

(2008) 12 AHC CK 0244

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 56920, 56921, 56922, 60522 of 2008

West U.P.Sugar Mills Association And Others

APPELLANT

Vs

State of U.P.And Others

RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 — Article 14, 226, 16

Citation : (2008) 12 AHC CK 0244

Hon'ble Judges : Arun Tandon, J and Dilip Gupta, J

Final Decision : Dismissed

Judgement

1. With the issuance of the notification by the State Government dated 18th October, 2008 fixing the State Advised Price (hereinafter referred to as SAP) for the crushing season 200809, this bunch of writ petitions by the owners of sugar factories has been filed. As in the previous years, the fixation of the said SAP by the State is being questioned on various grounds both legal as well as factual.

2. The authority of the State to fix the said price, the authority if any being unguided and therefore arbitrary to the extent of being violative of Article 14 of the Constitution of India, the price fixed, being unreasonable, based on irrelevant consideration and in ignorance of relevant consideration, are the broadly stated contentions agitated in this bunch of writ petitions. Judgments delivered by the Hon"ble Supreme Court as well as by the other Division Benches of this Court in various cases specifically between 2007 to 2008 are referred and relied upon by the parties to the litigation. Reference has also been made to the interim orders, passed by the Hon"ble Supreme Court in respect of the S.A.P. of the previous years in various special leave to appeals, which are pending, arising out of judgments of this Court.

3. Initially an attempt was made on behalf of the writ petitioners to suggest that since the dispute pertaining to fixation of SAP qua previous crushing season was

pending consideration before the Hon"ble Supreme Court and interim orders have been passed providing for payment of cane price on provisional basis pending finalization of the dispute pertaining to SAP by the Hon"ble Supreme Court, this Court may also pass suitable interim orders and postpone the hearing in the matter to some later date. However, the aforesaid plea was not pressed in the background that fixation of SAP, being a legislative function, has to be performed each year and such fixation on various factors, as may be relevant qua that fixation, has to be examined by the Court independent of the dispute pending qua previous crushing season. ,

4. It is in this background that we have proceeded to consider the writ petitions filed by various sugar factories challenging the fixation of SAP by the State Government for the year 200809 on merits. Affidavits have been exchanged between the parties.

5. The notification under challenge is dated 18th October, 2008. The SAP fixed thereunder in respect of the different varieties of sugarcane for the season 200809 is as follows :

For early maturing varieties ... Rs. 145.00 per qtl.

For normal varieties ... Rs. 140.00 per qtl.

For rejected varieties ... Rs. 137.50 per qtl.

6. The SAP. fixed for the crushing season 200607 and 200708 by .the State Government, which was the same was as follows:

For early maturing varieties ... Rs. 130.00 per qtl. For normal varieties ... Rs. 125.00 per qtl.

For rejected varieties ... Rs. 122.50 per qtl.

7. Thus, it would be seen that the enhancement effected in respect of various categories of sugarcane per quintal for the crushing season 200809 is Rs. 15/per quintal uniformly for all the varieties of sugarcane with reference to that fixed for the year 200607 and 200708.

8. Sri S.P. Gupta, Senior Advocate assisted by Sri Yashwant Verma, Advocate on behalf of the petitioners stated that petitioners" question the competence of the State Government to determine the said SAP as well as the vires of Section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as "Act of 1953"). However, in view of the Constitution Bench judgment of the Hon"ble Supreme Court in the case of U.P. Cooperative Cane Unions Federations v. West U.P. Sugar Mills Association and others, 2004 (4) SCC 430, such plea cannot be pressed before this Court and, therefore, the Court may only notice the contention raised and may proceed to examine the grievance of the writ petitioners in respect of other issues raised, accepting that the State has the competence to fix the SAP without prejudice to the right of the petitioners to raise the issue of vires of Section 16 of the Act, 1953 before the

Hon"ble Supreme Court, if necessary.

9. Having conceded the aforesaid legal position, Shri Gupta further contended that if Section 16 of the Act, 1953 is held to be the source of power qua fixation of SAP by the State Government then in absence of guidelines having been provided for under the Act or the Rules framed under the said Act, 1953, the power delegated upon the State is totally unguided and, therefore, arbitrary to the extent of being violative of Article 14 of the Constitution of India. He explains that in absence of guidelines/norms having been laid down under the Act or the Rules or by any Government Order issued thereunder, the fixation of price is unguided therefore, arbitrary resulting in illusory price being fixed for the year 200809.

10. He submits that a Division Bench of this Court in the case of Basti Sugar Mills Company Ltd. and another v. State of U.P. and others, 2008 (1) ADJ 36 (DB), being Writ Petition No. 33288 of 2007 (hereinafter referred to as BastiI), vide judgment dated 19th December, 2007 had quashed the SAP fixed by the State Government for the crushing season 200607 basically on the ground that guidelines/norms for fixation of the price had not been provided and further that consultation with the representatives of the sugar factories, farmers etc. had not taken place before announcing the SAP. The Division Bench, therefore, not only proceeded to quash the SAP fixed for the year 200607 but it also proceeded to issue guidelines for redetermination of the SAP.

11. It is submitted that the guidelines so provided by the Division Bench of this Court were not followed by the respondents while fixing the cane price for the subsequent year i.e. 200708, as a result whereof in Writ Petition No. 3271 of 2008; Basti Sugar Mills Company Ltd. and another v. State of U.P. and others, 2008 (8) ADJ 193 (DB) (hereinafter referred to as BastiII) another Division Bench of Allahabad High Court vide judgment and order dated 18th August, 2008 quashed the fixation of the SAP for the year 200708 after recording that the judgment of this Court in the case of BastiI was binding upon the State as it had not been stayed or upset by the Apex Court. Relevant paragraph 67 of the said judgment, relied upon, reads as follows :

"67. We have given our considered thought to the arguments advanced on behalf of learned counsel for the parties. In our opinion, since the judgment of this Court in the case of Basti Sugar Mills (supra) has neither been stayed nor upset by the Apex Court, though the Special Leave Petition is pending, it cannot be said on behalf of the State that they were not bound by the directions issued by this Court before fixing the SAP for the current year i.e. 200708."

12. In view of the aforesaid it is contended that since for the current season 200809 also the guidelines issued by the Division Bench of this Court in the case of BastiI have not been adhere to as in the previous year, the fixation of the SAP for the year 200809 is also liable to be similarly struck down by this Court inasmuch as the judgment of the Division Bench in the case of BastiI still holds

the field.

13. In the alternative it is contended that even if the directions issued by the Division Bench of this Court in the case of BastiI are taken to be applicable only for the relevant crushing season 200607 (as fixation of price is to be done each year and being a legislative function it's correctness or otherwise has to be examined independently each year), it is submitted that in absence of any norms having been notified first by the State Government for determination of the price for the year 200809, the Division Bench judgment had to be followed and respondents could have finalized the SAP after taking the necessary steps as per the mandamus issued by this Court in the BastiI case.

14. With reference to the judgment of the Division Bench of the Lucknow Bench of this Court in the case of Modi Sugar Mills v. State of U. P., 2008 (7) ADJ 208 (hereinafter referred to as "Modi's case"), it is stated that the said judgment does not lay down the correct law and further the same has been subjected to challenge before the Hon"ble Supreme Court whereunder an interim order has been passed, providing for payment of cost of sugarcane on provisional basis at the rate fixed, by the Hon"ble Supreme Court, pending finalization thereof.

15. It is further clarified that the Lucknow Bench of this Court in Modi's case (as per paragraph 116) refused to consider the issue of noncompliance of the direction issued by the Division Bench of this Court in the case of BastiI on a finding that the judgment of the Division Bench has been stayed by the Hon"ble Supreme Court and further that the said judgment of BastiI was in respect of crushing season 200607 while crushing season 200708 is a new season and fixation of SAP fixed for 200708 has to be examined on its own facts and the order passed for that year shall not operate as resjudicata.

