

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 U.P. & ORS

Petitioner(s)

VERSUS

M/s LALTA PRASAD VAISH

Respondent(s)

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1 **DHRUV AGRAWAL:** May it please, My Lords.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. Only one second to... do the electronic
4 housekeeping work, as we call it. Yes.

5

6 **DHRUV AGRAWAL:** May it please, My Lords. My Lords, my written submissions are,
7 Volume II-E.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume?

10

11 **DHRUV AGRAWAL:** II-E. My Lords, first, I'll take the issue of 'intoxicating liquor' under
12 Entry 8, List II, My Lords. That is at page 21, para 34. My Lords, Constituent Assembly debates
13 were referred to but the... page 21. PDF page 21, para 34. My Lord, this CAD debate was not
14 pointed out, My Lords. This is in relation to Article 47 of the Directive Principles and
15 intoxicating liquor and intoxicating drugs have been interchangeably used, My Lords. If My
16 Lords, have it, at the bottom where I've quoted, this is Hon'ble Shri B. G. Kher. He says, "I do
17 not wish to speak at length on prohibition because after very deliberate consideration and
18 prolonged discussion, most of the Provincial Governments and most of those, who are
19 interested in the progress of this country have accepted the necessity of protecting our people
20 from going to their ruin, by the use of intoxicating drugs and liquor." My Lords, may note this
21 word. "The use of intoxicating drugs and liquors do not affect the moral sense of a person who
22 uses them." Therefore, it is in the sense of beverage, My Lords. Then My Lords, may have on
23 the next page, para 22, it continues, My Lords. "The very object of introducing the amendment,
24 which I am very happy to find, has been accepted by the Hon'ble Dr. Ambedkar, who is in
25 charge of the Bill, is to prevent the furtherance of vice. It is argued that the use of intoxicating
26 liquors and use of drugs". So, intoxicating liquor and intoxicating drink have been
27 interchangeably used, My Lords. This has also been noted by Mr. Seervai in his books.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, liquor... Intoxicating liquor and liquor has
30 been used?

31

32 **DHRUV AGRAWAL:** Yes. And intoxicating drink... When ultimately Article 47 came, it used
33 the word 'intoxicating drinks'. So, intoxicating liquor has been used in that sense only, My
34 Lords. And Mr. Seervai's quote has been already pointed out to, My Lords. And that's why I'm
35 not repeating that. That is in paragraph 38 of my written submission. My Lords, Directive

1 Principles, all the fields... My Lords, have para 35 for a moment, My Lords. The fees
2 enumerated in the Directive Principles find place, by and large, in one or the other Lists of the
3 Seventh Schedule, My Lords. Article 47... I have given Appendix II, My Lords, which... This is
4 at page 41 of the written submissions, My Lords. This gives the comparison of which are
5 Articles and which is the Legislative Entry but...

6

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

8

9 **DHRUV AGRAWAL:** Para 35 read with Appendix II.

10

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

12

13 **DHRUV AGRAWAL:** That is at page 41. PDF page 41. My Lords, the only thing, what I would
14 like to point out, the most important Entry, has been missed out in this Appendix, My Lords.
15 Which, My Lords, may have at, page 44, serial number 11. Entry 8 of List II has to be added in
16 that, My Lords. This has been missed out in the comparative chart, Appendix II, My Lords.
17 Now coming back to...

18

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

20

21 **DHRUV AGRAWAL:** My Lords, if alcohol... Entry 8 talks about intoxicating liquor, My
22 Lords. If alcoholic liquor has to be added in that, it has to take colour from the other Entries
23 in the same List, My Lords. And I am saying so, because when the Law Commission report
24 recommended that, all alcohol be included in the State List, that was not accepted by the
25 Parliament and they restricted only potable alcohol and non-potable alcohol was under the
26 IDR, My Lords. Therefore, they were very much conscious of the fact, that State has only the
27 power to the extent of potable alcohol and no further.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. What is the next point?

30

31 **DHRUV AGRAWAL:** My Lords, next point is 'Power to Legislate on 245, 246'.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, we take it as second point?

34

35 **DHRUV AGRAWAL:** Second point is, 'The scope of 245, 246 and 254'. This is at page 6 of
36 my written submissions, My Lords. Paragraph 4.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Tell us that again, please.

2

3 **DHRUV AGRAWAL:** Paragraph 4, I have summarized 240. My Lords, may have 245 and
4 246 for a moment, then I come to that, My Lords.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What para? Page?

7

8 **DHRUV AGRAWAL:** My Lords, Constitution. My Lords, may have it...

9

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

11

12 **DHRUV AGRAWAL:** Article 245, 246.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, why don't you tell us the... What's the point
15 that you're making?

16

17 **DHRUV AGRAWAL:** 246(1) and (2) starts with 'Notwithstanding...' that is non obstante
18 clause. And Clause 3 of Article 246...

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 'Subject to'.

21

22 **DHRUV AGRAWAL:** 'Subject to', My Lords.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That Sister Nagarathna had pointed out the
25 other day.

26

27 **DHRUV AGRAWAL:** This is the enabling provision to make laws. My Lords, when we go to
28 Article 254, for the repugnancy, it talks about laws made by the Parliament. So, once the law
29 has been made by the Parliament, then the test of repugnancy will take place vis-a-vis the State
30 law, My Lord. And if law... Parliament has made the law, then to that extent, the State will be
31 denuded of its power.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 45C, you are right because we have discussed
34 in the [UNCLEAR].

35

36 **DHRUV AGRAWAL:** Right, My Lords.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the next point?

2

3 **DHRUV AGRAWAL:** My Lords, now here once the field is occupied, My Lords... My Lords,
4 may have 162, Article 162 for a moment.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What's the point you're making? When the
7 executive power of the State is extensive with the Legislature.

8

9 **DHRUV AGRAWAL:** No, My Lords, proviso. Proviso to 162 is very important.

10

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

12

13 **DHRUV AGRAWAL:** May I read, My Lords?

14

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

16

17 **DHRUV AGRAWAL:** 'Provided that in any matter with respect to which the Legislature of
18 a State and Parliament have power to make laws. The executive power of the State shall be
19 subject to and limited by the executive power expressly conferred by this Constitution or by
20 any law made by Parliament upon the Union or authorities thereof'. In my humble submission,
21 My Lords, under the IDR Act, power... specific executive powers have been conferred on the
22 Central Government, My Lords. Like in 18-G it can notify, then there are other provisions. So,
23 once that power is there, State is denuded of all its power, including legislative and executive
24 power to make laws in respect of IDR Act, My Lords. The issues... In this regard, My Lords,
25 may, there's one Constitution Bench decision, 2016...

26

27 **DHRUV AGRAWAL:** *2016, Volume 7, SCC 1.*

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where is it? Where do we find it in the
30 compilation?

31

32 **DHRUV AGRAWAL:** It is not in the... because it was...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What does it say?

35

36 **DHRUV AGRAWAL:** I have given *2016, 7 SCC page 1... Union of India versus...* My
37 Lords, para 140. My Lords, may have it. I won't read the entire discussion, My Lords. Para 140.

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CHIEF JUSTICE D. Y. CHANDRACHUD: What is the point that you are stating?

DHRUV AGRAWAL: My Lords, the executive power under 162. Because my submission is, the Act has been enacted under the legislative power and the executive powers under the Act have been conferred to the Central Government, My Lords. Therefore, the State is denuded of its power, even in respect of executive matters, My Lords. My Lords, may have para 140 at page 117. 'Thirdly', My Lords, got it? 'Thirdly, a situation may arise, where the authority to bring about a law may be available both to the Union as well as the State. That the law made by the Parliament may vest the executive power with the Centre, while the State may also enjoy similar... such executive power by virtue of a law which the State Legislature was also competent to make. In these situations, the ratio laid down by this Court in the decision in so and so will have to be applied and ascertained which of the two, namely either the State or the Union would gain primacy to pass any order of remission, etc. In this context, it will be relevant to note the proviso to Article 162 of the Constitution which reads as under'. After the quotation, My Lords, 'If the proviso applies to a case, the executive power of the State should yield to the executive power of the Centre, expressly conferred by the Constitution or by any law made by Parliament upon the Union or its authorities.' Therefore, in my humble submission the entire power may... be it a legislative or executive, that has been taken away from the State by reacting IDR Act, My Lords. The other relevant paragraph is 173.11, where they have summarized, My Lords. I'm not reading that but this is the main.

CHIEF JUSTICE D. Y. CHANDRACHUD: But see Article 73, proviso.

DHRUV AGRAWAL: Yes, My Lords.

CHIEF JUSTICE D. Y. CHANDRACHUD: The proviso to Article 73.

DHRUV AGRAWAL: 73. It's quoted My Lords, in this. 73. Yes, My Lords. 73 proviso. 'Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in the Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.' Subject to, the laws made by the Parliament.

CHIEF JUSTICE D. Y. CHANDRACHUD: So, if it's a field in the Concurrent List, then even if it is a Union law, the State has a power, executive power, unless that law provides otherwise, expressly.

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DHRUV AGRAWAL: Expressly. And in my humble submission, the entire provisions... If My Lord reads the entire Act, the entire executive power has been vested in the Central Legislation. My Lords, may have, Sections 25 and 26 of the IDR Act for a moment.

JUSTICE HRISHIKESH ROY: Mr. Agrawal...

DHRUV AGRAWAL: The other provisions...

JUSTICE HRISHIKESH ROY: This also... Sort of, we must also take into account.

DHRUV AGRAWAL: Yes, My Lord.

JUSTICE HRISHIKESH ROY: What is provided in the IDR Act?

DHRUV AGRAWAL: Yes, My Lord.

JUSTICE HRISHIKESH ROY: And what is specifically excluded out of the IDR Act.

DHRUV AGRAWAL: Yes, My Lord.

JUSTICE HRISHIKESH ROY: Now, when it says 'fermentation' and we have gone through it many times. Fermentation industries other than potable alcohol. So, you must understand. I mean, that potable alcohol part would always remain with the State...

