

(2014) 09 AHC CK 0258

In the Allahabad High Court

Case No : Public Interest Litigation (PIL) No. 29523 of 2014

Rashtriya Kisan Mazdoor Sangathan (Regd.)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Constitution of India, 1950 — Article 21

Contract Act, 1872 — Section 17, 172, 173, 176

Citation : (2014) 8 ADJ 671 : (2015) 1 ALJ 152 : (2014) 6 AWC 6435 : (2015) 1 UPLBEC 777

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : V.M. Singh (Party-in-Person), Advocate for the Appellant

Judgement

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1. These proceedings in the public interest seeking a direction to the State Government for ensuring the realisation of cane dues payable by sugar mills in the State of Uttar Pradesh to cane growers, comprising of the cane price and interest for crushing season 2013-14, were entertained by this Court on 30 May 2014 when interim directions were issued for the first time. The legal basis of the petition was an alleged : (i) breach by the sugar mills of the statutory obligation under the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (the Act) of paying over sugarcane dues to the cane growers; and (ii) failure of the State Government to initiate steps for recovery of the dues in accordance with law. The petition is founded on a breach of a legal duty cast upon the State by the state legislation to ensure the payment of the cane price and interest to farmers and upon the corresponding obligation which is cast upon the sugar mills which entered into statutory agreements under the U.P. Sugarcane Supply and Purchase Order, 1954 (the 1954 Order) for the purchase of sugarcane from assigned areas. This legal basis in the proceedings is compounded by the human misery of the sugarcane growers who, on the one hand have statutorily an

obligation to sell sugarcane only to sugar mills as stipulated by the Cane Commissioner, while on the other hand being at the mercy of the sugar mills for the re-payment of their dues. This Court has noted the incidents of suicides by farmers in the State and invoked Article 21 of the Constitution which assures, as an intrinsic part of the right to life, the right to live with dignity. At the outset, therefore, it is necessary for the Court to set out the parameters for intervention, confined as it must be to the application of statutory and constitutional norms.

2. The Court was informed by the State, on affidavit, that for the crushing season 2013-14, a total amount of Rs. 8754.52 crores was due to be paid as on 29 May 2014. At that stage, the Court was apprised of the fact that 21 First Information Reports had been lodged against the sugar mills. This Court held that the mere filing of FIRs was a statement of platitudes since this did not reflect any serious attempt on the part of the State to ensure compliance of law. This Court emphasised that a situation where nearly 40% of the sugarcane dues of the farmers had not been paid even though the crushing season was virtually at an end, was a serious issue which required urgent remedial action. The attention of the State was drawn to a recent judgment of the Supreme Court rendered on 24 January 2014 in *Anand Agro Chem India Ltd. v. Suresh Chandra and others*, Civil Appeal No. 897 of 2014, which refers to the enforcement power of the State under Section 17 of the Act. Section 17(4) empowers the Cane Commissioner to forward to the Collector a certificate specifying the amount of arrears on account of the price of cane plus interest, which the Collector has to proceed to recover from the occupier of the factory as if it were an arrear of land revenue. Taking due note of what appeared, prima facie, to be a breach of legal obligation by the sugar mills, a breach of legal duty by the State and a violation of the fundamental and statutory rights of the cane growers, this Court directed the State to have a serious re-look in the matter, having due regard to the fact that a large segment of the agricultural population had been subjected to great hardship.

3. Following the first interim order which was passed by the Court on 30 May 2014, the proceedings came up before the Division Bench on 1 July 2014 when the Court was informed that as on 1 July 2014, an outstanding of Rs. 7037.84 crores was still due and payable to the farmers against the sugarcane price for the crushing season 2013-14. This was exclusive of the liability to pay interest under Section 17(3) Act. Between the previous order of the Court and the second interim direction, a sum of Rs. 1720.55 crores was paid to the farmers. The Court was apprised that recovery certificates had been issued in respect of 40 sugar mills in the private sector and in the case of 7 sugar mills, the stock of sugar and molasses had been attached. The Court was also informed that recovery proceedings had been initiated and the stocks which had been seized by the Government would be auctioned in accordance with law. Of the 23 sugar mills in the co-operative sector where share capital is held by the State, an amount of Rs. 645/- crores was due to the cane growers for which a provision for payment of Rs. 400/- crores had been made in the budget by the State.

4. On behalf of the sugar mills, appearance was entered in these proceedings by the sugar mills association. On 1 July 2014, a statement was made before the Court that the mills do not challenge the liability to pay the outstanding dues but they are facing a serious financial burden consequent upon the State Advisory Price (SAP) of Rs. 280 per quintal. A suggestion was made before the Court that at the present stage, it would be appropriate if 85% of the amount which was realized from the sale of the sugar stocks was directed to be paid to the farmers subject to monitoring by the District Magistrates, while the balance may be paid to meet their own outstanding obligations for the payment of wages and for overhauling the machinery for the forthcoming season. Having due regard to the mandate which is contained in Section 17, this Court directed that the Cane Commissioner shall ensure that those provisions are strictly enforced so that the Court can be apprised by the next date of hearing of the progress made in the matter.