16. It is submitted on behalf of the writ petitioners that the reasons so assigned by the Division Bench in Modi's case are both factually as well as legally incorrect. It is clarified that the Hon"ble Supreme Court of India in Special Leave to Appeal No. 2248 of 2008; Kisan Mazdoor Sangathan v. Basti Sugar Mills and others, arising out of the judgment and order in BastiI case dated 19.12.2007 had stayed the operation of the judgment vide order dated 18.1.2008 till 12th February, 2008, which was extended vide order dated 15th February, 2008 till the next date of listing i.e. 21.2.2008 but thereafter the said interim order has not been extended. The interim order, which is now in operation, is that no coercive action shall be taken till the next date of listing and further the interim stay qua finalization of the auction shall continue in operation. For ready reference the orders dated 18.1.2008, dated 12.2.2008, dated 21.2.2008 and dated 27.2.2008 passed by the Hon"ble Supreme Court read as follows:

"18.1.2008

ORDER

Permission granted.

Application for exemption from filing O.T. is granted.

Issue notice returnable on 12th February, 2008.

Dasti, in addition, is permitted.

Respondents takes notice through respective counsel.

Counter, if any, may be filed within two weeks.

There shall be interim stay of the impugned order till 12th February, 2008.

12.2.2008

ORDER

"List these matters on 27.2.2008.

Counter affidavit and rejoinder affidavit shall be exchanged before that date.

Interim order dated 18.1.2008 to continue till the next date of hearing.

It is stated that auction proceedings have been fixed. The same may continue but no final decision shall be taken without leave of this Court."

21.2.2008

ORDER

"List these matters on 27.2.2008.

Before that date pleadings shall be completed.

Interim order so far as non finalization of the auction is concerned shall continue till the next date of hearing."

27.2.2008

ORDER

"Heard.

These special leave petitions shall be heard along with C.A. No. 7508 of 2005 and C.A. No. 150 of 2007.

As an interim arrangement for the cane year 200607 let payment be made by the sugar mills at the following rates :

For the Declined unsuitable variety Rs. 115/per quintal.

For the General variety Rs. 118/ per quintal.

For the Early variety Rs. 123/per quintal.

If any payment has been made towards the State Advised Price, the same shall be adjusted from the amounts payable on the basis of the rates indicated above.

If any payment has been made beyond the rate fixed above there shall not be for the present any refund. The payment shall be made within a period of six weeks from today. The factories which have been closed for alleged nonpayment shall be opened subject to filing of undertaking the same amount as directed shall be paid within the stipulated time. The same shall be deposited with the State Cane Commissioner who will in turn shall ensure that all the eligible persons are paid amount prorata on the basis of rate fixed by this interim order. The necessary steps in that regard shall be taken within a week from the date of deposit. It is made clear that there shall not be any recovery charges or interest for delayed payment at this stage.

All the civil appeals and SLPs shall be listed in the second week of April, 2008.

The earlier order is modified to the aforesaid extent."

17. It is, therefore, contended that the judgment and order of the Division Bench in the case of BastiI was not stayed as on relevant date and even if some interim arrangement has been made qua payment of SAP for the year 200607, under the order of the Hon''ble Supreme Court, quoted above, the State cannot ignore the directions issued by this Court in the case of BastiI qua the procedure and criteria to be adopted for fixation of the SAP. In any view of the matter there is absolutely no justifiable reasons to ignore the directions so issued for fixation of BAP specifically when they are fair and just.

18. In order to keep the record straight, it may also be recorded that this Court has been informed by the counsel for the parties that the judgment of the Lucknow Bench in the Modi's case as well as judgment of the Court in the case of BastiII have been subjected to challenge before the Hon''ble Supreme Court of india in respect of the SAP pertaining to the year 200708 and the Hon''ble Supreme Court has been pleased to pass the following interim order on 8.9.2008 :

"Issue notice in all these special leave petition.

Reply by the respective opposite parties shall be filed within four weeks. Rejoinder, if any, may be filed within four weeks thereafter. Call these matters after eight weeks.

Heard learned counsel for the parties and Mr. V.M. Singh, petitioner appearing in person, in SLP (C) No.....72008 (CC 12610) on the prayer for grant of interim relief.

It appears that for the Crushing Season 200607 following rates were fixed:

Decline General Early

Rs. 115/ Rs. 118/ Rs. 123/

For the Crushing Season 200708 there are two judgments, which from subject matter of challenge in these petitions, i.e., one passed by the Lucknow Bench

and the other by the Allahabad Bench of the High Court of Judicature at Allahabad. We are baffled that the Allahabad Bench referred to the judgment of the Lucknow Bench but took a diametrically opposite view. Judicial discipline required that if a different view was to be taken, the matter should have been referred to a Larger Bench. For reasons best known to the Bench, such a course was not adopted.

So far as the payment of the charges for Crushing Season 200607, 200708 are concerned the following directions are given :

(i) For the Crushing Season 200607 the payment at the rates indicated above, i.e., Rs. 115, 118 and 123 shall be the rates.

(ii) So far as the Crushing Season 200708 is concerned the rate shall be Rs. 110/, but no deduction for transport charges shall be claimed or adjusted. It is brought to our notice that large sums even on the basis of the aforesaid rates remain to be paid by the State owned Corporations, Cooperative Sugar Mills and the privately set up sugar Mills. The deficit amount, if any, shall be paid by the concerned mills within a period of four weeks from today. If any excess payment has been made, there shall not be any claim for refund. The arrangement as indicated above shall be an interim arrangement."

19. In the aforesaid legal background, counsel for the writ petitioners took the Court through various factual aspects of the matter with reference to the documents on record of the writ petition for demonstrating that the price fixed for the crushing season 200809 was patently arbitrary and based on irrelevant consideration. The factual contentions so raised on behalf of the writ petitioners may be summarised as follows:

The State Government vide order dated 30th September, 2008 constituted a committee (hereinafter referred to as "Main Committee") for determination of SAP, which comprised of seven members namely, Chief Secretary, U.P. Government, Principal Secretary, Cane Development and Sugar Industry Department, U.P. Government, Principal Secretary, Finance Department, U.P. Government, Principal Secretary, Law Department, U.P. Government, Cane Commissioner, U.P. Director, U.P. Cane Research Council, Shahjahanpur and Special Secretary, Cane Development and Sugar Industry Department.

The Chief Secretary in turn constituted a SubCommittee for assisting the aforesaid Main Committee vide letter dated 1st October, 2008, which comprised of five persons, namely Cane Commissioner, U.P. Lucknow, Director, U.P. Council of Sugarcane Research, Shahjahanpur, Director, Agriculture Statistics, Dy. Cane Commissioner, Saharanpur and Dy. Cane Commissioner, Gorakhpur.

The said SubCommittee submitted its report proposing the SAP to be fixed for the year 200809 as follows:

For early maturing varieties ... Rs. 150.00 per qtl.

For normal varieties ... Rs. 140.00 per qtl.

For rejected varieties ... Rs. 135.50 per qtl.

The SubCommittee examined various reports and records for justifying the proposal so made, as per the enclosures to the report.

The report of the SubCommittee was placed before the Main Committee, which after deliberation recommended that the SAP to be fixed for the year 200809 be as follows:

For early maturing varieties ... Rs. 143.00 per qtl.

For normal varieties ... Rs. 138.00 per qtl.

For rejected varieties ... Rs. 133.50 per qt.

The reports of the Main Committee and of SubCommittee were placed before the Cabinet of Ministers of the State. After examining the reports and the materials as were made available, the State Government determined the SAP as per the notification dated 18.10.2008.

Accordingly, in terms of the Cabinet decision the SAP for the year 200809 has been notified vide notification dated 18.10.2008.

20. According to the writ petitioners the very constitution of the Main Committee and SubCommittee by the State Government runs contrary to the directions issued by the Division Bench of this Court in BastiI case, as no representative of the sugarcane growers, factory owners, technical experts, who could examine and explain the costing, were inducted in the committee. It is clarified that although the petitioner sugar factories' owners were present in the meeting before the committee but they had no say in the matter and therefore their participation was an empty formality. It is emphasised that since no norms were notified for the purposes of working out the SAP by the Main Committee or SubCommittee, the entire exercise undertaken in absence of norms was only an eye wash.

