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Judgment Reserved on 10.09.2020

Judgment Delivered on 21.09.2020

Court No. - 5

1. **Case :-** WRIT - C No. - 13313 of 2020

**Petitioner :-** Kanikram And 3 Others

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Anoop Kumar

**Counsel for Respondent :-** C.S.C.,Diptiman Singh,Kartikeya Saran

2. **Case :-** WRIT - C No. - 12843 of 2020

**Petitioner :-** Brija And 19 Others

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Ram Karan

**Counsel for Respondent :-** Kartikeya Saran,Diptiman Singh

3. **Case :-** WRIT - C No. - 13284 of 2020

**Petitioner :-** Bhagwan Deen And 24 Others

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Ram Karan

**Counsel for Respondent :-** C.S.C.,Kartikeya Saran

4. **Case :-** WRIT - C No. - 12629 of 2020

**Petitioner :-** Shiv Das And 26 Others

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Ram Karan

**Counsel for Respondent :-** C.S.C.,Kartikeya Saran,Vinayak Mithal

Hon'ble Surya Prakash Kesarwani,J.

Hon'ble Jayant Banerji,J.

**(Delivered by Hon'ble Surya Prakash Kesarwani J.)**

1. Heard Sri Anoop Kumar, learned counsel for the petitioners in WRIT - C No. - 13313 of 2020, Sri Ram Karan, learned counsel for the petitioners in WRIT - C Nos. - 12843 of 2020, 13284 of 2020 and 12629 of 2020, and also heard Sri J.N. Maurya, learned Chief Standing Counsel alongwith Sri Bipin Bihari Pandey, learned standing counsel for the State – respondents, Sri Kartikeya Saran, learned counsel for the Cooperative Cane Society and Sri M.D. Singh “Shekhar”, learned Senior Advocate assisted by Sri Diptiman Singh, and Sri Vinayak Mithal, learned counsel for the respondent - Bajaj Hindustan Sugar Ltd. (Unit - Rudhauri, District – Basti).

2. With the consent of learned counsels for the parties, WRIT - C No. - 13313 of 2020 is treated the leading writ petition and facts thereof are being noted.

3. Today, the State – respondents, the respondent - Cane Society and the respondent - Sugar Mill have filed short counter affidavits all dated 08.9.2020 in WRIT - C No. - 13313 of 2020. The respondent no.5 has additionally filed a first supplementary affidavit dated 10.09.2020 in short counter affidavit. All these affidavits are taken on record.

### **Facts**

4. The petitioners are cane growers. They are members of the respondent Cooperative Cane Society. Their sugar cane growing area was reserved for supply of sugarcane to the respondent - Sugar Mill. They supplied sugarcane to the respondent - Sugar Mill for the crushing season 2019-20 (01.10.2019 to 31.03.2020). According to the respondent - Sugar Mill, the crushing was carried on upto 23.03.2020. As per details submitted by the respondent no.2 (Cane Commissioner) alongwith the counter affidavit, 28086 farmers supplied sugarcane to the respondent Sugar Mill but the respondent Sugar Mill has made payment whether in full or in part, only to 7,639 cane growers for the period of supply till 01.01.2020. Thus 20,447 cane growers have not been paid even a single penny by the respondent Sugar Mill. Although some correspondence was made by the respondent Cane Cooperative Society with the respondent no.2 Cane Commissioner but no action was taken by the Cane Commissioner and he simply issued 3 letters dated 04.02.2020, 19.5.2020 and 13.07.2020 to the respondent Sugar Mill requesting to ensure hundred percent payment of sugarcane price to the cane growers. As per last letter of the Cane Commissioner dated 13.07.2020 the sugarcane purchase payable amount by the respondent Sugar Mill was Rs.132.5194 crores against which it made payment of only Rs.18.6035 crores and thus there

remains arrears of Rs.113.9159 crores. The respondents - Sugar Mill has made payment of only 14.04% percent out of the total sugarcane supply amount. When this court passed an order on 03.09.2020 only then the respondent no.2 Cane Commissioner issued a recovery certificate dated 07.09.2020 reflecting total arrears of Rs.103.1057 crores towards sugarcane price and interest payable by the respondent Sugar Mill to cane growers.

