REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.151 OF 2007

STATE OF U.P. & OTHERS ...APPELLANT(S)

VERSUS

M/s. LALTA PRASAD VAISH AND SONS ...RESPONDENT(S)

WITH

CIVIL APPEAL NO.152 OF 2007

CIVIL APPEAL NO.153 OF 2007

CIVIL APPEAL NO.154 OF 2007

CIVIL APPEAL NO.580 OF 2008

CIVIL APPEAL NO.610 OF 2008

CIVIL APPEAL NO.671 OF 2008

CIVIL APPEAL NO.672 OF 2008

CIVIL APPEAL NO.688 OF 2008

CIVIL APPEAL NO.750 OF 2008

CIVIL APPEAL NO.5093 OF 2011

CIVIL APPEAL NO.6768 OF 2014

CIVIL APPEAL NO.2084 OF 2020

CIVIL APPEAL NO.4987 OF 2021

SPECIAL LEAVE PETITION (C) NO.16505 OF 2004

SPECIAL LEAVE PETITION (C) NO.19275 OF 2004

SPECIAL LEAVE PETITION (C) NO.26110 OF 2004

SPECIAL LEAVE PETITION (C) NO.26111 OF 2004

SPECIAL LEAVE PETITION (C) NO.20204 OF 2012

SPECIAL LEAVE PETITION (C) NO.20519 OF 2014

SPECIAL LEAVE PETITION (C) NO.25447 OF 2014

SPECIAL LEAVE PETITION (C) NO.3160 OF 2015

SPECIAL LEAVE PETITION (C) NO.4057 OF 2015

SPECIAL LEAVE PETITION (CIVIL) ____CC NO.7999 OF 2017

SPECIAL LEAVE PETITION (C) NO.27241 OF 2019

SPECIAL LEAVE PETITION (C) DIARY NO.41507 OF 2019

SPECIAL LEAVE PETITION (C) NO.18686 OF 2022

SPECIAL LEAVE PETITION (C) DIARY NO.7447 OF 2023

SPECIAL LEAVE PETITION (C) NO.18582 OF 2023

ORDER ON REFERENCE

NAGARATHNA, J.

Table of Contents

I have perused the comprehensive and erudite opinion authored by Hon'ble the Chief Justice of India Dr. Dhananjaya Y. Chandrachud on the questions referred to this nine-Judge Bench. I respectfully dissent on certain aspects of the said opinion and express my reasons therefor.

1.1 The sum and substance of all the questions referred to this Bench could be crystallised on the short point for consideration, namely, whether the expression "intoxicating liquors" in Entry 8 -List II of the Seventh Schedule of the Constitution of India includes within its scope and ambit "industrial alcohol" and consequently, whether a State Legislature has the competence to legislate on "industrial alcohol". My short answer is that there is a lack of legislative competence in the State Legislature when viewed from the constitutional framework and statutory framework of the Industries (Development and Regulation) Act, 1951 (for short, "IDRA") passed by the Parliament on the strength of Entry 52 – List I of the Seventh Schedule of the Constitution of India and having regard to Section 2 of the said Act read with its various provisions and the First Schedule thereto, particularly, Item 26 which deals with "Fermentation Industries"

(other than potable alcohol). However, the discussion on scope and ambit of Entry 33(a) – List III of the Seventh Schedule of the Constitution is distinct and shall be discussed later. Therefore, ***Synthetics and Chemicals Ltd. vs. State of Uttar Pradesh, AIR 1990 SC 1927 ("Synthetics and Chemicals (7J)"),*** has been correctly decided by the seven-Judge Bench of this Court. On the aspect of Section 18G of the IDRA occupying the field and consequently, whether the State Legislatures are denuded of their powers on the content of the subject matter of the said Section in the context of Entry 33(a) – List III as per first part of Article 254(1) shall be adverted to later. I propose to discuss the reasons for aforesaid view.

1.2 Since the Entries under discussion are in their respective Lists of the "Seventh Schedule of the Constitution", it would be unnecessary to refer to them as being part of "Seventh Schedule of the Constitution" in the following discussion.

Genesis of the controversy:

2. The genesis of this present controversy insofar as the reference to the nine-Judge Bench is concerned, emanates from

the judgment of the seven-Judge Bench of this Court in ***Synthetics and Chemicals (7J).*** The said judgment authored by Sabyasachi Mukharji, J. (as His Lordship then was) held that the scope of the expression "intoxicating liquors" in Entry 8 – List II did not extend to "industrial alcohol" and regulation of the same by State Legislature is impermissible in law having regard to the constitutional framework, particularly the relevant Entries of Lists I and II of the Seventh Schedule to the Constitution of India. The said dictum of the seven-Judge Bench was doubted by a three-Judge Bench of this Court in ***State of UP vs. M/s Lalta Prasad Vaish*** *vide* order dated 25.10.2007 and the following questions were formulated for consideration by a larger Bench:

> "Q. 1. Does Section 2 of the Industries (Development and Regulation) Act, 1951, have any impact on the field covered by Section 18-G of the said Act or Entry 33 of List III of the Seventh Schedule of the Constitution?
>
> Q. 2. Does Section 18-G of the aforesaid Act fall under Entry 52 of List I of the Seventh Schedule of the Constitution, or is it covered by Entry 33 of List III thereof?
>
> Q. 3. In the absence of any notified order by the Central Government under Section 18-G of the above Act, is the power of the State to legislate in respect of matters enumerated in Entry 33 of List III ousted?

Q. 4. Does the mere enactment of Section 18-G of the above Act, give rise to a presumption that it was the intention of the Central Government to cover the entire field in respect of Entry 33 of List III so as to oust the States' competence to legislate in respect of matters relating thereto?

Q. 5. Does the mere presence of Section 18-G of the above Act, oust the State's power to legislate in regard to matters falling under Entry 33(a) of List III?

Q. 6. Does the interpretation given in ***Synthetics and Chemicals case, (1990) 1 SCC 109*** in respect of Section 18-G of the Industries (Development and Regulation) Act, 1951, correctly state the law regarding the States' power to regulate industrial alcohol as a product of the scheduled industry under Entry 33 of List III of the Seventh Schedule of the Constitution in view of Clause (a) thereof?"

2.1 A similar view was expressed by a five-Judge Bench in very same case wherein this Court was of the view that the matter has to be considered by a Bench of nine-Judges.

2.2 In view of the nature of questions raised by the three-Judge Bench as well as the five-Judge Bench of this Court, the correctness or otherwise of judgment of this Court in ***Synthetics and Chemicals (7J)*** is being considered by this nine-Judge Bench.

Conclusions arrived at by the learned Chief Justice:

3. His Lordship, the Chief Justice has overruled the judgment in ***Synthetics and Chemicals (7J)*** and has arrived at the following conclusions:

> "In view of the discussion above, the following conclusions emerge:
>
> a. Entry 8 of list II of the Seventh Schedule to the Constitution is both an industry-based entry and a product-based entry. The words that follow the expression "that is to say" in the Entry are not exhaustive of its contents. It includes the regulation of everything from the raw materials to the consumption of 'intoxicating liquor';
>
> b. Parliament cannot occupy the field of the entire industry merely by issuing a declaration under Entry 52 of List I. The State Legislature's competence under Entry 24 of List II is denuded only to the extent of the field covered by the law of Parliament under Entry 52 of List I;
>
> c. Parliament does not have the legislative competence to enact a law taking control of the industry of intoxicating liquor covered by Entry 8 of List II in exercise of the power under Article 246 read with Entry 52 of List I;
>
> d. The judgments of the Bombay High Court in **FN Balsara v. State of Bombay** (supra), this Court in **FN Balsara** (supra) and Southern Pharmaceuticals (supra) did not limit the meaning of the expression 'intoxicating liquor' to its popular meaning, that is, alcoholic beverages that produce intoxication. All the three judgments interpreted the expression to cover alcohol that could be noxiously used to the detriment of health;

e. The expression 'intoxicating liquor' in Entry 8 has not acquired a legislative meaning on an application of the test laid down in **Ganon Dunkerley** (supra);

f. The study of the evolution of the legislative entries on alcohol indicates that the use of the expressions "intoxicating liquor" and "alcoholic liquor for human consumption" in the Seventh Schedule was a matter well-thought of. It also indicates that the members of the Constituent Assembly were aware of use of the variants of alcohol as a raw material in the production of multiple products;

g. Entry 8 of List II is based on public interest. It seeks to enhance the scope of the entry beyond potable alcohol. This is inferable from the use of the phrase 'intoxicating' and other accompanying words in the Entry. Alcohol is inherently a noxious substance that is prone to misuse affecting public health at large. Entry 8 covers alcohol that could be used noxiously to the detriment of public health. This includes alcohol such as rectified spirit, ENA and denatured spirit which are used as raw materials in the production of potable alcohol and other products. However, it does not include the final product (such as a hand sanitiser) that contains alcohol since such an interpretation will substantially diminish the scope of multiple other legislative entries;

h. The judgment in **Synthetics (7J)** (supra) is overruled in terms of this judgment;

i. Item 26 of the First Schedule to the IDRA must be read as excluding the industry "intoxicating liquor", as interpreted in this judgement;

j. The correctness of the judgment in **Tika Ramji (supra)** on the interpretation of word 'industry' as it occurs in the Legislative entries does not fall for determination in this reference; and

k. The issue of whether Section 18G of the IDRA covers the field under Entry 33 of List III does not arise for adjudication in view of the finding that denatured alcohol is covered by Entry 8 of List II."

3.1 While coming to the aforesaid conclusions, His Lordship, the Chief Justice of India has held that the entire industry of "intoxicating liquors" including raw materials is covered by Entry 8 – List II and is completely out of Entry 52 – List I; that the scope and ambit of Entry 8 – List II covers both potable and non-potable alcohol and therefore, only State Legislatures have the power to regulate the subject. I respectfully disagree.

3.2 While coming to the aforesaid conclusions, significant judgments of this Court in ***State of Bombay vs. FN Balsara, AIR 1951 SC 318 ("FN Balsara"); Ch. Tika Ramji vs. State of Uttar Pradesh, AIR 1956 SC 676 ("Tika Ramji"); Calcutta Gas Company (Proprietary) Ltd. vs. State of West Bengal, AIR 1962 SC 1044 ("Calcutta Gas Company"); Indian Mica and Micanite Industries vs. State of Bihar, (1971) 2 SCC 236 ("Indian Mica"); Ishwari Khetan Sugar Mills (P) Ltd. vs. State of Uttar Pradesh, AIR 1980 SC 1955 ("Ishwari Khetan"); State of AP vs. McDowell & Co., (1996) 3 SCC 709***

("McDowell"); Bihar Distillery vs. Union of India, (1997) 2 SCC 727 ("Bihar Distillery"); Vam Organic Chemicals Ltd. vs. State of U.P., (1997) 2 SCC 715, ("Vam Organic I"); and ***State of UP vs. Vam Organic Chemicals Ltd., (2004) 1 SCC 225 ("Vam Organic II"),*** amongst others, have been discussed.

Submissions:

4. As the learned Chief Justice has recorded the submissions of the respective parties in detail, I need not be repetitive except highlighting the submissions of the learned senior counsel Sri Rakesh Dwivedi, Sri Datar and Sri Jaideep Gupta and other counsel for the appellants. The main contention of the appellants is that the States have jurisdiction over "industrial alcohol" and therefore the judgment of this Court in ***Synthetics and Chemicals (7J)*** is incorrect. The expression "intoxicating liquors" in Entry 8 – List II of the Seventh Schedule of the Constitution cannot be restricted to alcoholic liquors for human consumption by a deduction from a reading of Entry 84 – List I with Entry 51 – List II. In other words, "intoxicating liquors" cannot be equated with only "alcoholic liquors for human consumption". On the other hand, it is contended that the

expression “intoxicating liquors” has attained a specific meaning over the passage of time which is more expansive than “alcoholic liquors for human consumption”.

4.1 The further submission was that only the production and manufacture of “industrial alcohol” would be governed by the Union List even if the requirement of a declaration under Section 2 of the IDRA read with Item 26 of the First Schedule thereto is as per Entry 52 – List I. However, when it comes to Entry 33 – List III, there is need for a notified order to claim exclusive jurisdiction on a product of a scheduled industry. If no such order has been issued, the legislative powers of the State would remain exclusive. It was further submitted that alcoholic liquors for human consumption means it is capable of being consumed by humans and it would fall under Entry 51 – List II, while denatured alcohol such as ethyl alcohol or rectified spirit which usually undergoes denaturation for the purposes of their use in industries would fall under Entry 84 – List I. That everything, except denatured spirit is alcohol for human consumption because it has the potential to be consumed by humans. That Extra Neutral Alcohol (‘ENA’, for short) and rectified spirit may

therefore be understood to be for human consumption and ceases to be such only upon undergoing denaturation. But according to the judgment in ***Synthetics and Chemicals (7J),*** the States do not have the power to levy tax on ENA despite being fit for human consumption. This position of law in the aforesaid decision has restricted the competence of the States to levy tax under Entry 51 – List II. That pursuant to the aforesaid decision, the Law Commission in its 158th Report suggested an amendment to the IDRA by which Item 26 in the First Schedule has been amended to mean that "Fermentation Industries" would not include "potable alcohol" with retrospective effect. It was contended that this amendment does not in any way clear the confusion created in the aforesaid case and hence, ***Synthetics and Chemicals (7J)*** may be overruled. It was also contended that in ***Tika Ramji,*** this Court has devised a three-fold classification as pre-production, production and post-production and it was only in the second category i.e. production which would be covered by the word "industry".

4.2 Taking a different stance, Sri V. Giri submitted that denatured alcohol is excluded from the scope of the term

"intoxicating liquors" in Entry 8 – List II and is covered under Entry 24 – List II. Further, unless a notified order under Section 18G of the IDRA is issued, the Parliament cannot occupy the field under Entry 33 – List III merely on the strength of the said provision being brought on the statute book.

4.3 On the other hand, Sri R. Venkataramani, learned Attorney General, leading the arguments for the Union of India and other respondents contended that Entry 52 – List I and Entry 33 – List III are interrelated as they touch upon matters relating to a scheduled industry under the provisions of the IDRA, whose control is with the Union. It was contended that Entry 52 – List I is provided in order to ensure a uniform control and development of an industry throughout the length and breadth of the country. This is not only in the interest of the scheduled industry but also to achieve equitable distribution of the products of such industry and as an economic measure. As a result, in respect of a scheduled industry, the powers of the State under Entries 26 and 27 - List II are denuded. Also, if the field is occupied by the Parliament (Union) and the States are denuded of their powers under Entry 33 – List III. Therefore, the judgment

in ***Synthetics and Chemicals (7J)*** would not call for a reconsideration as it was correctly decided. It was further contended that all liquids containing alcohol would fall under two categories, namely, those meant for human consumption (potable alcohol) and non-potable alcohol. Entry 8 – List II deals with only potable alcohol meant for human consumption as a beverage. Thus, non-potable alcohol is outside the scope of Entry 8 – List II. The amendment to Item 26 of First Schedule of IDRA has clarified this position. Further, the use of the expression "that is to say" in Entry 8 – List II refers to the various activities concerning potable alcohol and does not refer to any other class of liquor.

4.4 Learned Solicitor General of India submitted that the controversy in this case must be tread carefully as it would have a bearing on other legislation. That having regard to national interest, there is a requirement for a uniform development throughout the country in respect of the products of an industry that are sought to be equally distributed, and, therefore, the control of such industries is taken over by the Union exercising powers in relation to Entry 52 – List I. That the IDRA is an

instance of such legislation. It was contended that the judgment in ***Tika Ramji*** insofar as it held that there must be a notified order in force pursuant to Section 18G for the doctrine of repugnancy to apply is not correct and in ***Synthetics and Chemicals (7J),*** the judgment in ***Tika Ramji*** was rightly not considered. The expression "intoxicating liquors" in Entry 8- List II means a beverage which has the effect of intoxication upon consumption. In ***Synthetics and Chemicals (7J),*** this Court held that "intoxicating liquors" is "alcoholic liquors fit for human consumption". Other learned counsel for the respondents have adopted the above arguments.

5. On enumerating the questions for opinion of this nine-Judge Bench, the following issues have been crystallised for consideration in paragraph 42 of the judgment of the learned Chief Justice of India which read as under:

> "42. With the above preliminary observations, we have formulated the following issues:
>
> a. Whether Entry 52 of List I of the Seventh Schedule to the Constitution overrides Entry 8 of List II;
>
> b. Whether the expression 'intoxicating liquors' in Entry 8 of List II of the Seventh Schedule to the Constitution includes alcohol other than potable alcohol; and

c. Whether a notified order under Section 18G of the IDRA is necessary for Parliament to occupy the field under Entry 33 of List III of the Seventh Schedule to the Constitution."

Relevant Constitutional Framework:

6. Article 265 of the Constitution mandates that no tax shall be levied or collected except by authority of law. Article 366 is a definition clause and it states that in the Constitution, unless the context otherwise requires, the expressions mentioned therein have the meanings thereby respectively assigned to them. For the purpose of this case, Article 366(12) and (28) are relevant and the same read as under:

> "**Article 366. Definitions.-** In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –
>
> xxx
>
> (12) "goods" includes all materials, commodities and articles;
>
> xxx
>
> (28) "taxation" includes the imposition of any tax or impost, whether general or local or special and "tax" shall be construed accordingly;"

The aforesaid definition of 'taxation' is not exhaustive but inclusive in nature to include not only any tax in the usual

understanding of the said expression or tax *stricto senso* but also any levy akin to a tax. There can be no cavil to the proposition that before any tax or impost could be levied or collected, it must have the authority of law *vide* Article 265 including legislative competence.

6.1 Article 246 of the Constitution deals with distribution of legislative powers between the Parliament and State Legislature, while Article 254 speaks of inconsistency between the laws made by Parliament and laws made by the Legislatures of States. They read as under:

> **"246. Subject-matter of laws made by Parliament and by the Legislatures of States.—**(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule (in this Constitution referred to as the "Union List").
>
> (2) Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").
>
> (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

xxx

254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States.—(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

6.2 With regard to the allocation of subjects under the three Lists, namely, List I - Union List; List II - State List and List III - Concurrent List, it may be useful to refer to the Devolution Rules

drawn under the Government of India Act, 1919 and the Government of India Act, 1935 which are the precursors to the distribution of legislative powers between the Union and the States under the Seventh Schedule of the Constitution of India. Some of the salient aspects concerning the distribution of the legislative powers between Parliament and State Legislature as per the three Lists in the backdrop of the provisions could be alluded to.

6.3 Article 246 of the Constitution deals with the distribution of legislative powers between the Union and the States. The said Article has to be read along with the three Lists, namely, the Union List, the State List and the Concurrent List. The taxing powers of the Union as well as the States are also demarcated as separate Entries in the Union List as well as the State List i.e. List I and List II respectively. The Entries in the Lists are fields of legislative powers conferred under Article 246 of the Constitution. In other words, the Entries define the areas of legislative competence of the Union and the State Legislature. (*vide:* ***State of Karnataka vs. State of Meghalaya, (2023) 4 SCC 416 para 56), ("State of Karnataka").***

Interpretation of Legislative Entries:

6.4 On the aspect of interpretation of legislative Entries in the three Lists, the following principles are apposite as discussed in ***State of Karnataka:***

(i) The power to legislate, which is dealt with under Article 246 has to be read in conjunction with the Entries in the three Lists which define the respective areas of legislative competence of the Union and State Legislatures. While interpreting these Entries, they should not be viewed in a narrow or myopic manner but by giving the widest scope to their meaning, particularly, when the *vires* of a provision of a statute is assailed. In such circumstances, a liberal construction must be given to the Entry by looking at the substance of the legislation and not its mere form. However, while interpreting the Entries in the case of an apparent conflict, every attempt must be made by the Court to harmonise or reconcile them. Where there is an apparent overlapping between two Entries, the doctrine of pith and substance is applied to find out the true character of the enactment and the Entry within which it would fall. The

doctrine of pith and substance, in short, means, if an enactment substantially falls within the powers expressly conferred by the Constitution upon the Legislature which enacted it, the same cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another Legislature. Also, in a situation where there is overlapping, the doctrine has to be applied to determine to which Entry, a piece of legislation could be related to. In order to examine the true character of an enactment or a provision thereof, due regard must be had to the enactment as a whole and to its scope and object. It is said that the question of invasion into another legislative territory has to be determined by substance and not by degree.

(ii) In case of any conflict between Entries in List I and List II, the power of Parliament to legislate under List I will supersede when, on an interpretation, the two powers cannot be reconciled. But if a legislation in pith and substance squarely falls within any of the Entries of List II, the State Legislature's competence cannot be questioned on the ground that the field is covered by the Union list or the

Concurrent list *vide* ***Prafulla Kumar Mukherjee vs. Bank of Commerce Limited, Khulna, AIR 1947 P.C. 60 ("Prafulla Kumar Mukherjee")***. According to the pith and substance doctrine, if a law is, in its pith and substance within the competence of the Legislature which has made it, it will not be invalid because it incidentally touches upon the subject lying within the competence of another Legislature *vide* ***FN Balsara.***

(iii) Once the legislation is found to be 'with respect to' the legislative Entry in question, unless there are other constitutional prohibitions, the power would be unfettered. It would also extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in that topic or category of legislation *vide* ***United Provinces vs. Atiqa Begum, AIR 1941 FC 16 ("Atiqa Begum")***.

(iv) Another important aspect while construing the Entries in the respective Lists is that every attempt should be made to harmonise the contents of the Entries so that interpretation of one Entry should not render the entire content of another

Entry nugatory *vide* ***Calcutta Gas Company***. This is especially so when some of the Entries in a different List or in the same List may overlap or may appear to be in direct conflict with each other. In such a situation, a duty is cast on the Court to reconcile the Entries and bring about a harmonious construction. Thus, an effort must be made to give effect to both Entries and thereby arrive at a reconciliation or harmonious construction of the same.

(v) In short, the Entries in the different Lists should be read together without giving a narrow meaning to any of them. The powers of the Union and the State Legislature are expressed in precise and definite terms. Hence, there can be no broader interpretation given to one Entry than to the other. Even where an Entry is worded in wide terms, it cannot be so interpreted as to negate or override another Entry or make another Entry meaningless. In case of an apparent conflict between different Entries, it is the duty of the Court to reconcile them in the first instance.

(vi) Further, where one Entry is made "subject to" another Entry, all that it means is that out of the scope of the former

Entry, a field of legislation covered by the latter Entry has been reserved to be specially dealt with by the appropriate Legislature.

(vii) Also, when one Entry is general and another is specific, normally, the latter will exclude the former on a subject of legislation.

6.5 The sequitur to the aforesaid discussion is that if the Legislature passes a law which is beyond its legislative competence, it is a nullity *ab-initio*. The Legislation is rendered null and void for want of jurisdiction or legislative competence *vide* ***RMDC vs Union of India, AIR 1957 SC 628 ("RMDC")***.

6.6 On a close perusal of the Entries in the three Lists, it is discerned that the Constitution has divided the topics of legislation into the following three broad categories:

(i) Entries enabling laws to be made;

(ii) Entries enabling taxes to be imposed; and

(iii) Entries enabling fees and stamp duties to be collected.

6.7 Thus, the Entries on levy of taxes are specifically mentioned. Therefore, as such, there cannot be a conflict of

taxation power of the Union and the State. In substance, the taxing power can be derived only from a specific taxing Entry in an appropriate List. Such a power has to be determined by the nature of the tax and not the measure or machinery set up by the statute. In this context, reliance could be placed on ***MPV Sundararamier vs. State of Andhra Pradesh, AIR 1958 SC 468 ("MPV Sundararamier")***, wherein at paragraph 51 it was observed as under:

> "51. In List I Entries 1 to 81 mention the several matters over which Parliament has authority to legislate. Entries 82 to 92 enumerate the taxes which could be imposed by a law of Parliament. An examination of these two groups of entries shows that while the main subject of legislation figures in the first group, a tax in relation thereto is separately mentioned in the second. Thus, Entry 22 in List I is "Railways", and Entry 89 is "Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights". If Entry 22 is to be construed as involving taxes to be imposed, then Entry 89 would be superfluous. Entry 41 mentions "Trade and commerce with foreign countries; import and export across customs frontiers". If these expressions are to be interpreted as including duties to be levied in respect of that trade and commerce, then Entry 83 which is "Duties of customs including export duties" would be wholly redundant. Entries 43 and 44 relate to incorporation, regulation and winding up of corporations. Entry 85 provides separately for corporation tax. Turning to List II, Entries 1 to 44 form one group mentioning the subjects on which the States could legislate. Entries 45 to 63 in that List form another

group, and they deal with taxes. Entry 18, for example, is "Land" and Entry 45 is "Land revenue". Entry 23 is "Regulation of mines" and Entry 50 is "Taxes on mineral rights". The above analysis—and it is not exhaustive of the entries in the Lists—leads to the inference that taxation is not intended to be comprised in the main subject in which it might on an extended construction be regarded as included, but is treated as a distinct matter for purposes of legislative competence. And this distinction is also manifest in the language of Article 248 clauses (1) and (2) and of Entry 97 in List I of the Constitution. Construing Entry 42 in the light of the above scheme, it is difficult to resist the conclusion that the power of Parliament to legislate on inter-State trade and commerce under Entry 42 does not include a power to impose a tax on sales in the course of such trade and commerce."

6.8 What falls for interpretation in these cases is the content, interplay and meaning of Entries 52 and 84 – List I, Entries 8, 24, 26, 27, 51 – List II and Entry 33 – List III. The aforesaid Entries read as under:

"List – I

52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

xxx

84. Duties of excise on tobacco and other goods manufactured or produced in India except:—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

List – II

8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

xxx

24. Industries subject to the provisions of Entries 7 and 52 of List I.

xxx

26. Trade and commerce within the State subject to the provisions of entry 33 of List III.

27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

xxx

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

List – III

33. Trade and commerce in, and the production, supply and distribution of,—

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public

interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute."

For a better understanding of the discussion to follow, it would be relevant to refer to the scheme of the IDRA.

Scheme of IDRA:

7. The Preamble of the IDRA states that it is an Act to provide for the development and regulation of certain industries. Section 2 declares that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule to the said Act. Hence, the question would be, whether, the Parliament by law has declared it expedient in public interest that the Union should take control of certain industries. Section 2 of the IDRA, for immediate reference, reads as under:

> **"2. Declaration as to expediency of control by the Union.-** It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule."

In the First Schedule to the said Act, Item 26 reads as under:

"**26. Fermentation Industries:**

(1) Alcohol.

(2) Other products of fermentation industries."

Item 26 of the First Schedule to the Act was amended on 14.05.2016 by Act 27 of 2016 with retrospective effect from 08.05.1952 and it reads as under:

"26. Fermentation Industries (Other than Potable Alcohol):

(1) Alcohol.

(2) Other products of fermentation industries."

7.1 Section 3 of the IDRA is the definition clause and the relevant definitions read as under:

> **"3. Definitions. –** In this Act, unless the context otherwise requires,-
>
> xxx
>
> (d) "**industrial undertaking**" means any undertaking pertaining to a scheduled industry carried on in one or more factories by any person or authority including Government;
>
> (dd) "**new article**", in relation to an industrial undertaking which is registered or in respect of which a licence or permission has been issued under this Act, means—
>
> (a) any article which falls under an item in the First Schedule other than the item under which articles ordinarily manufactured or produced in the

industrial undertaking at the date of registration or issue of the licence or permission, as the case may be, fall;

(b) any article which bears a mark as defined in the Trade Marks Act, 1940 (5 of 1940), or which is the subject of a patent, if at the date of registration or issue of the licence or permission, as the case may be, the industrial undertaking was not manufacturing or producing such article bearing that mark or which is the subject of that patent;

(e) "**notified order**" means an order notified in the Official Gazette;

xxx

(g) "**prescribed**" means prescribed by rules made under this Act;

(h) "**Schedule**" means a Schedule to this Act;

(i) "**scheduled industry**" means any of the industries specified in the First Schedule;

xxx

(k) words and expressions used herein but not defined in this Act and defined in the Companies Act, 1956 (1 of 1956), have the meanings respectively assigned to them in that Act."

