention is on the footing that by virtue of the provisions contained in the E.C. Act read along with the Sugarcane Control Order, the powers vested with the Authorities of the Central Government was delegated only to the Director of Sugar cum Cane Commissioner and the State Government, while so, the constitution of the Area Delimitation Committee to determine the delimitation of the sugarcane area for different mills could not have been made. In other words, when the exercise of determination of sugarcane area for the sugar mills private, public and co-operative within the State of Tamil

Nadu can be validly exercised by virtue of G.S.R. 267, dated 04.06.1997, and the consequential amendment to the Sugarcane Control Order only

by the Cane Commissioner (Director of Sugar) and the State Government, the exercise of such power by way of a sub-delegation issued in favour

of the Area Delimitation Committee by G.O. Ms. No. 468, dated 06.12.1993 and G.O. Ms. No. 217, dated 18.08.1997, cannot be held to be

valid in law.

60. As far as the said contention is concerned, in the order impugned in the W.A. Nos. 542 to 548 of 2009, as well as, W.A. Nos. 535 to 539 of

2009 and W.A. Nos. 1690 to 1703 of 2009, in paragraph 31, the learned Single Judge has held that since no plea was raised in the writ petitions

challenging the constitution of Area Delimitation Committee, the learned Judge did not propose to go into the validity of the constitution of

the said Committee. However, it was pointed out before us that even in the writ petition in W.P. No. 29617 of 2008, in paragraph 10(d) a specific

contention was raised that G.O. Ms. No. 468, dated 06.12.1993 and G.O. Ms. No. 217, dated 18.08.1997, conferring the power delegated to

the Cane Commissioner under the Sugarcane Control Order with the Committee was illegal and contrary to the provisions of Sugarcane Control

Order. The correctness of the said contention therefore has to be necessarily examined.

61. According to the learned senior counsel appearing for the new mills for whom different cane areas were withdrawn from the public sector mills

and co-operative sugar mills and allotted to those new mills, in their submissions stated that the above referred to G.Os. were valid in law and

cannot be held to have been passed in violation of the provisions of Sugarcane Control Order or any other statutory provision.

62. According to the learned counsel, the constitution of the Committee by itself cannot be held to be invalid, even as per the above referred to

G.Os. the task entrusted with the Committee was only to make a study and submit its recommendations to the competent authority namely the

Cane Commissioner. It was therefore contended that when the ultimate order came to be issued only by the Cane Commissioner, no fault can be

found with the procedure followed by the Cane Commissioner and the State Government by issuing the above referred to G.Os. constituting the

Area Delimitation Committee.

63. As far as the said issue is concerned on a perusal of the stipulations contained in the G.O. Ms. No. 468, dated 06.12.1993, we find that the

Government of Tamil Nadu after constituting a Committee requested it to submit its recommendations on the different delimitation of area of

operation in the Co-operative, public and private sectors. In the subsequent G.O.217, dated 18.08.1997, it directed that the Area Delimitation

Committee can only examine any area demarcation proposal in respect of new sugar mills and sugar mills in private sector, while such demarcation

of areas between the existing sugar mills in Co-operative and public sector sugar mills can be considered only by the Director of Sugar cum Cane

Commissioner.

64. Keeping the above stipulations in mind when we examine the minutes of the 43rd Area Delimitation Committee dated 25.03.2008, in

paragraphs 10 and 11, it is mentioned that the Area Delimitation Committee interacted with the applicant mill who wanted to establish an integrated

sugar complex at Udumbiyam Village in Perambalur District and that the applicant agreed to abide by the conditions laid down in G.O. Ms. No.

362, dated 27.11.2006 and that the Committee recommended to the Government to allot 19 firkas i.e. 8 firkas of Perambalur Sugar Mills and 11

firkas of Salem Co-operative Sugar Mills to the proposed new sugar mill of M/s. Dhanalakshmi Srinivasan Sugars Pvt. Ltd.,

65. As far as the 11 firkas of Salem Co-operative Sugar Mill is concerned, the question that arises for consideration is whether such a

recommendations could have been validly made by the Area Delimitation Committee in the light of the restrictions imposed under G.O. Ms. No.

217, dated 18.08.1993, which specifically states that powers relating to demarcation of areas between an existing Sugar Mill in the Co-operative

and public sector is exclusively vested with the Director of Sugar cum Cane Commissioner. In fact there is no reference to such demarcation area

as between Co-operative sugar mill and new sugar mill even with the Cane Commissioner. As far as the Area Delimitation is concerned, the G.O.

is specific to the fact that it can examine any area demarcation proposals in respect of new sugar mills vis-a-vis the sugar mills in private sector.

66. In the said circumstances, it is quite apparent, assuming for a moment that

the role of Area Delimitation Committee is only to suggest any recommendations of area delimitation, having regard to the specific restrictions imposed in G.O. Ms. No. 217, dated 18.08.1997, even such a recommendation could not have been made with reference to any area attached with a Co-operative Sugar Mill to be transferred to any new mill to be established in the private sector. But the prime contention of the learned Counsel who appeared for the cane growers was to the basic issue as to whether at all the Area Delimitation Committee can be invested with any powers to consider demarcation of cane areas.

67. Having considered the contentions of the learned Counsel for the respective parties as well as the learned Advocate General, we are of the view that when an ultimate order dated 04.12.1997/03.06.2008, of demarcation of areas was passed only by the Cane Commissioner who was competent enough by virtue of powers delegated to him under Clause 11 of the Sugarcane Control Order by the Central Government, we are of the view that mere constitution of a Committee to examine the various cane areas with the existing mills private, public and Co-operative for the purpose of making demarcation to the proposed new mills cannot be held to be invalid.

68. As rightly contended by the learned Counsel who appeared for the newly proposed private mills, in both the G.Os. what was directed to be carried out by the Area Delimitation Committee was only to examine the claim of the proposed new mills and suggest its recommendations. It is not as if that any proposals of Area Delimitation Committee was binding on the Cane Commissioner or that once any such recommendation is made there was no scope for either the Cane Commissioner or the State Government to deviate from such recommendations and pass its own orders.

69. In our considered view, the nature of work entrusted with the Area Delimitation Committee was to consider the existing areas attached with the existing mills and the scope of delimiting/demarcating such areas for being attached with the proposed new mills in the light of IEM, acknowledgement obtained by such new mills from the Government of India and their preparedness to comply with the various guidelines specified in G.O. Ms. No. 362, dated 27.11.2006. Once in Clause 11 of the Sugarcane

Control Order, 1966 the Cane Commissioner was delegated with the powers for demarcating cane areas for different mills, it will have to be held that such delegation in its favour would take within its fold as well as the State Government to formulate its own procedure to ascertain the various details as regards the location of cane areas, the potential of sugarcane and content of sugarcane grown in such areas, the proximity and other allied factors, in order to enable the Cane Commissioner/State Government to take a decision as to what areas can be demarcated from the existing sugar mills for being allotted to the new sugar mills.

70. In fact the ultimate order dated 03.06.2008, came to be passed by the Cane Commissioner though after making a detailed reference to the minutes of the Area Delimitation Committee. As far as the role played by the Area Delimitation Committee and whether its recommendation was in accordance with the directives contained in G.O. Ms. No. 468, dated 16.12.1993 and G.O. Ms. No. 217, dated 18.08.1997 is concerned, that is a matter to be examined while considering the validity and justification of the ultimate orders passed by the Cane Commissioner, delimiting the cane areas in favour of the new sugar mills. On that score, it cannot be held that the very constitution of the Area Delimitation Committee in the above referred to G.Os. are invalid. We therefore answer the question in the negative.