5. On 25 July 2014, the Court was apprised of the steps which had been taken in the meantime as a result of which the balance that remained due and payable was Rs. 6431.89 crores. Certain directions were issued to the State Government to explain the tardy pace of recovery.

6. On 13 August 2014, this Court noted the contention of the sugar mills that during the crushing season 2013-14, the total purchase of cane was 696 lac tons in respect of which the arrears of the cane growers were still of Rs. 5340 crores and that an amount of Rs. 2400 crores had been paid out of the funds generated during the crushing season 2013-14 against the dues of the previous season. A comprehensive affidavit was filed before the Court by the Deputy Cane Commissioner indicating that there are 33 sugar mills which had no arrangements with the banks and out of them 6 sugar mills had paid their entire dues. A serious allegation was made on behalf of the State on affidavit that a substantial amount had been diverted by the sugar mills in a manner not contemplated by Section 17(5). The Court took note of the statement that the sugar mills had received assistance from the Union Government under the Interest Subvention Scheme under which Rs. 1469 crores was disbursed after March 2014 for the crushing season 2013-14. At that stage, several banks including the State Bank of India appeared before the Court. The principal issue before the Court was noted in the following observations:

"The principal issue of concern before the Court is whether the provisions of Section 17(5) have been duly and scrupulously fulfilled. Section 17(5) contains a mandate under which it is open to the mill owners to enter into an agreement with their bankers under which moneys can be advanced against the security of the stock of sugar which has been produced or which is to be produced. Any such agreement, described as a tagging agreement, has to be within the purview of the regulatory regime provided by Section 17(5) which contains safeguards and ensures that 85% of the total advance is used for the payment of the dues of the sugarcane growers. This amount has to be used only for the stipulated purpose

and to meet the dues of the current crushing season. As we have noted earlier, if an agreement is entered into dehors the provisions of Section 17(5), that obviously cannot operate to denude the cane growers of the safeguards of the statutory provisions. Otherwise, it would be open to the sugar mills to enter into arrangements with the banks without the safeguards of Section 17(5) thereby depriving the cane growers of the protection of the statutory provisions. This, in our view, would not just be permissible."

7. This Court acceded to the request of the sugar mills association for an adjournment to disclose full facts on whether the provisions of Section 17(5) had been followed in respect of all the agreements involving a hypothecation of assets and in respect of stocks of sugar. The estimated stock of sugar was noted to be 2.98 crore quintals at that stage.

8. By its interim direction dated 13 August 2014, the Court noted that any arrangement at the present stage would have to regard not only the interest of the cane growers but equally the concerns of the banks which were before the Court namely, the State Bank of India, the Punjab National Bank and the U.P. Co-operative Bank.

The sugar mills association informed the Court that it would be in a position to sell a quantity representing 15% of the stock of sugar millwise, no later than within a period of three weeks at a price not less than Rs. 3100 per quintal. During the hearing, as is recorded in the order, a broad consensus had emerged under which permission could be granted to the sugar mills to sell 15% of the available stock of sugar millwise no later than within a period of three weeks at a price not less than Rs. 3100 per quintal. The Collector of every district was directed to certify before the transaction was concluded whether the price was reasonable and to also monitor the sale. This Court directed that the entire sale consideration shall be held in an earmarked account under the control of the Collector of every district and shall abide by further orders as may be passed by the Court. In order to protect the interest of the banks, at that stage it had been agreed that in the meantime only 30% of the sale consideration shall be utilised by the Collector for disbursing the dues to the cane growers subject to further orders of the Court. All the sugar mills were placed on notice that the balance of sugar stock out of the total stock representing 15% millwise that remains to be sold would be subject to further directions of the Court.

9. In pursuance of the interim direction of this Court, the State has placed on the record that all the defaulting units were required to sell 37.37 lacs quintals of sugar. However, as a matter of fact, 26.27 lacs quintals of sugar have been sold leaving a short fall of 11.10 lacs quintals of sugar.

10. Now, with this background, it would be appropriate for the Court to record, as it were, a snapshot of the resultant position.

11. When this Court first intervened in these proceedings, the grievance of the petitioner was that the outstanding dues of the cane growers as on 16 May 2014

were Rs. 9377.42 crores exclusive of statutory interest. In pursuance of the successive directions which have been issued by the Court, the extent of the outstanding dues has substantially been reduced. This is indicative from the following table :

12. These figures are not in dispute. In fact, this is coupled with the position that as on 1 July 2014 even for the previous crushing season 2012-13, between 30 May 2014 and 24 June 2014 an amount of Rs. 14.40 crores was paid towards the sugarcane dues and an amount of Rs. 33.48 crores was due and outstanding.

