2024 INSC 812

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No 151 of 2007

State of U.P. & Ors. **…Appellants**

Versus

M/S Lalta Prasad Vaish and sons **…Respondent**

With

Special Leave Petition (C)….(CC) No. 7999 of 2017
With
Special Leave Petition (C) No. 27241 of 2019
With
Special Leave Petition (C) No. 18582 of 2023
With
Special Leave Petition (C) No. 19275 of 2004
With
Special Leave Petition (C) No. 16505 of 2004
With
Special Leave Petition (C) No. 26110 of 2004
With
Special Leave Petition (C) No. 26111 of 2004
With
Civil Appeal No. 580 of 2008
With
Civil Appeal No. 152 of 2007

With

Civil Appeal No. 153 of 2007

With

Civil Appeal No. 610 of 2008

With

Special Leave Petition (C) No. 20204 of 2012

With

Civil Appeal No. 6768 of 2014

With

Special Leave Petition (C) No. 20519 of 2014

With

Special Leave Petition (C) No. 25447 of 2014

With

Special Leave Petition (C) No. 3160 of 2015

With

Special Leave Petition (C) No. 4057 of 2015

With

Civil Appeal No. 2084 of 2020

With

Civil Appeal No. 4987 of 2021

With

Diary No. 41507 of 2019

With

Special Leave Petition (C) No.18686 of 2022

With

Diary No. 7447 of 2023

With

Civil Appeal No. 154 of 2007

With

Civil Appeal No. 671 of 2008

With

Civil Appeal No. 672 of 2008

With

Civil Appeal No. 688 of 2008

With

Civil Appeal No. 750 of 2008

And With

Civil Appeal No. 5093 of 2011

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

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A. Background

1. "Intoxicating liquor" falls within the legislative domain of the State Legislatures under Entry 8 of the State list, List II, of the Seventh Schedule to the Constitution. The issues which arise for adjudication in this reference pertain to the scope of the power of the State Legislatures under Entry 8 and the meaning of the phrase "intoxicating liquor". The question is whether "intoxicating liquor" in Entry 8 only includes potable alcohol, such as alcoholic beverages or also includes alcohol which is used in the production of other products. In **Synthetics and Chemicals Ltd.** v. **State of UP**,[1] **("Synthetics [7J])**, a seven-Judge Bench delineated the scope of the regulatory powers of State Legislatures on "intoxicating liquor". The correctness of **Synthetics [7J]** (supra) has been referred to a larger bench. We answer the reference in this judgment.

i. Constitutional provisions

2. The State has the legislative competence under Entry 24 of List II over 'industries' but this is subject to entries 7 and 52 of List I.[2] Under Entry 52 of List I, Parliament has legislative competence over such industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest[3]. Entry 7 of List I deals with industries which are declared by Parliament by law to be necessary for the purpose of defence or for the

[1] (1990) 1 SCC 109
[2] "24. Industries subject to the provisions of Entries 7 and 52 of List I"
[3] "52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest."

prosecution of war.[4] Under Entry 33 of List III, the State Legislatures and Parliament can legislate on trade and commerce in, and the production, supply and distribution of the products of industries controlled by Parliament under Entry 52 of List I.[5] Entry 8 of List II deals with 'intoxicating liquors'[6].These words are followed by the expression "that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors". The Seventh Schedule also demarcates taxing powers related to alcohol separately. Entry 84 of List I (before it was amended by the Constitution (One Hundred and First Amendment) Act 2016) enabled Parliament to levy duties of excise on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption but including medicinal and toilet preparations containing alcohol.[7] Entry 51 of List II confers the State Legislature the competence to levy duties of excise,

[4] "7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war."

[5] "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 grinned or ungrinned, and cotton seed; and
(e) Raw jute."

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

[7] "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.
But including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry."

inter alia, on alcoholic liquors for human consumption but not including medicinal and toilet preparations containing alcohol.[8]

3. In exercise of the power under Article 246[9] read with Entry 52 of List I, Parliament enacted the Industries (Development and Regulation) Act 1951[10]. Section 2 of IDRA stipulates that it is expedient in public interest that the Union should take control of the industries specified in the First Schedule to the enactment. Item 26 of the First Schedule read as follows:

> "26. Fermentation industries:
> (1) Alcohol
> (2) Other products of fermentation industries"

4. In 2016, Item 26 of the First Schedule to the IDRA was amended to exclude potable alcohol from the ambit of the Item.[11] Item 26 reads as follows after the amendment:

> "26. Fermentation industries (other than potable alcohol):
> (1) Alcohol
> (2) Other products of fermentation industries"

5. Section 18-G of IDRA[12] grants the Central Government the power to regulate the supply and distribution "of any article or class of articles relatable to a

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[8] "51. Duties of excise on the following goods manufactured or produced in the State and counterveiling 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.

[9] "246. Subject matter of laws made by Parliament and by the Legislatures of States."

[10] "IDRA"

[11] The Industries (Development and Regulation) Amendment Act 2016

[12] "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 of any article or class of articles relatable to any scheduled industry,

scheduled industry" for securing equitable distribution and availability at fair prices.

ii. The judgment in **Synthetics (7J)**

6. The United Provinces Excise Act 1910[13] was enacted to "consolidate and amend the law in force in the United Provinces relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs". In exercise of the powers under the UP Excise Act, the

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may, notwithstanding anything contained in any other provision of this Act, by notified order, provide for 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 such article or class thereof to sell the whole or the part of the articles so manufactured or produced during a specified period or to sell the whole or a part of the article 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, 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 of issue of licences, permits, or other documents and 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."

[13] "UP Excise Act"

Government of the Untied Provinces levied vend fee[14] on 'denatured spirit' from the wholesale dealer of denatured spirit. The UP Excise Act was amended to include Section 24-A. Section 24-A provided that the Excise Commissioner may grant licence for the manufacture or sale of any 'foreign liquor'. 'Foreign Liquor' was defined in the subordinate Rules to include "all rectified, perfumed, medicated and denatured spirit."[15] The constitutional validity of the amendment including Section 24-A was challenged before the Allahabad High Court. The High Court upheld the challenge. The UP State Legislature enacted the U.P Excise (Amendment) (Re-enactment and Validation) Act 1976 including Section 24-A relying on the decisions of this Court in **Nashirwar** v. **State of MP**[16] and **Har Shanker** v. **Dy. Excise and Taxation Commissioner**[17]. The Allahabad High Court upheld the validity of the U.P Excise (Amendment) (Re-enactment and Validation) Act 1976.[18]

7. The appellants in **Synthetics & Chemicals** v. **State of UP**[19] **("Synthetics [2J]")**, held licenses for wholesale vend of 'denatured spirit'. They instituted proceedings under Article 226 of the Constitution before the Allahabad High Court for seeking a direction to quash the notification by which vend fee was levied from a wholesale licence dealer of 'denatured spirit'. The High Court dismissed the petitions. It held that the phrase 'intoxicating liquors' in Entry 8 of List II of the Seventh Schedule to the Constitution includes denatured spirit

[14] Vend fee means the fee that is paid by a licenses dealer to sell the products in retain.
[15] Section 4(2) of the UP Act provides that the State may declare what shall be deemed to be foreign liquor or country liquor
[16] 1975 AIR 360
[17] AIR 1957 SC 414
[18] 1976 ALJ 436 (FB)
[19] (1980) 2 SCC 441

and that the State was, therefore, competent to levy the vend fee on denatured spirit.

8. Proceedings under Article 136 were instituted for challenging the decision of the High Court. Proceedings were also initiated under Article 32 challenging the constitutional validity of the levy of vend fee. A two-Judge Bench of this Court in **Synthetics (2J)** (supra) heard the writ petition and the appeals against the judgments of the Allahabad High Court together. Three issues arose before the Bench. On the issue of the meaning of the phrase 'intoxicating liquor' in Entry 8, the two-Judge Bench referred to the decisions of this Court in **State of Bombay** v. **FN Balsara**[20]**, Nashirwar** (supra) and **Har Shanker** (supra) and held that the decisions indicate that the phrase 'intoxicating liquor' in Entry 8 of List II comprises of liquor which contains alcohol, both potable and non-potable.[21] The second issue was whether in view of IDRA, the power of the State to regulate alcohol (both potable and non-potable) was denuded. In particular, reference was made to the notification issued by the Union under Section 18-G of the IDRA prescribing the price of various types of alcohol and rectified spirit. The two-Judge Bench referred to the decision of a three-Judge Bench of this Court in **Tika Ramji** v. **State of UP**[22] and entry 33 of List III to hold that the State Legislature had the power to legislate regarding the production, supply and distribution of the **products** of the industries notified by Parliament under Entry 52 of List I.[23]

[20] 1951 SCC 860
[21] (1980) 2 SCC 441 [18]
[22] AIR 1956 SC 676
[23] (1980) 2 SCC 441 [25-28]

The two-Judge Bench further held that the Ethyl Alcohol (Price Control) Order issued by the Central Government in exercise of the power under Section 18G of IDRA did not take away the exclusive rights of the State Government relating to intoxicating liquor.[24] The third issue was whether the phrase 'foreign liquor' in Section 24-A includes denatured spirit or only alcohol for human consumption. The Bench held that the meaning of the phrase cannot be restricted to alcohol for human consumption since "when liquor is put to any use such as manufacture of other articles, the liquor is all the same consumed."[25]

9. Review petitions were filed against the decision of this Court in **Synthetics (2J)** (supra). Writ petitions were also filed for challenging the rules by which vend fees were levied in Uttar Pradesh, and provisions of various laws enacted by the then State of Bombay, and the States of Tamil Nadu and Andhra Pradesh by which exclusive privilege of dealing with any intoxicant was vested in the State. The matters were heard by a seven-Judge Bench in **Synthetics(7J)** (supra).

10. Justice Sabyasachi Mukharji, writing for himself and five other judges framed the following issues for consideration:

> "2. The main question that falls for consideration in these matters is whether the vend fee in respect of the industrial alcohol under different legislations and rules in different States is valid. […] The questions with which we are mainly concerned are the following:

[24] (1980) 2 SCC 441 [28]
[25] (1980) 2 SCC 441 [34]

> Whether the power to levy excise duty in case of industrial alcohol was with the State legislature or the Central legislature;
>
> What is the scope and ambit of Entry 8 of List II of the Seventh Schedule of the Constitution?
>
> 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."

11. The decision, first, laid down the meaning of the terms, 'rectified spirit', 'industrial alcohol', and 'ethyl alcohol'. The decision noted that the petitioners and appellants were manufacturers of 'ethyl alcohol' and that 'ethyl alcohol', which is also known as rectified spirit is an industrial alcohol. The judgement, used the three phases interchangeably:

> "74. It has to be borne in mind that by common standards ethyl alcohol (which has 95 per cent) is an industrial alcohol and is not fit for human consumption. The petitioners and the appellants were manufacturing ethyl alcohol(95 per cent) (also known as rectified spirit) which is an industrial alcohol. ISI specification has divided ethyl alcohol (as known in the trade) into several kinds of alcohol. Beverage and industrial alcohols are clearly and differently treated. Rectified spirit for industrial purposes is defined as "spirit purified by distillation having a strength not less than 95 per cent of volume by ethyl alcohol". Dictionaries and technical books would show that rectified spirit (95 per cent) is an industrial alcohol and is not potable as such. It appears, therefore, that industrial alcohol which is ethyl alcohol (95 per cent) by itself is not only non-potable but is highly toxic. The range of spirits of potable alcohol is from country spirit to whisky and the ethyl alcohol content varies between 19 to about 43 per cent. These standards are according to the ISI specifications. In other words ethyl alcohol (95 per cent) is not alcoholic liquor for human consumption but can be used as a raw material input after processing and substantial dilution in the production of whisky, gin, country liquor, etc."

12. This Court allowed the challenge on the following grounds:

    a. The phrase 'intoxicating liquor' in Entry 8 means 'liquor which is consumable by human being **as it is**" for the following reasons: (i) In **FN Balsara** (supra), this Court was not aware of the full use of alcohol as industrial alcohol[26]; and (ii) Only two decisions of this Court have dealt with industrial alcohol. One was the decision in **Synthetics (2J)** (supra) and the other was the decision in **Indian Mica and Micancite Industries** v. **State of Bihar**[27] in which this Court held that Parliament had the legislative competence to levy tax on alcoholic liquor not fit for human consumption[28];

    b. The provisions that are challenged are not regulatory but seek to levy a tax.[29] List II does not confer the State Legislature the power to levy of tax on industrial alcohol[30];

    c. In view of Item 26 of the First Schedule to IDRA, the control of alcohol industries vests exclusively in the Union. Thus, the power to issue licenses to manufacture **both** potable and non-potable alcohol vests in the Central Government;[31]

    d. The State can also not regulate industrial alcohol as a 'product' of the controlled industry in terms of Entry 33 of List III because the Union

[26] (1990) 1 SCC 109 [74]
[27] (1971) 2 SCC 236
[28] (1990) 1 SCC 109 [75]
[29] On the distinction between tax and fee (see (1990) 1 SCC 109 [69-73]
[30] (1990) 1 SCC 109 [83]
[31] (1990) 1 SCC 109 [85]

occupies the whole field on industrial alcohol as evinced by Section 18G of the IDRA[32];

e. Even otherwise, the impugned provisions do not regulate a product of the scheduled industry. Rather, they deal with the manufacture and sale of industrial alcohol[33];

f. The power of the States to legislate on the subject of alcohol is restricted to laws which (paragraph 86 of **Synthetics (7J)** (supra)):

i. Prohibit potable alcohol in terms of Entry 6 of List II which concerns public health;

ii. Lay down regulations to ensure that non-potable alcohol is not diverted and misused as a substitute for potable alcohol;

iii. Charge excise duty on potable alcohol and sales tax under Entry 52 of List II. However, sales tax cannot be charged on industrial alcohol; and

iv. Charge fees on a *quid pro quo* basis, in return for some service rendered by the state, as distinct from fees for grant of a privilege in terms of **Indian Mica** (supra).

13. However, the judgment in paragraph 88 makes the following observations:

> "On an analysis of the aforesaid decisions and practice, we are clearly of the opinion that in respect of industrial alcohol the States are not authorised to

[32] (1990) 1 SCC 109 [85]
[33] (1990) 1 SCC 109 [85]

> impose the impost they have purported to do. In that view of the matter, the contentions of the petitioners must succeed and such impositions and imposts must go as being invalid in law so far as industrial alcohol is concerned. We make it clear that this will not affect any impost so far as potable alcohol as commonly understood is concerned. It will also not affect any imposition of levy on industrial alcohol fee where there are circumstances to establish that there was quid pro quo for the fee sought to be imposed. This will not affect any regulating measure as such."

14. Paragraph 88 lays down the following three principles:

    a. States do not have the competence to levy tax on industrial alcohol;

    b. States have the competence to levy tax on potable alcohol; and

    c. States have the competence to levy fee on industrial alcohol.

15. Justice Oza in his concurring opinion held:

    a. The legislative entries in List I and List II clearly demarcate the taxing powers of Parliament and State Legislature. Entry 84 of List I covers levy of excise duty on alcoholic liquor for other than human consumption and Entry 51 of List II covers levy of excise duty on alcoholic liquor for human consumption[34];

    b. Parliament controls the alcohol industry since Item 26 of IDRA deals with industry based on fermentation and alcohol. The competence of the State Legislature under Entry 8 can only be subject to IDRA[35]; and

[34] (1990) 1 SCC 109 [97]
[35] (1990) 1 SCC 109 [100]

c. The regulation of the State under Entry 8 of List II can only be limited to prevent the conversion of alcoholic liquors for industrial use for human consumption. Regulatory fee can be levied by the State for this limited purpose.

iii. The aftermath of **Synthetics (7J)**

16. Subsequently, the interpretation of the decision in **Synthetics (7J)** (supra) came up before this Court in numerous occasions. In **Shri Bileshwar Khand Udyog Khedut Sahakari Mandali** v. **State of Gujarat**[36], the constitutional validity of Section 58-A of the Bombay Prohibition Act 1949 was challenged. Section 58-A enabled the State Government to direct that "the manufacture, import, export, transport, storage, sale, purchase, use, collection or cultivation of any intoxicant, denatured spiritous preparations, hemp, mhowra flowers or molasses" would be in the supervision of persons appointed by them and the costs of such staff were required to be borne by the person engaged in the activity. This Court rejected the challenge. Relying on **Synthetics (7J)** (supra)**,** the two-Judge Bench observed that though industrial alcohol is not covered by the regulatory powers under Entry 8 or the taxing power under Entry 51 of List II, the State has powers to ensure that industrial alcohol is not diverted to be used as potable alcohol and this is covered by Entry 33 of List

[36] (1992) 2 SCC 42

III.[37] This decision was followed by another two-Judge Bench in **Gujchem Distillers India** v. **State of Gujarat**[38].

17. In **State of AP** v. **McDowell**[39], the prohibition of sale and consumption of intoxicating liquor in the State of Andhra Pradesh was challenged. The petitioners submitted that the State did not have the competence to prohibit consumption. For this purpose, reference was made to the observations in paragraph 85 of **Synthetics(7J)** (supra)**,** where the Court had observed that after the enactment of IDRA, the power to issue licenses to manufacture **both** potable and non-potable liquor vested in Parliament. The three-Judge Bench rejected the argument by referring to observations in paragraph 86(a) **Synthetics (7J)** (supra) that States have the power to enact legislation in the nature of prohibiting potable liquor.[40] In **Vam Organic Chemicals** v. **State of UP**[41] **["Vam Organic I"]**, the rules issued under the UP Excise Act providing for power to issue licenses for denaturation of spirit and levy of denaturing fee was challenged. Justice A M Ahmadi (as the learned Chief Justice then was) writing for the two-Judge Bench noted that **Synthetics(7J)** (supra) did not

[37] "4. […] Levy as a fee under Entry 8 of List II of Seventh Schedule or excise duty under Entry 51 are different than cost of supervision charged under Section 58-A. The former has to stand the test of a levy being in accordance with law on power derived from one of the constitutional entries. Since *Synthetics and Chemicals case* [*Synthetics and Chemicals Ltd.* v. *State of U.P.*, (1990) 1 SCC 109] finally brought down the curtain in respect of industrial alcohol by taking it out of the purview of either Entry 8 or 51 of List II of Seventh Schedule the competency of the State to frame any legislation to levy any tax or duty is excluded. But by that a provision enacted by the State for supervision which is squarely covered under Entry 33 of the Concurrent List which deals with production, supply and distribution which includes regulation cannot be assailed. The bench in *Synthetics and Chemicals case* [*Synthetics and Chemicals Ltd.* v. *State of U.P.*, (1990) 1 SCC 109] 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. This is enough to justify a provision like Section 58-A."
[38] (1992) 2 SCC 399
[39] 1996 3 SCC 709
[40] 1996 3 SCC 709 [33]
[41] (1997) 2 SCC 715

hold that the State will not have any power over 'industrial alcohol'.[42] Specifically, the two-Judge Bench referred to the observations in paragraph 86(b) that the State may lay down regulations to ensure that non-potable alcohol is not misused as a substitute for potable alcohol. Justice Ahmadi observed that the process of denaturing was to ensure it was not misused as potable alcohol which would be covered by the observations in **Synthetics (7J)** (supra).[43]

18. In **Bihar Distillery** v. **Union of India**[44], the petitioner challenged the State's cancellation of their license for preparing "rectified spirit" on the ground that the State lacked competence in view of **Synthetics(7J)** (supra). Justice B P Jeevan Reddy, writing for the two-Judge Bench held that the observations in paragraph 85 that Parliament has legislative competence over both potable and non-potable alcohol in view of the enactment of IDRA was a typographical error.[45] The Bench further observed that **Synthetics (7J)** (supra) was mainly concerned with legislative competence over "denatured rectified spirit" (which was exclusively and wholly industrial alcohol) and not "rectified spirit" (which could be used directly for industrial purposes or denatured for industrial purposes or used to prepare liquor for human consumption.)[46] This Court held that the line of demarcation must be drawn at the stage of clearance of the

[42] (1997) 2 SCC 715 [13]
[43] (1997) 2 SCC 715 [13,14] "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 taxed 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. [emphasis supplied]
[44] (1997) 2 SCC 727
[45] (1997) 2 SCC 727 [12]
[46] (1997) 2 SCC 727 [23]

rectified spirit since it was used for the preparation of both potable alcohol (over which the State had competence under Entry 8 of List II) and non-potable alcohol (over which the State did not have competence under Entry 8 of List II):

> "23. The line of demarcation can and should be drawn at the stage of clearance/removal of the rectified spirit. Where the removal/clearance is for industrial purposes (other than the manufacture of potable liquor), the levy of duties of excise and all other control shall be of the Union but where the removal/clearance is for obtaining or manufacturing potable liquors, the levy of duties of excise and all other control shall be that of the States. This calls for a joint control and supervision of the process of manufacture of rectified spirit and its use and disposal."