71. With this the next question to be examined is as to whether the Madras Sugar Factories Control Act, 1949 (i.e.) the Madras Act will create any conflict with the Sugarcane Control Order and thereby can it be held that there is any inconsistency as between those two sets of provisions and in which circumstances which should prevail.

72. The said question arises for consideration in the light of the submissions made by Mr. K. Doraisamy, learned Senior Counsel appearing for the petitioner in W.P. No. 24057 of 2009 and Mr. Rajarajan learned Counsel appearing for some of the cane growers in some of the writ petitions.

73. The contention has been raised on the footing that Madras Sugar Factories Control Act, 1949 was a Pre-Constitutional legislation and in the absence of repealing of the said Act specifically under the E.C. Act, having regard to Article 372 of the Constitution, the said Statute continue to remain in force and consequently any violation of the provisions contained in the

said Statute and the Rules framed thereunder while resorting to demarcation of cane areas would render the ultimate orders of demarcation/delimitation invalid. In that respect the submission made by Mr. K. Doraisamy, learned Senior Counsel and Mr. Rajarajan, learned Counsel appearing for the cane growers was that Section 3 of the Madras Act specifically provide for constitution of an Advisory Committee which should be represented, as far as possible of all the interest concerned for the purpose of advising the Government. The preamble of the Act specifically makes it clear that the enactment was necessitated as it became expedient for providing license to sugar factories and regulating the supply and the price of sugarcane used in such factories and for other incidental matters.

74. Under Rule 3 of the Madras Sugar Factories Control Rules, 1949 in the constitution of the Advisory Committee two representatives of Sugarcane growers and Jaggery manufacturers nominated by the Government were to be included as non-official members. It was therefore contended that when such a statutory stipulation providing for representation of all concerned and the statutory rules specifically stipulated inclusion of two representatives of cane growers as non-official members, the Committee constituted under G.O. Ms. No. 416, dated 06.12.1993, cannot be construed as a validly constituted Committee under the provisions of the enactment which was still holding the field.

75. It was therefore contended that any recommendation made by the Committee constituted under the above referred to G.Os. and the orders passed by the Cane Commissioner dated 04.12.1997/03.06.2008 based on such an invalid Committee cannot be sustained. In support of the said submission, reliance was placed upon the decision reported in *The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.,* .

76. u/s 6 of the E.C. Act, it is stipulated that any order made u/s 3 to control the production, supply and distribution of an essential commodity will have effect notwithstanding anything inconsistent therewith contained in any enactment other than the E.C. Act or any instrument having effect by virtue of any enactment other than the E.C. Act.

77. In the first place the said non-ostensible clause contained in Section 6 of the E.C. Act if applied vis-à-vis the provision contained in the

Madras Sugar Factories Control Act, 1949, it cannot be held that there was any inconsistency as between the two enactments. The absence of

any provision in the E.C. Act, Rules or the Sugarcane Control Order as regards the constitution of any Committee by itself cannot be held to be

inconsistent with the provisions of the Madras Act of 1949, where there is a specific provision u/s 3 for constitution of an Advisory Committee.

78. Moreover, when the State of Tamil Nadu thought it fit to constitute an Area Delimitation Committee for making any recommendation for the

purpose of demarcation of sugarcane areas as between different mills, it will have to be held that such a step of the State Government would

confirm to the position that a provision contained in the Madras Act, 1949 was in tune with the scheme of the provisions contained in the E.C. Act

read along with the Sugarcane Control Order, 1966. Therefore, any inconsistency as between the E.C. Act and Madras Act, 1949 is ruled out.

79. Section 16 of the E.C. Act contains the provisions of repeal. u/s 16(1)(b), it is specifically provided that any other law in force in any State

immediately before the commencement of the E.C. Act, in so far as, such law controls or authorises the control of the production, supply and

distribution of any trade and commerce in any essential commodity stood repealed.

80. Applying the said provision in its abstract form, one may have to hold that the State enactment stood automatically repealed. However, as

rightly contended by Mr.K.Doraisamy, learned senior counsel for some of the cane growers, by virtue of Article 372(1) of the Constitution, unless

a provision contained in the State Enactment had been altered or repealed or amended by a competent legislature, the same would continue to

remain in force. Therefore, a conjointed reading of Sections 3, 5, 6 and 16 of the E.C. Act read along with Madras Sugar Factories Control Act,

1949 and the Rules framed thereunder as well as Clause 6 of the Sugarcane Control Order, it will have to be held that an harmonious construction

of the provisions contained in the above Statutes and other connected enactment have to be applied while taking any measure relating to

delimitation/demarcation of sugarcane area in favour of any new sugar mills. The decision of the Hon"ble Supreme Court reported in The Belsund

Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., supports the above contention of the learned counsel.

81. We therefore hold that no conflict exist as between the Madras Sugar Factories Control Act, 1948 and the Sugarcane Control Order, 1966 as

well as the E.C. Act, as there was no inconsistency and above all the application of both the enactments would be more relevant and apposite

when it comes to the question of delimitation/demarcation of sugarcane area in favour of any new sugar mills.

82. With this we come to the last question as to whether the power exercised by the cane commissioner under Clause 6 of the Sugarcane Control

Order is in the nature of the legislative function and whether the order of the Commissioner of Sugar cum Cane Commissioner dated 04.12.1997,

in R.S. No. 23364/D1/94 and order dated 03.06.2008, in R.C. No. 5972/Cane-1/2008, in and by which, certain cane areas of Co-operative

sugar mills were allotted in favour of certain new sugar mills was justified, especially when such orders were passed without giving an opportunity

to the affected cane growers.

83. After a detailed consideration of the various contentions raised and the factors placed before the Court, the learned single Judge has taken the

view that there was violation of principles of natural justice, while passing the above orders by the Cane Commissioner, in as much as, the cane

growers were not heard before the cane areas belonging to them came to be diverted from the Co-operative Sugar Mills to the new Sugar Mills.

84. The Grievance of the cane growers were manifold and such grievance related to the very constitution of the Area Delimitation Committee, the

competency of the members of the Committee, the part played by the co-operative sugar mills in relation to the farmers who are its members, the

proximity of the sugarcane area surrounding the Co-operative sugar mills, the non-fulfilment of the various requirements contained in Clause 6(1)(a)

of the Sugarcane Control Order, the rights of the sugarcane growers in the co-operative sugar mills as its members, in as much as, nearly 73% of

the shares are held by them, the periodical Government announcement waiving the loans borrowed from the co-operative society, the possibility of

sugarcane growers losing their membership of the co-operative sugar mills if their cane areas are diverted to other private mills, the absence of

representatives of the cane growers in the Area Delimitation Committee, the absence of any statutory prohibition to be a representative in the Area

Delimitation Committee, the action of the Area Delimitation Committee in having allowed the representatives of the applicant new mills to make their say in the committee proceedings, the non consideration of various relevant factors such as demarcation of fully developed cane areas to the private mills diverting it from the Co-operative sugar mill, the availability of power under Clause 11(2) with the State Government only after the passing of the order by the Cane Commissioner which cannot be said to provide a proper opportunity before the passing of the initial order itself and that when the order of delimitation resulted in serious civil consequence, there was every justification in the claim of the sugarcane growers that failure to give such an opportunity before the passing of the impugned orders would render those orders invalid in law.