13. As on 1 August 2014, there was a ready stock of 2.98 quintals of sugar which was under attachment by the State pursuant to recovery action initiated under Section 17(4) of the Act.

The salient aspects of the factual position are as follows :

"(i) 33 sugar mills in the State are not covered by any arrangements with the banks. Out of them, six sugar mills have paid the entire dues;

(ii) According to the State, out of 33 sugar mills, there are 12 sugar mills which will continue to be in deficit even if the entire stock of sugar is sold and the money is transferred towards the cane price payable to the cane growers;

(iii) Pursuant to the provisions of Section 17(5) of the Act and the Rules, in several cases "tagging orders" were issued by the Collectors of the districts concerned in respect of those factories which had cash credit limits with the financial institutions. The tagging orders provide for the procedure through which the sugarcane dues have to be paid. The tagging orders stipulate that the entire amount which is transferred to a specifically earmarked cane price account will only be utilised for the payment of sugarcane dues for the crushing season 2013-14; and

(iv) Eight sugar mills have in fact followed the tagging orders and have paid more than 90% of the sugarcane dues.

14. The sugar mills in the State have received directly or indirectly extensive financial benefits both from the Central Government and the State Government which have been quantified in the amount of Rs. 4890.34 crores. The details of these financial benefits are as follows :

"(i) Rs. 1527.34 crores has been received by the sugar mills as a loan under the Interest Subvention Scheme of the Union Government;

(ii) Approximately Rs. 770 crores represents the rebate granted by the State Government in terms of purchase tax, society commission and entry tax;

(iii) The State Government has recently announced a reimbursement of Rs. 6 per quintal to those sugar mills which clear the dues until 30 September 2014. It is estimated that the payment under this head would be an amount of Rs. 377 crores;

(iv) The Power Corporation has paid approximately an amount of Rs. 1000 crores towards dues on account of the generation of electrical power which was payable to the sugar mills; and

(v) An amount of Rs. 1216 crores is to be recovered from the price of molasses."

15. At this stage, it would also be necessary to note that there is a serious allegation made by the State Government in regard to the diversion of funds by the sugar mills. According to the State, the moneys which ought to have been paid to the cane growers and the co-operative society on account of the cane price have been diverted, as a result of which the sugarcane farmers have been left in the lurch. We may indicate that this is a bone of serious contention since the figures which have been placed on record by the State have been disputed by the federation of the sugar mills. For the purpose of the present proceedings, it is not necessary to enter upon any disputed questions of fact. However, the Court must record that as many as 60 First Information Reports have been lodged by the State against the occupiers of sugar mills on the allegation that there has been a fraudulent diversion of funds.

16. Now, it is in this factual background that it would be necessary to deal with the contentions which have been urged before the Court.

17. The petitioner submits that the purpose of the petition, which is in the public interest, is to seek the enforcement of statutory duties and obligations which are cast upon the sugar mills in pursuance of the Act. According to the petitioner, Section 17 provides a comprehensive procedure for the payment of the cane price. Rule 48-A of the U.P. Sugarcane (Regulation of Supply & Purchase) Rules, 1954 (the Rules) regulates the procedure which is intended to ensure the due payment of the cane price to the fanners. The submission of the petitioner is that the statutory obligation under Section 17 has not been observed though, as held by the Supreme Court in *State of Madhya Pradesh Vs. Jaora Sugar Mills Ltd.*, and others etc., , the payment of the sugar cane price constitutes a first charge on the stock of sugar. This decision, it has been submitted, was subsequently followed in *S.K.G. Sugar Ltd. Vs. State of Bihar and Others*, , by a Bench of three Learned Judges of the Supreme Court. Moreover, it has been submitted that the decision was cited with approval in the judgment of a Constitution Bench of the Supreme Court in *U.P. Co-operative Cane Unions Federations Vs. West U.P. Sugar Mills Association and Others etc.* etc., . Hence, it has been submitted that it is necessary for the Court to intervene, particularly in a situation of grave financial crisis where non payment of the dues of the cane growers has resulted in increasing incidents of suicides in the State and where even the basic needs of the families, including education of the children cannot be fulfilled, where the family is deprived of its rightful claim of payment for the sugarcane supplied to sugar mills. It has been urged that on the one hand, the cane grower has no option except to supply his cane to the sugar mills as stipulated in the directions of the Cane Commissioner and depends for his existence on the payment of the cane price by the sugar mills. On the other hand, it has been submitted that until

this Court intervened, the banks which had extended financial assistance to the farmers were pursuing the farmers for their debts and it is only as a result of judicial intervention on that aspect that this situation was to some extent alleviated.

18. We may note at the outset that the sugar mills federation which has appeared on behalf of sugar mills in the State has not contested the liability for the payment of the outstanding dues of the cane growers. The liability to pay is not in dispute, as it cannot be, once the sugarcane has admittedly been supplied by the cane growers. The sugar mills, however, have pleaded a financial inability to pay the dues all at once and the Court has been requested to grant sufficient time to the sugar mills to clear off the outstandings.