DHRUV AGRAWAL: Yes, I am not on that. I am not on that.

JUSTICE HRISHIKESH ROY: Okay.

DHRUV AGRAWAL: Potable alcohol is within the domain of the State Legislature. I am...

JUSTICE HRISHIKESH ROY: You are saying that... In the context of denatured spirit.

DHRUV AGRAWAL: Denature... Non-potable, My Lords.

JUSTICE HRISHIKESH ROY: Denatured.

1 **DHRUV AGRAWAL:** Denatured is one of the species of non-potable, My Lords.

2

3 **JUSTICE HRISHIKESH ROY:** Let's use the expression 'denatured spirit'.

4

5 **DHRUV AGRAWAL:** Yes, My Lords.

6

7 **JUSTICE HRISHIKESH ROY:** In case of denatured spirit, it is...

8

9 **DHRUV AGRAWAL:** It is with the Union.

10

11 **JUSTICE HRISHIKESH ROY:** The Union of India. That's the proposition that you are
12 [UNCLEAR].

13

14 **DHRUV AGRAWAL:** Yes. My Lord, I'm not restricting to denatured because non-potable is
15 the... Non-potable is the correct phrase, My Lord. Because they've excluded potable. Potable
16 means safe for drinking. The literal meaning of potable is safe for drinking. I don't have to go
17 to any dictionary for that, My Lords.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Are you saying that 'potable' can be equated
20 with the subject in Entry 8?

21

22 **DHRUV AGRAWAL:** 8.

23

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

25

26 **DHRUV AGRAWAL:** Intoxicating liquor. And that is why when it was recommended... Law
27 Commission Report recommended to include entire alcohol in the State List, entire alcohol
28 outside the IDR Act that was rejected by the Parliament.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because intoxicating liquor within the
31 meaning of Entry 8, is for...

32

33 **DHRUV AGRAWAL:** Beverage.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's a beverage.

36

1 **DHRUV AGRAWAL:** Beverage purpose. I am obliged, My Lords. So, My Lords, may now
2 have, Sections 25 and 26.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Section 25 and Section...

5

6 **DHRUV AGRAWAL:** Section 25 is the delegation of powers. My Lords, the Centre can
7 delegate the power into that extent. My Lords, may have Section 26 for...

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And directions.

10

11 **DHRUV AGRAWAL:** Directions. And directions have been issued in the instant case, My
12 Lords, post 2016 amendment. My Lords, may have, Volume IV-A, PDF page 489. In fact, I
13 have quoted the relevant portion at page 48. Page 48, paragraph 26. Para 48, page 24, My
14 Lords. Have My Lords, got it? Volume IV-A, page 489, and the relevant portion has been
15 quoted in my written submissions at page 26, para 48. PDF page 26, para 48. My Lords, I was
16 at Para 48 of my written submissions at page 26, where a specific direction post 2016
17 amendment has been issued. Relevant portion, I have quoted, My Lords. 'In the present
18 circumstances...', My Lords may I read the direction itself? That would be sufficient. 'Now, all
19 issues pertaining to fermentation industries other than potable alcohol, such as control over
20 its licensing and regulation of the manufacture, storage, acquisition, possession use,
21 consumption, transportation trade and commerce, supply, distribution and its movement,
22 including intra-State and inter-State movement thereof and the grant or issue of such license,
23 permit or other documents and charging/levying of fees, if any, etc., shall be under the
24 exclusive control of the Government of India. Further any such control by State Governments
25 over the field indicated above, including on intra-State movement of industrial alcohol, that is
26 other than potable alcohol or alcohol for EVP programme, stands repugnant to the
27 amendment issued by the Central Government vide amendment dated 14-05-2016.' So, all the
28 powers with regard to non-potable alcohol, directions have been issued in exercise of the
29 powers under 26, My Lords. And many of the States, including State of Maharashtra and
30 Punjab, have accepted this. I have annexed those in Volume IV-E. Minutes of Meeting and the
31 acceptance by various States including Maharashtra, Punjab and various other States.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's all right. Whether they accept it or not,
34 we have to go by the Constitution.

35

36 **DHRUV AGRAWAL:** Yes, My Lords. So, this...

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the next point? We'll hurry along, now.

2

3 **DHRUV AGRAWAL:** Now, My Lords, 18-G is one of those executive powers, My Lords may
4 note, because the entire gamut of their argument is...

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, your third point was Section 25 and 26 or
7 third point was Article 162?

8

9 **DHRUV AGRAWAL:** 162.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Okay, just a second.

12

13 **DHRUV AGRAWAL:** In 162, My Lords may note, Section 18-G was specific, that it is with
14 the Central Government.

15

16 **JUSTICE HRISHIKESH ROY:** 18-D?

17

18 **DHRUV AGRAWAL:** 18-G. G for Goa.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yeah. Yeah. That we have seen.

21

22 **DHRUV AGRAWAL:** Yes.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then your fourth point was Section 25 and 26
25 of IDR Act. What is the next point?

26

27 **DHRUV AGRAWAL:** My Lords, next point is... My Lords, may have, the First Schedule for
28 a moment, My Lords, of the IDR Act.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the... [UNCLEAR] related?

31

32 **DHRUV AGRAWAL:** My Lords, the product which are mentioned, are in the exclusive
33 domain of the Central Government. My Lords, may have First Schedule, for a moment.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But there's nothing... There's no doubt about
36 this. This is their domain.

37

1 **DHRUV AGRAWAL:** My Lords, give me two minutes, I'll explain what I have in mind, My
2 Lords.

3
4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just formulate the point and then tell us.

5
6 **DHRUV AGRAWAL:** My Lords, the First Schedule starts... opens with, 'Any industry
7 engaged in the manufacture or production of any of the articles mentioned under each of the
8 following heading or sub-headings namely.' So, any of the articles which are being
9 manufactured, will fall within the scheduled industry. And 26 says, fermentation industry
10 other than potable alcohol and the products are alcohol and other products of fermentation
11 industry. So, it is specific that non-potable alcohol, is in the exclusive domain of the Central
12 Government, My Lords. Union. Because the product as such has to be seen, not its ultimate
13 use or it can be diverted or it can be used. The product which is being manufactured is non-
14 potable alcohol and it has to be seen as such. Not its potentiality, My Lords. Potential use is
15 not the key test over here, My Lords. It is the product which is being manufactured, is the
16 relevant factor.

17
18 **JUSTICE B.V. NAGARATHNA:** Or potential misuse.

19
20 **JUSTICE HRISHIKESH ROY:** Use of... Just a passing thought. Use of beer for washing
21 your hair, will it be misuse or use?

22
23 **DHRUV AGRAWAL:** My Lords, it depends. If it is healthy, then it will be use. Because while
24 washing, one can also have the beer as such, My Lords. So, it's both use and misuse.

25
26 **JUSTICE B.V. NAGARATHNA:** Using beer shampoo is not intoxicating at all.

27
28 **DHRUV AGRAWAL:** It's not.

29
30 **JUSTICE ABHAY S. OKA:** So, there will be use and abuse also.

31
32 **DHRUV AGRAWAL:** My Lords...

33
34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** See while making, they sort of siphon off the
35 intoxicating part of the product and it's washed away.

36

1 **DHRUV AGRAWAL:** My Lords, my learned colleague says, using beer for shampoo will not
2 make it a beer as such because then only beer is not there, something else added to the beer
3 for using as a shampoo, My Lords. It would not be...

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This is your now... This is the next... 'Products
6 in the First Schedule are in the exclusive domain of the Central Government'. And the opening
7 words, 'Any industry engaged in the manufacturer or production of any article'.

8

9 **DHRUV AGRAWAL:** Article. Because there are certain Entries, My Lords, where all the
10 articles which are capable of being manufactured by the scheduled industry is not covered. My
11 Lords, give me a moment. My Lords, the legislative history of IDR Act, because industrial
12 alcohol has been loosely used, that was the argument. Industrial alcohol was in the original
13 Act, My Lords, of 1951. My Lords, I have given the compilation of the legislative history of IDR
14 Act in Volume IV-F.

15

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

17

18 **DHRUV AGRAWAL:** IV-F, My Lords.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What else?

21

22 **DHRUV AGRAWAL:** My Lords, industrial alcohol in... 'Power in Industrial Alcohol' was in
23 Entry 24, at page 31 of the Volume IV-F.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. Just one second. Let's go to that.

26

27 **DHRUV AGRAWAL:** In fact, I have summarized in the list of dates in the opening page
28 itself for IV-F, My Lords.

29

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

31

32 **DHRUV AGRAWAL:** Page 1 itself, My Lords, may have it. Volume IV-F and these
33 supporting documents are there. My Lords, on 26th March 1949, when the Bill was introduced,
34 the Draft Entry was 18 in the First Schedule, 'Power in Industrial Alcohol'. Then the 49
35 Amendment Bill came and the Entry was 24 but it remained as 'Power in Industrial Alcohol'.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Agrawal, you are making an important
2 point. Just, let's quickly run through it. So, 51...

3

4 **DHRUV AGRAWAL:** 51.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 'Power in Industrial Alcohol'?

7

8 **DHRUV AGRAWAL:** Industrial alcohol. Then, an amendment was made.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Before the amendment...

11

12 **DHRUV AGRAWAL:** Yes, My Lords.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In the Act in 1951...

15

16 **DHRUV AGRAWAL:** 1951...

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where it was item 23, 'Power in Industrial
19 Alcohol'.

20

21 **DHRUV AGRAWAL:** Yes, My Lords, at page 31.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then came the...?

24

25 **DHRUV AGRAWAL:** Then came the 1956 Bill, My Lords. This is very important. 1956 Bill,
26 page 93 at 95.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And then Entry...?

29

30 **DHRUV AGRAWAL:** Entry 25 at page 98.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Became 'Fermentation Industry'?

33

34 **DHRUV AGRAWAL:** No, My Lords, fermentation industry and then 1 and 2.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Aah! Okay.

