
(2011) 11 AHC CK 0162
In the Allahabad High Court
Case No : Special Appeal No. 943 of 2010

Navneet Kumar and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

Constitution of India, 1950 — Article 14
Contract Act, 1872 — Section 27
Uttar Pradesh Cane Co-operative Service Regulations, 1975 — Regulation 2, 21, 26, 34, 60
Uttar Pradesh Co-operative Societies Act, 1965 — Section 121, 122, 28, 70
Uttar Pradesh Industrial Disputes Act, 1947 — Section 4I, 4I
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 10, 13, 15, 16, 16(2)
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 52, 53, 54, 55, 57

Citation : (2012) 1 ADJ 377

Hon'ble Judges : Bharati Sapru, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon"ble Ashok Bhushan, J.—All these special appeals, raising same question of law and facts, have been heard together and are being decided by this common judgment.

2. Special Appeal No. 943 of 2010 (Navneet Kumar and others v. State of U.P. and others) has been filed challenging the judgment and order of learned Single Judge dated 28th May, 2010 in Writ Petition No.28487 of 2010 (Navneet Kumar and others v. State of U.P. and others) connected with Writ Petition No.30907 of 2010 (Virendra Singh and others v. State of U.P. and others) dismissing the writ petitions. In Special Appeal No.943 of 2010, in Special Appeal No.1024 of 2010 as well as in Special Appeal No.1012 of 2010 same judgment dated 28th May, 2010 has been challenged. Special Appeal Nos.1160 of 2010, 1117 of 2010, 1161 of 2010, 1162 of 2010 and 990 of 2010 challenge the judgment of learned

Single Judge by which judgment the writ petitions filed by the appellants have been dismissed in view of the judgment and order dated 28th May, 2010 in Writ Petition No.28487 of 2010. The last special appeal being Special Appeal No. 1780 of 2010 has been filed against the order of learned Single Judge dated 6th October, 2010 passed in Writ Petition No.61204 of 2010 by which order the learned Single Judge refused to grant any interim relief and connected the writ petition with two pending writ petitions.

3. There is delay of 127 days in filing Special Appeal No.1012 of 2010. In the affidavit filed in support of the delay condonation application, one of the grounds taken is that since the employment of the appellants has been seized, they could not manage fund for filing the writ petition within time. Sufficient grounds have been made out for condoning the delay in filing the special appeal. The delay in filing Special Appeal No.1012 of 2010 is condoned and the application is allowed.

4. Special Appeal No.943 of 2010 is being treated as leading appeal and reference of facts and pleadings in the said appeal is sufficient for disposing of all the special appeals.

5. In special Appeal No.943 of 2010 the Division Bench granted an interim order dated 10th June, 2010 staying the operation of the order of learned Single Judge dated 28th May, 2010 as well as the notification dated 13th April, 2010 and the consequential order dated 24th April, 2010. Against the interim order dated 10th June, 2010 Special Leave to Appeal (Civil) No.26114 of 2010 was filed by the State of U.P. which special leave to petition was dismissed by the judgment of the Apex Court dated 4th October, 2010, however, looking to the impact of the decision to be arrived at by the High Court in different stakeholders, this Court was requested to dispose of the pending special appeals within the month of November, 2010.

6. Another Special Leave to Appeal No.17484 of 2010 was filed by the Cane Commissioner/Registrar Cooperative Cane Societies, U.P. and others challenging the same interim order dated 10th June, 2010 which special leave to appeal was disposed of noticing the order of the Apex Court passed in Special Leave to Appeal (Civil) No.26114 of 2010. The Apex Court, however, observed that till the appeal is disposed of by the High Court contempt proceedings should be stayed. By a subsequent order in an Intervention Application No.6 of 2011 filed in Special Leave to Appeal No.26114 of 2010 the Apex Court passed an order on 12th October, 2011 directing the High Court to hear the appeals which was fixed on 17th October, 2011 and decide the same. The hearing of the special appeals commenced on 17th October, 2010 and was concluded on 18th October, 2011.

