

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

**Reserved on 11.10.2022.
Pronounced On: 14.11.2022.**

226

CWP-3098-2020

SUKHJEET SINGH

... Petitioner

VERSUS

NAKODAR CO-OPERATIVE SUGAR MILLS LTD. AND ORS.

... Respondents

230-1

CWP-11189-2020

JASWANT SINGH

... Petitioner

VERSUS

NAKODAR CO-OPERATIVE SUGAR MILLS LTD. AND ORS.

... Respondents

230-2

CWP-11169-2020

MAJOR SINGH

... Petitioner

VERSUS

NAKODAR CO-OPERATIVE SUGAR MILLS LTD. AND ORS.

... Respondents

A N D

233

CWP-2951-2021

LAKHBIR SINGH AND ANOTHER

... Petitioners

VERSUS

NAKODAR CO-OPERATIVE SUGAR MILLS LTD. AND ORS.

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Sahil Soi, Advocate
for the petitioners in all petitions.

Mr. Vikas Singh, Advocate
for respondents No.1 and 4, and
for respondent No.5 in CWP-3098-2020.
Mr. Ashish Rawal, Advocate
for respondent No.2 – Union of India.

Ms. Niharika Sharma, AAG, Punjab
for respondent No.3.

VINOD S. BHARDWAJ, J. (ORAL)

Counsel appearing on behalf of the respective parties contend that since the issue involved in the instant batch of petitions is identical on the question of law as well as on the facts, hence, they can be decided by a common order. For the facility of reference, facts are extracted from CWP No. 11189 of 2020.

Briefly summarized, the instant writ petitions have been filed seeking issuance of directions for release of interest as per Clause 3 (3-A) of the Sugarcane Control Order, 1966 as well as in light of the directions contained in the order dated 27.07.2005 passed by this Court against the delayed payment of sugarcane sold by the petitioners.

The petitioners contend that they had supplied sugarcane to the respondent Mill during the period from 28.12.2019 to 01.03.2020 and that the respondent sugar mill had not made complete payment of the price against the sugarcane sold by the petitioner as well as the pro forma respondents. It is further contended that the Sugarcane Control Order 1966 contemplates award of interest at the rate of 15% per annum under clause 3 (3-A) and also prescribes the timelines within which the price of the sugarcane has to be

disbursed to the farmer. Owing to the delay in disbursement of the sale consideration, the petitioners – farmers are entitled to interest on such delayed payments as per the statute. It is averred that a similar controversy had come before this Court and the Division Bench had passed an order in CWP No.17915 of 2004 dated 27.07.2005 directing the respondents to make payment of interest. It is further stated that the petitioners alongwith proforma respondents had served a legal notice on 14th of June 2020, however, no response was received from the respondents thus compelling the petitioners to approach this court for seeking release of their statutory entitlement.

Response on behalf of the respondent Sugar Mills was filed wherein it was stated that the purchase of sugar in the mills in Punjab is not governed by the Essential Commodities Act and/or the Sugarcane Control Order 1966. It is submitted that government of Punjab has notified The Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 and a State Advisory Price (SAP) is determined under the said Act and Rules framed thereunder. He contends that the aforesaid Act and the Rules framed thereunder do not contemplate award of interest on the pattern as contained in clause 3 (3-A) of the Sugarcane Control Order, 1966. A further objection is raised that writ petition against the cooperative society would not be maintainable as it is not a State under Article 12 of the Constitution of India. It is also averred that the petitioners have an efficacious and alternative remedy under Sections 55 and 56 of the Punjab Co-operative Societies Act, 1961 and also in approaching the Cane Commissioner under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. Hence, once an alternative and efficacious remedy(ies) is/are available to the petitioners, the present writ petition espousing the aforesaid grievance is not maintainable.

While adverting to the merits of the present case, it is submitted that the State of Punjab fixes price of the sugarcane which is known as the State Advisory Price (SAP). The Central Government also fixes price of sugarcane which is called as the Minimum Support Price (MSP). The State Advisory Price (SAP) is generally higher than the one fixed by the Central Government. The SAP fixed by the State Government for the year 2017-18 was Rs.310 per quintal as against the Central Government MSP Rs. 255 per quintal. On account of drop in the prices of sugar, the Sugar Mills faced severe financial crisis and thus made a request to the State Government to advance loan for making payment for the sugarcane. The payment to the cane growers is made only upon availing financial assistance from the State of Punjab. It was also stated that the subsidy/financial support from the State of Punjab was expected and the delay in release of the payment occurred on account of above reasons that was beyond the control of Sugar Mills.