85. The learned Counsel for the cane growers therefore contended that the contention of the new mill owners that the impugned orders of the Cane Commissioner is in the nature of the legislative function has no meaning and the said submission cannot be accepted. The learned Counsel therefore contended that the orders passed by the Cane Commissioner without giving an opportunity to the cane growers is in violation of principles of natural justice and therefore the order of the learned Single Judge does not call for interference.

86. As against the above submissions, the learned senior counsel appearing for the new mills and the learned Advocate General submitted that the power exercised by the Cane Commissioner under Clause 6 of the Sugarcane Control Order is in the nature of legislative function to which the principles of Natural Justice will have no application.

87. It is also contended that it cannot also be construed as an exercise of a quasi judicial function. According to the learned Counsel unless the Cane growers complain that they get a lesser price in the sugarcane or there was any other disadvantage caused to them while demarcating their cane areas to the new sugar mills and there being no prejudice caused, the impugned orders cannot be interfered with.

88. According to the learned counsel, the Sugarcane Control Order covers every aspect of sugarcane industry which was formulated under the provisions of the E.C. Act and therefore the orders passed under Clause 6 of the Sugarcane Control Order is nothing but a statutory function and

that being so, there is no question of violation of principles of natural justice in order to interfere with the orders impugned in the writ petitions.

89. According to the learned counsel, the demarcation of sugarcane area in favour of new mills under the impugned orders does not create any

difference in treatment of any of the sugarcane growers in the matter of supply of sugarcane to the respective factories, in as much as, the price is

determined by the State Government, the transportation charges are borne by the respective sugar mills and that in any event the respective Co-

operative sugar mills with which the cane growers were attached were heard by the Delimitation Committee and therefore the individual members

cannot have any grievance.

90. It is further contended that the E.C. Act being a socio economic legislation and the Cane Commissioner exercise the power and whose action

consequently decides the price of sugar, such is the omnipresence in character, no individual can be expected to express any personal grievance

for the purpose of passing any orders.

91. It was lastly contended that in any event having regard to the remedy available under Clause 11(2) of the Sugarcane Control Order, those who

have got any grievance can approach the State Government and seek for the redressal of their grievances. It was also contended that since

irrespective of the character of the mills, be it existing private mill, public mill, Co-operative sugar mill or new mill there being no difference in the

cane price and the transport charges are borne by the concerned mills, no civil consequence would arise by demarcating the cane areas and

therefore the orders impugned cannot be interfered with.

92. It was also contended that the provisions contained in Sections 6 to 13 of the E.C. Act conflicts with the Madras Act, 1949, there was implied

repeal of the said Act and there being no repugnance, the Central Act should prevail. It was further contended that since the guidelines imposed in

G.O. 362, dated 27.11.2006, provide sufficient safeguard to any prejudice that may be caused to the cane growers and in the event of the said

guidelines not being complied with, the very allocation of cane area would stand withdrawn automatically and the impugned orders should be

upheld.

93. Having considered the rival submissions, at the very outset, we have to note

what is meant by civil consequence in order to arrive at a just conclusion based on the respective submissions of the learned counsel.

94. What is a civil consequence has been succinctly stated by the Hon''ble Supreme Court in the decision reported in Mohinder Singh Gill and

Another Vs. The Chief Election Commissioner, New Delhi and Others, Justice V.R. Krishna Iyer, speaking for the majority has stated:

"Civil Consequence" undoubtedly cover infraction of not merely property or personal rights but of civil liberties, material deprivations and non-

pecuniary damages. In its comprehensive connotation, everything that affects a citizen in his civil life inflicts a civil consequence.

95. Going by the broad definition stated by the Hon''ble Supreme Court as to what is "civil consequence" when we test the grievances expressed

on behalf of the sugarcane growers, such grievance can be listed out as under:

(a) The cane growers were not represented in the Area Delimitation Committee.

(b) As part of Co-operative sugar mill various helps extended to them through such society will stand deprived off.

(c) The distance between the cane area and the new sugar mills varies from 15 to 120 kilometres.

(d) As most of the cane growers have their own tractors and used to transport their sugarcane to the sugar mills and get the transportation charges,

after the bifurcation, due to the distance factor they are not in a position to use their own tractors instead they will have to go in for hired vehicles

by which they will be deprived of sufficient income.

(e) Being the members of the Co-operative sugar mills, and having regard to the concept of Co-operative movement, by virtue of the delimitation,

they will be forced to supply to private new mills in which they have no right of ownership. According to the cane growers, they would be too

willing to supply to their own Co-operative mills in which they are members.

(f) As a member of the Co-operative sugar mills whatever loan they borrow, they gain an advantage of periodical waiver of loans announced by

the State Government.

(g) There is likelihood of ceasing of membership of the Co-operative sugar mill when their cane area is allowed to private mills.

(h) Even as per the counter statement of the Government, serious prejudice is

caused to cane growers and therefore they should be heard before any delimitation takes place.

(i) By the impugned orders, the developed areas have been allotted to private new mills diverting it from the Co-operative sugar mills to its prejudice.

(j) Diversion of sugarcane area will offend Article 19(1)(f) of the Constitution and consequently an hearing should have been afforded to the farmers.

(k) By referring to certain clauses in the bylaws of Thirupathur Co-operative sugar mill it has been pointed out that if a sugarcane grower ceases to be a producer member, he will lose the benefit of membership of the mill which will have serious consequence.

(l) It was also pointed out that the crushing capacity of Co-operative sugar mill in the case of the respondent in S.A. No. 540 of 2009, the

proposed capacity of the proposed new sugar mill is 5 lakhs MT and that the cane area of Co-operative sugar mill if diverted that would seriously

impair the crushing operations of the Co-operative sugar mill which would in turn result in extrication of the very Co-operative sugar mill itself.

(m) It was further pointed out that by virtue of the stipulations relating to the new sugar mills wherein the sugarcane growers are expected to bear

the 10% of the cost of the self generating power supply unit, that would seriously impinge upon the rights of the cane growers.

(n) It was also pointed out that in the details of payments contained in the statement issued by the new sugar mills deduction by way of transport

charges and dividend has been made which deduction was never made by the Co-operative sugar mill.

(o) In respect of Kallakurichi sugar mill it was pointed out that already Kallakurichi sugar mill was bifurcated into two and a further bifurcation of

sugarcane areas to Dhanalakshmi Srinivasan Sugars (P) Ltd. will cause further set back in the functioning of the Kallakurichi Sugar Mills, which

may ultimately result in closure of the said mill.

(p) When the Area Delimitation Committee in its proceedings has specifically recorded that they heard the representatives of the New Sugar Mills,

there was no justification in not affording such an opportunity to the sugar cane growers.

96. The above grievances listed out on behalf of the cane growers are intrinsically connected and are germane in nature. In this context the statutory prescriptions of the Madras Sugar Factories Control Act, 1949, assumes greater significance. When statutorily it was thought fit to include two of the representatives of cane growers in the Advisory Committee, and when the competent Authority namely, the Cane Commissioner and the State Government thought it fit to constitute the Area Delimitation Committee mainly to consider the bifurcation of the cane areas, it was imperative that the representatives of the cane growers should have been given an opportunity to participate in the proceedings of the Area Delimitation Committee.