19. The decision further elucidated the realm of competence of the State and the Union with respect to (a) industries engaged in manufacturing rectified spirit meant exclusively for supply to industries; (b) industries engaged exclusively in manufacturing rectified spirit for production of potable alcohol; and (c) industries engaged in both of the above. This demarcation will be discussed in detail in the subsequent sections of the judgment. To understand the manner in which **Bihar Distillery** (supra) interpreted the judgment in **Synthetics (7J)** (supra), it is sufficient at this stage to know that the demarcation of the competence was based on the purpose for which the rectified spirit was used.

20. In **Government of Haryana** v. **Haryana Brewery**[47], a two-Judge Bench noted the dissonance in multiple decisions interpreting the judgment in

[47] (1997) 5 SCC 758

Synthetics(7J) (supra) and directed that the papers may be placed before the Chief Justice for listing the matters before the Constitution Bench. In particular, the Bench noted the observations in (i) **McDowell** (supra) that the State has competence over production to sale of "intoxicating liquor"; (ii) **Vam Organic I** (supra), that State has competence over "denatured spirit"; and (iii) **Bihar Distillery** (supra) that the State's competence over "rectified spirit' depended on the purpose for which spirit was going to be used. The Bench also noted the observations of a three-Judge Bench in **State of UP** v. **Modi Distillery**[48] that the State does not have the legislative competence to levy excise duty on the material or input that is used in the process of producing alcoholic liquor for human consumption by relying on **Synthetics (7J)** (supra)[49]. However, it must be noted that the Bench in **Modi Distillery** (supra), specifically recorded that it does not "express any opinion in regard to the power of the State to regulate the manufacture of alcoholic liquors for human consumption."[50]

21. Meanwhile, another two-Judge Bench[51] referred the decision in **Bihar Distillery** (supra) to a larger Bench on the ground that it was *prima facie* contrary to the scheme of legislative competence as examined by the Constitution Bench of this Court and the three-Judge Bench decision of this Court in **Modi Distillery** (supra). The three-Judge Bench in **Deccan Sugar &**

[48] (1995) 5 SCC 753
[49] In this case, the challenge was to the levy of excise duty on wastage in the preparation of Indian Made Foreign Liquor (IMFL), pipeline wastage and obscuration (which is the process of adding caramel to spirit for the preparation of rum. The Bench relied on the observations in **Synthetics (7J)** that the phrase 'alcoholic liquor for human consumption' means the liquor that is consumable "as it is" to hold that the State does not have the power to levy excise duty on the stages of manufacture or preparation of the liquor.
[50] (1995) 5 SCC 753 [14]
[51] Deccan Sugar and Abkari Co. Ltd. V. Commissioner of Excise, AP (1998) 3 SCC 272

Abkari v. **Commissioner of Excise, AP**[52], without overruling the decision in **Bihar Distillery** (supra) observed that this Court in **Synthetics (7J)** held that the State Legislature does not have the competence to levy any excise duty on "rectified spirit".[53] Subsequently, another two-Judge in **State of UP** v. **Vam Organic**[54] **["Vam Organic (II)"]**, dealt with the challenge to the levy of license fee on 'denatured industrial alcohol', a raw material used in the preparation of Organic compounds. In that case, the State had submitted that it had the power to levy the fee because denatured alcohol could be renatured to produce potable alcohol which is covered by paragraph 86(b) of the decision in **Synthetics (7J)**. The Bench rejected the submission holding that the State Government is competent to levy fee to ensure that industrial alcohol (which the judgment used alternatively for ethyl alcohol) is not "surreptitiously converted into potable alcohol so that … the public is protected from consuming illicit liquor". However, the Bench relying on **Vam Organic I** (supra) noted that the power stops with denaturing and that even if denatured alcohol can be re-natured, the States would not have the power to regulate it. The relevant observations are extracted below:

> "43. […] 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 seism of the State Legislature.**

[52] (2004) 1 SCC 243
[53] (2004) 1 SCC 243 [2]
[54] (2004) 1 SCC 225

> 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."
>
> (emphasis supplied)

iv. The Reference Order(s)

22. Separately, the State of UP levied an *ad valorem* licence fee on the sale of specially denatured alcohol by a wholesale vendor to those holding a licence under Form FL 41[55] of the UP Excise Act. The fee was levied under the provisions of the UP Spirit Rules. The petitioner in **RP Sharma** v. **State of UP**[56] instituted a writ petition before the Allahabad High Court, *inter alia,* for challenging the relevant rule and for a refund of the fee collected by the state.

23. A Division Bench of the Allahabad High Court allowed the petition, relying on the decision in **Vam Organic-II** (supra) since the fee was levied on the **sale** of denatured spirit and not to ensure that rectified spirit was not diverted for human consumption. The State of UP preferred an appeal against the decision before this Court, resulting in the present proceedings. The Court issued notice on the matter and granted an interim stay of the judgment of the High Court on 27 August 2004. By its order dated 25 October 2007, a three-

[55] Form FL 41 is meant for those industries where alcohol is used as a solvent but some alcohol continues to remain in final products such as lacquers, varnish, polishes, adhesives, anti-freezers and brake fluids.
[56] 2004 SCC OnLine All 159.

Judge Bench of this Court in **State of UP** v. **Lalta Prasad**[57] agreed with the submissions advanced by counsel for the appellants on the need for reconsideration by a larger bench. Numerous decisions were relied on to argue that Section 18G of the IDRA would not deprive the States of the power to enact laws with respect to Entry 33 of List III. The appellants argued that a notification ought to be issued under Section 18G for the field under Entry 33 to be occupied. Justice Altmas Kabir, writing for the three-Judge Bench observed that that the question of whether Section 18G occupies the field of Entry 33 on the alcohol industry needs to be referred to a Constitution Bench:

> "26. … The 7 Judge Bench did not also have the benefit of the reasoning in Ch. Tikaramji's case (supra) which had held that in the absence of any notified order under Section 18-G of the 1951 Act no question of repugnancy could arise, which Mr. Dwivedi urged, recognised the State's power to legislate with regard to matters under Entry 33 of List III notwithstanding the provisions and existence of Section 18-G in the 1951 Act.
>
> 27. Mr. Dwivedi then went on to refer to the judgment of this Court in SIEL Limited v. Union of India (1998) 7 SCC 26 wherein the learned Judges relying on the policy decision in Ch. Tikaramji's case (supra) explained and distinguished the decision of the 7 Judge Bench in Synthetics and Chemicals case (supra). […]
> 28. Yet another case referred to by Mr. Dwivedi was the decision of a Constitution Bench of 5 Judges of this Court in Belsund Sugar v. State of Bihar (1999) 9 SCC 620 […]. In the said case also it was observed by the Constitution Bench that in the absence of promulgation of any statutory order covering the filed under Section 18-G it could not be said that mere existence of a statutory provision for entrustment of such power would result in regulation of purchase and sale of flour even if it is a scheduled industry. It may be noted that even while noting the decision of

[57] 2007 13 SCC 463

the 7 Judge Bench in Synthetics and Chemicals case (supra) the Court placed reliance on the decision rendered in the SIEL Ltd. Case (supra).

…

35. On consideration of the aforesaid submissions made on behalf of the respective parties, we are of the view that Mr. Dwivedi's submissions have a good deal of force, **since by virtue of the interpretation of Section 18-G in the Synthetics and Chemicals case (supra) the power of the State to legislate with matters relating to Entry 33 of List III have been ousted,** except to the extent as explained in the Synthetics and Chemicals case in paragraphs 63-64 of the judgment, where the State's power to regulate, as far as regulating the use of alcohol, which would include the power to make provisions to prevent and/or check industrial alcohol being used as intoxicant liquor, had been accepted. … As submitted by Mr. Dwivedi, the 7 Judge Bench **did not have the benefit of the views expressed by this Court earlier in Ch. Tikaramji case (supra) where the State's power to legislate under the Concurrent List stood ousted by legislation by the Central Government under Entry 52 of List I and also in view of Section 18-G of the Industries (Development and Regulation) Act, 1951**.

36. In our view, if the decision in the Synthetics and Chemicals case (supra) with regard to the interpretation of Section 18-G of the 1951 Act is allowed to stand, it would render the provisions of Entry 33 (a) of List III nugatory or otiose.

37. We are, therefore, also of the view that this aspect of the matter requires reconsideration by a larger Bench of this Court, particularly, when the views expressed by 7 Judge Bench on the aforesaid question have been distinguished in several subsequent decisions of this Court, including the two decisions rendered by Constitution Benches of five Judges."

(emphasis supplied)

24. This Court formulated six questions for adjudication by a larger Bench. They are reproduced below:

    a. Does Section 2 of the IDRA have any impact on the field covered by Section 18G of the same or Entry 33 of List III of the Seventh Schedule?

    b. 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 of List III thereof?

    c. 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?

    d. Does the mere enactment of Section 18G of the IDRA, 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?

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

    f. Does the interpretation given in **Synthetics** (supra), in respect of Section 18G of the IDRA 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 in view of clause (a) thereof?

25. The batch was placed before a Constitution Bench pursuant to the above order. By an order dated 8 December 2010, the Constitution Bench observed that the decision in **Synthetics (7J)** (supra) requires to be considered by a Bench of nine Judges and directed the matter be placed before a larger Bench:

> "Having meticulously examined the judgment of the Constitution Bench of seven learned Judges in the case of Synthetics and Chemical Limited & Ors. vs. State of Uttar Pradesh & Ors., reported in 1990 (1) SCC 109, we are of the view that the matter requires consideration by a Bench of nine Judges."

26. Though the three-Judge Bench by an order 25 October 2007 only referred the issue of the interplay between Section 18-G of the IDRA and Entry 33 of List III to the Constitution Bench, the order of the Constitution Bench categorically noted that the correctness of the decision in **Synthetics (7J)** ought to be reconsidered by a nine Judge Bench. Thus, this Bench is not limited to the questions framed by the three-Judge Bench.

B. Submissions

i. Appellants' submissions

27. This Court held in **Synthetics (7J)** (supra) that denatured spirit is industrial alcohol and is outside the jurisdiction of States under Entry 8, List II of the Seventh Schedule to the Constitution. It held that Entry 8, List II deals only with potable alcohol. Mr Dinesh Dwivedi, learned senior counsel representing the State of UP assailed the reasoning in **Synthetics (7J)** (supra) and argued that the States have jurisdiction over industrial alcohol. He submitted that:

a. Legislative entries are fields of legislation and must be read widely and construed liberally to maintain the federal balance. The exclusive jurisdiction of the States cannot be ousted by a Parliamentary enactment. Article 245 of the Constitution is subject to Article 246 and therefore the division of legislative powers must be given their full effect;

b. The term 'intoxicating liquors' appearing in Entry 8 of List II of the Seventh Schedule to the Constitution has a rich history and legislative practice accompanying it;

c. The term 'intoxicating liquors' in Entry 8 of List II is borrowed from Entry 31, List II of the 1935 Act. The 1935 Act was enacted by the British Parliament when the term 'intoxicating liquors' had attained a specific meaning. This meaning can be discerned from Section 110 of the License Consolidation Act 1910 and Sections 3, 4, 5, 116 of the Spirit Act 1880;

d. In British legislations, the words 'intoxicating liquors' were defined to include spirit of all kinds including fermented and distilled spirits. The terms 'intoxicating liquors' and 'spirit' or 'liquor of all kinds' were used interchangeably in laws in England;

e. Various provincial statutes defined the words 'liquor' and 'sprit' to include all liquids containing alcohol.[58] These legislations were enacted with the knowledge that alcohol is used for industrial purposes. 'Intoxicating

[58] Bombay Abkari Act 1878, Madras Abkari Act 1886, Bengal Excise Act 1909, Bihar Excise Act 1915, MP Excise Act 1915, Punjab Excise Act 1914, Chhattisgarh Excise Act 1915 and UP Excise Act 1910.

liquors' in Entry 8 of List II of the Seventh Schedule to the Constitution is a comprehensive phrase which connotes all liquids containing alcohol. Therefore, liquor and spirit including industrial alcohol have always been under the jurisdiction of States;

f. The 1935 Act used different phrases in Entries 31 and 40 of List II of its Seventh Schedule. These entries are relatable to Entries 8 and 51 of List II of the Seventh Schedule to the Constitution respectively. Whereas the phrase 'alcoholic liquor for human consumption' is used in Entry 51 List II for taxation purposes, Entry 8 of List II uses the word 'intoxicating liquors'. Similarly, Entry 84 of List I uses the phrase 'alcoholic liquor not for human consumption' and Article 47 uses the phrase 'intoxicating drinks'. It would be irrational to presume that the framers of the Constitution used different phrases to mean the same thing;

g. The term 'liquors' used in a legislation under Entry 31 of List II of the Seventh Schedule to the 1935 Act was accepted to mean all alcoholic liquids by this Court in **FN Balsara** (supra). The language of Entry 8 of List II of the Seventh Schedule to the Constitution is borrowed from Entry 31 of List II of the Seventh Schedule to the 1935 Act and must be deemed to have the same meaning;

h. Entry 84 of List I of the Seventh Schedule to the Constitution uses the phrase 'alcoholic liquor not for human consumption'. Usage of widely different terms in the Constitution would appear irrational if 'intoxicating liquors' was understood to exclude alcohols used in industries;

i. Entry 8 of List II includes alcohols used in industries. Since it is a specific entry in List II, alcohols used in industries will be excluded from the general entry on industries in Entry 24 of List II. The Union cannot take over any industry in pursuance of Entry 52 of List I unless the industry falls under Entry 24 of List II. Therefore Parliament cannot takeover industrial alcohol by making a declaration under the IDRA, which relates to Entry 52 of List I;

j. Entry 8 of List II is not subject to any other entry in the Seventh Schedule. The Constitution makes specific mention where it intends a legislative field to be subject to other entries in the Seventh Schedule; and

k. **Synthetics (7J)** (supra) fell into error by not considering the traditional meaning of 'intoxicating liquors'. It also failed to notice all previous decisions, like **Ch Tika Ramji** v. **State of UP**,[59] which defined 'industry' for the purpose of Entry 24 of List II and Entry of 52 List I and delineated its scope. It held that the product of an industry notified under the IDRA falls under Entry 33 of List III.

28. Mr Dwivedi submitted that Entry 8 of List II governs the production, manufacture, possession, transport, purchase and sale of intoxicating liquors. Since alcohols used in industries fall within the remit of 'intoxicating liquors' the State legislature has exclusive and inalienable jurisdiction in this field. However, in the alternative, the industry i.e. the production and manufacture of alcohols used in industries, would be governed by the general entry, Entry

[59] 1956 SCC OnLine SC 9.

24 of List II, which can be taken over by the Union upon a declaration under Entry 52, List I. The product of the industry would be governed by Entries 26 and 27 of List II and would require a declaration under Entry 33 of List III for the Union to occupy the field. He argued that only the production and manufacture of industrial alcohol would be governed by the Union List even if the requirement of a declaration under Entry 52 of List I is met by Section 2 of the IDRA read with Entry 26 of the First Schedule to the IDRA. However, no corresponding declaration is made under Section 18G of the IDRA to satisfy the requirements of Entry 33, List III. The Central government would be required to issue a notified order under Section 18G of the IDRA to claim control over the product. No such order has been issued and therefore the product remains in the exclusive domain of the State. Therefore, the Union has not occupied the field under Entry 33, List III.

29. Mr Arvind Datar, learned senior counsel took us through the process of making denatured alcohol and potable liquor from molasses or grains. He argued that a license is required to make ENA and another license is required to make denatured spirit out of ENA. The process of denaturation is done before a State Excise Officer and the excise or duty payable against ENA and denatured spirit changes drastically. He argued that States can regulate potable alcohol as well as denatured spirits because the process of denaturing takes place within the same premises.

30. Mr Datar argued that the **Synthetics (7J)** (supra) must be overruled because:

a. In para 74 of the judgment, this Court erred in assuming that industrial alcohol and rectified spirit are the same substance. Rectified spirit or ethyl alcohol, which is *per se* for human consumption, cannot be used interchangeably with industrial alcohol which has undergone denaturation. Ethyl alcohol or rectified spirit usually undergoes denaturation for the purpose of their use in industries. This would involve payment of fees and obtaining of licenses for the process;

b. The expression 'alcoholic liquor for human consumption' in Entry 51 of List II was mistakenly read as 'alcoholic liquor fit for human consumption' which has a widely different meaning.[60] For example, molasses despite not being capable of final consumption, as it is, would be alcohol for human consumption. It would undergo a process for making it fit for human consumption. However, that does not take away from the fact that molasses is intended for human consumption and is susceptible to excise. Alcoholic liquor for human consumption means that the alcoholic liquor is capable of being consumed by humans. It would fall under Entry 51, List II while denatured alcohol would fall under Entry 84, List I;

c. Everything except denatured spirit is alcohol for human consumption because it has the potential to be consumed by humans. The process of denaturation is carried out only to make the alcohol sufficiently disagreeable for human consumption to avoid its misuse. ENA and

[60] Paras 52, 54, Synthetics (supra).

rectified spirit may therefore be for human consumption and cease to be such upon undergoing denaturation. Mr Datar emphasized that the State does not have the power to levy tax on ENA in terms of **Synthetics (7J)** (supra) despite being for human consumption. Such an interpretation has drastically reduced the ability of States to levy tax under Entry 51 of List II;

d. Unlike what was held in **Synthetics (7J)** (supra)**,** there are no licenses to manufacture industrial alcohol because what is manufactured is only the ENA. ENA can be denatured for the purpose of alcohol used in industries. However, it does not require separate manufacturing units;

e. The 158th Report of the Law Commission of India sought to address the practical problems which arose from the judgment of this Court in **Synthetics (7J)** (supra). It noted that the excise laws in force across different States in the country made no distinction between liquors used for human consumption or for other purposes. These pre-Constitution laws closely regulated and controlled the manufacture, possession, sale and transport of all alcohol and the Union government had no say in the matter. The Report clarified that there is no such thing as 'industrial alcohol' and that rectified spirit which has 95% alcohol may be used for industrial and non-industrial purposes. Accordingly, the report opined that litigation on the issue be avoided by bringing an amendment to the IDRA, namely, the substitution of item 26 in the First Schedule to the IDRA with the phrase "*Fermentation Industries but not including alcohol*."

This was to enable the States to levy excise duties on alcohol which had been the case for over a century prior to the judgment of this Court in **Synthetics** (supra). Parliament did not amend the IDRA as suggested by the Law Commission but instead only excluded potable alcohol from the purview of the Union with retrospective effect from the commencement of the IDRA; and

f. **Synthetics (7J)** (supra) must be overruled because it suffers from inconsistency in holding that the States have nothing to do with alcohol as well as holding that they can levy a regulatory fee.[61]

31. Mr Datar submitted that the phrase 'that is to say' featuring in Entry 8 of List II of the Seventh Schedule connotes that the entry is exhaustive. Such a reading would mean that the entire journey of intoxicating liquor – from production to purchase and sale will fall within the remit of Entry 8 of List II. Since Entry 8 of List II is exhaustive and is not subject to any other entry in List I or List III, it cannot be transgressed by a law made by Parliament.

