

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5736 OF 2022
WITH
INTERIM APPLICATION NO. 16542 OF 2022
WITH
INTERIM APPLICATION (ST) NO.6057 OF 2025

1. **Raju Alias Devappa Anna Shetti**)
Age 54 years, Occ. Agriculturist)
Ex-Member of Parliament, Hatkanagle)
R/o. Shirol, Tal. Jaisinghpur,)
District: Kolhapur)
2. **Anil Balu Madnaik**)
Age 50 years, Occ. Farmer)
R/o. Udgaon, Dist. Kolhapur)
3. **Sagar Jambu Shambushete**)
Age 45 years, Occ. - Farmer)
R/o. Nandani, Dist. Kolhapur)
4. **Prakash Yashwant Desai**)
Age: 47 years, Occ. Farmer)
R/o. Shirate, Taluka- Walva, Dist. - Sangli)
5. **Rajendra Balasaheb Belle**)
Age: 39 years, Occ. - Farmer)
R/o. Samdoli, Taluka – Miraj, Dist.- Sangli)
6. **Rajaram Ganpati Desai**)
Age 43 years, Occ. - Farmer)
R/o. Hupari, Taluka-Hatkanangale,)
Dist. - Kolhapur.)
7. **Jalinder Ganapati Patil**)
Age 48 years, Occ. - Farmer)
R/o. Rashivade, Tal.- Shirol, Dist.- Kolhapur)
8. **Annaso Chougule**)
Age 41 years, Occ. - Farmer)
R/o. Kurundwad, Tal.Shirol, Dist.-Kolhapur)

9. Dr. Balasaheb Patil)
 Age 53 years, Occ. Farmer)
 R/o. Belwale, Taluka-Kagal, Dist.-Kolhapur)

10. Suryakant Anna More)
 Age 48 years, Occ.- Farmer)
 R/o. Palus, District – Sangali)

...Petitioners

Versus

1. The State of Maharashtra, through its)
 Secretary Department of Cooperation)
 Ministry of Cooperation, State of)
 Maharashtra, Mantralaya, Mumbai – 01.)

2. The Union of India)
 Through its Secretary Ministry of Food and)
 Civil Supplies Department of Food and)
 Civil Supplies, Krishi Bhavan, New Delhi-01)

3. The Chief Director of Sugar)
 Directorate of Sugar, Ministry of Food,)
 Public Distribution and Consumer Affairs,)
 Krishi Bhavan, New Delhi – 01.)

4. The Sugar Commissioner,)
 State of Maharashtra, Sakhar Sankul,)
 Pune – 04.)

...Respondents

With

Maharashtra State Cooperative Sugar Factories)
 Federation Ltd., thr. Administrative Officer)

...Applicant

AND

WRIT PETITION (St.) NO. 17248 OF 2022

Dhanaji Daragu Chudmunge
 Vs.

... Petitioner

The State of Maharashtra, through Secretary
 Dept. of Cooperation & Ors.

... Respondents

AND

WRIT PETITION NO. 11514 OF 2022

Sant Muktai Sugar and Energy Ltd. ... Petitioner
Vs.
Union of India & Ors. ... Respondents

WRIT PETITION NO. 12825 OF 2022

Baliraja Sakhar Karkhana Ltd. ... Petitioner
Vs.
Union of India & Ors. ... Respondents

WRIT PETITION NO. 12826 OF 2022

Shraddha Energy and Infra Projects Pvt. Ltd. ... Petitioner
Vs.
Union of India & Ors. ... Respondents

Mr.Yogesh Pande for the Petitioner in WP/5736/2022 & WP(ST)/17248/2022.

Mr. Ranjit Agashe a/w. Ms. Namrata Agashe, Mr. Rajendra Jain, Ms. Vinsha Acharya, Mr. Pranil Lahigade, Mr Aniket Pardeshi for the Petitioner in WP/12826/2022.

Mr. Arshad Shaikh, Senior Advocate a/w. Mr. Ranjit Agashe, Ms. Namrata Agashe, Mr. Rajendra Jain, Ms. Vinsha Acharya, Mr. Pranil Lahigade, Mr. Aniket Pardeshi for Petitioner in WP/11514/2022.

Mr. Anil V. Anturkar, Senior Advocate a/w. Mr. Tanaji Mhatugade for Applicant in IA/16542/2022.

Ms. Priyanka Ashok Deshpande i/b Ms. Manjiri Parasnis for the Petitioner in WP/12825/2022.

Mr. Parag Vyas a/w. Mr. D.A. Dubey, Mr. Gaurang, Mr. Ashok Varma i/b Ansari for Respondent No.1/UOI for WP/11514/2022.

Mr. D.P. Singh i/b Mr. A.A. Ansari for Respondent No.1 in WP/12825/2022, WP/12826/2022.

Mr. Parag A. Vyas a/w. Mr. Gaurang Jhaveri for Respondent Nos. 2 & 3 in WP/5736/2022.

Dr. Birendra Saraf, Advocate General a/w. Ms. Neha Bhide, Government Pleader aw Mr. Vaibhav Charulwar “B” Panel Counsel aw Mr. Y.D. Patil, AGP for State.

Mr. S.R. Borulkar a/w. Mr. S.S. Borulkar in IA(St.)/6057/2025.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
RESERVED ON: 18 FEBRUARY 2025
PRONOUNCED ON: 17 MARCH 2025

JUDGMENT (Per G. S. Kulkarni, J.):-

1. This batch of petitions raise a common challenge, which is primarily to the Government Resolution dated 21 February, 2022 issued by the State Government in its Cooperation, Marketing and Textiles Department, whereby a policy is formulated by the State Government for payment of price of sugarcane, namely, the Fair and Remunerative Price (for short “FRP”) to the farmers being contrary to the “Sugarcane (Control) Order, 1966” (for short “SCO 1966”) issued by the Central Government.
2. On behalf of the sugarcane farmers, Writ Petition No. 5736 of 2022- Raju alias Devappa Anna Shetty & Ors. was argued as the lead matter, which is filed in the interest of the farmers/ agriculturists growing sugarcane and supplying their produce to the sugar factories. In similar interest, other Writ Petitions are filed by the sugar mills, who are aggrieved by the impugned Government Resolution.
3. There is an Intervention Application filed on behalf of the farmers by Mr. Anil Jaysing Ghanwat, who is the Ex-President of Shetkari Sanghatana established by Shri Sharad Joshi, who was also the President of Swatantra Bharat Party, a Political Wing of Shetkari Sanghatana. The intervenors are

stated to have a long history of dialogue and agitations on behalf of sugarcane growers on the price of sugarcane, since the year 1980, as set out in the application.

4. The opposition to the petition is from the State Government, which is represented by Dr. Birendra Saraf, learned Advocate General. There is also an Intervention Application filed by the Maharashtra State Co-operative Sugar Factories Federation Ltd., who are opposing the petition. Mr. Anturkar, learned senior counsel is representing these intervenors.

5. The Government of India, which has issued the SCO 1966 in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955, (for short 'EC Act') is also arrayed as respondent in the Writ Petition, has supported the actions taken by the Central Government and the notification issued under the SCO 1966. The Central Government is represented by learned counsel Mr. Parag Vyas.

FACTS

6. The facts relevant to the lead petition filed by the petitioner-Raju @ Devappa Anna Shetty & Ors. are required to be noted:

The case of the petitioners is that they are agriculturist/sugarcane farmers who have been cultivating sugarcane since past 10 to 30 years. It is contended that the Central Government introduced the concept of Fair and

Remunerative Price (FRP) to be paid to sugarcane growers in or about the year 2009. The object behind the FRP was to ensure that the sugarcane growers are receiving a fair and adequate minimum price for the sugarcane supplied by them to the sugarcane factories. The intention of the Central Government was to protect the sugarcane growers from the organized sector of sugar factories in India.

7. The petitioners have referred to the SCO 1966 to contend that by an amendment to the definition clause as inserted with effect from 22 October, 2009, the definition of “Fair and Remunerative Price of sugarcane” (FRP) was incorporated in Clause 2(cc) to mean “*the price fixed by the Central Government under Clause 3, from time to time, for the sugarcane.*” It is contended that similarly, the definition of “price” as contained in Clause 2(g) was redefined to mean that the price or fair and remunerative price (FRP) fixed by the Central Government from time to time for sugarcane delivered *inter alia* to a sugar factory at the gate of the factory or at a sugarcane purchasing centre; or to a khandsari unit. The petitioners have also referred to Clause 3 of the SCO 1966 to contend that it provides for determination of FRP of sugarcane payable by producer of sugar, in the manner as stipulated and to be fixed by the Central Government and the factories in regard thereto. It is contended that sub-clause (1) of Clause 3 ordains that 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 fair and remunerative price of sugarcane to be paid by producers of sugar or their agents for the sugarcane purchased by them, having regard to the factors as enumerated in sub-clauses (a) to (g) of Clause 3(1).

8. The petitioners contend that what is most imperative in the context of the present proceedings is the mandate of Clause 3(2) of the SCO 1966, which provides that 'no person shall sell or agree to sell sugarcane to the producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than that fixed under sub-clause(1). Further Clause (3) and sub-clause (3A) of Clause 3, around which the entire controversy in the present proceedings revolves, namely, that an obligation on the purchaser of the sugarcane *inter alia* to pay within 14 days from the date of delivery of the sugarcane to the seller and further sub-clause (3A) providing that when a producer of sugar or his agent fails to make payment for the sugarcane purchased within 14 days from the date of delivery, he shall pay interest on the amount due at the rate of 15% p.a. for the period of such delay beyond 14 days.

9. The petitioner has contended that although the aforesaid mandatory provisions of Clause 3 and sub-clause (3A) of the SCO 1966 were subsisting and binding at all material times, on the stakeholders including the State Government, however, contrary to the mandate of the said provisions, the State Government has issued the impugned Government Resolution dated

21 February, 2022 providing that from the sugar crushing season for the year 2021-22, FRP of sugarcane payable to cane farmers be calculated based on sugar recovery of same year, hence, until final rates of FRP are finalized, base recovery for revenue circle of Pune and Nashik be calculated with basic minimum recovery as 10% and for Aurangabad, Amravati and Nagpur, minimum recovery base for calculating FRP shall be at 9.50% with a further provision that transportation and harvesting (T & H) cost to be deducted from sugarcane price payable to the farmers. The impugned Government Resolution also provides for calculating average harvesting and transportation cost for previous two accounting years and deducting such amounts, from the amount payable as first installment to farmers and then after closure of sugar season, while paying final sugarcane FRP to the cane farmers, final recovery for entire season of respective sugar mill and final harvesting transportation cost, shall be deducted from final price payable to the farmers. It also provides that to fix final FRP payable to sugarcane farmers within 15 days of closure of sugar crushing season and accordingly difference price to be paid to the sugarcane farmers subsequently.

10. The case of the petitioners is to the effect that the impugned Government Resolution dated 21 February, 2022 is contrary to the sugarcane pricing policy, issued by the Government of India, and if the same is implemented, it shall adversely impact sugarcane farmers within the State of Maharashtra inasmuch as the farmers would receive much lesser amounts,

for the sugarcane supplied to the sugar factories. It is also contended that the farmers would be required to wait until closure of the sugarcane crushing season, for receiving price the price of the sugarcane supplied, as it would be determined at the end of the sugarcane season, which would be contrary to the mandatory directions as set out under the SCO 1966. The petitioners have also contended that the impugned Government Resolution is also rendered contrary to the provisions of the Maharashtra Regulation of Sugarcane Price (Supplied to Factories) Act, 2013 (for short “**the 2013 Act**”) under which sub-section (1) of Section 5 provides that as soon as the sugarcane is supplied to the occupier of a factory, the factory shall be liable to pay within 14 days of the receipt thereof, the minimum price as per FRP applicable at the relevant time.

11. The petitioners have further contended that the petition was filed on 2 March, 2022 at which time the relevant crushing season was 2021-22 in respect of which the Government of India had issued a policy dated 25 August, 2021 annexed at Exhibit D to the petition, approving the Fair and Remunerative Price (FRP) of sugarcane for sugar season 2021-22 which was fixed at Rs.290/- per quintal for a basic recovery rate of 10%, providing a premium of Rs.2.90 per quintal for each 0.1% increase in recovery over and above 10%. It provides for reduction in FRP by Rs.2.90 per quintal for every 0.1% decrease in recovery. It also provided that where recovery is below 9.5%, the farmers shall be granted Rs.275.50 per quintal for the

sugarcane as supplied by them, for the said season in place of Rs.270.75 per quintal.

