

(2017) 03 AHC CK 0180
In the Allahabad High Court
Case No : 67617 of 2014

Rashtriya Kisan Mazdoor Sangathan

APPELLANT

Vs

State of U.P. & Another

RESPONDENT

Date of Decision : 09-03-2017

Acts Referred:

[Essential Commodities Act, 1955](#), [Section 3](#) -
Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953, Section 17(4), Section 17, Section 17(3), Section 17(5), Section 17(5)(a)

Citation : (2017) 03 AHC CK 0180

Hon'ble Judges : V.K. Shukla, Mahesh Chandra Tripathi

Bench : Division Bench

Advocate : V M Singh, Diptiman Singh, B N Singh, Anoop Trivedi, Tarun Agrawal, Mansoor Ahmad, Ravindra Singh, A K S Bais, Rohit Agarwal, Ashok Bhatnagar

Final Decision : Dismissed

Judgement

1. Apart from other issues, the pivotal issue raised/canvassed and to be answered is as to whether the power to waive the interest on delayed payment of Cane price for the season 2012-13; 2013-14 and 2014-15 has been rightly exercised under the 1953 Act, by the Cane Commissioner with the approval of the State Government. 2. Rashtriya Kisan Mazdoor Sangathan has been espousing cause of the farmers for ensuring payment of balance cane dues along with statutory interest. 3. This Court after hearing the parties vide its order dated 09.01.2014 held that payment of interest for delayed payment was a right and not bounty and directed payment of the cane dues inclusive of interest within a period of 3 weeks. The relevant portion of the order is reproduced as under for ready reference: "In the counter affidavit which has been filed by the State, it has been stated that the statutory provisions of Section 17(3) of the U.P. Sugar Cane (Regulation of Supply and Purchase) Act, 1953 providing for payment of interest on the delayed payment of sugarcane price is subservient to

the wisdom of the Cane Commissioner with the approval of the State Government and while the State Government acknowledges that the wisdom of the Cane Commissioner must be fair and equitable, sugarcane growers are not entitled to seek interest on delayed payment of sugarcane price as a matter of right. This interpretation which is sought to be placed by the State is plainly contrary to the provisions of Section 17. Section 17(1) obligates the occupier of a factory to make provisions for speedy payment of the price of cane purchased by him as may be prescribed. Under sub-section (2), a liability is cast on the occupier of a factory upon the delivery of the cane to pay immediately the price of the cane so supplied together with all other sums connected therewith. Where there is a default in the payment of the price for a period exceeding 15 days from the date of delivery, the occupier of the factory is made liable under sub-section (3) of Section 17 to pay interest which, under the proviso, is prescribed at 12% per annum. However, the Cane Commissioner is empowered to direct, with the approval of the State Government, that no interest shall be paid or interest shall be paid at such reduced rate as he may fix. These provisions make it abundantly clear that there is a statutory obligation which is cast on the occupier of a factory not merely to pay price of the sugarcane purchased but any default in the immediate payment of price beyond the period of 15 days attracts a mandatory obligation to pay interest as prescribed under sub-section (3) of Section 17. The Cane Commissioner is empowered, with the approval of the State Government, to direct that either no interest shall be paid or that it would be paid at the reduced rate. From this, three consequences emerge. Firstly, there is a statutory entitlement of the supplier of the cane to the occupier of a factory to receive the payment of the cane price together with interest. Secondly, this entitlement is as a matter of right and not a bounty. The farmers have no discretion since they are duty bound to supply cane to the sugar factory to which they are directed. Equally, there is a corresponding obligation to pay to the farmers the cane price and where there is a default in payment beyond a period of 15 days, to pay interest. Thirdly, whether the interest should be paid or not does not lie in the subjective wisdom of the Cane Commissioner. The Cane Commissioner is empowered to direct, in a given case, that interest may not be paid or should be paid at a reduced rate. This is subject to two important safeguards. The first is the approval of the State Government. When the State Government grants its approval to such a proposal, it cannot do so at its own whims and fancy. The interest of the farmers cannot be ignored and it is only when there are important reasons having a bearing on public interest that the power can be exercised in a given case. The Cane Commissioner, before he moves the State Government, must also be satisfied on the basis of objective considerations that reasons have been established for reducing or waiving the payment of interest. At this stage, it should also be noted that the issue in regard to the liability to pay interest has been dealt with in a judgment of the Supreme Court in *State of M.P. v. Jaora Sugar Mills Ltd. & Ors.*, reported in (1997) 9 SCC 207. It has been held that, as a matter of fact, interest is liable to be paid at the rate of 15% per annum under sub-clause (3A) of the Sugar Cane

Control Order 1966. In the present case, since the State Government has now indicated to the Court that in pursuance of central assistance which has been made available, the process of disbursement of dues is to be completed within a period of three weeks from today, we would stand over the hearing to 30 January 2014. We would now expect and accordingly direct the State Government to perform its obligation to ensure the due payment of the arrears of cane price to the farmers within a period of three weeks from today in terms of the assurance made to the Court. We clarify that it would be inclusive of the statutory liability to pay interest from the applicable dates in accordance with law. Matter to stand over to 30 January 2014." 4. On 31 January, 2014, the sugar mills association and the sugar mills filed an impleadment application and sought recall of the order dated 9-01-2014 so as to modify the direction to pay interest. This Court once again clarified that the payment of the cane dues is to be made along with penal interest and also directed the Cane Commissioner and the Principal Secretary Cane to provide the statement of arrears of cane dues including the outstanding interest and give a time bound schedule for payment. The relevant portion of the order dated 31.01.2014 is reproduced as under: "We direct the Cane Commissioner to provide to the Court an upto date statement of all the arrears due and payable by each of the newly impleaded respondent-Mills together with the outstanding interest due and payable thereon. In the previous order, this Court had directed the State Government to perform its obligation to ensure the due payment of the arrears of cane price to the farmers within a period of three weeks and to pay interest from the applicable dates in accordance with law. Since in the meantime, as the supplementary affidavit states some action has been initiated by the State Government and the arrears have been scaled down as noted earlier, we are at this stage, not taking recourse to the coercive arm of law for the failure on the part of the State in fulfilling the legitimate demands of the farmers. We now direct the Principal Secretary, Sugar Industries to file a personal affidavit within a period one week from today setting out precisely the steps which the State Government proposes to undertake to ensure the due payment of the arrears on account of sugar cane price inclusive of interest within a time bound schedule. The farmers cannot be left in a state of uncertainty until the loans are disbursed by the Banks to the Sugar Mills at an uncertain future date which, in turn depends upon the due compliance with all the requirements of the Bank by the borrowing entities. In the meantime, the situation which has now emerged is leading to grave social unrest. We, therefore, peremptorily direct the State Government to file an affidavit to specify the steps which it shall pursue to ensure the realization of the cane price together with interest. If the Court is left with no other option, we put all concerned on notice to the fact that the coercive arm of the law will have to be resorted to. However, we refrain from doing so at this stage in the earnest hope that better sense would prevail." 5. This Court has proceeded to entertain the Writ Petitions in question that were in the nature of Public Interest wherein Shri V.M. Singh appeared in person and thereafter, record in question reflects that this Court took serious note of the fact in reference to non payment of sugarcane dues of the

farmers. This Court took note of the final judgement of this Court dated 05.09.2014 in Rashtriya Kishan Mazdoor Sangathan (Regtd.) through its convenor v. State of U.P. in PIL No. 29523/2014 wherein detailed order has been passed under which an outer time limit of 31.10.2014 was fixed for the sale of the balance stock of the sugar to meet the dues of the cane growers or as the case may be, or the Cane Growers Cooperative Society. The process of sale required to be monitored by the Collector of every district to ensure that the amount, which would be realised, would be deposited in separate accounts of the Nationalized bank and would be utilized for payment of cane growers dues. The judgement of this Court rendered on 05.09.2014 attained finality on account of dismissal of Special Leave Petition by the Apex Court on the said score. In spite of the said directives, as the payment in question was not being ensured, the Rashtriya Kishan Mazdoor Sangathan through its convenor once again came to this Court by preferring Writ Petition No.67617 of 2014 and this Court on 03.02.2015 proceeded to take serious note of the matter by clearly mentioning that the proceedings that have been so ensured shall not be construed as any excuse or reason not to ensure compliance with the directions of this Court issued in terms of final judgement of this Court dated 05.09.2014. The order dated 03.02.2015 is as follows:- "Supplementary affidavit filed today be taken on record. By the final judgment and order of this Court dated 5 September 2014 in Rashtriya Kisan Mazdoor Sangathan (Regd.) through Convenor v. State of U.P. and others (PIL 29523 of 2014), this Court issued detailed directions under which an outer time limit of 31 October 2014 was fixed for the sale of the balance stock of sugar to meet the dues of the cane growers or, as the case may be, of the cane growers" co-operative society. The process of sale was required to be monitored by the Collectors of every district to ensure that the amounts which would be realised would be deposited in a separate account in a nationalised bank and would be utilised for the payment of cane growers" dues. The judgment of this Court was upheld upon the dismissal of a special leave petition by the Supreme Court. The learned Chief Standing Counsel has placed on the record a statement which indicates that even as on 2 February 2015 there is an outstanding of Rs.724.24 crores on the part of 12 sugar mills. Prima facie, we find that this breach of the orders of the Court would not have been possible without a neglect on the part of the District Magistrates to comply with their obligations and duties under the law as adverted to in the judgment of this Court. The District Magistrates were specifically assigned the responsibility of monitoring the sale process to ensure the realisation of dues by 31 October 2014. We are hence inclined to issue a notice to show cause to the District Magistrates of Meerut, Baghpat, Muzaffarnagar, Ghaziabad, Maharajganj, Hapur, Kasganj, Bahraich, Badaun and Pilibhit, to explain why proceedings should not be initiated under the Contempt of Courts Act, 1971 for breach of the directions of this Court. Notice shall, accordingly, be issued to the aforesaid District Magistrates returnable on 25 February 2015. We specifically clarify that these proceedings shall not be construed as any excuse or reason not to ensure compliance with the directions of this Court issued in terms of the final judgment

