

**CHIEF JUSTICE'S COURT**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE HRISHIKESH ROY**  
**HON'BLE MR. JUSTICE ABHAY S. OKA**  
**HON'BLE MRS. JUSTICE B.V. NAGARATHNA**  
**HON'BLE MR. JUSTICE J.B. PARDIWALA**  
**HON'BLE MR. JUSTICE MANOJ MISRA**  
**HON'BLE MR. JUSTICE UJJAL BHUYAN**  
**HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA**  
**HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

**COURT NO.1**  
**SUPREME COURT OF INDIA**  
**RECORD OF PROCEEDINGS**

**Civil Appeal No. 151/2007**

**STATE OF UP & ORS**

**Petitioner(s)**

**VERSUS**

**M/S LALTA PRASAD VAISH**

**Respondent(s)**

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02-April-2024  
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10:35 AM IST

1 **GEETANJALI MOHAN:** It is a matter which is vested today itself. With respect, if I may  
2 submit? The question here is, it was de-tagged in 2009. Again, somehow in 2016, it got tagged.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Who are you appearing for Ma'am?

5

6 **GEETANJALI MOHAN:** I'm appearing for Kesar Enterprises and State of UP is the  
7 Appellant. My learned friend...

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So does this have to be tagged or de-tagged?

10

11 **DINESH DWIVEDI:** My friend says is that this is a matter pertaining to potable alcohol and  
12 it resulted in wastage because of accident. Therefore, the state was demanding excise duty on  
13 potable alcohol there. So we are not concerned with potable alcohol at all.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So can we just de-tag that matter?

16

17 **DINESH DWIVEDI:** I think it can be.

18

19 **GEETANJALI MOHAN:** Because, this matter does not pertain to industrial alcohol at all.  
20 It pertains to wastage of potable liquor, which is for human consumption, My Lord.

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22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So we can de-tag that.

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24 **DINESH DWIVEDI:** It can be.

25

26 **GEETANJALI MOHAN:** I am deeply obliged.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just keep this, you've taken the number.

29

30 **DINESH DWIVEDI:** But before I begin My Lord, I must submit an apology. Because of my  
31 colourful grey hair. Because of the Holi part. That's the disadvantage of having too many  
32 children and grandchildren. You can't save yourself.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Nothing to do with the alcohol.

35

1 **DINESH DWIVEDI:** It does My Lord. Holi means partly alcohol, and I must confess I am  
2 fond of at least whiskey part. To begin with this daunting task, Your Lordship might permit  
3 me to place one or two pages of my written submission initially because that will highlight the  
4 question involved and what has to be considered and answered by Lordships. This is PDF  
5 page... Volume 1(a) My Lord. Volume 1(a). It is a daunting task to appear before nine judges  
6 with this court, but then it is made more daunting by Your Lordship's insistence on the  
7 paperless series.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Do you realize how simple it is? It cuts down  
10 on time and it's so streamlined for all of you because you can switch from file to file.

11

12 **DINESH DWIVEDI:** Maybe at Your Lordship's age perhaps it's easier, but of my age, it  
13 becomes a little more difficult.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What are you saying, Dwivedi ?

16

17 **DINESH DWIVEDI:** Have Lordships have my written submissions?

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

20

21 **DINESH DWIVEDI:** Volume 1(a). But the issue involved in this case is primarily concerning  
22 state's jurisdiction over Industrial Alcohol or Rectified Spirit, for short IA, Industrial Alcohol,  
23 and this Rectified Spirit is also called Ethyl Alcohol as an alternative. In the ***Synthetics***  
24 second case, that is, the 1990 Supreme Court, it was categorically held that rectified, the  
25 denatured spirit is Industrial Alcohol and is outside the State's jurisdiction under Entry 8, List  
26 II of the Eighth Schedule to the Constitution. Entry 8, List II, when it refers to intoxicating  
27 liquor deals only with potable alcohol, when it is had as it is. ***Synthetics*** too, further went to  
28 the extent of denying jurisdiction to states in relation to Industrial Alcohol, even under Entry  
29 33, List III, as products of a notified brief scheduled industry under the Industrial  
30 Development Regulation Act. Hereinafter, it was idea namely declaration by Parliament under  
31 Section 2 of the IDR Act read with Section 18 of the IDR Act covers the entire field, ousting  
32 State's jurisdiction. The sole issue broadly is whether states have legislative jurisdiction to deal  
33 with and regulate Industrial Alcohol as well as the expanse of it; whether the jurisdiction is  
34 exclusive or concurrent. ***Synthetics*** too is erroneous on both the terms. It is for this reason  
35 that the reference order of the Constitution bench dated 08-12-2010 doubts the correctness of  
36 it after meticulously examining the judgment. The state's jurisdiction over Industrial Alcohol  
37 can be exercised in two ways. A) State has jurisdiction and control over Industrial Alcohol

1 under Entry 8, List II or states have jurisdiction in respect of Industrial Alcohol under Entry  
2 33, List III as a product of notified scheduled industry under the IDR Act, and the field is  
3 unoccupied. This is a statement which Your Lordship must mark that the field is unoccupied.  
4 Because Entry 33 in List III, question of occupied field will arise. Intoxicating... I'll come to  
5 this. Then kindly have... I have framed for Your Lordships convenience the questions. Page 29.  
6 Your Lordships have page 29 of the Volume 1?  
7

8 Page 29 of the Volume 1 itself would have the questions. 'Whether State can regulate and  
9 control Industrial Alcohol...'. Page 29. It's page 29 of Volume 1(a). Same volume. Questions  
10 for consideration. 'Whether State can regulate and control Industrial Alcohol, commonly  
11 called Rectified Spirits of more than 95% v/v including denatured spirit. This has two aspects.  
12 (A) One, whether Industrial Alcohol is included in Entry 8, List II and is therefore, within its  
13 exclusive jurisdiction and control. Or two, whether it falls under Entry 24 of List II and  
14 therefore, can travel on to Entry 52 of List I on specification of fermentation industry as a  
15 notified industry under Industrial Disputes, Development and Regulation Act.' My Lord, this  
16 question, if I may pause for a moment and elaborate a little? Entry 52, List I is the entry under  
17 which IDR Act was issued in the year 1951 enabling the Centre or the Union to specify which  
18 of the industries it wants to take over. Now, Entry 52 is intricately linked with Entry 24, List  
19 II. Your Lordship would have Entry 24.  
20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Would you like to just sort of show us the entry  
22 so that we can at the outset...  
23

24 **DINESH DWIVEDI:** I'll come to that.  
25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's look at the entries first. The whole thing  
27 turns in on the construction of the entries in this case.  
28

29 **DINESH DWIVEDI:** Quite right.  
30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So let's look at the different entries which are  
32 involved. That's the best way to go about it. Then we'll, of course, read your questions.  
33

34 **DINESH DWIVEDI:** The first entry to be taken into consideration is Entry 52, List I. This  
35 is where the *Synthetics II* had placed Industrial Alcohol, because IDR Act comes in and  
36 fermentation industry was notified in the year 1956 under the Schedule to the IDR Act,  
37 implying thereby that the declaration under IDR Act would apply and this industry is

1 abstracted from Entry 24, List II and goes on to Entry 52, List I. So once a declaration is made,  
2 Entry 52 comes in operation. Otherwise Entry 52, List I has no.... It's a shell. It is inoperative  
3 until unless there is a declaration. So you find a placed Entry 52.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

6

7 **DINESH DWIVEDI:** May I? 'Industries, the control of which by the Union is declared by  
8 Parliament by law to be expedient in the public interest.' So what it implies is those industries  
9 where the Union feels that the control should come to the Union and the Parliament has to  
10 declare it by law, that law will indicate the extent of control it wants to take over also. And that  
11 industry to that extent, comes over too. But importantly, along with 52, if I may juxtapose  
12 Entry 24, List II because we can't understand Entry 52, List I without looking into Entry 24,  
13 List II. 24 is industries subject to the provision of Entry 7 in 52 of List I. So there is an inherent  
14 link between Entry 52, List I and Entry 24, List II. Industry as a subject originally belongs to  
15 the State jurisdiction. Just for a moment, keep out the IDR Act or the declaration.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 24 is subordinate to Entry 52 of List 1.

18

19 **DINESH DWIVEDI:** No difficulty. It is. There's no doubt about it. It is subject to. But what  
20 I am saying is that let us for a moment, for the purposes of analysis, take out the IDR Act or  
21 the declaration. Then what conclusion that comes to the fore is that Entry 24 is the basic entry  
22 where State has jurisdiction over industry. Now, that word, 'industry' transports to or gets  
23 transported to Entry 52 on a declaration by Parliament. If Parliament makes a declaration...

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, that... actually Entry 52... Entry 24 of List  
26 I... of List II is made subject to Entry 52 of List 1. Entry 52 of List 1, which gives the dominance  
27 to a parliamentary law is, provided parliament has made a declaration in the law of Entry 52.

28

29 **DINESH DWIVEDI:** That's what I'm saying. Unless there is a declaration, the jurisdiction  
30 vests in the State.

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32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Obviously.

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34 **DINESH DWIVEDI:** That's it.

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36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right. But once the declaration is made under  
37 Entry 52...

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**DINESH DWIVEDI:** Then that part which is taken over goes to the Union.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Further, very interesting thing is, look at Entry 54 in contrast to 52. I mean, you were dealing with Entry 54 just two weeks ago.

**DINESH DWIVEDI:** Yes, Mines and Minerals.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** 'Mines and Mineral Development to the extent to which regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.' Now, the words, 'to the extent to which' are interestingly absent in Entry 52.

**DINESH DWIVEDI:** There is a reason...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** So, once Parliament makes a declaration, as in this case under Section 2, the entirety of that field of that industry is within the control. It's not to be extent to it.

**DINESH DWIVEDI:** I'll answer that question. That question has very frequently arisen, and Lordships have answered it on a number of occasions. The word, '54' here, if Your Lordship could once again have a look at 54. There's a difference in the two entries.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

**DINESH DWIVEDI:** 'Regulation of Mines and Mineral Development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient In public interest.' Now, the word, 'to the extent to which' has been used for an obvious reason. Word not here, the Entry 54 includes both the manufacturing that is mines... that's the factory part, the manufacturing part and includes mineral. So there's nothing else there left. So both the things come over here on a declaration. Unlike industries, when a declaration is made, the product of the industry doesn't go there. Here, the product of the industry is taken over under Entry 24. But in case of industry, Entry 52... Your Lordship may have Entry 33, List III. So it's not that the whole industry goes over or everything goes relating to that industry goes over. Kindly have Entry 33, List III. So we will have to consider, what is the ambit of the word, 'industry', and that will have to be assessed first and foremost in the context of the State entries. The reason being, Entry 24 is intricately linked with Entry

1 52, because whatever can be drawn under Entry 52 is from Entry 24 and no other entry. Then  
2 kindly have 26 and 27. Entry 26 and 27 of List II.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Actually just dwell on Entry 33.

5

6 **DINESH DWIVEDI:** Very Well.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You can read Entry 33. That might help you.

9

10 **DINESH DWIVEDI:** 'Trade and Commerce in and the production, supply and distribution  
11 of the products of any industry where the control such industry by the Union is declared by  
12 Parliament by law to be expedient in public interest and imported goods of the same kind as  
13 such product.' So therefore, trade and commerce, supply and distribution don't go to Entry 52.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So it's very interesting because once a  
16 declaration is made by law of Parliament under Entry 52, the trade and commerce is taken out  
17 of the field of Entry 52 and immediately goes into Entry 33 of List III.

18

19 **DINESH DWIVEDI:** As product of the notified industry.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right. To the extent therefore, the regulation  
22 of trade and commerce, production, supply and distribution best goes into the Concurrent  
23 List. The law made then by the State Legislature can be overridden by a law which is made by  
24 Article 254.

25

26 **DINESH DWIVEDI:** There is no difficulty. And I'll say as I said...

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But Entry 33... Entry 33 is an indication that  
29 notwithstanding a declaration which is made under Entry 52, a law made by Parliament under  
30 Entry 52 of List I, they still lie in the province of the states, albeit under the Concurrent List,  
31 namely trade, commerce and production, supply and distribution.

32

33 **DINESH DWIVEDI:** Now importantly, since Lordships have noticed this, kindly come to  
34 the State List again.

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36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In other words, the domain of Entry 52 will be  
37 everything pertaining to that industry minus Entry 33.

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**JUSTICE B. V. NAGARATHNA:** Yes.

**DINESH DWIVEDI:** It will be more apparent.

**JUSTICE B. V. NAGARATHNA:** We note an exception.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Absolutely.

**JUSTICE B. V. NAGARATHNA:** Entry 33, List III, it carves out an exception within the domain of Entry 52, List I.

**DINESH DWIVEDI:** Yes, Your Lordship is right because then now trade and commerce, supply and distribution would not come under Entry 52, List I, even if it is a notified industry. But before I proceed further, kindly have again, once again, come to the State List. List II, Entry 24 and if Your Lordship would permit me to elaborate on this, then things would become clearer.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Which Entry?

**DINESH DWIVEDI:** 24. Once again, industries subject to the provisions of Entry 7 and 52. Now, we are not concerned with 7. We're concerned with 52 of List I. In other words, Your Lordships are right when Lordships said that it is subject to, therefore, subordinate. Now, the important part is, kindly see Entry 26. State List.

**CHIEF JUSTICE D.Y. CHANDRACHUD:** Entry?

**DINESH DWIVEDI:** 26. 'Trade and commerce within the State subject to the provisions of Entry 33 of List III.' So the trade and commerce in the product of the industry is still in the State List. I'm saying for a moment imagine that there's no IDR for Entry 52. Then what is the position?

**JUSTICE B. V. NAGARATHNA:** Then Entry 26 of List II would be subordinate to Entry 33. List III.

**DINESH DWIVEDI:** That's accepted, My Lord. I would accept that. There's no doubt about it. Then 27 again. Entry 27. Entry 33 is the combination of these two entries, 26 and 27. Sorry.

1 Let me again explain it from the ground level, which is the State List. Now State List contains  
2 three entries, Your Lordships have seen. Industry, which is basically state subject. Then the  
3 trade and commerce and the production and supply do not fall in the word, 'industry' because  
4 there is a separate entry for that, 26 and 27. So 26 and 27 will never come toward industry.  
5 Now, when the IDR Act makes a declaration with regard to any industry, there are a couple of  
6 questions that will arise. One is, what will IDR Act take from the State List, the declaration? It  
7 will only draw from Entry 24. It can't take over from Entry 26 and 27 because that goes to  
8 Entry 33. The product of the declared or unnotified or scheduled industry doesn't fall in Entry  
9 52 but goes to Entry 33.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right.

12

13 **DINESH DWIVEDI:** Now the question is, My Lord...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So therefore, the entire doctrine of Occupied  
16 Field may not then be applicable to Entry 52 of List I, because on the face of the entry, a certain  
17 field notwithstanding the declaration under Entry 52 of List I, falls under Entry 33 of List III.

18

19 **DINESH DWIVEDI:** Undoubtedly.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And the object of the Parliament, of the  
22 Framers in putting it in Entry 53 was, notwithstanding the declaration under Entry 52, the  
23 States will still have power in respect of trade, commerce, production, supply and distribution.

24

25 **DINESH DWIVEDI:** Right. Now, before we come to...

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27 **JUSTICE ABHAY S. OKA:** These entries 26 and 27, advisedly they are not made subject to  
28 Entry 52.

29

30 **DINESH DWIVEDI:** My Lord, not made subject to.

31

32 **JUSTICE ABHAY S. OKA:** Subject to 33.

33

34 **DINESH DWIVEDI:** They are only subject to 33 and 24 is subject to 52, not 26 and 27. They  
35 are independent entries. So if the Parliament wants to take over anything pertaining to the  
36 trade and commerce, supply and distribution, then it has to pass some law under 33. Now, the  
37 other correction which I may be permitted to make is...

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** What is your... now we've seen the entries...

**DINESH DWIVEDI:** No, there are two broad arguments, My Lord. One is...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** What is theoretical structure that you are saying?

**DINESH DWIVEDI:** First we say, first we say, My Lord...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Anything else you want us to? Let's complete the entries.

**DINESH DWIVEDI:** Yes, then have... kindly have Entry 6.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Of?

**DINESH DWIVEDI:** List II. Public health and sanitation, hospitals and dispensaries. Omit the rest, take public health into consideration. And then 8. Word is, 'intoxicating liquors.' Now, that is to say, is an illustrative... illustration of what follows. That intoxicating liquor... in relation to that production, manufacture, possession, transport, purchase, sale of intoxicating liquors. The question is, what is the term, 'intoxicating liquor' stand for? And this term has abundant legislative history, which we call the legal sense. So, the question is, when Your Lordships are considering this term, my request would be Your Lordships will have to place Your Lordships in the positions of the Framers and see how they saw this term at that point of time, what the law was, what was the legal history, the legal sense. It is not always that in terms of the legislative power, Your Lordships have relied upon the popular and the common-sense point of view. Because more often than not, the entries have entirely different.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Any other entries that we have missed or that's now the sum total?

**DINESH DWIVEDI:** Yes. Now, My Lord, the next entry in the State List, which I would pray Lordship may have apart from what Lordships have seen, Entry 51, List... It says, '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.' So, duties of excise on the following goods: a) alcoholic liquors for human consumption.

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**JUSTICE ABHAY S. OKA:** Is it same as intoxicating liquor?

**DINESH DWIVEDI:** That's the question which Your Lordships would have to deal with, right. Because why would Framers use different words in two different entries? And the reason my answer is the legislative history is there. That is why.

**JUSTICE B. V. NAGARATHNA:** Is there any liquor which is not intoxicating?

**DINESH DWIVEDI:** I don't think so. At least, I have not experienced.

**JUSTICE B. V. NAGARATHNA:** Depends on the consumer, I suppose.

**JUSTICE ABHAY S. OKA:** It depends on the person who drinks it.

**DINESH DWIVEDI:** That would be the strength of the effect. But effect will be there. All liquids containing alcohol, they are intoxicating. I can't imagine of a liquor which is not intoxicating, be it Industrial Alcohol. Of course, intoxicating means alcoholic content. Industrial Alcohol has higher alcoholic content, that's all. It can't be had as it is. But then, do we have whiskey as it is? We have it with soda or water, normally.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** That again depends...

**JUSTICE HRISHIKESH ROY:** Neat, we must say.

**DINESH DWIVEDI:** For that matter, some people do have neat liquor. But then, that's what I'm trying to explain, the neat liquor is also, more often than not, mixed with ice cubes. It's not a constitutional issue. No, but it has been, My Lord kindly have Article 47. Kindly have Article 47. It says, 'State can prohibit consumption of alcoholic drinks.' So, whenever they refer to beverage form or something that can be had as it is, neat, as Lord Justice has said. There Article 47 refers to that as intoxicating drink. So, whole lot of different phrases have been used in different entries. There has to be some purpose behind it. And that is what my endeavour would be to show why. But in any case, at least one assumption I can make is when we read Entry 51, List II, when it says alcoholic liquor for human consumption...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** There is one reason, possibly, why they said... otherwise, liquors would have been sufficient. Why do they use intoxicating liquor?

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**DINESH DWIVEDI:** That is a question which legal history... legal, the state of law, which preceded our Constitution as necessary, that indicates.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** As Mr. Datar will tell you, if you go down South or Mr. Giri will tell you that even when somebody serves you coffee, they'll ask you, do you want to have the liquor? When you have the coffee liquor, it's not the decoction. The decoction is very often referred to as a liquor, but it's not intoxicating liquor. Coffee liquor.

**V GIRI:** Coffee powder is mixed with chicory. Different decoction. It has been carried on for some generation.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** So it's liquor, but it's not the intoxicating liquor. We have a history in our country of alcohol. It's not alcohol, but it's still referred to as liquor.

**DINESH DWIVEDI:** Not when we are talking of whiskey and liquor, the coffee liquor seems to be little...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** I know. Coffee liquor is very different. That is liquor.

**DINESH DWIVEDI:** Yeah. Spirits. It is spirits.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** My real problem in this matter is, what is the learned Attorney General going to argue when you people are done?

**DINESH DWIVEDI:** The bigger problem would be what most of Your Lordship would do without understanding what liquor is? That would be a bigger problem.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** The Attorney's whole argument is going to be purely theoretical. Attorney, you have an uphill task.

**DINESH DWIVEDI:** Let him have liquor, My Lord. He will conquer the hill. Some of us can do it more impartially. We know nothing about Liquor, nothing more.

1 **R VENKATARAMANI:** Kerala High Court... impact on hatcheries. Because 301, 304 etc.  
2 Chief Justice Dattu asked me, Mr. Venkataramani, how much did you know about chickens?  
3 So I said, I don't know, but the internal motion, but I know there's motions from state to state.  
4 So, that's talking about coffee. The Kumbakonam degree coffee, which is the highest coffee.  
5 Yes. There's a very important question. Liquor other than intoxication and intoxicating liquor.  
6 That's the secret of Entry 8.

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8 **DINESH DWIVEDI:** Attorney doesn't sound very convincing with regard to coffee liquor.  
9 He must graduate onto the liquor part.

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11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Mr. Dwivedi.

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13 **DINESH DWIVEDI:** Now coming back to the... kindly have... Your Lordship has seen it's a  
14 taxing Entry, Entry 51, List II. And duties of excise, which means tax on production and  
15 manufacture. Now the parallel entry is there in the Union List, Entry 84. Now My Lordship  
16 would have to see it before the amendment because now 2016. GST, et cetera has really spoiled  
17 the shape of the entries. Page 2016. It would be there in the footnote.

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19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, we got it in the footnote. You have to thank  
20 Mr. Sankaranarayanan for producing this masterpiece. No, that's page 471.

21

22 **DINESH DWIVEDI:** Now kindly juxtapose this Entry 51 with Entry 84. The parallel of this  
23 entry in the Union List because for tax purpose it seems Framers divided this thing... alcoholic  
24 liquor for human consumption and alcoholic liquor not for human consumption. So liquor was  
25 divided into two categories. Now coming back to Entry 51 again. Now with due respect I'm  
26 sorry, there's something which I should have pointed out earlier. It contains two items. Three  
27 items, in fact. Your Lordship would see alcoholic liquors for human consumption, that's one  
28 item. The other item is opium, Indian hemp etc. And the third item is medicinal and toilet  
29 preparations which are in the exclusion clause, but not including medicinal toilet preparations  
30 containing alcohol.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So all these cough syrups which have alcohol,  
33 will go to the Centre?

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35 **DINESH DWIVEDI:** For tax.

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37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** For tax.

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**DINESH DWIVEDI:** For tax. But the interesting part, which I wanted to really emphasize here is, there is no regulatory entry in any of the lists either specifying the word, 'Industrial Alcohol' or stating alcoholic liquors not for human consumption. There is no legislative entry in any of the list, List I or III.

**JUSTICE B. V. NAGARATHNA:** So does it mean that Industrial Alcohol is not meant for human consumption?

**DINESH DWIVEDI:** Obviously My Lord, it can't be had, because the strength of the liquor is 95%, 97%, 90% to 95%.

**JUSTICE B. V. NAGARATHNA:** Yes.

**DINESH DWIVEDI:** Which is dangerous for health.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Dwivedi, you just said no regulatory entry in any list using the phrase, Industrial Alcohol or? The 'or' I missed out.

**DINESH DWIVEDI:** Or alcoholic liquor not for human consumption. I can understand, if the idea was to regulate these two... tax these two. Then there should be some regulatory provision somewhere. Intoxicating liquor is one such entry, Your Lordships may keep it in mind. But apart from that, there is no entry to regulate Industrial Alcohol or alcoholic liquors not for human consumption. And more importantly, if Your Lordships would see medicinal and toilet preparations containing alcohol, there is no legislative entry in any of the lists. And the question therefore, which comes to my mind, which I placed before Your Lordship and I'll try to answer that. Why? Taxing entry only regulates part of it, the help intoxicating liquor or alcoholic liquor but the rest of the parts are where, we don't know. We have to speculate. *Synthetics* puts it in Entry 52 because of IDR. Now, if we put it in Entry 52, then obvious thing would be, that it goes to Entry 24 then. Because you can't pick up from any other entry excepting 24, so far as the industry is concerned. So if we place it in Entry 52, then pugnacity, it must go to Entry 24.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** But medicinal preparations containing alcohol will go to List I?

**DINESH DWIVEDI:** No. But which entry?

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 97.

**DINESH DWIVEDI:** No, I'll answer that. I'll answer that. If Entry 97 has been determined to be so huge, and what was the point in having these entries? They could have just said List II and III, Entry 97. It would have included everything.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** But the medicinal preparation containing alcohol, then the duty of.... power to levy duty of excise, where will that go, according to you?

**DINESH DWIVEDI:** No, duty of excise is there, Entry 84.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Right.

**DINESH DWIVEDI:** Entry 84, List I, it clearly includes... unamended. It includes. So that's what I am saying, My Lord, the idea is to have these items as separate items, but for tax only, but not for regulation.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** So Entry 84 will cover medicinal preparation which have alcohol?

**DINESH DWIVEDI:** For taxation.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Act, of course. Yes.

**DINESH DWIVEDI:** So what appears, apparently is that until, unless we look into the legislative history of this word, 'intoxicating liquor', and the laws pertaining to alcoholic liquors.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, we have seen the entire gamut of entries, right?

**DINESH DWIVEDI:** My Lord.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, why don't you formulate what your points are?

1 **DINESH DWIVEDI:** Yes.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Once we do that, we'll go to *Synthetics* and  
4 see. It's not a very long matter.

5

6 **DINESH DWIVEDI:** It will have to trace the legislative...

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Obviously, but why don't you formulate it? No,  
9 we'll look at the legislative history of intoxicating liquors, but now you can just formulate what  
10 your submissions are.

11

12 **DINESH DWIVEDI:** Yes. The first question again is, as I pointed out...

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You've made a note at page 29.

15

16 **DINESH DWIVEDI:** 59, yes.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** PDF page 30. But now why don't you formulate  
19 what your points are?

20

21 **DINESH DWIVEDI:** My Lord, the first question, which I'm going to canvas for Your  
22 Lordship is, that Entry 8, List II, which confers exclusive jurisdiction on the states to regulate  
23 Industrial Alcohol.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which confers exclusive...

26

27 **DINESH DWIVEDI:** Jurisdiction on the states to regulate Industrial Alcohol, because  
28 industrial alcohol is part of intoxicating liquor. So, the scope of Entry 8...

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Industrial Alcohol is part of intoxicating  
31 liquor?

32

33 **DINESH DWIVEDI:** Liquor. And therefore, states have exclusive jurisdiction.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, your first submission is, Entry 8 of List II  
36 confers exclusive jurisdiction on states to regulate Industrial Alcohol because Industrial  
37 Alcohol is part of intoxicating liquor.

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**DINESH DWIVEDI:** Liquor. Intoxicating liquor, Your Lordship may note it down... intoxicating liquor is a general term.

**JUSTICE B. V. NAGARATHNA:** Yes.

**DINESH DWIVEDI:** Unlimited. It has not been restricted by any phrases, before or after.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Is a general term.

**DINESH DWIVEDI:** Unrestricted, by any other entry. Unlike 24. To put it in a better form, it's a specific entry. Industry is a general entry. This is a specific entry, which at least three Constitution benches of Lordships have held that to.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** This intoxicating liquor is a general term unrestricted by any other entry.

**DINESH DWIVEDI:** Entry and perhaps, Lord, it's a special entry in State List as compared to Entry 24 which is a general entry. Industry can include any industry. But if, Your Lordship would see Entry 8. It says production, manufacture, sale, purchase, everything is there. It includes virtual every activity relating to intoxicating. And in *McDowell's* case, Lordships have held this very clearly, that it's a special entry as compared to industry, which is a general entry. For instance, Your Lordships may have a look at... I'm sorry. Entry 25, List II. If I may place now, Entry 25, List II says gas and gas works. That's an industry. But the question which I'm posing is, does it fall under word, 'industry' then? If there is a specific entry which has been carved out of the word, 'industry'. Entry 24 cannot be deemed to include gas and gas works. Because if 'industry' was wide enough to include gas and gas works, then what was the point in having it there? It can't by interpretation, make the entry redundant. Likewise, Entry 8 is a special entry as compared to the general entry, industry. Entry 24.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Could the power to legislate on Industrial Alcohol...

**DINESH DWIVEDI:** Because that is to say, kindly, have the elaborateness of the illustrative part, that is to say, is an illustrative word, but get the elaborateness of the illustrative part. It says, 'production, manufacture, possession, transport, purchase and sale of intoxicating liquor.' What else is left then apart from this, I ask myself? It's a complete entry. Which

1 completes... which includes every aspect of industry. Intoxicating liquor. Though I have to  
2 answer that question whether intoxicating liquor is wide or not.

3

4 **JUSTICE B. V. NAGARATHNA:** No, the question is whether intoxicating liquor would  
5 include Industrial Alcohol? That is the question.

6

7 **DINESH DWIVEDI:** That's the question. And for that, one of the aspects which I had  
8 indicated and emphasized.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Wouldn't we postulate something which is for  
11 human consumption by its very nature.

12

13 **DINESH DWIVEDI:** That's one way of looking at it. As I said, this is an entry which is  
14 general and uncontrolled. Now, intoxicating can mean intoxicate, causing intoxication to the  
15 humans. It can also mean a liquor which contains intoxicating element which can cause  
16 intoxication. So to confine this entry to only that aspect that it may cause intoxication to  
17 humans when it is had as it is, as a drink. Intoxicating drink. Can we have Article 47 for a  
18 moment?

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The purpose of Industrial Alcohol is never to  
21 intoxicate. That's why alcohol is a completely different...

22

23 **DINESH DWIVEDI:** I'll answer that question, it is.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The ordinary use of the article must be seen.

26

27 **DINESH DWIVEDI:** My Lord, the term Industrial Alcohol... Let us not confuse the two  
28 things. It may not be fit for human consumptions as it is. There's no difficulty. But to say that  
29 it is not intoxicating, that is not correct. Because it has alcohol. It has high quantity of alcohol.  
30 Therefore, it is intoxicating. We are attributing this term, 'intoxication' to humans only, that  
31 may not be correct, considering the wide entry that it is. And a general entry, which is  
32 unrestricted. Because if it was only human consumption then Entry 51 explained it. So why  
33 use the different phraseology? The phraseology would have been there in Entry 8. Alcoholic  
34 liquor for human consumption, that is to say. Framers would not use two entirely different  
35 phrases for denoting the same thing. That's one aspect which I have. And I will show...

36

1 **JUSTICE B. V. NAGARATHNA:** Because if you see Entry 84, Clause A, as it then fit, duties  
2 of excise on tobacco and other goods manufactured or produced in India, except (a) alcoholic  
3 liquors for human consumption. There only the state can levy.

4

5 **DINESH DWIVEDI:** Levy duty.

6

7 **JUSTICE B. V. NAGARATHNA:** Yes.

8

9 **DINESH DWIVEDI:** So again, the phrase is alcoholic liquor for human consumption. Now,  
10 my question to myself is that, if alcoholic liquor for human consumption was a set phrase used  
11 by the Framers to denote alcoholic drinks or beverage form or which can be had by the  
12 humans, then the same phraseology should have been there in Entry 8, if the idea was to  
13 indicate the same thing. And there is a reason why it is not so. Because as I said, legislative  
14 history is very critical in this regard.

15

16 **JUSTICE B. V. NAGARATHNA:** What you are looking at it is, if it is a declared industry,  
17 then obviously the state will not have any jurisdictions with regard to it. Then only the Centre  
18 can have the jurisdiction over that entry.

19

20 **DINESH DWIVEDI:** There's no difficulty. But the question which I had posed before Your  
21 Lordship was, if intoxicating liquor falls under Entry 8, then it is not an industry under Entry  
22 24. And if it is not an industry under 24, then it cannot be taken over under IDR, because then  
23 the Parliament would be determining the scope of the legislative entry.

24

25 **JUSTICE B. V. NAGARATHNA:** We have Entry 24 which says in List II, industries subject  
26 to the provisions of Entry 7 and 52 of List I.

27

28 **DINESH DWIVEDI:** So therefore, word 'industry' cannot include word 'intoxicating liquor',  
29 'manufacturer of intoxicating liquor', because both are separate entries specified in the State  
30 List only. One is special, the other is general. The special has been carved out, as I cited the  
31 example of gas and gas works. Your Lordships would recall *Calcutta Gas* case but Your  
32 Lordships specifically said it's a special entry, gas works. Intoxicating liquor...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Dwivedi, I've formulated your third point  
35 like this. Entry 51 and Entry 54 of List II use the expression, 'alcoholic liquor for human  
36 consumption'. Entry 8 of List II would have used the same phrase, if the Framers so intended.  
37 But Entry 8, List II uses a wider phrase, namely, 'intoxicating liquors'. If intoxicating liquor

1 falls under Entry 8 of List II, it does not fall under Entry 24 of List II and is therefore not  
2 subject to Entry 52 of List II.

3

4 **DINESH DWIVEDI:** Union cannot drag it to List I.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's your... So, really speaking, I think what  
7 we now have to focus on is, what do the Constitution mean when they use the expression  
8 'intoxicating liquors.' And let's look at the legislative background of the use of the expression.  
9 Because Mr. Dwivedi then, everything really either your argument, either falls or survives on  
10 the content of Entry 8. Does Entry 8 intoxicating liquor include as Industrial Alcohol?

11

12 **DINESH DWIVEDI:** Absolutely. That's the right. But the alternative argument is, that even  
13 if industry is, the second question, which I am formulating is, that even if word, 'industry'  
14 includes Industrial Alcohol...

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Even if industry...?

17

18 **DINESH DWIVEDI:** Word 'industry' includes Industrial Alcohol.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In Entry 52?

21

22 **DINESH DWIVEDI:** First it has to include in Entry 24.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right. So alternatively, even if industry in  
25 Entry 24...

26

27 **DINESH DWIVEDI:** Then only it can be taken over under Entry 52.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, we are just formulating it. I want to  
30 understand your point of view, alternative view.

31

32 **DINESH DWIVEDI:** Right. But if we...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** One second. Let's just hold the thought down.

35

36 **DINESH DWIVEDI:** I am sorry.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alternatively, even if industry in Entry 24 or  
2 Entry 51...

3

4 **DINESH DWIVEDI:** 52, List 1.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 52 of List I includes...

7

8 **DINESH DWIVEDI:** Industrial Alcohol.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Industrial Alcohol. Then?

11

12 **DINESH DWIVEDI:** Then whatever goes to List I is the manufacture.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What?

15

16 **DINESH DWIVEDI:** Manufacture of Industrial Alcohol. And once the Industrial Alcohol as  
17 product to be notified in industry emerges, it goes to Entry 33. The product is not included in  
18 Entry 24 or 52.

19

20 **JUSTICE ABHAY S. OKA:** So, what is included in industry and not the product, that's what  
21 you are saying?

22

23 **DINESH DWIVEDI:** Not the product. My Lord, it has been well defined, there are at least  
24 seven Constitution benches, which say word, 'industry' only denotes manufacture. It does not  
25 include trade, commerce or production, supply and distribution. Word, 'production' has been  
26 brought out of caution. It has been used, but manufacture goes to industry.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Actually, so even if we reject your point on  
29 intoxicating liquor covering Industrial Alcohol, the alternative limb, which frankly appears to  
30 be more acceptable, the alternative limb, the alternative... but you may be right, because we  
31 have not looked still at the legislative history.

32

33 **DINESH DWIVEDI:** Your Lordship would look at it in the sense of a timeline My Lord,  
34 perhaps, not the alternative may appear to be the easier one to go to and decide.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Something which is pending for 14 years,  
37 there's no timeline. We have to look at both aspects. But that's why your second limb is that

1 even assuming it's industry within Entry 24, and therefore, under Entry 52, only the  
2 manufacture falls within Entry 52 of List I.

3

4 **DINESH DWIVEDI:** Product goes.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The rest of the product is governed by Entry  
7 33, and if it falls in Entry 33, then you can levy fees under...

8

9 **DINESH DWIVEDI:** But the jurisdiction doesn't arise, My Lord.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right.

12

13 **DINESH DWIVEDI:** Jurisdiction of state doesn't arise. Jurisdiction is there.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because you can levy fees then, fees in respect  
16 of any of the entries.

17

18 **DINESH DWIVEDI:** If we come to the conclusion about the jurisdiction part, then what can  
19 be the ambit of jurisdiction is a separate issue. Which that can be adverted to, and the disputes  
20 will arise, they can keep on coming off and on and can be answered. But the issue is of state's  
21 jurisdiction, whether it is there or not, to regulate and control Industrial Alcohol. Now, another  
22 interesting aspect here would be... we have... if I may answer here? I could be over hear.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, these are the four submissions or there are  
25 alternative submissions?

26

27 **DINESH DWIVEDI:** The B part of that last argument is, that state will only have jurisdiction  
28 if the field is unoccupied.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Under Entry 33.

31

32 **DINESH DWIVEDI:** Under Entry 33. So, Article 254 comes in. And we have expressly stated  
33 that till date there is no legislation by the Union. Because under the IDR Act, Section 18-G, is  
34 there. If I may place that, Lordship, may have a look at it. This would be the last limb, Section  
35 18-G of the IDR Act.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, what is the submission? Section 18-G, how  
2 do you formulate it? Then we look at it.

3

4 **DINESH DWIVEDI:** Section 18-G confers an enabling power on the Union to regulate the  
5 products of the notified industries. For securing equitable distribution and availability at fair  
6 price, they can regulate. And that regulation has to be through an order issued by the Central  
7 Government, a notified order. It's like a control order. So, Union has to regulate by a notified  
8 order providing for regulation.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Section 18-G, we have got it on the screen here.  
11 It will be on the screen.

12

13 **DINESH DWIVEDI:** Yes.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Section 18-G is in Volume IV, Page is yours a  
16 PDF, page 577.

17

18 **DINESH DWIVEDI:** Now, this Section 18-G is traceable to Entry 33, List III. 'The Central  
19 Government, so far as it appears to it to be necessary or experienced for securing the equitable  
20 distribution and availability at fair price or any article or class of articles relatable to any  
21 scheduled industry may, notwithstanding anything contained in any other provision of this act  
22 by notified order.' So, may be notified order, provide for regulating the supply and distribution  
23 thereof and trade and commerce therein.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, it has to be a notified order?

26

27 **DINESH DWIVEDI:** It has to be a notified. Because if I recall correctly, I have listed and I'll  
28 get it, get hold of it. Chief Justice has in one of the Judgment-254 has said there has to be, in  
29 fact, an order there. It has to be real conflict, has to be actual conflict. Not supposed conflict  
30 that's in future order may be issued and then conflict may arise. So, there has to be a real  
31 conflict, actual conflict before jurisdiction can be taken away. That's in the case of context of  
32 occupied field. The field is occupied only when there is an order under 18-G. As my friend  
33 rightly says that under 254, state can still legislate and get the presidential assent to override  
34 them.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

37

1 **DINESH DWIVEDI:** But that's a different issue. I would not... but then that is, at least that  
2 indicates that the field has to be actually occupied.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And there is no notified order by them?

5

6 **DINESH DWIVEDI:** There... at least, I could not discover any notified order. My friend has  
7 also asserted that and in response My Lord, in their written submission they don't say that  
8 there is a notified order. They say that It's not required.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right.

11

12 **DINESH DWIVEDI:** Now, if My Lordships would come to my written submissions. May I  
13 take Your Lordships to my written submissions? Now My Lords, there's one provision which  
14 I perhaps should have also cited but I forgot to do that. Your Lordships may have Article 47,  
15 which also has some bearing on our question. Though this is non-enforceable, it does not  
16 impose any restriction on the legislative power but it certainly gives an indication. 'The state  
17 shall regard the raising of the level of nutrition and standard of living of its people and the  
18 improvement of public health as among its primary duties. And in particular, the state shall  
19 endeavour to bring about prohibition of consumption except for medicinal purpose of  
20 intoxicating drinks.' So where they wanted to restrict to beverage form, which is had as it is,  
21 they used a term, 'intoxicating drinks.' Consumption. This shows in the beverage form it is  
22 there as intoxicating drink in the Constitution. The Framers recognized it as such but then  
23 equated with intoxicating liquor again becomes a little difficult. Now, My Lord...

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now that you've formulated, now let's go to the  
26 legislative history, and then the few places you want to start. I think maybe by lunch, we should  
27 be done with your submission by then. About an hour and seven minutes.

28

29 **DINESH DWIVEDI:** I don't think, it has taken nearly hour and a half to elaborate on the  
30 entries over here.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now what is the gist of the point? Now, we just  
33 rapid fire with your... we're supporting your submissions.

34

35 **DINESH DWIVEDI:** I would only request is, it's an important issue. Then where rapid fire  
36 may lead or may lead to leaving out something which is important. And that is what happens.

1 The rapid fire happened in *Synthetics* too, as a consequence of which lots of things didn't  
2 come there.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Dwivedi, the Chief Justice has to always  
5 say that, not because it's going to be enforced but because the clock on the other side constantly  
6 stares at us.

7

8 **DINESH DWIVEDI:** At the very initial state, I had said if Your Lordships are going to  
9 determine this scope of the argument in terms of timeline, then perhaps, I will have lots of  
10 difficulty.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** [UNCLEAR] in lines now because there's so  
13 much of work. So many...

14

15 **DINESH DWIVEDI:** No, but for such an issue which is there rankling since 1951. This is an  
16 issue decided for the first time in '51 and since then it continued for 38...

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The reason for the reference and everything is  
19 not because it is so complex or something, but because perceptions change. Our perception of  
20 what India is today is very different from the perception which judges had in 1950 or 1960.  
21 There's a new dimension to States Right as federalism has progressed. A lot of reasons why we  
22 continually look, re-look at our judgments.

23

24 **DINESH DWIVEDI:** There are two answers to it, there are two answers to it.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So there are written submissions now,  
27 directly.

28

29 **DINESH DWIVEDI:** Yes, yes. But before that, there are two answers to it. Federalism  
30 concept is to my aid. The other thing is the evolution takes place, new things are discovered,  
31 new things happen. But then what Lordships have said that the legislative entries must be  
32 interpreted in an expansive manner to include the new things and new situations. But that  
33 doesn't mean that the old gets lost. The old will be there, plus additionally, this will come.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Submission.

36

37 **DINESH DWIVEDI:** Yes.

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** And see how you are first and foremost saying that Entry 8 covers intoxicating liquor. That's the first major submission, which you have, and the second is in the alternative.

**DINESH DWIVEDI:** Now, kindly come to my written submissions. Volume I(a), page 2. Page 2. At the bottom, Lordship would notice there is a word, 'intoxicating liquor' under 8, List II. Have Lordships got? 'It is important to note that the word Industrial Alcohol, IA for short, is nowhere used in any of the Lists. Entry 8, List II only uses the phrase intoxicating liquor, which has a rich and deep history and the legislative practice accompanying it. It is therefore, relevant to notice the history behind this phrase. It has been repeatedly held that the legislative entries are fields of legislation and therefore...'. My Lordships, this principle is well known. But the first principle is well known, so I need not take Your Lordships' time. Then that second aspect is also well known. Then the third aspect, the important part in this is, that there is a necessity starts with the context, contextual interpretation out of necessity starts with historical perspective, particularly, the legislative practice. That is what we call legal sense. Now there, there is one decision which I really wanted to place before Your Lordship, If Your Lordship would permit? *(1959) 1 SCR 379* and the relevant pages are...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** 1959?

**DINESH DWIVEDI:** '59, *Volume I SCR 379*, age 390 to 391. Then 397 to 413. This decision is not 51. 1 SCR is in Volume V(b), page 481. PDF page 486.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume V(b)?

**DINESH DWIVEDI:** V(b). My Lord, the reason why I want to cite this judgment this is... V(b).

**CHIEF JUSTICE D. Y. CHANDRACHUD:** On what proposition do you cite it?

**DINESH DWIVEDI:** Yes. In this case, the real dispute was with regard to tax on sale of goods. So, question arose, what is the meaning of the term, 'sale of goods' as understood by the Framers or the lawmakers? This was a case under 1935 Act, therefore, the entry was the same. They said what is...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** So, what were they told?

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**DINESH DWIVEDI:** Their Lordships, not debated the question whether we should adopt the popular sense or the common-sense point of view with respect to legislative entry, or we should adopt a sense which is in conformity with the legislative practice, which they call the legal sense. And eventually, after considering everything and lots of judgments, both the US Supreme Court in British matters, Privy Counsel and all, they came to the conclusion that the real meaning can be derived after looking into the legal history, that is the legal sense, not the popular sense. That's not always correct.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** From legal history, yes. How this have been used even before the adoption of that entry in...

**DINESH DWIVEDI:** Because what they said a lot of...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Government of India.

**DINESH DWIVEDI:** Quite right. And what their Lordship said... that Your Lordships would have to sit in the position of the Framers and see what the law was and in what sense...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Dwivedi, I don't think we need to labour that point really. Let's go.

**DINESH DWIVEDI:** This is what I wanted to rely on this.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** This is absolutely perfect.

**DINESH DWIVEDI:** And '51 therefore, Supreme Court SCR, the one above *Balasara*. This is (1951) SCR, 682.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

**DINESH DWIVEDI:** This is *Balsara versus State Of Bombay* or *State of Bombay versus Balsara*.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Where do we find it in the volumes? Volume V(b)?

1 **DINESH DWIVEDI:** Volume V(b).

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** V(b), right?

4

5 **DINESH DWIVEDI:** Volume V. Volume V. Page 1718.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And what does it say? I mean, you can just  
8 formulate it for us.

9

10 **DINESH DWIVEDI:** In *Balsara*, the question of course, the case was with regard to  
11 potable liquor.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

14

15 **DINESH DWIVEDI:** But they considered the history of the term, 'intoxicating liquor.'

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I think *Balsara*, we may have to look at.

18

19 **DINESH DWIVEDI:** Yes. They consider the entire history of intoxicating liquor from the  
20 British position to Government of India because Government of India has an act of British  
21 Parliament...

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I think *Balsara* we may see, no. It's regarding  
24 portable liquor.

25

26 **DINESH DWIVEDI:** And then this intoxicating liquor would include all kinds of liquors,  
27 including Industrial Alcohol. I know there is a difficulty. I have it in SCR form. Your Lordships  
28 have it, perhaps in AIR form.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, everybody should cite SCR because we  
31 have a digi SCR in place now.

32

33 **DINESH DWIVEDI:** Quite right. So, I have it in the SCR form Your Lordships have. It is  
34 1951.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 32?

37

1 **DINESH DWIVEDI:** SCR. 1951 SCR, page 682.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You can load it for us on the Digi SCR. You can  
4 load it on the screen. That's the official report.

5

6 **JUSTICE ABHAY S. OKA:** Yes, you know you have given SCR online.

7

8 **DINESH DWIVEDI:** And this further went to the extent of saying even in medicinal  
9 preparations containing alcohol would come under intoxicating liquor.

10

11 **JUSTICE ABHAY S. OKA:** Which are the relevant paragraphs?

12

13 **DINESH DWIVEDI:** Yes, but actually I am from SCR, I can give you lots of relevant pages,  
14 but I can't give the relevant...

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Can you just load it for us on our screen so that  
17 we can both follow, both the... *Woh kar lo. Digi SCR kar lo.* It has to go to?

18

19 **DINESH DWIVEDI:** Yes. Kindly notice the question here which arose, page 685 and 686.  
20 Question is with regard to, obviously, as I said, it was against the direction of the Prohibition  
21 Commissioner of Bombay prohibiting...

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, where do you want us to go to now?

24

25 **DINESH DWIVEDI:** Kindly have the next page, 686. The second paragraph. The Act in  
26 question was passed by the Legislature of the Province of Bombay. This was an Act under  
27 Government of India Act, 1949 Act. Therefore, Government of India Act and the entry was  
28 Entry 31 which is in the same terms as Entry 8.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which page do you want us to go to now? Look  
31 go where they discuss liquor and intoxicating liquor.

32

33 **DINESH DWIVEDI:** That's page 703. 'The High Court has held that the word, liquor...',  
34 starts like that. Before that Lordship may have a look at the entry. Entry 31 is at page 690. It  
35 says Entry 31, List II. Intoxicating liquors and narcotic drugs, that is to say, production,  
36 manufacturer, possession, transport, purchase and sale of intoxicating liquors, opium so and  
37 so. We are not concerned with opium, but 'intoxicating liquor' was the word they have used.

1 Now coming to page 703 and this law was claimed to have been made under Entry 31, List II  
2 of the Government of India Act 1935.

3

4 **JUSTICE ABHAY S. OKA:** Slightly above this is the definition of 'liquor'.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Oxford English Dictionary.

7

8 **JUSTICE ABHAY S. OKA:** Earlier just slightly earlier. Liquor includes spirit of wine, etc.  
9 Just above this paragraph starting from, 'High Court has held.'

10

11 **DINESH DWIVEDI:** 'The High Court has held that the word...'. May I? But in the Bombay  
12 Act, perhaps, there was the definition of the word, "liquor" which included spirits of wine, with  
13 ethylated spirit and all liquids consisting of alcohol. Then the answer is given by the High  
14 Court, which is page 703. 'The High Court has held that the word "liquor", ordinarily, means  
15 a strong drink as opposed to soft drink, but it must, in any event, be a beverage which is  
16 ordinarily drunk. Proceeding upon this view, the High Court has held that, although, the  
17 legislature may while legislating under Entry 31 prevent the consumption of non-intoxicating  
18 beverages and also prevent the use as drinks of alcoholic liquids which are not normally  
19 consumed as drinks, it cannot prevent the legislature the legitimate use of alcoholic  
20 preparations, which are not beverages, nor the use of medicinal toilet preparations containing  
21 alcohol. This view of the High Court was very strongly supported in the one hand and equally  
22 strongly challenged on the other, before us. And I therefore, proceed to deal.' Now then, Your  
23 Lordships go to the dictionary meaning. In the Oxford English Dictionary, edited by James  
24 Murray, several meanings are given to the word, "liquor", of which the following may be  
25 quoted. Liquor, a liquid matter in a liquid state, in wider sense a fluid. A liquid or a prepared  
26 solution used as a wash or bath and in many processes in the industrial parts. Liquid for  
27 drinking beverage drink, now, almost exclusively a drink produced by a fermentation or  
28 distillation, malt liquor, liquor brewed from malt, ale, beer, water etc. The water in which meat  
29 has been boiled, both sauce, the fat in which bacon, fish or the like has been fried, the liquid  
30 containing... the liquid produced by infusion. My Lordship, may I omit the rest and come to  
31 the next page? Thus, according to the dictionary, the word, "liquor" may have a general  
32 meaning in the sense of a liquid, or it may have a special meaning, which is the third meaning  
33 assigned to it in the extract quoted above. Vis-a-vis a drink or beverage produced by  
34 fermentation or distillation. The latter is, undoubtedly, the popular and the most widely  
35 accepted meaning of the and the basic idea of beverage seems rather prominent to run through  
36 the main provisions of the various acts of this country, as well as America and England relating  
37 to intoxicating liquor to which our attention was drawn. But at the same time on the reference

1 to these very acts, it is difficult to hold that they deal exclusively with beverages and are not  
2 applicable to certain articles which are, strictly speaking, not beverages. A few instances will  
3 make the point clear. In the National Prohibition Act 1909 of America, the word "liquor" and  
4 "intoxicating liquor" are used as having the same meaning and the definition states that these  
5 words shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, port wine.  
6 And in addition, there to any spirituous malt or fermented liquor, liquid and compounds,  
7 whether medicated, proprietary, proprietary patented or not and by whatever name called,  
8 containing one half of 1% of more or more of alcohol by volume which are fit for use as beverage  
9 purpose. Having defined liquor intoxicating liquor rather widely, the Volstead Act accepted  
10 denatured alcohol, medicinal preparations, toilet and antiseptic preparations, flavouring  
11 extracts and syrups, vinegar and preserved sweet cider which suggests that they were included  
12 in the definition. In some of these items, we have the qualifying words unfit for use for  
13 beverage purposes. But the heading of the Section 4 of Volstead Act under which these  
14 exceptions are enumerated, the exempted liquors.'

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Dwivedi, if you go to para 40. I mean, we  
17 are in para 44, which says coming now to the various definitions. Middle of that para...

18

19 **DINESH DWIVEDI:** Yes.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** If you go to middle of that para, even if, we  
22 exclude the American and English Acts from our consideration, we find that all the Provincial  
23 Acts of this country have consistently included liquids containing alcohol in the definition of  
24 liquor, an intoxicating liquor.

25

26 **DINESH DWIVEDI:** May I place it to Your Lordship?

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yeah, you can just read from there. 'Even if  
29 we...'

30

31 **DINESH DWIVEDI:** 'In the Bengal Excise Act...'

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, no, no the para is, 'coming now to the  
34 various definitions.'

35

36 **DINESH DWIVEDI:** Alright. 'Coming down to the...'

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Middle of that para. Middle of the para.

2

3 **DINESH DWIVEDI:** Correct, correct. I have it.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 'Even if we', 'even if we'.

6

7 **DINESH DWIVEDI:** 'Coming now to the definition...'

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just skip that. 'Even if we exclude the  
10 American, English Acts.' That's the ratio.

11

12 **DINESH DWIVEDI:** But kindly have it from report My Lord, because it refers to the local  
13 Act.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Not necessary. The formulation is, even if we  
16 exclude the American that's what we are relying on.

17

18 **DINESH DWIVEDI:** No, they were relying upon Indian Acts too earlier.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's not necessary now. Just go to 'even if  
21 we'. 'Even if we exclude the American and English Acts from our consideration, we find that  
22 all the Provincial Acts of this country have consistently included liquids containing alcohol in  
23 the definition of liquor and intoxicating liquor. The Framers of the Government of India Act  
24 1935 could not have been entirely ignorant of the accepted sense in which the word "liquor"  
25 has been used in the various excise Acts of this country, and accordingly, I consider the  
26 appropriate conclusion to be that the word "liquor" covers not only those alcoholic liquids  
27 which are generally used for beverage purposes and produce intoxication, but also, all liquids  
28 containing alcohol.' It may be that the latter meaning is not the meaning which is attributed  
29 to the word 'liquor' in common Parliament, especially when that word is prefixed by the  
30 qualifying word 'intoxicating'. But in my opinion, I think regards to the numerous statutory  
31 definitions of the word such a meaning could not have been intended to be excluded from the  
32 scope of the term 'intoxicating liquor' used in Entry 31 of List II.

33

34 **DINESH DWIVEDI:** My Lord, this is Entry 31 is Entry 8 of the Constitution.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Is Entry 8.

37

1 **DINESH DWIVEDI:** Now My Lord, to kind of corroborate this reasoning, if Your Lordship,  
2 would come to my written submissions. I have extracted all the definitions of liquor in the local  
3 Acts. And these are all of I think 1951.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Do you have more on this judgment that you  
6 want to or this is the point you want to make?

7

8 **DINESH DWIVEDI:** That's the point which I have.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Okay, then we will close this judgement now.  
11 What is the next point?

12

13 **DINESH DWIVEDI:** No, kindly come to the page 8 of my written submissions.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright, we will...

16

17 **DINESH DWIVEDI:** There I have extracted the definitions of liquor, intoxicating liquor,  
18 alcoholic liquor and so on so forth, but lot flows from that. Page 8 of my written submissions.  
19 Page 8.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

22

23 **DINESH DWIVEDI:** So, these are the backdrops under basis of which Entry 31 of  
24 Government of India Act was enacted and that was borrowed by the Constitution. Page 8. First  
25 is Bombay Abkari Act 1878. Liquor includes spirits of wine with highlighted spirit which is not  
26 potable, it's poisonous. My Lord. Spirits, spirits is defined later on, My Lord, I'll show that.  
27 Means 'any liquor containing alcohol and obtained by distillation, whether it is denatured or  
28 not', that's the important part. So, they were quite conscious of the fact that there is something  
29 like denatured spirit which is not potable. And then Section 350, Lordships, may have little  
30 below that, excisable article uses the phrase, because excise able article means and includes,  
31 any liquor or intoxicating drink as herein defined. Then My Lord, Madras Akbari Act again,  
32 'spirit means any liquor containing alcohol and obtained by distillation, whether it is  
33 denatured or not.' Then kindly turnover to the next page 39, definition of word 'liquor'. 'Liquor  
34 includes spirits of wine, methylated spirits, spirits, wine, toddy, beer and all liquids consisting  
35 of or containing alcohol.' Then excisable article. 'Any alcoholic liquor for human  
36 consumption...' now My Lord, the distinction is made here from 'liquor' and 'alcoholic liquor  
37 for human consumption' for tax purpose. Then this is followed in the next Act also, the Bengal

1 Act. 'Any liquor for human consumption, excisable article, any liquor for human consumption,  
 2 it follows the same pattern.' And then My Lord, it defines in Section 2, intoxicant means any  
 3 liquor.... Lordship may leave the rest. Kindly see Section 214, 'Liquor', means liquid consisting  
 4 of or containing alcohol and includes spirits of wine, spirits, wine, taadi, Bachwai, don't go  
 5 over the rest. Section 219, 'Spirit' means any liquor containing alcohol obtained by distillation,  
 6 whether it is denatured or not.' Then Bihar Act follows the same pattern. These are around the  
 7 same vintage, excisable article, any alcoholic liquor for human consumption. Section 214  
 8 defines liquor, includes all liquids consisting or containing alcohol and then spirit means any  
 9 liquor containing alcohol obtained by distillation, whether it is denatured or not. Then comes  
 10 the MP Excise Act, which is same vintage, the same pattern. Alcoholic liquor for human  
 11 consumption so far as the excise duty is concerned. Liquor defined widely includes all spirits,  
 12 all liquids consisting or containing alcohol and then spirit is defined as widely, including  
 13 denatured spirit also. So spirit is part of liquor and the denatured spirit is also part of liquor.  
 14 Likewise, when we come to Punjab Act which applied to Delhi, Haryana, Himachal Pradesh  
 15 and all these. Here, there is an interesting thing which comes in now.  
 16 Section 214,' liquor means intoxicating liquor and includes all liquids consisting of or  
 17 containing alcohol.' Omit the rest, My Lord. 'Spirit means any liquor containing alcohol  
 18 obtained by distillation, whether denatured or not.' So in other words, even denatured spirit  
 19 was part of intoxicating liquor and liquor means intoxicating liquor. Both are equated. Then  
 20 the same pattern is followed in the Chhattisgarh Act of 1950. For tax purpose, alcoholic liquor  
 21 for human consumption is used. Section 213 defines liquor. 'Liquor means intoxicating liquor  
 22 and includes spirits of wine, spirit, all liquids consisting or containing alcohol.' Then spirit is  
 23 defined to include even denatured spirit. Again, My Lords, UP Excise Act of the same vintage,  
 24 follows the same pattern, exactly the same pattern.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Your contention is that all liquid containing  
 27 alcohol..

28

29 **DINESH DWIVEDI:** Was part of intoxicating liquor.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ...is part of intoxicating liquor.

32

33 **DINESH DWIVEDI:** And not only that, with due respect, My Lords may see that Page 7 of  
 34 my written submissions. PDF Page 8. There is something more to be said. And I'm only basing  
 35 this on the fact that we have followed the Government of India Act 1935, which is an act of  
 36 British Parliament. So therefore, the pattern and thinking would be the same as it was there  
 37 and if in 31 that was the concept, then that has to be the same in the Constitution, because

1 Framers adopted the same. Now, the legislative, may I place it? The legislative... page 7 of my  
2 written submissions 'The legislative practice leads us to British position and therefore to laws  
3 prevailing, therein. License Consolidation Act of 1910, Section 110, Spirits Act 1910, Section 3,  
4 4, 5 and 6.' Now, the License Consolidation Act not uses the term 'spirit' as well as 'intoxicating  
5 liquor' for licensing. Then, these Excise Acts have come.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Dwivedi, the liquor will include all liquid  
8 containing alcohol. No doubt about it. Because when the legislature or the Constitution uses  
9 the expression 'liquor', it means all liquid containing alcohol. But when the word 'liquor' is  
10 qualified by the word 'intoxicating', does that make any difference to that?

11

12 **DINESH DWIVEDI:** Exactly, My Lord. This is what...

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, does intoxicating liquor also mean all  
15 liquor containing alcohol, which would include all liquids containing denatured spirit, also?  
16 That's your contention.

17

18 **DINESH DWIVEDI:** Yes, because every liquid containing alcohol is included as intoxicating  
19 liquor. Intoxicating liquor means liquor. Liquor means intoxicating liquor, that is evident from  
20 the pattern of these acts. When...

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, but liquor by itself would mean any liquid  
23 containing alcohol. Sorry? Any intoxicating...

24

25 **DINESH DWIVEDI:** My Lord, what, perhaps, is pointed out is that, perhaps, there can be a  
26 drug in a liquid form which may be intoxicative. So therefore, it can be a liquid containing  
27 intoxicant. The word 'intoxicant' was wider.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Intoxicating does not mean that it has to be  
30 capable of human consumption.

31

32 **DINESH DWIVEDI:** It indicates the potentiality of the item, that there is alcohol in it and  
33 therefore, it is intoxicating. It can mean both, something had as it is, as well as, as a beverage  
34 or as well as liquid containing alcohol, because that is intoxicated. My Lord, once let's take the  
35 instance of the country liquor. A country liquor is extremely common all around the world, in  
36 most of the states and is the highest revenue cherner in the states, perhaps. Now, what is  
37 country liquor? If I may place before Your Lordships, that chart we had prepared to explain to

1 Your Lordships the term 'intoxicating liquor'? Rectified spirit. Actually, the base is the rectified  
2 spirit. Lord, he's... Lord, in the most convenient form, we have tried to explain the process that  
3 will help in understanding of the commodity with which we are dealing.

4

5 **JUSTICE HRISHIKESH ROY:** Mr. Dwivedi, can we sort of... You are showing us the  
6 definitions of the Excise Act, various states. So, as the Chief Justice just said, all liquid  
7 containing alcohol will come within that. Now, whether it brings joy to the human, it must  
8 bring joy to the revenue. Is that what you're trying to say?

9

10 **DINESH DWIVEDI:** It does bring quite a joy to the revenue My Lord, because most of the  
11 states would try to apply, prohibition failed and had to reverse their policies. So, it is really  
12 joyous for the state to have, and liquor is really flogged as the most avenue generating device.  
13 There's no doubt about in our country. And therefore, every state wants to control it. But the  
14 important part is Your Lordship will see, the chart which we have indicated, the process of  
15 manufacturing spirit. 'It is a heavy, dark coloured, viscous liquid, molasses, because that's the  
16 basic raw material, molasses. It is the heavy, dark coloured, viscous liquid produced in the  
17 final stage of manufacturing of sugar and it is the byproduct in the sugar industry and raw  
18 material for the manufacturing of alcohol.' Now how does it happen? Fermentation. 'Firstly,  
19 the viscous liquid obtained from the sugar industry is mixed with water and yeast. It is also  
20 added to convert the fermentable sugars present in the molasses into alcohol. But the process  
21 of fermentation, a saccharine solution is obtained which is also known as fermented wash. In  
22 the fermented wash of paint during this process only 10 to 11% alcohol is generated in the total  
23 volume. Fermented wash is conveyed from the wash backs to the stilts columns in closed pipes.  
24 In the process of separating ethyl alcohol from the fermented wash and in this process, various  
25 components of the mixture are separated by virtue of their difference in boiling points. During  
26 the process of distillation, impurities like acetaldehyde, fused oil, impure spirits which are not  
27 fit for human consumption are removed. The product comes to be rectified spirit having  
28 strength of 91% to 95% after the process of distillation.' Now, this is My Lord, ethyl spirit or  
29 the rectified spirit, as we call it. Redistillation. 'In order to further remove the impurities, the  
30 redistillation is done. After redistillation, the product comes to be extra neutral alcohol having  
31 strength of 95% to 97% volume by volume, meaning thereby out of 100 litres of ENA, 95% to  
32 97 is alcohol. This distilled liquor can be aged or unaged to produce potable alcohol. For aged  
33 distilled liquor, maturation is required. For unaged distilled liquor, no maturation is required.  
34 Vodka, gin, country liquor are examples where maturation is not required. This fact really  
35 shows that the liquor before maturation is also fit for human consumption.' Now there are two  
36 columns My Lord, the maturation. 'For maturing of IMFL, Indian Made Foreign Liquor,  
37 maturation is only to improve the quality of alcohol and in this process, ENA is stored in the

1 wooden wax for the period of one year or two years or five years, ten years, twelve years and  
2 eighteen years in which chemical changes occur during storage, as the spirit in the container  
3 moves back and forth through the wood. The ingredients, including flavouring compounds  
4 are extracted from the wood and carried back into the container's contents on its own.' Now  
5 their column is My Lords, will see the rectified spirit which I was talking to. 'After distillation  
6 nor redistillation, the extra neutral alcohol becomes fit for human consumption. One is  
7 required to add only demineralized water into ENA having strength of 95% to 97% volume by  
8 volume. In India, country liquor is manufactured simply by adding demineralized water  
9 essence plus caramel into the ENA to bring its strength to 25%.' So, you dilute it, because it  
10 can't be had as it is, it will really burn your intestines. To bring its strength to 25% volume by  
11 volume for plain country spirit and to 36% for manufacturing of spice country spirit, for  
12 preparation of whether, this is important My Lord. 'Since ENA is fit for human consumption,  
13 it is also used for the purposes of preparation of medicines.'

14  
15 Nowadays, what is interesting is to see there are liquors of all kinds which are potable, like for  
16 instance, whiskeys and vodkas and all that. They go up to 72%, 57, 60%, 72%. Recently I  
17 discovered potable liquor consisting of 92%. So as Your Lordship said, as the time passes, new  
18 things come in, new concepts emerge. People keep on experimenting. They want the strongest  
19 drink possible. Therefore, they get it. The second aspect of it is important, if Your Lordships  
20 would turn to the page 7 of my written submissions. Because there are blended whiskeys, there  
21 are single malts. Addition of demineralized water, the reduction of spirit dilution. 'Addition of  
22 demineralized water in the alcohol is done to bring the higher strength to lower strength. In  
23 the case of Indian made foreign liquor by adding demineralized water's strength of 90%, v/v  
24 to 97v/v is brought down to 42%. And the desired strength as per the norms.' Then it is bottled.  
25 I need not go into that. But the basic idea is to... I'm sorry. Now My Lord, so far as... page 7.  
26 But before that, the term 'potability', which is now being used with regard to Entry 8.  
27 Potability is a relative concept. Potability can mean something had as it is, like intoxicating  
28 drink. We have a peg of whiskey or a vodka or something like that. That's intoxicating drink  
29 and potable. That's one aspect of potability. The other aspect of potability is that you add  
30 something to it and you diffuse it and then make it drinkable. How much you want to reduce  
31 and diffuse the strength of the liquor is, that is as per your choice.

32  
33 **JUSTICE B. V. NAGARATHNA:** But it is something which is fit for human consumption?  
34 Potable liquor?

35

1 **DINESH DWIVEDI:** Potable liquor can mean both. This is what I'm saying, that it is fit for  
2 consumption as it is, or maybe after putting in something into it and then making it  
3 consumable. That is my....

4

5 **JUSTICE B. V. NAGARATHNA:** As opposed to Industrial Alcohol.

6

7 **DINESH DWIVEDI:** But Industrial Alcohol can be used for industrial purpose also, like  
8 producing chemicals.

9

10 **JUSTICE B. V. NAGARATHNA:** Industrial Alcohol is not potable.

11

12 **DINESH DWIVEDI:** As it is, it is not. But then rectified spirit of 95% or 94%, by just adding  
13 water, you are reducing the strength of the rectified spirit and having it. Unless, of course, it is  
14 denatured. Denatured means when you are adding an item into it, which perhaps makes it  
15 nauseous and of course, poisonous.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Really, the word 'intoxicating' does not really  
18 mean that it has to be fit for human consumption.

19

20 **DINESH DWIVEDI:** Absolutely.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's an alcohol in which... it's a liquid in which  
23 alcohol is being added. You're relying on the legislative history which was referred to in  
24 *Balsara's* Case 1 and second, that the Constitution when it wanted to use related to alcohol  
25 fit for human consumption, it did so in Entry 84 of List I and Entry 51 of List II. Entry 8 is  
26 designedly only intoxicating liquors and therefore, intoxicating cannot be conflated with fit for  
27 human consumption, according to you.

28

29 **DINESH DWIVEDI:** And I will be repeating myself. After all, Lordships, have always held  
30 in so many decisions that why use two different phrases for denoting the same thing? Once  
31 different phrases are used, then obvious intention is that it denotes something different. And  
32 so widely different. Now, the other thing which I wanted to emphasize on is, please notice this.  
33 Government of India Act comes in 1935 and for the first time it uses the word "Intoxicating  
34 liquor". Entry 31 it has Entry 40 which again, is parallel to Entry 51, List II.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This is okay. So, the Government of India Act  
37 of 1935...

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**DINESH DWIVEDI:** For the first time in India use the phrase, not in the Constitutional statute, the word, "intoxicating liquor" comes in Entry 31. And it's in the same form as Entry 8, like the Framers have borrowed it from there. And at the same time, they use same phraseology as in Entry 51, List II, "alcoholic liquor for human consumption", in Entry 40, which is excise duty. Same as 51, List II.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Can you say that again?

**DINESH DWIVEDI:** My Lord, in Entry 40, the same phraseology as in Entry 51, List II, "alcoholic liquor for human consumption", has been used. When I had placed the local Acts as forming the backdrop, surely the Makers of the Government of India Act were aware of those local Acts. Their own Liquor Licensing Act, which used the term "intoxicating liquor". Their Spirit Act of 1870 which used both "denatured" as well as... it was used for licensing in the Intoxicating Liquor Act of 1910. I have indicated that in page 7 this aspect. Page 7 to 8. But an interesting factor, which I wanted to bring to Your Lordship's notice in this regard is this. When Government of India Act Entry 31 uses the same phraseology as the local Acts, intoxicating liquor, then obviously, it had in mind that "intoxicating liquor", which was defined in most of the local Acts. That has been borrowed in the Constitution of India, obviously, it follows the same thing. Now, in Entry 8, the word "intoxicating liquor", is there they have followed that. In Entry 51 or Entry 40, List II of the Government of India Act and Entry 51, List II of the Constitution, they have followed the same pattern as in...

**JUSTICE B. V. NAGARATHNA:** Entry 84, List I.

**DINESH DWIVEDI:** Entry 84. First it is Entry 51, List II in the State List and then the extruded part goes to Entry 54, List I.

**JUSTICE B. V. NAGARATHNA:** Entry 84, List I, as in...

**DINESH DWIVEDI:** I'm sorry, Entry 84.

**JUSTICE B. V. NAGARATHNA:** But then you see Entry 8 List II, is not a taxing entry. But Entry 51, List II is a taxing entry.

1 **DINESH DWIVEDI:** Quite right. So, we are not in the... issue is not tax here. Issue is the  
2 regulatory power, licensing powers. So, what I am saying is, again, My Lord, it corroborates  
3 my viewpoint that taxing entry cannot be used to curtail the...

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, we are entitled to levy a tax.

6

7 **DINESH DWIVEDI:** No, no I'm not.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You say that I'm entitled to regulate under  
10 Entry 8... and as incidental to the regulation, I can impose a fees under Entry 66 of List II.

11

12 **DINESH DWIVEDI:** I am not even for a moment claiming that we have a power to impose  
13 tax on denatured spirit or perhaps Industrial Alcohol. No, we don't have. Entry 84 is clear.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

16

17 **DINESH DWIVEDI:** And there is no taxing entry other than Entry 51, List II in the State  
18 List, so we can't. It hardly matters, it doesn't make much of a difference because liquor is  
19 nothing but a good denatured spirit would be a good. It can be taxes, sales tax. Likewise it is a  
20 good it can be taxed under Entry 52, that is entry tax earlier. So, it's not that we can't tax  
21 denatured spirit or something. It can be taxed in other forms, that is sales tax, entry tax and  
22 other local taxes. That can be done. But of course, state by itself cannot tax it as an excise duty.  
23 That power is not a way. To say there is no power to tax Industrial Alcohol is not correct, with  
24 due respect. It is correct to say that we do not have the power to impose excise duty on  
25 Industrial Alcohol, that is correct. In fact, after *Synthetics, Synthetics* clearly held in  
26 paragraph 86 My Lord that state will not have power to impose sales or purchase tax once IDR  
27 is there. That had to be clarified by *Synthetics* third case.

28

29 **JUSTICE B. V. NAGARATHNA:** Yes.

30

31 **DINESH DWIVEDI:** My Lord, that doesn't deal with sale and purchase tax. Therefore, it  
32 couldn't be held to be law on that. Laying down law on that. So, interesting part of what I'm  
33 saying is if the Government of India Act when it followed excisable article by specifying  
34 alcoholic liquor for human consumption and incorporated that in Entry 40, and it continued  
35 to follow intoxicating liquor and put it in Entry 31, then obviously, they were seeing the  
36 difference. And therefore, for separate things, they were incorporating it in a separate  
37 phraseology. We can't mix up Entry 51, List II and say it kind of restricts Entry 8 because that's

1 a taxing entry, this is a regulatory entry, and both Lordships, have held in so many cases,  
2 separate. So, taxing entry cannot colour the regulatory entry just as regulatory entry cannot  
3 lead to enforcement of imposing of tax. So, it would be quite unimaginable to think that the  
4 Government of India, Framers of Government of India Act and the Constitution partly  
5 followed the local laws and they did not follow the local laws in other respect, that doesn't  
6 make sense.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then please complete the submission. .

9

10 **DINESH DWIVEDI:** Yes. My Lord, there is also a word called, 'alcoholic liquor' in Entry 51,  
11 List II. Your Lordships, have seen.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right.

14

15 **DINESH DWIVEDI:** Alcoholic liquor obviously is very wide. Therefore, they divide it by  
16 saying, for consumption.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Consumption.

19

20 **DINESH DWIVEDI:** And if we read the definitions in the local Acts, it contains all liquids  
21 consisting of alcohol which would be alcoholic liquor. So therefore, intoxicating liquor. Liquor  
22 means intoxicating liquor and contains all liquids consisting of alcohol, obviously means  
23 alcoholic liquor.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, for instance, Entry 54, after the 101st  
26 Amendment says taxes on alcoholic liquor for human consumption.

27

28 **JUSTICE B. V. NAGARATHNA:** Yes.

29

30 **DINESH DWIVEDI:** So, state doesn't have the power to tax the Industrial Alcohol. That is,  
31 it can only tax, impose tax in respect of alcoholic liquor for human consumption. But that does  
32 not, as I said, mean that state cannot impose any tax on Industrial Alcohol. It can sales tax. It  
33 can Entry tax. I mean, after all, Industrial Alcohol is nothing but goods. The entry tax says  
34 goods brought in for sale and consumption, for use. So it's not correct to say that, the entire  
35 field of taxation goes.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's look at your submissions so that we then  
2 conclude that part.

3

4 **DINESH DWIVEDI:** Page 7, I was placing, and I would pray, kindly permit me to place the  
5 entire page. And this, this one page only. 'The legislative practice leads us to British position,  
6 therefore to laws prevailing therein, license cons...'

7

8 **JUSTICE B. V. NAGARATHNA:** Page number?

9

10 **DINESH DWIVEDI:** The written submission, I have placed in page 7. I'm sorry, there seems  
11 to be some confusion.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We got it. We got PDF page 7, bottom.

14

15 **DINESH DWIVEDI:** 'The legislative practice leads us to British position and therefore, to  
16 laws prevailing therein.' License Consolidation Act 1919, as I already told Your Lordships,  
17 includes the word 'intoxicating liquor'. B) Spirits Act, 1980, which includes the denatured  
18 spirit. Spirit Act defined spirit very widely to cover both potable and non-potable liquor.  
19 Section 3 to 5 and 16. It deals with manufacture, distillation, detailing, etc. of spirits. While  
20 Licensing Act of 1910 deals with licensing of distribution. Word 'intoxicating liquor' is defined  
21 there to include spirit of all kinds, including fermented and distilled. British position is clear  
22 that intoxicating liquor includes all kinds of spirits. The later 1910 Act used this term  
23 compendiously to include all spirits, all kinds of spirits, while spirit under 1880 Act included  
24 liquor of all kinds. Thus, in England, both the terms were understood and used  
25 interchangeably. That's what, My Lord, the Lordship would notice, *Balsara* says. It notices  
26 these two Acts. Then the Government of India Act 1915, Section 45, 79 to 81, 'the devolution  
27 rules made under Section 45 (a) and Section 129 of Government of India Act 1915,  
28 distinguished the functions in jurisdictions of local governments and that of the Governor  
29 General or the Indian Legislature. The subjects have been classified as central or provincial  
30 subjects. Part 2 of the Schedule I of the rules mentions Item 16 as excise and alcoholic liquor.  
31 It is around this time and thereabout, various state in actants were framed pertaining to the  
32 alcoholic liquors.' What is important to notice is, right from the earliest position, the local laws,  
33 the Government of India Act and so on and so forth, the state had the complete control and  
34 jurisdiction of intoxicating liquor. Earlier under the Government of India Act 1915, even the  
35 excise duty in respect of entire intoxicating liquor was with the state, which was separated for  
36 the first time in Government of India Act 1935, where Industrial Alcohol was put in the can of

1 Union and [UNCLEAR] in the can of the state. That was the position and it was in the light of  
2 this position, leaving the.... the extracts of local laws. Kindly come to para 12... Page 12.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Page?

5

6 **DINESH DWIVEDI:** Page 12.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 12.

9

10 **DINESH DWIVEDI:** Page 12 of my written submissions. Volume 1(a). 'In all the state laws,  
11 where liquor and spirit are defined as including all liquids containing alcohol. In some Acts,  
12 word "intoxicant", is used to define liquor as comprising of all liquids containing alcohol.  
13 Additionally, in some local Act, liquor means "intoxicating liquor" and includes all liquids  
14 containing alcohol. It is also noticeable that all the local Acts were alive and aware and aware  
15 of Industrial alcohol and "denatured" spirit. Being integral part of spirit or liquor. Reading all  
16 the above definitions, it becomes apparent that excise, liquor and spirits have always been part  
17 of state jurisdictions, including Industrial Alcohol. Centre did not have any jurisdiction in this  
18 regard. The legislatures were always aware of the industrial use of the alcohol and the local  
19 legislatures were dealing with. Liquor and spirit, traditionally, included all liquids consisting  
20 alcohol. Industrial Alcohol is a liquid containing alcohol. There cannot be any alcohol or liquor  
21 which does not cause intoxication. Therefore, any liquid containing alcohol would be capable  
22 of causing intoxication. It was in this sense word "intoxicating liquor" were defined.  
23 Intoxicating liquor only follows the past legislative history, for convenience, as part of the  
24 settled vocabulary position, which it had come to denote.' Then, Your Lordships, will omit this  
25 one. Then on page 14, My Lord, I'll just rushed through it. Page 14, the latter half. 'The  
26 importance of the legislative practice and past history can never be minimized. This  
27 constitutes an important aspect of context as indicated above for determining the scope of  
28 legislative power field, one has to have regard to what legislative practice it ordinarily  
29 embraces.' And these are the four questions, My Lord, four cases and then kindly add this case.  
30 (1959) 1 SCR 379, which I had referred to. *Gannon Dunkerley's* case, which says that it  
31 is preferable to have legal sense rather than...

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Therefore, there would be a dichotomy, if your  
34 submission is correct. Namely, that the regulatory power over Industrial Alcohol would vest  
35 to the states. But insofar as the taxing power is concerned, the taxing power over industry goes  
36 to the Centre.

37

1 **DINESH DWIVEDI:** But again, My Lord, if I may remind Lordships, the difference is when  
2 we talk of taxing power, excise duty is not the only tax. It's a tax on manufacture only. But then  
3 rest of the tax state can impose, like sales tax, entry tax and other local taxes.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

6

7 **DINESH DWIVEDI:** So, these are the cases where I had, My Lord. But then the important  
8 aspect here again is, My Lord, let us fall back on the question State and the Union claims or  
9 the *Synthetics* says Entry 52, is the source of power to regulate Industrial Alcohol, exclusive  
10 power. Then, as I pointed out, My Lord, then that source leads us to Entry 24. Now, if industry  
11 word includes Industrial Alcohol and intoxicating liquor means something else then with due  
12 respect, does not taking the past into consideration, it doesn't make sense. If the power had to  
13 be given to the State originally, if the power had to vest in the State under Entry 24, then I  
14 possibly can't imagine why the Framers would have not put it in Entry 8 rather than Entry 24,  
15 which is a general vague entry. To be searched and traced by Your Lordships through legal  
16 arguments and dictionaries and things like that. I mean, Framers had not enumerated the lists  
17 in a very carefully planned and perhaps elaborate manner. Why would they commit this kind  
18 of a confusion? So therefore, to trace intoxicating I mean, to trace Industrial Alcohol to Entry  
19 52 would be absolutely illogical. That apart, My Lord, may again... I'll come to what fell from  
20 Lord Justice Chandrachud. Why not Entry 97? Entry 97 is a residuary entry, which is supposed  
21 to be used in the...

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There is no other State List entry or so...?

24

25 **DINESH DWIVEDI:** First thing we have to see is whether there is a state entry or any entry  
26 in the concurrent...

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** [UNCLEAR] entry or a Concurrent List entry.

29

30 **DINESH DWIVEDI:** So, if in List II and III, if there is any entry which can logically trace  
31 this within itself, then Entry 97 cannot be used. But then there's even other difficulty Your  
32 Lordships, would notice. If the Union traces it to Entry 52, then obviously for that reason also,  
33 Entry 97 cannot be used, because then it falls in Entry 24. An intoxicating liquor and Industrial  
34 Alcohol would be in Entry 24, basically and it can be drawn over to Entry 52. So, this again My  
35 Lord, reduces our difficulty for placing it in Entry 97. It can't go to Entry 97 because it has been  
36 traced to 52. 52 means 24, which means State List.

37

1 **JUSTICE B. V. NAGARATHNA:** See, Entry 24 is subject to list, Entry 52 of List I. Suppose  
2 it is declared industry under Entry 52, List I, it can be any industry which is declared by the  
3 Parliament?

4

5 **DINESH DWIVEDI:** No, that's a difficulty. It can only be that industry which is in Entry 24.  
6 So, Entry 24 cannot include an industry which falls in Entry 25. That is also an industry and  
7 I'll cite two, three cases on that that will clarify it. The first decision which comes to mind is  
8 *Calcutta Gas* 1962.

9

10 **JUSTICE B. V. NAGARATHNA:** Now, what is the meaning to be given to Entry 52, List I?

11

12 **DINESH DWIVEDI:** Yes.

13

14 **JUSTICE B. V. NAGARATHNA:** That cannot be curtailed. On the principle of what is  
15 called a Parliamentary Supremacy, having regard to Article 246 of the Constitution.

16

17 **DINESH DWIVEDI:** I will answer that. My Lord, first and foremost, we'll have to demarcate  
18 the fields. Now, when we go to demarcating the fields, we look at Entry 52, List I. Now Entry  
19 52, List I uses the word 'industry'. There can be a declaration by Parliament with regard to an  
20 industry. Now, the obvious question, which I would like to answer is supposing there is no  
21 declaration of Parliament, and Entry 52 is not utilized, then where does this word 'industry'  
22 go? It goes to Entry 24. So, there is an inherent link between Entry 24 and 52, and 52 only  
23 borrows from Entry 24 and not anything else. So, when I'm placing it in Entry 8, intoxicating  
24 liquor, then the Union cannot take it over because that's a plenary jurisdiction of the state  
25 independent of Entry 24.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There are two... really speaking your  
28 submissions boil down to two limbs. First limb, that Industrial Alcohol falls within the ambit  
29 of Entry 8 of List II. If it falls within the ambit of Entry 8 of List II, it's a specific entry dealing  
30 with intoxicated liquors, therefore, it does not fall in Entry 24 of List II. Since it does not fall  
31 in Entry 24 of List II and it is only Entry 24 of List II which is subject to Entry 51, Industrial  
32 Alcohol is not subject to the overriding power of Parliament under Entry 52 of List I. That's  
33 one.

34

35 **DINESH DWIVEDI:** Entry 8 is not subject,

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right. That's one. Second, you say even  
2 assuming that Industrial Alcohol does not fall within the ambit of Entry 8 of List II then, in  
3 that event and assuming, arguing though that it, falls under Entry 52 of List I, Section 18-G  
4 contemplates that there has to be a notified order, and in the absence of notified order, the  
5 subject is not within the fold of Parliament. It falls within Entry 33 of List III.

6

7 **DINESH DWIVEDI:** And for this. Lordship is aware of *Tika Ramji* is the famous case  
8 where it says that. *Tika Ramji* and then from there starting...

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And declaration by Parliament and the Entry  
11 52 of List I notwithstanding, certain aspects are taken over, certain subjects which would  
12 otherwise fall under Entry 52 have been placed in Entry 33 of List III. And therefore, the State  
13 power to regulate under Entry 33 of List III will include the power to levy a fee.

14

15 **DINESH DWIVEDI:** Otherwise the consequence would be My Lord, that all these Entries  
16 8, 25, they all will be rendered new entry and empty by drawing power from IDR Act. Now,  
17 here would be, we'll be conferring Parliament the jurisdiction to take away the preliminary  
18 powers of the state legislature, which are not subject to, which are independent powers. So, we  
19 can't adopt this.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Even assuming that a declaration is issued by  
22 Parliament under Entry 52 of List I, notwithstanding that, it's evident from Entry 33, that yet  
23 trade and commerce, production, supply, distribution comes within Entry 33, because Entry  
24 33, Clause A covers only those industries which are declared under Entry 52 of List I.

25

26 **DINESH DWIVEDI:** And the other thing is if Your Lordship would see, the *Calcutta gas*  
27 is a Constitution Bench judgment. The first case, where they considered this issue and they  
28 struck down IDR on the ground that you can't take over gas and gas works.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Okay, we will come back after lunch. Now, Mr.  
31 Dwivedi, I think now, we can wrap up in a short while, because we have made very substantial  
32 progress I think we have understood your point. Now you can show us whatever remains in  
33 half an hour or so.

34

35 **DINESH DWIVEDI:** My Lords, we've made so much of an effort. Kindly give us some more  
36 time.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Oh yes, of course. We will run through it.

2

3 **DINESH DWIVEDI:** Pour in our efforts for us.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, yes, of course. We'll look at the case law.  
6 We'll run through now your written submissions and see what case law needs to be looked at.  
7 We have seen the essence of your submissions.

8

9 **DINESH DWIVEDI:** I'm grateful.

10

11

12 **DINESH DWIVEDI:** Appreciating Your Lordship's concern for early finish, My Lord, I  
13 certainly... I'm sorry.

14

15 **R. VENKATARAMANI:** My Lord, just one mentionable item, the chillness of the.... I'm  
16 sorry for that.

17

18 **DINESH DWIVEDI:** Appreciating Lordship's concern for early and fast finish, I have  
19 revised my argument in a different way. So, all that I would suggest now is just a recapitulation.  
20 Industrial alcohol must be understood in the context of the legal sense. That is, the  
21 [UNCLEAR] what it means is that it is part of intoxicating liquor. If it is part of intoxicating  
22 liquor in Entry 8, then it cannot be there in Entry 24, because the Union's stand is only that it  
23 is there Entry 24 drawn to Entry 52. So, all that we have to answer here is that it can't be in  
24 Entry 24. Intoxicating liquor in Entry 8 is not subject to unlike Entry 24. Coming to this issue  
25 of paramountcy, My Lord, we must take note of this fact, paramountcy is a question which is  
26 resorted to only as an ultimate resort when the conflict is there it cannot be resolved in any  
27 way. Otherwise, the rule of paramountcy is not applied. What is applied is the issue of pith and  
28 substance, which Your Lordships have devised, stating that the subjects will include the  
29 ancillary as well as the incidental factors which can be legislated upon by the relevant  
30 legislature. But this what Your Lordships have held is that incidental encroachment on the  
31 State List can never imply reduction in State's jurisdiction. It can at best save the law, which  
32 is in dispute but it cannot tantamount to restricting the scope of the legislative entry, which is  
33 within the State jurisdiction or State's legislative power, which is independent. States are, in  
34 the Federal polity, they are equally plenary, they are equally sovereign, sharing the  
35 sovereignty. So, we can't perhaps cut short State's power through Parliamentary declarations  
36 that would be most damaging for the federal structure. Because every time Parliament  
37 legislates on its own subject and, incidentally, encroaches upon the State List Your Lordships

1 may hold it as valid applying the Doctrine of Pith and Substance, which means in substance  
2 they acted within its own list. But if by that principle we are going to take away the power of  
3 the State in respect of one entry which is independent, then imagine what will happen, My  
4 Lord, most of the cases, Parliament will legislate on incidental and ancillary issues and it will  
5 continue to prevail over the State's jurisdiction. Where will the... ultimately, where will it go?  
6 How far will it go? So, that argument could be entirely destructive of the federal structure and  
7 should never be adopted, that's what Your Lordships have always done, and I'll show the  
8 decisions. But there also, Your Lordships have sounded a caveat that where the dominant  
9 legislature, that is, the legislature in whose list the subject is; when the dominant legislature  
10 legislates, and even if it conflicts with the incidental encroachment by the Union, then the law  
11 made by the dominant legislature will prevail.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

14

15 **DINESH DWIVEDI:** That is what Justice Ruma Pal said in *ITC* and that has been followed.  
16 I'll give Your Lordship the reference of that judgment in **(2018), 4 SCC 743** paragraph 39 to  
17 43.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Page?

20

21 **DINESH DWIVEDI:** I'll give the reference page number. Your Lordships have time and  
22 again decried this fact that we must not adopt an attitude which whittles down the State's  
23 power. That's the word used right from perhaps 1993, nine Judges Constitution Bench. That  
24 has been accepted right throughout up till now. That word whittling down the State's power is  
25 'anti-federal' has been accepted. And this would be a classic case of whittling down the State's  
26 power under Entry 52, which is Parliament's declaration. That means Parliament, by law, can  
27 take away the power of the State to regulate some industry which is within its own exclusive  
28 sphere. My Lord, that decision is Volume V(c), PDF page 1.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's see that, *Jayant Verma*.

31

32 **DINESH DWIVEDI:** Paragraph 39 to 43. Paragraph 39, which is PDF page 38. PDF page  
33 39. It's my immaturity in this field perhaps exposes itself.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Doesn't matter. Few more hearings like this  
36 and you'll be absolutely on track. We must appreciate that you're making the effort that's really  
37 to be appreciated, honestly.

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**DINESH DWIVEDI:** I'm grateful, My Lord, but my problem is which is kind of a lurking suspicion, what happens post November would we continue like this or not? That's the issue.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Once it becomes a part of your life, it becomes a part of your life. Imagine when we did 370, with the number of volumes and the five judges, it would have taken thrice as much of time to resolve the Article 370 case, if we didn't have our computers. Five judges, here nine judges, nine court masters having to hand over individual volumes, multiple volumes, every time something is cited, one really shudders about how this was done. I mean, maybe earlier time

**DINESH DWIVEDI:** So far as the employment situation in the country is concerned, this would be anti-employment.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** No, the court masters are all gainfully employed. They're doing something else.

**DINESH DWIVEDI:** Anyway, coming back to this, My Lord, paragraph 39.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes

**DINESH DWIVEDI:** Shri Bhushan then relied upon a concurring judgment of Ranganathan, J. in *Federation of Hotels and Restaurants Association of India vs Union of India*. In paragraph 74, the learned Judge, while upholding the Hotel Receipts Tax Act, 1980 held that, in pith and substance, it was referable to Entry 82, List I, being, in substance, a tax on income. In particular, Shri Bhushan relied upon the statement of the law that since Parliament had exclusive power, under Article 246(1) and (3) of the Constitution, to make laws with respect to any of the matters enumerated in List I, if an Act of Parliament is squarely covered by an entry in the Union List, no restriction can be read into the power of Parliament to make laws in regard thereto. This was made in the context of a taxation entry, which as the aforesaid paragraph 74 itself states, refers to the Constitutional scheme which neatly divides the subject matters of tax between the Union and the States, so that there can be said to be no overlapping. There is no discussion in this paragraph of Parliamentary paramountcy in the context of incidental trenching and unoccupied field. This judgment, therefore, does not take the matter very much further. Insofar as Article 246 is concerned, we have already seen how the said Article refers to federal supremacy insofar as the whittling down of a State List entry is concerned, when compared with a Union List entry. Once the

1 spheres of both the entries have been delineated, the doctrine of pith and substance comes in  
2 to test whether a particular legislation is referable, as a whole, to an entry in List I or to the  
3 competing entry in List II. Once it is found that the legislation as a whole is referable to an  
4 entry in List I, but it incidentally encroaches upon an entry in List II, there is no reason for the  
5 doctrine of unoccupied field not to apply to federal legislation. The expression "with respect  
6 to" appears in all the sub-articles of Article 246, which expression, so far as Clauses (1) to (3)  
7 are concerned, imports the twin doctrines of incidental trenching and unoccupied field, which  
8 applies, therefore, to legislation made under Clauses (1) to (3) of Article 246, thus making it  
9 clear that incidental encroachment by Parliament cannot be tolerated when the exclusive field  
10 allotted to the State legislature is not occupied. The paramountcy principle contained in Article  
11 246, as we have seen, is only taken as a last resort after harmonious construction fails, and,  
12 that too, qua entries in competing lists. Once legislation is referable to one list or the other,  
13 the doctrine of incidental trenching and unoccupied field would apply equally to both  
14 Parliamentary and State legislations. In the very first judgment of the Federal Court, **CP &**  
15 **Berar Sales of Motor Spirit & Lubricants Taxation Act, 1938** in Re AIR at page 31,  
16 Jayakar, J. set out principles that were evolved on a reading of the British North America Act  
17 by the Privy Council, which would prove to be a useful guide to the construction of Section 100  
18 of the Government of India Act, 1935. Your Lordship may leave that for a moment, these are  
19 principles which Your Lordships may look into it but last clause which have been perhaps  
20 identified for... Even where there has been an endeavour to give pre-eminence to the Central  
21 Legislature in cases of a conflict of powers, it is obvious that, in some cases where this apparent  
22 conflict exists, the Legislature could not have intended that powers exclusively assigned to the  
23 Provincial Legislature should be absorbed in those given to the Central Legislature. Kindly  
24 keep that in mind. Then, My Lord, they refer to paragraph 42, the federal structure under the  
25 constitutional scheme can also work to nullify an incidental encroachment made by the  
26 parliamentary legislation on a subject of a State legislation where the dominant legislation is  
27 the State legislation. An attempt to keep the aforesaid constitutional balance intact and give a  
28 limited operation to the doctrine of federal supremacy can be discerned in the concurring  
29 judgment of Ruma Pal, J. in **ITC Ltd. v. Agricultural Produce Market Committee.**  
30 This is a Constitution Bench, My Lord, wherein, after quoting the observations of this Court  
31 in **S.R. Bommai**, the learned Judge had gone to observe as follows, "The fact that under the  
32 scheme of our Constitution, greater power is conferred upon the Centre vis-à-vis the States  
33 does not mean that States are mere appendages of the Centre." My Lord, may I pause here My  
34 Lord, I recall what Your Lordship had observed in the Delhi matter, My Lord, "States are not  
35 satellites and appendages of the Centre. They have their own unique sphere, defined by the  
36 Constitution." "Within the sphere allotted to them, States are supreme. The Centre cannot  
37 tamper with their powers. More particularly, the courts should not adopt an approach, an

1 interpretation, which has the effect of or tends to have the effect of whittling down the powers  
2 reserved to the States." Now, the next paragraph is equally important, My Lord.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

5

6 **DINESH DWIVEDI:** Although Parliament cannot legislate on any of the entries in the State  
7 List, it may do so incidentally while essentially legislating within the entries under the Union  
8 List. Conversely, the State Legislatures may encroach on the Union List, when such an  
9 encroachment is merely ancillary to an exercise of power intrinsically under the State List. The  
10 fact of encroachment does not affect the vires of the law even as regards the area of  
11 encroachment. This principle commonly known as the doctrine of pith and substance, does  
12 not amount to an extension of the legislative fields. Therefore, such incidental encroachment  
13 in either event does not deprive the State Legislature in the first case or Parliament in the  
14 second, of their exclusive powers under the entry so encroached upon. In the event the  
15 incidental encroachment conflicts with legislation actually enacted by the dominant power,  
16 the dominant legislation will prevail. Otherwise, the entire concept would be anti-federal.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. What else?

19

20 **DINESH DWIVEDI:** Now, what I was submitting here is and I'll run through it very fast. I  
21 had already placed large portions of my written submission, but so far as it is based on the  
22 legal history in the legal sense Lordships can look into it. My Lord, I would not read the entire  
23 thing because it would be just repetition of my... page 16 to 22 and I have referred those  
24 principles which I have evolved with case laws. And this case law, which is specified point wise  
25 buttress is what I'm arguing. But then eventually, what I would submit with respect is the last  
26 of these, page 22, the last paragraph My Lord, "Therefore, any declaration... My Lords have got  
27 it?

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

30

31 **DINESH DWIVEDI:** Therefore, any declaration under Entry 52, List I, only draws  
32 jurisdiction from Entry 24, List II, and cannot affect State Legislature's power under any entry  
33 other than Entry 24, List II. This is settled position by various Constitution Benches of this  
34 Court, Entry 24 is a general entry while special entry are excluded from it. This is also settled  
35 by the above judgments, particularly the following:

36 62 is a very clear-cut case in this regard because it pertains to, as I had shown on Entry 25, List  
37 II, "gas and gas works". IDR took over that. He said, you can't do that and they struck down.

1 Likewise, My Lord **(1980), 4 SCC 136**. This is a case ***Ishwari Khetan*** where issue was  
2 acquisition of a company read into Entry 43, List III. They said, "Entry 52 cannot take over the  
3 power from Entry 42, List III." Then **(1981), 4 SCC 391**, this is ***Southern Pharma***, where  
4 again medicinal and toilet preparations were held to be within intoxicating liquor as defined  
5 in ***Balsara***. Medicinal and toilet preparations containing alcohol, they were held to be within  
6 intoxicating liquor. Then My Lord, **(1996), 3 SCC 709** is extremely critical. It considers this  
7 argument in detail and then holds that Entry 8 cannot be taken over under Entry 52. Now, of  
8 course, that case was a potable liquor. But then what applies to potable liquor will equally  
9 apply to a non-potable liquor if intoxicating liquor includes industrial alcohol. So, this is direct  
10 authority which will help our cause. And last of all, without wasting Your Lordship's time, I  
11 would pray kindly allow me to place this judgment, **(2002), 9 SSC 2...**

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Can we also see 96 for a moment. I mean, I  
14 think since you said it's very.

15

16 **DINESH DWIVEDI:** Would your Lordships like to see?

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just for two minutes. Let's have a look at it.

19

20 **DINESH DWIVEDI:** Volume V, PDF page 2036 and paras are 25 to 38.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Dwivedi, why are you going to your bound  
23 volume when it comes to the cases. You are going that far on your readings.

24

25 **DINESH DWIVEDI:** There's a slight kink in the mind that we underline it while reading.  
26 So, when something comes without underlining, I feel absolutely lost.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We underline all the time over here when you  
29 are reading, because when you are dictating the judgment...

30

31 **DINESH DWIVEDI:** I understand what your Lordship is saying.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You'll be able to underline as well. I'm sure  
34 your junior will tell you that little trick.

35

36 **DINESH DWIVEDI:** No, I have, My Lord, I have all...

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But even without the stylus, you can underline.  
2 2036 Volume V is it? That is *McDowell*.

3

4 **DINESH DWIVEDI:** *McDowell*. This is the case in relation to potable alcohol.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Para?

7

8 **DINESH DWIVEDI:** 25 to 38. Para 25, PDF page is 2054. 25 to 38. This would also greatly  
9 answer Justice Nagarathna's problem that... this will answer. Entries aforementioned disclose  
10 the following features. They have referred to those entries, Entry 33, 52. Your Lordships will  
11 see in the earlier paragraph. Entry 8 paragraph 23. We may now notice the relevant entries in  
12 our Constitution. Entry 6, 8, 24, 51 in List II in the Seventh Schedule to the Constitution read  
13 thus. Your Lordships have already seen, so I will not waste much of time on that. Entry 33 in  
14 List III was substituted by Constitution Third Amendment Act, 1954. The background to this  
15 entry is explained by this Court in *Tika Ramji vs State of U.P.* Entry 33 of List III reads  
16 trade and commerce in and production, supply and distribution of (a) products of any industry  
17 where the control of such industry by the Union is declared by Parliament by law to be  
18 expedient in the public interest and imported goods of the same kind as such products; (b)  
19 food stuff, including edible oil; (c) cattle fodder; (d) raw cotton, that we are not concerned with  
20 that. But food stuff, Your Lordship may keep in mind, because I'll refer to that later on. The  
21 entries aforementioned disclose the following features. The power to make a law with respect  
22 to industries lies with the States, Entry 24, List II, but the said entry is made expressly subject  
23 to the provisions of Entry 7 and 52 in List I. It means that if Parliament declares by law that it  
24 is expedient, in public interest to take over the control of a particular industry or industries.  
25 Such industry or industries get transplanted to List I. In other words, the industries in respect  
26 to which Parliament makes a declaration contemplated by Entry 52 in List I, the States are  
27 denuded of the power to make any law with respect to them under Entry 24 List II. Parliament  
28 has indeed made the declaration contemplated in Entry 52 in List I. In Section 2 of the IDR  
29 Act, which reads the declaration as to the expediency of control by the Union, it is hereby  
30 declared that it is expedient in the public interest that the Union should take under its control  
31 the industries specified in the First Schedule. By an amendment affected in '56, First Schedule  
32 was amended. The Amendment Act *inter alia* introduced Entry 26 in the scheme. It reads  
33 fermentation industry, alcohol and other products of the fermentation industry. The  
34 contention of the learned Counsel for the Petitioners is based upon these provisions. The  
35 submission is that manufacture and production of intoxicating liquor is an industrial activity  
36 falling within Item 26 of the First Schedule to the IDR Act. The IDR Act provides for licensing  
37 of industries mentioned in the First Schedule to the Act besides providing extensive control

1 and regulation of such industries and their products. The grant, the renewal and the refusal to  
2 grant or renew the license is thus the exclusive province of the Centre. The State has no say in  
3 the matter. The State Legislature is incompetent to prohibit manufacture of intoxicating  
4 liquors. But this argument, in our opinion, ignores the existence and the ambit of Entry 8, List  
5 II. Entry 8 expressly speaks of production, manufacture, possession, transport, purchase and  
6 sale of intoxicating liquors. It means that the power to make a law with respect to the said  
7 matters rests with the State Legislature. What is significant is that the entry speaks expressly  
8 of production and manufacture of intoxicating liquors as well. This would mean that the  
9 industries producing and manufacturing intoxicating liquors fall within the purview of Entry  
10 8. May I pause here? Your Lordships must keep this in mind, that this judgment is under the  
11 shadows of **Synthetics** too. It said that you don't have power in respect of industrial alcohol.  
12 You can only regulate potable alcohol. So it is under the shadow of that judgment that they are  
13 referring to. Applying the well-known rule of interpretation applicable to such situations  
14 (special excludes the general), we must hold that the industries engaged in production and  
15 manufacture of intoxicating liquors do not fall within Entry 24, but do fall within Entry 8. This  
16 was the position at the commencement of the Constitution, and this is the position today as  
17 well.

18

19 Once this is so, the making of a declaration by Parliament as contemplated by Entry 52 of List  
20 I does not have the effect of transferring or transplanting as it may be called, of the industries  
21 engaged in production and manufacture of intoxicating liquors from the State List to Union  
22 List. As a matter of fact, Parliament cannot take over the control of industries engaged in the  
23 production and manufacture of intoxicating liquors by making a declaration under Entry 52  
24 of List I. Since the State Entry governs only Entry 24 List II, but not Entry 8 List II. Faced with  
25 the above position learned Counsel for the Petitioners resorted to more than one argument to  
26 get over it. Firstly, it was submitted that the Entries 24 and 8 should be read harmoniously  
27 and that such harmonious reading should mean that the industries engaged in production and  
28 manufacture of intoxicating liquors would fall within Entry 24 because Entry 24 deals with  
29 industries as such, while Entry 8, according to such reading, would be confined to matters  
30 other than production and manufacture of intoxicating liquors. It is not possible to agree with  
31 the submission which runs counter to the express language of Entry 8. It requires us to delete  
32 the words "production and manufacture" from Entry 8 which is not open to us. We cannot re-  
33 write the entry. Another limb of this argument was that only those industries manufacturing  
34 intoxicating liquors which are not within the purview of the IDR. Act will fall under Entry 8.

35

36 Now kindly see (d). Reading the definition of "industrial undertaking" in clause (d) and the  
37 definition of "factory" in clause (c) of Section 3 of the IDR. Acts it is submitted that two types

1 of industries are not covered by the IDR Act viz. those where manufacturing process is carried  
2 on (i) with the aid of power but with less than 50 workers and (ii) without the aid of power but  
3 with less than 100 workers. The submission is that these industries which are not within the  
4 purview of the IDR. Act would remain within the purview of Entry 8 while the other industries  
5 would be under the control of the Union. This argument is equally unacceptable. This  
6 argument is premised upon the assumption that Entry 52 in List I over-rides Entry 8 in List II  
7 as well, which assumption, as we shall presently point out is without a basis and unacceptable,  
8 Moreover, industries which are exempted from the IDR. Act are exempted because of the very  
9 provisions of the IDR Act- and not by virtue of Entry 8 in List-II. The ambit and scope of a  
10 constitutional entry cannot be determined with reference to a Parliamentary enactment. The  
11 definition of "factory" in Clause (c) of Section 3 of the IDR Act may be changed tomorrow. The  
12 meaning and scope of Entry 8 in List II does not and cannot vary with the change in the  
13 provisions of the IDR Act. This submission too is, therefore, unacceptable. It was then  
14 contended that Entry 52 in List I governs not only Entry 24 in List II but all other entries in  
15 List II including Entry 8 insofar as it deals with industries. We cannot accept this submission  
16 either. A perusal of List II would show that whenever a particular entry was intended to be  
17 made subject to an entry in List I or List III, it has been so stated specifically. Not one but  
18 several entries in List II are made subject to one or the other entry in List I or List III. See  
19 Entries 2, 3, 17, 22, 23, 26, 27 and 33. Certain other entries use a different phraseology to  
20 demarcate the spheres of the Union and the States. For example, Entry 32, incorporation,  
21 regulation and winding up of corporations other than those... Likewise, My Lord, Entry 51,  
22 List II. All this shows that whenever a particular entry in List II is sought to be made subject  
23 to another entry in List I or List II or where a demarcation is sought to be made between the  
24 Union and the States within a particular head of legislation, the founding fathers have taken  
25 care to say so expressly. We cannot, therefore, accept the argument of the learned Counsel for  
26 the Petitioners that Entry 52 in List I impinges upon, over- rides and governs Entry 8 in List  
27 II as well. It does not. We must make it clear that Entry 8 speaks of only intoxicating liquors  
28 and does not, therefore, apply to or take in liquors which do not fall within the expression  
29 "intoxicating liquors". The power to make a law with respect to production and manufacture  
30 of intoxicating liquors is that of the States alone. The prohibition of production and  
31 manufacture of intoxicating liquors too squarely falls within the four corners of Entry 8 read  
32 with Entry 6 of List II.' This was the decision of the Constitution Bench in ***Khoday***  
33 ***Distilleries***. Article 47, then they refer to... then, Your Lordship, they referred to...

34

35 **JUSTICE J. B. PARDIWALA:** 37 straight away.

36

37 **DINESH DWIVEDI:** 37. Yes, My Lord.

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**JUSTICE J. B. PARDIWALA:** That will cover *Calcutta Gas Company*.

**DINESH DWIVEDI:** My Lord, I am grateful. Again we may in this connection... and this is the first case where this principle was evolved...

**JUSTICE J. B. PARDIWALA:** Correct.

**DINESH DWIVEDI:** We may in this connection refer to Constitution based decision of this Court in *Calcutta Gas vs State of West Bengal*, which furnishes a complete answer to the Petitioner's contention on this Court. The West Bengal legislature passed an act, West Bengal Oriental Gas Company Act, 1960, with a view to take over their management and control of the undertaking of the Oriental Gas Company. Notifications were issued under the Act taking over the company, which was questioned by way of a writ petition in Calcutta High Court. The writ petition was dismissed, whereupon the matter was brought to this Court. The main contention on behalf of the Appellant was that the West Bengal Legislature has no legislative competence to enact the said Act. It was submitted that by virtue of Industries Development Regulation Act 1951, which contains a declaration in terms of Entry 52 in List I and the Schedule thereof included fuel gas, coal gas, natural gas and the like under Item 2, 3. The power to make law with respect to those industries engaged in the manufacturer of gas has been vested in the Union, and that State has been totally denuded of that power. It was contended that Entry 24 in List II takes in all industries in that Entry 25, which reads gas and gas works, should be confined to matters other than those covered by Entry 24. Inasmuch as the impugned enactment was a law relating to gas industry, it was submitted, the Act made by the State Legislature is incompetent and void. Reliance was also placed upon Article 246 of the Constitution. All these contentions were negatived. After referring to the provisions of the IDR Act and the impugned West Bengal Act, the relevant entries in the Seventh Schedule to the Constitution, including Entries 7 and 52 in List I and Entries 24 to 27 in List II, and the principles governing the interpretation of the entries in the Seventh Schedule, the Court indicated that the matter was susceptible of three possible constructions: (1) Entry 24 of List II, which provides for industries, generally, covers the industrial aspect of gas and gas works leaving Entry 25 to provide for other aspects of gas and gas works; (2) Entry 24 provides generally for industries, and Entry 25 carves out of it the specific industry of gas and gas works, with the result that the industry of gas and gas works, is excluded from Entry 24; and (3) the industry of gas and gas-works falls under both the entries, that is, there is a real overlapping of the said entries. The Court opined that having regard to the well-settled principles relating to interpretation of these entries, that interpretation which reconciles and harmonises the

1 contending entries should be adopted and held. And Entry 24 in List II in its widest amplitude  
2 takes in all industries, including that of gas and gas works. So too, entry 25 of the said List  
3 comprehends gas industry. There is therefore an apparent conflict between the two entries,  
4 and they overlap each other. In such a contingency, the Doctrine of Harmonious Construction  
5 must be invoked. If industry in Entry 24 is interpreted to include gas and gas works, Entry 25  
6 may become redundant. And in the context of succeeding increase, namely Entry 26 dealing  
7 with trade and commerce and Entry 27 dealing with production, supply and distribution of  
8 goods, it will be deprived of all its content and reduce to useless lumber. On the other hand,  
9 the alternative contention enables Entries 24 and 25 to operate fully in their respective fields.  
10 While Entry 24 covers a wide field that is the field of the entire industry in the State, Entry 25  
11 dealing with gas and gas works can be confined to a specific entry that is the gas industry. It is  
12 therefore clear, that the scheme of the harmonious construction suggested on behalf of the  
13 State gives full and effective scope of operation for both the entries in their respective fields.  
14 While that suggested by the learned Counsel for the Appellant deprives Entry 25 of all its  
15 content and makes it redundant. The former interpretation must therefore be accepted in  
16 preference to the latter.

17

18 In this view, gas and gas works are within the exclusive field allotted to the State. On this  
19 interpretation the argument of the learned Attorney General that under 246 of the  
20 Constitution, the legislative power of State is subject to that of Parliament ceases to have any  
21 force, for the gas industry is outside the legislative field of Parliament and is within the  
22 exclusive field of the Legislature of the State. We, therefore, hold that the impugned Act was  
23 within the legislative competence of the Bengal Legislature and was, therefore, validly made.  
24 The court proceeded to hold further. Your Lordships, it's a repetition, the rest, My Lord. The  
25 ratio of the above decision fully supports what we have said hereinbefore. In fact, Entry 8 is  
26 more specific than Entry 25 in List II. While Entry 25 merely speaks of gas and gas-works,  
27 Entry 8 expressly speaks of production and manufacture besides possession, transport,  
28 purchase and sale of intoxicating liquors. The ratio of the *Calcutta Gas* case fully supports  
29 our conclusion that the industries engaged in the production and manufacture of intoxicating  
30 liquors are outside the purview of Entry 24 and fall squarely within Entry 8 in List II, and that  
31 Entry 52 in List I does not override or impinge upon Entry 8 in List II. According to this  
32 decision, the expression "industry" in both Entry 24 and Entry 52 in List I must carry the same  
33 meaning, which means that if a particular industry is not within the purview of Entry 24 in  
34 List II, it would not equally be within the purview of Entry 52, List I. The decision also supports  
35 our conclusion. Article 246 cannot be invoked to deprive the State Legislature of the powers  
36 inhering in them by virtue of entries in List II. Once enactment in pith and substance is  
37 relatable to Entry 8 in List II or for that matter any other entry in List II, Article 246 cannot

1 be brought in to yet hold that State Legislature is not competent. Now, what is important here  
2 again is that all these decisions are based on what we call the word "industry". My Lord, one  
3 word industry in Entry 24 as the judgment says has the same meaning as in Entry 52. But what  
4 is the scope of this word industry and that is where *Tika Ramji* is the *locus classicus*.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

7

8 **DINESH DWIVEDI:** Which is (1956) SCR 393 PDF page 80 and this *Tika Ramji's* case  
9 still holds the field.

10

11 **JUSTICE J. B. PARDIWALA:** Mr. Dwivedi we discussed *Calcutta Gas Company*, right?  
12 That is Volume V. Page PDF 2149. Just come to that judgment para 9, where *Tika Ramji* is  
13 elaborately discussed.

14

15 **DINESH DWIVEDI:** Yes

16

17 **JUSTICE J. B. PARDIWALA:** That will give a fair idea.

18

19 **DINESH DWIVEDI:** Your Lordships are right, My Lord. *Tika Ramji* was considered by  
20 *Calcutta Gas* and that is for the word industry.

21

22 **JUSTICE J. B. PARDIWALA:** Para 9 at PDF 2158.

23

24 **DINESH DWIVEDI:** I'm grateful

25

26 **JUSTICE J. B. PARDIWALA:** About 15 lines. .

27

28 **DINESH DWIVEDI:** 2158 correct in the para 9.

29

30 **JUSTICE J. B. PARDIWALA:** In a descending order.

31

32 **DINESH DWIVEDI:** First question that occurs, if I may please, with Your Lordship's  
33 permission?

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35 **JUSTICE J. B. PARDIWALA:** Yes.

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37 **DINESH DWIVEDI:** The first question that occurs...

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**JUSTICE HRISHIKESH ROY:** Give us the, which page you are reading?

**DINESH DWIVEDI:** 2158 PDF page, Volume 5 and we are at 2150. PDF page 2158. That's the whole confusion. The first question... If I may place?

**JUSTICE J. B. PARDIWALA:** Yes.

**DINESH DWIVEDI:** The first question that occurs to one's mind is what is the meaning of the expression "industry" in Entry 24 of List II? Is it different from the meaning of that expression in Entry 52 List II? Whatever maybe it's connotation, it must bear the same meaning in both the entries for the two entries are so interconnected that conflicting or different meanings given to them would snap the connection. Entry 24 is subject to the provisions of Entry 7 and 52 List I. Entry 7 of List I provides for industries declared by Parliament, by law to be necessary for the purposes of defence or for the prosecution of war and Entry 52 for industries the control of which by the Union is declared by Parliament, by law, to be expedient in the public interest. Therefore, ordinarily, industry is in the field of State legislation. But if Parliament by law makes a relevant declaration or declarations, the industry or industries so declared would be taken off its field and passed on to Parliament. In the premises the expression "industry" in all the entries must be given the same meaning. Now, what is the meaning of the word "industry"? In *Tika Ramji State of UP*, the expression "industry" is defined to mean 'the process of manufacture or production' and does not include the raw materials used in the industry or the distribution of the products of the industry. It was contented that the word industry was a word of wide import and should be construed as including not only the process of manufacture or production, but also activities and antecedent thereto such as acquisition of raw materials and subsequent thereto such as disposal of the finished products of that industry. But that contention was not accepted. It is not necessary in this case to attempt to define the expression "industry" precisely or to state exhaustively all its ingredients. Assuming that the expression means only production or manufacture, would it take in its sweep production or manufacture, of gas? Entry 24 in List II in its widest amplitude takes in all industries, including that of gas and gas-works. So too, Entry 25 of the said List comprehends gas industry. There is therefore, an apparent conflict between the two entries and they overlap each other. In such a contingency doctrine of harmonious construction must be invoked. Both the learned Counsels accept the principle, while the learned Attorney General seeks to harmonise both the entries by giving the widest meaning to the word industry. So as to include the industrial aspect of gas and gas works and leaving the other aspects to be covered by... My Lord, the rest My Lord is covered under *McDowell*, Your Lordships have already

1 seen that. But the critical part in My Lord, *Tika Ramji's* consideration is not entirely here  
2 and therefore, what I want to do is not to cut short time instead of reading all those decisions,  
3 there are at least 5-7 Constitution benches in that sphere, so it will be wasting time. There's  
4 one judgment of Your Lordships which deals with all of them, My Lord and synopsis all those  
5 cases right from *Tika Ramji* onwards till *ITC* judgement. And this is still holding the field  
6 there's no dispute with regard to this.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Were you referring to this? I was reading the  
9 original *Tika Ramji* 'industry in the wide sense of the term would be capable of comprising  
10 three different aspects'. Were you reading that part? I'm on *Tika Ramji*.

11

12 **DINESH DWIVEDI:** My, Lord that was very well dealt with in *Tika Ramji*, My Lord all  
13 the matters, all the aspects of industry they noted.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You see paragraph 24 at Volume V, page 96,  
16 Volume V *Tika Ramji* begins at page 80 yes, and if you see paragraph 24. Actually, that's a  
17 crucial part of *Tika Ramji*. See there, the question was whether the process of acquiring  
18 sugar cane, which was a raw material for the manufacture of sugar, whether that will be  
19 covered within the ambit of industry.

20

21 **DINESH DWIVEDI:** That they said would fall as 'goods' under Entry 26.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Para 24 is important, actually, at page 96, PDF  
24 page 96.

25

26 **DINESH DWIVEDI:** Yes. The passage begins as, "It is clear, therefore..." Have Your  
27 Lordships got it?

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

30

31 **DINESH DWIVEDI:** "It is clear, therefore, that all acts, all the acts and the notifications  
32 issued thereunder by the Centre, in regard to sugar and sugar cane, were enacted in excise of  
33 the concurrent jurisdiction. The exercise of such concurrent jurisdiction would not deprive the  
34 Provincial Legislature of similar powers which they had under the Provincial Legislative List,  
35 and there would therefore be no question of legislative competence..."

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Incompetence...

1

2 **DINESH DWIVEDI:** I'm sorry... "incompetence qua the provincial legislature in regard to  
3 similar pieces of legislation enacted by the latter. The Provincial Legislature as well as the  
4 Central Legislature would be competent to enact such pieces of legislation and no question of  
5 legislative competence would arise. It also follows as a necessary corollary that even though  
6 sugar industry was a controlled industry, none of these Acts enacted by the Centre was in  
7 exercise of its jurisdiction under Entry 52, List I."

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, actually what follows is very important.  
10 Industry in the wide sense...

11

12 **DINESH DWIVEDI:** In the wide sense. "Industry, in the wide sense of the term, would be  
13 capable of comprising three different aspects. 1) Raw materials which are an integral part of  
14 the industrial process. 2) The process of manufacture or production; and 3) the distribution of  
15 the products of the industry. The raw material would be goods, which would be comprised in  
16 Entry 27 of List II. The process of manufacture or production would be comprised in Entry 24  
17 of List II, except where the industry was a controlled industry when it would fall under Entry  
18 52, List I. And the products of the industry would also be comprised in Entry 27 of List II as  
19 'goods', except where they were the products of the controlled industry when they would fall  
20 under Entry 33, List III. This being the position, it cannot be said that the legislation which  
21 was enacted by the Centre in regard to sugar, and sugar cane would fall within Entry 52 of List  
22 I. Before sugar industry became a controlled industry, both sugar and sugar cane fell within  
23 Entry 27 of List II. But after declaration was made by Parliament in 1951 by Act 65 of '51, sugar  
24 industry became a controlled industry and the product of that industry which is sugar, was  
25 comprised in Entry 33 of List III, taking it out the Entry 27 of List II. Even so, the Centre as  
26 well as the State Legislatures had concurrent jurisdiction in regard to the same. In no event  
27 could the legislation in regard to the sugar and sugar cane, be thus be included in the Entry 52  
28 of List I. The pith and substance argument also cannot be imported here for the simple reason  
29 that when both the Centre as well as the State Legislatures were operating in the concurrent  
30 field, there was no question of any trespass on the exclusive jurisdiction vested in the Centre  
31 under Entry 52 of List I." The only question that survived being whether putting both the  
32 pieces of legislation enacted and the State Legislature together, there was any repugnancy in  
33 issue, and here they found, My Lord, there was no repugnancy because there was no Central  
34 Law. The 'conflict has to be in fact', My Lord, this is the judgment which for the first time said  
35 there has to be a 'conflict in fact', and therefore you've got to legislate under the IDR Act to  
36 control this. But then the interesting part of it is My Lord, this which Your Lordships will bear

1 in mind. Kindly come to Entry 33. There is one interesting factor which Your Lordships may  
2 take into consideration here again which...

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Difference in *Tika Ramji* was, *Tika Ramji*  
5 was concerned with the control over the antecedent raw material. Over here we are not dealing  
6 with the control over the antecedent raw material. This is the heart of the industry.

7

8 **DINESH DWIVEDI:** But the word 'industry' was considered and the scope of word industry  
9 was found. No, but important part is, 'why'. Question was that was *Tika Ramji* is a case where  
10 on the one hand there was...

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Actually but for Entry 8 of List II, industrial  
13 alcohol would fall within the ambit of industry in Entry 52 of List I.

14

15 **DINESH DWIVEDI:** How would it fall, My Lord? This is a question I...

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But for Entry 8. It's an industry.

18

19 **DINESH DWIVEDI:** I'll answer that, My Lord. Then we would at the same time be saying  
20 that intoxicating liquor would be only potable liquor and industry pertaining to potable liquor  
21 would exclusively go to Entry 8.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, that's not... I'm saying that it is because of  
24 Entry 8 that it doesn't go into Entry 24 and doesn't go into Entry 52, but if Entry 8 was not  
25 there...

26

27 **DINESH DWIVEDI:** Then it could have been.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It would have been an industry then, within  
30 Entry 52 of List 1.

31

32 **DINESH DWIVEDI:** Yes, no doubt about it. Important thing is *Tika Ramji*...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, what is the ambit of the expression?

35

36 **DINESH DWIVEDI:** I'll answer that.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Fermentation and...

2

3 **DINESH DWIVEDI:** Your Lordship has? My Lord kindly again go back to... There are two  
4 answers to what Your Lordship's query is.

5

6 **JUSTICE B. V. NAGARATHNA:** What would be the difference between intoxicating liquor  
7 and alcohol?

8

9 **DINESH DWIVEDI:** Every intoxicating liquor, as per the local act Your Lordship has seen  
10 meant all liquids containing alcohol. So, every alcohol will have to be there.

11

12 **JUSTICE B. V. NAGARATHNA:** Because under the Entry 26 of the Schedule...

13

14 **DINESH DWIVEDI:** That is the changed entry My Lord.

15

16 **JUSTICE B. V. NAGARATHNA:** One is...

17

18 **DINESH DWIVEDI:** It's a modified entry. This has been modified in 2016 where, because  
19 of the *Bihar Distillery* they carved out an exception against potable alcohol which was not  
20 there earlier. When these cases were considered *McDowell, Tika Ramji* the position was  
21 entirely different. Only fermentation in the industry was specified with alcohol, the word  
22 'alcohol'.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the Entry before 2016?

25

26 **DHRUV AGGARWAL:** The only thing within the brackets were omitted. It was fermented  
27 [UNCLEAR] one into the products. Alcohol and other products of [UNCLEAR].

28

29 **JUSTICE B. V. NAGARATHNA:** Fermentation.

30

31 **DHRUV AGGARWAL:** Yes. So other than potable alcohol was added by the 2016. That  
32 bracket portion was added.

33

34 **JUSTICE B. V. NAGARATHNA:** So, fermentation industries would take an intoxicating  
35 liquor?

36

1 **DINESH DWIVEDI:** Normally, My Lords, fermentation industry that was interpretation  
2 given to it. But the whole question is, can you take it? That's the question. Can the Parliament  
3 take it? Now to answer, the Chief Justice's query. No one has challenged, there's no doubt  
4 about it. No one has challenged, the inclusion of fermentation industry. There's no doubt about  
5 it. But in *Calcutta Gas* no one had challenged it, yet the Court struck down that on the  
6 ground that we are deciding and deciphering the scope of legislative entry. So if the act of  
7 another two legislatures do not fall within that entry, then they have to go. The dominant  
8 legislature has to prevail likewise in *ITC*, again, the same thing was done. This objection was  
9 raised, that no one has challenged the IDR Act. But the whole question would be, that if the  
10 Parliament legislates...

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** If we accept your submission. I mean, not that  
13 we are saying that it's wrong we're just trying to explore it. That would mean that any industry  
14 that is specified in List II that would include gas work that would include intoxicating liquor,  
15 that will fall outside Entry 52 of List I.

16

17 **DINESH DWIVEDI:** 52 of List I. 54 is Mines and Minerals. Your Lordships has done the  
18 Mines and Minerals matter with Entry 54 ...occurs in...

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 52.

21

22 **DINESH DWIVEDI:** It would be outside that.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, but then why does Parliament cover...  
25 prior to 2016, Parliament covers the entirety of alcohol.

26

27 **DINESH DWIVEDI:** But the whole issue is whether that is correct or not? Because Your  
28 Lordships are defining the scope of the entry and Parliament is legislating on an entry which  
29 is not there in their field. So, how can... My Lord legislation without power is a void legislation,  
30 still born.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But you are appearing for whom?

33

34 **DINESH DWIVEDI:** The State of U.P.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** U.P.

37

1 **DINESH DWIVEDI:** My Lord we are the Petitioners actually sitting on the wrong side,  
2 actually. That is the problem.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But are you saying, therefore, that the  
5 legislation which is enacted by Parliament is void?

6

7 **DINESH DWIVEDI:** Yes. Otherwise we can't get the jurisdiction, My Lord. Kindly look at it  
8 this way. State's jurisdiction has been denied by **Synthetics** on these grounds, Entry 52.  
9 Now, if we do not challenge that, **Synthetics** cannot be overcome. If **Synthetics** overcome,  
10 then what are we, with due respects reconsidering? We are considering whether **Synthetics**  
11 when it relies upon Entry 52 to shut down State's jurisdiction in respect of intoxicating liquor,  
12 which includes industrial alcohol that is incorrect, and State's jurisdiction cannot be taken  
13 away. **Synthetics** took away because of Entry 52 and IDR. My Lord, I'll satisfy Your Lordships  
14 on this issue that I need not challenge if the question arises during consideration. What is the  
15 scope of the legislative entry and if there is any conflict, Your Lordships will have to resolve  
16 the conflict. And if, Your Lordships resolve the conflict in the manner I am advocating, My  
17 Lords, then the question would be clear that Centre had legislated absolutely illegally.  
18 Otherwise, Your Lordships would see even though State has jurisdiction under Entry 8 yet  
19 because of Parliamentary declaration or legislation, we are denied the power to legislate on  
20 our own field. My Lord, whatever is troubling Your Lordship that no one has challenged IDR,  
21 My Lord, was answered by **ITC**.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Legislated....

24

25 **DINESH DWIVEDI:** Exactly.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** On an industry which falls within the scope of  
28 Entry 8 of List II.

29

30 **DINESH DWIVEDI:** Exactly.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because alcohol...

33

34 **DINESH DWIVEDI:** My Lord, that is, assuming it falls. My Lord, industrial alcohol, if it is  
35 part of intoxicating, then what Your Lordship is saying is correct. But if it has, then what will  
36 be the consequence. And the aspect that is troubling Your Lordships here is that since no one  
37 has challenged IDR and it has been prevailing, then what can be done? My Lord that is

1 answered by *ITC*. We need not challenge it. When Lordships determine the scope of the  
2 entries, then the power of the State with respect to its own entry cannot be declined because  
3 Parliament has declared something. Otherwise, tomorrow Parliament will take over gas and  
4 gas works, then what happens?

5

6 **JUSTICE B. V. NAGARATHNA:** See because Article 246 (1), it begins with a *non obstante*  
7 clause. Notwithstanding anything contained in Clauses 2 and 3. Clause 2 is with regard to  
8 concurrent List. Clause 3 is with regard to State List. Notwithstanding anything contained in  
9 the Concurrent List and the State List, Parliament has exclusive power to do it with regard to  
10 Union List.

11

12 **DINESH DWIVEDI:** Now, let me explain it this way. Your Lordships saw in that case of, My  
13 Lord, *Jayant Verma*, the word 'notwithstanding' is a concept which only emerges when  
14 there is an irreconcilable conflict. First, the effort should be to reconcile the conflict if it  
15 appears now, Parliament may have legislative on 'a' entry or 'b' entry, but the fact is what we  
16 have to see is whether that legislation is within its field or not and likewise State legislation  
17 within its field or not. Now, when we find that there are two entries which are overlapping, for  
18 instance, industry, gas and gas works, they were overlapping, the Court found in *McDowell*  
19 as well as *Calcutta Gas*. Now, if they were overlapping, then Your Lordships have to evolve  
20 some principles of harmonious construction. My Lord, the *non-obstante* clause...

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The other harmonious way would be to say  
23 that, 'yes, the State does have the power over intoxicating liquor but once there is a declaration  
24 made by Parliament under Entry 52, then your power is denuded.'

25

26 **DINESH DWIVEDI:** Which means Entry 8 List II, even though it is not being made  
27 specifically subject to Entry 52, it becomes subject to like Entry 24. So, what are we saying is  
28 that we are reading word 'subject to' in Entry 8 which perhaps it is not open to read.

29

30 **JUSTICE B. V. NAGARATHNA:** Then what is the meaning to be given to the expression  
31 'notwithstanding anything contained' in Article 246(1)?

32

33 **DINESH DWIVEDI:** I'll answer that. 'Notwithstanding' means in case the conflict is  
34 irreconcilable, harmoniously, then, in that event, Parliamentary entry would prevail over the  
35 State entry. But the fact is, when Your Lordships can reconcile harmoniously, as Your  
36 Lordships have done in the case of *McDowell* and *Calcutta Gas*, then perhaps *non-*  
37 *obstante* clause would not operate.

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**JUSTICE B. V. NAGARATHNA:** That is the question.

**DINESH DWIVEDI:** No, but in every case...

**JUSTICE B. V. NAGARATHNA:** Whether we can narrow the scope of the expression 'industry' in Entry 52, List I.

**DINESH DWIVEDI:** Entry 24, List I...

**JUSTICE B. V. NAGARATHNA:** Entry 52, List I.

**DINESH DWIVEDI:** For that the answer was there in this *McDowell's* case. Entry 52 draws from Entry 24. Now what we have to see, what is the position in the State List with regard to word 'industry' in the State List. Now in the State List, 'industry' means what? That has been determined in *Calcutta Gas* as well as *McDowell*. It means only manufacture, it would not include Entry 26, 27 or any other entry that is not subject to it. For instance, *Calcutta Gas* Entry 25, that is also an industry, like Entry 8. Now **Calcutta Gas Union** took over the jurisdiction by specifying it as an idea... under the idea in the Schedule. Now, despite the fact they had specified in the idea the gas and gas works. Yet, the Court said, when we look into the entries that are there, what appears to be is that the word 'industry' in State List would exclude those entries which are independent of and are not subject to Entry 52. For instance, gas and gas works is not subject to, but if Parliament can still take it over, then what is the point in specifying 25, List II separately. It could have been there in the word 'industry'.

**JUSTICE B. V. NAGARATHNA:** So long it has not taken over by the Parliamentary law, it will remain with the State List, but once it comes under the IDR Act, what happens?

**DINESH DWIVEDI:** I think there's one thing which has been missed, My Lord. I would submit with due respect. So long it is not taken over, but what can be taken over is only what is there in industry, that is, Entry 24. It cannot take over something which is not there in Entry 24. Now our submission is with the support of *McDowell* and the other cases, that Entry 24 will not include Entry 8. That is what *McDowell* says, and it will not include Entry 25 that is what *Calcutta Gas* says. If word 'industry' does not include that, then you can't take it over. Parliament cannot take it over. Power of Parliament is not entirely absolutely wide and expansive. Parliament's power cannot run amok over the State list, except so far as word

1 'industry' in Entry 24 is concerned. So, it is 24 only, which is subject to deprivation on a  
2 declaration. No other entry.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What else now remains?

5

6 **DINESH DWIVEDI:** I really wanted to read this judgement which is, *ITC (2002), 9 SCC*  
7 **232**. This is Volume V, PDF page 1597. This would clarify all the queries that have fallen from  
8 Your Lordships and therefore I wanted to. If I may indicate the paragraphs, Para 10. I'll give  
9 the paragraphs which are relevant for my purpose, para. 10, 26 to 32, 40, 86 and this deals  
10 with the entire history with regard to the word 'industry'. Entry 52 as well as Entry 24.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This is in Volume 5, 1597?

13

14 **DINESH DWIVEDI:** Yes. So instead of reading all these decisions, My Lord this has the  
15 judgments, all the judgments, Constitution Bench judgment in the synopsis form. To give  
16 the gist of the dispute My Lord, kindly come to PDF page 1617. Now, in this case, the minority  
17 judgment holds the, My Lord, in favour of the Union that the incidental encroachment would  
18 take away the power of the State. In the proposed judgment... this is the minority judgment  
19 and Justice Sabharwal's judgment is the majority judgment. In the proposed judgment,  
20 Justice Pattanaik has held that the word industry in Entry...

21

22 **JUSTICE J. B. PARDIWALA:** Just tell us the para once again.

23

24 **DINESH DWIVEDI:** Para 10, PDF page 1617.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We are now referring to, Justice Sabharwal's  
27 judgement, right?

28

29 **DINESH DWIVEDI:** Justice Sabharwal's judgement. Chief Justice Sabharwal's in fact.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes

32

33 **DINESH DWIVEDI:** No, I'm sorry. He was not the Chief Justice at that time. Justice  
34 Bharucha was the Chief Justice. In the proposed judgment, Justice Pattanaik has held that the  
35 word 'industry' in Entry 52 of Union... and by the way this will answer the other question too  
36 completely. This will answer the other question too. Therefore, I chose this decision that will  
37 save time. In the proposed judgment, Justice Pattanaik has held the word 'industry' in Entry

1 52 of the Union List cannot be given restricted meaning so as to exclude from its purview the  
2 subject of legislation coming within Entry 27 or Entry 14 of List II and thus, the parliamentary  
3 legislation, namely, the Tobacco Board Act, 1975 is constitutionally valid and consequently,  
4 the State legislations entitling the Market Committee to levy fee for sale and purchase of raw  
5 tobacco within the market area will not be operative so far as the produce of tobacco is  
6 concerned and that the majority judgment in the *ITC* case is correctly decided. Your Lordship  
7 may omit the rest. Kindly come to paragraph 26. It is PDF page 1621. Before considering the  
8 aforementioned decisions, it would be appropriate to make it clear that in these matters it has to be  
9 kept in view that this Court is not examining a case where the field of legislation is in  
10 Concurrent List to which Article 246(2) applies. This Court is also not considering the case of  
11 an incidental trenching of field by one or the other legislature. The Court is concerned with the  
12 question of legislative competence. We are examining a case where what has been questioned  
13 is the legality of the legislation in respect of a field in the State List to which Article 246(3)  
14 applies. The validity and applicability of the State legislations in respect of a field of legislation  
15 of State List has come under a cloud on account of a legislation passed by the Parliament in  
16 respect of field of legislation under Entry 52 of the Union List, namely, the Tobacco Board Act,  
17 1975. It is on account of this legislation containing declaration as contemplated by Entry 52 of  
18 the Union List that doubts have arisen about the validity and applicability of State legislation  
19 about the sale of agricultural produce of tobacco in market areas and levy thereupon of market  
20 fee which aspect are on field of legislation on the State List, Entries 14, 27, 28 and 66. Entry  
21 24 of the State List is subject to Entries 7 and 52 of List I. We are not concerned in these matter  
22 with Entry 7. The question here is as to the effect of transfer of field of legislation under Entry  
23 24 of the State List to the Union List, Entry 52, on other fields in the State List, namely, fields  
24 of legislation under Entries 14, 27, 28 and 66 and what is fact can be transferred. That's the  
25 question we are concerned with in this case. Now they refer to *Baijnath Kadio*, Your  
26 Lordship may omit that. 28 also Your Lordships may omit that. Kindly come to 31. 30, My  
27 Lord. Relying upon *Ishwari Khetan's* case Mr. Shanti Bhushan contends that Entry 52 has  
28 been equated with Entry 54 of the Union List.

29

30 Both sides have relied upon the case of *Ishwari Khetan* . Let us examine that case. In  
31 *Ishwari Khetan's* case the contention urged was that the Parliament has made the  
32 Industrial (Development and Regulation) Act, 1951 (for short, 'the IDR Act') in Entry 52 List I  
33 declaring control of sugar industry and that industry goes out of Entry 24 of List II and,  
34 therefore, State Legislature is denuded of legislative powers in respect of sugar industry and  
35 impugned legislation was with respect to acquisition of sugar undertaking and sugar industry.  
36 The Attorney General and contended that the power to acquire property was derived from  
37 Entry 42 of List III. *Ishwari Khetan's* case involved the determination or scope of Entry 52

1 of List I and Entry 24 of List II only. The scope of these entries with respect to Entries 26 and  
2 27 of List II and Entry 33 of List III did not fall for consideration. Paragraphs 7, 8 and 11 of  
3 ***Ishwari Khetan*** the Constitution Bench repeatedly pointed out that a declaration in Entry  
4 52 of List I denudes State Legislature of the power to legislate under Entry 24, List II only.  
5 Kindly notice this, 'only'. It was noticed that the sugar was a declared industry. The question  
6 posed was that "is it, however, correct to say that once a declaration is made as envisaged by  
7 Entry 52 List I, that industry as a whole is taken out of Entry 24 of List II?" The answer given  
8 by the Constitutional Bench was that it is not correct to say that once a declaration is made in  
9 respect of an industry that industry as a whole is taken out of Entry 24 List II. It was said that  
10 the industry as a legislative head is found itself placed in Entry 24 of List II. The State  
11 Legislature can be denied legislative power under Entry 24 to the extent Parliament makes  
12 declaration under Entry 52 and by such declaration, Parliament acquired power to legislate  
13 only in respect of those industries in respect of which declaration is made and to that extent  
14 as manifested by legislation incorporating the declaration and not more. Your Lordships may  
15 recall, My Lord, that initially Your Lordships had posed this question that Entry 52 does not  
16 use the word 'to the extent'. The Bench further said that the legislative power of the State under  
17 Entry 24, List II is eroded only to the extent the control is assumed by the Union pursuant to  
18 the declaration and the State Legislature which is otherwise competent to deal with industry  
19 under Entry 24, List II can deal with that industry in exercise of other powers enabling it to  
20 legislate under different heads set out in List II and List III and this power cannot be denied  
21 to the State. The extent of parliamentary legislation was seen only to determine how much is  
22 taken out from Entry 24 List II and not for the purposes of laying down any principle that  
23 Parliamentary legislation has to be seen to determine the extent of control and the denudation  
24 of the power of the State Legislature to the extent the control is laid down by the Parliament.  
25 Further, it was held that despite the parliamentary legislation the State Legislature can deal  
26 with industry in exercise of other powers in different entries in List II and List III and that  
27 power cannot be denied to the State. In this case the Court was examining whether the law of  
28 acquisition of sugar undertaking was referable to Entry 24, List II or Entry 42, List III. It was  
29 concluded that the acquisition of the property was referable to Entry 42 List III. The scope of  
30 the industry did not fall for examination in ***Ishwari Khetan's*** case . There is no discussion  
31 on the interpretation of expression 'industry' and that probably is the reason why ***Tika***  
32 ***Ramji's*** case has not been referred to. The reliance on ***Baijnath Kadio's*** case in ***Ishwari***  
33 ***Khetan's*** case was to show the denudation of States' power being limited to the extent of  
34 control. While ***Baijnath Kadio's*** case dealt with Entry 23, List II, ***Ishwari Khetan's*** case  
35 dealt with Entry 24, List II. The subject matter of the other entries was not in issue in this  
36 decision. The structure in Entry 54 of List I was not equated with that of Entry 52 List I as  
37 contended by Mr. Shanti Bhushan. This decision does not adopt the Mines and Minerals cases

1 for the purposes of considering the scope of Entry 52 of List I. In our view, the cases of Mines  
2 and Minerals are not of much assistance while examining the scope of Entry 52 of List I. In  
3 **State of A.P. vs McDowell** also it was held that the ambit and scope of a constitutional  
4 entry cannot be determined with reference to a parliamentary enactment. If it is otherwise, it  
5 would result in the Parliament enacting and/or amending an enactment thereby controlling  
6 the ambit and scope of the constitutional provision. That cannot be the law. The power to  
7 legislate with which we are concerned is contained in Article 246. The fields are demarcated  
8 in the various entries. On reading both, it has to be decided whether the concerned legislature  
9 is competent to legislate when its validity is questioned. The ambit and scope of an entry  
10 cannot be determined with reference to a parliamentary enactment.

11

12 **Tika Ramji's** case is required to be examined in detail, since that has been the bone of serious  
13 elaborate submissions in that case. The challenge by the sugarcane growers hailing from  
14 several villages of the State of U.P. was to the validity of UP Sugarcane, (Regulation of Supply  
15 and Purchase) Act '53 and notification issued thereunder. A short history of legislation enacted  
16 by the Centre as well as the Province of U.P. in regard to sugar and sugarcane was noticed.  
17 Your Lordships may omit that. Kindly come to para 40, PDF page 1626. On 31-10-1951,  
18 Parliament enacted the Industries Development Regulation Act '51 to provide for the  
19 development and regulation of certain industries. By Section 2 of the Act, it was declared that  
20 it was expedient in the public interest that the Union should take in its control, the industries  
21 specified in First Schedule. The Schedule included industries engaged in the manufacture or  
22 production of sugar. The U.P. Legislature enacted impugned Act. The object of it was as  
23 follows:

24

25 With the promulgation of Industries Development Regulation Act, with effect from so and so,  
26 the regulation of sugar industry has been exclusively a central subject. The State Government  
27 are now only concerned with the supply of sugarcane to the sugar factories. The bill is being  
28 introduced in order to provide for rational distribution of sugarcane to factories for its  
29 development on organized scientific lines to protect the interest of the cane growers of the  
30 industry and to put the new act permanently on the statute. In exercise of the rulemaking  
31 power conferred by the impugned act, the U.P. Government made rules and also promulgated  
32 UP Sugarcane Regulation Supply Purchase Order. All these related to the supplies and  
33 purchase of sugarcane in UP. Challenging the vires of the State Act, one of the submissions  
34 made in **Tika Ramji's** case before the Constitution...

35

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We have seen *Tika Ramji*. Why are we  
2 reading this? Actually, if you go to para 61, that's where Justice Sabharwal has summed up  
3 what he wants to say. Just see para 61 at 1632.

4

5 **DINESH DWIVEDI:** Kindly give me one minute, My Lord.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That will be your internal page 267 of the  
8 judgment. Sabharwal says this is... just see placitum C at page 1632. Placitum C, if you have  
9 the same copy. 1632 placitum C. "The expression industries in Entry 24 of List II or Entry 52  
10 of List I cannot be interpreted in a manner that would make other Entries of List II of the  
11 Seventh Schedule subject to Union control which in fact they are not. Whether it was intended  
12 to be made subject to such control, whether of List I or that of List III, it was said so. A perusal  
13 of List II shows that whenever a particular entry was intended to be made subject to an entry  
14 in List I or III which has been so stated specifically. Therefore, an interpretation which tends  
15 to have the effect of making a particular entry subject to any other entry, though not so stated  
16 in the entry, deserves to be avoided unless that be the only possible interpretation. We do not  
17 think that certain interpretations on the entries in question, namely 52 of the Union List and  
18 24 of the State List deserves to be placed". That is really the heart of what the learned judge  
19 said.

20

21 **DINESH DWIVEDI:** Quite right. But one of the passages Your Lordships have dealt with  
22 this issue also.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This is not a dissent is it?

25

26 **DINESH DWIVEDI:** This is not a dissent. This is the majority judgement. Now they had  
27 dealt with this issue that Central Act has not challenged IDR.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** They have dealt with that. They have dealt with  
30 that as well. The learned judge says if and when it is challenged...

31

32 **DINESH DWIVEDI:** No, it's come expressly. I will show.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Paragraph 64 at page 1633. Shadan, just give  
35 it to him. Para 64 at 1633. The validity of certain other acts, such as Cardamom Act, Central  
36 Silk Board Act, Coffee Act so on and so forth. Reference where of was made by Mr. Shanti  
37 Bhushan need not be examined for the purpose of considering the legislative competence.

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**DINESH DWIVEDI:** I will place it if Your Lordships permits me. The legislative competence of Parliament to legislate these statutes is not in issue before this Court and, therefore, we do not think it necessary to examine the question of legislative competence only from academic view point insofar as these legislations are concerned. However, prima facie, there is no substance in the apprehension expressed by Mr. Shanti Bhushan that narrow approach of the concept of 'industry'... No, not this one My Lord.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Just see following sentence. As and when these acts are challenged...

**DINESH DWIVEDI:** I'll answer that because in this case, this question was raised because no one has challenged the Central Act. Therefore... I'll just. Kindly give me just a minute.

**JUSTICE HRISHIKESH ROY:** Just two sentences after that. What the Chief Justice was trying to say.

**DINESH DWIVEDI:** I will cull it out and give it to Your Lordships.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Actually, *Tika Ramji* dealt with a process anterior to manufacture, namely acquisition of the raw material which is sugarcane. They said that the acquisition of the raw material would not be comprehended within the expression of the word 'industry' under Entry 52.

**DINESH DWIVEDI:** My Lord, even the end product

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Right. In our case, Entry 8 covers not just intoxicating liquors, but it covers...

**DINESH DWIVEDI:** Production and manufacturing.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Production, manufacture, possession, transport, purchase, and even sale of intoxicating liquor.

**DINESH DWIVEDI:** Everything.

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, really speaking, Entry 8 would cover the  
2 entire gamut of Entry 52 as well.

3

4 **DINESH DWIVEDI:** That's what *McDowell* says.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's why a specific entry having been made  
7 by the founders or the framers of the Constitution, the Entry 8 must govern.

8

9 **DINESH DWIVEDI:** Kindly have, My Lord, para 45. Kindly have para 45. Para 45 Your  
10 Lordship would find... and in this case, they struck down the IDR specification even though...  
11 Kindly have para 45. True, the challenge was to the vires of the State Legislation that is page...

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

14

15 **DINESH DWIVEDI:** And not to the Parliamentary Legislation. But at the same time, the  
16 entire basis of challenge was that in respect of sugarcane, only Parliament had the power to  
17 legislate on account of field being covered under Entry 52, List I. The sugar industry having  
18 been included in the entry and the connotation of industry being verified to include in it raw  
19 materials and sugarcane as well. Thus, the exclusive power of Parliament to legislate was urged  
20 as the main ground to seek invalidation of the State Legislation. The field of sugarcane is not  
21 available to the State Legislature to legislate. That's what was argued. And 46 were in view of  
22 the controversy as aforesaid, the fact that the validity of the parliamentary legislation was not  
23 an issue in the *Tika Ramji* case, does not in any manner affect the ratio of that division. The  
24 point for determination in that case was substantially the same as in the present case, namely,  
25 the scope of the expression 'industry' in Entry 52 List I and Entry 24 List II. There also the  
26 point was to adopt a narrow or a wide interpretation of the expression industry. Further, the  
27 fact that it was a case of manufacturing industry under IDR Act also does not affect the ratio  
28 of the case. The interpretation placed in *Tika Ramji* cannot be confined to industry, falling  
29 under IDR Act alone. There is neither any express or implied indication in that decision to  
30 limit the scope. Then kindly have 50, My Lord, which is important at page 260. 50, My Lord.  
31 The Petitioners in *Tika Ramji's* case in support of the wide construction to be placed upon  
32 the expression 'industry' also relied upon various decisions interpreting the said term in  
33 relation to Industrial Disputes Act. What we are concerned here is not the wide construction  
34 to be put on the term industry as such, but whether the raw material of an industry which  
35 forms an integral part of the process are within the topic of industry, which form the subject  
36 matter of Item 52, List I as ancillary or subsidiary matters which can fairly or reasonably be  
37 said to be comprehended in that topic and whether the Central Legislation while legislating

1 upon sugar industry could, acting within the sphere of Entry 52 of List I as well, legislate upon  
2 sugarcane. This Court said that if the legislation with regard to sugarcane came within the  
3 exclusive province of the Central Legislature under Entry 52 of List I, the enactment passed by  
4 the Provincial Legislature would be *ultra vires*. Your Lordships, kindly come to the next point.  
5 Your Lordships have already seen the gist of all these cases. Kindly come to para 57. Para 57,  
6 1630 Mr. Shanti Bhushan, however, contends that once the field is covered by Entry 52, by  
7 issue of requisite declaration and Parliament has actually covered the field by enacting a  
8 legislation with regard to that extent, the industry, including all facets of such an industry,  
9 whether it is raw material or the products of that industry the State Legislature will have no  
10 power to legislate. The contention is that the expression 'industries' in Entry 52 List I,  
11 comprises in it all its aspects, commencing from procurement of raw material and up to the  
12 disposal of final product of that industry, not only the process of manufacture or production.  
13 The submission of learned Counsel is that the expression 'industries' in the entries under  
14 consideration is not given such interpretation, it would denude the Parliament of the real  
15 objective control and such industry in particular in public interest, which is of paramount  
16 importance. As against this, the contention of the other side is that the acceptance of a  
17 viewpoint propounded by Shri Shanti Bhushan would mean denuding the State legislature of  
18 the power to legislate in respect... My Lord.

19

20 **JUSTICE J. B. PARDIWALA:** Views of Mr. Bhushan were negative.

21

22 **DINESH DWIVEDI:** Negative.

23

24 **JUSTICE J. B. PARDIWALA:** Now come straight to para 78. Why do they say so? Come to  
25 78.

26

27 **DINESH DWIVEDI:** Reliance was also placed...

28

29 **JUSTICE J. B. PARDIWALA:** Acceptance of the argument of Mr. Shanti Bhushan...

30

31 **DINESH DWIVEDI:** The acceptance of the argument... I'm just... Acceptance of the  
32 argument of Mr. Shanti Bhushan would make various entries in the State List otiose and  
33 meaningless and subject to Entry 52 of List I, despite the fact that the entries are not so...

34

35 **JUSTICE J. B. PARDIWALA:** Now come to para 82. Where he also relied on Entry 54 of  
36 the Union List and Entry 23 of the State List. And what is the ultimate finding?

37

1 **DINESH DWIVEDI:** The structure and scope of Entry 54 of the Union List and Entry 23 of  
2 the State List and their inter-relationship is substantially different from the scope and  
3 structure of Entry 24 of the State List and Entry 52 of the Union List. The entry relating to  
4 development of Mines and Minerals has in it both the industry of mines and the product of  
5 minerals. And therefore on a declaration both Mines and Minerals get embedded in 54 of the  
6 Union List. Therefore, it has been consistently held by this Court that the declaration under  
7 Entry 54, Parliament evinces an intention to occupy the field. Then kindly have the next one  
8 too. The Constitution Bench in *Belsund Sugar...* This is again a Constitution Bench.  
9 examined the question regarding the legality of levy of market fee under the provisions of  
10 Bihar Agricultural Produce Markets Act, 1960 pertaining to various commodities including  
11 sugarcane, sugar, molasses, wheat and tea. The Court first dealt with the transaction of  
12 purchase of sugarcane by the sugar factories functioning in the market areas falling within the  
13 jurisdiction of respective market committees constituted under the Market Act. It noticed that  
14 the Market Act had been enacted by the Bihar Legislature as per the legislative power  
15 mentioned in it by Entries 26, 27 and 28 of List II of the Seventh Schedule of the Constitution.  
16 The Court, however, noticed that the markets dealt with the supply and distribution of goods  
17 as well as trade and commerce therein as it seeks to regulate the sale and purchase of  
18 agricultural produce to be carried on in the specified markets under the Act. To that extent,  
19 the Court said, the provisions of Entry 33 of List III override the legislative powers of the State  
20 Legislature in connection with legislations dealing with trade and commerce in, and the  
21 production, supply and distribution of goods. Thus, to the extent to which the Market Act seeks  
22 to regulate the transactions of sale and purchase of sugarcane and sugar which are foodstuffs  
23 and trade and commerce therein, the Constitution Bench said that it has to be held that the  
24 Market Act being enacted under the topic of legislative powers under Entries 26, 27 and 28 of  
25 List II will be subject to any other legislation under Entry 33 of the Concurrent List. The  
26 contention of Mr. Dwivedi, however, that as admittedly the tobacco is not foodstuff and does  
27 not fall under Entry 33 of List III, like the amendment to the Constitution made in 1953, the  
28 Parliament by further amendment of the Constitution can, if so advised, place tobacco - raw  
29 material of the industry - in Entry 33 of List III and, thus, confer on itself the competence to  
30 legislate in respect to tobacco, need not be examined by this Court as being unnecessary. What  
31 we may, however, note that the Constitution Bench, after noticing various provisions of the  
32 Act and the Rules, came to the conclusion that the need for regulating the purchase, sales,  
33 storage and processing of sugarcane, being an agricultural produce, is completely met by the  
34 comprehensive machinery provided by the Sugarcane Act enacted by the same very legislature  
35 which...  
36

1 Now, Your Lordship may perhaps... then the paragraph 87, they notice other decisions which  
2 have followed this logic. 88, the principles aforesaid would equally apply to Entries 14, 27, 28,  
3 and 66 of List II. It may further be noticed that in para 170 of **Belsund Sugar Company's**  
4 case , the Constitution Bench reiterates the view expressed in **Tika Ramji's** case as also in  
5 **SIEL's** case affirming Full Bench of the Allahabad High Court in **Shriram Industrial**  
6 **Enterprises**. In view of the above we see no compelling reason either on account of binding  
7 preceding in the form of Earlier Constitution Bench judgment, history and background of the  
8 framing of the Constitution or other words used in various entries of the language of any  
9 Article in the Constitution of India, to take a view which will result in denuding the power of  
10 State Legislatures to legislate not in respect of field of legislation under Entry 24 but field of  
11 legislation covered by other entries in State List on making of declaration under Entry 52 of  
12 the Union List. The Constitution Bench judgment in the case of **Tika Ramji** and other  
13 decisions following it confine the field of legislation of industries to 'the process of  
14 manufacture or production' and not to 'raw materials' .In view of the aforesaid, I conclude as  
15 under. The State legislations and the Tobacco Board Act, 1975 to the extent of sale of tobacco  
16 in market area cannot co-exist. So Tobacco Board Act is a Central Legislation. State  
17 Legislation, and the Tobacco Board Act cannot co-exist. The State Legislatures are competent  
18 to enact legislations providing for sale of agricultural produce of tobacco in market area and  
19 for levy and collection of market fee on that produce. Parliament is not competent... Kindly  
20 you look at this? Parliament is not competent to pass legislation in respect of goods  
21 enumerated in the aforesaid conclusion No. 2, while legislating in the field of legislation  
22 covered by Entry 52 of the Union List under which Parliament can legislate only in respect of  
23 the industries, namely 'the process of manufacture and production'. So even though here  
24 parliamentary declaration law was not in question, yet they said Parliament cannot do it. A  
25 declaration was issued. My Lords, once Your Lordships come to the conclusion that the scope  
26 of the entries is to be delineated. You can't delineate that in the light of the parliamentary  
27 legislation. Then again, the question would be under which entry the law falls. And if Lordships  
28 come to the conclusion that encroaches on the State List, it has to... and that is where the  
29 question of Your Lordship in **Jayant Verma's** case, the dominant legislature will always  
30 have the power despite the fact that there is a parliamentary legislation covering the ancillary  
31 and incidental factors.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Justice Ruma Pal's judgment from para 110  
34 onwards, it's is a very illuminating...

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36 **DINESH DWIVEDI:** Your Lordships may also have para 94. Which had come earlier, but  
37 then I would...

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** 1647.

**DINESH DWIVEDI:** But 94 is very clear. Although Parliament cannot legislate on any of the entries in State List, it may do so incidentally while essentially legislating within the entries under Union List. Conversely, the State Legislature will encroach on the Union List when such an encroachment is merely ancillary to an exercise of power intrinsically in the State List. The fact of encroachment does not affect the vires of the law. Even as regards the area of encroachment. This principle, commonly known as doctrine of pith and substance does not amount to extension of the field of legislation. It does not amount to extension of the legislative fields. Therefore, such incidental encroachment in either event does not deprive the State Legislature in the first case or Parliament in the second, of their exclusive powers under the entry so encroached upon. In the event the incidental encroachment conflicts with legislation actually enacted by the dominant power, the dominant legislation will prevail.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** I'll tell you, as we are rising today that is the heart of what we have to consider. That's something which is worrying me. And we're still open on this aspect.

**DINESH DWIVEDI:** My Lord, I thought I had closed it down.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Just maybe five minutes tomorrow on this. The process of reflection never stops until the last word is said. *Tika Ramji* said that the word 'industry' means 'the process of manufacture or production' and that it does not include the raw materials used in the industry or the distribution of the products of the industry. The distribution of the products is Entry 26 and 27. Raw materials was not covered by Entry 52, that is *Tika Ramji*. If you come down now to *ITC* which we are reading. *ITC* dealt with the market fairs because of the Agricultural Produce Market Committee. Justice Ruma Pal and the other judgment, Justice Sabharwal says that applying the logic of *Tika Ramji*, the regulation of markets and fairs under Entry 28...

**DINESH DWIVEDI:** Are not subject to Entry 52...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Are not covered by industry, right? And therefore, Entry 66, the power to levy market fees is preserved for the States that is *ITC*. The real problem, which we are... the conundrum which we face is this that Entry 52 covers production, manufacture, expressly, right? Entry 8 covers production, manufacture expressly.

1 So, there's a complete overlap between Entry 52 and Entry 8. Now, one answer to that is this  
2 that if you read therefore, both of them as overlapping and Entry 52 as having predominance  
3 where Entry 8 is rendered otiose. But where the two entries are so completely overlapping  
4 because both cover production and manufacture, Entry 8 expressly, Entry 52 by interpretation  
5 that we have placed since ***Tika Ramji***, then what will prevail?  
6

7 **DINESH DWIVEDI:** No. Kindly have Entry 52 once again My Lord, for just a minute. Entry  
8 52.  
9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You see ***Tika Ramji*** and all the cases  
11 subsequently were able to skirt around this issue because there is no absolute overlap. ***Tika***  
12 ***Ramji*** was before then this last judgment is after markets and fees. This is a case which is  
13 directly and squarely an overlap between the two. That is the problem which...  
14

15 **DINESH DWIVEDI:** That may not be the correct due of ***Tika Ramji***. In every case, My  
16 Lord, right from ***Tika Ramji*** till date what the Union and the Petitioners have emphasized is  
17 that Entry 52 will include not only manufacturing...  
18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just while we are rising, just see Justice Ruma  
20 Pal's judgment. Paragraph 126 and then we'll rise. And we'll also reflect upon it in the night.  
21 To sum up, learned Judge says, at page 1659...  
22

23 **DINESH DWIVEDI:** To sum up, the word industry, for the purposes of Entry 52 of List I  
24 has been firmly confined by ***Tika Ramji*** to the process of manufacture production only.  
25 Subsequently, decisions, including those of our other Constitution Benches have reaffirmed  
26 that ***Tika Ramji***'s case authoritatively defined the word 'industry' to mean 'the process of  
27 manufacture or production', and that it does not include raw material used in the industry or  
28 the distribution of the product. Given the constitutional framework and weight of the judicial  
29 authority, it is not possible to accept the argument canvassing a wider meaning. My Lord, this  
30 is the critical...  
31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just go ahead.  
33

34 **DINESH DWIVEDI:** To accept argument canvassing a wider meaning of the word industry,  
35 whatever the word may mean in the other context, it must be understood in the constitutional  
36 aspect as meaning manufacture or production.  
37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now just see para 127.

2

3 **DINESH DWIVEDI:** Applying the negative test as evolved in the *Tika Ramji* in this case,  
4 it would follow that the word 'industry' in Entry 24, List II, and consequently, Entry 52 of List  
5 I does not and cannot be read to include Entry 28 and 66 of List II, which has been expressly  
6 marked out as fields within the State's exclusive... My Lords this is the...

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just read that para, then we'll read...

9

10 **DINESH DWIVEDI:** As noted earlier, Entry 28 deals with markets and fairs and Entry 66  
11 with the right to levy fee in respect of in present context, markets and fairs. Entry 52 of List I  
12 does not override Entry 28 in List II nor has Entry 28 in List II been made subject to Entry 52,  
13 unlike Entry 24 of List II. This Court in *Belsund* has also accepted the argument, Entry 28 of  
14 List II operated in its own and cannot be affected by any legislation pertaining to industry. My  
15 Lord, this part...

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now just see para 120, just one sentence. If  
18 'industry' does not include markets and fairs, it is important to define what markets and fairs...  
19 then learned judge discusses this. Therefore, all these judgments really say that look, Entry 52  
20 does not cover the activity which is being legislated upon by the State. And therefore, in one  
21 case, raw materials the State can legislate, markets and fairs the States can legislate. We are  
22 now in a situation where both are exactly on all fours together, production and manufacture.

23

24 **DINESH DWIVEDI:** Please have a relook at *Calcutta Gas* and *McDowell*.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then what happens?

27

28 **DINESH DWIVEDI:** There they are dealing with industry. In *Calcutta Gas*, Constitution  
29 Bench was dealing with industry, gas and gas works. Entry 25 List II.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There are two possible answers. One, is to say  
32 which is the pro State, or we say the pro-federal principle that if the entry is not made subject  
33 to a Central entry then the State entry must have its full operation. The other is to apply...  
34 though the Constitution is federal, the Constitution is federal with a certain weight in favour  
35 of the Centre and then say that where the two entries overlap then Article 246(1) will prevail  
36 because it covers exactly the overlapping field. There are two opposing viewpoints. Question  
37 is, which one to adopt?

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**DINESH DWIVEDI:** I'll come back tomorrow morning with fresh ammunition perhaps, My Lords.

**SHADAN FARASAT:** Another tentative answer, My Lords, if I may offer.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Just one second, Brother...

**JUSTICE HRISHIKESH ROY:** Chief Justice has given you a lot of food for thoughts, Mr. Dwivedi.

**DINESH DWIVEDI:** Definitely, My Lord but...

**JUSTICE HRISHIKESH ROY:** I may provide you some drink for thoughts. You are talking about different intoxicating liquor, some require ageing, some does not require ageing. Some are fair, some are dark. But perhaps it may not be comprehensible to some members of the Bench. Would material exhibit help?

**DINESH DWIVEDI:** The best thing would be, My Lord, to send a bottle to each one of the...

**JUSTICE HRISHIKESH ROY:** This is all in lighter vein.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** I told Brother Jamshed, as we were rising for the lunch, that you have become a domain expert by Mr. Dwivedi's argument.

**DINESH DWIVEDI:** I'm... certainly I must admit that I am fond of liquor. I don't mind claiming that.

**PETITIONER'S COUNSEL 1:** I seek, My Lord...

**ARVIND DATAR:** In a lighter vein, My Lord, we had a trademark case, so we brought actual bottles to show the Court and went for lunch, by the time we came back, they all were consumed.

**PETITIONER'S COUNSEL 1:** I seek, My Lords... I seek, My Lord, in this matter I'm appearing for UT of Puducherry. The registry is not accepting my Vakalat. May I be permitted to...

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2 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

3

4 **PETITIONER'S COUNSEL 1:** Obligated, My Lord.

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***END OF DAY'S PROCEEDINGS***