12. The petitioners have contended that in pursuance of said policy, a notification dated 31 August, 2021 came to be issued by the Government of India fixing the Fair and Remunerative Price (FRP) payable by sugar factories for sugar season 2021-22. The relevant extract of which reads as under:

“Subject : Fixation of Fair and Remunerative Price (FRP) payable by sugar factories for sugar season 2021-22.

Sir,

I am directed to inform that the Government of India has determined the ‘Fair and Remunerative Price’ of sugarcane payable by sugar factories for sugar season 2021-22 as under:

- i) Fair and Remunerative Price (FRP) of sugarcane for sugar season 2021-22 at ₹ 290 per quintal for a basic recovery rate of 10%;
 - ii) a premium of ₹ 2.90 per quintal for every 0.1 percentage point increase above 10% in the recovery;
 - iii) reduction in FRP proportionately by ₹ 2.90 per quintal for every 01. percentage point decrease in recovery, in respect of those factories whose recovery is below 10% but above 9.5%. However, for sugar factories having recovery of 9.5% or less, the FRP is fixed at ₹ 275.50 per quintal.
2. This may be brought to the knowledge of your member mills for compliance.”

13. The petitioners have contended that the State Government thereafter issued a notification dated 11 October, 2021 whereby the State Government adopted the FRP as fixed by the Central Government by notification dated

31 August, 2021 (supra). The petitioners have contended that although FRP as notified by the Central Government was accepted by the State Government and notified, the State Government issued the impugned Government Resolution dated 21 February, 2022 setting out a policy for payment of FRP to the farmers and patently contrary to the SCO 1966 and to the 2013 State Act, as also the notification dated 31 August, 2021 issued by the Government of India fixing the FRP for the crushing season.

14. On the aforesaid broad conspectus, the petitioners are before the Court making the following prayers in Writ Petition No.5736 of 2022:-

A. That, this writ petition May kindly be allowed;

B. That Resolution dated 21/2/2022 (Colly A) issued by Respondent No. 1 be Quashed and Set Aside and declared Bad in Law and Violative of Sec 3 and Sec 3(A) of Sugar Cane Control Order 1966.

C. That by issuing writ of Mandamus or any other appropriate writ, order or directions in the like nature, direct the Respondents No. 1 to 4 to take appropriate steps and action to implement FRP payable to sugar cane farmers for sugar season 2022-2023 as per provisions of the sugar cane control order 1966 and as per Maharashtra Regulation of Sugarcane Price (Supplied to Factories) Act, 2013 wherein FRP payable to sugar cane farmers within Maharashtra State be calculated on base of previous sugar seasons average recovery.

D. That directions to be issued to Respondents to adhere formula for calculating actual recovery of sugar cane arrived from crushing and based on that recovery calculation of FRP payable to sugar cane farmers within state of Maharashtra to be decided along with formula for calculations of revenue generated from sale of byproducts.

E. That Directions be issued to Respondents to issue Resolution prohibiting Sugar Millers to deduct any amount from final amount payable as FRP to sugar cane farmers without obtaining his fair consent.

F. That Directions be issued to Respondents to issue circulars to Sugar Millers within State of Maharashtra to accept weight of sugar

cane on private weighing weight machines done by sugar cane farmers.

G. That Directions be issued to Respondents to issue guidelines regarding harvesting charges in event sugar cane is harvested mechanically wherein deductions of 5% from FRP payable to farmers be declared void and bad.

H. Ad-Interim Relief in terms of prayer clause (A) to (G) be granted Pending disposal of this Petition.

I. Respondents be Directed to decide Representation given by Petitioners vide letter Dated 22/2/2022 (Colly H).

J. Any other appropriate relief to which the Petitioners is entitled to may please be granted in favour of the Petitioners.”

15. On behalf of the Central Government (respondent nos.2 and 3), reply affidavit of Mr. Jaivir Singh, Under Secretary to the Government of India is filed. The affidavit *inter alia* states that the challenge of the petitioners is to the State Government Resolution (“GR”) dated 21 February 2022 wherein certain directions are issued to sugar millers to pay FRP to sugarcane farmers in two installments wherein the first part is to be calculated on the basis of 10% recovery to be paid after deducting transportation and harvesting expenses, as per the provisions of SCO 1966, whereas the balance is to be subsequently paid, to be calculated within 15 days of closure of season, based on average recovery for entire season. Setting out the preliminary information, factual and legal, the affidavit states that as far as the Central Government is concerned, the prices of sugarcane are governed by the provisions of Clause 3 of the SCO 1966 which has been framed under Section 3 of the EC Act. It is contended that the sugarcane

and sugar are essential commodities under the EC Act, in regard to which Section 3 of the EC Act confers power on the Central Government to control production, supply and distribution etc. of such essential commodities. It is stated that it is in exercise of the powers conferred by Section 3 of the EC Act, the Central Government issued the SCO 1966 *inter alia* to fix the entitlement of the sugarcane farmers to receive cane price and to regulate distribution and movement of sugarcane.

16. It is next contended that by an ordinance promulgated on 21 October 2009, namely, the Essential Commodities (Amendment and Validation) Ordinance, 2009, the Central Government substituted the existing sub-section 3(c) of Section 3 of EC Act, thereby replacing the expression “minimum price” occurring in clause (a) of the sub-section 3(c) with the expression “Fair and Remunerative Price” of sugarcane with the intention to grant to the growers of sugarcane a better price for their product that includes margins on account of “risk” and “profit”. It is stated that the ordinance has been replaced by the EC Act 2009 notified on 22 December 2009. It is next contended that by an order dated 22 October 2009, the Central Government amended Clause 3(1) of SCO 1966 to insert the following items relating to margins payable to farmers of sugarcane on account of risk and profit:-

“(g) reasonable margins for the growers of sugar cane on account of risk and profits.”

It is stated that by the same order, the Central Government also deleted Clause 5A relating to payment of additional price of sugarcane to the farmers.

17. The affidavit further contends that the Commission for Agricultural Costs and Prices (CACP) under the Department of Agriculture and Farmers Welfare takes feedback from all stakeholders including State Governments, mill owners and farmers' representatives in the formulation of price policy for sugarcane. It is stated that cost of production of sugar cane is not only one of the factors in arriving at Fair and Remunerative Price for sugarcane, but there are other market related factors like the prices of sugar and its by-products, reasonable margin to growers on account of risk and profits, the returns to the growers from alternative crops, the general trend of prices of agricultural commodities, the availability of sugar to the consumers at a fair price, the recovery of sugar from sugar cane and global sugar scenario, etc. After informed judgment of all these factors and assessment of the likely situation of production of sugar and sugarcane, demand and supply of sugar, and the prices of sugar both in the domestic and the international market, the Commission recommends FRP for every sugar season. It is accordingly stated that the Central Government fixed the FRP of sugarcane payable by sugar mills for sugar season as follows:-

2019-20 at Rs. 275/- per quintal,

2020-21 at Rs. 285/- per quintal,

2021-22 at Rs. 290/- per quintal

linked to a basic recovery rate of 10%.

18. It is next contended that considering the provisions of sub clauses (3) and (3-A) of Clause 3 of the SCO, 1966, the powers for enforcing the provisions are delegated and vested with the State Governments/ UT Administrations which have the necessary field formations. It is stated that the sugar mills are expected to honour these provisions. What is stated in paragraph 2(vii) is significant which reads thus:-

“The sugar mills are expected to honour these provisions, more so as the Government is extending time to time all possible financial and non financial help to the sugar sector as and when required.”

19. The affidavit further states that the Ethanol Blended Petrol (EBP) programme was launched in year 2003 with the vision to boost agricultural economy, to reduce dependence on imported fossil fuel, to save foreign exchange on account of crude oil import bill, to reduce the air pollution and to support sugar sector and in the interest of sugarcane farmers. In such context, it is stated that the Government has fixed 10% blending target to be achieved by 2022 and 20% blending by 2025. However, the ethanol production capacity in the country is not sufficient at present to achieve 20% blending by 2025. It is stated that accordingly, to meet out the requirement of ethanol, the Government has modified earlier scheme and notified a Scheme for extending financial assistance to project proponents for

enhancement of their ethanol distillation capacity or to set up distilleries for producing 1st Generation (1G) ethanol from feed stocks such as cereals (rice, wheat, barley, corn & sorghum), sugarcane, sugar beet etc. It is next contended that under the scheme, Government would bear interest against the loan availed by project proponents from banks at the rate of 6% per annum or 50% of the rate of interest charged by banks whichever is lower for setting up of new distilleries or expansion of existing distilleries or converting molasses based distilleries to dual feedstock, which will bring an investment of about Rs. 40,000 crore. It is stated that due to upcoming investment in capacity addition/new distilleries, various new employment opportunities will be created in rural areas. It is contended that as a result of the measures taken by the Government during past few sugar seasons (Oct-Sept), the All-India cane price arrears of farmers have come down. For sugar season 2019-20 & 2020-21 the cane dues to the tune of 99.9% and 99.8% respectively have already been cleared. For the sugar season 2021-22, as on 29 July 2022, around 91.42% of the total cane dues has been paid. It is next contended that under the FRP system, the farmers are not required to wait till the end of the season or for any announcement of the profit by sugar mills or the Government.

20. In regard to the period prior to year 2020-21 it is stated that calculations of FRP payable are published and declared by respondent no.3 each year. In this context, it is stated that vide a Notification dated 22

October 2020, the Government of India issued directions wherein the power conferred on the Central Government as per clause 3(1) of the SCO, 1966 for fixing mill wise FRP, shall be exercisable by the State Government/Union Territory from sugar season 2019-20 onwards for the sugar mills wherein concerned sugar mill is located. It is further categorically stated that the payment of cane dues of farmers is 'ensured' under the provisions of sub clauses (3) and (3A) of Clause 3 of SCO, 1966, and that the powers for enforcing these provisions are delegated and vested with the State Governments/UT Administrations. It is hence contended that the writ petition be decided on the basis of the contentions as raised in the reply affidavit of Government of India.

Additional Affidavit on behalf of the Petitioners

21. There is an additional affidavit filed on behalf of the petitioners to contend that a meeting was held on 29 November 2022 by the Hon'ble Chief Minister in which a decision was taken for sugar crushing season 2022-23 wherein it was resolved that entire FRP to sugarcane farmers be paid in one installment. Also it was agreed that cancellation of the impugned GR dated 21 February 2022 for payment of FRP in two installments was proposed. A copy of the minutes of the meeting, which was forwarded to several stakeholders in which several parties participated, was published and circulated on 12 December 2022. It is contended that the decision to withdraw the impugned GR was an appropriate step in as much

as the impugned GR was interpreted by the sugar millers as a tool to disturb previous regime of full payment of FRP within 14 days as mandated by the SCO 1966. It is contended that the impugned GR is a clear case of fraud on farmers as while calculating H & T cost and deducting this cost entirely from the first installment paid to farmers, sugar millers are directed to consider previous years average final cost of H & T but while calculating sugar recovery, millers are provided with special provision to consider the same sugar season recovery, to be calculated at the end of crushing season. It is contended that there is no such mechanism or any specific direction under the provisions of the SCO 1966 or in law to calculate sugar recovery of same season.

22. It is next contended that in fact the State candidly accepted to withdraw the impugned GR in its meeting held on 29 November 2022 under the Chairmanship of Hon'ble Chief Minister, and that the minutes of the meeting were circulated to all concerned authorities/ office bearers. It is contended that such decision was required to be implemented and that the adamant approach of some of the office bearers ought not to have come in the way, so as to deprive sugarcane farmers from their lawful right to receive full payment for sugarcane within 14 days of supplying sugarcane to millers.

23. Considering the aforesaid contention as urged on behalf of the petitioners, that the State Government at the highest level had taken a

decision to withdraw the impugned GR, on 03 February 2025, this Court after hearing the parties, had passed the following order:-

- “1. We have heard Mr. Yogesh Pande, learned counsel for the petitioner on Writ Petition No.5736 of 2022 for some time and Mr. Kumbhakoni, Senior Advocate for the petitioner in WP/11514/2022 (Writ Petitions filed by the Sugarcane Factory).
2. These petitions were filed in the year 2022, however in the intervening period there are subsequent developments, which are sought to be placed on record by Mr. Pande on behalf of the petitioner.
3. The learned counsel for the petitioner has also placed on record minutes of the meeting which was held by the Hon’ble Chief Minister along with the Hon’ble Deputy Chief Minister on 29 November 2022, in which a decision in regard to the FRP being paid in two installments was withdrawn with specific reference to the writ petition filed by the petitioner, Shri Raju Shetty, and to be implemented on the petitioner withdrawing the said petition. Mr. Bhende, learned AGP has been handed over the minutes of the said meetings. She would take instructions on the correct position as it stands today and also place on record a short affidavit in that regard, so that the parties can be heard further and appropriate orders passed.
4. List this petition on 10 February 2025 High on Board.
5. Let short affidavit be served on all the parties on or before 8 February 2025.”