and order dated 5 September 2014. List on 25 February 2015, as fresh." 6. Thereafter the matter has been taken up by this Court once again and on 25.02.2015 following order has been passed:- "In pursuance of the order passed by this Court on 3 February 2015, affidavits have been filed by the learned Chief Standing Counsel and all the District Magistrates concerned. Besides, a chart has been filed in the Court of the exact position as on date. A total amount of Rs. 550.61 crores is due and outstanding towards the cane price payable to farmers for crushing season 2013-14. Of this amount, a substantial part of dues is outstanding from the Modi Sugars Ltd., Ghaziabad and Malakpur Sugars Ltd., Baghpat (Rs.168 crores); Mawana and Naglamal Sugar Mills at Meerut (Rs.173 crores); Simbhoali Sugar Mills Ltd., Hapur and Bahraich (Rs.92 crores) and Titawi Sugar Mill, Muzaffarnagar (Rs.102 crores). In the case of the Sugar Mills in the Modi Group at Ghaziabad and Baghpat, it has been stated that Mills do not have any CC limits. Similar is the position in respect of the Titawi Sugar Mill, Mawana and Naglamal Sugar Mills. If there were no CC limits, as stated in the chart, the entirety of the price which was realized from the sale of sugars, should have been paid over to the farmers. The Court has not been apprised of the amount which was actually paid over from the total price realized and, what if any, has been diverted by the Mills. Similarly, in the case of Simbhoali Sugar Mills, it has been stated that though the Mills have CC limits, the tagging orders were not complied with. The sale of sugar has been stayed by this Court in Writ - C No. 9333 of 2015 by an order dated 16 February 2015. According to the State, there is a diversion of Rs.100 crores from the actual amount which has been received from the sale of sugar in Simbhoali alone. We are of the view that this state of affairs should not have come to pass without the complicity or at the least negligence on the part of the District Cane Officers and the failure on the part of the District Magistrates to duly supervise the process. Moreover, it is not in dispute that moneys have been released for the current crushing season by the sale of sugar. There is no explanation before the Court how that money has been utilized and whether any part has been paid over to the farmers from the dues of the previous crushing season. The Court has been apprised of the fact that now coercive proceedings have been initiated by the State. The Court is requested by the learned Chief Standing Counsel to take up these matters after 16 March 2015, so as to enable the State to proceed ahead with the proceedings which have already been initiated. We are giving, all the District Magistrates of the concerned districts of Ghaziabad, Baghpat, Maharajganj, Muzaffarnagar, Meerut, Bahraich and Hapur, time until 23 March 2015 to ensure that the outstanding dues which now amount to Rs. 550 crores are liquidated at the earliest. The previous judgement of this Court which is required to be implemented has been affirmed, upon the dismissal of the Special Leave Petition by the Supreme Court, and it is the obligation of the State to ensure that the directions which were issued are strictly complied with. Since the passing of the last order on 3 February 2015, on which date an amount of Rs. 724.24 crores was outstanding, the dues of the farmers are now in the amount of Rs. 550.61 crores. There is no reason or justification for the officers of the State to await orders of the Court for

taking actions which they are otherwise duty bound to take in accordance with law. We place the District Magistrates on notice that unless firm steps are taken for ensuring compliance by the next date of hearing and the dues of the farmers are released, the Court would be inclined to take serious steps against them in terms of the directions which were issued on the previous orders dated 3 February 2015. Since in the meantime, an amount of Rs.190.00 crores has been released, we defer that action for the moment. We further direct that a further affidavit be filed indicating the (i) total quantity of sugar that was sold; (ii) the amount that was realized on the sale of the sugar; and (iii) the amount which was paid over to the farmers, so as to make the factual position clear before the Court by the Mills against whom dues are outstanding. List the matter on 24 March 2015, as fresh." 7. Thereafter the matter has been taken up by this Court once again and on 27.05.2015 following order has been passed:- "The position of the outstandings of sugar mills for crushing season 2014-15 has been tabulated in the counter affidavit filed by the Deputy Cane Commissioner. The counter indicates that dues which are outstanding to farmers for sugarcane which has been crushed are in the amount of Rs. 985.34 crores on the part of state owned cooperatives and Rs.23.97 crores on the part of the Cooperative Sugar Corporation. These dues have been computed on the basis of the State Advisory Price of Rs. 280/- per quintal. We find no reason or justification for state owned and controlled mills to be in default of the outstandings for crushing season 2014-15 which amount to Rs.1009.31 crores. The State cannot be oblivious to the plight of farmers who supplied the cane; whose cane has been crushed and who are entitled to receive the sugarcane price within a period of fifteen days of deliveries being made. These dues have been held in abeyance until date. We are of the view that the State Government must make necessary arrangements to pay 25% of the outstandings computed on the basis of the SAP of Rs. 280/- per quintal on or before 15 June 2015; 25% by 30 June 2015; and 25% by 15 July 2015. Insofar as the private sugar mills are concerned, the value of the sugarcane crushed for 2014-15 amounts to Rs.18444.87 crores of which an amount of Rs.9762.68 crores has been paid, leaving a balance of Rs.8682.19 crores at an SAP of Rs.280/- per quintal. Even after discounting the outstanding at the rate of Rs. 40/- per quintal, the total outstanding is Rs.6016.78 crores. The private mills, some of whom are represented in these proceedings by learned Senior Counsel, do not dispute their liability to pay but seek an indulgence for the grant of time having regard to the present rate for sugar. This has been seriously contested on behalf of the petitioner. We are of the view that it would be appropriate to direct that the State shall duly ensure that at least 25% of the outstanding dues are paid by the private sugar mills on or before 15 June 2015. The learned Chief Standing Counsel has informed the Court that the State Government is in the process of formulating the grant of incentives and assures that when the petition is taken up for further directions in the middle of July 2015, a substantial part of the outstandings will have been cleared. We are of the view that it would be necessary for the State to ensure that at least 75% of the outstandings are cleared by 15 July 2015. The State is not without

recourse to remedies available to it in the event of a default on the part of the sugar mills. The State Government is in the process of formulating incentives to ensure the realization of the outstanding dues. On this we make no observation whatsoever since it pertains to a matter of policy for the State. The industry is at liberty to make and pursue its representations. We direct that these proceedings shall now be placed before the Court for further hearing on 28 July 2015 at 2:00 p.m. " 8. Thereafter once again as everything was being monitored by this Court, this Court proceeded to pass order dated 29.07.2015. The same is as follows:- "On 27 May 2015, when the previous order was passed by this Court, the total amount due towards sugarcane crushed by private sugar mills for 2014-15 was Rs.8682.19 crores. By the order of this Court, the State owned mills were required to pay their outstandings in instalments each of 25% by 15 June, 30 June and 15 July 2015. In the affidavit filed by the Deputy Cane Commissioner, it has been stated that dues of the sugar mills owned by the State Sugar Corporation have been paid. The dues of State owned cooperative mills as of date are Rs.441/- crores. Though, in terms of the order of this Court, an amount of Rs.739.07 crores was required to be paid (being 75% of the overall outstandings), an amount of Rs.555.33 crores was paid. In respect of the private sugar mills, the outstanding position is Rs.7457.04 crores. Since the passing of the previous orders, an amount of Rs.1210.51 crores was paid as against an amount of Rs.8665.78 crores which was to be paid under the order of the Court. The dues of the cooperative mills and private mills together amount to Rs.7898.49 crores computed on the basis of the State Advisory Price. We find no reason or justification either for the State or for the private sugar mills and, for that matter, cooperative sugar mills, not to comply with the directions of the Court. The liability to pay is not in dispute. This Court had granted instalments for the payment of the outstanding dues and in fact, the order of the Court also notes that the State is not without recourse to remedies available to it in the event of default on the part of the sugar mills. The State is itself in default insofar as its own cooperative sugar mills are concerned. Besides informing the Court that first information reports have been lodged, no steps have been taken whatsoever by the State for the recovery of the dues. We cannot allow this state of affairs to continue. The sugar mills which have appeared before this Court through the learned Senior Counsel have highlighted their financial difficulties. These aspects must, on the other hand, be weighed against the abject misery of the farmers who have suffered a loss of the sugar cane crop in the recent past in the State of U.P. The financial difficulties of the farmers have been leading to farmers' suicides. There can be no denial that the scales in balance must tilt towards realising the dues of farmers which remain unpaid be it on account of the laxity on the part of the State in complying with its own obligation to pay the outstanding dues of its own sugar mills or, for that matter, its laxity in enforcing its authority under the Act for recovering the payment due to the farmers. The farmers have supplied the sugarcane which has been duly crushed for crushing season 2014-15. The sugar mills are under an obligation to pay the outstanding dues computed on the basis of the State Advisory Price of Rs.280/- per quintal.

