
(2010) 04 AHC CK 0262
In the Allahabad High Court

Simbholi Sugars Ltd.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 01-04-2010

Acts Referred:

Constitution of India, 1950 — Article 141, 21, 226, 227

Citation : (2011) 2 AWC 1744

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—It has been admitted at bar that except different cane purchase centres, the factory as well as the question of law and fact in both these writ petitions are same hence, are decided by the common judgment. The Writ Petition No. 581 (M/S) of 2010 is taken as leading petition.

2. The petitioner, Simbholi Sugars Ltd., (Unit Brajnathpur), District Ghaziabad, a Company incorporated and registered under the Companies Act, 1956, is engaged in manufacture of white crystal sugar through vacuum pan process at Brajnathpur, District Ghaziabad having crushing capacity of 4000 TCD. It has been alleged that the actual cane requirement of the petitioner Sugar Mill is 72 lakh quintal. The respondent No. 4 is also a sugar mill situated at village Bhandoria, District Bulandshahr. The working area of both, the petitioner Sugar Mill and the respondent No. 4 Sugar Mill, seems to overlap the area and the cane purchase centres allotted to them, have been the question for controversy from time to time.

3. The present controversy relates to 8 cane purchase centres namely, Sherpur, Partapur, Khangawali, Saidpur, Kisola-I, Kisola-II, Hazipur-I and Hazipur-II. All these cane purchase centres have been the reserved area of respondent No. 4 which was assigned to the petitioner by the order dated 2.11.2009, copy of which is contained in Annexure-3 to the writ petition, passed by the Cane

Commissioner in pursuance of the power conferred by Sub-section (2) of Section 15 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (in short the Act). While passing the order dated 2.11.2009, the Cane Commissioner observed that the petitioner Sugar Mill had earlier started crushing work from 8.11.2008 and continued upto 29.3.2009, thus, worked for 142 days and crushed 35.01 lakh quintal sugar cane. The Cane Commissioner noted 28% reduction of sugar and keeping in view the capacity of petitioner's sugar, observed that 51.61 lakh quintal sugarcane may be allotted and for that purpose, 9421 hectare of cane crop shall be necessary. After hearing the representatives of the petitioner's Sugar Mill and the Cane Cooperative Society, the Cane Commissioner considered the petitioner's demand in pursuance of Rule 22 of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 (in short the Rules), and assigned all these centres in question to the petitioner's Sugar Mill.

4. While considering the case of the respondent No. 4, the Cane Commissioner observed that total necessity of sugarcane for respondent No. 4 Sugar Mill, would be 40.43 lakh quintal sugarcane. It was further observed that in the previous session of 2008-2009, the respondent No. 4 started crushing work from 24.11.2008 and continued upto 4.3.2009. Thus, the respondent No. 4 worked for 100 days and out of 65.90 lakh quintal sugarcane production, approximately after drawl almost 34%, 22.17 lakh quintal sugarcane was crushed. The Cane Commissioner further observed that the respondent No. 4 had not paid cane purchase price to the farmers in the session 2009 to the tune of Rs. 185.19 lakh and also outstanding dues of Rs. 48.42 lakh with regard to development commission. Notices were issued for recovery of Rs. 257.57 lakh. It was also observed by the Cane Commissioner that cane price of the session 2002-2003 to the tune of Rs. 542.30 lakh and development commission of session of 2006-2007 and 2007-2008 to the tune of Rs. 73.89 lakh and Rs. 87.65 lakh remained unpaid. The production of cane was reduced to the tune of 33%. Accordingly, the Cane Commissioner assessed for supply of sugarcane to the tune of 23.22 lakh quintal. Under these compelling conditions, the Cane Commissioner had allocated the disputed cane purchase centres to the petitioner's Sugar Mill.

5. The order passed by the Cane Commissioner, has been reversed by the State Government in its appellate jurisdiction in pursuance of provisions contained in Sub-section 4 of Section 15 of the Act read with Rule 23 of the Rules. While reversing the order, the Special Secretary of the Government though, noted the argument advanced by the petitioner as well as the observations made by the Cane Commissioner with regard to non-payment of sugarcane dues or reduction of sugarcane production to the tune of 33% in the reserved area of respondent No. 4 but had not recorded any finding as to why the grounds discussed and relied upon by the Cane Commissioner assigning the cane purchase centres to petitioner's Sugar Mill, is not sustainable.

6. The Government observed that reduction in cane production of 33% in the

year of the respondent No. 4 is not too much keeping in view the fact that there were 28% reduction in the cane production of the petitioner and both are adjoining sugar mills. The Secretary observed that since both are adjoining sugar mills, the allocation of cane through cane purchase centres should be proportionate to each other. The allocation made by the Cane Commissioner has been found to be disproportionate to the respective sugar mills. It has been observed that with regard to cane an assurance has been given that the cane price shall be paid by March, 2010. Keeping in view the fact that Sherpur, Partapur, Khangawali, Saidpur, Kisola-I and Hazipur-I were reserved centres of the respondent No. 4, it has been held to be not justified to allocate the same to the petitioner's Sugar Mill. The assurance given by the respondent No. 4 with regard to payment of cane price was found to be satisfactory hence, the order of the Cane Commissioner with regard to cane purchase centres in question namely, Sherpur, Partapur, Khangawali, Saidpur, Kisola-I and Hazipur-I, was set aside and reserved for respondent No. 4.

7. Writ Petition No. 664 (M/S) of 2010, has been filed by the petitioner Simbhaoli Sugars Ltd., having Unit at Simbhaoli, District Ghaziabad and the controversy relates to cane purchase centres namely, Banbhaura, Barhana, Buklana, Sulaila-I, Bugrasi-I, Karauthi-I, Thal Inayatpur and Bharkau. These centres are reserved area of respondent No. 4 but, keeping in view the default of payment of cane price to cane-growers and non-compliance of Rule 22 of the Rules, have been allotted to the petitioner by the Cane Commissioner. The order of the Cane Commissioner, has been reversed by the State Government. The grounds are identical as that of Writ Petition No. 581 (M/S) of 2010.

8. Learned Counsel for the petitioner has assailed the impugned appellate order and made following submissions:

1. The reservation order of respondent No. 4 is of 2.11.2009 but crushing started only on 23.1.2010. The crushing continued upto the end of March and the Cane Commissioner allocated the cane purchase centres keeping in view the requirement for whole crushing season of the petitioner vis-a-vis respondent No. 4. The reservation order was passed on 2.11.2009 and the petitioner started crushing work immediately in the month of November, 2009.

2. The respondent No. 4 has not preferred any appeal against the order dated 2.11.2009 contained in Annexure No. 3 to the writ petition, reserving centres in question by the Cane Commissioner. The appeal was filed only against the order dated 2.11.2009 passed with regard to respondent No. 4 contained in Annexure No. 4 to the writ petition. Submission is, since allocation of cane purchase centres was not impugned before the appellate authority by preferring statutory appeal, the petitioner cannot be deprived of these cane purchase centres and the appellate authority had acted beyond jurisdiction affecting the order passed with regard to petitioner's Sugar Mill.