24. In pursuance of the aforesaid order, a short reply affidavit of Shri. Gopal Mavale, Regional Joint Director (Sugar), Kolhapur Division is filed on behalf of respondent nos.1 and 4 (the State Government and the Sugar Commissioner) in which it has been admitted that the State Government had called a meeting on 29 November 2022, under the Chief Minister of Government of Maharashtra which was in pursuance of the request of Chairman Swabhimani Sanghatna, Shri. Raju Shetti (Petitioner) and others, on the issue of FRP payment to sugarcane farmers. It is stated that in the

said meeting, the issue regarding the FRP was discussed and unanimously it was decided to withdraw the decision in respect of payment of FRP in two installments and the FRP price shall be paid in one installment. It is further stated that it was decided that the decision taken in the said meeting will be implemented within one month. It is next contended that the State Government was under obligation to follow the guidelines of Central Government and more particularly the recent guidelines dated 06 July 2023 and 27 February 2024 issued by the Central Government. It is in accordance with such guidelines issued by the Central Government, the State Government issued a fresh Government Resolution dated 27 November 2024 regarding payment of FRP. It is also stated that respondent no.1 is following the guidelines of the Central Government and as on today the G.R. dated 27 November 2024, is in force to decide the FRP. The relevant contents of the affidavit are required to be noted which read thus:-

“2. I say that the Respondent No.1 called the meeting on 29.11.2022 under by the then Chief Minister of Government of State of Maharashtra pursuant to the request of Chairman Swabhimani Sanghatna, Shri. Raju Shetti and others, on the issue of F.R.P. payment to Sugarcane farmer. I say and submit that, in the said meeting the issue regarding the F.R.P. was discussed and unanimously it was decided to withdraw the decision in respect to payment of F.R.P. in two installments and the F.R.P. price shall be paid in one installment. I say that it was further decided that, the decision taken in said meeting will be implemented within One month. Hereto annexed and marked as **Exhibit – R-1** is a copy of the minutes dated 29.11.2022.

3. I say that, the State Government is under obligations to follow the guidelines of Central Government. I say that the Central Government issues the guidelines time to time. I say that the Central Government recently issued the guidelines on 06.07.2023. Hereto annexed and marked as **Exhibit- R-2 (Colly)** are the copies of the guidelines dated 06.07.2023 and 27.02.2024. I say that as per the

guidelines issued by the Central Government, the Respondent No. 1 issued fresh Government Resolution 27.11.2024 regarding the payment of F.R.P. Hereto annexed and marked as Exhibit- R-3 (Colly) are the copies of is a copy of the Government Resolution dated 26.12.2023 and 27.11.2024.

I say that, as on today the Respondent No. 1 following the guidelines of the Central Government. As on today the Government Resolution dated 27.11.2024 is in force in deciding FRP.”

25. We note that three Writ Petitions being Writ Petition No. 11514 of 2022 - Sant Muktai Sugar & Energy Ltd. Vs. Union of India & Ors., Writ Petition No. 12825 of 2022 – Baliraja Sakhar Karkhana Ltd. Vs. Union of India & Ors. and Writ Petition No.12826 of 2022 - Shraddha Energy and Infra Projects Pvt. Ltd. vs. Union of India & Ors. respectively, are filed by the sugar mills challenging the Government Resolution dated 21 February, 2022 *inter alia* contending that the same is irrational, irregular, unconstitutional and in violation of SCO 1966. The contention of all these petitioners is common. For convenience, we note the primary contention from the averments as made in Writ Petition filed by Shraddha Energy and Infra Projects Pvt. Ltd. This petitioner’s contention is primarily to the effect that the impugned resolution dated 21 February, 2022 which was issued by the State of Maharashtra was effected almost after 110 days of the commencement of the crushing season. It is contended that till the impugned resolution dated 21 February, 2022 was brought into force, the petitioner had already made payments to the Sugarcane Growers on the basis of the then prevalent payment policy which included the consideration of

various parameters such as sugar yield, the recovery rate, etc. of the previous year, and in strict compliance of the provisions of Clause 3 of the SCO 1966. It is stated that the said impugned resolution has proposed two major changes from the future crushing seasons, commencing from 2021-22, viz. (i) FRP payable to the sugarcane growers to be calculated based on sugar recovery (percentage) of the same year and (ii) the payments to be made in two installments - first installment being calculated on the basis of FRP being declared by the Government (on the basis of the average recovery brackets declared for the State) after deducting the harvesting and transportation costs (average of prior two years) and the payments to be made to the sugarcane growers within 14 days of the delivery of the sugarcane and second installment being calculated within 15 days of the closure of the crushing season, on the basis of the final sugar recovery (percentage) of the same crushing season which would take into account the sugar produced, and ethanol produced from 'B heavy' or 'C' molasses and also the harvesting and transportation charges being calculated for the same crushing year, which (the newly introduced formulation system) was unlike the earlier system for payment of FRP for sugarcane by sugar factories, which took into consideration the sugar recovery rate (percentage) of the previous year/s. It is contended that the impugned Government Resolution did not take into consideration the welfare of the sugarcane growers nor it considered the financial difficulties of the sugar mills. Thus, the impugned

Government Resolution is arbitrarily issued without any application of mind. It is contended that practical difficulties of both the primary stakeholders of the sugar industry, is also in stark violation of the Central Statute, viz. the Sugarcane (Control) Order, 1966. Thus, if the impugned Government Resolution is not quashed and set aside, the consequence will be that the sugarcane growers would be required to wait for a prolonged duration, i.e. from the date of delivery of the sugarcane to the mills till the final calculations (which are to be done at the end of the crushing season). It is contended that as far as the sugar mills like the petitioners are concerned, also stand aggrieved in as much as the said impugned Government Resolution does not take into consideration the fact that the sugar mills may not have the financial wherewithal to cope up with the newly introduced arbitrary policy as the entire sugar sale either Domestic or Export of White or Raw Sugar is controlled by Ministry of Consumer Affairs, Food and Public Distribution of Government of India, through a release mechanism, which releases the Sugar Sale Quota every month. The Release Order is issued at 10% to 12% of the stock holding of the sugar mill. Thus, generation of huge funds to pay off the balance cane price in one stroke is far difficult for a sugar mill. Secondly, in case the stock is pledged to Bank, availability of funds is restricted to the extent of margin money stipulated by the Bank. The petitioner states that the impugned resolution is indeed bad in law, arbitrary, irrational and the same can be confirmed assuming, for the

sake of it, just to test the hypothesis, that the sugar mills goes bankrupt and / or insolvent, either because the sales are lean or because the sale permission was not received within a period of 15 days then the sugarcane growers would be left to nothing requiring them to run from pillar to post. Such a scenario is certainly adverse not only to the sugar mills (such as the Petitioner) but also to the sugarcane growers and, therefore, such a policy should not be given a legal effect as it is in nobody's interests, protecting nobody's rights and, therefore, such policy should be quashed and set aside as it belies the ordinary prudence or any rationale.

Reply Affidavit on behalf of the State Government

26. A reply affidavit dated 22 November, 2022 of Mr. Sachin Bhimashankar Raval, Regional Joint Director (Sugar), Nanded Division, Nanded on behalf of respondent nos. 2 and 3 – State Government is placed on record *inter alia* stating that in pursuance of the notification dated 22 October, 2020 issued by the Central Government, from sugar season 2019-20 onwards, powers have been given to each State Government for fixing mill-wise FRP for the sugar mills. It is stated that by the impugned Government Resolution dated 21 February, 2022, the State Government has declared policy for payment of FRP from the crushing season 2021-22 on the basis of and in consonance with the Central Government notification dated 31 August, 2021. It is contended that it is observed that some sugar factories although had not paid FRP for the previous season, still they

request crushing license for any current season, which is against Clause (3) & (3A) of the SCO 1966. It is next contended that the Government of India vide a notification dated 31 August, 2021 has clearly indicated that FRP payable to the farmers has two distinct parts, firstly, payment based on basic recovery rate and secondly, payment based on premium. It is stated that the premium is paid to the farmers for higher recoveries and higher recoveries cannot be known in advance before crushing season is over. It is stated that in the State of Maharashtra, there are different sugar recovery zones and amongst them, Kolhapur region is high sugar recovery zone and Marathwada and Vidarbha are low sugar recovery zones. It is hence stated that as per the sugar recovery percentage of revenue division, it was decided that FRP shall be calculated based on 10% sugar recovery for Pune Revenue Division and 9.5% sugar recovery percentage for Marathwada and Vidarbha Region. It is stated that the final sugar recovery percentage will be calculated after the closure of crushing season and premium will be given within 15 days from the closure of crushing season of sugar factory.

27. It is next stated that for payment of FRP, before issuance of Government Resolution dated 21 February, 2022, previous seasons' harvesting and transportation cost was considered, however, pursuant to the impugned Government Resolution dated 21 February, 2022, for payment of FRP, current financial year's harvesting and transportation cost will be considered. It is stated that pursuant to the Government Resolution dated

21 February, 2022, sugar factories in the State had paid FRP amounting to 99.62 percentage of total FRP payment and the petitioner cannot be exception to that. The affidavit refers to study group being constituted by the Government of Maharashtra under the Chairmanship of Sugar Commissioner for deciding the policy regarding calculation of FRP to be paid by the sugar factories to contend that the study group submitted its report to the State Government on 8 September, 2021. It is stated that after following the due procedure and obtaining the legal opinion from the Law and Judiciary Department, the impugned Government Resolution dated 21 February, 2022 was issued. In such contentions, it is submitted that the petition be disposed of.

Additional Reply on behalf of the State Government

28. An additional reply affidavit dated 16 March, 2023 is filed on behalf of respondent no. 2-State of Maharashtra and respondent no. 3-Commissioner for Sugar of Mr. Sachin Bhimashankar Raval, Regional Joint Director (Sugar), Nanded Division, Nanded. This affidavit is filed taking into consideration the crushing season 2022-23 which began on 1 October, 2022 to end on 30 May, 2023. It is contended that on 28 February, 2023, the Commissioner of Sugar, Pune issued crushing licence for the crushing season 2022-23, to these three petitions, who are sugar mills. The affidavit refers to the mandate of Clause 3, sub-clauses (3) and (3A) of SCO 1966. It is stated that these clauses of SCO 1966 are also terms and conditions of the

crushing licence as issued to the petitioners-sugar factories. It is stated that on the basis of such parameters, Government of India issued communication dated 31 August, 2021 and declared a policy for payment of FRP for the crushing season 2021-22 *inter alia* with the rate at Rs.290 per quintal for a basic recovery rate of 10% and Rs.275.50 per quintal for sugar factories having recovery of 9.5% or less. In paragraph 8 of the affidavit, a chart is set out showing the recovery percentage and corresponding FRP rate for season 2021-22 after crushing of 1000 kg. (1 metric ton) sugarcane, which reads thus:

Sr.No.	Sugar recovery %	Basic/Premium Recovery	Sugar produced (kg.)	FRP rate as per notification dt. 31.08.2021
1	13	Premium	130	3770
2	12	Premium	120	3480
3	11	Premium	110	3190
4	10	Basic	100	2900
5	9.5	Basic	95	2755
6	<9.5	Basic	<95	2755

29. It is next stated that the FRP notification dated 31 August, 2021 published by the Government of India has two important elements- (i) Basic recovery and (ii) Premium, which is based on increase or decrease in the recovery. It is stated that on a bare reading of such notification dated 31 August, 2021, it indicates the mandate to make payment to sugarcane farmers by the sugar factories. It is stated that in the beginning of the sugar season, sugar factory has to pay as per the basic recovery and at the end of

the season, sugar factory has to finally pay the difference on the basis of actual recovery for the entire crushing season. It is stated that the actual recovery of the sugar factory is known only after the entire crushing season is over.

