

(2000) 04 AHC CK 0121

In the Allahabad High Court

Case No : C.M.W.P. No's. 53640 of 1999 and 5855 of 2000

Simbhaoli Sugar Mills Ltd.

APPELLANT

Vs

Appellate Authority and others

RESPONDENT

Date of Decision : 17-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Section 12, 14, 15, 15(4), 16(1)

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Rules, 1954 — Rule 22, 22(1), 23, 25

Citation : AIR 2000 All 289 : (2000) 3 AWC 1867 : (2000) AWC 1867

Hon'ble Judges : O.P. Garg, J;M.C. Jain, J

Bench : Division Bench

Advocate : S.P. Gupta, Tarun Agarwal, Vineet Saran and Krishna Murari, for the Appellant;

Final Decision : Dismissed

Judgement

M.C. Jain, J.—There is a spate of writ petitions every year involving and concerning the provisions of U. P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as "the Act") and U. P. Sugarcane (Regulation of Supply and Purchase) Rules 1954 (for short "the Rules") framed in exercise of powers conferred by Section 28 of the Act, in one form or the other. The present two writ petitions belong to the same category.

2. Writ Petition No. 53640 of 1999 has been filed by Simbhaoli Sugar Mills against six respondents, but the main contest is between the petitioner and respondent No. 3--Agauta Sugar and Chemicals. By means of this petition, the petitioner has challenged the validity and legality of the order dated 10.12.1999 passed by the appellate authority (respondent No. 1) u/s 15 (4) of the Act (Annexure-1 to the writ petition) read with Rule 23 of the Rules, dismissing the petitioner's appeal against the reservation order dated 25.10.1999 passed by respondent No. 2 Cane Commissioner (Annexure-5 to the writ petition). The case

of the petitioner is that it is engaged in the manufacture and sale of sugar. Its case is that its present crushing capacity is 7.500 T.C.D. (Tonnes crushed per day). The petitioner has been granted an expansion licence to enhance its capacity to 10,000 T.C.D. and the expansion programme is under progress. The cultivable area of the petitioner's reserved area is 52,000 hectares. The factory was established in 1933 and huge investment of crores of rupees has been invested by it for intensive cane development and rural development. It has also raised huge loans from financial institutions. Any shortage in cane supply to the petitioner's factory is likely to involve financial crisis. Respondent No. 3 sugar factory came to be established in the neighbourhood of the petitioner factory in 1994 and from crushing season 1993-94 to 1998-99 the Cane Commissioner reserved 12 centres for purchase of sugarcane in favour of respondent No. 3. The same are detailed in paragraph 11 of the writ petition. These 12 centres have already been bifurcated in 23 centres detailed in paragraph No. 13 of the petition. The petitioner has been bringing to the notice of the Cane Commissioner every year that it was not getting sugarcane as per its requirements. For the crushing season 1999-2000 the petitioner submitted its reservation application u/s 12 of the Act read with Rule 25 of the Rules that its sugarcane requirement would be 125 lac quintals for a period of 180 days. The petitioner requested the Cane Commissioner for allotment of 23 centres wrongfully diverted to respondent No. 3 and for further allotment of 5 centres from Matiyana Sugar Factory which is closed down and is not functioning. The details of these five centres are given in paragraph 17 of the writ petition. The said five centres of Maliyana Sugar Factory were assigned in favour of the petitioner for the crushing season 1998-99 also. The Cane Commissioner erroneously assessed the petitioner's requirement at 103: 10 lac quintals by his order dated 29.4.1999. The sugarcane requirement for respondent No. 3 was assessed at 40.60 lac quintals. As per the estimate prepared by the Cane Commissioner, the cane available to the petitioner from his reserved area was to be 85 lac quintals with a shortfall of 18.10 lac quintals. For respondent No. 3, the cane availability was to the tune of 23 lac quintals. As per the chart prepared by the Cane Commissioner the petitioner was crushing 231.34 quintals of sugarcane per hectare whereas respondent No. 3 was crushing only 147.24 quintals per hectare. The drawl percentage of the petitioner was 36.38 and that of respondent No. 3 was 24.98. Without giving any effective hearing, the Cane Commissioner passed the reservation order dated 25.10.1999 (Annexure-5 to the writ petition) denying the allotment of 23 centres (detailed in paragraph 13 of the writ petition) to the petitioner. Instead they were reserved for respondent No. 3. Five centres of Maliyana Sugar factory (detailed in paragraph No. 17 of the writ petition) were also not given to the petitioner erroneously. Not only this, the Cane Commissioner assigned 10 more centres in favour of respondent No. 3 out of the centres reserved for the petitioner. Details of the same have been given in paragraph 30 of the writ petition. The contention of the petitioner is that the same area cannot be reserved for the petitioner and assigned as well to respondent No. 3. The petitioner filed appeal u/s 15 (4) of the Act before respondent No. 1 which dismissed it by order dated 10.12.1999 under