97. In this context, what has been held by the Hon''ble Supreme Court in the decision reported in *The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.*, can be usefully referred to. Though the said decision was rendered in a different context what has been stated about simultaneous operation of certain provisions in identical Statutes which does not conflict with one another has been acknowledged. In that case, the two identical enactment were Sugarcane Control Order, 1966 enacted under the provisions of Section 3 of the E.C. Act, 1955 and the Sugar Cane Act of 1981, enacted by the Bihar State Legislature. The issue related to the claim of State of Bihar, that Bihar Agricultural Produce Markets Act, 1960 will have prevalence over the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981, as well as, the Sugarcane Control Order, 1966. Dealing with that question, the Hon''ble Supreme Court held as under in paragraph 62 and 64:

62. It has to be appreciated that the aforesaid provisions of the Sugarcane (Control) Order operate in the same field in which the Bihar legislative enactment, namely, the Sugarcane Act operates and both of them are complementary to each other. When taken together, they wholly occupy the field of regulation of price of sugarcane and also the mode and manner in which sugarcane has to be supplied and distributed to the earmarked sugar factories and thus lay down a comprehensive scheme of regulating purchase and sale of sugarcane to be supplied by sugarcane-growers to the earmarked sugar factories. It is, however, true that a comprehensive procedure or machinery for enforcing these provisions is found in greater

detail in the Sugarcane Act of the Bihar Legislature. But on a combined operation of both these provisions, it become at once clear that the general provisions of the Market Act so far as the regulation of sale and purchase of sugarcane is concerned get obviously excluded and superseded by these special provisions.

64....Consequently on a conjoint reading of the Sugarcane Order as well as the Sugarcane Act, an inevitable conclusion has to be reached that the regulation of sale and purchase of sugarcane in the entire market area for which the general Act, namely, the Market Act is enacted, is fully governed and highlighted by these two special provisions harmoniously operating in the very same field. Therefore, there would remain no occasion for the State authorities to rationalise and reasonably visualise any need for regulating the purchase, sale as well as storage of sugarcane in the market area concerned. The wide sweep of the general notification of Section 3 of the Market Act, therefore, will have to be read down by excluding from its general sweep sugarcane and its products as the definition of "agricultural produce" as noted earlier would otherwise include not only the primary produce of agriculture but also any other commodity processed or manufactured out of such primary agricultural produce....

(Emphasis added)

98. The above extracted portion of the judgment of the Hon"ble Supreme Court makes it amply clear that a harmonious construction of the provisions contained in the E.C. Act along with the Sugarcane Control Order and the Madras Act, 1949 made it clear that they can be simultaneously applied and in the same analogues, the stipulation contained in the Madras Act, 1949 and the Rules framed there under for inclusion of two representatives of the cane growers in the Advisory Committee should have been followed and thereby provided an opportunity to the cane growers also to be part of the Area Delimitation Committee constituted by the State Government under G.O. Ms. No. 468, dated 06.12.1993.

99. Therefore, by virtue of the statutory implications which is prevailing under the Madras Act, 1949, it was obligatory on the part of the respondent State to have heard the representatives of the cane growers before taking any decision on delimitation of cane areas which were

already existing with the co-operative sugar mills.

100. In that context, at the risk of repetition, it would be worthwhile to refer to Section 3 of the Madras Act which specifically states that the

Government should by Notification constitute in such manner as may be prescribed an Advisory Committee which shall be represented as far as

possible of all the interest concerned on all matters on which consultation with the Committee is obligatory under the Act as well as the Rules made

thereunder and on such other matters as the Government may refer to it. Under Rule 3(i)(e) of the 1949 Rules it is specified that two

representatives of sugarcane growers and jaggery manufacturers should be nominated by the Government. In exercise of the powers conferred

under Clause 6 of the Sugarcane Control Order, the State Government thought it fit to constitute Area Delimitation Committee and the role to be

played by such Committee was nothing but advisory in nature and the issue to be considered by the said Committee having been referred by the

State Government which would fall squarely within the prescription contained u/s 3 of the Madras Act, 1949, the non-inclusion of the

representatives of the sugarcane growers would render the proceedings of the Committee invalid.

101. A conjoint reading of Section 3 of the E.C. Act, Section 3 of the Madras Act, 1949 and Clause 6 of the Sugarcane Control Order read

along with Rule 3 of the 1949 Rules, makes it abundantly clear that such constitution of the Committee without the representatives of the sugarcane

growers would be in violation of statutory prescriptions and consequently any order passed based on such an invalid Committee would be nonest

in law.

102. De hors the above, when we consider the other grievance voiced on behalf of the sugarcane growers, the various grievance listed out in

paragraph No. 95, will be of far reaching consequence on the sugarcane growers and consequently they would fall within the definition of "civil

consequence" as set out by the Hon"ble Supreme Court in the decision reported in Mohinder Singh Gill and Another Vs. The Chief Election

Commissioner, New Delhi and Others, . Since we have held that the inclusion of representatives of cane growers has to be necessarily made as a

statutory requirement, the submission of learned Counsel for the new mills to the

effect that the impugned order of the Cane Commissioner passed under Clause 6 of the Sugarcane Control Order is legislative in character fades into insignificance.

103. In the light of our above conclusions, we are not in a position to accept the submissions of Mr. C. Natarajan, learned senior counsel

appearing for the respondent in W.A. No. 401 of 1998, who strenuously contended that the thrust in the E.C. Act, the Sugarcane Control Order

in determining the price factor of sugar which was correlated with the factory and that while carrying out the exercise in contemplation of such

factor, the paramount interest would be of the public at large and consequently the whole exercise was legislative in character. Having regard to

our conclusions based on various other factors, even by applying the provisions contained in the E.C. Act, the Sugarcane Control Order and the

Madras Act, we are not impressed with the said submission of the learned senior counsel. When once statutorily as of right the cane growers are

entitled to be included as representatives in the Advisory Committee namely the Area Delimitation Committee, the failure to include them in the said

Committee by itself would invalidate the order of the Cane Commissioner.

104. Therefore, the arguments of the learned Counsel for the appellants in W.A. Nos. 540 of 2009 etc., batch filed by the new mills that the order

of the Cane Commissioner is in the nature of legislative function cannot be accepted.

105. In fact, in the decision reported in *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, the Hon"ble Supreme Court has

made it clear that the proceedings of the Cane Commissioner is undoubtedly a quasi judicial proceedings and it is obligatory on the authority to

hear the persons concerned. It also held that in as much as the aggrieved party was not given an opportunity of hearing that would vitiate the order

of the Cane Commissioner. That was also a case of bifurcation of cane areas from one mill to another mill and the grievance was expressed by the

sugar mill whose cane area was diverted to some other sugar mill. What was stated by the Hon"ble Supreme Court in the said decision in regard to

the proceedings of the Cane Commissioner who exercised his powers under Clause 6 of the Sugar Cane Control Order, *mutatis mutandis* apply to

the order impugned in the writ petitions and applying the ratio laid down in the

said decision, it will have to be held that the orders of the Cane

Commissioner dated 04.12.1997 and 03.06.2008 are violative of the principles of Natural Justice and consequently the same were rightly set

aside by the learned single Judge. The contention of the learned Counsel for the mills to distinguish the said decision on the ground that the dispute

in the said case was as between two mills cannot be accepted. The law laid down in the said decision is applicable to all situations where

demarcation of sugarcane area is made. Therefore, applying the ratio of the said decision, it will have to be held that failure to give an opportunity

of hearing to the sugarcane growers would render the impugned order invalid in law.

106. The reliance placed upon by the learned Counsel for the appellants in the decision reported in Aligarh Muslim University and Others Vs.

Mansoor Ali Khan, particularly paragraph 23 is also of no assistance to the appellants. In paragraph 23 the Hon"ble Supreme Court in the above

case has stated the proposition of law that in addition to breach of Natural Justice, prejudice must also be proved. In the case on hand apart from

violation of the principles of Natural Justice, the cane growers have demonstrated how in the event of an opportunity of hearing had been given

they would have explained the various circumstances which would cause serious prejudice to them because of the bifurcation of the cane area.