5. Section 17 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act 1953 (hereinafter referred to as “the Act 1953”) provides for payment of sugarcane by the Sugar Mill to cane growers within 14 days and for delayed payment an interest @ 12 % is also payable. The provisions of **Section 17 of the Act 1953 and Rule 45 of the U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954** (hereinafter referred to as “the Rules 1954”) are reproduced below:-

**“Section 17. Payment of cane price. - (1) The occupier of a factory shall make such provision for speedy payment of the price of cane purchased by him as may be prescribed].**

**(2) Upon the delivery of cane the occupier of a factory shall be liable to pay immediately the price of the cane so supplied, together with all other sums connected therewith,**

**(3) Where the person liable under sub-section (2) is in default in making the payment of the price for a period exceeding fifteen days from the date of delivering, he shall also pay interest at a rate of 7-1/2 per cent per annum from the said date of delivering, but the Cane Commissioner may, in any case, direct, with the approval of the State Government, that no interest shall be paid or be paid at such reduced rate as he may fix:**

**[Provided that in relation to default in payment of price of cane purchased after the commencement of this proviso, for the figure '7-1/2 the 'figure 12' shall be deemed substituted.]**

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

*(5)(a) Without prejudice to the provisions of the foregoing sub-sections, where the owner or any other person having control over the affairs of the factory or any other person competent in that behalf enters into an agreement with a bank under which bank agrees to give advance to him ["on the security of sugar or ethanol (directly produced from the sugarcane juice or B-Heavy molasses)"] produced or to be produced in the factory, the said owner or other person shall provide in such agreement that a [percentage determined by such authority and in such manner as may be prescribed] of the total amount of advance shall be set apart and be available only for repayment to cane-growers or their co-operative societies on account of the price of sugarcane purchased or to be purchased for the factory during the current crushing season from those cane-growers or from or through those societies, and interest thereon and, such societies commission in respect thereof.*

*(b) Every such owner or other person as aforesaid shall send a copy of every such agreement to the Collector within a week from the date on which it is entered into].*

**Rule 45 :** *Payments for cane shall be made only to the cane grower or his representative duly authorized by him in writing to receive payment or to a cane growers' Co-operative Society :*

***[Provided that the payment to the members of cane growers' Co-operative society may be made by the factory with the mutual agreement between the factory and the society. This remuneration to the factory for the payment to the members of a cane growers' Co-operative Society shall be determined by the Cane Commissioner :***

***Provided further that all arrears of cane price shall be remitted to the cane growers' Co-operative Society concerned within fifteen days of the close of the factory]."***

6. Briefly on the facts and legal provisions as noted above, the petitioners have filed the present writ petition praying for a direction in the nature of mandamus to the Cane Commissioner to direct the respondent no.5 sugar mill to pay the entire cane price with interest for the crushing season 2019 – 2020 and also to direct the respondent no.2 to consider the applications of the petitioners which is submitted in May 2020. The petitioners have also prayed that any other or further orders as this Court may deem fit and proper under the facts and circumstances of the case, may be issued.

**Submissions on behalf of the petitioners**

7. Learned counsel for the petitioners submits as under:-

- (i) The purchase and supply of sugarcane is regulated by the provisions of the Act 1953 and the Rules 1954. The petitioners' area was reserved for the respondent no.5. Accordingly, the respondent no.5 supplied the sugarcane to the respondent no.5 with clear stipulation under the Act 1953 that the respondent No.5 shall make the payment within 14 days and the delay in payment shall carry interest @ 12%. But despite various reminders and persuasion by the petitioners neither Cane Cooperative Society has taken any interest to ensure payment of sugarcane dues of the petitioners nor the respondent Cane Commissioner nor the State Government took any interest to ensure that the petitioners (poor farmers) may get sale consideration of their sugarcane supplied to the respondent no.5 Sugar Mill.
- (ii) The respondents are acting in connivance with each other, with the result that the petitioners are not getting price of their sugarcane supplied to the respondent no.5 under the provisions of the Act 1953 and the Rules 1954.
- (iii) The conduct of the respondents is not only violative of provisions of Section 17 of the Act 1953 and the Rule 45 of the Rules 1954 but is also violative of fundamental rights of the petitioners guaranteed under Part III of the Constitution of India.

**Submissions on behalf of the State respondents**

8. (i) Sri J.N. Maurya, learned Chief Standing Counsel, submits that the respondent no.2 has disclosed entire details in paragraphs 6, 7 and 8 of the short counter affidavit which indicates that the respondent no.5 has committed serious lapses in making payment of sugarcane to cane growers and consequently, the respondent no.2 has issued a recovery certificate dated 07.09.2020. The recovery could not yet be made.

(ii) The recovery certificate issued by the respondent no.2 shall be enforced by the Collector and the entire dues shall be recovered from the respondent no.5.

(iii) The respondent No.5 has not made any payment to cane growers for supplies after 02.01.2020.