challenge in the said writ petition.

3. To be brief, the petitioner has ventilated its grievance through the instant writ petition in three respects. viz., non-reservation of 23 purchase centres to ft mentioned in paragraph 13 of the writ petition and reserving the same for respondent No. 3, non-assigning of 5 reserved centres of Maliyana Sugar Factory in favour of the petitioner which had been assigned to it during the crushing season 1998-1999 (detailed in paragraph 17 of the writ petition) and assigning 10 centres tn favour of respondent No. 3 out of the reserved centres of the petitioner (as detailed in paragraph 30 of the writ petition).

4. Counter and rejoinder-affidavits have been exchanged between the petitioner and contesting respondent No. 3--Agauta Sugar and Chemicals.

5. Agauta Sugar and Chemicals has filed another petition, being Writ Petition No. 5855 of 2000 against five respondents including Simbhaoli Sugar Mills which is petitioner in Writ Petition No. 53640 of 1999. The material reliefs claimed by Agauta Sugar and Chemicals in Writ Petition No. 5855 of 2000 may be reproduced below :

(a) issue a writ, order or direction in the nature of mandamus commanding the State of U. P. and the Cane Commissioner, U. P. to allot/reserve 68. 618 hectares of cultivable area for the petitioner sugar mill in accordance with the recommendation made by the State Government for grant of licence to the petitioner for setting up a sugar mill (Annexure-1 to the writ petition).

(b) issue a writ, order or direction in the nature of mandamus commanding the respondents to ensure adequate supply of sugarcane assessed by the Cane Commissioner u/s 12 of the Act as the requirement of the petitioner sugar mill for the crushing season 1999-2000.

(c) Issue a writ, order or direction in the nature of certiorari calling for the records of the case and to quash the Impugned order dated 22.12.1999 (it should be 21.12.1999) (Annexure-21 to the writ petition) passed by the Cane Commissioner modifying the reservation order dated 25.10.1999."

6. The case set up by Agauta Sugar and Chemicals to counter Writ Petition No. 53640 of 1999 filed by Simbhaoli Sugar Mills and to back up its own Writ Petition No. 5855 of 2000 may be set forth. The petitioner is comparatively a new sugar factory and started commercial production from 27.10.1994 with crushing capacity of 2,500 TCD having invested about Rs. 60 crores. The expansion programme is under progress. The cultivable area of Simbhaoli Sugar Mills (reserved area) disclosed by it as 52,000 hectare has been disputed. It is said to be 97,000 hectares. It has also disputed the drawl percentage of Simbhaoli Sugar Mills, which according to it, is only 36.38%. The Simbhaoli Sugar Mills has no shortage of sugarcane. In fact, Agauta Sugar and Chemicals is facing shortage of sugarcane and is not getting cane according to its capacity requirement. Even on the assessment of the Cane Commissioner the