7.2 Chapter II of the Act deals with the Central Advisory Council and Development Councils while Chapter III speaks of regulation of scheduled industries. The headings of Sections 10 to 18 are noted within Chapter III. The said provisions deal with, *inter alia,* registration of existing industries, issuance of licence for producing or manufacturing of new articles, conducting

investigation to be made into scheduled industries. Chapter IIIA speaks of direct management or control of industrial undertakings by Central Government in certain cases while Chapter IIIAA speaks of management or control of industrial undertakings owned by companies in liquidation. Chapter IIIAB deals with the power to provide relief to certain industrial undertakings while Chapter IIIAC speaks of liquidation or reconstruction of companies. Chapter IIIB deals with control of supply, distribution, price, etc., of certain articles was inserted by Act 26 of 1953.

7.3 Section 18G which is in the said Chapter is relevant for the purpose of this case, reads as under:

> **"18G. Power to control supply, distribution, price, etc., of certain articles.—**(1) The Central Government, so far as it appears to it to be necessary or expedient for securing the equitable distribution and availability at fair prices or any article or class of articles relatable to any scheduled industry, may, notwithstanding anything contained in any other provisions of this Act, by notified order, provide of regulating the supply and distribution thereof and trade and commerce therein.
>
> (2) Without prejudice to the generality of the powers conferred by sub-section (1), a notified order made thereunder may provide—
>
> (a) for controlling the prices at which any such article or class thereof may be bought or sold;

(b) for regulating by licences, permits or otherwise the distribution, transport, disposal, acquisition, possession, use or consumption of any such article or class thereof;

(c) for prohibiting the withholding from sale of any such article or class thereof ordinarily kept for sale;

(d) for requiring any person manufacturing, producing or holding in stock any such article or class thereof to sell the whole or part of the articles so manufactured or produced during a specified period or to sell the whole or a part of the articles so held in stock to such person or class of persons and in such circumstances as may be specified in the order;

(e) for regulating or prohibiting any class of commercial or financial transactions relating to such article or class thereof which in the opinion of the authority making the order are, or if unregulated are likely to be, detrimental to public interest;

(f) for requiring persons engaged in the distribution and trade and commerce in any such article or class thereof to mark the articles exposed or intended for sale with the sale price or to exhibit at some easily accessible place on the premises the price-lists of articles held for sale and also to similarly exhibit on the first day of every month, or at such other time as may be prescribed, a statement of the total quantities of any such articles in stock;

(g) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters; and

(h) for any incidental or supplementary matters, including, in particular, the grant or issue of licences, permits or other documents and the charging of fees therefor.

(3) Where, in pursuance of any order made with reference to clause (d) of sub-section (2), any person sells any article, there shall be paid to him the price therefor—

(a) where the price can consistently with the controlled price, if any, be fixed by agreement, the price so agreed upon;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any, fixed under this section;

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

(4) No order made in exercise of any power conferred by this section shall be called in question in any court.

(5) Where an order purports to have been made and signed by an authority in exercise of any power conferred by this section, a court shall, within the meaning of the Indian Evidence Act, 1872 (1 of 1872), presume that such order was so made by that authority.

Explanation.— In this section, the expression "article or class of articles" relatable to any scheduled industry includes any article or class of articles imported into India which is of the same nature or description as the article or class of articles manufactured or produced in the scheduled industry."

7.4 The reason as to why Section 18G was inserted to the IDRA must be noted. In paragraph 3 of the Statement of Objects and Reasons, it has been stated as under:

"At present, the power to control prices and distribution of various goods under this Act is confined to industrial undertakings registered or licensed under the Act. In all other cases, it is necessary to have recourse to powers

> derived from the Essential Supplies (Temporary Powers) Act, 1946 and the Supply and Prices of Goods Act, 1950. Both these enactments have a limited period of life. It is proposed to add a chapter taking power to control the distribution and price of goods produced in scheduled industries and of similar goods even, though they may be of imported origin."

The aforesaid reflects that the IDRA has brought under Central control the development and regulation of a number of important industries, the activities of which affect the country as a whole and the development of which must be governed by economic factors of all-India import.

Similarly, in the Statement of Objects and Reasons of Amendment Act 72 of 1971, it has been stated as under:

> "The industries included in the First Schedule to the Industries (Development and Regulation) Act, 1951 are those the control of which by the Union has been considered to be expedient in the public interest. The proper development of these industries is vital to the economic development of the country. These industries not only substantially contribute to the Gross National Product of the country, but also afford gainful employment to millions of people."

7.5 Section 29E was inserted with effect from 14.05.2016 by Act 27 of 2016. As already noted, Item 26 of the First Schedule deals with "Fermentation Industries" and after amendment by

Act 27 of 2016 with retrospective effect from 08.05.1952, "Fermentation Industries" have been clarified as "other than potable alcohol". Therefore, alcohol and other products of "Fermentation Industries" would refer to products which are "other than potable alcohol".

Article 47: Directive Principle of State Policy:

8. Since we are trying to ascertain the true meaning of "intoxicating liquors" in Entry 8 – List II, Article 47 of the Constitution of India, which is a Directive Principle of the State Policy, is relevant as the said Article deals, *inter alia*, with intoxicating drinks. The same reads as under:

> **"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health**
>
> The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

What is significant are the words "the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes of intoxicating drinks which are injurious to

health". It is on the basis of the said Directive Principle that several prohibition and excise laws have been enacted in several States as a constitutional goal to improve the health of the people of India in the context of prevention and prohibition of consumption of "intoxicating liquors". The manufacture, export, import, transport or sale of "intoxicating liquors" is prohibited except in accordance with a licence, permit or pass granted in that behalf. The State legislations confer power on State Governments in matters concerning liquor licensing and also with regard to imposition of excise duty.

8.1 The following decisions of this Court could be considered at this stage as they are of relevance to the controversy under consideration:

a) In ***Cooverjee B. Bharucha vs. Excise Commissioner and the Chief Commissioner, Ajmer, AIR 1954 SC 220 ("Cooverjee B. Bharucha")***, the right of a citizen to carry on trade and business in liquor under Article 19(1)(g) of the Constitution was considered. The impact of liquor on a person who consumes it as well as on the society was discussed. With reference to an American decision in

Crowley vs. Christensen, (1890) 34 Law Ed. 620 ("Crowley") at p. 623, it was observed that when liquor is consumed, first of all it affects the person who consumes it, and subsequently, it affects those who are immediately connected and dependent upon him. Hence, there is a need to regulate the business of manufacture and trade in liquor. It was observed that no citizen has an inherent right to sell "intoxicating liquors" in retail. This is because the business of liquor is attended with danger to the community. It can, therefore, be entirely prohibited or regulated as per the discretion of the Government and the Authority concerned. It was held that Regulation could also be in the form of issuance of licences to eligible persons under a particular legislation. The provisions of regulation of liquor, which permit certain eligible persons to carry on the trade to the exclusion of the general public and thereby possibly create a monopoly, is also permissible in law.

b) In ***State of Assam vs. Sristikar Dowerah, AIR 1957 SC 414 ("Sristikar Dowerah")***, it was observed as under:

> "no person has any absolute right to sell liquor and that the purpose of the Act and the rules is to control and restrict the consumption of intoxicating liquors, such control and restriction being obviously necessary for the preservation of public health and morals, and to raise revenue."

The above observation is in line with Article 47 of the Constitution of India which is a Directive Principle.

c) The constitutional validity of the Bombay Prohibition Act, 1949 was challenged in ***FN Balsara.*** One of the arguments raised was that the said Act could be justified under Entry I -List II which relates to public order. This was by placing reliance on a tendency in Europe and America with regard to alcoholism as a menace to public order. However, the said submission was not pursued further before this Court as there were other express provisions under the pertinent Entry which dealt with "intoxicating liquors". The short question considered was whether the Bombay Prohibition Act, 1949 in pith and substance was a law relating to possession and sale, etc. of "intoxicating liquors" or whether it related to import and export of "intoxicating liquors". Dealing with the validity of the aforesaid Act, this Court

noted the word “liquor” ordinarily means “a strong drink as opposed to soft drink” but it must in any event be a beverage which is ordinarily drunk as noted by the Bombay High Court. The High Court further noted that although the State Legislature may prevent the consumption of non-intoxicating beverages and also prevent the use as drinks of alcoholic liquids which are not normally consumed as drinks, it cannot prevent the legitimate use of alcoholic preparations which are not beverages nor the use of medicinal and toilet preparations containing alcohol. This view was challenged before this Court. Noting the several meanings of “liquor” from the Oxford English Dictionary, it was observed that as a general meaning it is a liquid but as a special meaning it means a drink or beverage produced by fermentation or distillation. It was observed that this is the popular and most widely accepted meaning and the basic idea of beverage prominently ran through the main provisions of the various Acts of this country as well as America and England, relating to “intoxicating liquor”. Reference was made to the definition of “intoxicating liquors”

in various overseas jurisdiction and also Bombay Abkari Act, 1878 as well as other provincial Acts such as the Punjab Excise Act, 1914; the UP Excise Act, 1910; Madras Abkari Act, 1886, etc. It was observed that the framers of the Government of India Act, 1935 could not have been entirely ignorant of the acceptance in which the word "liquor" covers not only those alcoholic liquids which are generally used for beverage purposes and produce intoxication, but also all liquids containing alcohol. It may be that the latter meaning is not the meaning which is attributed to the word "liquor" in common parlance especially when that word is prefixed by the qualifying word "intoxicating", but in my opinion having regard to the numerous statutory definitions of that word, such a meaning could not have been intended to be excluded from the scope of the term "intoxicating liquor" as used in Entry 31 – List II. Consequently, on analysing the provisions of the impugned Act, it was observed that only those provisions which affected the possession, selling and consumption of any medicinal and toilet preparations and commendation of any intoxicant or hemp were invalid.

d) In ***Nagendra Nath vs. Commissioner of Hills Division, AIR 1958 SC 398 ("Nagendra Nath")***, it was reiterated that there is no inherent right in a citizen to sell liquor and that the control and restriction over the consumption of "intoxicating liquors" was necessary for the preservation of public health and morals and to raise revenue.

e) The question, whether Section 43 of the Bengal Excise Act, 1909, under which the licence of a liquor contractor was withdrawn, violated Articles 14 and 19 of the Constitution of India was considered in ***Amar Chandra Chakraborty vs. Collector of Excise, Government of Tripura, AIR 1972 SC 1863 ("Amar Chandra Chakraborty")***. It was observed that in view of the injurious effect of excessive consumption of liquor on health, the trade or business must be treated as a class by itself and it cannot be treated on par with other trades while testing the matter from the angle of Article 14 of the Constitution.

f) In ***State of Orissa vs. Harinarayan Jaiswal, AIR 1972 SC 1816 ("Harinarayan Jaiswal")***, it was observed that one of the important purposes of selling the exclusive right

to vend liquor was to raise revenue and since the Government had the power to sell exclusive privileges, there was no basis for contending that the owner of the privileges could not decline to accept the highest bid if it thought that the price offered was inadequate.

g) Similarly, in ***Nashirwar vs. State of Madhya Pradesh, AIR 1975 SC 360 ("Nashirwar")***, it was observed that there was no fundamental right of citizens to carry on trade or to do business in liquor. It was observed in the said case as under:

> "There are three principal reasons to hold that there is no fundamental right of citizens to carry on trade or to do business in liquor. First, there is the police power of the State to enforce public morality to prohibit trades in noxious or dangerous goods. Second, there is power of the State to enforce an absolute prohibition of manufacture or sale of intoxicating liquor. Article 47 states that the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Third, the history of excise law shows that the State has the exclusive right or privilege of manufacture or sale of liquor."

h) In ***Har Shankar vs. The Deputy Excise and Taxation Commissioner, AIR 1975 SC 1121 ("Har Shankar")***, this Court, speaking through Y.V. Chandrachud, C.J, observed

that the State has the power to prohibit trades which are injurious to the health and welfare of the public, that elimination and exclusion from business is inherent in the nature of liquor business as no person has an absolute right to deal in liquor. Also, all forms of dealings in liquor have, due to their inherent nature, been treated as a class by themselves by all civilized communities. Therefore, the contention that the persons who carry on trade or business in liquor have an unrestricted fundamental right as such was rejected. Thus, it was observed that while a citizen has a right to do business in liquor, the State can make law imposing reasonable restrictions on the said right in public interest.

Summarising the aforesaid judgments in ***Har Shankar,*** it was observed that there is no fundamental right to carry out trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants, its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and

indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. Therefore, the States' right to regulate activities in relation to intoxicants to the extent of prohibiting would imply that even when permission to deal with intoxicants is granted, the same can be regulated. This is because the rights in regard to intoxicants belong to the State and it is open to the Government to part with those rights for a consideration. The power of the Government to charge a price for parting with its rights and not the mode of fixing that price is what constitutes the essence of the matter. It was also held that neither does the label affixed to the price determine the true nature of the charge levied by the Government nor its right to levy the same. By use of the expression "licence fee" or "fixed fee", what is meant is the price or consideration which the Government charges to the licencees for parting with its privileges and granting them the licences. That the object of imposing licence fee is for the purpose of regulation so that the number of persons who wish to engage in liquor trade are kept under check and

within reasonable limits. It was also observed that the Government can, on its own, trade in its own rights or privileges and can deal with liquor or grant leases of its rights and issue requisite permits or licences or passes on payment of such fees as may be prescribed. Ultimately, it was observed that the amount payable by the licencees on the basis of the bids offered by them in auctions is neither a fee in the technical sense, nor a tax, but is in the nature of the price of a privilege. It was also held that the State has the power to grant liquor licences on payment of such fees as the consideration for parting with the privileges that the State has. That the payment demanded is in the form of excise revenue, which could be in the form of any payment, duty, fee, tax or fine ordered under the provisions of a particular enactment or Rules made thereunder relating to liquor or intoxicating drugs but would not include a fine imposed by a Court of law. That such an imposition could be recovered in the manner authorised by law. Consequently, in ***Har Shankar***, this Court repelled the contention of the retailed

vendors of country liquor holding licences for the sale of liquor in specified vends.

i) In ***Khoday Distilleries Ltd. vs. State of Karnataka, (1995) 1 SCC 574 ("Khoday Distilleries"),*** the Constitution Bench of this Court summarised the law on the subject relating to right to carry on trade or business in "potable liquor" as under:

> "(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The fundamental rights guaranteed in Article 19(1)(*a*) to (*g*) are, therefore, to be read along with the said qualifications. Even the rights guaranteed under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.
>
> (b) The right to practise any profession or to carry on any occupation, trade or business does not extend to practising a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilised societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public, i.e., *res extra commercium*, (outside commerce). There cannot be business in crime.

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is *res extra commercium* being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.

(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes.

(e) For the same reason, the State can create a monopoly either in itself or in the agency created by it for the manufacture, possession, sale and distribution of the liquor as a beverage and also sell the licences to the citizens for the said purpose by charging fees. This can be done under Article 19(6) or even otherwise.

(f) For the same reason, again, the State can impose limitations and restrictions on the trade or business in potable liquor as a beverage which restrictions are in nature different from those imposed on the trade or business in legitimate activities and goods and articles which are *res commercium*. The restrictions and limitations on the trade or business in potable

liquor can again be both under Article 19(6) or otherwise. The restrictions and limitations can extend to the State carrying on the trade or business itself to the exclusion of and elimination of others and/or to preserving to itself the right to sell licences to do trade or business in the same, to others.

(g) When the State permits trade or business in the potable liquor with or without limitation, the citizen has the right to carry on trade or business subject to the limitations, if any, and the State cannot make discrimination between the citizens who are qualified to carry on the trade or business.

(h) The State can adopt any mode of selling the licences for trade or business with a view to maximise its revenue so long as the method adopted is not discriminatory.

(i) The State can carry on trade or business in potable liquor notwithstanding that it is an intoxicating drink and Article 47 enjoins it to prohibit its consumption. When the State carries on such business, it does so to restrict and regulate production, supply and consumption of liquor which is also an aspect of reasonable restriction in the interest of general public. The State cannot on that account be said to be carrying on an illegitimate business.

(j) The mere fact that the State levies taxes or fees on the production, sale and income derived from potable liquor whether the production, sale or income is legitimate or illegitimate, does not make the State a party to the said activities. The power of the State to raise revenue by levying taxes and fees should not be confused with the power of the State to prohibit or regulate the trade or business in question. The State exercises its two different powers on such occasions. Hence the mere fact that the State levies taxes and fees on trade or business

in liquor or income derived from it, does not make the right to carry on trade or business in liquor a fundamental right, or even a legal right when such trade or business is completely prohibited.

(k) The State cannot prohibit trade or business in medicinal and toilet preparations containing liquor or alcohol. The State can, however, under Article 19(6) place reasonable restrictions on the right to trade or business in the same in the interests of general public.

(l) Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the interests of the general public under Article 19(6) of the Constitution.

(m) The restrictions placed on the trade or business in industrial alcohol or in medicinal and toilet preparations containing liquor or alcohol may also be for the purposes of preventing their abuse or diversion for use as or in beverage."

(underlining by me)

Survey of Judicial Precedents:

Synthetics and Chemicals (7J):

9. Since the main controversy in this case turns on the correctness of the decision in ***Synthetics and Chemicals (7J)***, it is necessary to advert to the same in some detail.

9.1 In the said case, the main contour of the controversy was whether vend fee in respect of "industrial alcohol" under different legislations and rules in different States was valid. In this context, the following three questions were considered:

> "(i) whether the power to levy excise duty in case of industrial alcohol was with the State Legislature or the Central Legislature?
>
> (ii) what is the scope and ambit of Entry 8 of List II of the Seventh Schedule of the Constitution?
>
> (iii) whether, the State Government has exclusive right or privilege of manufacturing, selling, distributing, etc. of alcohols including industrial alcohol. In this connection, the extent, scope and ambit of such right or privilege has also to be examined."

9.1.1 In this background, the expressions "intoxicating liquors" and "alcoholic liquors for human consumption" were considered and also Article 47 of the Constitution which deals with the State's duty regarding the improvement of public health and to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Reference was also made to Entry 52 – List I which deals with industries, the control of which by the Union is declared by Parliament by law to be expedient in public interest.

9.1.2 It was the contention of the petitioners therein that the IDRA was enacted with a view to developing and controlling various important industries. Section 2 of the IDRA declares that it is expedient in the public interest that Union should take under its control the industries specified in the First Schedule.

9.1.3 The said case did not concern primarily with potable alcohol for the purpose of human consumption but with ethyl alcohol (rectified spirit) as an industrial raw material for manufacture of downstream products. This Court concerned itself with the taxing power of the States to impose and levy excise duty on "industrial alcohol" and/or imposts such as vend fees. "Power Alcohol" was defined as ethyl alcohol containing not less than 95.5 per cent volume of ethanol measured at 60°F, corresponding to 74.4 over proof strength. That rectified spirit was ethyl alcohol or ethanol with 96 per cent alcohol. On dehydration, ethyl alcohol with 99.5 per cent volume of ethanol is produced.

9.1.4 This Court noted that on 08.05.1952, the Parliament enforced the IDRA which contains, *inter alia,* Section 18G which

was inserted w.e.f. 01.10.1953, whereby the Central Government was empowered for securing equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry to provide for regulating the supply and distribution thereof, and trade and commerce therein by a notified order. The notified order was also to provide for controlling the prices at which such article or class of articles could be bought or sold. The said Act was amended in 1956. Item 26 was inserted in the First Schedule to the said Act and empowered the Central Government to control the "Fermentation Industries" including alcohol industries.

Under the UP Licences for the Possession of Denatured Spirit and Specially Denatured Spirit Rules, 1976, special licence for possession of denatured spirit for industrial purposes was required. "Special denatured spirit" was defined as spirit rendered "unfit for human consumption". As per the Rules, licences for possession of denatured spirit including specially denatured spirit for industrial purposes were to be of three kinds – (i) Form FL 39; (ii) Form FL 40; and (iii) Form FL 41.

9.1.5 In that background, it was submitted on behalf of the Union of India that the legislative competence of the State enactments in various States will have to be determined with reference to following Entries in List I – 7, 52, 59, 84, 96, 97 and Entries in List II - 8, 24, 26, 27, 51, 52, 54, 56, 62 and Entries in List III - 19 and 33. That there is a dichotomy between Entry 84 – List I and Entry 51 – List II but this would not control the interpretation of other Entries. It was urged that there was no such dichotomy as regards Entry 8 – List II as it is not subject to Entry 52 – List I as the subject matters of these two Entries are different. That Entry 52 – List I deals with industries while Entry 8 – List II deals with "intoxicating liquors". The power to levy taxes is to be read from the Entry relating to taxes and not from the general Entry. That industry is a topic of legislation left to the Parliament and to the State. Identifying of Entries is by reference to a declaration under Entry 7 – List I and Entry 52 – List I. The aspect of legislation with regard to subject matter of Entries is the topic "industry". On the other hand, the subject matter of legislation under Entry 8 – List II is the topic "intoxicating

liquors". Therefore, according to the Union of India, there was no conflict.

9.1.6 In view of the above submission on behalf of the Union of India, the only question which was to be determined was, whether, "intoxicating liquors" in Entry 8 – List II is confined to potable liquor or includes all liquors. That the State Legislature had no power to levy excise duty on "industrial alcohol" as the latter is "not fit for human consumption" and the State Legislature will have power to levy fee in respect of all alcohol (see Entry 66 read with Entry 6 - List II). The State Legislature has power to legislate on the topic "intoxicating liquors" under Entry 8 - List II. It being a general Entry, will not comprehend a power of taxation but will comprehend a power to levy fee read with Entry 66 – List II.

9.1.7 According to the Union of India, with regard to industries the control of which by the Union is declared by Parliament by law to be expedient in public interest, Parliament will have exclusive legislative competence *vide* Entry 52 - List I. This power includes the power to declare by Parliament that control by the

Union of industries relating to all types of alcohol is expedient in public interest. Once Parliament makes such a declaration, the State Legislature will be denuded of its power under Entry 24 - List II on the aspect "industry" with respect to all subject matters.

9.1.8 It was also contended that the power to collect the lump sum amount by way of auction by any right or otherwise conferring the right to sell alcohol is neither a power to levy tax nor a power to levy fee but it will fall within the legislative competence of the State Legislature under Entry 8 – List II. But this power will extend only to alcohol for human consumption. Also, there can be a complete prohibition with regard to manufacture and sale of alcohol fit for human consumption because there is no fundamental right to carry on business in alcohol even for human consumption (see Article 47 of the Constitution and other judgments already discussed). The State can, therefore, collect an amount called vend fee, shop rent etc. for conferring on a citizen the right to manufacture and sell alcoholic liquors if it is fit for human consumption. This power cannot extend to "industrial alcohol" or "alcohol contained in the medicinal or toilet preparations". According to the Union of India,

there was no power to levy such rent or fee with regard to "industrial alcohol" because (a) "industrial alcohol" and "alcoholic liquors for medicinal and toilet preparations" cannot be completely prohibited; (b) as there is a right to carry on business in "industrial alcohol", any prohibition on manufacture of "industrial alcohol", would be violative of Article 19(1)(g) of the Constitution. Therefore, in the absence of a power to completely prohibit, there will be no power to collect sums for conferring rights to manufacture or sell except the levy of taxes and fees.

9.1.9 On behalf of the State of UP, it was submitted that in order to appreciate the controversy, it was necessary to realise that the real problem arises from the fact that the denaturants can be converted into renaturants through an illicit process. Therefore, they supported the levy. It was submitted that the vend fee on denatured alcohol or denatured spirit or what is known as "industrial alcohol" has been challenged on mainly two grounds, namely, (a) States lack legislative competence, and (b) after the enactment of the IDRA, the States' power is completely lost.

9.1.10 The contention of the State was that there is no dichotomy between ethyl alcohol to be used for beverages and to be used for "industrial purposes". The levy, in any case, was on manufacture of ethyl alcohol and not on its use. The levy was stipulated jointly or severally both under Entries 8 and 51 - List II; Entry 33 - List III, and as per police powers, regulatory and other incidental charges were collected. That levy was a regulatory power under Articles 19(6) and 19(6)(ii) of the Constitution.

9.1.11 According to the State, Parliament has no power to legislate on "industrial alcohol", since "industrial alcohol" was also "alcoholic liquors for human consumption". It was contended that Entry 84 - List I expressly excludes alcoholic liquors for human consumption and therefore, the residuary Entry 97 - List I will not operate as against its own legislative interest. The aforesaid submissions were made on the assumption that "industrial liquor" or "ethyl alcohol" is fit for human consumption.

9.1.12 This Court stated that the expression must be understood in its common and normal sense. “Industrial alcohol” as it is, is incapable of being consumed by a normal human being. The expression ‘consumption’ must also be understood in the sense of direct physical intake by human beings in this context. That utilisation in some form or the other is consumption for the benefit of human beings if “industrial alcohol” is utilised for production of rubber tyres, etc. It was held that the utilisation of those tyres in the vehicles used by human beings cannot, in the context in which the expression has been used in the Constitution, be understood to mean that alcohol has been for human consumption.

9.1.13 This Court observed that when the framers of the Constitution used the expression “alcoholic liquors for human consumption”, they meant and still the expression means, that “liquor which as it is consumable in the sense capable of being taken by human beings as such as a beverage or a drink” and Entry 84 - List I must be understood in that sense. It was contended that denatured spirit could also be by appropriate cultivation or application or admixture with water etc.,

transformed into 'alcoholic liquors for human consumption' and as such, transformation would not entail any process of manufacture as such. There is no organic or fundamental change in this transformation. However, this aspect was not examined, the reason being that the Constitutional provisions specially dealing with the delimitation of powers in a federal polity must be understood in a broad commonsense point of view as understood by common people for whom the Constitution is made. Alcoholic or "intoxicating liquors" must be understood as these are, not what these are capable of or able to become. Consequently, in paragraph 86 it was concluded as follows:

> **"86.** The position with regard to the control of alcohol industry has undergone material and significant change after the amendment of 1956 to the IDR Act. After the amendment, the State is left with only the following powers to legislate in respect of alcohol:
>
> (a) It may pass any legislation in the nature of prohibition of potable liquor referable to Entry 6 of List II and regulating powers.
>
> (b) It may lay down regulations to ensure that non-potable alcohol is not diverted and misused as a substitute for potable alcohol.
>
> (c) The State may charge excise duty on potable alcohol and sales tax under Entry 52 of List II. However, sales tax cannot be

charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the State on industrial alcohol.

(d) However, in case State is rendering any service, as distinct from its claim of so-called grant of privilege, it may charge fees based on quid pro quo. See in this connection, the observations of ***Indian Mica case [(1971) 2 SCC 236 : 1971 Supp SCR 319 : AIR 1971 SC 1182].***"

9.1.14 Oza, J. gave a concurring separate opinion wherein he considered the question relating to validity of the levies made by the States on alcohol which is utilised by the industries for manufacturing the products where alcohol is a raw material. Some of these industries themselves (i) manufacture alcohol as they have their own distilleries and from their distilleries through pipelines it goes to their industrial units where this is used as a raw material (ii) whereas some are industries which purchase alcohol or denatured spirit on being allotted by the Government.

9.1.15 On a comparison of the language of Entry 84 – List I and Entry 51 – List II, it was observed by Oza, J. that the powers of taxation on alcoholic liquors have been based on the way in which they are used, as admittedly alcoholic liquors is a very

wide term and may include variety of types of alcoholic liquors but the Constitution-makers distributed them into two heads:

(a) for human consumption

(b) other than for human consumption

9.1.16 Alcoholic liquors which are for human consumption were put in Entry 51 - List II authorising the State Legislature to levy tax on them whereas alcoholic liquors other than for human consumption have been left to the Central Legislature under Entry 84 – List I for levy of duty of excise. This scheme of the Entries in two Lists clearly indicates the line of demarcation for purposes of taxation of alcoholic liquors. What has been excluded in Entry 84 has specifically been put within the authority of the State for purposes of taxation.

9.1.17 Speaking about Entry 8 – List II, it was observed that this Entry talks about "intoxicating liquors" and further it refers to production, manufacture, possession, transport, purchase and sale of "intoxicating liquors". From the scheme of Entries in the three Lists, it is clear that taxing Entries have been specifically enacted conferring powers of taxation whereas other

Entries pertain to the authority of the Legislature to enact laws for purposes of regulation. That the declaration is made by the Parliament and this industry, i.e., industry based on fermentation and alcohol has been declared to be an industry under the IDRA and, therefore, is directly under the control of the Centre, and in respect of regulation the authority of the State Legislature in Entry 8 - List II could only be subject to the IDRA or Rules made thereunder by the Centre.

