

A WEST U.P. SUGAR MILLS ASSOCIATION & ORS.

v.

STATE OF UTTAR PRADESH & ORS.

(Civil Appeal No. 7508 of 2005)

JANUARY 17, 2012

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[DALVEER BHANDARI, T.S. THAKUR AND DIPAK
MISRA, JJ.]

*U.P. Sugarcane (Regulation of Supply and Purchase)
C Act, 1953 - s. 16 - Fixation of State Advised Price (SAP) for
sugarcane, over and above the minimum price fixed by the
Central Government - Power of the State Government -
D Conflicting judgments by the Constitution Bench of five
judges of the Court - Instant matter before a Bench of three
judges - Since conflicting judgments have been delivered by
the Bench of five judges, matter referred to a larger Bench of
at least seven judges - However, certain directions issued to
the sugar factories to pay the balance outstanding principal
amount to cane growers or to the co-operative societies
E according to the SAP of the relevant crushing seasons.*

**The question which arose for consideration in these
matters was whether the State of Uttar Pradesh has the
authority to fix the State Advised Price (SAP) which is
required to be paid over and above the minimum price
F fixed by the Central Government.**

**The appellant contended that in the Constitution
Bench judgment in **Tika Ramji's* case it was held that
there was no power to fix a price for sugarcane under the
G U.P. Sugar Cane (Regulation of Supply and Purchase)
Act, 1953 or Rules and orders made thereunder and the
same was contrary to the majority judgment in the later
Constitution bench judgment of 2004 in ***U.P. Co-
operative Cane Unions Federation's* case; and as such**

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WEST U.P. SUGAR MILLS ASSOCIATION v. STATE 353
OF UTTAR PRADESH

the cases may be referred to a larger bench.as regards
the power to fix a price for sugarcane.

Referring the matter to the larger Bench, the Court

HELD: 1.1. Ordinarily a Bench of three Judges should refer the matter to a Bench of five Judges, but, in the instant case since both the conflicting judgments *Ch. Tika Ramji and others etc. v. State of Uttar Pradesh and Others and **U.P. Cooperative Cane Unions Federations v. West U.P. Sugar Mills Association and Others have been delivered by the Constitution Benches of five Judges of this Court and thus, this controversy can be finally resolved only by a larger Bench of at least seven Judges of this Court, the matters are referred to the larger Bench. [Para 10] [360-F-G]

**Ch. Tika Ramji and others etc. v. State of Uttar Pradesh and others (1956) SCR 393; **U.P. Cooperative Cane Unions Federations v. West U.P. Sugar Mills Association and others (2004) 5 SCC 430: 2004 (2) Suppl. SCR 238 and Mineral Area Development Authority and others v. Steel Authority of India and others (2011) 4 SCC 450: 2011 (4) SCR 19 - referred to.*

1.2. In the peculiar facts and circumstances of the instant cases, the sugar factories are directed to pay the balance outstanding principal amount to the cane growers or to the co-operative societies according to the SAP of the relevant crushing seasons. In other words, in all those cases where the sugar factories and other buyers have not paid the balance outstanding principal amount to the cane growers or to the co-operative societies because of the stay orders obtained by them from this Court or from the High Court, they are now directed to pay the balance outstanding principal amount according to the SAP as fixed by the State Government from time to time. All the stay orders granted by this Court

A or by the High Court are modified/vacated in the aforesaid
terms. The balance outstanding principal amount are to
be paid by the sugar factories within the stipulated
period otherwise, buyers would be liable to pay interest
at the rate of 18% per annum on the delayed payment to
B the cane growers or to the co-operative societies, as the
case may be. [Para 13 and 14] [361-F-H; 362-A-B]

1.3. It is made clear that the payment of the balance
outstanding principal amount by the sugar factories is of
course without prejudice to the main submissions
C advanced by them (sugar factories) that the State
Government lack legislative competence to impose the
SAP. [Para 15] [362-C-D]

1.4. The SAP has been continuously increasing every
D year. In all those cases, where for any reason, the SAP
was not fixed in a particular year, then, the sugar
factories/buyers would be liable to pay the balance
outstanding principal amount to the cane growers at the
rate of the SAP of the previous year. [Para 17] [362-E-F]

E Case Law Reference:

(1956) SCR 393	Referred to	Para 6, 7
2004 (2) Suppl. SCR 238	Referred to	Para 6, 7
F 2011 (4) SCR 19	Referred to	Para 11

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
7508 of 2005.