Those circumstances listed out in paragraph 95, cannot be simply brushed aside. Those circumstances are all intertwined with the supply by cane

growers and their right to avail the various benefits apart from the cost of cane supplied by them to the sugar factories. Therefore, when such

serious consequence would follow due to bifurcation of the cane area from the co-operative sugar mills to the new private mills, it was imperative

that a proper hearing should have been afforded to them before the passing of the orders impugned in the writ petitions.

107. Reliance was placed upon Union of India (UOI) and Others Vs. Indian Jute Mills Associations and Others, in particular paragraph 23 to

support the contention that an opportunity of hearing to the cane growers under Clause 6 of the Sugarcane Control Order is not contemplated. In

the said decision, the Hon"ble Supreme Court dealt with a case arising under Jute Packaging Materials (Compulsory Use in Packing Commodities)

Act, 1987. The question of law raised was whether the Standing Advisory Committee constituting of only the Secretaries representing various departments without associating the jute industry or its representatives was void, was rejected by the Hon"ble Supreme Court. In the earlier decision reported in Dalmia Cement (Bharat) Ltd. and Another Vs. Union of India (UOI) and Others, , the Hon"ble Supreme Court however directed the Standing Advisory Committee to afford a hearing to the representatives of the growers and the workers producing raw jute and jute packaging materials. While upholding the said decision, the Hon"ble Supreme Court held that the provisions do not provide for inclusion of representatives of the jute manufactures in the Standing Advisory Committee. The said decision will have no application in the light of the specific provision contained in the Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987. In the case on hand, we have noted that the E.C. Act, the Sugarcane Control Order, 1966 and the Madras Act, 1949 read along with the 1949 Rules specifically mandate inclusion of the representatives of the cane growers in the Advisory Committee. Therefore, the reliance placed upon Union of India (UOI) and Others Vs. Indian Jute Mills Associations and Others, is of no assistance to the appellants.

108. Reliance placed upon the decision reported in Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc., relates to price fixation under the Drugs (Price Control) Order 1949, the Hon"ble Supreme Court held that the price fixation is neither the function nor the forte of the Court. It also held that it is in the nature of separate legislation where applicability of the principles of Natural Justice has no role to play. Having regard to the nature and contents of the statutory provisions relating to price fixation under the Drug Control Order which by no stretch of imagination is analogous to the E.C. Act, the Sugarcane Control Order and the provisions contained in the Madras Act, 1949, we find no scope to apply the said decision to the facts of this case.

109. Reliance was placed upon A.K. Jain and Others Vs. Union of India (UOI) and Others, in particular paragraph 6 to 8, which also does not support the case of the appellants. As against the position stated in the said decision that a provision contained in the Bihar Sugar Factories Control Act which is a pre-Constitutional legislation ran contrary to the provisions

contained in the Sugarcane Control Order, 1955 and the E.C. Act and therefore by virtue of Article 372 of the Constitution, the said Act stood repealed on the advent of E.C. Act, 1955 and the Sugarcane Control Order also of 1955 cannot be compared with the case on hand, where we have found that the details in regard to the right of representation of the sugarcane growers in the Advisory Committee as provided u/s 3 read along with the Rule 3 of the Madras Act, 1949 and the Rules framed thereunder does not in any way conflict with any of the provisions contained in E.C. Act or Clause 6 of the Sugarcane Control Order, 1966. The said decision is therefore of no assistance nor it supports the view that by virtue of Article 372 of the Constitution, the Madras Act, 1949 cannot be held to be repealed.

110. Reliance was placed upon the Constitutional Bench Judgment of the Hon'ble Supreme Court reported in U.P. Co-operative Cane Unions

Federations Vs. West U.P. Sugar Mills Association and Others etc. etc., in particular paragraphs 118, 119 and 137, to contend that the various

provisions contained in the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, the Rules framed thereunder and the U.P. Sugarcane

(Regulations of Supply and Purchase) Order 1954 makes it clear that the object to be achieved was to ensure that the sugar factories which

normally runs in shifts for the whole day during the crushing seasons needs the continuous supply of freshly harvested sugarcane depending upon its

daily crushing capacity and that such supply should be provided in order to ensure that the production operation is not affected throughout the

crushing seasons and thereby the arrangement does not allow the market forces to operate and thereby completely avoid competition amongst the

sugar factories which would lead to escalation in sugar price.

111. The said decision came to be rendered in the background of a situation where the legal status and binding nature of State Advised Price, the

power of the State Government to fix sugarcane price under the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 and when such

power accepted and exercised, whether the State law fixing the price was repugnant to the Central Law namely the Sugarcane Control Order

1966. While dealing with the above questions, the majority view expressed in paragraph 137 is to the effect that the reservation or assignment of

area is made for the benefit of a sugar factory and the agreements executed by the cane growers or cane growers' co-operative society in favour

of occupier of a factory are also for the benefit of the sugar factory in as much as such agreements assures continuous supply of freshly harvested

sugarcane so that there may not be any problem in getting optimum quantity of raw materials throughout the crushing season. While holding so, the

Hon'ble Supreme Court held 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.

112. The conclusion stated in the said decision to the effect that reservation or assignment of area is made for the benefit of the sugar factory will

have to be therefore understood in the context in which it was stated and the same cannot be taken to mean that even before the assignment of

area is made, everything else should be held in favour of the factory unmindful of the "civil consequence" that would arise while making such area

demarcation. We therefore do not find any support in favour of the appellants from the said decision.

113. The decision reported in Daman Singh and Others Vs. State of Punjab and Others, was relied upon for the proposition that once a person

becomes a member of the Co-operative Society, he loses his individuality qua the Society and he has no independent rights except those given to

him by the Statute and the by-laws and that he can only speak and act through the society or rather the society alone can act and speak for him

qua rights or duties of the Society as a body, therefore no individual notice was required to be given to the members. That was a case where one

Co-operative Society was amalgamated with another Co-operative Society u/s 13(8) of the Punjab Co-operative Societies Act. The above

statement of law was made by the Hon'ble Supreme Court in that situation of amalgamation of one society with another society wherein it was

held that the right of the individual member has no role to play. In contrast to the case on hand, where it comes to the question of bifurcating the

cane area owned by the individual member, the notice issued to the Co-operative sugar mill in which the owner of the cane area is a member

derives far different rights than what has been stated in relation to amalgamation of one Society with another Society. We therefore do not find any scope to apply the ratio laid down in the said decision to the facts of this case.

114. For the very same reason, the decision reported in AIR 2007 SC 1723 (Chandigarh Housing Board v. Devinder Singh) which has followed

the Constitutional Bench judgment reported in Daman Singh and Others Vs. State of Punjab and Others, also does not help the appellants.

115. The decision reported in Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, was cited to contend that Madras Act

of 1949 and the provisions contained therein relating to the right of representation of the Sugarcane growers cannot be claimed in the light of the

provisions contained in the E.C. Act and the Sugarcane Control Order, 1966 which does not contain such a provision. In other words, having

regard to Sections 6 and 16 of the E.C. Act, the provisions contained in the Madras Act, 1949 should be held to have been impliedly repealed.