3. The respondent No. 4 had not paid cane price of the cane growers. Hence the

appellate authority should not have interfered with the order passed by the Cane Commissioner in view of Rule 22 of the Rules. Merely on the basis of assurance given by the respondent No. 4, it seems to be false as cane price to cane growers, has not been paid till date. The appellate authority has not considered the grounds raised by the petitioner and decided the appeal arbitrarily on unfounded grounds in violation of statutory mandate.

9. Learned Counsel for the petitioner relied upon the judgment reported in 2000 ALL. L.J. 1374: M/s. Triveni Engineering & Industries Ltd., etc. v. State of U.P. and Ors.; and (1995) 1 UPLBEC 617 U.P. State Sugar Corporation Ltd., Rampur. v. State of U.P. and Ors.

10. On the other hand, learned Counsel for the respondent, relied upon the judgment reported in 1979 (3) SLR 116 : Pasupuleti Venkateswarlu Vs. The Motor and General Traders, Shreedharan Kallat Vs. Union of India and others, M/s. Basti Sugar Mills. Co. Ltd., Vs. State of Uttar Pradesh and others, Simbhaoli Sugar Mills Ltd. Vs. Appellate Authority and others, Diwan Sugars Ltd. Vs. Appellate Authority and Others, City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Others, B.K. Muniraju Vs. State of Karnataka and Others,

STATUTORY PROVISIONS

11. Clause (a) of Section 2 of the Act defines the word, "assigned area", to mean an area assigned to a factory u/s 15. Clause (i) defines the word, "Crushing season" to mean the period beginning on the 1st October in any year and ending on the 15th July next following year. Clause (n) defined the word, "reserved area" to mean the area reserved for a factory under an Order for the reservation of the sugarcane areas made under Rule 125-B 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 of the Act.

12. Section 15 of the Act deals with declaration of reserved area and assigned area. Sub-section (2) provides that where any area has been declared as reserved area for the factory, the occupier of such factory if so directed by the Cane Commissioner, shall purchase all the cane grown in that area from the cane growers. Section 16 deals with the regulation of purchase and supply of cane in the reserved and assigned area. For convenience, Clause (a) (i) and (n) of Section 2, Section 15 and 16 of the Act, are reproduced as under:

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

(a) "assigned area" means an area assigned to a factory u/s 15.

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

(n) "Reserved area" shall mean the area reserved for a factory under an Order

for reservation of Sugarcane areas made under Rule 125-B 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;

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" Co-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 purpose 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).

16. Regulation of purchase and supply of cane in the reserved and assigned areas.

(1) The State Government may, for maintaining supplies, by order, regulate---

(a) the distribution, sale or purchase of any cane in any reserved or assigned area; and

(b) purchase of cane in any area other than a reserved or assigned area.

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

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

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

(c) the form and the terms and conditions of the agreement to be executed by

the occupier or manager of the factory for which an area is reserved or assigned for the purchase of cane offered for sale;

(d) the circumstances under which permission may be granted---

(i) for the purchase of cane grown in reserved or assigned area by a [Gur, Rab or Khandsari Manufacturing Unit or any person or factory] other than the factory for which area has been reserved or assigned, and

(ii) for the sale of cane grown in a reserved or assigned area to a [Gur, Rab or Khandsari Manufacturing Unit or any person or factory] other than the factory for which the area is reserved or assigned;

(e) such incidental and consequential matters as may appear to be necessary or desirable for this purpose.

13. A perusal of Section 15 shows that the Cane Commissioner after consulting the factory and cane-growers, co-operative society, may prescribe the reserved area or assign area for the purpose of supply of cane to the factory in accordance with provisions of Section 16 and may also cancel such order at later stage. The Cane Commissioner may direct to the factory to purchase of cane grown in the reserved area. However, from the assigned area, the occupier of factory shall purchase such quantity of cane grown in that area which is offered for sale to the factory as may determined by the Cane Commissioner. Against the order of the Cane Commissioner in pursuance of Sub-section (2) and (3) of Section 15 of the Act, an appeal lies to State Government Sub-section (4) of Section 15 of the Act.

14. While deciding an issue with regard to reserved and assigned area whether it is the Cane Commissioner or the State Government, effective hearing should not only be given to factory but also the cane-growers co-operative society. Due weight should be given to the opinion of cane-growers, cooperative society while adjudicating dispute u/s 15 of the Act. It is the cane-growers who are aware of the ground realities of the locality as well as default if any, made by the factory with regard to payment of dues to the cane-growers or other facilities required under law.

15. u/s 15, permission may be granted to a factory for purchase of cane from the reserve area or assigned area of other factories to meet out its requirements by the State Government.

16. Section 17 deals with the mode of payment of cane price to the cane-growers and Section 18 of the Act relates to commission on purchase of cane. Section 17 provides that occupier of factory shall adopt necessary procedure for speedy payment of the price of cane purchased by him and shall be liable to pay cane price immediately after supply of cane by the cane-growers. In the event of default of payment of due u/s 17 of the Act, exceeding 15 days from the date of delivery of cane, the occupier of factory shall be liable to pay interest at the rate of 7.5% per annum from the date of delivery of cane. However, the payment of interest with the approval of State Government may be reduced or exempted by

the Cane Commissioner. The rate of interest has been enhanced to 12% under proviso to Sub-section (3) of Section 17 of the Act by the Act No. 28 of 1974 Section 2. Sub-section (5) of Section 17 of the Act secures the payment of price to cane-growers provided that any fund taken by the occupier of sugar factory with the Bank and agreement entered between them therein, appropriate provisions shall be made for payment of dues to the cane-growers or Co-operative society on account of the price of sugar cane purchase or to be purchased by the factory during the current crushing season from those cane-growers or through those societies and the interest therein. The copy of agreement shall be sent to the Collector within a week. For convenience, Section 17 of the Act is reproduced as under:

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 therewith.

(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 7-1/2 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 "7-1/2" 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 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 cooperative 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].

17. Section 18 of the Act provides that where purchase is made through cane-growers, co-operative society, the commission shall be payable to the Cane-growers' Co-operative Society and the Council in such proportion as the State Government may declare, so, however that the share payable to the Council shall not exceed 50 per cent.

18. Chapter VI of the Rules contain the provisions with regard to reserved and assigned area. Under Rule 21, the occupier of the factory has to apply to the Cane Commissioner in required form, for the reserved or assigned area for supply of cane. Rule 22 provides that while reserving an area for and assigning an area to a factory or determining the quantity of cane to be purchased from an area u/s 15, the Cane Commissioner may take into account the various factors like the distance of area from factory, the facilities for transport of cane, the quantity of cane crushed, previous year functioning of the factory with regard to payment of cess, the cane price and the commission and dues of the cane-growers of the societies. Against the order of Cane Commissioner u/s 15, appeal lies under Rule 23 of the Rules, to the State Government within 14 days of publication of order of the office of the Collector. Relevant Rule 21, 22 and 23 of the Rules are reproduced as under:

21. (1) The occupier of a factory shall apply to the Cane Commissioner in Form I. Appendix-III for the reservation or assignment of an area for supply of cane to the factory for one or more crushing seasons falling over the period of reservation and assignment.

(2). Every such application shall be accompanied by a Treasury receipt showing that a fee at the rate of Rupees One thousand for each crushing season has been deposited in local treasury."

(3) Every such application shall be accompanied by a Treasury receipt showing that a fee of rupees two has been deposited in the local treasury.

