IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8955 OF 2015

Bhaurao Chavan Sahkari Sakhar
Karkhana Ltd., Laxmi Nagar,
Degaon-Yelegaon, Tq. Ardhapur,
Dist. Nanded,
through its Managing Director,
Mr. Ghanshyam Ramnath Pandey,
Age : 61 Years, Occu. : Service,
R/o as above. .. Petitioner

Versus

01. The Union of India,
Through Ministry of Consumer Affairs,
Food and Public Distribution,
Krishi Bhavan, New Delhi.

02. The Ministry of Agriculture & Cooperation,
Government of India, New Delhi,
Through its Secretary.

03. State of Maharashtra,
Through its Principal Secretary,
Cooperation and Textile Department,
Mantralaya, Mumbai.

04. The Commissioner of Sugar,
Maharashtra State,
Sakhar Sankul, Shivaji Nagar,
Pune.

05. National Federation of Cooperative
Sugar Factories, Through its
Managing Director,
New August Kranti Marg,
C/o Ansal Plaza, New Delhi.

06. Maharashtra State Cooperative Sugar Factories Federation, Sahakar Bhavan, Backbay Reclamation, Nariman Point, Mumbai, through its Managing Director. .. Respondents

Shri P. M. Shah, Senior Advocate i/by Shri N. B. Suryawanshi, Advocate for the Petitioner.
Shri Sanjiv B. Deshpande, A.S.G. for Respondent Nos. 1 and 2.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 3 and 4.
The Respondent No. 6 served.

WITH
CIVIL APPLICATION NO. 15250 OF 2015
IN
WRIT PETITION NO. 8955 OF 2015

Raju Anna Shetti .. Applicant

Versus

Bhaurao Chavan Sahkari Sakhar Karkhana Ltd. Through its Managing Director G. R. Pandey and others .. Respondents

Shri Ramraje A. Deshmukh, Advocate for the Applicant.
Shri P. M. Shah, Senior Advocate i/by Shri N. B. Suryawanshi, Advocate for the Respondent No. 1.
Shri Sanjiv B. Deshpande, A.S.G. for Respondent Nos. 2 and 3.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 4 and 5.

WITH
WRIT PETITION NO. 5879 OF 2015

Padmashree Dr. Vitthalrao Vikhe Patil Sahkari Sakhar Karkhana Limited, At Pravaranagar, Tq. Rahata, District Ahmednagar, Through its Managing Director .. Petitioner

Versus

01. The Union of India,
Through the Secretary for
Ministry of Consumer Affairs,
Food and Public Distribution,
Krishi Bhavan, NEW DELHI.

02. The Chief Director (Sugar),
Government of India,
Krishi Bhavan,
Dr. Rajendra Prasad Road,
NEW DELHI.

03. The Commissioner of Sugar,
Maharashtra State,
Shivaji Nagar, PUNE - 5.

04. The Regional Joint Director of Sugar,
Regional Office, Trilok Chambers,
Laltaki Road, Ahmednagar,
District Ahmednagar. .. Respondents

Shri V. D. Hon, Senior Advocate i/by Shri A. V. Hon, Advocate for the Petitioner.
Shri Sanjiv B. Deshpande, A.S.G. for Respondent Nos. 1 and 2.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 3 and 4.

WITH
CIVIL APPLICATION NO. 15252 OF 2015
IN
WRIT PETITION NO. 5879 OF 2015

Raju Anna Shetti .. Applicant

Versus

Padmashree Dr. Vitthalrao Vikhe Patil
Sahkari Sakhar Karkhana Limited
and others .. Respondents

Shri Ramraje A. Deshmukh, Advocate for the Applicant.
Shri V. D. Hon, Senior Advocate i/by Shri A. V. Hon, Advocate for the Respondent No. 1.
Shri Sanjiv B. Deshpande, A.S.G. for Respondent Nos. 2 and 3.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 4 and 5.

WITH
WRIT PETITION NO. 5881 OF 2015

Jagruti Sugar and Allied Industries
Ltd., Talegaon, Tq. Deoni,
Dist. Latur,
Through its Joint Managing Director
Laxman S/o Nivrutirao More,
Age : 48 Years, Occu. : Agriculture,
& Vice Chairman .. Petitioner

Versus

1. Government of India,
through its Secretary,
Ministry and Department of
Consumer Affairs,
Food & Public Distribution,
'Krishi Bhavan', New Delhi.

2. State of Maharashtra,
through Principal Secretary,
Co-operation & Textile Department,
Mantralaya, Mumbai - 32.

3. Commissioner of Sugar,
Maharashtra State, Pune
Sahkar Sankul,
Shivaji Nagar, Pune - 411 005. .. Respondents

Shri V. D. Salunke, Advocate for the Petitioner.
Shri Sanjiv B. Deshpande, A.S.G. for the Respondent No. 1.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 2 and 3.