21. An attempt was also made to take the Court through the various documents including the calculation worked out for arriving at the cost of production of per quintal of sugarcane and it was contended that the cost has been so calculated on the basis of the production of sugarcane at three sugarcane research centres of the State Government namely the centres at Saharanpur, Muzaffamagar and Sirohi, when as a matter of fact there were two more sugarcane research centres of the State situate at Gola and Gorakhpur but the cost of production whereof has been completely ignored for which no explanation is available on record. It is contended that the respondents have deliberately selected only three centres for working out the cost of production.

22. Next it is submitted that even in respect of three centres, which have been taken into consideration, irrelevant factors, which have absolutely no application

for determination of cost of production of the farmers namely rental value of the land, depreciation on plant and machinery, interest on working capital etc., have been considered for arriving at the cost of production of per quintal of sugarcane at 118.09 p. and in that regard reference has been made to paragraph 34 of the writ petition read with Annexure17 at page 223224 of the writ petition.

23. Petitioners submit that the State itself had projected the cost of sugarcane production for the year 200809 at Rs. 109.39 per quintal, if the transportation cost of Rs. 9.20 per quintal is added with minimum 10% return to the cane growers, the cost of production would work out to Rs. 130.45 per quintal and if the above level is linked with the average recovery of 9%, the same would work out to Rs. 120.00 per quintal for the year 200809 and in respect of the said calculation Sri S.P. Gupta referred the report of the Commission for Agricultural Cost and Prices "On Price Policy of Sugarcane" for the year 200809 published by the Department of Agriculture and Cooperation Ministry of Agriculture, Government of India, New Delhi. The relevant portion with reference to the State of U.P. contained in Annexure2 to the said document is being quoted below:

"Uttar Pradesh:

Govt. of Uttar Pradesh has projected the cost of sugarcane production for the year 200809 at Rs. 109.39 per quintal. If the transportation cost of Rs. 9.20 per quintal is added and minimum 10% return to the growers is added, the SMP comes to Rs. 130.45 per quintal and if the above level is linked to the average recovery of 9%, the SMP works out at Rs. 120/ per quintal for 200809 sugar season."

24. He, therefore, submits that SMP, which has been so calculated takes into consideration the incentive to be provided to the farmers at the rate of 10% in addition of transportation cost. There is little or no justification for the same being not taken into consideration for determination of SAP also. In all previous years the State Government while determining the SAP had been providing 10% return to the farmers on the cost of production. In the current year 200809 the State Government has provided a return of 20%. Absolutely no material is available on record as to why it was necessary for the State Government to provide a return of 20% for the crushing season 200809 and therefore such provision of 20% of return on the cost of production is wholly arbitrary being based on no relevant consideration or material on record,

25. An effort was made to suggest that in case the rental value of the land and depreciation of the machinery etc., which have been taken into account for the purposes of working out the cost of production is excluded, the SAP would work out to Rs. 81.18 per quintal only.

26. Sri Gupta further contended that if 100% of the excess realization in accordance with the factor and 50A formula, based on the Bhargav Committee Report, is taken into consideration, the price payable by the sugar factories with reference to their paying capacity would work out to Rs. 125.00 only. Reference

in that regard has been made to the report of the SubCommittee dated 10.10.2008.

27. He submits that it is impermissible under the Constitution that the industries may be permitted to take the entire profit and to leave nothing for the farmers but at the same time it would also be constitutionally impermissible that the entire profits be transferred to the farmers and the industry is forced to bleed. He submits that the State Government is under legal obligation to ensure that the cost of SAP is so calculated that the industry as well as the farmers distribute amongst themselves equally the profit earned and none is permitted to suffer at the cost of other. Such an exercise has not been undertaken by the State Government in the facts of the case and therefore the fixation of price is rendered illegal.

28. Even before publication of the notification determining the SAP, the petitioners had made their representation on 9th October, 2008. The pleas raised therein have completely been ignored by the State Government while determining the SAP.

29. Lastly it is contended that although there is no price fixed for non levy sugar in the State of U.P., there is no ban on sugar being purchased from other States and being sold in the State and therefore it was obligatory upon the State Government to examine as to what was the prevailing price fixed by the State Government of other States so that the industries situate in the State of U.P. remain competitive and sugar produced by them is sold in the market at reasonable price.

30. Having formulated the grounds of challenge to the SAP notified for 200809, as noticed herein above, Sri S.P. Gupta submitted that in terms of the judgment of the Division Bench of this Court dated 21.4.2008 in the case of Bajaj Hindustan Ltd. and others v. Union of India and others, 2008(4) ADJ 500 (hereinafter referred to as "Bajaj's case") the petitioner sugar industries are entitled to deduction of Rs. 10.50 per quintal per kilometer from the cane price payable by the petitioners to the sugarcane growers towards cost of transportation in respect of the sugarcane delivered at purchase centre and not at the factory gate. The said judgment still holds good and the State as well as other private respondents are under legal obligation to comply with the said judgment of the Division Bench, referred to above.

31. All other counsel appearing in connected writ petitions on behalf of Sugar Factories only adopted the contentions of Sri S.P. Gupta, Senior Advocate.

32. The contentions so raised on behalf of the writ petitioners are opposed by the Additional Advocate General Sri Jaideep Mathur, assisted by Sri M.C. Chaturvedi, Chief Standing Counsel, on behalf of the respondent Nos. 1 and 2, by Sri R.N. Singh, Senior Advocate assisted by Sri Ravindra Singh, Advocate on behalf of respondent No. 3 and by Sri V.M. Singh in person. Nobody has appeared on behalf of the respondent No. 4 nor any counter affidavit has been filed.

33. Additional Advocate General Sri Jaideep Mathur on behalf of the State submits that the procedure followed for determining the SAP for the year 200809 and the relevant records/reports taken into consideration are entirely different visavis the announcement of the SAP, which was made for the year 200607 and 200708. He clarifies that earlier the Chief Minister of the State used to declare the SAP on the recommendations of the Cabinet of Ministers. He submits that in the current year 200809 a committee of senior officers of the State was constituted (the "Main Committee") under the notification dated 30th September, 2008 wherein specific directions were issued for consultation with the persons having technical knowledge, economic knowledge of the subject amongst other. Reference in that regard has been made to AnnexureCA1 to the counter affidavit filed on behalf of the State. He further points out that the Main Committee in turn constituted a SubCommittee vide order dated 1.10.2008, comprising of persons having wide knowledge in the field of cultivating of sugarcane. The said SubCommittee obtained reports/records relevant for determination of actual cost of production of the sugarcane. Various datas from the neighbouring States, sugarcane research institutes of the State and other relevant factors for the purposes of arriving at a fair cost of the sugarcane was collected and processed, as would be apparent from the report which was submitted by the sub committee and this connection reference was made to AnnexureCA4 to the counter affidavit of State. It is further pointed out that the said report of the SubCommittee along with attending documents was placed before the Main Committee, which after due deliberation with the farmers, their cooperative societies, factory owners etc. and on examination of the report of the SubCommittee as well as other material relevant for the purpose made its recommendation qua fixation of the SAP for the year 200809. Reference has been made to AnnexureCA5 to the counter affidavit of the State. The records of both the Committees were placed before the Cabinet which after consultation determined the SAP for the year 200809. The same was announced under the notification, impugned in the writ petition, dated 18.10.2008. He submits that not only the judgment and order of this Court dated 19.12.2007 in the case of BastiI has been complied qua constitution of committee, but all the relevant material facts, as directed in the said judgment, have been taken into consideration for fixation of the SAP for the current year 200809.