22. 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 the factory in previous year,

- (d) previous reservation and assignment orders,
- (e) the quantity of cane to be crushed in factory,
- (f) the arrangements made by the factory in previous years for payment of cess, cane price and commission,
- (g) the views of the Cane-growers' Cooperative Society of the area,
- [(h) efforts made by the factory in developing the reserved for assigned area.]

23. Appeal against an order of the Cane Commissioner u/s 15 shall be to the State Government within 14 days of the publication of the order at the office of the Collector: provided that the State Government may, for any special reason, entertain an appeal made after the expiry of the above period;

The appeal made under this rule shall be submitted to the State Government in triplicate.

[23-A. The State Government shall be the authority empowered to revise the estimates u/s 12 (3) and an application for revision of estimates published by the Cane Commissioner u/s 12 (2) shall be made to the State Government within fourteen days from the publication of the estimates.]

19. Chapter IX deals with the payment to cane-growers. Rule 44 provides that payment of cane price shall be made on the basis of recorded weight of cane at purchasing center. Rule 45 provides that payment shall be made only to the cane-growers or his representative duly authorized in writing or to a cane-growers' co-operative society. Rule 46 provides that any dispute arising with regard to payment of cane price, shall be referred to Sub-Divisional officer concerned and any decision of the Sub-Divisional officer, shall be appealable to the Collector of the district, within 30 days. The proviso to Rule 46 provides that in the event of dispute, the occupier of the factory shall deposit the amount in the Court of Sub-divisional officer concerned. Rule 49 deals with the commission on purchase of cane. For convenience, Rule 44, 45, 46, 47, 48 and 49, are reproduced as under:

44. Payment of the price of cane shall be made on the basis of the recorded weight of the cane at the purchasing centre. The price shall be calculated to the nearest naya paisa.

45. Payments for cane shall be made only to the cane-grower or his representative duly authorized by him in writing to receive payment or to a Cane-growers' Co-operative Society:

[Provided that the payment to the members of Cane-growers' Co-operative Society may be made by the factory with the mutual agreement between the factory and the society. This remuneration to the factory for the payment to the members of a Cane-growers' Co-operative Society shall be determined by the Cane Commissioner:

Provided further that all arrears of cane price shall be remitted to the Cane-

growers" Cooperative Society concerned within fifteen days of the close of the factory].

46. Where a dispute arises regarding the price of cane supplied or the claimants to the price or the "parchas" under which payments are claimed payment to the claimants may be withheld pending inquiry. All such cases shall be entered in a register and shall be immediately referred to the Sub-Divisional officer for orders. An appeal against the orders of the Sub-Divisional officer shall lie to the Collector within thirty days: Provided that whenever payment to the claimant is withheld under this rule, the occupier of the factory shall forthwith deposit the amount in dispute in the Court of the Sub-Divisional officer.

47. The occupier of a factory shall not make any deduction from the amount due for cane sold to him by a cane-grower or Cane-growers" Cooperative Society: [Provided that recovery of the dues of a Cane-growers" Co-operative Society may be made by deduction from the price payable for cane.]

48. If with the previous general permission of the Cane Commissioner given in respect of any area any loan was advanced by the occupier of a factory for meeting the expenses of cultivation, to the cane-growers from whom cane has been purchased, the amount of such loan, together with simple interest thereon at a rate not exceeding, 6-1/4 per cent per annum for the period the loan has been outstanding, may be deducted from the price of the cane:

Provided that the amount of the loan shall not be disproportionate to the area to be sown or the assistance necessary to sow it or the value of the cane to be delivered and that no deduction shall be made in respect of a loan given more than three years prior to the date of the purchase of cane:

[Provided further that intimation of previous general permission of the Cane Commissioner for loan advances is given to the Cane-growers" Cooperative Societies concerned at the time of advancing loans.]

Explanation.---A loan for the purposes of this rule shall mean an advance made in pursuance of an agreement to sow a definite area of sugarcane or to enable such area to be sown or to deliver a certain amount of cane. The Cane Commissioner will decide, on application from the occupier of a factory whether a loan is proportionate to the area to be sown or the assistance necessary to sow it or the value of the cane to be delivered.

49. [The occupier of a factory shall pay commission on cane purchase at the rate of three percent of minimum statutory cane price fixed by the Government of India, out of which seventy five percent shall be payable to the cane grower's co operative society and Twenty five percent to the Council:

Provided that out of the Commission payable on cane purchased during crushing season 2004-2005 an amount at the rate of 75 paise per quintal shall be paid to the cane growers directly.

20. Subject to aforesaid backdrop, and the statutory provisions, the question raised by the parties are to be considered. It has been vehemently argued that since respondent No. 4 started crushing after inordinate delay i.e., from 23.1.2010, the Cane Commissioner rightly reserved the cane purchase centres in question, to the petitioner. In response to petitioner's arguments, it has been stated by the learned Counsel for the respondent No. 4 that there was negotiation between the petitioner and the respondent No. 4 for sale of sugar mill and since negotiation was at final stage, a request was made by the respondent No. 4 to withhold the cane reservation Agauta Sugar Mill and, vide letter dated 4.12.1999, a request was made to the Cane Commissioner that the cane of entire reserved area falling within the domain of the respondent No. 4 may be allowed in favour of Simbholi Sugar Mill i.e., the petitioner, till the start of factory. Copy of the letter dated 4.12.1999, has been filed as Annexure No. CA-2 to the counter affidavit. The Cane Commissioner, vide letter dated 16.12.2009 contained in Annexure No. CA-3 to the counter affidavit, has diverted the entire cane of the reserved area to the petitioner's Sugar Mill. However, the negotiation failed and on 15.1.2010, a request was made for withdrawal of letter dated 16.12.2009, which was acceded by the Government, vide order dated 16.12.2009 contained in Annexure No. CA-5 to the counter affidavit. Various letters and communication between the petitioner vis-avis Cane Commissioner on record, reasonably explain the delay in starting the crushing by the respondent No. 4. Hence does not create the ground to that extent in favour of the petitioner.

21. It has been vehemently argued that the respondent No. 4 has not preferred any appeal against the order dated 2.11.2009 contained in annexure No. 3 to the writ petition. The appeal was preferred against the order of same day, passed by the Cane Commissioner against the respondent No. 4 withdrawing centres in question a copy of which is annexed as Annexure No. 4 to the writ petition.

22. While defending the impugned order, it has been submitted by the respondents counsel that appeal preferred against the order of the same day withdrawing the cane centres from the respondent No. 4, covers the cane purchase centres in question. The appellate authority has not acted arbitrarily while passing the impugned order.

23. Under Sub-section (4) an appeal lies to the State Government against the order passed by the Cane Commissioner in pursuance of power conferred by Sub-section (1) of the Act.

24. While passing two separate orders on the application moved by the petitioner as well as the respondent No. 4. The Cane Commissioner has dealt with the relevant facts and circumstances concerning respective sugar mills. While holding petitioner's right and passing the orders on the same date, the Cane Commissioner considered the fact that the petitioner Sugar Mill worked for 142 days and out of available 80.41 lakh quintals of cane and the drawl of 43.54%, the petitioner crushed 35.01 quintals of cane. The reduction in cane growing was

found to be 28%. This does not contain in the order passed on the same day with regard to respondent No. 4. Keeping in view the total number of working days and crushing of cane, the centres in question, were allotted to the petitioner.