37

1 **DHRUV AGRAWAL:** Alcohol, cash, industrial and power. My Lords, may note, this was in
2 the Bill. When it came to the Lok Sabha in debates, My Lords, PDF page 152. Page 152, right-
3 hand side, My Lords. Right hand side column, about ten lines from the bottom. Page 8, have
4 My Lords, got it? Page 8, right hand side column of the Lok Sabha. These were the
5 amendments which were moved. PDF page 152. "Sir, I beg to move to page 8, 2 (ii), line 12,
6 omit, 'industrial and power'." So, the amendment was made to remove industrial and power.
7 And the reason was, "This is intended to remove a printing error."

8

9 **JUSTICE B.V. NAGARATHNA:** Page?

10

11 **DHRUV AGRAWAL:** Page 152, right hand side, towards the bottom, it says paragraph 2. 2
12 (ii), in line 12. My Lords, it starts, "Sir, I beg to move..."

13

14 **JUSTICE B.V. NAGARATHNA:** [UNCLEAR]

15

16 **DHRUV AGRAWAL:** No, My Lords, page 152 of the PDF.

17

18 **JUSTICE HRISHIKESH ROY:** No, it starts with, on the right-hand side, 'Industries
19 Development and Regulation Act'. Is that what...?

20

21 **DHRUV AGRAWAL:** Yes, My Lords.

22

23 **JUSTICE HRISHIKESH ROY:** Is that what you...?

24

25 **DHRUV AGRAWAL:** And towards the bottom... towards the bottom.

26

27 **JUSTICE HRISHIKESH ROY:** Towards the bottom? Bottom continues in Hindi.

28

29 **DHRUV AGRAWAL:** Yes. Then, thereafter...

30

31 **JUSTICE HRISHIKESH ROY:** So, 154 we go to...

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Page 152.

34

35 **DHRUV AGRAWAL:** 2, and (ii)...

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37 **JUSTICE HRISHIKESH ROY:** Just a minute.

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DHRUV AGRAWAL: PDF page 152. Aah! Printed page 149. Printed page 149, towards the right-hand...

CHIEF JUSTICE D. Y. CHANDRACHUD: One second.

DHRUV AGRAWAL: About 8 lines from the bottom, My Lords.

CHIEF JUSTICE D. Y. CHANDRACHUD: Hmm.

DHRUV AGRAWAL: (ii), line 12, "Omit..."

JUSTICE HRISHIKESH ROY: Industrial and power.

JUSTICE B.V. NAGARATHNA: Oh! 149.

CHIEF JUSTICE D. Y. CHANDRACHUD: Are, "Omit".

DHRUV AGRAWAL: "Industrial and power". These are removed. And the reason for removal is, "This is intended to remove a printing error".

CHIEF JUSTICE D. Y. CHANDRACHUD: What was the printing error?

DHRUV AGRAWAL: That was 'industrial and power' had to be removed, My Lords. Only alcohol as a whole was to be there. The Bill said 'alcohol - industrial and power'. So, 'industrial and power' has been removed and the entire alcohol was included and that was the position till the 2016 amendment. This is how alcohol was introduced. So, this alcohol meant both potable and non-potable.

CHIEF JUSTICE D. Y. CHANDRACHUD: In the original Act, it was Entry 23...

DHRUV AGRAWAL: Yes, My Lords.

CHIEF JUSTICE D. Y. CHANDRACHUD: Which says, 'Power and Industrial Alcohol.

DHRUV AGRAWAL: Industrial alcohol.

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** One Second. Right?

2

3 **DHRUV AGRAWAL:** Yes.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then comes a 1956 Amendment. Entry 26.

6

7 **DHRUV AGRAWAL:** Yes.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which is 'Fermentation Industries – Alcohol'.

10

11 **DHRUV AGRAWAL:** Fermentation industries, then 1 and 2. Alcohol.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Obviously, yeah. That is alcohol.

14

15 **DHRUV AGRAWAL:** Alcohol.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And then 2016, it is Entry 26 is substituted as
18 'Fermentation Industries Other Than Potable Alcohol'.

19

20 **DHRUV AGRAWAL:** Other than potable alcohol. So, now it is... This is a retrospective
21 amendment from the date of the Act itself. So, my learned friend, Mr. Datar said, the
22 amendment came in '56. So, how can it be retrospective since 1953? So, this is the legislative
23 history and how this has been made retrospective from 1953.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, just one second. So, that later on, when
26 we are dictating, we don't have to start hunting pages. 1951, the original Act, what is the PDF
27 page in Volume IV-F? Just tell us.

28

29 **DHRUV AGRAWAL:** Volume IV-F, it is page 1 at 31. Sorry, page 36 at 42. Volume IV-F,
30 page 36. PDF page 36 at page 42.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right. Then the 1956 amendment, we'll just
33 look at it, in a fraction of a moment.

34

35 **DHRUV AGRAWAL:** Yes.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 1956 amendment, where Entry 56 comes...
2 Don't forget the Bill now. We don't want it to confuse us...

3

4 **DHRUV AGRAWAL:** Yes, it came from 1st March 1957.

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is a PDF page?

7

8 **DHRUV AGRAWAL:** It is not... Act is not here, My Lords, in this.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. It's not there. Fermentation industries,
11 (1) alcohol and... And then, 2016. We of course have it but give it to us again.

12

13 **DHRUV AGRAWAL:** Yes, 2016 Amendment is IV-B, page 576.

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume?

16

17 **DHRUV AGRAWAL:** Volume IV-B. B for Bombay.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** B for Mumbai

20

21 **DHRUV AGRAWAL:** B for Bangalore. Bengaluru.

22

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

24

25 **DHRUV AGRAWAL:** M for Mumbai.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Volume IV-B. IV-B, page?

28

29 **DHRUV AGRAWAL:** Page 576.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. *Theek hai.*

32

33 **DHRUV AGRAWAL:** So, My Lords, is in my humble submission, potable alcohol as such, is
34 covered by... And the product which is manufactured from that industry has to be a non-
35 potable alcohol. So, its use or misuse, My Lords, will not determine the legislative power. My
36 Lords, I have given the... My Lords, IDR Act is in two... in exercise of two legislative fields, My
37 Lords. One is Entry 52, List I and the second is Entry 33A, List III.

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CHIEF JUSTICE D. Y. CHANDRACHUD: What is the next point now?

DHRUV AGRAWAL: My Lords, I'm on that only. My Lords, IDR Act is a complete code. Declaration is under Section 2, which is deriving power from Entry 52, List I. Rest of the provisions of the Act derive their power from Entry 33, List III of the Constitution, My Lords. My Lords, Entry 33A... 33 says, 'trade and commerce, supply, distribution and production'.

CHIEF JUSTICE D. Y. CHANDRACHUD: What's the point now? We've...

DHRUV AGRAWAL: My Lords, so, all these... All these points have been covered. I am only pointing out Appendix I, which I have in my written submissions, My Lords.

CHIEF JUSTICE D. Y. CHANDRACHUD: Appendix I to your written submissions?

DHRUV AGRAWAL: Written submissions...

CHIEF JUSTICE D. Y. CHANDRACHUD: What does it say?

DHRUV AGRAWAL: I have tabulated, which field is covered by which provision, My Lords.

CHIEF JUSTICE D. Y. CHANDRACHUD: Which?

DHRUV AGRAWAL: Which field under Entry 33, is covered under which provision, My Lords. PDF page 40.

CHIEF JUSTICE D. Y. CHANDRACHUD: Where will we get Appendix I? Page?

DHRUV AGRAWAL: In my written submissions at page 40. PDF page 40.

CHIEF JUSTICE D. Y. CHANDRACHUD: Which is Volume?

JUSTICE B. V. NAGARATHNA: Volume?

DHRUV AGRAWAL: II-E.

CHIEF JUSTICE D. Y. CHANDRACHUD: Let's go to that.

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DHRUV AGRAWAL: Page 40, My Lords. So, all the fields... The legislative field under 33A is covered, My Lords. I'm not going through the Act.

CHIEF JUSTICE D. Y. CHANDRACHUD: Now what remains, Mr. Agrawal?

DHRUV AGRAWAL: Only two points.

CHIEF JUSTICE D. Y. CHANDRACHUD: Only two points.

DHRUV AGRAWAL: One is *stare decisis*, My Lords. It is held the field for... from 1989, My Lords.

CHIEF JUSTICE D. Y. CHANDRACHUD: Aah! *Synthetics*.

DHRUV AGRAWAL: And the amendment has been affected in line with that, My Lords.

CHIEF JUSTICE D. Y. CHANDRACHUD: One second.

JUSTICE HRISHIKESH ROY: *Synthetics* is 19...?

DHRUV AGRAWAL: 1989 was the judgement.

CHIEF JUSTICE D. Y. CHANDRACHUD: And reported in...

DHRUV AGRAWAL: Reported in 1990.

CHIEF JUSTICE D. Y. CHANDRACHUD: Alright. And last point?

DHRUV AGRAWAL: My Lords. And I have given the list of judgments, Appendix IV, which have followed *Synthetics*, My Lords.

CHIEF JUSTICE D. Y. CHANDRACHUD: One second, let's make a note of that.

DHRUV AGRAWAL: My Lords, this is a classic case.

CHIEF JUSTICE D. Y. CHANDRACHUD: Appendix IV, page?

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DHRUV AGRAWAL: Page... I will give, My Lords.

CHIEF JUSTICE D. Y. CHANDRACHUD: Page 50?

DHRUV AGRAWAL: Page 50. My Lords, this is a classic case where the decision of this Hon'ble Court has been accepted by the Government. Parliament has enacted a law in line with the decision of this Hon'ble Court. And the executive has also followed it, My Lords. Apart from various Courts which have relied upon *Synthetics* since the last 34 years.

JUSTICE ABHAY S. OKA: Not classic case, rare case.

DHRUV AGRAWAL: Rare case. This is the only case which I could find where the Government has accepted the judgment.

CHIEF JUSTICE D. Y. CHANDRACHUD: Alright. Last point?

