(2015) 09 KAR CK 0412

In the Karnataka High Court

Case No : Writ Appeal Nos. 100807-809/2014 (GM-RES)

The India Sugars and Refineries Limited	APPELLANT
Vs	
The Commissioner for Cane Development and Director of Sugar in Karnataka and Others	RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2015) 09 KAR CK 0412

Hon'ble Judges : Anand Byrareddy, J;S. Sujatha, J

Bench : Division Bench

Advocate : Uday Holla, Senior Counsel for H.N. Shashidhara Kesvy and Company, for the Appellant; C.S. Patil, Government Advocate, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Anand Byrareddy, J—The facts as stated are as follows:

"The appellant is a company, having its registered office at Chitwadgi, Hospet, Bellary District. It is engaged in the manufacture of sugar. It has its factory at Chitwadgi. It is said to have been established in the year 1933. At present, the sugarcane crushing capacity of the factory is said to be 2500 TCD. The petitioner is said to be a sick industry under rehabilitation pursuant to a Scheme sanctioned by the Board for Industrial and Financial Reconstruction (Hereinafter referred to as the ''BIFR'', for brevity).

The sale of sugar and sugar cane are regulated, inter alia, under the Sugarcane (Control) Order, 1966 (Hereinafter referred to as the ''SO 1966'', for brevity.) In terms of the said SO 1966, every year, the Central Government determines the minimum sugar cane price that is mandatorily payable by producers of sugar. In this regard, the Sugarcane Price Determination Order is issued and the price so determined is called ''Fair and Remunerative Price'' (FRP). It is also mandated therein that no sugarcane grower shall sell sugarcane at less than the FRP.

The State Government, in exercise of its power, as a delegate under Clause 6 of SO 1966, has specified the areas earmarked as the ''reserved area'' for the appellant''s factory, to ensure the availability of sugar cane, having due regard to its crushing capacity.

It is said that for the sugar season 2002-03, the appellant and the Hospet Raithara Sangha, the second respondent had entered into an agreement dated 5.12.2002, wherein the sugarcane price was fixed at Rs. 830 per MT. The Central Government is said to have fixed the FRP (or the ''Statutory Minimum Price'', (SMP), as it was then called) at Rs. 827.40 per MT payable by sugar producers, by a notification dated 12.12.2002. By a further notification dated 9.1.2003, it was said to have been re-fixed at Rs. 891.80. The said second notification was under challenge by the South India Sugar Mills Association, before this court in a writ petition. The same was said to have been transferred to the Supreme Court, pursuant to a transfer petition. Later, however, the petition is said to have been withdrawn - for reasons not made known.

It is further stated that for the sugar season 2003-04, the Central Government had, by a notification dated 12.2.2004 fixed the SMP at Rs. 891.50 per MT. This was determined on a calculation of the peak recovery of the previous sugar season. This was obviously erroneous and was brought to the attention of the Central Government by a notice dated 13.3.2004, with a request to correct the SMP and modify the price at Rs. 840 per MT.

It is stated that for the sugar seasons, 2002-03 and 2003-04, the second respondent is said to have raised a dispute that the appellant had not paid the SMP fixed by the Government. Though the Cane Commissioner is said to have issued a notice to the appellant, on the said complaint of the second respondent, the appellant is said to have replied contending that the demand was not tenable and further that the appellant was protected under Section 22 of the Sick Industrial Companies Act, 1985 (Hereinafter referred to as the ''SIC Act, for brevity). It transpires that no further action was taken by the Cane Commissioner.

However, it is claimed, that the appellant had, in order to meet the demand of the sugarcane growers and as a conciliatory measure, had agreed to pay a price far in excess of the SMP fixed for the sugar seasons 2004-05 and 2005-06. This had adequately covered the alleged short payment for the sugar seasons 2002-03 and 2003-04. This was a settlement arrived at the instance of a minister of the State government, late M.P. Prakash, and in the presence of the then Commissioner for Cane Development. Accordingly, it is claimed that the appellant had paid an excess amount of Rs. 81.80 per MT in the sugar season as against an alleged short payment of Rs. 61.80, for the sugar season 2002-03, in the sugar season 2004-05 and Rs. 55 per MT, in excess, compared to the SMP paid by neighbouring factories.

Similarly, for the sugar season 2005-06, the appellant is said to have paid Rs. 146.80 per MT in excess of the SMP, which adequately covered the alleged short payment of Rs. 51.50. This was Rs. 65 per MT more than that paid by neighbouring sugar factories for the said season.

It is hence claimed that the dispute as to any short payment for the sugar seasons 2002-03 and 2003-04, respectively, stood fully and finally resolved in the light of the above settlement. And that there was also no claim raised by any sugarcane grower in respect of any short payment between the years 2004 and 2013.