9.1.18 It was observed that high concentration of ethyl alcohol which is a product of distillation after fermentation is extracted in various concentrations and can also be extracted in a very high concentration above 90 per cent which is generally termed as rectified spirit. It is used as raw material for various industries. It is often supplied after being mixed with methylated alcohol or being denatured by other processes only to safeguard against its use for conversion into alcoholic beverages for human consumption. Ethyl alcohol is diluted by water and its percentage is brought to 40 or 45 or below then it becomes fit for human consumption.

9.1.19 The contention of the States was that various duties for purposes of regulation were imposed to prevent the conversion of rectified spirit or methylated alcohol to be diverted from industrial to potable use. In other words, the contention was that these levies had been imposed in order to prevent the conversion of alcoholic liquors which are not fit for human consumption to those which are fit for human consumption. Therefore, the levies could be justified as regulatory fees.

9.1.20 The said contention was repelled and it was concluded that Entry 8 – List II could not be invoked to justify the levy by the State in respect of alcoholic liquors which are not made for human consumption. Thus, the Court held that alcoholic liquors which are made for human consumption would not include alcoholic liquors not made for human consumption or "industrial alcohol".

Synthetics and Chemicals (2J):

9.2 In ***State of U.P. vs. Synthetics and Chemicals Ltd., (1991) 4 SCC 139 ("Synthetics and Chemicals (2J)"),*** a two-Judge Bench of this Court (speaking through Sahai J. who also

wrote the concurring judgment along with Thommen, J.) observed that the High Court relied upon the observations in paragraph 86 of the judgment of the Constitution Bench in ***Synthetics and Chemicals (7J)***, namely, "sales tax cannot be charged on "industrial alcohol" and, therefore, held that due to operation of the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the State on "industrial alcohol" and struck down the levy.

9.2.1 In ***Synthetics and Chemicals (2J),*** it was categorically argued by the learned Advocate General appearing for the State of Uttar Pradesh that the reference to "sales tax" in the judgment of this Court between the same parties (before seven-Judge Bench) was accidental and did not arise from the judgment. This was because the levy of sales tax was not in question at any stage of the arguments nor was the question considered as it was not in issue. In fact, the question which arose for consideration in the earlier litigation was in regard to the validity of "vend fee and other fees" charged by the States. This Court held that vend fee or transport fee and similar fees, unless supported by *quid pro quo*, interfered with the control exercised by the Central

Government under IDRA and the various orders made thereunder with respect to prices, licences, permits, distribution, transport, disposal, acquisition, possession, use, consumption, etc., of articles related to a controlled industry, "industrial alcohol" being one of them. The casual reference to sales tax in the concluding portion of the judgment was accidental and *per incuriam* was the submission.

9.2.2 While considering the said plea, this Court observed that, the only question which had to be determined between the same parties in ***Synthetics and Chemicals (7J)*** was, "whether "intoxicating liquors" in Entry 8 - List II was confined to potable liquor or includes all liquors." Answering this question, this Court categorically held that "intoxicating liquors" within the meaning of Entry 8 - List II was confined to "potable liquor" and did not include "industrial liquor".

9.2.3 Therefore, the only question that was considered by the seven-Judge Bench of this Court was whether the State could levy "excise duty" or "vend fee" or "transport fee" and the like by recourse to Entry 51 or 8 - List II in respect of "industrial

alcohol". This Court by a detailed discussion in the seven-Judge Bench decision had observed that the impugned statutory provisions purportedly levying fees or enforcing restrictions in respect of "industrial alcohol" were impermissible in view of the control assumed by the Central Government in exercise of its power under Section 18G of the IDRA in respect of a declared industry falling under Entry 52 - List I, read with Entry 33 - List III.

9.2.4 In this decision, it was observed that the aforesaid decision of this Court was not an authority for the proposition canvassed by the assessee in challenging the provision. This Court could not have intended to say that the Price Control Orders made by the Central Government under the IDRA imposed a fetter on the legislative power of the State under Entry 54 - List II to levy taxes on the sale or purchase of goods. The reference to sales tax in paragraph 86 of that judgment was merely accidental or *per incuriam* and therefore, had no effect.

9.2.5 In the earlier litigation of ***Synthetics and Chemicals (7J)***, the question was whether the State Legislature could levy

vend fee or excise duty on "industrial alcohol". The seven-Judge Bench answered in the negative as "industrial alcohol" being unfit for human consumption, the State Legislature was incompetent to levy any duty of excise either under Entry 51 or Entry 8 - List II of the Seventh Schedule.

The judgment of this Court in ***Synthetics and Chemicals (7J)*** has been considered in later decisions and they could be adverted to at this stage itself.

Bileshwar Khand Udyog:

9.3 In ***Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd. vs. State of Gujarat, (1992) 2 SCC 42 ("Bileshwar Khand Udyog"),*** it was observed that ***Synthetics and Chemicals (7J)*** finally brought down the curtain in respect of "industrial alcohol" by taking it out of the purview of both Entry 8 and Entry 51 - List II and the competency of the State to frame any legislation to levy any tax or duty was excluded. But by that a provision enacted by the State for supervision which is squarely covered under Entry 33 – List III which deals with production, supply and distribution which includes regulation cannot be assailed. It was further observed as under:

> " 4. …The Bench in Synthetic & Chemical's case made it clear that even though the power to levy tax or duty on industrial alcohol vested in the Central Government the State was still left with power to lay down regulations to ensure that non-potable alcohol, that is, industrial alcohol, was not diverted and misused as substitute for potable alcohol. … In paragraph 88 of the decision it was observed that in respect of industrial alcohol the States, were not authorised to impose the impost as they have purported to do in that case but that did not effect any imposition of fee where there were circumstance, to establish that there was quid pro quo for the fee nor it will affect any regulatory measure."

9.4 It was further observed that the principle of occupied field precluded States from trenching on any power which was already covered by a Central legislation. But in absence of any provision in IDRA touching upon regulation or ensuring that "industrial alcohol" was not diverted the State was competent to legislate on it under Entry 33 – List III.

Gujchem Distillers:

9.5 In ***Gujchem Distillers India Ltd. vs. State of Gujarat, (1992) 2 SCC 399 ("Gujchem Distillers")***, the judgment in ***Synthetics and Chemicals (7J)*** was followed and the fee of 7 paise per litre was held to be a regulatory measure, namely, for denaturation of spirit and supervision of the said process.

Modi Distillery:

9.6 In ***State of UP vs. Modi Distillery, (1995) 5 SCC 753 ("Modi Distillery")***, the facts were that the Allahabad High Court had allowed the writ petitions filed by the respondents therein who are manufacturers of Indian-made foreign liquor and quashed the orders impugned demanding excise duty from them. Referring to the provisions of the UP Excise Act, 1910 and the definitions therein on the different types of liquor, this Court speaking through Bharucha, J. (as he then was) observed in paragraphs 9, 10 and 11 as under:

> "9. It is convenient now to note the judgment of a Bench of seven learned Judges of this Court in ***Synthetics and Chemicals Ltd. v. State of U.P. [(1990) 1 SCC 109]*** This Court stated that it had no doubt that the framers of the Constitution, when they used the expression "alcoholic liquors for human consumption", meant, and the expression still means, that liquor which, as it is, is consumable in the sense that it is capable of being taken by human beings as such as a beverage or drink. Alcoholic or intoxicating liquors had to be understood as they were, not what they were capable of or able to become. Entry 51 of List II was the counterpart of Entry 84 of List I. It authorised the State to impose duties of excise on alcoholic liquors for human consumption manufactured or produced in the State. It was clear that all duties of excise save and except the items specifically excepted in Entry 84 of List I were generally within the taxing power of the Central Legislature. The State Legislature had limited power to impose excise duties.

That power was circumscribed under Entry 51 of List II. It had to be borne in mind that, by common standards, ethyl alcohol (which had 95 per cent strength) was an industrial alcohol and was not fit for human consumption. The ISI specifications had divided ethyl alcohol (as known in the trade) into several kinds of alcohol. Beverages and industrial alcohols were clearly and differently treated. Rectified spirit for industrial purposes was defined as spirit purified by distillation having a strength not less than 95 per cent by volume of ethyl alcohol. Dictionaries and technical books showed that rectified spirit (95 per cent) was an industrial alcohol and not potable as such. It appeared, therefore, that industrial alcohol, which was ethyl alcohol (95 per cent), by itself was not only non-potable but was highly toxic. The range of potable alcohol varied from country spirit to whisky and the ethyl alcohol content thereof varied between 19 to about 43 per cent, according to the ISI specifications. In other words, ethyl alcohol (95 per cent) was not an alcoholic liquor for human consumption but could be used as a raw material or input, after processing and substantial dilution, in the production of whisky, gin, country liquor, etc. In the light of experience and development, it was necessary to state that "intoxicating liquor" meant only that liquor which was consumable by human beings as it was.

10. What the State seeks to levy excise duty upon in the Group 'B' cases is the wastage of liquor after distillation, but before dilution; and, in the Group 'D' cases, the pipeline loss of liquor during the process of manufacture, before dilution. It is clear, therefore, that what the State seeks to levy excise duty upon is not alcoholic liquor for human consumption but the raw material or input still in process of being rendered fit for consumption by human beings. The State is not empowered to levy excise duty on the raw material or input that is in the process of being made into alcoholic liquor for human consumption.

> 11. That the measure of excise duty upon alcoholic liquor for human consumption is the alcoholic strength thereof does not make any difference in this behalf. It is only the alcoholic strength of the final product which is relevant."
>
> In paragraph 14, it was further observed as under:
>
> 14. ... The demand for excise duty is not a regulatory measure. The power of the State to levy excise duty cannot be expanded with reference to its power to regulate manufacture. We are not required to and do not express any opinion in regard to the power of the State to regulate the manufacture of alcoholic liquors for human consumption.

9.6.1 Consequently, the appeals were allowed with regard to levy of excise duty upon wastage of Indian-made foreign liquor exported outside the State of Uttar Pradesh. Rest of the appeals were dismissed.

Shree Krishna Gyanoday Sugar Ltd.:

9.7 In ***Shree Krishna Gyanoday Sugar Ltd. vs. State of Bihar, (1996) 10 SCC 11, ("Shree Krishna Gyanoday Sugar Ltd.")***, the question was whether Rule 9 of the Bihar & Orissa Excise Rules, 1990, framed under the Bihar and Orissa Excise Act, 1915, was *ultra vires* the said Act. In the alternative, the question was whether the said Rule covered the appellants'

distilleries which were manufacturing not only denatured spirit but also potable liquor.

9.7.1 It was contended that the distilleries of the appellants therein were having composite licences to manufacture not only denatured spirit and other spirits for industrial use but were also manufacturing potable spirit or country liquor and that for these distilleries the State had no power or jurisdiction to invoke Rule 9 of the Rules. The High Court repelled the contention of the appellants therein. It was held that Rule 9 was not *ultra vires* the provisions of the aforesaid Act. It was cautioned that if a distillery which manufactures denatured spirit attempts to alter any denatured spirit with the intention that such spirit may be used for human consumption, whether as a beverage or internally as a medicine, it would be committing an offence which is punishable under Section 49 of the aforesaid Act. Therefore, it was permissible for the Excise Authorities under the Act to supervise the working of such distilleries so that they may not commit such offences and to oversee their manufacturing activities. This was because the denatured spirit, if illegally altered and made fit for human consumption, would have a

devastating effect on the health of consumers and may even result in fatal consequences or loss of vision and other pernicious physical handicaps. Therefore, supervision was provided at the cost of distilleries and the licencees of the distilleries will have to bear the cost of maintenance of such supervision. The same would squarely fall within the regulatory powers for framing Rules with a view to see that the provisions of the aforesaid Act are not stifled or tinkered with by such licencee distilleries.

9.7.2 It was observed that the expression "commercial" would fall in the same category as denatured spirit, meaning thereby those spirits which are not fit for human consumption. They would not cover potable spirits even assuming that they are commercial spirits. That, the expression "other commercial spirits" as contemplated by the Rule are those spirits which are unfit for human consumption and they do not cover potable liquor which cannot fall in line with denatured spirit. Thus, it was observed that the expression "or any other commercial spirit" must mean those spirits which fall in the category of spirits unfit for human consumption like denatured spirits which are used for "industrial purposes" or any other purpose other

than for human consumption. It was held that Rule 9 of the aforesaid Rule would apply to only those distilleries which were licenced solely and wholly for the purpose of manufacturing either denatured spirit or any other commercial spirit unfit for human consumption but would not include those distilleries which are licenced for manufacturing along with denatured spirit or other industrial spirits unfit for human consumption, also potable liquor which is fit for human consumption. Hence, it was observed that the appellant therein, who had composite and multiple licences to manufacture potable liquor, was outside the sweep of second part of Rule 9 of the aforesaid Rules. That to such distilleries the first part of the Rule may apply wherein the State will have to bear the cost of providing supervisors and establishments for that purpose but the cost of such establishment cannot be foisted on such distilleries.

Bihar Distillery:

9.8 In ***Bihar Distillery,*** narrating the history with regard to the legislations on rectified spirit and in the context of the IDRA, and the incorporation of Item 26 in the First Schedule of the said Act which deals with "Fermentation Industries": (i) Alcohol, (ii) other

products of "Fermentation Industries", this Court, speaking through Jeevan Reddy, J., noted that the decision in ***Synthetics and Chemicals (7J)*** called for demarcation of the spheres of the Union and the States, particularly in the matter of alcoholic liquors.

9.8.1 This Court observed that insofar as "intoxicating liquors"/potable liquors are concerned, it is the exclusive province of the States. But for manufacturing "intoxicating liquors", or for manufacturing "industrial alcohol", as the case may be, one must have to manufacture or purchase alcohol. It is only thereafter that the alcohol is either converted into "industrial alcohol" (by denaturing it) or into "potable liquors" by reducing the strength of alcohol (which is normally of 95% purity or above). Alcohol can however be used for industrial purposes even without denaturing it. To say that the States step in only when alcohol becomes potable and not before it, creates a doubt and enough room for abuse apart from difficulties of supervision and regulation, such as, in the matter of licensing such industries — whether the Centre alone or the States or both should do it. Therefore, notices were issued to all the State

Governments as well as Union of India and the interplay between the Entries of Lists I, II and III which are under consideration here and which are extracted above, were discussed.

9.8.2 It was opined that Entry 51 - List II and Entry 84 - List I complement each other inasmuch as both provide for duties of excise. However, Entry 51 - List II empowers the State to levy duties of excise on alcoholic liquors for human consumption, which is expressly excluded from Entry 84 - List I. Therefore, alcoholic liquors may be used for several purposes, one of which is meant for human consumption. It was further observed that Entry 8 – List II does not use the expression "alcoholic liquors for human consumption" but employs the expression "intoxicating liquors" and significantly, the words "for human consumption" is conspicuous by its absence. According to Jeevan Reddy, J., this is for the obvious reason that the very word "intoxicating" signifies "for human consumption". Thus, Entry 8 - List II emphasizes all aspects of "intoxicating liquors" within the State's sphere, i.e., to say production, manufacture, possession, transport, purchase and sale of "intoxicating liquors". In this context, Entry 6 - List II was relied upon to observe that the said

Entry, which, *inter alia,* deals with "public health", has a close nexus to prohibiting or regulating consumption of "intoxicating liquors".

9.8.3 It was next opined that clause (a) in Entry 33 – List III is also significant. That though the control of certain industries may have been taken over by the Union by virtue of a declaration made by Parliament in terms of Entry 52 - List I, yet the "trade and commerce in, and the production, supply and distribution of the products of such industry" is placed in the Concurrent List. According to Jeevan Reddy, J., this would mean that it could be regulated by both by the Union as well as by the States, subject, of course, to Article 254 of the Constitution.

9.8.4 It was observed that insofar as the field is not occupied by the laws made by the Union, the States are free to legislate. It was further observed that Entry 24 - List II is in the nature of a general Entry. It deals with industries but is made expressly subject to Entries 7 and 52 - List I. That by making a declaration in terms of Entry 52 - List I in Section 2 of the IDRA, the Union has taken control of the several industries mentioned in the

Schedule to the Act. As a result, the States have been denuded of their power to legislate with respect to those industries on that account. It was further observed that a three-Judge Bench in ***McDowell*** had held that Entry 52 overrides only Entry 24 - List II and no other Entry in List II. That Entry 8 – List II is not overborne in any manner by Entry 52 – List I, which means that so far as "intoxicating liquors" are concerned, they are within the exclusive sphere of the States.

9.8.5 Referring to the judgment of Sabyasachi Mukharji, J. (as he then was) in ***Synthetics and Chemicals (7J),*** particularly paragraph 85, it was observed that the expression *"both potable and"* is an accidental error as the judgment in its earlier paragraphs had stated that so far as potable alcohol is concerned, they are governed by Entry 8 – List II and are within the exclusive domain of the States. The said judgment did not intend to convey that the industries engaged in the manufacture or production of potable liquors have been controlled by the Union by virtue of Item 26 of the First Schedule to the IDRA. So far as potable liquors are concerned, their manufacture, production, possession, transport, purchase and sale are within

the exclusive domain of the States and the Union of India has no say in the matter.

9.8.6 In this case, the Court further noted the contentions urged on behalf of the State to the effect that rectified spirit is "intoxicating liquors" within the meaning of Entry 8 - List II and hence outside the purview of Entry 24 - List II, which would in turn mean that the Union cannot take over its control by making a declaration in terms of Entry 52 - List I. Further Item 26 of the Schedule to the IDRA is ineffective and invalid insofar as it seeks to regulate the production and manufacture, etc. of rectified spirit. The State submitted that the decision to the contrary in ***Synthetics and Chemicals (7J)*** is not correct and requires reconsideration.

9.8.7. The State next contended that Entry 51 - List II and Entry 84 - List I speak of "alcoholic liquors for human consumption" and not "alcoholic liquors ***"fit"*** for human consumption". That the judgment in ***Synthetics and Chemicals (7J),*** read the word "fit" in the Entries and thus curtailed the legislative power of the States. It was further contended that rectified spirit is really and

essentially “intoxicating liquors” and by the process of “reduction of liquor” by adding water and spices (optional) does not cease it to be “intoxicating liquors”. In the State of U.P., bulk of the rectified spirit is used for the purpose of obtaining country liquor or IMFLs and a small quantity is used for industrial purposes. Therefore, the expression “intoxicating liquors” must include rectified spirit. It was further submitted that during the course of manufacture of rectified spirit, potable liquor comes into existence and the main raw material for rectified spirit is molasses.

9.8.8 However, on behalf of the distilleries, it was contended that there is no good reason for doubting the correctness of the decision in ***Synthetics and Chemicals (7J)*** or for referring the issue to a larger Constitution Bench of nine or more Judges. This was because if the States' submission were to be accepted, then Item 26 in the Schedule to the IDRA would become superfluous and meaningless. Therefore, this Court in ***Synthetics and Chemicals (7J)*** speaking through Sabyasachi Mukharji, J., drew a line between the respective spheres of the Union and the States. It was also contended that despite the insertion of Item

26 in the IDRA, the State was not totally denuded of any power to make a law with respect to rectified spirit or for that matter "industrial alcohol". In this regard, Entry 33 - List III and Section 18G read with other provisions of the IDRA were considered and by placing reliance on ***Tika Ramji,*** it was observed that "the possibility of an order under Section 18G being issued by the Central Government would not be enough. The existence of such an order would be the essential prerequisite before any repugnancy could ever arise".

9.8.9 On a conspectus consideration, this Court held that the decision in ***Synthetics and Chemicals (7J),*** did not deal with the aspects which arose for consideration in this case and that it was mainly concerned with "industrial alcohol", i.e., denatured rectified spirit. While holding that rectified spirit is "industrial alcohol", it recognised at the same time that it can be utilised for obtaining country liquor (by diluting it) or for manufacturing Indian Made Foreign Liquor ("IMFL"). When the decision says that rectified spirit with 95% alcohol content v/v is "toxic", what it meant was that if taken as it is, it is harmful and injurious to health. By saying "toxic", it did not mean that it cannot be

utilised for potable purposes either by diluting it or by blending it with other items. The Court in ***Bihar Distillery*** noted that the undeniable fact is, that rectified spirit is both "industrial alcohol" as well as a liquor which can be converted into country liquor just by adding water. It is also the basic substance from which IMFL are made. Denatured rectified spirit, of course, is wholly and exclusively "industrial alcohol". It was observed that this basic factual premise which was not and could not be denied by any one raised certain aspects for consideration therein which were not raised or considered in ***Synthetics and Chemicals (7J)***.

9.8.10 It was noted that ***Synthetics and Chemicals (7J)*** did not deal with rectified spirit which could be converted into potable alcohol and was merely concerned with "industrial alcohol" which could not be so converted, i.e., denatured rectified spirit. A distinction was drawn between industries engaged in manufacturing rectified spirit meant exclusively for supply to industries (industries other than those engaged in obtaining or manufacturing of potable liquor), whether after denaturing it or without denaturing it, and industries engaged in manufacturing

rectified spirit exclusively for the purpose of obtaining or manufacturing potable liquor. In the first case, the industry was to be under "the total and exclusive control of the Union and be governed by the IDRA and the rules and regulations made thereunder". As far as the second case is concerned, it was noted that "they shall be under the total and exclusive control of the States in all respects and at all stages including the establishment of the distillery".

9.8.11 It was thus noted that ***Synthetics and Chemicals (7J)*** was mainly concerned with "industrial alcohol", i.e., denatured rectified spirit. This Court raised several questions with regard to the supervision of the manufacture of country liquor or IMFL, which is not the concern of the Union but the bulk of the rectified spirit produced in many States is meant for and is utilised for obtaining or manufacturing potable liquors. The question was then at what stage, would the State intervene in the process of manufacture of potable liquor - whether until the stage of potable liquor is reached, or whether there has to be supervision even at a stage prior thereto by the States. This Court took into consideration the fact that under Entry 33(a) -

List III, the States do have the power to legislate on this field, provided the field is not occupied by any law made by the Union. Further, in the interests of law, public health, public revenue and also in the interests of proper delineation of the spheres of the Union and the States, it was noted that there has to be a clear line of demarcation drawn at the stage of clearance or removal of rectified spirit. In the matter of the levies, when the removal or clearance is for industrial purpose, the levy of duties of excise and all other control is with the Union but when the removal/clearance is for obtaining or manufacturing potable liquors, the levy of duties and all other control is with the States. It was observed that there is a need for joint control and supervision of the process of manufacture of rectified spirit and its use and disposal. Hence, certain observations were made by way of elaboration by taking into consideration the nature of the product and its use, namely supply for industries or "industrial alcohol" or use for potable purposes and the circumstances of misuse of rectified spirit (for industrial purposes) by diverting it for potable purposes, which are as under:

(1) (a) So far as industries engaged in manufacturing rectified spirit meant exclusively for supply to industries (industries other than those engaged in obtaining or manufacture of potable liquors), whether after denaturing it or without denaturing it, are concerned, they shall be under the total and exclusive control of the Union and be governed by the IDR Act and the rules and regulations made thereunder. In other words, where the entire rectified spirit is supplied for such industrial purposes, or to the extent it is so supplied, as the case may be, the levy of excise duties and all other control including establishment of distillery shall be that of the Union.

(b) The power of the States in the case of such an industry is only to see and ensure that rectified spirit, whether in the course of its manufacture or after its manufacture, is not diverted or misused for potable purposes. They can make necessary regulations requiring the industry to submit periodical statements of raw material and the finished product (rectified spirit) and are entitled to verify their correctness. For this purpose, the States will also be entitled to post their staff in the distilleries and levy reasonable regulatory fees to defray the cost of such staff.

(2) So far as industries engaged in the manufacture of rectified spirit exclusively for the purpose of obtaining or manufacturing potable liquors — or supplying the same to the State Government or its nominees for the said purpose — are concerned, they shall be under the total and exclusive control of the States in all respects and at all stages including the establishment of the distillery. In other words, where the entire rectified spirit produced is supplied for potable purposes — or to the extent it is so supplied, as the case may be — the levy of

excise duties and all other control shall be that of the States.

(3) So far as industries engaged in the manufacture of rectified spirit, both for the purpose of (*a*) supplying it to industries (other than industries engaged in obtaining or manufacturing potable liquors/ intoxicating liquors) and (*b*) for obtaining or manufacturing *or* supplying it to Governments/ persons for obtaining or manufacturing potable liquors are concerned, the following is the position:

(a) The power to permit the establishment and regulation of the functioning of the distillery is concerned, it shall be the exclusive domain of the Union. But so far as the levy of excise duties is concerned, the duties on rectified spirit removed/ cleared for supply to industries (other than industries engaged in obtaining or manufacturing potable liquors), shall be levied by the Union;

b) the duties of excise on rectified spirit cleared/removed for the purposes of obtaining or manufacturing potable liquors shall be levied by the State Government concerned. The disposal, i.e., clearance and removal of rectified spirit in the case of such an industry shall be under the joint control of the Union and the State concerned to ensure evasion of excise duties on rectified spirit removed/cleared from the distillery.

c) It is obvious that in respect of these industries too, the power of the States to take necessary steps to ensure against the misuse or diversion of rectified spirit meant for industrial purposes (supply to industries other than those engaged in obtaining or manufacturing potable liquors) to potable purposes, both during and after the manufacture of rectified spirit, continues unaffected.

d) Any rectified spirit supplied, diverted or utilised for potable purposes, i.e., for obtaining or manufacturing potable liquors shall be supplied to and/or utilised, as the case may be, in accordance with the State excise enactment concerned and the rules and regulations made thereunder. If the State is so advised, it is equally competent to prohibit the use, diversion or supply of rectified spirit for potable purposes.

(4) It is advisable and necessary that the Union Government makes necessary rules/regulations under the IDR Act directing that no rectified spirit shall be supplied to industries except after denaturing it save those few industries (other than those industries which are engaged in obtaining or manufacturing potable liquors) where denatured spirit cannot be used for manufacturing purposes.

(5) So far as rectified spirit meant for being supplied to or utilised for potable purposes is concerned, it shall be under the exclusive control of the States from the moment it is cleared/removed for that purpose from the distillery — apart from other powers referred to above.

(6) The power to permit the establishment of any industry engaged in the manufacture of potable liquors including IMFLs, beer, country liquor and other intoxicating drinks is exclusively vested in the States. The power to prohibit and/or regulate the manufacture, production, sale, transport or consumption of such intoxicating liquors is equally that of the States.

9.8.12 The aforesaid decision in ***Bihar Distillery*** was doubted in ***Deccan Sugar and Abkari Co. Ltd. vs. Commissioner of Excise, (1998) 3 SCC 272 ("Deccan Sugar***

and Abkari Co. Ltd.”), and the appeals were referred to a larger Bench which followed ***Synthetics and Chemicals (7J)*** and ***Modi Distillery*** without expressly overruling the decision in ***Bihar Distillery***. Opining that ***Synthetics and Chemicals (7J)*** continued to hold the field, it was noted that the State’s power was limited to regulation of non-potable alcohol for the limited purpose of preventing its use as alcoholic liquors. Ultimately, the appeal filed by the state was dismissed as the levies could not be treated as a regulatory measure.

McDowell:

9.9 In ***McDowell***, the State of Andhra Pradesh had prohibited the manufacture of liquor by an amendment in the Andhra Pradesh Prohibition Act, 1995. The appellants therein who were manufactures of “intoxicating liquors” challenged the constitutional validity of the Act by which the Prohibition Act was amended to include Section 7-A by which the manufacture of liquor came to be prohibited. This was owing to the lack of legislative competence in view of Item 26 in the First Schedule of the IDRA, which according to the writ petitioners therein, vested the control of alcohol industries exclusively in the Union and

denuded the State Legislature of its power to licence or regulate the manufacture of liquor. This argument was further based on the fact that “Fermentation Industries” were included in the Schedule of the IDRA and hence the State was denuded of its power to licence and regulate manufacture of liquor which industry and its product were within the exclusive province of the Union and hence the State lost its competence to grant, refuse or renew the licences The position of law was reiterated as under: -

> "It follows from the above discussion that the power to make a law with respect to manufacture and production and its prohibition (among other matters mentioned in Entry 8 in List-II) belongs exclusively to the State Legislatures. Item 26 in the First Schedule to the IDR Act must be read subject to Entry 8 and for that matter, Entry 6 in List II. So read, the said item does not and cannot, deal with manufacture, production of intoxicating liquors. All the petitioners before us are engaged in the manufacture of intoxicating liquors. The State Legislature is, therefore, perfectly competent to make a law prohibiting their manufacture and production in addition to their sale, consumption, possession and transport with reference to Entries 8 and 6 in List-II of the Seventh Schedule to the Constitution read with Article 47 thereof."
>
> The Civil Appeals were dismissed by this Court.