34. In the alternative he points out that the judgment in the case of BastiI was with reference to the crushing season 200607 only and the guidelines laid down in the said judgment for determination of the SAP would not in any way be treated to be the law for all time to come so as to be treated as mandatory by the State Government qua fixation of SAP for successive years/He submits that fixation of SAP is a legislative function to be performed each year and the price so fixed for each crushing season has to be examined on its own merits on the factors taken into consideration for fixation of the same. With reference to the various paragraphs of the judgment in the case of BastiI, it was demonstrated that the Bench itself was of the opinion that it was examining fixation of price for

the year 2006⁰⁷ only and was not laying down any general proposition of law for fixation of SAP for the subsequent years.

35. He further clarifies that the SAP for the year 2007⁰⁸ was announced on 31st October, 2007 i.e. even prior to the delivery of the judgment in the case of BastiI i.e. 19.12.2007, and therefore the question of compliance of the direction of the Judgment in case of BastiI, before such fixation, did not arise nor could be pleaded. Therefore, the order of the High Court of Allahabad in the case of BastiII dated 18th August, 2008 proceeds on the facts of that case only. He further submits that the Division Bench of this Court in Modi's case has rightly laid down the parameters on which challenge can be made to the fixation of SAP by the State, which is a legislative act. Judged on the parameter so laid down he submits that no case for interference in the facts of the present case is called for. He contends that what is binding upon this Court is the ratio of the judgment delivered by the concurrent bench and not the operative portion of the order passed therein. He, therefore, submitted that so far as the ratio of the judgment in the Modi's case is concerned, the same has not at all been diluted/explained in the subsequent judgment of the Allahabad Bench in the case of DastiII for the same crushing season 2007⁰⁸.

36. The Additional Advocate General took the Court through the report of the SubCommittee as well as report of the Main Committee for demonstrating before this Court that all relevant factors, including those which were pointed out in the judgment of this Court in the case of BastiI, have more or less been complied with and all relevant aspects have been taken into consideration. He, therefore, submitted that except for making a bald allegation that norms have not been laid down before fixation of SAP, learned Senior Counsel for the petitioners has hopelessly failed to demonstrate as to how fixation of SAP for the year 2008⁰⁹ was arbitrary so as to call for interference under Article 226 of the Constitution of India. He submits that the writ Court is not an expert qua fixation of price nor is it to sit in appeal over the determination of the price so fixed by the State.

37. With regard to the issue that cost of production in respect of only three cane research centres have been taken into consideration while those pertaining to two other centres namely Gola and Gorakhpur having been ignored, he points out that even if the figures of the aforesaid two cane research centres are taken into consideration, it will lead to the same average cost of production, as has been determined with regard to three research centres. He has specifically referred to the paragraph 34(ii)(b) of the Writ Petition No. 56920 of 2008.

38. On the issue of the provision of 20% incentive over the cost of production of sugarcane actually worked out for the year 2008⁰⁹, he submits that in the reports of the SubCommittee as well as of the Main Committee it was categorically recorded that the total area, over which sugarcane crop has been grown in the State of U.P. has been reduced by 25% and in case adequate price is not provided to the farmers, there is all likelihood that the farmers may shift to alternative crops in place of sugarcane. This would ultimately reflect upon the

production of sugarcane crop and the sugar to be produced in the State. He, therefore, submits that the State Government in its wisdom has taken a decision to provide 20% incentive over the cost of production calculated, to the farmers for the season 200809. Such fixation of 20% incentive, in the facts of the present case, specifically when no increase in SAP for the year 200708 was provided (by maintaining the SAP at the same rate as was maintained in the previous year 200607), it cannot be said that any arbitrary incentive has been provided.

39. With regard to competence of the State Government to determine the SAP under Section 16 of the Act and guidelines having not been framed for such fixation under the Act and therefore being arbitrary, it is submitted that the issue stands concluded in favour of the State under the judgment of the Hon''ble Supreme Court in the case of U.P. Cooperative Cane Union (*supra*) and the Division Bench judgment of this Court in the Modi's case (*supra*).

40. With reference to the various interim orders, which have been passed by the Hon''ble Supreme Court in respect of the year 200607 and 200708, he submits that fixation of SAP for each crushing season is a new legislative act and the fixation so made in each year has to be examined on its own merits and therefore any order passed for the previous crushing seasons will not operate as *resjudicata*.

41. Lastly it is contended that the petitioners have not produced the balance sheets of their company before this Court which could demonstrate as to what extent the company had suffered loss if any in previous years and that what amount of surplus funds would be diluted if the price of sugarcane is increased by Rs. 15/ per quintal visavis the price paid in the previous year. Vague plea that the industries would not be able to survive if they are forced to pay the SAP fixed for the season 200809 is an extreme argument advanced by the writ petitioners based on no material and has necessarily to be rejected.

42. Sri R.N. Singh, Senior Advocate on behalf of the Sahakari Ganna Samiti (respondent No. 5) contended that price fixation is a policy decision in view of the judgment of the Hon''ble Supreme Court reported in AIR 1984 SC 657; Rohtas Industries Ltd. v. Bihar Electricity Board and others. Price fixation cannot be challenged on the ground as are available against an administrative order. The scope of applicability of Article 14 to legislative functions is limited, as has been, explained by the Hon''ble Supreme Court in its judgment reported in JT1996 (3) SC 679; State of Andhra Pradesh and others etc. v. McDowell & Co. and others etc., and JT 2000 (Supp 3) SC 92, Om Kumar and others v. Union of India. It is contended that Article 14 to the extent of hostile discrimination alone is applicable in respect of legislative acts. The legislative act cannot be questioned if some irrelevant material have been considered or some relevant material have been ignored, provided other relevant facts have been taken into consideration in performance of the legislative acts. It is contended that legislative fixation of price is purely an objective decision and unless it is demonstrated that such

fixation is based on totally irrelevant consideration or that calculation done for fixation of the price is so arbitrary that no reasonable man can come to such determination, writ Court under Article 226 cannot interfere. Reliance has been placed upon the judgment of the Hon'ble Supreme Court reported in AIR 1971 SC 1537, Zora Singh v. J. M. Tandon and others (para10).

43. With regard to the judgment of Division Bench of this Court in the case of BastiI, he contends that the observation/guidelines provided therein have necessarily to be read as those in respect of the one particular crushing season, which was subject matter of consideration before the Bench, i.e. 200607. The contention of the learned counsel for the petitioners to the effect that the said guidelines are to be treated as a writ of mandamus issued by the Court for all times to come would lead to a situation where the judgment and order of the Division Bench itself would be rendered invalid in law, inasmuch as writ Court under Article 226 of the Constitution of India cannot legislate nor it can perform the legislative function. He, therefore, submits that the counsel for the petitioners is not correct in contending that the Division Bench has laid down the principles on which the sugarcane price is to be determined for all times to come.

44. Price fixation is a legislative act to be performed each year and it is to be judged on its own facts each year irrespective of the order which may have been passed pertaining to the fixation of price in the previous years. It is also contended that there is no conflict between the judgment of the Lucknow Bench in Modi's case and Allahabad Bench in the case of BastiI, inasmuch as what is binding upon this Court is the ratio of the judgments delivered by the concurrent Bench and not the operative portion of the order passed. He states that the ratio laid down by the Lucknow Bench of this Court in Modi's case, qua scope of interference under Article 226 of the Constitution of India in matters of fixation of price, has not at all been diluted/overruled or explained by the judgment in the case of BastiI and therefore the ratio continues to be applicant, with full force. Judged on the ratio of the Division Bench judgment of the Lucknow Bench in the Modi's case, it will be seen that in the facts of the present case the price fixatic, to fair and just.

45. Sri Singh also took the Court through the recommendation of the SubCommittee as well as Main Committee for demonstrating that practically all the directions issued by the Division Bench of this Court in the case of BastiI have been complied with. Representative of the petitioner sugar industries had participated in the deliberation before the SubCommittee and the figures arrived at qua fixation of the SAP for the year 200809 were based on relevant facts.

