(1979) 07 AHC CK 0041

Allahabad High Court

Case No: Civil Miscellaneous Writ No''s. 9383 etc. of 1978 and 397 etc. of 1979

Shervani Sugar Syndicate Ltd., Allahabad		APPELLANT
	Vs	
Union of India (UOI) and Another		RESPONDENT

Date of Decision: July 10, 1979

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: AIR 1979 All 394

Hon'ble Judges: R.S. Singh, J; K.N. Seth, J

Bench: Division Bench

Advocate: S.P. Gupta, for the Appellant; G.D. Tripathi and Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

K.N. Seth, J.

In exercise of the powers conferred by Clause ''3'' of the Sugarcane (Control) Order, 1966, the Central Government issued Notification No. GSR 484 (E)/ESS. Com/ Sugarcane dated 1st October, 1978 fixing the basic minimum price of sugarcane for the crushing season 1978-79 at Rs. 10/-per quintal linked to a recovery of 8.5% or below with a premium of 11.7647 paise per quintal for every 0.1% increase in recovery over 8.5%. The notification also specified in the schedule annexed thereto the minimum price payable by the owners of the vacuum pan process sugar factories for the aforesaid crushing season. Different prices have been fixed for different sugar factories for sugarcane that they may purchase. The petitioners have challenged the validity of the notification both with regard to the fixation of the basic minimum price of sugar-cane and the different prices for the petitioner companies specified in the schedule. In some of the petitions the validity of the order fixing the same price for the last year''s standing sugar-cane crop has also been challenged.

2. In this State the purchase and supply of Sugarcane is governed by the Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 (U. P. Act 24 of 1953), the U. P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954 and the U. P. Sugarcane Supply and Purchase Order, 1954, Each sugar factory is required to furnish to the Cane Commissioner an estimate of the quantity of cane required by the factory during the crushing season. The Cane Commissioner on receiving the estimate reserves or assigns ah area of sugarcane in consultation with the factory and the Cane Growers Co-operative Society. The factory has to purchase all the cane grown in the reserved area which is offered for sale to it and has to purchase such quantity of sugarcane grown in the assigned area and offered for sale as may be determined by the Cane Commissioner. The agreement entered into between the factory and the cane cooperatives or the cane growers envisages payment of cane price notified by the Government. Clause ''3'' of the Sugarcane (Control) Order, 1966 empowers the Central Government to fix the minimum price of sugarcane payable by the producer of sugar. The relevant part of Clause ''3'' run as follows:--

"The Central Government may, after consultation with such authorities, bodies or associations as it may deem fit, by notification in the official gazette, from time to time, fix the minimum price of sugarcane to be paid by producers of sugar or their agents for the sugarcane purchased by them, having regard to--

(a) the cost of production of sugarcane;

(b) the return to the grower from alternative crops and the general trend of prices of agricultural commodities;

(c) the availability of sugar to the consumer at a fair price;

(d) the price at which sugar produced from sugarcane is sold by producers of sugar, and

(e) the recovery of sugar from sugarcane:

Provided that the Central Government or, with the approval of the Central Government, the State Government may, in such circumstances and subject to such conditions as it may specify, allow a suitable rebate in the price so fixed.

Explanation-- (1) Different prices may be fixed for different areas or different quantities or varieties of sugar-cane."

3. This clause specifies the factors that have to be taken into consideration in fixing the minimum price of sugarcane payable by the producer of sugar.

4. It was urged that the Central Government is empowered to fix the minimum price of sugarcane only after consultation with such authorities, bodies or associations as it may deem fit. It requires consultation with persons who are interested in the fixation of price of sugarcane. The consultation should not be a mere empty formality but it should provide an opportunity to the interested parties to consider