It was only the second respondent which had filed a writ petition in WP 16580/2007, in October 2007, alleging short payment for the sugar seasons 2002-03 and 2003-04.

In the year 2008, the Commissioner for Cane Development, the first respondent, had while determining the additional cane price under Clause 5A of the SO 1966 for the sugar season 2003-04, directed the appellant to pay the difference of SMP of Rs. 51.50 per MT of sugar cane. The appellant being aggrieved by the order is said to have challenged the same before this court in a petition in WP 7169/2008. The said direction was stayed and the petition is said to have been disposed of by an order dated 29.7.2013, with a direction to the first respondent to adjudicate whether the dispute falls under the ambit of Clause 3(8) of the SO 1966.

In so far as the sugar season 2006-07, an agreement was said to have been entered into between the appellant and the second respondent on 3.1.2007. It is the appellant''s case, however, that the agreement did not determine the sugarcane price for the purposes of Clause 3 of the SO 1966. It is claimed that for every sugar season, there are such agreements entered into, whereby the SMP and the additional cane price payable in terms of Clause 5A of the SO 1966, if any, is paid tentatively. As there is an invariable delay in the determination of the additional cane price payable, the growers are paid a tentative sum over and above the SMP, which is in the nature of an advance to be adjusted towards the actual additional cane price, eventually determined.

It is contended that it is a matter of record that it is only after the appellant entered into the above agreement, or rather was coerced into it, that the crushing season commenced on 4.1.2007. The appellant was allegedly compelled to agree to pay Rs. 1140 per MT as against an SMP of Rs. 928.50 per MT. The difference amount was an advance towards the additional cane price, which was yet to be determined as on the date of agreement.

It is stated that there was excess production of sugar cane in the country during the sugar season 2006-07, particularly in the reserved area of the appellant''s factory. The government had compelled the appellant to extend the crushing till 31.7.2007, which is said to have resulted in very low recovery of sugar, averaging at 10 to 7%. It is claimed that the appellant suffered a loss of over Rs. 10 crore in the said season. As the price of sugar had fallen below the levy price, the question of determination of any additional cane price did not arise.

It is further stated that the neighbouring sugar factories had reduced the sugar cane price to Rs. 1000 per MT and hence the appellant is said to have requested the second respondent to reduce the price to Rs. 1000 per MT as well. It transpires that the second respondent had not responded. The appellant is said to have suspended crushing operations and terminated the agreement dated 3.1.2007, as on 18.5.2007. The appellant claims to have paid Rs. 1000 per MT upto 18.5.2007 and Rs. 928.50 per MT from that date to each of the sugarcane suppliers.

It is stated that on a complaint by the second respondent, the first respondent by a notice dated 17.12.2007 had called upon the appellant to pay the sugar cane price at Rs. 1140 per MT for the 393355 MT of sugar cane crushed during 2006-07, within two weeks from the date of notice, failing which recovery proceedings would be initiated. The appellant had filed a writ petition challenging the said notice in WP 725/2008. The said petition was disposed of on 19.2.2008, while quashing the show cause notice aforesaid and the matter was remitted to the first respondent for fresh adjudication. The first respondent is said to have held vide order dated 5.7.2008 that the agreement dated 3.1.2007 between the appellant and the second respondent was enforceable. The appellant had challenged the said order by yet another writ petition in WP 10479/2008. The said petition was allowed and the matter was again remitted to the first respondent for fresh adjudication, with a particular direction that the first respondent address his jurisdiction with respect to determination and enforcement of an agreement between the appellant and the second respondent and thereafter adjudicate on the claim and counter claim.

The first respondent is said to have held that his office has the jurisdiction to address the above aspect. It is, however, contended by the appellant that the said Order of the first respondent, dated 17.8.2009 was not a speaking order as there was no discussion or reasoning in arriving at such a conclusion. The appellant had hence challenged the same before this court in a writ petition in WP 64840/2009.

It is further alleged by the appellant that the second respondent had openly induced the sugar cane growers, within the reserved area of the appellant''s factory, to divert the sugarcane to the neighbouring sugar factories. It is claimed that in spite of repeated complaints to the concerned authorities to prevent such illegal transportation, no action is said to have been taken. The appellant was thus said to have been constrained to file yet another petition before this court in WP 31532/2008, seeking a direction to the authorities to prevent the illegal transportation. At the hearing, and on a suggestion from this court that the matter be amicably settled, by the appellant making a further payment of the alleged arrears, the appellant is said to have made such an offer - but the same, is said to have been negated by the second respondent. The petition was disposed of on 9.9.2009, with a direction to the authorities to implement the provisions of the SO 1966, to prevent illegal transportation of sugar cane.

In the year 2009, the Tungabhadra Sugarcane and Banana Growers Association, the third respondent herein, is said to have come into existence. It is the complaint of the appellant that this third respondent had started inducing sugarcane growers, within the reserved area of its factory, to divert sugarcane to neighbouring sugar factories, with a vengeance, from inception.