46. Sri V.M. Singh, who has appeared in person, claims to be a farmer. His application for impleadment has been disposed of by providing that he may intervene in the matter. He, with reference to the price fixed by the neighbouring States of the Haryana and Punjab for the year 200809, contends that the SAP announced by the State of U.P. is less by nearly Rs. 20/ to Rs. 30/ per quintal visavis the SAP announced by Haryana and Punjab. He submits that the State of

Uttaranchal has yet not notified the SAP for the year 200809. According to him the price paid by the northern States of the country cannot be compared with the cane price which is notified by the tropical States i.e. Maharashtra and Tamilnadu, as the yield of sugarcane crop in tropical State is nearly double visavis yield in the northern States (nontropical) in respect of the same area of cultivation. There can be no comparison between the price paid by the topical States. He submits that the sugar was being sold at the rate of Rs. 1200/ per quintal in the year 200708, while the price of sugar expected for the year 200809 is nearly 1900/ per quintal.

47. With reference to the details of three petitioner companies, disclosed in the impleadment application made by him, he submits that they have earned huge profits in the previous years and their reserves have grown nearly three times. The allegation that the petitioners do not have the capacity to pay the SAP fixed is without any basis and is only an attempt to mislead the Court. According to him even if the industries are called upon to pay SAP at the rate of Rs. 300/per quintal, they shall not suffer any loss. Lastly it is pointed out that in last three years 23 new industrial units for manufacturing sugar have been established in the State of U.P., while 17 existing units have increased their capacity.

48. Sri Ravindra Singh, Advocate on behalf of the U.P. Cane Union Federation Ltd. (respondent No. 3) also tried to justify the SAP notified by the State Government on the facts and the reasons which have been recorded herein above and submitted that this Court may not interfere with the determination so made by the State Government.

49. Sri S.P. Gupta, Senior Advocate in rejoinder, however, submitted that there is no conflict between the two judgments of this Court in respect of the crushing seasons 200607 and 200708 namely BastiII and Modi's case, inasmuch as there is no conflict in the ratio laid down by the two judgments. He submits that the judgment in the case of BastiII only follows the law as laid down by the judgment in the case of BastiI and since the guidelines fixed under the judgment in the case of BastiI have not followed in the year 200809, the same is liable to be struck down for the reasons which have been recorded by the Division Bench of this Court while striking down the SAP for the year 200708. He submitted that although nothing much can be said in respect of the competence of the State Government to notify the SAP as well as Section 16 of the Act, yet it is obligatory upon the State to notify the norms on which the SAP is to be determined. Unless such norms are notified by the State Government, the entire exercise for fixation of SAP would be rendered illegal. He submits that correctness or otherwise of the price so fixed can be examined only if the norms are fixed and not otherwise.

50. It is submitted that the cost of cultivation of sugarcane, as calculated with reference to the cost incurred at cane research centre is wholly out of context visavis the cost of farmers involved in the cultivation of sugarcane. Therefore, according to him, the very basis of calculation for determination of SAP is nonexistent in the eyes of law. It is reiterated that the respondents were under

obligation to afford an opportunity to the petitioners before fixation of the SAP. The objection filed by them have not been taken into consideration. The fixation of the SAP in the previous year at Rs. 125/ per quintal was based on assumption at the sale price of sugar at Rs. 1700/ per quintal and not Rs. 1250/ per quintal as suggested by the respondents.

51. Lastly it is contended that the Central Government has specifically laid down the norms under the Control Order for determination of the statutory minimum price (SMP). The State is also similarly obliged to lay down the criteria for determination of SAP, which have not been done. Therefore, this Court may quash the SAP notified under the impugned notification and require the State Government to first notify the norms on which SAP is to be determined and thereafter SAP may be determined with the active participation of the petitioner.

52. We have considered the submissions advanced by learned counsel for the parties and have gone through the records of the writ petition.

53. Before advertng to the merits of the writ petition it would be worthwhile to refer to the various judgments, which have been relied upon by the counsel for the parties and which are directly on the SAP fixed by the State Government in the previous years. The first judgment on the point is the Constitution Bench judgment of the Hon''ble Supreme Court in the case of U.P. Cooperative Cane Unions Federations (supra), wherein it has been specifically held that the competence of the State Government to determine the SAP flows from Section 16 of the "Act, 1953". The issue as to whether the said section confers an unguided power upon the State Government to fix the price stands repelled under the judgment and order of the Division Bench of this Court in the Modi's case, which in turn is based upon the observations made by the Constitution Bench in the case of U.P, Cooperative Cane Unions Federations (supra). No judgment to the contrary has been cited on behalf of the writ petitioners. More or less it has been admitted that the competence of the State Government as well as challenge to Section 16 cannot be pressed before this Court in view of the Constitution Bench judgment of the Hon''ble Supreme Court referred to above. Therefore, this Court has no hesitation to hold that in view of the said judgment of the Hon''ble Supreme Court, the State has the competence to fix the SAP and that Section 16 of the Act is the source of power for the purpose.

54. It may also be recorded that the parties agreed before us that the fixation of SAP is a legislative function and therefore the scope of interference under Article 226 of the Constitution of India has to be within the four corners of the law laid down by the Hon''ble Supreme Court, for interference with the legislative acts.

55. Now reference to the judgments of the Hon''ble High Court relied upon by the parties needs to be made. The first judgment pertaining to the crushing season 200607 i.e. Basti was delivered on 19.12.2007. It was held that the determination of SAP for the year 200607 was not based on any relevant material and further that the exercise as required for determination of sugarcane

price had not been undertaken by the State. Since the crushing season 200607 had already expired, the Court found it proper to issue guidelines qua the formation of the committee as well as the factors on which the SAP was required to be determined.

56. The judgment of the Division Bench has been subjected to challenge before the Hon'ble Supreme Court and the orders passed therein have already been quoted herein above. The matter is still subjudice before the Apex Court.

57. The SAP fixed for the year 200708 was subjected to challenge before the High Court of Judicature at Allahabad as well as Lucknow Bench of the Allahabad High Court by two separate set of petitioners by independent writ petitions.

58. The Lucknow Bench in the Modi's Case delivered its judgment on 7th July, 2008 and upheld the SAP so notified, after examining the facts and law applicable on the subject. The Division Bench, amongst others, noticed the scope of interference under Article 226 of the Constitution of India in respect of legislative acts pertaining to fixation of price as well as the relevant materials on which such price has been determined by the State Government for the year 200708.

59. The Allahabad High Court delivered its judgment in the case of Basti II on 18th August, 2008 and found that the SAP fixed for 200708 was not in conformity with the judgment of the Division Bench of this Court in the case of Basti I.

60. The Advocate General is justified in pointing out that since the judgment in the case of Basti I was pronounced in the month of December, 2007 while SAP for the year 200708 was notified on 31st October, 2007, there could have been no occasion for complying with the directions issued by this Court in case of Basti I by the State Government.

61. The Division Bench of this Court in the case, of Basti II did not consider the ratio of the judgment in the Modi's case only by observing that the law laid down by the Division Bench in the case of Basti I had to be followed as it cannot be said that the directions in that case were to be complied for that year i.e. 200607 only. Further in case the Lucknow Bench of this Court in Modi's case was not in agreement with the judgment of the Division Bench of this Court in the case of Basti I, it should have made a reference to a Larger Bench. Reference may be made to Paragraphs 11, 13 and 14 of the order passed by the Division Bench of this Court dated 18.8.2008, on the application of the State in the case of Basti II, reported in 2008(8) ADJ 215, which read as follows:

"11. In view of the law referred to above and considering the directions issued by this Court in the case of Basti Sugar Mills (supra), we are of the opinion that it cannot be said that the directions issued by this Court in the case of Basti Sugar Mills (supra) were confined to one particular year i.e. for the crushing season 200607 and would not be binding and to be followed by the respondents while fixing the SAP for the crushing season 200708 or for any subsequent year,

coupled with the principle with regard to the law regarding fixation of the price for sugarcane, we are of the opinion that the view taken by this Court in the case of Basti Sugar Mills (supra) are binding and since it is the admitted case of the parties that the same has not been complied with by the State Government while fixing the SAP for the year 200708; the fixation of SAP in question is illegal and unjustified.