WITH
CIVIL APPLICATION NO. 15253 OF 2015
IN
WRIT PETITION NO. 5881 OF 2015

Raju Anna Shetti .. Applicant
Versus
Jagruti Sugar and Allied Industries
Ltd., Talegaon, Tq. Deoni,
Through its Joint Managing Director
and others .. Respondents

Shri Ramraje A. Deshmukh, Advocate for the Applicant.
Shri V. D. Salunke, Advocate for the Respondent No. 1.
Shri Sanjiv B. Deshpande, A.S.G. for the Respondent No. 2.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 3 and 4.

WITH
WRIT PETITION NO. 6055 OF 2015

Manjara Shetkari Sahkari Sakhar
Karkhana Limited, Vilas Nagar,
Tq. & Dist. Latur, through its
Managing Director
Shri Dattatray Bhausaheb Shinde,
Age : 62 Years, Occu. : Service,
R/o Vilas Nagar, Latur,
Tq. & Dist. Latur. .. Petitioner
Versus

1. Government of India,
through its Secretary,
Ministry and Department of
Consumer Affairs,
Food & Public Distribution,
'Krishi Bhavan', New Delhi.

2. State of Maharashtra,
through Principal Secretary,

Co-operation & Textile Department,
Mantralaya, Mumbai - 32.

3. Commissioner of Sugar,
Maharashtra State, Pune
Sahkar Sankul,
Shivaji Nagar, Pune - 411 005. .. Respondents

Shri Mahesh S. Deshmukh, Advocate for the Petitioner.
Shri Sanjiv B. Deshpande, A.S.G. for the Respondent No. 1.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 2 and 3.

WITH
CIVIL APPLICATION NO. 15251 OF 2015
IN
WRIT PETITION NO. 6055 OF 2015

Raju Anna Shetti .. Applicant
Versus
Manjara Shetkari Sahkari Sakhar
Karkhana Limited, Latur,
through its Managing Director
and others .. Respondents

Shri Ramraje A. Deshmukh, Advocate for the Applicant.
Shri Mahesh S. Deshmukh, Advocate for the Respondent No. 1.
Shri Sanjiv B. Deshpande, A.S.G. for the Respondent No. 2.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 3 and 4.

WITH
WRIT PETITION NO. 6858 OF 2015

Maharashtra Shetkari Sugar Limited
Shri Uttam Nagar, Saikheda-Devinagar,
Tq. Sonpeth, Dist. Parbhani,
Through its Authorized Officer,
Rajendra S/o Ramrao Khadap,
Age : 42 Years, Occu. : Service,

R/o Shri Uttam Nagar, Saikheda-Devinagar,
Tq. Sonpeth, Dist. Parbhani. .. Petitioner

Versus

01. The Union of India,
Through its Secretary for
Ministry of Consumer Affairs,
Food and Public Distribution,
Krishi Bhavan, New Delhi.

02. The Chief Director (Sugar),
Government of India,
Krishi Bhavan,
Dr. Rajendra Prasad Road,
New Delhi.

03. The Commissioner of Sugar,
Maharashtra State,
Shivaji Nagar, Pune - 5.

04. The Regional Joint Director of Sugar,
V.I.P. Road, Bhuvikas Bank Building,
Nanded.

05. The Collector, Parbhani,
Dist. Parbhani.

06. The Sub Divisional Officer,
Pathri, Dist. Parbhani. .. Respondents

Shri V. D. Hon, Senior Advocate i/by Shri A. V. Hon, Advocate for the Petitioner.
Shri Sanjiv B. Deshpande, A.S.G. for Respondent Nos. 1 and 2.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 3 to 6.

WITH
WRIT PETITION NO. 9187 OF 2015

Bhaurao Chavan Sahkari Sakhar
Karkhana Ltd., Laxmi Nagar,
Degaon-Yelegaon, Tq. Ardhapur,
Dist. Nanded,
through its Managing Director,
Mr. Ghanshyam Ramnath Pandey,
Age : 61 Years, Occu. : Service,
R/o as above. .. Petitioner

Versus

01. The Union of India,
Through Ministry of Consumer Affairs,
Food and Public Distribution,
Krishi Bhavan, New Delhi.

02. The Ministry of Agriculture & Cooperation,
Government of India, New Delhi,
Through its Secretary.

03. State of Maharashtra,
Through its Principal Secretary,
Cooperation and Textile Department,
Mantralaya, Mumbai.

04. The Commissioner of Sugar,
Maharashtra State,
Sakhar Sankul, Shivaji Nagar,
Pune.

05. National Federation of Cooperative
Sugar Factories, Through its
Managing Director,
New August Kranti Marg,
C/o Ansal Plaza, New Delhi.

