

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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11:15 AM IST

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The rearrangement of chairs takes a little time.
2 We are in the hands of our ushers.

3
4 **TUSHAR MEHTA:** Yes. My Lord, I was taking Your Lordships, through the Act and from
5 the Chief Justice, My Lord it rightly fell, this is an Act of licensing era where there was too
6 much of red-tapism etc, etc. And now the country has progressed. Before I complete that Act,
7 My Lord, I reached up to Section 11, and I am going to show only five or six other sections, My
8 Lord, not the entire Act. I would wish, My Lord, subject to Your Lordships approval to show
9 My Lord, why this Act is still relevant and why it is kept. My Lord, 1991, is the year in which
10 we shifted as a nation from the old licensing regime to a free economy regime. That My Lord,
11 I have given in Volume IV-G at page 385. Only few paragraphs. My Lord, this was when... Just
12 My Lord, by way of information, Narasimha Rao Ji was the Prime Minister and Dr. Manmohan
13 Singh was the Finance Minister, My Lord, they pioneered this new industry policy. My Lord,
14 please come to para seven. I will read only relevant part, My Lord. Page 385, Volume IV-G.
15 Why this Act is still relevant? Why it is consciously not either amended or repealed? And why
16 it would be necessary My Lord, for Your Lordships to examine it, in that context, that in future,
17 even present, it is implemented and it needs to be implemented, maybe, My Lord, depending
18 upon the circumstances. My Lord, para three to six, earlier policies are dealt with, I am not,
19 My Lord, taking Your Lordships. Para seven, of My Lord this... My Lord, this is industrial
20 policy dated, July 1991. Para seven, 'The policies created a climate for rapid industrial growth
21 in the country', My Lord, that is earlier policies. 'Thus, on the eve of the Seventh Five Year
22 Plan, a broad-based infrastructure had been built up. Basic industries had been established. A
23 high degree of self-reliance in a large number of items, raw materials, intermediaries...
24 intermediates, finished goods had been achieved. New growth centres of industrial activity has
25 emerged and has new generation of entrepreneurs. A large number of engineers, technicians
26 and skilled workers had also been trained.' Now, My Lords, may kindly see the next page, it
27 demarcates in four categories, My Lord. In para 19, My Lord. 'In pursuit of the above objective
28 the Government has decided to take a series of initiatives in respect of policies relating to the
29 following areas; industrial licensing, foreign investment, foreign technology agreements,
30 public sector policy, MRTPA.' My Lord, we are concerned with the first only. Please see, My
31 Lord, Industrial Licensing Policy. 'Industrial licensing policy... licensing is governed by the
32 Industries Development and Regulation Act 1951. The industrial policy resolution of 1956,
33 identified the following three categories of industries; those that would be reserved for
34 development in public sector, those that would be permitted for development through private
35 enterprise with or without State participation and those in which investment initiatives would

1 ordinarily emanate from private entrepreneurs. Over the years keeping in view, the changing
2 industrial scene in the country, the policy has undergone modifications. Industrial licensing
3 policy and procedures have also been liberalized from time to time. A full realization of the
4 industrial potential of the country calls for continuation of the process of change.’ My Lord,
5 para 22 thereafter. Your Lordships, may skip 21. ‘The winds of change have been with us for
6 some time. The industrial licensing system has been gradually moving away from concept of
7 capacity licensing. The system of reservation for Public Sector Undertaking has been evolving
8 towards an ethos of greater flexibility and Private Sector Enterprise had been gradually
9 allowed to enter into many of these areas... of... a case of caste basis...’

10

11 **JUSTICE B.V. NAGARATHNA:** Case by case.

12

13 **TUSHAR MEHTA:** I am sorry Ma’am. ‘On case-to-case basis. Further impetus must be
14 provided to these changes, which alone can push this country towards the attainment of its
15 entrepreneurial and industrial potential. This call for bold and imaginative decisions designed
16 to remove restraints on capacity creation while at the same time ensuring the overriding
17 national interest are not jeopardized’. Thereafter, Your Lordships may kindly come to, para 39
18 My Lord, page 389. I’m skipping what is not relevant for the IRDA purpose because they made
19 several changes in foreign direct investment, et cetera, et cetera. And MRTP Act was My Lord...
20 mark one thing, MRTP Act was substantially amended, to bring it in tune with the new regime
21 of liberalization. Why I say this? The Government thereafter, consciously neither repealed the
22 IDRA nor amended IDRA and I’ll point out My Lord, why.

23

24 **JUSTICE OKA:** But, Solicitor, you are relying on this 1991 today. It looks very primitive. So
25 much has changed now. Today, you are relying upon ‘91 policy.

26

27 **TUSHAR MEHTA:** I’m not relying upon. My Lord, I’m sorry. I’m not relying upon. I am...
28 This can’t be relied on.

29

30 **JUSTICE OKA:** Respond to what Hon’ble Chief justice of India said. I mean, this policy in
31 today’s context...

32

33 **TUSHAR MEHTA:** My Lord, kindly allow me.

34

35 **JUSTICE OKA:** Alright.

36

1 **TUSHAR MEHTA:** I am not justifying the Act based on this policy. It's a '91 policy. Years
2 back. My purpose is to show that the changes, winds of change, as they say, is taken note of.
3 There are certain changes made, the IRDA is taken note of. My Lord, this is the policy which
4 delicensed everything, except some items. I am not saying that I justify, IRDA. I'm not
5 supposed to justify, because that's not under challenge. But that's a very basic argument. I am
6 just saying that this was My Lord, event which changed the course of our economic history.
7 But still IRDA was neither amended nor repealed. And My Lord after... At the end of this My
8 Lord, I'll be able to show why I am showing this. Not to rely upon it, to justify existence of
9 IRDA, to point out to Your Lordships, that it is still in operation and in future it can still be
10 required to be utilised by the country and therefore, consciously it was not done. As My Lord,
11 the Chief Justice of India, My Lord, was pleased to say, that now we are in a delicensed era.
12 That is true. From '91 we are in a delicensed era and the provisions which I read provided for
13 licensing but some scheduled industries are still under licensing regime and I will be able to
14 show, in future if the circumstances or contingencies so demand, the country may need again
15 to control them and I will give the illustrations. My Lord, para 39, 'Decisions of the
16 Government'. My Lord, kindly see '(a) Industrial Licensing Policy. Industrial licensing will be
17 abolished for all projects except for a short list of industries related to security and strategic
18 concerns, social reasons, hazardous chemicals, and overriding environmental reasons and
19 items of elitist consumption that is list at Annexure 2.' Your Lordships, need not do it right
20 now, because that also has kept on being amended. I'll point out what remains in the Schedule
21 as on date, My Lords. Now Your Lordships, may kindly turn to Annexure 2. Just to have a
22 flavour My Lord. 392, My Lord. Since, My Lord, this case incidentally concerns alcohol. My
23 Lord, as I have pointed out, my effort My Lord, is not... My Lord, let me, My Lord, make this
24 again clear. My Lord, my effort is not to succeed in case of alcohol. That alcohol, only Centre
25 has the power under Entry 52. My Lord, Entry 52 encompasses several things, and therefore
26 My Lord, Your Lordships, in this combination are examining the question of law. Therefore,
27 My Lord, I must point out from a broader perspective than just alcohol, because that happens
28 to be the case here, the fact situation. But Your Lordships' law would apply across all
29 industries. My Lord, distillation and brewing of alcohol was still under the licensing regime.
30 Now, it is not, My Lord, I must say. But it was, at the relevant point of time. Now, Your
31 Lordships may kindly see, what is the present position. List, Annexure-2, constantly became
32 shrinking. It remains shrinking. My Lord, more and more...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where do we get the latest position, Solicitor?

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36 **TUSHAR MEHTA:** Yes, My Lord. My Lord, we have uploaded it but it has not reached Your
37 Lordships.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Okay.

TUSHAR MEHTA: My Lord, it's only one page.

CHIEF JUSTICE D. Y. CHANDRACHUD: It will not be in this Act.

TUSHAR MEHTA: It's not in this Act. My Lord, it's one page. My Lord, if I can request...

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes, certainly.

TUSHAR MEHTA: 4(i), page 23. Now, the Act, My Lord, controls, regulates or provides for licensing of these products, as on date. For My Lord, only completing the record, Section 29B of IDRA, provides or empowers the Central Government, to exempt certain industries. Your Lordships need not go into.

CHIEF JUSTICE D. Y. CHANDRACHUD: 29B.

TUSHAR MEHTA: 29B. Under which, My Lord, several industries, were removed from List... Schedule II. My Lord, the effect of 29B is, it remains in the Schedule to the Act. Meaning thereby, it can always be brought under regulation. But for the time being, it would be exempted from the provisions or the regime or the licensing policies, et cetera, under the IDRA. So, potential regulation remains. Your Lordships have, My Lord, page 23? I'm sorry. It would be here, My Lord. My apologies, My Lord. It would be displayed, My Lord.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yeah, we got it. It now has a... There's a press note number three.

TUSHAR MEHTA: Yes, three, My Lord. The press note, number 17, 'Series regarding environmental clearance of industrial license conditions of letter of intent, industrial license relates to pre-1991 period. After the Industrial Policy Resolution '91 and considering various amendments made to notification number so and so, only the following four industries are covered under the compulsory licenses, cigars and cigarettes of tobacco and manufactured tobacco substitutes; electronic, aerospace and defence equipment; industrial explosives and hazardous chemicals.' These are, My Lord, now under licensing regime. The entire Act applies to them. Rest of the industries are, as on date out of it. My Lord, kindly bear one factor in mind. '91 policy delicensed everything. Thereafter, My Lord, except for the 'rest of the

1 industries' were exempted from the licensing regime, but they continued in the Schedule very
2 consciously.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Schedule is not amended.

5

6 **TUSHAR MEHTA:** Not amended. MRTP Act, My Lord, there are... There is a discussion, My
7 Lord, in 1991 Policy itself, that now we will have to bring it in tune with this liberalized regime,
8 we also amend the MRTP Act. But this Act is not even amended, and there is a reason why.

9

10 **JUSTICE HRISHIKESH ROY:** So Mr. Solicitor, you are trying to say that, following the
11 liberalization regime that we entered into from the License *Raj*, the Government of India is
12 consciously taking certain steps. And the press note that you are pointing out is that, only now
13 these four categories of industries are within the License *Raj*.

14

15 **TUSHAR MEHTA:** Correct, My Lords.

16

17 **JUSTICE HRISHIKESH ROY:** But we are keeping the industries mentioned in the
18 Schedule to the Act, so that at a given moment, if we have to do something, we'll bring them
19 within. But then, the context, if you look at also 20D, which is the empowering... there also,
20 you have to do it on the exigencies or the contingencies that are mentioned in 29B.

21

22 **TUSHAR MEHTA:** No, no, My Lord. Kindly... I also, My Lord... Your Lordships are right.
23 My Lord, I also initially read it like... and that may be a correct reading. But thereafter, My
24 Lord, I changed my interpretation. That is only for one category. Please, My Lord, read 29B.

25

26 **JUSTICE HRISHIKESH ROY:** Yes.

27

28 **TUSHAR MEHTA:** 'If the Central Government is of the opinion, having regard to the
29 smallness of the number of workers employed, or to the amount invested in any industrial
30 undertaking, or to the desirability of encouraging small indus... small undertakings generally',
31 My Lord, this is first part.

32 **JUSTICE HRISHIKESH ROY:** Yes.

33

34 **TUSHAR MEHTA:** 'Or to the stage of development of any scheduled industry', this is second
35 part, which applies to... My Lord, first three contingencies are for small industries. For other
36 scheduled industries, 'Stage of development of the scheduled industry, that it would not be in
37 public interest to apply all or any of the provisions of this Act thereto, it may, by notification

1 in the official gazette, exempt, subject to such conditions as it may think fit to impose etc., etc'.
2 So, My Lord, first three is for small industries, rest is... My Lord, for example, non-potable
3 alcohol is still in the Schedule My Lord. Nobody disputes that fact.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's not regulated by the Act.

6

7 **TUSHAR MEHTA:** It's not regulated by the Act, My Lord. As it stands today, it's not
8 regulated by the Act. So, we have a particular quantity of non-potable alcohol, which is
9 produced. Now, non-potable alcohol has several uses. I'm just giving a hypothetical example
10 why the Act still retains the power to regulate in future. It goes into making of the potable
11 alcohol. It goes into making of certain medicinal preparations. It goes into making of certain
12 paints and other industrial uses. Now, My Lord, we had COVID, for example, and we
13 required... and the Government of India, the nation requires, that entire quantity of industrial
14 alcohol should be used only for manufacturing sanitizers. I'm giving a hypothetical example.
15 Then the Government can again utilize the regulatory power. Therefore, the power is retained.
16 The regime of forbearance is enforced, that we will forbear from exercising. But the power is
17 there. And a decision not to exercise the power is also a decision. My Lord, I have given two
18 examples in my original note. My Lord, if Your Lordships can come to II-D, my original note,
19 just to illustrate this point. Page 56 of my note, My Lord, Volume II-D. These are the figures
20 taken from the Niti Aayog roadmap. My Lord, Niti Aayog conducts, that what is the
21 requirement of the country *qua* each scheduled industry, product of each scheduled industry.
22 Whether that requirement is met? If not met, what steps are to be taken? My Lord, everything
23 My Lord... since decades, everything happens very scientifically. There is a system in place.
24 The country doesn't run on an *ad-hoc* basis. My Lord, there are systems, there are institutions.
25 Every institution functions. They have their own defined roles, etc. Please see, My Lord, page
26 55 first. What is the position of alcohol? This is what the Niti Aayog would examine. Your
27 Lordships have the chart? Just... I'm illustrating, My Lord. This is by way of an illustration.
28 My Lord, 21-22, the ethanol requirement for blending was 437 crores. My Lord, page 55, II-
29 D. Volume II-D. For blending, requirement was 437 crores and for other uses that is potable,
30 My Lord, making beverages plus industrial alcohol, it was 270 crore litres. So, the total
31 requirement was 707. The country was meeting with that requirement; therefore, regulation
32 was not necessary. My Lord, but suddenly suppose there is a spike in the use of alcohol, not
33 potable alcohol, My Lord, for use of any other alcohol, then possibly the Central Government
34 can step in and say that now we will control what will be produced, license will have to be
35 required, from where you will procure the raw material. The raw material also may be required
36 to be diverted. That sugar cane becomes molasses, molasses becomes ultimately the alcohol,
37 so sugar cane would not be diverted for manufacturing sugar, it should be used for only

1 manufacturing alcohol, in a given set of circumstances. Therefore, the law is like, right now
2 exempting most of the items. Similarly, please come to the next page. My Lord, this is
3 regarding the sugar. Sugar is an essential element, as an essential food item. Please see My
4 Lord, 'Sugar cane production vis-a-vis sugar production and sugar consumption.' Kindly, My
5 Lord, have a look at page 56. Sugar cane production is, this is in L.E.T.S. metric ton. In 1819
6 sugar cane production is 4054. Now sugar is produced, is 332 metric ton... L.E.T.S. metric
7 ton, and the consumption is less than this. Now, suppose, My Lord, for whatever reasons,
8 international reasons or national reasons or whatever reasons, there is sudden decrease in the
9 sugar production and the nation needs uniform availability of sugar at uniform prices, then
10 My Lord, sugar remains in the Schedule. Right now, under the forbearance region. This can
11 be true, My Lord, about every product. Just to give an example, My Lord, in case of say, defence
12 industry, one of the scheduled industries. Suddenly the defence equipment manufacturing
13 demand rises for any international reason, My Lord. There may be some minerals which go
14 into the manufacturing of the explosive or something. I'm giving a very, very broad and
15 hypothetical example, then the Government can step in. Right now, you do, without licensing,
16 free market, free economy, no licensing. You do whatever you want to do. You invest your
17 money. Let the country grow, let the economy grow. But in certain circumstances, you have to
18 step in, that is...

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then, in regard to industrial alcohol, is the
21 Government exercising its regulatory power?

22

23 **TUSHAR MEHTA:** Yes.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Today, the compulsory licensing for industrial
26 alcohol is gone. All alcohol is gone.

27

28 **TUSHAR MEHTA:** My Lord, there are some regulatory controls. Licensing is not required.
29 But I will show, there are some regulatory controls. The reason is this... reason is this...

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Fair enough. Now, you were actually... Last
32 time when we stopped, you were looking at the statutory provisions. So, you showed us Section
33 10...

34

35 **TUSHAR MEHTA:** Before that, My Lords...

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's quickly run through the statutory
2 provisions, so we can make some headway then.