30. It is stated that the harvesting & transportation of sugarcane is not done by sugar factories in Uttar Pradesh and some other states and that only in State of Maharashtra, harvesting & transportation of sugarcane are undertaken by the sugar factories on behalf of farmers. The sugarcane is accordingly transported by the sugar factories at the factory location. It is stated that hence in Maharashtra, the expenses incurred for sugarcane harvesting and transportation, by the sugar factories on behalf of the sugarcane growers is deducted from FRP rate published by the Government of India for the said crushing season, and thereafter balance net FRP amount is paid to the farmers. It is stated that the sugar recovery for the season cannot be specified at the beginning of the crushing season and also while crushing season is in progress.

31. It is next stated that the Central Government vide notification dated 22 October, 2020 delegated the authority to declare the FRP for the sugar factories in the State to the respective State Government, with effect from crushing season 2019-20. It is stated that in pursuance of the aforesaid notification, a study group was constituted under the Chairmanship of the Commissioner of Sugar vide Government Resolution dated 22 April, 2021

for specifying the sugar recovery rate of the sugar factories, closed prior to and during the previous season 2020-21 and further stipulating the policy for specifying the FRP at Government level from the crushing season 2020-21 onward. It is stated that a study group consisted of representatives from the Cooperative Sugar Factories Federation, Federation of the Private Sugar Factories, Vasantdada Sugar Institute (VSI), private and cooperative sugar factories and the sugarcane growers. It is further stated that the Study Group discussed the issues in detail with all the stakeholders and submitted its report to the State Government on 8 September, 2021. Thereafter, the opinion of the Law and Judiciary Department was sought in accordance with the recommendations of the study group. Further, advice given by the Sugarcane Control Board headed by the Chief Secretary to State of Maharashtra was also taken in terms of the provisions contained in Section 4(B) of the 2013 Act. It is stated that the Government vide notification dated 22 October, 2020 delegated the powers to each State Government for fixing mill-wise FRP for the sugar mills from the sugar season 2019-20 and accordingly FRP rate would be based on current recovery for the crushing season 2021-2022.

32. The affidavit also sets out the figures, that in Maharashtra for last 10 years the area under cultivation for sugarcane was approximately around 10 lakh hectares and the area under cultivation of various types and varieties of sugarcane is distributed unevenly all over Maharashtra specifying different

variety of sugarcanes. It is stated that sugarcane is crushed by sugar factories and that there are peculiarities in respect of different regions/areas.

33. The affidavit further states that appropriate legal action was taken against all sugar factories, which have failed to pay FRP arrears to the sugarcane farmers. It is stated that during the season 2021-22, 194 sugar factories have fully paid net FRP to the farmers and only 6 sugar factories have failed to pay arrears of FRP payment of Rs 3247.68 lakhs to the farmers and 3 petitioners herein are included in the list of such six sugar factories, also that recovery orders are issued against all the six sugar factories.

34. It is next stated that for speedy and timely payment of FRP, the Commissioner of Sugar issued show cause notices to the sugar factories to minimise the FRP arrears. It is further stated that RRC orders were issued against those factories who despite the show cause notices failed to pay FRP to the farmers. It is next stated that to recover 100% FRP of the previous season which otherwise were delayed payments to the farmers, steps are being taken. Hence, before issuing crushing licence for next season 2022-23, 100% FRP payment was a pre-condition for each sugar factory. It is also stated that administrative steps were taken to enforce the sugar factories to pay 100% FRP arrears and till then crushing license would not be issued to such sugar factories.

35. It is contended that insofar as three petitioner sugar factories are concerned, they are in arrears of FRP payments amounting to Rs. 2766.07 lakhs to the farmers and that these factories have sold sugar and its by-products in the market and have earned sufficient income therefrom. It is next stated that till year 2020, the Government of India through administrative instructions had prescribed payment of FRP as per the previous year's recovery of sugarcane and a clarification regarding calculation of sugar recovery has been issued vide letter dated 7 September, 2018. It is next stated that as per the prevailing practice followed since many years, Department of Food and Public Distribution (DFPD) notifies factory-wise FRP of sugarcane in respect of each mill for a particular sugar season based on the recovery of previous sugar season. It is stated that factory-wise FRP is generally notified after the completion of the season on ascertaining recovery of individual mills from the State Government and after obtaining data relating to Harvesting and Transport (H&T) charges from Commission for Agricultural Costs and Prices (CACP). Factory-wise FRP for sugar season 2017-18 has not been notified, so far in respect of any of the mill of the country and will be notified after obtaining recovery data from the states and H&T charges from CACP. It is next contended that before issuance of impugned Government Resolution dated 21 February, 2022, farmers who supplied sugarcane in the year 2020-21, used to get the payment or were expected to get payment on the basis of recovery of earlier season i.e. for the

year 2019-2020. It is further stated that by issuing the impugned Government Resolution dated 21 February, 2022, the State Government has rationalized this entire issue of FRP payment to safeguard the interests of farmers at large and hence the validity of the GR is required to be upheld.

36. It is next contended that only because for the season 2021-2022, the petitioner factories have to pay more FRP to the farmers based on the actual recovery of season 2021-22, it is no ground for filing writ petitions. It is stated that all it means is that out of 200 factories who took 2021-22 crushing season, 197 factories have paid FRP based on actual recovery for season 2021-22 as against the three petitioner sugar factories. It is stated that petitioners have filed the present petition to avoid payment of net FRP amounting to about Rs.2766.07 lakhs, which is not paid by these three factories till date. It is accordingly submitted that considering the contentions as urged on behalf of the State Government in the earlier affidavit and in this affidavit, the petition does not require interference.

Submission on behalf of the Petitioner and the supporting Intervenor

37. It is on the aforesaid conspectus, we have heard Mr. Pande, Mr. Shaikh (Senior Counsel) and Mr. Agashe, learned counsel for the petitioners as also Mr. Borulkar, learned counsel for the intervenors supporting the petitioners. They have made the following submissions:

That the impugned Government Resolution dated 21 February, 2022 is illegal, being violative of Clause 3(3) and (3A) of the SCO 1966 inasmuch as it creates a mechanism by which the mandate of Clause 3, whereunder a producer of sugar (sugar factories) purchases any sugarcane from the agriculturalists / farmer is required to pay the agriculturalists/farmers, within 14 days from the date of delivery of the sugarcane, to the seller or tender to him the price of the sugarcane sold at the rate as fixed under sub-clause (1) of Clause 3 of SCO 1966. Hence, a contrary mechanism as brought about by the impugned Government Resolution, providing for making payment on the basis of the result of the crushing season, and thereafter making payment, is nothing but defeating the provisions of Clause 3(3) and (3A) of the SCO 1966. It is submitted that a system which allows that the farmers are paid for the sugarcane purchased by the sugar factories in two installments is in the teeth of the said provisions of the SCO 1966. The impugned Government Resolution is also contrary to the provisions of Section 5(1) of the 2013 Act, which also mandates that as soon as the sugarcane is supplied to the occupier of a factory, the factory shall be liable to pay, within fourteen days of the receipt thereof, the minimum price as per FRP applicable at the relevant time.

38. It is submitted that the method of arriving at FRP under the impugned Government Resolution, apart from being contrary to the provisions of Clause 3(3) and (3A) of the SCO 1966, is also seriously

prejudicial to the interest of the farmers, who though are entitled in law to receive the payment of sugarcane within 14 days, are required to wait and suffer the uncertainty of the rate at which FRP would be fixed by the State Government as per the requirement of the Government Resolution. This defeats the intention of the Central Government in making provision for payment to be received by the farmers for sugarcane supplied by them within 14 days from the supply. It is, therefore, submitted that the Government Resolution is bad and illegal.

39. It is next submitted that in all other states, payment as per the FRP fixed by the Central Government is followed or in other words, the notification issued by Government of India prescribing the FRP is what is implemented, and payment for the sugarcane price is made as per the mandate of Clause 3(3) of SCO 1966. It is submitted that the impugned Government Resolution also cannot be recognized as an exercise taken under the delegation of powers as conferred under Clause 11 of SCO 1966 read with notification issued by the Central Government dated 22 October, 2020. It is stated that the actions taken on the basis of impugned Government Resolution by issuing a further notification prescribing the FRP mill-wise, by issuing of a subsequent notification after a long lapse of the crushing season and sometime even after a year certainly cannot be recognized in any manner whatsoever when tested on the applicability and the mandate of SCO 1966. The farmers cannot be deprived of the FRP

which would be required to be paid within 14 days as per the provisions of Clause 3(3) by superimposing conditions and that too by Government Resolution which would amount to diluting the rigors of the SCO 1966, by an executive fiat.

40. It is submitted that the impugned Government Resolution is in direct conflict with the notification dated 31 August, 2021 issued by the Government of India prescribing FRP and its acceptance and adoption by the State Government vide notification dated 21 October, 2022, to be the standard FRP at the beginning of the crushing season. It is submitted that the Government of Maharashtra infact realized that the issuance of the impugned Government Resolution was illegal and contrary to the provisions of not only the SCO 1966, as also to the provisions of Section 5(1) of the 2013 Act and it is for such reason, a decision was taken in the meeting held by the Hon'ble Chief Minister alongwith all the stakeholders, that the impugned Government Resolution be withdrawn which was communicated to all the concerned. However, surprisingly the State Government is supporting the said Government Resolution despite a clear decision being taken in the meeting dated 29 November, 2012 of the Hon'ble Chief Minister, Hon'ble Deputy Chief Minister and all other officials, stakeholders including the representatives of farmers, producers of the sugar.

41. It is next submitted that the impugned Government Resolution dated 21 February 2022 brings about a total uncertainty in the matter of FRP to be paid to the farmers. Also the sugar factories cannot wait at the end of the crushing season to ascertain their liability to pay the sugarcane producers/farmers. This would bring about a complete imbalance in the working of the sugar factory, and its economics, leading to serious consequences, which can neither be imagined nor remedied at the end of sugarcane crushing season. It is submitted that the impugned Government Resolution wholly nullifies the notification issued by the Central Government dated 31 August, 2021 notifying the FRP at the very beginning of the crushing season 2021-22. It is stated that the harvesting and transportation charges cannot form part of FRP, as FRP is fixed Pan India on the basis of a expert study in that regard, payable at the beginning of the crushing season, there cannot be an exception as to what is required to be paid to the farmers within 14 days of the delivery of the sugarcane at the factory of the sugar producers.

42. It is submitted that also it is erroneous/illegal for the State Government to consider the inclusion of harvesting and transportation charges in fixing the FRP that too blanketly. It also creates a risk of uncertainty inasmuch as after the crushing season is over and sugar is supplied, if there are losses to the sugar factory, then the farmers would be rendered as unsecured creditors. Hence, to avoid such eventuality the SCO

1966 was issued by the Central Government as also the State Act was promulgated in the year 2013 which too under Section 5(1) guarantees payment of the FRP within 14 days.

43. Mr. Borulkar, learned counsel for the intervenor in supporting the petitioners' case has submitted that there is no interim or any ad-hoc determination as the State Government contemplates under the impugned Government Resolution. He submits that what is required to be followed in the strict sense is the mandate of determination of the FRP by the Central Government to be implemented which is at the beginning of the crushing season. It is his submission that to have any interim fixation is reading something in the language of Clause 3 of SCO 1966, which is not permissible. It is next submitted that the purport and attempt of using the delegation of the power by the Central Government under Section 11 of the SCO 1966 vide notification dated 22 October, 2020 to issue the impugned Government Resolution is *per se* illegal. He submits that the State Government cannot blanketly impose a FRP even region wise as sought to be done under the impugned Government Resolution so as to not pay the farmers within 14 days and delay the same to be paid after the crushing season. Mr. Borulkar's submission is that the mill-wise delegation cannot be applied wholly to the entire crushing season and to all the sugarcane farmers, who are the most vital stakeholders. It is contended that this is a serious issue as a situation is brought about that 69% of the sugar factories have not

paid to the farmers, which has lead to drastic consequences, also resulting into farmers suicides.

44. Mr. Borulkar would submit that the impugned Government Resolution creates far-reaching consequences for the farmers whereas for the sugar mills, there is no prejudice whatsoever. He submits that as pointed out by the Central Government, there are large scale finances and subsidies made available to the sugar factories, hence, when comes to farmers, it is question of life and death. It is hence his submission that necessarily the previous years figures are the very basis on which FRP for the sugarcane is fixed.

45. In support of the aforesaid contentions, on behalf of the petitioners, reliance is placed on the Constitutional Bench decision of the Supreme Court in **West U.P. Sugar Mills Association & Ors. vs. The State of Uttar Pradesh & Ors.**¹.