25. It is settled law that power to prefer an appeal, revision or review, is statutory remedy. Accordingly, it shall always be incumbent on appellate authority to exercise his or her appellate power against an order only in case an appeal is preferred.

26. In the present case, merely because the charts with regard to change of cane purchase centres were also annexed with the impugned order dated 2.11.2009 contained in Annexure No. 4 to the writ petition, shall not authorize the appellate authority to interfere with the order of the same date filed as Annexure No. 3 to the writ petition in the absence of an appeal filed against it.

27. In the present case, since no appeal was preferred under Sub-section (4) of Section 15 of the Act against the order dated 2.11.2009 contained in Annexure No. 3 to the writ petition with regard to allocation of cane purchase centres of the petitioner's Sugar Mill on different ground, could not have been set aside or modified while deciding an appeal with regard to order passed on the same date filed as Annexure No. 4 to the writ petition. Otherwise also, the appellate authority has not considered the fact that in the previous crushing season, the total output of petitioner's Sugar Mill was much more than that of the respondent No. 4 which crushed the cane to the tune of 22.17 lakh quintal cane only. Accordingly, the impugned appellate order seems to suffer from substantial illegality. The appellate authority had failed to exercise jurisdiction with regard to adjudication of controversy not assailed by preferring statutory appeal under Sub-section (4) of Section 15 of the Act.

28. That third question relates to payment of sugarcane price. In pursuance of the order passed by this Court, the Deputy Cane Commissioner Dr. Kripal Singh has filed an affidavit dated 8.3.2010 and stated that right from 2002-2003, the respondent No. 4 has been in continuous default of payment of cane purchase price and the commission to the cane-growers as well as the cane-growers Co-operative Society. It shall be appropriate to reproduce para 9, 10 and 11, 12, 13 and 14 of the affidavit filed by the Deputy Cane Commissioner:

9. That the arrears of cane price pertaining to the crushing season 2002-03 had not been paid by the respondent No. 4 sugar mill (i.e., the Agauta Sugar & Chemicals Ltd., Agauta, Bulandshahar) amounting to Rs. 793.36 Lakhs. For recovering the said amount, a recovery certificate had been issued by the Cane Commissioner, U.P., Lucknow to recover aforesaid amount from the respondent No. 4 sugar mill as cane dues + other dues, as arrears of land revenue under the provisions of Section 17 (4) and 18 (3) of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953.

(i). It is significant to submit that against the aforesaid recovery certificate, the respondent No. 4 sugar mill submitted an application I n the Writ Petition No.

48159 of 2002, West U.P. Sugar Mills Association & 41 Ors. v. State of U.P. and Ors. before this Hon"ble Court at Allahabad.

(ii). It is submitted that in the said Writ Petition No. 48159 of 2002, through an interim order this Hon"ble Court directed to the respondent No. 4 sugar mill to deposit an amount of Rs. 250 Lakhs with immediate effect and accordingly the respondent No. 4 paid an amount of Rs. 251.06 Lakhs to the cane growers.

(iii). It is submitted that vide judgment and order dated 21.7.2006, this Hon"ble Court pleased to dismiss the aforesaid Writ Petition No. 48159 of 2002. The true Photostat copy of the aforesaid judgment and order dated 21.7.2006 passed by this Hon"ble Court is being annexed herewith and marked as ANNEXURE No. A-1 to this affidavit.

(iv). It is significant to submit that the respondent No. 4 paid an amount of Rs. 251.06 Lakhs to the cane growers, and it enjoyed the cane price amounting to Rs. 542.30 Lakhs till August, 2006.

(v). Without any consent of the Cane Department and the concerned Cane Development cooperative Societies, in the month of September 2006, the respondent No. 4 sugar mill allegedly given debentures / bonds to the cane growers having value of Rs. 542.30 Lakhs with the preconditions that it will pay interest at the rate of 12% per annum. The true Photostat copies of two such debentures issued in the name of Sri Mavia S/o Sri Mushadi and Sri Rohtash S/o Sri Lakhi Singh, along with an application of the debenture holder demanding his money are being annexed herewith collectively and marked as ANNEXURE No. A-2 to this affidavit.

(vi). It is submitted that after completion of tenure of debentures on 01.9.2007, the respondent No. 4 sugar mill had not paid the value of debentures and after paying interest for one year to the farmers, respondent No. 4 itself extended the tenure of debentures for further one year. However, it is evident from the letter dated 16th January 2010 of the respondent no 4 sugar mill that it has still not paid the cane price to the sugarcane growers. The true Photostat copy of the aforesaid letter dated 16th January 2010 of the respondent No. 4 sugar mill is being annexed herewith and marked as ANNEXURE No. A-3 to this affidavit.

10. That it is submitted that as is evident from the aforesaid Section 16, 17 and 18 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 that there are no provisions under the law to pay cane price in the form of debentures. More so, in intention to mislead the farmers / cane growers, prior to alleged act, the respondent No. 4 has not obtained any consent either from the Cane Department or concerned Cane Development Cooperative Societies.

11. That it is significant to submit that the respondent No. 4 has executed an agreement with the concerned cane growers Cooperative Societies during the crushing season 2006-07 and agreed to pay the sugarcane price fixed by the State Government (i.e., the State Advised Price), and crushed all the sugarcane

as per agreement on Form "C" during the crushing season 2006-07. However, it has not paid sugarcane price and cane commission as per provisions contained in aforesaid Section 17 and 18 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953.

(i) It is submitted that in pursuance to the interim order dated 27.02.2008 passed by the Hon'ble Supreme Court in the case of Special Leave to Appeal (Civil) No. 2248/2008, the respondent No. 4 sugar mill paid the cane price at the rate of Rs. 115.00; Rs. 118.00 and Rs. 123.00 per quintal for the unsuitable variety, general variety, and early variety of sugarcane. The true Photostat copy of the aforesaid interim order dated 27.02.2008 passed by the Hon'ble Supreme Court in the case of Special Leave to Appeal (Civil) No. 2248/2008 is being annexed herewith and marked as ANNEXURE No. A-4 to this affidavit.

(ii) It is submitted that during the Crushing Season 2006-07; the respondent No. 4 sugar mill was liable to pay cane commission amounting to Rs. 127.88 Lakhs over the sugarcane purchase; out of which it paid only 42.14% amount (i.e., Rs. 53.89 Lakhs), and an amount of Rs. 73.99 Lakhs has not been paid by the respondent No. 4 sugar mill till date. The true Photostat copy of a chart dated 04.3.2010 showing the unpaid cane commission of the respondent No. 4 and other sugar mills for the Crushing Season 2006-07 is being annexed herewith and marked as ANNEXURE No. A-5 to this affidavit.

12. That it is submitted that during the Crushing Season 2007-08; the respondent No. 4 sugar mill was liable to pay cane commission amounting to Rs. 99.09 Lakhs, over the sugarcane purchase; out of which it paid only 11.55% amount (i.e., Rs. 11.44 Lakhs only), and an amount of Rs. 87.67 Lakhs has not been paid by the respondent No. 4 sugar mill till date. The true Photostat copy of a chart dated 04.3.2010 showing the unpaid cane commission of the respondent No. 4 and other sugar mills for the Crushing Season 2007-08 is being annexed herewith and marked as ANNEXURE No. A-6 to this affidavit.