3

4 **TUSHAR MEHTA:** And My Lord... I'll show, My Lord, what... My Lord, there is a 'biofuel
5 policy' and ethanol is an element in the biofuel policy. It's a national project and if that project
6 succeeds My Lord, the dependence on other fuel would be substantially reduced. So, My Lord,
7 there is some kind of a regulation in national interest. Now, please see, My Lord, the... My
8 Lord, I'll take Your Lordships to the noting. It's there, part of my original written submissions,
9 My Lord. But My Lord before, as My Lords, have been pleased to say, I'll just take Your
10 Lordships to the Act. Your Lordship, may give me only a minute. Your Lordships, I was at
11 Section 11. I'll read only those sections which are relevant. My Lord, first kindly see, Section
12 10. And bear, My Lord, one fact in mind. Your Lordships are not deciding only alcohol. That,
13 incidentally happens to be the fact of a case which is referred. This law, which My Lords, in
14 this nine judge combination, would lay down, will apply to all scheduled industries, today and
15 in future also, if regulation is required. Therefore, My Lord, I am assisting, not My Lord, to
16 win in an alcohol related matter. To assist, Your Lordships fully, objectively. My Lord, Section
17 10(3), sub-section 3, 'Wherein industrial undertaking is registered under this section, there
18 shall be issued to the owner of the undertaking or the Central Government as the case may be,
19 a Certificate of Registration, containing the productive capacity.' My Lord, production comes
20 here. That's the reason I am, My Lord, showing. 'Productive capacity of the industrial
21 undertaking and such other particulars', My Lord, last two lines also, 'Productive capacity of
22 the industrial undertaking and other prescribed particulars.' My Lord, suppose some
23 commodity from the scheduled industry, is now brought under licensing regime, for some
24 good reason, My Lord, subject to Your Lordships judicial review, if challenged. Then, My
25 Lords, this will be done. Then (5), 'In specifying the productive capacity in any Certificate of
26 Registration, issued under sub-section 3, the Central Government shall take into consideration
27 the productive or installed capacity of the industrial undertaking, as specified in the
28 application for registration made under sub-section 1. The level of production immediately
29 before the date on which the application for registration was made under sub-section 1. The
30 level of highest annual production during the three years immediately', et cetera, et cetera. So,
31 production is a part of IRDA.

32

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

34

35 **TUSHAR MEHTA:** Which undisputably traces its origin to Entry 52, List I, read with Entry
36 33, List III. My Lord, why I say this? *Tika Ramji* says, industry in 52 is confined only to

1 manufacturing. After taking note of the Act itself, My Lord. I'll show, My Lord, how **Tika**
2 **Ramji** is either bad or is *obiter*, My Lord.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, apart from 10(3) and 10(5), what is the
5 other provision?

6

7 **TUSHAR MEHTA:** My Lord, 11(2). My Lord, I have marked my copy, My Lord, I'll not read
8 anything which is irrelevant.

9

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

11

12 **TUSHAR MEHTA:** 11(2)- 'A license or permission under sub-section 1 may contain such
13 conditions, including in particular, conditions as to the location of the undertaking and the
14 minimum standards in respect of size to be provided therein as the Central Government may
15 deem fit to impose in accordance with rules.' In future this contingency might arise with regard
16 to some of the scheduled industries, therefore, this provision. Then, 11-A, Your Lordships have
17 seen, 'License for Producing or Manufacturing New Articles', but please see, My Lord, 11-B.
18 'Power of Central Government to Specify...', My Lord, I'm sorry, My Lord, one more fact...
19 While going through this, My Lord, kindly bear one fact in mind, because, that would be
20 necessary when I assist Your Lordships on the question of repugnancy between the State
21 provision and the Central provision. My Lord, one of the conditions, one of the grounds, on
22 which Your Lordships, would test repugnancy would be, that- 'Is the Central Act, intending to
23 cover the entire field of the subject?' If the entire field is occupied by the Central Law, that
24 would be one of the considerations. My Lord, the Chief Justice in forum, has My Lord, analysed
25 that, and My Lord, I'll cite that judgment and one or two judgments on that. So that is one
26 more reason why Your Lordships may see this Act in totality that it occupies, it intends to
27 occupy the entire thing. They may use it. They may not use it. Then 11B. 'Power of the Central
28 Government to specify the requirements which shall be complied with by small scale
29 industries, industrial undertakings'. This is what my Lord Justice Roy was saying 29B. Small
30 industries, those three conditions. Rest, a) Promoting in a harmonious manner the industrial
31 economy of the country, and easing the problem of unemployment. Then b) Securing that the
32 ownership and control of material resources of the community are so distributed as best to
33 subserve the common good. My Lord in some contingency in future like COVID, this power
34 may have to be invoked. That includes control over the raw material also, because that's one
35 of the natural resource or natural ownership of the nation as a whole. I may be, My Lord,
36 producing, but ultimately, it has to be harmoniously and uniformly distributed for the
37 advantage of everyone. Then My Lord, kindly see Sub-section 2(d). 'The nature..' It covers

1 every. I'm sorry.... It covers every aspect of industry. 2(d). 11B, Sub-section 2, Sub-clause (d).
2 'The nature, cost, and quality of the product of the industrial undertaking', this is also
3 controlled.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This is in regard to small scale industries.

6

7 **TUSHAR MEHTA:** Yes, My Lord. I'm just saying that...

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right. Apart from this, what else?

10

11 **TUSHAR MEHTA:** My Lord, 13(d). 'Further provision for licensing of industrial
12 undertaking in special cases, effect any substantial expansion of an industrial undertaking
13 which has been registered, et cetera'. Please see the explanation. 'Substantial expansion means
14 the expansion of an existing industrial undertaking, which substantially increases the
15 productive capacity of the undertaking, or which is of such a nature as to amount virtually to
16 a new industrial undertaking, but does not include any such expansion as in normal in
17 undertaking, having regard to its nature, et cetera'. The Government in a fact situation can,
18 say, expand your industry, expand your manufacturing capacity, the way we did in oxygen.
19 Now, My Lord, 15. This is, My Lord, again to show that the entire spectrum of every part of
20 industrial activity is occupied by the Central Law, which is completely missed by *Tika Ramji*
21 judgment. 'Power to cause investigation to be made into schedule industries or industrial
22 undertakings, where the Central Government is of the opinion that (a)(1) there has been, or
23 likely to be, substantial fall in the Volume of production in respect of any article or class of
24 articles relatable to that industry'. My Lord, please, not just the product. When I say sugar,
25 sugarcane, which is the raw material, is also relatable to the industry. 'Production in respect
26 of any article or class of articles relatable to that industry or manufactured or produced in the
27 industrial undertaking or undertakings as the case may be, for which, having regard to the
28 economic conditions prevailing, there is no justification'. My Lord, the Government can invoke
29 15 and say that why suddenly sugar production has gone down? Why suddenly non-potable
30 alcohol production has gone down? Because, it is necessary considering the economic
31 condition of that...

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which are the other provisions? Let's quickly
34 run through that.

35

36 **TUSHAR MEHTA:** I'm sorry. I'll not take Your Lordships to anything irrelevant. Which is
37 not read. I'll read?

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

TUSHAR MEHTA: (2) there has been, or is likely to be marked a deterioration in the quality of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking, or undertaking, as the case may be. (3) there has been or is likely to be a rise in prices of any article or class of articles relatable to that industry or manufactured or produced in the industrial undertaking or undertakings as the case may be.

TUSHAR MEHTA: (4) 'It is necessary to take any such action, as is provided in this chapter, for the purpose of conserving any resources of national importance which are utilized in the industry; or the industrial undertaking or undertakings, as the case may be. Then, My Lords may kindly come to 16 - 'For powers of the Central Government on completion of investigation -' Then, 'a) Power is to regulate the production of any article or class of articles by the industrial undertaking or undertakings and fixing the standard of production.' Then (c). (b), I am skipping. '(c) - Prohibiting the industrial undertaking or undertakings from resorting to any Act or practice which might reduce its or their production capacity or economic value. Suppose we need industrial alcohol for sanitizer, and majority of the industrial alcohol goes for manufacturing of potable intoxicating liquor, the Government can step in and say, 'The circumstances exist, that we give up our forbearance. We step in and we exercise this power.' Controlling the prices or regulating the distribution of any article or class of articles which have been the subject matter of investigation.' My Lord, now, price control is, My Lord, Your Lordships may mark Entry 34, List-III. Then Your Lordships have, My Lord seen, 18... Several, My Lord, several provisions, I don't intend to read them. Please come to 18-G. This is the only provision which is considered. Page 577 of Volume IV, Your Lordships have that? May I read? 'Power to control supply, distribution, price, etc., of certain articles - The Central Government, so far as it appears to it to be necessary or expedient for securing equitable distribution and availability at fair prices.' This is the condition, which condition may arise in future, even with regard to scheduled industry, which are today exempted.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

TUSHAR MEHTA: Please go further, My Lord, at fair prices; or any article or class of articles relatable to any schedule industry. The 'relatable' means raw material also. The only condition is that it should be formation of an opinion that it is required for securing 'a) Equitable distribution and availability at the fair prices at a national level.' So not only the production, the price, the quality the manufacturing activity but even related products also can be

1 regulated. 'Scheduled industry may, notwithstanding anything contained in any other
2 provisions of this Act, by notified order'... This is one contention which I'll separately deal with,
3 in a very short span. '...Notified order provide for regulating the supply and distribution
4 thereof and trade and commerce therein.' My Lord, the expressions under 33, List III. Then,
5 'Without prejudice to the generality of the powers conferred by sub-section 1, a notified
6 order made there under may provide a) For controlling the prices at which any such article or
7 class thereof may be bought or sold.' Price control. Then, My Lord, c) Prohibiting the
8 withholding from... sale of any such article or class thereof ordinarily kept for sale. Then
9 (d),and (d) is relevant, My Lord, even for the purpose of answering, that notified order
10 question, My Lord. 'For requiring any person manufacturing, producing or holding in stock
11 any such article or class thereof, to sell the whole or part of the article so manufactured or
12 produced during a specified period.' So, notified order can be for a specified period also. The
13 power before that date and after that specified date, still remains. 'Or to sell the whole or a part
14 of the article so held in stock to such person or class of persons and in such circumstances as
15 may be specified in the order'. Then (e), 'for regulating or prohibiting any class of commercial
16 or financial transactions.' See the width of the Act, My Lord. It occupies the field totally. 'For
17 regulating or prohibiting any class of commercial or financial transactions relating to such
18 article or class thereof which, in the opinion of the authority making the order, are, or if
19 unregulated, are likely to be detrimental to public interest'. Even this can be done if public
20 interest requires. It would normally not be done, that is forbearance. When it is done, it is done
21 by way of a notified order. But the power remains.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In fact, the forbearance really, that's the point
24 which you will have to mean, which is that, today, except for four industries cigarettes,
25 electronic, aerospace, industrial explosives and hazardous chemicals, all other industries have
26 been exempt from the provisions of the statute. Under Section 29-B has been utilized, you
27 said. So, though, theoretically speaking, the Government, of course, the authority which issues
28 an exemption can withdraw it. There's nothing to prevent the Government from again
29 withdrawing the exemption for one or more industries. Today, as the position stands,
30 industrial alcohol, *per se*, stands exempted from the provisions of the Act, right? Now, in a
31 theoretical future, the Government can, of course, withdraw the exemption, if it sees, as we
32 rightly said, suppose there's COVID like situation arose and hopefully we hope it will never
33 again arise. But...

34

35 **TUSHAR MEHTA:** Anywhere in the world...

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ...anywhere in the world. But as you said, that
2 you know, you require sanitizer. That's why you have to control the production of alcohol used
3 for sanitizer. Fair enough. But if the Government has, as if a given point of time, exempted an
4 industry completely from the operation of the Act, right? So, as to obviate any exercise of the
5 power under Section 18-G at that time, then are the states...

6
7 **TUSHAR MEHTA:** For other provisions.

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9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Okay. Are the States then denuded, the power
10 to regulate that industry?

11
12 **TUSHAR MEHTA:** No. I'll, My Lord... My Lord, I'll just point out, My Lord.

13
14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The exemption from the provision of the
15 statute covers everything or only licensing?

16
17 **TUSHAR MEHTA:** Only licensing. Not Section 2. Section 2, which is a declaration under
18 Entry 52. I just read. Your Lordships need not open. Section 2 of the IDRA, 'Declaration is to
19 expediency of control by Union: It is hereby declared that it is expedient in public interest that
20 Union should take under its control the industries specified in the First Schedule'. This is not
21 exempted. This operates the regime of licensing is under the forbearance. My Lord, otherwise,
22 what happens? And whether or not I'm posing a question to myself, Your Lordships would
23 interpret it in that manner, that this is the result. What happens? If Your Lordships were to
24 say, that so long as there is a notified order, the State would be denuded of its powers. If there
25 is no notified order, and we are in a forbearance, we means, the Central Government is in a
26 forbearance regime, they would have the power. My Lord, the question I'm posing to myself
27 is, can that be the jurisdictional ping pong, that if I interfere, they may have a law that would
28 stop from operating, because now there is a notified order. The moment I withdraw that
29 notified order, they again either bring new law or their earlier law becomes operative. My Lord,
30 that's not the intention. Therefore, My Lord, I at the outset said, that what is relevant is, does
31 this Act occupy or intends to occupy entire field or not? It occupies, My Lord, right from raw
32 material, pricing, quality, production, lack of production, investigation, manufacturing, final
33 goods, finished products, sale. Everything is occupied. And once there is a law, there is a
34 judgment which says that even a non-operative law, if it occupies the field and if it's a Central
35 Law, the State Government is denuded. I'll read that judgment. My Lord, what happened was
36 that, in that judgment... I'll come to that a little later. The question was, the Central

1 Government brought a law. The Parliament made a law. It was assented to by the President of
2 India.

3

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

5

6 **TUSHAR MEHTA:** The law provided that it shall come into force from such date as the
7 Central Government may appoint; every law provides. That was not done. And there was a
8 State Law. And the argument on behalf of the State was, that since the law made by Parliament
9 is not brought into force, there is no question of repugnancy. Repugnancy with what? This
10 court rejected that argument, saying that what Article 254 contemplates is, law made by the
11 Parliament, not law in force. If there is a law made by the Parliament and if the field is
12 occupied, then the State is denuded, but I'll come to that judgment.

13

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

15

16 **JUSTICE B. V. NAGARATHNA:** But you have to answer this question of the other side,
17 that Entry 8 is outside... Entry 8, List II is outside the scope of Entry 24 of List II.

18

19 **TUSHAR MEHTA:** That's a separate, My Lord... Yes, I will have to answer. Immediately
20 after that, I'll come on that. I'm just trying to show that the Central Act occupies the field and
21 intends to occupy the field because that...

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ... from 18-G?

24

25 **TUSHAR MEHTA:** 22. There is a Development Council contemplate which...

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's a direction to the Development council.