Submission on behalf of the State Government

46. Dr. Saraf, learned Advocate General in opposing the petition has made the following submissions:

Dr. Saraf has placed reliance on the State Government's case as set out in the reply affidavit and the additional affidavit, to which we have adverted in the forgoing paragraphs. In his submission before the Court, Dr. Saraf

¹ 2020 9 SCC 548

would submit that the State Government has not deviated from the mandate of SCO 1966. It is submitted that by the impugned Government Resolution, a higher price can be fixed, which is for the benefit of the farmers. It is hence submitted that what is fixed by the Central Government is the minimum FRP and final FRP would be fixed by the State Government, which would be at the end of the crushing season. It is hence the methodology to implement the Central Government directives under Clause 3 of the SCO 1966. The impugned Government Resolution also achieves balancing of interest not only of the farmers but of the sugar factories and of the other stakeholders. Thus, the State Government in no manner has tampered with the requirements of the mandate of FRP as fixed by the Central Government under Clause 3(1) of the SCO 1966.

Submissions on behalf of the Intervenors supporting the State Government

47. Mr. Anturkar in supporting the submissions of Dr. Saraf, on behalf of the Intervenors-Maharashtra State Co-operative Sugar Factories Federation Ltd., would refer to the definition clause of the SCO 1966, and more particularly to the definition of price as contained in Clause 2(g) which includes the Fair and Remunerative Price fixed by the Central Government, from time to time for the sugarcane delivered to a sugar factory at the gate of the factory or at the sugarcane purchasing centre or to a khandsari unit. He would submit that such definition read with Clause 3 itself would indicate

that the FRP is not required to be fixed only once and it can be fixed from time to time as Clause 3(1) would indicate. It is his contention that the FRP as determined by the Central Government vide notification dated 31 August, 2021 is provisional in nature and not the final FRP, which according to him, is for reason that by the time this provisional FRP is so declared on 31 August, 2021, the values of the various parameters which are mentioned in Clause 3(1)(a) to (e) cannot be identified at the beginning of the season and on which date the FRP notification dated 31 August, 2021 was issued by the Central Government. It is submitted that the contents of Clause 3(1) (a) to (e) are identified only at the end of the sugar season, which is from 1st October and ends on 30 June, therefore, the values of various parameters mentioned in Clause 3(1)(a) to (e) would become clear only after 30 June of the next year and after which, the Central Government will again determine the FRP. In short, Mr. Anturkar's submission is that the Central Government vide notification dated 31 August, 2021 for the crushing season (2021-2022) has decided the provisional FRP and not the final FRP. It is hence submitted that in the scheme of things, once such provisional FRP is fixed by the Central Government on 31 August, 2021, the sugar factory would be required to pay the price of the sugarcane as per the said FRP as per the requirement of Clause 3(3) of SCO 1966, and a final determination would take place after the end of the crushing season. For such reason, it cannot be said that a final determination of the FRP could in

any manner violate the provisions of the SCO 1966 and that too what is mandated in Clause 3(1) & (3) thereof.

48. It is also Mr. Anturkar's submission that a perusal of the impugned State Government Resolution dated 21 February 2022 would make it clear that the basic recovery rate as prescribed in the said notification whether it is 10% or above 10% or below 10% is a determination which is required to be undertaken only after the end of crushing season and for such reason, there is sufficient indication in the said notification for the Central Government to permit an appropriate exercise to be undertaken by the State Government at the end of the crushing season to determine the FRP. Hence the missing link between the situations prevailing at the beginning of the crushing season and end of the crushing season is what is being supplied/created by the impugned Government Resolution dated 21 February, 2022. It is hence submitted that in any event, things are required to be practically seen inasmuch as there is likelihood of different crushing seasons for sugar activities at different location. For such reason, what is determined by the Central Government under Clause 3 of SCO 1966 and as indicated in the notification dated 31 August, 2021 is only a provisional determination and not a final determination. Thus, what is notified by the impugned Government Resolution issued by the State Government is only a table of different FRPs which are required to be fixed. It is hence submitted that the impugned Government Resolution is not contrary to the SCO 1966 or to

the provisions of 2013 Act, when it identifies the missing link and facilitates the State Government in supporting the FRP notification dated 31 August, 2021 issued by the Central Government. It is submitted that the State Government, hence, has powers to issue the impugned Government Resolution, as delegated by the Central Government under Clause 11 of the SCO 1966, vide Notification dated 22 October, 2020, although the impugned notification does not fix mill-wise FRP. It is submitted that even assuming that the impugned Government Resolution is not issued under the delegated powers Clause 11 of SCO 1966 would provide, such exercise of powers would be required to be recognized in the light of the provisions of Article 162 of the Constitution, being its executive powers. It is thus submitted that the gap not covered by the Central Law, can certainly be filled up by the State Government by issuance of said Government Resolution. It is submitted that there can be no two opinions that the fixing of FRP by the Central Government vide Notification dated 31 August, 2021 is to take effect Pan India, which can never be an exercise of fixing FRP qua the sugar factories, region-wise in any State. It is submitted that once there is no embargo on the State government exercising powers fixing region-wise FRP, then certainly the exercise of powers by the Central Government by issuance of notification dated 31 August, 2021 is required to be held to be an initial determination of FRP by the State Government. It is, therefore, submitted that the petition be dismissed.

Reasons and Conclusions

49. We have heard learned counsel for the parties at great length. With their assistance, we have perused the record.

50. The questions which fall for consideration in the present proceedings need to be encapsulated. They are:-

- (i) Whether the farmers/agriculturists are entitled to receive the price of sugarcane as supplied by them to the sugar factories / sugar mills at the FRP fixed by the Central Government for the relevant crushing season under clause 3(1) of the SCO 1966 ?
- (ii) Whether the payment of FRP as fixed by the Central Government can be deferred by the State Government?
- (iii) Whether the impugned GR dated 21 February 2022 is in breach of Clauses 3(1), 3(3) and 3(3A) of the SCO 1966 ?

51. To examine the aforesaid questions, at the outset, it would be necessary to note the relevant clauses of the SCO 1966 which read thus:-

- “3. Minimum price of sugarcane payable by producer of sugar-
- (1) 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 specified in Clause 3-A, allow a suitable rebate in the price so fixed.

Explanation – (1) Different prices may be fixed for different areas or different qualities or varieties of sugarcane.

(2) When a sugar factory produces ethanol directly from sugarcane juice or B-Heavy molasses, the recovery rate in case of such sugar factory shall be determined by considering every 600 litres of ethanol so produced as equivalent to 1 tonne of production of sugar;

(3) Production of ethanol directly from sugarcane juice shall be allowed in case of sugar factories only.

(2) No person shall sell or agree to sell sugarcane to a producer of sugar or his agent, and no such producer or agent shall purchase or agree to purchase sugarcane, at a price lower than that fixed under sub-clause (1).

(3) Where a producer of sugar purchases any sugarcane from a grower of sugarcane or from a sugarcane growers' co-operative society, the producer shall, unless there is an agreement in writing to the contrary between the parties, pay within fourteen days from the date of delivery of the sugarcane to the seller or tender to him the price of the cane sold at the rate agreed to between the producer and the sugarcane grower or the sugarcane growers' co-operative society or that fixed under sub-clause (1), as the case may be, either at the gate of the factory or at the cane collection centre or transfer or deposit the necessary amount in the Bank account of the seller or the co-operative society, as the case may be.

(3A) Where a producer of sugar or his agent fails to make payment for the sugarcane purchased within 14 days of the date of delivery, he shall pay interest on the amount due at the rate of 15 per cent per annum for the period of such delay beyond 14 days. Where payment of interest on delayed payment is made to a cane growers' society, the society shall pass on the interest to the cane growers concerned after deducting administrative charges, if any, permitted by the rules of the said society.

(4) Where sugarcane is purchased through an agent, the producer or the agent shall pay or tender payment of such price within the period and in the manner aforesaid and if neither of them has so paid or tendered payment, each of them shall be deemed to have

contravened the provisions of this clause.

(5) At the time of payment at the gate of the factory or at the cane collection centre, receipts, if any, given by the purchaser, shall be surrendered by the cane grower or co-operative society.

(6) Where payment has been made by transfer or deposit of the amount to the Bank account of the seller or the co-operative society, as the case may be, the receipt given by the purchaser, if any, to the grower or the co-operative society if not returned to the purchaser, shall become invalid.

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

(8) Where any producer of sugar or his agent has defaulted in furnishing information under Clause 9 of this Order or has defaulted in paying the whole or any part of the price of sugarcane to a grower of sugarcane or a sugarcane growers co-operative society within fourteen days from the date of delivery of sugarcane, or where there is an agreement in writing between the parties for payment of price within a specified time and any producer or his agent has defaulted in making payment within the agreed time specified therein, the Central Government or an officer authorised by the Central Government in this behalf or the State Government or an officer authorised by the State Government in this behalf may either on the basis of information made available by the producer of sugar or his agent or on the basis of claims, if any, made to it or him regarding non-payment of prices or arrears thereof by the concerned grower of sugarcane or the sugarcane growers co-operative society as the case may be, or on the basis of such enquiry that it or he deems fit, shall forward to the Collector of the district in which the factory is located, a certificate specifying the amount of price of sugarcane and interest due thereon from the producer of sugar or his agent for its recovery as arrears of the land revenue.

(9) The Collector on receipt of such certificate, shall proceed to recover from such producer of sugar or his agent the amount specified

therein as if it were arrears of land revenue.

(10) After effecting the recovery, the Collector shall intimate to the concerned growers of the sugarcane or the concerned sugarcane growers co-operative societies through a public notice to submit their claims in such a manner as he considers appropriate within thirty days:

Provided that the Collector may, for the reasons to be recorded in writing allow the submission of claims after the period so specified if he is satisfied that there was sufficient cause for not submitting such claim earlier.

(11) If the amount recovered is less than the amount specified in the certificate under sub-clause (8), the Collector shall distribute the amount so recovered among the concerned growers of the sugarcane or the concerned sugarcane growers co-operatives in proportion to the ratio determined by the Collector on the basis of the sugarcane supplied by the concerned growers of sugarcane or the sugarcane growers' co-operative society as the case may be.

(12) If the amount recovered and distributed under sub-clause (11) is less than the amount specified in the certificate under sub-clause (8), the Collector shall proceed to recover the remaining amount, as if it were arrears of land revenue till the full amount is recovered and distributed to satisfy the remaining claims.

(13) If the amount is given to the concerned sugarcane growers co-operative societies, it shall distribute the amount through cheque/draft/or any other recognised banking instrument on any Scheduled Bank to the concerned sugarcane growers within ten days of the receipt of the amount from the Collector.

(14) If the concerned sugarcane grower or the concerned sugarcane growers co-operative society do not come forward to claim or collect the amount so recovered by the Collector within three years from the date of the public notice referred to in sub-clause (10), the unclaimed amount shall be deposited by the Collector in the Consolidated Fund of the State.]

3-A. Rebate that can be deducted from the price paid for sugarcane.—

A producer of sugar or his agent shall pay for the sugarcane purchased by him to the sugarcane grower or the sugarcane growers' co-operative society, either the minimum price of sugarcane fixed under Clause 3, or the price agreed to between the producer or his agent and the sugarcane grower or the sugarcane growers' co-operative society as the case may be (hereinafter referred to as the agreed price):

Provided that.—

- (i) in the case of sugarcane delivered at any purchasing centre and the same being transported to the factory by the factory owner by rail or by road using his own transport a rebate shall be made from the minimum price or the agreed

price as the case may be and such rebate shall be fixed by the Central Government having regard to the actual cost of transportation in the area after consultation with such body or bodies as it may deem fit by notification in the Official Gazette from time to time and the owner shall accordingly make the rebate;]

(ii) the Central Government or the State Government, or the Director of Agriculture, or the Cane Commissioner, or the District Magistrate may allow a suitable rebate in the minimum price or the agreed price as the case may be, for the [burnt cane or stale cane or dried cane or rejected varieties of cane] supplied to factories within their respective jurisdiction subject to the condition that the rebate so allowed does not exceed the reduction in price on account of the estimated shortfall in the recovery of sugar from 4[burnt cane or stale cane or dried cane or rejected varieties of cane.]