Vam Organic I:

9.10 In ***Vam Organic I,*** the Notification dated 18.05.1990 issued by the Excise Commissioner, Uttar Pradesh, was assailed before the High Court and the writ petition was dismissed. By the said Notification, certain amendments were made to the Rules published *vide* Notification dated 26.09.1910. Section 41 of the UP Excise Act, 1910 gave power to the Excise Commissioner to make Rules, *inter alia,* for regulating the manufacture, supply, storage or sale of any intoxicant. The earlier Rule 2 was substituted by a new Rule 2 titled "Denaturation of Spirit". The amended Rule provided for a new licence for denaturation of spirit in a prescribed form to be issued by the Collector to all distilleries situated within his district holding licence PD-1 or PD-2 and persons holding licences FL-16, FL-39, FL-40 and FL-41 to denature the spirit. A licence fee for denaturation of spirit at the rate of 7 paise per litre was levied in advance. The appellants in this case who were manufacturers of vinyl acetate monomer (a basic organic chemical for which "industrial alcohol" was the main feed stock being produced in the distillery) contended that the entire "industrial alcohol"

produced was denatured as per the method approved by the State Excise Authorities and was being used in their factory for manufacturing vinyl acetate monomer. The appellants held licences in the form of FL-39 to enable them to use the "industrial alcohol" as the main raw material for their product. The notification was challenged on two grounds: *firstly,* that the State of Uttar Pradesh has no power to legislate in respect of "industrial alcohol" or to levy taxes in respect thereof. *Secondly,* that the levy being not based on *quid pro quo* was otherwise bad.

9.10.1 In this case, before considering the legal contentions, this Court highlighted the difference between "industrial alcohol", denatured spirit and potable liquor. Ethyl alcohol was noted to be rectified spirit of 95% v/v in strength. Rectified spirit was highly toxic and unfit for human consumption. However, rectified spirit diluted with water was noted to be country liquor. Rectified spirit, as it was, can be used for manufacture of various other products like chemicals, etc. Rectified spirit, produced for industrial use was required by a Notification issued under the Act to be denatured in order to prevent the spirit from being directed to human consumption. Rectified spirit was denatured

by adding denaturants which made the spirit unpalatable and nauseating. As such rectified spirit could be converted to potable liquor but once denatured it could be used only as "industrial alcohol".

9.10.2 It was observed that in ***Synthetics and Chemicals (7J)*** the question of legislative competence of the State to impose tax or levy on "industrial alcohol" was ruled in the negative, so far as ethyl alcohol/rectified spirit is concerned. Further, even if the State had the regulatory power to prevent misuse of "industrial alcohol" for potable purposes, such power did not include power to levy any impost. It was further observed that denaturation is a statutory duty imposed by a notification under the U.P. Excise Act and as no service by the State was being provided for the same, no fee could be charged and even if the State had to incur any expenses for enforcement of the requirement of denaturation, there is no *quid pro quo* between the expenses incurred and the fees charged. This Court noted that the term "industrial alcohol" is not used in any of the Lists and whether alcoholic liquors other than "alcoholic liquors for human consumption" or "intoxicating liquors" was a State

subject or a Union subject should be the real controversy. It was with a view to describing that particular kind of liquor the term "industrial alcohol" is used. It was observed that after an analysis of all the provisions of law giving the Union Parliament and the State Legislature jurisdiction to legislate on alcohol, this Court in ***Synthetics and Chemicals (7J)*** held that the impugned notifications therein, imposing certain fees as vend fee or transport fee, etc. were within the legislative competence of the State. That this Court was fully aware of the fact that rectified spirit was the ingredient for "intoxicating liquors" or alcoholic liquors for human consumption although rectified spirit/ethyl alcohol as well as denatured spirit are referred to as "industrial alcohol" in that judgment. This Court did not hold that the State will have no power whatsoever in relation to "industrial alcohol". In fact, in the judgment in ***Synthetics and Chemicals (7J)***, the Court has enumerated the various areas relating to "industrial alcohol" in which the State could still legislate or make rules. In that regard paragraph 86 of the judgment in ***Synthetics and Chemicals (7J)*** was quoted. Of course, the same has been explained in ***Synthetics and Chemicals (2J)***, discussed above.

This Court observed in this case that denaturation of spirit meant for industrial use is meant to prevent misuse of non-potable alcohol for human consumption and as such was specifically mentioned by the Court to be within the legislative competence of the State. This Court observed in para 14 as under:

> "**14.** It is to be noticed that the States under Entries 8 and 51 of List II read with Entry 84 of List I have exclusive privilege to legislate on intoxicating liquor or alcoholic liquor for human consumption. Hence, so long as any alcoholic preparation can be diverted to human consumption, the States shall have the power to legislate as also to impose taxes etc. In this view, denaturation of spirit is not only an obligation on the States but also within the competence of the States to enforce."

Haryana Brewery Ltd.:

9.11 In ***Government of Haryana vs. Haryana Brewery Ltd., (2002) 4 SCC 547 ("Haryana Brewery Ltd."),*** the controversy related to levy of excise duty on beer brewed by the respondent therein. Rule 35 of the Punjab Brewery Rules, 1956 and Section 32 of the Punjab Excise Act, 1914 were considered. It was observed by this Court that the said Rule was only an enabling provision which would help the Excise Authorities in calculating

what would be the quantity of beer manufactured and fit for human consumption on which excise duty could be imposed. The said Rule was declared valid and it did not require any reading down as had been done by the High Court. It was observed that the tax was on the end product and not on the raw material. Rule 35 indicated that in order to determine what was the quantity of beer manufactured which was fit for human consumption, after all the processes were completed, one had to see what was the quantity of raw materials which were utilised for the manufacture of beer and then allowance for wastage of seven per cent had to be made and thereafter the quantity of beer manufactured was determined. That the figure taken for the purpose of calculating the excise duty was only on the end product, namely the beer produced, and not the quantity of the raw material used in manufacture of beer, during which loss of some quantity as wastage would have occurred and there could not be a deduction of any sum or proportion as wastage from the quantity of end product in order to arrive at that quantity. In such a case, the question of determining any allowance of seven per cent for wastage did not arise. Therefore, the Excise

Authorities could levy excise duty only on the beer after it had been manufactured and the levy was on the quantity manufactured. How this quantity had to be arrived was to be determined according to Section 32 read with Rule 35 of the aforementioned Act and Rules. Hence, Rule 35 was sustained as valid and it did not require any reading down.

Industrial Corporation (P) Ltd.:

9.12 In the ***State of Bihar vs. Industrial Corporation (P) Ltd., (2003) 11 SCC 465 ("Industrial Corporation (P) Ltd."),*** the respondent companies were engaged in the manufacture of rectified spirit from molasses allotted to them by the Controller of Molasses in terms of the Bihar Molasses (Control) Act, 1947 and they had been granted licences under various provisions of the Bihar and Orissa Excise Act, 1915. It was found that certain quantity of rectified spirit had to be produced but instead there was a shortfall and therefore, notice was issued and penalty was imposed on the premise that the respondents therein had diverted the molasses towards manufacturing either country liquor or liquor which was fit for human consumption. Assailing the same, writ petitions were filed before the High Court which

had allowed the said writ petitions. Therefore, the State had appealed before this Court.

9.13 This Court noted that molasses is a by-product of sugar and mainly used as raw material for manufacture of spirit, including alcohol for human consumption. The respondents in the said case were engaged in the manufacture of rectified spirit from molasses and penalty was imposed owing to a loss of revenue by reason of loss of wastage of molasses while carrying on manufacture of such rectified spirit. One of the contentions raised was that the State has power to impose duty only on the spirit which is for human consumption and the respondents therein had not carried out any activities in relation to manufacture of potable liquor from the molasses. It was observed that the judgment in ***Modi Distillery*** applied to the said case and therefore, no penal duty could be imposed on rectified spirit. Reliance placed on ***Bihar Distillery*** was not gone into inasmuch as it was observed that it was unnecessary to go into the question of the correctness of the observations made in ***Bihar Distillery.*** However, the observations of the High Court therein were that in view of the judgment of this Court in ***Synthetics and Chemicals***

(7J), the State had no legislative competence even in relation to potable liquor, (which is fit for human consumption), was not correct.

Vam Organic II:

9.14 In ***Vam Organic II,*** a notification dated 13.01.1990 whereby licence fee of 15 paise per litre was sought to be imposed on the quantity of specially denatured spirit (STS) obtained from distilleries in the State of Uttar Pradesh under Rule 3(a) of the UP Licences for the Possession of Denatured Spirit and Specially Denatured Spirit Rules, 1976 was assailed before the Allahabad High Court. The writ petitions were allowed, and the State had filed appeals before this Court. Section 3 (13) of the UP Excise Act, 1910 (for short, "1910 Act") had defined the word "intoxicant" as meaning "any liquor or intoxicating drug". The word "liquor" in turn was defined in Section 3(11) as meaning "intoxicating liquors and includes spirits of wine, spirit, wine, tari, pachwai, beer and all liquid consisting of or containing alcohol, also any substance which the State Government may by notification declare to be liquor for the purposes of the Act." In paragraph 6 of the judgment, it was observed that "industrial

alcohol" is not liquor nor is it potable as such. However, it may be utilized to produce a kind of liquor if it is denatured. "Denatured" in Section 3(9) of the Act was defined to mean "rendered unfit for human consumption in such manner as may be prescribed by the State Government by notification in this behalf". Thus, the State Act equated "industrial alcohol" to non-potable alcohol and not fit for human consumption. To ensure the denaturation of "industrial alcohol" under Section 41 of the 1910 Act, Rules were made in the year 1976. It was contended by the appellant State that the word "industry" has been construed by the Constitution Bench of this Court in ***ITC Ltd. vs. Agricultural Produce Market Committee, (2002) 9 SCC 232 ("ITC Ltd.")*** to mean only manufacture and production. Therefore, the State was competent under Entry 33 - List III to regulate the products of an industry which was declared to be a controlled industry under Entry 52 - List I. Since there was no Central legislation occupying the field, the State law must be held to be valid.

9.14.1 Referring to ***Synthetics and Chemicals (7J)***, it was observed that since the coming into force of the IDRA on

08.05.1952, the State Legislatures are constitutionally incompetent to levy tax on "industrial alcohol". This principle was reiterated in ***Modi Distillery*** wherein it was held that the State's power to levy excise duty was limited to alcoholic liquors for human consumption which means, that liquor which, as it is, is consumable in the sense that it is capable of being taken by human beings *as such* as a beverage or drink. Therefore, even if ethyl alcohol (95 per cent) could be used as a raw material or input, after processing and substantial dilution, in the production of whisky, gin, country liquor etc. nevertheless, it was not "intoxicating liquors" which expression meant only that liquor which was consumable by human beings *as it was*. Therefore, the State could not legislate on "industrial alcohol" despite the fact that such "industrial alcohol" has the potential to be used to manufacture alcoholic liquors for human consumption.

9.14.2 Ultimately, in paragraph 43 of the judgment, it was pithily observed as under:

> "43. Considering the various authorities cited, we are of the view that the State Government is competent to levy fee for the purpose of ensuring that industrial alcohol is

not surreptitiously converted into potable alcohol so that the State is deprived of revenue on the sale of such potable alcohol and the public is protected from consuming such illicit liquor. But this power stops with the denaturation of the industrial alcohol. Denatured spirit has been held in ***Vam Organics I*** to be outside the seisin of the State Legislature. Assuming that denatured spirit may by whatever process be renatured (a proposition which is seriously disputed by the respondents) and then converted into potable liquor, this would not give the State the power to regulate it. Even according to the demarcation of the fields of legislative competence as envisaged in ***Bihar Distillery*** industrial alcohol for industrial purposes falls within the exclusive control of the Union and according to ***Bihar Distillery*** "denatured rectified spirit, of course, is wholly and exclusively industrial alcohol" (SCC p. 742, para 23)."

Analysis of Judicial Dicta:

10. I shall now analyse the judgments of this Court on the points in controversy.

10.1 In ***Indian Mica,*** the question which came up was whether the fee levied under Rule 111 of the Bihar and Orissa Excise Rules framed under Section 90 of the Bihar and Orissa Excise Act, 1915 on denatured spirit used and possessed by the appellants therein had sufficient *quid pro quo* for the levy. This Court struck down the levy as being unjustified and excessive as

there was no co-relationship between the levy and the services rendered.

10.2 In ***Southern Pharmaceuticals and Chemicals vs. State of Kerala, AIR 1981 SC 1863 ("Southern Pharmaceuticals"),*** being aggrieved by the dismissal of their writ petitions and upholding the constitutional validity of Section 12-A and other sections of the Kerala Abkari Act, and Rules 13 and 16 of the Kerala Rectified Spirit Rules, 1972, the manufacturers of medicinal and toilet preparations containing alcohol had filed the appeal before this Court questioning the legislative competence of State to enact a law relating to medicinal and toilet preparations containing alcohol under Entry 8 - List II. Repelling the said contention in light of the scheme of legislation and its history, it was observed that impugned Act was relatable to Entry 8 - List II. Reference was also made to the judgment of this Court in ***FN Balsara*** and it was held that the main purpose of the impugned Act was to consolidate the law relating to manufacture, sale and possession of "intoxicating liquors" which squarely fell under Entry 8 - List II, while the main object of the Central Act was to provide for the levy and collection

of duties of excise on medicinal and toilet preparations containing alcohol falling under Entry 84 - List I. According to this Court when the framework of the two enactments was examined, it was apparent that the Central and the State legislations operated in two different and distinct fields. It was held that in the matter of making rules or detailed provisions to achieve the object and purpose of a legislation, there may be some provisions seemingly overlapping or encroaching upon the forbidden field, but that does not warrant the striking down of the impugned Act as *ultra vires* the State Legislature.

10.3 In ***Synthetics and Chemicals (7J)***, the question for consideration was whether different legislations and rules in respect of "industrial alcohol" enacted by the States were valid. In my view, this Court was clear about the concept of "industrial alcohol" and "intoxicating liquors" and therefore, the State Legislatures' competence to levy excise duty on "industrial alcohol" was considered as the seminal issue. In that context, the scope and ambit of Entry 8 - List II was also considered. It is in the context of the taxing power of the States, i.e., to levy excise

duty on “industrial alcohol” and/or impost(s) such as vend fees which was the point of controversy.

In the above backdrop, the question was crystallised to whether the expression “intoxicating liquors” in Entry 8 - List II is confined to potable liquor or includes all liquors. It was observed that the expression “alcoholic liquors for human consumption” used by the framers of the Constitution in Entry 51 – List II and Entry 84 – List I meant that liquor which is consumed by human beings directly as a beverage or as a drink. It was observed that alcoholic liquor or “intoxicating liquors” must be understood as common people would understand it and not what certain alcoholic products are capable of being transformed or converted into. That when excise duty was being levied under Entry 84 - List I, it did not include alcoholic liquors for human consumption but included denatured spirit which is “industrial alcohol”. It was observed that merely because the denatured spirit could be treated with water and transformed into alcoholic liquors into human consumption which did not involve a process of manufacture, the States would not have the

legislative competence to levy excise duty under Entry 51 - List II.

10.4 Subsequently, in ***Synthetics and Chemicals (2J),*** it was clarified that the question which arose for consideration before the seven-Judge Bench was with regard to the validity of "vend fee and other fees" charged by the States. The two-Judge Bench clarified that the seven-Judge Bench had answered the question whether, "intoxicating liquors" in Entry 8 - List II was confined to only potable liquor or other liquors also and it was held that it included only potable liquor and not "industrial alcohol". However, it was clarified that the State has the power to levy taxes on sale or purchase of goods under Entry 54 - List II and therefore paragraph 86 of the seven-Judge Bench in ***Synthetics and Chemicals (7J)*** was clarified in those terms. It was observed that in paragraph 86 by an accident (due to an inadvertence) the prohibition of sales tax being levied by the States on the "industrial alcohol" was adverted to without there being a discussion on that aspect of the matter and, therefore, to that extent the dictum of the seven-Judge Bench in ***Synthetics and Chemicals (7J)*** was *per incuriam.* It was further clarified that the

seven-Judge Bench was only concerned with the question whether the State Legislature could levy vend fee or excise duty on "industrial alcohol" and that the said question was answered in the negative by holding that "industrial alcohol" being unfit for human consumption, the State Legislature was incompetent to levy any duty of excise under Entry 51 - List II.

10.5 In the above context, it was also observed that alcohol can be divided into two categories, namely, potable and non-potable alcohol. That alcohol which is potable is "intoxicating liquors" for human consumption directly as a beverage and comes within the scope and ambit of Entry 8 - List II and the State Legislature has the power to regulate such "intoxicating liquors" by making relevant laws. However, non-potable liquor or "industrial alcohol" as it is popularly called, can be diluted and consumed as a beverage, and the State has an obligation and powers to regulate and ensure that there is no such abuse having regard to Article 47 of the Constitution being a Directive Principle of State Policy. Hence, under Entry 8 - List II, the State can make laws for prevention of production, possession, sale etc. of non-potable alcohol as "intoxicating liquors". Such regulation would be *intra*

*vire*s Entry 8 - List II and would not be in conflict with any other Entry in List I, II or List III. This would also be in line with Article 47 of the Constitution.

10.6 The aforesaid view was affirmed in ***Bileshwar Khand Udyog*** by holding that clarity was brought about in respect of "industrial alcohol" in ***Synthetics and Chemicals (7J)*** and the competency of the State to frame any legislation to levy any tax or duty on "industrial alcohol" was excluded. However, under Entry 33 - List III, there was power vested in the State insofar as "industrial alcohol" was concerned as the said product was a product of a scheduled industry, namely, Item 26 of the First Schedule of the IDRA which was enacted pursuant to Entry 52 - List I. This is subject to the intention of the Parliament to occupy the field as per the provisions of the IDRA, in particular, under Section 18G of the said Act. ***Gujchem Distillers*** also followed the aforesaid judgment. ***Khoday Distilleries*** also emphasised the fact that the State has the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage but the State cannot prohibit trade and business in medicinal and toilet preparations containing

liquor or alcohol. In the same way, the State cannot prohibit trade or business in "industrial alcohol" which is not used as a beverage but used legitimately for industrial purposes. It was held that restrictions imposed by the States on trade or business in "industrial alcohol" or in medicinal and toilet preparations containing liquor or alcohol could be for the purpose of preventing their abuse or diversion for use as or in beverages.

10.7 In ***Shree Krishna Gyanoday Sugar Ltd.*** it was categorically observed that the excise authorities under the concerned State Act could supervise the working of the distilleries which had composite licences to manufacture not only denatured spirit and other spirits for industrial use but also potable spirit or country liquor in order to prevent alteration of denatured spirit and make it fit for human consumption. Therefore, at the distilleries of the licencees, supervision had to be provided as it was a regulatory measure. In this context also, it was clarified that the denatured spirit is a spirit which is not fit for human consumption and non-potable, and was also called as "other commercial spirits" under the rules in question, as they are used for industrial purposes or any other purpose other than human

consumption as a beverage. This was opposed to potable liquor which is fit for human consumption. It was finally observed that in respect of such distilleries having composite licencees, the State will have to provide the cost of supervisors and the same could not be foisted on such distilleries.

10.8 Jeevan Reddy, J., in ***Bihar Distillery,*** also held that insofar as "intoxicating liquors or potable liquors" are concerned, they fall in the exclusive province of the State. However, alcohol can be used for the industrial purposes even without denaturing it. Significantly, it was held that Entry 8 - List II uses the expression "intoxicating liquors" which signifies "liquor for human consumption". The absence of the words "for human consumption" in Entry 8 – List II is irrelevant as the word "intoxicating" signifies human consumption, i.e., as a beverage and all aspects of its production, manufacture, possession, transport, sale and purchase of "intoxicating liquors" are covered under the said Entry. Also the accidental error in para 85 of the ***Synthetics and Chemicals (7J)*** was explained to say that all potable liquor shall be governed by Entry 8 - List II which is within the exclusive domain of the State. Further, Entry 8 - List

II is outside the purview of Entry 24 - List II and the Union cannot take control of "intoxicating liquors" by making a declaration in terms of Entry 52 - List I. It was further observed that ***Synthetics and Chemicals (7J)*** mainly dealt with "industrial alcohol", i.e., denatured rectified spirit.

10.9 In ***Bihar Distillery,*** this Court further observed that the States have the power to legislate under Entry 33(a) – List III provided the field is not occupied by the Union. That there was a clear line of demarcation at the stage of removal or clearance of the product, i.e., if the clearance is for "industrial" purpose, the duties of excise and all other control is with the Union but if the removal or clearance is for obtaining or manufacturing "potable liquor", the levy of duty and other control is with the State. It was observed that there was a need for joint control and supervision of the process of manufacture of rectified liquor and its use and disposal for ensuring that "industrial alcohol" was not misused by diverting it for potable purpose and consequently certain concrete observations were made in the said judgment which is of a binding nature.

10.10 The challenge to the notification issued by the excise commissioner, Uttar Pradesh dated 18.05.1990 was a subject matter of controversy in ***Vam Organic I***, in the context of legislative competence of the State of Uttar Pradesh to impose tax or levy on "industrial alcohol", ethyl alcohol and rectified spirit. It was observed that the expression "industrial alcohol" is not used in any of the three Lists of the Seventh Schedule of the Constitution. Referring to ***Synthetics and Chemicals (7J),*** this Court observed that the judgment in the aforesaid case proceeded to consider that rectified spirit was the ingredient for "intoxicating liquors" or alcoholic liquors for human consumption. The same was referred to as "industrial alcohol" in respect of which the State has no power whatsoever under Entries 8 and 51 – List II, while the States have the exclusive competence to legislate on "intoxicating liquors" or "alcoholic liquors for human consumption" but if any alcoholic preparation is diverted for human consumption, the States would have the power to legislate under Entry 8 - List II.

10.11 Again, Jeevan Reddy, J. speaking for the Court in ***Bihar Distillery*** noted that in ***Synthetics and Chemicals (7J)*** a distinction was drawn between rectified spirit meant exclusively for industries ("industrial alcohol") and rectified spirit exclusively used for obtaining potable alcohol. The said judgment did not deal with rectified spirit which could be converted to potable alcohol as such. That insofar as the first category was concerned, it was under the exclusive control of the Union and the second category was under the control of the State at all stages including the establishment of the distillery.

10.12 In ***Vam Organic II,*** the history of the legislations on "intoxicating liquors" as well the earlier judgments of this Court were considered and it was observed that the State Legislatures are constitutionally not competent to levy tax on "industrial alcohol" since the coming into force of the IDRA on 08.05.1952. It was opined that ***Synthetics and Chemicals (7J)*** continued to hold the field and therefore, the States' power was limited to regulation of non-potable alcohol for the limited purpose of preventing its use as alcoholic liquors.

Further Analysis:

11. The survey of the aforesaid decisions of this Court and their analysis clearly indicate the golden thread of continuity in all of them, i.e., this Court has been clear on what is meant by the expression "industrial alcohol" as simplified to refer to all alcohol which is "not fit for human consumption as a beverage or non-potable alcohol". By contrast, the use of the expression "potable alcohol" refers to "intoxicating liquors" used for human consumption as a beverage or as a drink. However, in paragraph 85 of ***Synthetics and Chemicals (7J)*** the expression "both potable and" is an inadvertent insertion inasmuch as there was no reason to state that licences to manufacture potable alcohol was vested in the Central Government. Therefore, to that extent the judgment in ***Synthetics and Chemicals (7J)*** calls for a clarification. Apart from that the following points would emerge from paragraph 85:

(i) That, on insertion of Item 26 of the First Schedule to IDRA, the control of "Fermentation Industries" has vested exclusively in the Union.

(ii) Therefore, even the States cannot themselves manufacture "industrial alcohol" without the permission of the Central Government.

(iii) "Industrial alcohol" cannot be amenable to States' claim to possession of exclusive privilege and the States can neither rely on Entry 8 – List II nor Entry 33 – List III as a basis for such claim.

(iv) The States cannot claim that under Entry 33 – List III, it can regulate "industrial alcohol" as a product of the scheduled industry as the Union under Section 18G of the IDRA has evinced a clear intention to occupy the whole field. The doctrine of occupied field under Article 254 has been applied in the said case which shall be adverted to later.

(v) Any exercise of power by the States under Entry 8 – List II is not an exercise of power under Entry 33 – List III.

11.1 The aforesaid judgments state that insofar as "intoxicating liquors" or potable liquors are concerned, Entry 8 - List II is the regulatory Entry while Entry 51 - List II is the taxation Entry which provides for imposition of excise duty on potable liquor also

called alcoholic liquors for human consumption. Conversely, insofar as "industrial alcohol" is concerned, the control of the said industry is vested with the Union owing to Section 2 of the IDRA read with the other provisions of the said Act, which enactment has been made by virtue of Entry 52 - List I. That the Union has taken under its control "Fermentation Industries" as per Item 26 of the First Schedule to the IDRA which has been enacted by the Parliament in relation to Entry 52 - List I excluding "intoxicating liquors". "Fermentation Industries" relates to various products manufactured, processed, etc. as a result of fermentation process. Such products of fermentation are broadly classified as "industrial alcohol" (non-potable alcohol) and "intoxicating liquors" (potable alcohol). This classification is for the purpose of identifying the nature of the product, its use in the industry and consequently, dividing the subject of the legislation between the Parliament and the State Legislature.

11.2 The aforesaid decisions also indicate that merely because "industrial alcohol" or non-potable alcohol such as rectified spirit can be converted into "intoxicating liquors" or alcohol fit for human consumption as a beverage (potable alcohol), that would

not empower the State Legislature to tax or impose any levy on such "industrial alcohol". However, since the expression "intoxicating liquors" in Entry 8 - List II deals specifically with alcohol used as a beverage and meant for human consumption, it would be within the scope and ambit of the said Entry for the State Legislature to regulate any abuse or conversion of "industrial alcohol" as a beverage, which is, in fact, harmful when consumed. Therefore, having regard to Article 47 of the Constitution, a State Legislature can even prohibit manufacture of "intoxicating liquors" in a State as one of the objects of which would be to negate the conversion or abuse of "industrial alcohol" as alcohol fit for human consumption.

11.3 The judgment of this Court in ***Synthetics and Chemicals (7J),*** was also clear about the controversy before it, namely, the competence of the Uttar Pradesh State Legislature to impose vend-fee on "industrial alcohol" when the same is a product of "Fermentation Industries" and, therefore, under the control of the Union.

11.4 However, the sum and substance of the controversy has to be answered by this Court on the premise that, despite there being clarity in the minds of the authorities under the States as well as the Centre, repeated imposition of imposts in the form of tax or excise duties etc., have brought several cases before this Court for adjudication. Ultimately, those who are in the business of "industrial alcohol" or "intoxicating liquors", namely, non-potable and potable liquor respectively are clear about the nature of their business and the products that they are dealing with. Hence, I feel that it is incumbent for this Court to enhance the clarity and not create a further legal regime which would cause confusion and legal uncertainty in the economy.

Meaning of "intoxicating liquors":

12. Before embarking on an enquiry in this Reference to understand the scope of the expression "intoxicating liquors" as it appears in Entry 8 – List II, it would be useful to highlight that this Court has relied on pre-constitutional legislations and the Constitution of India while interpreting the scope of the expression "intoxicating liquors".

12.1 At the outset, I may refer to Cooley's "Constitutional Limitations" [2nd ed. Boston : Little, Brown & Company, p.58], wherein it is explained as follows:

> "In interpreting clauses we must presume that words have been employed in their natural and ordinary meaning. Says Marshall, Ch. J.: "The framers of the Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have understood what they meant." This is but saying that no forced or unnatural construction is to be put upon their language; and it seems so obvious a truism that one expects to see it universally accepted without question; but the attempt is so often made by interested subtlety and ingenious refinement to induce the courts to force from these instruments a meaning which their framers never held, that it frequently becomes necessary to re-declare this fundamental maxim."
>
> (underlining by me)

Therefore, one task before this Court is to ascertain to what extent "intoxicating liquors" had acquired a natural and ordinary meaning at the time of the Constitution coming into force.