19. The principal opposition to judicial intervention in these proceedings has been at the behest of the financial institutions. Among these are the State Bank of India, the Punjab National Bank, the Oriental Bank and the U.P. Co-operative Bank. The submissions which have been urged before the Court on behalf of the financial institutions merit consideration and it would, hence, be appropriate to now turn to those submissions.

20. Learned Senior Counsel appearing on behalf of the financial institutions submitted that:

"(i) The banks have a charge over the entire stock of sugar which stands pledged in their favour;

(ii) Under Sections 172, 173 and 176 of the Contract Act, the financial institutions have a contractual right as a pawnee to retain the security over the pledged sugar and this right is in the nature of a special property;

(iii) Any sale of the sugar which has been pledged to the banks would be in derogation of their pledge and would be contrary to law;

(iv) There is no express prohibition in Section 17 of the Act precluding a sugar mill from entering into an agreement with a financial institution for pledging the stock of sugar;

(v) Such an agreement of pledge can be entered into notwithstanding the tagging agreement governed by Section 17(5);

(vi) Section 17 does not create a statutory charge over the stock of sugar in respect of unpaid sugarcane dues to the cane growers;

(vii) The sugarcane growers are not secured creditors but their claim is in the nature of an unsecured claim and the observations of the Supreme Court in Jaora Sugar Mills Ltd. are only of a "passing nature";

(viii) Under Section 17(5), what is contemplated is that a percentage of an advance which is received by a sugar mill must be paid over to the cane growers. This does not amount to a claim on the stock of sugar but is in respect of the

percentage of the advance received. Once the percentage of the amount which is received by way of an advance by the sugar mill has been paid over to the cane growers, Section 17(5) gets exhausted and would not be operative thereafter;

(ix) The entire amount under the tagging orders of the Collector has been realised from the financial institutions and has been paid to the cane growers or their society; and

(x) Section 17(5) does not bind the banks or the financial institutions insofar as the pledged sugar is concerned."

21. We have summarized above the submissions which have been urged before the Court by the learned Senior Counsel for the State Bank of India and the U.P. Co-operative Bank and the learned counsel appearing on behalf of the Punjab National Bank and the Oriental Bank have adopted the submissions.

22. While dealing with the submissions which have been urged on behalf of the petitioner, it would be necessary for the Court to have due regard to the provisions of the 1954 Order. Clause 3 provides for the purchase of cane in a reserved area and requires the occupier of the factory to estimate by the stipulated date in a crushing season the quantity of cane with each grower and which has to be submitted on demand to the Cane Commissioner and the Collector. Clause 4 refers to the purchase of cane in an assigned area under which the occupier of a factory for which an area has been assigned is required to enter into an agreement in a statutory form with the cane grower or, as the case may, the cane growers' society for the purchase of cane from the assigned area. Consequently, in the State, the supply of cane, the purchase of cane as well as the agreement governing purchase and supply are governed by the provisions of the 1954 Order which have statutory force under the Act.

23. Section 17(1) of the Act provides that the occupier of a factory shall make such provision for speedy payment of the price of cane purchased by him as may be prescribed. Under sub-section (2), the price of cane which is supplied to a factory has to be paid immediately upon delivery of the cane by the occupier of the factory, together with all other connected sums. In default, a provision for interest is contained in sub-section (3). Sub-section (4) provides that the Cane Commissioner shall forward to the Collector a certificate specifying the amount of arrears on account of cane price and interest, if any, due from the occupier. Thereupon, the Collector is under a statutory duty to proceed to recover the amount reflected in the certificate as an arrear of land revenue.

24. Sub-section (5) of Section 17 of the Act is the subject-matter of controversy in the present case and reads as follows:

"Section 17(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 into an agreement with a bank

under which the bank agrees to give advance to him on the security of sugar or ethanol (directly produced from the sugarcane juice or B-Heavy molasses) 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 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 cane-growers 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 send a copy of every such agreement to the Collector within a week from the date on which it is entered into."

25. Sub-section (5) of Section 17 is without prejudice to the provisions contained in sub-sections (1) to (4). The object and purpose of sub-section (5) is to enable the owner or a person having control over the affairs of the factory to enter into a financial arrangement with a bank for the purpose of obtaining an advance on the security of the sugar or ethanol produced or to be produced. The expression "produced" would refer to the existing stock of sugar, while the expression "to be produced" would refer to a stock of sugar which would be produced in future during the ensuing crushing season. Sub-section (5) contemplates that the producer of sugar would need to enter into an agreement with a bank for the purpose of obtaining an advance on the security of sugar. At the same time, the legislature has taken care to ensure that the legitimate interest of the cane growers in the immediate payment of the price of cane which is supplied, which is a mandate under sub-section (2), is duly protected. This is ensured by the statutory condition that of the total amount of advance which is received by the occupier of the factory, a percentage which would be determined in the manner as prescribed, shall be set apart and be available only for re-payment 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, together with interest and commission.