**Submissions on behalf of the respondent No.4 (Cane Cooperative Society)**

9. Learned counsel for the respondent no.4 has submitted as under:

(i) The respondent no.4 has written to the respondent no.5 for payment of cane dues and interest but the respondent no.5 has not made any payment.

**The payment of sugarcane price is made directly by the respondent no.5 to the cane growers through ESCROW account** (which is a joint account of the respondent no.5 - Sugar Mill and the District Cane Officer). An intimation is sent to the respondent Cane Cooperative Society when the payment is made. The respondent Cane Cooperative Society gets commission only when the payment is made to cane growers but due to conduct of respondent no.5 the respondent No.4 is not getting commission.

(ii) The respondent no.5 is not making payment of commission to the respondent no.4 under Rule 49 of the Rules 1954 and thus has defaulted even in payment of Commission.

(iii) The respondent no.4 has apprised the Cane Commissioner through notice dated 13.07.2020 (addressed to the respondent no.5 and a copy to the Cane Commissioner) regarding non payment of cane price to growers but no action has been taken.

(iv) There is no allegation by the petitioners against the respondent no.4 Cane Cooperative Society for any lapses on its part regarding non payment of cane dues by the respondent no.5 to the cane growers.

**Submissions on behalf of the respondent No.5 Sugar Mill**

10. Sri M.D. Singh 'Shekhar', learned Senior Advocate, has submitted as under:-

(i) The writ petitions are not maintainable at the instance of individual cane growers who have no individual right to approach the Court for payment of sugarcane price/dues. Reliance is placed upon the orders dated 28.11.2019 in **WRIT - C No. - 38324 of 2019 ( Akram Khan and another Vs. State Of U.P. and 03 Others)** (para 6 and 22), order dated 03.01.2020 in **WRIT - C No. - 41791 of 2019 (Vishambhar Dayal And 5 Others Vs. State Of U P And 5 Others )**, order dated 03.03.2020 in **WRIT - C No. -7166 of 2020 (Ram Chand And 8 Others Vs. State Of U.P. And 4 Others)**, and order dated 31.8.2020 in **WRIT - C No. -12762 of 2020 (Swami Nath And 24 Others Vs. State Of U.P. And 4 Others)**.

(ii) The prayer nos. 1 and 2 can not be granted to the petitioners in view of the judgments and orders of this Court referred above.

(iii) The Deputy Cane Commissioner wrote a letter dated 24.8.2020 to the respondent no.5 pursuant to a letter of the Cane Commissioner dated 20.08.2020 for submitting plan for payment of cane dues and in response thereto the respondent no.5 has submitted a plan for payment of cane dues of the farmers to the tune of 97 crores, till February 2021 (excluding interest). **Since the respondent no.5 has already submitted a plan for making payment of sugarcane dues of the crushing season 2019 – 20 by February 2021, therefore, there is no occasion for this Court to issue any direction for payment of recovery of cane dues of the petitioners/cane growers.**

(iv) The respondent no.5 has made payment on 08.9.2020 for sugarcane purchased till 02.01.2020 and part payment of sugarcane purchased on 03.01.2020. The Sugar Mill stopped crushing since 23.03.2020. Therefore, the respondent no.5 is making effort for payment.

(v) Since recovery certificate has already been issued by the respondent

no.2 against the respondent no.5, therefore, the writ petition has become infructuous.

(vi) If the respondent no.5 makes the payment then it may face financial crisis and may be forced to close the Sugar Mill.

11. The submissions made by learned counsels for the parties as aforementioned give rise to the following **Questions for determination** in these writ petitions:-

(i) Whether petitioners/cane growers have *locus standi* to maintain writ petition under Article 226 of the Constitution of India for payment of their cane dues in terms of the provisions of Section 17 of the Act 1953 read with Rule 45 of the Rules 1954 ?

(ii) Whether on issuance of Recovery Certificate dated 07.09. 2020 by the respondent no.2 against the respondent no.5 for recovery of cane price and interest, the writ petitions have become infructuous. ?

(iii) Whether the respondent no.5 even being bound by the provisions of Section 17 of the Act 1953 and Rules 44 and 45 of the Rules 1954, can withhold or delay the payment of sugarcane supplied by the petitioners/cane growers on the ground that it has submitted a schedule of payment to the Cane Commissioner to pay the sugarcane dues (except interest) by February 2021, and whether the Cane Commissioner and authorities have acted in due discharge of their duties?