A written statement by way of affidavit of the Cane Commissioner was also filed on behalf of respondent No.3 reiterating aforesaid submissions of the mills. It is further stated that during the crushing season 2019-20, there were 16 Sugar Mills working in the State out of which 9 are from the Cooperative Sector while 7 belong to the Private Sector. It is contended that during the above season, the respondent-Sugar Mills had crushed sugarcane worth Rs.4925.16 lacs out of which Rs.2631.90 lacs were generated by the sugar mills from its own resources and the Government assistance of Rs.2293.26 lacs had also been released. A reference was made to Clause 18 of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1958 regarding the payment and to reiterate that interest was not payable on delayed release of such payment. A further averment has been made that the

Cooperative Sugar Mills were not in a position to pay the cane payment due to the losses. All possible efforts were being made by the office of the Cane Commissioner to balance the competing interests of the sugar mills as well as the cane growers. Tabulation with regard to the differentiation between the State Advisory Price (SAP) and the Fair and Remunerative Price (FRP) along with the details of the payment made to the cane growers and the Government assistance was also mentioned.

A short reply had also been filed on behalf of the Ministry of Consumer Affairs, Food and Public Distribution, Union of India wherein it was stated that the Sugar Mills cannot withhold the payment of farmers'/cane growers' pending claim/ reimbursement of subsidy or the expenses. It is further averred that claim/reimbursement of subsidy is dependent upon submission of the claim in the prescribed form and on the basis of the payment already released by the Sugar Mills. Being a reimbursement, hence, payment of the cane price by the Sugar Mills is a pre-requisite for claiming the release of subsidy. It is also submitted that sugarcane is an essential commodity under the Essential Commodities Act, 1955 and that Clause 3 (3-A) of the Sugarcane Control Order, 1966 governs the price of sugarcane. Reference was also made to various measures taken by the Central Government to improve the liquidity position of the sugar mills. A further reference has been made that Clause 3 (3-A) of the Sugarcane Control Order of 1966 would not be applicable on the State Advisory Price determined by the Government of Punjab under its Act of 1955.

The counsel for the respective parties have advanced arguments reiterating their pleadings and the same are not being repeated.

No other argument has, however, been raised on behalf of the respondents. It is also not disputed by the respondents that there was a delay in making payment of the price of sugarcane to the farmers.

I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended by the respective parties.

As the factual aspects are not in dispute, hence the legal submissions advanced by the counsel for the respective parties are dealt with.

The first question that arises for consideration before this Court is as to whether the petitioners are entitled to claim interest in terms of Clause 3(3-A) of the Sugarcane Control Order, 1966 or not.

A specific stand has been adopted by the respondents that Sugarcane Control Order, 1966 has been promulgated under the Essential Commodities Act, 1955. It has also been maintained by the respondents that the purchase of sugarcane in the State of Punjab is governed as per the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 and the Rules of 1958. A State Advisory Price (SAP) which is higher than the Fair and Remunerative Price (FRP) notified by the Government of India, is paid to the cane growers of the State of Punjab. While the Sugarcane Control Order, 1966 provides for interest at the rate of 15% per annum on the delayed payments after a period of 15 days, similar Clause is not provided for in the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 or the Rules of 1958. No rejoinder to the same has been filed by the petitioners. Even the Union of India has maintained the aforesaid stand. The same not being contradicted or supported by any argument or law, there is no valid basis for this court to hold that the petitioners would be entitled to interest as

contemplated in Clause 3 (3-A) of the Sugarcane Control Order, 1966. Once the procurement has not been effected under the said Order of 1966, the terms of payment of the Control Order of 1966 cannot be attracted to the Act of 1953- under which purchase has been effected.

The second question which arises for consideration is as to whether the dispute involved in the present petition is amenable to the writ jurisdiction of this Court or not.

Reliance has been placed by the respondents on the judgment of Hon'ble Supreme Court in the matter of S.S. Rana Vs. Registrar Cooperative Societies and another reported as (2006) 11 SC 634.

To appreciate the said argument, the scope of Writ Jurisdiction under Article 226/227 of the Constitution of India needs to be examined.

The Hon'ble Supreme Court of India had laid down six tests for holding as to whether an entity would be 'State' within the meaning of Article 12 of the Constitution or not in the matter of Ajay Hasia Vs. Khalid Mujib Sehravardi reported as (1981) 1 SCC 722. The said tests are extracted as under:

- "(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.*
- (2) Where the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.*
- (3) It may also be a relevant factor whether the corporation enjoys monopoly status which is State-conferred or State-protected.*

- (4) *Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.*
- (5) *If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.*
- (6) *'Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government."*

Further in the matter of **Pardeep Kumar Biswas Vs. Indian Institute of Chemical Biology**, reported as **(2002) 5 SCC 111**, the Hon'ble Supreme Court has held as under:

40. *The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex-hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory, whether under statute or otherwise, it would not serve to make the body a State"*

It was thus held that where an entity/Body is financially, functionally and administratively dominated by or under the control of Government, such control being pervasive, it falls within the meaning of a 'State' under Article 12 of the Constitution of India.