26. While analysing sub-section (5) of Section 17, emphasis would have to be laid on the words "shall be set apart", and "be available only for re-payment to cane growers or their societies on account of the price of sugarcane". These words indicate that what the legislature has provided is that a prescribed percentage of the advance which is paid by the bank to the person having control over the affairs of the sugar factory shall be earmarked and set apart only for a specified purpose. The expression "set apart" shows that the prescribed percentage is carved out. This prescribed percentage can be utilised only for a specific purpose and for no other. The purpose for which the earmarked account can be utilised is for the re-payment to the cane growers or their co-operative societies on account of the price of the sugarcane purchased. The expression

"repayment" postulates that there is already an existing liability in favour of the cane growers which had arisen immediately upon the delivery of the sugarcane which corresponds to the right of the cane grower to receive the payment of the price of the sugarcane supplied under the provisions of the sub-section (2) of Section 17. Under clause (b) of sub-section (5), every such owner or every person is required to send a copy of the agreement to the Collector within a week of the execution of the agreement. This provision again is of crucial importance because it implicitly confers upon the Collector a duty to monitor, regulate and to ensure that the amount which is earmarked for the purpose of repayment of the dues of the sugarcane grower is not diverted for any other purpose.

27. The provisions of sub-section (5) of Section 17 must receive a purposive interpretation. This provision has been introduced by the State legislature to protect the interest of the cane growers. In the absence of such a protection, a cane grower would be left to the mercy of the sugar mill for the payment of his dues. The cane grower in the State has no option, once he falls within the reserved area, but to supply the entire stock of the sugarcane in the manner which is indicated by the Cane Commissioner. The cane grower has no bargaining capacity or the option not to supply or to supply the sugarcane to any other entity outside the reserved area. The cane grower is, in that sense, entirely at the mercy of the sugar mill for the payment of the price of the cane supplied. It is in this background that the legislature has made a salutary beneficial provision. It is a well-settled principle of interpretation of statutes that a beneficial provision must receive an interpretation that would achieve the object which the legislature has sought to achieve. In our view, once the legislature has stipulated that a specific percentage of the advance which is made by the bank to the sugar factory is required to be set apart for re-payment of the cane dues of the grower and for no other purpose, which is clear from the use of word "only", this amounts to the creation of a statutory charge. The creation of a charge by statute can be express or can emerge by necessary implication from the language used by the legislature. Ultimately, it is the language which is used and the words of the enactment which have to be construed. In our view, no clearer language was necessary other than what has already been provided in sub-section (5) of Section 17.

28. The principle, which we are inclined to derive from the provisions of sub-section (5) of Section 17, has been adverted to in several decisions of the Supreme Court. The first of those is a judgment of two Hon'ble Judges of the Supreme Court in Jaora Sugar Mills Ltd. (supra) While interpreting the provisions of the M.P. Sugarcane (Regulation of Supply & Purchase) Act, 1958, which are similar, the Supreme Court held as follows:

"13. It would thus be clear that the Cane Commissioner having power to compel the cane growers to supply cane to the factory Khandsari unit, he has incidental power and is duty bound to ensure payment of the price of the sugarcane

supplied by the sugarcane grower. The price fixed or agreed is a statutory price and bears the stamp of statutory first charge on the sugar and assets of the factory over any other contracted liabilities to recover the price of the sugarcane supplied to the factory or Khandsari unit."

(emphasis supplied)

29. In a subsequent decision of three Learned Judges of the Supreme Court in *S.K.G. Sugar Ltd. (supra)*, where the Bihar Sugarcane (Regulation of Supply & Purchase) Act, 1981 came up for consideration, the Supreme Court referred to the earlier decision in *Jaora Sugar Mills Ltd.* with approval, at Page 4 (Pages 364 and 365). At this stage, it would also be necessary to note that subsequently a Bench of three Hon'ble Judges of the Supreme Court in *Agauta Sugar and Chemicals Vs. State of U.P. and others*, , dealt with appeals by Special Leave arising from certain interim directions issued by this Court. In that case, the appellant had utilised the sugarcane supplied by the cane growers individually or through the society and had outstanding arrears of payment due to the cane growers. The Collector, in recovery proceedings, attached the stock of sugar against which the appellant filed a writ petition before this Court in which certain interim directions had been issued. Though the order passed by the Supreme Court does not specifically refer to the decision in *Jaora Sugar Mills Ltd.*, it is clear from the operative order that the Supreme Court contemplated that while the District Collector would assess the quantum of sugar which was sufficient to meet the payment of cane price to the cane growers together with interest, this would be treated as a first charge and would be recordable against the stock of sugar. The operative directions contemplated that the Collector would thereafter permit the appellant to sell that quantum of the stock of sugar which would be credited into a separate account and that the entire amount would be paid over to the cane growers. The operative directions of the Supreme Court read as follows :