DHRUV AGRAWAL: Yes. My Lords, there were two arguments made by the other side. One by Mr. Jaideep Gupta for State of Bengal that, there would be an administrative chaos. My Lord, administrative chaos cannot be a ground to justify whether the legislative competence, My Lords. There is a sentence in the judgment of this Hon'ble Court in *B. Prabhakar Rao*, My Lords. 'When you have stirred the hornet's nest, you should be ready to feel the sting.' My Lords, if My Lords want, I can give the citation. I'm not reading that, My Lords. That is **1985 SCC (SUPP) 432**, para 20 at 462.

CHIEF JUSTICE D. Y. CHANDRACHUD: Supplementary 4 SCC, is it?

DHRUV AGRAWAL: *Supplementary SCC 432*. At that time there was only one Supplementary Volume.

CHIEF JUSTICE D. Y. CHANDRACHUD: At para?

DHRUV AGRAWAL: Para 20 at 462, quoting Lord Denning, My Lords. And then this was later relied on **(2014) 4 SCC 720**, para 70.

CHIEF JUSTICE D. Y. CHANDRACHUD: **(2014) 4 SCC...**

1 **DHRUV AGRAWAL:** 720, para 70.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The earlier judgement, is it in the compilation?

4

5 **DHRUV AGRAWAL:** No, it's not.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Second one also, is not there.

8

9 **DHRUV AGRAWAL:** I'll give.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. Thank you, Mr. Agrawal.

12

13 **DHRUV AGRAWAL:** My Lords, one more thing. My Lords, Mr. Balbir Singh while
14 appearing for Maharashtra said, 'we are following BIS's standards of denaturing agents', My
15 Lord. My client, used BIS's standard and he is being prosecuted because they say, 'it is our
16 standards which have to be taken and not BIS standard'.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr. Agrawal.

19

20 **DHRUV AGRAWAL:** Deeply obliged, My Lords.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You are satisfied now, that we have given you
23 a full hearing? Thank you.

24

25 **DHRUV AGRAWAL:** My Lord, the only thing is....

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I must compliment. You are also very precise
28 and absolutely on the point. So, we appreciate that.

29

30 **DHRUV AGRAWAL:** My Lords, I may be permitted to file a two page...

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, no. Don't file two pages now. You have
33 filed so many pages before.

34

35 **DHRUV AGRAWAL:** Deeply obliged.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. Thank you. Yes, Mr. Bhandari.

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ABHIMANYU BHANDARI: My Lords, I'm only going to take five to seven minutes. I have filed a very short note which is at Volume II-H. So, My Lords, my other submission can be ignored because it will be repetitive to what others have filed. So, I have filed now II-H, My Lords, which is a very short note.

CHIEF JUSTICE D. Y. CHANDRACHUD: Volume?

ABHIMANYU BHANDARI: II-H.

EJAZ MAQBOOL: In fact, My Lords, [UNCLEAR] for alcohol. One I had already told My Lord, the Chief Justice about Mr. Nariman, My Lord, for the most oft quoted couplet in Urdu about alcohol is that, you know, 'zaahid' means, the cleric. And he said, "*Zaahid sharaab peeney de mazjid mein baithkar. Yaan woh jagah bataa de jahaan par khudaa naa ho*".

CHIEF JUSTICE D. Y. CHANDRACHUD: Aah! Beautiful.

ABHIMANYU BHANDARI: My Lords, my first argument is that, the decision of Bombay High Court in *Balsara* is the right decision and gives the correct interpretation to the term 'intoxicating liquor' and that's para-A of my note. Bombay High Court reasons this in about four or five or six lines and I've quoted that exact paragraph. If, My Lords looked, My Lords, it says, 'In the first instance, liquor ordinarily means a strong drink as opposed to a soft drink, but it must, in any event be a beverage which is ordinarily drunk.' Now, the other side wants to argue, that the term 'liquor' comes from 'liqueur' and therefore please extend it to also include 'liquids'. But if one looks at the Constitution itself, the Constitution in Entry 53, List I uses the word liquids. So, liquor and liquids cannot be interchanged.

CHIEF JUSTICE D. Y. CHANDRACHUD: Where does the Constitution use? Yes, of course.

ABHIMANYU BHANDARI: At Entry 53, List I, liquids is a term used in a non-consumption manner. So therefore, to extend liquor to mean liquids, the answer is in the Constitution itself because Constitution uses the word liquids when it wants to use the word liquids. That's at Entry 53, List I. So, as far as liquor's definition given in *Balsara's* High Court judgment, meaning a strong drink, that's the correct one. Then second reason why *Balsara* High Court States that it's for human consumption, is because then it goes on to define what is the meaning of the term 'intoxication' and it says, very interestingly, 'In the second place, the use

1 of the word intoxicating in item number 31 in contra distinction to the use of the word alcoholic
2 in item number 48 as qualifying the word liquor is very significant. We may also point out,
3 that in the white paper, item 26, which corresponded to Entry 31, used the word alcoholic
4 liquors which have in Government of India Act being changed into intoxicating liquors.
5 Therefore, if it is apparent that from the class of alcoholic drinks, non-intoxicating drinks are
6 excluded by this Entry. Thirdly medicinal and toilet preparations containing alcohol, which
7 are found in Entry 46, are neither liquor nor intoxicating and therefore they are obviously
8 excluded from the scope of item number 31.' So, My Lords, there it reaches the conclusion why
9 intoxicating should be something for human consumption. My Lords, then if one steps back
10 and looks at Article 47, why is Entry 8 worded in the way it is worded? If one looks at Entry
11 25, one will see that, when they wanted to do 'gas and gasworks', they said 'gas and gasworks
12 full stop'. But when they drafted Entry 8, they gave it with full splendour. That is to say,
13 'production, manufacture, supply'. That is because if one steps back and looks what the State
14 is vested with. The State is vested with every power to achieve and fulfil what Article 47
15 'Directive Principle' mandates it to do. Therefore, Entry 8 had all these words to ensure that if
16 State wants to fulfil its objective under 47, it can do that, it has enough powers there. That's
17 why Entry 6 also, public sanitation is with the State and more importantly, Entry 51, List II
18 gives State full power to levy excise duty on potable alcohol. So, this all flows from 47. Because
19 to achieve the purpose in 47, Entry 6, Public Health and Sanitation. Entry 51 Tax on Excise
20 Duty. And lastly, but not least, Entry 8, List II, which is, that is to say 'Production,
21 Manufacture, Supply'. Everything is vested as far as potable alcohol is concerned with the
22 State. So, that it can fulfil its objectives under Article 47. So, my humble submission is that the
23 definition of intoxicating liquors. One can see what it means by looking at the Constitution
24 itself. Then My Lords, I cite after that, there was an argument made that, if you look at the
25 Indian Government Act of 1935, when you look at the local Act, in and around that period,
26 then intoxicating liquor, especially liquor, could mean liquids also. But My Lords, the only
27 point I'm making here is that even under the Indian Government Act, there was a Power
28 Alcohol Act of 1948, which **Synthetics** too has looked at and therefore, from those days itself,
29 industrial alcohol is within the Centre's control. Now, My Lords, para 2 of my note, My Lords,
30 I have actually set out where all the term 'intoxicating' is used in the Constitution. It's very
31 interesting. Article 47. Then there is Article 366(29A)(f). And then there is Schedule VII, Entry
32 8. All these three places where the term 'intoxicating' is used, is in connotation for human
33 consumption.

34

35 **ABHIMANYU BHANDARI:** There is one more place which my note left out, My Lords,
36 which is Schedule 6 of Entry 3B, which deals with special laws for Bodoland. There also, it's
37 for human consumption.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Just one second.

ABHIMANYU BHANDARI: It's para 2 of my note.

CHIEF JUSTICE D. Y. CHANDRACHUD: In Article 47, Article 366.

ABHIMANYU BHANDARI: (29 A)(f).

CHIEF JUSTICE D. Y. CHANDRACHUD: And Entry 8. And which was the final one?

ABHIMANYU BHANDARI: And then, My Lords, one final is left out is, Schedule 6, Entry 3B.

CHIEF JUSTICE D. Y. CHANDRACHUD: Of the Constitution.

ABHIMANYU BHANDARI: All My Lords, are in the context of something which can be 'consumed'. So, intoxicating has never been used in the Constitution in the context, 'cannot be consumed' or 'not fit for human consumption'. So, My Lords, that's as far as intoxicating liquor is concerned. Now My Lords, the second point I want to make is, My Lords, I feel ***Tika Ramji***... The case of ***Tika Ramji*** was dealt with, what was not dealt with in reply, I suppose was the ***Calcutta Gas Company*** case which follows ***Tika Ramji***. Now, ***Calcutta Gas Company*** case My Lords, I don't need to go as far as saying, please overrule these judgments of ***Tika Ramji***. I am sorry. ***Calcutta Gas Company*** case, I don't need to go as far to say please overrule ***Calcutta Gas Company*** to make me reach where I want to reach. According to me, if one looks at ***Calcutta Gas Company*** case and looks at the reasoning of ***Calcutta Gas Company*** case. It supports me, because the way they dealt with the analysis, if that same analysis is applied, then Entry 8 would exclude industrial alcohol. And I have cited a very interesting paragraph from ***Calcutta Gas***, which was the key paragraph, where ***Calcutta Gas*** was trying to look at Entry 25, which said gas and gasworks...

CHIEF JUSTICE D. Y. CHANDRACHUD: Is it para 9 that you quote?