06. Maharashtra State Cooperative Sugar
Factories Federation, Sahakar Bhavan,
Backbay Reclamation, Nariman Point,
Mumbai, through its

Managing Director. .. Respondents

Shri P. M. Shah, Senior Advocate i/by Shri N. B. Suryawanshi, Advocate for the Petitioner.
Shri Sanjiv B. Deshpande, A.S.G. for Respondent Nos. 1 and 2.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 3 and 4.
The Respondent No. 6 served.

WITH
WRIT PETITION NO. 880 OF 2016

Shri Renuka Sugars Limited Unit
at Deonandra Post Pathri,
Taluka Pathri, Dist. Parbhani,
Through its Authorized Representative
Rajendra Shantaram Deshpande,
Age : 52 Years, Occu. : Service. .. Petitioner

Versus

01. The State of Maharashtra,
Through the Principal Secretary,
Cooperation Department,
Mantralaya, Mumbai - 32.

02. The Commissioner for Sugar,
Sakhar Sankul, Shivaji Nagar,
Pune, Dist. Pune.

03. The Regional Joint Director of Sugar,
Nanded, District, Nanded.

04. The Union of India,
Through Principal Secretary,
Ministry of Consumer Affairs,
Food and Public Distribution,
New Delhi. .. Respondents

Shri Pradip R. Patil, Advocate for the Petitioner.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 1 to 3.

Shri Sanjiv B. Deshpande, A.S.G. for the Respondent No. 4.

WITH
WRIT PETITION NO. 1049 OF 2016

Siddhi Sugar and Allied Industries
Limited Mahesh Nagar, Ujana,
Taluka Ahmedpur, District - Latur,
Through its Deputy Chief Accountant,
Mr. Laxman Rajaram Patil,
Age- 48 years, Occu. : Service,
R/o As above. .. Petitioner

Versus

01. The Union of India,
Through Ministry of Consumer Affairs,
Food and Public Distribution,
Krishi Bhavan, New Delhi.

02. The Ministry of Agriculture & Cooperation,
Government of India, New Delhi,
Through its Secretary.

03. State of Maharashtra,
Through its Principal Secretary,
Cooperation and Textile Department,
Mantralaya, Mumbai.

04. The Commissioner of Sugar,
Maharashtra State,
Sakhar Sankul, Shivaji Nagar,
Pune. .. Respondents

Shri P. M. Shah, Senior Advocate i/by Shri N. B. Suryawanshi, Advocate for the Petitioner.
Shri Sanjiv B. Deshpande, A.S.G. for Respondent Nos. 1 and 2.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 3 and 4.

WITH
WRIT PETITION NO. 1369 OF 2016

Gangakhed Sugar and Energy Ltd.,
Vijay Nagar, Makani,
Through it's Chief Executive Officer,
Rajendra S/o Daulatrao Dongare,
Age : 42 Years, Occu. : Service,
R/o Gangakhed Sugar and Energy Ltd.,
Vijay Nagar, Makani, Tq. Gangakhed,
District Parbhani. .. Petitioner

Versus

01. The Government of India,
Through Secretary,
Ministry and Department of
Consumer Affairs, Food and
Public Distribution, 'Krushi Bhavan'
New Delhi.

02. State of Maharashtra,
Through Principal Secretary,
Co-operation and textile department,
Mantralay Mumbai - 32.

03. Commissioner Of Sugar,
Maharashtra State Pune
Sahkar Sankul,
Shivaji Nagar Pune.

04. The Regional Joint Director of Sugar,
V.I.P. Road, Bhuvikas Bank Building,
Nanded. .. Respondents

Shri Mahadeo V. Nagargoje, Advocate for the Petitioner.
Shri Sanjiv B. Deshpande, A.S.G. for the Respondent No. 1.
Shri S. G. Karlekar, A.G.P. for Respondent Nos. 3 to 4.

CORAM : S. V. GANGAPURWALA
A. M. BADAR, JJ.

DATE RESERVED FOR JUDGMENT : 01.03.2016
DATE ON JUDGMENT PRONOUNCED : 06/05/2016

JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. These petitions assail the Fair and Remunerative Price (hereafter referred as the "F.R.P." for the sake of brevity) fixed by respondent Nos. 1 and 2 for the year 2014-2015 and 2015-2016. The challenge to the said F.R.P. is based on similar grounds, as such to avoid rigmarole, all these petitions are decided by common judgment.