requirement of Agauta Sugar and Chemicals is 40.60 lac quintals with shortage of 59.16% whereas the shortage of Simbhaoli Sugar Mills would be only of 26.46%. The disputed 23 centres have rightly been allotted to Agauta Sugar and Chemicals on consideration of entire facts and circumstances. It has defended reservation of 23 centres in its favour and has claimed that 5 centres of Maliyana Sugar Factory should have also been assigned to it to meet the shortfall. It is also aggrieved by the reservation order dated 25.10.1999 passed by the Cane Commissioner where against it filed three appeals before respondent No. 1 u/s 15 (4) of the Act. The same have not yet been decided and are still pending, whereas that of Simbhaoli Sugar Mills has been decided which is the foundation of Writ Petition No. 53640 of 1999. It was incumbent upon the appellate authority to have clubbed all the appeals together and to have decided the appeals of all the concerned parties. Not only this, the Cane Commissioner yet passed another order dated 21.12.1999 permitting the Simbhaoli Sugar Mills to make Joint purchases of sugarcane along with Agauta Sugar and Chemicals from three cane centres, namely, Banboi, Dhakoli and Tibra which were assigned to it by the order dated 25.10.1999. The said order was passed ex parte. The Cane Commissioner had no power or jurisdiction to order joint purchase of sugarcane by two sugar mills from any particular area.

7. It would be noted from the above narration of facts that Agauta Sugar and Chemicals is aggrieved by the reservation order dated 25.10.1999 passed by the Cane Commissioner (respondent No. 2) in not allotting/reserving sufficient area for purchase of sugarcane by it during the crushing season 1999-2000 in respect of which its three appeals are still pending before the appellate authority-respondent No. 1 and by the subsequent order dated 21.12.1999 passed by respondent No. 2 permitting joint purchase of sugarcane by it and Simbhaoli Sugar Mills from three purchase centres, namely, Banboi, Dhakoli and Tibra which had been assigned to it by reservation order dated 25.10.1999.

8. We have heard Sri S. P. Gupta, learned senior advocate, assisted by Sri Tarun Agarwal on behalf of Simbhaoli Sugar Mills and Sri Vineet Saran, advocate assisted by Sri Krishna Murari on behalf of Agauta Sugar and Chemicals at considerable length. The material on record has carefully been gone through by us.

9. It would be advantageous to have a glance on the relevant provisions of the Act and Rules. The U. P. Sugarcane (Regulation of Supply and Purchase) Act 1953 has been passed to regulate the supply and purchase of sugarcane required for use in sugar factories and Gur, Raab or Khandsari sugar manufacturing units. The underlying idea of the Act is to ensure the maintenance of reasonable supply of sugarcane to producers and to provide for other allied matters which include a fair return to the cane growers as well. The interests of cane growers and sugar manufacturers have to be protected. At the same time, balance is to be maintained amongst sugar producers inter se. "Assigned area" as per Section 2 (a) of the Act means an area assigned to a factory u/s 15. "Crushing season" has

been defined in Section 2 (i) of the Act as the period beginning on 1st" October of any year and ending on 15th July next following. As per Section 2 (n) of the Act "reserved area" means the area reserved for the factory under order of reservation of sugarcane areas made under Rule 125B of the Defence of India Rules, 1962 and when no such order is in force, the area specified in an order made u/s 15.

10. Sections 12 and 15 of the Act and Rule 22 of the Rules being relevant, are reproduced below in extenso for Instant attention.

"12. Estimate of requirements.-

(1) The Cane Commissioner may, for the purposes of Section 15, by order, require the occupier of any factory to furnish in the manner and by the date specified in the order to the Cane Commissioner an estimate of the quantity of cane which will be required by the factory during such crushing season or crushing seasons, as may be specified in the order.

(2) the Cane Commissioner shall examine every such estimate and shall publish the same with such modifications, if any, as he may make.

(3) An estimate under subsection (2) may be revised by an authority to be prescribed."

"15. Declaration of reserved area and assigned area.--(1) Without prejudice to any order made under clause (d) of sub-section (2) of Section 16, the Cane Commissioner may, after consulting the Factory and Cane-growers" Company-operative Society in the manner to be prescribed :

(a) reserve any area (hereinafter called the reserved area), and

(b) assign any area (hereinafter called an assigned area),

for the purposes of the supply of cane to a factory in accordance with the provisions of Section 16 during one or more crushing seasons as may be specified and may likewise at any time cancel such order or alter the boundaries of an area so reserved or assigned.