"(1) The District Collector, Bulandshahar is directed to assess as to what is the quantum of the Sugar stock-in-hand would be sufficient to meet the payment of price of the sugarcane together with interest to all the cane growers towards the sugarcane supplied by them for all the crushing seasons as also the societies' commission. It would be a first charge and recordable against the stock of sugar. On so assessing, he would permit the appellant to sell that quantum of stock of sugar. The sale proceeds thereof, when received from the appellant, are directed to be credited to an account to be opened by the Collector in a nationalised Bank towards this amount. The Collector is directed to depute a responsible officer of his collectorate to be present at the time of sale. The officer would ensure that the sale would be made only of the permitted stock and that the sale proceeds are credited to the said account directed to be opened in that behalf. On the amount being so deposited, the entire amount due shall be paid to the cane growers.

(2) After the sale thus is effected and payment made to the cane growers, it

would be open to the appellant to file an application before the Collector stating as to what amount it is liable to pay towards Excise Duty and arrears of wages to the employees etc. On the statement so made, the District Collector is directed to assess as to what quantity of sugar from the remaining stock-in-hand would meet the above requirements; he would accordingly allow the release of that part of the stock-in-hand for sale by the appellant for liquidation of excise duty, arrears of wages etc."

(emphasis supplied)

30. The decision in Jaora Sugar Mills Ltd. was cited in a judgment of a Constitution Bench in U.P. Co-operative Cane Unions Federations, At Paras 38.1 and 38.2 (Pages 81 and 82). Hence, it would be material to note that the principle which has been enunciated in the decision of two Learned Judges of the Supreme Court in Jaora Sugar Mills Ltd. has been followed specifically in a decision of three Learned Judges in S.K.G. Sugar Ltd. and has been "adverted to in the judgment of the Constitution Bench in U.P. Co-operative Cane Unions Federations.

31. But, the submission which has been urged on behalf of the banks in these proceedings is that the subsequent judgment of two Learned Judges of the Supreme Court in Central Bank of India Vs. Siriguppa Sugars and Chemicals Ltd. and Others, , specifically considers the position of a pawnee and his right to retain the quantity of sugar which has been pledged towards the re-payment of its dues. Based on this decision, it has been urged that both the Cane Commissioner and the workmen of the sugar factory have been held to be unsecured creditors who would be ranked *pari passu* only in the event of winding up of the mill. Based on this decision, it has been urged that the dues of cane growers are only in the nature of an unsecured claim and their rights cannot prevail over the rights of the banks and financial institutions as pawnees of the stock of sugar.

32. Section 173 of the Contract Act provides that the pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest on the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged. Section 176 provides that if the pawnor makes a default in the payment of the debt or performance at the stipulated time or promise in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise and retain the goods pledged as a collateral security; or he may sell the thing pledged on furnishing the pawnor a reasonable notice of the sale. If the proceeds of the sale are less than the amount due, the pawnor is still liable to pay the balance and it is only if the proceeds of the sale exceed the amount due that the pawnee has to pay over the surplus to the pawnor.

33. These provisions were first interpreted in a decision of the Supreme Court in The Bank of Bihar Vs. The State of Bihar and Others, . The Supreme Court

held that the pawnee has a special property or special interest in the thing pledged and in this sense it is an intermediate situation between a simple lien and a mortgage in which the property is wholly passed in the thing conveyed. In contrast in the case of a pawn, the absolute title does not pass in favour of the pawnee. The pawnee has a special interest or property in the security of the goods pledged so long as his claim is not satisfied. The Supreme Court held that by the mere fact of a lawful seizure, the Government could not deprive a pawnee of the amount which was secured by the pledge of the goods to it.

34. The earlier decisions on the subject were considered by a Bench of three Learned Judges of the Supreme Court in Maharashtra State Co-operative Bank Ltd. Vs. The Assistant Provident Fund Commissioner, . In that case, the Supreme Court had to consider the provisions of Section 11(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 which statutorily conferred a first charge on the assets of the establishment in respect of any amount due from an employer, whether in respect of the employees' contribution or the employer's contribution to the provident fund. This, it was held, would rank in priority over all other debts. While considering the earlier decisions including in the case of Bank of Bihar, the Supreme Court observed as follows:

"The ratio of the abovenoted two judgments is that in a contract of pawn the property pledged should be actually or constructively delivered to the pawnee and pawnee has only a special property in the pledge but the general property remains with the pawner and wholly reverts to him on discharge of debt. The right to property vests in the pledgee only so far as necessary to secure his debt. We, therefore, hold that the deeds of pledge executed by the management of the Sugar Mills as security for repayment of loan etc. did not have the effect of transferring of the ownership of the sugar bags to the appellant-bank and the Recovery Officer did not commit any illegality by attaching the same and the High Court was fully justified in directing payment of a portion of the sale price to the Assistant Commissioner for being appropriated towards the provident fund dues of the workers."