We are of the view that the State Government must ensure that the dues of the State owned cooperative sugar mills are cleared no later than within a period of two weeks from today. In the event that a default is made, we put the concerned officials including the Cane Commissioner and the Principal Secretary of the department on notice that the Court would be constrained to take recourse to its coercive jurisdiction to ensure that dues of the farmers are paid. We also direct that necessary steps should be taken by the State for realizing the dues from the private sugar mills. The chart which has been annexed to the affidavit which has been filed by the Deputy Cane Commissioner (Annexure-9) indicates that in several instances what has been paid, is only a small percentage of the outstanding dues. The affidavit of the Deputy Cane Commissioner indicates that the Government of India notified a scheme on 23 June 2015 for the payment of an amount of Rs.6000/- crores to the sugar mills for the discharge of cane dues as a one year interest free loan. The scheme envisages that loan applications for those mills will be considered which have cleared at least 50% of the cane price, payable for the current crushing season, calculated on the basis of the Fair and Remunerative Price (FRP) of sugarcane fixed by the Central Government. The FRP for the current season is Rs.220/- per quintal. The affidavit highlights that those sugar mills which had paid the entire FRP were denied a loan by the Union Government on the ground that they have already discharged their entire liabilities. Similarly, those sugar mills which have paid less than 50% of the FRP were not entitled to the grant of loan. It has been stated that those factories which are eligible for the grant of loan have applied to the Union Government and the payment is due to be finalized in the near future. In this connection, the Chief Secretary has addressed a communication on 21 July 2015 to the Cabinet Secretary to the Government of India. The State Government has also issued a Government Order dated 27 May 2015 proposing certain incentives. The Court has also been informed that meetings were convened by the Chief Secretary in the month of June and July 2015 so as to ensure realization of cane dues by the privately owned mills. Having due regard to all the facts and circumstances, we now stand over the proceeding by a further period of three weeks from today. Stand over the proceedings to 27 August 2015. We direct that the State shall take all necessary and appropriate steps both for the clearing of the outstanding dues to the farmers from the State owned mills as well as the realization of the dues from the private sugar mills. We put the State on notice that should this not be done, the Court would be constrained to take recourse to coercive steps in accordance with law." 9. This Court at all point of time intended that as far as sugarcane dues of the farmers are concerned, the same shall be ensured. It appears that on one hand the matter has been on the radar of this Court wherein directives were issued for ensuring payment of cane dues of farmers that was inclusive of statutory interest and on the other hand, an application in question was moved for waiver of interest and on the said application being moved, the Cane Commissioner constituted a Committee on 05.02.2014 and therein representative/Chairman of 167 Sugarcane Cooperative Societies were invited to give their suggestions wherein 27 Chairmen came and voiced their opinion

against the waiver by contending that they have grown the sugarcane in question based on loan advanced to them by the respective cooperatives whereas the owner of sugar mills suggested the waiver on the ground that sugar prices have reduced and they cannot compete with the States like Karnataka, Maharashtra etc. and have incurred a loss of Rs.32,00 crores and due to the said loss, few mills have become sick. The Sugar Mill Association in order to substantiate its claim relied upon the report dated 27.08.2015 prepared by PICUP, wherein the PICUP has finally recommended compensation by the State to the extent of Rs.11.03 per quintal of sugarcane to the mill owners and they have incurred losses and the said Committee, based on the said PICUP report, recommended for waiver of the interest. The State Cabinet, thereafter, has taken the decision to waive the interest and in this background an amendment application has been moved before this Court assailing the decision that has been so taken for waiving the interest in question for quashing the Government Order dated issued by the Principal Secretary under Section 17(3) of the Act to waive the interest payable by the Mill owners to the cane growers. 10. The amendment application in question has been allowed and affidavit has been filed in rebuttal by the State to justify the waiver of interest by submitting that the State Advised Price (SAP) for the crushing season 2012-13 was fixed at Rs.280/- per quintal. The aforesaid price was fixed by the State inter alia on the basis of expectation that the sugar prices during the season 2012-13 would hover around Rs.3600/- per quintal. However, on account of market forces, the prices of sugar fell drastically as a result of which the cane price paying capacity of sugar mills was affected. This adversely impacted the cane payment of farmers resulting in accumulation of huge cane arrears. Further, the earnings before interest, taxes, depreciation and amortization margins and return of capital employed touched a historical low. On account of mounting cane arrears for the crushing season 2012-13, and acknowledging the steep fall in sugar prices, the State decided to grant financial assistance/rebate to the sugar mills to enable them to clear the cane dues. The State granted exemption from purchase tax of Rs.2/- per quintal for the season 2012-13 to facilitate cane price payments. The intervention of the State was necessary for ensuring cane payments by the sugar mills keeping in view the overall interest of the cane farmers. It was on account of the aforesaid intervention of the State Government that the sugar mills cleared the principal cane dues of the cane farmers for the crushing season 2012-13. 11. The sugar mills in U.P. took stand that on account of mounting cane arrears of 2012-13 coupled with deteriorating market conditions as well as steady fall in sugar prices the viability of the sugar industry in U.P. was adversely impacted and the sugar mills gave closure notices expressing their inability to run the mills for the year 2013-14. The State Government fixed the SAP for crushing season 2013-14 at Rs.280/- per quintal. However, taking the market factors into consideration as well as to ensure payment of cane dues to the farmers by the sugar mills and to ensure commencement of crushing operations by the sugar mills, the State Government granted the sugar mills a rebate of Rs.20/- per quintal of sugarcane for the crushing season 2013-14. Further, looking at the hardships being faced

by the sugar mills in clearing cane dues across the country for the seasons 2012-13 as well as 2013-14, the Central Government also issued a notification dated 03.01.2014 granting financial assistance under Scheme for Extending Financial Assistance to Sugar Undertakings (SEFASU). In furtherance to the aforesaid Government of India notification, the sugar mills of Uttar Pradesh were granted approximately Rs.1737 crores as financial assistance for the purpose of clearing arrears of cane prices. The Agriculture Production Commissioner/ Infrastructure and Industrial Development Commissioner of State vide letter dated 14.03.2014 directed PICUP to submit study report in relation to terms of reference indicated therein relating to financial assistance to the sugar mills in view of the decreasing sugar prices and the arising difficult situation in payment of cane dues. PICUP in compliance of the direction submitted its report dated 27.08.2014. The State was also constrained to extend financial assistance to its own Cooperative sugar mills as they, too, faced similar hardships on account of crash of sugar prices. Chart showing the disbursement of loan/financial assistance to Cooperative Sugar mills is as follows:-

Particulars	Season 2012-13	Season 2013-14
Total Operational Sugar Mills (in nos.)	122	119
Private Sector	99	95
Cooperative Sector	23	23
Corporation Sector	00	01
Total Cane crushed (In Lac qtls.)	8150.62	7011.74
Private Sector	7455.69	6282.63
Cooperative Sector	694.93	695.63
Corporation Sector	0	33.31
Total Cane Price due (Rs. in Crores)	22464.54	19388.23
Private Sector	20539.38	17366.54
Cooperative Sector	1925.16	1929.27
Corporation Sector	00	92.42
Loan given by Govt. (Rs. In Crores)	400.00	474.88
Private Sector	00	00
Cooperative Sector	400.00	474.88
Corporation Sector	00	00
Loan given by Govt. (Rs./Qtl.)	57.56	68.25
Private Sector	00	00

Cooperative Sector 57.56 68.25

Corporation Sector 00 00

State Advisory Price-SAP (in Rs.Per qtl.) 280 280

12. Based on the same, it was suggested that on account of operation of market forces, the sugar mills found it difficult to pay cane prices. The State and the Central Government had to directly intervene to ensure payment of cane arrears and as the duty of the State is to ensure that the interest of the farmers is protected and also that the sugar industry is preserved, ultimately, with the assistance of the State and Central Governments, the sugar mills were able to clear the entire principal cane dues for the crushing seasons 2012-13 and 2013-14. However, with regard to payment of interest, the UP Sugar Mills Association moved an application before the Cane Commissioner seeking waiver of interest under Section 17(3) of the Act. Upon receipt of the application/representation dated 20.01.2014, the Cane Commissioner formed a committee vide order dated 05.02.2014 to examine and consider the issues raised after giving opportunity of hearing to all the concerned parties, and to submit its report to the Cane Commissioner. Thereafter, the committee vide order dated 09.10.2014 issued notices to all the parties concerned requiring them to present their case and fixed 14.10.2014 as the next date of hearing. On 14.10.2014, the meeting took place between all the requisite stakeholders-sugar mill representatives and representatives of cane cooperative societies substantially representing the interests of farmers of the entire State. The Committee, after examining the issues in detail and giving opportunity of hearing to all the concerned parties and duly considering the points raised by respective representation, finally submitted its report to the Cane Commissioner on 12.11.2014. The Cane Commissioner, thereafter, objectively analysed the report submitted by the Committee and came to be conclusion that a case for waiver of interest is made out in public interest and accordingly forwarded his recommendations giving reasons for same. Upon receipt of the application/representation dated 09.09.2014, the Cane Commissioner formed a committee vide order dated 20.10.2014 to examine and consider the issues raised after giving opportunity of hearing to all the concerned parties, and to submit its report to the Cane Commissioner. Thereafter, the Committee vide order dated 02.01.2015 issued notices to all the parties concerned requiring them to present their case and fixed 09.01.2015 as the next date of hearing. On 09.01.2015, the meeting took place between all the requisite stakeholders-sugar mill representatives and representatives of cane cooperative societies substantially representing the interests of farmers of the entire State. The representative of the cane cooperative societies duly submitted a joint representation dated 08.01.2015 before the Committee. The Committee, after examining the issues in detail and giving opportunity of hearing to all the concerned parties and duly considering the points raised by respective representatives, finally submitted its report to the Cane Commissioner on 11.03.2015. The Cane Commissioner,