28

29 **TUSHAR MEHTA:** Yes. My Lord, please see 25... 26, My Lord. 'Power to issue directions.
30 The Central Government may give directions to any State Government as to carrying into
31 execution in the State of any of the provisions of this Act'. My Lord, completely supervening
32 legislation. And last, Your Lordship may see 31, also. I must show Your Lordship fully.
33 'Application of other laws not barred. The provisions of this Act shall be in addition to and not
34 save as otherwise expressly provided in this Act, in derogation of any other Central Act, for the
35 time being in force. The State Act is barred'. My Lord, when I read the judgments on
36 repugnancy, and there are only three judgments which I'll read, this would be relevant. I'll
37 would attempt to satisfy Your Lordships that there is a legislative intent to occupy the field

1 fully and completely. Now, Your Lordships may only see, as a last point on IRDA. My Lord,
2 very quickly... Please come to My Lord... I'll take, I'll complete this within ten minutes. 'The
3 history of...', My Lord, this Act - how alcohol is dealt with... That is at Page 56 of my written
4 submissions, My Lord. II-D, Volume II-D. I'll read only the title, not read, My Lord, the whole
5 thing, because, My Lord, the Chief Justice is questioned whether alcohol is right now under
6 regulated category or not. Some part of it is, therefore. The second purpose of showing the
7 history is... D for Delhi. 656 of my written submissions, My Lord, followed Volume II-D. D for
8 Delhi. The purpose is, My Lord, it has always remained with the Centre, historically. Indian
9 Power Alcohol Act used to govern 1948. Then comes, My Lord, Indian Power Alcohol
10 Amendment... I'm sorry. My Lord, 'Indian Power Alcohol Act used to govern' - Page 56. Then
11 57, Indian Power Alcohol Amendment Act came into force. Then Central Government
12 constituted Alcohol Committee in 1956. Then, this order came in, came to be passed under 18-
13 G of IDRA - 'Ethyl alcohol price control order.' Your Lordships need not read it. Then Your
14 Lordship may kindly come to 69 - National Biofuel Policy, 2018. This is a very, very ambitious
15 policy and since we have the problems with fuel because it has its international implications...
16 we are dependent upon some circumstances, My Lord, in other countries, etc. So, our country
17 is kind of trying whether there is any alternative is available. 'The Central Government notified
18 National Biofuel Policy on 4th June 2018 in the Gazette after it was approved by the cabinet
19 on 16th May 2018 with a view to promote biofuels. To promote biofuels in the country through
20 structured program like Ethanol blended petrol program, National Biodiesel Mission,
21 Biodiesel blending program, the Niti Aayog in its report dated 22 June '21, roadmap for
22 ethanol blending in India 2025, made several recommendations to ensure uniform availability
23 at a national level...' Therefore, it can be done at State level. '...of ethanol blend in the country.
24 During the outbreak of COVID-19 pandemic, several orders were issued to ensure availability
25 of ethanol at the notified price for the manufacturing manufacture of sanitizers. In its product
26 publication, Ministry of Petroleum and Natural gas named ethanol growth story has traced the
27 evolution of the use of ethanol and its significance. The Government has decided to advance
28 the target of 20% ethanol blending in petrol by five years, from 2030 to 2025. This necessarily
29 needs control, Central Government regulation, pan India implementation.' My Lord, there
30 may be some notified orders which may come with regard to... there may be. I'm not predicting
31 anything as a... Therefore, My Lord, the law still is relevant. That's all my objective. 'As on 30
32 November 2023, the ethanol production capacity in the country is about... 1380 crore litres,
33 out of which, about 874 crore litre is molasses based and about 504 crore litres is grain based.
34 The Government of India has been implementing ethanol blended with petrol program
35 throughout the country wherein, oil marketing companies sell, petrol blended with ethanol.
36 Under EBP program, Government has picked the target of 20% blending of ethanol with petrol
37 by 2025. Further ,with a view to enhance the ethanol production capacity in the country to

1 achieve the blending target set under EBP program, the Government has notified various
2 ethanol interest subvention schemes from July 2018 to April 2022. Under this scheme, that is
3 National Biofuel Policy, the Government is facilitating entrepreneurs to set up new distilleries,
4 molasses based, green based, and dual feed based, on or expansion of existing distilleries,
5 same, My Lord, throughout the country. Interest subvention at 6% per annum or 50% of rate
6 of interest charge by banks or financial institution, whichever is lower, on the loans to be
7 extended by banks and financial institutions is being borne by the Central Government for five
8 years, including one year moratorium. This would at some stage need regulation to ensure
9 sufficient quantity of ethanol. But now we are encouraging that we will bear some kind of...
10 some portion of interest, there would be a moratorium, invest in this industry, produce more
11 ethanol, let the ethanol be available for the purpose of blending with petrol, rather than using
12 it for any other purpose, etc. At some stage... My Lord, this may not directly assist Your
13 Lordships on answering the questions. My Lord, this is only apropos. My Lords, My Lord,
14 very right observation, that after 91 liberalizations, would this Acts tend the scrutiny to which,
15 My Lord, my answer was, that that's not in question. But relevant submission is, that this still
16 is in force for a good reason, for a valid reason, and there are situations and circumstances
17 which we may not be able to contemplate now, but which may be required to be, My Lord,
18 exercised for the purpose of regulation. That's the purpose, My Lord. Can I in five minutes
19 show, My Lord, the history of IRDA and switch over, My Lord, to the next point?
20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Solicitor, to summarize what you have said up
22 to now, one, the expression intoxicating drinks in Entry 8 of List II covers essentially what is
23 called potable alcohol.
24

25 **TUSHAR MEHTA:** Beverages, yes.
26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Beverages meant for human consumption.
28

29 **TUSHAR MEHTA:** Which has the effect of intoxication.
30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right. Now, if that is so, denatured spirit, what
32 we loosely called industrial alcohol, we'll call it 'denatured spirit', is not within the ambit of
33 Entry 8 of List II. Two, if denatured spirit is not within the ambit of Entry 8 of List II, this is
34 not what you said but I'm just putting it, it would otherwise have been within the fold of Entry
35 24 of List II.
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37 **TUSHAR MEHTA:** That is true. I am also...

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CHIEF JUSTICE D. Y. CHANDRACHUD: Just one second. It would have been within the ambit of Entry 24 of List II, which is the provision relating to industries. Three...

TUSHAR MEHTA: Corresponding to 52.

CHIEF JUSTICE D. Y. CHANDRACHUD: Three, Entry 24 of List II is subject to Entry 52 of List I. Four, Parliament has enacted a law within the legislative domain falling under Entry 52 of List I, which specifically covers non-potable alcohol.

TUSHAR MEHTA: Only.

CHIEF JUSTICE D. Y. CHANDRACHUD: Only. Five, once Parliament has made a declaration under Entry 52 and has enacted a law, that law covers the entire field. Sixth, Entry 52 of List I, nonetheless, leaves open an area under Entry 33 of List III. But here again, the Industries (Development and Regulation) Act covers the entire field, even in relation to Entry 33 of List III. And to that extent, therefore, the states are denuded both by virtue... the states are denuded for two reasons. One, denatured spirit or all spirit other than potable liquor, for within the ambit of Entry 52 of List I. Two, in regard to Entry 33 of List III, Parliament has been made a comprehensive legislation on the subject that covers the field, and therefore, the states are ousted. I think that's...

TUSHAR MEHTA: I could not have put it more succinctly than this. one thing which occurred to us after my arguments....

CHIEF JUSTICE D. Y. CHANDRACHUD: These are the six propositions, which, I think...

TUSHAR MEHTA: Only one thing which occurred to us after my arguments.

CHIEF JUSTICE D. Y. CHANDRACHUD: ... says Brother, Sister and other... Justice Nagarathna also says, that Article 246(3) makes it very clear that every exercise of power by the State Legislature under the State List or under the Concurrent List, is subject to...

TUSHAR MEHTA: List I.

CHIEF JUSTICE D. Y. CHANDRACHUD: List I... is subject in List I and List III exercise of power by the Parliament.

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TUSHAR MEHTA: So otherwise also, denuding. One more thing, My Lord...

CHIEF JUSTICE D. Y. CHANDRACHUD: Now, I think we can go ahead because we'd like to hear them in rejoinder. Now you've made your point. You can quickly in rapid fire, take us through...

TUSHAR MEHTA: Only one thing, then....

CHIEF JUSTICE D. Y. CHANDRACHUD: The judgments you can cite.

TUSHAR MEHTA: Yes, but one thing. I was just wondering My Lord, in 84 List I, the word/expression used is 'alcoholic legal for human consumption'. Why it is? I have already argued that 84 is a taxing entry. Please come to page 32.

CHIEF JUSTICE D. Y. CHANDRACHUD: Now, have you finished this part about the history of regulation of alcohol? You want us to see those headings?

TUSHAR MEHTA: One or two.

CHIEF JUSTICE D. Y. CHANDRACHUD: Just one or two, just show us, so that that part is over then. We don't have to come back to it.

TUSHAR MEHTA: Page 61.

CHIEF JUSTICE D. Y. CHANDRACHUD: Not very strictly relevant, but you can just show it to us, so that we'll see the headings, if you're rightly only referring to the headings.

TUSHAR MEHTA: My Lord, Indian Power Alcohol Act also had a declaration like this - '52. That's all. Your Lordships need not read it. I have, My Lord, reproduced. I have also reproduced - Whenever there is an amendment made in the IDRA, the statement of objection reasons and that has remained consistent, that is, Pan India uniformity...fair prices. My Lord, that is, at, Your Lordships would find, Page 62. It was amended in '53. My Lord, where 18(g) came in that amendment. Thereafter, Your Lordships, can come to page 64 - 'We introduce... The Central Government, or rather, the Parliament introduce fermentation industries as a heading, as item number 26 in the schedule, to IDRA.' Correct, My Lord? I have given, My Lord, the statement of objection...

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CHIEF JUSTICE D. Y. CHANDRACHUD: The Solicitor, who was the junior, who assisted you the most in preparing these propositions?

TUSHAR MEHTA: My Lord, all four of us used to sit together for that.

CHIEF JUSTICE D. Y. CHANDRACHUD: But we are going to, at the end, after you finish your argument, we are going to ask your junior to make a five-minute argument before us. We want them to have the benefit of arguing before nine judges.

TUSHAR MEHTA: My Lord, I had requested at the outset, it's a rare opportunity. They've really work very hard. They know the subject better than me.

CHIEF JUSTICE D. Y. CHANDRACHUD: I want to put them on notice, so that they are not taken by surprise that we are going to call upon them, maybe for two minutes, just to make...

TUSHAR MEHTA: My Lord, for five to seven minutes also, they are fully prepared and they are prepared better than me.

CHIEF JUSTICE D. Y. CHANDRACHUD: Also call upon only one of them, so we might do that as well...

TUSHAR MEHTA: My Lord, that may be difficult for me or Your Lordships to choose.

CHIEF JUSTICE D. Y. CHANDRACHUD: Let's see. So teach to all the juniors to make a point which has not been made by the Solicitor and...

TUSHAR MEHTA: My Lord, I could not do what Your Lordships did in five minutes. I took one and a half day. Now, My Lord, they can't do it in two minutes. Let it be five-seven...

CHIEF JUSTICE D. Y. CHANDRACHUD: Our was distillation of the alcohol after you had given us the raw material. All right. Now, what else? Now, just let's go quickly now.

TUSHAR MEHTA: Kindly come to page 67. And this is relevant, My Lord. Therefore, I must show this - 67. And this was not shown. Your Lordships must have... My Lord, judgement in *Bihar Distillery* comes, authored by, incidentally... nothing... Justice Jeevan Reddy. In '98,

1 Justice Reddy becomes Chairman of the Law Commission. And the judgement is taken up as
2 a *suo moto* recommendation to the Government.

3

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

5

6 **TUSHAR MEHTA:** Yes. And the Government, My Lord, in the Parliament... Not
7 Government, Parliament - only accepts the recommendation partly, and this is the stage in,
8 My Lord, page 68, where the amendment comes in Entry 26 of the IDRA... Page 68, there is
9 an amendment in the Act made by the Parliament - 14th May 2016. My Lord, I have given you
10 if Your Lordships may read it. My Lord, I would earnestly request Your Lordships to read it.
11 Right now, I'm not taking Your Lordships' time, but that would reflect the legislative intent
12 that we don't wish to give up the control on non-potable alcohol. So therefore, My Lord, what
13 they do was - they only amend the entry and the entry, My Lord, which reads as on now, comes
14 and that entry is, My Lord, as Your Lordships have already seen - 'Fermentation industries
15 (other than potable alcohol). So, 'potable' is consciously kept, as a part of the schedule to IDRA
16 and there is a detailed, My Lord, statement of object and reasons, which I'm not taking Your
17 Lordships through. And last, My Lord, even recently, My Lord, 23 this Act is amended. Just to
18 show, My Lord, that the Act has not outlived its life. It is still existing. It's still alive. Whenever
19 necessary, it is invoked. That's the only purpose. Now Your Lordships, My Lord, kindly come
20 to *Tika Ramji*. My Lord, unfortunately...

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Actually, before we go to *Tika Ramji*, just
23 see, the statement of objects and reasons of that 2016 amendment, just see para five at page
24 69 of your note.

25

26 **TUSHAR MEHTA:** Yes, My Lord. Yes, Page 69.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Para 4, refer to the Law Commission, 158
29 people. Now, this is why Parliament did not accept it.

30

31 **TUSHAR MEHTA:** Five, My Lord. The recommendation of the Law Commission of India
32 was examined in debt by the Government, if the subject, alcohol is taken out of the First
33 Schedule of the Act, both industrial alcohol and potable alcohol would come under the purview
34 of the State Government, which is not in concerns with the judgment of the Supreme Court.
35 Moreover, the effect of the implementation of recommendation of the Law Commission, would
36 be that the subject alcohol, which covers both industrial alcohol and potable alcohol, would no
37 longer be a Central subject. Therefore, it is proposed to amend the First Schedule, to the

1 Industrial Development and Regulation Act by substituting the heading 26 thereof as,
2 fermentation industries within bracket other than potable alcohol, so that it would be in
3 conformity with judgment of the Supreme Court, and also ensure that industries engaged in
4 manufacture of alcohol meant for potable purposes shall be under the total and exclusive
5 control of states in all respects. That was one of the judgment in ***Bihar Distillery***. The
6 Central Government would continue to be responsible for formulating policy and regulating
7 foreign collaboration, foreign direct investment and foreign technology collaboration
8 agreement, for all products of fermentation industries, including industrial alcohol and
9 potable alcohol. So, this part of potable alcohol is also controlled. So far as foreign
10 collaboration is concerned. I am not going to read, My Lord, all the judgments. My Lord, I'll
11 read only few paragraphs, except ***Tika Ramji*** . And there is a reason, My Lord. ***Tika Ramji***
12 also, I don't intend to read the whole, but some parts. My Lord, the difficulty is... My Lord, not
13 only here, but earlier also whenever ***Tika Ramji*** was followed, only two or three paragraphs
14 were cited. Out of context, the ***Tika Ramji*** is not what, My Lord, the other side subsequent
15 judgment, says its laid down. That's not what ***Tika Ramji*** says. My Lord, in ***Tika Ramji***,
16 the dispute was this. Limited dispute. And, My Lord, the two findings, which are consistently
17 being relied upon by subsequent Benches and today by the petitioners, are in fact orbiter. It
18 never fell for consideration and therefore there is no discussion also. My Lord, please bear in
19 mind what was the fact situation in ***Tika Ramji***. My Lord, Sugar... My Lord, slight, My Lord,
20 deviation...

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22 **JUSTICE B. V. NAGARATHNA:** Which Volume?

23

24 **TUSHAR MEHTA:** My Lord, Volume V, page 80. My Lord, somebody, My Lord, told George
25 Bernard Shaw, that 'do you know sugar is the only word in English where 's' is pronounced as
26 'sh' ?'. His answer was, 'are you sure?'. Sure is another one, right. My Lord, sugar is doubtlessly
27 industry. Sugar is a part of, My Lord, IDRA. There was a Central Act governing sugar.

28

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

30

31 **TUSHAR MEHTA:** The State of U.P came out with an Act governing sugarcane, which was
32 My Lord, the raw material. That was under challenge by some affected parties, including ***Tika***
33 ***Ramji***, that the State Act is repugnant to the Central Act. So the examination of the court in
34 ***Tika Ramji*** judgment was limited as to whether the State Act governing sugarcane and the
35 Central Act governing sugar, have any repugnancy? And, the only *ratio decidendi* is, there is
36 no repugnance. Rest of the things, My Lord, nobody argued, and the court though observes,
37 but that never fell for consideration. Please come to para 2... 1st para after Justice N.H.

1 Bhagwati. 'These petitions under Article 32, impugned the validity of *U.P. Sugarcane*
2 *(Regulation of Supply and Purchase) Act, 1953*. (2) The petitioners are sugarcane growers in
3 several villages of district so and so... and so and so in U.P., numbering so and so in aggregate.
4 The notification dated 27th September '54 issued in exercise of the powers conferred under
5 Sub-section (1)(a) read with Sub-section (2)(b) of Section 16 of the impugned order so and so
6 and so and so'. Please now come to... straight. Para 8. It would be page 85, My Lords. 'On 31st
7 of October 1951, Parliament enacted the Industries (Development and Regulation) Act 1951,
8 to provide for the development and regulation of certain industries. By Section 2 of the Act, it
9 was declared that it was expedient in public interest, that the Union should take under its
10 control, the industries specified in the First Schedule, etc'. Then, Your Lordships may kindly
11 turn to para 10.

12

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

14

15 **TUSHAR MEHTA:** 'Act 65 of '51,' There is another Act also, that is 10 of... that is Essential
16 Commodities Act. I'll point out, whenever they is a reference to... because the court refers to
17 the Act by Act number. Therefore, there is a likelihood of some confusion. My Lord, whenever
18 the Hon'ble Court is being assisted with entries in the list or any constitutional provision, the
19 minimum we are supposed to do is, to show the history, the Constituent assembly Debates,
20 etc., that's not shown. Only on that ground, My Lord, I can respectfully urge that this is *per*
21 *incuriam*. I have read, My Lord, Entry 52, how Entry 33 came into picture, what is the history
22 behind Entry 24, List II? Nothing. No argument, no discussion, because there was no, possibly,
23 assistance on that. Page... para 10, My Lord. 'Act 65 of 1951 was amended by Act 26 of '53,
24 which, by adding Chapter 13(3)(b)...' My Lord, that is 18-G. Your Lordships can mark here, 18-
25 G.