(2) Where any area has been declared as reserved area for a factory, the occupier of such factory shall, if so directed by the Cane Commissioner, purchase all the cane grown in that area, which is offered for sale to the factory.

(3) Where any area has been declared as assigned area for a factory, the occupier of such factory shall purchase such quantity of cane grown in that area and offered for sale to the factory as may be determined by the Cane Commissioner.

(4) An appeal shall lie to the State Government against the order of the Cane Commissioner passed under sub-section (1)"

"Rule 32. (1) in reserving an area for or assigning an area to a factory or

determining the quantity of cane to be purchased from an area by a factory u/s 15, the Cane Commissioner may take into consideration :

- (a) the distance of the area from the factory.
- (b) facilities for transport of cane from the area,
- (c) the quantity of cane supplied from the area to factory in previous year,
- (d) previous reservation and assignment orders.
- (e) the quantity of cane to be crushed in the factory,
- (f) the arrangements made by the factory in previous years for payment of (purchase tax), cane price and commission,
- (g) the views of the Cane-growers" Company-Operative Society of the area,
- (h) efforts made by the factory in developing the reserved or assigned area."

It would be appropriate to proceed further with the above background.

11. To pick up the thread, it is an undisputed and admitted fact that 12 purchase centres (now bifurcated in 23 purchase centres) by reservation of which in favour of Agauta Sugar and Chemicals, the Simbhaoli Sugar Mills is aggrieved, had constantly been reserved for the Agauta Sugar and Chemicals since its inception in 1994. To say in other words, in four crushing seasons earlier to 1999-2000, they had been reserved for Agauta Sugar and Chemicals. It goes without saying that when a new sugar factory is established in a sugarcane growing area, in which one or more such factories are operating from before, then sugarcane area has necessarily to be re-allotted/re-reserved balancing in a reasonable way the competitive claims of all the sugar factories operating in the area. Some sugarcane area which had earlier been allotted or reserved for the operating sugar factories has to be parted with or taken away from them to cater to the requirement of the newly established sugar factory in the area. There can be no escape from such a situation. As per the statistics prepared by the Cane Commissioner (Annexure-4 to Writ Petition No. 53640 of 1999), there is shortage of sugar cane for both the sugar factories, namely, Simbhaoli Sugar Mills as well as Agauta Sugar and Chemicals. There is nothing to justify the contention of the Simbhaoli Sugar Mills that for the crushing season 1999-2000, 23 purchase centres in question should have been reserved for it. The reservation order dated 25.10.1999 passed by the Cane Commissioner and the order of the appellate authority dated 10.12.1999 cannot be flawed so far as this aspect of the matter is concerned. As is clear from Section 12 of the Act reproduced above, the exercise of preparation of estimate of requirement of sugarcane is usually made before every crushing season and reservation order is thereafter passed by the Cane Commissioner u/s 15 of the Act. For the crushing season 1999-2000. the Simbhaoli Sugar Mills has not been able to justify on: the strength of some additional factor that these 23 centres should have been reserved for it, Instead of Agauta Sugar and Chemicals. It goes without saying that the contesting sugar

factories would be at liberty to stake their claims for any number of purchase centres in the next crushing season too which are expected to be decided by the Cane Commissioner after giving an effective hearing to all the concerned parties and taking into consideration all the relevant factors bearing upon the making of reservation of purchase centres in favour of one or the other,

12. Next comes the grievance of the Simbhaoli Sugar Mills claiming five reserved centres of Maliyana Sugar Factory to it mentioned in paragraph 17 of Writ Petition No. 53640 of 1999. Though it is averred by it that in the previous crushing season of 1998-99, these five centres had been assigned to it because of Maliyana Sugar Factory being closed down, but we find that there is no material on record to indicate as to whether Maliyana Sugar Factory is a sick unit under Board for Industrial and Financial Reconstruction (B.I.F.R.) or it is disfunctional on account of some breakdown or for some other like reason. To state this another way, the reason is not known for which the Maliyana Sugar Factory is not functioning. It has also not been specified as to whether or not the said five centres have been assigned to some other sugar factory of the area for the crushing season 1999-2000. Needless to say, in case of their assignment to some other sugar factory of the area, the challenge to the non-assignment of these centres to Simbhaoli Sugar Mills is not competent to be considered at the back of the assignee. Resultantly, the Simbhaoli Sugar Mills cannot be heard complaining against the non-assignment of the said five centres to it by means of a writ petition under Article 226 of the Constitution of India.