(iii) where the sugarcane is brought bound in bundles and weighed as such, the Central Government, or with the approval of the Central Government, the State Government, or the Director of Agriculture, or the Cane Commissioner, or the District Magistrate, within their respective jurisdictions may allow a suitable rebate in regard to the weight of the binding material [not exceeding 1,000 grams per quintal of sugarcane;] and

(iv) The Central Government or the State Government or the Director of Agriculture or the Cane Commissioner or the DistrictMagistrate, may allow a suitable rebate in the minimum price or the agreed price as the case may be, when the cane is supplied ex-field to sugar factories within their respective jurisdictions subject to the condition that the rebate so allowed shall not exceed the estimated expenditure on harvesting.]

11. Delegation of powers – (1) The Central Government may, by notification in the Official Gazette, direct that all or any of the powers conferred upon it by this Order shall, subject to such restrictions, exceptions and conditions, if any, as may be specified in the direction, be exercisable also by-

(a) any officer or authority of the Central Government;

(b) a State Government or any officer or authority of a State Government.

(2) Where all or any of the powers conferred upon the Central Government by this Order have been delegated in pursuance of sub-

clause (1) (b) to any officer or any authority of a State Government, every order or direction issued by such officer or authority in exercise of that power may be amended, varied or rescinded by the State Government to whom the officer or authority is subordinate either suo motu, or on application made within a period of thirty days from the date of the order or direction:

Provided that no order revoking a licence or a permit issued to a person shall be made without giving such person an opportunity to make representation.”

(emphasis supplied)

52. The relevant provisions of the State Act, namely, the 2013 Act are required to be noted which read thus:

“Section 5. Payment to Sugarcane growers.—

(1) As soon as the Sugarcane is supplied to the occupier of a factory, the factory shall be liable to pay, within fourteen days of the receipt thereof, the minimum price as per FRP applicable at the relevant time.

(2) Payment shall be made on the basis of the recorded weight of the Sugarcane at the factory.

(3) The actual payment for Sugarcane fixed by the Board shall be paid in two steps. The first would be payment of FRP. Balance payment of Sugarcane dues will be paid subsequent to publication of half yearly ex-mill prices and values, determined by the Board in accordance with the provisions of clause (a) of section 4.

(4) Every payment made by the factory, under the provisions of this Act shall be paid to the farmer through his bank account only.”

53. It would also be necessary to note the notification dated 31 August 2021 issued by the Central Government in exercise of powers under Section 3(1) of the SCO 1966, as also the delegation notification dated 22 October 2020 issued by the Central Government in exercise of powers under clause 11 of the SCO 1966. The said notifications reads thus:-

NO.3(4)/2020/SP-I
Government Of India
Ministry of Consumer Affairs, Food & Public Distribution
Department of Food & Public Distribution

Krishi Bhawan, New Delhi,

Dated the 31st August, 2021

To

- i. Director General,
Indian Sugar Mills Association,
Ansal Plaza, 'C' Block,
2nd Floor, August Kranti Marg,
Khel Gaon Marg, New Delhi – 110049.
- ii. Managing Director,
National Federation of Cooperative Sugar Factories
Ltd.,
Ansal Plaza, 'C' Block,
2nd Floor, August Kranti Marg,
Khel Gaon Marg, New Delhi – 110049.

Subject: Fixation of Fair and Remunerative Price (FRP) payable by sugar factories for sugar season 2021-22.

Sir,

I am directed to inform that the Government of India has determined the 'Fair and Remunerative Price' of sugarcane payable by sugar factories for sugar season 2021-22 as under:

- i. Fair and Remunerative Price (FRP) of sugarcane for sugar season 2021-22 at Rs.290 per quintal for a basic recovery rate of 10%;
 - ii. a premium of Rs.2.90 per quintal for every 0.1 percentage point increase above 10% in the recovery;
 - iii. reduction in FRP proportionately by Rs.2.90 per quintal for every 0.1 percentage point decrease in recovery, in respect of those factories whose recovery is below 10% but above 9.5%. However, for sugar factories having recovery of 9.5% or less, the FRP is fixed at Rs. 275.50 per quintal.
2. This may be brought to the knowledge of your member mills for compliance.

Yours faithfully,

sd/-

(Rajesh Kumar Yadav)
Under Secretary to the Govt. of India
Tel: 23385726"

(emphasis supplied)

**“MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC
DISTRIBUTION
(Department of Food and Public Distribution)
NOTIFICATION**

New Delhi, the 22nd October, 2020

G.S.R 663(E).-/Ess. Com/Sugarcane:- In exercise of powers conferred by clause 11 of the Sugarcane (Control) Order, 1966, the Central Government hereby directs that powers conferred on it by Clause 3(1) of the said Order for fixing mill-wise FRP, shall be exercisable by the State Government/Union Territory from sugar season 2019-20 onwards for the sugar mills wherein the concerned sugar mill is located.”

(emphasis supplied)

54. At the outset, we may observe that it is not in dispute that the provisions of SCO 1966 framed by the Central Government in exercise of powers under Section 3 of the EC Act appears to be sacrosanct which empowers the Central Government under Clause 3(1) to fix the FRP for a crushing season. Further, the legal effect sub-clause 3 and 3A of Clause 3 brings about to pay the agriculturists the FRP within 14 days of the sugarcane being received by the sugar factories/sugar mills. The State Government does not question the orders/notifications issued by the Central Government in exercise of powers under Clause 3(1) as also the specific delegation under Clause 11 of the SCO 1966. Thus, the Central Government within the powers conferred on it under Clause 11 of the SCO 1966 has rightfully issued the notification dated 22 October 2020 (supra) whereby the powers under Clause 3(1) have been delegated in favour of the State Government, to be exercised in the manner and for the purpose as set out in the said notification. The learned Advocate General has taken a clear

stand that the State Government has not deviated from the notification dated 31 August 2021 issued by the Central Government in issuing the GR dated 21 February 2022.

55. Having noted the indisputed position qua the Central Government exercising powers and issuing relevant notifications under the SCO 1966, as to what is the purport of the impugned GR dated 21 February 2022, needs to be seen to answer the aforesaid questions. The official translation of the impugned Government Resolution from the Original Marathi reads thus:-

“(Official Translation from the copy of Government Resolution typewritten in Marathi.)

The policy to pay sugarcane price as per the F. R. P. by the Sugar Factories in the State as per the directions of the Central Government.

Government of Maharashtra
Co-operation, Marketing & Textiles Department,
Government Resolution No. CSF 2021/M.No.101/25 Sa.,
Mantralaya, Annexe Building, Mumbai – 400 032.

Date : 21.02.2022

- Read:-
- 1) Sugarcane (Control) Order, 1966.
 - 2) The Maharashtra Regulation of Sugarcane Price (Supplied to Factories) Act, 2013 and Rules, 2016 framed thereunder.
 - 3) Notification bearing No. S.F.R. 663(A)/Aa. Va./ E. Kha. /dated 22/10/2020 of the Ministry of Consumer Affairs, Food and Public Distribution of the Central Government, Government of India.
 - 4) Government Resolution No. CSF/2021/M. No.101/25 Sa., dated 22/04/2021 issued by the Co-operation, Marketing & Textiles Department, Government of Maharashtra.
 - 5) D.O. Letter bearing No. C.S./Finance/Section 7/F. R. P. determination /Study Group/2021, dated 8.9.2021 from the Commissioner, Sugar, Pune and the Report of the Study Group, enclosed therewith.

- 6) Letter bearing No. C.S./Finance/Section 7/F. R. P./Study Group/07/2022 dated 11.1.2022 from the Commissioner, Sugar, Pune.
- 7) Letter bearing No. C.S./Section 7/ Finance 1/ SCB/Online Meeting 21-22/130 and 131/2022 dated 8.2.2022 from the Commissioner, Sugar and Member Secretary, Sugarcane Control Board, Pune.

Preface :-

1. The provision regarding price of the sugarcane (Fair and Remunerative Price-F. R. P.) has been made in Point No. 2 and 3 of the Sugarcane (Control) Order, 1966. Every year, before commencement of the crushing season, the Central Government issues a Notification as to at which rate, the minimum rate of F. R. P. for sugarcane should be paid in the new season.

2. The sugarcane price notified by the Notification issued by the Central Government is for the sugarcane brought 'to a sugar factory at the gate of the factory'. In some other States including Uttar Pradesh, sugarcane harvesting and transportation is not done by the Sugar Factories. However, in the State of Maharashtra, the work of sugarcane harvesting and transportation thereof is done by Sugar Factories on behalf of the farmers - Sugarcane Suppliers. Therefore, in the State of Maharashtra, by deducting the expenditure incurred for harvesting and transportation by the Factory on behalf of Sugarcane Suppliers, from the F. R. P. notified in the Notification issued by the Central Government, the remaining amount is paid. When the crushing season of Sugar Factories is underway, it cannot be certainly said at the beginning of the season as to how much sugar will be produced during that season. Therefore, the factory is paying the F. R. P. amount for the current season by considering the sugar production of the previous season.

3. The Central Government by the Notification dated 22.10.2020, has conferred the powers upon the concerned State Governments to declare the F. R. P. of sugarcane from the crushing season 2019-20 of the Sugar Factories in the State. In view of the said Notification in this regard, by the Government Decision dated 22.4.2021, a Study Group was set up under the chairmanship of the Commissioner, Sugar to determine the production of Sugar Factories closed in the previous season of the year 2020-21 and prior thereto and for the current season and also to formulate the policy for determining the F. R. P. at the level of the State Government from the season 2020-21 onwards. The said Study Group comprises of the Representatives of the Federation of the Co-operative Sugar Factories in the State, Federation of Private Sugar Factories (WISMA), Vasantdada Sugar Institute, Pune (VSI), Representatives of the Sugar Factories in co-operative and private sector and also the Representatives of Sugarcane Supplier-Farmers and after detailed discussions with all these members, the report of the Study Group was submitted to the Government on

the 08/09/2021.

4. As per the recommendations made by the Study Group headed by the Commissioner, Sugar, the opinion of the Law and Judiciary Department was sought. Similarly, as per the provisions of Section 4 (b) of the Maharashtra Regulation of Sugarcane Price (Supplied to Factories) Act, 2013, the advice of the Sugarcane Control Board under the chairmanship of the Chief Secretary, was sought and in pursuance thereof, a special meeting of the Sugarcane Control Board under the chairmanship of the Chief Secretary was held on the date 27/01/2022. After comprehensively considering the recommendations made by the Study Group and the decision taken by the Sugarcane Control Board in connection therewith, the Government has taken the following decision regarding the procedure to be followed for paying the price to be paid by the Sugar Factories in the State for the sugarcane received for crushing, as per the F. R. P. notified by the Central Government.

Government Resolution :-

1. As per the F. R. P. notified by the Central Government, the Sugar Factories in the State shall take the following steps while paying the price for the sugarcane received for crushing.

- 1) **While paying the sugarcane price as per F. R. P. for the crushing season 2021-22 and for the subsequent seasons, the sugar production of that particular season shall be taken into account.**
- 2) **Until the final sugar production of the crushing season 2021-22 and of the subsequent seasons is determined, while paying the initial minimum F. R. P. for sugarcane crushed from the date of commencement of the crushing season, the sugar production to be considered as base therefor is determined as per the respective Revenue Divisions as follows:-**

Sr. No.	Name of the Revenue Division	The sugar production to be considered as a base for determination of F. R. P. for sugarcane till the final sugar production of the season is determined.
1	Pune and Nashik	Minimum 10.00 %
2	Aurangabad, Amravati and Nagpur	Minimum 9.50 %

Taking into account the sugar production as a base as mentioned hereinabove, the Sugar Factories in the respective Revenue Divisions shall determine the minimum F. R. P. of the sugarcane at the beginning of the season as per the basic F. R. P. notified by the Central Government under the Notification for that season and shall take steps for making payment thereof as per the Point No. 3 of the

Sugarcane (Control) Order, 1966.

Similarly, if the Central Government revises the rate of F. R. P. after the season 2021-22, then, the minimum base of sugar production shall be determined with the approval of the Government together with the recommendation of the Sugarcane Control Board.