26

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

28

29 **TUSHAR MEHTA:** 'Invested the Central Government *inter-alia*, with power so far as it
30 appeared to necessary or expedient for securing the equitable distribution... so and so'. (11) On
31 1-4-55, Parliament enacted Essential Commodities Act, 1955, providing for... so and so'. This
32 is Act 10 of '55, that is, Essential Commodities Act. Your Lordships may kindly see para 12. 'In
33 exercise of the powers conferred by Section 3 of the Act', that is Essential Commodities Act,
34 'the Central Government promulgated on 27th August '55 the Sugar (Control) Order 1955 and
35 the Sugarcane (Control) Order 1955'. Both were Central Orders, My Lord. 'The letter
36 empowered the Central Government after consultation with such authorities, bodies and or
37 associations, as it may deem fit by notification in the Official Gazette from time to time, to fix

1 the price of sugarcane and direct payment thereof, and also to regulate the movement of
2 sugarcane. The power to regulate the movement of sugarcane comprise the power to prohibit
3 or restrict or otherwise regulate the export of sugar... sugarcane from any area for supply of
4 two different factories and the power to direct that no *gur*, that is, jaggery, or sugar shall be
5 manufactured from sugarcane except under and in accordance with the conditions specified
6 in a license issued in this behalf.' Sugarcane was the raw material for sugar. Then, My Lord, 14
7 - 'Only one argument is relevant for the present purpose. Learned counsel for the petitioner
8 urge before us, that State of U.P. had no power to enact the impugned Act, as the Act is with
9 respect to the subject of industries, the control of which by the Union is declared by
10 Parliament, by law, to be expedient in Public interest, within the meaning of Entry 52, list I,
11 and is therefore within the exclusive province of the Parliament. The impugned Act is therefore
12 *ultra vires* the power of State Legislature and is a colourable exercise of legislative power of
13 the State.' The impugned Act is repugnant to, My Lord, that is IDRA and Act 10, that is
14 Essential Commodity Act and in the event of Court holding that impugned Act was within
15 legislative competence of the State Legislature, it is void by reason of repugnancy. Rest is
16 challenged under Article 14, 19(1)(g), et cetera, with which we are not concerned. My Lord,
17 please see 50. 'This contention relates to the legislative competence of U.P. Legislature to enact
18 the impugned Act.' That is, My Lord, sugarcane... U.P. Sugarcane Act. 'It was contended that
19 even though the impugned Act purported to legislate in regard to sugarcane required for use
20 in sugar factories, it was in [UNCLEAR] substance and in true nature and effect legislation in
21 regard to sugar industry, which had been declared by Act 65 of 51, that is IDRA, to be an
22 industry and the control of which the Union was experienced in Public interest and was
23 therefore within the exclusive province of Parliament under Entry 52 List I. The word
24 'industry', it was contended, was a word of wide import and included not only the process of
25 manufacture or production, but also things which were necessary incidental to it, that is raw
26 materials.' Because that was the fact situation. One State was dealing with sugarcane. Centre
27 was dealing with sugar and sugarcane, both. 'For the industry, as also the product of that
28 industry and would therefore include within its connotation, the production, supply, and
29 distribution of raw materials for which... for the industry, which meant sugarcane in relation
30 to sugar industry. It was also contended that in, so far as the impugned Act purported to
31 legislate in regard to sugarcane, which was necessary ingredient in production of sugar, it was
32 colourable exercise, etc.' Then, My Lord, 16 - 'It was contended on behalf of the State, on the
33 other hand, that after the advent of war and the proclamation of Emergency under 102 of
34 Government of India, acted by so and so...' Your Lordships may directly come to, My Lord, the
35 third Constitutional Amendment - 'At amending Entry 33 of List III, the Central Legislature
36 turn was operating all along on what became the effect of concurrent fail, even in regard to
37 sugarcane that the investing the Central Government with the power to legislate in the sphere

1 of provincialists, did not deprive the Provincial Legislature of such power and that both the
2 Central Legislature as well as State Legislature had legislative competence to legislate in regard
3 to these fields, which were for the purpose of legislative competence, translated into
4 concurrence field and that therefore the U.P. State Legislature was competent to enact the
5 impugned Act, which would be valid within its own sphere except for repugnancy with any of
6 the provisions of the Central Legislature covering the same field.' So they say, 'For sugarcane,
7 we are entitled. You go section by section. Whatever is repugnant, the Central law will prevail.'
8 Then, My Lord, kindly come to 18 - 'Production, supply and distribution of goods was no doubt
9 within the exclusive sphere of the State Legislature, but it was subject to provisions of Entry
10 33 of List III, which...' gave concurrent powers of legislation to the Union as well as the States
11 in the manner of trade and commerce in and production, supply and distribution of the
12 products of industries where, the control of such industries by the Union was declared by
13 Parliament to so and so and so. Then My Lord, somewhere there is no *placitum*, after Entry
14 52, List I, which was an exclusive province of Parliament, leaving other industries within Entry
15 24 of List II, which was the exclusive province of State. The products of industries which were
16 comprised in Entry 24 were dealt with by the State Legislature, which had under Entry 27 of
17 that list, power to legislate in regard to production, supply and distribution of goods. Goods
18 according to the definition contained in Sec. Article 366(12), including all raw materials,
19 commodities and articles. This is one of the findings, that raw material would not fall under
20 24 or 52. It would fall under 27. Because it says, 'goods'. And according to **Tika Ram**, 'goods'
21 means 'raw material'. But 27 says subject to 33, My Lord, which I will show, My Lord. When
22 however it came to the products of the control industries comprised in Entry 52 of List I, trade
23 and commerce in and production, supply and distribution of these goods became the subject
24 matter of Entry 33 of List III, and both Parliament and the State Legislature had jurisdiction
25 to legislate in regard there too. The amendment of Entry 33 of List III by the Constitution
26 Third Amendment Act, only enlarge the scope of that Entry, without in any manner
27 whatsoever detracting from the legislative competence of parliament and the State Legislature
28 to legislate in regard to the sin. My Lord, this, in my respectful submission, is wrong, if we go
29 by 27. Entry 27 says 'goods' subject to 33. If the matters had stood there, the sugar industry
30 being a controlled industry, legislation in regard to the same would have been an exclusive
31 province of Parliament and production, supply and distribution of product of sugar, sugar
32 industry, that is, sugar as a finished product would have been within Entry 33 List III.
33 Sugarcane would certainly not have been comprised within Entry 33 of List III, as it was not
34 the product of sugar, sugar industry, which was a controlled industry. Kindly pause here for a
35 minute. When we say, control of industry, the term industry would include, right from raw
36 material till the finished product. But Supreme Court, My Lord, in **Tika Ramji** throughout

1 goes, that no. Raw material is outside for final product, you have to rely on 33. And gave a
2 restricted and contrived meaning to the term 'industry' under List II. Entry 52.

3

4 **JUSTICE B. V. NAGARATHNA:** Under Article 366(12), the expression 'goods' is defined.

5

6 **TUSHAR MEHTA:** Correct.

7

8 **JUSTICE B. V. NAGARATHNA:** So mean, it's an inclusive definition, includes all
9 materials, commodities and articles.

10

11 **TUSHAR MEHTA:** Correct, My Lord, but I will show, My Lord if...

12

13 **JUSTICE B. V. NAGARATHNA:** The definition which is already given in the Constitution,
14 as to what 'goods' refers to.

15

16 **TUSHAR MEHTA:** My Lord, that doesn't come in the way of my submission for the simple
17 reason, that the term 'goods' are used in Entry 27...

18

19 **JUSTICE B. V. NAGARATHNA:** And in Entry...

20

21 **TUSHAR MEHTA:** ...which is subject to 33, which is a concurrent subject, My Lord. Yes, but
22 definition clause is always unless the context, otherwise.

23

24 **JUSTICE B. V. NAGARATHNA:** But, it is not a restricted definition. It is an inclusive
25 definition.

26

27 **TUSHAR MEHTA:** I'm not on good's restricted definition of industry, My Lord, which I'll
28 come. Entry 33 of List II by the Constitution Third Amendment Act that- 'Foodstuffs, including
29 edible oil, seeds and oils came to be included within that list, and it was possible to legislate in
30 regard to sugarcane having records to Entry 33 of List III, say for that sugarcane being goods
31 fell directly within Entry 27, List II, and was within the exclusive jurisdiction of the State
32 Legislature. Production, supply and distribution of sugarcane being thus within exclusive
33 sphere of the State Legislature. The U.P. State Legislature would be without anything more
34 competent to legislate in regard to the same and impugned Act would be *intra vires* the State
35 Legislature.' This is the argument. The argument, however was, that the word 'industry' was a
36 word of wide import and should be construed, My Lord, kindly read, My Lord this is
37 considered to be the ratio. 'The argument, however, was that the word 'industry' was a word

1 of wide import, and should be construed as including not only the process of manufacture or
2 production, but also activities antecedent thereto, such as acquisition of raw materials and
3 subsequent thereto, such as disposal of finished products of that industry'. I have shown to
4 Your Lordships in IDRA, that right from the raw material till finished products, everything is
5 covered, because it says 'articles, products relatable to the scheduled products/
6

7 **JUSTICE HRISHIKESH ROY:** Section 18-G that you read, to say...

8

9 **TUSHAR MEHTA:** And 15 also. 15 also.

10

11 **JUSTICE HRISHIKESH ROY:** ... relatable and 15 also. So, by the word... use of the word
12 'article relatable', you are saying that raw material would also come in with sugar, the final
13 product, which is in the domain of the Union.

14

15 **TUSHAR MEHTA:** IDRA. And, *Tika Ramji* ultimately says that industry would only mean
16 only that manufacturing part. That's the finding. Only manufacturer. Now kindly see the
17 difficulty. We may continue at 2:00, My Lords.

18

19 **JUSTICE HRISHIKESH ROY:** As we are breaking, in the Volume II-D at page 57, what is
20 referred to is an Alcohol Committee?

21

22 **TUSHAR MEHTA:** Correct.

23

24 **JUSTICE HRISHIKESH ROY:** We would like to be informed, what are the qualifications
25 needed to be a member of the Alcohol Committee and whether...

26

27 **TUSHAR MEHTA:** They were competent.

28

29 **JUSTICE HRISHIKESH ROY:** ...bar members, have a straight route to the Alcohol
30 Committee?

31

32 **TUSHAR MEHTA:** Whether they were competent and eligible.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** They are members of The Bar.

35

36 **DINESH DWIVEDI:** It will obviously be relatable to the industry.

37

1 **JUSTICE HRISHIKESH ROY:** Of course, denatured. That is, Denatured Committee, of
2 course.

3
4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Mr. Solicitor.

5
6 **TUSHAR MEHTA:** During lunch, My Lord, I have further... So what I am arguing now, My
7 Lord is further abridged edition. I was on para 19. 'The argument, however, was that the word
8 'industry' was a word of wide import and should be construed as including not only the process
9 of manufacture and product or production, but also activities antecedent there too, such as
10 acquisition of raw materials, subsequent there to, such as disposal of finished products of that
11 industry. The process of acquiring raw materials was an integral part of industrial process and
12 was therefore, included in the connotation of the word 'industry' and when the Central
13 Legislature was invested with the power to legislate in regard to sugar industry, which was a
14 controlled industry, it should be scheduled industry by Entry 51, List I, that legislative power
15 included also the power to legislate in regard to the raw material of the sugar industry. That is
16 sugarcane. And the production, supply and distribution of sugarcane was by reason of its being
17 necessary ingredient in the process of manufacture or production of sugar within legislative
18 competence of the Central Legislation. Each entry in the list, which is a category of head of the
19 subject matter of legislation must be construed not in a narrow or restricted sense, but as
20 widely as possible so as to extend to all ancillary or subsidiary matters which can fairly and
21 reasonably be said to be comprehended in it.' Thereafter, Your Lordships may kindly come to,
22 just above para 21, 'what we are concerned with', Your Lordship gets? 'What we are concerned
23 with here is not the wide construction to be put on the term 'industry' as such, but whether the
24 raw material of an industry which form an integral part of the process are within the topic of
25 industry, which forms the subject matter of Item 52 of List I as ancillary or subsidiary matters
26 which can fairly or reasonably be said to be comprehended in that topic and whether the
27 Central Legislature, while legislating upon sugar industry could acting within the sphere of
28 Entry 52, List I as well legislate upon the sugarcane. If both the Central Legislature and the
29 Provincial Legislature were entitled to legislate in regard to this subject of production, supply
30 and distribution of sugarcane, there would arise no question of legislative competence of the
31 Provincial Legislature in the matter of having enacted the impugned Act. The conflict, if any,
32 arose by reason of the interpretation which was sought to be put on the two entries. Entry 62
33 of List I and 27 of List II put in juxtaposition...', 62 is a typo, it should be 52, '...put in
34 juxtaposition with each other. It was suggested that Item 62 of List 1 comprised not only the
35 legislation in regard to sugar industry, but also in regard to sugarcane, which was an essential
36 ingredient of the industrial process of manufacture or production of sugar and was therefore,
37 ancillary to it and was covered within the topic. If the legislation with regard to sugarcane thus

1 came within the exclusive province of the Central Legislature, the Provincial Legislature was
2 not entitled to legislate upon the same by having resort to Entry 27 of List II and the Impugned
3 Act was therefore, *ultra vires*, the Provincial Legislature.' Rest Your Lordships can skip, some
4 judgment is cited. Kindly come to My Lord, para 22, after the quotation, in **Subramanian**
5 **Chettiar**. Am I with Your Lordships? 'And it was contended that Entry 27 of List II should be
6 construed in a general manner as applying to production, supply and distribution of goods in
7 general and Entry 52 of List I should be construed as comprehending within its scope, ancillary
8 matters in relation to the controlled industries, thus, excluding production, supply and
9 distribution of goods, which would be thus comprised within it as ancillary matters from the
10 sphere of Entry 27.' The argument was that read State entry in a wider sense and the Central
11 Entry 52 in a restrictive sense. 'If this construction was adopted, it would avoid the apparent
12 conflict between the two entries and would reconcile the power of the Provincial Legislature
13 with those of the Central Legislature. It was therefore, contended that the Legislation in regard
14 to sugar cane should be considered as ancillary to the legislation in regard to sugar industry,
15 which is a controlled industry and comprised within Entry 52, List I and should be excluded
16 from Entry 27, List II which should be read as covering only those categories which did not
17 fall within Entry 52 of List I, even though on a wider construction of the word 'production,
18 supply and distribution of goods', they would be capable of covering the same. If this
19 construction was put upon these two entries, it would follow that the subject matter of the
20 impugned Act was within exclusive jurisdiction of Parliament being comprised in Entry 52,
21 List I and was *ultra vires* the U.P. State Legislature. The answer of the State of U.P. was
22 twofold. One, after the advent of Second World War...', My Lordships can skip. 'Two, that the
23 Impugned Act merely confined itself to the legislation in regard to sugar cane and did not
24 purport to legislate in regard to sugar, which was exclusively dealt with by the Centre. There
25 was, therefore, no trespass upon the exclusive jurisdiction.' 23, Your Lordships can skip. Just
26 above 24... 'sugar and sugar cane thus...', My Lord, Your Lordships... that also Your Lordships
27 can skip. Its interplay between Essential Commodities Act and sugar. Nothing would assist
28 Your Lordships. Para 24 is the finding. 'It is clear, therefore, that all the Acts and the
29 notifications issued there under by the Centre in regard to sugar and sugar cane were enacted
30 in exercise of the concurrent jurisdiction.' They don't say 27. They resort to 33. 'The exercise
31 of such concurrent jurisdiction would not deprive the Provincial Legislature of similar powers.
32 This is the ratio which they had under the Provincial Legislative List and there would therefore,
33 be no question of legislative incompetence *qua* the Provincial Legislature in regard to similar
34 pieces of legislation enacted by the latter. The Provincial Legislature as well as Central
35 Legislature would be competent to enact such pieces of legislation and no question of
36 legislative competence would arise. It also follows as a necessary corollary, that even though
37 sugar industry was a controlled industry, none of these acts, enacted by the Centre, was in

1 exercise of its jurisdiction under Entry 52, List I. 'Industry' in the wide sense of the term, would
2 be capable of comprising three different aspects.' Please mark this My Lords. 'One, raw
3 materials, which are an integral part of the industrial process; two, the process of manufacture
4 or production and three, the distribution of production of the products of the industry. The
5 raw material would be goods which would be comprised in Entry 27 of List 2.' This is where in
6 my submission, there is an error in law. If the first part is right, then 'industry' encompasses
7 everything from raw material to supply and distribution of final product. There is an
8 exception. May I, My Lord, continue reading?