G From the Judgment & Order dated 07.10.2004 of the High
Court of Judicature at Allahabad in Civil Misc. Writ Petition No.
26291 of 2004.

WITH

H Civil Appeal Nos. 7509-7510 of 2005, 150, 2664 of 2007,
4026, 4024, 4025. 4014-4023 of 2009.

WEST U.P. SUGAR MILLS ASSOCIATION v. STATE 355
OF UTTAR PRADESH

Contempt Petition (C) No. 169 of 2006 in C.A. No. 7508 of 2005, Contempt Petition (C) No. 253 of 2007 in C.A. No. 7508 of 2005, Contempt Petition (C) No. 254 of 2007 in C.A. No. 7508 of 2005. A

Civil Appeal Nos. 3911-3912, 3925, 3996-3997 of 2009. B

Contempt Petition (C) NOs. 263-264 of 2008 in C.A. Nos. 3996-3997 of 2009, Contempt Petition (C) Nos. 265-266 of 2008 in C.A. Nos. 3996-3997 of 2009, Contempt Petition (C) Nos. 267-268 of 2008 in C.A. Nos. 3996-3997 of 2009.

Civil Appeal No. 4764/2009 C

SLP (C) Nos. 21576-21581, 21585-21587, 18681, 19183, 20205, 20206. 23202, 26026 of 2008.

P.P. Malhotra, ASG, Mukul Rohtagi, Sudhir Chandra, Jayant Bhushan, Indu Malhotra, Rajiv Dutta, J.S. Attri, Ashok H. Desai, M.L. Verma, Dr. Rajeev Dhawan, Shail Kumar Dwivedi, AAG, Mahesh Agarwal, Narinder Kumar Verma, Gaurav Goel, Kush Chaturvedi, J.K. Sethi, Vansh Deep Dalmia, Vikas Mehta, Syed Shahid Hussain Rizvi, Sanjeev Kumar Singh, Uday Kumar, Rajesh Tiwari, Parijat Sinha, Sanjeev K. Singh, Uday Singh, Ruby Singh Ahuja, Abeer Kumar, Ishan Gaur, Bhagwati Prasad Padhy (for Karanjawala & Co.), V.M. Singh, Prashant Kumar, Anurag Sharma (for AJ & J Chambers), Manik Karanjawala, E.C. Agrawala, Vishwajit Singh, Praveen Kumar, Umesh Kumar Khaitan, Kritika Mehra, Bhumika Manan, Vishnu Sharma, P.N. Gupta, Indira Sawhney, Gaurav Sharma, Binu Tamta, Sushma Suri, Anil Katiyar (for V.K. Verma), Ravi P. Mehrotra, Vibhu Tiwari, Shantanu Krishna, Ajay Singh, Mukesh Verma, Vandana Mishra, S.S. Shamsbery, Jatinder Kumar Bhatia, Abhishek Attrey, V.D. Khanna, Parvesh Sharma, Bimal Roy Jad, Rajeev K. Bharti, Nopni Gopal Dev, Manvendra Verma, K.R. Sasiprabhu, Punit D. Tyagi, Sidharth Chowdhary, Bina Gupta, Pradeep Mishra, Gunnam Venkateswara Rao, Ajay Kumar Talesara, T. Mahipal, Ritesh Agrawal, Ajay Choudhary, Ambhoj Kumar Sinha for the appearing parties. D
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A The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. The crucial issue involved in this group of matters is whether the State of Uttar Pradesh has the authority to fix the State Advised Price (for short, 'SAP'), which is required to be paid over and above the minimum price fixed by the Central Government?

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2. It is submitted by the appellants that the power to regulate distribution, sale or purchase of cane under Section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as the 'U.P. Sugarcane Act') does not include the power to fix a price. According to the appellants, this aspect has been comprehensively dealt with by the Constitution Bench judgment of this court in *Ch. Tika Ramji and others etc. v. State of Uttar Pradesh and others* (1956) SCR 393. In this case this Court enumerated the legislative history of laws relating to sugar and sugarcane of both Centre and States. This Court came to the specific conclusion that the power reserved to the State Government to fix the minimum price of sugarcane which existed in U.P. Act 1 of 1938 was deleted from the U.P. Sugarcane Act since that power was being exercised by the Centre under Clause 3 of the Sugar and Gur Control Order, 1950. The relevant paragraphs from pages 422, 433 and 434 of the *Tika Ramji's* case are reproduced as under:

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“... ..*Even the power reserved to the State Government to fix minimum prices of sugarcane under Chapter V of U.P. Act 1 of 1938 was deleted from the impugned Act the same being exercised by the Centre under clause 3 of Sugar and Gur Control Order, 1950, issued by it in exercise of the powers conferred under Section 3 of Act XXIV of 1946. The prices fixed by the Centre were adopted by the State Government required under rule 94 was that the occupier of a factory or the purchasing agent should cause to be put up at each*

WEST U.P. SUGAR MILLS ASSOCIATION v. STATE 357
OF UTTAR PRADESH [DALVEER BHANDARI, J.]

purchasing centre a notice showing the minimum price of cane fixed by the Government meaning thereby the Centre. The State Government also incorporated these prices which were notified by the Centre from time to time in the forms of the agreements which were to be entered between the cane growers, the cane growers cooperative societies... ..”

... ..

“... ..As we have noted above, the U.P. State Government did not at all provide for the fixation of minimum prices for sugarcane nor did it provide for the regulation of movement of sugarcane as was done by the Central Government in clauses (3) and (4) of the Sugarcane Control Order, 1955. The impugned Act did not make any provision for the same and the only provision in regard to the price of sugarcane which was to be found in the U.P. Sugarcane Rules, 1954, was contained in Rule 94 which provided that a notice of suitable size in clear bold lines showing the minimum price of cane fixed by the Government and the rates at which the cane is being purchased by the centre was to be put up by an occupier of a factory or the purchasing agent as the case may be at each purchasing centre. The price of cane fixed by Government here only meant the price fixed by the appropriate Government which would be the Central Government, under clause 3 of the Sugarcane Control Order, 1955, because in fact the U.P. State Government never fixed the price of sugarcane to be purchased by the factories. Even the provisions in behalf of the agreements contained in clauses 3 and 4 of the U.P. Sugarcane Regulation of Supply and Purchase Order, 1954, provided that the price was to be the minimum price to be notified by the Government subject to such deductions, if any, as may be notified by the Government from time to time meaning thereby the

A *Central Government, the State Government not having made any provision in that behalf at any time whatever.*
.....”

B 3. It has been specifically held in *Tika Ramji's* case that there was no power to fix a price for sugarcane under the U.P. Sugarcane Act or rules and orders made thereunder.

C 4. It is also submitted by the appellants that even if such a power had existed under Section 16 of the U.P. Sugarcane Act, even then such power would be totally repugnant to the power of the Central Government to fix the minimum price under clause 3 of the Sugarcane Control Order, 1955. This Court in *Tika Ramji's* case has not commented on whether such a power with the State Government would be repugnant to the Central legislation, since it found no such power with the State
D Government, however, the majority judgment in the later Constitution Bench judgment of 2004 in *U.P. Cooperative Cane Unions Federations v. West U.P. Sugar Mills Association and others* (2004) 5 SCC 430 held as under:

E “The inconsistency or repugnancy will arise if the State Government fixed a price which is lower than that fixed by the Central Government. But, if the price fixed by the State Government is higher than that fixed by the Central Government, there will be no occasion for any
F inconsistency or repugnancy as it is possible for both the orders to operate simultaneously and to comply with both of them. A higher price fixed by the State Government would automatically comply with the provisions of sub clause (2) of clause 3 of the 1966 Order. Therefore, any price fixed by the State Government which is higher than
G that fixed by the Central Government cannot lead to any kind of repugnancy.”

H 5. According to the appellants, the aforementioned conclusion of the *U.P. Cooperative Cane Unions Federations* is contrary to *Tika Ramji's* case.

6. We have heard learned counsel for the parties at length. We have also carefully perused and analysed both the aforementioned judgments delivered by the two Constitution Benches of this Court in *Tika Ramji and U.P. Cooperative Cane Unions Federations's* cases. A

7. In our considered view, there is a clear conflict in the aforementioned judgments of the Constitution Benches. It may be pertinent to mention that almost every year a spate of petitions are filed before the Allahabad High Court and thereafter before this Court on similar issues and questions of law. Therefore, in the interest of justice, it is imperative that the conflict between these judgments be resolved or decided by an authoritative judgment of a larger Bench of this Court. B C

8. The learned counsel for the appellants in one voice asserted that these cases be referred to a larger Bench so that at least in future the parties would have benefit of a clearer enunciation of law by an authoritative judgment of a larger Bench. D

9. Following questions of law may be considered by a larger Bench of this Court: E

- (1) Whether by virtue of Article 246 read with Entry 33 of List III to the Seventh Schedule of the Constitution the field is occupied by the Central legislation and hence the Central Government has the exclusive power to fix the price of sugarcane? F
- (2) Whether Section 16 or any other provision of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 confers any power upon the State Government to fix the price at which sugarcane can be bought or sold? G
- (3) If the answer to this question is in the affirmative, then whether Section 16 or the said provision of the H

A U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 is repugnant to Section 3(2)(c) of the Essential Commodities Act, 1955 and Clause 3 of the Sugarcane (Control) Order, 1966? and if so, the provisions of the Central enactments will prevail over the provisions of the State enactment and the State enactment to that extent would be void under Article 254 of the Constitution of India.