12.2 I may note another cardinal rule of interpretation explained by Sir Maurice Gwyer C.J., of the Federal Court of India in ***In Re: the Central Provinces and Berar Act No. XIV***

of 1938, 1939 1 FCR 80, while discussing the principles of interpretation of a constitutional provision as under:

> "I conceive that a broad and liberal spirit should inspire those whose duty it is to interpret it; but I do not imply by this that they are free to stretch or pervert the language of the enactment in the interests of any legal or constitutional theory, or even for the purpose of supplying omissions or of correcting supposed errors. A Federal Court will not strengthen, but only derogate from, its position, if it seeks to do anything but declare the law; but it may rightly reflect that a Constitution of a Government is a living and organic thing, which of all instruments has the greatest claim to be construed *ut res magis valeat quam pereat*."

12.3 The learned Chief Justice Dr. Chandrachud, in his opinion has conducted an extensive inquiry into identification of legislative meaning of the phrase and its legislative history, but found that no conclusive answer can be reached on the legal import of "intoxicating liquors". With due respect, I view that such an enquiry needs to give due primacy to the ordinary and natural meaning of words and also test their connotations in colloquial use by the Constitution makers so as to give it a constitutional flavour.

A Historical Perspective:

12.4 A historical enquiry would show that "intoxicating liquors" was first used in Entry 31 – List II in the Government of India Act, 1935. This was a departure from the legislative head in Devolution Rules framed under the Government of India Act, 1919 insofar as the Entry therein was "alcoholic liquor". The revisions in List II of Government of India Act, 1935 were partly the product of a Joint Select Committee chaired by Lord Linlithgow. Later, the word "liquors" was also qualified by the word "intoxicating".

12.5 I may briefly refer to the following remarks of Brewer, J. in ***South Carolina vs. United States, (1905) 199 US 437 ("South Carolina"):***

> "To determine the extent of the grants of power, we must, therefore, place ourselves in the position of the men who framed and adopted the Constitution, and inquire what they must have understood to be the meaning and scope of those grants."

12.6 In this backdrop, it is useful to draw sustenance from certain contemporaneous legislations and Hansard records that go to show that the phrase "intoxicating liquors" was used in the context of consumption. On 30.04.1889, the House of Commons

on a motion moved by Mr. S. Smith to discuss how the fiscal system of the Government of India led to the establishment of spirit distilleries, liquor and opium shops in a large number of places where till recently (from the date of question) they never existed had several references to "intoxicating liquors" exclusively in the context of consumption. On 29.06.1904, Mr. Herbert Roberts, a person interested in temperance asked the Secretary of State for India whether he was aware that the number of 'shops open for the sale of "intoxicating liquors" and drugs in India rose from 97,910 in 1901–02 to 99,497 in 1902–03' and whether he was in a position to explain the reasons for this increase in the number of shops opened and the consequent increase in consumption. Most interestingly, on 13.07.1937, in a sitting of the House of Lords, Lord Clwyd (formerly Mr. Herbert Roberts) asked the Secretary of State for India the following question:

> "To ask His Majesty's Government what was the amount in pounds sterling of the net Excise revenue of India for the years 1933–1934, 1934–1935 and 1935–1936 respectively; what was the recorded consumption of country spirits in 1935–1936 in Bengal, Madras, Bombay, Sind, Bihar and Orissa, the United Provinces, the Punjab, the North-West Frontier Province, the

> Central Provinces and Berar, Assam and Burma respectively; **what was the number of shops licensed for the sale of intoxicating liquor**, the net amount of Excise revenue, and the cost of Excise administration in each Province in 1930–1931 and 1935–1936; and what was the percentage of Excise revenue compared with the total revenue accruing to the Provincial Governments in each case for the year 1935–1936."

12.7 This enquiry reflects that "intoxicating liquors" has not only been a term of common parlance but was also used in administration for assessment and regulation of consumption of spirits in provinces in pre-independence India from the point of view of collection of revenue.

Constituent Assembly Debates:

12.8 I might also take persuasive strength from the use of the expression "intoxicating liquors" in Constituent Assembly Debates in the context of Article 47. Sri B.G. Kher speaking on the ruin caused by the consumption of alcohol noted the use of **"intoxicating liquors"** and drugs as a vice.

12.9 The aforesaid discussion points to the fact that there was a consumption-oriented meaning attached to "intoxicating liquors" that was used for legal and administrative purposes. To

ascertain the breadth of the phrase "intoxicating liquors" as it was used by the draftsmen of the Constitution and the Government of India Act, 1935 one cannot be bound by only the definitions provided in legislative enactments, or lack thereof.

12.10 The Constitution of India clearly employs three distinct expressions relevant to the present controversy:

(a) Entry 51 - List II refers to duties on '**alcoholic liquors for human consumption**';

(b) Article 47 uses the words "consumption of '**intoxicating drinks**'"; and

(c) Entry 8 – List II uses the words in question – **"intoxicating liquors**"

12.11 I may observe that the expression **"alcoholic liquors for human consumption"** as it appears in Entry 51 – List II and **intoxicating drinks** as it appears in Article 47 have been categorically used in the context of human consumption as a beverage, as rightly observed by the learned Chief Justice in his opinion. Herein, I might note that appellants have sought to contend that the expression "intoxicating liquors" as it appears

in Entry 8 – List II has no explicit neighboring context which would indicate that it is restricted to mean only potable liquor.

12.12 The first interpretive question therefore is, whether the absence of the context of consumption expands "intoxicating liquors" to also include "industrial alcohol". In my opinion, the words "intoxicating liquors" itself explains that Entry 8 – List II does not seek to travel beyond "intoxicating liquors" meant for human consumption i.e., potable alcohol. This was also the view of Jeevan Reddy, J. in ***Bihar Distillery.***

12.13 Another distinguishing consideration is the use of "intoxicating" as an adjective to liquor i.e., as a qualifier whereas elsewhere in the Constitution the word "alcoholic" accompanies the word liquor. Learned Chief Justice has carefully found following three inferences which are summarized as under:

a) ***Ingredient vs. Effect:*** "Alcoholic liquor" defines the scope of the provision based on the ingredient, that is, alcohol whereas "intoxicating liquors" defines the scope based on effect i.e. intoxication. Therefore, liquor which is not

colloquially considered alcoholic liquor may be covered by the phrase "intoxicating liquors".

b) ***Broader intent:*** 'Intoxicate' means either the ability of someone to lose control of their behavior or poison. Thus, the purpose of substituting the adjective which indicates the impact with the ingredient seems to have enhanced the scope of the Entry to cover all liquor which has an impact on health; and

c) ***Public interest purpose:*** There is a discernible public interest in covering the entire stage from production to sale of "intoxicating liquors". Additionally, Entry 31 – List II in the Government of India Act, 1935 also regulated narcotic drugs and opium along with "intoxicating liquors". However, references to them were deleted to prevent overlapping with entries in the Concurrent List. In substance, the inference that is drawn is that all – alcohol, narcotic drugs and opium – are products which can be noxiously used because they are also used as raw materials in the production of other products.

12.14 What *prima facie* appears is that the "intoxication" effect is a *sine qua non* for the legislative competence of States on any liquors potentially coming within the scope of Entry 8 – List II. In the absence of an "intoxicating" effect from liquors, a State Legislature cannot legislate on the subject. However, in my view, what is required to be seen is the nature of the product which leads to such an intoxicating effect upon human consumption of the same. Here, the expression consumption must be explained. It is not all kinds of human consumption, direct or indirect, which is the determining factor. It is only direct consumption i.e. as an ingestion by the act of drinking as a beverage or a drink. An indirect consumption by use of alcoholic liquors as a raw material for any other product, industrial, medicinal or a toilet item cannot be included as part of Entry 8 – List II. Secondly, merely because there can be a potential misuse of "industrial alcohol", for example, by converting rectified spirit ("industrial alcohol") as a beverage which has an intoxicating effect, Entry 8 – List II cannot be stretched to include such "industrial alcohol". The prevention of abuse of "industrial alcohol" as a beverage is also covered under Entry 8 – List II. Thus, what is carved out of

"Fermentation Industries" in Entry 24 – List II is only "intoxicating liquors" used as beverage and thus, for direct human consumption the said subject is placed in Entry 8 – List II. This would imply that the rest of "Fermentation Industries" would be within the scope and ambit of Entry 24 – List II which is subject to Entry 52 – List I and is a scheduled industry as per Section 2 read with Item 26 of First Schedule of IDRA.

12.15 One must also be cognizant of the fact that Entry 8 – List II concerns itself with "intoxicating liquors" even from a historical perspective. Constitutional framers were not engaged in a theoretical task of demarcating legislative fields but in their utmost wisdom and pragmatism distributed legislate fields between Parliament and State Legislatures that would continue to determine the governance of the nation. One must note that a construction of Entry 8 – List II should not potentially give the States the legislative competence to legislate on "industrial alcohol" which is a scheduled industry under IDRA. That Entry 8 – List II which deals with "intoxicating liquors" cannot also subsume industries for manufacture of "industrial alcohol", etc.

12.16 Therefore, in deciding on "intoxicating liquors", the contours of interpretation must be concerned only with the very nature of the product of "intoxicating liquors" rather than the entire industry concerning alcohol. Entry 8 – List II provides the legislative competence to States to regulate production, manufacture, possession, transport, purchase and sale of only "intoxicating liquors". It must follow from this that what is being produced or manufactured or possessed or transported or purchased or sold must actually be "intoxicating liquors" and not any other alcoholic product.

12.17 Halsbury's Laws of England (Fourth Edition), Volume 26 defines the meaning of "intoxicating liquors" as discussed in the context of the distinction between wholesale and retail trade. It is stated that "Dealing wholesale" means "the sale at any one time to any one person of not less than two gallons or one case of spirits, wine or made-wine, or not less than four and a half gallons or two cases of beer". "Selling by retail" means "the sale at any one time to any one person of not more than two gallons or one case of spirits, wine or made-wine or not more than four

and a half gallons or two cases of beer or cider". The following definitions are apposite:

(i) "Spirits" is defined to mean spirits of any description and includes all liquors mixed with spirits and all mixtures, compounds and preparations made with spirits, but does not include methylated spirits : Customs and Excise Act, 1952.

(ii) "Wine" means liquor obtained from the alcoholic fermentation of fresh grapes or the must of fresh grapes, whether or not it is fortified with spirits or flavoured with aromatic extracts.

(iii) "Made-wine" means any liquor obtained from the alcoholic fermentation of any substance or by mixing a liquor so obtained or derived from a liquor so obtained with any other liquor or substance, but does not include wine, beer, black beer, spirits or cider. This definition replaced an earlier one in different terms of "British wine".

(iv) The definition of "beer" includes ale, porter, stout and any other description of beer and any other liquor which is made or sold as a description of beer or as a substitute for beer

which on analysis of a sample at any time is found to be of a strength exceeding two degrees of proof, but does not include liquor made elsewhere than upon the licenced premises of a brewer for sale which on analysis of a sample at any time is found to be of an original gravity not exceeding 1,016 degrees and to be of a strength not exceeding two degrees of proof : Customs and Excise Act, 1952.

(v) "Intoxicating liquors" means spirits, wine, beer, cider and any fermented, distilled or spiritous liquor but (apart from cider) does not include any liquor for the sale of which by wholesale no excise licence is required : Licensing Act, 1964.

(vi) "Cider" means cider or perry of a strength less than 8.7 per cent of alcohol by volume at 20 degrees Centigrade obtained from the fermentation of apple or pear juice without the addition at any time of any alcoholic liquor or liquor or substance which communicates colour or flavour other than such as the Commissioner of Customs and Excise may allow as appearing to them to be necessary to make cider or perry : Customs and Excise Act, 1952.

(vii) “Intoxicating liquors other than spirits” includes beer, wine, made-wine and cider.

12.18 It may also be useful to outline some undisputed elements of “industrial alcohol”. It is an undisputed position that “industrial alcohol” is not meant to be consumed as a human beverage. In other words, it is not produced or manufactured to be meant for direct human consumption as a beverage. However, only when misused, as an intoxicating substance after some treatment, howsoever limited, “industrial alcohol” certainly could cause the “intoxicating” effect on direct human consumption.

12.19 Two distinguished interpretations have been contended before us. In effect, the respondents contend that “intoxicating liquors” must be so constructed that it includes only “liquors which are meant to intoxicate” as is. *Per contra,* the appellants contend that it is a cardinal rule of interpretation that legislative Entries be given the widest possible construction and therefore Entry 8 – List II should be read as “liquors which can intoxicate even when mischievously used”. The effect of the appellants’ construction is that Entry 8 – List II will give States

the legislative field on “industrial alcohol”, which by design is not sought to be intoxicating but rather could intoxicate because of its misuse.

12.20 Before proceeding further, I may first note a notable feature of the phraseology of Entry 8 – List II of the Constitution of India and Entry 40 – List II, as Entry 8 appeared in the Draft Constitution. Neither in the Constitution nor in the Draft Constitution was there any other Entry in List II that used an adjective as a qualifier. Whether use of the word “intoxicating” enlarges or limits the scope of “liquors” is something that needs to be answered. Herein, “intoxicating” is an adjective that is adjoined to “liquors” and explains an effect that is caused. In this regard, learned Solicitor General contended that “intoxicating” has been used to expand beyond the limits of “alcoholic liquors” because States have an interest in regulating other “intoxicating liquors” such as *bhang*. It needs no labour that an “intoxicating” effect can be said to be caused only upon actual consumption by human beings. Unlike potable alcohol, “industrial alcohol” by its design, intent and purpose is neither sought to be consumed and cause an intoxicating effect nor is it produced keeping in mind

its intoxicating effect on human beings. If we were to read "industrial alcohol" as "intoxicating liquors" which even though by design is neither supposed to be consumed nor have an effect on health but has the constituents that could be "intoxicating" when misused, it would enable a cumbersome interpretational plane.

12.21 It is useful to allude to the *sine qua non* of Entry 8 – List II i.e. the intoxicating effect. In my view, the *sine qua non* of Entry 8 – List II i.e. the "intoxicating" effect of liquor has to be read as (i) an effect, and (ii) an intended effect of the industry and its products. One might argue that even "industrial alcohol" due to its very constituents could cause an intoxicating effect, when mischievously consumed, albeit with dire consequences. However, such an argument ignores that the fundamental nature of "industrial alcohol" is that it is non-potable i.e. when put to its actual use, neither is it intended to be consumed by human beings as a beverage nor, as a corollary, is sought to cause an "intoxicating" effect on human beings. "Industrial alcohol" can be said to cause an "intoxicating" effect only when it is mischievously directed away from its actual purpose and use and

towards human consumption. To accept such a rationale for interpreting Entry 8 – List II would lead to an anomalous situation wherein the marginal mischievous use of "industrial alcohol" would bring in the whole industry of "industrial alcohol" to Entry 8 – List II and take it out of Entry 24 – List II *viz.* "industrial alcohol" which is not always meant to intoxicate a human being but could only sometimes when used mischievously or abused would wholly become a legislative field for States to legislate. It is to avoid such an abuse that States have the powers to prevent by suitable legislative and administrative measures, as has been held in the aforesaid decisions of this Court.

12.22 Viewed from another perspective, the exception (mischievous use) cannot lead to governing of the norm (original intended use) through such construction of Entry 8 – List II. Put into practice, this would translate into legislative regulation of production, manufacture, possession, transport, purchase and sale of the entire industry and product of "industrial alcohol" only because of its possible misuse or mischievous use. This reading would be tantamount to attaching to the constitutional

intent an absurdity i.e. the part governing the whole or in other words, bringing within the ambit of Entry 8 – List II something which is an exception as a main aspect of the Entry. A careful revisit pertinent at this point would be to paragraph 86 of ***Synthetics and Chemicals (7J)***, wherein it was held that States continue to have legislative competence to ensure that non-potable alcohol is not misdirected to potable alcohol. That is different from saying that States have the right to regulate "industrial alcohol" or non-potable alcohol. A power to legislate as to the principal matter specifically mentioned in the Entry also includes within its expanse, legislation touching incidental and ancillary matters. However, ancillary matters by a backdoor cannot be included within the Entry, beyond what is covered as the principal. Herein, the ancillary matter being prevention of mischievous use of "industrial alcohol" would be within Entry 8 – List II but "industrial alcohol" as such would not be included.

Hence, the analysis of the relevant Entries in the three Lists must be in the backdrop of the aforesaid discussion.

Analysis of relevant Entries in the three Lists:

13. While analysing Entry 52 – List I which deals with industries, the control of which by the Union is declared by Parliament by law to be expedient in public interest, it would be useful to refer to Entries 7 and 54 – List I. What is common in all these three Entries is that there is a declaration made by the Parliament. Entries 7, 52 and 54 – List I read as under:

> **"7.** Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.
>
> xxx
>
> **52.** Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
>
> xxx
>
> **54.** Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

13.1 What is common between Entry 52 – List I and Entry 54 – List I is the fact that control of industries or regulation and development of mines and mineral development respectively is to the degree or extent under the control of the Union which is expressed by a declaration made by Parliament by law to be

expedient in the public interest. Thus, under Entry 52 – List I, the intent to control an industry: (i) by the Union; (ii) by a declaration by Parliament by law; and (iii) which law is expedient in the public interest are the key phrases to be taken note of. Thus, if there is a declaration by Parliament by law (such as IDRA) to control any of the industries by the Union, such as "Fermentation Industries" which is expedient in the public interest then, to the extent of such control, the industries would be covered under Entry 52 – List I. This is also evident on a reading of Entry 24 – List II which also deals with the field of legislation being "industries" subject to the provision of Entries 7 and 52 – List I. As already noted above, Entry 7 – List I pertains to industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. Entry 52 – List I deals with "industries", the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

13.2 In ***Ishwari Khetan***, the facts were that the Governor of Uttar Pradesh promulgated an Ordinance on 03.07.1972, styled as U.P. Sugar Undertaking (Acquisition) Ordinance, 1971, with a

view to transferring and vesting sugar undertakings set out in the Schedule to the Ordinance in the U.P. State Sugar Corporation Limited, a Government Company within the meaning of Section 617 of the Companies Act, 1956. Subsequently, the Ordinance was repealed and replaced by an Act. The Schedule to the Act enumerated twelve sugar undertakings which stood transferred to and vested in the Corporation w.e.f. 03.07.1971, the date on which the Ordinance was issued. Writ Petitions were filed before the Allahabad High Court challenging the constitutional validity of the Ordinance as well as the Act on various grounds. The Division Bench of the High Court had repelled the contentions advanced on behalf of the petitioners therein and upheld the constitutional validity of the Act. Before this Court, the main thrust of the attack was that the U.P. Legislature lacked legislative competence to enact the impugned Act. This was because under Entry 52 – List I the Parliament had made the requisite declaration in Section 2 of the IDRA and in view of Item 25 of the First Schedule to the Act i.e. sugar, being a declared industry therein, that industry was excluded from Entry 24 - List II. Hence U.P. State Legislature was

denuded of all legislative power to legislate in respect of sugar industry and the impugned legislation was void on account of legislative incompetence.

13.2.1 D.A. Desai, J. for himself and on behalf of V.R. Krishna Iyer and S. Murtaza Fazal Ali, JJ. wrote for the majority. This Court analysed the relevant Entries keeping in view the legislative perspective and historical background through which Entries 7 and 52 – List I, Entry 24 - List II and Entry 33 - List III, *inter alia,* had passed through. Considering Entry 52 – List I and Entry 24 - List II, it was observed that "industry" as a head of legislation is to be found in Entry 24 - List II with the limitation that it is subject to Entries 7 and 52 - List I. The difference in the language in which Entries 7 and 52 - List I is couched has a bearing on the interpretation of Entry 52 - List I. The subject "industry" being enumerated in List II, the State Legislature has power to legislate in respect to it and keeping aside the words "subject to the provision of Entries 7 and 52 of List I", the State Legislature alone can legislate in respect of the legislative head "industry". *Ipso facto* Parliament would have no power to legislate in respect of industry as a legislative head. Under Entry 52 - List

I, unless and until a declaration is made by Parliament by law to assume control over specified industries, the embargo on the power of Parliament to legislate in respect of industry would not be lifted. The declaration has to be made by Parliament by law to assume control over specified industry in public interest. Thus, the extent of control would be known by the declaration so made by law. This would necessarily depend upon the legislation enacted spelling out the degree of control assumed which is a pre-requisite for assuming control over a specified industry. As a result to that extent, the State Legislature would be denuded of its powers to legislate under Entry 24 - List II. It was contended that the industry in respect of which control is assumed for the purpose of their development and regulation have been set out in the First Schedule and in the manner provided in the statute i.e. IDRA which also provides the limit of control to the extent mentioned in the said Act. It was contended that Section 2 has to be read along with the Act and not read *de hors* the Act. This would mean the provision of the Act would make the control concrete and specific and the manner in which exercise has to be laid down and not some abstract control. Thus, the control

has to be concrete and the mode and method of its exercise must be regulated by law. That under the IDRA, Sections 3 to 30 set out various modes and methodology, power and procedure to effectuate the control which the Union acquired by virtue of the declaration contained in Section 2 of the IDRA. On these contentions, it was observed that absence of the words "to the extent herein provided" in Section 2 of the IDRA would not lead to the conclusion that the control assumed was to be something in abstract, total and unfettered and not as per the provisions of the IDRA. It was thus held that to the extent Union acquired control by virtue of declaration in Section 2 of the IDRA as amended from time to time, the power of the State Legislature under Entry 24 - List II to enact any legislation in respect of declared industry so as to encroach upon the field of control occupied by IDRA would be taken away.

13.2.2 In this regard, reliance was placed on ***Baijnath Kedia vs. State of Bihar, AIR 1970 SC 1436 ("Baijnath Kedia").*** Thus to the extent the provision of the IDRA occupies the field, the State Legislature stands denuded of its power to legislate in respect of such declared industry. Examining the provision of the

IDRA, it was held that in pith and substance, the impugned Act was one for acquisition of scheduled undertakings to the corporation, which would in no way come in conflict with any of the provision of the IDRA or would not trench upon any control exercise by the Union under the various provisions of the IDRA. That the IDRA is not concerned with the ownership of industrial undertaking in declared industry except the control over the management of the undertaking by the owner. Thus the legislative power of the State under Entry 24 - List II is eroded only to the extent control is assumed by the Union pursuant to a declaration made by the Parliament in respect of a declared industry as spelt out by the legislative enactment and the field occupied by such enactment is the measure of erosion. Subject to such erosion, on the remainder the State Legislature will have power to legislate in respect of a declared industry without in any way trenching upon the occupied field. It was held that State Legislature which is otherwise competent to deal with industry under Entry 24 – List II can deal with that industry in exercise of other powers enabling it to legislate under different heads set out in Lists II and III and this power cannot be denied to a State.

The second limb of the submission therein is not related to the present controversy and need not be adverted to. It was finally observed that the impugned Act was not intended to take over management or control of any industrial undertaking by the State Government as in pith and substance, it was enacted to acquire the scheduled undertakings in terms of Entry 42 – List III.

13.2.3 In ***Ishwari Khetan***, Pathak, J. (as he then was) for himself and for Koshal, J. (minority view) observed that while they broadly agreed with the final conclusion, on several points, reached by Desai, J. in his judgment, they preferred to refrain from expressing any opinion on the question whether the declaration made by Parliament in Section 2 of the IDRA in respect of the industries specified in the First Schedule to that Act can be regarded as limited to removing from the scope of Entry 24 - List II only so much of the legislative field as is covered by the subject matter and content of that Act or it can be regarded as effecting the removal from that Entry of the entire legislative field embracing all matters pertaining to the industries specified in the declaration. It was further opined that the

observations made by this Court in ***Hingir-Rampur Coal Co., Ltd. vs. The State of Orissa, AIR 1961 SC 459 ("Hingir-Rampur")***; ***State of Orissa vs. M.A. Tulloch and Co., AIR 1964 SC 1284 ("M.A. Tulloch")***; ***Baijnath Kedia vs. State of Bihar, AIR 1970 SC 1436 ("Baijnath Kedia")***; and ***State of Haryana. vs. Chanan Mal, AIR 1976 SC 1654 ("Chanan Mal")***, would not be of assistance in this behalf. In each of those cases, the declaration made by Parliament in the concerned enactment limited the control of the regulation of the mines and the development of minerals to the extent provided in the enactment. Whether the terms in which the declaration has been made in Section 2 of the IDRA, a declaration not expressly limiting control of the specific industries to the extent provided by the Act, can be construed as being so limited was a matter which, they thought, should be dealt with in some more appropriate case. That the range of considerations encompassed within the field of enquiry to which the point was amenable had not been sufficiently covered before the Court. "This was for the good reason and, hence, the provocation was limited." Therefore, the controversy could be adequately answered on the ground that

the legislation impugned therein fell within Entry 42 - List III and would not be related to Entry 52 - List I or Entry 24 - List II.

13.2.4 Therefore, there was a reluctance to enter upon an examination of the mutually competing claims of Entry 52 - List I and Entry 24 - List II — Entries which deal with "industries". Consequently, the appeals were dismissed.

13.3 When the expression "subject to" is used in an Entry in List II it would imply that the said Entry is subordinate to the respective Entries in List I and has to be read along with the relevant Entry in List I. Thus, on a conjoint reading of Entry 24 – List II with Entry 52 – List I, it is apparent that Entry 24 – List II is subject to Entry 52 – List I. The expression "subject to" in the Entries in List II has been a subject matter of interpretation in several decisions and is of legal import.

13.3.1 As per Black's Law Dictionary, 5th Edition, Pg.1278, "subject to" means "liable, subordinate, subservient, inferior, obedient to, governed or affected by."

13.3.2 The relevant judgments of this Court on the point are discussed as under:

a) In ***Hingir Rampur Coal Company vs. State of Orissa, (1961) 2 SCR 537 ("Hingir Rampur"),*** while interpreting the import of the expression "subject to" in Entry 23 – List II and the interplay of that Entry with Entry 54 – List I, this Court observed as undisputed the position in law that, once a Central Act containing a declaration by Parliament covering the field is passed as required by Entry 54 – List I, the State Legislature had no legislative competence to enact a legislation on the subject that has already been occupied by a Central legislation – not for reason of repugnancy but rather competence at the very inception.

b) In ***Gujarat University vs. Shri Krishna Ranganath Mudholkar, AIR 1963 SC 703 ("Shri Krishna")***, this Court was tasked with interpreting Entry 11 - List II, which, although stands omitted now, earlier read as *'Education including universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I and Entry 25 of List III'*. Therein, it was held that use of the expression "subject to" in Entry 11 - List II clearly indicated that legislation in respect of excluded matters cannot be made by the State Legislature.

By the Constitution (Forty-Second Amendment), 1976, Entry 11 – List II was omitted, as noted above, and Entry 25 – List III was substituted as, '*Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.'* In this context, this Court in ***Baharul Islam vs. The Indian Medical Association, 2023 SCC OnLine SC 79 ("Baharul Islam")***, while referring to ***Modern Dental College & Research Centre vs. State of Madhya Pradesh, (2016) 7 SCC 353 ("Modern Dental College")***, explained that where one Entry is made 'subject to' another Entry, it means that out of the scope of the former Entry a field of legislation covered by the latter Entry has been reserved to be specially dealt with by the appropriate Legislature.

c) Similarly, while interpreting the significance of a constitutional provision being subject to another in ***The South India Corporation (P) Ltd. vs. The Secretary, Board of Revenue Trivandrum, AIR 1964 SC 207 ("South India Corporation")***, this Court observed that the

expression "subject to" conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject.

d) Helpful reference may also be made to the import of "subject to" in legislative uses. In ***Ashok Leyland Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 1, ("Ashok Leyland Ltd.")*** this Court held that "subject to" is an expression whereby a limitation is expressed.