and weigh each other''s viewpoint. The authorities, bodies or associations with whom the Central Government holds consultation must be chosen honestly so that views of all concerned parties are placed before it. It was contended that before issuing the impugned notification no genuine consultation was held with the sugar factory owners or their association who were vitally interested in fixation of the price. In the counter-affidavit it has been averred that in fixing the minimum price of sugarcane for the year in question the recommendation of the Agricultural Prices Commission, an expert body appointed by the Government to advise it on fixation of prices of agricultural commodities including sugarcane, has been taken into consideration. Its recommendations are based on datas collected by it. The Central Government also took into consideration the report of the Bhargava Commission on sugar industry. The Indian Sugar Mills Association of which the petitioners are members had also made a representation. The file relating to the representation of the Association was produced before us in Court. The nothings on the file clearly indicate that the representation made by the Sugar Mill''s Association was fully considered. In our opinion, it was not at all necessary that the office bearers of the Association and the officers of the Central Government should have sat across the table and discussed and debated every relevant factor or material taken into consideration in fixing the price of the sugarcane. In the representation made by the Association no request was made for any personal discussion. The petitioners are not justified in making the grievance that proper consultation was not done with the manufacturers of sugar. In our opinion, requirement of law regarding consultation with authorities, bodies or associations was fully satisfied by considering the recommendation of the Agricultural Prices Commission, the Bhargava Commission Report on sugar industry and the representation of the Sugar Mills Association.

5. Fixation of the basic minimum price of Rs. 10/- per quintal has been challenged on the ground that the Central Government totally ignored or failed to take into consideration the relevant factors set out in Clause ''3'' of the Sugarcane (Control) Order, 1966 (hereinafter referred to as the Control Order). It was urged that the basic minimum price of sugarcane of Rs. 8.50 fixed for the year 1977-78 was arbitrarily enhanced to Rs. 10/- although the cost of production of sugarcane had not increased nor had the return to the grower from alternative crops and general trend of prices of agricultural commodities undergone any change. In the petitions it has been asserted that there has been no increase in the cost of production of sugarcane since last year and that there has also been no increase in the return to the growers from alternative crops or in the general trend of prices of agricultural commodities. On behalf of the respondents it has been asserted in the supplementary-counter affidavit sworn by Sri S. Bansi, Deputy Secretary to the Government of India, Ministry of Agriculture and Irrigation, Department of Food, that cost of several inputs has increased resulting in increase in the cost of production, such as cost of agricultural labour, electricity charges, irrigation rates and fertilizers. The return available to the growers from alternative crops has also

increased. The Government itself has increased its procurement price of wheat, rice and some other grains. Neither in the petition nor in the counter affidavits filed on behalf of the respondents any material has been furnished regarding cost of production of sugarcane or return to the grower from alternative crops and the general trend of prices of agricultural commodities. However, we see no reason to doubt the averment made on behalf of the respondents that these factors were taken into consideration in fixing the minimum price of sugarcane. According to the respondents the Central Government took into account the recommendations of the Agricultural Prices Commission. The recommendations of the Commission are based on datas collected by it regarding cost of production, return to the growers from various agricultural commodities and the prevailing market price etc. Since the recommendation of the Commission were taken into account by the Central Government while fixing the minimum price of sugarcane, it may be accepted that factors (a) and (b) set out in Clause 3 (1) of the Control Order were in fact taken into consideration while fixing the basic minimum price off sugarcane.

6. In this connection it was also urged that the criteria of availability of sugar to the consumer at a fair price and the expected market price of sugar in the current season have not been taken into consideration in fixing the basic minimum price of sugarcane, According to the petitioners sugar was decontrolled with effect from 16-8-1978 and the distinction between the ''levy sugar'' and ''free sugar'' came to an end. In view of the record production of 65 lac tons of sugar in the year 1977-78 and discontinuance of the policy of supplying sugar to the consumers at the controlled rate out of the levy sugar, the Central Government must have anticipated considerable fall in the price of sugar and there could be no justification for enhancing the basic minimum price. A chart has been annexed to the petitions indicating a decline in the market price of sugar since the commodity was decontrolled. The average prevailing price of about Rs. 210/- per quintal before de-control came down to about Rs. 189/- per quintal in October, 1978. On the basis of these figures it was urged that obviously the Central Government did not take into consideration the decline in price of sugar while fixing the minimum price of sugarcane. On behalf of the respondents it was urged that though immediately after de-control, price of sugar disclosed a declining trend but subsequently the price again started moving up. The stand taken by the respondents was that the Central Government did take into consideration the factors of availability of sugar to the consumer at a fair price and also the question of the likely market price of sugar in determining the minimum price of sugarcane. Its decision to enhance the minimum price of sugarcane from Rs. 8.50 to Rs. 10/- per quintal was based on the factors set out in Clause ''3'' of the Control Order and also the fact that the petitioners during the past seasons voluntarily and willingly paid prices which were substantially higher than the minimum price fixed by the Government of India, Taking by way of example the case of the Neoli Sugar Factory run by M/s. Shervani Sugar Syndicate it was pointed out that during the year 1974-75 while the minimum