It is also not claimed by the respondent No.1 – Nakodar Cooperative Sugar Mill that it is a private Society and not a Cooperative Sugar Mill established by the Government. Further, as per written statement filed on behalf of the respondent-Sugar Mill, it is evident that the said Sugar Mill has been receiving substantial financial support from the Government as well. The said aspect is clearly illustrated in their own written statement and the tabulation given by the Cane Commissioner in his response. As per the said response, the Sugar Mill had arranged for the payment to the tune of Rs.2631.90 lacs while Rs.2293.26 lacs were given by the Government. It is also set out in the table that by the financial year 2019-20, the respondent-Sugar Mill had again received financial assistance to the tune of Rs.22.93 crores. It is thus apparent that substantial financial assistance is also being extended by the State Government out of public funds towards the payment of the sugarcane price.

Another aspect which needs to be kept in mind is that even though the respondents have raised an objection that it is a society, however, the requisite details with regard to its Constitution as well as the administrative and supervisory control have not been set out in the response. There is thus no supporting material other than a bald pleading, to establish that the society does not fall under the administrative and supervisory control of the Government. No valid explanation has been put forth for withholding such crucial and relevant information. Such failure on the part of the respondents leaves no option with this Court but to infer that the respondent No.1-Sugar Mill is actually established and controlled by the State Government of Punjab and would be amenable to writ jurisdiction being a State under Article 12 of the Constitution of India.

The instant issue is also examined from an alternative perspective as well. It has been held by the Hon'ble Supreme Court in the matter of *“Common Cause, A Regd. Society Vs. Union of India”* reported as (1999) 6 SCC 667 that where an element of public law entailing public duty is involved, even a Society would be amenable to the writ jurisdiction of High Court under Articles 226/227 of the Constitution of India.

Modern times recognize two separate fields of law: Private law and public law. While Private law regulates the affairs of subjects between themselves, public law deals with affairs between subject and Public Authorities. The prerogative writs are set to motion against action/inaction of the Public Authorities. The factor which is thus determining is the formal source of power. If power is derived wholly or substantially from the contract as opposed to statute, it is not public law- whereas, whenever a body exercises powers which are partially regulated by Statute, the matter would depend on statutory interpretation. The “power test” is concerned only with the “source of the particular power” and not with the status of the body exercising said power. Hence, in an absence of statutory Power and Regulation, a Contract executed even by a statutory authority for public purpose is apparently a private law matter. The public law system enforces the proper performance of duties owed to the public by the Public Authorities. The general Public as a whole is beneficiary of what is protected or projected by public law while individuals/bodies are entitled to the benefits of protection of Private Law. Not all decisions of such public authorities may fall under judicial review. Where some other breach of law more appropriate governs the disputes, that branch of law should normally be applied and where there is an agreement, such express or implied terms of the agreement would normally govern the matter.

Public duty cannot be equated to an obligation to any person or identified group but to public in general. Hence, the broad requirements for judicial review would be “Public Law”; “Public Authority”; and “Public Duty”.

With the expanding horizon of Article 14 of the Constitution of India the arbitrary, unreasonable, illegal or discriminatory acts have fallen under the power of judicial review.

The sale and purchase of sugarcane in the State of Punjab is claimed to be governed under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 and the Rules of 1958. The said Act was published in the Gazette after receiving assent from the Governor of Punjab on 30.10.1953 with an object to provide for rational distribution of the sugarcane to the factories, for its development on organized and scientific lines and making adequate funds available and also to protect the interest of cane growers and all the industries. As per the statutory scheme, an area is assigned to the respective sugar mills and the cane growers of the assigned area are required to sell their produce only to the respective Sugar Mill. Each factory is required to submit the estimate of quantity of the sugarcane required by the Factory to the Cane Commissioner, who shall then submit the said requirement to the Sugarcane Control Board and take a decision to assign the area from which the sugarcane may be purchased by the said Factory. The Sugarcane Control Board, also declares the varieties of the sugarcane to be sown and also the varieties that are unsuitable for use in the Factories. The seed of the sugarcane is then required to be distributed by the Factory or its agent as per the varieties so approved. Section 14 of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 stipulates that a cane grower may sell his produce to the Factory to which

his area has been assigned and that no other person can purchase the sugarcane grown in the assigned area except with the permission of the Government. Hence, even though the Act seemingly grants a liberty to a cane grower to enter into an agreement with a particular Factory within whose assigned area his land falls, however, at the same time it imposes a prohibition for any other person to purchase sugarcane from outside his assigned area except with the permission of the Government. Resultantly, the entire sale of sugarcane to any person is regulated by the Government itself. Relevant provision of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 is extracted hereinafter below:

“2. Definition . – In this Act unless the context otherwise requires.