9

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

11

12 **TUSHAR MEHTA:** 'The raw material would be goods, which would be comprised in Entry
13 27, List 2.' The Court is not invited to see Entry 33 here, that it is in Entry 33 also.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's in the next sentence.

16

17 **TUSHAR MEHTA:** 'The process of manufacture or production would be comprised in Entry
18 24 of List II, except where the industry was a controlled industry, when it would fall within
19 Entry 52 of List I on the products of the industry would also be comprised in Entry 27 of List
20 II except where there were the products of control industries, where they would fall within
21 Entry 33 of List III. This being the position, it cannot be said that the legislation which was
22 enacted by the Centre in regard to sugar and sugar cane could fall within Entry 52 of List I.'
23 This is under the Essential Commodities Act, not IDRA. 'Before sugar industry became a
24 controlled industry, both sugar and sugar cane fell within Entry 27 of List II, but after a
25 declaration was made by Parliament in 1951 Act...', this is IDRA, '...that is Act 65 of '51, sugar
26 industry became a controlled industry and the product of that industry i.e. sugar was
27 comprised in Entry 33, List III, taking it out of Entry 27 of List II. Even so the Centre, as well
28 as the Provincial Legislature had concurrent jurisdiction in regard to the same.' I have no
29 difficulty, that is so. 'In no event could the legislation in regard to sugar and sugar cane be
30 thus, included within Entry 52 of List I.' My Lord, this is wrong in my respectful submission.
31 It's a scheduled industry. 52 provides for a declaration. Declaration is made that these
32 industries will fall within 52 and therefore, the Parliament did it. 'The pith and substance
33 argument also cannot be imported here for the simple reason that when both the Centre as
34 well as the State Legislatures were operating in the concurrent field, there was no question of
35 any trespass upon the exclusive jurisdiction vested in Centre under Entry 52 of List I. Only
36 question which survived being whether putting both the pieces on legislation enacted by the
37 Centre and the State Legislature together there was any repugnancy, a contention which will

1 be dealt with hereafter.' This is what the question was. But Your Lordships would find there is
2 no reasoning, discussion or finding, why sugar or sugar cane cannot be a part of a legislation
3 under Entry 52, List I. It can be declared by the Parliament to be an industry which needs
4 control by the Central Government. The Court proceeds on a footing that it falls only under 33
5 and 33 being concurrent, both have the jurisdiction. Now we will examine whether there is any
6 repugnancy. Now, further...

7

8 **JUSTICE B. V. NAGARATHNA:** Entry 33 is also having the relationship with Entry 52...

9

10 **TUSHAR MEHTA:** Even 27 has a relationship, is subject to 33.

11

12 **JUSTICE B. V. NAGARATHNA:** It is not before Entry 52.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In fact, if there was no Entry 33 in List I, those
15 products should fall under Entry 52 of List I.

16

17 **TUSHAR MEHTA:** Yes.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Isn't it?

20

21 **TUSHAR MEHTA:** Would have exclusively, exclusively to the Centre. Now My Lord...

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That threefold dichotomy between raw
24 material, manufacture and products, that may not be... As a matter of abstract proposition,
25 that may not be correct. Now, products are separated out by a constitutional entry. That
26 constitutional entry indicate that but for it, the products would have gone to Entry 52 of List
27 I. Probably.

28

29 **TUSHAR MEHTA:** I'm grateful.

30

31 **JUSTICE B. V. NAGARATHNA:** And raw material can be...

32

33 **DINESH DWIVEDI:** I'll show, they'll remain in the State List otherwise. Please see, word
34 'industry' emanates from the State List 24. Now, when we demarcate the field of industry
35 whether it is taken over or not, then we have to notice the other comparable entries. Now what
36 happens is, if industry comes in 24, then the product goes to 26, 27. And if raw material, if it

1 is good, as the judgment says, and is it not electricity, is a good which we can't even see.
2 Telecom signal...

3

4 **TUSHAR MEHTA:** When a product would be a good, final product would be.

5

6 **DINESH DWIVEDI:** Raw material also goes in Entry 27, which means deals with goods.

7

8 **TUSHAR MEHTA:** But 27 is subject to 33. My Lord, that question... My learned friend has
9 put a wrong question. The question should be, why should it not fall under 52. Suppose 33
10 would not have been there entirely exclusively under 52. Now 33 means you have to exercise
11 Central power and concurrent powers and both would oust when exercised by the Parliament,
12 the State Legislature. That is in my respectful submission the correct rationale, but that is My
13 Lord missing, because then...

14

15 **JUSTICE B. V. NAGARATHNA:** That is why it is called Clause 3 is subject to Clause 192
16 under Article 246 which is subject to.

17

18 **TUSHAR MEHTA:** Correct. 25. 'A more effective answer is furnished by the comparison of
19 the terms of U.P. Act number so and so with those of Impugned Act, whereas...'. Now they
20 compare both the Acts with which we are not concerned. They said there is no repugnancy
21 because both operate on separate fields. Why? One deals with raw material, another deals with
22 only manufacture. 25, last para My Lord. Just above 26. 'This comparison'. Your Lordships
23 gets? 'This comparison goes to show that the Impugned Act merely confined itself to the
24 regulation of the supply and purchase of sugar cane required for use in sugar factories and did
25 not concern itself at all with the controlling or licensing of sugar factories with the production
26 or manufacture of sugar or with the trade and commerce in and production, supply and
27 distribution of sugar. If that was so, there was no question whatever of its trenching upon the
28 jurisdiction of the Centre in regard to sugar industry, which was a controlled industry within
29 Entry 52, List I and the U.P. Legislature had jurisdiction to enact the law with regard to sugar
30 cane, because they bifurcated raw material.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Solicitor, your argument is that when
33 Entry 52 is broad enough to include even the products?

34

35 **TUSHAR MEHTA:** Correct. Read with 33.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Read with 33.

1
2 **TUSHAR MEHTA:** Now, My Lord further. Then Your Lordships may kindly see. They could
3 have, possibly stopped that debt, but please come to page 31. Para 31. I'm sorry. This is reliance
4 upon para 30, first, **Sulaiman J.** in **Shyamkant Lal vs. Rambhajan Singh**, and at the
5 foot, what they rely upon is **Attorney General for Ontario vs. Attorney General for**
6 **Dominion.** It's on record, but I'm not reading it. I'll just orally point out how that judgment
7 is completely not relevant, or My Lord in facts of the case. What happened In Ontario. Ontario
8 is a province in Canada. Your Lordships are aware, our 254 is inspired by Section 109 of the
9 Australian Constitution, it is *pari materia*. So provisions are *pari materia*. I'll give My Lord...
10 Ontario in Indian parlance, so that's easy for me to make myself clear. India has a law, take it
11 as a Canadian law. The law says that the law is in two parts. One part, 'how to deal with a
12 particular commodity, say alcohol'. Second part of that Central law says 'whether the State
13 would accept this law or not, the State would decide.' For example, Karnataka would decide
14 whether this Central law would be applicable in Karnataka or not. How? Chapter 2 dealt with,
15 that there would be a meeting held, there would be a voting take place, and by majority if they
16 take a decision that we will accept the Central Legislation, the Central Legislation would apply
17 to Karnataka, which was My Lord, Ontario in this case. Here, there was no such meeting took
18 place. So Central law was not applicable and Ontario law on the very same subject enacted a
19 law, Ontario being the State, here in my example, Karnataka. And therefore, when the question
20 of repugnancy came, the High Court of Australia, which is the highest court in the State, that
21 there is no question, because, in fact, there is no repugnancy, because the law is not made
22 applicable, the Central law does not apply to Ontario. That is the long and short of this
23 judgment. But what has happened is **Shyamkant Lal**, one line is picked up. Somebody has
24 cited that repugnancy should be in fact, and not merely based on a possibility. In the instant
25 case how the **Tika Ramji** judgment refers that there is no Notified Order. So, there is a
26 possibility of a Notified Order. In absence of Notified Order, there is no question of your
27 applying the Central law. My worry is this. If this logic is right, then all enabling Central Acts,
28 enabling Central Acts, which enables the Central Government to do something or not to do
29 something, will become repugnant if the Central has chosen not to do something because they
30 are only enabling, they are not mandate, that you will have to do it. Centre is enabled, Centre
31 is empowered to do something. Now in this context, see para 31, which My Lord in my
32 submission, never fell for consideration. 'In the instant case, there is no question of any
33 inconsistency in actual terms of the Acts enacted by Parliament and the Impugned Act. The
34 only question that arises are whether Parliament and the State Legislatures sought to exercise
35 their powers over the same subject matter or whether the laws enacted by the Parliament were
36 intended to be a complete exhaustive code or in other words, expressly or impliedly evinced
37 an intention to cover the whole field.' This is My Lord, ultimately, the law, Your Lordships

1 have also used the same expression in forum. 'It would be necessary, therefore, to compare the
2 provisions of Act of 65, that is, IDRA, as amended by so and so and the Sugar Control Order
3 issued there under with those of the impugned Act, i.e., State Act and U.P. Sugar Regulation
4 Act.' Now kindly come to... which is that...

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But is overruling *Tika Ramji* crucial for your
7 line of submissions?

8

9 **TUSHAR MEHTA:** The reason why *Tika Ramji*...

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** *Tika Ramji*, you are really concerned with
12 that threefold bifurcation which they do of manufacturing, manufacture raw materials and...

13

14 **TUSHAR MEHTA:** Para 32 troubles me and My Lord this Notified Order, para 32. Please
15 see para 32. Only para 32 at 102... relevant portion of para number... 97. Sorry 105.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Solicitor, at a certain level, I'm not sure
18 whether you can say that the *Tika Ramji's* an egregious error or anything like that, because
19 see, products are separated out of the industry. That's very clear. In relation to List II, products
20 go to 27. The industry is under 24. The goods come under 27.

21

22 **TUSHAR MEHTA:** Which is subject to 33.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Of course, of course. But 27 is an indicator that
25 the products don't go with the industry. Some products of controlled industry is declared
26 industries under 52 of List I, go under Clause (a) of Entry 33 of List III. This much is clear that
27 there is a separation of the industries from the products. They either go in respect of State
28 industries, State controlled industries into Entry 25. Union Industries... I'm just using that
29 loose expression, under Entry 52, the products go to Entry 33. So, now the only question is
30 that there to sustain the State Act they said that, look, the State Act dealt with the raw material
31 which is sugar cane...

32

33 **TUSHAR MEHTA:** Beyond that what is my trouble...

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ... It is difficult for us to overrule. Your
36 argument may be sustained, even on independently of the correctness of...

37

1 **TUSHAR MEHTA:** The difficulty is the Reference Order says, 'the *Synthetics* too didn't
2 notice *Tika Ramji* 'and *Tika Ramji...* therefore, it becomes necessary. But please see why...
3 I have two problems with *Tika Ramji*.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** How does *Tika Ramji...* assuming that the
6 reference... the *Synthetics* didn't notice *Tika Ramji* . *Synthetics* sustains your position.
7 Suppose *Synthetics* has noticed *Tika Ramji*. Would that make any difference to us?

8

9 **TUSHAR MEHTA:** I don't think so, except please come to My Lord, page 105. I have two
10 problems.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's because these are older judgments which
13 have stood the test of time.

14

15 **TUSHAR MEHTA:** Only two problems with *Tika Ramji...*

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Is there... no, you can always explain away
18 some observation and a judgment which has been followed in our own jurisprudence. You
19 don't know what's the large scale impact would be.

20

21 **TUSHAR MEHTA:** No, certainly. If Your Lordships can come to para 32.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Your argument that the field is not occupied
24 unless there's a Notified Order, because 18-G uses the expression 'Notified Order'. That we will
25 deal with separately.

26

27 **TUSHAR MEHTA:** Correct, My Lords.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But I'm just trying to see... you maybe sort of...
30 you may reflect on it even after you finish the day in a little while, you can still reflect on it
31 because that, is it strictly necessary for us to start wielding the axe and going... overruling an
32 earlier judgment like this or can we not... I mean we have to hear the Petitioners in rejoinder.
33 Can we not independently or can you not independently sustain your argument even without
34 going into *Tika Ramji*?

35

1 **TUSHAR MEHTA:** Before a larger bench My Lord. Honourable nine judges would not be
2 bound by *Tika Ramji*. Whether Your Lordships overrule, explain or whatever. Your
3 Lordships can definitely take a different view, but my difficulty is one.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Suppose we say that we just strike *Tika*
6 *Ramji* without either over-ruling it or saying... [UNCLEAR], but that's why we're asking you.
7 Can you not sustain your line of inquiry or your argument, irrespective of the correctness of
8 *Tika Ramji* or are you in a situation where you have to confront the correctness of *Tika*
9 *Ramji* otherwise your argument has to be rejected by us?

10

11 **TUSHAR MEHTA:** If Your Lordships are persuaded that raw material does not fall within
12 the term 'industry', A, industry includes only manufacturing. B, and third, in absence of a
13 Notified Order, there is the field open and the State can legislate.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's see that Notified Order bit of *Tika*
16 *Ramji*. That is para 32, right?

17

18 **TUSHAR MEHTA:** Only for my satisfaction My Lord page 105.

19

20 **DINESH DWIVEDI:** May I request Lordships to just pause for a moment? I'll add on to
21 what my friend is saying. *Tika Ramji* is essential for the reason that the alcohol, which is
22 subject matter of dispute in *Synthetics 2*, is product of the notified industry because IDR
23 specified alcohol industry. So taking it as a product of the notified industry, then the question
24 is sale, distribution, etc will go where. Because that was a case involving fee being charged for...

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It will go to Entry 33 of List III.

27

28 **DINESH DWIVEDI:** Exactly. So then they formed... My Lord the question inevitably arises,
29 is there a law made under Section 18-G because 18-G is traceable to I'll show the...

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The only point then which survives is that even
32 if the product of a control... of a declared industry goes into Entry 33, there is no Notified
33 Order. That's the only point which we have to still hear Mr. Solicitor on that.

34

35 **DINESH DWIVEDI:** Both the submissions would survive 1st, 2nd. 1st because *Synthetics*
36 further says that it cannot fall under Entry 8. So therefore, we'll have to raise that argument
37 that Entry 8 includes industrial alcohol.

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TUSHAR MEHTA: But *Tika Ram* is not on that.

DINESH DWIVEDI: I'm not. *Tika Ramji*...

CHIEF JUSTICE D. Y. CHANDRACHUD: Whether Entry 8 includes industrial alcohol or not is a separate issue. That we've argued.

DINESH DWIVEDI: So therefore, *Synthetics* has to be seen in the context of both the issues.

CHIEF JUSTICE D. Y. CHANDRACHUD: Whether intoxicating rings under Entry 8 includes denatured spirit, we have to deal with. There's no difficulty. But I'm only on this, I mean instinctively as a judge sitting in a combination of nine, because you don't know what the unforeseen. We are looking at it from the point of view of industrial alcohol. As sister Nagarathna was also saying a moment ago, *Tika Ramji* must have been followed throughout in our jurisprudence. We don't know what we will be unsettling if we just go hammering tongs at *Tika Ram*.

TUSHAR MEHTA: Certainly. I bow down to that. I'm not in an adversarial...

CHIEF JUSTICE D. Y. CHANDRACHUD: Yeah, that's exactly. So we must see... on the Notified Order you can make your argument now, but you can just reflect on it, maybe, just tomorrow is a holiday. You can reflect on it and tell us in five minutes thereafter. Suppose, we don't decide to reconsider the correctness of *Tika Ram*, can you not still sustain Your argument on... without going into the correctness of *Tika Ram*?

TUSHAR MEHTA: Except that *Tika Ramji* restricts... I'm sorry.

CHIEF JUSTICE D. Y. CHANDRACHUD: 18-G. Then you will have to deal with the argument.

TUSHAR MEHTA: My Lord, *Tika Ramji* restricts the meaning of the word 'industry' to be only manufacture... manufacturing. Now, the problem...

CHIEF JUSTICE D. Y. CHANDRACHUD: But Solicitor, you know insofar as industries of the States are concerned, Entry 24, the goods go into Entry 27 anyway. So, whether it's

1 under 24 or 27, they have authority of the goods. Products of a controlled industry, the
2 declared industry under Entry 52, it goes into your power under Entry 33, albeit a concurrent
3 power and your argument is that look, but IDRA is comprehensive enough and has occupied
4 the field. If you are right about that.

5

6 **TUSHAR MEHTA:** My submission. I'll respond and if...

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Reflect on it, because...

9

10 **TUSHAR MEHTA:** I am not right now taking Your Lordships...