ABHIMANYU BHANDARI: Yes, from para 6, I have quoted it and I have quoted para 9 of the judgment. There's a second page of the quotation of the judgment where I've underlined in bold. There the point I am making is that, if one looks at... The Court was confronted with Entry 25, which says 'Gas and Gasworks'. And the Court was then confronted with Entry 24,

1 'Industries'. Court said, if I say that gas and gasworks is in 24, then of course it will fall into 52
2 and therefore I will... Entry 25, will be left meaningless. Rather the way... Court was at a
3 situation where it says, and I will read this, just four lines, it's from what I've highlighted and
4 underlined, just three lines above that. 'If industry in Entry 24, is interpreted to include gas
5 and gasworks, Entry 25 may become redundant and in the context of the succeeding Entries,
6 namely Entry 26, dealing with 'Trade and Commerce' and Entry 27 dealing with 'Production,
7 Supply and Distributions of Goods'. It will be deprived of all its contents and reduced to useless
8 lumber. Plus, my humble submission is that by removing industrial alcohol from Entry II, one
9 would not make Entry 8 useless lumber. Entry 8 would still apply fully as far as portable
10 alcohol is concerned. There was a case where the Court was trying to see what would be left
11 with gas and gas. Plus, if I removed, if I put it the entire thing in the industry, so that analysis
12 is also applied. Then My Lords, **Calcutta Gas** comes to my rescue. Leaving My Lords to my
13 Last point which I have made at para 9 of my note, is that **Synthetics** too cites **India Mica**
14 case and says that within the parameters of **India Mica** case, if a regulatory fee is imposed
15 by the State and those parameters and the boundaries are set out in **India Mica** case, which
16 is time tested and recently applied in Bama Organics too, which was led out by Hon'ble
17 Solicitor General. So, My Lords, as far as regulatory fee imposition is concerned, **Synthetics**
18 **II** also leaves that door open for the State. So, according to which is [UNCLEAR] and a teacup
19 My Lords, to say that we can't do anything. If you follow within the fall within the parameters
20 of **India Mica** case, you can still impose a regulatory fee. Those are my points; I am very
21 grateful.

22

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

24

25 **PAWAN SHREE AGARWAL:** In a very, very short compass. My submission would be only
26 on the phrase, this alcoholic liquor for human consumption. The Lordships are looking at
27 Entry 8, the intoxicating liquor, my submissions are just twofold. The phrase alcohol liquor
28 for human consumption has since been long since the Constitution has been understood as
29 what their **Synthetics** has said, which is to be consumed as it is. The debate has always been
30 with regard to intoxicating liquor and the fact that whether something other than alcoholic for
31 human consumption would also be added in intoxicating liquor. So far as their submissions to
32 say that alcoholic liquor for human consumption has to be expanded, to mean something
33 capable of also has never been any judgments of Your Lordships, except the **Bihar Distillery**
34 which makes an aberration in that, to say that now you can even go and impose excise duty
35 with regard to rectified spirit, etc. which is not an alcohol for human consumption. So, my
36 submission to Your Lordships is, that with regard to this phrase, alcoholic liquor for human
37 consumption, since **Balsara** and till **Synthetics II** and the later judgments, all have

1 consistently has held, that this phase would mean only with something which can be consumed
2 as it is. Whether intoxicating liquor as what has been all argued will also include something
3 else, but Your Lordships would see, I would not wish to make those submissions on that. My
4 only submission I have put that, that how it has been followed in *Utkal Distilleries*, just
5 2022 judgment of Your Lordships. All have taken this consistent view except the judgment in
6 *Bihar Distillery*. Now *Bihar Distillery* Your Lordships may just note the fact that it
7 applies a very simple test, which, according to me, it's not correct, is the fact that it's a case of
8 a mere dilution. In fact, it also recognizes the fact that it makes a potable alcohol or an alcohol
9 for human consumption only when you dilute it. So therefore, they imply there is an existence
10 of a process and the initial that is rectified spirit is not something which is alcoholic liquor for
11 human consumption. So, my submission to Your Lordships is, one, the test that it is a case of
12 mere dilution, is not correct. As Your Lordships in *Vinbros*, in the case of an income tax has
13 clearly analysed the process, and has said that it is not only a mere dilution. It has to be a case
14 where it has to be put on a specific environment on a temperature by addition of many other
15 things to make it fit for human consumption. So, my submission to Your Lordships...

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Have you given us a note, by any chance?

18

19 **PAWAN SHREE AGARWAL:** Yes, Your Lordships. It's II-J, Volume II-J.

20

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

22

23 **PAWAN SHREE AGARWAL:** Yes, Your Lordships. And one last submission to Your
24 Lordships' consideration. There was a submission made that look today after a GST, what the
25 States have been left, if there's an Entry, 54 is the alcoholic liquor for human consumption.
26 And then, Your Lordships has to read it expansively. My submission to that is that in fact, if
27 that has been the interpretation given, there would be a substantial loss, because today, post
28 GST, all other alcoholic liquor, including the rectified spirit and the extra neutral alcohol, all
29 is liable for GST. So that GST also goes to State. It's not only that, the Centre is keeping Your
30 Lordships know. It's a federal fiscal legislation. So, it goes both to States and the Centre. Now,
31 apart from that, for alcohol liquor for human consumption, they have an exclusive power to
32 impose sales tax. So, my submission is that what they are losing would be in fact a GST in case
33 if the expansive meaning is to be given, not there has been a loss to a revenue because that's
34 what Shadan...

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you very much Pawan Shree.

37

1 **PAWAN SHREE AGARWAL:** Deeply obliged, Your Lordships.

2

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

4

5 **S. NANDA KUMAR:** May I please, Lords. Small submission My Lord, for five minutes I'll
6 take. My Lord 901.16 SLP civil number 3160 of 2015. This SLP subject to outcome of Your
7 Lordships' decision, this is to be desired. On the ground My Lord, certain duty was imposed.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What... we'll not go into the facts. You can tell
10 us what your submission on law is.

11

12 **S. NANDA KUMAR:** My Lord, my submission is, they have imposed a certain interest for
13 the duty because of the issue...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That you will have to go before the
16 regulation....

17

18 **S. NANDA KUMAR:** The Hon'ble High Court....

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You have to say on the questions which we
21 have been hearing on arguments on now for the last several days.

22

23 **S. NANDA KUMAR:** Yes, My Lord. In case if Your Lordship is upholding the judgment, I
24 got benefited this Respondent. Suppose overruling it, the interest should not.... 100%...

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That you can argue before....

27

28 **S. NANDA KUMAR:** 180% it is coming, My Lord. More than a crore.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, alright. Thank you.

31

32 **S. NANDA KUMAR:** Much obliged.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Anybody else?

35

36 **AKASH BAJAJ:** My Lord, we are from Balrampur Chini. Just two minutes, Your Lordship.
37 Just stepping back, now it has become a Centre versus State issue, which is rightly so. But it

1 started out as me or the private party versus the State issue and the legislation in question was
2 the UP-Excise Act, in light of which... and why we say it because in light of the three issues
3 which are before the Court. The first issue is regarding Entry 84, List I, and the counterpart
4 Entry, which is Entry 51, List II. The issue regarding that is alcohol fit for human consumption?
5 The second issue is regarding Entry 8, List II, which is intoxicating liquor. And the third, issues
6 regarding Entry 33 of List III, which is to be, as per the other side, read along with Entry 24 of
7 List II, which is on the industries aspect, and the counterpart Entry in Entry 52, List I.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What do you have to add?

10

11 **AKASH BAJAJ:** The only, the thing add is Your Lordship in the UP-Excise Act, we have to
12 see the legislative conscious from the Act itself. If Your Lordship will see the Act because no
13 one has shown the Act, the Act itself defines what a liquor is. The UP State says, "Liquor is
14 intoxicating liquor". And in what it includes, they add all the beverages. So, the argument
15 sought to be made now, is contrary to the legislative conscious itself. If Your Lordship takes
16 the statute for one minute...

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where do we get it? We will just make a note
19 and then...

20

21 **AKASH BAJAJ:** Your Lordship, it's in Volume IV, page number 682. There are four
22 definitions which are important in this statute. The first is Excise Duty which is at page 692,
23 because it says, "Excise Duty as per Entry 51, List II."

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right. Excise Duty, 692. Then?

26

27 **AKASH BAJAJ:** Then, definition of liquor, which is also at page 692, bottom, Your Lordship.
28 I'll just read it out. It says, "Liquor means intoxicating liquor and includes spirits of Wine,
29 Spirit, *Tari, Panchai*, Beer and all liquids consisting of and containing of alcohol." So, there is
30 no question of moving beyond these beverages or taking assistant of Entry late. The other is
31 'excisable article' which is definition at page 696. Excisable Article, they specifically
32 mentioned, means, 'Any alcoholic liquor for human consumption.'

33

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

35

36 **AKASH BAJAJ:** And then Your Lordship, Section 13 read with Section 19 and 28 of the Act,
37 says that - 'Any transport or removal of these excisable article, that is to say, any alcoholic

1 liquor fit for human consumption, will be charged with a duty.' So, they in the legislative aspect
2 have only relied on Entry 51, which, as per every submission, is bought by Entry 84.

3

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

5

6 **TUSHAR MEHTA:** I was to answer, My Lord, that *Tika Ramji* issue, My Lord, if Your
7 Lordships recollect, so whether it is... My Lord, my submission is this, My Lord - *Tika Ramji*
8 essentially does three things - a) It compares the two Act which were in question in that
9 petition and says that there is no repugnancy in that matter, with which, we are not concerned.
10 Then second, which in my submission is an obiter, because that was not required to be decided
11 is - the term 'industry' in Entry 52, List I, is restricted only to manufacture, neither pre nor
12 post manufacture. And third, *Tika Ramji* does not even go into occupied field and says that
13 once there is no notified order, the scope is open for the State to step in and...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Does not go into it occupied...

16

17 **TUSHAR MEHTA:** Does not go into it and says that... but that is clearly an *obiter*. It was not
18 required to be decided. There is no discussion why one view over another view. So, it is an
19 obiter. My Lord, so far as second issue is concerned, regarding the restricted meaning given to
20 the term 'industry', there are some legislations in place as on date referable to Entry 52, List I.
21 So, they might be impacted. In future the Parliament may require, My Lord, in peculiar
22 circumstances, to control My Lord, right from raw material till the end products usage. I'm
23 not, My Lord, respectfully concerned with whether *Tika Ramji* is overruled or affirmed or
24 explained. That's entirely Your Lordship's prerogative, but kindly bear these factors in mind.
25 So, for as second is concerned, whichever way, Your Lordships, may, My Lord, accept our
26 submission that there was no legal or other necessity to restrict the meaning of the term
27 industry. It is wide meaning and if it is not so, then even Entry 24, List II also will be impacted,
28 because then State also will have only manufacturing part. So, I'm not My Lord, against it. I
29 am saying State also would be adversely affected. These are my submissions.