thereafter, objectively analysed the report submitted by the Committee and came to the conclusion that a case for waiver of interest is made out in public interest and accordingly forwarded his recommendations giving reasons for the same. The State Government upon receipt of the aforesaid two recommendations of the Cane Commissioner as well as the reports of the Committee, placed the same before the Cabinet and after getting approval of the Cabinet, the Principal Secretary issued the letter dated 22.05.2015 waiving the interest for crushing seasons 2012-13 and 2013-14, in view of this, it has been contended that rightfully authority has been exercised. 13. U.P. Sugar Mills Association has also mentioned that prices fixed by the State are unrealistic and rightful relief has been accorded. 14. Details have been furnished of the condition of the Sugar mills in question by giving tabular chart of payment of cane prices dues and payment disbursed towards cane prices and much assertion has also been made of the fact that financial crisis is not limited to the State of U.P. and sugarcane prices are higher has been acknowledged by the State Government itself and the State Government has been providing subsidy to its mills year after year to help the mills to make the payment of cane dues. Details have also been sought to be furnished that crushing operations even @ Rs.240/- per quintal is unreliable and even the price of Rs.3,100/- per quintal, the sugar mills will find it difficult to discharge their obligation. Mention has also been sought to be made that the cane price fixed by the State Government is arbitrary and contravene the provisions of Section 17(5) of the Act and further the financial situation of the sugar companies have been recognised by the respective Governments by giving soft loan to the sugar companies and in view of this, once financial condition is bad and the State Government has taken a conscious decision to waive the interest within its statutory authority, then in such a situation and in this background, no interference should be made in the order impugned. It has been submitted that in order to save the sugar industry rightfully authority of waiver has been exercised. 15. On the basis of the pleadings that have come forward in the shape of Counter Affidavit, Supplementary Counter Affidavit, Rejoinder Affidavit, Supplementary Rejoinder Affidavit, Supplementary Affidavits and records produced, present matter has been taken up for final hearing and disposal with the consent of parties. 16. Shri V.M. Singh appearing in person in the present Public Interest Litigation has contended that once this Court has proceeded to issue directives for payment of interest, then it was not at all open to the State Authorities to have proceeded to entertain application for waiver of interest and as such, the waiver of interest that has been so accorded by ignoring the interest of farmers is one sided and the same is liable to be reversed. 17. Shri V.M. Singh appearing in person has also contended before us that once sub clause 3-A of Clause 3 was introduced by way of an amendment for payment of price within 15 days with interest on delayed payment @ 15% per annum for the period of such delayed payment beyond 14 days and earlier it was covered by the Act, then as the Sugarcane (Control) Order, 1966 was promulgated under Essential Commodities Act, 1955, in view of this, the State Government has no authority to waive the interest and as such, this Court should

come to the rescue and reprieve of the petitioners. 18. Shri Anoop Trivedi, Advocate has toed the same line of argument as has been advanced by Shri V.M. Singh. 19. Shri Ajai Bhanot, Senior Advocate appeared with Shri Mohit Singh, Advocate to clarify the status of payment made by Kisan Sahkari Chini Mills. 20. The claim in question has been resisted by Shri J.N. Mathur, Additional Advocate General by submitting that under the provisions of the Act, the interest can be waived and once the statutory authority has been exercised in the given facts of the case when admittedly financial condition of the sugar mills in question is bad and the said factual situation has not at all been disputed that financial situation is bad, then once there is no dearth of authority and a conscious decision has been taken by the State Government to bail out the sugar companies, then no interference be made. 21. Shri Ravi Kant, Senior Advocate assisted by Shri Tarun Agrawal, Advocate and Shri Diptiman Singh, Advocate at the outset has contended that petitioners have no locus to file the present Public Interest Litigation as the matter of interest is inter-se Cooperative Societies, Sugar Mills and Cane Commissioner and as Cooperative Societies have not come forward, assailing the action of waiving of interest, accordingly the matter should be given quietus and coupled with this, the Commissioner/State Government has been conferred with the authority to waive the interest and once the authority has been conferred and there are grounds in existence for exercising the said authority and the same is fully reflected from the perusal of record from the facts and figures supplied and there is no serious challenge against the same, then this Court, in order to save the sugar industry, should not interfere. 22. Shri J.N. Mathur, Additional Advocate General as well as Shri Ravi Kant, Senior Advocate have also countered the said submission by contending that the provisions of Sub-section 3 of Section 17 of U.P. Sugar Cane (Regulation of Supply and Purchase) Act, 1953 inheres the authority in the Commissioner to waive the interest with the approval of the State Government and the said authority in no way is affected or taken away on account of enforcement of the provisions of Sugar Cane Control Order 1966, as such there is no lack/dearth of authority in the Commissioner to waive the interest, with the approval of State Government. 23. Shri V.M. Singh appearing in person once again reiterated that Sangathan has no personal interest in the matter, Sangathan has been espousing the cause of farmers and on their raising of voice orders for payment of sugarcane dues along with interest has been passed and once said right was being taken away, Sangathan has every right to make complaint before this Court. 24. Most surprising feature of the Writ Petition is that Shri Ravindra Singh, Advocate, who represents farmers co-operative union before this Court is supporting the stand of Sangathan and Shri J.N. Mathur, Additional Advocate General for the State of U.P. has not raised any issue qua the locus of Sangathan to espouse the cause of farmers. 25. On the strength of the arguments advanced following broad issues are being framed to be answered by us: (1) Locus of Sanghtan to file Public Interest Litigation. (2) Authority of Commissioner to waive the interest with the approval of the State Government under 1953 Act, keeping in view the amendment to the Sugarcane Control Order, 1966. (3) The Authority exercised to

waive interest as provided under Section 17(3) of 1953 Act is based up on relevant consideration. 26. Along with said issues, incidental issues such as right to receive interest and power coupled with duty would also be adverted to. Locus of Sangathan 27. At the very outset we proceed to consider the objections that have been raised by Shri Ravi Kant, Senior Advocate in respect of maintainability of Writ Petition at the behest of petitioners by highlighting before us that in the past on one occasion serious observations have been made against the petitioners in order dated 21.04.2005 passed in C.W.P. No.2534 of 2005 wherein Shri V.M. Singh has been described as busy body. 28. Qua the same Shri V.M. Singh has demonstrated before us that as said petition was filed at the said point of time in his name and not at all in the name of Sangathan, accordingly such an observation was made whereas thereafter, Appeal had been filed before the Apex Court and Apex Court gave liberty to file petition in the name of petitioner organisation and accordingly for the same cause of action C.W.P. (PIL) No.674 of 2006 has been filed and same has been entertained and is pending. What we find from the record is that right from the beginning, the Rashtriya Kisan Mazdoor Sangathan has been espousing the cause of farmers and time and again at the behest of Rashtriya Kisan Mazdoor Sangathan, the cause espoused looking into the fact that it has the element of public cause the matters have been entertained and at no point of time Rashtriya Kisan Mazdoor Sangathan has ever been subjected to criticism rather at all point of time we find that Rashtriya Kisan Mazdoor Sangathan has bona-fidely espoused the cause of farmers and such fact is fully fortified from the fact that Rashtriya Kisan Mazdoor Sangathan was got impleaded in price fixation matter filed by Sugar Mills Association and therein the petition was dismissed by imposing cost of Rs.50 lacs. S.L.P. preferred against the same was also got dismissed with a direction that cost be deposited within next three months in the Registry. Not only this, Rashtriya Kisan Mazdoor Sangathan has been before this Court by preferring Writ Petition for ensuring payment of sugarcane dues along with interest and this Court has proceeded to entertain the said request in question and final orders have been passed for ensuring payment of sugarcane dues in Public Interest Litigation No.29523 of 2014 and the said order in question has also been affirmed by the Apex Court. Once the present litigation is also connected with the same and petitioners' association/sangathan has been espousing the cause of farmers, then we cannot proceed to non-suit the claim of petitioners, at this juncture, on the plea and premises that petitioners has no locus to espouse the cause of farmers. Credentials of petitioner's Sangathan is before us in the shape of affidavit filed by Shri V.M. Singh and before us no contrary or counter material has been produced to show or substantiate that public cause is not being espoused by petitioner's Sangathan. The cause espoused has taken a final shape in the shape of direction for redressing the claim of sugarcane farmers for ensuring payment of their sugarcane dues along with interest and once there has been a positive order passed in black and white for ensuring sugarcane dues along with interest and the component of interest has been sought to be waived, then merely because farmers co-operative society