13. In view of the law laid down by the Apex Court, referred to above, learned Counsel for the petitioners, submitted that in fact Division Bench of Lucknow Bench of this Court hearing the case of Modi Sugar Mills (supra) ought to have referred the matter to a larger Bench.

14. In view of what has been stated above, to us it appears that since the respondents/State Government have not complied with the directions issued by this Court in the case of Basti Sugar Mills (supra), the decision relied upon by learned Additional Advocate General in the case of Modi Sugar Mills (supra) will not come to the rescue of the State Government."

62. The judgment of this Court in the Modi's case and that in the case of BastiI have been challenged before the Hon"ble Supreme Court and the Hon"ble Supreme Court has been pleased to issue an interim order (quoted herein above), whereby the sugar factories have been directed to make payment of the SAP on provisional basis.

63. We may record that parties before us made an attempt to draw support from the judgments in their favour and to suggest that the other judgment which was against them was legally not correct. We refrain ourselves from entering into the said issue. We are not called upon to examine the correctness or otherwise of the judgment so passed nor we have competence to do so while sitting in a coordinate Bench. The matter is being examined by the Hon"ble Supreme Court in the Special Leave Petitions filed against both the said judgments. We therefore leave the issue at this stage.

64. Since learned counsel for the parties before us have agreed that fixation of SAP is legislative act to be performed each year and that determination of SAP so made has to be judged by this Court on the facts of the relevant year only, this Court needs to consider the grievance of the petitioners independent of the correctness of the two judgments delivered in the matter of SAP fixed for the year 200708.

65. Counsel for the parties have specifically stated before this Court that there is no conflict between the judgment of the Allahabad High Court in the case of BastiI and that of the Division Bench in the Modi's case, inasmuch as ratio laid down in the said judgments have not been diluted in any manner nor there is any conflict between the same.

66. Since it is the case of respondents that irrespective of the fact as to whether the guidelines provided for determination of SAP in the case of BastiI would be

applicable in respect of subsequent crushing season or not, such conditions in fact have been complied with and further that the scope of enquiry by this Court in such a fixation under Article 226 is confined to the four corners of the law declared in Modi's case, the following three issues arise in these petitions

(a) Whether it was necessary for the State, while performing its legislative function of fixation of price, to notify the norms and conditions on which the SAP was to be determined, prior to undertaking the said exercise.

(b) Whether the guidelines as provided for in the case of BastiI in fact have been complied with while determination of SAP for the crushing season 200809.

67. We may add a word of caution at this stage itself i.e. we should not be taken to have held that the guidelines notified in the case of BastiI are to be applicable qua fixation of SAP for all subsequent years. The issue in that regard is under examination before the Hon''ble Supreme Court in the S.L.P. arising out of the case of BastiII.

(c) To what extent this Court under Article 226 of the Constitution of India can interfere with the fixation of price on the ground of arbitrariness on the principles to law explained in the Modi's case.

68. We will deal with the first contention raised on behalf of the petitioner which is to the effect that unless norms are notified in advance by the State Government providing for the relevant factors before taking necessary steps for determination of the SAP, the entire exercise for such fixation would be rendered illegal, inasmuch as any other procedure would only amount to collecting material for the purposes of back calculation of the SAP so notified. It has been vehemently contended before us that unless the norms for determination of the SAP are announced in advance by the State Government, the exercise for determination of the SAP cannot be undertaken.

69. We cannot accept such a broad proposition as stated by the counsel for the petitioners. Challenge to the vires to Section 16 of the Act on the ground that it confers unguided and unchanneled powers upon the State Government has specifically been repelled by the Division Bench of this Court in the Modi's case. Following the judgment of the Apex Court in the case of U.P. Cooperative Cane Union (supra).

70. The reasoning so assigned by the Division Bench of this Court is binding upon us and even otherwise we see no good reason to disagree with the same. We further record that what cannot be permitted to be challenged directly, cannot be permitted to be introduced through a plea in a different language. We repel the contention raised on behalf of the writ petitioners, that norms for fixation of SAP are necessarily to be declared first by the State Government before the exercise for the determination of SAP is undertaken, for the following additional reasons also:

(a) If the vires of Section 16 of the Act, which confers the legislative power of

fixation of SAP on the State Government cannot be challenged on the ground of power being unguided, the Court cannot permit the writ petitioners to seek introduction of norms and the guidelines first by the State Government before such fixation through a writ.

(b) No such statutory requirement or any other principle of law could be referred to by the counsel for the petitioners in respect of performance of legislative act of fixation of price, except that it would be more fair.

(c) The legislative acts can be subjected to challenge within the four corners of the law laid down by the Hon'ble Supreme Court, broadly on two grounds (i) lacks of legislative competence, (ii) it violates any of the constitutional provision. Such a challenge can only be made after the legislative act has been performed and then this Court can examine as to whether such legislative act is in conformity with the provisions of the Constitution or not. If Article 14 is invoked for challenging such legislative acts, the Court has to see as to whether it is patently arbitrary/discriminatory or not, inasmuch as not all principles flowing from Article 14 are applicable qua legislature/policy decision.

(d) If the fixation of price is otherwise found to be based on material facts relevant for the purpose, the writ Court would not be justified in exercise of power under Article 226 of the Constitution of India to quash such a fixation only because norms were not notified prior to such fixation.

71. Issues Nos. (b) and (c) are interlinked and are therefore being decided together

72. Since it is the case of the writ petitioners that the guidelines and norms provided for fixation of SAP under the judgment and order of this Court in the case of BastiI have not been followed before issuance of the notification for the year 200809, the same has to be struck down by this Court while the Additional Advocate General submits otherwise, we think it proper to reproduce the operative portion of the Division Bench, judgment in the case of BastiI, which reads as under:

"(a) Order impugned fixing SAP for crushing season 200607 and Circular/ Notification etc. in connection thereto stands quashed.

(b) Consequently, the State will discharge the essential legislative function in its true sense by reassessing the SAP for the crushing season 200607 in consultation with the respective representatives of the cane growers, sugar producing factories, appropriate executives of the union and the State inclusive of representative of Cost Accounting Branch of the union and the State, Commission of Agricultural Costs and Prices, National Sugar Institute, Kanpur, any other person or institute required for the purpose.

(c) Calling of the representatives of the Union of India for sharing their experience regarding fixing the price and over all assessment, will not be treated to be interference with the existence of the power and authority of the State.

(d) In case the legislature desires and wants to apply its discretion to form a committee of experts and affected persons to make a report to work upon it and further wants that such committee can be formed under the chairmanship of a retired High Court or Supreme Court Judge to maintain absolute independence, they are at liberty to do so.

(e) In either of cases, the decision should be backed by reasons giving adequate outlines of norms, criteria or guidelines to incorporate in the Act/Rules/Circular so that dispute in seriatim can be resolved for all time and delay in payments in the scheduled price of sugarcane can be avoided.

(f) Due to paucity of time, only for the crushing season 200607 norms, criteria or guidelines will be indicated in the decision having a binding effect upon the parties irrespective of making any formal amendment/circulation etc. as prescribed above, and the parties will act upon the communication of the decision.

(g) The Court is constrained to fix the period of three months for the purpose of entire exercise by the State, as directed herein above, due to intervention of the subsequent crushing season.

(h) Subject to final decision and communication thereof, payment of SAP, in case of shortfall or adjustment/recovery in case of over payment by the sugar producing factories, will be given effect, therefore, question of coercive action, if any will arise at that juncture in the appropriate cases.

(i) However, no part of the payment already made by the sugar producers to the cane growers as per fixation of price by the State will be refunded by the State will be refunded by them.

(j) This order will not affect or create any hindrance to any sugar producing factory in paying SMP to the Central Government regularly."