30

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

32

33 **DINESH DWIVEDI:** We have compiled the rejoinder submissions also for Your Lordships
34 convenience. It's a short ten pages only, 15 pages.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where will we find it, Mr. Dwivedi?

37

1 **DINESH DWIVEDI:** Volume I-M.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then we can scroll it, actually. Yes.

4

5 **DINESH DWIVEDI:** Law, as I have been taught, My Lord, and as I have learned over the
6 years, Your Lordships have hammered it in and that is My Lord, we are, a federal structure,
7 but the power of the State under List II, cannot be controlled or regulated by Parliament. That's
8 the concept of cooperative federalism. Federalism, My Lord, have churned out time and again
9 and I would refer to Lordship's judgment.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Would you like to read that out? We have that
12 para 1, para-A. Let's see how you have formulated?

13

14 **DINESH DWIVEDI:** No. I was responding to what was argued today.

15

16 **CHIEF JUSTICE D.Y. CHANDRACHUD:** Right at the end.

17

18 **DINESH DWIVEDI:** So, the question is, My Lord, what we are being told is that, in 1951
19 IDR contained industry and industrial alcohol and other things. In 56, it was modified to
20 include alcohol through via, under the heading fermentation. And then 16 again, it has been
21 changed. Now I ask myself, is the jurisdiction of the State going to confirm to the law laid down
22 by the Parliament or can Parliament by constantly modifying and amending its own Act law
23 dictate what is contained in the State List. Your Lordships, it very clearly States, State Lists,
24 reserved for the States and States have plenary power which power cannot be controlled by
25 Parliament or by Parliamentary Legislation. That is absolutely clear. But yet my friends say
26 that Entry 8 has to be guided by legislation of Parliament 1951 Act. Now I ask myself, Lord,
27 what is being argued, in fact, is that forget what the makers of Government of India Act 1935
28 had in mind when they incorporated Entry 31, which is the same, the same as Entry 8. What
29 they had in mind when they incorporated Entry 40, which is excise duty, same as Entry 51,
30 List II. My friends further say, forget what the framers of the Constitution saw in the
31 Government of India Act and these Entries and incorporated that verbatim in the same
32 manner as in the Government of India Act. My friends, further forget the fact that the
33 legislative history if these Government of India Act and My Lord, the Constitution Entries are
34 seen in the light of the legislative history. The legislative history contained both the things in
35 the same manner, as incorporated in the term intoxicating liquor in Entry 31 for the
36 Government of India Act. So, what we really have to see is, what did the makers of the
37 Government of India Act have in mind when they incorporated Entry 31 List II, that is

1 intoxicating liquor and all its facets. And not anything else, Parliamentary law can say
2 whatever it wants to, Parliament may include whatever it wants to, but we cannot on the
3 ground of Parliamentary supremacy justify this kind of encroachment on the State List. So,
4 therefore, what is absolutely essential is that before we go into the issue, whether intoxicating
5 liquor means what I am claiming, or what they are to call it means for their claiming. Before
6 that, we must be clear about the federal aspect that is embedded in our Constitution and the
7 best judgement in that regard, My Lord, the latest one, I would submit, Your Lordship's
8 judgement for **(2018) 8 SCC 501**. That is at Volume V PDF page1299. The relevant
9 paragraph, My Lord I have given my note at page one 18. The emphasis is quite clear and
10 unequivocal that the powers are plenary within their own list. They cannot be tempered by
11 Parliament.

12

13 **JUSTICE HRISHIKESH ROY:** You are supposed to give your rejoinder today, right? But
14 why this particular document is uploaded within the Court hours? We are having to stress our
15 hand and get away from the notes that we are taking with our hands. It should have been
16 incorporated before the recommence proceedings. To the technical issue and what we are
17 having to concentrate on the law is getting diverted. At least I am speaking for myself, I'm not
18 speaking for other members of the Bench.

19

20 **DINESH DWIVEDI:** I can understand that difficulty because since we are confining
21 ourselves to this technology part we can't obviously, there's no...

22

23 **JUSTICE HRISHIKESH ROY:** If it was done at 10:00 it would have been incorporated in
24 our devices.

25

26 **SAMAR VIJAY:** It was at 9:45, My Lords.

27 **JUSTICE HRISHIKESH ROY:** Why not at yesterday evening? Why not today at 06:00.
28 Don't try to give a justification 9:45. 9:45 we are getting dressed for Court.

29

30 **DINESH DWIVEDI:** Quite right.

31

32 **JUSTICE HRISHIKESH ROY:** 9:45, what do you do, if I may ask you, young man?

33

34 **SAMAR VIJAY:** My apologies, My Lord.

35

36 **JUSTICE HRISHIKESH ROY:** You are looking at your preparation of the Court or you are
37 getting dressed for the Court? I think we have the same routine.

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DINESH DWIVEDI: My extreme apologies, My Lord.

JUSTICE HRISHIKESH ROY: No, it is just that I am little disturbed, that's all.

CHIEF JUSTICE D. Y. CHANDRACHUD: Everybody.

DINESH DWIVEDI: It's inconvenient and difficult too, My Lord. I can understand. If I may lighten the entire Court, this was the evening whiskey which caused the problem. But my apologies. Your Lordships may.... My extreme apologies.

JUSTICE B.V. NAGARATHNA: ... from you.

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

DINESH DWIVEDI: I was just to lighten the entire this thing.

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

DINESH DWIVEDI: My Lord, therefore what I was saying is what we have to look into is what does the Constitution provide? Not what does the law provide of Parliament. Parliament would always be encroaching. The nature of power is encroaching. Therefore, always try to encroach. Now, that is why I was referring to **2018, Volume 8, SCC 501**, paragraphs 94 to 120, 123 to 133, 466 to 468 and then, My Lord, that nine judges' judgment of **Jindal** in which Justice Chandrachud was there. **2017, Volume 2, SCC 1**. Volume 12. Paras 13 to 16. This is PDF page 678. PDF page 678, Volume V. Now, My Lords, if I may, since Your Lordships are... can I paste the A part of my...

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

DINESH DWIVEDI: The words notwithstanding Clause 2 and 3 and subject to in Article 246(3) are not unlimited. They are limited by the context that is the basic structure of the dual polity. Admittedly, both the Union and the State Legislatures are plenary in relation to their fields. Both derive equal powers of legislation only from the Constitution. The States share sovereignty with the Union and that they are legislative, then the percentage within their legislative fields, they are neither appendages nor satellites of the Union, but are its co-equal. This is precisely what Your Lordships have said in 2018, following large number of divisions

1 in the earlier.... Therefore, keeping in the context in view, we have to analyse the scope of the
2 aforesaid phrases. The issue of Parliamentary supremacy only, arises only in the event of a
3 conflict of Entries. Kindly note this My Lords. It arises only in the event of a [NO AUDIO]
4 conflict of Entries, not in the case of conflict of laws, which goes to 254 [NO AUDIO] conflict
5 of Entries and the three lists, and not in the case of conflict of laws that attracts question of
6 repugnancy or occupied field. Not only the Entries in the Union List, but all the legislative
7 Entries in the other lists are to be interpreted widely and liberally. While so interpreted,
8 conflicts or overlaps may arise, which are resolved as per the principles evolved in **Hoechst**
9 **Pharmaceuticals**. And I have for Your Lordships' convenience laid down certain
10 paragraphs which are relevant. In fact, this judgment My Lord, **Hoechst Pharmaceuticals**,
11 which is kind of an authority for this purpose, it in fact, says if there is a conflict between
12

13 **DINESH DWIVEDI:** ...the Entry in the List I and Entry in the List II, then the effort has to
14 be to reconcile the conflict harmoniously, and every effort should be made to reconcile
15 harmonies. It is only when no reconciliation under any circumstance is possible, then only
16 then, this Parliamentary supremacy kicks in. But then, for that purpose, they went to this
17 extent that if the Central List is a general list, that's what is considered in this, and if the State
18 list overlaps the Central list, then carve out the space for this State list, and then create
19 whatever normally could be given to the Centre, and appropriate space for the State. It's not
20 that we will wipe out the State Entry because there is a conflict. So, this kind of interpretation
21 has been followed by, Your Lordships, all throughout and I'll show it till about that 2002 **ITC**.
22 'The Parliamentary supremacy has held in the above case is limited and not absolute. It
23 operates only when there is an irreconcilable conflict of Entries. An irreconcilable conflict will
24 only emerge then all efforts at harmonious reconciliation fail. One of the foremost methods of
25 reconciliation has pointed out, is to cut down the Union Entry and carve out the reasonable
26 space for the State Entry.' That's what, My Lord, **Hoechst** says. So, we should not attribute,
27 My Lord, with all due respect, My Lord, we should not attribute everything to the concept of
28 Parliamentary supremacy. We should be hesitant in going to that because Your Lordships have
29 said that any interpretation that brittles down the power of the State should be avoided. And
30 this **Hoechst Pharma**, My Lord, I am informed was reaffirmed, innovative arbitration
31 matter. Now, bearing this in mind, My Lord, let us analyse what is the scope of Entry 8?
32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, if you have to then, going to the content of
34 Entry 8 as which says intoxicating liquor - According to you, 'Intoxicating liquor includes all
35 liquid which are alcoholic.' Therefore, it is not really something which is only for which is
36 potable of a human consumption. Can you just formulate why you are saying? Why their
37 interpretation...you're really...

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DINESH DWIVEDI: Yes. Exactly. [UNCLEAR]

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes. So, Mr. Dwivedi, just tell us one if you can summarize them in points, why intoxicating, as you say, means all liquids containing alcohol? These are the words you have used in a written submission.

DINESH DWIVEDI: Quite right.