13. It takes us to the third question of controversy as to whether ten purchase centres reserved for Simbhaoli Sugar Mills could simultaneously be assigned to Agauta Sugar and Chemicals by reservation order dated 25.10.1999 passed by the Cane Commissioner. We note that Partapur purchase centre does not figure in the purchase centres reserved for Simbhaoli Sugar Mills as mentioned in column No. 4 of the reservation order dated 25.10.1999 (Annexure-5 to Writ Petition No. 53640 of 1999). Therefore, the dispute regarding assignment is confined only to nine centres, namely, Iklandi, Inayatpur, Karothi, Chitsona, Dhakoli, Banboi, Sathala, Tibra and Tiana. They figure at Serial Nos. 3, 4, 6, 17, 21, 39, 62, 91 and 93 in column No. 4 detailing the centres reserved for Simbhaoli Sugar Mills.

14. The argument of learned counsel for Simbhaoli Sugar Mills is that on consideration of the requirement for sugarcane for the said factory as per the estimate submitted u/s 12 of the Act and keeping in view the other relevant factors, these centres were reserved for the said factories for the year 1999-2000 and there could be no justification for simultaneously assigning the same in favour of Agauta Sugar and Chemicals. It has also been urged that Section 15 of the Act does not contemplate simultaneous reservation of a centre in favour of one factory and assignment in favour of the other. Reference has been made to the case of M/s. Basti Sugar Mills. Co. Ltd., Vs. State of Uttar Pradesh and others, , to urge the point that such simultaneous reservation and

assignment of a particular purchase centre is not possible. Learned counsel for the other side, viz., Agauta Sugar and Chemicals has vehemently argued that assignment is possible only after reservation of a particular centre and there is no prohibition against simultaneous assignment in favour in respect of a centre reserved for the other. He has tried to distinguish the Basti Sugar Mills case referred to above with the reasoning that in that case the factors did not justify the assignment of Tinich Rail Centre to respondent No. 5 for the crushing season 1994-95 because the reasons for such assignment had not been given except mentioning that it was being assigned for the reasons which existed in previous year. Thus, there was total non-application of mind. The Cane Commissioner was aware of the fact that during the last crushing season the petitioner factory could not start crushing at the commencement of crushing season 1993-94 since it had been shut down on account of an order of Supreme Court for not having adequate pollution safeguards. The Cane Commissioner did not apply his mind to the fact that the same condition did not exist while passing the impugned order because the petitioner's factory had made adequate pollution safeguards and the Supreme Court had lifted the restriction. Therefore, the same reason could not exist as it was during the previous year. Thus, the impugned order was found to be based on no consideration of relevant facts but on extraneous reasons.

15. We are of the opinion that the Basti Sugar Mills case (supra), cannot be deemed to be an authority to return a finding that reservation of a centre in favour of one factory and its simultaneous assignment in favour of another is contemplated or warranted under the scheme of the Act. Really speaking, in the said case, the Court did not address itself to this pointed question which is in real controversy presently before us. The scheme of the Act and Rules indicates that the Cane Commissioner for the purpose of Section 15, may by order require the occupier of the factory to furnish an estimate of the quantity of sugarcane which could be required by it during such crushing season or crushing seasons as may be specified in the order. Section 14 of the Act stipulates that the State Government may, for the purpose of Section 15, by order provide for a survey to be made of the area proposed to be reserved or assigned for supplying cane to a factory. It is after consideration of the estimate and all other relevant factors as per Rule 22 that reservation or assignment is made. As per the estimate, there was shortage of sugarcane for Simbholi Sugar Mills. Reservation of a centre in favour of a factory and simultaneously assigning it to another renders the reservation to be nugatory, meaningless, redundant and otiose. It would tantamount to giving by one hand and taking away by the other. No doubt, the assignment in favour of another factory can be only when there exists a reservation order in favour of some factory, but it must be justified by some subsequent eventuality. For example, there may be breakdown in the factory for which a particular purchase centre is reserved ; it may become in-operational for a certain period during a crushing season for myriad reasons ; or it might not be making sufficient draws from the area reserved for it. We have just cited some examples which may provide an occasion for assigning the centres in favour of a