has not come forward, but in effect supporting the cause raised by Sangathan through their counsel, to say that petitioners' association has no locus to challenge the same, cannot be accepted by us. 29. Parameters for entertainment of Public Interest Litigation, in the case of *State of Uttaranchal v. Balwant Singh Chaufal* 2010 (3) SCC 402 are fully fulfilled in the present case as credentials of petitioners' Sangathan cannot be doubted by any means as on their persuasion dues have been paid to farmers and substantial public interest is involved in the present case as right of farmers to receive interest has been taken away by the impugned action; there is no personal gain, private motive or oblique motive in filing petition. Accordingly, the preliminary objection raised by Shri Ravi Kant, Senior Advocate qua the locus of the petitioners' sangathan to assail the validity of action of the State/Commissioner in waiving the interest, cannot be accepted by us and accordingly, we proceed to consider the claim pressed on behalf of petitioners on merits. States power to waive interest keeping in view amendment to Sugarcane Control Order, 1966 30. In order to appreciate the arguments that have been so advanced on this score, this Court proceeds to examine the relevant statutory provisions holding the field for running of sugar mills, sugar and sugarcane. 31. "Sugarcane" is an essential commodity as defined in Section 2(b) of the Essential Commodities Act, 1955. In the leading decision *Tika Ramji v. State of Uttar Pradesh & Ors.*, (1956) 1 SCR 393 : AIR 1956 SC 676, Apex Court held that the Essential Commodities Act included within the definition of "essential commodity" "food-crops" which would include sugarcane. Again, in *A.K. Jain v. Union of India & Ors.* (1970) 1 SCR 673 : AIR 1970 SC 267, following *Tika Ramji*, Apex Court held that Section 2 of the Essential Commodities Act provided that sugarcane would be an "essential commodity" within the meaning of the Act and hence cultivation and sale of sugarcane could be regulated by law. 32. The Industries (Development and Regulation) Act, 1951 declared certain industries as controlled industries. Section 2 of the said Act enacts that it is expedient in the public interest that the Union should take under its control, the industries specified in the First Schedule. The First Schedule, inter alia, included "sugar" industry as one of the controlled industries. 33. In *M/s. Triveni Engineering Works Ltd. & Anr. v. Union of India & Ors.*, AIR 1996 All 420, this Court held that the sugar industry is a controlled industry. The Government is exercising control on the sugarcane at all levels, namely; of production, distribution, pricing as also on the production and marketing of finished product of sugar. 34. Section 3 of the Essential Commodities Act empowers the Central Government to issue order providing for regulating or prohibiting the production, supply and distribution of any essential commodity if it is of the opinion that it is necessary or expedient so to do for maintaining or increasing supply of any essential commodity or in securing equitable distribution and availability at fair price. In exercise of the said power, the Central Government framed the Sugarcane (Control) Order, 1966. Clause 2 thereof defines important terms such as "factory", "khandsari sugar", "khandsari unit", "crusher", "power crusher", "producer of khandsari sugar", "reserved area", etc., whereas Clause 3 enable the Central Government to fix minimum price of sugarcane payable by producer

of sugar. 35. Sub-clause (3) and Sub-clause (3-A) of Clause 3 obligates the producer of sugarcane when he purchases any sugarcane from the grower of sugarcane or from a sugarcane grower's cooperative society to ensure payment of the price of the cane within 14 days of the date of delivery and also talks of interest on delayed payment. Sub-clause (3) and Sub-clause (3-A) of Clause 3 are extracted below; "(3) Where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a sugarcane growers' co-operative society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of the sugarcane to the seller or tender to him the price of the cane sold at the rate agreed to between the producer and the sugarcane grower or the sugarcane growers' cooperative society or that fixed under sub-clause (1), as the case may be, either at the gate of the factory or at the cane collection centre or transfer or deposit the necessary amount in the bank account of the seller or the co-operative society, as the case may be. (3-A) Where a producer of sugar or his agent fails to make payment for the sugarcane purchased within 14 days of the date of delivery, he shall pay interest on the amount due at the rate of 15 per cent per annum for the period of such delay beyond 14 days. Where payment of interest on delayed payment is made to a cane growers' society, the society shall pass on the interest to the cane growers concerned after deducting administrative charges, if any, permitted by the rules of the said society." 36. Under this very order, the way and manner of effectuating payment to sugarcane grower has also been provided for and same also provides for mechanism for recovery of the said amount towards price of sugarcane. Relevant provisions are sub-clause (4) to (14) of Clause 3 of Sugarcane Control Order is extracted below: "(4.) Where sugarcane is purchased through an agent, the producer or the agent shall pay or tender payment of such price within the period and in the manner aforesaid and if neither of them has so paid or tendered payment, each of them shall be deemed to have contravened the provisions of this clause. (5.) At the time of payment at the gate of the factory or at the cane collection centre, receipts, if any, given by the purchaser shall be surrendered by the cane grower or cooperative society. (6.) Where payment has been made by transfer or deposit of the amount to the bank account of the seller or the cooperative society, as the case may be, the receipt given by the purchaser, if any, to the grower, or the cooperative society, if not returned to the purchaser, shall become invalid. (7.) In case, the price of the sugarcane remains unpaid on the last day of the sugar year in which cane supply was made to the factory on account of the suppliers of cane not coming forward with their claims therefor, it shall be deposited by the producer of the sugar with the collector of the district in which the factory is situated, within three months of the close of the sugar year. The Collector shall pay, out of the amount so deposited, all claims, considered payable by him and preferred before him within 3 years of the close of the sugar year in which the cane was supplied to the factory. The amount still remaining un-disbursed with the Collector, after meeting the claims from the suppliers, shall be credited by him to the Consolidated Fund of the State, immediately after the expiry of the

time limit of three years within which claims therefor could be preferred by the suppliers. The State Government shall, as far as possible, utilise such amounts, for development of sugarcane in the State.] (8.) Where any producer of sugar or his agent has defaulted in furnishing information under clause 9 of this Order or has defaulted in paying the whole or any part of the price of sugarcane to a grower of sugarcane or a sugarcane growers' cooperative society within fourteen days from the date of delivery of sugarcane, or where there is an agreement in writing between the parties for payment of price within a specified time and any producer or his agent has defaulted in making payment within the agreed time specified therein, the Central Government or an officer authorised by the Central Government in this behalf or the State Government or an officer authorised by the State Government in this behalf may either on the basis of information made available by the producer of sugar or his agent or on the basis of claims, if any, made to it or him regarding non-payment of prices or arrears thereof, by the concerned grower of sugarcane or the sugarcane growers' cooperative society, as the case may be, or on the basis of such enquiry that it or he deems fit, shall forward to the Collector of the district in which the factory is located, a certificate specifying the amount of price of sugarcane and interest due thereon from the producer of sugar or his agent for its recovery as arrears of land revenue. (9.) The Collector, on receipt of such certificate, shall proceed to recover from such producer of sugar or his agent the amount specified therein as if it were arrears of land revenue. (10.) After effecting the recovery, the Collector shall intimate to the concerned growers of the sugarcane or the concerned sugarcane growers' cooperative societies through a public notice to submit their claims in such a manner as he considers appropriate within thirty days: Provided that the Collector may, for the reasons to be recorded in writing, allow the submission of claims after the period so specified if he is satisfied that there was sufficient cause for not submitting such claim earlier. (11.) If the amount recovered is less than the amount specified in the certificate under sub-clause (8), the Collector shall distribute the amount so recovered among the concerned growers of the sugarcane or the concerned sugarcane growers cooperatives in proportion to the ratio determined by the Collector on the basis of the sugarcane supplied by the concerned growers of sugarcane or the sugarcane growers' cooperative society, as the case may be. (12.) If the amount recovered and distributed under sub-clause (11) is less than the amount specified in the certificate under sub clause (8), the Collector shall proceed to recover the remaining amount, as if it were arrears of land revenue till the full amount is recovered and distributed to satisfy the remaining claims. (13.) If the amount is given to the concerned sugarcane growers cooperative societies, it shall distribute the amount through cheque/ draft/or any other recognised banking instrument on any scheduled bank to the concerned sugarcane growers within ten days of the receipt of the amount from the Collector. (14.) If the concerned sugarcane grower or the concerned sugarcane growers cooperative society do not come forward to claim or collect the amount so recovered by the Collector within three years from the date of the public notice referred to in sub clause (10), the unclaimed amount shall be