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We are a bench of nine. We are untrammelled.
13 At the same time, when there is a long line of authority which has stood the test of time, it's
14 easier for future benches to distinguish it. Say it's not applicable. These were the peculiar facts.
15 Suddenly saying that it's overruled, [INAUDIBLE]. You can say that some part is not the *ratio*
16 *decidendi*.

17

18 **TUSHAR MEHTA:** That's my submission.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** [UNCLEAR] necessary.

21

22 **ARVIND DATAR:** [INAUDIBLE] The Development Regulation Act. Section 15 and Section
23 16. So the Bench says with the top of articles, being the manufactured product and not the raw
24 material that goes into the article. That's how they say, this is the explanation to 18-G also.
25 Article or articles? Class of article or articles. What *Tika Ramji* says is when you refer to
26 articles, it means the produce, the product which is made, not the raw material.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That is paragraph 32.

29

30 **TUSHAR MEHTA:** Yes, but it misses...

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Let's see 32 once again, that part. Let's see 32
33 for a minute.

34

35 **TUSHAR MEHTA:** But, only bear one factor in mind while reading 32. 18-G says, 'article or
36 class of articles relatable to any schedule industry', not touched at all in *Tika Ramji*. Now 32.
37 Act 65 of '95.

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JUSTICE B. V. NAGARATHNA: The expression 'goods' includes materials and articles under Article 366(12). It includes materials and articles. Both are included.

TUSHAR MEHTA: Yes, yes.

JUSTICE B. V. NAGARATHNA: And goods is under Entry 27 subject to Entry 33 of List III.

TUSHAR MEHTA: Correct. My Lord, please see 32. Act 65 of '95. 'So 51, that is IDRA was an Act to provide for the development and regulation of certain industries.' Your Lordships can skip that. Kindly come, after 18. Before that, just above 18-G. 'It did not involve the regulation of the supply and purchase of sugar cane, which, though it formed an integral part of the process of manufacture of sugar was merely the raw material for the industry and as such, not within the purview of the Act.' This is My Lord the finding. Tomorrow, suppose for a defence industry, I'm giving a loose example, the Central Government is required to control the raw material, which is some mineral, some typical mineral, which is used for producing some defence equipment or some substance. We cannot do that. That will have to be the State's Legislature. The Centre would depend upon the State. And 52 is intended to be an overarching provision that for some industries uniformity requires the Centre only to have the power. Then My Lord, further. 'The Act had remained as originally enacted, the provisions of the Act would not have been in any manner whatsoever, whatever repugnant to the provisions of U.P. Act because both the Acts covered different fields. Act 26 of '93, however, introduced certain amendments.' Then 18-G is quoted, 'were relatable to any scheduled industry' is specifically added. Thereafter, the Court says, 'sugar industry being one of the scheduled industry, it was contended for the Petitioners that sugar cane was an article relatable to the sugar industry and was therefore, within the scope of Section 18-G of the Central Government, was thus authorized by Notified Order to provide for regulating the supply and distribution thereof and trade and commerce therein. If that was so, it was next contended the field of legislation in regard to sugar cane was covered by this provision of the Act and was taken away from the jurisdiction of the State Legislature. The above intention being to cover the whole field of legislation. It was, however, urged on behalf of the State that articles relatable to scheduled industry comprised only those finished products which were of the same nature or description as the article or class of articles manufactured or produced in the scheduled industry and did not comprise the raw materials.' This is not coming out of the bare reading of the section for the scheduled industry. 'Reliance was placed in support of this contention on terms of the explanation to Section 18-G, as also Section 15 and 16, where the same words, 'any article or

1 class of articles relatable to that industry' were used. In our opinion, the contention of the State
2 is sound. The structure of the whole Act, 65 or 51, that is IDRA related to Development and
3 Regulation of Scheduled Industries and all provisions which were contained in the Act,
4 including those which were introduced therein by Act 26 of '53, were designed for effectuating
5 that purpose. It is significant to note that even in Section 18-G, the regulation which was
6 intended was that of the supply and distribution of article or class of articles, relatable to the
7 scheduled industry and the production of those articles was not sought to be regulated at all.
8 The raw material would certainly be essential ingredient in the process of manufacture or
9 production of the articles in the scheduled industry, but would not be the same nature or
10 description as the article or class of articles manufactured or produced therein. The whole
11 object of enactment of Section 18-G was to secure equitable distribution and availability at fair
12 prices of such articles which, by relation thereof to the article or class of articles manufactured
13 or produced in the scheduled industry would affect such manufacture or production or the
14 supply and distribution thereof, or trade or commerce therein.' Kindly pause here for a minute.
15 I have shown the provisions of IDRA which says that even price control is one of the
16 regulations. If we want to control the price, we will necessarily have to control the raw material
17 price or ensure that the raw material is not sold for any other purpose other than the purpose
18 for which we are regulating, not considered. Not only where the article or class of articles
19 relatable to the scheduled industry, which were themselves manufactured or produced in this
20 country. My Lord, not necessarily. It can be mineral, it can be sugar cane, it can be any grain,
21 agricultural produce sought to be controlled in this manner, 'but also the articles or class of
22 articles imported into India which were of the same nature or description as the article or class
23 of articles manufactured or produced in scheduled industry, so that all these articles, whether
24 indigenous or imported, would be controlled by the Central Government by regulating the
25 supply and distribution thereof and trade and commerce therein, with a view to develop and
26 regulate and thus control the scheduled industries in public interest. Section 15 of the Act
27 provided that where the Central Government was of the opinion that in respect of any
28 scheduled industry or industrial undertaking, there had been or was likely to be a substantial
29 fall in Volume of production in respect of any article or class of articles relatable to that
30 industry or manufactured or produced in the industrial undertaking for which, having regard
31 to the economic condition prevailing, there was no justification, it may make or cause to be
32 made full and complete investigation into the circumstances.' My Lord, suppose the raw
33 material production started falling, the Government can inquire into it in a given set of facts
34 that why raw material started falling. As a result, the production has started getting affected.
35 'If, after making or causing to be made any such investigations, the Central Government was
36 satisfied that action under Section 16 was desirable, it was to issue such directions to the
37 industrial undertaking concerned, as may be appropriate for regulating production of any...'

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CHIEF JUSTICE D. Y. CHANDRACHUD: In para 32 of *Tika Ramji*, that's a little bit of a problem.

TUSHAR MEHTA: It's an orbiter.

CHIEF JUSTICE D. Y. CHANDRACHUD: That's an orbiter. We can say that they were not called upon to really decide that. And actually, that may not be a correct approach also because they say repugnancy must exist in fact, and not depend merely on a possibility. There are two ways in which the conflict has to be addressed under the Concurrent List. One, where the Central law says something and the State law mandates exactly to the contrary. They both can't co-exist. The second may be where the Central law by virtue of the comprehensive nature of its provisions excludes any legislation by the State. If I was... I was just telling my colleagues, our judgment in that, *West Bengal RERA* case, *West Bengal RERA* case... forum, where the State law was identical to the Central law.

TUSHAR MEHTA: Yes.

CHIEF JUSTICE D. Y. CHANDRACHUD: And the argument of Mr. Dwivedi in that case was that, look, what have we done? We have enacted a law which is identical to the Central law. Where are we barred from making a law which is identical to the Central law? That was the argument of Mr. Rakesh Dwivedi. We overruled it and set aside the State law saying that, look, once the Central law, RERA has held a field, the State cannot enact a law even on all fours with the Central law. So repugnancy in the sense that they can't both stand together is one aspect of repugnancy. And this part about 18-G, the Notified Order, there may be a way out of it. You see, 18-G confers power on Parliament to regulate production, supply, distribution, etc., and 18-G says that the Central Government may by a Notified Order provide XYZ. Now the issuance of a Notified Order is an administrative Act. This cannot be determined by, determinate about the field, which is occupied by Parliament.

TUSHAR MEHTA: Absolutely. In *Mar Appraem* this exactly was the situation. I'll just... give me two minutes. I'll not cite...

CHIEF JUSTICE D. Y. CHANDRACHUD: Now we have seen this para 32. What do you want to show us in *Tika Ramji*, so that we can...

TUSHAR MEHTA: *Tika Ramji* judgment is over. *Tulloch* doubts *Tika Ramji*.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Which one, who doubts it?

TUSHAR MEHTA: *Tulloch*. If Your Lordships can get *Tulloch*. First, it is doubting in *Hingir Rampur*, My Lord. We have cited in minerals matter and Bench was same, so I'll not read them. Thereafter, if my learned friend can... we have prepared a list of following, follow up judgments of *Tika Ramji*. IV(i). I have page 78 of my written submission. I have quoted para 13. Let me give the para numbers only, how it is followed without reading it. Page 78.

JUSTICE HRISHIKESH ROY: Give us the citation first.

TUSHAR MEHTA: Yes, My Lord. I'll give the *Hingir Rampur* first. *Hingir Rampur* is because it was first doubted in *Hingir Rampur*. Page 80, para 92 of my written submissions I have quoted. Therefore, Your Lordships may get an immediate...

CHIEF JUSTICE D. Y. CHANDRACHUD: Page? Page 82?

TUSHAR MEHTA: 80. *Hingir Rampur*. The citation is **(1961) Volume 2 SCR 537** and if Your Lordship would like to go through the whole judgment, it's on record. On that page 80, My Lord, we have given the citation, PDF Volume V(F), page 409. Then *Tulloch*, I'm sorry. *Tulloch* is page 78, Para 91. I have quoted para 13 in extenso, citation is... It's a five Judge Bench judgment again. **(1964) Volume 4 SCR 461**. It is same Volume, Volume V(B), page 113.

CHIEF JUSTICE D. Y. CHANDRACHUD: The earlier one was page V(F), you said?

TUSHAR MEHTA: V(B). Volume V(B).

CHIEF JUSTICE D. Y. CHANDRACHUD: *Hingir Rampur* was Volume?

TUSHAR MEHTA: *Hingir Rampur* Volume is V(F).

CHIEF JUSTICE D. Y. CHANDRACHUD: Yeah, and *Tulloch* is Volume V(B)?

TUSHAR MEHTA: V(B). Page 113, para 13, which is quoted in my written submissions at page 78, 79 onwards.

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 'The test of two legislations containing
2 contradictory provisions is not, however, the only criteria of repugnancy, for if a competent
3 Legislature with a superior efficacy expressly or impliedly evinces by its legislation an
4 intention to cover the whole field, the enactments of the other Legislature, whether passed
5 before or after would be overborne on the ground of repugnance. Where such is the position
6 the inconsistency is demonstrated not by detailed comparison of provisions of the two statutes
7 but by the mere existence of the two pieces of legislation.'

8

9 **TUSHAR MEHTA:** There is one judgment of Andhra Pradesh High Court My Lord...

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Para 93, page 81.

12

13 **TUSHAR MEHTA:** There is one judgment of Andhra Pradesh High Court by Justice B.P.
14 Jeevan Reddy, but again Andhra Pradesh High Court, that is **(1988) SCC Online AP,**
15 Andhra Pradesh, page 129, which is quoted in page 75.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** AP page?

18

19 **TUSHAR MEHTA:** 129.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where do we find it?

22

23 **TUSHAR MEHTA:** Page 75 of my written submissions, II(d), Volume II(d) and judgment is
24 Volume V(k), page 2, entire judgment, but the relevant paragraph, entire in three pages, I have
25 quoted, where **Tika Ramji** is doubted, but ultimately the Court takes a different route and
26 obviously High Court could not have...

27

28 **JUSTICE ABHAY S. OKA:** More in the nature of obiter, it says.

29

30 **TUSHAR MEHTA:** Even obiter would be binding. So, it notes and says that this...

31

32 **ARVIND DATAR:** Para 32 says even assuming... [UNCLEAR]

33

34 **TUSHAR MEHTA:** It was not called upon to decide, but said something.

35

36 **ARVIND DATAR:** ...and the Central Act. That was the first... of last sentence, you mean,
37 assuming it is... [INAUDIBLE]

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TUSHAR MEHTA: No discussion otherwise what happens is the ratio in *Mar Appraem*, is this. The Court had beautifully said, My Lord, their argument was, as I have indicated, Act was passed, assented to by the President of India. At that moment, law is made as contemplated under Article 254(1). It was not brought into force. So, there is always a commencement date that it would commence from the date it is notified by the Central Government. The Court said that it is a law made by Parliament, assented to by the President of India. The existence of the law cannot depend upon an executive action or inaction of not bringing it into operation. So therefore, it is a law and if it is in conflict with some other State law, repugnancy will have to be tested. It's a Constitution Bench judgment.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

TUSHAR MEHTA: I'll just give the citation on this obiter part. Page 82 of my written submissions, para 94. *State Of Kerala & Ors vs. M/s Mar Appraem Kuri Co. Ltd.* which takes note of *Tulloch* and the entire judgment is Volume V, PDF page 2382. My learned friend cited *ITC Ltd.* Her Ladyship Justice Ruma Pal's majority view.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

TUSHAR MEHTA: The minority view of My Lord, Justice Pattanaik and Justice Bharucha, I'll just give the page numbers. It says exactly opposite. The submissions which I am respectfully canvassing for Your Lordships acceptance. May I read or give the page and para numbers?

CHIEF JUSTICE D. Y. CHANDRACHUD: Just the para numbers.

TUSHAR MEHTA: My Lord my note at 2G. It is filed not on record. It was uploaded yesterday in time, but could not reach Your Lordships. Para 8 we have said *Tika Ramji* is followed in following judgments and one of them is *ITC* and dissent of Justice Pattanaik and Justice Bharucha is para 189. Page 189. It's a detailed discussion on why majority is wrong and therefore, *Tika Ramji* is wrong. My Lord, it is page 1705 of Volume V. At 1705. Judgment starts at 1597, Volume V, but para 189 is at 1705. My Lord's judgment... My Lord, the Chief Justice's judgment regarding *REERA*, that is forum for people's collective efforts, which I referred to during the course of the day to day, forum judgment. This is that judgment, *versus State of West Bengal*. Citation is **(2021) Volume 8 SCC 599**. It is Volume V(f), page 60 and paragraph number is 130-133. Because 132 is in three, four paragraphs. There Your

1 Lordships have considered all judgments on repugnancy by occupying the field. And Your
2 Lordships are aware. So these are my respectful submissions only. During the course of the
3 recess, lunch hours, one fact, which I will just highlight on Entry 8. I have prepared one chart.
4 Just for a minute. It won't take more than... I was just wondering why two different expressions
5 are used. Entry 8, List II says 'intoxicating liquors'. Correct?
6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.
8

9 **TUSHAR MEHTA:** Entry 51 is taxing power of the State. It's a taxing entry. Therefore, what
10 it says, alcoholic liquors for human consumption. It doesn't use the word 'intoxicating'. There
11 are two reasons. First, I have already assisted Your Lordships with, the taxing entry being a
12 taxing entry, you have to have the incidence of tax that it would be at what stage.
13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That you had said, yes.
15

16 **TUSHAR MEHTA:** That I have already said. My Lord second, there are certain products
17 where there is alcoholic liquor but it is not intoxicating. For example, cough syrup.
18

19 **JUSTICE HRISHIKESH ROY:** It is really speaking, the item that you are suggesting, really
20 speaking not intoxicating, depends upon how many bottles you consume.
21

22 **TUSHAR MEHTA:** Yes. Your Lordships are right. Anything in excess is poison. That's what
23 people say. Even if you drink five litres of milk, you might die. But people are using it for
24 intoxication purpose. But when we interpret the entry, My Lord, we will go by the general use,
25 not abuse. Your Lordships are right. If you have two bottles of cough syrup, you get intoxicated.
26

27 **JUSTICE HRISHIKESH ROY:** Under the NDPS Act, correct? For the syrup.
28

29 **TUSHAR MEHTA:** Correct. Thousands of bottles are recovered, My Lord, from people who
30 don't have the license to sell. They are not pharmacy graduates.
31

32 **DINESH DWIVEDI:** They've been prosecuted under the Prohibition Act.
33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In alcoholic liquors for human consumption is
35 used in Entry 51 because firstly, it's a taxing Entry, and therefore it has to indicate the basis of
36 that...
37

1 **TUSHAR MEHTA:** Decides the taxing event.

2

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

4

5 **TUSHAR MEHTA:** And second, that there may be alcoholic liquors which are capable of
6 human consumption, but may not have intoxicating effect, I mean, if used, not abused.

7

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

9

10 **TUSHAR MEHTA:** These are my respectful submission.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you Mr. Solicitor.

13

14 **TUSHAR MEHTA:** And on that *Tika Ramji* I'll respond day after. This is in continuation
15 and with consent of Mr. Dhruv, if my colleagues can have five minutes each. It would be ...