02. Mr. P. M. Shah, the learned Senior Counsel, Mr. V. D. Hon, the learned Senior Counsel, Mr. V. D. Salunke, Mr. P. R. Patil, Mr. M. S. Deshmukh and Mr. M. V. Nagargoje, the learned counsel have canvassed their submissions on behalf of respective petitioners. The contour of their submissions can be summed up as under :

A. The Central Government is empowered to fix the minimum price of sugar cane from time to time under Rule 3 of the Sugar Cane Control Order, 1966 (for the sake of brevity hereinafter referred as the "Control Order 1966"). The respondents have not adhered to clause (d) and (e) of Rule 3 of the Control Order 1966. Sub clause (d) of Rule 3 obliges the respondent No. 1 to have regard to the price at which sugar produced from sugar cane is sold by producers of sugar. The same is not taken into account by the respondent No. 1 while fixing F.R.P. Normally sugar season/crushing season commences from 01st October and ends either on 31st March or 30th April of the year. The sugar season/crushing season runs always in last quarter of an year and 01st quarter of the next following year. The F.R.P. payable to the sugar cane growers for the year 2015-2016 is determined considering the sugar price in the month of August 2014 and is fixed in February 2015. The payment is to be made within 14 days from the receipt of sugar cane from the cane grower, which is normally after 01st October till 31st March or 30th April of the next year. The prices of sugar as prevailing at the time when the payment as per the F.R.P. is to be made is not considered. There is long intervening period of 18 months between the recommendation of Commission for Agricultural Costs and Prices (for short "C.A.C.P.") and on the basis of which F.R.P. is fixed. It is unsafe and unreasonable to fix the price of the sugar cane on the basis of forecasting of the market price of the sugar before 18 months. The formula which is speculative itself is fundamentally faulty and it is not in consonance with sub clause (d) of Rule 3 of the Control Order 1966. The forecasting of the sugar price is proved to be wrong. For the year 2015-2016, the C.A.C.P. report dated 14.08.2014 states that, the price of sugar would be in the range of Rs. 3,000/- to Rs. 3,500/-. This stand is contradicted, as in the year 2013-2014, the price of sugar was Rs.

2,747/- and the estimated price for the season 2014-2015 was Rs. 2,747/- with a footnote that it is assumed that, prices would remain at the same level in the year 2014-2015 as that in the year 2013-2014. Despite reduction in price of sugar in the year 2015-2016, the F.R.P. for the year 2015-2016 was increased by 4.5% over the F.R.P. of 2014-2015. The F.R.P. was increased by Rs. 2.42% per quintal, while price of sugar was far below Rs. 3,000/-. However, still on the basis of the forecast of the prices of sugar to be in the range of Rs. 3,000/- to Rs. 3,500/- F.R.P. was fixed, whereas the actual price of sugar was much less. According to the learned counsel, the Maharashtra State Cooperative Sugar Factories Federation Limited vide its letter dated 13.09.2014 addressed to the Government of India had informed that, sugar is being sold by the producers at a rate of Rs. 2,780/- to Rs. 2,890/- per quintal and the C.A.C.P. report assumes the price of the sugar at Rs. 3,000/- to Rs. 3,500/- on the basis of forecast. The National Federation of Co-operative Sugar Factory Limited vide its letter dated 03.09.2014 had emphasized that, sugar cane price should be linked with the revenue realization on the primary product of sugar cane i. e. sugar and other byproducts. However, said suggestion is also not considered. All these suggestions have not been considered. The forecast of the price of sugar is proved to be absolutely wrong for the year 2014-2015 and 2015-2016.

B. Two different formulas are adopted for considering clause

(d) of Rule 3 of the Control Order 1966 i. e. market price of sugar and Clause (e) i. e. percentage from sugar cane. The basis adopted for considering clause (b) is forecast, whereas basis adopted for clause (e) is actual input of current crushing season. The resultant consequences flowing from adopting such hybrid formula has vitiated the decision making process itself. The learned counsel submit that, the decision making process is vitiated by non application of mind. The same is influenced by irrelevant circumstances. It has excluded the relevant circumstances from consideration. The price of sugar cane to be paid is to be determined according to the statutory guidelines laid down in Rule 3 of Control Order 1966. It assumes the *quasi judicial* character. The respondents are expected to strike a balance of all the factors enumerated in Rule 3 of Control Order 1966. The learned counsel relies on the judgment of the Apex Court in a case of **Maharashtra Rajya Sahkari Sakhar Karkhana Sangh Vs. State of Maharashtra** reported in ***1995 (Supp) 3 SCC 475*** to submit that, the price fixation can be challenged on the ground that the authority did not act in accordance with guidelines for fixation of price laid down in the Control Order 1966. The respondents have miserably failed to adhere to the relevant factors laid down under Rule 3 of the Control Order 1966.

C. The considerations stipulated by the Sugar Cane Control Order were not taken into account and as such the decision making process is vitiated. The learned counsel relies on the judgment of the Apex Court in a case of **Union of India and another Vs. Cynamide India and another** reported in ***AIR 1987 Supreme Court 1802(1)***.