7. Brief facts giving rise to Special Appeal No.943 of 2010 now need to be noted. The appellants Navneet Kumar and others claimed to be working with Cooperative Cane Development Society, Dhampur (respondent No. 4) as seasonal staffs for the past several years. The seasonal staffs are appointed during "crushing season" in the establishment of respondent No.4. The service

conditions of seasonal staff are governed by the U.P. Cane Cooperative Service Regulations, 1975 framed under the provisions of the U.P. Cooperative Societies Act, 1965. The respondent No.4 is a registered Cooperative Society which is engaged in supply of sugarcane belonging to its members i.e. cane growers to the various sugar factories of the area. The State of U.P. has enacted an Act, namely, U.P. Sugar Cane (Regulation of Supply and Purchase) Act, 1953 which defines the "crushing season" in Section 2(i) as the period beginning from 1st October in any year and end on 15th July next following. The seasonal staffs are engaged during crushing season in the Cane Cooperative Societies i.e. respondent No.4. The respondent No.4 is a registered Cooperative Society within the meaning of U.P. Cooperative Societies Act, 1965. u/s 122 of the U.P. Cooperative Societies Act, 1965 the Cane Commissioner has been authorised to frame regulations for regulating the service conditions of the staffs of Cane Cooperative Society in pursuance of which the 1975 Regulations, as mentioned above, have been framed. The 1975 Regulations also contain a definition of "crushing season" in Regulation 2(n). Up to the year 1993 the definition of crushing season under Regulation 2(n) meant the period as defined in U.P. Sugar Cane (Regulation of Supply and Purchase) Act, 1953. An amendment was made in Regulation 2(n) of the 1975 Regulations by the Cane Commissioner by order dated 17th May, 1993 and 14th July, 1993 amending Regulation 2(n) to the following effect: "Crushing season means the period commencing from the date when crushing of sugarcane in concerned sugar factory commences till the date when crushing ends".

8. The said amendment was challenged in the High Court by means of Writ Petition No.33014 of 1993 which was dismissed by this Court on 26th April, 2005. The said judgment and order was challenged by the U.P. Cane Union Employees Federation Limited in the Apex Court and the Apex Court allowed the special leave to appeal by judgment dated 10th April, 2008 reported in U.P.C.U.E.F. Ltd. Vs. Cane Commissioner and R.C.C.S. and Others, The Apex Court took the view that as per Section 4-I of the U.P. Industrial Dispute Act, 1947 the service conditions of the writ petitioners, who were seasonal employees, could not have been changed without notice to the employees since the same involved change of condition of service. The notification dated 17th May, 1993 and 14th July, 1993 were set-aside and the writ petition was allowed. It is useful to quote paragraphs 10 and 11 of the said judgment, which are to the following effect:

10. In view of our discussions made hereinabove, we, therefore, hold that the orders dated 17th of May, 1993 and 14th of July, 1993 could not have been passed without giving any notice in compliance with Section 4-I read with the Third Schedule of the U.P. Industrial Disputes Act, 1956, as mentioned herein earlier. In view of our finding made hereinabove, it is, therefore, not necessary to deal with Question No.2 regarding power of respondent No.1 to frame and amend regulations u/s 122 of the U.P. Cooperative Societies Act, 1965.

11. For the reasons aforesaid, the impugned judgment of the High Court is set-aside. The writ petition filed by the appellant is allowed to the extent indicated above. The appeal is thus allowed without any order as to costs. However, it would be open to the respondent to amend the definition of "Crushing Season" in accordance with law.

9. After the judgment of the Apex Court, the Cane Commissioner, after giving hearing to the employees, has again passed an order on 13th April, 2010 which was published in the Gazette on 17th April, 2010. By the order of the Cane Commissioner Section 2(n) of the 1975 Regulations was again amended to the same effect as was amended in the year 1993. The appellants, who claimed to have been engaged as seasonal employees of respondent No.4 in the crushing season 2009-10, claiming that they were entitled to work till 15th July, 2010 i.e. the end of crushing season, have challenged the order of the Cane Commissioner dated 13th April, 2010 as published on 17th April, 2010 as well as the consequential order of disengagement dated 24th April, 2010 issued by the Secretary, Cooperative Cane Development Union Limited, Dhampur, Bijnore by means of writ petitions. The writ petitions were dismissed by the learned Single Judge upholding the notification dated 17th April, 2010 against which judgment and order special appeals have been filed.

10. We have heard Sri Shashi Nandan, Senior Advocate, assisted by Sri Alok Kumar Yadav for the appellants, Sri S.G. Hasnain, learned Additional Advocate General assisted by Sri S.P. Kesarwani, learned Additional Chief Standing Counsel for the State and Sri Ravindra Singh, Advocate for respondent No.4.