- (1) “assigned area” means an area assigned to a factory under this Act;*
- (2) XXX XXX XXX*
- (3) “cane” means sugarcane intended for reuse in a factory;*
- (4) “Cane Commissioner” means the officer appointed by the Government to perform the functions of Cane Commissioner;*
- (5) “Cane Grower” means a person including a tenant who cultivates cane either himself or through members of his family or through hired labour and who is not a member of a Cane-growers’ Co-operative Society.*
- (6) XXX XXX XXX*
- (7) XXX XXX XXX*
- (8) XXX XXX XXX*
- (9) “factory” means a sugar factory wherein 20 or more workers are working, or were working, on any day of the preceding twelve months and in any part of which any manufacturing process connected with the production of sugar is being carried on or is ordinarily carried on with the aid of power;*

- (10) “Governemnt” means the Government of the State of Punjab;
- (11) XXX XXX XXX
- (12) XXX XXX XXX
- (13) “State” means the State of Punjab.

4. Appointment of Cane Commissioner. –

The Government may appoint any officer to be the Cane Commissioner and may also appoint such other staff, body or committee as may be necessary for the performance of any duty or function, under this Act.

XXX XXX XXX XXX

10. Estimate of quantity of cane required by factory.-

- (1) The Cane Commissioner may order the occupier of any factory to submit to him on or before any specified date, an estimate of the quantity of cane intended to be purchased for his factory during any particular crushing seasons.
- (2) On receipt of an estimate, the Cane Commissioner shall cause the same to be submitted to the Sugarcane Control Board for their approval. The Sugarcane Control Board shall be competent to confirm, modify or reject the estimate, and in case of its not being rejected, to assign the area from which the cane may be purchased, on such terms and conditions as it may deem fit.
- (3) If the Sugarcane Control Board is of the opinion that a survey of any area is necessary for the purpose of assigning it to a factory, the Cane Commissioner shall cause such survey to be made and report the result to the Sugarcane Control Board. The cost of such survey shall be payable by the occupier of such factory.

XXX XXX XXX XXX

14. Purchase of cane in assigned area.-

- (1) XXX XXX XXX XXX
- (2) XXX XXX XXX XXX
- (3) Except with the permission of the Government, cane grown in an assigned area shall not be purchased by any person

other than the agent of the factory for which such areas has been assigned.”

Further the Punjab Sugarcane (Regulation of Purchase and Supply) Rules, 1958 were published in the Gazette on 02.08.1958, which governs the sale and purchase of the sugarcane and also the declaration of the assigned area. The entire process of purchase of sugarcane grown in an assigned area is provided for under Rule 11 of the said Rules, while the minimum price payable is prescribed under Rule 12 of the said Rules. General provisions regarding purchase of sugarcane are incorporated under Rule 14. Payments are governed by Rule 18 of the said Rules. The relevant provisions of the Rules are reproduced hereinafter below:

“11. Purchase of cane grown in assigned areas. –

(1) The occupier or agent of a factory or society shall estimate or caused to be estimated by the 30th September each year, the sugarcane with each cane grower and shall send a copy of the same to the Cane Commissioner before the 10th of October who, after such enquiries and modifications of the estimate as he considers necessary, shall order these entries to be posted in the growers register by the occupier of the factory

(2) By the 20th October each year a cane grower, and by the 31st of October each year, a society in assigned area may offer in Form VII to supply, during the ensuing crushing season, to the occupier or agent of the factory for which the area has been assigned, cane not exceeding the quantity approved by the Cane Commissioner:

Provided that the Cane Commissioner may, for reasons to be recorded in writing, extend the date for making offers in respect of a particular season.

(3) The agent of a factory for which the area is assigned shall enter into an agreement with a cane grower or with a Cane-

growers' Co-operative Society, as the case may be, in Form VII within a month of the offer mentioned in sub-rule (1)

(4) The occupier or agent of a factory of society shall spread the purchases made in the assigned area in an equitable manner, and shall make purchase of cane only after issuing requisition slips, the occupier or agent shall cause identification cards to be distributed to all cane-growers of the assigned area to whom requisition slips have been issued and shall maintain a record of their issue and return.

(5) Cane grown in an assigned area shall not, except with the permission of the Cane Commissioner, be purchased by any person without the previous issue of requisition slips and identification cards to the cane growers, by the society, the occupier or agent of the society for which the area is assigned.

(6) Requisition slips and identification cards to members of the society shall be issued by such society. A factory can also purchase cane direct from the members of the society only if permitted by the Cane Commissioner for special reasons to be recorded in writing.

(7) The notice under section 15 shall be given in Form VIII-A.

(8) In case of disputes, whether a particular system of purchase adopted by the occupier or agent of the factory or his employee or the purchasing agents or the society in the assigned area, is equitable or not, the dispute may referred to the Cane Commissioner whose decision shall be final.

12. Minimum price.-

(1) An occupier or agent or purchasing agent or any person employed by him shall not purchase cane for a factory or pay for it at a price below the minimum price, of any, fixed by law for the time being in force.

(2) The minimum price payable for cane shall be per standard maund of 82.2/7 ibs. avoir dapois.