During the sugar season 2010-11, the State government is said to have directed the appellant, by an Order dated 26.11.2010, to crush only 2 lakh MT of sugarcane and the balance quantity of 2 lakh MT of sugarcane grown in the reserved area of the appellant''s factory, was to be supplied to other neighbouring factories. The said Order was subject matter of challenge in a writ petition filed by the appellant, before this court, in WP 68780/2010. In the meanwhile, with the intervention of local leaders, the second respondent is said to have come forward to enter into an agreement with the appellant to supply sugar cane for the sugar season 2010-2011. As a reciprocal gesture, the appellant had agreed to pay the alleged difference of amount towards the price for the years 2002-03, 2003-04 and 2006-07.

In the meantime, the State government having realized the injustice caused to the appellant, is said to have withdrawn the order dated 26.11.2010, by an order dated 11.1.2011.

On 12.01.2011, this court had disposed of the petition in WP 64840/2009, recording the factum of the agreement dated 12.12.2010 having been executed. The appellant had then disbursed a sum of Rs. 45 lakh to eligible growers, pursuant to the agreement. But it was said to have been found that the second respondent and third respondent were actively encouraging the sugar cane growers within its reserved area, to routinely divert sugar cane to other factories. In that view of the matter, the appellant claimed that it was unable to make any further payment in terms of the settlement.

However, again during the sugar season 2012-13, the appellant found itself at the mercy of the growers and to appease them, had agreed to pay the alleged arrears, in line with the agreement dated 12.12.2010. But it is said to have been found by the appellant that there was large scale diversion of the sugarcane by the growers, at the instance of the second and third respondents and as against 4 lakh MT of sugarcane, the appellant was able to crush only 80000 MT of sugarcane.

It transpires that the third respondent, consisting of 27 members, had filed two writ petitions before this court in WP 72498-502/2012 and WP 72712-713/2012 and had sought for a direction to the appellant to pay the alleged difference of amount for the sugar season 2006-07 as per an agreement dated 3.1.2007, between the appellant and the second respondent. The appellant had, in its statement of objections, pointed out that the third respondent was not even a party to the said agreement and was not even in existence when that agreement was executed and that it was individual growers who had signed individual agreements with the appellant during the relevant period. This court by its Order dated 1.7.2013, disposed of the said petitions with a direction to the first respondent to consider the representation of the third respondent in respect of the very claim made as on 26.9.2011, before the very authority.

Further, this court had disposed of the petitions in WP 76567-568/2013, WP 7169/2008 and WP 16580/2007 as on 29.7.2013, with the following directions to the first respondent:--

"i. to examine whether the dispute falls within the ambit of Clause 3 (8) of the SO 1966, on the basis of evidence adduced by the parties;

ii. the parties were required to adduce evidence in support of their respective stand;

iii. to examine whether there were any authorities which had addressed the question of jurisdiction."

Pursuant to the said order, the appellant is said to filed detailed objections before the first respondent refuting the claims for arrears, as well as assailing the jurisdiction of the first respondent to adjudicate as regards the performance of the terms of the agreements in question. The appellant contends that the first respondent had passed orders dated 26.10.2013 and 30.10.2013, totally ignoring the agreements dated 12.12.2010 and 21.11.2012, had held that the appellant was bound to pay the difference amount for the sugar season 2002-03, 2003-04 and 2006-07, with interest thereon at 15% per annum. It is hence contended that the first respondent had failed to comply with the letter of the order of this court and had failed to consider the objections filed and the material produced before him to substantiate the case.

The first respondent is then said to have issued a show cause notice dated 30.10.2013, calling upon the appellant to pay the above said arrears within 15 days. The appellant had challenged the said order in petitions before this court in WP 84435/2013 and WP 84472-73/2013. The learned single judge having dismissed the same by an order dated 25.4.2014, aggrieved by the same, the present appeal is filed."

2. The learned Senior Advocate Shri Udaya Holla, appearing for the counsel for the petitioner, would contend, that the learned single judge was in error in concluding that as there was an agreement between the appellant and the second respondent, the first respondent would be clothed with the jurisdiction to adjudicate upon the claim of the alleged short payment of sugar cane price and proceed to recover the same in terms of Clause 3(8) of SO 1966.

That the finding of the learned Single judge to the effect that the agreement entered into with the second respondent was for purposes of sub-clause (3) of Clause 3 of the SO 1966 is incorrect.

It is contended that where a statute confers jurisdiction upon an authority to exercise statutory power upon a condition precedent, such power can be exercised only if the condition precedent exists. Thus, when Clause 3(3) and Clause 3(8) of SO 1966, both contemplate an agreement between a factory and a sugarcane grower or a sugarcane growers co-operative society, for the purpose of ascertaining the price agreed to be paid, then reference made to any other agreement with a third party, even if it is for the benefit of the sugar cane grower, the pre-condition to exercise the power is absent. The second respondent was an association and not a co-operative society.