factory which had been reserved for the other. Reservation of centres in question had been made in favour of Simbhaoli Sugar Mills on consideration, inter alia, of its crushing capacity and the sugarcane that was to be available to it from the centres reserved for it and the same could not be simultaneously assigned to Agauta Sugar and Chemicals. The situation would have been different, had the centres in question been assigned to Agauta Sugar and Chemicals at some later stage (subsequent to the same having been reserved for Simbhaoli Sugar Mills) consequent upon arising of any such eventuality as we have exemplified above. The mere fact that there was shortage of sugarcane for Agauta Sugar and Chemicals also could not clothe the Cane Commissioner with the power to simultaneously assigning some of the reserved centres of Simbhaoli Sugar Mills in favour of Agauta Sugar and Chemicals.

16. It should also be noted that in exercise of powers conferred by Section 16 of the Act. U. P. Sugarcane (Supply and Purchase) Order. 1954, has been promulgated. Under clause 3 of the said Order the occupier of a factory is required to give an estimate by 31st October to the Cane Commissioner about the quantity of cane that is required by it. Under clause 3 (2), a cane grower or a Cane growers" Cooperative Society may within 14 days of the issue of an order by the Cane Commissioner reserving or assigning an area u/s 15 of the Act, has to make an offer to supply the cane grown under the said reserved area to the occupier of the factory. Clauses 3 and 4 talk about the agreement to be entered into in the prescribed form between the occupier of the factory and the Cooperative Societies of the reserved area for the purchase of sugarcane. The purchase of sugarcane has to be for the entire crushing season and there is also a stipulation that the cane grown in the reserved or assigned area of a sugar factory shall not be purchased by any other person except the sugar factory concerned. It is gleaned from the various provisions of the Act. Rules and the above referred Order of 1954 that various factories submit an estimation of their requirements according to their crushing capacity on the basis of which the Cane Commissioner passes the order of reservation. The philosophy is to ensure the maintenance of reasonable supply of sugarcane to the sugar producers and securing, on the other hand, the interest of cane growers.

17. Reservation order had been passed in favour of Simbhaoli Sugar Mills (including nine disputed purchase centres which came to be assigned to the Agauta Sugar and Chemicals) on the estimates submitted by it. The situation could vary during the currency of crushing season Actualities and developments could surface with the progress of crushing season which could have bearing on estimates on the basis whereof the reservation order had been passed in favour of Simbhaoli Sugar Mills. The assignment of certain centres reserved for Simbhaoli Sugar Mills during the currency of the crushing season could be warranted upon the exigencies of the situation and the changing factors coming to light with the progress of the crushing season, but simultaneous assignment of the reserved centres in favour of another factory could not be possible. There is a purpose behind the assignment at a later stage during the currency of

crushing season. That purpose is to safeguard the interest of cane growers. If some eventuality happens with the factory for which a particular area has been reserved and it is not able to make sufficient drawls or there is breakdown for some reason or the other, then the cane growers should not suffer and their produce is diverted to be purchased by another factory by making assignment in its favour. Truly speaking the assignment is a temporary phenomenon arising out of exigencies and developments coming to " light during the progress of currency of crushing season. On giving our thoughtful consideration to the various provisions of the Act, Rules and Order of 1994, we have no manner of doubt that simultaneous assignment in favour of a factory in respect of an area reserved for the other is not at all contemplated.