CHIEF JUSTICE D. Y. CHANDRACHUD: So, let's just take it down step by step. Just give us the reason.

DINESH DWIVEDI: This was what was in the mind of the makers for the Government of India Act 1931.

CHIEF JUSTICE D. Y. CHANDRACHUD: All right. Just one second. 'This was how the makers of 1935 construed the phrase.' Now, when you say, "This is how the makers of the GOI Act 1935 construed the phrase", what is it? How do you support it?

DINESH DWIVEDI: Yes. Now, My Lord, when we see the Entry 31 in the Government of India Act 1935, then naturally, we'll have to find out from where did they get this?

CHIEF JUSTICE D. Y. CHANDRACHUD: What is the Entry? What is Entry 31, can you just say just...

DINESH DWIVEDI: Verbatim, the same as in Entry 8. It includes certain other items. It will be a right, with which we are not concerned. So, I was not wasting Your Lordships time. And when it came to Entry 41, and the other important thing is which...

CHIEF JUSTICE D. Y. CHANDRACHUD: What did it include, apart from opium? Sanskriti, is that somewhere in one of our compilations. So, I didn't have to again, hunt for them. Can you just tell which Volume, Mr. Tushar Mehta, Sansriti?

SANSRITI PATHAK: II-D, II-D.

CHIEF JUSTICE D. Y. CHANDRACHUD: Page 28?

1 **ARVIND DATAR:** In the... Yes. Government of India Act. I have got the Government of India
2 Act.

3
4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yeah, we have also got it now. Volume II-D,
5 page 28.

6
7 **ARVIND DATAR:** Your Lordships will stop at intoxicating liquor, from the word starting
8 with opium, other narcotic drugs but subject as respects opium to provision List I. And in
9 respect poisons and dangerous drug provisions. So, up to liquor is...

10
11 **DINESH DWIVEDI:** Intoxicating liquor that is to say.

12
13 **ARVIND DATAR:** Your Lordships now compares, right, from opium to the end, all the other
14 words are...

15
16 **DINESH DWIVEDI:** I would request Your Lordship just to ignore that. It is not relevant to
17 our purpose.

18
19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yeah.

20
21 **ARVIND DATAR:** Your Lordship wants the relevant text; I have got it.

22
23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yeah. That is to say, the production,
24 manufacturer, possession, transport and transport, purchase and sale of intoxicating liquor.
25 So, everything from opium up to the end is deleted. And narcotics drugs is deleted. Yes. All
26 right. We got it. Then?

27
28 **DINESH DWIVEDI:** Now the question is, what did they have in mind and where did they
29 get this from? There is Entry 41 also, the Government of India Act which is important, My
30 Lord. Entry 41 is the taxing Entry My Lord, excise duty which is verbatim in the same form as
31 it was in the Government of India Act, Entry 41. Entry 51, List II, of the Constitution is
32 verbatim the same, My Lord, so far as the relevant part is concerned. Verbatim the same as
33 Entry 40, under the Government of India Act.

34
35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 40, right?

36

1 **DINESH DWIVEDI:** Entry 40, Government of India Act 35. Now the question is these two
2 phrases were not new phrases. These two phrases were not, which had not dawned all of a
3 sudden, under the Government of India Act, these two phrases of well been understood and
4 utilized in various local Acts, Excise Acts. And that is where I'll say, kindly have my written
5 submission written submission, and I will refer to two, three pages only because that's a
6 keystone of my entire argument. Both Entry 31 and Entry 40 in the Government of India Act
7 were verbatim borrowed from the local acts. Now, My Lord, it is, if Your Lordships would
8 kindly come to my written submissions My Lord, Volume 1 A, page 8. Yes, I had referred
9 earlier also.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And according to them, according to you,
12 therefore, that this had meaning. It was not a meaning which was confined to.... It was not
13 confined only to potable liquor?

14

15 **DINESH DWIVEDI:** Yes. Initially these local acts used liquor, which included all kinds of
16 liquor, all liquids containing alcohol, including denatured. Then comes the Madhya Pradesh
17 Act at page 10. For convenience I have only quoted the definition clauses of those acts. Your
18 Lordships would have page 10. M.P. Excise Act, 'Excisable Article'.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, according to the meaning in the local acts
21 was...

22

23 **DINESH DWIVEDI:** Adopted.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right. Then what is the next point?

26

27 **DINESH DWIVEDI:** But, kindly just have a look at...

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We've got your point. That Entries 31 and 40
30 were borrowed from the local Acts, and therefore, they must have the same meaning as in
31 those local Acts. It includes...

32

33 **DINESH DWIVEDI:** What I wish to point out here is My Lord, permit my little insistence
34 on this.

35

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

37

1 **DINESH DWIVEDI:** What Entry 50.... 40, List I ... or II, sorry. The Government of India
2 Act follows the definition of 'Excisable Article' which says alcoholic liquor for human
3 consumption. Excisable obviously means tax. So, it uses that phrase. But when it comes to
4 liquor, which is Section 2 of the Act, it means intoxicating liquor and includes spirit, wine,
5 spirit, *tari* and all liquids consisting of or containing alcohol. Spirit is defined to mean all
6 liquids containing alcohol. Now, what is interesting here is, none of these acts, none of these
7 acts, when it comes to regulatory power, dissect between the industrial alcohol, the denatured
8 spirit or the rectified spirit and the potable alcohol. They don't. None of the acts. And these
9 acts were of vintage '15, 1915, 1908, 1910, 1912. The only dissection which these acts had, was
10 in respect of excise duty, where it was said alcoholic liquor for human consumption would go
11 there. And of course, the dominion wanted its share of the pound of flesh. Therefore, they said,
12 we'll have the industrial or the non-potable excise duty. The Constitution has verbatim
13 borrowed and adopted the same system. Now I ask myself, for Excisable Article for the
14 purposes of levy of Excise Duty, the phrase used is alcoholic liquor for human consumption
15 separately. There's a dissection. Rectified spirit and denatured spirit may not fall there, but for
16 human consumption, therefore potable. But if the idea was to have the same meaning here of
17 liquor and intoxicating liquor, why would they not put the same word here? But instead of
18 that, all the acts unanimously did not dissect for regulatory excise of power, My Lord, the
19 liquors. In fact, if Your Lordships would see Section 2(13) of the liquor and all the acts, it says
20 all liquids containing alcohol, which means alcoholic liquor. So, alcoholic liquor was in the
21 regulatory regime while the alcoholic liquor for human consumption was for taxing regime.
22 That was the dissection created by the local acts, followed by the Government of India Act.
23 And why do I say please adopt this legal sense because, Your Lordships have in **Gannon**
24 **Dunkerley**, Your Lordships were confronted with this similar issue exactly, taxes on sale of
25 goods. That was the word used in the Government of India Act. Your Lordships went into the
26 history, how did this term, taxes on sale of goods come. And then Your Lordships said that
27 they must see the legal history of the term. How was it used in England, as well as, in India
28 and then they hit upon this Sale of Goods Act 1930, which was close proximity to the
29 Government of India Act. And they said that definition must have prevailed, because that was
30 the legal sense prevailing at the time when the makers of Government of India Act applied
31 their mind. It's not that everywhere we adopt this theory of popular sense or any other sense.
32 Question is **Gannon Dunkerley** Constitution Bench clearly says, if there is a choice between
33 popular sense or the legal sense, then we will adopt the legal sense born out of history...
34 legislative history.

35

36 **DINESH DWIVEDI:** This is, My Lord, 1959. If Your Lordships would see that **Gannon**
37 **Dunkerley** is [1959] Volume 1 SCR 379. It is Volume V(b). In fact, they discarded the Popular

1 sense and said...no sense in which it was understood by the Makers. And what was that sense?
2 Legislative History. Sale of goods. Now I ask myself, what is the difference between that case
3 and this case? Why should that principle not be adopted here? The question to be, as I said,
4 note, I repeat again - The question to be asked is not what the Maker saw and thought, but the
5 question to be asked is what the Makers of the Government of India Act that the British
6 Parliament saw and what are the legal sense prevailing in which they saw the term?

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Omar, you cited Justice Chagla's *Balsara*
9 judgement. Can you just give us that cross reference once again?

10

11 **OMAR AHMAD:** 429, Volume V(F).

12

13 **DINESH DWIVEDI:** That [UNCLEAR] is again based on strong and...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Can we go to that, Mr. Dwivedi? Because that's
16 the con. We have, *Balsara* which reverses Chief Justice Chagla's interpretation.

17

18 **DINESH DWIVEDI:** *Balsara* is the only case which deals with the legislative history. No
19 other case.