11. Learned counsel for the appellant submitted that definition of "crushing season" as contained in Regulation 2(n) of the 1975 Regulations as amended by Cane Commissioner on 17th April, 2010 violates the definition of "crushing season" as provided in Section 2(i) of the 1953 Act, hence the same is liable to be struck down. It is submitted that the 1975 Regulations being subordinate legislation cannot violate the plenary legislation i.e. the 1953 Act. It is submitted that respondent No.4-Society of which petitioners are seasonal employees is engaged in purchase and supply of sugarcane and is governed by the 1953 Act, hence the 1975 Regulations cannot provide for any contrary definition of "crushing season". It is submitted that Regulation 2(n) is also arbitrary since it creates class amongst class. It is submitted that respondent No.4 supplies sugar cane to four sugar factories and crushing period of different sugar factories being different, the crushing season for society shall be different from each sugar factory which shall lead to arbitrariness. It is stated that work of societies for procurement and supply of sugar cane commences much prior to the actual crushing by the factory, hence the crushing season for society and its employees cannot be crushing season of a sugar factory. It has further been submitted that the 1953 Act is a special Act viz a viz U.P. Cooperative Societies Act, 1965, hence the same shall prevail.

12. Sri S.G. Hasnain, learned Additional Advocate General, refuting the

submissions of learned counsel for the appellants, contended that the 1975 Regulations have been framed u/s 122 of the U.P. Cooperative Societies Act, 1965 under which the Cane Commissioner is fully empowered to lay down service conditions of employees and authority who is empowered to frame regulations is fully empowered to amend the regulations from time to time and the Regulations 1975 cannot be controlled or affected by the 1953 Act. It is stated that the 1953 Act operates in different field whereas the 1965 Act and the Regulations 1975 operate in different fields and the Cane Commissioner is fully empowered to lay down the service condition of the employees. It is submitted that definition of "crushing season" under the 1953 Act has no concern with the service condition of the employees of the Cane Society. It is submitted that Cane Union throughout the State are running at loss and they are unable to pay wages to their staffs and in the event crushing season is treated to be 1st October to 15th July, the financial burden shall not be able to be borne by the societies. It is further submitted that actual crushing in all the sugar factories is only five to six months and the requirement of seasonal staff is only for the period when crushing starts in the sugar mill. It is submitted that definition under the 1975 Regulations relates to service condition of employees of the societies which regulations are within the power and jurisdiction of the Cane Commissioner. It is submitted that payment of wages to the seasonal staff during the period of actual crushing by the sugar factory is just and proper, hence the amendment made in the Regulation 2(n) is fully justified.

13. Sri Ravindra Singh, learned counsel for respondent No.4 also adopted the submissions raised by the learned Additional Advocate General. It is further submitted that for the last about 20 years the actual crushing has been between 5 to 6 months and the working of the seasonal staffs was almost coterminous with closing of the crushing. He has referred to Annexure-7 to the counter affidavit in which the dates of closure of crushing by the mills and the dates when the seasonal staffs were relieved are mentioned. He submits that normally seasonal staffs were relieved on the next date of closing of the crushing mill and they were never allowed to work till 15th July. It is further submitted that financial burden cannot be met by the Society of paying the seasonal staff for entire crushing season if the crushing season is treated to be from 1st October to 15th July. It is further submitted that even if there are more than one sugar factory to whom the sugar cane is supplied by respondent No.4, the date when first sugar mill starts shall be beginning of crushing season and the date when the crushing in the last sugar mill is closed, is the date of end of crushing season and there is no difficulty in finding out the crushing season as per Regulation 2(n).

14. Learned counsel for the parties have also relied on various judgments of the Apex Court which shall be referred to while considering the submissions in detail.

15. Before we proceed to consider the submissions of learned counsel for the parties, it is useful to have a look over the statutory scheme of the 1953 Act, as

well as the 1965 Act and the 1975 Regulations.

16. The U.P. Sugar Cane (Regulations of Supply and Purchase) Act, 1953 (hereinafter referred to the 1953 Act) was enacted to regulate supply and purchase of sugarcane required for use in sugar factories and Gur, Rab or Khandsari Sugar Manufacturing Units. Section 2(d) of the 1953 Act defines Cane Commissioner. Section 2(f) defines Cane Growers' Cooperative Society and Section 2(i) defines "Factory". Section 2(d), 2(f) and 2(i) are quoted below:

2. Definitions. -In this Act unless there is anything repugnant in the subject or context.

...

...

(d) "Cane Commissioner" means the Officer appointed to be Cane Commissioner u/s 9, and includes an Additional Cane Commissioner appointed u/s 10;

...

(f) "Cane-growers" Co-operative Society" means a society registered under the Co-operative Societies Act, 1912, one of the objects of which is to sell cane-grown by its members and includes the federation of such societies registered u/s 8 of the said Act;

...