It is contended that the learned Single Judge was not justified in holding that the first respondent not having assigned any reason as to the manner in which jurisdiction is conferred on him, was not material and would not raise a presumption that the first respondent was not conscious to the issue. The learned Single Judge having quoted the legal maxim "Conventio et modus vincit legem" in this regard, is held to be out of context and wholly inapplicable; As in Indian jurisprudence, a question of jurisdiction is always decided strictly in terms of the statute alone. The above maxim which is to the effect that an express agreement of parties overcomes (prevails against) the law. In the Indian context, it is a first principle of law that jurisdiction cannot be conferred on an authority by agreement of parties.

It is further contended that the first respondent being a delegate of the State Government, in exercise of power under Clause 3(8) of SO 1966, could only order recovery of dues payable to growers of sugarcane and could not adjudicate upon the alleged agreement dated 3.1.2007, between the second respondent and the appellant.

It is contended that the learned Single Judge had failed to consider the several contentions urged and the grounds raised, in disposing of the petition.

Shri Holla, would assert that the learned Single Judge had failed to appreciate that the first respondent had blatantly ignored the specific directions issued by this court, while disposing of WP 72498-502/2012 and connected cases, by its order dated 29.7.2013 and further the basis on which the order could be demonstrated to be bad in law are as below :

"a) The Court directed that the matter be adjudicated by the competent authority ''if the dispute falls within the ambit of clause 3(8) of the Control Order''.

b) That the first respondent failed to consider the orders of this Court dated 14.8.2008 in WP 10479/2008 with regard to the jurisdiction of the first respondent. This Court has clearly directed the first respondent to record a finding on the question of jurisdiction.

c) The contention urged before him that he has no jurisdiction under Clause 3(8) to adjudicate upon an allegation of short payment of price which is based upon an agreement executed between the producer and an ''Association'', which is a body registered under the Societies Act, and which is not a ''Cooperative

Society'', has not been addressed. The authority has merely referred to the government notification delegating him the power for the purposes of Clause 3(8), alone without rendering any finding on his jurisdiction as questioned.

d) This Court allowed the parties to lead evidence for the consideration of the authority and the authority was thus directed to hold an inquiry and consider the evidence. However, the first respondent failed to consider any evidence produced by the appellant company and the proceedings.

e) The order passed by the first respondent is not a reasoned one, as stated supra, nor is any evidence was considered, viz., the individual agreements, as well as the agreement with the association from time to time, as well as the documentary evidence that the claims submitted were apparently forged and fraudulent.

f) The first respondent failed to consider the statement filed in the proceedings by the appellant a sum of Rs. 28 Crore in excess of the SMP right from the year 2001-02 to 2010-11 vide Annexure-AN to the writ petition.

g) The first respondent failed to consider the law laid down by the apex court in Kothari Sugars and others v. Union of India, 1996(7) SCC 752, wherein it is held that any amount paid over and above the SMP without there being an agreement to that effect, the amount is recoverable by the manufacturers of sugar, if it is found that it is not at all payable.

h) The contention urged before the first respondent was that the alleged arrears for the season 2002-03 and 2003-04 have been discharged in the years 2004-05 and 2005-06 has not been answered at all. All the facts and data provided relating to such payments having been made has not been addressed at all.

i) That the first respondent has not conducted any inquiry having regard to the material placed before it with regard to payment of excess amount of Rs. 28 crore during the sugar seasons 2001-02 to 2011-12 over and above the SMP, which includes about Rs. 9.00 crore up to 2006-07 as per the individual agreements between the farmers and the sugar factory. In view of the excess payment of sugar cane price as stated above, the appellant is not liable to pay any amount for sugar season 2002-03, 2003-04 and 2006-07.

j) The fact that each of the sugarcane growers have executed individual agreements with the producer during the seasons 2004-05 and 2005-06 for price being the Minimum Price (Rs. 868.20 and Rs. 918.20 respectively), whereas have in fact received an amount in excess of Minimum Price in both the years (viz., Rs. 950 and Rs. 1065) thus resulting in a total sum of Rs. 228.60 excess payment per MT against short payment of Rs. 113.30 per MT, together for 2002-03 and 2003-04), has not been considered. No findings rendered on the effect of such excess payment in law.

k) Similarly, the fact that each of the sugarcane growers have executed individual agreements with the producer during the seasons 2006-07 for supply of sugar cane at the SMP, viz., Rs. 928/- and thus cannot rely upon the agreement with the association providing for Rs. 1 140/- per MT, has not been considered. No findings rendered.

l) Without prejudice to the above, the contention that even otherwise, the growers were not entitled to any difference of amount for the season 2002-03 and 2003-04 having received higher price for cane in the season 2010-11 and 2012-13 pursuant to agreements dated 12.12.2010 and 21.11.2012 and thus having waived their rights under the statute, has not been addressed at all.