deposited by the Collector in the Consolidated Fund of the State." 37. This Court at this juncture also proceeds to take note of the provisions as contained under the U.P. Sugarcane (Regulation of Supply & Purchase) Act, 1953 wherein as stated in the preamble, the Act has been enacted with a view "to regulate the supply and purchase of sugarcane required for use in sugar factories and gur, rab or khandsari sugar manufacturing units." The object of enactment was stated to be as follows: " with the promulgation of the Industries (Development and Regulation) Act, 1951, with effect from 8/5/1952, the regulation of sugar industry has become exclusively a Central subject. The State Government are now only concerned with the supply of sugarcane to the sugar factories. The bill is being introduced in order to provide for a rational distribution of sugarcane to factories, for its development on organised scientific lines, to protect the interest of cane-growers and of the industry and to put the new Act permanently on the Statute Book." Section 17 therein deals with the payment of cane price and also deals with the procedure that is to be followed for recovery of the amount in question. Relevant Section 17 is being quoted below: "17. Payment of Cane Price:- (1)The occupier of a factory shall make such provision for speedy payment of the price of cane purchased by him as may be prescribed. (2) Upon the delivery of cane the occupier of a factory shall be liable to pay immediately the price of the cane so supplied, together with all other sums connected herewith. (3) Where the person liable under sub-section (2) is in default in making the payment of the price for a period exceeding fifteen days from the date of delivering, he shall also pay interest at a rate of 7½ per cent per annum from the said date of delivering, but the Cane Commissioner may, in any case, direct, with the approval of the State Government, that no interest shall be paid or be paid at such reduced rate as he may fix: [Provided that in relation to default in payment of price of cane purchased after the commencement of this proviso, for the figure "7½" the "figure 12" shall be deemed substituted.] (4.) The Cane Commissioner shall forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest, if any, due from the occupier and the Collector, in receipt of such certificate, shall proceed to recover from such occupier the amount specified therein as if it were an arrear of land revenue. (5) (a) Without prejudice to the provisions of the foregoing sub-sections, where the owner or any other person having control over the affairs of the factory or any other person competent in that behalf enters to an agreement with a bank under which the bank agrees to give advance to him on the security of sugar produced or to be produced in the factory, the said owner or other person shall provide in such agreement that a [percentage determined by such authority and in such manner as may be prescribed] of the total amount of advance shall be set apart and be available only for repayment to cane-growers or their co-operative societies on account of the price of sugarcane purchased or to be purchased for the factory during the current crushing season from those canegrowers or from or through those societies, and interest thereon and, such societies, commission in respect thereof. (b) Every such owner or other person as aforesaid shall sent a copy of

every such agreement to the Collector within a week from the date on which it is entered into." 38. On the parameters of the provision quoted and noted above, sub-section (3) of Section 17 provides where the person liable under sub-section (2) is in default in making the payment of the price for a period exceeding fifteen days from the date of delivering, he shall also pay interest at a rate of 7½ per cent per annum from the said date of delivering, but the Cane Commissioner may, in any case, direct, with the approval of the State Government, that no interest shall be paid or be paid at such reduced rate as he may fix. Proviso wherein it has been provided that in relation to default in payment of price of cane purchased after the commencement of this proviso, for the figure "7½" the "figure 12" shall be deemed substituted. Sub-section (4) of Section 17 provides that the Cane Commissioner shall forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest, if any, due from the occupier and the Collector, in receipt of such certificate, shall proceed to recover from such occupier the amount specified therein as if it were an arrear of land revenue. Sub-section (5)(a) of Section 17 provides that without prejudice to the provisions of the foregoing sub-sections, where the owner or any other person having control over the affairs of the factory or any other person competent in that behalf enters to an agreement with a bank under which the bank agrees to give advance to him on the security of sugar produced or to be produced in the factory, the said owner or other person shall provide in such agreement that a (percentage determined by such authority and in such manner as may be prescribed] of the total amount of advance shall be set apart and be available only for re-payment to canegrowers or their co-operative societies on account of the price of sugarcane purchased or to be purchased for the factory during the current crushing season from those cane-growers or from or through those societies, and interest thereon and, such societies, commission in respect thereof. 39. Thus provision in question is clear and categorical that cane payment price has to be ensured in the manner prescribed and in case there is delay in payment of price of cane purchased, then interest on the same is payable and if there is default in payment of price of cane purchased, then Cane Commissioner is entitled to forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest, if any, due from the occupier and the Collector, in receipt of such certificate, shall proceed to recover from such occupier the amount specified therein as if it were an arrears of land revenue. 40. It is true that under Sugarcane Control Order 1966, there is a higher rate of interest provided as compared to the interest provided for under Sugarcane Act, 1953 and State Government, in its turn as obedience to both the provisions is possible, has accepted in principle to award higher rate of interest as it is more beneficial to the farmers, therefore the submission made that once the field regarding interest stands occupied by Control Order, the power to waive interest in terms of Section 17(3) Sugarcane Act 1953 stands divested is also being adverted to by us. 41. The Apex Court in the case of State of M.P. v. Jaora Sugar Mills and others 1997 (9) SCC 207 has clearly proceeded to mention that the respondents

are liable to pay interest on the late payment under the Act read with order. 42. Apex Court in the case of Belsund Sugar Company Ltd. v. State of Bihar 1999 (9) SCC 620, while considering akin provisions vis.a.vis. Sugarcane (Control) Order, 1966 as well as Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 took the view that both are harmoniously operating in same field and compliment each other. View to the similar effect has once again been taken in the case of Krishi Upaj Mandi Samiti v. Shiv Shankar Khandsari Udyog 2012 (9) SCC 368 wherein the provisions of M.P. Sugarcane (Regulation of Supply and Purchase) Act, 1958 along with the provisions of Sugarcane (Control) Order, 1966 was being dealt with and Apex Court has found and ruled that entire field of sale and purchase of sugarcane is covered by Sugarcane Act and Control Order, which are special provisions. In the case of U.P. Cooperative Cane Union Federation v. West U.P. Sugar Mill Association 2004 (5) SCC 430, Apex Court though in the matter of fixation of price took the view that there will be no inconsistency or repugnancy as it is possible for both the orders that is Sugarcane (Control) Order, 1966 and the provisions of U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 to operate simultaneously and to comply with both of them. 43. In the present case, what we find that there is no repugnancy arising for the simple reason that under the provision of Sugarcane (Control) Order, 1966, there is no provision that empowers the authorities to waive the interest, whereas under sub-section (3) of Section 17 the State Authorities are empowered to waive the interest on the recommendation of the Cane Commissioner. 44. Legislative Competence of U.P. State Legislature to enact law in regard to supply and purchase of sugarcane required or to be used in sugar factories has not at all been disputed before us, and once legislative competence is there to enact law with regard to sugarcane wherein authority has also been inhered to waive interest on delayed payment, hence there is no question of trenching upon the authority covered under Sugarcane Control Order 1966. 45. Apex Court in the case of Yogendra Kumar Jaiswal and others v. State of Bihar 2016(3) SCC 183 has clearly mentioned that repugnancy would arise when there is clear and direct inconsistency between Central Law and State Law and such inconsistency irreconcilable. Question of repugnancy can arise only with reference to legislation made by Parliament falling under the Concurrent list or an existing law with reference to one of the matter enumerated in Concurrent list. If a law made by the State Legislature covered by an entry in the State List incidentally touches any of the entries in the Concurrent List. Article 254 is not attracted but where a law covered by an entry in the State List (or an amendment to a law covered by an entry in the State List) made by the State Legislature contains a provision, which directly and substantially relates to a matter enumerated in the Concurrent List and is repugnant to any provision of an existing law with respect to that matter in the Concurrent List then such repugnant provision of the State law will be void. Such a provision of law made by the State Legislature touching upon a matter covered by the Concurrent List, will not be void if it can co-exist and operate without repugnancy with the provisions of the existing law. It needs no special emphasis to state that the issue of repugnancy would also arise where the law made by

Parliament and the law made by the State Legislature occupy the same field. 46. On such parameters, the question of repugnancy would not at all arise and to the contrary both the provisions would co-exist for the simple reason that under the scheme of things provided for interest has been made admissible on delayed payment under both the statutory provisions and in addition to it under State Act, State has inherited in itself authority to waive the interest on the recommendation of Cane Commissioner. Accordingly to suggest that once the field regarding the interest has been completely occupied by the Control Order, the power to waive the interest in terms of Section 17(3) Sugarcane Act, 1953 no longer exists with the Commissioner cannot be accepted by us. 47. In view of this, the objection that has been raised by the petitioners association/sangathan that State Authorities has got no authority to waive the interest, cannot be accepted by us and we also make it clear that the co-ordinate Bench of this Court of which one of us was member, has already taken view to the similar effect and therein a clear cut caution has been made that at the point of time when authority of waiver of interest is to be exercised by the authority, the said exercise is not to be undertaken in routine manner and the exercise of authority has to be fair and equitable and only in exceptional cases such an authority could be exercised. 48. Exercise of authority of waving the interest has also been subject matter of challenge in Public Interest Litigation (PIL) No.64933 of 2013 (Rashtriya Kisan Mazdoor Sangathan v. Union of India and 2 others), decided on 09.01.2014 , wherein this Court has clearly mentioned that interest in question should not be waived in a routine manner, Section 17(3) of the U.P. Sugar Cane (Regulation of Supply and Purchase) Act 1953 provides for payment of interest on the delayed payment of sugarcane price same is subservient to the wisdom of the Cane Commissioner with the approval of the State Government for waving interest. At the said point of time wisdom of the Cane Commissioner has to be fair and equitable, factory owners are not entitled to seek waiver of interest on delayed payment of sugarcane price as a matter of right, only in exceptional cases such an authority could be exercised and that too after providing opportunity to the Cane Growers, as any order of waiver of interest would be effecting the rights of Cane Growers. Such an order of waiving of interest can always be subject matter of judicial review at the behest of Cane growers. 49. A Division Bench of this Court in the case of Titwai Sugar Complex v. State of U.P., Writ Petition No.25339 of 2014 has taken the view that the Cane Commissioner is empowered to direct, in a given case, that interest may not be paid or should be paid at reduced rate. This is subject to two safeguards. The first is the approval of the State Government, when the State Government grants is approval to such proposal, it cannot do so at its whims and fancies, the interest of farmers cannot be ignored and it is only when there are reasons having a bearing on public interest that the power can be exercised in a given case. The Cane Commissioner before he moves the State Government, must also be satisfied on the basis of objective consideration that reasons have been established for reducing or waiving the payment of interest. 50. Payment of sugarcane price is to be made within the statutory period provided for and in