D. According to learned counsel for petitioners, there is no effective consultation while determining F.R.P. of sugar cane as is contemplated in Rule 3 of the Control Order 1966. The word consult involves conference of two or more persons. Consultation is a process which requires meeting of minds of the parties involved in the consultation on material facts and points to evolve correct or at least satisfactory solution. Consultation is not complete or effective before the parties thereto make their respective point of view known to others and discuss and examine the relative merits of their views. The learned counsel rely on the judgment of the Apex Court in a case of **Ram Tawakya Singh Vs. State of Bihar** reported in ***(2013) 16 SCC 206***. So also the judgment of the Apex Court in a case of **State of Gujrat Vs. Justice R. A. Mehta (Retired)** reported in ***(2013) 3 SCC 1*** and another judgment in a case of **Supreme Court Advocates On Record Association and others Vs. Union of India** reported in ***(1993) 4 SCC 441***. The learned counsel for petitioners also rely on the judgment of the Apex Court in a case of **Indian Administrative Service (S.C.S.) Association U. P. Vs. Union of India and others** reported in ***(1993)***

(Suppl) 1 SCC 730.

E. The learned counsel further submit that, the measures adopted by Union of India in the form of extending soft loans, etc. are not effective, to stall recurring losses. The sugar industries will have to repay the burden of soft loan which will be increasing every year. The Sugar Cane Control Order is not only made to protect the interest of cane growers and consumers, but also to protect interest of manufacturers. The learned counsel submit that, when the decision making process is vitiated on account of non adherence to the principles laid down in Rule 3 of the Control Order 1966, then this Court can interfere and exercise the powers of judicial review. The learned counsel rely on the judgment of the Apex Court in a case of **Tata Cellular Vs. Union of India** reported in ***AIR 1996 SC 11 (1)***.

F. As per the demand and supply formula, the supply of sugar has increased. The union has taken a policy decision to decontrol the sugar. The prices of the sugar in the open market are reducing day by day. However, the expenses on the other hand for production of sugar are increasing. The sugar factories are finding it difficult to cope up with its overheads and the petitioner sugar factories are required to pay F.R.P. to the agriculturists which is fixed by the Central Government much before the start of crushing season. The factor that is considered is recovery of sugar from sugar cane, but the other factors i. e.

cost of manufacturing of sugar including expenses to be borne by the sugar factories for manufacturing sugar are not considered.

G. The methodology of the Government is based on unseen situation, as such it has no rational.

H. The Government has applied uniform standards to all Sugar Mills within the State of Maharashtra and has not considered the factors referred in Rule 3(1) of the Control Order 1966. The respondents are obliged to fix the F.R.P. from time to time as referred in Rule 3 of Control Order 1966. While considering sub clause (d) of Rule 3 i. e. the price at which sugar is sold by the producers, the respondent No. 1 is supposed to redetermine the price as per the sugar sold by the producers in the month of October in the year next following.

I. The petitioners have placed on record the accounts of their industry to substantiate their contention that the sugar industry is sustaining loss because of the payment to be made as per the F.R.P. and that it is not viable to make payment to the cane growers as per the F.R.P. fixed. The theme of argument of all the learned counsel for petitioners is that, they are not against fixing the F.R.P., but the same should be commensurate with the price of sugar and that it should be fixed in such a manner that sugar industry should also survive.

J. The word "having regard to" in Rule 3, makes it clear that, the Government while exercising the function of price fixation has to take into consideration factors laid down in Rule 3(c) of the Control Order 1966. The learned counsel rely on the judgment of the Apex Court in a case of **Mahalakshmi Sugar Mills Company Ltd. Vs. Union of India and others** reported in ***(2009) 16 SCC 569***.

3. Mr. Deshpande, the learned Assistant Solicitor General for the respondents/Union of India submits that, the philosophy of the Sugar Cane Control Order needs to be considered. The individual interest, however, precious it must be utilized to the larger interest of the community that is large body of cane growers. The interest of sugar cane growers is also to be considered, which is the only raw material for sugar. The learned A. S. G. relies on the judgment of the Apex Court in a case of **Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Vs. The State of Maharashtra and others** reported in ***1995 (Supp. 3) SCC 475*** to submit that, cultivators are exploited or at least in danger of being exploited, as such the Government has fixed the price of sugar cane. The main feature of the Sugar Cane Control Order is that, minimum price of sugar cane is fixed having regard to the cost of production of sugar cane, the return to the grower from the alternative crops, availability of sugar to the consumer at fair price, the price at which sugar produced from the sugar cane is

sold by producer of sugar and the recovery of sugar from the sugar cane. The learned A. S. G. also relies on the judgment of the Apex Court in a case of **Sukhanandan Saran, Dinesh Kumar Vs. Union of India** reported in ***(1982) 2 SCC 150***.