m) The contention that the growers cannot approbate and reprobate in law and are thus estopped from making claims for 2002-03 and 2003-04 having taken the benefit of higher price for cane under agreements in 2010-11 and 2012-13 seasons, has not been addressed at all. The SMP for 2010-11 was Rs. 1493.40 and the amount actually paid is Rs. 1,850/- (excess of Rs. 356.60/- per MT). Similarly for 2012-13, the SMP was Rs. 1,843/- per MT and amount paid is Rs. 2,510/- (excess of Rs. 667/- per MT). In the said agreements the parties have agreed and settled the issues of 2002-03, 2003-04, and 2006-07, which was acknowledged by the individual farmers in the agreement between them and appellant.

n) The claim that the appellant has paid a sum of Rs. 46 lakh in settlement in terms of the agreements dated 12.12.2010 and 21.11.2012, was not addressed, nor the payment of the same was taken into account.

o) The contention that several claims filed for the first time before the authority by the farmers are forged documents, and fraudulent, was not addressed at all.

p) That contention that none of the farmers and individually filed any claim with the authority in the past and that the fresh claims were being pressed only by the association, was not bona fide. The third respondent Tungabhadra Association had only 27 members and the Association was registered only in 2009 much after those seasons. As such, the locus standi of the third respondent was not considered by the first respondent.

q) That the first respondent failed to appreciate that notwithstanding repeated request of the appellant for direction for production of evidence with regard to the authority, under which respondents 2 and 3 appeared for and on behalf of 8,000 claimants of the appellant''s reserved area, no material is placed before the first respondent to establish the link between the claimants and respondents 2 and 3, hence the impugned order is passed without any findings and was arbitrary.

r) Further, when there is no dispute pending consideration before any forum, deliberately the third respondent raised same and sought adjudication by the first respondent and the first respondent ignoring the same has entertained the grievance of the third respondent and has ventured to adjudicate on the issues which were already settled issues before this court.

s) The first respondent failed to notice, the action of the respondents No. 2 and 3 is for their own oblique motives and to deliberately cause harm to the factory and facilitate a stalemate between the factory and the farmers to meet the ends of the neighbouring factories, the contentions of the appellant were not considered by the first respondent. No findings rendered on these submissions.

t) The farmers have been paid in excess of the SMP which alone was payable to the farmers in terms of the individual agreements entered into with each of the farmers in the said years.

u) The first respondent failed to consider that the alleged arrears for the year 2006-07 is misconceived in law, in as much as each of the farmers have executed independent agreement with the producer to receive the price being the SMP of Rs. 928.50 per MT and additional cane price was not payable for this season.

v) The first respondent failed to consider that the whole of the SMP of Rs. 928.50 has been paid and hence there are no arrears. The enforcement of a price of Rs. 1,140/- provided under an agreement with the association cannot be enforced when each of the farmers have a separate agreement providing for price being the SMP.

w) The order of the first respondent is bad in law, in as much as there is no quantification of the arrears for each of the seasons, viz., 2002-03, 2003-04 and 2006-07 vis-?-vis the amounts due to each farmer.

x) The first respondent failed to consider that the claim statements submitted by the farmers lack evidence and are unsigned. The claim quantity in the statement for 2002-03 season is 1,68,063 MT and for the season 2003-04, it is 83,312 MT. In fact, only about 50% of the farmers came before the first respondent. The remaining farmers according to the appellant did not make any grievance as they were satisfied with the payment of sugar cane price for the years 2002-03, 2003-04 and 2006-07. Therefore, the action of the first respondent in declaring that the appellant - company is required to pay the alleged dues to all the farmers is bad in law.

y) Respondent No. 1 also failed to consider the order dated 14.8.2008 in WP 10479/2008 and dated 12.1.2011 in WP 64840/2009. The question with regard to the jurisdiction of the first respondent, has not been resolved by this court. Therefore, respondent No. 1 ought not to have ventured into the question of resolving the disputed facts.

z) The first respondent failed to consider that the fact that the advocate representing the respondent Nos. 2 and 3 filed vakalat on behalf of association and had not filed vakalat for any of the individual growers who appeared before the first respondent. Further, respondent No. 2 and 3 also have not placed any material before the first respondent with regard to the membership of the farmers with them nor any authorisation from the farmers in their favour. The first respondent failed to consider these aspects before passing the order.

aa) The appellant - company submitted that as the claims of the individual farmers have been manipulated and the fact that the farmers never made any appearance nor participated, the first respondent is required to hold a detailed inquiry and to examine the evidence before deciding the case.