73. We may also refer to following paragraph of the judgment in the case of *BastiI* which provides for the factors, which are to be taken into consideration before determination of SAP:

".....Record is silent about any adoption of any norms, criteria or guidelines for fixation of price or its enhancement for the crushing season 200607. Record is totally silent about reasoning. It is verbatim reproduction of the submission of the State in the Supreme Court in re: U.P. Cooperative Cane Unions Federations (*supra*) that higher investment gives higher price. This note of an executive had received assent of the Chief Minister and Cabinet. Higher investment can give higher return might be a theory of economics which cannot be the reason of fixation of SAP for the respective years. Yearwise investment is to be assessed. Recovery is to be assessed. Crushing capacity is to be assessed. International price is to be assessed. Domestic price is to be assessed. Fixation of SMP by the Central Government is to be assessed. Consumer's consumption is to be assessed. Competitive price of different States is to be assessed. Why price of Rs.

10/ will be increased this year why not Rs. 15/ or Rs. 1/, these relevant factors are to be assessed. Recommendations of various experts are to be assessed. Then a price can be fixed.

.....The fixation of price per year which has been provided by the Act, 1953, is to be determined on the basis of factum of each year. Neither it will be made theoretically nor mechanically but actually on the basis of assessment of all aspects of the economy for the purpose of good governance. From the argument of Mr. Singh it appears to us that exercise of power for fixation of price by the State is no more *res Integra*, which is actually not. The power and authority of the State is no more *res Integra* in view of the majority judgment of the Supreme Court in *U.P Cooperative Cane Unions Federations (supra)* but exercise of power is still *res Integra*."

74. We may again repeat the note of caution that we are not entering into the issue as to whether the guidelines and norms fixed by the Division Bench of this Court in the case of *Basti I* are to be followed and complied with by the State Government year after year as has been held by the Division Bench of this Court in the case of *Bastill* nor we are holding that such guidelines are to be treated limited for the year 200607, inasmuch as the matter in that regard is pending adjudication before the Hon'ble Supreme Court. We proceed to only examine as to whether the said guidelines in fact have been complied with by the State Government while determining the SAP for the year 200809 as has been stated by the Advocate General before us, with reference to the operative portion of the judgment of the Division Bench in the case of *Basti I* as well as the factors, which were required to be considered before fixation of SAP.

75. We have examined the facts stated in detail in the counter affidavit and the reports submitted by the SubCommittee and the Main Committee, which were considered by the Cabinet of Ministers before notification of SAP for 200809. We find that a committee with Chief Secretary of the State as the Chairman was constituted under the order dated 31 st September, 2008 which comprised of seven persons in all. The said committee was required to have active consultation with Sugar Mills, Managing Director, U.P. Cooperative Sugar Mills Sangh/Nigam, Khandsari Units and Cane Growers, Representatives of Cooperative Cane Development Societies, Indian Cane Research Institute, Lucknow, Director, National Sugar Institute, Kanpur and Agricultural Economist, Agriculture University, Meerut and to submit its recommendation within ten days.

76. The Chief Secretary on 1st October, 2008 constituted a SubCommittee, for submitting its recommendation after consultation with the persons concerned, with Cane Commissioner, U.P. as the Chairman and four other persons of the same department. The SubCommittee, after detail enquiry/discussion, submitted its report after taking into consideration various facts namely the cost, of actual production of sugarcane, the other expenses incurred for the purpose, the total area of cultivation of sugarcane in the State of U.P. in the relevant years, the whole sale price of sugar in various markets, the other produce manufactured as

byproducts by the sugar factories namely molasses, Bagasses, Press Mud, the sale and consumption whereof generates revenue for the sugar factories, the SAP fixed in the neighbouring States, the SMP fixed by the Central Government, the records made available by the sugarcane research centres as well as agricultural institute, Meerut, sugar mills, farmers etc. and ultimately recommended that the SAP may be determined between Rs. 135/ to Rs. 145/ per quintal. The report of the said SubCommittee refers to in detail the documents, which had been collected reasons and the calculations in support of the figure so arrived at. The recommendations of the SubCommittee were placed before the Main Committee, constituted by the State Government. The Main Committee after deliberations in detail, after examining the records, as were collected by the SubCommittee and submitted along with its report, and after affording opportunity of participation to various persons including the owners of petitioner sugar factories, cane cooperative societies, cane growers, agricultural and other expert on the subject, which included filing of written representations by the petitioners also, made its recommendation qua determination of SAP for crushing season 200809 supported by reasons and calculations for the same. The report of the Main Committee was placed before the cabinet of ministers, which ultimately finalized the SAP and thereafter notification dated 18.10.2008 was published.

77. From the aforesaid facts it is apparently clear that the Committees, as recommended by the High Court in its operative portion of the judgment in the case of BastiI, were constituted. The Committees held deliberations with all the parties involved in the manufacture of sugar (including factory owners and the cane growers), all the factors relevant as per the paragraph, quoted above, of the order of the Division Bench in the case of BastiI, which were required to be considered before fixation of SAP, have practically been so considered and decision after due deliberations, supported by reasons and calculations, has been arrived at.

78. We are of the considered opinion that such determination of SAP for the year 200809 is more or less in strict compliance of the relevant guidelines provided under the judgment of the Division Bench in the case of BastiI and broadly all material facts stated in the said judgment of the BastiI have been taken into consideration.

79. We may add that the judgment of the Court is not be read as a statute nor as Euclid's theorems. Reference in that regard may be had to the law laid down by the Hon''ble Supreme Court in the case of Union of India and another v. Major Bahadur Singh, (2006) 1 SCC 368, relevant paragraphs 9 and 10, which read as follows:

"9. The Courts should not place reliance on decisions without discussing as to how the factual situation fits in which the fact situation of the decision on which reliance is placed. Observations of the Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context.

These observations must be read in the context in which they appear to have been stated. Judgments of the Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* Lord MacDermott observed: (ALL ER p. 14CD)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge..."

10. In *Home Office v. Dorset Yacht Co.* Lord Reid said: (All ER p. 297gh)

"Lord Atkin's speech.....is not to be treated as if it were a statutory definition. It will require qualification in new circumstances."

Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2) observed: (All ERp. 1274de) "One must not, of course, construe even a reserved judgment of even Russell, L. J. As if it were an Act of Parliament;" and, in *Herrington v. British Railways Board* Lord Morris said: (All ER p. 761 c)

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

80. We, therefore, have no hesitation to record that in the fixation of the SAP for the year 200809 there has been sufficient compliance of the judgment and order of the High Court in the case of Bastil.

81. It has to be kept in mind that fixation of the SMP is for a different purpose visavis the determination of SAP by the State Government, as has been clarified by the Hon"ble Supreme Court in the case of U.P. Cooperative Cane Unions Federations (supra), wherein it has been held that Central Government only fixes the minimum price under the 1966 Control Order i.e. SMP, and it is open to the State Government to fix a higher price, which would also be a statutory price i.e. SAP. The purpose being to fix remunerative price for the farmers and not the minimum price only. Therefore, SMP fixed by the Central Government is only one of relevant factor to be taken into consideration by the State Government while determining the SAP which has been done in the facts of this case.

82. From the facts and figures, which have been noticed in the reports including the SAP fixed by the neighbouring States for the year 200809 namely Punjab and Haryana, the decision of the State to provide 20% incentive over the actual cost of production of sugarcane to the farmers for the year 200809 in the background of reduction in cultivation area by 25%, for ensuring that the farmers do not shift

to alternative crops cannot be said to be as without any reason.

83. Non consideration of the cost of production of sugarcane qua the two research cane centers of the State at Gola and Gorakhpur has been contended only for the sake of an objection, inasmuch as the petitioners failed to establish as to what material change in the cost of production would have been brought about if the said cane centers had been taken into consideration. The Additional Advocate General has specifically pointed out that average cost of production would have remained the same if these two centres had also been taken into consideration.