4. While fixing the F.R.P. the interest of farmers is paramount. The decision making process is proper and legal. The report of Rangrajan Committee is followed. By a detail report Commission for Agricultural Costs and Prices, makes price policy recommendation and non price recommendation. In Chapter - 2, the said Commission has discussed about the demand, supply and efficiency of pricing policy. In Chapter - 4 it has discussed about the profitability and intercrop price parity. In Chapter - 5 the productivity and cost are analyzed. This report is submitted by expert after considering representations from various reputed institutions and thereafter F.R.P. is arrived at. The report of C.A.C.P. is submitted to the Union of India. As per the provisions of Rule 3(1) of the Control Order 1966, the Central Government sought views of the Associations of Sugar Mills and Sugar Cane Growers Association and the Maharashtra State Cooperative Sugar Factories Federation, so also N.F.C.S.F. submitted their views. This would show that, the Central Government has consulted the Association of Sugar Mills as well as Sugar Cane Growers and after considering their views F.R.P. is finalized. As per Rule 3(1) of the Control Order 1966, the Central Government may consult body or associations as may

deem fit by the Central Government. It is not possible to consider views of each and every individual sugar factory, but the views of the body or associations are considered. There is no defect in the decision making process. The primacy of the views expressed by either the sugar mills or sugar cane growers is not contemplated under Rule 3(1) of the Control Order 1966. According to the learned A. S. G. in Rule 3(1) of the Control Order 1966, the word consultation does not envisage mandatory character. The learned A. S. G. relies on the judgment of the Apex Court in a case of **Indian Administrative Service (S.C.S.) Association U. P. Vs. Union of India and others** reported in ***(1993) (Suppl) 1 SCC 730***.

5. The intervention application is filed by one Raju Anna Shetti, Member of Parliament and a Member of Sugar Cane Control Board constituted U/Sec. 3 of the Maharashtra Regulation of Sugarcane Price (Supply to Factories) Act 2013. According to the learned counsel appearing for intervenor, the C.A.C.P. is a statutory body constituted to calculate cost of agricultural produce and to advice the Government to ensure adequate minimum support price is paid to the growers. The C.A.C.P. has recommended the F.R.P. The Central Government has duly considered the guidelines as laid down U/Sec 3 of the Control Order 1966 before fixing F.R.P. The Sugar Cane Control Board has passed resolution on 09th September, 2015 thereby fixed and decided the sugar cane price in the State of

Maharashtra as the price of F.R.P. fixed by the Central Government. N.F.C.S.F. is duly consulted by the Central Government before fixing F.R.P. and all the sugar factories in the State of Maharashtra have been duly represented through their representatives before the Sugar Cane Control Board, which has passed the resolution, as such it is not open for them to challenge the F.R.P. The petitioners are not taking into account the value of byproducts like bagasse, molasses, press mud, ethanol, etc. The Central Government has come up with financial assistance to the sugar factories such as soft loan scheme for payment of F.R.P. etc.

6. We have considered the submissions canvassed by learned counsel for respective parties.

7. Before we advert to the submissions canvassed by learned counsel for respective parties, it would be appropriate to refer tot he relevant provisions.

THE SUGAR CANE (CONTROL) ORDER, 1966

1. ....
2. ....

3. Minimum price of sugarcane payable by producer of sugar.--- (1) The Central Government may, after consultation with such authorities, bodies of association as it may deem fit, by notification in the official Gazette, from time to time, fix the [fair and remuneration 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 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;

[(f) the realization made from sale of by products *viz* molasses, bagasse and press mud or their imputed value].

[(g) reasonable margins for the growers of sugarcane on account of risk and profits]

[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.]

[1] *Explanation.*--- Different prices may be fixed for different areas of different qualities or varieties of sugarcane.

[*Explanation (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 liters of ethanol so produced as equivalent to tone tone of production of sugar;

Explanation (2).--Production of ethanol directly from sugarcane juice shall be allowed in case of sugar factories only];

[*Explanation* (4).---Imputed value of the by-products would include unsold value or the notional or transfer value of such by products for further value addition in the sugar factory like, alcohol and ethanol production from molasses, use of press mud for making bio-fertilizer and/or distillery effluent treatment, generation of power from bagasse or any other product produced through value addition to the by-products mentioned above but should not include the bagasse used for running the boiler of the main sugar factory for the production of sugar alone.

Explanation (2).--The realization made fromt he sale of by-products namely, molasses, bagasse and press mud or their imputed value means only transfer prices and not the value of or profit from cogenerated power, alcohol or ethanol, bio-fertilizers or distillery effluent treatment or any other product produced through value addition to the by-product mentioned above.]

8. The determination of Fair and Remunerative Price is within the realm of the Central Government. The Courts would not ordinarily interfere with the exercise of determination of the F.R.P., unless it is shown that the said function is carried out in contravention of statutory requirements. The determination of F.R.P. has to be reasonable and in consonance with the legislative

policy, so also has to give effect to the purport and object of the Act. The Apex Court in the case of **Mahalakshmi Sugar Mills Company Ltd. Vs. Union of India and others** referred to supra has held that, the determination of the price is a legislative function.