### **Discussion and Findings**

#### **Question No. (i)**

12. It is undisputed that the petitioners' sugar cane growing area was reserved for supply of sugar cane to the respondent no.5 under Section 15 of the Act 1953 and accordingly the petitioners supplied their sugar cane to the respondent no.5. As per short counter affidavit of the respondent no.2, 28086 farmers supplied sugarcane to the respondent No.5 - Sugar Mill but the respondent has made payment whether in full or in part, only to 7,639 cane growers for the period of supply till



01.01.2020. Thus, 20,447 cane growers have not been paid even a single penny by the respondent No.5 against the supply of sugarcane. The petitioners cane-growers have stated in para 12 of the writ petition that they have no other source of livelihood and are totally dependent on the sale price of sugarcane. In paragraphs 9 to 14 the petitioners have stated that under the Act, 1953 and the Rules 1954, the respondents' Sugar Mill is bound to pay the sugarcane price immediately and if it is not paid within 15 days of the date of supply then interest also become due and payable to cane-growers. It has also been stated that the entire actions of the respondents regarding non payment of cane dues, are illegal, arbitrary and violative of Article 14 of the Constitution of India.

13. In paragraph 6 of the short counter affidavit, the respondent No.2 has stated as under:-

*“6. That in the crushing season 2019-2020, Bajaj Hindustan Sugar Ltd. Unit-Rudhali, District Basti (respondent no.5) (hereinafter referred to as the sugar mill) had purchased total 42.23 lakhs quintal of sugarcane from the cane growers amounting to Rs.13,251.94 lakhs. The sugar mill has paid only Rs.3,778.56 lakhs to the farmers/cane growers towards the cane price and Rs.9,473.38 is due and payable to the farmers/cane growers. Since, there was delay in payment of cane price to the farmers/cane growers by the sugar mill, an interest of Rs.644.89 lakhs has been imposed on the outstanding cane price under Section 17(3) of the U.P. Sugarcane (Regulation Supply and Purchase) Act, 1953 (hereinafter referred to as U.P. Act No.24 of 1953). It is relevant to submit here that in the crushing season 2019-20, total 28086 cane growers have supplied sugarcane to the sugar mills out of which only 7,639 cane growers have been paid cane price (fully or partially) and the remaining 20,447 farmers/cane growers have not been paid their cane price. Copy of chart showing the details of payments of cane price to the farmers/cane growers by the sugar mill is being annexed herewith and is marked as Annexure No.SCA-1 to this short counter affidavit.”*

14. It has been stated in paragraphs 10 and 11 of the short counter affidavit of the respondent no.2 that payment of sugar cane price is made by the sugar mill to the farmers (cane-growers) under ESCROW Account Scheme and the outstanding cane price dues of the farmers of the cane-

growers is paid into their bank account through RTGS/NEFT.

15. The facts as stated in the short counter affidavit and briefly mentioned above have not been disputed by the respondent no.5 in its short counter affidavit. Thus, the facts stated in paragraph 6 of the short counter affidavit of the respondent no.2 that a sum of Rs.94.7338 crores towards cane price and interest Rs.6.4489 crores is payable to farmers (cane growers) under Section 17 of the Act 1952, is undisputed.

16. As per provisions of **Section 17(1)/(2)** upon the delivery of cane the occupier of a factory **shall be liable to pay immediately** the price of the cane so supplied, together with all other sums connected therewith. As per Section 17(3) of the Act **where a person liable under sub-section (2) is in default in making the payment of the price** for a period exceeding fifteen days from the date of delivery, **he shall also pay interest at the rate of 12% per annum**. Sub – Section 4 mandates that the Cane Commissioner shall forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest, if any, due from the occupier and the Collector, in receipt of such certificate, shall proceed to recover from such occupier the amount specified therein as if it were an arrear of land revenue. Rule 45 of the Rules 1954 specifically mandates that the **payments for cane shall be made only to the cane growers** or his representative duly authorized by him in writing to receive payment or to a cane growers' Co-operative Society. The second proviso to Rule 45 provides that all arrears of cane price shall be remitted to the cane growers' Co-operative Society concerned within fifteen days of the close of the factory.

17. It has been stated by the respondent no.2 in his short counter affidavit that payment of cane price is made to the cane-growers through ESCROW Account and the payment is directly remitted to farmers of the cane growers through RTGS/NEFT. **Thus, it is clear that under the Act, 1953 and the Rules 1954 the petitioners have supplied**

sugar cane to the respondent no.5 and they are entitled to receive payment immediately as per provisions of Section 17 of the Act, 1953.

18. The rights of the petitioners for immediate payment of sugar cane supplied to the respondent no.5 emerges from the provisions of Section 17 (1)/(2) of the Act 1953 and in case of none payment beyond 15 days of the delivery of sugarcane, the respondent no.2 Cane Commissioner is under a statutory obligation to issue a recovery certificate and forward it to the Collector for recovery of cane dues from the Sugar Mill. Thus, right to receive payment of sugar cane price and interest, if any, is a statutory right of cane-growers/farmers under Section 17 of the Act who supplied sugarcane to the respondent no.5 as per reservation order issued by the competent authority under the Act 1953.