32. Relying on the **State of Madras** v. **Gannon Dunkerley**,[62] Mr Datar argued that to understand the meaning of 'intoxicating liquors', which has not been defined in the Constitution, the Court may identify if the expression is *nomen juris* and adopt the meaning which the word has obtained over a passage of time. The British law i.e. the Spirits Act 1880 includes denatured alcohol. Similarly, this Court in **India Mica** (supra) and **FN Balsara** (supra) held that

[61] Para 86. Synthetics (supra)
[62] 1959 SCR 379.

intoxicating liquor includes denatured spirits. Mr Datar also presented a list of legislation enacted at around the same time which included denatured alcohol in the same category as liquor. Mr Datar relied on the judgment of this Court in **SIEL Ltd** v. **Union of India**[63] to argue that the subjects enumerated in Entry 33, List III are excluded from Entry 52, List I. Lastly, he urged that since Section 18G of the IDRA does not specify that it extends to 'production', even the issuance of a notified order would not result in the occupation of the field by the Union with respect to production.

33. Mr Jaideep Gupta, learned senior counsel, supplemented the case of the appellants. He submitted that if this Court were not inclined to hold that all alcohol falls under Entry 8 of List II then, in the alternative, the judgment of this Court in **Synthetics (7J)** (supra) must be overruled on the ground that the three-fold classification of **Tika Ramji** (supra) has not been followed. This Court in **Tika Ramji** (supra) devised a threefold classification as pre-production, production and post-production. It held that only the second category i.e. production would be covered by the word 'industry'. He submitted that the State therefore has the power to regulate the manufacture of ENA which would fall under the pre-production category. The State would also have the power to regulate the distribution of denatured alcohol. Buttressing this point, Mr Jaideep Gupta argued that it becomes imperative for the State to regulate the distribution of denatured alcohol because it may be renatured and distributed as potable alcohol which will lead to tragedies.

[63] (1998) 7 SCC 26.

He argued that it becomes imperative for the State to regulate such instances under Entry 8 of List II as well as Entry 6 of List II which deals with public health.

34. Mr V Giri, learned senior counsel, differed from other counsel for the appellants and submitted that denatured alcohol would be excluded from the ambit of the term 'intoxicating liquors' and would therefore fall under Entry 24 of List II. However, he supported the arguments of the other counsel on a notified order under Section 18G of the IDRA being a prerequisite for Parliament to occupy the field under Entry 33 of List III.

35. Mr Balbir Singh, learned senior counsel, and Mr Shadan Farasat and Dr. Vivek Sharma, learned counsel, have supported the above arguments on behalf of the appellants.

ii. Respondent's submissions

36. Mr R Venkataramani, learned Attorney General for India appearing for the Union of India submitted that:

a. The production, manufacture, trade and commerce, supply and distribution constitute a chain of economic activity and may not be looked at separately. Therefore, the process of production necessarily includes the series of actions of trade, commerce, supply and distribution. This implies that there is a symbiotic relationship between Entry 52 of List I and Entry of 33 List III and they may not be looked at separately. Entry 52 of List I and Entry 33 of List III are a family of entries which are

interconnected. Entry 52 of List I can also include and touch upon all matters relating to an industry that is brought under the control of the Union. These matters can be production, trade, commerce, supply and distribution, etc.;

b. Entry 52 of List I is a special entry uncontrolled by any other entry including Entry 8 of List II. It envisages the possibility of uniform control at the federal level of any declared industry by removing it from the individual jurisdiction of the States. Such uniform control serves the purpose of subserving the common good, equitable distribution, fair prices, utility of the products of an industry for serving the interests of all the States, etc.;

c. To the extent that Parliament legislates with respect to an industry, the powers of the States under Entries 26 and 27 of List II are denuded. Similarly, the powers of the States under Entry 33 of List III are denuded if Parliament has occupied the field. Merely because a notified order is not issued would not leave the subject to be legislated upon by the States. This is because the lack of regulation or notification may be to serve the interest of the industry. The principle elucidated in **Tika Ramji** (supra) is not a principle of universal application i.e., in the absence of a notified order under Section 18G, the IDRA will not be a dormant law and the States will not derive their competence to deal with all or any matters otherwise exhaustively dealt with by Section 18G;

d. The observations in **SIEL** (supra) and **Tika Ramji** (supra) are incorrect in completely separating Entry 52 of List I from Entry 33 of List III. It is open to Parliament to enact laws in respect of trade and commerce, production, supply, distribution. The fact that the IDRA touches upon a certain field is enough to oust the jurisdiction of the State completely;

e. All uses of liquids containing alcohol, other than those meant for human consumption, would fall under one category which is non-potable alcohol. Non-potable alcohol must fall outside Entry 8 of List II. Accordingly, the 2016 amendment to Entry 26 of Schedule I of the IDRA must be taken to have validly taken over non-potable alcohol;

f. The focus of the framers while drafting the provisions concerning alcohol in the Constitution was temperance, regulation of trade and commerce in consumable alcohol preparations and to raise revenue;

g. Entry 8 of List II cannot be interpreted to carve anything out of Entry 52, List I and Entry 33, List III. The judgment of this Court in **ITC Ltd** v. **Agricultural Produce Market Committee**,[64] is inapplicable to the present case because **ITC** (supra) was determined in the context of overlapping entries. The 'fermentation industry' has been dealt with under the IDRA, which is a self-contained legislation;

h. The term 'intoxicating liquors' in Entry 8 of List II does not include all classes of alcoholic liquids. The use of the phrase 'that is to say'

[64] (2002) 9 SCC 232.

occurring in Entry 8 of List II only refers to the range of activities concerning one class of alcohol, namely potable alcohol, and is not referable to other classes of liquor;

i. The framers of the Constitution may not have been aware of many industrial uses of alcohol and that all alcohol is neither consumable by humans nor intoxicating in nature; and

j. The Report of the Industrial Alcohol Committee in 1920 observed that it was difficult to define 'intoxicating liquors' since there was no intrinsic difference between alcohol intended for potable and non-potable purposes.

37. Mr Tushar Mehta, learned Solicitor General of India, argued that the adjudication on the interplay of Sections 2 and 18G of the IDRA with Entry 52 of List I and Entry 33 of List III will have a bearing on other legislation and therefore the ruling in this case may not be restricted to the industry of alcohol. The division of legislative powers has undergone four stages: (a) the devolution of powers to the Federal legislature and the Provincial legislatures under the Devolution Rules, Government of India Act 1919;[65] (b) the division of subjects between the Centre and the Provinces under the 1935 Act; (c) the draft Constitution which was placed before the Constituent Assembly; and (d) the entries as they were finally adopted in the Constitution. The Solicitor General submitted that:

[65] "1919 Act"

a. Some industries have always been considered as necessarily under Union control. This may be because it is in national interest, requires uniform regulation throughout the country, or when the industry or its products are sought to be equitably distributed. Entry 52 of List I is in furtherance of the federal principle;

b. Entry 20 of the Central Subject List in the Devolution Rules framed under the 1919 Act which corresponds to Entry 52 of List I of the Seventh Schedule to the Constitution used the term 'development'. A similar provision was inserted as Entry 34, List I of the Seventh Schedule to the 1935 Act which also used the term 'development'. This entry was further retained as Entry 64 of List I of the Seventh Schedule to the draft Constitution. However, after debates in the Constituent Assembly the entry gained the form in which it appears today in Entry 52 of List I. The word 'development' was dropped from the entry but the word 'control' was retained. Therefore, the term 'control' must have been intended to connote a wider meaning than its earlier versions;

c. This is borne out by the Constituent Assembly debates where Dr BR Ambedkar responded to amendments which sought to introduce the term 'development and control' in draft Entry 64, List I. He stated that the intention of the Drafting Committee was not merely to allow the Union to take over the development of an industry but also other aspects;

d. **Tika Ramji** (supra) must be overruled because:

i. It did not consider the Constituent Assembly debates and wrongly restricted the meaning of industry to manufacturing and production only;

ii. All aspects from the sourcing of raw materials to the distribution of products must fall within the powers of the Union to take control of an industry under Entry 52 of List I;

iii. Article 366(12) did not define the term 'goods' to include raw materials in particular;

iv. Entry 27 of List II is subject to Entry 33 of List III. The implication of this aspect was not sufficiently dealt with by the Court in **Tika Ramji** (supra); and

v. It is expedient in public interest that alcohol is regulated by a Central legislation. Currently, the IDRA occupies the field, and any State law on alcohol, other than potable alcohol, will be repugnant to the IDRA. The holding in **Tika Ramji** (supra), that there must be a notified order in force pursuant to Section 18G for there to be repugnancy is not correct. Further, it was *obiter dicta*;

e. **Synthetics (7J)** (supra) rightly did not consider the observations in **Tika Ramji** (supra) regarding the absence of a notified order by the Union government;

f. The debates in the Constituent Assembly would show that the framers of the Constitution intended the Union to have some control over the

trade and commerce, production, supply and distribution which led to the introduction of a concurrent list entry which is identifiable as Entry 33 of List III;

g. The power of taxation over potable alcohol has always been with the States and the power of taxation over non-potable alcohol has always been with the Union. This is borne out by the evolution of Entry 84 of List I and Entry 52 of List II of the Seventh Schedule to the Constitution. The control and the taxing power were cumulatively given to the provinces under Entry 16 of the provincial subject list of the Devolution Rules under the 1919 Act. Under the 1935 Act, Entry 45 of List I specifically excluded 'alcoholic liquor for human consumption' from the domain of the Union and correspondingly included it under the State list as Entry 40 of List II;

h. The term 'intoxicating liquors' in Entry 8 of List II means a beverage which has the effect of intoxication upon consumption. The term is not used elsewhere in the Seventh Schedule and instead the term 'alcoholic liquor for human consumption' is used in taxing entries. The terminological variation is because the incidence of tax is relevant in a taxing entry. Accordingly, since intoxication is not the incidence of taxation but the effect of consuming alcoholic liquor, it is not used in the taxing entries;

i. Similarly, in Article 47, the term 'intoxicating drinks' is used to connote all drinks which have the effect of intoxication regardless of its alcoholic content, for example, Indian hemp;

j. This Court, in **Synthetics (7J)** (supra), held that 'intoxicating liquors' is limited to 'alcoholic liquor fit for human consumption'. **FN Balsara** (supra) defined liquor in a different context and did not deal with legislative competence; and

k. Industrial alcohol is a subject which affects the entire nation and requires a uniform approach. This is evidenced by national laws and policies such as the Indian Power Alcohol Act 1948, Ethyl Alcohol (Price Control) Order 1966 and the National Biofuel Policy 2018.

38. Mr Dhruv Agrawal, learned senior counsel; Mr Abhimanyu Bhandari; Mr Omar Ahmad; Ms Tahira Karanjawala; Ms Sansriti Pathak; Mr Pawan Shree Agarwal; Mr S Nandakumar; and Mr Akash Bajaj, learned counsel, have supported the above arguments on behalf of the respondent.

C. The distinction between potable and non-potable alcohol

39. Before delineating the issues that fall for the consideration of this Court, certain preliminary remarks on the process of preparation of potable alcohol, that is, alcohol that is used as a beverage must be made. The raw material for potable alcohol is generally molasses and grain[66], which is fermented and distilled to produce rectified spirit. Rectified spirit, also known as ethyl alcohol, contains about 95% alcohol and some impurities which can affect flavour and aroma. Rectified spirit is used as a solvent in pharmaceutical and cosmetic products. Though rectified spirit is not generally used in the preparation of

[66] See FB Wright, Distillation of Alcohol and De-Naturing (2nd ed. 1907)

alcoholic beverages, it may be used to produce home-made liqueurs.[67] Extra Neutral Alcohol is a highly purified form of ethanol which contains more than 96% alcohol. ENA has a neutral taste and smell and is mostly used as a base for the preparation of premium beverages. Additionally, it is also used in the production of products like perfumes and mouthwashes. Absolute alcohol is ethanol that contains less than 1% water and more than 99% alcohol.[68] The high purity of the alcohol makes it ideal for the preparation of pharmaceutical products, cosmetics and chemical manufacturing that require a water-free solvent.[69]

40. 'Industrial alcohol' is a common term that is used to denote the alcohol that is used in industries. As indicated above, all the above three variants of ethanol are used in various industrial preparations. While ENA is usually used for the preparation of alcoholic beverages, rectified spirit is also used to prepare certain alcoholic beverages. Denaturation is a process by which ethanol is deliberately made undrinkable by adding chemicals known as 'denaturants' to make it poisonous or foul smelling and unsuited for ingestion by humans. Denaturants can be added to any of the three forms of ethanol (ENA, rectified spirit and absolute alcohol). Denatured alcohol is also further classified into 'Completely Denatured Alcohol' and 'Specially Denatured Alcohol'. Both these formulations contain denaturants making it unconsumable. However, in completely denatured alcohol, the denaturants cannot be easily removed

[67] Stuart Walton, Norma Miller, An Encyclipedia of Spirits & Liqueurs and How to Cook with Them (2000)
[68] See FB Wright, Distillation of Alcohol and De-Naturing (2nd ed. 1907)
[69] See KA Jacques, TP Lyons, DR Kelsall (ed), The Alcohol Textbook: A reference for the beverage, fuel and industrial alcohol industries (4th ed. Nottingham University Press)

while in 'specially denatured alcohol', they can be easily removed.[70] In view of this complexity, where the materials for the preparation of potable alcohol are also used for the preparation of other products, a simplistic classification of 'potable' and 'non-potable' alcohol cannot be made for the purposes of this judgment.

41. This is also evident from the submissions by counsel on the scope of Entry 8 of List II. The counsel made the following submissions:

    a. Entry 8 only includes the final product of potable alcohol, that is alcoholic beverages for human consumption. Entry 8 does not include ENA which is a raw material for the preparation of beverage[71];

    b. Entry 8 includes ENA and potable alcohol[72];

    c. Entry 8 includes ENA, potable alcohol and the process of 'denaturing' ENA[73]; and

    d. Entry 8 includes ENA, potable alcohol and denatured alcohol[74].

[70] See Alcohol Denaturants-Specification (Second Revision), ICS 71.100.80
[71] See submissions of Mr Tushar Mehta, learned SG.
[72] See submissions of V Giri, counsel for petitioner
[73] See Vam Organic (II)
[74] See submissions of Mr Dwivedi and Mr Datar senior counsel

D. Issues

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.

E. Analysis

i. The constitutional distribution of legislative power

43. One of the prominent features of a federal Constitution is the distribution of legislative powers between the Union and the States. Article 246 provides for the distribution of legislative powers between Parliament and the State Legislatures. Clause (1) of Article 246 stipulates that Parliament has exclusive power to make laws with respect to any matter enumerated in the Union List (List I to the Seventh Schedule) notwithstanding anything in the State or the Concurrent Lists. Clause (2) stipulates that Parliament and the State Legislatures have the power to legislate on any matter enumerated in the Concurrent List (List III of the Seventh Schedule) subject to the power of

Parliament under Clause (1) but notwithstanding the power of the State Legislatures under Clause (3). Clause (3) provides that subject to clauses (1) and (2), the State Legislatures have the power to legislate on any matter enumerated in the State List (List II of the Seventh Schedule) of the Seventh Schedule. Further, Clause (4) provides for the power of Parliament to enact laws for Union Territories. It states that Parliament may enact laws for any part of the territory of India which is not included in a State. This power includes the power of Parliament to make laws with respect to entries enumerated in the State list, for Union Territories.

44. The federal balance of the distribution of legislative powers between the Union and the States rests on the interpretation of the phrase "notwithstanding" in Clause (1) of Article 246 and "subject to" in Clause (3) of Article 246. It is more than clear that the phrases provide predominance to Parliament over State Legislatures. The federal balance lies not on the recognition that the Constitution grants Parliament predominant legislative power but on the identification of the scope of such predominance. The scope of the non-obstante clause in Article 246(1) and the subjugation clause in Article 246(3) must not be interpreted in isolation but along with the substantive provisions of the clauses. Clause (1) of Article 246 grants Parliament the "exclusive power" to enact laws with respect to matters in List I. Similarly, Clause (3) of Article 246 grants the Legislature of States, the "exclusive power" to enact laws with respect to matters in List II. On a holistic interpretation of the provisions, it is clear that the non-obstante clause in Article 246(1) and the subjugation clause in Article 246(3) do not permit

Parliament to enact laws with respect to the entries in List II. Each of the legislative bodies are sovereign and supreme within the sphere that is allocated to them in the Seventh Schedule.[75] What then is the purpose of the non-obstante and subjugation clause? It is crucial to note that Clause (1) of Article 246 stipulates that the power of Parliament to make laws with respect to entries in List I is 'notwithstanding' not just the power to make laws with respect to matters in the Concurrent list but also the power to make laws with respect to matters in the State List. A combined reading of the non-obstante clause and the subjugation clause along with the use of the phrase "exclusive power" means only one thing, that when there is a conflict between the entries in List I and List II, the power of Parliament supersedes.

45. The judgment of this Court in **Hoechst Pharmaceuticals** v. **State of Bihar**[76] is the *locus classicus* on the constitutional scheme of legislative distribution. The decision holds that when there is a conflict between an entry in List I and entry in List II which is not 'capable of reconciliation'[77], the power of Parliament to legislate with respect to a field covered by List I must supersede the exercise of power by the State legislature to that extent.[78] The judgment also proceeded to lay down the manner in which the entries in List I and List II must be reconciled[79]:

[75] Jindal Stainless Steel v. State of Haryana, (2017) 12 SCC 1 [617]
[76] (1983) 4 SCC 45
[77] Also see In re Central Provinces and Berar Act 14 of 1938, AIR 1939 FC 1
[78] (1983) 4 SCC 45 [38]
[79] AIR 1939 FC 1 [41]

a. In case of a seeming conflict between the entries in the two lists, the entries must be read together without giving a narrow and restricted meaning to either of the entries in the Lists; and

b. If the entries cannot be reconciled by giving a wide meaning, it must be determined if they can be reconciled by giving the entries a narrower meaning.

46. In **State of WB** v. **Committee for Protection of Democratic Rights**[80], a Constitution Bench held that the principle of federal supremacy in Article 246 can be resorted to only when there is an 'irreconcilable **direct** conflict' between the entries in List I and List II.[81]

ii. Scheme of legislative entries

47. The lists in the Seventh Schedule demarcate the legislative fields between Parliament and the State Legislatures. They do not confer power but stipulate broad fields of legislation.[82] The source of the power of Parliament and State Legislatures emanates from Articles 245 and 246 of the Constitution. These provisions in the Constitution have been borrowed from Sections 99 and 100 of the Government of India Act 1935[83] with necessary modifications. The demarcation of legislative fields is based on a deliberate design as well as on the principles of federalism. Matters requiring coordination between different regions of the country or of national importance have been placed in the field

[80] (2010) 3 SCC 571
[81] (2010) 3 SCC 571 [27]; Also see In re C.P & Berar Taxation Act, AIR 1939 FC 1
[82] See Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B., 1962 SCC OnLine SC 60; Union of India v. HS Dhillon, (1971) 2 SCC 779; TMA Pai Foundation v. State of Karnataka, (2002) 8 SCC 481.
[83] "1935 Act"

of Parliament. Matters requiring localized focus and limited or no coordination between States have been placed in the State List. Fields of legislation which may require either uniform legislation for the entire nation or context and region-specific accommodation, depending on the circumstance, are placed in the Concurrent List. Moreover, the three lists make a clear distinction between general entries and taxation entries. The power of taxation cannot be derived from a general entry.[84] The entries in the legislative lists do not cast an obligation to legislate or to legislate in a particular manner. Within the confines of an entry, the legislature exercises plenary power subject to the provisions of the Constitution.[85]

48. Numerous language devices are used in the Seventh Schedule to prevent the conflict of entries and ensure a clear demarcation of the fields of entry. The entries in List II use the following language devices:

    a. 'Subject to' a <u>specific</u> provision of List I or List III: Entries 2,17,22, 24,26,27,33 and 57;

    b. 'Subject to' provisions of an <u>entire</u> list with regard to the subject matter: Entry 13;

    c. 'Not specified in' or 'other than those specified in' List I: Entries 13, 32 and 63; and

[84] State of Karnataka v. State of Meghalaya, (2023) 4 SCC 416; Union of India v. HS Dhillon, (1971) 2 SCC 779; MPV Sundararamier & Co. v. State of Andhra Pradesh, (1958) 9 STC 298; R Abdul Quader & Co. v. STO, (1964) 6 SCR 867; HM Seervai, Constitutional Law of India, Volume 3 (4th edn.) [25.57] 2340-2341.
[85] United Province v. Atiqa Begum, (1940) FCR 110; Constitution of India, Article 13

d. ‘Subject to’ law made by Parliament or ‘subject to’ any limitations imposed by Parliament by law: Entries 37 and 50.