price for sugarcane fixed by the Central Government was Rs. 9.20 the factory actually paid at the rate of Rs. 12.50 to 14.50 per quintal. Similarly in the year 1975-76 while the minimum price fixed was Rs. 9.50 the factory actually paid Rupees 11.30 to 13.25 per quintal and in the year 1977-78 while the minimum price fixed was Rs. 10.10 the factory actually paid Rs. 13.50. On the basis of these figures it was urged that the minimum price fixed by the Central Government for the sugar season 1978-79 in respect of the aforesaid factory at Rs. 12.12 per quintal was much less than the price actually paid by the factory in the previous year. The fact that the factories paid higher price for the sugarcane than the price fixed by the Central Government has not been disputed but it was urged that the higher price was paid under coercion exercised by the State Government. It was further urged that this was an extraneous and irrelevant consideration not contemplated by Clause ''3'' of the Control Order and could not be legally taken into consideration for fixing the minimum price of sugarcane. It was contended that Sub-clauses (a) to (e) exhaustively set out the factors which could validly be taken into consideration in determining the basic minimum price. The price actually paid by the factories could not form the basis for determining the basic minimum price.

7. There is no material on record to support the allegation that in earlier years higher price for sugarcane was paid under coercion exercised by the State Government. The other contention raised by the petitioners, is also untenable. Clause 3 (1) of the Control order only casts a duty on the Central Government to keep in mind the factors mentioned therein. They provide only the guide-line for fixing the basic minimum price. These factors could not be totally ignored. They also cannot be said to be exhaustive in the sense that no other relevant factor could be taken into consideration. The Supreme Court in The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another, considered the content and purport of the expressions ''having regard to'' and ''shall have regard to'' and cited with approval the following observation in the decision of the Court of Appeal in Perry v. Wright (1908) 1 KB 441 :

"No mandatory words are there used, the phrase is simply "regard may be had". The sentence is not grammatical, but I think the meaning is this : Where you cannot compute you must estimate, as best as you can, the rate per week at which the workman was being remunerated, and to assist you in making an estimate you may have regard to analogous cases."

The Supreme Court then referred to a few words from the judgment of Fletcher Moulton L. J. at page 458. Under the phrase ""Regard may be had to" the facts which the Courts may thus take cognizance of are to be "a guide, and not a fetter."" Again the Supreme Court in Saraswati Industrial Syndicate Ltd. and Others Vs. Union of India (UOI), while considering the import of the expression ''having regard to'' occurring in Clause 7 (2) of the Sugar (Control) Order, 1966 observed that this expression only obliges the Government to consider as relevant data material to

which it must have regard. The implication of the expression ''have regard to'' was laid down by the Privy Council in AIR 1943 164 (Privy Council) thus :

"The view taken by the majority of the Collective Board of Revenue in making the order dated 19th October, 1936, which is now complained of, is that the requirement to ''have regard to'' the provisions in question has no more definite or technical meaning than that of ordinary usage, and only requires that these provisions must be taken into consideration."

Viscount Simon, L. C. proceeded to observe-

"The expression "have regard to" or expressions very close to this, are scattered, throughout this Act, but the exact force of each phrase must be considered in relation to its context and to its own subject-matter. Any general interpretation of such a phrase is dangerous and unnecessary."

8. From the cases referred to above it is apparent that the effect of the words ''having regard to'' will be different in different contexts. The words have life and meaning infused in them through the context in which they are used. In the context in which it has been used in the Control Order it is obligatory on the part of the Central Government to take into consideration the various factors enumerated in Clause ''3'' before coming to a decision with regard to the price of the sugarcane supplied to the producers of sugar. That does not imply that they are the only factors which could be taken into consideration. Factors other than those mentioned in Clause ''3'' having a bearing on the fixation of price of sugar-cane and having a nexus with that matter could be validly taken into consideration. In the present case the fact that producers of sugar paid Rupees 13.50 per quintal for the sugarcane for the preceding year was a factor having a direct bearing on the fixation of minimum price for the current year. It could not be characterised as irrelevant or extraneous. The Central Government, therefore, rightly took that factor into consideration. The fixation of the basic minimum price of Rs. 10/- per quintal, therefore, could not be struck down as unreasonable, capricious or arbitrary having regard to the cumulative effect of the relevant factors.