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, yes. Who will argue first? What's your
18 name? Mr. Omar Ahmad.

19

20 **OMAR AHMAD:** Yes, My Lord.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, one second. Omar Ahmed.

23

24 **TUSHAR MEHTA:** My Lord, one argument I left. Sorry, my apologies. So far as *Synthetics*
25 too is concerned, which overrules *Balsara*.

26

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

28

29 **TUSHAR MEHTA:** In taking the view that, My Lord, *Balsara* took the view that liquor
30 includes all types of liquor, whether intoxicating, whether for human consumption, not human
31 consumption. etc. *Synthetics* says, "no." Intoxicating liquor for human consumption means
32 something which is a beverage, I support that. There was one of the questions, which I must,
33 I'm dutybound to answer, where according to me, going reading, I can read four or five
34 paragraphs fully. What the Learned Attorney General, the then Attorney General said is not
35 something at variance, except one statement that *Balsara* needs not, need not be overruled.
36 Otherwise, My Lord, the Learned Attorney General also has said what we have respectfully
37 submitted. But the question was, I'm supporting *Synthetics* too, but the question which was

1 posed because of Mr Datar's article, that executive estoppel. We have, if Your Lordships would
2 like to go into it, we have already filed judgments. There are four judgments which takes the
3 view that a separate view can be taken by the law officer, because several things, because of
4 lapse of time society may have changed, law may have changed, there may be several
5 circumstances. There are four direct judgments. Would Your Lordships like to go into that
6 question?

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Mr. Ahmad?

9

10 **OMAR AHMAD:** I have emailed a short note, My Lord, or I can hand over a hard copy. I
11 have a few minutes, but I just thought if I. Yes, it's on the screen. My submissions in brief,
12 pertain to the meaning of intoxicating liquor in Entry 8 List II and broadly, Justice Chagla's
13 judgment in the Bombay High Court in **Balsara**, which has not been shown and a few reasons
14 why the Supreme Court decision in **Balsara** may not be correct. I highlight that is because
15 the State's argument really to bring in non-portable into Entry 8 hinges on the interpretation
16 put forth in **Balsara**. So, My Lord, only few submissions with respect to why **Balsara** may
17 not be correct on the proposition 8 rules. I will just very briefly go through these paragraphs.
18 First three paragraphs, only highlight the fact that in Entry 8, List II, I'm reading para 2, My
19 Lord. The noun which is 'liquor' is qualified by an adjective that is 'intoxicating.' The plain
20 meaning of the latter being of "alcoholic drink or a drug that can cause somebody to lose
21 control of their behaviour or their physical and mental abilities." This is a dictionary, I have
22 cited. And the antonym of which is 'non-intoxicating,' that is, "the consumption of the
23 beverage does not lead to inebriation." And My Lords, in paragraph 3, I've just highlighted
24 that it makes no difference that the phrase "meant for human consumption" has been used
25 instead, and intoxicating has been done. Our understanding in Justice B.P. Jeevan Reddy's
26 judgment in para 4, I've just quoted the relevant para to save time. This proposition is
27 accepted, My Lords will just see para 10. I'll just read two lines in paragraph 10 of **Bihar**
28 **Distillery**. It says, "Now coming to Entry 8 in List II, it does not use the expression 'alcoholic
29 liquor for human consumption.' It employs the expression intoxicating liquors, which
30 expression is of course, not qualified by the words 'human consumption'. This is for the
31 obvious reason that the word intoxicating 'signifies' for human consumption." And that
32 is...also learned Solicitor General has already dealt with Article 47. I've quoted that at the next
33 page, My Lord. The only reason I say that the same meaning which is there in Article 47 should
34 be given. There's no reason why the same meaning should not be given. Also, there are in
35 paragraph 7, I have referred to the Constituent Assembly debates which were held on 24th
36 November, 1948. I have given the page reference. It was dealing with draft Article 38, which
37 is now Article 47 and the whole discussion would show that it deals with intoxicating liquor,

1 which is consumable as a beverage, and the importance there is they were dealing with this as
2 a vice. They deal with all the religious minorities, as to say, everyone has a problem with
3 alcohol, spoiling a society, thereby showing it's purely consumable only. And, I've just given
4 the reference. Now I just very quickly come to the decision in **Balsara** of Justice Chagla and
5 the Bombay High Court, that has not been shown. Just for My Lord's convenience, I've quoted
6 it here. I just wanted to say that the **Balsara** Bombay High Court judgment, My Lord, dealt
7 with the Bombay Prohibition Act. There was a writ filed to the Prohibition Commissioner for
8 certain directions. My Lord would see para 11. My Lord was dealing with Entry 31 of the
9 Government of India Act, 1935, which is the predecessor entry to Entry 8. My Lords, I would
10 just like to read in paragraph 12, I've quoted page 439 of the Bombay High Court, **Balsara**
11 and this is important. "We have next to consider the scope of the words 'intoxicating liquor'.
12 In the first instance, liquor ordinarily means a strong drink, as opposed to a soft drink, but it
13 must, in any event, be a beverage which is ordinarily drunk. In the second place, the use of the
14 word 'intoxicating' in Item 31, in contradistinction to the use of the word alcoholic in Item
15 40(a) as qualifying the word 'liquor' is very significant." 40(a) is now Entry 51, List II. Reading
16 follows. "We may also point out that the white paper Item 26, which correspond to Entry 31,
17 used the word 'alcoholic liquors; which having Government of India had been changed to so
18 and so. Therefore, it is apparent that the class of alcoholic drinks, non-intoxicating drinks are
19 excluded by this Entry. Thirdly, medicinal and alcohol, which are found in Entry 40 (c), are
20 neither liquor nor intoxicating, and therefore, they are obviously excluded from the scope of
21 Item 31." I will not read the rest of this. This deals with a judgment of the U.S. Supreme Court
22 in **Selzman**. Only to say the last bit, Justice Chagla disagrees with the application of the U.S.
23 Supreme Court judgment, saying that only dealt with 'prohibition of noxious use'. Because my
24 motive is only focused on the definition. Now coming to the decision, para 13 on the Bombay
25 High Court came up and appealed to this Court where Justice Fazl Ali disagreed with the views.
26 I just want to add one thing. Justice Chagla used the plain words used in Entry 8. The Supreme
27 Court **Balsara** decision, as My Lord will see, gives no reason why we should give a 'go by' to
28 that plain meaning, My Lord. The ratio in Supreme Court **Balsara** is in paragraph 39, 41, 42
29 and 44. My Lords, I have quoted it. I will not read the whole thing. I just wanted to say, in para.
30 39 this quote summarizes what the High Court held, My Lords. In para 41 which is important,
31 they say thus, according to the dictionary, the word liquor may have a general meaning in the
32 sense of a liquid, or it may have a special meaning, which is a third meaning, fermentation or
33 distillation. The latter is undoubtedly the popular and most widely accepted meaning and the
34 basic idea of beverage seems rather predominantly to run through the main provisions of the
35 various acts of this country as well as of America and England relating to intoxicating liquor
36 to which our attention was drawn. I just want to pause here for a moment. Justice Fazl Ali does
37 notice that this is the predominant understanding. However, further it says, "But at the same

1 time, on a reference to these very acts, it is difficult to hold that they deal exclusively with
2 beverage and are not applicable to certain articles which are, strictly speaking, not beverages.
3 A few instances will also make the point clear. In the..." My Lords this of the US. This is called
4 the Volstead Act. They had defined 'liquor' and 'intoxicating'. This portion is relevant. In the
5 National Prohibition Act, also known as the Volstead Act, the words 'liquor' and 'intoxicating
6 liquor' are used as having the same meaning and the definition state that these words shall be
7 construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter and wine and in
8 addition thereto any spirits in malt or fermented liquor, liquids and compounds, whether
9 medicated, propriety patented or not, and by whatever name called, containing one half of one
10 per centum or more of alcohol, My Lords please mark, which are fit for use of beverage
11 purposes. My Lord the Volstead Act, Section 1, Title 2 itself needed, predicated on it being
12 which are fit for use for beverage purposes. Having defined 'liquor' and 'intoxicating liquor'
13 rather widely, the Volstead Act excepted denatured alcohol, medicinal preparations, toilet and
14 antiseptic preparation, flavouring extracts in syrups, vinegar and preserved sweet cider,
15 Section 4 so and so. In some of these items, we have the qualifying words "unfit for use for
16 beverage purposes", but the heading of Section 4, Volstead Act under which the exempted are,
17 is the exempted liquor. My Lords I will just briefly... para 42 deals with the statute which the
18 learned Solicitor had shown. This is of U.K. Justice Fazl Ali then gives the definition of 42. My
19 Lords, 44 is important. 44, coming now to the various definitions given in the Indian Act. I
20 may refer in the first instance to the Bombay Akbari Act of 1878, as amended. There are various
21 statutes mentioned. I just want to point at out that, these are all before the Government of
22 India Act 1935. And then the portion after Bombay Act. Even if we exclude the American and
23 English Act from our consideration, we find that all the provincial acts of this country have
24 consistently included liquids containing alcohol in the definition of 'liquor' and 'intoxicating
25 liquor.' The framers of the Government of India Act could not have been entirely ignorant of
26 the accepted sense in which the word 'liquor' has been used in the various excise acts of this
27 country. And accordingly, I consider the appropriate conclusion to be that the word 'liquor'
28 covers not only those alcoholic liquids which are generally used for beverage purposes and
29 produced intoxication, but also all liquids containing alcohol. It may be that the latter meaning
30 is not the meaning which is attributed to the word 'liquor' in common parlance, especially
31 when that word is prefixed by the qualifying word 'intoxicating'. But in my opinion, having
32 regard to the numerous statutory definitions of that word, such a meaning could not have been
33 intended to be excluded from the scope of the term 'intoxicating liquor' as used in Entry 31.
34 My Lord in the next few paras. I've dealt with each of these paragraphs as to why **Balsara**
35 Supreme Court has not applied the law correctly. I will just very, very briefly, a few minutes, I
36 think I will just... Para 14, My Lords. My submission is, as is evident Supreme Court **Balsara**
37 does not provide any reason for discarding the plain meaning of 'intoxicating liquor' in favour

1 of contextually limited statutory definitions and colonial legislations passed prior to the
2 Government of India Act and a few legislations. Just to summarize, My Lord. In para 15 I say
3 when Justice Fazl Ali deals with the Indian Acts. In paragraph 16 and 17, My Lord I have cited
4 case law to say that a court should not interpret constitutional entries with the help of statutory
5 definition. For instance, in Ahmedabad Municipal, the meaning of lands and building in Entry
6 49 My Lords was being considered. And this court said to look at the entries in the Seventh
7 Schedule because My Lords they are contextual, they are limited and the deal only with the
8 object of the statute. Similarly, in para 17 My Lords, there's a constitution bench judgment,
9 which was dealing with the meaning of 'industry' in Section 2(j). Again, My Lords, while
10 dealing with that, you cannot look at the judgments or the meanings which have been given to
11 'industry' to see Entry 50 of List I My Lord, because that is a more limited definition. I've
12 quoted them. I won't read them My Lord, and I've given the page references. My Lord,
13 paragraph 18. I now deal with the foreign statute which Justice Fazl Ali relied upon, and to
14 say, even on a plain reading of those statutes, that conclusion could not have come, which has
15 come in **Balsara**. Para 18. It is further submitted that SC **Balsara's** selective reliance on the
16 definition of 'intoxicating liquor' in the Licensing Consolidating Act was also incorrect. It did
17 not consider the substantive provisions of the Licensing Consolidating Act, 1910, which clearly
18 indicate that an intoxicating liquor was nothing but a beverage, i.e. a substance actually meant
19 for human consumption. My Lord, in Footnote 4, just for your convenience I've mentioned all
20 the sections. So, My Lord, in Footnote 4, why I'm mentioning, the National Licensing
21 Consolidating Act, 1910...My Lord had asked the learned Solicitor when we were saying,
22 Justice Fazl Ali notices the definition of intoxicating liquor in that. Apart from the fact, the
23 judgment quotes a wrong definition. It's not in the statute, but I'm saying that statute
24 substantively, deals with beverages which are a substance meant for consumption. In the
25 footnote, just for My Lord's convenience, I have quoted all the relevant sections, which clearly
26 bring out that intoxicating liquor has to be a substance which is consumed as a beverage. I'm
27 just saying, but with respect, **Balsara** Supreme Court did not see the whole Act other than
28 the definition, My Lords. In paragraph 19, learned Solicitor has already dealt with these two
29 and read the debate. So, the law in England, which this Court in **Balsara** dealt with, had a
30 totally different view as to it had to be consumed. There are two new statutes which we were
31 able to pull out, Para 21, My Lord I'll read. 'Similarly, the Intoxicating Liquor Act, 1927 of
32 Ireland considered intoxicating liquor as a beverage. Illustratively, in the enactment, it was
33 stated that the expression on license...'

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The word 'intoxicating liquor' come in?

36

1 **OMAR AHMAD:** Very well, My Lord. There is another interesting Act, we found in para 22
2 My Lord, which is the Habitual Drunkards Act. I'll stop here My Lords.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you.

5

6 **OMAR AHMAD:** Just one last thing. *Synthetics*, I would say... sorry, I will close it.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** *Synthetics*?

9

10 **OMAR AHMAD:** *Synthetics* preferred the view of Justice Chagla in Bombay, in para 74.
11 The Reference Order does not find fault in *Synthetics* on this score of the disagreement with
12 this Court in view in *Balsara*. Grateful, My Lord.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. You read that Habitual Drunkards Act.

15

16 **OMAR AHMAD:** We found it only yesterday, My Lord. I thought it was a very interesting
17 statute.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 'Not being amenable to any jurisdiction in
20 lunacy, notwithstanding by reason of habitual intemperate drinking of intoxicating liquor, at
21 that time dangerous to himself or herself or to others or incapable of managing himself or
22 herself and his or her affairs.'

23

24 **OMAR AHMAD:** I found it very interesting.

25

26 **TUSHAR MEHTA:** In this definition, one need not be intoxicated.

27

28 **OMAR AHMAD:** I'm very grateful, My Lord.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Ms. Tahira Karanjawala.

31

32 **TAHIRA KARANJAWALA:** May I please, My Lord. I wish to address Your Lordships on
33 the question of whether a notified order is required for a repugnancy to kick in under Article
34 254 of the Constitution. As far as this question is concerned, the first time these observations
35 come into the jurisprudence is in *Tika Ramji*. And as Justice Oka had observed, the actual
36 question in *Tika Ramji* was whether the U.P. Sugarcane Regulation of Supply and Purchase
37 Act was repugnant to the IDRA. The Hon'ble bench having come to the conclusion that the

1 State Act deals with the raw material concerned and doesn't deal with the product concerned,
2 the raw material doesn't fall into the sweep of 18-G, and therefore, there is no repugnancy as
3 the two Acts operate in different fields. Of course, learned Solicitor General has already
4 addressed at length about how these observations are wrong. However, I'm on the second
5 point of whether a notified order is required. Whether or not the first limb of the findings in
6 **Tika Ramji** is wrong, or right? As far as the second limb is concerned of whether a notified
7 order is required, the Hon'ble bench, holds that 'even assuming sugarcane were an item falling
8 within the sweep of 18-G, there is no notified order and therefore there is no repugnancy.' It is
9 my humble submission that this was *obiter dicta*. This did not arise in the facts of that case
10 and therefore, and it is simply a three-line observation without any discussion on the
11 implications of such a finding on whether 18-G was exhaustive in nature. Although **Tika**
12 **Ramji** does notice the test of repugnancy, the three tests of repugnancy, in fact, including the
13 test of whether the Parliament has evinced an intention to cover the entire field. It does not
14 apply this test, as far as this question is concerned, of whether the enactment of 18-G itself is
15 sufficient to denude the State Legislatures, perhaps because it was not required to go that far,
16 and the State Act was found to operate in a different field. Then in the 1990s, these same...

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where does **Tika Ramji** notice the threefold
19 test of repugnancy? Can you just give us that para? "Thus referred to the third." Occupied field,
20 they refer to specifically...

21

22 **TAHIRA KARANJAWALA:** Yes, Your Lordship. This discussion starts at para 27, where it
23 notices under the Australian Constitution.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Para 27.

26

27 **TAHIRA KARANJAWALA:** Para 27, Your Lordships.