84. Similarly, consideration of rental value, depreciation on plant and machinery, interest on working capital etc. for calculating the cost of production of sugarcane at the research centres of the State has been so done to total all that actually goes into production of each quintal of sugarcane at the centres. The cost of production at research centres is only one of the relevant considerations to be taken into account for determination of SAP. In our opinion it cannot be said that the said factors were totally irrelevant or out of context for determining the cost of production at the research centres. Cost of production at Saharanpur Sugarcane Research Centre has been the basis for determination of SMP by Central Government as also for determination of SAP in the previous years specifically for the 200304 which stands affirmed with dismissal of the writ petition filed against the same.

85. With regard to the capacity of the sugar industry to pay the SAP fixed for 200809, no balance sheets of petitioners' company have been brought on record. What has been reflected as the loss to be caused to the sugar factories because of such fixation is in fact the excess amount of price to be paid in comparison to price paid in previous years for the sugarcane purchased. Excess payment in the opinion of the Court need not necessarily result in over all loss to the sugar factory. Therefore, if the petitioners have themselves hidden the balance sheet of their respective company from the Court, no benefit can be permitted to be drawn by them for such hedged incomplete pleadings/material.

86. Moreover, the establishment of 23 new units for manufacture of sugar in the State and enhancement of the manufacturing capacity of 17 existing such units within last three years is in itself an indication that the industry in the State has a sound base and is progressive.

87. The SAP for the year 200809 should have fairly been Rs. 125/ per quintal as contended by the counsel for the petitioners or it should have been more than that notified as the industry has the capacity to pay Rs. 300/ per quintal without any loss being caused, as submitted by the respondents is not an issue within the realm of jurisdiction of this Court under Article 226 of the Constitution of India. The State is the best judge, it has the experts and the material on which price is to be fixed for an essential commodity qua which in public interest is the ultimate consideration.

88. Now coming to the issue as to what is the scope to interfere under Article. 226 of the Constitution of India in the matter of determination of SAP, we need not burden to our judgment by various pronouncements of the Hon"ble Supreme Court on the subject. Division Bench of this Court in the Modi"s case, after referring to the law as explained in various judgments of the Hon"ble Supreme Court namely Tika Ram v. State of Uttar Pradesh, AIR 1956 SC 676; Prag Ice and Oil Mills v. Union of India, AIR 1978 SC 1296; Union of India v. Cynamide India Ltd., AIR 1987 SC 1802; M. Shri Sitaram Sugar Co. Ltd. v. Union of India, AIR 1990 SC 1277; P.T.R. Exports Madras Pvt. Ltd. v. Union of India, 1996(5) SCC 268; Royalseema Paper Mills Ltd.v. Government of A.P., 2002 (49) ALR 669 and Ashoka Smokeless Coal India (P) Ltd. v. Union of India, (2007) 2 SCC 640, has finally concluded in para105 as follows:

"105. In view of the proposition laid down by the apex Court the power of judicial review in respect of fixation of price by the State Government, can be invoked within the specified limited field, namely, to see that such price fixation has been done in accordance with the provisions of the statute if any such governing principles are provided in statute or rules or in the orders, and whether all relevant factors including economic considerations and the market trend have been taken into account or not. The fixation of price is to depend on reasonable, nondiscriminatory and uniform criteria, so that it gives an impetus to the economic growth of the country. In the case of essential commodities, the public interest is the key word."

89. We may also record that the scope of applicability of Article 14, when challenge is made to legislative act, is limited as have been laid down by the Hon"ble Supreme Court in the case of State of Andhra Pradesh and others etc. v. McDowell & Co. and others etc., JT 1996(3) SC 679.

90. In view of the said law to which no other contrary principle could be pointed out or referred to by the learned Senior Counsel for the writ petitioners, we find that the scope of interference is very limited. As already noticed herein above by us, all relevant facts in respect of determination of SAP for the year 200809 have been taken into consideration. The State has exercised its legislative powers by issuance of notification dated 18th October, 2008. Such fixation on the material facts, as have been made available, cannot be said to be so arbitrary and perverse so as to warrant any interference by this Court under Article 226 of the Constitution of India. .

91. Counsel for the petitioners, except for referring to various factors like nonconsideration of data from two cane research centres, irrelevant consideration of depreciating cost of plant and machinery in respect of cane centres, rental of the land etc., could not point out any substantive material on the basis whereof this Court can come to a conclusion that the State Government has acted so arbitrarily in exercise of its legislative function that this Court under Article 226 of the Constitution of India may declare the same to be violative of Article 14.

92. Now we may deal with the last submission made with reference to judgment of this Court in *Bajaj Hindustan Ltd. and others* (supra) i.e. the petitioners are entitled to transportation charges of Rs. 10.58 per quintal per kilometer when sugarcane is supplied at the purchase centres and not at the factory gate of the petitioners. Para 75 of the said judgment reads as follows:

"75. In the facts and circumstances of the case, as stated we are of the opinion that the rate of Rs. 10.58 per quintal per km. Is fairly reasonable as against the demand of the petitioner of Rs. 13.33 per quintal which should be paid to the petitioner or petitioner should be made entitled to deduct the same from the minimum price payable by the petitioner for the sugarcane purchased by petitioner and this is based on the basis of cost supplied by petitioner till the rate of transportation rebate is worked out on the basis of material as mentioned in Clause 3A of the Control Order periodically, preferably, yearly."

93. The Advocate General, the counsel for the cane farmers cooperative societies as well as other counsel for the respondents could not point out as to whether said judgment has been subjected to challenge before the Hon'ble Supreme Court and if so whether any interim order has been granted or not. What has been stated before us by the respondents is that if the judgment holds good and is applicable for the crushing season 200809 also, the petitioner sugar factories are entitled to the benefit flowing there from subject, however, to the right of the sugarcane growers to challenge the same before the Apex Court. "

94. In view of the aforesaid, we only provide that if the judgment of *Bajaj's* case still holds field and is applicable for the year 200809 the sugar factory owners are held entitled to transportation cost as provided in the *Bajaj's* case. They would be at liberty to enforce the said judgment and to take all such actions as may be necessary for the purpose without prejudice to the rights of the cane growers cooperative societies as well as other private farmers to seek redressal of their grievance in that regard.

95. With the aforesaid observations/directions the present writ petitions are dismissed.

96. Before parting with the case we feel that a disturbing feature noticed by us must be rectified in order to avoid similar conflicts in future. Notification issued by the State Government in respect of SAP for the year 200708 was subjected to challenge both before the Allahabad Bench of Allahabad High Court by one set of sugar factories led by Basti Sugar Mills Limited and similarly before the Lucknow Bench of this Court led by M/s Modi Sugar Mills and others. Both writ petitions questioned the same notification of the State Government fixing SAP for the year 200708. It appears that hearing in both the writ petitions took place before Lucknow Bench as well as Allahabad Bench simultaneously and as a matter of fact the judgment by the Lucknow Bench was delivered on 7th July, 2008, while the judgment by the Allahabad Bench was reserved and was ultimately delivered on 18th August, 2008. The judgment of the Lucknow Bench, which is prior in

point of time, dismissed the writ petition and upheld the fixation of SAP for the year 200708, while the Division Bench of Allahabad High Court allowed the writ petition and quashed the same notification fixing the SAP for 200708.

97. We can see the predicament of the State Government inasmuch as one Division Bench of this Court upholds the SAP for 200708, while the other Division Bench quashes the same notification. Such conflicting judgments by the coordinate Benches, one sitting at Lucknow and the other at Allahabad, only lead to uncalled for difficulties being created for the executive of the State and other respondents and do not in any way enhance the reputation of the Court as a whole.

98. We may record that the High Court is one and therefore normally there should not be a situation for such anomaly being created. We, therefore, think that amendment in the Rules of the Court are required so that such situations can be taken care of. The Court may consider for a suitable rule being framed so that when the same notifications or statutory provisions of an Act are challenged by way of separate writ petitions before the Lucknow Bench as well as before the Allahabad Bench, such writ petitions are tagged together and decided by one common Bench. For the purpose we feel that the matter should be referred to the Rule Framing Committee of the High Court. We, therefore, request the Registrar General of this Court to place the recommendation made by us herein above, before the Hon'ble The Chief Justice of this Court for appropriate orders being passed in that regard.