9. The challenge to the fixation of minimum price for the petitioner factories separately is based on grounds : (1) that the Central Government wrongly took into consideration the recovery of the previous year and (2) that the recovery of the entire crushing season and not that of the optimum period, that is, December to March, should have taken into consideration. According to the petitioners a wrong principle was applied with regard to Sub-clause (e) which relates to recovery of sugar from sugarcane. It was urged that the normal crushing season of a sugar factory extends from November to April which is extended even upto July depending on the availability of sugarcane to be crushed. Recovery of sugar has to be calculated on the basis of the actual recovery made during the entire crushing season of a factory and the relevant period would be the crushing season of the

year for which sugar-cane price is fixed. It is not disputed that in fixing the sugarcane price payable by the producers for the year 1978-79 the Central Government took into consideration recovery of sugar, from sugarcane made by the petitioners in the preceding year and that too for the period December to March or for the whole year whichever was more. Learned counsel for the petitioners contended that the word ''sugarcane'' in Clause 3 (1) (e) means that sugarcane for which price is required to be fixed under Clause 3 (1), that is, the sugarcane which shall be purchased and paid for by the petitioners. The factor -- ''the recovery of sugar from sugarcane'' can be a relevant factor only if it refers to the recovery, from the sugarcane for which the minimum price is being fixed under Clause 3 (1). In case these words referred to recovery of sugar from any other sugarcane, that is, other than that which is to be purchased and paid for by the producers of sugar, it shall become an irrelevant and irrational factor. It was contended that there was no provision in the Control Order on the basis of which it could be assumed that the expression ''sugarcane'' and ''the recovery of sugar from sugarcane'' referred to the previous year. In support of the contention that in Clause (e) the recovery of sugar from sugarcane referred only to recovery of sugar from sugarcane for which the price was being fixed. Our attention was invited to Sub-clauses (a) to (d) and it was urged that each of these factors referred to the year for which the cane price was sought to be fixed. In fixing the price of sugarcane for the current year, the cost of production of sugarcane, the return to the grower from alternative crops and the general trend of prices of agricultural commodities, the availability of sugar to the consumer at a fair price, and the price at which sugar produced from sugarcane is sold by producers of sugar the datas of the previous year could possibly have no relevance. The contention appears to be well founded. The cost of production of sugarcane of any earlier year could have no relevance in fixing the price of sugarcane of the current year. Similarly what was the return to the grower of sugarcane from alternative crops and the general trend of prices of agricultural commodities in earlier years could not provide a basis for fixing the price of sugarcane produced in the current year. In the same way, the availability of sugar to the consumer at a fair price in the preceding year or any earlier years would be wholly irrelevant and so would be the case with regard to the price at which sugar was sold in the preceding year or any earlier years. The established rules of interpretation do not justify the addition of the words ''in the previous year'' after the words ''the recovery of sugar from sugarcane'' occurring in Sub-clause (e) and for that reason we find it difficult to agree with the view expressed in Kalooram Govindram Vs. The Union of India (UOI) and Another, and the decision of the Patna High Court in Standard Refinery & Distillery Ltd. v. Union of India (Civil Writ Jur. Case No. 255 of 1971, D/-23-4-1976), a copy of which has been produced before us. We are not unmindful of the difficulties in taking recovery of the current year into consideration. Sugarcane price is normally announced in October i.e. before the commencement of the crushing season, At that time it is not possible for the Central Government to take into account the recovery of the current year. At best only an

estimate could be made. That may ultimately prove to be wide of the mark on account of uncertainties of climatic conditions, natural calamities, working of the factory, duration of the crushing season etc. It is this consideration which weighed with the Bhargava Commission to recommend that the previous season recovery be taken into consideration for fixing the price of cane which the Government accepted.

10. In spite of the interpretation put by us on Sub-clause (e) of Clause 3 (1) of the Control Order we are of the opinion that the petitioners are not entitled to challenge the validity of the notification fixing the prices payable by them on the basis of the recovery made in the preceding season on account of the fact that in the representation made by the Sugar Mills Association of which the petitioners are members, the practice of taking the recovery of the preceding year was not objected to but was accepted as the correct basis. Having accepted that basis for a long number of years the petitioners cannot be permitted to turn round and take a different stand at this stage.