13.4 Having noted as above, it is also crucial to examine the interplay between Entry 52 – List I, Entry 24 – List II and Entry 8 – List II. Entry 24 – List I is a regulatory Entry which provides State Legislatures with the competence to legislate on "industries" subject to Entry 7 – List I and Entry 52 – List I. In effect, Entry 52 – List I enables the Union to take an industry out of the legislative competence of States and bring it within Entry 52 – List I. In the instant cases, the primary question is whether there is any overlap between Entry 52 – List I and Entry 8 – List II. In other words, is there any conflict between the exclusive competence of State Legislatures under Entry 8 – List II and the

regulation of industries the control of which by the Union is declared by Parliament by law to be expedient in the public interest under Entry 52 – List I?

13.4.1 It is a settled law that the meaning of "industries" in Entry 52 – List I and Entry 24 – List II is coextensive. Therefore, what is out of Entry 24 – List II will also not be within Entry 52 – List I. In that context, it has been contended before us that Entry 8 – List II is a unique Entry as it is not limited to only the product of "intoxicating liquors" but also takes within its sweep the "industry" of "intoxicating liquors". It was also submitted that Entry 8 – List II unlike Entry 24 – List II is not subject to Entries in List – I and therefore the industry of "intoxicating liquors" is the exclusive domain of State Legislatures. The import of such a position is that if Entry 8 – List II is held to be both an industry-based and product-based Entry, the Entry would empower States to legislate on both the product of "intoxicating liquors" and production of the product as well. Furthermore, as Entry 8 – List II is not subject to Entry 52 – List I, the industry of "intoxicating liquors" will be out of Entry 24 – List II, and therefore, coextensively under Entry 52 – List I the Union would

not have the legislative competence to legislate on what lies exclusively within Entry 8 – List II.

13.4.2 Learned Chief Justice Dr. Chandrachud in his proposed judgment has observed that the Seventh Schedule differentiates between the industry and product of industry and, even further, Entry 8 – List II is special because such a distinction made in the general Entries is not adopted in Entry 8 – List II. As rightly pointed out, it is the potential overlap between Entry 52 – List I and Entry 8 – List II which must be resolved herein.

13.4.3 In this regard, reference to the dictum of this Court in ***Calcutta Gas Company*** is apposite, wherein the interpretation between Entries 24 and 25 – List II in relation to Entry 52 – List I was considered. It was observed that Entry 24 – List II in its widest amplitude takes in all industries, including that of "gas and gas-works". So does Entry 25 – List II which comprehends gas industry. There is, therefore, an apparent conflict between the two Entries and they overlap with each other. It was observed that in such a contingency the doctrine of

harmonious construction must be invoked. While Entry 24 – List II covers a very wide field, that is, the field of entire industry being within the legislative competence of the State, Entry 25 – List II dealing with "gas and gas-works", can be confined to a specific industry, that is, the "gas industry". This was possibly because only one or two States are concerned with "gas industry" and it was not considered to be of an all-India importance and therefore, was carved out of Entry 24 – List II and given a separate Entry as Entry 25 – List II, as otherwise if a declaration by law was made by Parliament within the meaning of Entry 7 or Entry 52 - List I, gas and "gas industries" would be taken out of the legislative power of States. Therefore, by the doctrine of harmonious construction, "gas and gas works" were found to be within the exclusive field allotted to the States and outside the legislative field of Parliament. It was further observed that the expression "industry" in Entry 52 - List I bears the same meaning as that in Entry 24 - List II, with the result that the said expression in Entry 52 - List I also does not take in the industry of "gas and gas works". If so, it followed that the IDRA, in so far

as it purported to deal with the "gas industry" is beyond the legislative competence of Parliament.

13.4.4 Keeping the aforesaid dictum in mind, it must be observed that Entry 8 – List II being a special Entry prevails over the general Entry 24 – List II. Therefore, while Entry 52 – List and Entry 8 – List II overlap on the aspect of "industry" of "intoxicating liquors", Entry 52 – List I cannot takeover the "industry" of "intoxicating liquors".

13.5 Therefore, the next question is whether Entry 8 – List II which deals with "intoxicating liquors", that is to say, the production, manufacture, possession, transport, purchase and sale of "intoxicating liquors" is restricted to only alcoholic liquors for human consumption i.e., potable alcohol or it would also extend to non-potable alcohol or "industrial alcohol". In other words, if "industrial alcohol" is read within the meaning of Entry 24 – List II then, whether, on account of the declaration made by the Parliament in Section 2 of the IDRA in terms of Entry 52 – List I it would be excluded from Entry 24 – List II and included under Entry 52 – List I as per the provisions of the IDRA. In other

words, the question is whether Entry 8 – List II which deals with "intoxicating liquors" would take within its scope and ambit "industrial alcohol"?

One of the ways of answering these questions would be to compare Entry 84 – List I as it stood prior to 16.09.2016 with Entry 51 – List II although both are taxation Entries. Entry 84 – List I dealt with duties of excise on tobacco and other goods manufactured or produced in India except – (a) alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this Entry. Entry 51 – List II talks of duties of excise on the goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India, namely, - (a) alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this Entry. Both are taxation entries.

13.6 On a comparative reading of the said two Entries, what is evident is that excise duty on goods manufactured as per Entry 84 – List I excludes duty of excise on alcoholic liquors for human consumption. This is subject to the further exception that, if, any medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of the said Entry, namely, opium, Indian hemp and other narcotic drugs and narcotics, then, the excise duty is leviable as per Entry 84 – List I by the Union or Central Government. Conversely, under Entry 51 – List II, goods manufactured or produced in the State would be subject to excise duty such as on – a) alcoholic liquors for human consumption; b) opium, Indian hemp and other narcotic drugs and narcotics, but does not include medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of the said Entry. In other words, alcoholic liquors not meant for human consumption and medicinal and toilet preparations containing alcohol or any substance such as opium, Indian hemp and other narcotic drugs and narcotics would be subject to excise duty leviable under Entry 84 – List I by the Central Government. Insofar as alcoholic liquors for

human consumption is concerned, the States have the power to levy excise duty.

13.7 Therefore, in my view, the framers of the Constitution bifurcated alcoholic liquors for human consumption as distinct from alcohol used for medicinal and toilet preparations or any other liquor including "industrial liquor" on which excise duty is leviable under Entry 84 – List I. What is the purpose of excluding levy of excise duty under Entry 84 – List I on alcoholic liquors for human consumption and including the same under Entry 51 – List II and thereby giving the powers to the State Legislature to levy excise duty on such alcoholic liquors? The intent of the framers of the Constitution was to categorize alcoholic liquors into following two categories and accordingly divide the legislative powers between Parliament and State Legislature:

(a) alcoholic liquors for human consumption (potable alcoholic liquors); and

(b) alcoholic liquors not for human consumption such as "industrial alcohol" (non-potable alcoholic liquors).

At this stage itself, it is made clear that if alcoholic liquor, which is manufactured for the purpose of using the same as a raw material in the manufacture or production of any other "industrial product" and is subject to a process, would not come within the scope and ambit of "alcoholic liquors for human consumption". As noted, the said product is also known as "industrial alcohol". Such "alcoholic liquors" or "industrial alcohol" are not used directly for human consumption as a beverage. On the other hand, it would be an abuse of such "industrial alcohol", if consumed as a beverage. Merely because it can be subjected to a process and mischievous human consumption is possible, does that make "industrial alcohol" "alcoholic liquors for human consumption" within the meaning of Entry 84 – List I and Entry 51 – List II and also "intoxicating liquors" within the scope and ambit of Entry 8 – List II?

13.8 A person or an entity which is not engaged in the manufacture of alcoholic liquors for human consumption as a beverage is not authorised to manufacture "industrial alcohol" and subject it to a process and sell it as alcoholic liquors for human consumption. The same is prohibited and has to be dealt

with having regard to the scope and ambit of Entry 8 – List II. On the other hand, it is only "intoxicating liquors" which is directly for human consumption as a beverage and the production, manufacture, possession, transport, purchase and sale of such "intoxicating liquors", as per Entry 8 – List II, which is within the competence of State Legislature i.e. for the purpose of regulation of such "intoxicating liquors" which would also entail levy of an excise duty on such "intoxicating liquors" as per Entry 51 – List II as alcoholic liquor for human consumption. Therefore, on "intoxicating liquors" which is alcoholic liquors directly for human consumption as a beverage, excise duty is levied by the State Legislature and regulated under Entry 8 – List II. Also, under Entry 84 – List I, the Parliament has no power to levy any such excise duty on such "intoxicating liquors" meant for human consumption as a beverage as it is an expressly excluded item. In other words, alcoholic liquors for human consumption is thus directly relatable to "intoxicating liquors" and the expression "intoxicating liquors" in Entry 8 – List II means alcoholic liquors directly for human consumption as a beverage. Thus, no other alcoholic liquors can be regulated as per Entry 8 – List II except

to ensure that there is no abuse/misuse of "industrial alcohol" being treated for human consumption by subjecting it to a particular process; nor can any excise duty be levied on such liquor by the State Legislature.

Hence, any "intoxicating liquors" would mean alcoholic liquors for human consumption which is produced, manufactured, possessed, transported, purchased or sold and can be regulated under Entry 8 – List II by the State Legislature but alcoholic liquors which are not for human consumption as a beverage would not come within the scope of the expression "intoxicating liquors", such as "industrial alcohol" which would in turn be regulated by Entry 24 – List II which Entry is subject to Entry 52 – List I and can be controlled by the Union exclusively. Thus, "industrial alcohol" and medicinal and toilet preparations which contain alcohol can be taxed as per Entry 84 – List I by the Central Government in the form of central excise duty.

13.9 Merely because "industrial alcohol" by a process can be converted to alcohol for human consumption as a beverage does not entitle the State Legislature to tax or regulate "industrial

alcohol". On the other hand, the States as per Entry 8 – List II have the power to regulate "intoxicating liquors" which is for human consumption as a beverage and in that regard have the power to prohibit "industrial alcohol" being converted to alcohol for human consumption as a beverage. This is in order to protect the health of citizens which is a Directive Principle of State Policy under Article 47 of the Constitution and in order to prohibit unauthorised use/misuse of "industrial alcohol" produced in the State from being converted and sold as "intoxicating liquors" meant for human consumption as a beverage.

13.10 This interpretation would become clearer on a reading of Entry 33(a) – List III which deals with, *inter alia,* trade and commerce in, and the production, supply and distribution of the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and also includes imported goods of the same kind as such products. Therefore, if products of any industry where the control of such industry by the Union has been declared by Parliament by law to be expedient in public interest are manufactured in India or imported into India, then as per

Entry 33(a) – List III, on the production, supply and distribution of and trade and commerce of such industrial products, the State Legislature would not have any exclusive power to pass a law under Entries 26 and 27 – List II as they are subject to Entry 33(a) – List III. In other words, in view of the passing of the IDRA, under Entry 52 – List I and the inclusion of, *inter alia,* products of "Fermentation Industries" such as "industrial alcohol" in Item 26 of the First Schedule of the IDRA, the State Legislatures would be subject to the powers of the Parliament to pass a law in the matter of production, supply, distribution, trade and commerce of such industrial product.

13.11 Therefore, if the control of any industry has been declared by Parliament by law to be expedient in the public interest, then in such a case, in the matter of production, supply and distribution of products of such industry, Entry 27 – List II would be subject to Entry 33(a) – List III. Thus, the subject production, supply and distribution of goods found in Entry 27 – List II as well as in Entry 33(a) – List III regarding any product of an industry has a nexus with Entry 52 – List I.

13.12 Further, Entry 24 – List II which deals with industries, is itself subject to Entry 52 – List I. Therefore, if any industry is mentioned in the First Schedule of the IDRA which is a legislation passed by the Parliament by virtue of Entry 52 – List I, a reading of the same conjointly with Entry 33(a) – List III would mean that particular industry which has been mentioned in the First Schedule of IDRA would be under the control of the Union. However, as far as the products of such industry are concerned, Entry 33(a) – List III deals with the aspect of production and supply and distribution as well as trade and commerce. Thus, if any particular industry is not mentioned or is deleted from the First Schedule of IDRA, then automatically Entry 33(a) – List III would not apply to such industrial products and the subject would squarely fall within the scope and ambit of Entry 24 – List II and Entry 27 – List II.

14. There is another way of looking at the Entries under consideration. As already noted, Entry 24 - List II which deals with the subject "industries", enables legislative competence to the State Legislature to enact laws on the said subject. Therefore, at a first glance the subject "industries" is a State subject.

However, Entry 24 - List II is subject to Entries 7 and 52 - List I which have been discussed above. In particular, Entry 52 - List I deals with “industries”, the control of which is taken over by the Union by a declaration made by the Parliament by law as it is expedient in public interest. In respect of “such industries”, as covered within the scope and ambit of Entry 52 - List I, it would imply that under Entry 33(a) - List III, insofar as the products of any such industry are concerned where the control of such industry by the Union is declared by the Parliament by law to be expedient in public interest and import of goods of the same kind as such products have to be read in consonance with the scheme of the Entries. It would mean that if any legislation has been made by the Parliament, such as the IDRA and an industry is named in the First Schedule thereof such as “Fermentation Industries” in the instant cases, the State Legislation would be subject to the Parliamentary legislation. The said Entry is in the Concurrent List and the Parliament as well as the State Legislature have the competence to pass such laws. Then, the question that would arise, is whether, there would be

repugnancy between the laws made by Parliament and laws made by a State Legislature and if so, how could it be resolved.

14.1 In this regard, Section 18G which is a part of Chapter IIIB of the IDRA could be considered. The said Section states that the Central Government, so far as it appears to be necessary or expedient for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry, i.e. any of the industries specified in the First Schedule of IDRA may, notwithstanding anything contained in any other provision of the IDRA by notified order, provide for regulating the supply and distribution thereof and trade and commerce therein. This provision deals particularly with regard to regulation of supply and distribution, trade and commerce of any article relatable to scheduled industry. Sub-section (2) of Section 18G states that without prejudice to the generality of the powers conferred by sub-section (1) of Section 18G, a notified order made may provide for various aspects. Sub-section (4) of Section 18G states that no order made in exercise of any power conferred by this section shall be called in question in any court.

14.2 One of the contentions raised in this batch of cases is with regard to whether the Central Government has to, in fact, issue a notified order with regard to regulating the supply and distribution and trade and commerce of any article or class of articles relatable to any scheduled industry so as to indicate that the State Legislature cannot pass any legislation under Entry 33(a) - List III. In my considered view, the fact that an industry is a scheduled industry under the IDRA would imply that at any time the Central Government is empowered to issue a notified order providing for regulating the supply and distribution and trade and commerce of the products of such a scheduled industry. But in the absence of there being an issuance of a notified order as such can the State Legislature be denuded of their powers to pass any law under Entry 33(a) - List III?

14.3 Having regard to the emerging situation in the economy in the matter of supply and distribution and trade and commerce of any article or class of articles relatable to any scheduled industry, the Central Government may issue a notified order for the purpose of regulating the same so as to secure its equitable

distribution and availability at fair prices of the products of such industry.

14.4 A situation may suddenly arise making it necessary or expedient to issue a notified order under Section 18G of the IDRA. One cannot envisage the emerging circumstances in an economy such as the Indian economy where the need for issuance of such a notified order would arise. It could be for instance to curb hoarding and black marketeering of a particular article of a scheduled industry in order to stifle price rise. It could be for ensuring a minimum or maximum price for any article related to a scheduled industry which is a raw material or ancillary input for a product/article of another scheduled or non-scheduled industry. Sudden rise in prices of commodities/articles relatable to any scheduled industry due to natural disasters, floods, famines, financial emergency or other such reasons could necessitate issuance of a notified order under Section 18G of the IDRA. Of recent occurrence is the Covid-19 pandemic which would have necessitated issuance of notified orders on certain articles related to scheduled industries. The field of legislation must therefore be left open for the Central

Government to act by issuance of a notified order as and when thought necessary or expedient to secure and achieve the objects stated in the said provision.

14.5 But, can it be held that in the absence of any such notified order issued by the Central Government, the States could pass laws under Entry 33(a) - List III? Would it lead to a legal confusion and an overlapping and contradiction? This is because if it is held that in the absence of there being a notified order actually issued by the Central Government under Section 18G of the IDRA, the States are empowered to pass laws under Entry 33(a) - List III and such laws are in fact made under the aforesaid Entries by the States and the Central Government subsequently decides to issue a notified order under Section 18G of the IDRA, the question would be, what would be the fate of the laws made by the States if they overlap with the notified order issued under Section 18G of the IDRA? Obviously, the control of any industry being taken over by the Union under the provisions of the IDRA would imply that the Central Government is empowered to issue a notified order in terms of Section 18G of the said Act as and when it is necessary or expedient to secure the equitable

distribution and availability at a fair price of any article related to any scheduled industry. In such a case, the notified order being issued under Section 18G of the IDRA, would have an overriding effect on the States' laws if any made under Entry 33(a) – List III in regard to trade and commerce, supply and distribution of such articles or products of the scheduled industry which are covered under the notified order and the same would no longer be applicable wherever there is a conflict in the laws.

14.6 A law made by the State Legislature under any Entry of List III or Concurrent List is no doubt subject to Article 254 of the Constitution. However, Entry 33(a) - List III is in a way unique inasmuch as the said Entry would have to be read in the context of Entry 52 - List I which relates to the IDRA which is enacted by Parliament under the said Entry and therefore, *inter alia,* to Section 18G of the IDRA. When Entry 52 - List I and any law such as IDRA empowers the Union or Central Government to take certain steps under the provisions of the said Act, it would imply that the State Legislature is, *per se,* denuded of its powers to make any law under Entry 33(a) - List III. Applying the above

interpretation, when once the Central Government has the powers under Section 18G of the IDRA in the matter of regulating supply and distribution and trade and commerce of any article of a scheduled industry so as to secure the equitable distribution and availability at fair price, the field/contours as covered under Section 18 of IDRA is occupied by the Parliament and, consequently by the Central Government to issue a notified order as and when the necessity arises.

14.7 The reason for holding so is because List III which is the Concurrent List is governed by Article 254 of the Constitution which deals with inconsistency between laws made by Parliament and laws made by the Legislatures of the States. The same is expressed as the doctrine of repugnancy. Clause (1) of Article 254 states that –

(i) if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, **or**

(ii) to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List,

then, subject to clause (2) thereof, the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

Under Article 13(3)(a), law includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law.

14.8 Clause (2) of Article 254 is an exception to clause (1). It states that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. The proviso states that nothing in clause (2) of Article 254 would prevent Parliament from enacting at any time any law with respect to the

same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

14.9 What is of significance under the second portion of Article 254(1) is that the law has to be passed by the Parliament either before or after the law made by the Legislature of such a State, secondly, such a law must be with respect to one of the matters enumerated in the Concurrent List. The above is a case of actual repugnancy. There can also be a case of what can be called potential repugnancy, which is also expressed as the doctrine of occupied field which shall be discussed at this stage in the context of the observations made in ***Synthetics and Chemicals (7J).***

Entry 33(a) – List III vs. Entry 52 - List I: Observations in Synthetics and Chemicals (7J):

15. Article 246 of the Constitution deals with the division of legislatives subjects between the Parliament and the Legislatures of the States. Both sub-clauses (1) and (2) begin with a *non-obstante clause* while sub-clause (3) begins with a "subject to" clause. On a holistic reading of Article 246, it emerges that the Parliament has exclusive power to make laws with respect to any

of the matters enumerated in List I and it also has the power to make laws with respect to any of the matters enumerated in List III or the Concurrent List (*vide* clause (2) of Article 246). The *non-obstante clauses* in clauses (1) and (2) of Article 246 in my view, are significant inasmuch as they envisage parliamentary supremacy over laws made by the State Legislature even in respect of a subject enumerated in List II as clause (3) of Article 246 is subject to clauses (1) and (2) of Article 246. This is despite the State Legislatures having exclusive competence over the subjects mentioned in List II. However, the said position would apply only when there is a conflict between a State Law and a Union Law which is irreconcilable or cannot be interpreted harmoniously.

15.1 The Parliament as well as the Legislature of any State have also concurrent powers to make laws in respect of any of the matters enumerated in List III. This is notwithstanding anything in clause (3) of Article 246 but is subject to clause (1) thereof. This would imply that any law made by the Legislature of a State in List III or the Concurrent List is subject to a law made by Parliament in List I. This also has a bearing on first part of the

clause (1) of Article 254. Therefore, in my view, the doctrine of parliamentary supremacy is writ large in Articles 246 and 254 both in the manner of arrangement of the subjects in the three Lists as well as the extent to which the State Legislatures have competence with regard to the subjects assigned to them particularly in List III or the Concurrent List.

15.2 In this case, we have to consider Entry 33(a) – List III in light of Entry 52 - List I and the observations made by this Court in ***Synthetics and Chemicals (7J).*** Entry 33(a) – List III is in the Concurrent List and it speaks of trade and commerce in, and production, supply and distribution of the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products. A dissection of this Entry would indicate that insofar as products of any industry which is a scheduled industry in terms of a law made by Parliament by virtue of Entry 52 – List I *viz.* where the control of such scheduled industry has been assumed by the Union (insofar as trade and commerce in, and production, supply and distribution of the products of such industry), both the

Union as well as the States have concurrent powers to enact laws. It must be remembered that Entry 33(a) – List III is a field of legislation and therefore, deals with the concurrent legislative competence of both the Union as well as the State Legislature. An enactment under such an Entry by the State is subject to the application of the principle of repugnancy as envisaged in Article 254 of the Constitution discussed above.

15.3 One cannot lose sight of the fact that the IDRA has been enacted by Parliament taking control of certain industries such as the "Fermentation Industries", which is the subject matter of controversy in the present cases, on the strength of Entry 52 – List I. The degree of control envisaged under the various provisions of the IDRA have been detailed in the various provisions of the said Act. Section 18G was inserted to IDRA w.e.f. 01.10.1953. The said Section in the IDRA is also a provision which has been inserted pursuant to Entry 52 - List I. The said Section empowers the Central Government to issue a notified order for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry. The expression "notified order" is

defined in Section 3(e) of the IDRA to mean the issuance of a notification in the official gazette.

15.4 It is necessary to note that Entry 33(a) – List III will apply only when a law such as IDRA has been enacted pursuant to Entry 52 – List I, which has enabled the Union to take control of certain industries such as "Fermentation Industries". While Entry 33(a) – List III is a field of legislation which deals with trade and commerce in, and the production, supply and distribution of, *inter alia,* the products of the scheduled industry under IDRA, Section 18G thereof deals with securing equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry. The Explanation to Section 18G states that the expression "article or class of articles" relatable to any scheduled industry includes any article or class of articles imported into India which is of the same nature or description as the article or class of articles manufactured or produced in the scheduled industry. An article manufactured or produced in the scheduled industry is nothing but a product of a scheduled industry. Therefore, the expression "the products of any scheduled industry" comes within the scope and ambit of the

expression "article or class of articles" relatable to any scheduled industry. Thus, Section 18G which pertains to a scheduled industry is also relatable to Entry 33(a) – List III though it is a part of IDRA which is a Parliamentary law enacted on the basis of Entry 52 – List I.

15.5 The question that would then arise is, whether, by the mere insertion of Section 18G to the IDRA with effect from 01.10.1953, the State Legislatures have been denuded of their legislative competence in the matter of regulation of supply and distribution and trade and commerce of products of any scheduled industry. The conundrum which has arisen in this case is on account of the observation in paragraph 85 of ***Synthetics and Chemicals (7J)***, which, *inter alia,* reads as under:

> "**85.** … The State cannot claim that under Entry 33 of List III, it can regulate industrial alcohol as a product of the scheduled industry, because the Union, under Section 18-G of the IDR Act, has evinced clear intention to occupy the whole field…."

The aforesaid observations mean that by the very insertion of Section 18G to the IDRA, there is a denudation of the State's

legislative competence *vis-à-vis* Entry 33(a) – List III with respect to a product of a scheduled industry which in the instant cases is the "Fermentation Industries".

15.6 The aforesaid observation which has led to a reference to this nine-Judge Bench has to be considered in light of Entry 52 – List I, Entry 33(a) – List III and Section 18G of the IDRA. As already stated, it is pursuant to Entry 52 – List I that the IDRA has been enacted by the Parliament declaring the taking of control of industries mentioned in the First Schedule to the said Act called a scheduled industry. Entry 33(a) – List III deals with trade and commerce in, and production, supply and distribution of the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest and imported goods of the same kind as such products i.e. with reference to a scheduled industry. The nexus between Entry 33(a) – List III and Entry 52 – List I is with regard to the Union taking control of certain industries such as "Fermentation Industries" in the instant cases by a declaration made by Parliament by law. Section 2 of the IDRA has made such a declaration and hence, it is in respect of

the products of any industry whose control has been taken by the law i.e. IDRA, pursuant to Entry 52 – List I that Entry 33(a) – List III gives the legislative competence to both the Parliament as well as the State Legislatures.

15.7 As already noted, the IDRA is enacted by Parliament under Entry 52 – List I taking control of, *inter alia*, "Fermentation Industries" as noted in Item 26 of the First Schedule to the said Act. Section 18G deals with any article or class of articles relatable to any scheduled industry i.e. "Fermentation Industries" in the instant cases. The Explanation to Section 18G states that the expression "article or class of articles" relatable to any scheduled industry i.e. "Fermentation Industries" herein **includes** any article or class of articles imported into India which is of the same nature or description as the article or class of articles, **manufactured or produced in the scheduled industry**. The explanation is inclusive and not an exhaustive one. For immediate reference Item 26 of the First Schedule of the IDRA pursuant to the 2016 amendment is extracted as under:

"**26. The fermentation industries (other than potable alcohol):**

(i) Alcohol

(ii) other products of fermentation industries."

The said Item 26 was added w.e.f. 08.05.1952 even prior to the insertion of Section 18G to the IDRA which is w.e.f. 01.10.1953. However, w.e.f. 14.05.2016, Item 26 has been amended to clarify that "Fermentation Industries" refers to industries others than potable alcohol. This is for the reason that "intoxicating liquors" in Entry 8 – List II is equated to only potable alcohol and rest of the industry of the "Fermentation Industries" other than potable alcohol is a scheduled industry.

15.8 Once an industry is a scheduled industry under the provisions of IDRA, in the context of Section 18G the Central Government may notwithstanding anything contained in any other provision of IDRA by a notified order provide for regulating the supply and distribution thereof and trade and commerce therein of a product of scheduled industry. A notified order may also provide -

(a) for the purpose of controlling the prices at which any such article or class of articles may be bought or sold for;

(b) for regulating the licences, permits or otherwise the distribution, transport, disposal, acquisition, possession, use or consumption of any such article or class thereof;

(c) for prohibiting the withholding from sale of any such article or class thereof ordinarily kept for sale;

(d) for requiring any person manufacturing, producing or holding in stock any such article or class thereof to sell the whole or part of the articles so manufactured or produced during a specified period or to sell the whole or a part of the articles so held in stock to such person or class of persons in such circumstances as may be specified in the order;

(e) for regulating or prohibiting any class of commercial or financial transactions relating to such article or class thereof which in the opinion of the authority making the

order are, or if unregulated are likely to be, detrimental to public interest;

(f) for requiring persons engaged in the distribution and trade and commerce in any such article or class thereof to mark the articles exposed or intended for sale with the sale price or to exhibit at some easily accessible place on the premises the price-lists of articles held for sale and also to similarly exhibit on the first day of every month, or at such other time as may be prescribed, a statement of the total quantities of any such articles in stock;

(g) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters; and

(h) for any incidental or supplementary matters, including, in particular, the grant or issue of licences, permits or other documents and the charging of fees therefor.

15.9 Sub-section (4) of Section 18G provides that no order made in exercise of any power conferred under Section 18G shall be called in question in any court. Thus, a notified order may be issued by the Central Government bearing in mind the situations

and conditions which may arise in the Indian economy pertaining to a particular scheduled industry.

Article 254, Repugnancy and Doctrine of Occupied Field:

16. There is also a further angle to the matter in the context of concurrent powers of Parliament and State Legislatures *vis-à-vis* Entry 33(a) – List III and Article 254 of the Constitution. Nicholas in his Australian Constitution, 2nd Edition, page 303, refers to three tests of inconsistency or repugnancy:

(i) There may inconsistency in the actual terms of the competing statutes;

(ii) Though there may be no direct conflict, a State law may be inoperative because the commonwealth law; or commonwealth court is intended to be a complete exhaustive Code; and

(iii) Even in the absence of intention, a conflict may arise when both State and commonwealth seek to exercise their powers over the same subject matter."