19. In the case of **Anand Agro Chemical India Ltd. Vs. Suresh Chandra & Ors.** 2014 (3) SCC 631 (paragraphs 2, 3, 4, 8, 9, 10, 11, 12, 13, 14) Hon'ble Supreme Court while considering the provisions of Section 17 of the Act 1953 held as under:-

*“2. The facts in nutshell are as follows. Respondents 1 to 3 supplied sugarcane to the sugar mill of the appellant in the year 2007-08, for which the appellant has not paid the price in spite of several representations made by the respondents 1 to 3 herein. This led to the filing of a Writ Petition in Writ-C no.14936 of 2013 by respondents 1 to 3 seeking for issuance of the Writ of Mandamus directing the appellant herein to release the sugarcane price to them. The Division Bench of the High Court after hearing both the sides directed the District Magistrate, Hathras to take immediate action against the Directors and occupiers of the appellant sugar mill against whom several orders have been passed under the U.P. Sugarcane (Regulation and Supply) Act, 1913 and it further observed in the order that the District Magistrate may in exercise of his powers cause arrest of the Directors and occupiers of the sugar mill to recover the dues and in the event of such arrest, they will not be released until they have paid the entire amount*

*due against them.*

*3. The appellant sugar mill aggrieved by the said order preferred a **Special Leave Petition in SLP(C) no.16633 of 2013** and this Court by order dated 1.5.2013 dismissed the petition by observing thus :-*

*“2. We have heard Shri Sanjay Parikh, learned counsel for the appellant and perused the record.*

*3. A reading of the order under challenge shows that the appellant has not paid Rs.16.12 crores to the farmers for the crushing year 2005-06 to 2009-10, which includes the price of sugarcane, the cane development commission and the interest. It is also borne out from the record that vide letter dated 24.11.2012, the Director of the appellant had assured the Cane Commissioner that the company will pay Rs.160 lacs as the price of the cane within two weeks and an amount of Rs.700 lacs in installments, the first of which will be paid on 15.01.2013, but the company did not fulfill its assurance.*

*4. In the above backdrop, it is not possible to find any fault with the direction given by the Division Bench of the High Court and there is absolutely no justification for this Court's interference with the impugned order.*

*The special leave petition is accordingly dismissed.....”*

*4. Thereafter, the appellant-sugar mill filed an application in the pending Writ Petition in the High Court of Judicature at Allahabad seeking for stay of arrest of the Directors pursuant to the order dated 26.4.2013 and the Division Bench of the High Court after hearing both sides and after referring to the earlier orders held that no modification/vacation of the order dated 26.4.2013 is required and, accordingly, rejected the prayer of stay of arrest. Challenging the said order the appellant-sugar mill has preferred the present appeal.*

*8. Section 17 of the U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 stipulates that the occupier of the sugar - factory shall make speedy payment of cane price and in the event of default, sub-Section (4) stipulates that the Cane Commissioner shall forward to the Collector a certificate specifying the amount of arrears of the cane price due from the occupier and the Collector shall proceed to recover the said amount from such occupier as if it were an arrear of land revenue. Section 170 of the Uttar Pradesh Revenue Code, 2006 prescribes the process for recovery of arrears of land revenue, wherein it is mentioned that it may be recovered by anyone or more of the processes mentioned therein which includes by arrest and detention of the defaulter and attachment and sale of his movable property.*

*9. The Division Bench of the Allahabad High Court in its order dated 26.4.2013 has directed the District Magistrate,*

*Hathras, namely, the Collector to take immediate action against the Directors and occupiers of the appellant-sugar mill against whom several orders have been passed under the U.P. Sugarcane (Regulation and Supply) Act, 1913 and this Court has confirmed the said order. The Division Bench in the present application considered the plea of the appellant for the stay of arrest and after hearing both sides rejected the said plea by the impugned order and we find no error in it.*

*10. We say so, firstly, because the order dated 26.4.2013 passed by the Division Bench of the Allahabad High Court directing the District Magistrate to take immediate action against the Directors of the sugar mill has already been affirmed by this Court in appeal. The question whether or not one of the Directors who is said to be 65 years old could be arrested as a defaulter and committed to prison under Section 171 of the Uttar Pradesh Revenue Code, 2006, could and indeed ought to have been raised by the appellants either before the High Court or before this Court in appeal preferred against the order passed by the High Court. No such contention was, however, urged at that stage.*