11. The main contention raised by the petitioners appears to be against the principle adopted for fixing the minimum price payable by the producers. According to the impugned notification, over and above the basic minimum price of sugarcane at Rs. 10/-per quintal linked to a recovery of 8.5% or below, a premium of 11.7647 paise per quintal for every 0.1% in- crease in recovery above 8.5% is payable by the producers. In calculating the rate applicable to a producer, recovery of sugar for the period December to March, called the optimum period of recovery, has been taken into consideration. The grievance of the petitioners is that assuming that recovery of the previous year could be taken into account it should have been the recovery of the entire crushing period and not the recovery made during the period when it was at the peak. It has been urged that there is no warrant in Clause 3 (1) of the Control Order for taking into consideration the recovery of only December to March. In this connection it has been asserted that the normal period of crushing extends from November to May but the sugar factories are made to continue crushing even after that period on account of surplus production of sugarcane by the cultivators. During the period 1977-78 crushing continued even beyond June 1978 under the direction of the State Government. To take the example of Neoli Sugar Factory run by M/s. Shervani Sugar Syndicate Ltd., the crushing season 1977-78 started on 21st November, 1977 and ended on 23rd June, 1978 i.e., the factory worked for 215 days during that year. Similar was the case with most of the factories in the State. These facts have not been controverted by the respondents.

12. During the current year also, barring a few exceptions, almost all the factories in the State continued crushing beyond March. In April, the Cane Commissioner issued a direction that no Sugar Mill in Uttar Pradesh will close crushing operations without Government permission. Under the directions issued by the Cane Commissioner, most of the factories continued crushing throughout April and May. The factories

that closed down earlier had to do so not on account of paucity of the sugarcane available for crushing but on account of some extraordinary situation. To take the example of Neoli Sugar Mills, it had to close down earlier because the labour went on strike.

13. It is common knowledge that recovery of sugar is not at its best in the beginning of the season when the sugarcane crop is not quite mature and after March, when the quality of cane begins to deteriorate. It was urged that the minimum price fixed in Clause 3 (1) the Control Order is not only for the sugarcane which is purchased and paid for during the optimum period but applies to sugarcane which is purchased and paid for during the entire crushing season. As pointed out earlier, considerations under Sub-clauses (a) to (d) refer to the whole year and are not confined to any particular period. The language of Sub-clause (e) also indicates that the recovery of the entire crushing season of the factory and not a part of it should be taken into consideration. In this connection we may refer to the recommendations of the Bhargava Enquiry Commission. In the opinion of the Commission it is not fair to take the recovery of the optimum period inasmuch as the average recovery of this period represents normally the best quality of cane. However, since the duration of the entire crushing season varies from year to year it is unsuitable for adoption as a basis for fixing the minimum cane price. The Commission recommended that the ''normal crushing period'' should be taken as the basis. This normal crushing period will be midway the optimum period and the entire season. It will also be fixed and pre-determined period. For example, in the case of West U. P., the normal crushing period may be taken as 15th November to 30th April.

14. The learned Advocate General appearing for the respondents contended that the Central Government has to keep in view the economy of the thousands of cultivators on whom the economy of the State depends. The Control Order has been framed for safeguarding the interest of the cultivators so that they get reasonable price for their crop. It was further contended that the language of Sub- Clause (e) does not in terms show that the recovery that has to be taken into account must be for the entire period. Consequently it was open to the Central Government to have regard to the recovery for any particular period during a year. Reliance in this connection was placed on the decisions of the Madhya Pradesh and Patna High Courts, mentioned earlier. We regret our inability to accept the reasoning adopted in those decisions. Since the factor set out in Sub-clauses (a) to (d) admittedly relate to the whole year there appears to be no reasonable basis for confining the question of recovery of sugar only for a particular period, if it was intended that the recovery of only the optimum period has to be taken into consideration, that intention would have been clearly indicated in express words. The omission to confine the period of recovery to any particular period indicates that the recovery must be of the entire season or of the normal crushing season. Since the entire crushing period may vary from factory to factory and from year to year, the

intention under Sub-clause (e) appears to be that it is the recovery of the normal crushing season that has to be taken into consideration. The argument that the Control Order has been framed to safeguard the interest of the large number of cultivators also does not appear to be a valid assumption. In an industry like the sugar industry the interests of the consumers are as vital as those of the cultivators. In fact the interest of the consumer is of paramount importance as emphasised by the Supreme Court in a number of decisions of which the latest is the case of Prag Ice and Oil Mills and Another Vs. Union of India (UOI), where the Court observed:

"The interest of the consumer has to be kept in the forefront and the prime consideration that an essential commodity ought to be made available to the common man at a fair price must rank in priority over every other consideration."