28

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

30

31 **TAHIRA KARANJAWALA:** Thereafter, Your Lordships, in the 1990s, two judgments,
32 **Indian Aluminium Co. versus Karnataka State Board** and **SIEL versus Union of**
33 **India**, which have been cited by the learned Petitioner. They follow these observations again,
34 without any discussion on the scope of 18-G. And it's notable that in both these judgments, the
35 State Act concerned, had the assent of the President. And therefore, fell within the ambit of
36 Article 254, Clause 2 and therefore again, perhaps a detailed discussion on this aspect was not
37 required.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Have you dealt with it in your notes?

TAHIRA KARANJAWALA: Yes, in my note. Your Lordship at page 10, paragraph (i), at the bottom in SIEL, paragraph 2 and paragraph 23, 24, both notice that the State Act concerned had the assent of the President. *Indian Aluminium Company* also at paragraph 12, the PDF pages are given in the note, notices that this particular state enactment concerned had the assent of the President.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

TAHIRA KARANJAWALA: Therefore, again, there is no detailed discussion on this aspect. These observations are then picked up by the Constitution bench in *Belsund Sugar*, and then further in *ITC* and then has been cited as the continuing jurisprudence. And, in fact, the reference order says that the bench in *Synthetics*, which was a seven-judge bench which and *Tika Ramji* was a five-judge bench doesn't consider these observations, but actually these observations were purely in the nature of *orbiter dicta*. As learned Solicitor has already pointed out, two Constitution benches thereafter have doubted this proposition of law in *Tika Ramji* and has classified these as a misapprehension of the legal position, both in *Tulloch* and in *Mar Appraem*. As far as the test of repugnancy is concerned, from *Tika Ramji* onwards to *Forum*. There are three tests which have been recognized. Firstly, whether there is a direct collision between the Parliamentary Act and the State Act. The second whether Parliament has enacted an exhaustive code or has evinced an intention to cover the entire field and thirdly, whether the State Act has... the State Act covers the same subject matter and seeks to set up a parallel mechanism as the Parliamentary Act. Your Lordship in *Forum* also Your Lordships have given us guidance as to how one is to interpret test numbers 2 and 3. One of the tests that is given is the techniques used by the legislative draftsman, which include sections like whether the Act is in addition to and not in derogation of. As learned Solicitor already pointed out Section 31 of this Act is unique because it only specifically says that this Act is in addition to and not in derogation of the Central Act. The necessary implication being that it did intend to denude and derogate from any State enactments. In fact, the Select Committee on the bill specifically says that this clause was inserted *ex abundanti cautela*, to ensure that only the Central Acts were not derogated from. This is an important distinction from the decision in *ITC*, because in *ITC*, under the Tobacco Act, the relevant provision said that this Act is in addition to and not in derogation of any other law for the timing enforced. Our Act, the IDRA, does not use the phrase 'any other law' for the timing being enforced. And it is my humble submission that this was an important consideration which should have been

1 noted in *Tika Ramji* if the analysis was that 18-G is not enough to oust the legislative
2 competence of the states.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Well, it says that the application of other laws.
5 The provision of this Act shall be addition to and not same as expressly otherwise provided in
6 derogation of any other Central Act.

7

8 **TAHIRA KARANJAWALA:** Central Act. It does not use any other law for the timing. So,
9 therefore, the intention was to cover the field different from the decision in *ITC*. Your
10 Lordship then the second submission on 18-G notified order is that, 18-G is not a walled
11 provision. 18-G, subclause-2 specifies different circumstances in which the Central
12 Government can issue a notified order, for example, price control, regulation of distribution,
13 transport, consumption, possession by use of permits, prohibiting withholding the sale of a
14 particular article, reserving... directing that a particular product that has been manufactured
15 only be sold to a particular person under certain circumstances. So therefore, it's my humble
16 submission that enough guidance has been given in that section. Also, unlike certain other
17 provisions in the IDRA itself, the notified order under 18-G does not need any further approval
18 or any other step by Parliament for it to come into force. There are other provisions in the idea.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Fundamental point is that the doctrine of
21 repugnancy, in the sense of an occupied field is not dependent on the exercise of the power by
22 the...

23

24 **TAHIRA KARANJAWALA:** It is not dependent on the exercise of the power. And, in fact,
25 by the Executive, because the test of repugnancy is a test of Parliamentary intention. As far
26 as...

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's an occupation of the field by the
29 Legislature.

30

31 **TAHIRA KARANJAWALA:** By the Legislature. As far as Parliament is concerned, 18-G is
32 the last word Your Lordships, because the provision is such that it is exhaustive for that
33 particular time. It can't give any further details because the premise is that it will deal with a
34 changing situation, and therefore, as far as the Legislative and Parliamentary intention is
35 concerned 18-G is itself enough to oust the competence of the Legislatures. And, in fact it may
36 be distinguished from other provisions under the IDRA, where in fact, for certain delegated
37 legislations, the Government has to go back to Parliament, for example where, under 11-B,

1 subclause 3, in case the Central Government is laying down any conditions for a particular
2 industrial undertaking to be considered, a small-scale undertaking, these requisites have to be
3 laid before Parliament. If the management of a particular industry undertaking is taken over
4 and is extended beyond five years, that has to be linked before Parliament. And there are other,
5 there are four such provisions in the IDRA itself. However, 18-G doesn't require any further
6 step by Parliament, and it's my humble submission that as far as the test of repugnancy is
7 concerned it is satisfied only by the enactment of 18-G itself. I'm very grateful for a patient
8 hearing.

9
10 **SANSRITI PATHAK:** Your Lordships, my submissions have been emailed. If Your
11 Lordships have my written submissions.

12
13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, Sansriti?

14
15 **SANSRITI PATHAK:** I will argue on the first and the third test of repugnancy. So far as
16 third test of repugnancy, which is being on the same subject matter, Your Lordships' judgment
17 in *Forum* covers the subject. But my submission is that even so far as first test is concerned,
18 which talks about direct collision. So here, there is a conscious legislative policy of not
19 intervening in a certain manner, which learned Solicitor said, forbearance. So the legislative
20 tool, which legislative tool, how much has to be regulated, how pervasive has to be the
21 regulation, at what periods the regulation has to exist and when does it have to cease, My Lord.
22 These are all conscious legislative choices by the Parliament. So, we have seen the evolution of
23 IDRA Act and the nature of regulation, the exemption. So, it is a dynamic legislative choice
24 which is being exercised by the Parliament. So, here if the Centre is forbearing not making a
25 specific provision, not making a notified order. If the state, if that is considered to be
26 unoccupied field by the state, then it is in direct collision with the conscious legislative choice
27 of the Parliament to abstain. Abstinance does not mean that I'm giving it up. I am not
28 exercising that choice, which is there with me, because I have spread my coverage to the entire
29 spectrum, which is right from production to production, supply, distribution, raw material.
30 Right from raw material to production, supply and distribution. So, my legislative coverage is
31 occupied and it is my legislative choice to decide how much do I want to, how pervasive my
32 regulation will be. So, at this it also meets the first test.

33
34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes.

35
36 **SANSRITI PATHAK:** So, Your Lordships can have my written submission. My para 2 Your
37 Lordships. In the present case... Your Lordships have my written submissions?

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JUSTICE HRISHIKESH ROY: Yes.

SANSRITI PATHAK: In the present case, the Parliament has legislatively covered...

JUSTICE HRISHIKESH ROY: Just a minute?

SANSRITI PATHAK: Your Lordships, in the second paragraph of my note. In the present case, Parliament has legislatively covered the field with regard to industries and production, supply and distribution of the products of such industries and their trade and commerce by means of IDRA Act 1951. Section 2, read with 10, 11, 11-B, 15, 16, 18-G of IDRA in particular, it regulates not only the scheduled industries, but also the products of scheduled industries. That is to say, it covers all aspects of industries, right from procurement of raw material to trade and commerce in, of the finished goods. While regulating the Parliament sometimes makes a conscious choice of not intervening, given the market conditions or other factors. It is a conscious legislative choice in the interest of development of scheduled industries or production, supply and distribution or trade or...

CHIEF JUSTICE D. Y. CHANDRACHUD: Regulating...when you said the Parliament makes a conscious choice, you mean the Government, right?

SANSRITI PATHAK: Please, My Lords. yeah.

CHIEF JUSTICE D. Y. CHANDRACHUD: The Government sometimes makes a conscious choice.

SANSRITI PATHAK: I'm sorry, My Lord.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yeah, Just go ahead.

SANSRITI PATHAK: It's a conscious legislative choice in the interest of development of a scheduled industry or production, supply and distribution of products of the scheduled industry or its trade and commerce. Which legislative device or tool is to be used, how pervasive will be the regulation and when it is to be regulated becomes the exclusive legislative choice of the Parliament once it has spread its coverage to the scheduled industry Entry 52, List I and production and supply distribution of trade and commerce, which is relatable to 33. When there is a conscious exercise of legislative choice or forbearance, then intervention by

1 State Legislature is directly in conflict with the regulatory regime made by the Parliament by
2 law since industrial plan or scheme of the Parliament qua a scheduled industry or a class of
3 scheduled industries or scheduled industries in general will be directly be hindered or
4 obstructed by a State law. For example, if Parliament is of the view that a sector needs only
5 light touch regulation, or no regulatory intervention at all, or if the Parliament feels that an
6 intervention will be counterproductive, the Parliament will abstain from providing any
7 regulation and will allow the market forces to play. In such a situation... It may be read as
8 Government

9
10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** When you are emailing it Sansriti today just
11 correct it.

12
13 **SANSRITI PATHAK:** I'll make corrections.

14
15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You can say Central Government instead of
16 Parliament.

17
18 **SANSRITI PATHAK:** Please My Lord. If such a situation... in such a situation, if State law
19 is made then hold policy of abstinence or forbearance is defeated and such law will necessarily
20 be repugnant in terms of Article 254 My Lords. So, what I'm trying to say is My Lords, even
21 the first test of direct collision is met because here there's a case of forbearance and if the States
22 start intervening because there is forbearance it is defeating the policy of the Central
23 Government My Lords. On this aspect, judgment of *Innoventive Industries*, My Lords
24 2018, 1 SCC 407.

25
26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Justice Nariman's judgment.

27
28 **SANSRITI PATHAK:** Para 60. It says that the State law is defeating with the national plan
29 and scheme of the IBC. So therefore, it was held to be repugnant. So, My Lord so far as second
30 test is concerned, the same subject matter test is there. I would just want to add. Here, often,
31 there are judgments where the inquiry diverts to how much is occupied and what remains.
32 Instead of focusing on the same subject matter test, one gets into this test of how much remains
33 because that test applied for distributive lists like Entry 54, 23. Because there is a distribution
34 of subject matter in List I and List II, this examination may be necessary because how much
35 field has been covered by the Parliament. But so far as the subject matter test, which is the
36 third test is concerned, My Lord, this inquiry of micro dissection, whether this sub-subject has

1 been covered or not, that may not be a good test for 254 My Lords, for the third test. And in
2 this case, IDRA is a rag-bag legislation My Lords. Entry 52 List I My Lords...

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It covers also Entry 33 of List...

5

6 **SANSRITI PATHAK:** Entry 3. Your Lordship saw a price control also, which is Entry 34.
7 Prior to 2017, there was taxing provision also. So, 84. So this rag-bag legislation has too many
8 rags, My Lord. It's a comprehensive legislation. So that has to be kept in view while a state law
9 is being seen. And the test in *Tika Ramji* which says, occupied in fact, not mere possibility.
10 The test is correct, but the application of test is incorrect. Occupied, in fact, only means
11 Parliament has, in fact made a law. There is no possibility of making a law. So, if there is a law,
12 the test is complete My Lords. And for the third test, there are two other aspects. If Your
13 Lordships come to para III of my note at page 5, at page 3 My Lords. III and IV. The Parliament
14 may envisage a national level policy and a parallel law by State Legislature cannot be...

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16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's the *Innoventive*, the IBC case.

17

18 **SANSRITI PATHAK:** And My Lords the fourth aspect is, aspect of uniformity. Concurrent
19 List has those subjects where uniformity may not be mandatory, like List I, but desirable. So,
20 when Parliament makes a law, keeping the intention of having a uniform law for the entire
21 nation is concerned, then variations by the State My Lords they will have to be read with lot of
22 circumspection and para V of my note. It is submitted that the most vital subject fields which
23 could not have been left to the State provinces and were of all India import were put in List I.
24 These are subjects where uniformity was imperative and there was no room for any variation
25 as per State needs, unless Entry itself provided for that. Those subjects where uniformity was
26 desirable, with room for variation or modification by legislation for states, if need be, were put
27 in List III. This is also reflected from the Constituent Assembly debates dated 4th November,
28 1948, when the Draft Constitution was being discussed. Dr. Ambedkar said there is another
29 special feature of the proposed Indian Federation which distinguishes it from other
30 federations. A federation being a dual polity based on divided authority with separate
31 legislative, executive, and judicial powers for each of the polities is bound to produce diversity
32 and laws and administration and in judicial protection. Up to a certain point, this diversity
33 does not matter. It may be welcomed as being an attempt to accommodate the powers of
34 Government to local needs and local circumstances. But this very diversity, when it goes
35 beyond a certain point, is capable of producing chaos and has produced chaos in many federal
36 states. One has only to imagine 20 different laws, if we have 20 states in the union of marriage,
37 divorce, of inheritance of property, family relations, contract, torts, crimes, weights and

1 measurement of bills and checks... My Lords, I will leave that. And such a state of affairs not
2 only weakens the state but becomes intolerant to the citizens who move from state to state
3 only to find what is lawful in one state, is not lawful in another. The second paragraph, care is
4 taken to eliminate all diversity from laws which are at the basis of civic and corporate life. The
5 great codes of civil and criminal law such as CPC, Penal Code, CRPC and the Evidence Act. I
6 will not read any further. Only the last two lines. So, that necessary uniformity can always be
7 preserved without impeding the federal system. So, uniformity is one factor which is relevant
8 while applying the third test, My Lords. Para 6 subjects such as criminal law, criminal
9 procedure, marriage, divorce, adoption, transfer of property, contracts, bankruptcy and
10 insolvency, prevention of cruelty to animals, legal and medical, and other professions are few
11 such illustrations wherein a uniform law has been laid on by the Parliament. These laws no
12 doubt, do have certain state amendments, but Article 254(2) specifically takes care of such a
13 situation wherein variation, modification, which are required, assent can be taken by the
14 President, My Lord.

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16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Sansriti.

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18 **SANSRITI PATHAK:** I'm obliged, My Lord.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, we'll give you ten minutes?

21

22 **TUSHAR MEHTA:** Chiefs have been very kind. I'm really grateful.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you. Thank you, all three of you, Omar,
25 Sansriti and Tahira, thank you very much. So, we now have... One hour is too much. I'll tell
26 why. Our schedule is we have to wrap up by lunch on Thursday, both sides. So, we'll have to
27 give them two hours.

28

29 **DINESH DWIVEDI:** [INAUDIBLE]

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We will have to wrap up by lunch on Thursday,
32 so we'll have to give them time to make the Rejoinder.

33

34 **DINESH DWIVEDI:** That may not be possible, My Lord. By lunch, My Lord, I cannot My
35 Lord. I'll try my best, but it's not...

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37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You have to now make your...

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DINESH DWIVEDI: The response may take time. As I said Your Lordships...

CHIEF JUSTICE D. Y. CHANDRACHUD: What we suggest is that you circulate your note.

DHRUV AGRAWAL: I have already filed my written submissions, but I'll take at least 45 minutes, if not, an hour.

CHIEF JUSTICE D. Y. CHANDRACHUD: We'll read your submissions. We'll read your submissions. We'll give you ten minutes and ten minutes to make your point.

DHRUV AGRAWAL: Ten minutes would not be sufficient, My Lords. Ten minutes would not be sufficient because I am representing the industry and industry is at the receiving end.

CHIEF JUSTICE D. Y. CHANDRACHUD: I know, but this is...

DHRUV AGRAWAL: I know, My Lords at least 45 minutes I will require.

CHIEF JUSTICE D. Y. CHANDRACHUD: We can't do 45 minutes, absolutely. We have to... Look, we will give them. I'll tell you what we'll do is, we will give them 2 hours for the Rejoinder. 2 hours for the Rejoinder is very fair for them. So, 11:00 to 01:00 we'll give them for the...

DHRUV AGRAWAL: Half an hour would be too...

CHIEF JUSTICE D. Y. CHANDRACHUD: We give them two and a half hours for the Rejoinder. We are satisfied. Our conscience is satisfied, we have heard you all sufficiently. So, half an hour between all of you. 10:30 to 11:00. 11:00 to 1:00 is the Rejoinder and we wrap up. One Rejoinder, not more than one Rejoinder. I think we have to, all things have to end.

TUSHAR MEHTA: We have agreed, My Lord, for one rejoinder. Mr. Dwivedi is giving that.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

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