13. That the arrears of cane price pertaining to the crushing season 2008-09 has not been paid by the respondent No. 4 sugar mill amounting to Rs. 251.57 Lakhs. For recovering the said amount, a recovery certificate dated 02.9.2009 had been issued by the Cane Commissioner, U.P., Lucknow to recover aforesaid amount from the respondent No. 4 sugar mill as cane dues + other dues, as arrears of land revenue under the provisions of Section 17 (4) and Section 18 (3) of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953. The true Photostat copy of the aforesaid recovery certificate dated 02.9.2009 is being annexed herewith and marked as ANNEXURE No. a-7 to this affidavit.

It is submitted that against the recovery certificate dated 02.9.2009 issued by the competent authority, which is relating to the year 2008-09; the respondent No. 4 sugar mill (i.e., the Agauta Sugar & Chemicals Ltd., Agauta, Bulandshahar) has paid an amount of Rs. 233.61 Lakhs (i.e., sugarcane price + society commission); however, it has not paid an amount of Rs. 17.96 Lakhs (i.e.,

interest on the sugarcane price + society commission).

14. That in view of the facts and circumstances stated herein above it is evident that following amount have not been paid by the Augauta Sugar & Chemicals Ltd., Agauta, Bulandshahar to the cane growers and cane growers societies in the various years:

Crushing Season Dues (Rupees in Lakhs). 2002-03 Rs. 542.30 Lakhs 2006-07 Rs. 73.99 Lakhs 2007-08 Rs. 87.65 Lakhs 2008-09 Rs. 17.96 Lakhs
----- Total Rs. 721.90 Lakhs.

29. Though the petitioner has raised questions with regard to unpaid dues by the respondent No. 4 but the Secretary of the State Government has not given much weight and turned down the argument merely with the observation that an assurance has been given for payment of cane price by the respondent No. 4.

30. Sri K.S. Pawar learned Counsel for the cane-growers' Cooperative Society, invited attention to the affidavit filed by the Cooperative Society. The affidavit filed by Cooperative Society shows that keeping in view the default of payment of cane purchase price and commission by the respondent No. 4 and reduction in the cane production in the relevant year, it was resolved that cane purchase centres may be given to petitioner's Sugar Mill. While filing affidavit, the Cane Cooperative Society stated that effort made by the petitioner's Sugar Mill in developing area in question, is better than the respondent No. 4. It has also been stated that the respondent No. 4 has not taken any interest in the crushing season 2008-09, to develop the area in question. So far as the distance of cane purchase centre and sugar mill is concerned, there is no much difference hence it is not necessary to consider and discuss. The cane-growers' cooperative society has also stated while filing affidavit that the cooperative society has been in favour of the petitioner's sugar mill because of its better performance.

31. In the present case, Sri K.S. Pawar learned Counsel for the cane-growers further submitted that the cane-growers' Society has resolved to allocate the centres in question to the petitioner being not satisfied with the work and conduct of the respondent Sugar Mill. The respondent's sugar mill has not taken care to pay the cane price within reasonable time in accordance with the statutory provisions and also not developed the area hence, the Cane Commissioner rightly allocated the centres to the petitioner's Sugar Mill.

32. While rebutting the submissions of the respondent's Sugar Mill, Sri K.S. Pawar learned Counsel also submitted that any decision or communication made by the Chairman giving undue favour to respondent Sugar Mill shall carry no weight being contrary to resolution of Committee of Management. The Submission of Sri K.S. Pawar, seems to carry weight. In individual capacity the office bearer of a society seems to have got no power to take any decision or pass any order in violation of resolution of the Committee of Management.

33. While defending its cause, learned Counsel for the respondent No. 4 stated

that with regard to cane price due for the year 2002-03, the cane price was paid to the cane growers in the form of debenture and entire dues shall be paid by the end of April, 2010. It has also been stated that the payment through debenture, has been affirmed by the Hon"ble Supreme Court.

34. The statement of Sri J.K. Sethi who appeared on behalf of the respondent Sugar Mill on 24.2.2010, seems to be not correct. As stated by the Deputy Cane Commissioner in his affidavit with regard to outstanding dues of Rs. 793.36 Lakhs, of the year 2002-03, the respondent No. 4 has filed Writ Petition No. 48159 of 2002 at Allahabad in which this Court at Allahabad directed to deposit an amount of Rs. 250 Lakhs. Later on, the writ petition was dismissed on 21.7.2006. Out of the amount due to the tune of Rs. 793.36 Lakhs, with regard to cane price, an amount of Rs. 542.30 Lakhs remained due till August, 2006 for which the respondent No. 4 sugar mill had given debentures/bonds to cane-growers with assurance to pay interest at the rate of 12% per annum. The conduct of respondent No. 4 has been assailed by the petitioner as well as the Deputy Cane Commissioner on the ground that the payment through debenture is not permissible under the statutes. Moreover the interest of 12% per annum assured by the respondent No. 4 sugar mill, was unsecured interest.

35. It has also been stated by the Deputy Cane Commissioner that the applications were moved by the cane-growers for payment of dues covered by the debentures but has not been paid till date. Even after on completion of period of debenture on 1.9.2007, the respondent No. 4 sugar mill has not paid the value of the debentures and by one sided decision, it extended the period of debenture for one more year as is borne out from the latter dated 16.1.2010 contained in Annexure No. A-3 to the affidavit of the Deputy Cane Commissioner.

36. As is evident from para-14 of the affidavit of the Deputy Cane Commissioner, right from the year 2002-03 till 2008-09, against the respondent No. 4, the total outstanding dues is Rs. 721.90 Lakhs. The respondent No. 4 appears to be habitual defaulter in payment of cane price and commission in lieu of supply of cane by the cane growers" cooperative society.

37. One of the arguments advanced by the respondent No. 4 with regard to payment of dues is that the State Government owe responsibility to pay an amount of Rs. 1,18,00,000.00 (one crore eighteen Lakhs) since 1997.

38. I am afraid to observe as to whether the payment of farmers" dues can be withheld for any amount payable by the State Government to the Sugar Mill ? In any case, neither the State Government nor the sugar mills are entitled to withhold the payment of cane price of the cane growers because of alleged fact that certain dues are payable by the State Government to the sugar mill or vice versa.

39. A plain reading of Section 17 of the Act read with Chapter IX of the Rules reveals that payment should be made to the cane-growers and cane cooperative societies in lieu of purchase of cane within 15 days and in failure thereof, the

sugar mill shall be liable to pay the interest at the rate of 12%. The mode and manner for payment of dues has been categorically provided in the Act and rules framed thereunder. Neither the State Government nor the Sugar Mills have got power to withhold the price of cane for any reason in violation of statutory provisions. Once the manner has been provided in the Act and Rules framed thereunder, then the respondent No. 4 was not entitled to withhold the cane price by providing debentures for specified period by a unilateral decision. It is unfortunate that opposite party No. 4 in a very high handedness manner, extended the period of debenture unilaterally without adhering to its own initial promise with regard to payment of debenture price.