The statement of law stated by the Hon''ble Supreme Court in the decision reported in Ch. Tika Ramji and Others etc. Vs. The State of Uttar

Pradesh and Others, , we do not find any support for such a submission made on behalf of the appellant. On the other hand it supports the stand of

the respondent sugarcane growers. In the said decision, the Hon''ble Supreme Court while considering the E.C. Act, 1955 and the Sugarcane

Control Order, 1955 vis-a-vis the U.P. Sugarcane (Regulation of Supply and Purchase) Order, 1954 held as under at Pg.704:

Suffice it to say that none of these provisions do overlap the Centre being silent with regard to some of the provisions which have been enacted by

the State and the State being silent with regard to some of the provisions which have been enacted by the Centre. There is no repugnance

whatever between these provisions and the impugned Act and the rules framed thereunder as also the U.P. Sugarcane Regulation of Supply and

Purchase Order, 1954 do not trench upon the field covered by Act 10 of 1955.

There being no repugnance at all, therefore no question arises of the operation of Article 254(2) of the Constitution and no provision of the

impugned Act and the rules made thereunder is invalidated by any provision contained in Act 65 of 1951 as Amended by Act 26 of 1953 or Act

10 of 1955 and the Sugarcane Control Order, 1955 issued thereunder.

116. Having regard to the above statement of law and in the light of the decision reported in *The Belsund Sugar Co. Ltd. Vs. The State of Bihar*

and *Others Etc.*, there being no repugnancy as between the E.C. Act, Sugarcane Control Order, 1966 and the Madras Act, 1949 and the rules

framed thereunder, there would be no difficulty in making a harmonious construction of both the enactment and apply the provisions. We therefore

do not find any support for the appellants based on the above decision.

117. In the decision reported in 2009 (2) CTC 185 (*Uma Nath Pandey v. State of U.P.*), the Hon''ble Supreme Court has held as under in

paragraph 15:

15. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always

expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What

particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and

circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an

administrative act has withered away. Even an administrative order which involves civil consequence must be consistent with the rules of natural

justice. Expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material

deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

(Emphasis added)

118. Applying the above principles to the facts of this case, we have no hesitation to hold that the impugned order resulted in civil consequence

adverse to the interest of the cane growers and consequently the orders passed without giving an opportunity of hearing to the writ petitioners

rendered the impugned orders invalid in law.

119. In the decision reported in *Dhampur Sugar (Kashipur) Ltd. Vs. State of Uttranchal and Others*, the issue related to the claim of sugar

manufacturing company in challenging the licences granted in favour of another company for power driven machinery for the manufacture of

khandsari sugar. On an earlier occasion such an application was rejected on the

ground that the manufacture of khandsari sugar was in the reserved area of sugar mill of the appellant before the Hon"ble Supreme Court and therefore no such licence could have been granted. In that context the Hon"ble Supreme Court held as under in paragraphs 37, 39 and 43:

37. The High Court also noted that there may be occasions when one sugar factory is not able to crush the entire sugarcane available in assigned or reserved area and at the same time another sugar factory is having the shortage of sugarcane in its reserved area during the crushing season. In such situations, the Sugarcane Commissioner can very well assign any specified area out of the reserved area of the former factory to the latter factory. The Court observed that reserved area of a sugar factory is not of permanent nature and no sugar factory can claim that the area reserved for a particular year would remain with it for all the time. The reserved area is allocated to a particular sugar factory for a ""crushing season"" which can be changed or modified by the Sugarcane Commissioner in the next crushing season. If exigencies of situation require, the Sugarcane Commissioner can change the area even during the same crushing season.

39. The High Court, in our opinion, was right in considering the facts and circumstances in their entirety and in holding that the action of Respondents 1 to 3 could not be said to be illegal or otherwise objectionable. It is, no doubt, true that earlier an application made by Respondent 4 came to be rejected but it was because of the policy then in force. Since the policy was thereafter changed, grant of licence in favour of Respondent 4 could not be objected to by the appellant.

43. To us, the High Court is right in holding that whether or not the sugar factory of the appellant has been adversely affected is essentially a question of fact. Such question, therefore, in our considered opinion, can be raised by the appellant before the authorities under the Act, and it cannot be decided in proceedings under Article 226 or Article 136 of the Constitution. The appellant can also in this connection rely on additional Condition 3 imposed on Respondent 4 that no permission could be granted to the unit of Respondent 4 to purchase ""bonded cane"".

In paragraph 54 of the said decision, the Hon"ble Supreme Court referred to certain observations contained in its earlier decision relating to M/s.

Shri Ganesh Sugar Works and others Vs. State of Haryana and others, . The extracted portion of the said judgment in paragraph 54 is to the

following effect:

54. The Court also made the following observations: (Shri Ganesh Sugar Works case, SCC pp.607-08, para 4)

4. We may mention that while the Commissioner is now the licensing authority, the State Government is the appellate authority. It is a matter of

common knowledge that the Sugarcane Control Order was made in the interests of growers of sugarcane primarily and also in the interests of the

sugar factories, that is, factories engaged in the manufacture of sugar by the vacuum pan process and in the ultimate analysis in the interests of the

consumers by making sugarcane available for sugar production....

(Emphasis added)

A reading of the above extracted part of the judgment, it can be safely held that while the power of the Cane Commissioner in allotting the cane

area of existing sugar mills in favour of the proposed new sugar mill cannot be questioned, having regard to the definite finding that the Sugarcane

Control Order was made in the interest of growers of sugarcane primarily it will have to be held that if such interest of the sugarcane growers are to

be protected, necessarily in a situation like this, where the sugarcane area is bifurcated from the Co-operative sugar mill for the purpose of allotting

it in favour of the new mills in the private sector, the basic requirement of affording an opportunity of personal hearing is imperative.

120. In the decision reported in Government of India and another Vs. Maxim A. Lobo and another, the Division Bench of this Court has held as

under at Pg.114:

...Fair hearing is a postulate of decision making by a statutory authority exercising quasi-judicial powers. Of course, undue expansion of natural

justice without reference to the administrative realities and other factors of a given case is not desirable, but the fact remains that it is ""untenable

heresy to lock-jaw the victim or act behind his back"" by tempting invocation of administrative necessity. Even where there is a clearest case of

public interest or public injury, there is no justification for non-observance of

even an abridged form of fair hearing, preferably pre-decisional or, at any rate, post-decisional where pre-decisional hearing for practical reasons cannot be granted. A hearing, an essential attribute of a quasi-judicial action, would cease to be fair, if apprising the affected is wanting.

One principle which is now well-settled by a catena of authorities is that even if the statute is silent with regard to grant of hearing to the person

affected but the decision taken by the authority involves civil consequences or adverse consequences, at least a minimal hearing is essential, and not

only desirable. An order suffering from non-observance of the principles of natural justice would, under the circumstances, be void and a nullity.....

(Emphasis added)

121. Since in the decision reported in *The Purtabpore Co., Ltd. Vs. Cane Commissioner of Bihar and Others*, the Hon''ble Supreme Court has

held that the proceedings of the Cane Commissioner is a quasi judicial function, having regard to the above legal position stated by the Division

Bench of this Court, it can be safely held that the failure to give an opportunity to the sugarcane growers in matters relating to bifurcation of cane

area to the new mill from the existing Co-operative sugar mill would render the impugned order a nullity.