ab) the first respondent failed to consider that many farmers belong to the third respondent have entered into agreement with the appellant - company for the sugar seasons 2010-11, 2011-12 and 2012-13 by accepting the terms of the agreement, entered into between the appellant and the second respondent dated 12.12.2010 and 21.11.2012. They have taken the benefit under the said aspects and supplied the sugar cane to the appellant company. In view of the same, it is not open for the first respondent to ignore this aspect and the direction of the first respondent to appellant - company to pay the dues of the alleged arrears to all the farmers is bad in law.

ac) The first respondent failed to consider that the third respondent has no respect for the court orders. In WP 60262-264/2011, where the third respondent was the petitioner, this court had directed the farmers to supply all the sugar cane to the appellant factory. On the other hand, the third respondent, violating the court orders, supplied sugar cane illegally to the other factories. This aspect has not been considered by the first respondent.

ad) The first respondent failed to consider that the third respondent indulged in unlawful act and some of the members have received monetary benefits from other sugar factories. In this regard, a bank statement was submitted to the first respondent which has not been considered by the first respondent.

ae) The first respondent failed to consider said 27 members of the third respondent have also not produced any evidence for having supplied sugarcane to the appellant company during the year 2006-07. If at all they have supplied sugarcane during the year 2006-07, they are bound by the individual agreements which they have entered into with the appellant - company to receive only Rs. 928.50 per MT as sugarcane price being the SMP as per individual agreements.

af) The first respondent failed to consider that the third respondent, which has lost its identity is in the habit of making false complaint to the Pollution Control Board, making allegations on the crushing capacity of appellant factory, which clearly establishes the fact that they are working only with the mala fide intention in connivance with the other sugar factories. This fact is not considered by the first respondent.

ag) That the first respondent failed to consider that appellant company has filed Review Petition No. 1588/2013 in WP 72498-502/2012 challenging the locus standi of the third respondent which is pending before this court. As such, the directions of this court in WP 72498-502/2012 ought not to have been implemented."

It is pointed out that the learned Single Judge has proceeded on the basis that the petition in WP 72498/2012 was filed by the second respondent, when it was a petition by the third respondent, this has led to the learned Judge arriving at wrong conclusions.

It is pointed out that the learned Single Judge had failed to note that the first respondent had not quantified the amount to be paid by the appellant. There were no individual claims by any of the growers. An omnibus order to pay the difference in amount, when there was no evidence produced is incapable of being complied with.

It is further contended that the learned Single Judge erred in holding that the SO 1966 framed under Essential Commodities Act, 1955 (Hereinafter referred to as the "EC Act", for brevity), being a special enactment prevails over Section 22 of SIC Act. The learned Single Judge failed to appreciate that SIC Act is also a special enactment with a non-obstante clause like the EC Act. It is a settled rule of Statutory Interpretation that when there are two special enactments containing non-obstante clauses, the later enactment must prevail over the former. In the instant case, SIC Act being the later enactment clearly prevails over the Sugarcane Control Order, which is the earlier enactment. In this view of the matter, no recovery under the Sugarcane Control Order can be made when the appellant is protected by Section 22 of the SIC Act. The impugned order is clearly erroneous and unsustainable for this reason also.

The learned Single Judge and respondent No. 1 failed to consider that the third respondent is claiming their right under an agreement dated 3.1.2007 between the appellant and the second respondent, but conveniently sought to ignore the agreements dated 12.12.2010 and 21.11.2012 between the appellant and second respondent. The authorities and courts of law should not allow the parties to take advantage of one agreement and to ignore the subsequent agreements to the disadvantage of other side. No courts of law can accept such conduct of the parties.

In the course of the hearing, at which it was emphasized that the appellant had, in fact, paid amounts far in excess of the SMP or the FRP and claimed that such excess amount paid was in the order of Rs. 28 crore, and as this was sought to be asserted on the basis of a statement prepared by the appellant itself, at the instance of this court, the appellant has placed a certificate issued by a Chartered Accountant as to the said payment being reflected from the records of the appellant company.

3. The learned Senior Advocate Shri S.S. Naganand, appearing for the counsel for Respondent No. 2, would seek to justify the order of the learned Single Judge and strongly refutes the arguments canvassed by Shri Holla. He would draw attention to the relevant documents to demonstrate that there is admitted short payment made during the sugar season 2002-03 and 2003-04. The argument as

to the same having been made good in subsequent years is not reflected in any document acknowledging this contention. It is also pointed out that in so far as the sugar season 2006-07 was concerned, it cannot be disputed that there was an agreement to pay Rs. 1140/- per MT of sugar cane, the same having been unilaterally terminated by the appellant, is also on record. The termination, however, is not permissible and the appellant having been held bound by the agreement, by the first respondent is in order.