(i) "Crushing season" means the period beginning on the 1st October in any year and ending on the 15th July next following;

17. Section 9 of the 1953 Act contemplates appointment of Sugar Commissioner and the Cane Commissioner, which is quoted below:

9. Sugar Commissioner and Cane Commissioner.-The State Government may for purposes of this Act appoint

(a) a Sugar Commissioner; and

(b) a Cane Commissioner;

who shall perform the duties and exercise all powers conferred or imposed upon them by or under this Act:

Provided that nothing in this section shall prevent the State Government from appointing the same person to be Sugar Commissioner and the Cane Commissioner.

18. Section 13 of the Act provides of maintenance of register of all cane growers and cane growers' cooperative societies who shall sell cane to sugar factory. Section 15 empowers the Cane Commissioner, after consulting the factory and Cane growers' Cooperative Society, to reserve and assign an area for the

purposes of supply of cane to the factory. Section 16 of the 1953 Act provides for regulation of purchase and supply of cane in the reserved and assigned areas. Section 16(2)(a) and (b) of the 1953 Act, which are relevant for the purpose, are quoted below:

16. Regulation of purchase and supply of cane in the reserved and assigned areas.- (1)...

...

(2) Without prejudice to the generality of the foregoing powers such order may provide for

(a) the quantity of cane to be supplied by each Cane-grower or Cane-growers" Cooperative Society in such area to the factory for which the area has so been reserved or assigned;

(b) the manner in which cane grown in the reserved area or the assigned area, shall be purchased by the factory for which the area has been so reserved or assigned and the circumstance in which the cane grown by a cane-grower shall not be purchased except through a Cane-growers" Cooperative Society;...

19. Section 28 of the 1953 Act provides for rule making power. The U.P. Sugar Cane (Regulation of Supply and Purchase) Rules, 1954 has been framed by the Governor. Chapter XI of the 1954 Rules deals with cane growers" cooperative society. Rule 52, 53, 54, 55 and 57, which are relevant, are quoted below:

52. The terms and conditions of service including the qualifications, grades, and scales of salaries of the permanent as well as temporary staff of the Cane-growers" Cooperative Society shall be determined by the Federation subject to the approval of the Cane Commissioner.

53. The strength of staff to be maintained by a Cane-growers" Cooperative Society shall be fixed by the Cane Commissioner or an officer authorised by him in that behalf, with due regard to the working requirements and financial resources of the society.

54. The power to appoint, grant leave of absence to, punish, dismiss, transfer and control Secretaries, Assistant Secretaries and Accountant of Cane-growers" Cooperative Societies, whether permanent or temporary, shall be exercised by the Federation subject to the general, control of the Cane-Commissioner who may rescind or modify any order of the Federation:

Provided that Cane Commissioner may himself exercise any of such powers in case of emergency.

55. Similar powers as stated in Rule 54 may be exercised by the society in respect of the other staff, subject to the regulations made by the Federation and the general control of the Cane-Commissioner.

57. All arrangements in connection with the sowing, sale and supply of cane by

Cane-growers" Cooperative Societies shall be in accordance with such general or special instructions as may be issued by the Cane-Commissioner from time to time.

20. The U.P. Cooperative Society Act, 1965 has been enacted to consolidate and amend the law regarding cooperative societies in Uttar Pradesh. Section 122 of the 1965 Act provides for an authority to control employees of a cooperative society for the recruitment, training and disciplinary control. Section 122 of the 1965 Act is quoted below:

Section 122 -Authority to control employees of co-operative societies.-(1) The State Government may constitute an authority or authorities, in such manner as may be prescribed, for the recruitment, training and disciplinary control of the employees of co-operative societies, or a class of co-operative societies, and may require such authority or authorities to frame regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees and subject to the provisions contained in Section 70, settlement of disputes between an employee of a co-operative society and the society.

(2) The regulations framed under sub-section (1) shall be subject to the approval of the State Government and shall, after such approval, be published in the Gazette, and take effect from the date of such publication and shall supersede any regulations made u/s 121.

21. The Cane Commissioner has been constituted as an Authority u/s 122 of the 1965 Act who has framed the regulations, namely, U.P. Cane Cooperative Service Regulations, 1975. Regulation 2(d) of the 1975 Regulations defines "Cane Union". Regulation 2(n) defines "Crushing Season" and Regulation 2(o) defines "Cane Commissioner". Regulations 2(d), 2(n) (both unamended and amended) and Regulation 2(o) are quoted below:

2. Definition.-In these regulations, unless there is anything repugnant in the subject or context:

(a)...