16.1 In ***Tika Ramji,*** this Court accepted the above three rules evolved by Nicholas, among others, as a useful guide to test the

question of repugnancy. The same was also quoted by this Court in ***M/s. Hoechst Pharmaceuticals Ltd. vs. State of Bihar, AIR 1983 SC 1019 ("Hoechst Pharmaceuticals Ltd.").*** In the said case, it was observed that the question of repugnancy between a law made by Parliament and a law made by the State Legislature arises only in case both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List and there is direct conflict between the two laws. It is only when both these requirements are fulfilled that the State law will, to the extent of repugnancy, become void. Article 254(1) has no application to cases of repugnancy due to overlapping found between List II on the one hand and Lists I and III on the other. If such overlapping exists in any particular case, the State law would be *ultra vires* because of *non-obstante* clause in Article 246(1) read with the opening words "subject" in Article 246(3). In such a case, the State law will fail not because of repugnance to the Union law but due to want of legislative competence. Thus, the question of repugnancy arises only when both the Legislatures are competent to legislate in the same field, that is, with respect to one of the matters mentioned in the Concurrent

List. Hence, Article 254(1) cannot apply unless both the Union and the State laws relate to a subject specified in the Concurrent List and they occupy the same field.

16.2 Thus, Article 254 of the Constitution applies the doctrine of repugnancy in the context of the legislative subjects which are enumerated in List III or the Concurrent List. While applying the principles of repugnancy under Article 254, a *sine qua non* is to identify the conflict between the laws made by the Parliament and the laws made by the State Legislature. The conflict between the said laws is the basis for the application of Article 254. The conflict could be direct when both the laws cannot operate together or it could be indirect when the State law entrenches upon a Parliamentary or Central law. But when laws made by the Parliament or the State Legislature can be implemented without there being any conflict, the principle of repugnancy would not apply inasmuch as there would be no contrary results owing to the applicability of both sets of laws. In other words, there cannot be a situation where obeying the State laws would result in disobeying the Parliamentary laws. Thus, when laws are made under an Entry in List III or the Concurrent List by both

the Parliament as well as by the State Legislature, the Court must first ascertain whether the two sets of laws can operate harmoniously, if not, whether harmonious interpretation could be given to the said laws so as to avoid a conflict between the two. It is only when there is a conflict between the two sets of laws inasmuch as the State laws would be abridging the Parliamentary law, in such a case, the doctrine of Parliamentary supremacy would apply i.e. when a harmonious interpretation is not possible. Even if the two laws overlap, if they are complimentary to each other, in such a case, there would be no application of the principle of Parliamentary supremacy. Thus, when there is absolute inconsistency between the two sets of laws, and they are not reconcilable then, the principle of Parliamentary supremacy would apply in the context of repugnancy.

16.3 The next question that would arise is, whether, the principle of repugnancy in Article 254 of the Constitution could have a wider ramification inasmuch as even in the absence of there being two sets of laws which have been made by the Parliament and by the State Legislature but owing to the nature

of the law that the Parliament has made, the State Legislature is incompetent in making a law on the same subject. In other words, whether a law enacted by the Parliament can prevent a law being made by the State Legislature on the same subject on the premise that the field has been occupied by the Parliamentary law. This is expressed in what is known as the doctrine of occupied field. By this, it would mean that the law enacted by the Parliament has occupied the field in its entirety and consequently, the States have no legislative competence to make a law on the very same aspect. In other words, if a law is made by the Parliament, does it occupy the entire field so as to reduce or negate the legislative competence of the State Legislature to make a similar law? How does one determine whether the legislative field has been occupied? Firstly, there must be a Parliamentary law in place with an intention to occupy the field. Secondly, the contours of the field must be determined. Consequently, the State Legislature would be prevented from making the law in terms of what has been determined by the Parliament to occupy the field. Thus, the intention to occupy the field must be explicit and clear and discernible with the result

that the State Legislature would have a reduced field or the legislative competence would be one of total prohibition to make a similar law. For instance, whether the Parliamentary law intends to put in place a complete and exhaustive regulatory scheme, as a result of which the State Legislature is denuded of its powers to make any State regulation in the field as a whole. This intention would have to be discerned on a reading of the statute as a whole and the particular provisions which should emanate such an intention. Thus, there must be a clear intention to occupy the field by a Parliamentary legislation. Further, the extent of the field sought to be occupied must be clearly demarcated. In other words, whether the Parliament has evinced to exclude the State Legislature from making a law on a similar subject by virtue of an Entry in List III?

16.4 In order to answer this question, the provisions of the Act made by the Parliament have to be examined threadbare in order to ascertain a clear intention of the Parliament to occupy the field so as to negate the Legislature of the States to have the competence to make a similar law. Thus, while a direct conflict of a Parliamentary law and a State law could be resolved on the

touchstone of a harmonious interpretation of the two laws (*vide* second part of article 254(1)), a potential conflict between a Parliamentary law which has been enacted and a potential or future law by a State Legislature is avoided on the touchstone of the doctrine of occupied field.

16.5 While applying the occupied field doctrine, Courts must delicately balance the legislative competence of the Parliament and the State Legislatures in making laws on a particular subject under the Concurrent List and apply the doctrine of occupied field only having regard to the intention of the Parliament to occupy the field and the Parliament defining the contours of the field sought to be occupied by a comparative and coherent reading of the other Entries in List I and List II, having bearing on the concerned Entry in List III of the Constitution. Such balancing need to be done by Courts in order to ascertain whether despite legislative competence being provided to the State Legislatures under a particular Entry in the Concurrent List but owing to what has been stated in any law made under Entry in List I (Union List) having a bearing on an Entry in the Concurrent List being made subject to any Entry in the Union

List, would result in the State Legislatures being denuded of legislative competence to make laws on a similar subject under an Entry in List III such as Entry 33(a) – List III which is under consideration.

16.6 The application of the doctrine of occupied field is a technique adopted by the constitutional courts in order to ensure that there is no potential conflict that could arise between the State laws and the existing Parliamentary law having regard to the nature of the legislative powers, their importance in the socio-economic sphere of governance in the country and such other considerations.

16.7 Applying the aforesaid principles to the cases at hand, the question is whether by virtue of insertion of Section 18G to the IDRA, the legislative competence of the State Legislatures under Entry 33(a) – List III *vis-à-vis* products of the scheduled industry namely, "Fermentation Industries" would be governed within the scope and ambit of Section 18G of the IDRA and consequently, the State Legislatures would have no competence to make a law in regard to the products of a scheduled industry in respect of

which Section 18G applies. This is by bearing in mind the twin tests referred to above namely, the intention of the Parliament to occupy the field and the demarcation of the areas in which the field is sought to be occupied. In other words, in the instant case, whether Item 26 which speaks of "Fermentation Industries" to include "industrial alcohol" or non-potable alcohol as a product of such industry which has been taken control of by the Union under the provisions of IDRA (and which is excluded from the scope and ambit of Entry 8 – List II), falls within the scope and ambit of a scheduled industry, and thereby Section 18G would apply the aspects referred to above.

16.8 The answer is in the affirmative for the following reasons: firstly, insofar as the potable or "intoxicating liquors" is concerned, the legislative field is exclusively with the State Legislature. However, in respect of the scheduled industry which is "Fermentation Industries" (which does not take within its scope and ambit potable alcohol) *vide* Item 26 of the First Schedule, all other types of alcohol including "industrial alcohol" can be regulated only by the Parliamentary law and the Central Government. Any other interpretation would imply that even in

the face of Section 18G being incorporated into the IDRA and in the absence of any notified order being issued, the States Legislatures and the State Governments would have the legislative competence to make laws on what is the subject matter of Section 18G of IDRA under Entry 33(a) – List III. Then, each State could make its own law on the said subject matter covered under Section 18G of IDRA pertaining to a scheduled industry. If in respect of the products of a scheduled industry, the States make laws and there are a variety of laws made by the individual States which are in force in respect of the subject under Section 18G of IDRA then when a notified order is issued, the Central Government's notified order would apply if there is a direct conflict between the State laws or legal regime in place and the notified order that is issued. This would result in a legal quagmire *vis-à-vis* a scheduled industry. It cannot then be said that it is necessary to ascertain whether there is a direct conflict between the State law and the notified order made by the Central Government at every instance such an order is issued and if there is such a direct conflict then, the Parliamentary law would apply on the strength of Article 254 of the Constitution. Such a

legal confusion and conundrum would not be conducive to a scheduled industry such as “Fermentation Industries” dealing with “industrial alcohol” which is a commodity of critical and significant importance in the Indian economy.

16.9 Sub-section (4) of Section 18G also states that no order in exercise of power conferred by the Section shall be called in question in any court. Thus, the question of repugnancy between an existing State law and the notified order of the Central Government cannot be raised before a court of law. Then, whether both the State law as well as the notified order can be simultaneously obeyed. If not, what would be the remedy. Sub-section (4) of Section 18G also indicates that the Parliament has intended to occupy the field as demarcated under Section 18G. Such an interpretation has to be given in order to avoid a legal uncertainty and quandary in the economy in the context of Section 18G of the IDRA.

16.10 Thus, the question, whether, under Entry 33(a) – List III, the States have been denuded of their powers by virtue of insertion of Section 18G to the IDRA, i.e., Section 18G having

occupied the field to the extent of control as above mentioned and the States would not have the competence to pass any law relating to Entry 33(a) – List III, in my view, has to be answered in the affirmative. This is because Section 18G has been inserted by Parliament to the IDRA which is an enactment made pursuant to Entry 52 – List I. Entry 52 – List I speaks of the Union by declaration made by Parliament by law taking control of such scheduled industry (Section 2 of the IDRA) such as the "Fermentation Industries" herein. The industries which are controlled of by the Union are specified in the First Schedule to the IDRA. "Fermentation Industries" is a scheduled industry. Therefore, the Union has taken control of "Fermentation Industries". For the sake of clarification, in the year 2016 an amendment was made to expressly exclude potable alcohol from "Fermentation Industries" and it includes only non-potable alcohol such as "industrial alcohol". The detailed discussion made above is in regard to only "industrial alcohol" being non-potable alcohol. "Intoxicating liquors" being potable alcohol is not within the scheduled industry. Therefore, the said products of "Fermentation Industries" which have been taken control of by

the Union by virtue of insertion of the Section 18G of the IDRA would come within the scope and ambit of the said Section.

16.11 In this context, by way of analogy, it would be of relevance to refer to my dissenting opinion dated 25.07.2024 in ***Mineral Area Development Authority Etc. vs. M/s. Steel Authority of India & Others (Civil Appeal Nos.4056-4064 of 1999) ("Mineral Area Development Authority")*** wherein the interpretation of Entry 50 – List II *vis-à-vis* Entry 54 – List I came up for consideration and it was observed by me that even a taxation Entry i.e. Entry 50 – List II was subject to the limitation imposed by Parliament by law relating to mineral development in terms of the Entry 54 – List I. Thus, the doctrine of parliamentary supremacy in the context of an Entry in List II (State List) with an Entry in List I (Union List) was considered. For immediate reference the following passage from said opinion could be extracted:

> "8.6 However, what is pertinent to be considered in this case is, Entry 50 - List II in juxtaposition with Entry 54 - List I. As already noted, Entry 50 - List II is a taxation Entry which empowers a State Legislature to impose tax on mineral rights. However, this power of the State Government is not an absolute power inasmuch as Entry 50 - List II itself states that the power of the State

Legislature to impose tax on mineral right is "subject to any limitations imposed by Parliament by law relating to mineral development". In other words, if there is any limitation imposed by the Parliament by law relating to mineral development then that would have an impact on the legislative competence of the State Legislature to impose a tax on mineral rights. The key expressions of Entry 50 - List II are "taxes on mineral rights" and "subject to any limitations imposed by the Parliament by any law on mineral development". Thus, the Parliament can impose any limitation on the State's right to impose a tax on mineral rights by way of a law relating to mineral development. Thus, while Entry 50 - List II speaks of taxes on mineral rights and is a taxation Entry empowering States to impose taxes on mineral rights, the same is not unbridled or absolute but is subject to any limitation to be imposed by Parliament by law relating to mineral development. In other words, if Parliament intends to regulate mineral development in the country, it can do so by a law made as per Entry 54 - List I and to that extent the taxation Entry in Entry 50 - List II could be limited and the State's right to impose a tax on mineral rights by a law would be affected. Thus, a taxation Entry in Entry 50 - List II can be affected by Entry 54 - List I in the interest of mineral development by Parliament imposing a limitation on the State's right to tax mineral rights. In other words, if the Union has by a law taken control of, *inter alia,* mineral development with the Parliament passing a law, then the State's power to impose any tax on mineral rights would, to that extent, be denuded, if the Parliamentary or Central law creates a limitation to impose such a tax, if it relates to mineral development. It is in the above backdrop that the controversy must be considered.

8.7 Exercise of mineral rights have to be consistent with mineral development in the country, which would embrace, *inter alia,* uniformity in mineral development throughout the country having regard to several factors which would otherwise come in the way of such

development. Hence, the framers of the Constitution introduced Entry 50 - List I enabling a limitation being imposed on Entry 50 - List II although that is a taxation Entry giving powers to the States to impose taxes on mineral rights. It is subject to any limitation imposed by Parliament under Entry 54 - List I.

8.8 The golden thread which runs through Entry 54 - List I and Entry 23 - List II is that the Entries deal with regulation of mines and mineral development. Thus, any aspect of regulation of mines and mineral development taken under the control of the Union by a declaration made by the Parliament by a law, denudes the State Legislature of its legislative competence to pass any law to that extent. If a Parliamentary law such as MMDR Act, 1957 is enacted and deals with certain aspects of mineral development, to that extent the State Legislature would be denuded of its competence to pass any law on the said aspect. The legislative competence vested with the State Legislature is, therefore, not an absolute one but is subject to a Parliamentary law enacted as per Entry 54 - List I dealing with mineral development.

In the circumstance, the aforesaid observations made in ***Synthetics and Chemicals (7J)*** are in consonance with the constitutional framework of Article 246 read with the Entries in Lists I and III and the doctrine of occupied field applies in the context of Section 18G of IDRA enacted under Entry 52 – List I and Entry 33(a) – List III.

17. One of the contentions raised was that so long as the notified order has not been issued by the Central Government

which triggers the exercise of powers under Section 18G of the IDRA, the States would have the legislative competence to pass laws under Entry 33(a) – List III. In my view, the issuance of a notified order under Section 18G is only a ministerial act to be performed and to be complied with by the Central Government by a publication in the official gazette. The object of publication of a notified order in the official gazette is to inform the world at large about the contents of the said order. This could happen at any point of time having regard to the situations and conditions which emerge in the Indian economy with regard to a product of a scheduled industry which is also described as an article or class of articles relatable to any scheduled industry under Section 18G of IDRA. Thus, when the field is occupied by Section 18G of the IDRA which is an enactment made pursuant to Entry 52 – List I and the State Legislatures are denuded of legislative competence for passing any law under Entry 33(a) – List III in respect of a product of a scheduled industry which is read within the definition of article or class of articles relatable to any scheduled industry as per the Explanation to Section 18G, the issuance of a notified order pales into insignificance in the

context of repugnancy. The issuance of a notified order has relevance only for the purpose of intimation of action being taken on any particular article or class of article of a scheduled industry by the Central Government in an occupied field.

17.1 As far as the controversy whether "Fermentation Industries" being under the control of the Union could enable the State Legislature to pass a law by virtue of Entry 33 (a) - List III of the Constitution, in the context of a product of "Fermentation Industries" and in the context of Section 18G of the IDRA, there has been a cleavage of opinion of this Court in the aforesaid judgments. While in ***Synthetics and Chemicals (7J),*** it was held that mere insertion of Section 18G into the statute of the IDRA, would imply that the field has been occupied by the Union and, therefore, the State has no jurisdiction to exercise its powers under the said Entry and therefore, has been denuded of all its powers, the subsequent decisions in ***Bihar Distillery*** etc., have opined that the said position may not be correct. In other words, unless action is taken under Section 18G of the IDRA by the actual issuance of a notified order and if such a notified order is repugnant to an existing State legislation or action being initiated

thereto, the question of repugnancy would arise. The judgment of this Court in ***Tika Ramji*** has been referred to and how far the said judgment would have an application in the present controversy is a matter to be analysed.

17.2 In ***Tika Ramji,*** the *vires* of the Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as "UP Act") was assailed by the petitioners therein. It was contented that the State of Uttar Pradesh had no power to enact the said Act as the same was with respect to the subject of industries, the control of which by the Union was declared by Parliament by law to be expedient in the public interest within the meaning of Entry 52 – List I and was, therefore, within the exclusive province of Parliament. It was further contended that the Act was *ultra vires* the powers of the State Legislature and was a colorable exercise of legislative power by the State. It was further contended that it was repugnant to the IDRA and the Essential Commodities Act, 1955 (Act 10 of 1955) also a Central Act. That in the event of this Court were to hold that the impugned Act was within the legislative competence of the State Legislature, it was void by reason of such repugnancy. It was also

contended that the impugned Act stood repealed to the extent that it had been repealed by Section 16 of Act 10 of 1955 and by clause (7) of the Sugarcane (Control) Order, 1955, made in exercise of the powers conferred by Section 3 of Act 10 of 1955 (a Central Act).

17.3 It was observed that even if it was assumed that sugarcane was an article or class of articles relatable to the sugar industry within the meaning of Section 18G of the IDRA, since no order was issued by the Central Government in exercise of the powers vested in it under that section, no question of repugnancy could ever arise because repugnancy must exist in fact and not depend merely on a possibility. The possibility of an order under Section 18G being issued by the Central Government would not be enough. The existence of such an order would be an essential prerequisite before any repugnancy could ever arise.

17.4 Without going into the other aspects of the case, in my view, this Court was not right in holding that since no order was issued by the Central Government under Section 18G of the IDRA, the legislative field was open to both the Central as well as

the State Governments to take action. That portion of the judgment in ***Tika Ramji*** in my view is not correct.

17.5 The judgments of this Court including that of the Constitution Bench in ***Tika Ramji; Indian Aluminium company Limited vs. Karnataka Electricity Board, (1992) 3 SCC 580 ("Indian Aluminium company"); Shree Krishna Gyanoday Sugar Ltd.; Belsund Sugar Co. Ltd. vs. State of Bihar, (1999) 9 SCC 620 ("Belsund Sugar Co. Ltd.")*** and ***SIEL Ltd. vs. Union of India, (1998) 7 SCC 26 ("SIEL Ltd.")*** have lost sight of the fact that when a notified order is issued under Section 18G of the IDRA it is pursuant to a Central enactment made by virtue of Entry 52 – List I and it is not an exercise of power under Entry 33(a) – List III. When once Section 18G has been inserted to the IDRA in respect of a scheduled industry, the control being taken over by the Union in respect of the very same scheduled industry, legislative competence cannot remain with the State Legislature also under Entry 33(a) – List III in respect of the aspects or field covered under Section 18G of IDRA which is a Parliamentary enactment.

18. There is another angle to the matter. Article 254 in the normal course would apply when there is a direct conflict between the laws made by the Parliament and the State Legislature under an Entry in the Concurrent List. But in the instant case, it can also be held that the conflict is not between a law or an action taken by the Parliament or the Central Government under Entry 33(a) – List III versus a State law that could be made or action taken under the very same Entry. Here, the conflict arises between action that could be taken by the Central Government under Section 18G of IDRA made by virtue of Entry 52 – List I as opposed to a State law or action which could be made under Entry 33(a) – List III. In such case, the doctrine of repugnancy would arise as per the first part of Article 254(1) between Entry 52 – List I and Entry 33(a) – List III and not in respect of the second part of Article 254(1). Thus, when the Central Government seeks to exercise power in respect of a scheduled industry under Section 18G of the IDRA it is pursuant to the said Act being made under Entry 52 – List I. Hence, any action to be taken by the Central Government under Section 18G

is not really an action that would be taken under Entry 33(a) – List III.

18.1 On this aspect, reference must be made to judgment of this Court in ***State of Kerala vs. Mar Appraem Kuri Company Limited, (2012) 7 SCC 106 ("Mar Appraem Kuri Company").*** The Constitution Bench of this Court speaking through Kapadia, C.J., considered the question - when does repugnancy arise in the context of whether Kerala Chitties Act 23 of 1975 becoming repugnant to the (Central) Chit Funds Act 40 of 1982 under Article 254(1) upon making of the Central Act (i.e. 19.08.1982 when the President gave his assent) or whether the Kerala Chitties Act 23 of 1975 would become repugnant to the Central Act as and when the notification under Section 1(3) of the Central Act bringing the Central Act into force in the State of Kerala is issued. In other words, the question raised was whether making of the law or its commencement brings about repugnancy or inconsistency as envisaged in Article 254(1) of the Constitution. In this context, reference was made to ***Deep Chand vs. State of UP, AIR 1959 SC 648 ("Deep Chand")*** and it was observed as under:

> "30. That, in ***Deep Chand v. State of U.P.,*** three principles were laid down as indicative of repugnancy between a State law and a Central law, which have to be borne in mind by the State Legislature whenever it seeks to enact a law under any entry in the Concurrent List. Thus, where there is a Central law which intends to override a State law or where there is a Central law intending to occupy the field hitherto occupied by the State law or where the Central law collides with the State law in actual terms, then the State Legislature would have to take into account the possibility of repugnancy within the meaning of Article 254 of the Constitution. In this connection, it was submitted that Tests 1 and 2 enumerated in ***Deep Chand*** do not require the Central law to be actually brought into force for repugnancy between two competing legislations to arise in the context of Article 254 of the Constitution."

18.2 In paragraph 40, it was observed that the expression "subject to" in clauses (2) and (3) of Article 246 denotes supremacy of Parliament and the same is extracted as under:

> "40. However, the principle of federal supremacy in Article 246(1) cannot be resorted to unless there is an "irreconcilable" conflict between the entries in the Union and State Lists. The said conflict has to be a "real" conflict. The non obstante clause in Article 246(1) operates only if reconciliation is impossible. As stated, the parliamentary legislation has supremacy as provided in Articles 246(1) and (2). This is of relevance when the field of legislation is in the Concurrent List. The Union and the State Legislatures have concurrent power with respect to the subjects enumerated in List III. [See Article 246(2).] Hence, the State Legislature has full power to

legislate regarding subjects in the Concurrent List, subject to Article 254(2) i.e. provided the provisions of the State Act do not come in conflict with those of the Central Act on the subject. [See ***Amalgamated Electricity Co. (Belgaum) Ltd. v. Municipal Committee, Ajmer [AIR 1969 SC 227 : (1969) 1 SCR 430***] .] Thus, the expression "subject to" in clauses (2) and (3) of Article 246 denotes supremacy of Parliament."

18.3 In paragraph 43, it was observed as under:

"43. Our Constitution gives supremacy to Parliament in the matter of making of the laws or legislating with respect to matters delineated in the three Lists. The principle of supremacy of Parliament, the distribution of legislative powers, the principle of exhaustive enumeration of matters in the three Lists are all to be seen in the context of making of laws and not in the context of commencement of the laws."

18.4 Dealing with the question of repugnancy and the ways in which it would arise between Parliamentary legislation and States' legislation, it was observed in paragraph 47 as under:

"47. The question of repugnancy between parliamentary legislation and State legislation arises in two ways. First, where the legislations, though enacted with respect to matters in their allotted spheres, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, the parliamentary legislation will predominate, in the first, by virtue of non obstante clause in Article 246(1); in the second, by reason of Article 254(1)."

18.5 Ultimately, in paragraph 61, it was stated as under:

> "61. The entire above discussion on Articles 245, 246, 250, 251 is only to indicate that the word "made" has to be read in the context of the law-making process and, if so read, it is clear that to test repugnancy one has to go by the making of law and not by its commencement."

18.6 On the facts of the said case, this Court held that on the enactment of the (Central) Chit Funds Act, 1982 on 19.08.1982, intending to occupy the entire field of chits under Entry 7 - List III, the State Legislature was denuded of its power to enact the Kerala Finance Act 7 of 2002.

18.7 Thus, when the State of Kerala intended to amend the State Act in 2002, it was bound to keep in mind the fact that there is already a Central law on the same subject made by Parliament in 1982, though not in force in Kerala, whereunder there is a *pro tanto* repeal of the State Act. Therefore, the State Legislature ought to have followed the procedure in Article 254(2) and ought to have obtained the assent of the President.

18.8 Ultimately, in paragraph 78, issue was summed up as under:

> "78. To sum up, Articles 246(1), (2) and 254(1) provide that to the extent to which a State law is in conflict with

> or repugnant to the Central law, which Parliament is competent to make, the Central law shall prevail and the State law shall be void to the extent of its repugnancy. This general rule of repugnancy is subject to Article 254(2) which inter alia provides that if a law made by a State Legislature in respect of matters in the Concurrent List is reserved for consideration by the President and receives his/her assent, then the State law shall prevail in that State over an existing law or a law made by Parliament, notwithstanding its repugnancy."

19. Further reference could also be made to the Food Safety and Standards Act, 2006 ("FSSA, 2006") which has been enacted pursuant to Entry 52 – List I where the Parliament by a declaration made under Section 2 of the said Act has declared that it is expedient in the public interest that the Union should take under its control the food industry. Consequently, clause (b) of Entry 33 – List III which speaks of food stuffs, including edible oils seeds, and oils would be impacted on account of the FSSA, 2006 and the declaration made therein pursuant to Entry 52 – List I to the extent of the control under the said Act.

20. The reason for the aforesaid view would have to be also considered from the point of view of the fact that when an "industry" is taken control of by the Union by specifying it in the

First Schedule of the IDRA, it becomes a scheduled industry and to the extent of control envisaged as per the Schedule and as per the provisions of IDRA. It is only those industries which are critical and of vital significance to the Indian economy which are taken control of by the Union and one such industry is "Fermentation Industries", which *inter alia* comprises of "industrial alcohol" both as a product and as a raw material for other industries.

21. Conversely, if any industry is not a scheduled industry and does not come within the scope and ambit of First Schedule of the IDRA, in such an event, not only Entry 24 - List II but also Entries 26 and 27 - List II would fully operate. Then, Entries 26 and 27 - List II would not be subject to the restriction under Entry 33(a) - List III nor to Entry 52 - List I. The States would have the liberty to pass laws with regard to trade and commerce, production supply and distribution of goods of any industry under Entries 26 and/or 27 - List II without there being any restriction in terms of Entry 33(a) - List III. In other words, insofar as a non-scheduled industry is concerned, Entry 33(a) - List III would not at all apply and Entries 26 and/or 27 - List II

would apply in the matter of production, supply and distribution of goods or trade and commerce of the products of any industry or any other specific Entry in List II, as the case may be.

22. In the above context, the intention of the Constitution makers in the matter of division of legislative subjects between the Parliament and the States have to be clearly understood. In order to achieve consistency of dividing the subjects of legislation not only *within* the particular Lists, namely, the Union List, State List and Concurrent List but also, *inter se,* between the three Lists so as to have a clarity in the matter of the Parliament or the State Legislature having competence to make laws, the prescription under Article 246 and the mandate thereof would give a clue regarding interpretation of the Entries in the three Lists. To reiterate, Articles 246 (1) and (2) of the Constitution begins with a *non-obstante* clause and Article 24(3) begins with a "subject to" clause. On a conspectus reading of aforesaid clauses of Article 246, it is evident that the Legislature of a State has the power to make laws with respect to any matter enumerated in List III, i.e., Concurrent List, subject to List I which deals with Parliament's exclusive powers to make laws in

respect of any matter enumerated in List I. Therefore, a subject placed in List III, i.e., the Concurrent List can also be subject to the exclusive power of Parliament to make laws with respect to any matter enumerated in List I (*vide* first part of Article 254(1)). Thus, the intention of the Constitution makers was to preserve parliamentary supremacy while at the same time maintaining a federal balance in the matter of distribution of the fields of legislation *vis-à-vis* various Entries in the three Lists. This is also evident on a reading of Article 246(3) which deals with the exclusive powers to make laws by State Legislatures in respect of matters enumerated in List II being subject to clauses (1) and (2) of Article 246, i.e., subject to the Union List and the Concurrent List is in a case of conflict of laws which is irreconcilable.