Sugar would have been available to the teeming millions of consumers of this vast Country at a fair price if the correct basis of recovery of sugar from sugarcane would have been adopted. The bogey raised by the learned Advocate General in his argument that if price for sugarcane had been fixed on the basis of recovery for the normal crushing season, the cultivators would have been tempted to divert their land to other agricultural produce does not appear to be justified. It has not been shown that return from other agricultural produce like wheat etc., was more attractive.

15. The validity of the impugned notification was also challenged on the ground that fixation of price factorywise was illegal. Reference in this connection was made to the use of expression ''producers of sugar'' occurring in the main part of Clause 3 (1) and to the language employed in the Explanation appended thereto that different prices may be fixed for different areas or different qualities or varieties of sugar-cane. Our attention was also invited to Section 3(3-C) of the Essential Commodities Act which uses the expression "different prices may be determined from time to time for different areas or for different factories of for different kinds of sugar". According to the learned counsel for the petitioners the language used in the Control Order indicates that prices should have been fixed areawise or zonewise and not factory-wise. It was urged that if it was intended that prices may be fixed factorywise that would have been clearly indicated as was done in Section 3(3C) of the Essential Commodities Act. It was also urged that under the present scheme different sugar factories situate in the same area are required to pay different prices in respect of same quality of sugarcane because of difference in the rate of recovery of sugar and that results in irrational and unreasonable discrimination. On behalf of the respondents it was urged that the language employed in the Control Order does not justify the inference that fixation of price factorywise is not permissible. It was also pointed out that fixation of price of sugar cane factorywise has been in vogue for the last 30 years and no objection was ever raised by the factories. Even the petitioners in their representation before the Government did not challenge the correctness of fixation of price on that basis. In our opinion, the contention of the

petitioners is untenable. The language of Clause 3 (1) of the Control Order and the Explanation appended to it do not justify the inference that it is not permissible to fix separately the price payable by each factory. The language used appears to be flexible and wide enough to empower fixation of price for each factory separately on the basis of its percentage of recovery. Each factory is required to pay what it actually recovers from the sugarcane utilized by it and that forms a rational and reasonable basis for fixation of price. The measure is neither irrational nor discriminatory. Moreover, since this practice has been in vogue for a long period and no objection was taken even in the representation made on behalf of the producers, such an objection deserves to be rejected on that ground alone.

16. For the petitioners it was next contended that in calculating the minimum cane price for individual producers the principle of rounding up the figure of sugar recovery is neither sanctioned by law nor warranted by equitable considerations. It is not disputed that where the recovery figure has more than one place of decimal, the figure in the first place of decimal is increased by one. For example if the recovery is 10.11 or 10.19 it is rounded to 10.2 in both the cases. Assuming that the basis of recovery is 10% and the rate of premium is 10 paise for 0.1% increase in recovery over the basic recovery, the premium works out to 20 paise in both the cases although on the basis of actual recovery it should be 11 paise in one case and 19 paise in the other. In the first case the advantage in favour of the grower is 9 paise and in the other case it is 1 paise only. The financial implication of rounding up the figure of recovery on the producer may be analysed with reference to the case of the Neoli Sugar Mills. In this case recovery of 10.24% has been rounded up to 10.3%. The increase is by 0.06%. The difference in price at the rate of 11.76 paise per quintal on increase of 0.1% comes to 7.05882 paise per quintal. The normal crushing of the factory during a crushing season is about 18 lac quintals of sugarcane. The extra sum that the factory is required to pay on account of rounding up of the recovery figure amounts to over 1.27 lacs. The learned Advocate General could not point out any provision of law or principle of accounting which may justify the device of rounding up the figure of recovery which involves not only considerable financial burden on the producer but also unequally distributes the gain among different cultivators. Even if rounding up is to be adopted for the purpose of convenience in calculating the minimum price of sugarcane, it may be done in respect of the finally calculated price. The adoption of this device with regard to the figure of recovery does not appear to be justified on any ground whatsoever and must be struck down.