40. It is settled law that a thing should be done in the manner provided by the Act and statutes and not otherwise vide, AIR 1936 253 (Privy Council) Deep Chand Vs. The State of Rajasthan, Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others, State of Uttar Pradesh Vs. Singhara Singh and Others, The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, Chandra Kishore Jha Vs. Mahavir Prasad and Others, Delhi Administration Vs. Gurdip Singh Uban and Others, ; Dhanajay Reddy v. State of Karnataka AIR 2001 SC 1512 , Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, Prabha Shankar Dubey v. State of M.P. AIR 2004 SC 486 and Ram Phal Kundu Vs. Kamal Sharma, Nika Ram Vs. State of Himachal Pradesh, Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, Chettian Veetil Ammad and Another Vs. Taluk Land Board and Others, State of Bihar and Another Vs. J.A.C. Saldanha and Others, A.K. Roy and Another Vs. State of Punjab and Others, State of Mizoram Vs. Biakchhawna,

41. In view of above conduct of the respondent No. 4, in withholding the payment of sugarcane price or fulfilment of statutory liability, with regard to payment of cane-growers" cane price in the form of debenture, at the face of record, is not sustainable and suffers from vice of arbitrariness and is deprecated.

42. In case the argument of the learned Counsel for the respondent No. 4 is accepted with regard to payment of dues in the form of debentures or any other agreement or bill, it shall amount to apply the principle of *causis omnis* while construing statutory provisions. It is settled law that while interpreting the statutory provisions each and every section, line and word of the statutes be considered and intention of Legislature should be ascertained by reading full text and *causis omnis* should not be supplied in case the language of the statutes is clear vide, judgment of Hon"ble Supreme Court reported in Grasim Industries Ltd. Vs. Collector of Customs, Bombay, Grasim industries Ltd. v. Collector of Custom. *Causis Omnis*/principle of reading down in a provision ordinarily should not be supplied by judicial interpretative process. Court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous vide Union of India (UOI) Vs. Rajiv Kumar, .The same principle has been reiterated in the cases reported in Vemareddy Kumaraswamy Reddy and Another Vs. State of A.P., Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others,

Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others, Dental Council of India and Another Vs. Hari Parkash and Others,

43. In the present case, there appears to be no ambiguity with the language of the statute i.e., Act and the Rules framed thereunder with regard to liability of the Sugar Mill to pay cane price to the cane-growers. In unequivocal term, it shall be bounden duty of Sugar Mill to pay the cane price in cash or by cash pay orders within the time specified under the Rules or face penal consequences.

44. It shall be appropriate to consider the judgments referred by the learned Counsel for the respondents. The case of Pasupuleti Venkateswarlu (supra) relates to rent control matter, where Hon'ble Supreme Court held that right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. However, subsequent development may be taken into account affecting the rights and existence of the parties.

45. In the case of B.N. Nagarajan (supra), their lordships held that executive power cannot override the statutory rules whereas the case of Shreedharan Kallat (supra) relates to judicial commity and propriety and both are not relevant for the purpose of present controversy.

46. In M/s. Basti Sugar Mills (Supra), a Division Bench of this Court held that where the sugar mill developed the cane purchase centres since last 50 years and developed the rail sidings to facilitate easy loading and transportation of sugarcane, the assignment order with regard to such cane purchase centre in favour of other sugar mill, shall be arbitrary and liable to be set aside by the court. It has further been held that reserved area maintained and developed by the sugar mill, may simultaneously not be assigned to other mill. In case it is done, it shall amount to non-application of mind (para-9).

47. The case of Simbhaoli Sugar Mills Ltd., (supra) also reiterates the proposal propounded by the Basti Sugar Mill (supra) and rules that once reserved area of a sugar mill may not simultaneous assign to other sugar mill. The assignment order is illegal and liable to be quashed. Mere fact that there was shortage of sugarcane for one sugar mill, the cane purchase centres was reserved for one sugar mill, cannot simultaneously assign to other.

48. In Diwan Sugars Ltd., Moradabad (supra), five purchase centres within reserved area of petitioner's unit assigned to respondent's sugar mill without considering the right of parties keeping in view the principles under Rule 22, has been held to be illegal and set aside. It has been held that factors mentioned in Rule 22 of the Rules are guidelines and not exhaustive but are only enumerative. Any single factor mentioned therein cannot be taken to be conclusive but cumulative effect to all the factors has to be taken into account along with the other relevant criteria and material (para-8 and 9).

49. Dr. R.K. Srivastava, learned Counsel for the respondent submitted relying upon the case of B.. Muniraju (supra), that power conferred under Article 226

and 227 of the Constitution of India, is supervisory and may be interfered with on limited ground. He also submitted that crushing season is at its fag end and Court should not interfere. He submits that this Court under writ jurisdiction may interfere only in case respondents authorities have acted in excess of their jurisdiction or because of refusal to exercise jurisdiction vested in it or because of illegality or impropriety in exercise of jurisdiction, grave miscarriage of justice has been caused. This Court may not interfere unless the authorities have acted on evidence which is legally, inadmissible or the finding is not supported by any evidence at all or there is no error of law. The power of error of fact howsoever, be grave, may not be corrected.

50. There is no dispute with regard to legal proposal canvassed by Dr. R.K. Srivastava learned Counsel for the respondent No. 4.

51. In the case of U.P. State Sugar Corporation Ltd., Rampur (supra), this Court held that in case the factors which were relevant for assigning any area, have not been taken into consideration and without considering the other factors given in Rule 22, then the Court may interfere under writ jurisdiction.

52. In the case of Triveni Engineering (Supra), relied upon by the petitioner's counsel, the Division Bench of this Court has reiterated the proposition of law that the order of Cane Commissioner or the appellate authority, without considering the factors enumerated in Rule 22 and views of cane-growers, shall be bad in law.

53. Rule 22 specifically provides that while considering the question with regard to allocation of cane purchase centres, the Cane Commissioner shall take into account various factors out of which the most important is arrangement made by the factory in previous years for payment of cess, cane price and commission as well as the efforts made by the factory in developing the reserved or assigned area coupled with the views of the cane-growers and cane-growers' Cooperative Society. Clause (f) (g) (h) of Rule 22 directly relates to the cane-growers and the cane-growers' Cooperative Society. Hence while considering an application for reserved and assigned area, the Cane Commissioner as well as the State Government must consider these factors in public interest with utmost carefulness and scrutiny. In case a sugar mill is defaulter in payment of cane-growers price, then such sugar mill should not be assigned new areas or cane purchase centres and the reserved or assigned area of such sugar mill may be reduced. No addition of cane purchase centres (area) should be made in case there is substantial outstanding dues against sugar mill payable to cane-growers or cane-growers' Cooperative Society.

54. Similarly, in case sugar mill does not make any effort to develop any area and cane production reduced substantially, then also the area of such sugar mill may be reduced and given to other sugar mill which is comparatively serving the cane-growers' Cooperative Society or cane-growers in a better way.