18. Resultantly, the simultaneous assignment of nine purchase centres, namely, Iklandi, Inayatpur, Karothi, Chitsona, Dhakole, Banboi, Sathala, Tibra and Tiana by the Cane Commissioner in favour of Agauta Sugar and Chemicals which had been reserved for Simbhaoli Sugar Mills by order dated 25.10.1999 (Annexure-5 to Writ Petition No. 53640 of 1999) has to be quashed. It has already been clarified that the purchase centre Partapur had not been reserved for Simbhaoli Sugar Mills and as such it could not ventilate any grievance as to its assignment in favour of Agauta Sugar and Chemicals. The Simbhaoli Sugar Mills which is the petitioner in Writ Petition No. 53640 of 1999 is not entitled to any other relief.

19. Relief (c) claimed by the Agauta Sugar and Chemicals in connected Writ Petition No. 5855 of 2000 is closely related to the assignment order made in its favour by the Cane Commissioner on 25.10.1999, in fact, the said controversy stemmed up from the assignment order itself. It would be recalled that by a subsequent order dated 21.12.1999 (Annexure-21 to Writ Petition No. 5855 of 2000), the cane Commissioner modified the order dated 25.10.1999 and permitted joint purchase of sugarcane by Simbhaoli Sugar Mills as well as by Agauta Sugar and Chemicals from three purchase centres, namely, Banboi, Tibra and Thakoli. Actually both the parties are dissatisfied by the said modification order of Joint purchase. The learned counsel for Simbhaoli Sugar Mills has argued that the Cane Commissioner passed the said order of joint purchase without any authority simply to appease it against his earlier illegal order of assigning centres in favour of Agauta Sugar and Chemicals which had been reserved in favour of Simbhaoli Sugar Mills. It has also been urged that in any view of the matter, the remedy of Agauta Sugar and Chemicals against the said order could be by way of challenge to it through an appeal u/s 15 (4) of the Act. On the other hand, learned counsel for Agauta Sugar and Chemicals has argued that the Cane Commissioner was not at all empowered to pass such an order of joint purchase u/s 15 of the Act. According to him. It could only be the State Government which could have done so u/s 16 of the Act. Reference has been made to Sections 16 (1) and 16 (2) (d) of the Act which relates to regulation of purchase and supply of cane in the reserved and assigned area. It provides that for maintaining supplies, the State Government may, by order, regulate the circumstances under which permission may be granted for purchase of cane

grown in reserved or assigned area by gur, rab or khandsari manufacturing units or any person or factory other than the factory for which the area has been reserved or assigned. It is submitted that under this power only the State Government could - provide for joint purchase of sugarcane from certain purchase centres by two sugar producing factories. As a matter of fact, the controversy of permitting joint purchase of sugarcane by order in question dated 21.12.1999 passed by the Cane Commissioner pales into insignificance in view of our findings above that simultaneous assignment of purchase centres in favour of Agauta Sugar and Chemicals which had been reserved for Simbhaoli Sugar Mills is illegal. It may be observed that the three purchase centres from which joint purchase was permitted by Cane Commissioner by order dated 21.12.1999 were also included in those centres which had been reserved in favour of Simbhaoli Sugar Mills and had been simultaneously assigned in favour of Agauta Sugar and Chemicals. It is well known that when the main relief becomes infructuous for whatever reasons, other incidental and academic questions need not be answered. It is, therefore, not necessary for this Court to dilate over the issue as to whether the joint purchase order could be passed by the Cane Commissioner. To come to the point, joint purchase order dated 21.12.1999 goes off and ceases to have any effect on the quashing of the simultaneous assignment order.

20. What remains to be considered are the prayers (a) and (b) made by the Agauta Sugar and Chemicals in Writ Petition No. 5855 of 2000 extracted in earlier part of the judgment. It is an admitted fact that aggrieved by the reservation order dated 25.10.1999 passed by the Cane Commissioner on 25.10.1999 Agauta Sugar and Chemicals filed three appeals before the appellate authority as provided by Section 15 (4) of the Act. Annexures-11, 12 and 13 to Writ Petition No. 5855 of 2000 are the copies of such appeals preferred by it. Really speaking, much of the steam of the present litigation raised through the two writ petitions has passed off. The reason is that for all practical purposes the crushing season 1999-2000 (in respect of which the orders in question had been passed) has come to a close with the breaking out of summer when we are in later part of April, 2000. Nevertheless, as per Section 2 (i) of the Act "crushing season" means the period beginning from 1st October of any year and ending on 15th July next following. So, theoretically speaking, the crushing season 1999-2000 is still in operation. We are of the opinion that the only relief that should be granted to Agauta Sugar and Chemicals in respect of its prayers (a) and (b) made in Writ Petition No. 5855 of 2000 is that its three appeals pending before appellate authority should be directed to be decided expeditiously within short distance of time. Learned counsel for Agauta Sugar and Chemicals has argued that the appellate authority ought to have consolidated all the appeals to decide the rival claims of the parties. According to him, the appellate authority conducted itself in a queer manner by deciding the appeal preferred by Simbhaoli Sugar Mills and letting to remain pending the three appeals of Agauta Sugar and Chemicals. We do not think that any prejudice has been occasioned to Agauta Sugar and Chemicals by the decision of the appeal preferred by