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14. General provisions regarding purchase of cane.-

(1) No person shall transfer, or abet the transfer of a requisition slip for the supply of cane of a grower to another person with the object of enabling cane other than that belonging to the grower to whom the requisition slip has been issued, to be sold to a factory.

(2) No person shall accept or obtain, or agree to accept or attempt to obtain from any person for himself, as gratification or consideration, bribe, money, or any other such payment whatever, other than the legal remuneration, as a motive or reward for weighing or purchasing cane or making payment therefor, or for issuing requisition slips, or for showing or for having to show, in connection with weighing or purchases or supply of or payment for cane, favour or disfavour to any person.

(3) No person shall falsely represent himself as a grower of cane, or as authorised by such grower, to deliver cane on his behalf, or as a person duly authorised by the grower to receive payment on his behalf.

(4) The occupier or agent of a factory or a purchasing agent shall establish a purchasing centre, at a particular place for the supply of cane to the factory, if so directed by the Cane Commissioner.

(5) An occupier or agent or purchasing agent, who opens a purchasing centre shall send intimation thereof within twenty-four hours of the start of operations to the Inspector within whose jurisdiction such purchasing centre is situated and to Cane Commissioner.

(6) If a purchasing centre has to be closed temporarily owing to a breakdown of a machine or other causes necessitating an abrupt but temporary suspension of operations, the occupier or the purchasing agent shall -

(a) cause to be posted immediately, at the purchasing centre concerned, notice indicating the probable duration of suspension;

(b) cause the suspension of purchase to be otherwise advertised as widely as possible;

(c) *send intimation thereof immediately to the Inspector within whose jurisdiction the purchasing centre is situated and to the Cane Commissioner and*

(d) *purchase all requisitioned cane, brought within 12 hours of posting of notice under clause (a).*

(7) *The occupier or agent or the purchasing agent shall, at least seven days before its close permanently -*

(a) *affix a notice to that effect at the purchasing centre specifying clearly the date on which the centre is to be closed.*

(b) *intimate the date of the proposed closure to the Inspector within whose jurisdiction the purchasing centre is situated and to the Cane Commissioner.*

Provided that the Cane Commissioner has agreed to closure of the factory after previously satisfying himself that the cane in the assigned area will finish by that date.

(8) *An occupier or a purchasing agent shall -*

(a) *cause a list to be put up at each purchasing centre, showing the names of the persons employed by him, for making weighments, purchases and payments;*

(b) *cause such lists to be maintained up-to-date and*

(c) *send a copy of the names and full particulars about the persons whose names are entered in these lists within 24 hours of their employment to the Inspector within whose jurisdiction such purchasing centre is situated and to the Cane Commissioner.*

(2) *No person who is not licensed in accordance with the Act or these rules shall make or supervise weighments, purchases or payments at any purchasing centre on behalf of an occupier or agent or purchasing agent.*

Note- This sub-rule is not intended to prevent responsible officers of a factory above the rank of Agent from exercising supervision.

(10) *All licensees shall produce their licences as demand by the Inspector.*

(11) *The occupier of a factory situated outside the Punjab or his licensed purchasing agent purchasing cane in the Punjab shall also be bound by these rules.*

XXX XXX XXX XXX

18. *Payments.* –

(1) *The occupier, agent of purchasing agent, unless otherwise permitted by the Cane Commissioner, shall make payments to all cane growers due to each cane-grower or society for the cane purchased at each purchasing centre within a week from the date of payment:*

Provided that when the purchasing centre is closed all payments must be made within 10 days:

Provided further that if any grower does not appear to receive payment within the specified periods after the close of the purchasing centre, payment to him shall thereafter be made by the factory within 12 hours of demand.

(2) *Payments shall be made on the basis of the recorded weight of the cane at the purchasing centre. The price of the cane to be paid shall be calculated at the nearest Naye paise.*

(3) *An occupier of agent shall be liable for all payments due for cane supplied to him or on his behalf, and if a purchasing agent fails to make payment for cane purchased by him for the factory, the occupier of such factory shall be responsible for making such payments:*

Provided that notice of complaint of non-payment is given or made in writing to the occupier or the agent of the factory concerned within three months of the date on which the purchasing centre at which the cane was supplied is closed.

(4) *The payment for cane purchased for a factory shall be made to the grower or his duly authorised representative in writing only.*

(5) *The days of the week or the dates and the hour which payment will be made shall from time to time be exhibited on a notice board on each weighment or payment centre throughout the cane crushing centre and shall also be notified to the Cane Commissioner and Inspector concerned.*

(6) *The Cane Commissioner shall forward to the Collector a certificate under his signature specifying the amount of arrears on account of price of cane plus, interest, if any, due from the occupier or agent and the Collector, on receipt of such certificate, shall proceed to recover from such occupier or agent, the amount specified therein as if it were an arrears of land revenue.”*