case within the time frame provided for if the price of sugarcane is not paid, then same entails consequences of paying interest on the same and even the rate of interest has been specified. 51. Statutory provision in question for realisation of the said amount is in place when there is default in payment of sugarcane price and the interest calculated on delayed payment, to recover the same as arrears of land revenue. The interest in question, under the scheme of thing provided for is a statutory interest. Interest as it is understood in common parlance is the price paid for using someone else's money. To the borrower it is the cost of renting money, to the lender the income from lending it. Once sugarcane stands supplied the occupier/producer/agent of the factory is obligated to make speedy payment within 14 days of delivery failing which interest is liable to be paid on amount due at the rate of 15% per annum for the period of such delay beyond 14 days. Interest here accordingly is the price paid for keeping on hold the sugarcane price that was required to be paid within 14 days of delivery. Most surprisingly in the present case ignoring the scheme of things provided for, from the side of the State it has been canvassed that claim for interest is not a matter of right, accordingly interest cannot be claimed as a matter of right. 52. We do not approve of such a stand of State as here interest by way of damages was payable as per the statutory provision itself. The liability had been crystallised and the interest had become payable because of the failure to pay the amount as per liability. Interest accordingly, is a vested and accrued right in favour of farmer who has supplied sugarcane and has not been paid sugarcane dues within 14 days from the date of delivery. 53. This Court while passing order dated 09.01.2014 has clearly mentioned, whether the interest should be paid or not does not lie in the subjective wisdom of Cane Commissioner. Cane Commissioner in a given case is empowered to direct, that interest may not be paid or should be paid at reduced rate. This is subject to two important safeguards. The first is the approval of the State Government. When the State Government grants its approval, it cannot do say at its whims and fancies. The interest of farmers cannot be ignored and it is only when there are important reasons having a bearing on public interest that the power can be exercised in a given case. The Cane Commissioner before he moves the State Government, must also be satisfied on the basis of objective considerations that reasons have been established for reducing/waiving the interest in a given case. Earlier this court while deciding Writ Petition No. 14417 of 2016 (Simbhaoli Sugars Ltd. v. State of U.P.) on 24.05.2016, following earlier judgement has mentioned that wisdom of Cane Commissioner has to be fair and equitable, factory owners are not entitled to seek waiver of interest as a matter of right on delayed payment, only in exceptional cases such an authority be exercised and that too after providing opportunity to the cane growers. Such exercise of authority of waiving/reducing interest can be subject matter of review. 54. Vested right can be taken away, if there is a law enacted by legislature. 55. As already noted above, under the provisions of 1953 Act, Cane Commissioner has been conferred with the authority to direct with the approval of State Government that no interest shall be paid or be paid at such reduce rates. In what way and manner and under

what circumstances/contingencies Cane Commissioner with the approval of State Government would exercise his authority to waive the interest or reduce the rate of interest is not at all provided for. 56. Decision making process: Power coupled with duty has always been subject matter of concern. The leading cases on the subject has been as follows:- (a) In the case of *The House of Lords in Julius v. Lord Bishop of Oxford*, (1880) 5 AC 214, the Apex Court has held as under:- "There may be something in the nature of thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so." (b) In *Andhra Pradesh S.R.T.C. v. State Transport Appellate Tribunal & Ors* (1998) 7 SCC 353, the Apex Court explaining the exercise of discretionary power, has held as under:- "The power cannot be arbitrarily or in discriminatorily exercised....The power is coupled with a duty....The authority must genuinely address itself to the matter before it....It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously." (c) In *Consumer Action Group & Anr. v. State of T.N. & Ors.*, (2000) 7 SCC 425, the Apex Court held that "whenever any statute confers any power on any authority, howsoever wide the discretion may be, the same has to be exercised reasonably within the sphere that statute confers and such exercise of power must stand the test to judicial scrutiny. This judicial scrutiny is one of the basic features of our Constitution. The reason recorded truly discloses the justifiability of the exercise of such power." (d) In *Delhi Administration v. Manohar Lal* (2002) 7 SCC 222, the Apex Court observed as under:- "We are also of the view that even the appropriate Government may not, as a matter of routine course, indulge in exercise of such powers at its sweet will, pleasure and whim or fancy powers conferred upon the appropriate Government have to be exercised in accordance with rules and established principles reasonably and rationally, keeping in view the reasons germane and relevant for the purpose of law Otherwise, the legislative will become a mere dead-letter at the whim of the executive. 57. State Government has been conferred with the authority of according approval. The impact of according approval is that prior to it the action contemplated cannot be given effect to, the same remains inconsequential and unenforceable. Approval means confirming/ratifying/assenting/consenting with the proposal of the Commissioner, so forwarded. Apex Court in the case of *Vijai Devi Naval Kishor Bhartia v. Land Acquisition Officer* 2003 (5) SCC 83 has extensively dealt with the contextual meaning of word approval and its ramifications as follows:- "From the Scheme of the Act, it is seen that the power of inquiry under Section 11 vests with the Collector who has to issue notice to the interested persons and hear the interested persons in the said inquiry. He also has to determine the measurements of the land in question and on the basis of material on record

decide the compensation which in his opinion should be allowed for the land and if need be, he can also apportion the said compensation amongst the interested persons. The nature of inquiry which statutorily requires the interested parties of being heard and taking a decision based on relevant factors by the Collector shows the inquiry contemplated under Section 11 is quasi-judicial in nature, and the said satisfaction as to the compensation payable should be based on the opinion of the Collector and not that of any other person. Section 11 under the Act has not provided an appeal to any other authority as against the opinion formed by the Collector in the process of inquiry conducted by him. What is provided under the proviso to Section 11(1) is that the proposed award made by the Collector must have the approval of the appropriate Government or such officer as the appropriate Government may authorise in that behalf. In our opinion, this power of granting or not granting previous approval cannot be equated with an appellate power. Black's Law Dictionary, 6th Edition, defines "approval" to mean an act of confirming, ratifying, assenting, sanctioning or consenting to some act or thing done by another. In the context of an administrative act, the word "approval" in our opinion, does not mean anything more than either confirming, ratifying, assenting, sanctioning or consenting. It will be doing violence to the Scheme of the Act if we have to construe and accept the argument of learned counsel for the respondents that the word approval found in the proviso to Section 11(1) of the Act under the Scheme of the Act amounts to an appellate power. On the contrary, we are of the opinion that this is only an administrative power which limits the jurisdiction of the authority to apply his mind to see whether the proposed award is acceptable to the Government or not. In that process for the purpose of forming an opinion to approve or not to approve the proposed award the Commissioner may satisfy himself as to the material relied upon by the Collector but he cannot reverse the finding as if he is appellate authority for the purpose of remanding the matter to the Collector as can be done by an appellate authority; much less can the Commissioner exercising the said power of prior approval give directions to the statutory authority in what manner he should accept/appreciate the material on record in regard to the compensation payable. If such a power of issuing direction to the Collector by the Commissioner under the provision of law referred to herein above is to be accepted then it would mean that the Commissioner is empowered to exercise the said power to substitute his opinion to that of the Collector's opinion for the purpose of fixing the compensation which in our view is opposed to the language of Section 11 of the Act. Therefore, we are of the opinion that the Act has not conferred an appellate jurisdiction on the Commissioner under Section 15(1) proviso of the Act. This conclusion of ours is further supported by the scheme of the Act and Section 15A of the Act which is also introduced in the Act simultaneously with the proviso to Section 11(1) under Act 68 of 1984. By this amendment, we notice that the Act has given a power akin to the appellate power to the State Government to call for any records or proceedings of the Collector before any award is made, for the purpose of satisfying itself as to the legality or propriety of any finding or order passed or as