(d) "Cane Union" or "Union" means and includes a Cooperative Society registered under the U.P. Cooperative Societies Act, 1965 or any other law for the time being in force in U.P. relating to Cooperative Societies, the primary object of which is to arrange for the development and marketing of sugar-cane grown by its members....

(n) (unamended) "Crushing season" means the period as defined in U.P. Sugarcane (Regulation of Supplies and Purchases) Act, 1953 (U.P. Act No. XXIV of 1953).

(n) (amended) "Crushing season" means the period commencing from the date when the crushing of sugarcane in concerned sugar factories commence till the

date, when crushing ends.

...

(o) Cane Commissioner" means an officer appointed as such by the State Government u/s 9 of the U.P. Act No. XXIV of 1953).

22. Regulations 21, 26 and 34 of the 1975 Regulations, which are pertaining to seasonal staff, are quoted below:

21. Categorisation. - At the end of each crushing season the Secretary of the Cane Union shall classify the entire seasonal staff into "A" and "B" categories on the basis of their work and worth during the season. Such persons unquestionable integrity and have discharged their duties efficiently during the crushing season shall be placed in "A" category and the rest in category "B". When seasonal employee is placed in category "B" he will be informed of the same together with the grounds for his categorisation and an opportunity shall be given to him to explain the charges and deficiencies against him. These proceedings shall be of summary nature and shall be conducted by the Secretary of the Union concerned.

...

26. The staff placed in category shall be automatically re-employed in the next season unless the strength of seasonal staff has been reduced in any particular year to such an extent that it may not be possible to re-employ all such staff.

34. Termination of services.-The services of a seasonal employee may be terminated by the recruiting or appointing authority at any time on a week's notice or with a week's salary in lieu thereof. This provision shall not apply in case of termination as a result of disciplinary proceedings or termination at the close of the crushing season.

23. The main challenge in these appeals is to the definition of Regulation 2(n) as introduced by amendment dated 17th April, 2010 which according to appellants is not in conformity with the 1953 Act and deserves to be set-aside. The definition of Regulation 2(n) as was contained in original 1975 Regulations adopted the same definition of "crushing season" as was there in the 1953 Act. Subsequently in the year 1993 the definition was amended which was subject matter of challenge in writ petitions before this Court and thereafter before the Apex Court and ultimately the amendment was set-aside by the Apex Court on a different ground i.e. it violates Section 4-I of the U.P. Industrial Dispute Act, 1947, however, the question as to whether the Cane Commissioner has rightly amended Regulation 2(n) was not gone into by the Apex Court and was left open. The submission, which has been advanced by the appellants is that the definition of "crushing season" in Regulation 2(n) is contrary to the 1953 Act and deserves to be set-aside on this ground alone. It is submitted that respondent No.4 and its employees are engaged in purchase and supply of sugar cane and are governed by the 1953 Act. The definition of "crushing season" is a special

definition given in the 1953 Act for the purposes of regulating supply and purchase of sugarcane and no other definition can be introduced by regulation of "crushing season". It is submitted that one of the grounds to challenge the subordinate legislation is that it violates any other plenary legislation. Before we proceed further to examine the challenge, it is useful to consider the grounds which are available to challenge a subordinate legislation.

24. Justice G.P. Singh's Principles of Statutory Interpretation (11th Edition) refers to grounds of judicial review in following words:

Delegated legislation is open to the scrutiny of courts and may be declared invalid particularly on two grounds: (a) Violation of the Constitution; and (b) Violation of the enabling Act. The second ground includes within itself not only cases of violation of the substantive provisions of the enabling Act, but also cases of violation of the mandatory procedure prescribed. It may also be challenged on the ground that it is contrary to other statutory provisions or that it is so arbitrary that it cannot be said to be in conformity with the statute or Article 14 of the Constitution or that it has been made in bad faith. The limitations which apply to the exercise of administrative or quasi-judicial power conferred by a statute except the requirement of natural justice also apply to the exercise of power of delegated legislation. Rules made under the Constitution do not qualify as legislation in true sense and are treated as subordinate legislation and can be challenged in judicial review like delegated legislation. Compliance with the laying requirement or even approval by a resolution of Parliament does not confer any immunity to the delegated legislation but it may be a circumstance to be taken into account along with other factors to uphold its validity although as earlier seen a laying clause may prevent the enabling Act being declared invalid for excessive delegation.