In so far as the question of jurisdiction of the first respondent is concerned, it is contended that the power to hold an inquiry and recover arrears could not be denied, as that is expressly conferred on the said authority under Clause 3(8) of the SO 1966. Even if it could be said that respondents No. 2 and 3 were not co-operative societies and their claim could not be adjudicated, there were several individual sugar cane growers, who had made claims and hence, there was no want of jurisdiction in the first respondent having determined the arrears payable by the appellant, in accordance with law.

In so far as the claim of the appellant that an excess amount of Rs. 28 crore having been paid over the years, is a self serving claim and is neither reflected in the Books of Account or the Balance sheets of the relevant period. The Chartered Accountants Certificate, which is produced in this regard is dismissed off-hand as not being adequate proof of any such payment and would point out that it was necessary to produce the actual Books of Account or the balance sheets reflecting the same along with the report.

Shri Naganand would thus seek to sustain the order of the first respondent as being in accordance with law.

4. In our view, the primary point for consideration is as to whether the first respondent had considered and passed the impugned order, that was under challenge in the writ petition, in line with the directions issued by a learned Single Judge of this court in WP 7169/2008, dated 29.7.2013. The said directions are referred to hereinabove.

The impugned order passed by the first respondent dated 26.10.2013, is to the following effect:

"1. The Government of India has fixed the SMP for the sugar season 2002-03 at Rs. 891.80 and for the sugar season 2003-04 at Rs. 891.50, for the sugar season 2006-07, the company has agreed to pay Rs. 1140/- as against the SMP of Rs. 928/-. The sugar factory challenged the Notification of the Government of India in fixing SMP for 2002-03 and 2003-04. The Hon''ble Court has not set aside the Notifications issued by Government of India fixing the Statutory Minimum Price for the sugarcane purchased by the sugar factory.

2. As per clause 3(2) of Sugarcane (Control) Order, 1966, no person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane at a price lower

than that fixed under sub-clause (1). As such the SMP fixed by the GOI is mandatory and any amount paid less than SMP, shall be deemed to have contravened the provisions of Sugarcane (Control) Order 1966.

3. It is very much evident from the statement furnished by ISR factory that it has crushed 3,11,481 MT of sugarcane during 2002-03, 1,46,408 MT of sugarcane during 2003-04 and 3,93,355 MT of sugarcane during 2006-07 and paid sugarcane price at the rate of Rs. 830/-PMT for sugar season 2002-03, for sugar season 2003-04 at the rate of Rs. 840/- per MT and for the sugar season 2006-07 at the rate of Rs. 1000/- per MT & Rs. 928.50 PMT. As per Clause 3(2) of Sugarcane (Control) Order 1966, no person shall purchase sugarcane lower than the price fixed by Government of India and as per clause 3(3) rate agreed between the parties. Hence the ISR Sugar Factory shall pay the SMP of Rs. 891.80 per MT for the sugar season 2002-03 & Rs. 891.50 per MT for the sugar season 2003-04 and the rate agreed i.e., Rs. 1140/- per MT for the sugar season 2006-07 to the farmers who have supplied sugarcane to the factory in the respective years.

4. The ISR Sugar factory has crushed sugarcane during the sugar season 2002-03, 2003-04 and 2006-07. The factory has not produced any sugarcane purchase receipt raised in the name of HRS or TSBGA Associations or Sangha. As such the cane bill payable to HRS or TSBGA does not arise.

5. As regards the authority under clause 3(8) of Sugarcane (Control) Order 1966, the State Government has authorised the Commissioner for Cane Development and Director of Sugar to exercise powers under clause 3(8) and 5A of Sugarcane (Control) Order 1966 vide notification No. CI 18 SGF 2001 dated 21.5.2001. As per Clause 3(8) on the basis of the claims, if any, made to it or him regarding non-payment of prices or arrears thereof by the concerned grower of sugarcane or the sugarcane growers co-operative society as the case may be, the certificate specifying the amount to recover it as arrears of land revenue can be effected. There are a number of farmers who have filed the claims for payment of sugarcane bill dues for the years 2002-03, 2003-04 and 2006-07.

6. As regards the question of limitation raised for claiming the arrears is concerned, 14 days period is prescribed for making payment of sugarcane bills by the sugar factory as per clause 3-A of Sugarcane (Control) Order 1966. Clause 3(7) of Sugarcane (Control) Order 1966 reads as follows:

"3(7) In case, the price of the sugarcane remains unpaid on the last day of the sugar year in which cane supply was made to the factory on account of the suppliers of cane not coming forward with their claims therefor, it shall be deposited by the producer of sugar with the collector of the district in which the factory is situated, within three months of the close of the sugar year. The Collector shall pay, out of the amount so deposited, all claims considered payable by him and preferred before him within three years of the close of the sugar year in which the cane was supplied to the factory. The amount still remaining undisbursed with the collector, after meeting the claims from the suppliers, shall be credited by him to the consolidated fund of the State, immediately after the expiry of the time limit of 3 years within which the claims therefor could be preferred by the suppliers. The State Government shall, as far as possible utilise such amounts for development of sugarcane in the State.

The Sugar factory has not complied with the provisions of Clause 3(7) of Sugarcane (Control) Order, 1966. In the light of the above provision in Sugarcane (control) Order 1966 the question of limitation cannot be raised.

In the circumstances, a certificate under Clause 3(8) of Sugarcane (Control) Order 1966 shall be issued for sugarcane bill paid to the sugarcane suppliers lower than the Statutory Minimum Price fixed by Government of India for the Sugar season 2002-03 and 2003-04 and the amount agreed to by the Sugar factory over and above Statutory Minimum Price fixed by Government of India for the Sugar season 2006-07."

It is evident from a reading of the above that the first respondent has not addressed as to whether he would have jurisdiction under Clause 3(8) to address a claim for arrears of the sugar cane price at the behest of a third party which does not claim to be a sugarcane grower, or a sugarcane growers cooperative society. This is also the finding of the learned Single Judge.

We, however, do not subscribe to the view of the learned Single Judge that an express agreement between parties prevails against the law. And hence would clothe the first respondent with the jurisdiction, even if the statute did not confer it. In our view, in the Indian context, parties cannot, by agreement confer jurisdiction on an authority, if the statute under which that authority exercises power does not confer it. In any event, it cannot be said that the parties have, in the instant case on hand, conferred any such jurisdiction. The agreement in question is presumed to be as being one made for the purposes of Clause 3(3) of the SO 1966. In our opinion, the first respondent had no jurisdiction to address the claim by respondents 2 and 3. They were neither sugar cane growers or co-operative societies of sugar cane growers.

The first respondent has apparently assumed jurisdiction - on the footing that there were also individual sugarcane growers before him, who had filed claims. The order is however, silent about who the claimants were and the quantum of arrears that they were claiming. The Order cryptically recites thus:

"There are a number of farmers who have filed the claims for payment of sugarcane bill dues for the years 2002-03, 2003-04 & 2006-07."

In the operative portion of the Order again, there is no determination of any amount as being the arrears. As can be seen from the text of the Order reproduced hereinabove.

Further, assuming that the first respondent could have proceeded to address the claims of individual sugarcane growers, whether such claims were barred by limitation has been answered with reference to Clause 3(7) of SO 1966. It is held that the appellant had not complied with the said provision and hence the question of limitation would not arise.

This, in our view, is again erroneous.

There is an obligation on a producer of sugar, under Clause 3(3) of the SO 1966, in the absence of an agreement to the contrary, to pay the price of the cane purchased, within 14 days from the date of delivery. In the event of any delay in payment, the price payable shall carry interest at the rate of 15% per annum for the period of such delay beyond 14 days. If the same remains unpaid on the last day of the sugar year in which the cane supply was made to the factory- on account of the suppliers of cane not coming forward with their claims therefor, the same shall be deposited by the producer of sugar with the Collector of the district, within three months of the close of the sugar year. Such deposit shall be kept with the Collector who shall pay out of the amount so deposited all claims considered payable by him and preferred before him within three years of the close of the sugar year. The amount remaining undisbursed, after the claims if any, shall be credited by the Collector to the Consolidated Fund of the State, immediately on the expiry of the time limit of 3 years within which claims could be preferred by the suppliers. This is evident from a combined reading of Clause 3 (3), (3 A) and (7) of SO 1966.

Hence, it is clear that if a supplier of cane is not paid the price or if he has not claimed the amount within three months of the close of the sugar year, the admitted amount of price payable shall be liable, to be deposited by the producer of sugar with the District Collector. The supplier of cane should lay claim to any such dues within three years from such deposit. There after it is unavailable as it is expected to go into the Consolidated Fund of State.

The finding of the first respondent that the appellant had not complied with Clause 3(7) is not tenable. The situation did not arise. The present dispute is not with regard to the price payable in respect of the supply made, but towards the difference of amount said to have been short paid for the years 2002-03, 2003-04 and 2006-07. It would follow that a claim for such difference of amount should have been raised before the first respondent in terms of Clause 3(8). Any claim beyond three years from the date of receipt of such alleged short payment would be barred by limitation, even under the general law.

In view of our finding that the first respondent was not vested with jurisdiction to address any claim for arrears of the sugar cane price at the behest of the second and third respondents we set aside the order of the learned Single Judge and quash the impugned order of the first respondent dated 26.10.2013. Any consequential action taken pursuant to the impugned order of the first respondent shall be retracted and closed.

In so far as the claims said to have been made by individual sugarcane growers, the first respondent may reconsider their claims after affording an opportunity to the appellant to contest the same and on the basis of such evidence as may be available, with due regard to the issue of limitation, which shall in all such claims be considered as a preliminary issue. The first respondent shall dispose of the claims, on a case by case basis, in accordance with law.

The appeals stand disposed of.