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C (4) Whether the SAP fixed by the State Government in exercise of powers under Section 16 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 is arbitrary, without any application of mind or rational basis and is therefore, invalid and illegal?

D (5) Does the State Advisory Price (for short 'SAP') constitute a statutory fixation of price? If so, is it within the legislative competence for the State?

E (6) Whether the power to fix the price of sugarcane is without any guidelines and suffers from conferment of arbitrary and uncanalised power which is violative of Articles 14 and 19 (1) (g) of the Constitution of India?

F 10. We are conscious of the fact that ordinarily a Bench of three Judges should refer the matter to a Bench of five Judges, but, in the instant case since both the aforementioned conflicting judgments have been delivered by the Constitution Benches of five Judges of this Court and hence this controversy can be finally resolved only by a larger Bench of at least seven Judges of this Court.

G 11. Recently, a three-Judge Bench of this court in *Mineral Area Development Authority and others v. Steel Authority of India and others* (2011) 4 SCC 450 dealt with somewhat

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similar situation and this Court in para 2 of the said judgment observed as under: A

“Before concluding, we may clarify that normally the Bench of five learned Judges in case of doubt has to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger coram than the Bench whose decision has come up for consideration (see *Central Board of Dawcodi Bohra Community v. State of Maharashtra* (2005) 2 SCC 673). However, in the present case, since prima facie there appears to be some conflict between the decision of this Court in *State of W.B. v. Kesoram Industries Ltd.* (2004) 10 SCC 201 which decision has been delivered by a Bench of five Judges of this Court and the decision delivered by a seven-Judge Bench of this Court in *India Cement Ltd. v. State of T.N.* (1990) 1 SCC 12, reference to the Bench of nine Judges is requested. The office is directed to place the matter on the administrative side before the Chief Justice for appropriate orders.” B
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12. Reference of these matters to a larger Bench is made so that the controversy which arises almost every year is settled by an authoritative judgment of a larger Bench of this Court. E

13. However, in the peculiar facts and circumstances of these cases, we direct the sugar factories to pay the balance outstanding principal amount to the cane growers or to the cooperative societies according to the SAP of the relevant crushing seasons. In other words, in all those cases where the sugar factories and other buyers have not paid the balance outstanding principal amount to the cane growers or to the cooperative societies because of the stay orders obtained by them from this Court or from the High Court, they are now directed to pay the balance outstanding principal amount according to the SAP as fixed by the State Government from time to time. All the stay orders granted by this court or by the F
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A High Court are modified/vacated in the aforesaid terms. Let the balance outstanding principal amount be paid by the sugar factories within three months from the date of this judgment.

B 14. In case the balance outstanding principal amount, as directed by this Court, is not paid within three months from the date of this judgment then the sugar factories/buyers would be liable to pay interest at the rate of 18% per annum on the delayed payment to the cane growers or to the cooperative societies, as the case may be.

C 15. It is made clear that the payment of the balance outstanding principal amount by the sugar factories is of course without prejudice to the main submissions advanced by them (sugar factories) that the State Government lack legislative competence to impose the SAP.

D 16. It may be pertinent to mention that all these cases are covered by separate individual agreements where the sugar factories had undertaken to pay the SAP to the cane growers. We are not examining the veracity of these agreements.

E 17. It may be relevant to note that the SAP has been continuously increasing every year. In all those cases, where for any reason, the SAP was not fixed in a particular year, then, the sugar factories/buyers would be liable to pay the balance outstanding principal amount to the cane growers at the rate of the SAP of the previous year. On consideration of all the facts and circumstances of these cases, we request Hon'ble the Chief Justice of India to refer these matters to a larger Bench, preferably to a Bench consisting of seven Judges.

F 18. All these Civil Appeals and other petitions are accordingly referred to a larger Bench.

G N.J. Matter referred to Larger Bench.

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