55. Right to life, right to livelihood and quality of life are fundamental rights

guaranteed under the Constitution of India vide, Hinch Lal Tiwari Vs. Kamala Devi and Others, Bangalore Medical Trust Vs. B.S. Muddappa and others, Bangalore Medical Trust v. B.S. Mudappa AIR 2007 SC 1046 Milkmen Colony Vikas Samiti v. State of Rajasthan and Ors. and 2006(13) SCC 382 The Chairman, Railway Board and Others Vs. Mrs. Chandrima Das and Others, Bandhua Mukti Morcha Vs. Union of India (UOI) and Others, , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others,

56. Clause (f), and (h) of Rule 22 is a part and partial of fundamental rights guaranteed under the Constitution of India. Accordingly, in case sugar mill does not meet out the requirements of Clause (f) and (h) of Rule 22, it shall amount to violating of fundamental rights of the cane-growers and, no new cane centre should be allotted and, the area should be reduced by allocating the same to other sugar mill which is discharging its obligations in terms of Clause (f) and (h) of Rule 22.

57. In none of the cases of Hon''ble Supreme Court, referred by both sides, the question with regard to fundamental rights available to cane-growers under Article 21 of the Constitution of India has been considered. Without considering the rights protected under Article 21 of the Constitution of India, Rule 22, has been observed as guidelines, seems to be per incuriam to law settled by Hon''ble Supreme Court.

58. Per incurium means in ignorance of or without taking note of some statutory provisions or the judgment of Hon''ble Supreme Court or the larger Bench, vide; State of Bihar Vs. Kalika Kuer @ Kalika Singh and Others, State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., Mamleshwar Prasad and Ors. v. Kanhaiya Lal 2005 (1)SCC 608, Ram Gopal Baheti v. Girdharilal Soni and Ors., (1999) 3 SCC 112 A.R. Antulay Vs. R.S. Nayak and Another, Sarnam Singh and Another Vs. Dy. Director of Consolidation and Others, State through S.P., New Delhi Vs. Ratan Lal Arora,

59. The concept of "per in curiam" in all those decisions given is ignorance or forgetfulness of some inconsistent statutory provisions or of some authority binding on the Court concerned, i.e., previous decisions of the Court i.e. its own Court or by a Court of co-ordinate or higher jurisdiction or in ignorance of a term of a statute or by a rule having the force of law. "Incuria", literally means "carelessness". In practice, per incuriam is taken to mean per ignoratium. (Vide Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., A.R. Antulay Vs. R.S. Nayak and Another, State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, B. Shama Rao Vs. The Union Territory of Pondicherry, Municipal Corporation of Delhi Vs. Gurnam Kaur, Ram Gopal Baheti v. Girdharilal Soni and Ors., (1999) 3 SCC 112 Sarnam Singh and Another Vs. Dy. Director of Consolidation and Others, Government of Andhra Pradesh v. B. Satyanarayana Rao, (dead) by L.Rs. & Ors; AIR 2000 SC 1729 ; M/s. Fuerst Day

Lawson Ltd. Vs. Jindal Exports Ltd., Suganthi Suresh Kumar Vs. Jagdeeshan, State of Bihar Vs. Kalika Kuer @ Kalika Singh and Others, Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, Manda Jaganath Vs. K.S. Rathnam and Others, Sunita Devi v. State of Bihar and Ors. AIR 2004 SCW 7116 ; Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another, K.H. Siraj Vs. High Court of Kerala and Others, and Union of India (UOI) and Another Vs. Manik Lal Banerjee,

60. In the case of State through S.P., New Delhi Vs. Ratan Lal Arora, the Hon''ble Supreme Court held that where in a case the decision has been rendered without reference to statutory bars, the same cannot have any precedent value and shall have to be treated as having been rendered per in curiam.

61. In N. Bhargavan Pillai (Dead) by Lrs. and Another Vs. State of Kerala, the Hon''ble Supreme Court held that in view of the specific statutory bar, the view, if any, expressed without analysing the statutory provision cannot, in our view, be treated as a binding precedent, and at the most is to be considered as having been rendered per in curiam.

62. A similar view has been reiterated in Mayuram Subramanian Srinivasan Vs. C.B.I., wherein the Apex Court has observed as under:

"Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. English Courts have developed this principle in relaxation of the rule of stare decisis. The ""quotable in law", as held in Young v. Bristol Aeroplane Co. Ltd., (1944) 2 All ER 293 , is avoided and ignored if it is rendered, ""in ignoratium of a statute or other binding authority". Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution of India, 1950 (in short "the Constitution") which embodies the doctrine of precedents as a matter of law. The above position was highlighted in State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, To perpetuate an error is no heroism. To rectify it is the compulsion of the judicial consigns. The position was highlighted in Nirmal Jeet Kaur Vs. The State of Madhya Pradesh and Another,

63. In view of the above, the right, flowing from Rule 22 (f) and (h) of Rule 22, protects the fundamental rights of cane-growers available under Article 21 of the Constitution of India, and is binding. Non-compliance of provisions contained in Clause (f) and (h) of Rule 22 (supra;), by the sugar mills, shall disentitle the sugar mills to claim allotment of new sugar cane centres and also to continue with old one. It shall be obligatory on the part of the Cane Commissioner and the Government not to allot or reserve or assign any new cane purchase centres (area) to the sugar mills which are in due of cane price and not worked for developing the assigned or reserved area. The cane purchase area may be reduced and transferred to other sugar mills which are not in due of cane price and discharge their obligations in developing the reserved or assigned area.

64. In the present case, respondent No. 4 is in default of payment of dues since

2002-03 and kept the farmers running from pillar to post for payment of dues almost every year in the past. For this habitual default on the part of the respondent No. 4, in payment of farmers dues, the Cane Commissioner has rightly transferred the cane purchase centres in question to the petitioner and the appellate authority as well as the Government should not have interfered with the decision taken by the Cane Commissioner.

65. It is trite in law that while reversing an order, the appellate authority has to pass a reasoned order. The appellate authority have to show the justifiable ground on each and every count discussed by the trial court, in the present case, the Cane Commissioner. The Special Secretary who decided the appeal, seems to have not resolved the issue in a just and fair manner without taking into account the farmers plight with regard to cane price not paid by the respondent Sugar Mill.

66. In view of the above, to sum up:

(i) Clause (f) and (h) of Rule 22 (supra), relate to cane price and development of reserved or assigned area. Non-compliance of these conditions, shall be violative of Article 21 of the Constitution which protect the right to life, right to livelihood, right to dignity and quality of life. Hence, compliance of condition No. (f) and (h) of Rule 22 is mandatory.

(ii) In case, a sugar mill fails to pay the cane price and does not develop the reserved or assigned area then, it shall not be entitled for any new cane purchase centres and its area shall be liable for reduction and may be transferred to the sugar mill which comply with the condition (f) and (h) of Rule 22. Reduction of cane purchase area or cane purchase centre of a sugar mill, habitual in default of payment of cane price, is justifiable.

(iii) The cane price must be paid in accordance with statutory provisions (supra) and not otherwise. The payment of cane price in the form of debentures not provided by the statutory provisions, is not permissible and such action on the part of the sugar mills shall call for penal action in accordance with law and shall also be a ground for reduction of area and other action provided by law.

(iv) The withholding of cane price in violation of statutory provisions for inordinate period, makes out a case for criminal prosecution as well as civil consequences. The cane-growers and cane-growers" cooperative societies have got right to prosecute the sugar mills in default of payment of cane price in the manner provide by the Rules and also claim damages apart from interest provided by the Rules.

(v) In case, the sugar mill has got any grievance against the order passed by the Cane Commissioner then, it shall be obligatory to prefer an appeal under Sub-section (4) of Section 15 of the Act against such order. In absence of any statutory appeal preferred by the sugar mill, the State Government lacks jurisdiction to decide the issue under the garb of appeal preferred against an

order passed by the Cane Commissioner in a connected matter.