Simbhaoli Sugar Mills earlier than those preferred by it (Agauta Sugar and Chemicals). It may be pointed out that the appeal preferred by Simbhaoli Sugar Mills was dismissed. It was aggrieved by the simultaneous assignment of certain purchase centres in favour of Agauta Sugar and Chemicals which has been reserved for it and also by the non-assignment of five purchase centres of the reserved zone of closed Maliyana Sugar Factory. The appeal filed by Simbhaoli Sugar Mills failed on both the counts. Obviously, the decision of the said appeal of Simbhaoli Sugar Mills does not in any way affect the pending appeals of Agauta Sugar and Chemicals whereby it has staked claim for more purchase centres to meet out its shortage of sugarcane. We note that Agauta Sugar and Chemicals has laid claims through these appeals for certain purchase centres reserved for U. P. State Sugar Corporation-Unit Bulandshahr, Kisan Sahkari Chini Mills Ltd., Anoopshahr and Simbhaoli Sugar Mills. The first two sugar mills have not been arrayed as respondents in Misc. Writ Petition No. 5855 of 2000. In a sense, therefore, the writ petition claiming the relief at their back suffers from the defect of non-joinder also. So far as Simbhaoli Sugar Mills is concerned, claim had been staked by Agauta Sugar and Chemicals in respect of certain purchase centres reserved for the former, namely. Ahmad Nagar, Bibi Nagar, Ghansurpur and Katikeda. This Court does not ordinarily enter into the realm of factual controversy. The grant or refusal of the prayer of Agauta Sugar and Chemicals for additional purchase centres for the availability of sugarcane to it would necessarily require the appreciation of factual facts respecting the rival claims of the concerned parties on the basis of the material on record. Judged from this angle also, it would not be proper for this Court to express any opinion as to the rival contentions of the parties in justification of their rival claims in the matter of grant or refusal of additional purchase centres in favour of Agauta Sugar and Chemicals.

21. To sum up, we hold and decide the two writ petitions in the following terms.

A. The Cane Commissioner has no power or authority to reserve a particular area/centre for the purchase of sugarcane in favour of one sugar factory and simultaneously assigning the same in favour of the other. Consequently, the order dated 25.10.1999 passed by the Cane Commissioner (Annexure-5 to the Misc. Writ Petition No. 53640 of 1999) is quashed insofar as it assigns nine centres namely, Iklandi, Inayatpur, Karothi, Chitsona, Dhakoli, Banboi, Sathala, Tibra and Tiana in favour of Agauta Sugar and Chemicals which is a respondent No. 3 in Writ Petition No. 53640 of 1999.

B. The appellate authority-Special Secretary, Sugar Industries, Cane Development, Government of U. P. is directed to decide the three appeals preferred by Agauta Sugar and Chemicals u/s 15 (4) of the Act (Annexures-11 to 13 to Misc. Writ Petition No. 5855 of 2000) within fifteen days from the date of presentation of a certified copy of this order before him.

C. The order of joint purchase dated 21.12.1999 passed by Cane Commissioner (respondent No. 2 in both the writ petitions) is rendered non est in view of the

fact that the order of simultaneous assignment dated 25.10.1999 has been quashed.

22. In the circumstances of the case the contesting parties shall bear their own costs of the two writ petitions.