17. The learned Advocate General raised an objection that the non-joinder of the Sugarcane Growers Cooperative Societies as respondents in some of the petitions was fatal to the maintainability of those petitions as the decision of the petitions would have a direct bearing on the financial interest of the cane growers. Reliance was placed on the observation made by the Supreme Court in Indian Sugar and Refineries Ltd. Vs. Amarvathi Service Co-operative Society Ltd., . The principle laid down in the above case has no application to the questions raised in the present

petitions. In that case additional price payable for the seasons 1960-61 and 1961-62 was determined by the Government, No appeal against this order was preferred either by the appellant factory or the respondent Co-operative Societies of sugarcane growers. So the additional price fixed became final. The appellant did not pay the additional price. Later on the Government granted exemption to the appellant factory from paying the additional price without affording any opportunity to the Co-operative Societies. The Supreme Court observed that the power to grant exemption to factories from payment of additional price is intimately connected with the right of sugarcane growers td claim additional price. It was, therefore, necessary to give opportunity to the growers of sugarcane as well as the producers of sugar to be heard when the Government exercised under 1966 Control Order for determining the additional price and granting exemption from payment of additional price since the grant of exemption from payment of price affected rights and interests of growers of sugarcane. The subsequent order of the Government granting exemption to the factories from payment of additional price took away rights which had accrued in favour of the growers of sugarcane. Hence the sugarcane growers ought to have been heard when exemption was granted to the factories from payment of additional price. The principle laid down in the aforesaid case is not attracted to the present petitions. In these petitions the notification issued by the Central Government has been impugned. It is the policy decision of the Central Government which is under challenge mainly on the ground that it was in violation of the Control Order. The Union of India against whom relief has been claimed has been impleaded in all the petitions. No relief has been claimed against the cane growers as such. On the principle laid down in The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others, non-impleadment of the Co-operative Societies is not fatal to the maintainability of the petitions. In our opinion, the Co-operative Societies were neither necessary nor proper parties to be impleaded in these petitions.

18. In the petitions filed by Delhi Cloth and General Mills (Writ Petition No. 70 of 1979), Simbheoli Sugar Mills (Writ Petition No. 398 of 1979), The Triveni Engineering Works (Writ Petition No. 327 of 1979), The Uppar Doab Sugar Mills (Writ Petition No. 135 of 1979); M/s. Swarup Vegetable Products Industries (Writ Petition No. 36 of 1979) and M/s. Modi Industries (Writ Petition No. 35 of 1979) the petitioners have challenged the validity of the rate at which they are required to pay for the sugarcane of the last season which under the direction of the Cane Commissioner, dated September 28, 1978 they are required to purchase and consume first before starting crushing of the current season crop. It is not disputed that these factories started the crushing season 1977-78 in the month of November, 1977. They crushed the entire cane that was fixed by the bonding policy of the Cane Commissioner, U. P. and satisfied their statutory obligations for purchase of sugarcane from the cultivators. There was, however, an abnormal glut of sugarcane in the year 1977-78. Under the direction of the U. P. Government the factories went on crushing

sugarcane till the end of July, 1978 and thereby consumed large quantities of sugarcane over and above the quantity of bonded sugarcane. Still at the end of the season some sugarcane could not be consumed and remained standing in the fields. Before the beginning of the season 1978-79 the Cane Commissioner issued a direction td the effect that these factories shall first consume the sugarcane of the last season before starting crushing the current year''s sugarcane crop. It may be recalled that for the year 1977-78 the basic minimum price of sugarcane was fixed at Rs. 8.50 per quintal linked to a recovery of 8.5% or below with a premium of 10 paise per quintal for further 0.1 % increase in recovery above 8-5%. For the year 1978-79 the basic minimum price was enhanced to Rupees 10/- per quintal. The case set up by the petitioners was that although their normal crushing season extended from November to April, they continued crushing operations till about the end of July and thus crushed much more sugarcane than their normal average capacity. According to the petitioners on the average, recovery from the cane of the last season is less than 7%. The facts set out above have not been controverted. The contention of the petitioners was that neither in law nor in equity could they be compelled to pay for the last season''s sugarcane at the rate fixed for the current year. If that cane had been crushed during the last season, the cultivators would have received payment at the rate fixed for the season 1977-78. It was for no fault of the producers that some cane still remained in the fields and naturally they cannot be penalised for utilizing this cane when admittedly recovery from this cane would be below the normal recovery. The stand taken by the respondents on the other hand was that since the agriculturists were compelled to keep the crop standing on their fields and they could not utilize the land for growing any other crop, they deserve to be compensated by directing the producers to pay at the enhanced rate fixed for the season 1978-79. It was further stressed that low recovery from the old sugarcane would be reflected in the average recovery for the current year and when the price will be fixed for the next year''s sugarcane crop the producers shall get the advantage in fixation of price. We find no justification for compelling the producers of sugar to pay for the old sugarcane at the rate fixed for the sugarcane of the current season. What would be the policy of the Government for the next season is an unknown and doubtful factor. The producers were compelled to continue crushing till about the end of July and admittedly recovery of sugar during the extended crushing season was much below the average recovery. The Central Government, however, ignored the recovery made during November and after March while fixing the minimum price payable by each factory for the current season. To compel them to pay for the old sugarcane at the enhanced rate during the current season for a stuff which would yield less sugar than the average and that too at a time when the price of sugar has fallen considerably below the level prevailing in the preceding year, does not appear to be just and fair. It clearly smacks of arbitrariness and seems to be motivated by extraneous considerations. In the interest of national economy and to safeguard the interest of the cultivators, the direction to consume the old standing crop first may be justified but the price for