Reading the deed of pledge, it was noted that even though the sugar bags which were available with the mills were placed in the custody of the bank as security for re-payment of the loan together with interest, they continued to be under the ownership of the sugar mills. Title to the property, it was held, continued to remain with the sugar mills and only a limited interest passed to the bank as security for the re-payment of the loan. For the purpose of clarity, it would be appropriate for this Court to note that the decision in Maharashtra State Co-operative Bank involved a specific statutory provision of Section 11(2) of the Employees' Provident Fund Act under which a statutory first charge is created on the assets of the establishment in respect of the unpaid contribution of provident fund.

35. The issue which the Court is called upon to consider in the present

proceedings relates to the claim of the sugarcane growers for the re-payment of the cane dues vis-?-viz the rights of the financial institutions as the pawnee of the goods. For this purpose, it would be necessary, perhaps at the cost of repetition, to revisit the provisions of Section 17(5) of the Act and equally importantly, rule 48-A of the Rules. Section 17(5) postulates that where the owner of the sugar factory intends to obtain an advance on the stock of sugar produced or to be produced in future from a bank, any such agreement with the bank shall provide that a percentage, determined in the manner prescribed, of the total amount of advance has to be set apart and will be available only for re-payment to the cane growers or to a co-operative society on account of the price of the sugarcane purchased or to be purchased during the current crushing season. Rule 48-A provides for the manner in which the percentage, which is referred to in Section 17(5), is to be computed. Sub-rules (1) and (2) of Rule 48-A read as follows:

"(1) The percentage of the total amount to be set apart under sub-section (5) of Section 17 shall be equivalent to the cost of cane (in rupees) estimated to go into the production of each bag containing one quintal of sugar or per 60 litres of ethanol (directly produced from the sugarcane juice or B-Heavy molasses) which shall be arrived at in the manner hereinafter provided, multiplied by one hundred and divided by the amount of advance (in rupees) per such bag to be given by the bank to the owner or any other person having control over the affairs of the factory or any other person competent in that behalf.

(2) In respect of any factory the cost of cane estimated to go into the production of each bag containing one quintal of sugar shall be a sum (in rupees) equivalent to the price of sugarcane per quintal (in rupees) payable by that factory (in the crushing season for which the percentage is to be worked out) including the commission of any cane-growers" co-operative societies in respect thereof, divided by the average recovery of sugar per quintal of sugar-cane worked out to the third place of decimal, in that factory (in the preceding crushing season), determined in each case by the Collector."

Sub-rule (5) provides as follows:

"(5) The agreement referred to in sub-section (5) of Section 17 shall provide for the opening of a separate account in the same bank by the owner or other person having control over the affairs of the factory or any other person competent in the behalf, and the percentage of advance referred to in that sub-section shall be credited into that account."

36. Under sub-rule (7), the owner or occupier of a factory is required to furnish to the Collector of the district with a copy to the Cane Commissioner, a fortnightly statement in Form-12 as well as other information as the Collector may require for the proper enforcement of the provisions of sub-section (5) of Section 17. Sub-rule (8) provides that any balance which is left over from the amount which is set apart on the basis of the percentage which is arrived at

under sub-rule (1) or, as the case may be, on a review under sub-rule (3), or a reduction under sub-rule (4), may be handed over by the Collector to the owner of the factory after an inquiry.

37. The legislature has, thus, contemplated that the owner of a sugar factory would require an advance from a bank and has, therefore, made an enabling provision in sub-section (5) to that effect. However, while making such a provision, there is an express stipulation that the prescribed percentage which is worked out in the manner prescribed, and which is now provided for in rule 48-A(I), shall be set apart and be used only for the payment of the dues of the cane growers. Once such an agreement has been arrived at, a copy thereof has to be supplied to the Collector. The Collector is required to regularly monitor compliance of the provisions of Section 17(5) and the submission of fortnightly statements is intended to achieve that purpose.