A reading of the aforesaid statutory provisions clearly shows that the entire process from the cultivation of the sugarcane till its sale and also the pricing and payment mechanism is governed by the State and the statutory regulations. Even though the Act stipulates an option to the cane grower to sell his produce to any other person, however, even such other person must have approval from the Government before purchasing such sugarcane. The payment period as per Rule 18 is prescribed to be one week and it also contemplates that the occupier and/or agent shall be responsible for making all payment. The Cane Commissioner is required to forward to the Collector a certificate under his signature specifying the amount of arrears of account of price of sugarcane plus the interest, if any, due from the occupier and/or agent of the Factory in the event of delay and the Collector, on receipt of such certificate, shall proceed to recover from such occupier and/or agent the amount specified therein as if it were arrears of land revenue. Hence, the payment of price of sugarcane and/or the interest on delayed payment thereof is not simpliciter a private dispute for refund of some money by an individual, rather, it is part of a public law enforcement entailing a further duty not only on the occupier and/or agent of the Factory but also on the agencies and instrumentalities of the State including the Cane Commissioner as well as the Collector.

In the matter of *Godavari Sugar Mills Limited Vs. State of Maharashtra* reported as *(2011) 2 SCC 439* where the question before the

Hon'ble Supreme Court was with regard to the payment of interest on delayed payment of compensation, the Hon'ble Supreme Court held that where a lis has a public law character, the relief under Articles 226 of the Constitution cannot be denied. The same cannot be treated as akin to a private relief for seeking refund of money where the appropriate remedy would be to approach the Civil Court. The breach in the instant case is not on account of a mere breach of contract or a tort to pay an amount of money due to the claimant, it is rather a case of enforcement of public law under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 and the Rules framed thereunder. The High Court had held that the remedy of writ would not be available for seeking interest on delayed payment, with such judgment was reversed by the Hon'ble Supreme Court. The relevant extract of the said judgment is reproduced hereinafter below:

“5. The following two questions arise for our consideration in this appeal:

(i) Whether the writ petition was for "recovery of money" and therefore not maintainable?

(ii) Whether the second respondent was justified in awarding interest only at the rate of 3% per annum on the compensation payable under Section 25 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961?

Re: Question No.(i)

6. The writ petition was for a declaration that the Notice dated 30.3.2005 informing the appellant that total compensation including interest for acquisition of 12127.4 acres of land as Rs.88,77,538/- was unjust and arbitrary and discriminatory insofar as it offered interest only at the rate of 3% per annum on the compensation amount and for a mandamus to pay the compensation with interest at 9% per annum from the date of surrender of possession to date of actual payment. The appellant contended in the writ petition that having regard to decisions of

the Bombay High Court in Krishnakumar Vithalrao Jamdar vs. State of Maharashtra (WP No.83 of 1986 decided on 29.6.1991) and Shree Changdeo Sugar Mills vs. State of Maharashtra (WP No.3805/2000 decided on 7.7.2000) wherein interest was awarded at the rate of 9% per annum in regard to compensation payable under the said Act, the second respondent acted illegally in awarding interest at a lesser rate of 3% per annum. Therefore, the writ petition filed by appellant did not relate to a simple money claim. It required adjudication in regard to the allegations of arbitrariness and discrimination on the part of the state government and its officers in the exercise of their statutory functions, before the issue of rate of interest could be examined or determined. Primarily, therefore the writ petition was of a public law character as it related to the public law functions on the part of the state government and its officers, and therefore maintainable.

7. *The High Court relying upon the decision of this court in Suganmal v. State of MP - AIR 1965 SC 1740 has held that the prayer in the writ petition being one for payment of interest, it should be considered to be a writ petition filed to enforce a money claim and therefore, not maintainable.*

8. *The observations in Suganmal related to a claim for refund of tax and have to be understood with reference to the nature of claim made therein. The decision in Suganmal has been explained and distinguished in several subsequent cases, including in UP Pollution Control Board vs. Kanoria Industrial Ltd 2001 (2) SCC 549 and ABL International Ltd vs. Export Credit Guarantee Corporation of India Ltd. - 2004 (3) SCC 553. The legal position becomes clear when the decision in Suganmal read with the other decisions of this Court on the issue, referred to below:*

(i) Normally a petition under Article 226 of the Constitution of India will not be entertained to enforce a civil liability arising out of a breach of a contract or a tort to pay an amount of money due to the claimants. The aggrieved party will have to agitate the question in a civil suit. But an order

for payment of money may be made in a writ proceeding, in enforcement of statutory functions of the State or its officers. [vide Burmah Construction Co.v. State of Orissa - (1962) Supp 1 SCR 242].