122. On behalf of the cane growers reliance was placed upon the decision reported in *State of T.N. and Another Vs. Adhiyaman Educational and*

Research Institute and Others, in particular paragraph 30, where the Hon''ble Supreme Court has held as under:

30. ...Thus, so far as these matters are concerned, in the case of the institutes imparting technical education, it is not the University Act and the

University but it is the Central Act and the Council created under it which will have the jurisdiction. To that extent, after the coming into operation

of the Central Act, the provisions of the University Act will be deemed to have become unenforceable in case of technical colleges like the

engineering colleges. As has been pointed out earlier, the Central Act has been enacted by Parliament under Entry 66 of List I to coordinate and

determine the standards of technical institutions as well as under Entry 25 of List III. The provisions of the University Act regarding affiliation of

technical colleges like the engineering colleges and the conditions for grant and continuation of such affiliation by the University shall, however,

remain operative but the conditions that are prescribed by the University for grant and continuance of affiliation will have to be in conformity with

the norms and guidelines prescribed by the Council in respect of matters entrusted to it u/s 10 of the Central Act.

123. In the decision reported in State of T.N. represented by Secretary, Housing Deptt., Madras Vs. K. Sabanayagam and Another, wherein in

paragraphs 22 & 30, the Hon"ble Supreme Court has stated the legal principle as under:

22. But there may be a third category of cases wherein the exercise of conditional legislation would depend upon satisfaction of the delegate on

objective facts placed by one class of persons seeking benefit of such an exercise with a view to deprive the rival class of persons who otherwise

might have already got statutory benefits under the Act and who are likely to lose the existing benefit because of exercise of such a power by the

delegate. In such type of cases the satisfaction of the delegate has necessarily to be based on objective consideration of the relevant data for and

against the exercise of such power. Maybe such an exercise may not amount to any judicial or quasi-judicial function, still it has to be treated to be

one which requires objective consideration of relevant factual data pressed into service by one side and which could be tried to be rebutted by the

other side who would be adversely affected if such exercise of power is undertaken by the delegate. In such a third category of cases of

conditional legislation the legislature fixes up objective conditions for the exercise of power by the delegate to be applied to past or existing facts

and for deciding whether the rights or liabilities created by the Act are to be denied or extended to particular areas, persons or groups....

30. On the aforesaid conclusion of ours we must hold that the ultimate decision of the High Court on Point No. 3 that the impugned exemption

notifications issued u/s 36 from year to year by the State of Tamil Nadu were null and void, has to be upheld not on the ground that hearing,

personal or otherwise, was not given to the employees but on the ground that the procedure indicated by us hereinabove regarding third category

of cases of exercise of powers of conditional legislations was admittedly not followed by the appellant-State while passing the impugned orders of

exemption in favour of the Housing Board. The third point for determination is, therefore, answered in the affirmative in the aforesaid terms.

124. In the light of the above decisions it is imperative that the Cane Commissioner as a delegated authority while proceeding to pass orders of delimitation, which would impinge upon the cane growers ought to have extended a fair opportunity of hearing. More so, when the ultimate orders passed by the Cane Commissioner resulted in serious civil consequences affecting the rights of the cane growers.

125. In the decision reported in *Rajesh Kumar and Others Vs. D. Commissioner of Income Tax and Others*, the Hon"ble Supreme Court has held as under in paragraph 20, 23, 31, 48 and 53:

20. Principles of natural justice are based on two basic pillars:

(i) Nobody shall be condemned unheard (*audi alteram partem*).

(ii) Nobody shall be judge of his own cause (*nemo debet esse judex in propria sua causa*).

23. We, however, need not dilate on the said question being not very necessary for the purpose of this case. But it is beyond any cavil that

ordinarily unless excluded by operation of a statute, the superior courts while exercising power of judicial review shall proceed on the basis that

assignment of reasons is imperative in character. When an authority, be it administrative or quasi-judicial adjudicates on a dispute and if its order is

appealable or subject to judicial review, it would be necessary to spell out the reasons therefor. While applying the principles of natural justice,

however, the court must also bear in mind the theory of useless formality and the prejudice doctrine.

31. In *Delhi Transport Corporation v. D.T.C. Mazdoor Congress*, Ray, J. opined, SCC p.706, para 202

It is now well settled that the "audi alteram partem" rule which in essence, enforces the equality clause in Article 14 of the Constitution is

applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party in question unless the application of the rule

has been expressly excluded by the Act or regulation or rule which is not the case here. Rules of natural justice do not supplant but supplement the

rules and regulations. Moreover, the rule of law which permeates our Constitution demands that it has to be observed both substantially and procedurally.

(See also *Basudeo Tiwary v. Sido Kanhu University and Uptron India Ltd. v. Shammi Bhan.*)

48. In any event, when civil consequences ensue, there is hardly any distinction between an administrative order and a quasi-judicial order. There might have been difference of opinions at one point of time, but it is now well settled that a thin demarcated line between an administrative order and quasi-judicial order now stands obliterated (see *A.K. Kraipak v. Union of India and Chandra Bhavan Boarding and Lodging v. State of Mysore and S.L. Kapoor, V. Jagmohan*).

53. The factors enumerated in Section 142(2-A) of the Act, thus, are not exhaustive. Once it is held that the assessee suffers civil consequences and any order passed by it would be prejudicial to him, principles of natural justice must be held to be implicit. The principles of natural justice are required to be applied inter alia to minimise arbitrariness.

126. The above principles stated by the Hon"ble Supreme Court when applied to the facts of this case, makes it explicit that the impugned order passed by the Cane Commissioner without affording an opportunity of hearing to the cane growers could render the impugned orders null and void.

127. By referring to the decision reported in *Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc.*, which related to the issue of price fixation of an essential commodity and *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, which also related to fixation of price of sugar and contended that in those cases the exercise of price fixation is of general application throughout the country as compared to the delimitation of sugarcane area which relates to individual sugarcane growers vis-a-vis the sugar factories. What has been stated in those decisions is to the effect that price fixation is neither the function nor the forte of the Court. As rightly contended by the learned Counsel

appearing for the cane growers the law laid down in these decisions to the effect that such price fixation is by way of legislative function where

there is no scope to apply the principles of natural justice in contrast to the case on hand, where by the impugned orders, the Cane Commissioner

interfered with the individual rights of cane growers when it wanted to demarcate such cane areas belonging to them and allow the same to the

newly started sugar factories without giving any opportunity to the cane growers. Certainly such an action of the delegated authority can be held to

be invalid as held by the learned single Judge.

128. In the decision reported in *Swadeshi Cotton Mills Vs. Union of India (UOI)*, the Hon"ble Supreme Court after referring to the view of Prof.

De. Smith in paragraph 41 has laid down the general principle as under in paragraph 42:

41. Prof. de Smith, the renowned author of *Judicial Review* (3rd Edn.) has at p. 170, expressed his views on this aspect of the subject, thus:

Can the absence of a hearing before a decision is made be adequately compensated for by a hearing ex post facto? A prior hearing may be better

than a subsequent hearing, but a subsequent hearing is better than no hearing at all; and in some cases the Courts have held that statutory provision

for an administrative appeal or even full judicial review on the merits are sufficient to negative the existence of any implied duty to hear before the

original decision is made. The approach may be acceptable where the original decision does not cause serious detriment to the person affected, or

where there is also a paramount need for prompt action, or where it is impracticable to afford antecedent hearings.

42. In short, the general principle--as distinguished from an absolute rule of uniform application--seems to be that where a statute does not, in

terms, exclude this rule of prior hearing but contemplates a post-decisional hearing amounting to a full review of the original order on merits, then

such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. Conversely, if the statute conferring the

power is silent with regard to the giving of a pre-decisional hearing to the person affected and the administrative decision taken by the authority

involves civil consequences of a grave nature, and no full review or appeal on merits against that decision is provided, Courts will be extremely

reluctant to construe such a statute as excluding the duty of affording even a minimal hearing shorn of all its formal trappings and dilatory features at

the pre-decisional stage, unless, viewed pragmatically, it would paralyse the administrative progress or frustrate the need for utmost promptitude.