25. The Apex Court in the case of Indian Express Newspapers (Bombay) Private Ltd. and others v. Union of India and others reported in AIR 1986 S.C. 515, while enumerating the grounds to challenge a subordinate legislation, has laid down following in paragraphs 73 and 75:

73. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the judges would say "Parliament never intended authority to make such rules. They are unreasonable and ultra vires". The present position of law bearing on the above point is stated by Diplock, L.J. in *Mixnam Properties Ltd. v. Chertsey U.D.C.*(1) thus:

The various grounds upon which subordinate legislation has sometimes been said to be void.... can, I think, today be properly regarded as being particular applications of the general rule that subordinate legislation, to be valid must be shown to be within the powers conferred by the statute. Thus the kind of unreasonableness which invalidates a by-law is not the antonym of "reasonableness" in the sense of which that expression is used in the common law, but such manifest arbitrariness, injustice or partiality that a court would say: "Parliament never intended to give authority to make such rules: they are unreasonable and ultra vires.... If the courts can declare subordinate legislation to be invalid for "uncertainty," as distinct from unenforceable-this must be because Parliament is to be presumed not to have intended to authorise the subordinate legislative authority to make changes in the existing law which are uncertain....

75. In India arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. In India any enquiry into the vires of delegated legislation must be confined to the grounds on which plenary legislation may be questioned, to the ground that it is contrary to the statute under which it is made, to the ground that it is contrary to other statutory provisions or that it is so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.

26. The Apex Court again in the case of Kerala Samsthana Chethu Thozhilali Union Vs. State of Kerala and Others, laid down following in paragraph 17:

17. A rule is not only required to be made in conformity with the provisions of the Act where under it is made, but the same must be in conformity with the provisions of any other Act, as a subordinate legislation cannot be violative of any plenary legislation made by the Parliament or the State Legislature.

27. In the case of State of Tamil Nadu and Another Vs. P. Krishnamurthy and Others, grounds to challenge the subordinate legislation were enumerated in paragraph 15, which is quoted below:

15. There is a presumption in favour of constitutionality or validity of a subordinate Legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a sub-ordinate legislation can be challenged under any of the following grounds:

- a) Lack of legislative competence to make the sub-ordinate legislation.
- b) Violation of Fundamental Rights guaranteed under the Constitution of India.
- c) Violation of any provision of the Constitution of India.
- d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- e) Repugnancy to the laws of the land, that is, any enactment.

f) Manifest arbitrariness/unreasonableness (to an extent where court might well say that Legislature never intended to give authority to make such Rules).

28. From the above, it is clear that one of the grounds to challenge subordinate legislation is repugnancy to the laws of land, that is, any enactment "plenary legislation". The 1975 Regulations have been framed under the 1965 Act and the subordinate legislation can be struck down if it is ultra vires to the parent Act or to the Constitution of India but in the present case no such grounds have been pressed. The ground, which has been pressed, is that Regulation 2(n) being contrary to the 1953 Act cannot be sustained.

29. As noticed above, the 1953 Act which relates to supply and purchase of sugar-cane and lays down detail procedure including working of cane cooperative societies engage in supply of sugar-cane clearly controls the functioning of cane societies. Section 2(f) of the 1953 Act which defines "Cane Societies" as well as Section 16 and Chapter XI of the 1954 Rules. The conclusion is inescapable that insofar as the respondent No.4-Society, which is a society registered under the Cooperative Societies Act, 1965, is concerned, the same is clearly regulated by the 1953 Act. The issue as to whether cane societies registered under the Cooperative Societies Act are governed by the 1953 Act has been specifically considered by the Apex Court in the case of U.P. Cooperative Cane Union Federation Ltd. and Another Vs. Liladhar and Others, In the aforesaid case, the provisions of U.P. Cooperative Societies Act, 1912 and the 1965 Act as well as the 1953 Act came for consideration before the Apex Court in context of disciplinary proceedings against an employee of the Cane Cooperative Society. The Apex Court laid down in paragraph 8 of the judgment that each as a Cooperative Society would be governed by the 1912 Act and each as a Cane-growers" Cooperative Society would be governed by the 1953 Act. Followings are laid down in paragraphs 8 and 21 of the said judgment:-

8.... Each as a Co-operative Society would be governed by the 1912 Act and each as a Cane-growers" Co-operative Society and its federation, for the purpose of regulation of supply and purchase of sugarcane, would be governed by the 1953 Act.

21.... A Cane-Growers" Co-operative Society would be governed with regard to the provisions for law of Co-operative Societies by 1912 Act and in respect of its business of growing and selling cane it would be governed by 1953 Act. Both Acts operate in an entirely different field and are enacted with different objects in view. 1953 Act neither trenches upon 1912 Act nor supersedes or supplants any provision of it.....