- (ii) *If a right has been infringed whether a fundamental right or a statutory right and the aggrieved party comes to the court for enforcement of the right, it will not be giving complete relief if the court merely declares the existence of such right or the fact that existing right has been infringed. The High Court, while enforcing fundamental or statutory rights, has the power to give consequential relief by ordering payment of money realized by the government without the authority of law (vide State of Madhya Pradesh v. Bhailal Bhai - AIR 1964 SC 1006).*
- (iii) *A petition for issue of writ of mandamus will not normally be entertained for the purpose of merely ordering a refund of money, to the return of which the petitioner claims a right. The aggrieved party seeking refund has to approach the civil court for claiming the amount, though the High Courts have the power to pass appropriate orders in the exercise of the power conferred under Article 226 for payment of money. (vide Suganmal v. State of Madhya Pradesh - AIR 1965 SC 1740).*
- (iv) *There is a distinction between cases where a claimant approaches the High Court seeking the relief of obtaining only refund and those where refund is sought as a consequential relief after striking down the order of assessment etc. While a petition praying for mere issue of a writ of mandamus to the state to refund the money alleged to have been illegally collected is not ordinarily maintainable, if the allegation is that the assessment was without a jurisdiction and the taxes collected was without authority of law and therefore the respondents had no authority to retain the money collected without any authority of law, the High Court has the power to direct*

refund in a writ petition [vide Salonah Tea Co.Ltd. v. Superintendent of Taxes, Nangaon (1988) 1 SCC 401].

(v) *It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, where the facts are not in dispute, where the collection of money was without the authority of law and there was no case of undue enrichment, there is no good reason to deny a relief of refund to the citizens. But even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and circumstances of a given case. (Vide U.P. Pollution Control Board vs. Kanoria Industrial Ltd 2001 (2) SCC 549).*

(vi) *Where the lis has a public law character, or involves a question arising out of public law functions on the part of the State or its authorities, access to justice by way of a public law remedy under Article 226 of the Constitution will not be denied. [Vide Sanjana M.Wig v. Hindustan Petroleum Corporation Ltd. (2005) 8 SCC 242.]*

We are therefore of the view that reliance upon Sukanmal was misplaced, to hold that the writ petition filed by the appellant was not maintainable.”

It must be kept in mind that legal right of an individual may be founded upon a Contract, Statute or an Instrument having the force of law, however, for a public law remedy enforceable under Article 226 of the Constitution, the actions of the Authority need to fall in the realm of public law. It cannot be possible to generalize the nature of action that would come either under public law remedy or private law field as it is neither desirable nor

possible to give an exhaustive list of such actions. The same has to be determined by a Constitutional Court on a case-to-case basis.

The judgment of **S.S. Rana (supra)**, however, is not applicable to the facts of the present case, which are rather more similar to the issue involved in the matter of **Gadavari Sugar Mill's case (supra)**. In the case of **S.S. Rana (supra)** relied upon by the respondent, the dispute rather related to the termination of service of the appellant therein and was a contract of service. Besides, the entire management structure and functional details have been duly noticed on the basis of documents placed on record before the Hon'ble Supreme Court concluded that the respondent therein would not fall within the aegis of an authority amenable to writ jurisdiction under Article 12 of Constitution. It was specifically noticed that there was nothing on record to infer that the State exercised any functional and financial control over the affairs of the society the respondent society did not fulfill any of the concerned tests. No such evidence has been adduced by the respondent in the present case. Besides, the dispute in question is not limited to the private lis between the employer and employee and is, rather, relatable to payment of dues as regulated by the Statute. Besides, the cane grower is also obligated as per the Statute to sell his produce to the persons authorised by the Government. However, the nature of dispute involved in the present case cannot be treated at par with an individual private dispute.

Considering the facts of present case on both the above aspects, I am of the view that the present dispute is amenable to the writ jurisdiction of this Court as it involves a public law element and imposes a public duty on the respondent sugar mills as well as the officials nominated by the State Government to ensure enforcement of the public law. The relief claimed for is

in furtherance to the public law and not based on any private contractual breach or a tortuous claim for alleged infringement of a civil right.

The next question which thus arises for consideration is as to whether the writ petition should be dismissed since an alternative efficacious remedy under Rule 18 is available to the cane growers and they can approach the Cane Commissioner, who is empowered to carry out the assessment and issue a certificate under his signature to the Collector so that the price as well as the interest, if any, due to the cane grower can be recovered and disbursed.

It is not an absolute law that the existence of an alternative remedy is a bar to the exercise of writ jurisdiction under Article 226 of the Constitution of India. The Hon'ble Supreme Court has held in the matter of **Harbans Lal Sahnia and another Vs. Indian Oil Corporation Ltd. and others** reported as **(2003) 2 SCC 107** that in an appropriate case, the High Court may exercise its writ jurisdiction despite availability of alternative remedy. The relevant extract of the said judgment is reproduced hereinafter below:

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (1) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (m) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks) The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners’

dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

The said position in law is also not controverted by the respondents. It is significant herein that despite the aforesaid provisions contemplated in the rules, this Court is also persuaded to not relegate the petitioners to the Cane grower since the response of the Cane Commissioner has already been filed. Even though the Cane Commissioner, who is the prescribed Authority under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 and the Rules framed thereunder, was fully conscious of the issue involved, however, he has yet chosen to not make any commitment for examining the issue in hand has also not furnished any specific stand as to whether the petitioners herein would be entitled to receive any interest or not. Apart from being non-committal, he has rather been defending the Sugar Mills about the strenuous efforts made by them to clear the arrears. The appellate Authority having already opined, it would not serve any purpose to relegate the petitioners to the same Authority.