- 3) In the matters of the factories closed in the season of 2019-20 and prior thereto, while paying F. R. P. for crushing season 2020-21, sugar production, sugarcane harvesting and transportation costs of that season shall be taken into account. However, those factories which have already paid F. R. P. for the season 2020-21, are not required to determine the F. R. P. as aforesaid.
- 4) If the rate higher than the rate of F. R. P. notified by the Central Government by the Notification, is to be paid, then, the factories shall determine the said rate.
- 5) It shall be mandatory for the sugar factories to publish the rates determined by the Board of Directors of the said Sugar Factories, in two local newspapers having a wide circulation and also at the factory site for information, before the commencement of the season and it shall be mandatory for the said factories to pay the sugarcane price in the said entire season, only at the rate as published in the aforesaid manner.
- 6) While paying the initial minimum F.R.P. of sugarcane crushed during the crushing season 2021-22 and from the commencement of the subsequent crushing season to the sugarcane suppliers, the cost to the extent of the average cost for sugarcane harvesting and transportation during the last two financial years shall be deducted from the same. While paying the final F.R.P. as per the final sugar production after the end of the season, the actual costs of sugarcane harvesting and transportation incurred in the financial year of the concerned season shall be deducted.
- 7) After the season is over, the factories, within 15 days, shall determine the final sugar production by considering together, the quantity of actual sugar production as per the sugar production considered for that season and the reduction in the sugar production on account of the use/sale of sugarcane juice, syrup and "B-Heavy molasses" for production of ethanol. The factories shall get certified the reduction in sugar production due to the use/sale of sugarcane juice, syrup and "B-Heavy molasses" for production of ethanol, from the Competent Institutions designated by the Central Government for the said purpose.

- 8) After the season is over, the final F. R. P. shall be determined as per the final sugarcane production of the same season and the amount of difference shall be paid to the sugarcane farmers accordingly, within 15 days.

2. The Sugar Factories in the State shall take steps as aforesaid to determine the final sugarcane price to be paid as per the F. R. P. for the sugarcane that was received for crushing. While taking the said steps, all the Sugar Factories shall take precaution to see that there is no violation of the prevailing laws enacted, rules framed and instructions given by the Central Government and shall follow the said instructions scrupulously.

3. The Commissioner, Sugar, Pune shall ascertain that the factories are implementing the aforesaid instructions and shall monitor the same.

4. The above orders shall come into force with immediate effect.

5. This Government Resolution has been made available on the Website www.maharashtra.gov.in of the Government of Maharashtra and its code number is 202202211301518402. This order is issued by authenticating the same under digital signature.

By order and in the name of the Governor of Maharashtra.

Digitally signed by,
(Ankush P. Shingade)
Deputy Secretary,
Government of Maharashtra.”

(emphasis supplied)

56. Thus from a bare reading of the impugned GR, it is clear that there is a tacit acknowledgment on the part of the State Government that the Central Government announces FRP, however, notwithstanding the same, the impugned Government Resolution postulates the following exercise and steps to be undertaken by the sugar factories in the State while paying the price for sugarcane, received for crushing, to the farmers:-

- (i) The sugar produce for that season to be taken into account while paying the sugarcane price as per FRP,

(ii) Until the determination of the final sugar produce of the crushing season 2021-22 and from the beginning of the season for the crushed sugarcane, while paying the initial minimum FRP, the sugar produce be considered as base as per the revenue division as under:-

Sr. No.	Name of the Revenue Department	The sugar produce to be considered as base for determination of F. R. P. till determination of the final sugar produce of the season.
1	Pune and Nashik	Minimum 10.00%
2	Aurangabad, Amravati and Nagpur	Minumum 9.50%

(iii) On the basis of the aforesaid base of sugar produce, the sugar factories in the revenue division are to take action “to determine the minimum FRP sugarcane price” at the beginning of the season as per the base of FRP price determined by the Central Government for that season through notification and pay the same as per Clause 3 of the SCO 1966.

(iv) If the Central Government changes the FRP after the season 2021-22, the minimum base of sugar produce should be determined with the approval of the State Government along with the recommendation of the Sugarcane Control Board.

(v) In case of factories closed in season 2019-20 and earlier, while paying FRP for crushing season 2020-21, sugar produce, sugarcane harvest and costs should be taken into account. However, factories which have already paid FRP for season 2020-21, those factories are not required to determine FRP.

(vi) If the FRP prices are to be paid more than the price announced by the Central Government as per the Central Government notification, the factory should determine the said price.

(vii) It would be mandatory to publish the prices determined by the Board of Directors of the Sugar Factory in two local newspapers with high circulation and at the factory site for information before the start of the season and it would be mandatory to pay the sugarcane price as per the published price throughout the season.

(viii) From the commencement of the crushing season 2021-22 and subsequent seasons, the initial minimum FRP for the crushed sugarcane of that season should be paid to the sugarcane suppliers after deducting the average cost of sugarcane harvesting and transportation costs of the previous two financial years. After the end of the season, the final FRP on the final sugar bill should be deducted after deducting the actual sugarcane harvesting and final cost incurred in that financial year of that season.

(ix) Within 15 days from the end of the season, the factories should have combined the actual sugar produce obtained as per the sugar production for that season and the reduction in sugar produce due to the use/sale of sugarcane juice, syrup and heavy molasses for ethanol production to determine the final sugar produce and pay the final FRP accordingly. The reduction in sugar produce due to the use of sugarcane juice, syrup and heavy molasses for ethanol production should be certified by the competent institutions determined by the Central Government.

(x) Within 15 days after the end of the season, the final FRP should be determined on the final sugar produce of the same season and the difference in the amount should be paid to the sugarcane farmers accordingly.

(xi) Following the above procedure, the sugar factories in the State should take steps to determine the final sugarcane price to be paid as per FRP for the sugarcane that would come for crushing. Further while taking the said steps, all the sugar factories should ensure that there is no violation of the prevailing laws, rules and instructions given by the Central Government and that such instructions should be strictly followed. The Sugar Commissioner, Pune should inspect the factories to ensure that these instructions are being implemented and monitoring should be done in that regard.

57. A perusal of the aforesaid conditions as stipulated by the impugned Government Resolution *ex facie* indicates that a regime which is wholly alien and/or contrary to the provisions of Clause 3(1), 3(3) and 3(3A) is prescribed by the State Government to determine the FRP to be paid for the sugarcane as supplied by the agriculturists/sugarcane farmers to the sugar

factories/sugar mills. The conditions as imposed by the GR establish a parallel procedure being required to be undertaken by the 'sugar factories', in determination of the FRP to be paid to the agriculturists for the sugarcane sold by them to the sugar factories/sugar mills. It is also difficult to fathom, that when the mandate of the FRP determined by the Central Government under Clauses 3(1) of the SCO 1966 is recognized by the State Government, can the State Government at all prescribe such novel procedure to be undertaken, for determination of the FRP as prescribed by the impugned Government Resolution. In other words, a serious situation of conflict arises between the FRP as fixed by the Central Government and the one fixed under the impugned Government Resolution. Hence, if the FRP as determined by the Central Government is accepted to be sacrosanct then what has been provided under the impugned GR, cannot stand. Also, in our opinion, the conditions as prescribed under the impugned GR cannot be accorded any sanctity.

58. The conditions as imposed by the impugned Government Resolution are certainly destructive of the orders to be passed by the Central Government under Clause 3(1) of the SCO 1966 fixing the FRP which is to apply at the beginning of the season. It is impossible to conceive that the orders passed by the Central Government fixing the FRP and the order to be passed under the impugned Government Resolution can co-exist to operate at the beginning of the crushing season. If this be so, then there can be no

two opinions that the impugned GR dated 21 February 2022 is *ex facie* contrary to the provisions of Clause 3(1), (3) and (3A) of the SCO 1966.

59. There is another major reason on the legality of the impugned Government Resolution, namely, that the State Government does not have jurisdiction to issue the impugned GR in the form it is issued, as such exercise of powers, in no manner, can be recognized as any exercise of powers under the powers delegated to the State Government under Clause 11 of the SCO 1966. The delegation is specific. It is only in respect of the powers which are conferred on the Central Government by Clause 3(1) of the SCO 1966 to be exercised by the State Government (and not by sugar mills/sugar factories) “for fixing mill-wise FRP”, to be exercisable which the State Government was permitted to exercise w.e.f. sugar season 2019-20, for sugar mills qua their location. Certainly the impugned Government Resolution is general in nature, it does not in any manner specify that it is issued qua the location of a sugar mill and/or qua any specific sugar mill. For such reason, if the impugned Government Resolution is to be read to be issued in exercise of powers as delegated vide Central Government Notification dated 22 October 2020, in that event, it was required to be issued qua the specific sugar mills depending on the location of the sugar mill for fixing mill-wise FRP. Such clear intention of the delegation has been completely misapplied. From a bare reading of the impugned Government Resolution, it can be gathered that it has not been issued to

fulfill the exact cause and the object of the delegation of powers by the Central Government, as the same exceeds and surpasses the delegation.

60. It is well-settled that unless expressly authorized, a delegate cannot sub-delegate its powers, as done by the State Government. “*Delegatus non potest delegare*” is a well known maxim which would squarely apply in considering the effect as brought by the impugned Government Resolution, when tested on the basic delegation of the powers as contained under the Central Government Resolution dated 22 October 2020. It is hence difficult to read the impugned GR to be any exercise of powers under clause 3(1) by the State Government as delegated to it under the notification dated 22 October 2020. Hence, the contention of the petitioners in such context appears to be quite correct as the impugned GR is prescribing a regime completely alien, unknown and/or contrary to the SCO 1966, rendering the impugned GR to be bad and illegal, being violative of Clause 3(1) read with sub-clause (3) & (3A) of the SCO 1966.

61. We are thus not inclined to accept the contention as urged by Dr. Saraf that the State Government in issuing the impugned Government Resolution dated 21 February, 2022 has not contravened the SCO 1966 and/or the impugned Government Resolution is reflective of the legitimate exercise of powers by the State Government under the notification dated 20

October, 2020 by which powers under Clause 3(1) of SCO 1966 has been delegated in favour of the State Government as observed above.

62. For the aforesaid reasons, we also do not accept the State Government's contention that the impugned Government Resolution in any manner would indicate any exercise of fixing mill-wise FRP and that too by the State Government. This is certainly not what is reflected by the impugned Government Resolution which has blanketly created a provision not only for the year 2021-22 but for all seasons to come as set out in Clauses 1(1) and 1(2) thereof and that too at the hands of the sugar mills.

63. We may also observe that no legal sanctity and legitimacy can be attributed to the impugned Government Resolution for the reason that the same would also violate the provisions of Section 5(1) of the State legislation, namely, the 2013 Act, which provides for "Payment to sugarcane growers" as soon as the sugarcane is supplied to the occupier of a factory, the factory shall be liable to pay, within 14 days of the receipt thereof, the minimum price as per the FRP applicable at the relevant time. This indicates a FRP fixed and prevailing at the time of supply of the sugarcane. Considering the purport of Section 5(1) of the 2013 Act, there is no scope that the FRP is not in existence, at the beginning of the crushing season and that payment could be delayed any time after 14 days. Thus, considering the provision of Section 5 as it stands, there cannot be any attempt on the

part of the State Government to make payment of the FRP after determination of the sugar produced at the end of the crushing season. If such position is to be accepted, the same would fall foul of the provisions of Clause 3(3) of SCO 1966 as also of Section 5(1) of the 2013 Act. Thus, considering the provisions of Section 5 of the 2013 Act, the issuance of the impugned GR is not an appropriate, lawful much less a legitimate exercise of the powers by the State Government. We are of the clear opinion that once a power is conferred on the State Authorities under Clause 3(1) to fix the price in terms of notification dated 22 October, 2020, which is for fixing mill-wise FRP for the sugar mills based on the location of the concerned sugar mills, it is required to be exercised only for such purpose and in such manner or not at all. Such principle of law which is well settled, is borne out in the maxim *Expressio Unius Est Exclusio Alterius*². Such principle was applied in 1875 in the celebrated decision of the Chancery Division in **Taylor v. Taylor**³ Thereafter, the Judicial Committee of the Privy Council in the case of **Nazir Ahmed v. King Emperor**⁴, applying such principle in *Taylor V. Taylor*, held that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. In **State Of Uttar Pradesh vs Singhara Singh & Ors.**⁵, the Supreme Court applying such principle, held as under:-

2 *The express mention of one thing implied the exclusion of another.*

3 (1875) 1 Ch. D. 426

4 L.R. 63 I.A. 372.

5 (1964)4 SCR 485

“8. The rule adopted in *Taylor V. Taylor* is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.”

64. In *Hukam Chand Shyam Lal Vs. Union of India & Ors.*⁶ the Supreme Court recognized the applicability of the principles in *Taylor v. Taylor* (supra), when it was observed thus:-

“18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice.”

The recognition of the aforesaid principle is seen in several decisions of the Supreme Court including a decision of a recent origin in *Tahsildar Vs. G. Thambidurai*⁷.