23. Any other view would result in a situation wherein the State Legislatures on the strength of Entry 33(a) – List III would have their own legislations on the premise that there is no notified order issued by the Central Government in respect of the scheduled industry under Section 18G of the IDRA, and if subsequently in respect of a product of a scheduled industry, the Central Government is to issue a notification under Section 18G

of the IDRA, the laws that are in operation in the various States would become repugnant if there is a direct conflict between the said State laws with the notified order issued by the Central Government under Section 18G of the IDRA. This would result in a legal quagmire and uncertainty leading to confusion. Therefore, for this reason also States cannot have legislative competence to pass laws or take any action in respect of any product of a scheduled industry from the moment Section 18G has been inserted to the IDRA which has been enacted pursuant to Entry 52 – List I. As a result, time of insertion of Section 18G to the IDRA, the intention of the Union is to occupy the field insofar as an article or articles of scheduled industry is concerned which will also include a product of a scheduled industry. Consequently, the States are denuded of their powers to pass any law insofar as the said subject-matter is concerned.

24. In ***State of W.B. vs. Union of India, AIR 1963 SC 1241 ("State of W.B."),*** this Court on a comparative analysis of List I in Seventh Schedule to the Constitution with the Seventh Schedule to the 1935 Act noted that the powers of the Union have been enlarged particularly in the field of economic unity and that

this was done as it was felt that there should be centralised control and administration in certain fields of common interest if rapid economic and industrial progress had to be achieved by the nation. Reference in this regard was also made, *inter alia*, to the transfer of new Entry 33 – List III in the Constitution from List II of the 1935 Act. It was observed that the result of ensuring such economic unity was a departure from any traditional pattern of federation and a conscious decision for the common good. Furthermore, in identifying deviations from traditional features of federations, this Court noted a notable feature that is true of the Indian constitutional framework:

> "26. … (c) Distribution of powers between the Union and the regional units each in its sphere coordinate and independent of the other. The basis of such distribution of power is that in matters of national importance in which a uniform policy is desirable in the interest of the units, authority is entrusted to the Union, and matters of local concern remain with the States. …"

Importance of "Industrial Alcohol" to the Indian Economy:

25. It is necessary to note the importance of "industrial alcohol" in the Indian economy. "Industrial alcohol" is important to the Indian economy for it is used in at least two sectors: i) as

a key feedstock for production of various chemicals in the chemicals industry; and ii) as liquid fuel to be blended with petrol.

25.1 As regards the chemical industry, the XIIth five-year plan (2012-2017) of the Planning Commission ("PC Report") notes that "alcohol-based chemical industry occupies an important place in the Indian chemical industry and is a key contributor to the growth of the sector". It also notes that several alcohol-based chemicals are made using "industrial alcohol" and are used as building blocks for various downstream industries such as "synthetic fibres and synthetic yarn, drugs and pharmaceuticals, agrochemicals, personal care products, dyestuffs, pigments, flavours & fragrances etc." Further, the PC Report notes that alcohol based chemical industry "contributes to green chemistry" as chemicals are manufactured using ethanol instead of being manufactured through the petro-chemical route. It also notes that they contribute to foreign exchange reserves.

25.2 As regards blending of ethanol with petrol, the contribution of Ethanol Blended with Petrol (EBP) programme of

the Government of India appears significant. In this programme, fuel-grade ethanol is blended with petrol and is sold by Oil Marketing Companies (OMCs) for use as a fuel in automobiles. In response to an Unstarred Question No.2764 answered on 20th December, 2023, the Minister of State for Ministry of Consumer Affairs, Food & Public Distribution had answered that:

i) The Government of India has been implementing EBP programme and has fixed the target of 20% blending of ethanol with petrol by 2025;

ii) The supply of ethanol to OMCs has increased by more than 13 times from 38 crore litres in ESY 2013-13 to 502 crore litres in ESY 2022-23;

iii) To achieve the target of 20% blending by 2025, about 1016 crore litres of ethanol would be required and for this, about 1700 crore litres of ethanol producing capacity is required.

25.3 Further, a report of the Ministry of Petroleum and Natural Gas, Government of India titled "Ethanol Growth Story" suggests that the EBP programme has at least three benefits: first, it raises income of farmers which is evident from the observation that OMCs have paid sugar mills nearly Rs.81,796

crore for ethanol supplies up to 2022. Second, it reduces import bills and improves India's energy security. The report suggests that the cumulative foreign exchange impact is estimated to be over Rs.53,894 crore between 2014 and 2022. Third, it lowers CO_2 emissions and promotes a cleaner environment. The report estimates that Greenhouse gas emissions were reduced by 318.2 lac tonnes due to the EBP programme between 2014 and 2022.

26. Thus, insofar as "Fermentation Industries" (other than potable alcohol) is concerned, both alcohol and other products of "Fermentation Industries" being a scheduled industry under the IDRA passed under Entry 52 – List I it would clearly be within the scope of Union legislation. It is clarified that as far as the concept of "intoxicating liquors" versus "industrial alcohol" is concerned, it is clear that Entry 33(a) – List III does not deal with "intoxicating liquors" which is a State subject under Entry 8 – List II. "Fermentation Industries" is a controlled industry and is a scheduled industry under the IDRA. It has been clarified by the 2016 Amendment that Item 26 dealing with "Fermentation Industries" does not include potable alcohol. Therefore, insofar as "intoxicating liquors" which is "potable liquors" is concerned,

only the State Legislatures have the legal competence to enact laws concerning the said subject. Therefore, other types of liquor (i.e. excluding "intoxicating liquors") comes within the nomenclature of "Fermentation Industries" which is a scheduled industry under IDRA.

27. Since *qua* State Legislatures, Article 246(2) is also subject to Article 246(1), the legislation which could have been made under List III (Concurrent List) can also be subject to legislation made under Entry 52 – List I. This is expressly so having regard to Entry 33(a) – List III as any law regarding trade and commerce in, and the production, supply and distribution of the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products, would be subject to a law made as per Entry 52 – List I i.e., IDRA. This is because a Parliamentary law which is made by virtue of an Entry under List I has supremacy over any other law in List II or List III when they are irreconcilable or when the doctrine of occupied field applies respectively.

28. In ***Mineral Area Development Authority,*** I have voiced similar concerns as in the present case in the following words:

> "36.3 The Government of India Act, 1935 was the first comprehensive blueprint for legislative division of power in India between federal, provincial and concurrent spheres which resolved residuary powers to rest with the Federal Government. Though there are apparent similarities between the Government of India Act, 1935 and the Indian Constitution, yet factors, such as, regulation of economic competition and the development of twentieth century welfare States guided the constitutional blueprint for a model of federalism in which provincial initiative should not preclude national coordination, particularly, in the fields of socio-economic spheres.
>
> 36.4 According to Tillin, "in the case of India, political economy considerations intersect with the accommodation of diversity in shaping the resulting forms of federalism". The question of a desirable balance between Central and the State Governments has to be viewed in the context of the country continuing to confront the need to promote economic growth while upholding and expanding social rights.
>
> ***Sarkaria Commission Report on Centre-State Relations:***
>
> 37. Resolved to study and reform the existing arrangements between the Union and the States in an evolving socio-economic scenario, the Ministry of Home Affairs *vide* Order dated 09.06.1983 constituted a Commission under the Chairmanship of Justice R.S. Sarkaria with Shri B. Sivaraman and Dr. S.R. Sen having due regard to the framework of the Constitution. At this stage, reference to Section 5, Chapter II – Legislative Relations of the Report of the Sarkaria Commission ("Sarkaria Commission Report") may be of assistance:

"2.5.21 In every Constitutional system having two levels of government with demarcated jurisdiction, contents respecting power are inevitable. A law passed by a State legislature on a matter assigned to it under the Constitution though otherwise valid, may impinge upon the competence of the Union or vice versa. Simultaneous operation side-by-side of two inconsistent laws, each of equal validity, will be an absurdity. The rule of Federal Supremacy is a technique to avoid such absurdity, resolve conflicts and ensure harmony between the Union and State laws. This principle, therefore, is indispensable for the successful functioning of any federal or quasi-federal Constitution. It is indeed the kingpin of the federal; system. "Draw it out, the entire system falls to pieces"

2.5.22 If the principles of Union Supremacy are excluded from Articles 246 and 254, it is not difficult to imagine its deleterious results. There will be every possibility of our two-tier political system being stultified by internecine strife, legal chaos and confusion caused by a host of conflicting laws, much to the bewilderment of the common citizen. Integrated legislative policy and uniformity on basic issues of common Union-State concern will be stymied. The federal principle of unity in diversity will be very much a casualty. The extreme proposal that the power of Parliament to legislate on a Concurrent topic should be subject to the prior concurrence of the States, would, in effect, invert the principle of Union Supremacy and convert it into one of State Supremacy in the Concurrent sphere. The very object of putting certain matters in the Concurrent List is to enable the Union Legislature to ensure uniformity in laws on their main aspects throughout the country. The proposal in question will, in effect, frustrate that object. The State

Legislatures because of their territorially limited jurisdictions, are inherently incapable of ensuring such uniformity. It is only the Union, whose legislative jurisdiction extends throughout the territory of India, which can perform this pre-eminent role. The argument that the States should have legislative paramountcy over the Union is basically unsound. It involves a negation of the elementary truth that the 'whole' is greater than the 'part'."

(emphasis supplied)

As the paragraphs extracted above elucidate, the Commission was of the firm view that the principles of Union Supremacy cannot be undermined from Articles 246 and 254. While the immediate paragraph is concerned with legislative actions taken under the List III - Concurrent List, they provide us a beneficial lens to both the importance of Union supremacy in matters that demand national uniformity and the Commission's following discussion on "Mines and Minerals" in Chapter XIII."

29. Constitutional law is mainly concerned with the basic features or the framework of distribution of powers between the different organs of the State; between the Union and its units and between the State and the citizens. But there is something in a Constitution that is even more primordial than the structure and the features. These are the ideals on which the founding parents, in their wisdom and sagacity, built the entire edifice of the Constitution itself. It is all important that this edifice is not

dislodged while attempting to dynamically interpret the Constitution. These Constitutional ideals are irreducible and underpin the survival and success of constitutional order and a concordial society. Federalism is one such ideal where the Constitution defines a federal structure with a unitary spirit in Article 246 read with the three Lists of the Seventh Schedule of the Constitution.

Conclusions on interplay of legislative Entries:

30. In view of the aforesaid discussion, my conclusions on the interplay of the legislative Entries under consideration are as under:

I. The field of legislation comprised in Entry 8 – List II is carved out of Entry 24 – List II.

Thus, the subject relating to "intoxicating liquors", that is to say, the production, manufacture, possession, transport, purchase and sale of "intoxicating liquors" being a specific subject is taken out of the general subject of "industries" under Entry 24 – List II.

II. As a result, Entry 52 – List I or any law made under that Entry by the Parliament cannot intrude or trench upon

any law made by the State Legislatures under Entry 8 – List II.

Thus, the Parliament cannot take under its control the subject pertaining to "intoxicating liquors" under any law, such as, IDRA made under Entry 52 – List I. Therefore, the subject "intoxicating liquors" falls exclusively within the domain of the State Legislatures which also have the obligation to prevent "industrial alcohol" being converted into "intoxicating liquors" as an abuse and, therefore, pass legislations or take State action in that regard having regard to Article 47 of the Constitution of India.

III. Entry 33(a) – List III (Concurrent List) and any law made or to be made by the State Legislatures under the said Entry is subject to Parliamentary law made either under Entry 52 – List I or under Entry 33(a) – List III in terms of the first part and second part of Article 254(1) respectively.

Thus, if any law has been made by the Parliament by virtue of Entry 52 – List I, such as, the IDRA and there is

an intention to occupy the field, the State law would be subject to the doctrine of occupied field. Thus, Section 18G of the IDRA which has been made by virtue of Entry 52 – List I thereof would prevail on the basis of the aforesaid doctrine. Consequently, it is held that issuance of a notified order under Section 18G of the IDRA is neither a *sine qua non* nor is it a condition precedent for the State Legislatures to restrain exercise of powers under Entry 33(a) – List III. In other words, the mere insertion of Section 18G to the IDRA implies that the Parliament has intended to occupy the field demarcated under the aforesaid provision. Also, a notified order when issued by the Central Government under Section 18G of the IDRA cannot be questioned in any Court of law. This also indicates that the doctrine of occupied field applies to the said Section *vis-à-vis* a scheduled industry under the IDRA.

IV. If the Parliament has made a law under Entry 52 – List I and intends to occupy the whole field then the State Legislatures are denuded of their powers and therefore,

they would lack legislative competence to enact a law under Entry 33(a) – List III.

In the context of "industrial alcohol" and in terms of Item 26 of the First Schedule of the IDRA i.e. "Fermentation Industries", it is only the Central Government which has the powers to act under Section 18G of the said Act. So long as an industry is a scheduled industry under the IDRA and Section 18G of the said Act remains on the statute book, the State Legislatures are denuded of their powers to pass a legislation or to take any action in respect of the products of a scheduled industry under Entry 33(a) – List III.

Effect of overruling Synthetics and Chemicals (7J):

31. The judgment of this Court in ***Synthetics and Chemicals (7J)*** has held the field since 1989 for three and a half decades. The doubts which have arisen regarding the said judgment subsequently have led to the reference to a larger Bench. On re-considering the judgment in ***Synthetics and Chemicals (7J)*** in light of the arguments advanced before this nine-Judge bench and in the backdrop of the constitutional Entries in the three

Lists, I find that except for a clarification and deletion of the words "***both potable and***" in paragraph 84 of AIR version of the Report, the said judgment would not call for any intervention. The reasons for saying so can be stated as under:

Firstly, the judgment has held the field for three and a half decades on certain concrete ideas pertaining to liquors as part of "Fermentation Industries", which is a scheduled industry, and that part which is excluded from the aforesaid scheduled industry. This is based on the interplay of Entries in Lists I and II.

The judgment in ***Synthetics and Chemicals (7J)*** has crystallised the concepts of "intoxicating liquors" and "industrial alcohol" which are clearly distinguished in legislations of the State and in administration or governance for several decades on the basis of constitutional demarcation of legislative entries. Consequently, it held that "Fermentation Industries" is a controlled industry and I have now clarified that it does

not take within its ambit "intoxicating liquors" or potable alcohol.

The judgment in ***Synthetics and Chemicals (7J)*** correctly held on a conspectus reading of Entry 8 – List II, Entry 6 - List II and Article 47 that State Legislatures have the competence to ensure that "industrial alcohol" or non-potable alcohol is not diverted and misused as a substitute for potable alcohol.

Secondly, the judgment has correctly considered the significance of insertion of Section 18G to the IDRA which is a Parliamentary Law made under Entry 52 – List I and the consequences that follow in light of the doctrine of occupied field in the context of "Fermentation Industries", a scheduled industry, by bearing in mind the first part of Article 254(1) of the Constitution.

Thirdly, the reasons assigned in ***Synthetics and Chemicals (7J)*** for invoking the doctrine of occupied field in the context of "Fermentation Industries" and in the context of Section 18G of the IDRA would equally

apply to all other scheduled industries under the said Act. Any interference with the said legal position would have a cascading effect on other scheduled industries thereby giving legislative competence in respect of all scheduled industries to the States under Entry 33(a) – List III. This would result in multiple States as well as the Union having powers to make laws which would lead to the scheduled industries under IDRA pale into insignificance. This would defeat the purpose of Entry 52 – List I and the laws made thereunder; such as IDRA.

Fourthly, the critical importance of scheduled industries in the Indian economy must not be lost sight of. The object and purpose of Entry 52 – List I and passing of laws on the strength of the said Entry by the Parliament taking over control of certain industries by a declaration made by law as expedient in the public interest, is a factor which cannot be lost sight of while answering the reference made to this Bench in the form of various questions raised. This aspect has been borne

in mind in ***Synthetics and Chemicals (7J)*** while deciding the issues raised therein.

Fifthly, if the judgment in ***Synthetics and Chemicals (7J)*** is overruled then all State legislatures can also make laws under Entry 33(a) – List III in respect of scheduled industries. This would result in IDRA made under Entry 52 – List I and Entry 52 – List I itself losing significance as the object and purpose of taking control of certain industries by insertion of the said industries as scheduled industries under the said Act would be defeated.

Sixthly, if industries of critical importance to the Indian economy which are scheduled industries under the IDRA which are under the control of the Union by a declaration made by Parliament by law are allowed to be legislated upon by the State legislatures, the whole object of taking control of such industries by the Union for ensuring uniformity in their development and for ensuring the object and purpose of the IDRA would be

defeated. This would result in a haphazard development of such scheduled industries in the country. For instance, if "industrial alcohol" is read as coming within the scope and ambit of Entry 8 – List II then it would be excluded from the scheduled industry. Such a state of affairs would not be conducive to the economy as the scheduled industries such as "Fermentation Industries", minus potable alcohol play a significant role in the Indian economy.

Seventhly, the interpretation of the constitutional Entries and the provisions of the Constitution must be so made bearing in mind the intentions of the framers of the Constitution and the nature and structure of the Indian economy and the need for a uniform development throughout the country of certain industries which have been taken control of by the Union. This approach has been adopted in ***Synthetics and Chemicals (7J)***.

Eighthly, the principle of federal balance must yield to the doctrine of Parliamentary supremacy in certain

areas such as when laws are made under Entry 52 or Entry 54 or Entry 7 – List I such as in the present cases. This is because of the unique manner in which Article 246 of the Constitution is worded and the division of legislative subjects between the Parliament and the State legislatures, having regard to the unique federal structure in India with the balance tipping in favour of the Union in certain niche areas of legislation and governance.

Ninthly, the Amendment Act, 2016 has brought much needed clarity on the issue and is the correct position of law compatible with the scheme of legislative competence as under our Constitution. I have already held that merely because "industrial alcohol" can be easily manufactured into or misused to become "intoxicating liquors" would not grant States the competence to wholly regulate "industrial alcohol". State legislatures only have legislative competence over what is "intoxicating liquors" as a beverage. Therefore, the judgment in ***Synthetics and Chemicals (7J)*** is good law

and was most correct in postulating that State legislatures will only have the competence to prevent misuse in interest of public health.

For the aforesaid reasons, I am of the view that although the judgment in ***Synthetics and Chemicals (7J)*** calls for only a clarification, it does not require any overruling.

My answers to the questions formulated:

32. Consequently, the questions formulated are accordingly answered as under:

Ques.1. Does Section 2 of the Industries (Development and Regulation) Act, 1951, have any impact on the field covered by Section 18G of the said Act or Entry 33(a) of List III of the Seventh Schedule of the Constitution?

Ans.: Entry 33(a) – List III has to be read in the context of Entry 52 – List I. IDRA is relatable to Entry 52 – List I. Section 2 of the IDRA has a nexus and is connected with Section 18G of the said Act. Therefore, Entry 33(a) – List III is impacted by Section 2 read with Section 18G of the IDRA.

Ques. 2. Does Section 18G of the aforesaid Act fall under Entry 52 of List I of the Seventh Schedule of the Constitution, or is it covered by Entry 33(a) of List III thereof?

Ans.: Section 18G of the IDRA is directly relatable to Entry 52 – List I which has to be read in the context of Section 2 of IDRA. The doctrine of occupied field applies and the legislative field under Entry 33(a) – List III is covered by the said provision on the basis of doctrine of occupied field under first part of Article 254 of the Constitution.

Ques.3. In the absence of any notified order by the Central Government under Section 18G of the above Act, is the power of the State to legislate in respect of matters enumerated in Entry 33 of List III ousted?

Ans.: Yes, even in the absence of any notified order by the Central Government under Section 18G of the IDRA, the power of the States to legislate in respect of matters enumerated in Entry 33(a) – List III is ousted on the basis of the doctrine of occupied field as aforestated.

On this aspect, the judgment of this Court in ***Synthetics and Chemicals (7J)*** is correct.

Ques.4. Does the mere enactment of Section 18G of the above Act, give rise to a presumption that it was the intention of the Central Government to cover the entire field in respect of Entry 33(a) - List III so as to oust the States' competence to legislate in respect of matters relating thereto?

Ans.: Yes, the mere enactment of section 18G of the IDRA gives rise to a presumption that it was the intention of the Parliament and Central Government to cover the entire field in respect of Entry 33(a) - List III so as to oust the States' competence to legislate in respect of matters relating thereto.

Answer given to question (3) above is reiterated here.

Ques.5. Does the mere presence of Section 18G of the above Act, oust the State's power to legislate in regard to matters falling under Entry 33(a) of List III?

Ans.: Yes, the mere presence of Section 18G of the IDRA would oust the State's power to legislate in regard to matters falling under Entry 33(a) - List III. The doctrine of occupied field applies.

Ques.6. Does the interpretation given in ***Synthetics and Chemicals case, (1990) 1 SCC 109*** in respect of Section 18G of the Industries (Development and Regulation) Act, 1951, correctly state the law regarding the States' power to regulate “industrial alcohol” as a product of the scheduled industry under Entry 33(a) of List III of the Seventh Schedule of the Constitution in view of Clause (a) thereof?

Ans. : Yes, the interpretation given in ***Synthetics and Chemicals case, (1990) 1 SCC 109*** in respect of Section 18G of the IDRA correctly states the law. Even with regard to “industrial alcohol” as a product which falls within “Fermentation Industries” in respect of which the Union has assumed control, in the absence of a notified order, the competence of the State to act under Entry 33 - List III is denuded.

My answers to the conclusions of learned Chief Justice:

33. His Lordship, the Chief Justice of India has overruled the judgment in ***Synthetics and Chemicals (7J)*** and has come to the following conclusions and my answers to the same are in a tabular form as under:

Point(s)	Conclusions arrived at by Hon'ble the CJI	My Conclusions
a.	Entry 8 of List II of the Seventh Schedule to the Constitution is both an industry-based entry and a product-based entry. The words that follow the expression "that is to say" in the Entry are not exhaustive of its contents. It includes the regulation of everything from the raw materials to the consumption of 'intoxicating liquor';	**In my view, Entry 8 – List II deals with "intoxicating liquors". The misuse, diversion or abuse of "industrial alcohol" as "intoxicating liquors" can also be controlled and prevented under Entry 8 – List II by the State Legislatures having regard to Article 47 of the Constitution. It is also made clear that the IDRA which has been enacted by the Parliament by virtue of Entry 52 – List I has taken control of "Fermentation Industries" as a scheduled industry. Such "Fermentation Industries" would exclude "intoxicating liquors".**

b.	Parliament cannot occupy the field of the entire industry merely by issuing a declaration under Entry 52 of List I. The State Legislature's competence under Entry 24 of List II is denuded only to the extent of the field covered by the law of Parliament under Entry 52 of List I;	**Parliament can occupy the field of the entire industry by merely issuing a declaration under Entry 52 – List I and the State Legislature's competence under Entry 24 – List II is denuded to the field of the entire industry and specifically to the extent of the field covered by the law of Parliament under Entry 52 – List I.**
c.	Parliament does not have the legislative competence to enact a law taking control of the industry of intoxicating liquor covered by Entry 8 of List II in exercise of the power under Article 246 read with Entry 52 of List I;	**I agree.**
d.	The judgments of the Bombay High Court in **FN Balsara v. State of Bombay** (supra), this Court in **FN Balsara** (supra) and **Southern Pharmaceuticals** (supra) did not limit the meaning of the expression 'intoxicating liquor' to its popular meaning, that is, alcoholic beverages that produce intoxication. All the three judgments interpreted the expression	**The context of the controversy must be borne in mind in the said cases. The aforesaid decisions in substance limited the meaning of the expression "intoxicating liquors" to its popular meaning i.e. "alcoholic beverages" that produce intoxication. Therefore, in the context of prohibition of "intoxicating liquor" as a**

	to cover alcohol that could be noxiously used to the detriment of health;	**beverage, there could not have been prohibition of production of alcohol used for medicinal and toilet preparation as well as "industrial alcohol" or non-potable alcohol.**
e.	The expression 'intoxicating liquor' in Entry 8 has not acquired a legislative meaning on an application of the test laid down in **Ganon Dunkerley** (supra);	**The expression "intoxicating liquor" in Entry 8 has acquired a legislative and judicial meaning over the decades as per the discussion above.**
f.	The study of the evolution of the legislative entries on alcohol indicates that the use of the expressions "intoxicating liquor" and "alcoholic liquor for human consumption" in the Seventh Schedule was a matter well-thought of. It also indicates that the members of the Constituent Assembly were aware of use of the variants of alcohol as a raw material in the production of multiple products;	**The members of the Constituent Assembly were clear in what they envisaged within the scope and ambit of the expression "intoxicating liquors" in Entry 8 – List II. This is also evident from Item 26 of the First Schedule of the IDRA. "Intoxicating liquors" is only a segment of the "Fermentation Industries", namely, potable alcohol. There was no intention on the part of the members of the Constituent Assembly to read within the expression "intoxicating liquors" non-potable or "industrial alcohol". Further, in order to have**

		a consistency between what was envisaged under Entry 84 – List I and Entry 51 – List II in the context of alcoholic liquors for human consumption, the taxing Entry in List II which is within the legislative competence of the States follows the regulatory Entry in Entry 8 – List II. Therefore, the use of the expression "industrial alcohol" or non-potable alcohol in *Synthetics and Chemicals (7J)* was only to crystallise all variants of alcohol which were non-potable and to distinguish the same from potable alcohol meant only for human consumption as a beverage.
g.	Entry 8 of List II is based on public interest. It seeks to enhance the scope of the entry beyond potable alcohol. This is inferable from the use of the phrase 'intoxicating' and other accompanying words in the Entry. Alcohol is inherently a noxious substance that is prone to misuse affecting public health at large. Entry 8	**The entire controversy cannot be viewed from the point of view of alcohol being used as a raw material and final product such as hand sanitizer containing alcohol. The potential misuse of alcohol cannot be the basis for interpreting an Entry such as Entry 8 – List II. Ultimately, the**

	covers alcohol that could be used noxiously to the detriment of public health. This includes alcohol such as rectified spirit, ENA and denatured spirit which are used as raw materials in the production of potable alcohol and other products. However, it does not include the final product (such as a hand sanitiser) that contains alcohol since such an interpretation will substantially diminish the scope of multiple other legislative entries;	**"Fermentation Industries" have to be borne in mind which takes within its canvas only non-potable /"industrial alcohol". The aspect of public health having a corelation to Entry 8 – List II dealing with "intoxicating liquor" and the misuse of alcohol cannot be a guide while interpreting the content of the said Entry and therefore, its scope and ambit being amplified beyond what it really envisages as a field of legislation for the States to legislate upon.**
h.	The judgment in **Synthetics (7J)** (supra) is overruled in terms of this judgment;	**The judgment in *Synthetics and Chemicals (7J)* need not be overruled in relation to Section 18G of the IDRA and it continues to be good law in the context of what is comprised in the expression "industrial alcohol" and "intoxicating liquors" except what has been clarified above in Entry 8 – List II.**
i.	Item 26 of the First Schedule to the IDRA must be read as excluding	**Item 26 of the First Schedule of the IDRA must be read excluding**

	the industry "intoxicating liquor", as interpreted in this judgement;	**only what is contained in the expression "intoxicating liquors" as interpreted above in Entry 8 – List II.**
j.	The correctness of the judgment in **Tika Ramji (supra)** on the interpretation of word 'industry' as it occurs in the Legislative entries does not fall for determination in this reference; and	**In my opinion, *Tika Ramji* is held to be not good law insofar as the requirement of issuance of a notified order as a condition precedent for the field to be occupied, has been mandated therein.**
k.	The issue of whether Section 18G of the IDRA covers the field under Entry 33(a) of List III does not arise for adjudication in view of the finding that denatured alcohol is covered by Entry 8 of List II."	**Denatured alcohol belongs to the family of "industrial alcohol" and therefore, Section 18G of the IDRA has a bearing on the said product. Section 18G occupies the field under Entry 33(a) – List III and, thereby, only Parliament is competent to legislate on all articles or class of articles related to a scheduled industry i.e. "Fermentation Industries".**

34. Reference is answered in the above terms.

35. The Registry to place the matters before Hon'ble the Chief Justice of India for seeking orders for being listed before the appropriate Bench.

36. I must place on record my sincere appreciation to the learned Attorney General, learned Solicitor General and their teams, learned senior counsel appearing for the respective parties, learned instructing counsel and learned counsel for the respective parties for their valuable assistance to this Bench.

.....J.
(B.V. NAGARATHNA)

New Delhi;
October 23, 2024.