to the irregularity of such proceedings and to pass such other order or issue such direction in relation thereto as it may think fit. Therefore it is not as if the acquiring authority namely the appropriate Government even if aggrieved by the fixation of compensation by the Collector it has no remedy. It can very well exercise the power under Section 15A and pass such orders as it thinks fit, of course, after affording an opportunity to such person who is likely to be prejudicially affected by such order of the appropriate Government, therefore, it is clear that the statute when it intended to give appellate or revisional power against the finding of the Collector in the fixation of compensation it has provided such power separately in Section 15A of the Act. Therefore, in our opinion, if the Commissioner while considering the proposed award of the Collector under the proviso to Section 11(1) of the Act to grant or not to grant approval if he thinks that the order of the Collector cannot be approved, he can at the most on the administrative side bring it to the notice of the appropriate Government to exercise its power under Section 15A of the Act, but he cannot as in the present case on his own exercise the said power because that power under Section 15A is confined to the appropriate Government only. Therefore we have to negative the argument of Mr. Joshi that it is open to the Commissioner while considering the grant of approval to exercise the power either found in Section 15A of the Act or similar power exercising his jurisdiction under proviso to Section 11(1) of the Act." 58. In view of this, once the grant of interest on delayed payment is under statutory provision, then interest in question has to be ensured and only in exceptional circumstances it can be waived only if the fact and situation of the case so desired keeping in view the interest of both the sides i.e. the Sugar Mill as well as the Farmer and not by means of one sided decision. The claim for interest based by statute confers valuable right in favour of the farmers in question and the said right in question cannot be taken away lightly. Conferment of authority is one facet and rightful/proper exercise of authority is altogether different concept. Awarding of interest under the statute has a different connotation than the interest that is to be awarded by way of compensation and in such a situation and in this background, once consciously provisions have been introduced for awarding interest, then the normal rule is that the interest amount has to be paid and only in exceptional circumstances the power of waiver be exercised and not at all in routine manner. 59. In view of this, once grant of interest on delayed payment is substantive right and not a bounty then the right of waiver is to be exercised in exceptional circumstances, in this backdrop, we proceed to examine the facts of the case as to whether the relevant factors liable to be taken into account in waiving the interest has been taken note of or not in the decision making process. 60. We have proceeded to examine the record in question and what we find from the record in question in the present case, that the Cane Commissioner has proceeded to constitute a Committee and the said Committee in question called for a report from PICUP and based on the said report in question, the State Government, in its wisdom, has proceeded to form opinion for waiving the interest. The entire record in question at no place reflects that at any point of time, the view point of farmers, who were participating has

been taken care of, inasmuch as, the claim of the farmers has been right from the beginning and even in the hearing that took place that they have grown their sugarcane crop based on the loan obtained by the Bank/Co-operative Societies and on the said loan, they are paying interest. Once such a stand has been taken on behalf of farmers and they have been paying interest, then this aspect of the matter also ought to have been considered by the Commissioner/State and the interest of farmers also ought to have been looked into from the said perspective and point of view at the point of time of according waiver of interest in favour of mill owners. The entire proceedings nowhere proceeds to examine the plight of the farmers as to in what way and manner interest that was being paid by them that would be redressed. No report had been called for to quantify the interest that was being paid by the farmers to the Banks/Co-operative Societies in lieu of loan obtained by them for growing sugarcane crop. In case it was imperative to waive the interest in the opinion of the Commissioner/State, then liability of farmers was also a relevant factor to be taken into consideration, as interest under then scheme of things provided for can be waived in full and alternatively it can be directed to be paid at reduced rate. 61. We do not approve of such decision making process as vis-avis cane growers it is totally lop sided/one way decision ignoring their point of view as well as without addressing their concern. Once cane-growers were called to attend meeting, their concern expressed though has been taken note of but has not at all been dealt with. 62. One of the principal reason that has swayed the authorities to take call on the issue of waiving interest is that on account of operation of market forces, the sugar mill found it difficult to pay cane prices and financial assistance has been rendered by the State Government as well as Central Government and based on the same, cane dues has been cleared and Sugar Mills are not at all in a position to pay interest component and if they are forced to pay interest, Sugar Mill would not at all run in the coming crushing season. 63. Copy of the report of the Committee had never been supplied to cane growers or their representative for enabling them to have their say in the matter. Report as already mentioned above has not at all addressed the concern of cane growers and concern of Sugar Mill owners has been taken note of and simultaneously, it has been mentioned that it would be for the benefit of farmers also. 64. We do not say that the factors that have been taken note of by the Committee while making recommendation to the Commissioner for waiving of interest are not at all germane or irrelevant for exercise of authority, rather the larger issue is that there were other vital aspects having nexus to the object sought to be achieved when the decision to recommend for waiver of interest took place. The decision to recommend has to be an informed decision. 65. While proceeding to exercise the authority of waiver of interest payable to farmer, the financial health of respective company on individual basis ought to have been examined, as the language of the Section 17 empowers the Commissioner to exercise authority of waiver of interest, in a given case, instead of proceeding to pass general order in favour of all sugar mills. 66. In the report that has been made foundation and basis, price of raw molasses, bagasse and press mud has been taken into consideration. Qua the

same it has been mentioned on behalf of the State as well as Association concerned, that only first stage byproducts molasses, press mud and bagasse has been taken into consideration, as under 1953 Act, sugarcane is the only concern and it is not connected with sugar industry. While determining Fair and Renumorative Price under clause 3(3) of Sugarcane Control Order, 1966, even the Central Government takes into first stage byproducts only. 67. Apart from sugar sector, there are Company running distilleries or co-generation etc. State Authorities have not at all taken note of the fact, that in price fixation matter namely U.P. Co-operative Federation v. West Sugar Mill Association 2004 (5) SCC 430, stand of State of U.P. has been that apart from sugar, the mills make considerable money from the by-products. Rectified spirit, potable and industrial alcohol and ethanol is manufactured form mollases, bagasse is used for co-generation and paper and press mud is used for manufacture of manure. The sugar factories earn considerable money from these by-products, and this fact has been stated in the counter affidavit dated 11.02.2014 that they annually pay more than Rs.10,000 crores as excise duty from the distilleries owned by them to the State of U.P. and contribute Rs.700 crores to the Central Government revenue by way of Central Exicse duty. Certainly, the income from said by-products can also be looked into until and unless there is a statutory prohibition. Broader picture accordingly was required to be seen instead of minuscule picture. 68. Before us it has been sought to be demonstrated that to its share holder heavy dividends are being given; loans to its subsidiary company are being given; and they are multiplying their reserves and in this regard, reference has been given of Bajaj Hindustan and others, that have increased its tally of 2 mills in 2004 to 17 mills. Details are as follows: "Bajaj Hindustan: Equity Share Capital of the company increased from Rs.8.73 crores in March, 2004 to Rs.38.14 crores in March, 2011 whereas the reserves of the company grew from Rs.129 crores to Rs.317.07 crores in September, 2011 and further increased to Rs.4030.34 crores in September, 2012. The company's dividend during this period were 40%, 50%, 60%, 60%, 60%, 70%, 70% and 40%. DCM Shriram: Consolidated Limited: Equity Share Capital of the company increased from Rs.16.75 crores in March, 2004 to Rs.33.34 in March, 2011 crores whereas the reserves of the company grew from Rs.352 crores to Rs.1228 crores in March, 2011. The company's dividend during this period were 60%, 80%, 45%, 40% 115%, 40%, 40% and 20%. Balrampur Chini Mills: Equity Share Capital of the company increased from Rs.18.97 crores in March, 2004 to Rs.25.63 crores in March, 2011 whereas the reserves of the company grew from Rs.256 crores to Rs.1263 crores in March, 2011. The company's dividened during this period were 16%, 175%, 175%, 50%, 300%, 75%, 75%. Triveni Engineering: Equity Share Capital of the company increased from Rs.8.32 crores in March, 2004 to Rs.25.79 crores in March, 2011 whereas the reserves of the company grew from Rs.118.77 crores to Rs.989.96 crores in March, 2011. The company's dividend during this period were 65%, 65%, 85%, 25%, 60%, 100%, 75% and 20%. Dalmia Bharat Sugar: Equity Share Capital of the company increased from Rs.7.65 crores in March, 2004 to Rs.16.19 crores in March, 2011 whereas the reserves of the company

grew from Rs.240.57 crores to Rs.1307.6 crores in March, 2011. The company's dividend during this period were 50%, 50%, 100%, 150%, 200%, 150%, 100% and 12.5%." 69. On factual front no serious dispute has been raised on this aspect of the matter rather it has been suggested that the Mills were making losses from the sugar sector and if same has been making profits from the distilleries or co-generation etc., that cannot be taken into account. We have already deliberated over this aspect of the matter, that this aspect of the matter also ought to have been taken in consideration when opinion was being formed to waive the interest. 70. Apart from this, Cabinet had taken a decision on 12.11.2014 that if payment of interest is not made within the stipulated period the same would become principal amount. Even, this facet of the matter has been totally ignored. 71. Once on all these broader aspect of the matter, there is no application of mind and based on the report submitted by PICUP and looking into the limited financial situation of the company in question, as a general rule waiver has been accorded, in view of this, the decision making process is not at all being approved of by us and accordingly, we proceed to set aside the decision that has been so taken for waiver of interest for all the three years 2012-13, 2013-14, 2014-15 and proceed to ask the Cane Commissioner to look into the grievance of farmers that has been so raised by first supplying the copy of the report to Shri V.M. Singh as well as to the representatives of Kisan Union, and then examine the claim of each and every company on the parameters that have been so detailed above. 72. Consequently, challenge made stands approved by us, in view of this, all the three Public Interest Litigations i.e. Public Interest Litigation (PIL) No.67617 2014, Public Interest Litigation (PIL) No.64933 of 2013 and Public Interest Litigation (PIL) No.53133 of 2016 are allowed to the extent indicate above. Cane Commissioner will take final call in the matter within next four months from the date of receipt of certified copy of the order as per law. As far as rest of the matters are concerned i.e. Writ C No.52303 of 2014, Writ C No. 43709 of 2015, Writ C No. 35704 of 2015, Writ C No. 36041 of 2015, Writ C No. 9333 of 2015, Writ C No. 13756 of 2015 and Writ C No.13752 of 2015; as arguments have not been advanced with respect to the issues raised therein, as such, the said Writ Petitions are consequently dismissed. No order as to cost.