9. The petitions are required to be decided on the touch stone of aforesaid aspects. The factors which are required to be considered are well enumerated in Rule 3 of the Control Order 1966 as is reproduced above. The C.A.C.P. has given its recommendations upon consideration of various facets.

10. The term "having regard to" in Rule 3(c) of the Control Order 1966 would mean that, minimum price of the sugar cane payable by the producer of sugar would be in consonance with sub clause (a) to (g) of Rule 3 of the Control Order 1966. The criteria laid down for fixation of F.R.P. is required to be considered by the Central Government. The said decision is not to be lightly interfered with. The fixation of the price has to be reasonable and in consonance with the legislative policy and is required to give effect to the purpose and object of the Act. Price fixation is not the function of the Court. The Court can only consider whether relevant considerations have been taken into account and the same is not based upon alien considerations. The Legislature has laid down the pricing policy and prescribed the factors that would guide the determination of the price. The

Court would only consider, whether the policy and the factors were considered by the authorities while specifying the price. It is laid down by the Apex Court in a case of **Union of India Vs. Synamide India** referred to supra that, the mechanics of price fixation is the concern of the executive. The Court will not reevaluate the considerations, even if the prices are demonstrably injurious to some manufacturers or producers.

11. The price fixation is a piece of subordinate legislation. The nature and extent of enquiry is in the realm of the subordinate legislating body. The price determined can be assailed only on the grounds permissible to challenge the sub-ordinate legislation.

12. The petitioners have harped more on the aspect of non adherence to the requirement of effective consultation. The object of consultation is to render decision making process meaningful, so that it may serve its needed purpose. The meaning of consultation varies from case to case, depending upon its fact, situation and the context of the statute, as well the object it seeks to achieve. The term consultation will have to be interpreted having regard to the scope of consultation envisaged in the relevant provisions. There cannot be any straitjacket formula in this regard. Ordinarily and broadly consultation means communication of the views between the consultee and the consultor. Direct discussion is not an indispensable ingredient of any consultation. The extent, nature and

importance of consultation depends on the subject, object and the context thereto under a particular statute. No hard and fast rule can be laid down with regard to the manner in which consultation must take place. It is for the Court to determine in each case in the light of the facts and circumstances, whether the consultation as appearing in the provision has taken place or not.

13. There are more than 700 sugar mills in the country and it is not possible and practicable to have consultation with each and every sugar mill and that is why recommendations were called and the association representing the sugar industry were consulted. In the instant cases before fixing the F.R.P., the views of the bodies representing the sugar industries were called for. In the decision making process of determining the F.R.P., the Central Government in its discretion as it may deem fit consult such bodies of associations and authorities. Rule 3 of the Control Order 1966 does not mandate that the Central Government shall consult particular body or association. It is left to the discretion of the Central Government, the bodies of association which it may consult. Moreover, the views of the bodies of association do not have a primacy. As such, the aspect of consultation will have to be viewed from the fact that, views of the bodies of association do not have a primacy, but it is at the discretion of the Central Government it may consult with such authorities, bodies of association as it may deem fit before determining the F.R.P. In the present cases, various bodies/associations representing sugar

industry were consulted. Their views were called for and considered. This would show that the Central Government has complied with the aspect of consultation.

14. While determining the F.R.P., the statutory factors listed in the Control Order 1966 are to be considered i. e. (a) the cost of production of sugar cane, (b) the return to the grower from alternative crops and the general trend of price of agricultural commodities, (c) the availability of sugar to the consumers at a fair price, (d) the price at which sugar produced from sugar cane is sold by producers of sugar, (e) recovery rate of sugar from sugar cane, (f) realization made by the sale of by-products i. e. molasses, bagasse and press mud or their imputed value, (g) reasonable margin of grower of sugar cane on account of risk and profit. The sugar cane is raw-material for production of sugar. The prices of sugar cane are directly linked with the prices of sugar. The Control Order 1966 is promulgated to ensure that grower of sugar cane i. e. a weaker section of the society is not left to the vagaries of trade or the sugar industries and while performing function of determination of F.R.P. all factors as laid down in Rule 3 of the Control Order 1966 are required to be considered.

15. Before determination of F.R.P., the Central Government has considered recommendations of the C.A.C.P. The exhaustive report submitted by the C.A.C.P. considering various aspects as

laid down in sub-clause 3(a) to sub-clause 3(g) of the Rule 3 of the Control Order 1966 is placed on record. It would be seen that, C.A.C.P. has considered all the statutory factors.