this cane must not be pegged at a rate higher than the rate applicable for the sugarcane of 1977-78 season.

19. In Writ Petition No. 10649 of 1978 filed by Rai Bahadur Narain Singh Sugar Mills Ltd., Saharanpur, and some other petitions the petitioners have challenged the legality and reasonableness of the rate of rebate fixed under Sub-clauses (a) and (b) of proviso (1) to Clause 3-A of the Control Order, in respect of sugar cane delivered at the out purchasing centres of the petitioners. Under the aforesaid provisions deductions are restricted to a ceiling of 32 paise per quintal of cane both in respect of cane hauled by rail and road transport. Before Clause 3-A was introduced in the Control Order in 1976 deduction was provided for in the notification issued under Clause 3 of the Control Order. The ceiling of 32 paise per quintal was fixed as far back as 1958-59. The State Government of Uttar Pradesh permitted a rebate at the rate of Re. 1/- per quintal during the last few years. According to the petitioner in Writ Petition No. 10649 of 1978, the actual cost of transporting of sugarcane from the out purchasing centres to the petitioner factory which includes loading charges, freight annual kachcha road repair and salaries of supervisory staff comes to about Rupees 1.135 per quintal. In the year 1977-78 the total purchase of sugarcane by the petitioner amounted to over 38 lac quintals, out of which purchase at the factory gate was of over 10 lac quintals and purchase at outer centres was about 28 lac quintals. The loss suffered by the factory on account of the difference between the rebate permitted and the actual cost of transporting amounted to over 20 lacs. According to the other petitioners the incidence of transporting charges on out station cane amounts to Rs. 1.50 per quintal. In the representation made by the Sugar Mills Associations necessary particulars of the transportation charges were set out in detail. The correctness of the facts and figures furnished by the petitioners have not been specifically disputed. At one stage during the course of hearing it was stated on behalf of the respondents that the Union Government was considering revision of the rebate in case of sugarcane delivered at out station purchasing centres but subsequently we were informed that the matter was not under consideration of the Central Government at present. In view of the fact that the cost of transportation charges have increased considerably during the last couple of years, maintaining the rate of rebate at 32 paise per quintal appears to be arbitrary and unreasonable. These out station purchase centres are sometimes situate at a distance of 10 to 15 miles away from the factory premises. A rebate of 32 paise per quintal for purchases made at these centres cannot possibly meet the actual expenses incurred by the producers of sugar. The matter deserves to be considered afresh by the Central Government.

20. In the result, the petitions are allowed with costs. The impugned Notification dated 1st October, 1978 fixing the minimum price payable by the petitioners specified in the Schedule is quashed and we direct that the minimum price of sugarcane payable by the petitioner factories during the year 1978-79 be re-fixed in accordance with law keeping in view the observations made in this judgment.

21. We further direct that in respect of sugarcane of the last years which the petitioners Delhi Cloth and General Mills, Simbhaoli Sugar Mills; The Triveni Engineering Works. The Uppar Doab Sugar Mills, M/s. Swarup Vegetable Products Industries and M/s. Modi Industries purchased under the direction of the Cane Commissioner, Uttar Pradesh, the price shall not exceed the minimum price fixed under the notification issued by the Central Government for the year 1977-78 in respect of the aforesaid petitioners.

22. We further direct the Central Government to fix the rate of rebate allowable in case of sugarcane delivered at out station purchasing centres at a rational and reasonable basis keeping in view the cost of transportation both in respect of sugarcane hauled by rail and road transport.