67. In view of the discussion and finding recorded hereinabove, the reduction of cane purchase area, or the transfer of reserved or assigned area of a sugar mill to other sugar mill on account of non-payment of cane price to the cane growers or cane-growers" cooperative society, is justified and lawful. Failure on the part of the respondent No. 4 in payment of cane price since 2002-2003, shows the inaction on the part of the State Government. The Government should have taken steps to ensure the payment of cane price. In absence of any action on the part of the State Government, this Court has got ample power to issue appropriate order or direction to ensure the payment of cane price along with interest in accordance with Rules. This Court expects that keeping in view the assurance given before the State Government, the respondent No. 4, sugar mill shall ensure payment of entire cane price to cane-growers/cane-growers" cooperative society by April, 2010 along with interest in accordance with Rules (supra).

68. In today's costly life, everyone requires the price of his/her produce immediately more so, when it relates to farmers. The payment should be made immediately in accordance with Act and Rules framed thereunder without withholding the same on any ground whatsoever. Life has become more dearer nowadays and every farmer has got legitimate expectation to receive cane price immediately in accordance with law to cope with his family responsibilities. In the event of default of payment of dues, the majority of cane-growers may suffer irreparable loss and injuries in due course of time.

69. As observed, the non-payment of cane price within reasonable time or failure on the part of sugar mills to develop the area in compliance of Rule 22, affects the fundamental rights of the cane-growers. In the present case, where the respondent No. 4 has failed to pay cane price since 2002-2003, shows the apathy on the part of the State Government to look after cane-growers interest. Such thing should not occur in the democratic country where peoples elect representatives, owe responsibility to protect the rights of citizens.

70. Farmers are lifeline of a country. In the event of any injustice caused to them, the country shall suffer from ill-consequences like reduction in agriculture produce. In the present case, because of non-payment of cane price and inaction on the part of sugar mills to develop the area, the cane production has been reduced to the tune of 28% to 33% respectively. This shows dereliction of statutory duty on the part of sugar mills.

71. Special attention should be paid by the Government to the farmers" plight with regard to production, sale and payment of price for their produce. Failure on the part of the Government in due course of time, may result into lesser agriculture produce with consequence of threat of wide spread famine and starvation. Comparatively, more attention should be given to agriculturists problem by the Government to provide bread and butter to every citizen of the

country.

72. During Gupta Dynasty (321 BC onward), king and its provincial governor were much concerned with the peoples' plight than the cause of their own vested interest. Following verse shows how the ideals set before the local official used to watch public interest:

He caused distress to no man in the city, but he chastised the wicked. Even in this mean age he did not fail the trust of the people. He cherished the citizens as his own children and he put down crime. He delighted the inhabitants with gifts and honours and smiling conversation, and he increased their love with informal visits and friendly receptions.

"The Wonder that was india"A L Basham.

73. Historian Basham further says, to quote:

The duty of protection was often little more than the preservation of the status quo, but it was nevertheless onerous, and involved positive duties, such as developing irrigation, relieving famine, and generally supervising the economic life of the realm.

74. Kautilya in his treatise "Arthashastra" while discussing the duty of king (in today's context, the Government) suggests to quote:

He should follow the friends and leaders of the people. Whoever acts against the will of the people will also become unreliable. He should adopt the same mode of life, the same dress, language, and customs as those of the people. He should follow the people in their faith with which they celebrate their national, religious, and congregational festivals or amusements. Whoever has caused excitement to the people or incurred their displeasure should be removed and placed in a dangerous locality.

"Ancient India" ---R.C. Majumdar

75. Pt. Jawaharlal Nehru, the first Prime Minister of India says, to quote:

Normally speaking, it may be said that the forces of a capitalist society, if left unchecked, tend to make the rich richer and the poor poorer and thus increase the gap between them.

Jawaharlal Nehru 1889-1954 "Basic Approach" in Vincent Shean Nehru ... (1980)

76. In case the payment of cane price is not made within reasonable time to the farmers as observed (supra) it may result into serious adverse consequences affecting the family life and creating undue hardship. Thing should be done within reasonable time with regard to payment of cane-growers' dues as well as development of reserved and assigned area.

Bible says, to quote:

"To every thing there is a season, and a time to every purpose under the heaven:
A time to be born, and a time to die... A time to weep and a time to laugh; a
time to mourn, and a time to dance.

[Bible:Ecclesiastes]

77. By withholding the cane price and circulating the money so earned, virtually, the sugar mills use to multiply their assets at the cost of poor farmers seems to an act of exploitation. Oliver Goldsmith had rightly said, to quote:

Laws grind the poor, and rich men rule the law.

[Goldsmith---"The Traveller" (1764)]

78. Needless to say that those who have got plenty of wealth and prosperity, may not be aware with the plight of poor farmers who wait the payment of their cash crops to meet the necessities of life, fooding, cloths, marriage, and medical case etc. James Baldwin, rightly said to quote:

"Anyone who has ever struggled with poverty knows how extremely expensive it is to be poor."

"Nobody Knows My Name" (1961) ---James Baldwin

79. It is expected that the Government must take appropriate steps to ensure the monitoring of sugar mills with regard to payment of cane price in accordance with Rules within reasonable period and also to ensure that the development work in the reserved and assigned area is done effectively by the sugar mills in accordance with law so that farmers may not be discouraged from growing sugarcane crop as seems to have happened in the present case. Otherwise, the price of sugar shall become more dearer.

80. It shall be appropriate for the State Government to constitute a statutory monitoring committee or Tribunal to ensure the payment of cane price to cane-growers/ cane-growers" cooperative society in accordance with Rules within reasonable period and in default, take penal as well as civil action against the sugar mills. The committee/Tribunal so constituted may also work as an authority to whom the cane-growers may submit their complaints which may consider and decide it in accordance with law expeditiously. The committee, or Tribunal or body so constituted, should be given statutory power to monitor the development work done by the sugar mills in their reserved or assigned area. The committee may also taken into account as to whether the factors given in Rule 22 (f) and (h) (supra), is enforced in its letter and spirit keeping in view the interest of cane-growers.

81. Subject to observation and finding hereinabove, the writ petitions are allowed. A writ in the nature of certiorari is issued quashing the order dated 29.1.2010 contained in Annexure No. 1 to the Writ Petition No. 581 (M/S) of 2010 and the order dated 28.1.2010 contained in Annexure No. 1 to the Writ

Petition No. 664 (M/S) of 2010 with consequential benefits. A writ in the nature of mandamus is issued directing the respondent No. 4 to ensure the payment of cane price in accordance with Rules and assurance given before Government, before 30.4.2010.

The State Government is further directed to consider for creation of Statutory Monitoring Body to receive complaints and adjudicate the dispute with regard to payment of cane price to cane-growers/cane-growers" cooperative society within a specified period and to take action against the sugar mills in default of payment of dues and to monitor the development work keeping in view observation made in the present judgment.

The Registry of this Court, shall send a copy of this judgment to the Chief Secretary to State Government of Uttar Pradesh, for appropriate action keeping in view of observations made in the present judgment.

82. The writ petition is allowed accordingly. Costs is made easy.