49. With respect to category (a) above, where an Entry in List II is subject to an entry or entries in List I or List III, the extent of the legislative field covered by the entry in List II is circumscribed by the domain covered by the entries in Lists I or III to which the entry in List II is subject. For example, Entry 22 of the State List deals with “courts of wards subject to the provisions of Entry 34 of List I”. Entry 34 of List I provides for “Courts of wards for the estates of Rulers of Indian States”. The legislative field in Entry 22 of List II is wider than the field of Entry 34 of List I. Hence the subjection of Entry 22 of List II to Entry 34 of List I indicates that that the field assigned to the States is circumscribed to the extent of the field assigned to Parliament in Entry 34 of List I. Barring the express legislative device of subordination, the States have complete power to enact laws over the fields specified in List II of the Seventh Schedule to the Constitution. The authority of the State Legislature to enact laws on those entries of List II which are not expressly made subject to other entries has maintained the federal balance of legislatures under the Constitution.[86]

50. The devices of language used in the Seventh Schedule prevent the overlap between entries in various Lists. Now, what of the instances where there is an overlap between provisions in different entries but the Constitution does not use a device to resolve it? It must be recalled that the federal supremacy of Parliament on legislative competence can only be resorted to when there

[86] ibid

is an 'irreconcilable direct conflict' between entries in different lists. It is crucial to note the difference between 'overlap' and 'conflict'. An overlap occurs when two or more things or fields partially intersect. However, a conflict occurs when two or more entries operate in the exactly same field. Courts while dealing with an overlap of legislative entries must endeavour to diminish the overlap and not enhance it by including it in the field of conflict. The federal supremacy accorded to Parliament ticks in at the stage of 'conflict'.

51. The legislative entries must be given a wide meaning. All incidental and ancillary matters which can be fairly and reasonably comprehended must be brought within them[87]. However, if there is an overlap between two entries the Court must endeavour to interpret the entries harmoniously. While interpreting the entries harmoniously, it must be ensured that no entry is rendered redundant. This principle of construction applies equally to entries within the same List and entries within different lists.[88] The principle of parliamentary supremacy must be applied only when the attempted reconciliation by the above methods of interpretation fails.

iii. <u>The field covered by Entry 52 of List I and Entry 8 of List II</u>

52. Entry 8 of List II reads as follows:

> "Intoxicating liquors, **that is to say**, the production, manufacture, possession, transport, purchase and sale of **intoxicating liquors**".
>
> (emphasis supplied)

[87] United Provinces v. Atiqa Begum, (1940) FCR 110; Western India Theatres Ltd. V. Cantonment Board, Elel Hotels & Investments Ltd. V. Union of India; Godfrey Phillips India Ltd. V. State of UP (2005) 2 SCC 515
[88] See Harakchand Ratanchand Banthia v. Union of India, (1969) 2 SCC 166

a. The scope of Entry 8

I. The meaning of 'that is to say'

53. Entry 8 of List II deals with 'intoxicating liquor'. The Entry specifies the scope of the provision by the usage of the phrase 'that is to say'. The Entry stipulates that it includes everything from the production to the sale of intoxicating liquor, with the use of the expressions 'production, manufacture, possession, transport, purchase and sale'. The Entry specifies the breadth of the provision by couching it in over broad terms. There are a few entries which provide such a specification, by the use of the words "that is to say"[89]. Otherwise, the general language of the Seventh Schedule is to merely mention the field such as 'gas and gas-works'[90], or 'fisheries'[91], or 'census'[92], or 'public health and sanitation; hospitals and dispensaries'[93]. Entry 25 of List II specifies 'gas and gas-works' without clarifying the scope of the provision. Similarly, Entry 21 of List II specifies 'fisheries'. Even within the entries that provide some specification, there are two kinds. First, entries where the **meaning** of the field is clarified. For example, Entry 71 of List I deals with the field of 'Union Pensions'. The phrase 'that is to say' is then used to specify the meaning of the phrase 'Union Pensions' as pensions payable by the Government of India or out of the Consolidated Fund of India[94]. This specification operates more or less as a definition clause. Second, the phrase is used to specify the **scope**

[89] Seventh Schedule to the Constitution of India; Entry 71 to List I, Entry 5 to List II, Entry 13 of List II, Entry 17 of List II, Entry 18 of List II, Entry 42 of List II
[90] Seventh Schedule to the Constitution of India; Entry 25 of List II
[91] Seventh Schedule to the Constitution of India; Entry 21 of List II
[92] Seventh Schedule to the Constitution of India; Entry 69 of List I
[93] Seventh Schedule to the Constitution of India; Entry 6 of List II
[94] Other examples include Entry 13 of List II which specifies the meaning of 'communications' to mean roads, bridges, ferries and Entry 42 of List II which specifies State pensions to mean pensions payable by the State or out of the Consolidated Fund of the State.

of the provision. For example, Entry 5 of List II reads as "local government, that is to say, the constitution and powers of municipal corporations, improvement trusts…"[95] Entry 8 falls in the latter category.

54. The next question is whether the phrase 'that is to say' used in Entry 8 limits or explains the scope of the entry. The interpretation of the phrase 'that is to say' has fallen for the consideration of this Court earlier in numerous cases.[96] This Court has adopted both views. Benches have interpreted the expression as a limiting as well as an explanatory device. In **Bhola Prasad** v. **The King Emperor**[97], the Federal Court dealt with the meaning of the phrase 'that is to say' in Entry 31 of the Provincial List in the 1935 Act. Entry 31 of the Provincial List read as "Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs." The issue was whether the Provincial Government had the competence to issue a notification prohibiting the possession of intoxicating liquor. The Federal Court held that the Provincial Government had the competence to prohibit though Entry 31 does not expressly grant the power to 'prohibit'. The Court noted that the words that follow the phrase 'that is to say' were explanatory or illustrative and not words of either amplification or limitation. However, in other judgments

[95] Other examples include Entry 17 of List II which reads as "water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I" and Entry 18 of List II which reads as 'Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; and colonization.

[96] State of Karnataka v. Balaji Computers; Bansal Wire Industries v. State of UP (2011) 6 SCC 545; Sait Rikaji Furtarnal v. State of AP (1991) Supp (1) SCC 202; CST v. Popular Trading Company (2000) 5 SCC 511; State of Punjab v. Devans Modern Brewaries (2004) 11 SCC 26; State of Bombay v. Bombay Education Society (1954) 2 SCC 152

[97] (1942) 4 FCR 17

dealing with taxing provisions, this Court has held that the expression 'that is to say' is employed to exhaustively enumerate.[98] While interpreting the expression 'that is to say', it must not be lost that it features in the legislative list which must be interpreted widely and to include all ancillary items. The interpretation of taxing statutes (which must be construed strictly) and legislative entries in the Seventh Schedule(which are required to be construed widely and liberally) cannot be the same. This was noticed by the Constitution Bench in **State of Bombay** v. **Bombay Education Society**[99].

55. In **State of Punjab** v. **Devans Modern Breweries**[100], the levy of tax on the import of potable liquor manufactured in other States was challenged. Justice SB Sinha in his dissenting opinion, considered the scope of the words 'that is to say' in Entry 8 of List II. Relying on the decisions in **CST** v. **Popular Trading**[101] and **Indian Aluminium Co. Ltd.** v. **Assistant Commissioner of Commercial Taxes (Appeals)**[102], the learned Judge held that the expression 'that is to say' in Entry 8 of List II is descriptive, enumerative and exhaustive

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[98] State of Karnataka v. Balaji Computers; Bansal Wire Industries v. State of UP, (2011) 6 SCC 545 [20]; Sait Rikhaji Furtarnal v. State of AP (1991) Supp (1) SCC 202 [4]; CST v. Popular Trading Company (2005) 5 SCC 511

[99] (1954) 2 SCC 152; "12. […] He points out that one of the meanings of the word "namely" as given in *Oxford English Dictionary*, Vol. VII, p. 16 is "that is to say" and he then refers us to the decision of the Federal Court in *Bhola Prasad* v. *King Emperor* [*Bhola Prasad* v. *King Emperor*, 1942 SCC OnLine FC 3 : (1942) 4 FCR 17 at p. 25] where it was stated that the words "that is to say" were explanatory or illustrative words and not words either of amplification or limitation. It should, however, be remembered that those observations were made in connection with one of the legislative heads, namely, Entry 31 of the Provincial Legislative List. The fundamental proposition enunciated in *R.* v. *Burah* [*R.* v. *Burah*, (1878) LR 3 AC 889 (PC)] was that Indian Legislatures within their own sphere had plenary powers of legislation as large and of the same nature as those of Parliament itself. In that view of the matter every entry in the legislative list had to be given the widest connotation and it was in that context that the words "that is to say", relied upon by the learned Attorney General, were interpreted in that way by the Federal Court. **To do otherwise would have been to cut down the generality of the legislative head itself.** The same reason cannot apply to the construction of the Government Order in the present case for the considerations that applied in the case before the Federal Court have no application here." [emphasis supplied]

[100] (2004) 11 SCC 26

[101] (2000) 5 SCC 511

[102] (2001) 2 SCC 201

and circumscribes the scope of the said entry to a great extent."[103] However, the opinion did not consider the decisions in **Bhola Prasad** (supra) and **State of Bombay** v. **Bombay Education Society**[104] and instead referred to the interpretation of the expression in taxing statutes. For the above reasons, the expression 'that is to say' in Entry 8 of List II cannot be interpreted to circumscribe the scope of the entry. The words that follow 'that is to say' are illustrative and explanatory of the scope of the provision. The expression does not limit the scope of the entry. Thus, the scope of Entry 8 of List II cannot be limited to the 'production, manufacture, possession, transport, purchase and sale' of Intoxicating Liquor.

II. Product or industry based entry

56. The Seventh Schedule differentiates between an industry and the product of the industry. Entry 24 of List II deals with industries. Entries 26 and 27 of List II deal with products of industries. Entry 26 deals with "Trade and commerce within the State subject to the provisions of Entry 33 of List III". Entry 27 provides for "Production, supply and distribution of goods subject to the provisions of Entry 33 of List III". Entry 33 of List III enables both Parliament and the State Legislature to enact laws with respect to trade and commerce in, and the production, supply and distribution of, *inter alia,* the products of the industry where control by the Union is declared by Parliament by law to be in the public interest. Thus, if the Union has control over an industry under Entry 52 of List I, both Parliament and the State Legislature will have the

[103] (2001) 2 SCC 201 [158]
[104] (1954) 2 SCC 152

competence with respect to the products in terms of Entry 33 of List III. Under Entries 26 and 27 of List II, the State Legislature has the exclusive power to enact laws with respect to the products of the industries covered by Entry 24 of List II. Parliament has the competence to legislate on any 'industry' provided that it satisfies the condition stipulated in Entry 52 of List I (control by the Union being declared by a law of Parliament to be in the public interest). The necessary corollary of the enactment of the law under Entry 52 is that the products of the industry are shifted to the Concurrent list from the State List.

57. The scope of Entry 8 must be interpreted in this background. If Entry 8 is a product-based Entry, it will only cover the consumable end-product. However, if it is an industry-based Entry, it would cover the production of the product as well.[105] Entries 24, 26 and 27 of List II are general entries relating to industry and the products of the industries. A distinction between industry and product is made in List II to give effect to the legislative scheme by which certain industries may be controlled by the Union under Entry 52 of List I but products of those industries which are placed in the Concurrent list under Entry 33. To give effect to this unique demarcation, it was necessary to separate the entries relating to industries and products in List II. However, Entry 8 is a specific entry dealing only with 'intoxicating liquor'. The distinction made between industry and products in the general entries to give effect to the scheme of legislative distribution on industries is not adopted in Entry 8. We have in the preceding sections emphasised that the primary principle of

[105] See Tika Ramji v. State of UP, AIR 1956 SC 676

interpreting entries in the legislative lists is to provide a wide meaning to them. A narrow interpretation must only be adopted when either (a) the scope of the Entry is limited by the use of language devices; or (b) a wide interpretation creates an overlap between entries within the same list or different lists. For example, Entry 25 of List II provides States the competence over "gas and gas-works". This Court in **Calcutta Gas Company** (supra) did not interpret the Entry to only include the product of 'gas and gas works' but rather interpreted it to include the industry. This is the construction which is in consonance with settled principles of interpretation.

58. Entry 8 in itself indicates that the intent is to ensure that it is read as broadly as possible. The Entry itself covers the 'production, manufacture, possession, transport, purchase and sale' of intoxicating liquors. Thus, it is clear that the Entry seeks to regulate everything from the stage of the raw materials to the consumption of 'intoxicating liquor'. Entry 8 of List II includes both the industry and the product of 'intoxicating liquor'.

b. Scope of Entry 52 of List I: the absence of "to the extent to which"

59. Entry 24 of List II deals with 'Industries'. The entry is subject to entries 7 and 52 of List I. Entry 7 of List I deals with industries which are declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. Entry 52 of List I deals with industries, the control of which by the Union is declared by Parliament to be expedient in the public interest. The State Legislature will have the competence to enact laws with respect to 'industries'. However, Parliament has the power to deal with such industries

which are necessary to be in the control of the Union for: (a) public interest; (b) defence; and (c) prosecution of war. Thus, the State Legislature will have the competence to enact laws with respect to all industries, unless Parliament has taken control of the industry under Entries 52 or 7 of List I.

60. A comparison may be drawn to Entry 54 of List I and Entry 23 of List II to cull out the scope of Entry 52 of List I. Entry 23 of List II deals with the "regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union." Entry 54 of List I deals with the "regulation of mines and mineral development **to the extent to which** such regulation and development under the control of Union is declared by Parliament by law to be expedient in public interest." The expression 'to the extent to which' is absent in Entry 52 of List I. In **Mineral Area Development Authority** v. **M/s Steel Authority of India**[106], a nine-Judge Bench of this Court dealt with the scope of Entry 52 of List I and in particular, the purport of the expression "to the extent to which". One of the contentions before the nine-Judge Bench was that the State Legislature does not have any power under Entry 23 of List II because the Mines and Minerals (Development and Regulation) Act 1957[107] is a complete code that occupies the entire field relating to regulation of mines and mineral development. Rejecting the argument, the majority held that the words "to the extent to which" indicates that "besides declaring that it is taking under its control any subject relating to the regulation of mines and mineral development,

[106] 2024 INSC 554
[107] "MMDRA"

Parliament has to specify the extent to which the Parliamentary regulation is deemed expedient in the public interest."[108]

61. As opposed to Entry 54, Entry 52 does not use the words "to the extent to which". The question is whether the State Legislature is denuded from legislating on an industry which is controlled under the IDRA or any other similar legislation enacted under Article 246 read with Entry 52. Section 2 of IDRA provides that the Union takes control over the industries specified in the First Schedule. In **Ishwari Khetan Sugar Mills** v. **State of UP**[109], a Constitution Bench of this Court dealt with the constitutional validity of the UP Sugar Undertakings (Acquisition) Act 1971 which was challenged on the ground that the State Legislature lacked the legislative competence. While demarcating the scope of Entry 52 of List I and Entry 24 of list II, Justice D A Desai (writing for himself and two other Judges), observed that the degree and extent of control acquired by Parliament upon a declaration under Entry 52 would depend on the legislation enacted "spelling out the degree of control assumed". The relevant observations are extracted below:

> "7. […] Entry 52 List I on its own language does not contemplate a bald declaration for assuming control over specified industries, but the declaration has to be by law to assume control of specified industries in public interest. The legislation enacted pursuant to the power to legislate acquired by declaration must be for assuming control over the industry and the declaration has to be made by law enacted, of which declaration would be an integral part. Legislation for assuming control containing the declaration will spell out the limit of control so assumed by the declaration. Therefore, the degree and extent of

[108] 2024 INSC 554 [158-161]
[109] (1980) 4 SCC 136

> control that would be acquired by Parliament pursuant to the declaration would necessarily depend upon the legislation enacted spelling out the degree of control assumed. A mere declaration unaccompanied by law is incompatible with Entry 52 List I. A declaration for assuming control of specified industries coupled with law assuming control is a prerequisite for taking legislative action under Entry 52 List I. The declaration and the legislation pursuant to declaration to that extent denude the power of State Legislature to legislate under Entry 24 List II."

62. The opinion of Justice D A Desai referred to the judgments of this Court in **Baijnath Kedia** v. **State of Bihar**[110] and **State of Haryana** v. **Chanan Mal**[111] "on an identical Entry 54, List I."[112] It was also argued that Section 2 of IDRA[113], unlike Section 2 of MMDRA[114] does not provide that the Union shall take control "to the extent herewith provided", and thus, IDRA takes full control over the scheduled industries. Rejecting the argument, Justice D A Desai noted that the "words of limitation on the power to make declaration are 'by law'".[115] Justice R S Pathak, as the learned Chief Justice then was, (writing for himself and Justice Koshal) observed that he would refrain from expressing any opinion on this issue and that the challenge to the validity of the impugned enactment could be disposed of without a reference to Entries 52 of List I and 24 of List II.[116]

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[110] (1970) 2 SCR 100
[111] (1976) 3 SCR 688
[112] (1980) 4 SCC 136 [8]
[113] "2. Declaration as to expediency of control by 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."
[114] "2. Declaration as to expediency of Union Control.- It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the **extent hereinafter provided.**" [emphasis supplied]
[115] (1980) 4 SCC 136 [11]
[116] "44.[…] It seems to us that the observations made by this Court in *Hingir-Rampur Coal Co. Ltd.* v. *State of Orissa* [AIR 1961 SC 459 : (1961) 2 SCR 537] , *State of Orissa* v. *M.A. Tulloch and Co.* [AIR 1964 SC 1284 : (1964) 4 SCR 461] , *Baijnath Kadio* v. *State of Bihar* [(1969) 3 SCC 838, 847-848 : AIR 1970 SC 1436 : (1970) 2 SCR 100, 113] and *State of Haryana* v. *Chanan Mal* [(1977) 1 SCC 340, 351 : AIR 1976 SC 1654 : (1976) 3 SCR 688, 700] cannot be of assistance in this behalf. In each of those cases, the declaration made

63. In **ITC** (supra), another Constitution Bench briefly dealt with this issue. It was argued that this Court in **Ishwari Khetan** (supra) equated Entry 52 of List I with Entry 54 of List II. Justice Y K Sabharwal, as the learned Chief Justice then was, writing for the majority specifically rejected the argument that Entry 54 was equated with Entry 52 and observed that the "decision does not adopt the mines and minerals cases for the purposes of considering the scope of Entry 52 of List I."[117]

64. We agree with the opinion of Justice Desai in **Ishwari Khetan** (supra). Entries 52 and 54 of List I (and entries 23 and 24 of List II) are unique. Though entries 23 and 24 stipulate that they are subject to specific entries in List I, they are actually subject to the law made by Parliament under the entries. The entries are unique in the sense that the scope of an entry in the State List is not subjected to another entry in the Union List but rather by the law made by Parliament. The consequence of this is that when stretched to the extreme, Parliament may by law declare that all industries must be in the control of the Union. This would enable Parliament to render an entry in the State List otiose. As held in the preceding section of this judgment, the entries must be interpreted to maintain the federal balance. When there are two possible interpretations of the entries, the Court must choose the one that maintains the federal balance. Entries 24 of List I and 52 of List II maintain the federal balance in a unique way. The members of the Constituent Assembly thought

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by Parliament in the concerned enactment limited the control of the mines and the development of minerals to the extent provided in the enactment. Whether the terms in which the declaration has been framed in Section 2 of the Industries (Development and Regulation) Act — a declaration not expressly limiting control of the specific industries to the extent provided by the Act — can be construed as being so limited is a matter which, we think, we should deal with in some more appropriate case."

[117] (2002) 9 SCC 232 [31]

it fit to include ‘industries’ as a legislative field in the State List because it requires localized focus. If the draftspersons thought otherwise, they could have included the Entry in the Union List or even the Concurrent List. The unique placement of these entries must be considered and given due effect. The entries must not be interpreted in a manner that would, in effect for all purposes, place the entry in the Concurrent List.

65. The question is whether an implied limitation can be read into Entry 52 of List I in the absence of the expression “to the extent to which”. If an implied limitation is not read into the Entry, Parliament by a simple declaration may take over the complete industry and subject the power of the State Legislature to make any provision with respect to that industry to the power of Parliament. This interpretation diminishes the scope of competence of the State Legislature under Entry 24 of List II. Such an interpretation completely tilts the federal balance that entries 52 of List I and 24 of List II seek to maintain. The power of Parliament in Entry 52 of List I is defined by the phrase ‘control’. The Entry does not read as “industries, declared by Parliament by law to be expedient in the public interest.” The Entry states “Industries, **the control of which by the Union** is declared by Parliament by law to be expedient in the public interest.” The law enacted by Parliament must not be an abstract declaration but must specify the extent of control that is necessary to be taken in public interest. The State Legislature will have the competence to legislate with respect to the field which is not the subject matter of control. The legislative competence of the State Legislature is only denuded to the extent

of the 'control' by the Union declared by the law of Parliament to be expedient in the public interest.

c. Reconciling the potential overlap between Entry 52 of List I and Entry 8 of List II

66. Having discerned the scope of Entry 52 of List I, it next needs to be considered if Entry 52 of List I and Entry 8 of List II overlap, and if they overlap, whether they can be reconciled.

67. At this juncture, the decisions of this Court that have dealt with the interplay of Entry 52 of List I and entries of List II need to be referred to. In **Calcutta Gas Company** v. **State of West Bengal**[118], a Constitution Bench dealt with the overlap between Entry 52 of List I and Entry 25 of List II. Entry 25 of List II provides for 'gas and gas works'. The Legislature of West Bengal enacted the Oriental Gas Company Act 1960. The constitutional validity of the enactment was challenged on the ground that Entry 24 of List II which deals with industries is subject to Entry 52 of List I and thus, Entry 25 of List II must be confined to matters which are not covered by Entry 24. In short, the submission was that the 'industry' of gas and gas works will be covered by Entry 24 of List II and the other matters relating to gas and gas works will be covered by Entry 25 of List II. Justice Subba Rao writing for the Constitution Bench held that the 'industry' of gas and gas works will be covered by Entry 25 for the following reasons[119]:

[118] AIR 1962 SC 1044
[119] AIR 1962 SC 1044 [9]

a. Entry 25 of List II will become redundant if Entry 24 of List II (read along with Entries 25 and 26 which deal with trade, commerce, production, supply and distribution of products) covers the industry of 'gas and gas works';

b. The alternative, allows Entries 24 and 25 to operate fully in their respective fields. Entry 24 must be interpreted to cover the entire field of industry while Entry 25, the specific industry of gas and gas works;[120] and

c. Parliament cannot enact laws on the gas industry under Entry 52 because the meaning of 'industry' in Entry 24 of List II and Entry 52 of List I is the same. Since Entry 24 does not cover the gas industry, it cannot be included in Entry 52 as well.[121]

68. In **McDowell** (supra), the constitutional validity of the Andhra Pradesh Prohibition Act 1995 was under challenge. The enactment prohibited the selling, buying, consumption and manufacture of liquor. It was submitted that the State did not have the competence to enact the statute because the manufacture and production of intoxicating liquors is an industrial activity

[120] "9. […] If industry in Entry 24 is interpreted to include gas and gas works, Entry 25 may become redundant, and **in the context of the succeeding entries, namely Entry 26, dealing with trade and commerce, and Entry 27, dealing with production, supply and distribution of goods it will be deprived of all its contents** and reduced to "useless lumber". If industrial, trade, production and supply aspect are taken out of Entry 25, the substratum of the said entry would disappear: in that event we would be attributing to the authors of the Constitution ineptitude, want of precision and tautology. On the other hand, the alternative contention enables Entries 24 and 25 to operate fully in their respective fields: while Entry 24 covers a very wide field, that is, the field of the entire industry in the State, Entry 25, dealing with gas and gas-works, can be confined wo a specific industry, that is, the gas industry." [emphasis supplied]

[121] "11. […] As we have indicated earlier, the expression "industry" in Entry 52 of List I bears the same meaning as that in Entry 24 of List II, with the result that the said expression in Entry 52 of List I also does not take in a gas industry."

covered by Item 26 of the Schedule to IDRA. It may be recalled that Item 26 before the 2016 amendment included alcohol and other products of fermentation industry. The three-Judge Bench of this Court rejected the submission. Justice Jeevan Reddy, writing for the Bench, observed that:

a. Entry 8 expressly refers to 'production and manufacture' of intoxicating liquor. Including the production and manufacture of liquor in Entry 24 of List II (and as a consequence in Entry 52 of List I), would amount deleting the words "production and manufacture" in Entry 8;

b. Entry 24 is a general entry and Entry 8 is a specific entry. On the application of the principle of *generalia specialibus non derogant* (general things do not derogate from specific things), the industry of intoxicating liquor will not fall under the general entry (Entry 24) but the special entry (Entry 8); and

c. Entry 52 only governs Entry 24 and not Entry 8. Thus, the industry of intoxicating liquor cannot be taking over by Parliament under Entry 52.[122]

[122] "26. […] Entry 24 is a general entry relating to industries whereas Entry 8 is a specific and special entry relating inter alia to industries engaged in production and manufacture of intoxicating liquors. Applying the well-known rule of interpretation applicable to such a situation (special excludes the general), we must hold that the industries engaged in production and manufacture of intoxicating liquors do not have within Entry 24 but do fall within Entry 8. This was the position at the commencement of the Constitution and this is the position today as well. Once this is so, the making of a declaration by Parliament as contemplated by Entry 52 of List I does not have the effect of transferring or transplanting, as it may be called, the industries engaged in production and manufacture of intoxicating liquors from the State list to Union List. As a matter of fact, Parliament cannot take over the control of industries engaged in the production and manufacture of intoxicating liquors by making a declaration under Entry 52 of List I, since the said entry governs only Entry 24 in List II but not Entry 9 in List II."

Referring to the decision in **Calcutta Gas Company** (supra), the three-Judge Bench observed that Entry 8 is more specific as compared to Entry 24 because the former expressly refers to 'production and manufacture', and thus, it is all the more clear that the production of liquor cannot be covered by Entry 52.[123]

69. In **Calcutta Gas Company** (supra) and **McDowell** (supra), this Court adopted the following established principles of interpretation to resolve the overlap between legislative entries: (a) *generalia specialibus non derogant*; (b) an interpretation which does not render an entry redundant must be adopted; and (c) parliamentary supremacy in Article 246 will only operate if the entries in the State List and the Union List cannot be reconciled. The approach in **Calcutta Gas Company** (supra) and **McDowell** (supra) on the issue of reconciling the conflict between the entries varies on one aspect. In **Calcutta Gas Company** (supra), the Constitution Bench adopted a three-step analysis:

    a. On an application of the principle of *generalia specialibus non derogant,* the industry of the specific entry (in this case, the gas industry) was traced to Entry 25 and not Entry 24 (which is a general entry);

    b. Entry 52 is co-extensive with Entry 24. Thus, the scope of Entry 54 is circumscribed by the scope of Entry 24; and

[123] "28. […] Article 246 cannot be invoked to deprive the State Legislatures of the powers inhering in them by virtue of entries in List II. To wit, once an enactment, in pith and substance, is relatable to Entry 8 in List II or for that matter any other entry in List II, Article 246 cannot be brought into yet hold that State Legislature is not competent to enact that law."

c. The gas industry is included in Entry 25 (and not Entry 24) which is not subject to Entry 52. Thus, Entry 52 cannot cover the gas industry.

70. In **McDowell** (supra), the three-Judge Bench applied the principle that the State Legislature has full competence to enact laws with respect to those entries which are not **expressly** subject to an entry in List I or List III.

71. The question is whether Parliament under Entry 52 of List I takes over the industry of intoxicating liquor covered by Entry 8. The answer is in the negative. Irrespective of whether the term 'industry' is interpreted in a narrow or a wide manner (a point that is vehemently contested by both sides), the industry of intoxicating liquor cannot be taken over by Parliament under Entry 52 of List I for the following reasons:

a. The general principle is that legislative lists must be interpreted widely. The question that the Court must pose is whether the two entries would overlap when interpreted widely. If they overlap, the Court must reconcile them. But the method of reconciliation must maintain the federal balance. The courts must not apply the principle of legislative supremacy of Parliament at the stage of reconciliation. As explained above, such an exercise would tilt the federal balance towards the Union;

b. The only limitation in Entry 52 is that the control of the industry by the Union must be necessary for public interest. Parliament can legislate on any industry, provided that it satisfies the condition prescribed in the Entry. Thus, Entry 52 when read independent of any other entry of List

I, List II and List III does not preclude the inclusion of the industry of intoxicating liquor (provided that the Union is able to prove that its control is necessary in public interest). Similarly, Entry 8 of List II, when read independently also includes, *inter alia,* the production and manufacture of intoxicating liquor which is included within the meaning of industry. Thus, Entry 52 of List I and Entry 8 of List II overlap on the aspect of 'industry' of intoxicating liquor;

c. Entry 8 of List II is not subject to Entry 52 of List I. Thus, the State Legislature has the exclusive competence to enact a law on the field in Entry 8. The Court must distinguish between entries that are expressly subject to entries in the Union List and entries that are not. When one entry is not subject to the other, the Court must harmonise the overlap of the entries;

d. The only way to reconcile the entries is either to exclude the industry of intoxicating entry from Entry 52 of List I or Entry 8 of List II. The Court while reconciling the provisions, must ensure that neither of the entries is rendered redundant. The principle of *generalia specialibus non derogant* is used by courts to ensure that the harmonisation of the entries does not render an entry redundant. In **Wavery Jute Mills Co. Ltd.** v. **Raymon & Co**[124], the issue was whether Parliament or the State Legislature had the competence to enact laws with respect to 'forward markets'. Applying the principles of *generalia specialibus non derogant*,

[124] (1963) 3 SCR 209

this Court held that the Union will have competence over 'forward contracts' in terms of Entry 48 of List I (stock exchanges and future markets) and that if it is brought within Entry 26 of List II (trade and commerce), Entry 48 will become redundant. Similarly, in **Jayant Verma** v. **Union of India**[125], this Court applied the principle to resolve the overlap between Entry 30 of List II and Entry 45 of List I. A special entry must prevail over a general entry, otherwise, the special entry may become redundant; and

e. Entry 52 of List I is a general entry dealing with industry. Entry 8 of List II is a special entry dealing with one particular industry.[126] The consequence of interpreting Entry 52 to cover the industry of 'intoxicating liquor' is two-fold: first, it would amount to deleting the words 'production, manufacture' in Entry 8; and second, the State Legislature also loses its exclusive competence to legislate upon the product of the industry, rendering Entry 8 fully redundant. This is because the legislative competence on products of industries covered by Entry 52 of List I is placed in Entry 33 of List III.

72. As a consequence, Parliament does not have the legislative competence to enact a law taking control of the industry of intoxicating liquor under Entry 52 of List I.

[125] (2018) 4 SCC 743
[126] Calcutta Gas company (supra) and McDowell (supra)

iv. Scope of Entry 8: Meaning of ‘intoxicating liquor’

73. Entry 8 of List II is a general entry and not a taxing entry. However, it is a special entry in the sense that it specifically enumerates ‘intoxicating liquors’ as a legislative field to the exclusion of all other general entries under which it may have otherwise been subsumed. The Entry stipulates that intoxicating liquors would fall within the legislative domain of States. The arguments of the counsel on either side on the scope of Entry 8 of List II rest on the interpretation of the expression “intoxicating liquor’.

74. The appellants rely on the meaning of ‘liquor’ in statutes which predate the Constitution to argue that the framers of the Constitution were aware of the sense in which the phrase was used at the time and, that it included denatured alcohol. In response, the Union argues that the word ‘intoxicating’ occurring in the expression ‘intoxicating liquors’ must not be rendered redundant by adopting the interpretation accorded to Entry 8 of List II by the appellants. It argues that ‘intoxicating liquors’ means beverages which are *per se* meant for human consumption for the purpose of intoxication without dilution or modification by any process. The Union also relies on the legal history of the division of legislative fields between the Union and the States in support of its argument that only Parliament is competent to legislate with regard to denatured alcohol.

*a. Precedent on the interpretation of 'intoxicating liquor': exploring **FN Balsara and Southern Pharmaceuticals***

75. The respondents have relied on the interpretation of the phrase 'intoxicating liquor' in the judgment of the Bombay High Court in **FN Balsara** v. **State of Bombay**[127]. The petitioners have strongly relied on the decision of this Court in **FN Balsara** (supra) which overturned the judgment of the Bombay High Court.

76. The petitioner in **Balsara** (supra) had one bottle of whisky, one bottle of brandy, one bottle of wine, two bottles of beer, one bottle of medicated wine, one bottle of eau-de-cologne, one bottle of lavender water and some bottles of medicinal preparations. The petitioner invoked the writ jurisdiction of the High Court to challenge the validity of the Bombay Prohibition Act 1949.[128] As the name suggests, the statute sought to put in place and enforce the policy of prohibition of alcohol. It was enacted with reference to Entry 31 of List II of the Seventh Schedule to the 1935 Act, which was similar to Entry 8 of List II of the Seventh Schedule to the Constitution, in respect of intoxicating liquors. The Act defined 'intoxicant' as "any **liquor**, intoxicating drug, opium or any other substance which the Provincial Government may, by notification in the Official Gazette declare to be an intoxicant…"[129] 'Liquor' was defined to include "all liquids containing alcohol".[130] The definition clause was challenged on the ground that it was beyond the competence of the State

[127] 1950 SCC OnLine Bom 57
[128] "Bombay Prohibition Act"
[129] Bombay Prohibition Act 1949; Section 2(22)
[130] Bombay Prohibition Act 1949; Section 2(24)

Legislature under the entries in List II and List III of the 1935 Act. Chief Justice M C Chagla, writing for the Bench, held that the State Legislature did not have the competence to enact laws with respect to the "**legitimate** use of alcoholic preparations which are not beverages" and "the use of medicinal and toilet preparations containing alcohol".[131] In short, the High Court held that 'intoxicating liquor' in Entry 31 of List II of the 1935 Act did not include **all liquids with alcohol**, and thus, the definition was beyond the scope of the State Legislature. The reasons for the interpretation were thus:

a. Liquor ordinarily means a strong drink as opposed to a soft drink. In any event, it must be a beverage which is ordinarily drunk;

b. The difference in the words qualifying 'liquor' in entries 31[132] and 40(a)[133] of List II in the 1935 Act (the Entry corresponding to Entry 51 of List II of the Seventh Schedule to the Constitution) is very significant. In Entry 31, the word used is 'intoxicating'. In Entry 40(a), the word used is 'alcoholic'. In the Whitepaper of 1933, the entry dealt with 'alcoholic liquor' which was substituted with the expression intoxicating liquor. With the substitution, non-intoxicating liquor was excluded from the scope of the Entry; and

[131] 1950 SCC OnLine Bom 57 [36]
[132] "31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III."
[133] "40. Duties of excise on the following goods manufactures or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India- (a) alcoholic liquors for human consumption…"

c. Medicinal and toilet preparations containing alcohol are neither liquor nor intoxicating. Thus, they are excluded from the scope of the Entry.

The 18th amendment to the US Constitution prohibits the sale, manufacture and transportation of 'intoxicating liquor'.[134] The petitioners relied on judgments of the US Supreme Court to substantiate the submission that the State Legislature can legislate on all liquids containing alcohol. The High Court, upon an analysis of judgments noted that they only hold that 'intoxicating liquor' could cover drinks that contain a small percentage of alcohol, even if it does not produce an intoxicating effect. The Court further noted that the judgments of the US Courts hold that the State cannot regulate the **legitimate** use of non-beverage, and medicinal and toilet preparations containing alcohol, but only regulate their use for **noxious** purposes. Upon the analysis of the decisions, the High Court held that the State: (a) has the competence to legislate on alcoholic liquids which are not normally consumed as drinks; (b) cannot legislate on the "legitimate" use of alcoholic preparations which are not beverages; and (c) cannot legislate on the use of medicinal and toilet preparations containing alcohol.

77. The appeals against the judgment of the High Court were allowed by a Constitution Bench of this Court in **FN Balsara** (supra). This Court noticed the meaning of the word 'liquor' by referring to its dictionary meaning and also assessed the meaning assigned to it in various enactments including the

[134] 18th Amendment to the US Constitution; Section 1: "After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

National Prohibition Act 1919 in the USA, the Licensing (Consolidating) Act 1910 and the Spirits Act 1880 in England. It also referred to the Indian enactments, namely, the Bombay Abkari Act 1878, the Bengal Excise Act 1909, the Punjab Excise Act 1914 and the UP Excise Act 1910. The judgment, authored by Justice Fazl Ali, was careful to clarify that the Court was not suggesting that the definition of 'liquor' in the Bombay Prohibition Act was borrowed from the statutes in the USA or England but that they were referred to show that the term was "*capable of being used in a wide sense*".[135] Based on its analysis, this Court observed that:

a. While 'liquor' was commonly understood to mean a drink or beverage produced by fermentation or distillation, the various enactments referred to indicated that the phrase extended to liquids which were not, strictly speaking, beverages[136];

b. The definitions of 'liquor' and 'intoxicating liquor' in the provincial statutes consistently included liquids containing alcohol. The framers of the 1935 Act were aware of the 'accepted sense' of the meaning assigned to the term in the various provincial laws[137]; and

c. Therefore, the term 'intoxicating liquors' in Entry 31 of List II of the Seventh Schedule to the 1935 Act included not only beverages which intoxicate but also all liquids containing alcohol. While this may not have been the meaning attributed to 'intoxicating liquors' in common parlance,

[135] 1951 SCC 860 [43]
[136] 1951 SCC 860 [41]
[137] 1951 SCC 860 [44]

the numerous statutory definitions made it clear that the expression in Entry 31 of List II of the 1935 Act was broad and included all liquids containing alcohol.[138]

78. The Constitution Bench also approached the question from the perspective of the entries on 'public health' and 'public order', and Article 47[139] of the Constitution. The Bench noted that the word 'liquor' must be given a wide meaning to include "all alcoholic liquids which may be used as substitutes for intoxicating drinks, to the detriment of health." [140] On the consideration of the meaning of the phrase, both from the perspective of legislative meaning and the constitutional directive of prohibiting intoxicating drinks which are injurious to health, this Court reversed the finding of the High Court.[141]

79. Though the High Court held that the definition of 'liquor' in the Bombay Prohibition Act is *ultra vires* and this Court reversed the finding, there is one commonality between both the decisions. Neither of the decisions limited the scope of the phrase to the common parlance meaning of 'intoxicating beverages'. Both the decisions held that the entry covered liquor which may not produce 'intoxication' but which may be used for noxious purposes. The difference is one of degree. While the High Court held that all liquids

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[138] 1951 SCC 860 [44]

[139] "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 endeavor to being about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

[140] 1951 SCC 860 [45]

[141] See Paragraph 48: "… the idea of prohibition is connected with public health, and to enforce prohibition effectively the wider definition of the word "liquor" would have to be adopted so as to include all alcoholic liquids which may be substitutes for intoxicating drinks, to the detriment of health. **On the whole,** I am unable to agree with the High Court's finding, and hold that the definition of 'liquor' in the Bombay prohibition Act is not ultra vires." [emphasis supplied]

containing alcohol will not be covered by Entry 31 of List II, this Court held otherwise. However, the conclusion of this Court on the scope of the phrase cannot be read detached from observations that a wider definition of intoxicating liquor is necessary to cover other products which 'may be used as substitutes for intoxicating drinks'.

80. In **Southern Pharmaceuticals and Chemical** v. **State of Kerala**[142], the appellants challenged the constitutional validity of the provisions of the Abkari Act, as amended by the Abkari (Amendment) Act 1967 and Kerala Rectified Spirit Rules 1972 which regulated the use of alcohol for the preparation of medicines. Item 22 of the Schedule to IDRA specifies the "drugs and pharmaceuticals" industry. The contention was that the State Legislature did not have the competence to enact laws because the field was covered by Parliament through IDRA. The issue before the three-Judge Bench of this Court was whether the State Legislature had the competence to enact a law related to medicinal and toilet preparations containing alcohol under Entry 8 of List II of the Seventh Schedule to the Constitution. This Court held that the State had the competence to enact the impugned laws under Entry 8 of List II because the legislations are confined to ensuring the proper utilisation of rectified spirit in the manufacture of medicinal and toilet preparations.[143] After referring to the decision of this Court in **FN Balsara** (supra), the Bench held that only medicinal preparations which are capable of being misused for

[142] (1981) 4 SCC 391
[143] (1981) 4 SCC 391 [14]

"noxious" purpose can be considered 'intoxicating liquor'.[144] This Court held that the test to determine if it can be misused is whether the article in question can be used as a beverage:

> "19. **The general test for determining what medicinal preparations containing alcohol are** capable **of being misused and, therefore, must be considered intoxicating within the meaning of the term ''intoxicating liquor'', is the capability of the article in question for use as a beverage. The impugned provisions have been enacted to ensure that rectified spirit is not misused under the pretext of being used for medicinal and toilet preparations containing alcohol.** It was argued that this definition was therefore *ultra vires* the powers of the State legislature, which could only make laws related to alcoholic beverages."
>
> (emphasis supplied)

81. The observations of this Court in **Southern Pharmaceuticals** (supra) follow the precedent in **FN Balsara** (supra) that preparations which contain alcohol will be covered by the phrase 'intoxicating liquor' in Entry 8 to prevent its 'noxious use'. In **Indian Mica** (supra), the appellant challenged the *vires* of the rule levying licence fee to possess denatured spirit. The Rules were framed under the Bihar and Orissa Excise Act 1915. The State would have the competence to enact a law levying fee on denatured spirit under Entry 66

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[144] "18. … The power to legislate with regard to intoxicating liquor carries with it the power to regulate the manufacture, sale and possession of medicinal and toilet preparations containing alcohol, not for the purpose of interfering with the right of citizens in the matter of consumption or use for bona fide medicinal and toilet preparations, **but for preventing intoxicating liquors from being passed on under the guise of medicinal and toilet preparations**. **It was within the competence of the State legislature to prevent the noxious use of such preparations, i.e. their use as a substitute for alcoholic beverages.**" [emphasis supplied]

of List II[145] if the spirit was covered by the phrase 'intoxicating liquor' in Entry 8 of List II. Denatured spirit in this case was used as a raw material for the preparation of another product (micanite). In this case, the Constitution Bench held that denatured spirit is 'intoxicating liquor' and thus, covered by Entry 8 of List II.[146] Further it was held that the fee charged will be valid if the levy has a reasonable relationship with the services rendered by the Government.[147]

82. It is clear from the analysis of the above judgments that the meaning of the phrase 'intoxicating liquor' in Entry 8 of List II has been expanded beyond the narrow definition of alcoholic beverages that produce an 'intoxicating effect' upon consumption. Liquids which contain alcohol **and** which can possibly be used (or misused) as intoxicating liquor have been included within the meaning of the phrase.

83. We will test this proposition in the subsequent sections. In our opinion, there are four possible approaches that we can adopt to determine the meaning of the expression 'intoxicating liquor'. The first is through the identification of the 'legislative meaning' of the phrase intoxicating liquor; the second is through legislative history; the third, is the common parlance test, and the fourth is the principle of workability. We will discuss the merits and demerits of each of the above approaches in turn.

[145] "66. Fees in respect of any of the matters in this List, but not including fees taken in any Court."
[146] (1971) 2 SCC 236 [3]
[147] (1971) 2 SCC 236 [11]

b. The legal import of 'intoxicating liquor'

84. The petitioners submit that the expression 'intoxicating liquor' is a term of recognised legal import because it has been used in numerous statutes that pre-date the 1935 Act, where the phrase was first used in Entry 31 of List II. The principle of 'legal import' has been used by this Court to interpret entries in the Seventh Schedule. In **Gannon Dunkerley** (supra), a Constitution Bench dealt with the interpretation of Entry 48 of List II of the Seventh Schedule to the 1935 Act which specified the field of 'taxes on the sale of goods'. This Court was required to interpret the phrase 'sale of goods'. On one side it was contended that the term must be given the 'popular meaning' and on the other side, it was contended that it must be given the 'legal meaning'. This Court chose the latter. The Bench laid down the standard to determine when a phrase has obtained a legal meaning. This Court laid down a two-prong test: first, the phrase should have acquired a well-recognised, definite and precise meaning in law[148]; and second, the legal import of the word must be practically unanimous.[149] It is also crucial to note that in this

[148] "The ratio of the rule of interpretation that words of legal import occurring in a statute should be construed in their legal sense is that those words have, in law acquired a definite and precise sense, and that, accordingly, the legislature must be taken to have intended that they should be understood in that sense. In interpreting an expression used in a legal sense, therefore, we have only to ascertain the **precise connotation which it possesses in law.**" [emphasis supplied]

[149] "It will be seen from the foregoing that there is practical unanimity of opinion as to the import of the word "sale" in its legal sense

case, the popular meaning of the phrase was not widely different from the legal meaning[150].[151]

85. The judgment of this Court in **Gannon Dunkerley** (supra) must be read in the context of the settled principle of interpreting legislative entries, that the entries must be conferred the widest meaning possible. Interpreting a phrase or words in the Legislative Lists based on the legal import of the phrase is, thus, in many ways an exception to the settled principle of interpreting entries. This is for the simple reason that the legislative entries delimit the scope of competence of the legislative bodies. If the entries are interpreted based on the meanings or definitions in a legislation, the purpose of the Seventh Schedule may become redundant. Further, the statute does not define phrases based on popular or common parlance meaning but rather based on the scope of the legislation and the manner in which the provisions are drafted. A deeming fiction is often used to define phrases by conferring artificial meanings.[152] The interpretation based on 'legislative meaning' elucidated in **Gannon Dunkerley** (supra), which narrows the interpretation of

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[150] "Now, in its popular sense, a sale is said to take place when the bargain is settled between the parties, though property in the goods may not pass at that stage, as where the contract relates to future or unascertained goods, and it is that sense that the learned Judge would appear to have had in his mind when he spoke of a commercial or business sense. But apart from the fact that these observations were obiter, **this Court has consistently held that though the word "sale" in its popular sense is not restricted to passing of title,** and has a wider connotation as meaning the transaction of sale, and that in that sense an agreement to sell would, as one of the essential ingredients of sale, furnish sufficient nexus for a State to impose a tax.." [emphasis supplied]

[151] The judgement in Gannon Dunkerley's case (supra) was held to be constitutionally superseded on other aspects by subsequent cases including Kone Elevator India (P) Ltd. v. State of T.N., (2014) 7 SCC 1. However, the principle of interpretation referred to in this judgment continues to be good law.

[152] See Ahmedabad Municipal Corporation v. GTL Infrastructure Limited (2017) 3 SCC 545 [13] "13. "… it would be self-defeating to understand the meaning and scope of Entry 49 of List II by reference to the definition clauses in the Gujarat Act. Definitions contained in the statute may at times be broad and expansive; beyond the natural meaning of the words or may even contain deeming provisions. Though the wide meaning that may be ascribed to a particular expression by the definition in a statute will have to be given effect to, if the statute is otherwise found to be valid, it will, indeed, be a contradiction in terms to test the validity of the statute on the touchstone of it being within the legislative entry, by a reference to the definition contained in the statute"

entries, thereby creating an exception to the rule of wide interpretation should only be employed by Courts when the twin tests highlighted above. The tests are (a) the phrase should have acquired a well-recognised, definite and precise meaning in law; and (b) the legal import of the word must be practically unanimous. Additionally, we also are of the view that the legislative meaning interpretation should be adopted only when the deviation from the popular meaning of the phrase is not too wide. The legislative meaning cannot be used to artificially narrow legislative entries. We also deem it necessary to note that we must be cognizant that the standard of 'legislative meaning' is employed to identify the 'intent' of the framers of the Constitution and belongs to the originalist school of thought, which has been consistently opposed by this Court over the years.[153] For these reasons, the principle of interpretation elucidated in **Gannon Dunkerley** (supra) must be used cautiously by Courts.

86. Let us now proceed to determine if the phrase 'intoxicating liquor': (a) has a definite and precise meaning in law; (b) is unanimous; and (c) has a legal meaning that is not widely different from its popular meaning. We must refer to the pre-constitutional statutes for this purpose because the expression 'intoxicating liquor' was first used in the 1935 Act. The table below indicates the definition of 'Liquor', 'intoxicating liquor', and 'spirits' in numerous pre-constitutional statutes:

[153] See **Gannon Dunkerley** (supra) : "… Sales tax was not a subject which came into vogue after the Government of India Act 1935. It was known to the framers of that statute and they made express provision for it under Entry 48."

Bombay Abkari Act 1878"	Liquor is defined in an inclusive manner. It includes "all liquid consisting of or containing alcohol…denatured or not."[154]
Madras Abkari Act 1886	Liquor includes ….all liquid consisting of or containing alcohol.[155] Spirits means any liquor containing alcohol and obtained by distillation, whether it is denatured or not.[156]
Abkari Act 1077	Liquor includes …. all liquid consisting of or containing alcohol.[157]
Bengal Excise Act 1909[158]	Intoxicant means any liquor.[159] Liquor means liquid consisting and containing alcohol.[160] Spirit means any liquor containing alcohol, whether denatured or not.[161]

[154] Bombay Abkari Act 1978; Section 3(7)
[155] Madras Abkari Act 1886; Section 3(9)
[156] Madras Abkari Act 1886; Section 3(8)
[157] Abkari Act 1077; Section 3(10)
[158] Similar definitions in Bihar and Orissa Excise Act 1915; Sections 2(14); 2(19)
[159] The Bengal Excise Act 1909; Section 2(12a)
[160] The Bengal Excise Act 1909; Section 2(14)
[161] The Bengal Excise Act 1909; Section 2(19)

Madhya Pradesh Excise Act 1915[162]	Liquor means 'intoxicating liquor' and includes …. all liquid consisting of or containing alcohol.[163]
National Prohibition Act	The word 'liquor' or the phrase 'intoxicating liquor' shall be construed to include alcohol, brandy, whisky, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicating, proprietary, patented, or not and by whatever name called, containing one-half of 1 per centum or more of alcohol by volume which are fit for use for beverage purposes.
The Licensing (Consolidating Act) 1872	Intoxicating liquor means (unless inconsistent with the context) spirits, wine, beer, porter, cider, perry and sweets, and any fermented, distilled, or spiritous liquor which cannot,

[162] Similar definitions in The Punjab 'article' Excise Act 1914; Section 2(14); The Chhattisgarh Excise Act 1915; Section 2(13); United Province Excise Act 1910; Section 3(11)
[163] MP Excise Act 1916; Section 2(13)

	according to any law for the time being in force, be legally sold without an excise law.[164]
Spirits Act 1880	Spirits means spirits of any description, and includes all liquids mixed with spirits, and all mixtures, compounds, or preparations made with spirits.[165]

87. The Abkari Acts have generally defined the phrase 'liquor' to mean liquids containing alcohol including denatured alcohol. However, the Abkari Acts do not define the phrase 'intoxicating liquor'. In Excise Acts, 'liquor' was defined to mean 'intoxicating liquor' and included liquids containing alcohol. Thus, none of the pre-constitutional statutes have defined the phrase 'intoxicating liquor' for it to have acquired a legal meaning. The phrase was defined in the Licensing (Consolidating Act) 1910 which regulated the United Kingdom. It cannot be concluded that the phrase used in the Indian Constitution has acquired a legal meaning based on a definition clause in one statute which applied to the United Kingdom. The definition of 'liquor' in pre-constitutional statutes as liquids containing alcohol cannot be transposed to interpret the legislative entry. The phrase used in the legislative entry is 'intoxicating liquor'.

[164] The Licensing (Consolidating Act) 1872; Section 74
[165] Spirits Act 1880; Section 3

The definition of one part of the expression in statutes cannot be used to interpret expressions that are used to indicate a collective meaning, particularly when the common parlance definition starkly varies. The common parlance meaning of 'intoxicating liquor' means liquor which causes intoxication, that is, which causes someone to lose control. Thus, the three-prong test to identify if "Intoxicating Liquor" has acquired legislative meaning has not been satisfied.

c. Evolution of the legislative lists on 'intoxicating liquor'

88. We proceed to consider the evolution of the legislative field relating to 'intoxicating liquor' to determine the meaning of the expression. The evolution of the legislative entries must be traced from the Devolution Rules formulated under the 1919 Act.[166] The Devolution Rules classified legislative subjects for the purpose of distinguishing the functions of the local legislatures from those of the federal legislature. Alcohol was placed in the 'Provincial List' of the First Schedule to the Devolution Rules (equivalent to List II or the State List in the Seventh Schedule to the Constitution). Entry 16 of the Provincial List concerned alcohol. It is reproduced below:

> "16. Excise, that is to say, the control of production, manufacture, possession, transport, purchase and sale of **alcoholic liquor** and **intoxicating drugs**, and the levying of excise duties and licence fees on or in relation to such articles, but excluding, in the case of opium, control of cultivation, manufacture and sale for export."
>
> (emphasis supplied)

[166] The Devolution Rules were made by the Governor General in Council with the sanction of the Secretary of State in Council in exercise of the powers conferred by Sections 45A and 129A of the Government of India Act 1919.

89. Instead of two distinct entries, one which covered taxation and the other which covered regulation, the Devolution Rules contained a single entry in the Provincial List which extended to both aspects. The Entry related to (a) levy of excise duties; (b) levy of fee; and (c) general regulation. That it concerned taxation is evident from the term 'excise' and the 'levying of excise duties'. The words "*the control of production, manufacture, possession, transport, purchase and sale*" indicate that the Entry extended to regulation as well. The expression used in Entry 16 was 'alcoholic liquor' as opposed to 'intoxicating liquor'. However, it must be noted that the provision deals with both 'alcoholic liquor' and 'intoxicating drugs'.

90. The approach adopted in the 1935 Act differed from the 1919 Act. Entry 45 of List I of the Seventh Schedule to the 1935 Act stipulated the federal domain over duties of excise. It is reproduced below:

> "45. Duties of excise on tobacco and other goods manufactured or produced in India except —
> (a) alcoholic liquor for human consumption;
> (b) opium, Indian hand and other narcotic drugs and narcotics; non-narcotic drugs;
> (c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry."

91. Alcoholic liquor for human consumption was among the three categories which was excluded from the ambit of legislative competence of the Federal legislature. Entries 31 and 40 of List II of the Seventh Schedule to the 1935 Act stipulated the Provincial legislative domain over intoxicating liquors and narcotics, and duties of excise respectively. They are reproduced below:

> "31. **Intoxicating liquors** and **narcotic drugs**, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.
>
> …
>
> 40. Duties of excise on the following goods manufactured or produced in the Province 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; non-narcotic drugs;
> (c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry."
>
> (emphasis supplied)

92. The three categories which were excluded from duties of excise on goods produced or manufactured in India (in Entry 45 of List I) were incorporated in Entry 40 of List II. Thus, duties of excise on alcoholic liquors for human consumption was a subject assigned to the Provinces. The following changes on the legislative scope on 'alcoholic liquors' were introduced in the 1935 Act:

a. Taxation and regulation were placed in separate entries. Entry 40 of List II concerned duties of excise, *inter alia,* on 'alcoholic liquors for human consumption.' On the other hand, Entry 31 of List II covered the regulation of 'intoxicating liquors' and other substances;

b. The Federal legislature could levy duties of excise on tobacco and other goods manufactured in India but not on alcoholic liquor for human

consumption, medicinal and toilet preparations containing alcohol, and other specified goods;

c. The Provincial legislatures could levy duties of excise on alcoholic liquor for human consumption, medicinal and toilet preparations containing alcohol, and other specified goods produced in the province; and

d. Entry 31 of List II was a regulatory entry covering intoxicating liquors and narcotic drugs and the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs. Hence, the regulatory power in relation to intoxicating liquor lay with the Provincial legislatures and not the Federal legislature. Where Entry 16 of the Provincial List of the Devolution Rules as well as Entries 45 of List I and 40 of List II of the Seventh Schedule to the 1935 Act used the term ‘alcoholic liquors’, Entry 31 of List II used the expression ‘intoxicating liquors’. This term was first used in the 1935 Act.

93. The Seventh Schedule to the Constitution also placed the regulatory powers and the taxing powers relating to alcohol in separate entries. Entry 8 of List II of the Seventh Schedule to the Constitution deals with ‘intoxicating liquors’. Entry 8 of List II of the Seventh Schedule to the Constitution varies from Entry 31 of List II of the 1935 Act in a significant manner. Entry 8 only deals with ‘intoxicating liquor’. It does not cover narcotic drugs and opium. Entry 31 conferred the Provincial Legislature, the competence to legislate with respect to narcotic drugs which included opium. It was subject to Entries in List I and

List II which dealt with opium[167] and 'poison and dangerous drugs'[168]. The Seventh Schedule to the Constitution placed opium in List I[169] and List III[170], completely removing it from List II.

94. Entry 84 of List I deals with duties of excise of goods except a few. The Entry read as follows before the Constitution (One Hundred and First Amendment) Act 2016:

> "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."
>
> (emphasis supplied)

95. Entry 51 of List II deals with duties of excise, *inter alia*, on alcoholic liquor:

> "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."
>
> (emphasis supplied)

[167] Government of India Act 1935, Entry 31 of List I
[168] Government of India Act 1935, Entry 19 of List III
[169] Constitution of India 1950, Entry 59 of List I
[170] Constitution of India 1950, Entry 19 of List III

96. The only change with respect to the legislative competence on duties of excise from the 1935 Act is that Parliament (and not the State Legislature as it was envisaged under the 1935 Act) has the competence to enact laws with respect to medicinal and toilet preparations containing alcohol or narcotic substances, opium and Indian hemp.[171]

97. The Constituent Assembly Debates which the Union of India referred to ascertain the meaning of the phrase 'intoxicating liquor' are not of assistance. The phrases 'alcoholic liquor for human consumption' and 'intoxicating liquor' were used for the first time in the 1935 Act. Entry 16 of the Provincial List of the Devolution Rules dealt with 'alcoholic liquor and intoxicating drugs". The provision dealt both with regulatory power and excise power. It is necessary to trace the development between the 1909 Rules and the 1935 Act to understand the context of substituting the expression 'alcoholic liquor' with 'intoxicating liquor' in the regulatory entry but retaining it in the taxing entry.

98. The 1935 Act was based on the White Paper (1931) on the proposals for Indian Constitutional Reform[172] and the Report of the Joint Select Committee on Indian Constitutional Reform[173] which was constituted to examine and report upon the proposals contained in the White Paper.The White Paper

[171] The reason for providing Parliament the power to enact laws with respect to the excise duty on medicinal and toilet preparations containing alcohol is reflected in the footnote to Entry 86 of List I in the Draft Constitution of India 1948 as follows: "The committee is of the opinion that duties of excise on medicinal and toilet preparation containing alcohol or any substance included in sub-paragraph (b) of this entry should be included in this entry as duties leviable by the Union, as it thinks that uniform rates of excise duty should be fixed in respect of these goods in all states for the sake of development of the pharmaceutical industry. The levy of different rates in different States is likely to lead to discrimination in favour of goods imported from foreign countries which would be detrimental to the interest of Indian manufacturers as was pointed out by the Drugs Enquiry Committee in their report in 1931."; See Shiva Rao (Vol II) pg. 666

[172] "White Paper"; See Command Paper 4268

[173] "Joint Committee"; See Report of the Joint Select Committee on Indian Constitutional Reform

recommended the demarcation of regulatory and taxation powers relating to alcohol. However, both the entries used the words 'alcoholic liquor'.[174] The Report of the Joint Committee suggested the following two revisions to the entries related to alcohol: (a) the relevant entry in the Federal List provided that the Union did not have the competence to levy excise duty on "potable alcoholic liquor"[175] and the Provincial List conferred States the competence to levy excise duty on "potable alcoholic liquor"[176]; and (b) the regulatory provision in List II dealt with the "production, manufacture, possession, transport, purchase and sale of **liquors**, opium and other drugs and narcotics not covered by item 19 of List III."[177]

99. Two revisions were further made to the entries as they appear in the Government of India Bill 1935 which were subsequently reflected in the Government of India Act 1935. The phrase 'potable alcoholic liquor' was substituted with the phrase 'alcoholic liquor' in the taxing entry and the phrase 'liquor' was substituted with the phrase 'intoxicating liquor' in the regulatory

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[174] See Joint Committee on Indian Constitutional Reform (Volume 1 Part I) 369; "26. Control of production, manufacture, possession, transport, purchase and sale of alcoholic liquors, drugs and narcotics."; "27. Imposition and regulation of duties of excise on alcoholic liquors, drugs and narcotics other than tobacco."

[175] List I, Entry 49 of the Revised Lists; See Joint Committee on Indian Constitutional Reform (Volume 1 Part I) 152 "46. Duties of excise on the manufacture and production of tobacco and other articles except-

(i) Potable alcoholic liquors;
(ii) Toilet and medicinal preparations containing alcohol, Indian hemp, opium or other drugs or narcotics;
(iii) Opium, Indian hemp, and other drugs and narcotics.

[176] List II, Entry 19 of the Revised Lists; See Joint Committee on Indian Constitutional Reform (Volume 1 Part I) 155 "19. Duties of excise on the manufacture and production of –

(i) Potable alcoholic liquors;
(ii) Toilet and medicinal preparations containing alcohol, Indian hemp, opium or other drugs and narcotics;
(iii) Opium, narcotics, hemp and other drugs.

[177] List II, Entry 18 of the Revised Lists; See Joint Committee on Indian Constitutional Reform (Volume 1 Part I) 155 "18. Production, manufacture, possession, transport, purchase and sale of liquors, opium and other drugs and narcotics not covered by item 19 of List III."

entry. The table below reflects the evolution of the Legislative entries relating to alcohol:

Enactment	**Taxing Entry**	**Regulatory Entry**
Devolution Rules	'alcoholic liquor'[178]	
White Paper	'alcoholic liquor'[179]	'alcoholic liquor'[180]
Joint Select Committee on Indian Constitutional Reform	'potable alcoholic liquor'[181]	'liquor'[182]
Government of India Act 1935	'alcoholic liquor for human consumption'[183]	'intoxicating liquor'[184]
Constitution of India	'alcoholic liquor for human consumption'[185]	'intoxicating liquor'[186]

100. Before we proceed to lay down our inferences upon a study of the evolution of legislative entries, we clarify that the issue before this Bench is squarely related to the interpretation of the expression 'intoxicating liquor'. The

[178] Devolution Rules; Entry 16 of the Provincial List
[179] Command paper 4268; Entry 26 of List II: "26. Control of production, manufacture, possession, transport, purchase and sale of alcoholic liquors, drugs and narcotics."
[180] Command paper 4268; Entry 27 of List II: "27. Imposition and regulation of duties of excise on alcoholic liquors, drugs and narcotics other than tobacco."
[181] Report of the Joint Committee on Indian Constitutional Reform; Entry 49 of List I
[182] Report of the Joint Committee on Indian Constitutional Reform; Entry 19 of List II
[183] Government of India Act 1935; Entry 45 of list I
[184] Government of India Act 1935; Entry 31 of list II
[185] Constitution of India 1950; Entry 84 of List I
[186] Constitution of India 1950; Entry 8 of List II

meaning of the expression 'alcoholic liquor for human consumption' and whether it can be read as 'alcoholic liquor **fit** for human consumption' is not before this Bench.

101. The Report of the Joint Committee does not explain why the expression 'alcoholic liquor' was substituted with the phrases 'liquor' in the regulatory entry and 'potable alcoholic liquor' in the taxing entry. While the Report explains the reasons for a few revisions from the White Paper, the entries relating to alcohol are not one of them.[187] However, the paragraph extracted below provides some clarity:

> "241. It would extend this chapter to an unreasonable length if we were to set out in detail all the changes which a revision of the three Lists has involved. We are less willing to do so, because we recognise that the revised Lists themselves will require **further expert scrutiny** before they are finally submitted to Parliament as part of the legislative proposals of His Majesty's Government. We think, however, **that if the revised Lists are compared with the Lists in the White Paper**, such **changes** as have been made, in addition to those already mentioned will, for the most part, be found to **speak for themselves**."
>
> (emphasis supplied)

102. While the revisions are not accompanied by any reasons, it is clear that the intention of the Joint Committee was to differentiate between the product covered by the regulatory entry and the taxing entry. It is also clear that the Committee was aware of the possibility of alcohol not being understood as just a final 'consumable product' but also as a raw material in the production

[187] Joint Committee on Indian Constitutional Reform (Volume I Part I) 148-149.

of other products. The Report of the Joint Committee specifically conferred the States, competence over "toilet and medicinal preparations containing alcohol, Indian help, opium or other drugs and narcotics."[188] While the taxing entry recognised the distinction between liquor that is used as a beverage and is a product in itself by using the words 'potable alcoholic liquors', and other products that contain alcohol, the regulatory entry does not create that distinction. The regulatory entry only refers to 'liquor', which is a much larger all-encompassing phrase.

103. We are unable to trace the discussions that led to a further revision in the 1935 Act, where the expression 'potable liquor' was substituted with 'alcoholic liquor for human consumption', and 'liquor' was substituted with the expression 'intoxicating liquor'. However, it is clear that the use of the phrases as they appear in the relevant entries of the 1935 Act and the Constitution of India was a matter well-thought of.

104. Another point that needs to be noted based upon a study of the evolution of legislative entries is that **until** the 1935 Act, the regulatory entry covered narcotic drugs and opium along with 'alcoholic liquor'/'liquor'/'intoxicating liquor'. There are two possible interpretations of the expression "intoxicating liquor", as it appeared in the 1935 Act, on an application of the principle of *noscitur a sociss*, that is, the principle by which the meaning of an ambiguous expression may be ascertained by reference to the meaning of the words

[188] Report of the Joint Committee on Indian Constitutional Reform; Entry 19(ii) of List II

associated with it[189]. It could be interpreted to mean liquor that has an intoxicating effect upon consumption since narcotic drugs and opium also produce intoxication. The expression 'intoxicating liquor' could also mean the regulation of alcohol used in the production of other products since opium and narcotic drugs are also used as raw materials in the production of other products (like pain relivers)

105. Mr TT Krishnamachari moved an amendment to delete references to narcotic drugs and opium in Entry 40 of List II of the Draft Constitution 1948 (which correspondes to Entry 31 of List II of the 1935 Act). The amendment was adopted by the Assembly. Mr Krishnamachari submitted that it was necessary to delete references to opium and narcotic drugs because they were covered by other entries in List I and List III:

> "This amendment is necessary because we have shifted poisons and drugs to the Concurrent List and opium happens to be in the Central List. This entry, therefore, will suffice for the purposes of State Governments."[190]

106. An analysis of the evolution of the legislative entries relating to alcohol does not provide an unambiguous interpretation. While the evolution of the entries does indicate that the drafters were aware of the distinction between potable alcohol and alcohol used as a raw material in the production of other products, there is no clear answer to whether 'intoxicating liquor' includes both. The

[189] See Rainbow Steels v. Sales Tax Commissioner, UP AIR 1981 SC 2010; State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 SC 610, 613; Rohit Pulp and Paper Mills Ltd v. Collector of Central Excise, AIR 1991 SC 754

[190] Constituent Assembly Debates (2 September 1949) Volume IX

evolution of the entries provides us with some context and background but not a conclusive answer. We now proceed to apply the third principle of interpretation, the workability or harmonious interpretation principle.

d. The harmonious interpretation

107. The expression 'intoxicating liquor' can possibly be interpreted to mean the following:

a. Alcohol which is used as a beverage for human consumption such as beer or gin, that is, potable liquor;

b. If liquor means liquid, then Entry 8 of List II includes all liquids which contain alcohol; and

c. Alcohol which is used as a raw material to prepare other products such as pharmaceutical products and cosmetic drugs. This could include denatured alcohol but also other types of alcohol that are used in the production of products without denaturing it.

108. A preliminary observation needs to be made. It may be recalled that the State does not have the competence to levy excise duty with respect to toilet and medical preparations containing alcohol. However, this cannot influence the interpretation of the phrase 'intoxicating liquor' in Entry 8 of List II. The Seventh Schedule demarcates the legislative competence on taxes and regulation. It is settled law that the Legislature cannot derive taxation powers from a general regulatory entry.[191] Thus, the lack of competence to levy tax

[191] MPV Sundararamier & Co. v. State of Andhra Pradesh, (1958) 9 STC 298

on products other than alcoholic beverage cannot influence the interpretation of the regulatory entry. They operate in separate spheres. We now proceed to interpret the phrase 'intoxicating liquor'.

109. The *Oxford English Dictionary* provides multiple meanings of the word 'Liquor'. They include: (a) alcoholic drinks, especially spirits; (b) water used in brewing; (c) liquid that has been produced in or used for cooking; and (d) liquid from which a substance has been crystallized or extracted. Liquor thus broadly takes two meanings, of an alcoholic beverage or liquid. The word 'intoxicate' is defined to mean: (a) cause someone to lose control of their senses; (b) poison; and (c) excite or exhilarate.

110. The dictionary meanings of the phrases 'liquor' and 'intoxicate' are variable. If liquor is interpreted to mean 'liquid' instead of an alcoholic beverage and intoxication a reference to alcohol, the Entry would cover all liquids that contain alcohol. However, if liquor is interpreted to mean alcoholic beverage, the Entry would only cover alcoholic beverages for human consumption which causes intoxication, that is, potable alcohol.

111. Entry 51 of List II refers to duties of excise on, *inter alia*, "alcoholic liquors for human **consumption'**. Article 47 which is placed in the Part on the Directive Principles of State Policy stipulates that the State shall endeavour to bring prohibition of the **consumption** of **intoxicating drinks** and drugs injurious to health, except for medicinal purposes. The provision lists this as one of the aspects of the duty of the State to improve public health. The phrase liquor is also used in multiple places in the 6th Schedule to the Constitution. The 6th

Schedule stipulates provisions on the administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram. Paragraphs 12, 12AA and 12B provide for the application of Acts of Parliament and of the Legislature of the State to the autonomous districts and regions in the States of Assam, Tripura and Mizoram. The provisions stipulate that the enactments of the Legislature of the State "prohibiting or restricting the **consumption** of any non-distilled alcoholic liquor" would not apply to the autonomous Districts or autonomous regions[192]. The expressions in the 6th Schedule will not be of aid to interpret Entry 8 because it refers to a legislation enacted by the State Legislature under Entry 8.

112. Thus, the Constitution uses three distinct expressions relating to alcohol: "intoxicating liquor", "alcoholic liquor for human consumption" and "intoxicating drinks". The evolution of the entries in the legislative Lists indicate that it was a conscious decision to substitute 'alcoholic liquor' with 'intoxicating liquor' in the regulatory provision. It was also a conscious decision to use different phrases in the taxing entry and the regulatory entry. We do not think that it is necessary for us to lay down the contours of the different phrases used in the Constitution. That is a decision for another day and in another case. However, it is still possible to draw some inferences from the different uses. The expressions "alcoholic liquor for human consumption" and 'intoxicating drink' are used in the context of 'consumption'. However, the provision relating to "intoxicating liquor" is not limited to its consumption. It

[192] Unless the District Council by a public notification directs to give effect to the Act. The District Council may also direct that the Act shall have effect subject to 'exceptions or modifications'; See Paragraphs 12, 12AA and 12B of the 6th Schedule.

stretches to its 'production, manufacture, possession, transport, purchase and sale of intoxicating liquors' and beyond. The second difference is the use of the expression 'intoxicating' instead of 'alcoholic' as the adjective to liquor. The following inferences can be drawn from the above differences:

a. 'Alcoholic liquor' defines the scope of the provision based on the ingredient, that is, 'alcohol'. In contrast, 'intoxicating liquor' defines the scope of the provision based on the effect, that is, intoxication. Thus, even liquor which colloquially or traditionally is not considered as alcoholic liquor may be covered by the phrase 'intoxicating liquor' if it produces the effect of intoxication;

b. "Intoxicate" means the ability of someone to lose control of their behaviour. It could also mean poison. Thus, the purpose of substituting the adjective which indicates the ingredient (alcohol) with the impact (intoxication) seems to be enhance the scope of the Entry to cover liquor which has an impact on health; and

c. The public interest purpose of the provision is evident from the accompanying words in the provision which includes every stage from its production to consumption within the scope of the Entry. The public interest purpose of the provision is also evident from the evolution of the Entry. The relevant entry in the 1935 Act also regulated narcotic drugs and opium along with intoxicating liquor. References to narcotic drugs and opium were deleted to prevent its overlap with entries in the Concurrent list. As highlighted in the previous section, a common thread

that runs through alcohol, narcotic drugs and opium is that they are products which can be noxiously used because they are also used as raw materials in the production of other products.

It is clear from the above analysis that the meaning of the phrase 'intoxicating liquor' cannot be restricted to potable alcoholic liquor, that is, alcohol that is sold as a beverage.

113. At this juncture, it is relevant to recall that all entries in the Seventh Schedule must be given a wide interpretation and Entry 8 of List II when interpreted widely covers everything from the raw materials required for the production to the consumption of 'intoxicating liquor'. It must also be recalled that a few of the materials that are used to prepare potable alcohol (such as rectified spirit and ENA) are also used to prepare other pharmaceutical and cosmetic products. For example, ENA and rectified spirit are also used to prepare products such as varnish and hand sanitizer. Hand sanitizer is a pharmaceutical product which is covered by Entry 19 of List III of the Concurrent List which deals with "drugs". Since all entries must be interpreted widely, Entry 19 will also include the production and manufacture of drugs and will thus cover the materials (ENA or rectified spirit) used for the preparation. Usually the entries cover the materials used for the purpose of producing the product covered by that Entry. However, alcohol is an inherently noxious substance that is prone to misuse affecting public health at large. The purpose of Entry 8 is to cover alcohol that could be used noxiously to the detriment of public health. The Entry covers all alcohol that could be 'prone' to noxious

use. It also covers variants of alcohol that are not used for the preparation of potable alcohol but which could be misused to harm public health. This interpretation is in consonance with the mischief sought to be covered by the Entry. Thus, while the entry covers ENA and rectified spirit which are used in the preparation of potable alcohol, it also covers variants of alcohol such as denatured alcohol which though are not used in the preparation of potable alcohol, are prone to be misused.

114. It is not disputed that denatured alcohol is prepared by adding substances which are called denaturants to give the alcohol a foul smell and taste. The very purpose of denaturing ethanol to prepare denatured alcohol is to make it undrinkable. This Court in **VAM Organic (II)** (supra) held that the State can regulate the **process** of preparing denatured alcohol because it is done to ensure that the public is protected from consuming illicit liquor but not the product of denatured spirit even if it can be renatured and converted to potable liquor.[193] The petitioners further sought to make a classification between Specially Denatured Alcohol and Completely Denatured Alcohol. It was argued that though Specially Denatured Alcohol is not fit for human consumption, it can be made potable by certain recovery processes while there is no such possibility in Completely Denatured Alcohol.[194] It was argued that Entry 8 must at the least cover Specially Denatured Alcohol. The issue of whether denatured alcohol can be renatured to produce potable alcohol is

[193] "43. […] But this power stops with the denaturation of the industrial alcohol. Denatured spirit has been held in *Vam Organic-I* to be outside the seism 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.[…]"
[194] See Alcohol Denaturants-Specification (Second Revision), ICS 71.100.80

immaterial for the purposes of delineating the field of Entry 8 of List II. As held above, Entry 8 does not only cover potable alcohol but alcohol which may be used noxiously also. Thus, the test to be adopted is not whether the alcohol could be converted and used for the preparation of alcoholic beverages but whether it could be mischievously used for its preparation or as a substitute.

115. It was also argued by the petitioners that the phrase 'intoxicating liquor' must be interpreted to mean liquid containing alcohol. The consequence of this interpretation would be that it would include liquid products which may be covered by other entries, thereby, causing an overlap of the entries. For example, if interpreted in the above manner, the product of 'hand sanitizer' will be covered by both Entry 8 of List II ('intoxicating liquor') and Entry 19 of List III ('drugs'). Since the Entry must be read widely, it will then cover everything relating to the production of the drug, substantially reducing the scope of Entry 19 because other products of the pharmaceutical and cosmetic industry will be covered by Entry 8. This interpretation will not be in consonance with the settled principle of interpretation that an interpretation that promotes the workability of provisions must be adopted. This interpretation of the phrase is also in consonance with the precedents that we have analysed in section E(iv)(a) of this judgment.

v. <u>The correctness of the decision in **Synthetics** (7J)</u>

116. Having interpreted Entry 8 of List II, we now turn to the decision in **Synthetics** (7J) (supra). This Court in **Synthetics (7J)** (supra) did not undertake an independent analysis of the meaning of the phrase 'intoxicating liquor'.

Without any discussion, the seven-Judge Bench readily concluded that the interpretation of the Bombay High Court and not this Court in **FN Balsara** (supra) is the correct approach. The only reasoning that this Court offered was that when the Constitution Bench in **FN Balsara** (supra) interpreted the phrase, it was not aware of the full potentiality of industrial alcohol:

> "74. […] It appears that in the light of the new experience and development, it is necessary to state that "intoxicating liquor" must mean liquor which is consumable by human being as it is and as such when the word "liquor" was used by Fazl Ali J., they did not have the awareness of full use of alcohol as industrial alcohol. It is true that alcohol was used for industrial purposes then also, but the full potentiality of that user was not comprehended or understood. With the passage of time, meanings do not change but new experiences give new color to the meaning."

117. These observations are erroneous for the following reasons:

a. The High Court in **FN Balsara** v. **State of Bombay** (supra) did not limit the meaning of 'intoxicating liquor' to its common parlance meaning, that is, potable alcoholic liquor. It also included alcoholic liquids which are not normally consumed as drinks. On appeal, the Constitution Bench held that a wider definition of intoxicating liquor is necessary to cover other products which may be used as substitutes for intoxicating drinks. [See section E (iv)(a) of this judgment]. This Court held that the expression must be given a wide meaning precisely because it recognised the potentiality of the wide use of alcohol for industrial purposes and its consequent misuse; and

b. The Constitution itself recognises the industrial use of alcohol. Entries 84 of List I (before the amendment in 2016) and 51 of List II specifically refer to medicinal and toilet preparations containing alcohol.

Thus, the use of alcohol for industrial preparations was well within the knowledge of this Court in **FN Balsara** (supra).

118. This Court in **Synthetics (7J)** (supra) did not determine the meaning of the expressions 'intoxicating' or 'liquors' or 'intoxicating liquors' independently. It did not compare the difference in the language used to describe alcohol or liquor in different provisions of the Constitution to understand the significance of the difference. Only Article 47 was referred to in the following terms:

> "77. Article 47 of the Constitution imposes upon the State the duty to endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and products which are injurious to health. If the meaning of the expression "intoxicating liquor" is taken in the wide sense adopted in Balsara case, it would lead to an anomalous result. Does Article 47 oblige the State to prohibit even such industries as are licensed under the IDR Act but which manufacture industrial alcohol? This was never intended by the above judgements or the Constitution."

119. Although Article 47 was mentioned, the distinction between the purpose of a constitutional provision in Part IV and a legislative entry was not appreciated. This leads to an incorrect inference, namely, that holding Entry 8 of List II includes non-potable alcohol would amount to placing an obligation on the state to prohibit non-potable alcohol in terms of Article 47. There is no doubt that Article 47 refers only to intoxicating drinks which means potable alcohol.

However, an analysis of the differences in the terminologies without appreciating that the reference in Article 47 is made in the context of consumption leads to an erroneous conclusion.

120. Further, in **Synthetics (7J)** (supra), this Court concluded that the impugned fees are in the nature of a tax. In that case, the only entries that this Court ought to have dealt with are Entries 84 of List I and Entry 51 of List II. Entry 8 deals with regulatory power and is not a taxing entry. It is a settled principle that a tax cannot be levied under a general entry.[195]

121. In spite of holding that the fee charged was a tax and that the State Legislature does not have the competence to levy tax on industrial alcohol, the Bench proceeded to analyse the relationship between Entry 52 of List I[196] and Entry 8 of List II in paragraph 84 of the judgment. The Bench noted that the "levy of impost" is not possible in view of the occupation of the field by IDRA and that in view of IDRA, the power to issue licences to manufacture both potable and non-potable alcohol is vested in the Central Government.[197] These observations are erroneous for the following reasons:

    a. Under Entry 52 of List I, Parliament has the competence to enact laws with respect to certain industries, the control of which by the Union is necessary in public interest. It is a general entry. It does not confer any taxing power. Thus, Entry 52 of List I may only impact the entries in List II that deal with the regulatory aspect of industries as we have explained

[195] See MPV Sundararamier & Co. v. State of AP, AIR 1958 SC 468
[196] See Synthetics (7J) [84]
[197] See Synthetics (7J) [85]

in the previous section of this judgment. It does not have any impact on taxing entries. Thus, the observation in paragraph 84 of **Synthetics (7J)** (supra) is overruled; and

b. We have also held that Parliament in exercise of the power under Article 246 read with Entry 52 of List I cannot legislate with respect to the field covered by Entry 8 of List II. The observations in paragraph 85 of **Synthetics (7J)** (supra) that after the amendment to IDRA in 1956 bringing fermentation industries within the scope of the enactment, the Union has competence over both potable and non-potable alcohol is overruled. The law enacted in terms of Entry 52 of List I cannot render any entry of List II (including Entry 8) otiose. Thus, Parliament cannot take over the field covered by Entry 8.

122. In paragraph 86 of the judgment, this Court in **Synthetics (7J)** (supra) held that after the inclusion of the fermentation industry in the schedule to IDRA, the State only had legislative competence to:

a. enact any legislation in the nature of **prohibition** of potable liquor referable to Entry 6 of List II and regulating powers;

b. lay down regulation to ensure that non-potable alcohol is not diverted and misused as a substitute for potable alcohol;

c. levy excise duty and sales tax on potable alcohol under Entry 52 of List II. However, the State cannot levy sales tax on industrial alcohol because “under the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the State on industrial alcohol”; and

d. in case the State is rendering any service, it may charge fees based on quid pro quo. Reliance was placed on observations in **Indian Mica** (supra).

123. Since this Court in **Synthetics (7J)** (supra) held that the State lost the competence to enact a legislation on potable alcohol because IDRA occupies the field and that it did not have the competence to enact a law on non-potable alcohol, it traced regulations relating to alcohol to Entry 6 of List II which deals with "public health". Viewing the consumption of potable alcohol as a public health concern on a reading of Article 47 along with Entry 6 of List II, this Court held that the State has the competence to deal with (a) and (b) above. In view of our holding that : (a) the expression 'intoxicating liquor' in Entry 8 is not limited to alcoholic beverages; and (b) Entry 52 of List II cannot occupy the field covered by Entry 8 of List II, the observations in **Synthetics (7J)** (supra) by which alcohol was only traced to the entry on public health is erroneous. It cannot be denied that there is a degree of overlap between Entry 8 and Entry 6 of List II. However, Entry 8 of List II cannot be rendered redundant for all purposes by a declaration by parliamentary law under Entry 52 of List I. Such as interpretation, as held above, would completely tilt the federal balance in the favour of Parliament.

124. Paragraph 86(d) must be read along with paragraph 88 extracted in the earlier part of the judgment. The Bench only placed reliance on the decision in **Indian Mica** (supra) to arrive at this conclusion. In paragraph 3 of **Indian Mica** (supra), the Constitution Bench held as follows:

> "Denatured spirit though an alcoholic liquor is not fit for human consumption. The power to levy duty on the same was and is given to the Central Legislature. But **the same being intoxicating liquor**, the Provincial Legislature under the 1935 Act and at present the State Legislature has power to levy fee. The power of any Legislature to levy fee is conditioned by the fact that it must be by and large a quid pro quo for the services rendered."
>
> (emphasis supplied)

125. The conclusion in **Indian Mica** (supra) that the State Legislature has the competence to levy fees on denatured alcohol (which this Court in **Synthetics (7J)** (supra) interchangeably uses with industrial alcohol) is premised on the wide interpretation of the phrase intoxicating liquor in Entry 8 of List II to include denatured alcohol. However, this Court in **Synthetics (7J)** (supra) expressly rejected this interpretation. The State Legislature would have the competence to levy fees in terms of Entry 66 of List II in respect of any of the matters in the List. Thus, the conclusion in paragraph 86(d) creates an inherent inconsistency within the judgment. We have overruled the interpretation in **Synthetics (7J)** (supra) on the scope of Entry 8 and the interaction between Entry 8 and Entry 52 of List. The phrase 'intoxicating liquor' in Entry 8 includes denatured alcohol. Thus, the State will have the competence to levy fees with respect to denatured alcohol, but for the reasons in this judgment.

126. Reference may be made to judgments of this Court interpreting **Synthetics (7J)** which are summarised in Section A(iii) of this judgment. This Court interpreted **Synthetics (7J)** (supra) in the following manner:

a. The State has the competence to legislate upon industrial alcohol as a product of the controlled industry under Entry 33 of List III[198];

b. The State has the competence to legislate upon the process of producing denatured spirit but not the product of denatured spirit because the process is related to preventing the diversion of non-potable liquor to potable liquor;[199]

c. The State does not have the competence to legislate upon rectified spirit[200]; and

d. The State has the competence to legislate upon rectified spirit that is used for the purpose of preparing potable alcohol[201].

127. Before we proceed to analyse the correctness of these observations based on the law that we have laid down in this judgment, it is necessary to expound upon how this Court in **Bihar Distillery** (supra) drew a purpose based demarcation of the legislative fields. The heart of the reasoning of the Court is reproduced below:

> "23. … Take a case where two industries 'A' and 'B' come forward with proposals to manufacture rectified spirit; 'A' says that it proposes to manufacture rectified spirit and then denature it immediately and sell it as industrial alcohol while 'B' says that it will manufacture rectified spirit and utilise it entirely for obtaining country liquor (arrack or by whatever other name, it may be called) or for manufacturing IMFLs from out of it or to supply it to others for the said purpose. *According*

[198] Shri Bileshwar Khand Udyog Khedut Sahakari Mandali (supra)
[199] See VAM Organic(I) (supra) and VAM Organic (II) (supra)
[200] Deccan Sugar (supra)
[201] Bihar Distillery (supra)

> to *Synthetics* [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623] , 'A' is under the exclusive control of the Union and the only powers of the State are those as are enumerated in para 86 quoted above. But what about 'B'? The rectified spirit manufactured by it is avowedly meant only for potable purposes. Can it yet be called "industrial alcohol"? Can it still be said that the State concerned has no power or authority to control and regulate industry 'B' and that the Union alone will control *and* regulate it until the potable liquors are manufactured? The Union is certainly not interested in or concerned with manufacture or process of manufacture of country liquor or IMFLs. Does this situation not leave a large enough room for abuse and misuse of rectified spirit? It should be remembered that according to many States before us, bulk of the rectified spirit produced in their respective States is meant for and is utilised for obtaining or manufacturing potable liquors. Can it be said even in such a situation that the State should fold its hands and wait and watch till the *potable* stage is reached. … It is these and many other situations which have to be taken into consideration and provided for 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. **The line of demarcation can and should be drawn at the stage of clearance/removal of the rectified spirit.** Where the removal/clearance is for industrial purposes (other than the manufacture of potable liquor), the levy of duties of excise and all other control shall be of the Union but where the removal/clearance is for obtaining or manufacturing potable liquors, the levy of duties of excise and all other control shall be that of the States. This calls for a joint control and supervision of the process of manufacture of rectified spirit and its use and disposal."
>
> (emphasis supplied)

128. This Court in **Bihar Distillery** (supra) held that where rectified spirit is manufactured only for the purpose of converting it into potable alcohol, it cannot be termed 'industrial alcohol'. It was of the opinion that it was ill-conceived to allow for a legal structure where the States would step in only

after alcohol was made potable as this would either result in a lacuna in regulation or permit the Union to regulate a field which it was not empowered to in terms of the Seventh Schedule. The three-Judge Bench held that the line of demarcation should be drawn at the stage of clearance or removal of rectified spirit. Put differently, the Bench held that the purpose for which the rectified spirit was manufactured would determine whether the Union or the States would tax and control it. It elaborated that:

a. Industries which manufactured rectified spirit exclusively for supply to industries other than those which manufactured potable liquor would be under the total and exclusive control of the Union including for the purpose of levying excise duty. This extended to denatured alcohol as well. The power of the States with respect to this category was limited to ensuring that such alcohol was not illegally diverted to create potable alcohol. The States could levy regulatory fees to defray the costs of the staff deployed for this purpose;

b. Industries which manufactured rectified spirit exclusively for the purpose of manufacturing potable alcohol would be under the total and exclusive control of the States in all respects and at all stages including levying excise duty; and

c. The power to permit the establishment of industries which manufactured rectified spirit for both the purposes delineated above as well as the regulation of such industries would be exclusively with the Union. The Union could levy excise duty on rectified spirit which was cleared or

removed for supply to industries and the States could levy excise duty on rectified spirit which was cleared or removed for manufacturing potable alcohol. The removal or clearance of alcohol would be under the joint supervision of the Union and the States to ensure that excise duty was not evaded.

129. In **Bihar Distillery** (supra), the issue before this Court was whether the State has the competence to regulate raw material ("rectified spirit") for the preparation of "intoxicating liquor" which was interpreted to only mean potable liquor. Justice Jeevan Reddy, writing for the three-Judge Bench, saw it fit to draw a purpose based delineation because rectified spirit could be used to prepare both potable alcohol and other products. The shortcoming of this reasoning is evident in the manner in which the Bench deals with composite industries, that is, industries which manufacture both rectified spirit for the purpose of potable alcohol and the production of other products. The regulation of such composite industries was held to be with the Union though there was no constitutional basis for such a division. This Bench, having expounded on the meaning of "intoxicating liquor" to include variants of alcohol which are prone to be misused, the interpretations of **Synthetics (7J)** summarised in paragraph 126 of this judgment are overruled. The classification of alcohol into potable and non-potable (or industrial alcohol) is oversimplistic. Alcohol (such as ENA or rectified spirit) which is used to prepare potable alcohol is also used to prepare other products of the pharmaceutical industry. An interpretation that ENA or rectified spirit which is used in the preparation of potable liquor is 'industrial alcohol' and is thus

outside the scope of Entry 8 limits the field covered by the Entry even if 'intoxicating liquor' is interpreted to only mean potable liquor. Further, we also see no merit in the classification between the process of making denatured spirit and the product of denatured spirit since we have held that the expression intoxicating liquor includes denatured spirit.

vi. <u>The impact of the decision on Item 26 of the First Schedule of IDRA</u>

130. The Law Commission of India in its 158th Report on the amendment of the IDRA, released in 1998 noted that the decision in **Synthetics (7J)** (supra) created "*several practical problems*" and that "*there is no such thing as industrial alcohol*". The Law Commission recommended that Item 26 of the IDRA which read "*Fermentation industries*" be substituted to read "*Fermentation industries but not including alcohol*". Item 26 was substituted in 2016 to read "*Fermentation industries (other than potable alcohol)*".[202] While the Law Commission recommended removing alcohol as a whole from the scope of the IDRA, Parliament by the 2016 amendment only removed **potable** alcohol from the scope of the enactment. The Statement of Objects and Reasons indicates that the amendment to the IDRA was to harmonise the Act with the decision of this Court in **Bihar Distillery** (supra). The relevant portion of the Statement of Objects and Reasons is reproduced below:

> "The Supreme Court of India, in the case of Bihar Distillery v. Union of India (AIR 1997 SC 1208), has held that in the interest of proper delineation of the spheres of the Union and the States, the line of demarcation should be drawn at the stage of clearance or removal of the rectified spirit. Where the

[202] *See* the Industries (Development and Regulation) Amendment Act 2016.

> removal or clearance is for industrial purposes (other than the manufacture of potable liquor), the levy of duties of excise and all other control shall be with the Union and where the removal or clearance is for obtaining or manufacturing potable liquors, the levy of duties of excise and all other control shall be with the States.
>
> In the backdrop of the above judgment of the Supreme Court, the Law Commission of India had recommended in its 158th Report that the Heading 26 of the First Schedule to the Act be substituted as "Fermentation Industries but not including Alcohol". The recommendation of the Law Commission of India was examined in depth by the Government. **If the subject "Alcohol" is taken out of the First Schedule to the Act, both industrial alcohol and potable alcohol would come under the purview of the State Government which is not in consonance with the judgment of the Supreme Court.** Moreover, the effect of implementation of the recommendation of the Law Commission would be that the subject "Alcohol" which covers both industrial alcohol and potable alcohol would no longer be a Central subject."
>
> (emphasis supplied)

131. The Statement of Objects and Reasons indicates that the recommendation of the Law Commission was not accepted because the effect of accepting the recommendation would be that both 'industrial alcohol' and potable alcohol would be in the domain of the States, and that this would be contrary to **Bihar Distillery** (supra). Hence, the IDRA was amended to remove only potable alcohol from Item 26 of IDRA.

132. We have held above that Parliament under Entry 52 of List I does not have the legislative competence to enact a law taking control of the industry of intoxicating liquor. The State Legislatures will have control over the industry of 'intoxicating liquor'. Parliament could not have taken control of the field covered by Entry 8 since we have interpreted intoxicating liquor to include

alcohol other than potable alcohol as well. Therefore, Item 26 of the First Schedule to the IDRA must be read as excluding the industry of "intoxicating liquor", as interpreted in this judgment.

vii. <u>The (ir)relevance of the decision in **Tika Ramji** to the dispute</u>

133. In **Tika Ramji** (supra), sugarcane farmers instituted proceedings under Article 32 of the Constitution challenging the constitutional validity of the Uttar Pradesh Sugarcane (Regulation of Supply and Purchase) Act 1953[203] and two notifications issued by the State government under the Act. The constitutional validity of the UP Sugarcane Act was challenged on the ground that the State Legislature did not have the competence because Item 8 of the Schedule to the IDRA notified 'sugar' as one of the controlled industries, and that the legislation regulating sugarcane was in pith and substance related to 'sugar'. The Constitution Bench, *inter alia,* held that:

a. Industry in the wide sense of the term comprises of three different aspects: (i) raw materials which are an integral part of the industrial process; (ii) the process of manufacture or production; and (iii) the distribution of the products of the entries[204];

b. The Seventh Schedule creates a demarcation based on the above three stages. Entry 27 of List II deals with the production, supply and distribution of goods subject to the provisions of Entry 33 of List III. The term 'goods' is defined by Article 366(12) of the Constitution and

[203] "UP Sugarcane Act".
[204] Tika Ramji (supra) [24]

includes materials, commodities and articles. 'Materials' includes raw materials. Thus, the raw materials for industries would be covered by Entry 27 of List II. The products would also fall under Entry 27 of List II, except in the case of a controlled industry in which case they would be covered by Entry 33 of List III. Entry 24 of List II would deal with the process of manufacture or production, unless it is a controlled industry under Entry 52 of List I[205]. Thus, the phrase 'industry' in Entry 24 of List II and Entry 52 of List I takes the narrow meaning of process of production and manufacture;

c. Section 18G of the IDRA enables the Union Government to regulate supply and distribution, and trade and commerce of certain 'articles'. It does not extend to the production of articles. Raw materials are essential ingredients for manufacture or production but they are not of the same nature or description as the articles produced by the process of manufacture. The articles or class of articles relatable to the scheduled industry could only comprise of finished products of a cognate character. Raw materials, not being finished products, are not articles which are relatable to the scheduled industry covered by Section 18G[206];

d. Sugarcane is a raw material for the production of sugar. Consequently, it is not an article relatable to the sugar industry and does not fall within the scope of Section 18G. The IDRA did not affect the legislative powers

[205] ibid
[206] Tika Ramji (supra) 32

of the State Legislature with respect to sugarcane. Therefore, the UP Sugarcane Act was not repugnant to the IDRA[207]; and

e. Even if it were assumed that sugarcane was relatable to the sugar industry under Section 18G, the Central Government had not issued a notified order, as required by the provision. The mere possibility that a notified order may be issued could not lead to repugnancy. Such an order was an essential prerequisite for repugnancy to arise[208].

134. The decision in **Tika Ramji** (supra) was relied upon by this Court in **Calcutta Gas** (supra), **Kannan Devan Hills Produce** v. **State of Kerala**[209], **Ganga Sugar Corporation** v. **State of UP**[210], **B Viswanathiah & Co.** v. **State of Karnataka**[211] and the majority in **ITC** (supra) on the aspect of the meaning of industry covered by Entry 24 of List II. The dissenting opinion of Justice Pattanaik for himself and Justice Bharucha in **ITC** (supra) doubted the correctness of **Tika Ramji** (supra) on that aspect.

135. The Union of India submitted that the inclusion of 'raw materials' in Entry 27 of List II (and their consequential exclusion from the definition of 'industry' in Entry 24 of List II and Entry 52 of List I) in **Tika Ramji** (supra) must be overruled. It was submitted that 'industry' as it features in the legislative lists includes raw materials as well. The learned Solicitor General submitted that if the restrictive meaning in **Tika Ramji** (supra) is overruled, then the State

[207] id
[208] id
[209] (1972) 2 SCC 218
[210] (1980) 1 SCC 223
[211] (1991) 3 SCC 258

will not have competence to legislate on ENA used for the preparation of potable alcohol under Entry 8.

136. We have in the preceding section held that the industry of intoxicating liquor is covered by Entry 8 and not Entry 52. Thus, even if a broad meaning is given to the word 'industry' in Entry 52, it will not impact the decision in this case because Entry 8 is the specific entry which applies to the industry of intoxicating liquor.

137. The meaning of the phrase 'industry' in Entry 52 will only impact this decision if (a) Entry 52 of List I includes raw materials necessary for the industry; **and** (b) Entry 8 of List II includes the process of manufacture but does not include the stage anterior to it (that is, raw materials). If an expansive meaning is given to the word 'industry', the raw materials to an industry will be covered by Entry 24 of List II and Entry 52 of List I (if it is a controlled industry). It will not be covered by Entry 27 of List II. If Entry 8 of List II does not include raw material but only the process to manufacture and final product, it is only then that the competence to enact laws on the raw material for the industry (in this case, ENA) will lie with Parliament.

138. We are of the opinion that the holding in **Tika Ramji** (supra) is not relevant to the dispute for the following reasons:

a. We have interpreted the phrase 'intoxicating liquor' in Entry 8 to include ENA since it could be noxiously used; and

b. Notwithstanding the above, if the ground for overruling the holding in **Tika Ramji** (supra) is that manufacture/production cannot be disconnected from raw materials, it would equally apply to the industry of intoxicating liquor covered by Entry 8 of List II. In Section C (iii)(a) of this judgment, we have concluded that the words 'that is to say' are illustrative. They are not exhaustive of the contents of the Entry. Thus, Entry 8 cannot be interpreted to exclude raw materials used for the production of intoxicating liquor merely because the Entry does not expressly provide for them. On an application of the principle that entries ought to be interpreted widely, the raw materials for the production and manufacture of intoxicating liquor, as interpreted in this judgment will be covered by Entry 8.

viii. Section 18G of IDRA and Entry 33 of List III

139. To recall, this Court in **Synthetics (7J)** (supra) held that the State cannot regulate 'industrial alcohol' as a product of the controlled industry because the Union has occupied the field by Section 18G of IDRA.[212] The questions referred by the three-Judge Bench in **Lalta Prasad** (supra) all relate to the

[212] Synthetics (7J) [85]

issue of whether Section 18G of the IDRA occupies the field in Entry 33 of List III or whether the field is occupied only when an order is notified under Section 18G. There is no necessity to determine the correctness of this observation in this reference since the Legislature of the State will have the competence to regulate denatured alcohol in view of our interpretation of the expression 'intoxicating liquor' in Entry 8 of List II.

F. Conclusion

140. 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 to the Constitution 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 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 of “intoxicating liquor”, as interpreted in this judgment;

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.

141. The reference is answered in the above terms.

PART F

142. The Registry is directed to obtain administrative instructions from the Chief Justice for placing the matters before an appropriate Bench.

.....CJI
[Dr Dhananjaya Y Chandrachud]

.....J
[Hrishikesh Roy]

.....J
[Abhay S Oka]

.....J
[J B Pardiwala]

.....J
[Manoj Misra]

.....J
[Ujjal Bhuyan]

.....J
[Satish Chandra Sharma]

.....J
[Augustine George Masih]

New Delhi;
October 23, 2024