38. The submission of the banks is that Section 17(5) does not impede the owner of a sugar factory from creating a pledge in respect of the same stock of sugar which forms the subject-matter of a tagging agreement under Section 17(5). It has been urged that multiple financial arrangements in respect of the same security or purpose are not unknown to commercial law. Even if for the purposes of the present discussion, we accept that the owner of the sugar factory is entitled to create multiple financial arrangements, the issue before the Court is more fundamental. The issue is as to whether, once the legislature has provided that an advance on the security of the stock of sugar which is produced or which is to be produced, has to be utilised to the prescribed extent, only for the purpose of re-payment of the dues of the cane growers, whether it is open to a sugar factory to enter into a financial agreement in respect of the same stock of sugar which would have the effect of defeating the entitlement of the cane growers under Section 17(5). In our view, the answer to that must be plainly in the negative. The record before the Court indicates that the sugar factories have entered into tagging agreements within the purview of Section 17(5) which are subject to monitoring by the Collector. However, any advance which is made over to the sugar factory by a bank on the security of the stock of sugar which is produced or which is to be produced, must necessarily comply with the rigour and discipline of Section 17(5). Any other construction would defeat the whole object and purpose of Section 17(5). Otherwise, it would enable the sugar factories to enter upon financial arrangements with banks in respect of the same stock of sugar and defeat the rights of the cane grower by utilisation of the entirety of the advance for a purpose other than re-payment of cane dues. This would, in our view, be plainly a subterfuge and a fraud on the provisions of Section 17(5). Both the banks as well as the sugar mills are clearly aware of the provisions of Section 17(5) and in fact it has been submitted that to the extent to which tagging arrangements were entered into, they have been complied with. However, what is sought to be done is that in the course of entering upon working capital arrangements with the banks, a general charge is sought to be created on all the fixed assets of the sugar factories including plant and

machinery, receivables and finished or semi-finished goods. In this process, the prior claim of the sugarcane growers cannot be allowed to be defeated.

39. For these reasons, we hold that any financial arrangements between the sugar factory and a bank under which an advance is sought to be provided to the sugar factory on the security of the sugar which is produced or to be produced must necessarily comply with the tagging principles laid down in Section 17(5) of the Act. Once a tagging order has been duly fulfilled, the bank to that extent would be entitled to assert its rights as a pawnee of the goods so pledged.

40. Before we formulate the operative directions, we record the request of the sugar mills that adequate time be granted to them for the disposal of the stock of sugar. Learned counsel submitted that the mills would be able to realize an adequate price in close proximity to the ensuing festive seasons of Dussehra and Diwali and, hence, while indicating a time schedule, the Court may take this factor into account.

41. Though the stock of sugar has been attached by the Collectors under Section 17(4) for non-payment of the dues of the farmers, it would be appropriate to grant an opportunity to the mills to sell the sugar, as has been requested by the mills. However, the Collectors would have to monitor the sale process.

42. The proceedings have been pending in Court since May 2014. By the previous order of this Court, permission was granted to the sugar mills to dispose of 15 percent of the outstanding stock of sugar. As noted earlier, out of 37 lac quintals of sugar to be sold, a quantity of approximately 11 lac quintals has not been sold.

43. Having due regard to the submission which has been made before the Court, we fix an outer limit of 31 October 2014 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, in the manner indicated herein below:

"(a) The process of sale shall be monitored by the Collector of each district and the amount realised shall be deposited in a separate account in a nationalized bank and shall be utilized only for the payment of dues of the cane growers or, as the case may be, the cane growers' co-operative society;

(b) (i) Where the stock of sugar is governed by a tagging agreement under Section 17(5), the Collector shall duly verify whether, as required, 85 percent of the total advance received by the sugar mills under each agreement has been paid over to the cane growers or, as the case may be, the cane growers' co-operative society for the sugar cane purchased in crushing season 2013-14;

(ii) Subject to the due satisfaction of the Collectors on (i) above, such part of the stock of sugar, as is sufficient to meet the outstanding dues of the banks under the tagging agreements for the crushing season 2013-14 shall be set apart and excluded from the process of sale. The sale shall be completed no later than by 31 October 2014;

(iii) The sale shall be completed on the certification of the Collector that the consideration of the sale is reasonable. The entire sale consideration shall be deposited with the Collector.

(c) In those cases where the stock of sugar is not governed by any tagging agreement under Section 17(5), the Collector shall grant permission to the sugar mills to sell the stock of sugar sufficient to meet the dues for the crushing season 2013-14 of the cane growers or, as the case may be, the cane growers' co-operative society, so that the sale process is completed by 31 October 2014. The sale shall be completed on the Collector certifying the reasonableness of the sale consideration;

(d) The aforesaid arrangement shall also govern the amounts which have already been realized in pursuance of the interim order passed by this Court on 13 August 2014;

(e) The aforesaid directions will govern the outstanding claims of the cane growers or, as the case may be, of the cane growers' co-operative society on account of the price of cane and shall also be inclusive of statutory interest under Section 17(3), unless the Cane Commissioner makes a determination as provided in sub-section (3);

(f) Within the time as prescribed by the Court for the completion of the sale process (31 October 2014), it would be open to the Collector of each district to issue appropriate directions for the progressive completion of the sale so that the proceedings are duly completed by the outer limit prescribed by the Court;

(g) In the event that the Collector finds that any sugar mill is not co-operating in the completion of the sale process, it would be open to the Collector to issue appropriate directions in accordance with law; and

(h) It would also be open to the parties to approach this Court for appropriate directions.

44. The learned Chief Standing Counsel appearing for the State shall immediately communicate a copy of this order to the Collectors of the concerned districts for compliance of the directions. Subject to the aforesaid, the writ petition is finally disposed of.