*11. Secondly, because the company and its Directors have not made their promises good by paying even the amounts which they had offered to pay. A plain reading of order dated 1.5.2013 passed by this Court in Anand Agro Chemical India Ltd. Vs. Suresh Chandra SLP (C) No.16633 of 2013 extracted above would show that the company and its Directors had assured the Commissioner that they would pay Rs.160 lacs towards price of sugarcane within two weeks besides an amount of Rs.700 lacs to be paid in installments, the first of which installment was to be paid on 15.5.2013. No such payment was, however, made by the company and its Directors. That apart, the statement made at the bar on 7.10.2013 by Dr. Rajeev Dhawan, learned senior counsel, for the appellant that the Directors would pay Rs.4.55 crores is also sought to be withdrawn on the ground that the same was made under a mistake. It is evident that the company and its Directors have been despite promises made on their behalf committing breach of such assurances on one pretext or the other.*

*12. Thirdly, because there is nothing before us to suggest that the company and its Directors are incapable of raising funds for liquidating the outstanding liability towards dues payable to the farmers. Simply because the sugar factory has been attached, is no reason for us to assume that the company or its Directors are in any financial distress thereby disabling them from making the payments recoverable from them. The fact situation in the present case is, therefore, completely different from that in Jolly George Varghese case (1980) 2 SCC 360 relied upon by Mr. Ram Jethmalani.*

*13. In the light of the above, we see no compelling reason for us to interfere with the order passed by the High Court*

*in exercise of our extraordinary jurisdiction. We regret to say that the amounts due to the farmers towards price of the sugarcane and incidentals remains to be paid to them for several years in the past thereby accumulating huge liability against the company. That is not a happy situation nor can repeated invocation of the process of law by the appellant be a remedy for it.*

*14. The appeal is devoid of merit and is accordingly dismissed.”*

20. Thus, in the case of **Anand Agro Chemical India Ltd. (supra)** Hon'ble Supreme Court clearly held that Section 17 of the Act 1953 stipulates that the occupier of the sugar - factory shall make speedy payment of cane price and in the event of default, sub-Section (4) stipulates that the Cane Commissioner shall forward to the Collector a certificate specifying the amount of arrears of the cane price due from the occupier and the Collector shall proceed to recover the said amount from such occupier as if it were an arrear of land revenue.

21. The aforesaid judgment in the case of **Anand Agro Chemical India Ltd. (supra)** arose from the judgment of this Court dated 31.07.2013 in Writ Petition No.14936 of 2013 which was filed by cane-growers and was entertained by this Court.

22. In the case of **Hari Shanker Vs. Cane Commissioner 2004 ALL LJ 3322 (All – D.B.)** this Court considered the plight of poor farmers/cane growers and observed as under :

*“Before parting it must be mentioned that it is deeply regrettable that economically strong sugar mills resort to such hyper technical arguments for defeating just claims of poor cultivators, by questioning the jurisdiction of empowered authorities, or the right of the poor cultivators to prefer the claim, or by raising artificial pleas of violation of natural justice. Very often the co-operative society which receives commission from the factory sides with the powerful sugar mill, leaving its poor farmer members high and dry.”*

23. The petitioners are aggrieved due to non discharge of legal burden imposed upon the respondents including the respondent no.5, under the Act 1953. In the case of **Bar Council of Maharashtra Vs.**

**M.V. Dabholkar and others 1975 (2) SCC 702 (para 28)** a Constitution Bench of Hon'ble Supreme Court considered the meaning of the words "**person aggrieved**" and held that the meaning of the words "a person aggrieved" *may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved"*. Again a person is aggrieved if a legal burden is imposed on him. **Thus, in the light of the discussion made above, the petitioners are "aggrieved persons"**

24. The rights under Article 226 of the Constitution of India can be enforced only by an "aggrieved person" except in cases where the writ prayed is for habeas corpus or quo-warranto. Another exception in the general rule is filing of a writ petition in public interest. **The existence of legal right of the petitioners which is alleged to have been violated, is the foundation for invoking the jurisdiction of the High Court under Article 226 of the Constitution of India.** If a person approaching the Court can satisfy that the impugned action is likely to affect adversely his right which is shown to be having source in some statutory provisions, the writ petition filed by such person shall be maintainable and such person shall have the *locus standi* to maintain the writ petition. Similar view has been taken by Hon'ble Supreme Court in the case of **Ghulam Qadir Vs. Special Tribunal and others (2002) 1 SCC 33 (Para 38)**.