16. The emphasis of the petitioners is that, the price at which the sugar produced from sugar cane is sold by the producers is not considered properly. The F.R.P. is fixed considering the price of sugar prevailing eighteen months prior to the date the sugar industries are required to pay the F.R.P. determined by the Central Government. If, the F.R.P. is payable for the year 2015-2016 the same is determined considering the prices in August 2014. The prices of sugar may vary from time to time. The price of sugar was considered at Rs. 3,000/- to Rs. 3,500/- in August 2014, whereas the amount is to be paid to the cane grower as per the F.R.P. from the period October 2015 to April 2016 and at that time the price of sugar is much less. According to the petitioners, during this period prices of sugar had gone down, as such sub-clause (d) of Rule 3 of the Control Order 1966 is not adhered.

17. It will have to be considered that, the F.R.P. is to be fixed for the whole country. The determination of F.R.P. involves long drawn process, wherein surveys are required to be made with regard to various facets as detailed and enumerated in Rule 3 of the Control Order 1966. The F.R.P. is determined in February 2015 for the year 2015-2016. It is a matter of common knowledge that harvesting season would start from October 2015 and will

continue till March/April 2016 and the payment to the cane grower as per the F.R.P. is to be made within 14 days of the supply of sugar cane by the cane grower. Some element of speculation as to the price of sugar at which it is sold is involved. It may happen that some times the price of sugar may fall subsequently and considering the same the Government has also taken measures such as providing soft loan, etc. to the sugar industries. Some element of speculation cannot be ruled out and it would be an integral part of process of determination of fair and remunerative price, however, it is not only the price of sugar that is the sole determining factor while fixing the F.R.P. The realization made by the industries from sale of by-products that is molasses, bagasse and press mud or their imputed value is also required to be considered. The reasonable margin for the grower of sugar cane on account of risk and profit is also a relevant factor. All these factors would involve some speculation. The same cannot be considered with mathematical precision. While considering the price of sugar in future, various aspects are considered as per the report of the C.A.C.P. However, only on the said count, it cannot be said that determination of F.R.P. is arbitrary or not in consonance with Rule 3 of the Control Order 1966. The C.A.C.P. has also considered the trade policy. It has also considered the production and trade in sugar globally, so also in domestic market.

18. The aforesaid discussion would show that, each and every

factor has been considered while determining the F.R.P. As such, it cannot be said that the determination of F.R.P. is without considering the relevant statutory factors. The same is done by the experts and the Courts in the exercise of the power of judicial review would not sit as Appellate Authority over the decision taken by the experts.

19. We are not considering the statistics put forth by individual sugar industry. The figures would differ from industry to industry, whereas the F.R.P. is fixed for whole country. The individual statistics are considered while considering the recovery and the recovery rate is also fixed subsequently in the month of September/October. At that time the aspects are considered with regard to the figures given by the industries. The F.R.P. is determined well in advance by the Central Government, the mill wise specific rate to be paid to the cane growers is determined and notified after obtaining necessary inputs including the recovery details from the concern mills. The States can prescribe higher price than the F.R.P. fixed by Central Government. However, for the current year the State of Maharashtra has not prescribed higher rate of F.R.P. than fixed by the Central Government. The market price of sugar is one of the factor. The sugar cane is a long term crop of 12 months. The respondent/Central Government has also accepted that, the sugar prices have come down, however, to meet the situation many measures are taken such as extending interest free

working capital loan, soft loan schemes, providing incentive on export of raw-sugar, fixing remunerative price for ethanol under ethanol blending programme to improve liquidity position of sugar mills.

20. One of the arguments of the petitioners is that, Rule 3 of the Control Order 1966 requires to fix the F.R.P. from time to time. The argument that words from time to time appearing in Rule 3 of the Control Order 1966 would mean that as and when there is fluctuation of the price of sugar, the F.R.P. should be changed. The F.R.P. cannot be fixed each and every month. The F.R.P. is to be fixed for the current year, which is fixed in February and the recovery is considered at the start of the harvesting season.

21. Considering the above conspectus of the matter, the decision making process of fixing the F.R.P. does not suffer from any illegality, as such the same needs no interference. No doubt, there is a wide intervening period between time when the rates of sugar are being considered for fixing the F.R.P. and the time at which the F.R.P. is required to be paid by the sugar industries to the cane grower. The Government can take effective steps to reduce this period as price of sugar prevailing in August 2014 was considered while fixing F.R.P. in February 2015, the payment of which is required to be made by sugar industries to the cane growers during the period October 2015 to March/April 2016.

However, this is left to the wisdom of the Central Government and the concerned bodies to arrive at a solution by which it would reduce the period of speculation involved in the decision making process while fixing minimum F.R.P. as subsequently in October after obtaining necessary in puts from the sugar industry including recovery details, recovery percentage is fixed. The writ petitions stand disposed of. No costs.

21. The civil applications also stand disposed of.

Sd/-
[A. M. BADAR, J.]

Sd/-
[S. V. GANGAPURWALA, J.]

bsb/May 16