30. Thus it is clear that respondent No.4-Society is governed by the 1953 Act as well as by U.P. Cooperative Societies Act. Although the regulations have been framed u/s 122 of the 1965 Act but viz. a viz. respondent No.4 cannot adopt any different definition of words "crushing season" as to one which are contained in the 1953 Act. The society in which the appellants are employed cannot have two

definition of "crushing season", one for its functioning and another for its employees. Insofar as functioning of the society as per the 1953 Act is concerned, there are several functions of the society which have to be in accord with the functioning of crushing season as given in the 1953 Act. A society registered under the Cooperative Societies Act, 1965 is also governed by the 1953 Act and while framing any regulation, any provision of the 1953 Act cannot be violated nor any such provision can be adopted which goes contrary to the 1953 Act. As noticed above, subordinate legislation has also to yield to any plenary legislation which is applicable to it. It may be another thing that a plenary legislation is not applicable in a particular case in which case there can be no question of examining violation of any plenary legislation. This can be explained by taking a simple example. Although u/s 122 the regulation can be framed with regard to recruitment, training and disciplinary control of the employees of the cooperative society but the said regulation cannot contain a provision which may violate the provisions of the Contract Act, 1872. Suppose, the service condition in the regulation contains a clause which provides that any employee who is a seasonal employee shall not take any profession, trade or business even after cessation of his employment, the said clause shall be clearly void and can be invalidated on the ground that it violates Section 27 of the Contract Act, 1872. Similarly, if one of the service conditions contained in the regulations provides that no seasonal employee shall take recourse to the Court if he accepts seasonal employment, the said provision will violate Section 28 and can be declared void, although both the above provisions are not ultra vires to any provision of U.P. Cooperative Societies Act, 1965. It may be possible for the Cane Commissioner, while laying down conditions for employment of employees of Cane Cooperative Society that they may be terminated during currency of crushing season or they may be paid wages only for the period when they are required to work but for that it is not necessary to change the definition of "crushing season". Thus the first submission of learned counsel for the appellants has substance.

31. The submission of the learned counsel for the respondents that the Cane Commissioner having framed the 1975 Regulations u/s 122 of the U.P. Cooperative Societies Act, 1965 is free to amend the 1975 Regulations in the manner as he thinks fit with only limitation that amendment is not ultra-vires to the 1965 Act, can be tested taking one more illustration. As noticed above, "Cane Commissioner" is defined in Section 2(d) of the 1953 Act and is appointed by the State Government u/s 9 of the 1953 Act for the purposes of the Act. The 1975 Regulations also defines "Cane Commissioner" in Regulation 2(o) to mean an officer appointed as such by the State Government u/s 9 of the 1953 Act. Can Regulation 1975 be amended in a manner that the "Cane Commissioner" for the Regulations 1975 may be a different officer, although amending the Regulation 2(o) may not contravene any provision of parent Act i.e. 1965 Act, the answer has to be "No" for the simple reason that "Cane Commissioner" is appointed under the 1953 Act for carrying out the purpose of the 1953 Act, similarly the

"crushing season" has been defined in the 1953 Act for specific purpose which can not be amended by a subordinate legislation in a manner which is contrary to the 1953 Act.

32. The second submission of learned counsel for the appellants is that definition of "crushing season" as contained in Regulation 2(n) is irrational and arbitrary. The definition of "crushing season" in Regulation 2(n) as now amended provides that "crushing season" means the period commencing from the date, when the crushing of sugar-cane in concerned sugar factories commence till the date, when crushing ends. The work of the societies (respondent No.4) is not limited or correspond only to the crushing of sugar-cane in the concerned sugar factory. There is statutory performance by the society even prior to start of crushing season and the societies function even after crushing ends towards the payment of cane price and other allied activities. When the societies' work is not limited to crushing in the sugar mills, there cannot be any restraint in engaging staff beyond the actual crushing by the sugar factories. The definition of crushing season in the 1953 Act is with specific object and purpose and there cannot be two definition, one for society and another for its employee. It is also relevant to note that definition contained in Regulation 75 of "crushing season" shall not only govern the seasonal staff, rather it shall govern all category of staffs. There may be more than one sugar factory in the domain of a society which shall also lead to different crushing season for different factories, hence the same is irrational.

33. Regulation 60 of the 1975 Regulations has also been referred to which empowers transfer of various categories of staff from one Union to another Union outside the district and within the district which shall lead to inconsistency if for different sugar factories different crushing season is found out and adopted. The definition thus is clearly irrational and unworkable.