65. Applying the aforesaid principles, looked from any angle, the impugned Government Resolution dated 21 February, 2022 cannot be held to be legal and valid when tested on the anvil of its validity qua the powers as conferred on the Central Government under Clause 3(1) read with sub-clause (3) and (3A), and even when tested on the basis of delegation of power in favour of the State Government under the notification of the Central Government dated 22 October 2020, granted in exercise of powers

⁶ (1976)2 SCC 128

⁷ (2017)12 SCC 642

as per Clause 11 of SCO 1966. The impugned Government Resolution also cannot be sustained when tested by applying the provisions of Section 5(1) of the 2013 Act.

66. We may also note that our aforesaid conclusion is fortified by further notifications which are issued by the State Government. In such context, we may observe that a notification dated 15 February, 2023 was issued by the State Government for determination of FRP payable by the sugar mills for 2020-21 crushing season, by which, FRP mill-wise was determined and specifically referring to the delegation of powers in favour of the State Government under Central Government notification dated 22 October, 2020. It cannot be said that such notification can in any manner comply the requirements of Clause 3(3) of the SCO 1966. Similarly, the notifications was issued for the year 2021-22 after one year i.e. on 25 April, 2023. Illustratively, we note the notification dated 15 February, 2023, issued for the crushing season (year 2020-21) almost after three years which reads thus:

CO-OPERATION, MARKETING AND TEXTILES DEPARTMENT

Madam Cama Marg, Hutatma Rajguru Chowk, Mantralaya,
Mumbai 400 032, dated the **15th February, 2023**.

NOTIFICATION

SUGARCANE (CONTROL) ORDER, 1966.

In exercise of powers conferred by clause 11 of the Sugarcane (Control) order, 1966 the Central Government directed to State

Government that powers conferred on it by clause 3 (1) of the said order for fixing mill-wise FRP, shall be exercisable by the State Government from sugar season 2019-20 onwards for the sugar mills where in the concerned sugar mill is located vide Central Government Notification No. 23102020- 222688 dated 22nd October, 2020.

Fixation of Fair and Remunerative Price (FRP) payable by sugar mills for 2020-21 sugar season has been notified by Central Government vide notification dated 26th August 2020 as under-

- (i) fixed FRP of sugarcane at Rs.285/- per qtl for a basic recovery rate of 10%,
- (ii) a premium of Rs.2.85 per qtl for every 0.1% increase above 10% in the recovery will be provided
- (iii) to reduce the FRP proportionately by Rs.2.85/qti for every 0.1 percent decrease in recovery, in respect of those mills whose recovery is below 10% but above 9.5 percent.
- (iv) to fix FRP for mills having recovery of 9.5% or less at Rs.270.75/ctl.

After completion of crushing season sugar factories submit their RT(8)C report which is submitted to Central Government, State Government and Commissioner of Sugar. Actual sugar recovery percentage is certified in RT(8)C report. Fair and Remunerative Price (FRP) of sugar mill is fixed on recovery rate per quintal as per the Central Governments notification of fixation of FRP.

As per existing practice the sugarcane harvesting and transport machinery is raised by sugar mills in Maharashtra on behalf of farmers. Therefore, H and T charges incurred by sugar mills gets deducted from the FRP of sugarcane grower. Average harvesting and transportation charges are deducted from the FRP fixed by the Central Government for that sugar season and amount is transferred in the bank accounts of farmers.

In exercise of the powers delegated to the State Government by the Central Government vide notification dated 20th October 2020, fixation of mill wise FRP for the sugar season 2020-21 in Maharashtra is published in Annexure I.”

(emphasis supplied)

67. On a plain reading of the aforesaid notification, it is clear that what is payable to the farmers for the crushing season 2020-21 stands determined

almost after a long period of three years i.e. on 15 February, 2023 and that too mill-wise. However, this cannot be accepted to mean that by such notification which is a sequel to exercise of powers under notification dated 22 October, 2020 could deprive the farmers of payment of FRP as determined under Clause 3(1) of SCO 1966 by the Central Government within 14 days of the sale of sugarcane to the sugar factories/sugar mills as mandated by sub-clauses (3) and (3A) thereof.

68. The aforesaid discussion would also make it imperative to observe that there clearly appears to be an arbitrary exercise of power by the State Government in issuing the impugned Government Resolution dated 21 February, 2022 as also there was a complete misconception in regard to the powers the State Government could exercise in fixing the FRP to be paid to the farmers.

69. Further, considering the provisions of SCO 1966 as also the provisions of notification dated 22 October, 2020 which delegate the powers under Clause 3(1) on the State Government for fixing FRP mill-wise depending on its location, as also considering the powers vested with the State Government under Section 5 of the 2013 Act, we are of the opinion that such powers are quite compartmentalized. This inasmuch as the State Government has no authority or jurisdiction to deny to the farmers, payment of FRP as determined by the Central Government as per Clause

3(1) of SCO 1966 within 14 days of the supply of sugarcane to the sugar factories as mandated by sub-clause (3) of Clause 3. Such payment is an immediate relief guaranteed to the farmers who vest their entire produce of the sugarcane crop, in the hands of the factory/sugar mill, and that too without any security as they hand over the same with the guarantee that they would be paid FRP for the same within 14 days.

70. It may be that for a given crushing season, the final sugar produce of the season is in variance with the FRP which is determined and there is likelihood that the farmers would be benefited. In such event, after the payment of FRP to the farmers within 14 days as mandated by the provisions of Section 3(3) of SCO 1966, it is open to the State Government to undertake an appropriate exercise, as may be permissible to do so considering the provisions of sub-section (3) of Section 5 of the 2013 Act. However, such exercise is a distinct exercise and the same cannot, in any manner, displace or substitute the requirement of sub-clause (3) of Clause 3 of SCO 1966, namely, payment of FRP within 14 days as fixed by the Central Government by notification issued under Clause 3(1) of SCO 1966. In other words, the agriculturist/farmers/sugarcane producers are not only entitled for the FRP being payable within 14 days of the supply as per the provisions of SCO 1966, but also for a determination of final price as may be arrived by the State Government in terms of its decision under sub-section (3) of Section 5.

71. We may also observe that in the event, the State Government is of the opinion that it is necessary to fix mill-wise FRP for any legitimate reason under the delegation of powers on it under the Central Government Notification dated 20 October 2020 qua the sugar mills depending on its location, in such event, it is required to exercise such powers qua such sugar mills for which it intends to fix mill-wise FRP and any such exercise is required to be undertaken not in any manner contrary to Clause 3(3) of the SCO 1966, so as to deprive the agriculturist/sugarcane farmers of the benefit of FRP to be paid within 14 days of the supply of sugarcane to the sugar factories/sugar mills.

72. In the light of the above discussion, we are of the clear opinion that the FRP fixed by the Central Government in exercise of powers under Clause 3(1) of SCO 1966 and on the basis of various steps taken by it as envisaged by it in consultation with the various bodies is sacrosanct, as the same is based on the performance/figures for the prior crushing season inasmuch as the FRP is determined by the Central Government under Clause 3(1) at the beginning of the crushing season, which normally begins in the month of October (10th Month) of every year and ends by varying between April to June of the following year. The element of FRP under Clause 3(1) as categorically stated by the Central Government in the reply affidavit can never be on the performance and/or final sugar price for the ongoing season and necessarily it is on the basis of prior season. However, as

noted above, any final determination of the FRP on the basis of the final sugar produced for the season is an exercise to be undertaken after payment of the initial FRP to the sugarcane growers/farmers/agriculturist as per the provisions of Clause 3(3) of SCO 1966.

73. We also find substance in the contentions as urged on behalf of the petitioners that the denial of implementation of the orders of Central Government in Clause 3(1) of SCO 1966 would bring about a regime of uncertainty not only in relation to the liability the sugar mill would be required to incur, on payment of price for the sugarcane by the farmers, but it would amount to postponing payment of the FRP of the sugarcane beyond the mandate of Clause 3(3) of SCO 1966, which would be in breach of the rights of farmers and/or of the agriculturist.

74. While parting, we cannot be oblivious to the more humane realistic and natural consequences of any activity of the Farmers. Traditionally our country is predominantly known to be an agrarian, wherein, a vast population of the country depends on agricultural and the related activities, for their livelihood. The agriculturist / farmers, hence, play a pivotal role in supporting the food requirements of the vast population the country has namely more than about 140 crores. The agriculturist / farmers producing sugarcane certainly play a significant role in their contribution to the sugar industries, which are scattered all over the country. It is for such reason

sugarcane and sugar both are brought within the purview of the EC Act by the Central Government and are controlled items. In doing so the Central Government is conscious that the sugarcane grower ought to be paid fair price for the sugarcane grown by them and supplied to the sugar factories, in providing for timelines for payment of the price of sugarcane within 14 days of being supplied by them to the sugar factories. This imminently shows that the Central Government is alive that there cannot be any delay in payment of the basic fair price of the sugarcane harvested by the agriculturalist. This is also to remove any speculation and/or any uncertainty in receipt of the price for the sugarcane by the agriculturist. It also cannot be that the agriculturist supply the sugarcane as harvested by them and are required to endlessly wait till the end of the crushing season to receive the basic price of their products as supplied to the sugar factories. If this is accepted to be the regime as to what would happen to the farmers / agriculturists and their suffering, cannot be imagined. Agriculturist in no manner whatsoever should suffer, is the object and intention of the Central Government in providing immediate payment of the FRP to the sugarcane supplied by them, within 14 days of the supply. Any dilution of such mandate as contained in Clause 3 of the SCO would be fatal and would adversely affect the very livelihood of the agriculturists and the farmers. There cannot be a situation that the farmers become debt ridden, as it is only on the receipt of the fair price for the sugarcane as supplied by them, depends their further

activities, for the next crushing season. Farmers / agriculturists certainly are not persons of commerce they are not capitalist are dependent fully on the agricultural income (albeit some exceptions who may not at all be the sufferers). We cannot be oblivious of the large numbers of subsidies, benefits, advantages and schemes the Government showers on sugar factories, the reasons which we need not delve upon. However, although such benefits are granted to the sugar factories, the agriculturists / farmers can never be neglected nor can their rights be suppressed and or they could be financially exploited. In the event of any delay in payment of the fair price or FRP or its non payment to the farmers/agriculturist for the sugarcane supplied by them, the prejudice which would be caused, would be enormous. It is certainly bound to be a hard financial blow and impact on them, for the reason that on such remuneration their very livelihood and the livelihood of their dependents / family members would rest. On the other hand, insofar as the sugar factories / sugar mills are concerned, any delayed payment of the fair price to the farmers or its non payment for some reason would certainly be an economic and / or a commercial consideration. Thus livelihood of the farmers / agriculturists can never be a matter of comparison to the commerce and economics of a sugar factory. It is in such light, in our opinion, the rights of the agriculturist / farmers to receive the FRP as mandated by Clause 3 read with sub-clause (3) and (3A) thereof are paramount, which are intended to be safeguarded by law.

75. In the light of the above discussion, we are certain that the petitions would be required to be allowed. They are allowed by the following order:

ORDER

(i) The impugned Government Resolution dated 21 February, 2022 is quashed and set aside being violative of Clause 3(1) and Clause 3(3) of Sugarcane (Control) Order, 1966 read with Section 5(1) of the Maharashtra Regulation of Sugarcane Price (Supplied to Factories) Act, 2013. It is declared that sugarcane farmers are entitled to the Fair Remunerative Price (FRP) for the sugarcane supplied by them, to the sugar factories at the beginning of the crushing season, as determined by the Central Government as per Clause 3(1) and Clause 3(3) of SCO. 1966.

(ii) In the event any of the sugarcane farmers do not intend to take the benefit of the FRP fixed by the Central Government under Clause 3(1) read with sub-clause (3), it is open for them to have an agreement in that regard with the sugar factory as provided for under sub-clause (3) of Clause 3 of the SCO 1966.

(iii) It is clarified that it would be open to the State Government to exercise powers under Clause 3(1) of the Sugarcane (Control) Order, 1966 strictly in the manner

as envisaged by the Central Government Order dated 20
October 2020 and not otherwise.

76. Except for the aforesaid discussion and conclusion, we have not decided the subject matter of any other prayers as made by the petitioner.

77. Rule in all the petitions is made absolute in the aforesaid terms. No costs.

78. In view of the disposal of the petitions, pending Interim Applications would not survive and are accordingly disposed of.

79. At this stage, learned AGP has prayed for stay of our judgment. Considering the facts of the case as the same would have a serious repercussion on the agriculturist / farmers, we reject such prayer.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)