In short, this rule of fair play ""must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands"". The court

must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications. But, to recall the words of

Bhagwati, J., the core of it must, however, remain, namely, that the person affected must have reasonable opportunity of being heard and the

hearing must be a genuine hearing and not an empty public relations exercise.

129. Applying the principles laid down by the Hon"ble Supreme Court, we have no hesitation in holding that the impugned order of the Cane

Commissioner resulted in adverse civil consequence against the cane growers and in the interest of justice it would be just and proper to set aside

those orders and direct the Cane Commissioner to give an opportunity to the cane growers before passing any orders of area delimitation.

130. In the decision reported in M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, the Hon"ble Supreme Court has laid

down the principles as under in paragraph 27, 32 and 47:

27. The petitioners contend that although the government has the discretion to fix different prices for different areas or for different factories, or for

different kinds of sugar, such wide discretion has to be reasonably exercised. It is, of course, a well accepted principle that any discretion

conferred on the executive has to be reasonably exercised. Nevertheless, it is a discretion which the court will not curtail unless the exercise of it is

impeachable on well accepted grounds such as "ultra vires" or "unreasonableness".

32. Judicial decisions are made according to law while administrative decisions emanate from administrative policy. Quasi-judicial decisions are also

administrative decisions, but they are subject to some measure of judicial procedure, such as rules of natural justice. To distinguish clearly

legislative and administrative functions is ""difficult in theory and impossible in practice"". Referring to these two functions, Wade says:

They are easy enough to distinguish at the extremities of the spectrum: an Act of Parliament is legislative and a deportation order is administrative.

But in between is a wide area where either label could be used according to taste, for example where ministers make orders or regulations

affecting large numbers of people....

Wade points out that legislative power is the power to prescribe the law for people in general, while administrative power is the power to prescribe

the law for them, or apply the law to them, in particular situations. A scheme for centralising the electricity supply undertakings may be called

administrative, but it might be just as well legislative. Same is the case with ministerial orders establishing new towns or airports etc. He asks: ""And

what of directions of a general character given by a minister to a nationalised industry? Are these various orders legislative or

administrative?"" Wade says that the correct answer would be that they are both. He says: ""...there is an infinite series of gradations, with a large

area of overlap, between what is plainly legislation and what is plainly administration"". Courts, nevertheless, for practical reasons, have

distinguished legislative orders from the rest of the orders by reference to the principle that the former is of general application. They are made

formally by publication and for general guidance with reference to which individual decisions are taken in particular situations.

47. Power delegated by statute is limited by its terms and subordinate to its objects. The delegate must act in good faith, reasonably, intra vires the

power granted, and on relevant consideration of material facts. All his decisions, whether characterised as legislative or administrative or quasi-

judicial, must be in harmony with the Constitution and other laws of the land. They must be ""reasonably related to the purposes of the enabling

legislation"". See *Leila Mourning v. Family Publications Service*. If they are manifestly unjust or oppressive or outrageous or directed to an

unauthorised end or do not tend in some degree to the accomplishment of the objects of delegation, court might well say, ""Parliament never

intended to give authority to make such rules; they are unreasonable and ultra vires"": per Lord Russell of Killowen, C.J. in *Kruse V. Johnson*.

Applying the above principles to the facts of this case, we are convinced that the

order of the Cane Commissioner calls for interference as held by the learned Single Judge.

131. In the decision reported in (2009) 5 SCC 641 (Bihar State Electricity Board v. Pulak Enterprises) the Hon''ble Supreme Court has stated

what could be a legislative function or non-legislative function and in the event of exercise of power which affects individuals without giving

opportunity such actions can be interfered with. The Hon''ble Supreme Court has laid down the principles in paragraph 29 and 37 which reads as

under:

29. The significance of the question as to whether fixing the rate of fuel surcharge is a legislative function or a non-legislative function is that if the

function is held to be legislative, in the absence of any provision in that regard the principles of natural justice would not be applicable and the

scope of judicial review would also be limited to plea of discrimination i.e. violation of Article 14 of the Constitution of India. As a general

proposition, the law on the point is settled.

37. Where the fixation of rate or determination of the amount is made individually, depending on the context in which this is to be done, there may

be justification or necessity to give opportunity of hearing to the person or persons concerned. But where the rate is fixed for persons at large the

only way by which such opportunity can be given is to notify the rates and then invite objections. There is no such provision. In the absence of any

mechanism provided in the tariff notification, it would not be feasible at all. Whenever the statute contemplates giving such an opportunity, a

mechanism, such as for fixing rates of municipal taxes, while it is not so in the case of income tax or other taxes.

Applying the ratio of the decision of the Hon''ble Supreme Court to the facts of this case, we are of the view that the impugned order of the Cane

Commissioner in determining the rights of individual cane growers resulting in adverse consequences calls for interference.

132. In the decision reported in 2009 2 LW 435 (Nagarajuna Construction Co. Ltd. v. Government of Andhra Pradesh) the Hon''ble Supreme

Court has explained the principle of Natural Justice as under in paragraph 33, 35, 36 and 39:

33. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

35. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Wroks 1963 (143) ER 414, the principle was thus stated: Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat. Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

36. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the

individual against the arbitrary procedure that may be adopted by a judicial, quasi judicial and administrative authority while making an order

affecting those rights. These rules are intended to prevent such authority from doing injustice.

39. ...Even an administrative order which involves civil consequence must be consistent with the rules of natural justice. Expression "civil

consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary

damages. In its wide umbrella comes everything that affects a citizen in his civil life.

The rules of natural justice thus stated by the Hon'ble Supreme Court squarely applies to the facts of these cases where there is total denial of

opportunity to the cane growers before their cane areas were demarcated and allotted in favour of the new private sugar mills.

133. Having regard to our above conclusions, we uphold the order of the learned single Judge, the impugned orders of demarcation and allotment

of areas to various private sugar mills passed by the Sugar Commissioner cum Cane Commissioner in the order dated 04.12.1997, in R.S. No.

23364/D1/94 and order dated 03.06.2008, in R.C. No. 5972/Cane-1/2008 are set aside. The directions issued by the learned single Judge in

paragraph 90 is upheld. We only add and direct the State of Tamil Nadu to pass appropriate orders including two of the representatives of cane

growers in the Area Delimitation Committee and that we also make it clear that the Area Delimitation Committee shall confine its consideration

relating to demarcation in respect of new sugar mills and sugar mills in private sector while the Director of Sugar cum Cane Commissioner shall

exercise its power relating to demarcation of areas between existing sugar mills in co-operative and public sector as directed in the order of the

Government in G.O. Ms. No. 217, dated 18.08.1997.

134. We also hold that till such time final orders are passed by the Cane Commissioner, the areas allotted to various sugar mills shall remain as free

will area in so far as the members of the co-operative sugar mills. The writ

petitions are disposed of on the above terms.

135. W.A. No. 1456 of 2009 and W.P. 24057 of 2009 as well as W.P. No. 24233/2009 and W.P. No. 9246 of 2009 stands allowed.

136. W.A. 401 of 1998 stands disposed off. W.P. No. 19322 of 1997 stands allowed and the impugned order is set aside. W.A. Nos. 535 to

539, 540 to 543, 544 to 548, 571 and 572 stands dismissed. W.A. No. 1690 to 1703 of 2009 stands dismissed. All miscellaneous petitions are

closed. In the facts and circumstances of the case, there will be no order as to costs.