34. The Apex Court in the case of H.S. Vankani and Others Vs. State of Gujarat and Others, laid down that Courts have to avoid a construction of an enactment that leads to an unworkable, inconsistent or impracticable results. Following was laid down in paragraph 48:

48. The above legal principles clearly indicate that the courts have to avoid a construction of an enactment that leads to an unworkable, inconsistent or impracticable results, since such a situation is unlikely to have been envisaged by the rule-making authority. The rule making authority also expects rule framed by it to be made workable and never visualises absurd results....

35. The submission on which much stress has been given by the learned Additional Advocate General and Sri Ravindra Singh is that Cane Cooperative Societies are running under great loss and unable to pay wages to its staffs during entire crushing season if it is taken as 1st October to 15th July of next year. There cannot be any restraint on the employer to take work from its seasonal staff for a period when their services are not required nor there can be any restraint to terminate the services of a seasonal staff when there is no

requirement. Regulation 34 of the 1975 Regulations, as noted above, clearly envisaged a situation when a seasonal staff can be terminated on a week's notice or a week's salary in lieu thereof. The 1975 Regulations could have been amended to achieve the aforesaid object if so required, however, it is not justified to change very definition of "crushing season".

36. Learned Additional Advocate General has placed reliance on judgment of the Apex Court in the case of Virendra Pal Singh and Others Vs. District Assistant Registrar, Cooperative Societies, Etah and Another, . In the said case the Apex Court was considering as to whether provisions of banking activity by cooperative societies takes out the Act out of the competence of State legislature. It was held that State legislature is fully competent to legislate since such legislation falls within the legislative competence of the State. The said judgment does not help the respondents in the present case.

37. Learned Single Judge has erred in observing that Regulation 2(n) of the 1975 Act does not militate against any provision of the 1953 Act since the regulation was framed for an altogether different purpose. The view of the learned Single Judge that Regulation 2(n) is not arbitrary also cannot be supported in view of the reasons as noticed above.

38. Another order, which has been challenged in the writ petition was an order dated 24th April, 2010 by which the appellants were relieved. The said order also refers to the order of the Cane Commissioner dated 13th April, 2010.

39. The issue to be answered is as to for what relief the appellants are entitled in the above facts and circumstances. The seasonal employees, who are appellants, having been relieved on 24th April, 2010, they have not performed any work during the season after 24th April, 2010 and the said crushing season has also come to an end. From the counter affidavit, which has been filed by respondent No.4, as well as from the counter affidavit filed by the State, it is clear that for the last several years in majority of years regarding which statement has been given, i.e. from 1991 to 2009-10, the seasonal staffs were relieved in the month of April. In few cases they were allowed to continue till May or June. In none of the years the seasonal staffs were actually worked till 15th July of the next year. Regulation 34 of the 1975 Regulations empowers the Cane Society to terminate the services of seasonal staff by giving one week's notice or giving one week salary in lieu thereof. Further details regarding financial position of the societies have been mentioned and pleaded. It is not the case that after 24th April any other seasonal staff was allowed to work and have been paid salary. The relieving of the seasonal employee although was on the basis of the order of the Cane Commissioner dated 13th April, 2010 but there being power with the society to terminate by one week notice, the seasonal employees were entitled at best for one week salary since they were not given one week notice as required by Regulation 34 of the 1975 Regulations.

40. In view of the aforesaid, the appellants were entitled for a week's salary as

required by Regulation 34 of the 1975 Regulations before relieving them.

41. In result, all the special appeals as well as writ petitions giving rise to special appeals, are partly allowed in following manner:

(i) The judgment of learned Single Judge impugned in these appeals are set-aside. The Special Appeal No. 1780 of 2010 although is against an order refusing to grant interim relief, but since the issues raised in the writ petition giving rise to Appeal No. 1780 of 2010 are fully covered by this judgment, the Writ Petition No. 61204 2010 as well as Special Appeal No. 1780 of 2010 are allowed to the extent as indicated below.

(ii) The order of the Cane Commissioner dated 13th April, 2010 as published on 17th April, 2010 is set-aside.

(iii) The order dated 24th April, 2010 is also quashed insofar it relieves the appellants without giving one week's notice or with a week's salary in lieu thereof. However, the appellants shall be entitled for only a week's salary as per Regulation 34 of the 1975 Regulations in lieu of one week notice, as a result of quashing of the order dated 24th April, 2010.

42. Parties shall bear their own costs.