25. We have found that the petitioners have a legal right under Section 17 of the Act 1953 to get payment of sugarcane supplied to the respondent no.5 immediately and in any case within 15 days without interest. The respondent No.2 has failed to ensure enforcement of the provisions of sub Section 4 of Section 17 of the Act 1953 until this Court passed an order dated 03.09.2020. Even after issuance of recovery

certificate, neither recovery of long over due payment under Section 17 of the Act has been made by the respondent no.5 to the petitioners nor the respondent no.2 could ensure the payment to the petitioners as per provisions of the Act and the Rules. Under the circumstances, the submissions of learned Senior Advocate appearing for the respondent no.5 that the petitioners have no *locus standi* or the writ petition is not maintainable, is wholly devoid of merit and, therefore, it can not be accepted. The petitioners have legally protected and judicially enforceable subsisting right to ask for mandamus for payment under Section 17 of the Act, 1953. Similar writ petition No.14936 of 2013 decided on 31.07.2013 was entertained by this Court and the judgment was affirmed by Hon'ble Supreme Court in the case of **Anand Agro Chemical India Ltd. (supra)**. Consequently, we hold that the petitioners have *locus standi* and the writ petitions are maintainable.

**Question Nos. ii & iii**

26. As per own case of the respondent no.5 and the stand taken by the respondent no.2 in their short counter affidavit, no payment to cane growers/petitioners for sugarcane supply/delivery after 02.01.2020, has been made by the respondent no.5. It is also admitted to the parties that the respondent no.5 received supply of sugarcane from 28086 farmers but made payment whether in full or in part only to 7,639 cane-growers for the period of supply till 01.01.2020. Thus, 20447 cane-growers have not been paid any amount by the respondent no.5 against supply of sugarcane. As per provisions of Section 17(1)/(2) of the Act 1953 payments were required to be made immediately to cane-growers and delay in payment beyond 14 days of supply/delivery, attracts interest @ 12% payable to farmers/cane-growers. Sub-Section 4 of Section 17 of the Act casts a statutory duty upon the respondent no.2 Cane Commissioner to issue and forward a recovery certificate to the Collector for recovery of sugarcane



dues of the cane-growers/farmers, as arrears of land revenue. The payment was due and payable by the respondent no.5 to the petitioners even before the start of lock down period due to COVID 19 Pandemic. It has not been disputed by the respondents that the petitioners cane-growers earned their livelihood and maintain their families from the consideration received on supply of sugarcane to Sugar Mil/respondent No.5.

27. Thus, non payment of sugarcane price by the respondent no.5 and delay/laches by the respondent no.2 in issuing recovery certificate against the respondent no.5, clearly indicates breach of provisions of Sub-Sections 1, 2 and 3 of Section 17 by the respondent no.5 and sub-Section 4 of Section 17 by the respondent no.2. The respondent no.5, who is giant manufacturer in the field of sugar and its by-products; has not taken even Cash Credit Limit (CCL) from any Bank. No material has been placed on record of the writ petition that the respondent no.5 Sugar Mill or its directors or occupier are unable to pay sugar cane dues to the petitioners/cane-growers or they have no resources to pay the sugar cane dues. Under the circumstances, mere issuance of recovery certificate by the respondent no.2 on 07.09.2020 does not give a ground to the respondent no.5 to say that writ petition has become infructuous due to issuance of recovery certificate. Unless the cane dues pursuant to recovery certificate are recovered, the rights of the petitioners under Section 17 of the Act 1953 shall not be satisfied. No material has been placed by the respondent No.1 or 2 that any action pursuant to the recovery certificate dated 07.09.2020 has been taken by the Collector, Basti. Under the circumstances, it can not be said that the writ petition has become infructuous.

28. The provisions of Section 17 of the Act 1953 provide for the speedy payment of price of cane purchased by the occupier of a factory and the consequences for non-payment, the procedure for recovery and connected matters. Sub-section (1) of Section 17 imposes a statutory duty on the occupier of the factory to make such provisions of speedy payment

of the price of cane purchased by him as may be prescribed. A statutory mandate is cast upon the occupier by the factory fixing his liability to pay immediately the price of cane so supplied together with sums connected therewith. In default of making the immediate payment of the price of cane for a period exceeding fifteen days from the date of delivering, payment of interest has also been prescribed subject to the Cane Commissioner in any case directing, with the approval of the State Government, that no interest be paid or paid at such reduced rates as he may fix. In sub-section (4) of Section 17 of the Act 1953, the Cane Commissioner is enjoined to forward to the Collector a certificate under his signatures specifying the amount of arrears on account of price of cane plus interest, if any, due from the occupier and the Collector, in turn, is enjoined to proceed to recover from the occupier, the amount specified in such certificate as if it were an arrear of land revenue.