Reliance is also placed on memo dated 19.05.2020 (Annexure R-1) where the Cane Commissioner had directed interest to be paid at the rate of 15% per annum against the respondent-Sugar Mills itself for its failure to pay the amount within 14 days as per Clause 3(3-A) of the Sugarcane Control Order, 1966. Similar orders have also been passed under Annexure R-2 dated 27.04.2020. Thus, although the Cane Commissioner was conscious of the dispute and had been directing payment of compensation by the concerned sugar mills at par with the owners and/or agents under Section 3 (3-A)

Sugarcane Control Order, 1966, yet, for no explicable reason, response filed herein has been largely evasive.

Apparently, even though the respondent-Authorities contend that the provisions of Clause 3(3-A) Sugarcane Control Order, 1966 may not be applicable, however, the Cane Commissioner has been following the said principle while issuing certificates under Rule 18(6) of the Punjab Sugarcane (Regulation of Purchase and Supply) Rules, 1958. There is thus inherent contradiction in the actions of the respondent – Cane Commissioner vis-à-vis the submissions/objections raised in their written statement. Relegating the petitioners to approach the Cane Commissioner so that the procedural requirements may be satisfied would only amount to further delay in redressal of the grievance of the farmers-petitioners and to add to their agony. Once the factual aspect as well as the entitlement of the petitioners-farmers to the interest is not disputed, it would not be appropriate at this juncture to not redress their grievance.

It has also remained uncontroverted that a Division Bench of this court has earlier passed an order directing the respondents to make payment of interest in terms of the Clause 3(3-A) Sugarcane Control Order, 1966 vide CWP No.17915 of 2004 against the respondent No.1- Nakodar Cooperative Sugar Mills itself. Thus, considering it from any of the said perspective, writ jurisdiction has been invoked against the respondent-Sugar Mill on an earlier occasions also and they have been directed to pay interest as per the Clause 3(3-A) Sugarcane Control Order, 1966. Such aspect, thus, need not be re-examined again.

The last question which now arises for determination is as to what rate of interest ought to be extended to the petitioners since the Punjab

Sugarcane (Regulation of Purchase and Supply) Rules, 1958 did not stipulate any specific rate of interest, which such interest is otherwise prescribed under Sugarcane Control Order, 1966. The submissions of the respondents had been that the Clause 3(3-A) Sugarcane Control Order, 1966 being not applicable, the interest at such rate thus cannot be held to be statutorily applicable. However, it is not in dispute that Rule 18(6) contemplates interest, if any, that is due and as such it empowers the Cane Commissioner to award interest on delayed payment. Even though time period of 7 days for payment of money has been contemplated in Rule 18, a period of 14 days is contemplated under Sugarcane Control Order, 1966. The Cane Commissioner, in his order, which has been appended alongwith the response, has been directing disbursement of interest in terms of Clause 3(3-A) Sugarcane Control Order, 1966 and the Division Bench had issued a direction to the respondent-Sugar Mill to pay interest in terms of Clause 3(3-A) Sugarcane Control Order, 1966 vide its order dated 27.07.2005 (Annexure P-4) passed in CWP No.17915 of 2004. The orders passed by the Authorities as well as the precedents judgment of the Division Bench of this Court have thus maintained parity by drawing strength from the Sugarcane Control Order, 1966 and have awarded interest at the rate of 15% per annum for the delayed period of the payment after an expiry of 14 days instead of 07 days as contemplated under the Punjab Sugarcane (Regulation of Purchase and Supply) Rules, 1958. A mere reason of financial hardship cited by the respondent cannot be the basis to dilute the statutory mandate or to provide an escape to respondents to not adhere to the statutory provisions. The interest on delayed payment is not a price against the material purchased, rather, it is a equitable relief extended to the persons, who have been wrongfully deprived of their legitimate dues and takes into consideration the

benefits that may have been availed by the respondents on account of the wrongful retention of the money with itself. It cannot be permitted to derive a wrongful gain and retain the benefits to itself at the cost of farmers.

Hence, keeping all the aforesaid circumstances into consideration as well as the orders that are being passed by the Cane Commissioner in exercise of the powers conferred under Rule 18(6) of the Punjab Sugarcane (Regulation of Purchase and Supply) Rules, 1958 as well as the precedent judgments of this Court, I am of the view that interest in terms of Clause 3(3-A) Sugarcane Control Order, 1966 shall be admissible to the petitioners after expiry of 14 days from the date of sale of their produce. The requisite payment be calculated and released by the respondent-Sugar Mill within a period of three months from the date of receipt of certified copy of this order.

14.11.2022
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes