

**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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10:40 AM IST

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

2

3 **DINESH DWIVEDI:** Perhaps, I was waiting in anticipation that Your Lordship, would put  
4 a question, 'How much time would you take now'? But I think, I should conclude it within an  
5 hour and a half or maybe a little...

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** If you can try by 11:30 today. So that then we'll  
8 give Mr. Datar...

9

10 **DINESH DWIVEDI:** My Lord, I....

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the line up? It's basically you, followed  
13 by Mr. Datar? Ten minutes for you? So, the two major arguments now are by Mr. Dwivedi and  
14 Mr. Datar.

15

16 **PETITIONER'S COUNSEL:** [INAUDIBLE]

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** By? Jaideep Gupta. How long will Mr. Gupta  
19 take?

20

21 **PETITIONER'S COUNSEL:** V. Giri is also there.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Is it possible for all of you to wrap up by lunch  
24 today? So that this side and Mr. Datar... and what I was thinking was that if maybe Mr. Dwivedi  
25 concludes at 11.30, then we give Mr. Datar till lunch. So, you get about an hour and a half and  
26 then maybe an hour after lunch for everybody together. So, by 03:00 this side can get over and  
27 then the Solicitor and the Attorney can start at 03:00 today. So, we'll wrap up by 03:00  
28 tomorrow on this side and then we have one rejoinder from all of you. All of you can sit down  
29 together and see who will do the rejoinder. One rejoinder for one hour tomorrow and we'll  
30 close tomorrow evening.

31

32 **DINESH DWIVEDI:** With due respect, Your Lordships, I would request Your Lordships not  
33 to ask us to combine together, because that never happens. Invariably, My Lord, everyone  
34 wants to say his own kind of thing, which he has obviously...

35

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We are doing this in all other benches. All other  
2 CBs, we have had one rejoinder, and others may give a small note of a page or something.  
3 Perfect. So that there'll be one rejoinder. And if you feel that anything else is remaining, one  
4 page note that, well, these are the major points which we wanted to highlight to supplement  
5 what Mr. Dwivedi has argued, because rejoinder really should be one.

6

7 **TUSHAR MEHTA:** My Lord, only one caveat. Concluding it tomorrow may perhaps not be  
8 possible. There are two reasons My Lord. A) Your Lordship would find in all these judgments,  
9 the argument is this judgment was not cited, that judgment was not cited. At least we would  
10 not like to be accused of not citing everything, My Lord. And number two, the nine-judge  
11 combination sits rarely. If we cannot, My Lord, cite some judgment, then lack of assistance,  
12 My Lord results into something. We will not repeat anything, will not My Lord, be irrelevant,  
13 and my submissions would be other than what they have already argued rather than not  
14 dealing with it.

15

16 **DHRUV AGRAWAL:** And My Lord, apart from the Attorney and Solicitor, there are private  
17 parties also, I'm representing them.

18

19 **CHIEF JUSTICE D.Y.CHANDRACHUD:** After the Attorney... but you are supporting  
20 them?

21

22 **DHRUV AGRAWAL:** Yes. Whatever is left I will cover...

23

24 **CHIEF JUSTICE D.Y.CHANDRACHUD:** Maybe you can give us a one-page note, or  
25 something. The others after the Attorney and the Solicitor, a one page note by all of you. Tell  
26 us, what the points are, which have been left out.

27

28 **TUSHAR MEHTA:** I think others means he is the only one. Our team is smaller.

29

30 **DHRUV AGRAWAL:** We have filed written submissions. That's all.

31

32 **CHIEF JUSTICE D.Y.CHANDRACHUD:** Yesterday I was seeing Mr. Abhimanyu...

33

34 **TUSHAR MEHTA:** The Attorney, followed by me and Mr. Agrawal, My Lord.

35

1 **CHIEF JUSTICE D.Y.CHANDRACHUD:** So, keep a one page note ready so that we can  
2 then... we'll give you time. Of course, we'll hear him. It's a pleasure to hear all of you, but just  
3 keep a one page note ready.

4

5 **TUSHAR MEHTA:** I would curtail my submissions, My Lord, but kindly give ten minutes  
6 each to My Lord, the colleagues who have really prepared well. They wish to address Your  
7 Lordship. I would wish them to address Your Lordships. Brilliant young people.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Certainly. Yes, Mr. Dwivedi?

10

11 **DINESH DWIVEDI:** My Lord, kindly recall the question which Your Lordships had put to  
12 me, because that question, I must confess, has given me some sleepless nights, My Lord,  
13 therefore, I need to elaborate on that.

14

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

16

17 **DINESH DWIVEDI:** The question which Your Lordships had posed was that intoxicating  
18 liquor contains various items on which regulations can be made, i.e. manufacture, production,  
19 supply, distribution, transport, etc. It's virtually everything with regard to intoxicating liquor.  
20 This is irrespective of whether it contains potable liquor or industrial alcohol. Then, Your  
21 Lordships felt that even Entry 52 contains the same thing, and therefore, there is a conflict and  
22 a clash. Now, if Your Lordship would kindly have Entry 52 again for a moment.

23

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

25

26 **DINESH DWIVEDI:** Does it contain the same thing? That's the issue. And is there a clash?  
27 That's the issue.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's the interpretation, it has been held to  
30 contain the same thing.

31

32 **DINESH DWIVEDI:** No, I'll answer that. Is there a clash? That's the question eventually.  
33 Entry 52, List I. Industries, the control of which by the Union is declared by Parliament, by  
34 law, to be expedient in the public interest. Now, whether we can read this word control so  
35 compendiously and expansively as to include everything that is contained in Entry 8, My Lord,  
36 that's the issue. Because if it does not, then there is no conflict. And this will also entail the  
37 question, My Lord, whether industry here is so expansive, as to cover sale, distribution,

1 transport, etc. Trade and Commerce, will it include the word control of industry? Now, My  
2 Lord, when we compare the two entries, Entry 8, List II and Entry 52, List I, there is a vast  
3 difference in the language. That's one aspect, Your Lordship, may note, because lots of things  
4 would turn on the word control, whether they include whatever is included in Entry 8 or not.  
5 That's the question. None of the cases, My Lord, which I had cited up till *ITC*, come to this  
6 conclusion that the word control is as broad as what is included in Entry 9. Supply,  
7 distribution, trade and commerce, everything it's is not there. There's a considerable  
8 unanimity from 1956 onwards till 2002. At least seven Constitution Benches would say, if you  
9 have to see this expanse of this scope of this Entry 52, you must see Entry 52 is by itself not a  
10 field of legislation. It becomes alive only when a declaration is made with regard to an industry.  
11 Then that industry, it is transported from Entry, perhaps 24 and comes to Entry 52. So what  
12 is the source, I ask myself? The source of the power of the field is Entry 24 exclusively, Your  
13 Lordship recall that statement in *Ishwari Khetan*, Justice Krishna Iyer Constitution Bench  
14 said, only from Entry 24. So, whatever is dragged out of 24, that comes to 52, nothing more.  
15 So there are two ways of looking at it. One, when we want to see the expanse of the word  
16 industry in control, then we must go back to the source, which is Entry 24, List II. Because  
17 whatever is contained therein can possibly come here. Entry 52 cannot drag more than what  
18 is there in the well or the source. And Entry 24 has been analysed in at least half a dozen cases.  
19 One was which I had cited in a very limited manner, but I just need to place that judgment,  
20 and then that will answer Your Lordships. Now, the question is this word 'industry' in Entry  
21 24, what is the expanse of that? Because, as Your Lordship has seen, all the cases are  
22 unanimous that word 'industry' in Entry 52 would mean the same thing as Entry 24. There is  
23 an intricate and intimate link between the two which cannot be snapped. Now, if word  
24 'industry' here is of limited expanse, then we can't expand the scope of Entry 52 beyond  
25 'industry' in Entry 24. Now, let us see the scope of entry...

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** *Tika Ramji* says that industry... industry  
28 covers three elements. One is the raw materials...

29

30 **DINESH DWIVEDI:** Yes. Widely... in a wider way, it covers three.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** .... Raw materials, manufacture or production  
33 and distribution.

34

35 **DINESH DWIVEDI:** Quite right.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It says that raw materials would not be  
2 comprehended within Entry 52..

3

4 **DINESH DWIVEDI:** Because they are not part of industry.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Industry. Then second, they say manufacture  
7 or production would also not be covered unless it is a controlled industry. Once it is a  
8 controlled industry, they say, manufacture or production will also be covered by Entry 52. But  
9 they say, that even in respect of a controlled industry, distribution of the products goes to Entry  
10 33. So, in your favour, in case an industry is declared as a controlled industry, the distribution  
11 of the product goes to the Concurrent List. In the Concurrent List, unless there is a legislation  
12 by the Centre which prohibits the States from enacting the law...

13

14 **DINESH DWIVEDI:** I'll come to that aspect, My Lord, a little later... That's (b) part of my  
15 argument.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Therefore, for instance, you can certainly levy  
18 a fee in relation to distribution is concerned.

19

20 **DINESH DWIVEDI:** The difficulty that is arising, with due respect, if I can explain is,  
21 because we are trying to trace the word industry in all its expanse, on its own. But what the  
22 case law from '56 onwards till date indicates is, the word 'industry' takes its colour and scope  
23 and expanse in depth and breadth, whatever it is, from Entry 24. Now let us see what is there  
24 at the initial stage, what is there in Entry 24, which can be taken over.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Your know, if you go to *Tika Ramji* again,  
27 which was what we read yesterday at Volume 5, page 96.

28

29 **DINESH DWIVEDI:** My Lord, let me, kindly bear this fact in mind. In *Tika Ramji*, the  
30 issue was of Entry 33, not for the product of notified industry. *Tika Ramji* is different. *Tika*  
31 *Ramji* was a case of Entry 33 because there was an entry containing food stuff over there and  
32 therefore it fell within Entry 33, List III. Not because it was product of notified industry.  
33 Sugarcane was never regarded as product of notified industry. Your Lordship may have Entry  
34 33, List III. Trade and Commerce in and... I'm sorry. 33(a) relates to product of industry  
35 notified under IDR. (b) relates to food stuff, and sugarcane was traced to food stuff in *Tika*  
36 *Ramji*, and therefore, they said there is an express entry here for food stuff, therefore it won't  
37 go to industry. So *Tika Ramji* is being misunderstood with due respects here because *Tika*

1 **Ramji** is not a case of product of notified industry being regulated, but instead raw material  
2 of the industry which is sugarcane. So when **Tika Ramji** segregated the end product as well  
3 as raw material, it first went to Entry 24 and therefore, what I am submitting with respect is  
4 kindly go to Entry 24 and then let us carve out what is included in Entry 24 in the State List.  
5 Because, as I said, My Lord source is Entry 24. If the source doesn't contain something, then  
6 perhaps you can't expand the source by taking it over in Entry 52. Now kindly have Entry 24.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Your argument... basically, we've got the  
9 point... that your argument, we'll have to hear the other side on that, is that this product relates  
10 to Entry 8 of List II.

11

12 **DINESH DWIVEDI:** Completely. You don't have to go to Entry....

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right? That's step one. Once it relates to Entry  
15 8 of List II, it does not fall in Entry 24 of List II, point number two. Three, if it doesn't fall  
16 under... point number three, the concept of industry in Entry 24 is the same as Entry 52, or  
17 rather, Entry 52 'industry' is the same as Entry 24. So four, since Entry 24 is not applicable  
18 likewise, therefore, Entry 52 is not applicable.

19

20 **DINESH DWIVEDI:** Exactly. With due respect, I'm grateful.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's really the five points which you have  
23 made, and really speaking the whole fulcrum of your submission depends on whether  
24 industrial alcohol is an intoxicating liquor within the meaning of Entry 8.

25

26 **DINESH DWIVEDI:** Exactly. And for that purpose...

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because that's the first and foundational  
29 argument which you have made.

30

31 **DINESH DWIVEDI:** Extremely obliged, My Lord. I had to work whole night on this, but  
32 Your Lordships have really...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, these are the five steps which you have built  
35 your whole argument on.

36

37 **DINESH DWIVEDI:** And this would be clear...

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** And you say that industrial alcohol is intoxicating liquor by saying that, well, you must bear in mind the past legislative practice, the provisions of the Government of India Act, Entry 31 and how it was interpreted by the courts. There are two British acts which *Balsara* said, you must look at. And therefore, *Balsara* says, according to you, that industrial alcohol would... intoxicating liquor would include liquor fit for human consumption as well as denatured spirits. That was what *Balsara* said.

**DINESH DWIVEDI:** Here, Your Lordship may add two more decisions relating to that.

**JUSTICE ABHAY S. OKA:** One more addition to that. Industry is basically a state subject. 52 is by way of exception.

**DINESH DWIVEDI:** Now My Lords, here Your Lordships may very kindly add two more decisions, relating to denatured spirit and industrial alcohol, which were held to fall in intoxicating liquor under Entry 8. One is perhaps the *Southern Pharmaceuticals*.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Give us those apart from *Balsara*.

**DINESH DWIVEDI:** Yes, *Southern Pharmaceuticals. Southern Pharmaceuticals* PDF page... Volume V.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the citation?

**DINESH DWIVEDI:** (1981), 4 SCC 391. The relevant paras are, para 6, 12 to 14 and 17.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** How many judges in *Southern Pharmaceuticals*?

**DINESH DWIVEDI:** This is I think three judges.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** I think this is Justice A. P. Sen's judgment, right?

**DINESH DWIVEDI:** I'm sorry?

**CHIEF JUSTICE D. Y. CHANDRACHUD:** This is Justice A. P. Sen's judgment, I think.

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**DINESH DWIVEDI:** Your Lordship is right, My Lord. It is Justice A. P. Sen's judgement.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** That's the classical judgment on fee, tax and fee, I think.

**DINESH DWIVEDI:** That is a different judgement. That's *Hoechst Pharmaceuticals*.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** That's not this one. All right, that's different. This is *Southern*.

**DINESH DWIVEDI:** That's *Hoechst Pharma*. But that judgment, Your Lordships may have a look into it. With due respect for this reason, what was troubling, My Lord, Justice Nagarathna, was the notwithstanding clause. It has been beautifully explained in that judgment. Because this clause was there in Section 100 of the Government of India Act from where we have borrowed this, it has been beautifully penned there.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** *Southern Pharma* also says that intoxicating liquor includes industrial alcohol.

**DINESH DWIVEDI:** There a rectified spirit was being used for manufacture of medicinal and toilet preparations. So, they said it comes within Entry 8, intoxicating liquor. Then, the next is perhaps, My Lord, *Indian Mica & Micanite*. It's a Constitution Bench Judgment, (1971), 2 SCC 236. It's a PDF page 5, Volume 5.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** The earlier judgment, where do we get it in, Volume 5?

**DINESH DWIVEDI:** PDF page 1985.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** And in the second judgment, which is the relevant para?

**DINESH DWIVEDI:** Yes.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** And just give us the PDF.

1 **DINESH DWIVEDI:** I will give it. Para 3 and 12.

2

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

4

5 **DINESH DWIVEDI:** PDF page 7, Volume 5(a).

6

7 **CHIEF JUSTICE D.Y. CHANDRACHUD:** 5(a)?

8

9 **DINESH DWIVEDI:** So, these two judgments, My Lord, further elaborate on this and accept  
10 the contention.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's have a look at those two judgments  
13 because one of them was a CB.

14

15 **DINESH DWIVEDI:** Yes.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We'll look at the CB first, and then just quickly  
18 glance through the next one. First one was volume... Second is 5(a). Five *pe hain* so we'll go to  
19 page 1985 for a moment. Para 6 and 12.

20

21 **DINESH DWIVEDI:** Kindly have para 3, My Lord.

22

23 **CHIEF JUSTICE D.Y.CHANDRACHUD:** Of Justice Sen's judgement, right?

24

25 **DINESH DWIVEDI:** Justice Hegde's judgement. This is '71, My Lord.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright, just give us a minute. I'll just go to  
28 Volume V(a). V(a) no? What's the page at?

29

30 **DINESH DWIVEDI:** Volume V(a), PDF page 5.

31

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

33

34 **DINESH DWIVEDI:** Paragraph 3, page 7 of the PDF. The Appellant, is a consumer of  
35 denatured spirit. It purchased denatured spirit from the wholesalers or the manufacturers for  
36 the purposes of manufacturing micanite. The Bihar and Orissa Excise Act, 1915, came into  
37 force on January 19, 1916. In pursuance of the provisions of that Act, the impugned rule was

1 framed by the Board of Revenue for levying license fee. The fee for the license to possess  
2 denatured spirit in 1919 was only Rs. 2 per annum irrespective of the quantity of the possession  
3 of a person. This rate continued to be in force till 1937. At this stage it may be remembered  
4 that under the Subsection 143 of the Government of India Act, 1935, the Provinces were  
5 authorized to continue to levy tax, duties, cesses or fees which were being lawfully levied prior  
6 to the commencement of that act. Under the 1935 Act, as under our present Constitution, the  
7 power to levy duties on alcoholic liquor fit for human consumption was allotted to the  
8 Provincial Legislature. Whereas, the power to levy duty and alcoholic liquor not fit for human  
9 consumption was allocated to Central Legislature. Denatured spirit, though an alcoholic liquor  
10 not fit for human consumption. The power to levy duty on the same was and is given to the  
11 Central Legislature, but the same being intoxicating liquor, the provincial legislature under  
12 the 1935 Act, and at present the State Legislation, has power to levy fee. The power of any  
13 legislature to levy fee is conditioned by the fact that it must be, by and large, *quid pro quo*. So  
14 they have not relegated the matter back to the court, that please look into it, because whether  
15 it is a fee or not and this issue was of license fee on denatured spirit, possession of denatured  
16 spirit. Rest is on fee. What is fee? And so and so forth...

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, they remitted it really on... The whole  
19 question turned on fee?

20

21 **DINESH DWIVEDI:** Fee... reasonable, and whether it will be a tax or a fee. So, kindly have  
22 para 12 then.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There's really no... if they say it is an  
25 intoxicating liquor.

26

27 **DINESH DWIVEDI:** Kindly have, para 14.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In fact, they say, therefore, the duty, meaning  
30 thereby, probably excise duty...

31

32 **DINESH DWIVEDI:** Excise duty.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ...will be levied by the Centre, but it's an  
35 intoxicating liquor and therefore a fee can be levied by the State, under 66.

36

1 **DINESH DWIVEDI:** And then in 12 said, let us see whether the impugned levy can be  
2 justified under as fee or not.

3

4 **JUSTICE HRISHIKESH ROY:** Mr. Dwivedi...

5

6 **JUSTICE B. V. NAGARATHNA:** This sentence is...

7

8 **JUSTICE HRISHIKESH ROY:** Sorry.

9

10 **JUSTICE B. V. NAGARATHNA:** Sorry.

11

12 **JUSTICE HRISHIKESH ROY:** Go ahead.

13

14 **JUSTICE B. V. NAGARATHNA:** Please.

15

16 **JUSTICE HRISHIKESH ROY:** Mr. Dwivedi, you see, here the product that is being  
17 discussed in the judgment is denatured. That means it is made, unfit for human consumption.  
18 Right?

19

20 **DINESH DWIVEDI:** Right.

21

22 **JUSTICE HRISHIKESH ROY:** So thereafter, although it starts off... The entire liquid, it  
23 starts off as an alcohol, after molasses, it is made unfit for human consumption...

24

25 **DINESH DWIVEDI:** By adding some chemicals...

26

27 **JUSTICE HRISHIKESH ROY:** By adding something, so that it's fit only for industrial use.  
28 And we are looking at a kind of product which is alcohol and capable of human use. Is that  
29 what you are trying to....?

30

31 **DINESH DWIVEDI:** Quite right. And I'm, at the same time trying to indicate is, if denatured  
32 spirit which is made unfit for human consumption, can be regarded by the Constitution Bench  
33 as intoxicating liquor, then what to say of the rectified spirit, which is not a denatured spirit,  
34 and we can't say it is as incapable of being consumed or not. Because all that is needed in  
35 rectified spirit is, that you put mineralized water into it and dilute the strength of the liquor  
36 from 95, 90% to 35% and it's drinkable. In fact, all over the country, country liquor is this only.  
37 There's nothing else. Country liquor is nothing but rectified spirit diluted by this

1 demineralized water. So, potability does not mean having as it is, potability therefore, my  
2 submission was would always mean that it must have some intoxicating element which may  
3 cause or is capable of causing intoxication. So, it will include both. Something which can be  
4 had as it is plus what is capable of causing intoxication.

5

6 **JUSTICE HRISHIKESH ROY:** Then those who imbibe neat, would they be called purists?

7

8 **DINESH DWIVEDI:** By that definition, My Lord, I do call myself a purist, My Lord. Because,  
9 I prefer single malts, My Lord, therefore they can't be had. If to give an example, My Lord. It's  
10 very interesting. I went to Edinburgh, My Lord, that's a Mecca of single malt. So, I am a lover  
11 of single malt. So, I went to a bar. There I wanted to put ice cube into my single malt which  
12 they served me. So, the bartender got annoyed. He said, you can't have this. It's a single malt,  
13 you got to have it neat. You can't, you can't mix it with water, soda or cube. After all, ice cube  
14 is nothing but water. So, he got annoyed. That's the first time I came to know a single malt is  
15 had like that. And there's a separate glass for it. It's not the normal whiskey glass. That's  
16 besides the point, just to. Now, My Lord, the other is the *Southern Pharma*.

17

18 **JUSTICE B. V. NAGARATHNA:** In relation to a human being?

19

20 **DINESH DWIVEDI:** In relation to. Obviously, My Lord.

21

22 **JUSTICE B. V. NAGARATHNA:** So therefore, it is alcohol fit for human consumption.  
23 Will it involve then industrial alcohol? Because industrial alcohol per se is not fit for human  
24 consumption.

25

26 **DINESH DWIVEDI:** No, as we pointed out yesterday, My Lords. The legislative history  
27 indicated that, both denatured spirit, as well as potable alcohol were part of intoxicating liquor.  
28 All the Excise Acts, The Intoxicating Liquor Act of 1910 of Britain, certain Acts... Volstead Act  
29 of USA, all regarded the industrial alcohol as part of intoxicating liquor. In fact, My Lord, the  
30 Spirit Act of 1870 of England, was that, they showed the awareness about denatured spirits. It  
31 is specifically mentioned as part of spirit. The local Acts definitely mentioned it as, intoxicating  
32 liquor, includes denatured spirits. Because the reason is My Lord, as Your Lordships saw in  
33 those definitions, all liquids containing alcohol are part of intoxicating liquor. That was the  
34 definition in all those Acts.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Would liquor really, in your submissions would  
37 include liquor, which is fit for human consumption and liquor which is not fit for human

1 consumption. Right? Because, intoxicating liquor in that sense in your submissions, a broader  
2 concept which is not confined only to liquor which is fit for human consumption. The only  
3 difference which arises is in regard to the taxing power.

4

5 **DINESH DWIVEDI:** Taxing power.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** If it is alcohol fit for human consumption, the  
8 Centre has no control. If it is alcohol, which is for human consumption...

9

10 **DINESH DWIVEDI:** Then it goes under 51...

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then it goes to the States. If it is unfit to human  
13 consumption the Centre can levy a duty, right, under Entry 84, but the power of the State, once  
14 it falls under Entry 8, the power of the State to levy a fee is preserved by Entry 66.

15

16 **DINESH DWIVEDI:** To regulate. Regulatory fee can be imposed.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Whether in a given set of circumstances, a  
19 regulatory fee or something, is for a... is an independent determination.

20

21 **DINESH DWIVEDI:** That's an independent issue. Now, My Lord, there is an interesting  
22 question, which I had posed yesterday...

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Can we see *Southern Pharma*, since we  
25 were on this, so we can close this part now?

26

27 **DINESH DWIVEDI:** Yes.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume V, page 1985.

30

31 **DINESH DWIVEDI:** This is judgment to three judges, My Lord. Justice A. P. Sen's judgment  
32 and this is... This Judgment would make more sense if, Your Lordship, would... This judgment  
33 would make more sense if Your Lordship, would allow me for a moment to place Entry 51, List  
34 II. This would make more sense; therefore, I was going to that. Entry 51 says, "Duties of excise  
35 on following goods, manufactured or produced in the State and countervailing duties at the  
36 same or lower rate on similar goods manufactured or produced elsewhere in India." Now, "(a)  
37 is alcoholic liquor for human consumption", which means, My Lord, what it means is, there is

1 an alcohol which is not for human consumption. That's one thing. Now, my apparent question  
2 is, My Lord, if alcoholic liquor for human consumption is regulated under Entry 8. Where is  
3 the alcoholic liquor not for human consumption, regulated? There is no Entry, anywhere. The  
4 word Industrial Alcohol is not used in the Constitution.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That point, you made yesterday.

7

8 **JUSTICE B. V. NAGARATHNA:** It can come under industry as such. Under, Entry 54,  
9 industry...

10

11 **DINESH DWIVEDI:** That is answered.

12

13 **JUSTICE B. V. NAGARATHNA:** Subject to, Entry...

14

15 **DINESH DWIVEDI:** Just assume at the moment it does. I'll answer that.

16

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

18

19 **DINESH DWIVEDI:** Now, alcoholic liquors for human consumption. There is no parallel  
20 Entry with regard to alcoholic liquor, not for human consumption. In any of the Lists. If they  
21 were using this phraseology then, it was very convenient for them to have used the same  
22 phraseology, more or less for regulating industrial alcohol, if the framers had that in mind.  
23 Then the more important part is, My Lord, if Your Lordship would see, the excluding part, the  
24 last part. "But not including medicinal and toilet preparations containing alcohol." Now, this  
25 part is excluded from the State jurisdiction only for the purposes of levy of excise duty.  
26 Because, here also, My Lords, there is no Legislative Entry in any of the Lists, regulating the  
27 distribution, trade, commerce etc. in medicinal and toilet preparations. So, it was very  
28 convenient to have put a Legislative Entry in this regard also, and that is why, My Lord,  
29 ***Southern Pharmaceutical*** says, that these medicinal and toilet preparations containing  
30 alcohol, come in Entry 8, following, My Lord, ***Balsara***. All liquids containing alcohol,  
31 medicines containing alcohol. Your Lordship, would recall, My Lord, during time of  
32 prohibition, cough syrup was a very go to kind of an object, for most of the people addicted.  
33 They used to have cough syrups in large quantities and consume whatever alcohol was there  
34 in that. So, medicinal, toilet preparations containing alcohol also fall in Entry 8, and this is  
35 what ***Balsara*** said, and this is what ***Southern Pharmaceutical*** follows.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Point in, that little extract from *Southern*  
2 *Pharmaceutical* which has that.

3  
4 **DINESH DWIVEDI:** Yes. Kindly have para 6, it's very clear. This is a case where the spirit  
5 was being used for manufacture of drugs, that is medicinal product and para 4 contains the  
6 challenge. "Enactment of Medicinal and Toilet Preparations Excise Duties Acts '55, by  
7 Parliament, under Entry 84, List I of the VII Schedule to Constitution for the framing of the  
8 Medicinal and Toilet Preparations (Excise Duties), rules added in '56 by the Central  
9 Government, in exercise of their rulemaking power, under 19 of the Act for purposes of the  
10 deep use of excise on medicinal and toilet preparations containing alcohol, et cetera. Do not  
11 prevent the State legislature from making a law under Entry 8 List II of the VII Schedule to  
12 the Constitution with respect to intoxicating liquors or a law under 51, List II for levy excise  
13 duty, and alcoholic requirements for human consumption. In order to appreciate the field, the  
14 contention regarding the applicability of the *Doctrine of Occupied Field*, it is necessary to  
15 examine the scheme of both the Acts." Then, 8. "The legislative history of this central..." My  
16 Lord. I'm sorry. I would, pray My Lord, kindly have it from para 12, 13 and 14. "It is the  
17 charging section which gives the two index to the real character of a tax. The nature of the  
18 machinery by which the tax is to be assessed is not of assistance except, insofar as it with low  
19 light on the general character of the tax. The charging section in Section-3 of the Central Act  
20 really shows that it does not seek to levy a duty, duty of excise on alcoholic liquor for human  
21 consumption falling under Entry 51, List II of the VII Schedule, but to levy a duty of excise on  
22 medicinal and toilet preparations containing alcohol, etc." This is the Central Rule. Last line,  
23 My Lord, last two lines. "But there can be little doubt that the Central Act must in pith and  
24 substance, be attributed to Entry 84, List I. In determining whether the enactment is a  
25 legislation with respect to a given path, what is relevant is not the consequence of the  
26 enactment on the subject matter or whether it affects it or whether it is in pith and substance,  
27 it is a law upon the subject matter in question. The Central and the State Legislatures operate  
28 in two different and distinct fields. The Central Rules to some extent trench upon the field,  
29 reserved to the State Legislature, but that is merely incidental to the main purpose. That is to  
30 the levy of duties of excise on medicinal and toilet preparations containing alcohol. Similarly,  
31 some of the impugned provisions may also, maybe almost similar to some of the provisions in  
32 the Central Rules, but that does not imply that the State Legislature has no competence to  
33 enact a provision. It is sufficient to say, on the first ground, that the impugned legislation is  
34 confined to intoxicating liquor, i.e., to ensure proper utilization of rectified spirit in the  
35 manufacture of medicinal and toilet preparations. And therefore, within the power of the State  
36 Legislature under Entry 8, List II. It further seeks to regulate the manufacture of *bonafide*  
37 medicinal preparations and prevent misuse of rectified spirit, in the manufacture of spurious

1 medicinal and toilet preparations containing alcohol capable of being used as ordinary  
2 alcoholic beverages. It was suggested that the provisions are identical with the provisions  
3 contained in Central Rules and in particular Rule 45(1), and therefore the legislation is in the  
4 occupied field. The answer is that the enumeration of intoxicating liquor in Entry 8, List II  
5 confers exclusive power to the State to legislate in respect of medicinal and toilet preparations  
6 containing alcohol." My Lord, perhaps that answers Justice Nagarathna's query. The exclusive  
7 power cannot be taken over under Entry 24, My Lord, that's what we are expanding this  
8 argument. The exclusive power of State under Entry 8 or Entry 25, List II is exclusive power.  
9 It is carved out on the general power of Industry, Entry 24, and therefore that exclusive power  
10 cannot be at all taken by the Centre by making a declaration under IDR.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In other words, Mr. Dwivedi, your argument  
13 really would be this, that the bifurcation in regards to the legislative competence of the Centre  
14 on the one hand and the States on this subject, is in respect of the levy of the duties of excise,  
15 right? So, what the Central List does is, that the power to levy duties of excise on all goods  
16 produced or manufactured in India, excludes alcohol fit for human consumption. That is the  
17 Central List, Entry 84. Alcohol, which is... Duty of excise on alcohol, which is fit for human  
18 consumption, which is taken out of Entry 84 of List I, was given to the States under Entry 51  
19 of List II. Right? So, this is the bifurcation in regard to the taxing power. Now, insofar as the  
20 substantive power to regulate is concerned....

21

22 **DINESH DWIVEDI:** There is no division.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** There is no division at all. The only reference  
25 to the substantive power to legislate on intoxicating liquor is in regard... is in Entry 8. And  
26 Entry 8, therefore, would cover the broad gamut, whether it is fit for human consumption or  
27 unfit for human consumption.

28

29 **DINESH DWIVEDI:** All liquids containing alcohol, that was the...

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Even though you have the power to regulate it  
32 under Entry 8, State cannot levy the duty of excise on alcohol which is not fit for human  
33 consumption. It's very clear, I think.

34

35 **DINESH DWIVEDI:** There is another factor, My Lord. Supposing I levy a fee... I levy a fee  
36 which is very harsh and excessive, then Your Lordships can turn around, because regulatory  
37 fee is to recover the cost of regulation. But then, if it is very high, and very harsh, then it

1 becomes a levy, which is generally to churn out revenue, which then becomes a tax rather than  
2 a fee.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Those are independent challenges.

5

6 **DINESH DWIVEDI:** That's the question. And that's an independent question, we're not  
7 concerned with it. Just as in *Synthetics*, too, they came to a finding that the levy imposed  
8 there, was vend fee on rectified spirit or a denatured spirit, and Your Lordships, felt and came  
9 to the conclusion that the levy is excessive. So, they say it's a tax. And if it is a tax, then they  
10 said, that there is no power in the State list to tax the rectified spirit or denatured spirit,  
11 excepting 51, which is excise duty, there's no other path. Taxing power has to be expressly  
12 given. So they are separate? So therefore they said, there is no power enabling the legislature  
13 to tax, rectified spirits or denatured spirit. Therefore, that levy is bad, because it's a tax. So,  
14 that question in that decision, My Lords, turns really on this.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And there is no substantive provision in List I,  
17 either dealing with alcohol, which is fit for human consumption or unfit for human  
18 consumption. Surprisingly, List... It's not surprisingly, but List I is advisedly silent in regards  
19 to that. There is no specific provision in List I, except in regard to taxing. Therefore taxation is  
20 a completely different...

21

22 **DINESH DWIVEDI:** So therefore, the question is, when they were dividing the object into  
23 two for the purposes of tax, were they oblivious of the fact that there are two separate  
24 categories. The fact is they realized that the intoxicating liquor... Liquor containing alcohol is  
25 included. All liquors containing alcohol are included in Entry 8, intoxicating...

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And look at the beauty of the Constitutional  
28 Division. Just as a aside. Entry 24 of List II, covers all industries, right? So, the entire gamut  
29 of industry is governed by the States under Entry 24 of List II, except whatever is declared to  
30 be a controlled industry under Entry 52. Yet, though the State has full regulatory power on  
31 industry, you can't impose a duty of excise on any goods produced by your industry, the power  
32 to impose the duty of excise is given only to the Centre.

33

34 **DINESH DWIVEDI:** There was a reason for it, My Lord, I went into that issue. Why is this?  
35 The reason is primarily because, India had become independent. Now it required funds, huge  
36 funds and excise was the biggest revenue churner at that point in time.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** They wanted to give it to the Centre.

2

3 **DINESH DWIVEDI:** They wanted it, to go to the Centre.

4

5 **JUSTICE B. V. NAGARATHNA:** To also have uniformity. Uniformity with regard to rate  
6 of excise.

7

8 **DINESH DWIVEDI:** Right.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But there is no substantive provision in List I,  
11 dealing with either alcohol, which is fit for human consumption or...

12

13 **DINESH DWIVEDI:** Even medicinal, toilet preparations containing alcohol.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The only reference, we have is, to intoxicating  
16 liquor in Entry 8.

17

18 **DINESH DWIVEDI:** Only. There is another interesting factor. 17 of this *Southern*  
19 *Pharmaceuticals*, that's also interesting because, they again fall back on *Balsara*. Your  
20 Lordships, just make a note of it. That is reliance based on *Balsara*.

21

22 **JUSTICE ABHAY S. OKA:** But *Balsara* is approved again. Slightly different...

23

24 **DINESH DWIVEDI:** Again, the issue is all liquids containing alcohol, but there is little more  
25 interesting factor, which I may bring out to Your Lordships appreciation and that may further  
26 clarify the position. My Lord, let us...

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We are at 11:30. We have understood now, your  
29 points. You have made it very succinctly.

30

31 **DINESH DWIVEDI:** I'm grateful, My Lord. Your Lordships...

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I call upon, Mr. Datar.

34

35 **DINESH DWIVEDI:** But then, since Your Lordships have... As Solicitor said, My Lord, Your  
36 Lordships are sitting in 9 judge bench, which is not a recurring kind of a thing...

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Why don't I do this.

2

3 **DINESH DWIVEDI:** There is something important which I want to point out, My Lord.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** One more thing, which we would like you to do  
6 is, that obviously, because you are arguing in the flow of the submissions, we ask the question,  
7 and then you cite a judgment. Just on maybe one page or two pages, just in chronological  
8 order...

9

10 **DINESH DWIVEDI:** It's there in my written submission, but this aspect is something which  
11 My Lord, comes... A thought-provoking idea, My Lord, comes, when we are researching,  
12 thinking over it, then it comes up. Now, this is what. I want to tell...

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright, tell us, now what more.

15

16 **DINESH DWIVEDI:** Now, apart from the fact that the intoxicating liquor has been  
17 expansively read because of the legislative history in the legal sense. Now, if Your Lordship,  
18 would recall Your Lordship's query yesterday, is there a conflict between Entry 52, List I and  
19 Entry 8 or Entry 25? And my answer is, there is no conflict.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** According to you, once it falls under Entry 8,  
22 it can't go into Entry 24. If it goes into Entry 24, it can't go to Entry 8.

23

24 **DINESH DWIVEDI:** The reason being, My Lord, the source is 24. The power under 52 is  
25 not like Entry 97, My Lord. Residuary power, where everything can be dragged in. But source  
26 is there for Entry 24, for Entry 52 that is Entry 24 only. So, it can't go beyond Entry 24. If Entry  
27 24 does not contain something, then it cannot be contained in Entry 52. And that is the reason  
28 why *ITC* struck down the Central Law. *Calcutta Gas* struck down down the Central Law  
29 IDR. That is the reason why *McDowell* strikes down..... That was a case where My Lord, the  
30 declaration was made with regard to even potable liquor.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In fact, really speaking, the universe of  
33 industry is contained in Entry 24. What Entry 52 does is, it carves out a portion, of what would  
34 otherwise fall in Entry 24 by allowing Parliament to make a declaration. So, what is left in 52,  
35 is.... Or rather, what is taken in 52, is that limited area where Parliament makes a declaration.  
36 Anyway, anything which is not covered by a declaration by Parliament, does not come into 52,  
37 but comes into 24.

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**DINESH DWIVEDI:** That's one aspect, My Lord, I'm grateful. The other aspect is...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** But before Parliament makes a declaration, it must otherwise fall under 24. If it doesn't fall under 24, what's Parliament making a declaration under 52 about?

**DINESH DWIVEDI:** The difference being Entry 97, doesn't have a source, but Entry 52 has a source and therefore is limited, unlike Entry 97. So, we can't drag every industry which is not specified somewhere, in any of the List, put it into 52...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** So, the concept of industries in 52 and 24 is co-extensive. It completely is... covers the same field, except that once a declaration is made by Parliament, it is exclusive there.

**DINESH DWIVEDI:** It abstracts from that.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** It abstracts from it.

**JUSTICE B. V. NAGARATHNA:** Then the question is, how much of Entry 24 is in Entry 8? How much of Entry 24 is taken away into a...

**DINESH DWIVEDI:** I'm grateful. This is the question... This is the question answered in *Calcutta Gas* as well as *McDowell*, that when we look at Entry 24, then what we notice is that it cannot include other industries which are there in this exclusive State Jurisdiction. Entry 24 is exclusive State Jurisdiction, it cannot fall in Entry 24. Likewise, Entry 25, gas and gas works, which is exclusive State Jurisdiction, cannot fall in Entry 24. Likewise, raw material which is covered by Entry 17.... 26, 27, which is exclusive State Jurisdiction, cannot fall in Entry 24. That is the reason for segregating industry from raw material and....

**CHIEF JUSTICE D. Y. CHANDRACHUD:** I feel now, take it today, now, for instance, on a lighter vein... but it's a very important Constitutional issue. Sports, entertainment, amusement is an industry today, right? Sports is not just amateur now, it's an industry. So, because sports, if you see sports, entertainments and amusements, falls in Entry 33 of List II.

**DINESH DWIVEDI:** And then kindly see 21, fisheries, that's also industry.

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 34. Classical industry, betting and gambling.

2

3 **DINESH DWIVEDI:** Betting and gambling.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, once there are specific items here,  
6 ***Calcutta Gas*** tells us that you can't put it in the general entry.

7

8 **DINESH DWIVEDI:** Exactly. I'm grateful. And if we follow that, that Entry 52 will include  
9 all the industries, then perhaps this will be the difficulty. So many entries would be rendered  
10 absolutely *otiose*. ***Calcutta Gas*** and ***McDowells***, the classical cases, which answer this  
11 confusion. It is true, word 'industry' is wider but these are the industries that are abstracted  
12 out of the general word 'industry', because they are special. So, special carves out an exception  
13 from the general, and therefore they are exclusive. Once Your Lordships have held, it is in the  
14 exclusive State List as an exclusive Entry then, it is plenary. Otherwise the consequence would  
15 be, we would be making all these Entries, My Lord, fisheries, sports, betting and gambling, gas  
16 and gas work, intoxicating liquor subject to Entry 52, which in fact, it is not.

17

18 **JUSTICE B. V. NAGARATHNA:** In the context of intoxicating liquor, in that context, or  
19 in the context of the world of alcohol, so to say, is there something beyond intoxicating liquor  
20 or is that the most and the highest comprehensive term?

21

22 **DINESH DWIVEDI:** That's what I indicated, Your Lordship, saw the legislative history of  
23 the local Acts and there is a... of at least 1915, 1910, 1909 vintage, which definition was  
24 borrowed in the Government of India, Act 35, intoxicating liquor. So, these are the local Acts  
25 which use the phrase intoxicating liquor meaning liquor consisting of alcohol. All liquids  
26 consisting of alcohol.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, Mr. Dwivedi, keep your powder dry for  
29 the rejoinder. Otherwise...

30

31 **DINESH DWIVEDI:** My Lord, I had to conclude this part, My Lord. If Your Lordship, would  
32 just permit me to just... couple of pages left in the written submission... which will conclude.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright.

35

36 **DINESH DWIVEDI:** I would start from page 25 of my written submissions.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. So, to our concerns, the Attorney is  
2 not here, So we don't want to... Mr. Attorney.

3

4 **R VENKATARAMANI:** Your Lordships.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We will, of course, hear you in your turn but  
7 this is a matter of curiosity, are you going to be arguing that Entry 8 will only cover potable  
8 liquor and not industrial alcohol?

9

10 **R VENKATARAMANI:** Yes, yes only potable liquor.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, you will be arguing that *Balsara* is wrong,  
13 therefore.

14

15 **R VENKATARAMANI:** To a limited extent, *Balsara*, in fact, proceeds in an entirely  
16 different issue. *Balsara* doesn't address this question directly. *Balsara* is in the context of  
17 import of potable liquor, possession of potable liquor.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right. Thank you. Thank you, Mr. Attorney.  
20 Depends on Entry, what do we mean by intoxicating liquor?

21

22 **DINESH DWIVEDI:** My Lord, with all due respect, I submit Your Lordships, have always  
23 emphasized a general entry using general phraseology must be interpreted in the widest  
24 possible manner. And why should we not pay the same respect to this entry, My Lord, I asked  
25 myself? It's also entitled to the same expansive interpretation.

26

27 **R VENKATARAMANI:** It is only to contain intoxication.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's... anything now Mr. Dwivedi, you would  
30 like to..

31

32 **DINESH DWIVEDI:** Yes, My Lord, kindly come to page 25.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right.

35

36 **DINESH DWIVEDI:** This would be a few pages, My Lord.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Certainly.

2

3 **DINESH DWIVEDI:** Volume I(a).

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I(a).

6

7 **DINESH DWIVEDI:** It states, Lord, Page 25 PDF.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** D, right?

10

11 **DINESH DWIVEDI:** D. Lordship, I just have a look at it, there I have compared it with the  
12 word intoxicating drinks and the contention is that, if it was only a beverage form, then they  
13 would have used the word intoxicating drink instead of intoxicating liquor. So, there's a  
14 difference. In every which way we may look at it, My Lord, it traces it to the local acts. The  
15 states power (b)1, then.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. This is your alternative argument.

18

19 **DINESH DWIVEDI:** Yes.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume I(a) in written submission, page 25.

22

23 **DINESH DWIVEDI:** My Lord *Synthetic* shut off, shut the states off and through a lethal  
24 observation, I would say My Lord, most lethal observation, paragraph 84, 85. They said even  
25 Entry 33 does not give the power because IDR, once it is there, it covers the whole field. There's  
26 nothing left for the state. Which perhaps My Lord, I'll show you, is not correct.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Fine.

29

30 **DINESH DWIVEDI:** The state's power to regulate industrial alcohol can also be traced to  
31 Entry 33 List III. I'm sorry. The state's power to regulate industrial alcohol can also be traced  
32 to Entry 33 List III. Entry 52 List I, as shown above, also includes manufacture and not trade  
33 and commerce, supply and distribution of products of notified industry under Entry 52 List I,  
34 IDR Act. IDR Act notified fermentation industry, therefore, manufacturing in such industry  
35 would go to Entry 52 List I, but not trade and commerce and supply and distribution, which  
36 go to Entry 33 List III. The power of state to regulate industrial alcohol survives, however, it  
37 would be subject to Article 254 as the said entry is in Concurrent List. IDR Act contains Section

1 18-G, which purports to regulate industrial alcohol only by means of a notified legislative  
2 order, which is a control order. Section 18-G, is only traceable to Entry 33 of List III. The  
3 Central Government has not issued any order to regulate industrial alcohol as per Section 18-  
4 G, therefore, there cannot be a case of conflict or occupied field. The field is unoccupied and  
5 the state's power to legislate to regulate industrial alcohol is untrammelled and complete. This  
6 position has been made clear in the following decisions. But these decisions, Lordship, may  
7 just note two My Lord, which include all these judgments and I'll give the paragraphs too, that  
8 will solve, make Your Lordships' task easier. The judgments are My Lord, ***Belsund Sugar***  
9 ***Co. Ltd. vs. State of Bihar (1999) 9 SCC 620***. This is Volume V, PDF page 2069...69.  
10 Now, the relevant paras are, paragraph 1116 to 118, 168 to 171. This is a Constitution Bench  
11 Judgement My Lord.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is it hold?

14

15 **DINESH DWIVEDI:** It holds My Lord, that there has to be a notified order to create a real  
16 conflict. If there is no notified order under Section 18-G, then there is no issue of conflict.  
17 Conflict has to be actual and not possible conflict in future. So, the IDR Act does not perhaps  
18 by its own presence and Section 18-G by its own presence, does not take away state's  
19 jurisdiction until and unless... then the other is My Lords, ITC what Your Lordships had seen  
20 some of it yesterday, 2002 Volume IX, SCC 232 Volume V, PDF page 1597.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. And what para are you referring to?

23

24 **DINESH DWIVEDI:** Yes. Paras are, para 84 to 88.

25

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

27

28 **DINESH DWIVEDI:** Then, and this is all those cases I have narrated here. But the conflict  
29 has to be, in fact, an existing and not in realm of possibilities. Next page, page 21. Here are  
30 cases which do that. They also mentioned 2002 and 99. Therefore, despite declaration under  
31 IDR Act '51, in the absence of any order being issued under Section 18G, I'm sorry, in the  
32 absence of any order being issued under Section 18G, the State's jurisdiction in relation to  
33 industrial alcohol, IA My Lord is the short form of it, I indicated earlier, cannot cease mainly  
34 on denaturation of rectified spirit, making it unfit for human consumption. Because even  
35 denatured spirit is a product of....

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then finally you say that minds..... cases are  
2 different because the product is not covered in entry.... in the concurrent list.

3

4 **DINESH DWIVEDI:** The other thing is that, in the end, there is one judgment which we  
5 need to really emphasize on is, the *VAM Organics (2004) Volume I, SCC 225*.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 5A right? Page 118.

8

9 **DINESH DWIVEDI:** My Lord, this judgment is important because relying upon  
10 *Synthetics 2*.... relying on *Synthetics 2*, this VAM organic says....

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 118. 118. I took 18.

13

14 **DINESH DWIVEDI:** The relevant paras My Lord, para 22 to 28, 29, 43, 29 to 43, and this  
15 says clearly that *Synthetics* has brought down curtains for the State to regulate industrial  
16 alcohol. And therefore, the jurisdiction seizes. So, instead of reading it, I'll just make it  
17 convenient. That's the sum and substance of that judgment. So for as *Synthetics* case is  
18 concerned, my friend would be dealing with that judgment, the correctness of it in detail. But  
19 there are two things which I want to point out only in this regard and then I conclude my  
20 arguments. *Synthetics* My Lord, 1st 67 pages perhaps is the arguments noted. There is a  
21 paragraph 67 and 68, the two important reasons given for coming to the conclusion that  
22 denatured spirit or the rectified spirit is not in.... not included in the word intoxicating liquor.  
23 And one important reason is that they have adopted ISI standards for the drinkable alcohol,  
24 intoxicating drinks. So ISI standard prescribes 42% of whiskey 16ml, 30% for vodka and so  
25 and so forth. Therefore, it is a kind of alcohol which can be consumed as it is, in the actual  
26 form and not when it is mixed with something. So, if it is mixed with something, then industrial  
27 alcohol will remain industrial alcohol. But if it can be had as it is, then the word intoxicating  
28 liquor is confined to that. That's one aspect, which is really damaging. The other aspect is, and  
29 there is no reason given over here, no rationality. They all of a sudden rely upon, they ignore  
30 the, Your Lordships have ignored the, I'll say with respect, the legislative history, the meaning  
31 of the term intoxicating liquor, which would have come to Entry 31, List II of the Government  
32 of India Act. They have completely ignored that. They haven't gone into the legislative sense,  
33 but they say popular sense.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let them, we will come back to that.

36

1 **DINESH DWIVEDI:** But the second is even more damaging. It says the judges were not  
2 aware of the use of industrial alcohol at that point of time when **Balsara** was there. But that's  
3 the logic given. and therefore they included it in intoxicating liquor. But somehow the other, I  
4 felt.

5  
6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** They'll be relying heavily on it.

7  
8 **DINESH DWIVEDI:** I'm extremely grateful, Lord, for kind consideration.

9  
10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Arguments are intoxicated.

11  
12 **DINESH DWIVEDI:** Now, at least, I can have my neat, not in the afternoon. Of course, not.

13  
14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What are your preferences, Mr. Datar?

15  
16 **ARVIND P. DATAR:** I have made a colourful chart also to show, My Lord, of how it is made.  
17 Now, since I've got an hour and little bit more. My Lord, basically, we have to decide whether  
18 **Synthetics** of 1990 deserves to be overruled, and we had to answer the six questions which  
19 are raised in the referral order. Fortunately, for us, My Lord, the Law Commission went into  
20 this aspect in 1998, and they said that **Synthetics** has created a lot of confusion, exact word  
21 they used. And they recommend that the IDR Act be amended and Entry 26 be changed that  
22 was done, retrospective from 1953 or '56. So, the amendment to the IDR Act completely  
23 changes the complexion of the whole situation. So, first submission is correctness of  
24 **Synthetics**, then the Law Commission report in the amendment, that's the second. Thirdly,  
25 My Lord, I will just supplement on Entry 8, the importance of Entry 8 and the question of  
26 what is the interplay of Article 246(2), 246(3) and one should not forget 254(1). Not 254(2),  
27 254(1). Secondly, My Lord, on intoxicating liquor, My Lord, so, I just heard the Attorney  
28 General say that on intoxicating liquor, the Union wants to take the stand that it will not  
29 include "industrial alcohol" or "denatured" spirit. My Lord, in **Synthetics** and Chemicals,  
30 they expressly took the stand that the word "intoxicating liquor" includes both and what I'll do  
31 before going to that, I'll just with Your Lordships' permission, just give because... And they  
32 expressly say **Balsara** should not be reversed after 38 years, that's the stand they took in  
33 **Synthetics**.

34  
35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** *Balsara* 41.

36

1 **ARVIND P. DATAR:** So, My Lord, in case, they choose to argue, I may be in reply relying on  
2 an article on executive estoppel. As to how the executive cannot change its stand once it has  
3 taken a position. There's an executive estoppel, provided that will be in the reply, not now.  
4 There's a wonderful article by Francis Bennion in Public Law on the nature of executive  
5 estoppel, and he discusses pepper versus heart and so on. Now, My Lord, before, Your  
6 Lordships with Your Lordships kind permission, I'll just give a brief idea, because before we  
7 understand the legal aspect, we have to understand how the industry works unless we know  
8 how the actual industry works and what is industry? Just five minutes a brief introduction, My  
9 Lord.

10

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

12

13 **ARVIND P. DATAR:** My Lord, if My Lordships, just sees my written submission.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where are your written submissions?

16

17 **ARVIND P. DATAR:** I(e). And please come to page 12, pdf 13. There's a colour with the  
18 colour code. All Your Lordships have got. I'll just wait. While it is being searched, My Lord, as  
19 My Lordship, rightly put it, the universe of regulation is entirely with the states the split takes  
20 place at the time of removal as Justice Jeevan Reddy notes in the Law Commission. When you  
21 split, if you're going for industrial, you pay excise duty, if you go for IMFL you pay State excise  
22 duty,

23

24 **JUSTICE B. V. NAGARATHNA:** I'll follow on this. You may please continue.

25

26 **ARVIND P. DATAR:** Now My Lord, I've discussed this with people from the industry. My  
27 Lord, the source of alcohol is basically, two substrates - either it is molasses or it is grain. Now,  
28 molasses and grain are subject to fermentation, adding yeast and so on, and there used to be  
29 what is called primary distillation which results in rectified spirit or RS. Rectified spirit is  
30 about can be 80-90% alcohol from rectified spirits there is a secondary distillation which  
31 results in ENA, extra neutral alcohol, which is Your Lordships sees a lot, it comes to ENA. If  
32 the same secondary distillation is from grain, it is called GNS, grain neutral spirit. It's called  
33 neutral because it is, most of the impurities have been removed and ethyl alcohol can go up to  
34 99%, but the industry tells me that the cost of taking it from 95 to 99 is very huge and the  
35 benefits are not much. So typically they use 95, 95% of ENA. So, if I start a distillery and I get  
36 a state license, I will either get my substrate from molasses of a grain, I will make rectified  
37 spirit, and now I'm told in the modern days, with technology, you go straight from substrate

1 to ENA, you bypass the rectified spirit stage and straight away go to ENA. And I'm also told  
2 that except Maharashtra and one more state, all country liquor is based on dilution of ENA or  
3 grain neutral spirit. So, in UP for whom I appear, the country liquor has got 26% potency.  
4 That's how, and one is, one brand is 26% one brand is 32% in UP. So, ENA is diluted to that.  
5 Now, please see the chart, My Lord. So, a distillery...

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Your chart doesn't have rectified spirit in it?

8

9 **ARVIND P. DATAR:** No, actually between molasses and ENA should be rectified spirit. This  
10 is the modern technology. I'm told that in most cases now they go straight to ENA.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Oh I see.

13

14 **ARVIND P. DATAR:** So, if Your Lordship, doesn't mind between molasses and this, Your  
15 Lordships can also can add rectified spirit. Now, once I get extra neutral alcohol 90-95% of the  
16 output goes to manufacture of liquor, IMFL or country liquor. A smaller percentage can be  
17 used in various industries paints, varnishes, perfumes and so on. Now, when I get a license, I  
18 get a license to make extra neutral alcohol. If I want to clear a percentage for industrial  
19 purposes, I must file form DS-1, DS-2, Your Lordship, please ignore the procedure, I have to  
20 file DS-1, DS-2, and State Excise Officer will be present in my premises. In his presence the  
21 portion of the alcohol I want to sell for industrial purposes will be denatured. Once it is  
22 denatured and it is removed to a paint manufacturer or a perfume manufacturer or somebody  
23 else it will suffer central excise duty and be cleared. But even at the stage of denaturation, I  
24 have to pay denaturing free and there are three categories of denaturants which are given.  
25 Now, somebody asked, can you make denatured spirit and drink it? I discussed the matter. It  
26 depends on the nature of the denaturing. There are different types of denaturation. If the  
27 denaturant is methyl alcohol or it is just one molecule less, ethyl is  $C_2H_5OH$ , ethyl alcohol is  
28  $CH_3OH$ , just 1 Carbon less, 2 Hydrogen less. But ethyl alcohol... methyl alcohol results in  
29 blindness definitely and death beyond a point. So, Your Lordships, sees this hooch tragedies,  
30 illicit liquor tragedies, we are getting in the press now and then. That is because the bootlegger  
31 or the illicit manufacturer, he does not know what is the denaturant. He gets somewhere from  
32 some illegal sources he gets that, he diluted, sells it. God forbid, if it has methyl alcohol and  
33 this, Your Lordship, will see in the press people turn blind, people. If there's some other  
34 denaturant it could still cause, vomiting, sickness, nausea, but it may not cause blindness and  
35 death. So, this is the whole thing and there is a prosecution and punishment of anybody  
36 attempting to make denatured spirit into renaturing. It is punishable with fine and  
37 imprisonment up to two years, that's the law. So, now My Lord, just completing this chart, and

1 I'll go to synthetic. So, Your Lordship, will find if I want to make... I want to sell industrial  
2 alcohol then, actually, industrial alcohol should not be used. I would beg Your Lordship, to call  
3 it, denatured spirit. Industrial alcohol is a, that's the fountain head of the confusion that has  
4 been created, I'll point out later. It is denatured spirit. All definitions say spirits include  
5 denatured spirits, and a denatured spirit is a spirit to which de natural is added. In fact, there  
6 are denatured in rules and, interestingly, My Lord, sorry..... Interestingly My Lord, suppose I  
7 import extra neutral alcohol. I import extra neutral alcohol. The duty is 150%. Once it is  
8 denatured, there's a denature process at the port itself, you can get it denatured, then the duty  
9 is 5%. Now it has become 0%. So, denatured goes for industrial purposes, they kept the duty  
10 at 5. When it is meant for ENA to be cleared for making say, for example, many ENAs are  
11 brought here, then they have blended in India and they are again sold. So they suffer duty at  
12 150. So I'll show Your Lordships customs also. And to show Your Lordship that intoxicating  
13 liquor means everything. What happens is intox... because if Your Lordship sees this entire  
14 universe is Entry 8.

15

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

17

18 **ARVIND P. DATAR:** When it's going out, it is Entry 84 of List I or Entry 51 of List II. Now,  
19 Lordship sees, if I go to IMFL, Lordship will kindly see, what is added in whiskey, what is  
20 added in rum, brandy, gin, vodka. Nothing is added. These are the categories. My Lord, beer  
21 is a separate entry. Beer, the level is about 8%. Wine is about 18%. Now, Lordship will just  
22 note, just for completing, in India, you cannot sell by law, liquor containing more than 50%  
23 strength of alcohol. It's banned, but there are certain brands which are sold which have got  
24 higher content, but they're only for export. But I've got photographs. I didn't want to make it  
25 more colourful. I got photographs where there are Polish vodkas which are 92% strength. I  
26 don't know how, either are we adding one litre of water to that and how they're drinking, but  
27 I've got photographs of alcohol 60, 70% is very common. So this is the strength. Now, My Lord,  
28 so this is the entire structure of the industry. Maybe extreme cold in...

29

30 So my humble submission is, when we understand intoxicating liquor, what the State does is,  
31 it can regulate both liquor meant for human consumption, called potable alcohol. It can also  
32 regulate denatured spirit, because denaturing takes place within that premises itself.

33

34 Now, I would humbly submit ***Synthetics and Chemicals***, this is my second argument now.  
35 ***Synthetics and Chemicals*** is liable to be overruled by Your Lordship because the  
36 fundamental flaw is that there Lordships mix up industrial alcohol and rectified spirit to be  
37 synonymous. They say industrial alcohol is rectified spirit. In one more place, they say

1 industrial alcohol is ethyl alcohol. So they fail to note the distinction between rectified spirits  
2 or ethyl alcohol which, per se is for human consumption. Secondly, My Lord, as Justice Jeevan  
3 Reddy also notes from the Law Commission and Your Lordship also point out, there is no word  
4 of industrial alcohol anywhere. It's a loose commercial term to say, this spirit is denatured.  
5 The second error which ***Synthetics and Chemicals*** makes, is that, they read the Entry 51,  
6 which uses the phrase, "alcoholic liquor for human consumption", mistakenly, as "alcoholic  
7 liquor fit for human consumption". There's a world of a difference. Now, the third error, which  
8 has been, another Supreme Court judgment said, is *per imperium*, ***Synthetics*** goes and says  
9 that states can't even levy a Sales Tax and that was held to be *per imperium* in **(1991) IV SCC**  
10 **139**. But, Lordship, need not trouble yourself with that now. The sales tax is not an issue. But  
11 I can give a full note, My Lordships, if it saves time, I can give a note also.

12

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

14

15 **ARVIND P. DATAR:** And I'll give a full note because, My Lord, I had made my written  
16 submissions, but in the light of so many questions, now I have to recast. My Lord, the other  
17 fourth error, which is an inconsistency in the earlier part, they say states have nothing to do  
18 with alcohol but in the later part, they say, yes, you can levy a Regulatory Fee. Now, you cannot  
19 have both ways. So, My Lord, I will straight away, go to paragraphs of ***Synthetics*** and then  
20 I'll make my submissions on Entry 33, IDR Act.

21

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

23

24 **ARVIND P. DATAR:** Volume 13 I'll just read four or five paragraphs of ***Synthetics***, then  
25 I'll go to the most important amendment, which completely changes the situation. Lordships  
26 will kindly come to first para 41 of ***Synthetics*** and Chemicals. It's Volume V, PDF para 37.  
27 This is to say that...

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just one sec, Volume V, page?

30

31 **ARVIND P. DATAR:** Volume V, PDF para 37. My I read para 41, My Lord? Para 41. This is  
32 the judgment which is now for reconsideration. Please see para 41, the only question which  
33 has to be determined is whether intoxicating liquor in Entry 8 in List II is confined to potable  
34 liquor or includes all liquors? According to the Union of India, in view of the difference of  
35 language and Entry 8 and Entry 51 of these two, it is reasonably possible to take the view that  
36 intoxicating liquors include both liquors. They took this stand before the seven judges. Now  
37 please see further. It was submitted by the Union Of India that there are no grounds for

1 overruling **Balsara** case decided in 1951, after 38 years, particularly, when it has been  
2 followed and applied in later decisions. But the Bench, the judgment then later goes to say  
3 **Balsara** is wrongly decided.

4

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

6

7 **ARVIND P. DATAR:** Now, My Lord. Just see below that, there's no placitum here,  
8 Lordships, will see it was submitted in the in **India Mica and Micanite** case where  
9 Lordship, saw they held **India Mica** they said, the word intoxicating liquor can include, will  
10 include denatured spirit, but they said you only can levy fee, excise duty goes to the Centre,  
11 you can use levy regulatory fees, and they remanded the matter for reconsideration. Now, Your  
12 Lordship will kindly see, they notice **India Mica**. Now come to para 86(d), which will be at  
13 page, PDF page 58, para 86(d). However, in case state is rendering any service as distinct from  
14 its claim of so-called grant of privilege, it may charge fees based on *quid pro quo*. See in this  
15 connection observations of **India Mica**. And Your Lordship, will kindly see para 86 the  
16 position with regard to control of alcohol, industry has undergone material significant change.  
17 After the amendment, the state is left with the falling power in respect of alcohol. Now, what  
18 alcohol are we meaning? So, my humble submission is, the Union has taken a categorical stand  
19 that Entry 8 includes both **Balsara** was right, and this Seven Judge Bench notices **India**  
20 **Mica** but says that, yes, part of it is correct. Now, what are the errors in these judgments? My  
21 Lord, I just point out the error.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Please do.

24

25 **ARVIND P. DATAR:** Now please come to para 74, PDF page 54. Your Lordships has got it,  
26 para 74?

27

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

29

30 **ARVIND P. DATAR:** Para 74. 'It has to be borne in mind that by common standards'. Now  
31 this is the, if I may say so, the main error, which completely 'by common standards, ethyl  
32 alcohol, which is 95%, is an industrial alcohol and is not fit for human consumption. The  
33 petitioners and appellants are manufacturing ethyl alcohol, also known as rectified spirit,  
34 which is an industrial alcohol'. I would humbly request Your Lordships, to hold that this  
35 observation is incorrect.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Observation that....

1  
2 **ARVIND P. DATAR:** Rectified spirit or ethyl alcohol after undergoing denaturation then  
3 becomes industrial alcohol. This is an anterior stage. It has to be denatured under the  
4 denatured rules on payment of denaturing fees and then becomes industrial alcohol or  
5 technically, industrial spirit. ISI specification has divided ethyl alcohol, as known in the trade,  
6 into several kinds of alcohol. Beverage and industrial alcohols are clearly and differently  
7 treated. Rectified spirit for industrial purposes is defined as spirit purified by distillation,  
8 having a strength not less than 7... 95%, volume mark [UNCLEAR]. Again, this is wrong.  
9 Rectified spirit per se has no purpose. Rectified spirit after denaturation becomes unfit for  
10 human consumption. Then please see further My Lord, dictionaries and technical books also  
11 show that rectified spirit is an industrial alcohol and is not potable as such, again, completely  
12 wrong. It appears therefore that industrial alcohol, which is ethyl alcohol by itself is not only  
13 non-potable, but is highly toxic. If these passages are overruled, then the entire law gets into  
14 place. And I will show Your Lordships, that this is not just my argument, kindly see, how it is  
15 classified in Customs Act, for example, how they split it. I'll do, I'll finish the other portion  
16 which require correction, and then Your Lordship, will kindly see. Your Lordship, just bear  
17 with me. I'm also learning like Mr. Dwivedi. Come to para 52, My Lord.

18

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

20

21 **ARVIND P. DATAR:** 52, at PDF page 42. May I read, My Lord? I'll just, please come 7-8  
22 lines down the line. The industry needs potable alcohol and denaturants are not required by  
23 it. Rather, some of them are avoided according to State of... My Lord, this is just the reverse.  
24 Industry doesn't want potable alcohol; industry wants denatured spirit. Human beings want  
25 potable alcohol. Then please see further. The industry needs potable alcohol and the  
26 denaturants are not required by it. Rather, some of them are avoided, according to the State  
27 of U.P. In particular industries, they hamper the manufacture of final product. Denatured  
28 spirit or industrial alcohol is basically potable alcohol. It is denatured in public interest to  
29 prevent its use as potable alcohol. Then please come to para 54. Next page. Para 54. We have  
30 no doubt that the framers of the Constitution, when they use the expression alcoholic liquor  
31 for human consumption, they meant at that time, and still the expression means that liquor  
32 which as it is, is consumable, in the sense capable of being taken by human beings as such as  
33 beverage for drinks, which is not correct. If Your Lordship goes back to my chart at page 12,  
34 there are many companies, basically sugar industry, they have molasses. So from molasses  
35 they make ENA and that ENA then sold to, say, XYZ companies, which make different kinds  
36 of products. So, what happens is ENA from the sugar factory or the sugar industry is potable  
37 alcohol. It may not be fit for consuming as it is, but it is alcoholic liquor for human

1 consumption and we pay excise duty on that. And to make the technical point very clear, what  
2 happens in U.P. is, when we clear it to a distillery within U.P., the duty is paid at the IMFL  
3 stage. It is moved in bond, the entire movement is controlled by the State and then depending  
4 on what you buy and the selling price, they levy the excise duty. Because the product may vary  
5 depending on strength, etc. So, this statement that, alcoholic liquor for human consumption,  
6 my humble request is, please do not add the word 'fit' for human consumption in that place.  
7 Alcoholic liquor for human consumption means alcoholic liquor which is capable of being used  
8 for human consumption. Your Lordship knows *Anwar Khan's* case, 11 STC. They say  
9 consumption, Article 286 before the amendment, it said consumption. *Anwar Khan* said  
10 there is consumptions and final consumption. So even at the earlier consumption also, it's all  
11 right. So, consumption by itself, does not mean final consumption, even at the earlier stage is  
12 good enough. So, my next request is subject to Your Lordship's approval. Alcoholic liquor for  
13 human consumption means if the alcoholic liquor is capable of being used for human  
14 consumption, it will come under Entry 51 of List II. If it is denatured, it will come under Entry  
15 84 of List I. And I was told that, when I apply for the license to the State, I don't say how much  
16 denatured I'll make, how much this I'll make. It's my choice. It's a demand and supply.  
17 Suppose tomorrow, let's say, for example, prohibition is imposed in Bihar, I don't know what's  
18 the situation, automatically IMFL demand will go down. It'll have to be more useful for  
19 industry, unless it is exported from that State. So, the factory which gets the license, or the  
20 sugar company which gets the license, will pay the duty depending on how much they clear.  
21 Today, they may clear hundred tons, etc. So, this is the law. So, this also in my humble  
22 submission para 54 is wrong. So, my request is para 74, para 52, which mix up between ethyl  
23 alcohol, rectified spirit and treat them as industrial alcohol, deserves to be overruled. The  
24 statement in para 74 that, what alcoholic liquor which is contemplated in Entry 51 and Entry  
25 84 is as it is. My humble submission is, Article 47 used the word 'intoxicating drinks'. That  
26 may be something which is ready to use, but not here. Then My Lords, the other error which  
27 requires to be reversed, please come to para 85, page 57.

28

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

30

31 **ARVIND P. DATAR:** Sorry. Page 57, para 85. After the 1956 amendment, all Your Lordships  
32 have got? After the 1956 amendment to the IDR Act, bringing alcohol industries under  
33 fermentation industries as item 26 of the First Schedule to the IDR Act, the control of this  
34 industry has vested exclusively in the Union. That is incorrect. I will take, Your Lordships, to  
35 the IDR Act and show how it is not exclusive and just now I'll just simply point out Entry 26  
36 uses the word, "trade and commerce", 27 says, production supply, distribution. So, 2 plus 3, 5.  
37 Entry 33 says trade, commerce, production, supply, distribution, all five. 18(g) talks only of

1 trade, commerce, supply, distribution, nothing on production. Essential Commodities Act all  
2 are included. I'll come to that shortly. So, this observation is not correct. Please see further,  
3 My Lord. Thereafter, licenses to manufacture both potable, non-potable alcohol is restricted  
4 to Central Government, is absolutely incorrect. All of us know that licenses to manufacture  
5 liquor, it is entirely a state subject.

6

7 Distilleries are manufacturing alcohol under a central license IDR Act, also not correct. No  
8 privilege of manufacture even if one existed has been transferred to the distilleries for the  
9 State. Now, just pausing here, Your Lordships say, they criticize the police power theory and  
10 says we'd not like to use police power, we'll use the word sovereign power. My humble  
11 submission is that's a separate controversy whether police power is there or not there. So,  
12 when, My Lordship, writes to judgment I would request that that can be kept open, subject to  
13 My Lord's approval. Because nobody's arguing on, is there a police power? There is a sovereign  
14 power, let's go by that because just to clarify, My Lord, this aspect of police power came with  
15 the 18th Amendment to the U.S. Constitution. Lordship knows, they imposed prohibition in  
16 the US in 1919 by the 18th Amendment. It was repealed by the 21st Amendment in 1933. So,  
17 US had prohibition from 1919 to 1933. I've got a US Supreme Court judgment which says, they  
18 use the word "intoxicating liquor", the 18th Amendment. An intoxicating liquor the US  
19 Supreme Court said includes denatured spirit. Your Lordships would like to see that or I'll just  
20 give a page number in my note. So, to say that, My Lord, privilege is not there. I don't want to  
21 go to that for the time being, since it's a nine Judge Bench. If Your lordship is supposed going  
22 to approve or overrule that police power may be left open, is my request. Now, kindly see  
23 further. The State cannot itself manufacture industrial alcohol without the permission of the  
24 Central Government. Sorry, no, I don't need Central Government's permission. I will make  
25 ENA. If I clear ENA for after denaturant, I will pay the appropriate duty. The States cannot  
26 claim a right they do not possess nor can the States claim exclusive right to produce and  
27 manufacture industrial alcohol which are manufactured under the grant of license for Central  
28 Government. My Lord, I could be wrong, but what research I did was there is no industrial  
29 licensing for any industrial alcohol. Only one thing I'm told now, this popularity of ethanol  
30 being used as additive to fuel. So, there are plants which are being only in the denatured. I  
31 mean, they don't make potable, they make complete ethanol based on a formula which is then  
32 added to petrol or so and so and so. That's a different aspect. But to say, that industrial alcohol  
33 is manufactured under grant of license is technically incorrect. Because industrial alcohol is  
34 never manufactured. What is manufactured is ENA, ENA is adulterated or denatured. It  
35 remains an alcohol, but it's an alcohol which can't be used by human beings. So, there's no  
36 question of manufacturing industrial alcohol. You manufacture only ENA. Then there's a fork  
37 in the road.

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**JUSTICE HRISHIKESH ROY:** The license is obtained to manufacture one basic item...

**ARVIND P. DATAR:** ENA.

**JUSTICE HRISHIKESH ROY:** ENA and then you convert it, subject to demand.

**ARVIND P. DATAR:** Yes.

**JUSTICE HRISHIKESH ROY:** And depending upon that, whatever the implications of regulations, is set then...

**ARVIND P. DATAR:** My Lord as the Chief Justice said, then the tax part comes in.

**JUSTICE HRISHIKESH ROY:** Tax part comes in.

**ARVIND P. DATAR:** Yes.

**JUSTICE HRISHIKESH ROY:** Could be central excise or it could be state?

**ARVIND P. DATAR:** Yes.

**JUSTICE HRISHIKESH ROY:** But then this is something very straightforward conclusion. I am just wondering, these seven judges, they had no Polish roots. You said they drink very potent liquor in Poland, because they I think, were influenced by, you know, 97% alcohol and heavy argument.

**ARVIND P. DATAR:** Or perhaps the lawyer didn't consume enough.

**DINESH DWIVEDI:** [INAUDIBLE] not knowing the progress in the field.

**ARVIND P. DATAR:** No, actually, what happened was... with great respect, for my learned friend. If Your Lordships sees para, opening paragraph, please see para 3 and 4 of the judgment. What is the controversy? U.P. levied vend fee on industrial alcohol. These people challenged it. They said this vend fee is actually a tax in disguise. It's masquerading as a vend fee but actually it's a tax. Then the Court went into and then what happened was the assesseees took the point that state has no power to levy vend fee at all. That issue was actually settled by

1 **India Mica.** What they say is you can levy regulatory fees. But if they are, disproportionately,  
2 if they are high, then they'll be subject to challenge as arbitrary, excessive or... then what  
3 happens? You misusing the power of fee to actually levy a tax. That can't be done. That's again  
4 settled. So, My Lord, these are the erroneous paragraphs in this particular thing. Now, let me  
5 go to the Law Commission Report. Now, what happened was after 1990, there were a number  
6 of judgments on both sides. Sorry. We are both for U.P., so, we are basing our power to levy  
7 fees on the sovereign power on this Constitutional provision. We are not claiming privilege  
8 and so on, which is a different subject altogether. In fact, Justice Venkataramiah in **CSS**  
9 **Transport**, which is coated with growing tributes later by Mr. B.K. Mukherjea. He says that  
10 privilege is basically all prerogative, and if Your Lordship, asks me frankly, in a Republican  
11 Constitution, privilege may be anachronism. Nobody... we are all citizens either I get the  
12 license or I don't get the license. Nobody's giving me privilege. But we use privilege in the same  
13 of... typically what happens, whether it's telecom or petroleum or alcohol, whatever was a state  
14 monopoly, they say state is allowing you to make, therefore state is parting with the privilege,  
15 but I don't want to waste time on that. Your Lordship, will now come to... now, please,  
16 straightaway come to the Law Commission Report.

17

18 **JUSTICE ABHAY S. OKA:** Which volume?

19

20 **ARVIND P. DATAR:** Yes, which is Volume IV, IV(a), page 559. I'll read the opening letter,  
21 My Lord, after **Synthetics**, there's a lot of representation from different states because  
22 **Synthetics** said that...

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes 559.

25

26 **ARVIND P. DATAR:** Page 560 My Lord, the covering letter? May I read? Para 2, My Lord,  
27 the subject was taken up by the Law Commission on its own. The need for taking up the subject  
28 is on account of the emergence of several practical problems as a sequel to the decision of the  
29 Constitution Bench of the Supreme Court in the case of **Synthetics and Chemicals and**  
30 **Ors.** versus so and so. The import of the said **Synthetics** has caused inconsistency in later  
31 Supreme Court decision, discussed in Chapter 2 of the report. The report seeks to do away the  
32 doubts so that the conflicts in discharge of functions, etc. My humble submission is that I did  
33 not go into the decision, both for or not, because Your Lordships are untrammelled by  
34 precedents. So we can straight away decide on first principles, but this is the reason why the  
35 law commission took it up. Just please come to page 572, which is PDF based, same thing.  
36 Paragraph, almost every state, almost every state has an excise law enforce, some of them  
37 enacted prior to the commission to the Constitution governing the manufacturer, distribution,

1 sale and possession of liquor. The definition of liquor in these enactments made no distinction  
2 between liquor used for human consumption and liquor used for other purposes. These acts  
3 populate or regulate all liquors. The excise duty on the manufacturer of liquor was collected  
4 by the state government, which also closely regulated and controlled the manufacturer  
5 position and transfer the liquors. As a fact and speaking generally, the Union had no say in the  
6 matter. Now, Lordship will come to page 580, at same PDF page 2.2.1. Nature of problem  
7 created pursuant to so and so. The decision of the Constitution once created several practical  
8 problems as explained in the later decisions of the Supreme Court to be referred to presently,  
9 to be referred to presently. There is no such thing as industrial alcohol. What is manufactured  
10 as alcohol namely of 95% above purity, which it appears, is known as ethyl alcohol and also as  
11 rectified spirit. This rectified spirit can be used for both industrial and non-purposes. And then  
12 Your Lordships with the example of excise, where the taxable event is manufactured but the  
13 collection is a time of removal. So here also, the time of removal is important and then the  
14 conclusion. Please come to the conclusion. Because this Report is accepted. Yes, now, page  
15 595, para 3.1, chapter 3. Lordship have got it? Yes. Having observed in the preceding chapter  
16 the apparent conflict in the Supreme Court decisions on the import of the important subject  
17 relating to Item 26 of the First Schedule, it is quite essential to do away the doubts as early as  
18 possible, so that conflicts and discharge of functions of the Central and State Government are  
19 reconciled as held in *Murari* so and so. Before embarking upon the effect to seek a solution,  
20 it's pertinent to refer to argument. He refers to *Bihar Distillery*, which actually was  
21 judgement by Justice Jeevan Reddy himself. Now Lordship will kindly see para 599  
22 consideration of the problem and recommendations. I'm not going into it because ultimately  
23 the government accepted this report.

24

25 Now, please come to 602, the Law Commission of India is the opinion that the above matter  
26 should be clarified by enacting appropriate amendments to the IDR Act instead of leaving the  
27 matter to be fought with in courts. This controversy has already attracted four or more  
28 judgments, and the confusion has not been cleared. In the interest of maintaining balance  
29 between Union and the States and also with the view to eliminate room for abuse and misuse  
30 of abuse of law and misuse alcohol, to enable the States to levy and collect income which they  
31 were receiving by levying excess duty on alcohol, for more than a century prior to the decisions  
32 in *Synthetics*. And also to put an end to legal wrangling, it is eminently proper and expedient  
33 to substitute the following item in the First Schedule to the IDR Act in the place of the existing  
34 item, fermentation industries, but not including alcohol. The entry of such industry, Your  
35 Lordships said add, not including alcohol.

36

1 Now, then they finally conclude. Please see page 604. The Law Commission recommends  
2 substituting item 26 in the First Schedule. Fermentation industries, but not including alcohol.  
3 What Parliament did was, they put in brackets, not potable alcohol. Now Lordships will come  
4 to the Act, yes. I'll take Your Lordships to the statement of objects and reason which is Volume  
5 IV(a), page 830, same volume.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What page is it, for you?

8

9 **ARVIND P. DATAR:** Page 30, my apologies.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In that same page?

12

13 **ARVIND P. DATAR:** Yes, same page. Now, My Lord, I'll read para 2, para 1 is just a  
14 preamble. May I read now? All of Your Lordships got it? According to the distribution of  
15 legislative powers content in the Seven Schedule, Entry 8 of list II, State List enumerates a  
16 subject matter intoxicating liquors, that is to say, so and so. And Entry 24, thereof, enumerates  
17 a subject matter industry, subject to provisions of entries 7 and 52 of List I. While, Entry 7 of  
18 list I are in list provides for subject matter industries declared by Parliament to be necessary  
19 for defence. Entry 52 thereof provides industries, the control of which, by the Union, is  
20 declared by Parliament, My Lord, [UNCLEAR]. Thus, the authority to regulate the subject  
21 matter intoxicating liquors appears to vest in both Union and State, this has result in  
22 prolonged litigation. But I'll show how that is not correct. But for the time being, yes. The  
23 Supreme Court in the case of *Bihar Distilleries* has held that in the interests of proper  
24 delineation of the spheres of the Union and the States, the line of demarcation should be drawn  
25 at the stage of clearance or removal of the rectified spirits. My Lordship, for your kind interest  
26 it is most important, the demarcation, the division, the split should be drawn at the stage of  
27 clearance or removal of the rectified spirits where the removal or clearance is for industrial  
28 purposes other than manufacture of potable liquor. The levy of duties of excise and all other  
29 control shall be with the Union and where the removal or clearances for obtaining  
30 manufacturer of potable liquors, the levy of duties of excise and all other control shall be with  
31 the State. I will explain that this control doesn't mean regulatory control, it's only control pay  
32 taxation. Please see further, in the backdrop of the Supreme...of the above judgement of  
33 Supreme Court, the Law Commission India is recommended in its 150th 158th report that  
34 heading 26 of the first schedule to that we substituted as fermentation industries, but not  
35 including alcohol. The recommendation of the law commission was examined in depth by the  
36 government, it's very important, if the subject alcohol is taken out of the First Schedule to  
37 react, both industrial and potable alcohol would come under the purview of State Government,

1 which is not in consonant of the judgment of the Supreme Court. Moreover, the effect of  
2 implementation of the recommendation of the law Commission would be at the subject  
3 alcohol, which covers both industrial alcohol and potable alcohol, would no longer be a central  
4 subject. Therefore, it is proposed to amend the First Schedule to the Industry's Development  
5 Regulation Act by substituting heading 26 thereof when fermentation industries other than  
6 potable alcohol, so that it would be in conformity with the judgment of the Supreme Court and  
7 also ensures Supreme Court is not *Synthetics* but *Bihar Distilleries*.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Exactly what you said, yesterday.

10

11 **ARVIND P. DATAR:** This conformity Supreme Court, Your Lordships will see the  
12 conformity Supreme Court is not 1990, it is 1997 *Bihar Distilleries*. So, Parliament accepted  
13 the *Bihar Distilleries* view.

14

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

16

17 **ARVIND P. DATAR:** And also ensure that the industries engage in the manufacture of  
18 alcohol meant for potable purposes shall be under the total and exclusive control of States in  
19 all respect, kindly note My Lord, and ensure that industries engaged in the manufacture of  
20 alcohol meant for potable purposes shall be under the total and exclusive control of State in  
21 all respects. And that, Lordship, see my chart that figure again at page 12, if I make ENA till  
22 the stage of removal, everything is with the State, removal tax, that's all. Two different taxes.  
23 The Central Government would continue to be responsible for formulating policy and  
24 regulating foreign collaboration. Foreign direct investments so and so for all products of  
25 fermentation industries, including industrial alcohol and potable alcohol. So, My Lord, for  
26 formulating policy, foreign collaborations, et cetera, it will be Centre. Now, kindly see the  
27 amendments, the actual amendments, lordships will kindly come to page the actual act at  
28 Volume IV pays 601.

29

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

31

32 **ARVIND P. DATAR:** Volume IV, page 601. My Lord, this is the statement, objects and  
33 reasons there. And now I'm going to act as in a different place. If you see clause, Section-3 of  
34 the Act. Your Lordship, will kindly see it has, act was received Presidential Ascent on 14th May  
35 and kindly come to 3 first, then I'll come to 2. Your Lordships, has got 3? The 2 is Validation  
36 Clause, come to 3 please. On and from the date of commencement of the Principal Act in the  
37 First Schedule for the heading, '26 'Fermentation Industries'. The heading 'Fermentation

1 Industries' other than potable alcohol shall be substituted. Now kindly note from the  
2 commencement of the Principal Act.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** [INAUDIBLE].

5

6 **ARVIND P. DATAR:** Retrospective... Sorry, My Lord, page 601.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume IV.

9

10 **ARVIND P. DATAR:** Volume IV. I'm so sorry. Chief Justice has gotten it My Lord? 601 is  
11 the act starts. Lordship, will note Presidential Ascent is on 14th May and kindly come to  
12 Section-3 first, I'll come to 2 later. Which is the, Savings Clause. On and from the  
13 commencement of the Principal Act, there is a small mistake here, but I don't want to make  
14 much of it. The main Act came in '53 or '52. The First Schedule came with the Act. It was fully  
15 substituted in '56. Mr. Jeevan Reddy notes that and 26 was added in '56.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Like from the date of the Act [INAUDIBLE].

18

19 **JUSTICE ABHAY S. OKA:** [INAUDIBLE] When earlier entry was not there at all.

20

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

22

23 **ARVIND P. DATAR:** Yes, but doesn't matter. The minimize [INAUDIBLE].

24

25 **JUSTICE B. V. NAGARATHNA:** Deemed entry.

26

27 **ARVIND P. DATAR:** Yes?

28

29 **JUSTICE B. V. NAGARATHNA:** Deemed entry into the schedule.

30

31 **ARVIND P. DATAR:** I don't know if this got alcoholic effect My Lord, but that does...

32

33 **JUSTICE HRISHIKESH ROY:** Just to see. You see my device, it just fell off and I said, so  
34 much alcohol, alcohol there, I think there was a physical effect.

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36 **ARVIND P. DATAR:** One thing, Your Lordship will agree this is much better than *Mines*  
37 *and Minerals* My Lord. Now, My Lord, please see 29(e), Validation Act.

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**JUSTICE B. V. NAGARATHNA:** See Section-2 there?

**ARVIND P. DATAR:** Yes. I'm going to Validation Act. Now if they make it retrospective, then what happens to everything?

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

**ARVIND P. DATAR:** So, they say save it, don't disturb it, that's all they say. if Your Lordships, want me to read I'll read it.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** That's the Validation Act?

**ARVIND P. DATAR:** Validation, not withstand anything, contained in any judgment because 29(e) became necessary because of the retrospective amendment. If the amendment was made prospective, there was no need, no need for 29(e). Yes.

**JUSTICE B. V. NAGARATHNA:** There if you see this 29(e), as if the state is deemed to have the power.

**ARVIND P. DATAR:** Yes.

**JUSTICE B. V. NAGARATHNA:** That means what?

**ARVIND P. DATAR:** No, Your Lordships, will kindly see...

**JUSTICE B. V. NAGARATHNA:** Shall be deemed to be and shall always be deemed to have been...

**ARVIND P. DATAR:** For all purposes 'yes'. What happens is, many acts have been done after *Synthetics and Chemicals*. Number of judgments came. Different states have taken different views. Madras High Court has got one view, another high court has taken Allahabad is taken in different view. Now, if you're going to have a retrospective amendment, you'll be completely opening up everything,

**JUSTICE B. V. NAGARATHNA:** Therefore, it did not have the power but they exercised that power, now it is being validated?

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**ARVIND P. DATAR:** Yes.

**JUSTICE B. V. NAGARATHNA:** By making this amendment?

**ARVIND P. DATAR:** I'll put it in a general way. Whether you had the power or not, whatever you have done is saved.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Is now saved.

**ARVIND P. DATAR:** Yes.

**JUSTICE ABHAY S. OKA:** Whatever is done by Central and State both.

**ARVIND P. DATAR:** And both, as the same. Same thing in the Vodafone amendment when they made it retrospective, they had to issue a circular saying all closed assessments would not be reopened.

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

**ARVIND P. DATAR:** Otherwise it becomes difficult. Now with this I'll now go to the Constitutional provisions. Please see Entry 33 of List III. Sorry, I got just got two things to only two points, I'll not take much time. What is the scope of the entries in addition to what my learned colleague has...?

**JUSTICE B. V. NAGARATHNA:** What is the effect of this amendment now?

**ARVIND P. DATAR:** The effect of this amendment now is this. From the beginning the control of the states on the manufacture of potable alcohol is absolute. If that is correct, they unfortunately use the word potable alcohol, so, they want to say that suppose there is an industry which is making alcohol which is not potable. For example, you can have butyl alcohol, you can isopropyl alcohol. They're different alcohols. The intoxicating liquors are those which have ethyl alcohol, basically, primarily because methyl you'll go blind. So it may intoxicate you, but it'll be fatal. So what they say is, suppose, there's a fermentation industry, I get a license to make only an alcohol which is not potable, then I will come under the First Schedule, but if I've got a license like no sugar industries or in those States where there is no sugar, they have grain. So, I'm told they buy it in bulk from Food Corporation of India, and

1 that grain is fermented. That will be completely coming under state control and there, the only  
2 role of the Central Government will be to collect Central Excise Duty when it is cleared from  
3 my factory. So if this factory gate is there, what goes for IMFL, will be State Excise. What goes  
4 for industrial, will be Central Excise, as My Lord Chief Justice responded.

5  
6 Now I come to... My Lord, I have got to do only two things. Explain my own submission on  
7 Entry 8 and on the provisions IDR Act, and I am done. Please come to, before coming to Entry  
8 8, I think Your Lordship will come to Entry 8, doesn't matter. Please come to Entry 8. It's  
9 already been explained, it's not subject to, it's a complete standalone provision and so on. Now  
10 yesterday, Your Lordships, including Chief Justice asked, in one sense, Entry 52 gives  
11 Parliament full power. It can declare any industry to be under its control. At the same time,  
12 Entry 8 is not subject to revision. The interplay of this entry has been explained in SIELK case  
13 by Justice Sujata Manohar, I'll come to that after lunch. But Lordship will kindly take on a first  
14 principle reading, my humble submission is Entry 8, Your Lordships will kindly see,  
15 intoxicating liquors, that is to say, Now in the List II, that is to say, is used four or five times.  
16 And my humble submission is, when they say, that is to say...

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It is exhaustive.

19

20 **ARVIND P. DATAR:** Exhaustive. And as Your Lordship pointed out yesterday, it's  
21 production to sale, that is from the raw material to the factory. It leaves the factory. And  
22 purchase and sale can also mean second sale. They can control second sale, first sales. It is not  
23 only B to B, can be B to C also. Now, my humble submission is 246(2). I'm going to just make  
24 submission on 246(2), 246(3) and 254 because, sorry, one must make a clear distinction  
25 between what is competence and what is repugnance. A law can be made by Parliament under  
26 List I on a subject matter. The same can also be made by the State under List II. For example,  
27 Banking, List I. Money lending/debt relief, List II. So, regulating interest or banning higher  
28 interests can be a State Law can be a Central Law. How do you decide? Now, there could be a  
29 law which Parliament is competent to make. There could be a law which State as an act of  
30 competent to make, like interest, then which will prevail? There my submission is, if both the  
31 laws are, first Your Lords, first test which is decided is on competence. This law is made by a  
32 State Legislature. Is it competent to make it? We have to decide that. Once it is competent,  
33 then go to Parliament. Parliament has made a law. How do you decide the repugnance? Please  
34 see 254(1). I'll first say, take 246(2) and (3). Then I'll come to 254.

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36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** After lunch? We're just five minutes short of  
37 lunch.

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**ARVIND P. DATAR:** Oh yes. I'll try to finish as fast, as others are waiting. I'll finish as fast as possible.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Mr. Datar.

**ARVIND P. DATAR:** I want to wrap up as early as possible. I'm going to refer to 366(12)(a). GST. Then go to Entry 8 and go to Entry 33 and I am finished. Please come to Article 366(12)(a) and then Your Lordship will...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Article 366 (12)(a).

**ARVIND P. DATAR:** Yeah. Your Lordship there's a definition section Your Lordship knows and they have defined GST by the 101st Amendment.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Any tax on supply of goods or services of both except taxes on the supply of alcoholic liquor for human consumption.

**ARVIND P. DATAR:** Now, Lordship will note that taxes on the supply of human consumption. So now that central excise duties, sales tax, all is subsumed into GST, which becomes a concurrent levy, both Centre and State. [UNCLEAR] Lordship said that. What is left for the States is alcoholic taxes on supply of alcoholic liquor for human consumption. So these taxes on the supply of alcoholic can be by way of excise duty or other imposts. Now if Your Lordship just goes to Entry 84 for a minute, the pre-amended Entry 84. It will be in the footnote. Now please see the new entry after the 101st Amendment. Lordships have got it?

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

**ARVIND P. DATAR:** Duties of excise on tobacco. I'm seeing the footnote. Now My Lord, on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** You're referring to entry?

**ARVIND P. DATAR:** Entry 84. Old entry.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** 84, prior to amendment.

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**ARVIND P. DATAR:** In the List I. Sorry My Lord at the footnote. Duties of excise on tobacco and other goods manufactured or produce in India. But the unique thing that tobacco is an agricultural product. All exercise duties on manufactured goods, tobacco is the only case where it is levied on a agriculture product, but I'm on except alcoholic liquors for human consumption. That Your Lordships of will now come to Entry 51 of List II which is the taxing power. Entry 51 of List II. 'Duties of excise on the following goods manufactured or produced in India in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India.' So My Lord. if liquor is imported from another state into one state, they can levy CBD just as an import from other country, we can levy CBD.

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

**ARVIND P. DATAR:** That is to balance, because it can't be that one State levies 20% tax, other State levies 10%. Then it becomes an arbitrage for tax evasion. So they neutralize it. So that can be a countervailing duty. 'Duties on excise on the following goods manufactured. Alcoholic liquors for human consumption.'

**CHIEF JUSTICE D. Y. CHANDRACHUD:** What is taken out of Entry 84 is introduced in Entry 51.

**ARVIND P. DATAR:** 51. So what happens... Yes, except. So the concurrent power on the Article 246(a). Article 246(a) says tax on supply of goods or services. That is defined in 366(12)(a).

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

**ARVIND P. DATAR:** Just as after the 46th Amendment, tax on sale of goods is now defined in 366(29)(a)... like that. So the net result is, today if it is an alcoholic liquor for human consumption call it potable alcohol, call it every alcohol, I would humbly submit that the proper way of interpreting for Your Lordships time and consideration is to take it in the reverse. Everything except denatured spirit will be alcoholic liquor for human consumption. Because unless it is denatured, it is alcoholic liquor for human consumption.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Everything except?

1 **ARVIND P. DATAR:** Everything except denatured spirit because since Your Lordships is  
2 sitting in nine judges, we don't want another round of litigation. Is it alcoholic liquor fit for  
3 human consumption? At what stage you levy, et cetera. And the reason, sorry... My Lord why  
4 I say this also is because of on this tax aspect because of this, we have to also see the economic  
5 consequences of what we hold. This discreetly refers to Richard Posner's theory of law and  
6 economics having an interplay. Suppose Your Lordship says as held in ***Synthetics and***  
7 ***Chemicals*** in paragraph 85, they say 'it should be fit for human consumption'. Paragraph 65.  
8 Then what happens is State has no power to levy an excise duty unless it's a readymade  
9 whiskey, rum, gin or beer. At the ENA stage it has no power to levy. That ENA is actually for  
10 human consumption. Part of it becomes unfit by adding a denaturant. And why do you add a  
11 denaturant? Because the State says, 'if I am going to lose my revenue, you better make it unfit  
12 for human consumption. Then you clear it'. So my humble request is, keeping in mind the  
13 interplay of law and economics if Your Lordship takes the view that it should be fit for human  
14 consumption, it will have deleterious effects from the State finances, particularly after GST  
15 where as part of our new fiscal federalism, the taxing powers of the States have been drastically  
16 reduced. Today only source... major source is alcohol, potable alcohol that is and petroleum  
17 products. And Your Lordship has interpreted 279(a)(4). They say that once the GST Council  
18 decides to bring it into the levy of... net of GST, then States lose the power. But today My Lord  
19 the main source of revenue is alcohol. So my humble submission is if we use the word 'fit for  
20 human consumption' and take it to that stage, it will have an extremely adverse impact on the  
21 taxes of the States.

22

23 **JUSTICE ABHAY S. OKA:** In fact, the word 'fit' is not there.

24

25 **ARVIND P. DATAR:** Not there.

26

27 **JUSTICE ABHAY S. OKA:** Is it there, anywhere?

28

29 **ARVIND P. DATAR:** No, I checked...

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31 **JUSTICE ABHAY S. OKA:** By interpretation... Otherwise it is for. So it is capable of.

32

33 **ARVIND P. DATAR:** Yes, actually, I tried to do a legal search 'fit for'. I got some 6000  
34 entries. Wherever there is 'fit' and 'for' it is showing up. So it became very difficult. Even  
35 statutory provisions I could not see. There's no... Only ***Anwar Khan*** says that 'consumption  
36 doesn't mean final consumption. As long as the goods can be consumed, it is enough'. I'll give  
37 an example. Suppose you say rice. Now, rice by itself is for human consumption, but till we

1 make it into a or put in into a pressure cooker and make it into rice or wheat is converted into  
2 flour or *atta* or *maida*, it is still wheat. It is still for human consumption. So in the same way,  
3 ENA in my chart after the secondary process of distillation, first substrate, rectified spirit,  
4 ENA. Then we branch out into drinkable or industrial. So my humble request is keeping in  
5 mind 366(12)(a), the power of the States to levy tax should be on extra neutral alcohol.  
6 Whatever is not denatured....

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Clearly in that sense, dealing with tax per se  
9 under Entry 51 are we?

10

11 **ARVIND P. DATAR:** No.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Dealing with the ambit under Entry 88. Your  
14 contention is that you are entitled to levy fees?

15

16 **ARVIND P. DATAR:** No, I'm on a different point. I am saying that I will to get over the  
17 *Synthetic*. Because *Synthetics* seven judges say it has to be fit, in paragraph 65 they say,  
18 'till it's fit'. Till it's like a beverage. They use actual... italics and they put it in emphasis. Till it's  
19 a beverage, the State has no power to levy tax at all. That in my submission is too extreme from  
20 the State's perspective and it may lead to a conundrum because argument is... So, My  
21 Lord...Sorry. May I continue?

22

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

24

25 **ARVIND P. DATAR:** So, My Lord my...This is the request..

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** For human consumption is that it may be  
28 eventually destined for human consumption.

29

30 **ARVIND P. DATAR:** It is. It has the potential to be... potential to be meant for human  
31 consumption. That's the point. Now, I go to Entry 8 and Entry 33. Entry 8, my submission...  
32 my learned friend has elaborately discussed the whole point. My submission is Entry 8, as  
33 Your Lordship knows, is not subject to but Justice Nagarathna asked the question, "What is  
34 the interplay of 246(2) and (3)?" There had my...

35

36 **JUSTICE B. V. NAGARATHNA:** 246(1). 246(1) also.

37

1 **ARVIND P. DATAR:** 246(1) also. Please see 246 (1),(2),(3). And I would request Your  
2 Lordship to read it in the context of 254. 246 (1), yes. 'Notwithstanding anything contained in  
3 Clause (2) and (3), Parliament has exclusive powers to make laws with respect to any of the  
4 matters enumerated in List I. 2) Notwithstanding anything in Clause (3), Parliament and  
5 subject to Clause (1), the legislature of any State also have the powers to make law with List  
6 III.' 3) is very important from my side. 'Subject to (1) and (2), the legislature of any State has  
7 exclusive powers to make laws for such State or any part thereof with respect to any other  
8 matters enumerated in List II in the Eighth Schedule.' So, Lordships will kindly see, the rule  
9 is exclusive power. In the concept of a federal structure, exclusive power is there and my  
10 humble submission is unless that legislative entry uses the word 'subject to', the power of the  
11 State legislature should be plenary.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But 'subject to' really makes it clear that the  
14 power of the legislature of the State is in that sense, I will say 'subordinate it to' but is subject  
15 to the power of Parliament.

16

17 **ARVIND P. DATAR:** Very interesting. Very interesting. Now, let's take a law with regard to  
18 Entry 8. Manufacture, production, possession, transport, intoxicating liquor. That is to say  
19 manufacture, production, possession, transport, sale. This is given, exclusive power is given to  
20 the State. Now, my submission is, if Your Lordship now reads 254, I am saying the question of  
21 competence. Just because Parliament is supreme, it does not mean it can make a law which  
22 has been exclusively given to the State.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Undoubtedly.

25

26 **ARVIND P. DATAR:** Undoubtedly. So... that's all. So, 254, Your Lordship has got the point.  
27 So I won't belabour on that. Please see 254. I'm saying... I'm requesting Lordship to read 246  
28 (1),(2),(3) and 254 as an overall scheme. I'm not going to 254(2) because Entry 8 is not in the  
29 Concurrent List.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The word 'subject to Clauses (1) and (2)'. Does  
32 that mean that where Parliament has undoubted power to make a law and has made a law in  
33 exercise of its jurisdiction to make a law on the Union List, the State also has the power to  
34 make a law on a subject which falls in the State List. Both have powers and both are acting  
35 within their realm. The law, nonetheless, made by the legislature of the State ought not to  
36 trench upon the law made by Parliament.

37

1 **ARVIND P. DATAR:** True, but I'm going in one other way. Repugnance will come where it's  
2 a law validly made by Parliament. There is another law made by the State. Two can't collide  
3 and coexist. Then, in that case, supremacy goes to Parliament. So, if two laws are colliding with  
4 each other, then Parliament law will su... I am requesting Your Lordship to interpret Entry 8  
5 to me. Please see 254 (1), 'If any provision of law is made by the legislature of a State is  
6 repugnant to any provision of law made by Parliament...', but what law made by Parliament  
7 not any law. Please see the next after the comma '...which Parliament is competent to enact.'

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** With respect to one of the matters enumerated  
10 in the Concurrent List.

11

12 **ARVIND P. DATAR:** No, there my submission is, after comma, 'or to any provision of an  
13 existing law.' My submission is, the first part that is upto Parliament is competent to enact can  
14 be a List I versus List II law. Then there is a comma, 'or to any provision of an existing law  
15 with respect to any matters enumerated in the Concurrent List.' Then subject to... So now the  
16 second part Concurrent List or to any provision of an existing law made. Please see this, I'll  
17 put it this way. There is an existing Parliamentary law. That existing Parliamentary law is with  
18 respect to a matter in the Concurrent List. Any law made by the State will be repugnant, will  
19 be void to that extent. I am not on an existing law. I am only trying to interpret the scope of  
20 List II. I am trying to say, the words between the two commas, which Parliament is competent  
21 to enact if Entry 8 has given exclusive power to the States in the context of manufacturer,  
22 production, possession, transport, sale. Parliament has no competence to get into intoxicating  
23 liquor on those fields, because it's not any law made by Parliament. It should be a law which  
24 Parliament is competent to enact. And my submission is that *non obstante* clause only talks of  
25 a law, competent law of Parliament. Suppose tomorrow Parliament makes a sales tax law. It's  
26 not competent to make it. Then you can't say, no, Parliament in the federal structure is  
27 supreme. That's the submission. So my humble submission is, these words are very important  
28 which Parliament is competent to enact. My Lord I have also this theory that occupied field  
29 should not be necessarily restricted to Concurrent List.

30

31 **JUSTICE B. V. NAGARATHNA:** Therefore, the scope and ambit of this expression in Entry  
32 8, intoxicating liquor is again important.

33

34 **ARVIND P. DATAR:** Yes.

35

1 **JUSTICE B. V. NAGARATHNA:** Because if there is something beyond intoxicating liquor,  
2 then it can be read in the first part of Article 254 read with sub-Clause (1) of Article 246. They  
3 go together.

4

5 **ARVIND P. DATAR:** Yes. My answer to that is this. Now, intoxicating liquor has not been  
6 defined.

7

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

9

10 **ARVIND P. DATAR:** It has not been defined. What do we do? Mr. Seervai goes into various  
11 aspects of different types of competence. *Gannon Dunkerley*, the test is the classic test.  
12 Suppose a word is not defined in the Constitution, then find out if that word is *nomen juris*. If  
13 that word has got a definite connotation over passage of time, then adopt that. Therefore, what  
14 happened in the *Gannon Dunkerley's* case? The Madras Government, then Rajaji's  
15 Government amended the word 'sale' to include 'works contract'. That was challenged. And  
16 incidentally, as brilliant as the Supreme Court judgments, the classic Madras Judgment is  
17 equally good. Justice Sathyanarayan's judgment. What they say is, you have got the power to  
18 tax sale or purchase of goods. Sale is not defined. Then can you say State Government can say,  
19 sale include works contract. What Justice Venkatramaiah says in *Gannon Dunkerley* is,  
20 sale is not defined. But sale is *nomen juris* because by tradition the Sale of Goods Act, which  
21 was early in the Contract Act, sale basically means it should be goods, consideration should be  
22 in money and there should be transfer of property. Buyer and seller. If those three things are  
23 there. It's a sale. In worse contract, that is absent. So he said you can't expand your taxing  
24 powers by giving artificial definition to the word. In the context of intoxicating liquor, my  
25 submission is, all the Acts are here. He has made a complete chart. Spirits Act 1880 says spirit  
26 includes denatured alcohol. So intoxicating liquor today *India Mica, FN Balsara* all have  
27 said intoxicating liquor includes denatured spirit because if Your Lordship sees my colour  
28 chart, denatured spirit is born out of intoxicating liquor. In a sense, it's the offspring of  
29 intoxicating liquor to which denaturant is added. That's all. So you have molasses, you have  
30 rectified spirit, you have extra neutral alcohol, and then one branch goes to denaturing. So my  
31 submission is, intoxicating liquor in that sense. There is no such thing as industrial alcohol  
32 coming out of somewhere. Industrial alcohol is the offspring of intoxicating liquor. And my  
33 submission is that, 'subject to' in 246(3) Your Lordships asked, that's 'subject to' must be a  
34 'subject to in the Constitution'. And the legislative entry cannot be cut down by a Parliamentary  
35 law.

36

1 That's why this is subject to Entry 24, Your Lordship Mines and Minerals subject to subject.  
2 Incidentally, in List I, Entry 32 is the only list where it is subject to a Parliamentary... State law  
3 in the Constitution. Now so my humble submission is Entry 8 should be read in such a way  
4 that the State's power is supreme because tomorrow if they want to levy a revenue fee, a  
5 regulatory fee so we should completely demarcate what is the territory, legal territory for the  
6 States. And I would submit, as the Statement of Object says, let the *Laxman Rekha*, let the  
7 borderline be the time of removal. Up to the time of removal, it is the State's jurisdiction. When  
8 it is removed, depending on its destination, it becomes a State tax or it becomes a Central tax.  
9 Now it becomes a GST. Now I go on to Entry 33. Your Lordship will kindly see Entry 33 is  
10 substituted by Article 36... by the 3rd Amendment to the Constitution. And why was it done?  
11 My Lord, if Your Lordships will kindly see Entry 33 for a minute.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** They added DCDE.

14

15 **ARVIND P. DATAR:** Yes. Not just that, there was a small change. If Your Lordship kindly  
16 takes... I've got the old Entry 33. It's just one page, so I didn't put the whole Government of  
17 India Act.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now use the word... uses the word 'industry'.

20

21 **ARVIND P. DATAR:** Yes.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The earlier one was in plural, 'industries'.

24

25 **ARVIND P. DATAR:** If Your Lordships kindly sees where the control of such industries is...  
26 yes, Your Lordship is right. My Lord one thing of Entry 33... Is Your Lordships seeing the old  
27 Act My Lord? I'll see the old Act and then. Please see the old one. 'Trade and commerce in', so  
28 Your Lordship can link it to Entry 26. 'Production, supply, distribution of', link it to Entry 27  
29 of List II. 'The products of industries where the control of such industries by the Union is  
30 declared by Parliament to be expiated in public interest.' Now, why was there need to amend  
31 it? Please come to 369 of the Constitution.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** They of course also added, 'and imported  
34 goods of the same kind as such products'.

35

36 **ARVIND P. DATAR:** Yes. No, please see 369. 'One of the temporary provisions in the  
37 Constitution' 369. Your Lordships have gotten Article 369?

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

**ARVIND P. DATAR:** Temporary power of Parliament to make laws with respect to certain matters. 'Notwithstanding anything contained in this Constitution, Parliament shall, during a period of 5 years from the commencement of this Constitution have power to make laws with respect to the following matters as if they were enumerated in the Concurrent List'. So they take a legal fiction with regard to specified matters, even if it's in the State list, Parliament gets power. Now, please see what are the matters. 'Trade, commerce within a state in the production supply distribution'. Again, they adopt the language of 26 and 27. 'Cotton and woollen textiles, raw cotton, including gin cotton and gin cotton kapdas, cotton seed, paper, newsprint, foodstuffs, cattle fodder, coal, including coke, derivatives coal, iron, steel and mica'. Now, this is what was going to lapse in 1955 because it had a shelf life of 5 years. So if Your Lordship sees the Statement of Objects and Reasons of the 3rd Amendment, Parliament felt it necessary that though Article 369 will lapse in 5 years by 1955, Parliament should continue to have control over certain essential items. That's why they came with this substituted entry of 33. Now please come to Entry 33 for a minute.

Your Lordship will note that Entry 33 of List III.. Lordship will see trade and commerce in production, supply, distribution. So, there are five activities. Trade, commerce, production, supply, distribution. Now come to A- products of any industry. As Your Lordship said now it's 'industry' where the control of such industry by the Union is declared by Parliament by law, to be expedient in public interest and imported goods of the same kind of product. B, C, D are some of the items on 369. Not all.

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

**ARVIND P. DATAR:** Not all. Because iron and steel has gone to IDR Act. Coal has gone to Mines and Minerals Act. One more distinction Lordship will note. 1) is industry... A is industry. B, C, D are agricultural items. So Mr. Basu, in his commentary says, 'this is a cut at federalism. Agriculture is exclusively State, but you have put trade, commerce, supply, etc., in List III.' Now, the scope of 33 *vis a vis* 24, 25, 26 has been very well explained in a Supreme Court judgment, *SIEL versus Union of India*.

**JUSTICE B. V. NAGARATHNA:** That is under 369, it was held to being Concurrent List. Therefore, they brought it to the Concurrent List.

1 **ARVIND P. DATAR:** No, what happened, Your Lordship is right...

2

3 **JUSTICE B. V. NAGARATHNA:** Under the temporary powers, even though maybe  
4 agricultural products, under the temporary powers, it was under the Concurrent List.

5

6 **ARVIND P. DATAR:** Yes. What they did was, they created a legal fiction. They said, for the  
7 first five years, although all these items are in the State List, they will treat it as if they are in  
8 the Concurrent List.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That was to give Parliament the power of  
11 legislation.

12

13 **ARVIND P. DATAR:** Yes. So now what happened is they didn't want the whole... see if...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** They brought some of those items in Entry 33.

16

17 **ARVIND P. DATAR:** Yes, which are agricultural items.

18

19 **JUSTICE B. V. NAGARATHNA:** But they continued it in the Concurrent List.

20

21 **ARVIND P. DATAR:** Now it's forever. Now it's forever. It's a very nice, very short Statement  
22 of Objects.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Raw jute is not in Article 369, no?

25

26 **ARVIND P. DATAR:** Sorry, My Lord?

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Raw jute was not in Article 369?

29

30 **ARVIND P. DATAR:** Only jute was there.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Was jute there?

33

34 **ARVIND P. DATAR:** 1 second. I'll just subject to memory, My Lord... just 1 second. Jute is  
35 not there. Your Lordship is right.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The subjects in Clause (a) of Article 369 were  
2 not brought into...

3

4 **ARVIND P. DATAR:** No, not all. Not all.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just these limited items.

7

8 **ARVIND P. DATAR:** Yes, because for example, cotton, wool and textiles, iron, steel have  
9 gone to Schedule 1 of IDR Act. So, they are not in B, C, D but they are in A, they're in A.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, what does *SIEL* say?

12

13 **ARVIND P. DATAR:** No... tobacco. Tobacco is not here. Sorry.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What does the judgment in *SIEL* say?

16

17 **ARVIND P. DATAR:** That shows interplay of 24, 25, 26 and 52. And they say that what is  
18 entry... what is an Entry 33 of List III is out of Entry 52 of List I. My Lord, we will read Volume  
19 V, page 2209, PDF page is 2217. 2217. The initial facts may be slightly important. What was  
20 challenged was some Molasses Order, which was upheld by the High Court and Supreme Court  
21 confirmed it. Kindly come to page 2213. Bench of two judges. 2213. I'll just read para 2 and 4.  
22 'The Appellants in these appeals have challenged the Constitutional validity of Uttar Pradesh  
23 Sheera Niyantaran Adhiniyam, in the UP Act 24 of '64, which received the assent of the  
24 President on so and so. The occasion for this challenge appears to have arisen on account of  
25 orders passed by the Controller of Molasses, Excise Commissioner, UP, under Section 8 of the  
26 Act, read with Rule 22, dated so and so. So, now para 4. 'Under the said orders of the  
27 Controller, dated so... and so different percentages of graded molasses were reserved for  
28 distilleries and industries. Based on molasses and alcohol in the State of UP, the reserve  
29 quantity under the set order was required to be sold at prices fixed by the State Government.'  
30 Now, please come to page 2214. They expressly extract 18-G. Now, since Your Lordship has  
31 got page 2214 at 18-G, to save time kindly note, it says, 'regulation supply of distribution, trade  
32 and commerce there is no production in 18-G.' The word 'production' is not there in 18-G. So  
33 out of the five items of... Entry 26 has 2, trade and commerce. Entry 27 has 3, production,  
34 supply, distribution. So two plus three, five. But here only four are there, whereas Essential  
35 Commodities Act Section 3, all are included. So the point is, even under the IDR Act,  
36 Parliament has not preserved to itself, even by notified order, they can't cut into production.  
37 So now please come to para 10, page 2215. They see the entries, Your Lordship may just note

1 Entry 8 was not there. Now, please come to 11. They refer to **Calcutta Gas**. Now, please see  
2 12 and 14 are important. May I read 12 and 14? 'While dealing with Entry 24 of List II and  
3 Entry 52 of List I, this Court in the above case considered what was meant by the term  
4 "industry", which was used in both these entries. This court held that in the first place, where  
5 whatever be the connotation of industry, it must bear the same meaning in Entry 24 of List II  
6 as In Entry 52 of List I because the two entries are interconnected and giving differential  
7 meanings to the word "industry" in the two entries will snap their connection. This Court  
8 further observed that the ordinarily industry was in the field of State Legislation but if  
9 Parliament makes a relevant declaration or declarations, the industry or industries so declared  
10 would be taken off the State List and passed on to Parliament. This Court in that case was  
11 concerned with interrelationship of 52 of List I, Entry 24 and 25 of List II. The last entry  
12 expressly dealt with...'. Your Lordship has seen that, I'll skip it. 'If we apply the same principle  
13 of harmonious construction to Entries 24, 26 and 27 of List II, the term "industry" in 24 would  
14 not take within its ambit trade, commerce or production, supply distribution, which are the  
15 express province of 26 and 27 of List II. Similarly, Entry 52 in List I, which deals with industry  
16 also would not cover trade, commerce in/or production supply, distribution of the products of  
17 those industries which fall on Entry 52 of List I. For the industries falling in Entry 52 of List I,  
18 these subjects are carved out and put in Entry 33 of List III.' Now, please see 15. I'll just come  
19 to *placitum* E, My lord. Below that. Just above *placitum* F. 'The products of the industry...',  
20 Your Lordships have got it? 'The products of the industry would be comprised in Entry 27 of  
21 List II, except where these products were of a control industry where they would fall within  
22 Entry 33 of List III. Therefore, the subject matter falling within Entry 26 and 27 of List II would  
23 not be covered by Entry 24 of List II and similarly, subject matter falling under Entry 33 of  
24 List III would not fall under Entry 52 of List I.' My Lord I've done My Lord. Only one point.  
25 There is a controversy since Your Lordship is sitting in nine judges. What happens if a law is  
26 made but not notified? Suppose Parliament makes a law but doesn't notify it. Does it occupy  
27 the field? If a State law is there, will it be repugnant to that? My Lord there is a Constitution  
28 Bench judgment of **Mar Appraem Kuri** which says that the Chitkuri's Act, they made the  
29 Chit Act by Parliament, but it was never notified. So the Constitution Bench says 'law made by  
30 Parliament is different from commencement of the law made by Parliament.' So just by making  
31 the law Parliament occupies the field. My humble submission is that may not be correct,  
32 because Mr. Dwivedi also read, repugnancy must be in reality. So my submission is, unless the  
33 law is actually brought into force, the law made by Parliament must be the law made by  
34 Parliament which is in force. Your Lordship knows the Higher Purchase Act was made in '55  
35 but never notified. Take service tax. 88th Amendment, never notified.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Section 2(j) of the industrial...

1  
2 **ARVIND P. DATAR:** So to that extent, *Mar Appraem Kuri*, which makes a distinction  
3 between law made by Parliament and commencement of the law made by Parliament may not  
4 be good law. Would Your Lordships like me cite it or I'll reserve it later. If we get time in reply,  
5 I mentioned that. Because I'm just submitting... because today what will happen is State has  
6 got the power in the new amendment. Potable alcohol fully comes within the State. Suppose  
7 tomorrow Parliament makes some law and doesn't bring it into force, the States can't be  
8 completely paralyzed or stultified. So I'm saying that the law made by Parliament will be a law  
9 only if it is brought into force. That's why Your Lordships saw in service tax, they added Entry  
10 92(c). Never notified it. So it is always on Entry 97.

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

13  
14 **ARVIND P. DATAR:** Deeply obliged.

15  
16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you Mr. Arvind.

17  
18 **ARVIND P. DATAR:** Whatever the questions were referred, I gave the answer, but so many  
19 questions came from the Bench, My Lord, I had to restructure it. With Your Lordship's  
20 permission, I'll give a fresh...

21  
22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No problem. You can give it by tomorrow also.

23  
24 **ARVIND P. DATAR:** Can it be by Saturday? I will have to go back to Chennai.

25  
26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright.

27  
28 **JUSTICE HRISHIKESH ROY:** That judgment you wanted to give.

29  
30 **ARVIND P. DATAR:** Which one?

31  
32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** *Mar Appraem*.

33  
34 **ARVIND P. DATAR:** (2012) 7 SCC 106, it's a Constitution Bench.

35  
36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 106?

37

1 **ARVIND P. DATAR:** 106. *State of Kerala versus Mar Appraem Kuri*. So, they say  
2 repugnancy arises as soon as the law is made, even though it is not implemented or...

3

4 **DHRUV AGRAWAL:** It's there in the compilation. Yes, it's in Volume V. Page...

5

6 **TUSHAR MEHTA:** Yes, I am relying upon it when my turn comes. It's there in the  
7 compilation.

8

9 **DHRUV AGRAWAL:** It is there in the compilation. Volume is... page 2374, Volume V.

10

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

12

13 **JUSTICE ABHAY S. OKA:** That has come twice.

14

15 **DHRUV AGRAWAL:** PDF page 2382. Volume V.

16

17 **JUSTICE ABHAY S. OKA:** Both sides are targeting this Constitution Bench judgment.

18

19 **ARVIND P. DATAR:** Finally, My Lord, I appeared for State of UP. Yesterday, I was asked  
20 before State of Tamil Nadu, same submission. They've added something on duty of fee and  
21 taxes, which I'm not... I'll be appearing for that. I'll just...submission will be common for both.  
22 The rules are the same. Deeply obliged.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Mr. Gupta.

25

26 **JAIDEEP GUPTA:** My task is very light and I won't hold Your Lordships up. I appear for the  
27 State of West Bengal. And unfortunately, there has been a little technical hitch. Our  
28 *Vakalatnama* is filed in 901.28. There is a small hitch, My Lord. 901.28 is the matter in which  
29 the State filled it's *vakalatnaama*. Now My Lord, the first thing which happened in this matter  
30 was that, that matter got de-tagged. So we haven't filed it in any other matter. We'll file it. Our  
31 written submissions are in Volume I(h) and My Lord... and the judgments which are not  
32 common to what was already filed before us are in Volume V(d). The judgments which were  
33 common, we have been told to take out because they are already on record. Now, there are two  
34 ways in which this matter is being analysed now. So, I'll just summarize very briefly. I am not  
35 adding submissions to the first limb of the argument which is based on the proposition that  
36 all alcohol is intoxicating liquor and therefore, all alcohol is under Entry 8 except excise which  
37 takes out a part of it.

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 8 has no fiscal ramification.

**JAIDEEP GUPTA:** It doesn't have. In any event, the fiscal ramifications are expressly provided for.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** And provided under separate heads.

**JAIDEEP GUPTA:** Completely separate heads.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Because you said, 'except excise'.

**JAIDEEP GUPTA:** Yes.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** That we need not...

**JAIDEEP GUPTA:** No, that's right.

**JUSTICE B. V. NAGARATHNA:** Not necessary.

**JUSTICE HRISHIKESH ROY:** That's not the end use of the product.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Your basic point is that all alcohol is intoxicating liquor and falls under Entry 8.

**JAIDEEP GUPTA:** Yes My Lord. Therefore, it is excluded from Entry 24. I am just summarizing what Mr. Dwivedi has already made it very clear to Your Lordships. So it's not included within Entry 24, therefore, not included in 52, List 1. And therefore, the entirety of the control should be with the State. So, I adopt that. I don't add anything more to it. The second aspect of this matter is, if Your Lordship do not accept that all alcohol is intoxicating liquor within Entry 8, then what is the position? And it should be pointed out that this proposition was not accepted in *Synthetics* and so therefore, Your Lordship will have to overrule *Synthetics* on that aspect that all alcohol is intoxicating liquor.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Has Mr. Datar left? *Haan* Mr. Datar you had to give us that Bennion's citation on public law.

1 **ARVIND P. DATAR:** I've got copies, so I'll...

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because that issue has also arisen us... arisen  
4 before us in the *AMU* case.

5

6 **ARVIND P. DATAR:** What it says...

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Of course, that the issue is a little different  
9 which... and we're not deciding it. We're commenting since both the Solicitors and  
10 [UNCLEAR] will have objections if we did that. As to whether the Union can do anything other  
11 than to support the Union law. Can a Union say that a Union law is not a valid law? Broadly,  
12 jurisprudentially it's the same thing. Do you know in that *AMU* case... Mr. Datar had a point,  
13 because in *Synthetics* the Union supported *Balsara* and said that Entry 8 covers both  
14 liquor for human consumption and what is now called as industrial denatured spirit. So Mr.  
15 Datar wanted to refer to an article by Francis Bennion in public law, jurisprudential article.  
16 An attorney is also interested in jurisprudence. So it'll be very interesting to see what is his...

17

18 **ARVIND P. DATAR:** Volume V, capital E, PDF page 41.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just 1 second. Let me see where we are. *Kahan*  
21 *gaya*? Volume V-E. Page?

22

23 **ARVIND P. DATAR:** PDF page 41. Public Law I, 2007. Since Your Lordship asked, colleague  
24 just found out this executive *estoppel*, the same article has been cited by Justice SB Sinha in  
25 two judgments **(2008) 12 SCC 466** and **(2009) 16 SCC 569**.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 2008?

28

29 **ARVIND P. DATAR:** **12 SCC 466** and **(2009) 16 SCC 569**, both by Justice S B Sinha.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, you are on the second point now?

32

33 **JAIDEEP GUPTA:** Yes.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And you said that alternately, the Court does  
36 not accept that all alcohol falls under Entry 8.

37

1 **JAIDEEP GUPTA:** Yes. In that case, *Synthetics* has to be overruled on the simple ground  
2 that the threefold classification of *Tika Ramji* followed up to today has not been taken into  
3 consideration at all.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the threefold classification of raw  
6 materials?

7

8 **JAIDEEP GUPTA:** Raw materials...

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Manufacture and distribution...

11

12 **JAIDEEP GUPTA:** Manufacture and production and post production. Pre-production,  
13 production, post production. Only the second, i.e., production is covered by the word  
14 'industry'. So therefore, My Lord...

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Post production goes into Entry 33? Trade or  
17 commerce...

18

19 **JAIDEEP GUPTA:** Not necessarily, My Lord. First it goes into 26...

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 27...

22

23 **JAIDEEP GUPTA:** 26, and 27.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Or 33.

26

27 **JAIDEEP GUPTA:** It might go to 33, if the product itself is in... is an notified industry. The  
28 product... not, My Lord, the product... let us say in this case, industrial alcohol is the product.  
29 Let us assume. 'Denatured spirit' is the better word, as Mr. Datar has already pointed out.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 'The products of any industry where the  
32 control of such industry is declared by Parliament.'

33

34 **JAIDEEP GUPTA:** That's right.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, it has to be the product of an industry which  
37 is declared by Parliament to be...

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**JAIDEEP GUPTA:** Correct. And if raw material is not that industry, it's not part of the industry, it might itself be a product.

**JUSTICE B. V. NAGARATHNA:** Yes, it can be a raw material for some other product.

**JAIDEEP GUPTA:** In this case itself, let's go straight away into the real problem. The nub is here. Your Lordship has seen the process. It starts from molasses, it goes to ENA, Extra Neutral Alcohol. Extra Neutral Alcohol is then capable of use in two ways. First, by using denaturing compounds, it can become denatured alcohol and can only be used for industrial purposes. It cannot be used for consumption. Second, that same ENA can now be used for processing into potable alcohol. Now assuming that Your Lordships do not overrule **Synthetics** on the question of what is intoxicating liquor, what **Synthetics** said was that in order to be intoxicating, it must be for human consumption. Because the word 'intoxicating' indicates that it is for human consumption. That My Lord, my learned friend has argued in detail, should not be the correct interpretation because of the legal meaning given to the phrase 'intoxicating liquor', long prior to it, including **Balsara**, et cetera. So by overruling **Balsara**, **Synthetics** said that intoxicating liquor means for human consumption. If so, if so My Lord Entry 8 at the very least will protect State's rights on all aspects as far as potable alcohol is concerned.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** You say that **Synthetics** overruled **Balsara**, by holding that intoxicating liquor covers liquor for human consumption.

**JAIDEEP GUPTA:** Right. If Your Lordship does not accept my learned friend, Mr. Dwivedi's argument, then that part of **Synthetics** will continue to hold, that is the spreading point or starting point for the second set of arguments. The first set of arguments is complete if Your Lordship accepts that intoxicating liquor includes all alcohol. Then you don't have to go into this second argument at all. But the second argument is also important because the judgment so far have accepted that position and carried on after **Synthetics** naturally. Even under that, Entry 8 would at least cover the entire process as far as potable alcohol is concerned.

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

**JAIDEEP GUPTA:** And My Lord here, there is a little footnote whether or not we look at the amended IDR Act, that would be the position. Before amendment, the schedule to the IDR Act said, fermentation products, alcohol and the second heading. Even here, if intoxicating liquor

1 included only potable alcohol, even then it would not be industry, it would not be subject to  
2 52. Potable alcohol.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because potable alcohol is covered by Entry 8,  
5 it can't go to Entry 22.

6

7 **JAIDEEP GUPTA:** Can't go to Entry 22. This has become even clearer after the amendment  
8 because the schedule now excludes potable alcohol categorically, but that was actually the  
9 position even before.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Post 2016. In any case, portable alcohol is out.

12

13 **JAIDEEP GUPTA:** Because it is no longer a notified product.

14

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

16

17 **JAIDEEP GUPTA:** Now we then come... We are left with denatured spirit. Most of the  
18 process for manufacturing denatured spirit is common to the manufacture of potable alcohol.  
19 In fact, I'm not saying theoretically.

20

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

22

23 **JAIDEEP GUPTA:** Up to the stage of ENA, there is only one process.

24

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

26

27 **JAIDEEP GUPTA:** If the State imposes any regulations in the manufacture of ENA, it cannot  
28 make a distinction between the end product at that stage. At that stage, it is not known what  
29 is the end product.

30

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

32

33 **JAIDEEP GUPTA:** So My Lord, Justice Jeevan Reddy in *Bihar Industries* said that at the  
34 point of removal is the appropriate point at which you have to look at the end use. Whatever  
35 goes for the manufacturer of denatured spirit will have... will remain in the control of the  
36 Union and whatever goes for production of potable alcohol will remain in the control of the

1 State. But up to the point of ENA, whatever is done as far as potable alcohol is concerned will  
2 necessarily also happen as far as denatured spirit.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because it is after the ENA stage that the  
5 denaturant is added..

6

7 **JAIDEEP GUPTA:** That's right.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In the bifurcation...

10

11 **JAIDEEP GUPTA:** Bifurcation takes place after that. So My Lord suppose and I give Your  
12 Lordship a concrete example.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the *sequitur* Mr. Gupta?

15

16 **JAIDEEP GUPTA:** My Lord just one concrete example. Several states will have certain  
17 restrictions on the input output ratio of molasses to the final product ENA. If it is within the  
18 efficiency factor, then there is no measure. If it is outside, it becomes subject to penalty. Now  
19 My Lord if I impose, if the State imposes a efficiency factor in the process of manufacturing  
20 ENA, at that stage, it will get imposed both on the quantity which will ultimately be used for  
21 rectified spirit as well as the quantity which will ultimately be used for potable alcohol. So  
22 therefore, keeping that reality in mind, we have to proceed to the next stage to see where the  
23 control of the State should end and where the control of the Union should start. Up to that  
24 point, it becomes impossible to make that distinction, because whatever I do for potable  
25 alcohol will necessarily also apply to the manufacturing process for ENA, which is ultimately  
26 used for denatured spirit. Therefore, now let us look at the legal analysis. This is a practical  
27 difficulty. Now, let us look at the legal analysis.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What happens in the process after the  
30 denaturant is added?

31

32 **JAIDEEP GUPTA:** Yes, after denature the product has already come into being. So there My  
33 Lord the industrial... the denatured spirit is actually in that second stage. Production and  
34 manufacture has been completed now of that product. After that comes the question of  
35 distribution, which will go into Entry 33. Why? Because denatured spirit is certainly excluded  
36 by the schedule of IDR Act. So the notified product, if I may put it that way, the notified product  
37 is the denatured spirit. Now, if I apply *Tika Ramji*, the raw materials used for the notified

1 product, denatured spirit ENA, is within the State's power. The distribution of the product is  
 2 within the State's power. And it is very important for the reason that even denatured spirit, as  
 3 a matter of fact, can re-enter or try to re-enter the potable zone and create havoc. So, if the  
 4 State has no power to regulate what happens at the distribution stage, then there can be havoc.  
 5 What is ultimately causing all these hooch tragedies is where denatured spirit diluted with  
 6 water, mixed up with some genuine spirit like whiskey, cheap whiskey, is then sold and that  
 7 creates havoc. It can become... no even ethyl... even ethyl alcohol. That's right. You're saying  
 8 that because it is... in order to make it denatured. Yes. My learned friend is saying that in order  
 9 to make it denatured, you make it methylated. You add methylated spirit, then it becomes  
 10 denatured. It should not be used for human consumption anymore. But in the market, it  
 11 sometimes comes back and by mixing it with some cheap whiskey, it is sold. The distribution  
 12 is also a very, very important stage. Not only for revenue purposes. Here Entry 6 becomes  
 13 absolutely important because public health is a State subject. Entry 6 of List II. So, both under  
 14 Entry 6 and Entry 8, it becomes necessary for the State to control the entire process of potable  
 15 alcohol, which sometimes goes across to the question... to the control of the denatured spirit  
 16 process as well. That's the factual background. Now therefore, if I'm to analyse it now, in terms  
 17 of **Tika Ramji**, we'll put it into these three components and only the middle component will  
 18 be subject to Union control and the other two will go into... will either be State control because  
 19 My Lord, it is State controlled because of 26 and 27. Now, the question is that if the product  
 20 itself has become included in the schedule, ENA, suppose ENA becomes included in the  
 21 schedule, then of course, it will go to 33. So far, the only thing in Entry 33 will be denatured.  
 22 That's the product which has been put there. Now the simple point is, if you do not take into  
 23 account **Tika Ramji's** analysis, then you cannot reach the correct result. And **Tika Ramji**  
 24 has not been taken into consideration in **Synthetics** and the reason, I'm sure, is as Mr. Datar  
 25 said, it was actually a matter relating to tax. It all started with some provision of tax which was  
 26 under challenge. It could have been decided on a much simpler basis, perhaps but seven judge  
 27 bench, so, it went into all issues which were argued. Now, one more thing My Lord, one  
 28 passage from **Bihar Industries**. Volume V(a), page 72. Oh, because it was in the previous  
 29 compilation, not in my compilation. It is already there. **Bihar Distillery**.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** V(a), 72 is **Vam Organics**.

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33 **JUSTICE B. V. NAGARATHNA:** 76.

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35 **JAIDEEP GUPTA:** 76, PDF page 76.

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37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, **Bihar Distillery** is 76.

1  
2 **JAIDEEP GUPTA:** Yes, the actual page is 72. Here let me just place 23. I won't take Your  
3 Lordship's time. Para 23. 'We are of the respectful and considered opinion...'. PDF page 91.  
4 'We are of the respectful and considered opinion that the decision in **Synthetics** did not deal  
5 with the aspects that have arisen for consideration herein, and that is mainly concerned with  
6 industrial alcohol that is denatured, rectified spirit. While holding that the rectified spirit is  
7 industrial alcohol, it recognized at the same time that it can be used for obtaining country  
8 liquor by diluting it or manufacturing IMFL. When the decision says that the rectified spirit  
9 with 95% alcohol content v/v is toxic. What is meant is that if it is taken as it is, it is harmful  
10 and injurious to health. By saying toxic, it does not mean that it cannot be utilized for potable  
11 purposes, either by diluting it or by blending it with other items. The undeniable fact is that  
12 rectified spirit is both industrial alcohol as well as a liquor which can be converted into country  
13 liquor just by adding water. It is also the basic substance from which IMFL is made. Denatured  
14 rectified spirit of course, is wholly and exclusively industrial alcohol. This basic factual premise  
15 which is not and cannot be denied by anyone before us, raises certain aspects for consideration  
16 herein, which were not raised or considered in **Synthetics**. Take a case where two industries,  
17 A and B, come forward with proposals to manufacture rectified spirit. A says that it proposes  
18 to manufacture rectified spirit and then denature it immediately and sell it as industrial  
19 alcohol, while B says that it will manufacture rectified spirit and utilize it entirely for obtaining  
20 country liquor and for manufacturing IMFL from out of it or to supply it to others for the said  
21 purpose. According to **Synthetics**, A is under exclusive control of the Union and only power  
22 of the State are those which are enumerated in para 86.' Those were the limited powers, which  
23 was given to the State under that judgment. But what about B? 'The rectified spirit  
24 manufactured by it is avowedly meant only for potable purposes. Can it yet be called industrial  
25 alcohol? Can it still be said that the State concerned has no power or authority to control or  
26 regulate industry B and that Union alone will control and regulate it until the potable liquors  
27 are manufactured. The Union is certainly not interested in or concerned with manufacture  
28 process or manufacture of country liquor or IMFL. Does this situation not leave a large enough  
29 room for abuse and misuse of rectified spirit? It should be remembered that according to many  
30 States before us, bulk of the rectified spirit produced in their respective States is meant for and  
31 is utilized for obtaining or manufacturing potable liquors. Can it be said, even in such a  
32 situation, that the State should fold its hands and wait and watch till the potable stage is  
33 reached? Yet another in additional circumstance is this, it is not brought to our notice that any  
34 notified order has been issued under 18-G of the IDR Act regulating the sale, disposal or use  
35 of rectified spirit for the purpose of obtaining or manufacturing potable liquids, which means  
36 that by virtue of Entry 33 of List III, the States do have the power to legislate on this field. This  
37 field is not occupied by any law made by the Union.' And My Lord the next two sentences

1 beyond that, My Lord. 'The line of demarcation... the line of demarcation can and should be  
2 drawn at the stage of clearance and removal of the rectified spirit where the removal of  
3 clearance is for industrial purpose, the levy of duty of excise and all other controls shall be of  
4 the Union. But where the removal clearance is for obtaining or manufacturing potable liquors,  
5 the levy of excise and all other controls will be of the State. This calls for joint control and  
6 supervision of the process, et cetera, et cetera.' Now, My Lord, I come to the next proposition.  
7 The next proposition is this My Lord, and this was actually highlighted in the questions which  
8 were referred in the **Lalta Prasad** order and that was with regard to 18-G. The reason why  
9 it is being referred is, two things happened in **Synthetics**.

10  
11 It was said that because it has gone into 52, the entire field is denuded and so therefore, 33  
12 will not apply to give States any leeway. And secondly, that 18-G is an indication that it has  
13 denuded the whole field. Now a very simple aspect to be taken into consideration is that 18-G  
14 was in the statute books all along from 1953 or so. Now, even when **Tika Ramji** was decided,  
15 it was there. Every time **Tika Ramji** My Lord has been upheld. It has been on the face of 18-  
16 G. If so My Lord, how could raw materials go out? How could distribution, et cetera, go out?  
17 If the whole field was denuded? So what has happened is, if you do not look at **Tika Ramji's**  
18 judgment, you will think that it is possible to hold that if the field has been denuded. But, if  
19 you look at **Tika Ramji and** follow it through, then you cannot hold that the field has got  
20 denuded. Because at least two aspects are out. Now we have given the list of all the judgments  
21 which has followed **Tika Ramji** up to **ITC**. I'm not taking Your Lordship through those.  
22 There are just two... there's only one more aspect which I want to point out, and this is also,  
23 because of specific difficulties which may arise later on. At this point of time, we are not  
24 discussing any specific statutes with relation to this aspect, but if Your Lordship holds, and to  
25 the extent that Your Lordship holds, that the State has the power to impose regulatory  
26 measures, it cannot.. it may take the form of matters other than regulatory fees. The moment  
27 we say fees, it becomes a situation where you might be asked to show *quid pro*. Cost of  
28 regulation must be shown to somehow have a correlation with the amount imposed. It may be  
29 a vague correlation or a loose correlation, but correlation has to be there. Whereas in fact,  
30 regulatory measures may include some kind of penalties to discourage a person from doing  
31 something. This is not something which is fees and therefore, requiring *quid pro*. So all that  
32 I'm saying is that Your Lordships, if regulatory powers remain with the State government for  
33 whatever reason, then such regulatory powers should not be restricted to regulatory fees.

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

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37 **JAIDEEP GUPTA:** My Lord those are my submissions.

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr. Gupta. Mr. Giri?

**JAIDEEP GUPTA:** Yes. Licensing is a very important way of regulation, so that will also, and as Your Lordship has heard from Mr. Datar, the States are in fact are the licensing authority for all industries which are manufacturing ENA today.

**V. GIRI:** May it please Your Lordships, I beg to appear in Civil Appeal Number 6708 of 2014 I think that is 901.14 and 901.17 on behalf of the State of Kerala. My Lord, the impugned judgments were passed on the basis of *Synthetics and Chemicals* without getting into any other issue. That's why when the appeal was filed, the appeal was admitted in and tagged along with the matters which are already referred. My Lord see... my written submissions are contained in Volume I(d), d for Delhi. There's one other point which arises from a judgment of Constitution Bench of this Honourable Court which has not been referred to but which arose from the same enactment that has been considered. Take Your Lordships to that in a moment to see. I've given the citation to the Court Master so that it is not part of the compilation of judgment, but I think it has been uploaded. But permit me to make a basis for what I wanted to submit before Your Lordships. If Your Lordships were to consider that an industry which is engaged in the manufacturer of alcohol per se, without coming to the distinction of whether it is potable alcohol, industrial alcohol or industrial alcohol in the sense that it is unfit for human consumption, then Your Lordships may construe 24... Entry 24 of List II. My respectful submission is that it would not take an industry which is regulated by Entry 8 of List II and intoxicating liquor, which is a prime question that Your Lordships have formulated for consideration, as falling under Entry 8, whether it should take in all subsets of alcohol except denatured spirit, which has to go out of the purview of alcohol fit for human consumption or which could be made fit for, because then it would according to me, it would not be an intoxicating liquor per se. Denatured spirit can never be treated as intoxicating liquor per se.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** You are arguing something at variance with what...

**V. GIRI:** Yes. According to me, intoxicating liquor cannot take in denatured spirit per se, My Lord. This is what I have tried to say in my written submissions also. Except denatured spirit which is a matter of manufacture, all other aspects of all other varieties of liquor would come under Entry 8. Every activity which would be comprehended by an industry relating to any product is textually covered by Entry 8 in so far as intoxicating liquors are concerned protection, manufacture, possession, transport, purchase, every aspect of. Therefore, Entry 24

1 will have to exclude intoxicating liquors. Entry 24 of List II. My Lord, two hypothesis flow in  
2 my respective submission. Going by 246, Article 246 and the general principles which Your  
3 Lordships have laid down in innumerable decisions as to how to construe an entry in a list.  
4 The scope and ambit of Entry 52 of List I will have to necessarily exclude any item which is  
5 comprehensively covered by an entry in List II and here 24 would go out of the picture.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, what happens to denatured spirit, then?

8

9 **V. GIRI:** Denatured spirit may not require the manufacturer of a specific commodity which  
10 does not become the raw material for any other alcohol. There is no question of denatured...

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Therefore, according to you denatured spirit  
13 will be governed by IDRA.

14

15 **V. GIRI:** Yes. The *sequitur* is therefore, except denatured spirit, every other sect of alcohol,  
16 whether it is a final product or an intermediate product would be covered by Entry 8. Let alone  
17 the question of levy of excise duty under Entry 51. In fact, Entry 51 of List II is treated to be  
18 complementary. That's what Your Lordships have held in the judgment to Entry 84 of List I.  
19 because 84 of list I as it stood prior to the 101st Amendment specifically excluded it and 51  
20 specifically provides for it.

21

22 **JUSTICE B. V. NAGARATHNA:** Both spirit can come. Both under Entry 24, List II and  
23 Entry 33, List III.

24

25 **V. GIRI:** No, My Lord. The Entry 34, List II.

26

27 **JUSTICE B. V. NAGARATHNA:** 24.

28

29 **V. GIRI:** Entry 24.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because if it is, if denatured spirit is not part  
32 of intoxicating liquor, according to you under Entry 8.

33

34 **V. GIRI:** Yes.

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36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then the *sequitur* will be that denatured spirit  
37 is governed by the schedule to the IDRA.

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**V. GIRI:** If it comes under Entry 24, then it becomes subject to 52.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Right. So in which case it becomes part of Item 26. If it does, right? If it does, its directly governed by Entry 33 of List III. It's a product of an industry.

**V. GIRI:** Yes.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** The control of which is declared by Parliament to be in the public interest.

**V. GIRI:** Yes.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** In which case it would still be within the State's regulatory power until Parliament were to enact a law to the contrary.

**V. GIRI:** Yes, until Parliament were to enact a law in terms of...

**CHIEF JUSTICE D. Y. CHANDRACHUD:** And 18-G also requires a notified order.

**V. GIRI:** It requires a notified order. There's no notified order.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** The little nuance which you are putting... I mean, not the nuance but the difference from what everybody else has argued is that according to you denatured spirit is out of Entry 8.

**V. GIRI:** Completely.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** But are you therefore, arguing that *Balsara* is wrong?

**V. GIRI:** *Balsara* really did not consider the distinction. *Balsara* went into the question of why does the provisions which provided a restriction on the import of not rectified spirit, not denatured spirit, but liquor as such and therefore, there was no occasion in *Balsara* to consider the distinction. Not only that, prior to the Constitution... prior to the Constitution, all those local enactments may which Mr. Dwivedi has provided in his chart. All of them also

1 define spirit is including denatured spirits and the entirety of control of anything to do with  
2 alcohol, including denatured spirits subject to correction, came within the province of the  
3 provincial legislature. It is only when it came... only when it came under the... sorry.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Really speaking Mr. Giri, you are really in that  
6 sense arguing the second point.

7

8 **V. GIRI:** Yes.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But the alternate submission, which he argued  
11 is your main submission, the sense that you are saying that there is no substance in their first  
12 submission therefore the alternate submission is your main argument.

13

14 **V. GIRI:** I'm not trying to take away anything from what they've argued. This is something  
15 which Your Lordships will have to consider.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But for denatured spirit, your argument is  
18 directly contrary to what the others have argued.

19

20 **V. GIRI:** In the sense My Lord, but it is not in antagonism to that. It is not in antagonism to  
21 that.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But You are saying that denatured spirit does  
24 not fall within Entry 8.

25

26 **V. GIRI:** That's correct. Only denatured spirit. I'm saying, distinct from 95% ENA, which is  
27 what is considered in *Synthetics and Chemicals*. In fact, *Synthetics and Chemicals*  
28 need not have gone into the question of ENA or any other aspect, because the persons who had  
29 filed the writ petition were distillers or were manufacturers of denatured spirit. And it was one  
30 My Lord... It was apparently because the license was not granted or some fee was demanded  
31 that they had approached the High Court also, even in the first instance in '91. But then My  
32 Lord then the Court probably because, as Mr. Gupta put it, probably because it was argued  
33 before them that Their Lordships found... probably felt it necessary to go into these aspects,  
34 but otherwise, denatured spirit according to me, stands completely separately. It's  
35 manufactured My Lord... it's manufactured with a process that is unique to it. There is no  
36 question of extracting alcohol from denatured spirit thereafter. Nothing. There's no question  
37 of comeback. Denatured spirit by itself is a product that cannot be used for and according to

1 me, it cannot therefore, come under Entry 8 because it's not an intoxicating liquor. One cannot  
2 treat the word 'intoxicating' as a [UNCLEAR]. Intoxicating liquor means it must be fit for  
3 human consumption. A denatured chat spirit is not. My Lord why I beg to try to bring it under  
4 this Entry 8 is because then I don't have to fall under 24 and 24 take in anything which falls  
5 under 8. And if I don't fall under 24, then I am really not concerned with 52.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Anything other than denatured spirit.

8

9 **V. GIRI:** Yes.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Is something which is, will not say 'alcohol fit  
12 for human consumption', but 'alcohol for human consumption'.

13

14 **V. GIRI:** 'Alcohol for human consumption'.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which has a potential for human consumption.

17

18 **V. GIRI:** Yes, yes. My Lord, there's no...

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You are appearing for the State of Kerala?

21

22 **V. GIRI:** Yes. There's no rocket science involved in converting ENA into...

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So... correct.

25

26 **V. GIRI:** Converting ENA into either country liquor or anything which....

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just add a denaturant, that's all.

29

30 **V. GIRI:** Nothing My Lord. Just add water to it and then for the purpose of labelling it in  
31 different, very attractive bottles, you either add caramel, then it becomes rum. You add malt,  
32 then it becomes whiskey, and then the others I don't know.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Giri, it's your theoretical analysis of the  
35 subject we presume, therefore.

36

1 **V. GIRI:** I'm saying I'll go by what Mr. Datar has provided in his chart. At page 12 of his  
2 written submissions, he has provided...

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Clarified by Mr. Datar has provided in his chart  
5 not what Mr. Datar has provided.

6

7 **V. GIRI:** My Lord I used the word 'chart'.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So I think we've got the point. But therefore,  
10 you take it that... you are appearing for the State of Kerala, right?

11

12 **V. GIRI:** Yes, My Lord.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Therefore, you're not seeking to regulate or  
15 impose any regulatory fees on denatured spirit?

16

17 **V. GIRI:** No, we are not. We are not. The issue in the present case arises from the demand for  
18 wastage fee on Extra Neutral Alcohol.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The wastage fee...

21

22 **V. GIRI:** That is all My Lord. Now, there are two or three aspects below which may flow out  
23 of it My Lord. Can I proceed?

24

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

26

27 **V. GIRI:** My Lord insofar as the judgment in *Synthetics and Chemicals* are concerned, if  
28 Mr. Datar taken Your Lordships to some of the paragraphs which in his submissions he said  
29 will have to be treated as not acceptable and therefore, has urged Your Lordships to consider  
30 whether they have to be overruled. Would Your Lordships kindly come back to *Synthetics*  
31 *and Chemicals* because the end of the day Your Lordships are considering the correctness  
32 of the judgment and that's...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Only we will not go into the nitty gritty of your  
35 particular [UNCLEAR], the wastage fee, as you said.

36

37 **V. GIRI:** Yes. I'm sorry I did not catch you.

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**CHIEF JUSTICE D. Y. CHANDRACHUD:** I mean, we need not going to State specific legislation here.

**V. GIRI:** No, we need not. This is only, this is an additional strength to the bow, if Your Lordships kindly consider it that way. Without taking away anything from the broad sweep of the argument, which Mr. Dwivedi had made that the alcohol which is mentioned in Entry 8 would cover everything, every variety of alcohol.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Denatured spirit.

**V. GIRI:** In my respectful submission, it cannot include denatured spirit because Entry 8 makes it intoxicating liquor and if there is one product which cannot be treated as intoxicating... intoxicating would mean intoxicating for the human being, which means it must be consumed by the human being and it cannot be. There is no process by which... there is no process by which a denatured spirit can be made into consumable alcohol as it were or potable alcohol as it were. And therefore... and therefore, Entry 8 will have to exclude that except that if every other variety is therefore included in Entry 8, the *sequitur* in my most respectful submission, forgive me for repeating, I don't have to concern myself with Entry 24. If I don't have to concern myself with an Entry 24, then really speaking, I don't have to concern myself with 25 or 27. Every aspect of it is covered by Entry 8. Because I fall under Entry 33, I have to take resort to Entry 33 only when the Parliament may by law declare that any industry is one of public interest as such. Therefore, the Parliament cannot... Sorry.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** When you say that therefore, denatured spirit does not fall within the fold of Entry 8, it necessarily therefore, may fall under Entry 24 and therefore under Entry 52.

**V. GIRI:** Yes.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** But if it falls under Entry 52, then the State's regulatory power, even insofar as denatured spirit...

**V. GIRI:** Correct, My Lord.

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Would be subsumed in say, Entry 33 of List III then.

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**V. GIRI:** Correct My Lord, it could. But in my respectful submission, it is not necessary to get into that orbit at all. If Your Lordships are pleased to hold that the intoxicating liquor as contained in Entry 8 would contain any other species of alcohol as it were except denatured spirit, because it can never become... Manufacture is the ultimate stage of a production. A production therefore, would have intermediate stages. ENA is one of the products which you get in the manufacture of Indian Made Foreign Liquor. Molasses is another product. And for molasses, fermentation takes place. Extra Neutral Alcohol is obtained which could be 95.5%. But that's alcohol, which would still fall within the ambit of..

**CHIEF JUSTICE D. Y. CHANDRACHUD:** Is it State of Kerala's position, therefore, that the States would not have any role whatsoever to play in regard to denatured spirit?

**V. GIRI:** No, My lord. In my respectful submission, if this argument... even otherwise, we don't do anything with the denatured spirit. That's what I wanted to get myself clarified. We have nothing to do with denatured spirit.

**JUSTICE ABHAY S. OKA:** You may not be doing it, but ultimately, what is your submission?

**CHIEF JUSTICE D. Y. CHANDRACHUD:** About State's powers?

**V. GIRI:** States's powers. For example, My Lord, for setting up a manufacturing unit of denatured spirit per se, I don't think they have the power to issue a license and therefore, they don't have the power to regulate.

**JUSTICE HRISHIKESH ROY:** But licensing, as we are told is for the alcohol manufacturing.

**V. GIRI:** Yes.

**JUSTICE HRISHIKESH ROY:** At this stage, when license is issued, it is not issued for industry A, industry B, two categories. It is issued that the end product will determine whose control it will be. Therefore, at the time of issuing license, that's what we are given to understand.

1 **V. GIRI:** Yes. Suppose it is for manufacture of Extra Neutral Alcohol per se, then obviously  
2 the State would have the power. But the question as to whether it gets into denatured spirit or  
3 not, comes about at the stage of clearance. That's insofar as a taxing power is concerned.

4

5 **JUSTICE HRISHIKESH ROY:** At the time of issuing license, that distinction is not there.

6

7 **V. GIRI:** They'll have to say what they are going to manufacture.

8

9 **JUSTICE HRISHIKESH ROY:** No. Also, an example was given. Let us say at a given point  
10 of time, an industry license... it is manufacturing and there is a prohibition... prohibition is  
11 imposed, say Bihar, then what happens? He has a licensing; he has a factory but that demand  
12 for the product is not there. For the potable alcohol, which gives a kick. No demand for that.  
13 Then?

14

15 **V. GIRI:** No, My Lord. He has a license for manufacturing. He has a license for producing  
16 Extra Neutral Alcohol. But does he have the license to produce denatured spirit?

17

18 **JUSTICE HRISHIKESH ROY:** Denatured spirit is at this stage of removal.

19

20 **V. GIRI:** No. Denatured spirits is also a product of...

21

22 **JUSTICE HRISHIKESH ROY:** There is also a levy, we are told, for... at the stage of  
23 denaturing, you are importing a fee. That now you have putting denatured elements.

24

25 **V. GIRI:** They say that, that's at the stage of clearance. Therefore, when it gets into the stage  
26 of manufacture of denatured spirit...

27

28 **JUSTICE HRISHIKESH ROY:** Up till the factory gate, up till the factory gate, it remained  
29 within the purview of the State.

30

31 **V. GIRI:** In which case My Lord, in which case, insofar as a regulatory control is concerned,  
32 if it falls outside Entry 8, it could still fall under 24. In which case it will be subject to Entry 33,  
33 52 and Entry 33. I really don't have to go to that extent insofar as all other varieties of liquor  
34 except denatured spirit is concerned. It's only for that purpose they see. But what fell from  
35 Your Lordships that the fact that it doesn't fall under the Entry 8, let's not completely take it  
36 out of the purview of List II. Your Lordships are right. It could then fall under Entry 24. You  
37 say it's an industry. If it falls under Entry 24, it could then... it is then subject to Entry 52 of

1 List I. If it is subject to Entry 52 of List I, then it is subject to Entry 33 of List III, in which case,  
2 possession, transport and all those things could come under the regulatory control of the State  
3 as well. I'm saying... I'm taking it from the point of view of exclusion. Except denatured spirit,  
4 all other varieties of alcohol would come under and we are really concerned with intoxicating  
5 liquor fit for human consumption in this, for human consumption.

6  
7 My attempt is only this. Bring it under Entry 8, then I don't have to come and I don't have to  
8 bother with Entry 24. If I don't have to bother with Entry 24, then I'm not bothered with Entry  
9 51 also. And then Entry 52 of List II also. Then I don't have to bother with Entry 33 of List III.  
10 For all varieties of alcohol, which would come under the broad category of intoxicating liquor  
11 under which rectified spirit will never... I'm sorry My Lord... denatured alcohol will never  
12 come. The other *sequitur*, the other consequential question, would Your Lordships then say,  
13 denatured spirit is completely taken out of the purview of List II. No. Your Lordships are right.  
14 But I really don't have to labour on that because in my respectful submission, my regulatory  
15 control is on the question of whether the potable or intoxicating liquor which is fit for human  
16 consumption.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's all, Mr. Giri?

19

20 **V. GIRI:** No, My Lord. I need another 15 minutes.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright, 15 minutes and then now we only left  
23 Mr. Shadan Farasat.

24

25 **V. GIRI:** Mr. Balveer Singh was...

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 10 minutes, 15 minutes and then...

28

29 **JUSTICE HRISHIKESH ROY:** But Mr. Giri, you are sitting here from yesterday. So  
30 arguments of Mr. Dwivedi did not have intoxicating effects on you. You are arguing something  
31 contrary to that.

32

33 **V. GIRI:** I don't know My Lord. They have the potential; they have the potential of doing it.

34

35 **JUSTICE HRISHIKESH ROY:** So Mr. Giri, you are suggesting that Entry 8 gets kicked in  
36 only when the liquid has the potential to give a kick.

37

1 **V. GIRI:** Give a kick, My Lord.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's wonderful.

4

5 **V. GIRI:** My Lord, that's another facet of Constitutional interpretation. Grateful.

6

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