29. Chapter 9 of Rules 1954 provides for payment to be made for the purchase of cane. Rule 44 provides for payment of price of cane on the basis of the recorded weight of cane at the purchasing centre. Rule 45 provides for payment of cane price to be made only to the cane-grower or his representatives duly authorised or to cane-grower Co-operative Societies.

30. The provisions of Section 17, thus, cast an onerous duty on the occupier of a factory to make prior provision for speedy payment of the price of cane purchased by him. The provisions of such payment has to be reflected in the records of the factory.

31. Though a plan has been submitted by the respondent no.5 before the authorities concerned with regard to payment of the price of cane purchased by the occupier, it certainly is not supported by any document evincing the financial status of the factory. The provisions of Section 17 of the Act 1953 do not contemplate purchase of cane by the occupier even where the occupier is not in position to make payment of the price of cane. It is incumbent that the occupier make adequate

provisions, duly evinced by the records of the factory, prior to purchase of cane. The only leeway permissible to an occupier under the provisions of Section 17 with regard to payment of the price of cane purchased is the period of fifteen days from the date of delivery of cane. Immediately after fifteen days, the liability for payment of interest is imposed. In the present case, admittedly, the cane dues have not been paid after 2.1.2020. It was the bounded duty of the Cane Commissioner to proceed to issue a certificate for recovering the amount of arrears on account of price of cane plus interest in the event of default by the occupier. In the present case, there is inexplicable delay in issuance of certificate by the Cane Commissioner under sub-section (4) of Section 17 of Act 1953 where, admittedly, the factory had stopped crushing on 23.3.2020. The indulgence granted by the Cane Commissioner to the respondent no.5 in this regard is at the cost of the struggling farmers whose livelihood and lives are at stake. The aforesaid indulgence indicates a deleterious neglect by the authorities having the effect of compromising the fundamental rights of the distraught farmers.

32. Merely because the respondent no.5 has submitted a schedule of payment to the Cane Commissioner to pay sugarcane dues (without interest) by February 2021, shall not protect the respondent no.5 from the consequences arising from the provisions of Section 17 of the Act. In other words the provisions of sub-sections 1, 2, 3 and 4 of Section 17 of the Act are in operation and shall continue to operate till respondent no.5 makes the payments of outstanding amount of sugar cane supplies or it is recovered from him pursuant to the recovery certificate dated 07.09.2020 forwarded by the respondent no.2 to the Collector.

33. Facts of the present case as aforementioned also leads to an irresistible conclusion that the respondent no.2 and other authorities under the Act have failed to discharge their statutory obligation.

34. The judgments of this Court relied by learned counsel for the respondent No.5 are distinguishable on facts of the present case. The

judgment dated 17.09.2014 in **CMWP. No.1853 of 2009 Bajaj Hindustan Ltd. Vs. State of U.P. and others**, is with respect to quashing of demand notices to realise purchase tax on purchase of sugar cane. The judgment in the case of **Akram Khan and another (supra)** involved controversy with regard to sugar cane purchase centre. In the case of **Vishambhar Dayal and 5 others (supra)** the petitioners sought direction to the authorities to ensure supply of sugar cane slips to them to supply sugar cane to the Dhampur Sugar Mills whereas cultivation was attached to some other sugar mill in accordance with Section 15 of the Act, 1953. In the case of **Ram Chand and 8 others (supra)** the question of maintainability of the writ petition was not raised and the court simply granted liberty to approach Cane Commissioner for recovery of dues. The judgment of Hon'ble Supreme Court in the case of **Anand Agro Chemical India Ltd. (supra)** was also not brought to the notice of the Court. The writ petition in the case of **Swami Nath and 24 others (supra)** was disposed off with the consent of learned counsels for the parties. Thus, the judgments relied by learned counsel for the respondent No.5 are of no help to the respondent No.5.

35. For all the reasons aforesaid, all the **writ petitions are allowed** with the direction to the respondent Nos. 1 & 2 to ensure that the Collector concerned shall recover the amount of recovery certificate dated 07.09.2020, in accordance with law, within two months from today after adjusting the amount, if any paid by the respondent No.5. The District Magistrate, Basti, may also take action against the Directors and occupiers of the respondent No.5 including their arrest to recover the dues, as was also directed by this Court and affirmed by Hon'ble Supreme Court in **Anand Agro Chemical India Ltd. (supra)**.

36. The concerned authority/official shall verify the authenticity of the computerized copy of this order from the official website of High Court, Allahabad and shall act accordingly without waiting for submission of a certified copy of this order.

**Order Date :-** 21.9.2020/vkg