20

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

22

23 **DINESH DWIVEDI:** Even *Synthetics* doesn't deal with legislative history. Silent on that.
24 *Balsara* is the only case which had adopted, in my opinion, the right approach as indicated
25 in *Gannon Dunkerley*, though it did not notice that judgement. But were between the same
26 situation. So, the choice before Your Lordship is to whether to rely on the legislative history
27 and the legal sense which prevailed at that time, or to adopt some kind of a Popular sense
28 which may keep on fluctuating and so will the Entry. And that is the difficulty, I sincerely wish
29 to point out. My friend says, "In 51 IDR included Power alcohol and Industrial alcohol. Then
30 in '56, they changed it to alcohol, which means including even potable alcohol. Then in '16,
31 they again changed it." And then my friends say, "Please rely upon the Law Commission
32 Report and the Legislative debates of Parliament." How can they possibly not solve the riddle,
33 I ask myself, before Your Lordship? The issue is the interpretation of a Constitutional Entry,
34 and Entry 8 does not conflict with any Central Entry in the Central list. So, there's no issue of
35 conflict. And if my submission is correct, that Entry 8 includes, as I am advocating, then
36 perhaps 'where is the conflict?', I ask myself. 'Where is the occasion to attract Article 246 for
37 Federal supremacy. Federal supremacy certainly cannot mean that we can snatch every Entry

1 from the State List, because fact is, My Lord, if Your Lordships would recall 369, Article 369
2 clearly enabled Parliament to legislate on any State Entry for a period of five years. Therefore,
3 virtually every Entry was within the sway of Parliament. But 369 was given a limited life of five
4 years and expired. But should we still continue to adopt that? My Lord, there would be another
5 confusion, which I may indicate if Your Lordship would not adopt my interpretations to this
6 word intoxicating liquor. Intoxicating liquor contained all liquids consisting of alcohol and
7 therefore, under the excise Act, they were being regulated. Even medicinal and toilet
8 preparations were being regulated there as liquid containing alcohol. The non-potable liquor
9 was also being regulated under the excise acts, local acts. Now, I ask myself, if we limit the
10 definition of intoxicating liquor to potable alcohol, then there is no Entry in any of the lists,
11 which provides that regulatory power will be exercised by any of the State or the Centre in
12 respect of alcoholic liquor, not for human consumption. Where will that go? I ask myself.
13 Likewise, medicinal toilet preparations containing alcohol, where would they go? I ask myself.
14 And the answer has been provided. The **Indian Mica & Micanite** Constitution Bench of '71
15 says, rectified spirit and industrial alcohol, which is raw material to micanite industry would
16 be covered here in Entry 8. And Your Lordships would recall Lordship has seen that
17 **Southern Pharmaceuticals** where medicinal toilet preparations containing alcohol were
18 included in Entry 8. My Lord, the whole situation is we have been following the legislative
19 design created in the local acts, so far as alcohol is concerned. That has been followed all
20 throughout the Government of India Act and from there we have adopted it in the Constitution
21 of India. Now we are saying segregate because the IDR says so. IDR wants, Parliament wants.
22 maybe so. That is the desire of the Parliament. Every power structure wants more power. As
23 the saying goes, My Lord, as the popular saying goes, '*yeh dil maange more*'. But question
24 here is, can we curtail the scope of that Entry. That's the point My Lord, which I was
25 emphasizing on, and we cannot, unless there is a very cogent reason to show otherwise, mainly
26 because industries included in IDR. Now, some of the arguments were that industry if
27 intoxicating liquor. Let's test it another way. Some of the arguments raised were that the
28 intoxicating liquor being portable liquor will fall under Entry 8, but the non-potable liquor will
29 go to word industry in Entry 24 because if it doesn't go there, it can't go to Entry 52. Now, My
30 Lord, I ask myself, My Lord, if the framer looking into the background adopting the skill of
31 Government of India Act and the local Act, why would they put alcohol not for human
32 consumption in the word industry in Entry...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Dwivedi, the Constitution uses the word
35 intoxicating both in Article 47 and in Entry 8. So, if it is used the same expression in both these
36 then that expression 'intoxicating' has a different meaning in Article 47 and a different

1 meaning in Entry 8. It will. And I'll show if it is to have the same meaning when in Entry 8
2 also, it has to be intoxicating for the human being, isn't it?

3

4 **DINESH DWIVEDI:** I'll answer that. There's no difficulty in that. Intoxication word implies
5 the human factor, that it should be intoxicating to the humans. But does it mean that it should
6 be as a beverage causing intoxication to the humans? Or can it mean also liquor which is
7 capable of causing intoxication to the humans? The dictionary means says, intoxicating means
8 both the things that causes and is capable of causing intoxication.

9

10 **JUSTICE B.V. NAGARATHNA:** But what is capable of causing is not something which is
11 drunk normally. The beverage is a normal drink that is an abuse of...

12

13 **DINESH DWIVEDI:** My Lord, that that may not be... with due respects... that...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Chief Justice Chagla, my learned Brother,
16 Justice Hrishikesh Roy, just pointed out, in the opening paragraph makes a distinction
17 between the consumption of drink and foreign liquor and its application and he then refers to
18 also the fact that it can be used eau de cologne, and it's also accustomed to the use of eau de
19 cologne in lavender water. So, he made that distinction in the very first paragraph.

20

21 **DINESH DWIVEDI:** The important part is and I went through that judgment more than
22 once. Does it at all, I ask myself, refer to the legislative history, the Government of India Act
23 because that was an Act made under Government of India Act.

24

25 **JUSTICE HRISHIKESH ROY:** We may just benefit by reading the first sentence of Chagla
26 judgement.

27

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

29

30 **JUSTICE HRISHIKESH ROY:** Let us read that first sentence. It's at Volume V-F, 429.

31

32 **JUSTICE B.V. NAGARATHNA:** One is to drink; the other is to use.

33

34 **DINESH DWIVEDI:** The first paragraph Lordships refer to. This is a petition by one F. N.
35 Balsara, who is a citizen of India, has in his possession, one bottle of whiskey, one bottle of
36 brandy, both partly used. One bottle of wine, two bottles of beer, one bottle of medicated wine,
37 one bottle of eau de cologne.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Good old Balsara, didn't realize at that time, they would be still living in the annals of our history... Partly used...

DINESH DWIVEDI: It's really intoxicating.

JUSTICE HRISHIKESH ROY: No, then the sentence should be finished.

DINESH DWIVEDI: And some bottles of medicinal preparations. He alleges that he has...

JUSTICE B.V. NAGARATHNA: Before that medicated wine.

JUSTICE ABHAY S. OKA: Immediately after that

JUSTICE HRISHIKESH ROY: Medicated wine, then rest of it, please read. One bottle of medicated wine...

DINESH DWIVEDI: One bottle of medicated wine, one bottle of eau de cologne, one bottle of lavender water and some bottles of medicinal preparations.

JUSTICE HRISHIKESH ROY: We have an entire picture of Mr. Balsara captured by Justice Chagla in that one sentence.

DINESH DWIVEDI: Now, My Lord, kindly notice that this is in the context of the Bombay Prohibition Act, not the Bombay Excise Act. I have placed because it's just not the Bombay Excise Act but the definition of liquor includes everything. But beside the point, My Lord, since Lordships were...

JUSTICE B.V. NAGARATHNA: Next sentence also what he drinks and what he uses...

JUSTICE HRISHIKESH ROY: That's important.

JUSTICE B.V. NAGARATHNA: Yes.

DINESH DWIVEDI: That was the case confined to what was caught with him, under the prohibition law.

1 **DINESH DWIVEDI:** And therefore, what he was trying to explain was in terms of what was
2 caught with him. Those were drinks. There's no difficulty. But the point is, does it necessarily
3 mean that whatever he had will confine the jurisdiction of State under Entry 8? Lord, I am on
4 an issue where the Legislative Entry of State which Your Lordships had said is 'primary for the
5 State', would it be confined to these drinks only? As the Legislative history shows, from Local
6 acts to Government of India Act and then the Constitution - it does not. The question here is
7 perhaps it seems affected by the word, 'intoxicating drinks' coming in Article 47. But kindly
8 notice last two lines very carefully - 'The State shall endeavour to bring about prohibition of
9 consumption, except for medicinal purpose.' That means prohibition of consumption, except
10 for medicinal purposes of intoxicating drinks. In other words, medicinal purposes would
11 always be their liquid. State can control. But it will not prohibit. Kindly notice the distinction.
12 My Lord, prohibition is for drinks which are consumed as it is - beverage. So, what 47 is
13 advocating is that - 'You prohibit the consumption, because the idea was prohibition. But you
14 will not prohibit medicine purposes. State will not prohibit medicinal purposes, though it may
15 regulate that.' 'Of intoxicating drinks...' Now, word is 'intoxicating drinks', which normally one
16 can associate with the consumption as it is - the beverage. 'But if the idea of Entry 8 was the
17 same, then why not use the word 'intoxicating drinks' there?', I ask myself. 'Why have different
18 words for the same thing?' At every place, My Lord, Entry 8... then for perhaps, My Lord, 47...
19 Then perhaps, My Lord, in Entry 40...51, List II. 'Why do they...', again, here's another answer
20 to it - 'Why do Framers use the phrase - Alcoholic liquor for human consumption - in Entry 51
21 List II. 'If it meant beverage, as in Entry 8, then the same thing could have been used here', I
22 ask myself, 'Why?' My lord, the question immediately crops up, My Lord. 'Why use two
23 entirely different phrases to denote the same thing?' It was very convenient. They could have
24 used it - 'Intoxicating liquor meant always the liquor which can be had as it is and consumed.'
25 Then the same could have been used in Entry 51, List II. So, 51 List II doesn't use that term.
26 But instead, it uses the term that was there in the Excise Act. It follows that. When the Excise
27 Act, distinguished and dissected between the Liquor that is potable, goes to the Excise duty
28 and non- potable goes to the Regulatory. Again, I would be kind of repeating myself -
29 'Intoxicating liquor borrowed from the Excise Act. Alcoholic liquor for human consumption
30 for Entry 51, List II, borrowed from the Excise Act.' Then why should we confine the meaning
31 of intoxicating liquor? It has been borrowed from the Excise Act. My Lord, word 'intoxicating'
32 has to be understood widely. Your Lordships have always said, "Interpretation of an Entry is
33 always wide." So let us interpret it widely. Would it not include both liquor which, when had
34 as it is as a drink, causing intoxication or liquor capable of causing intoxication to the humans?
35 For instance, 'rectified spirited' as I explained earlier, the 'rectified spirit' is nothing but
36 alcohol, which is diluted by pouring water into it and then drinking. As I had given an example,

1 My Lord. Even normal whiskeys, normal people have it with soda or water, but then it doesn't
2 cease to be intoxicating when it is in bottle.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, what is a proposition? What is the
5 proposition that you formulate?

6

7 **DINESH DWIVEDI:** The proposition is this My Lord, that the word intoxicating liquor has
8 to be interpreted in the light of the legislative history, that is the legal sense. And therefore,
9 will include all alcoholic liquors containing alcohol. This is because *Gannon Dunkerely*
10 says, so, My Lord, I submit with respect. This judgment of *Gannon Dunkerely* which I
11 wanted to place on the earlier occasion... I'm sorry. *Gannon Dunkerely* case kindly have
12 that judgment, but I will not place it for Your Lordship. I have at page four, of my written
13 submissions. I have referred to it **(1959), Volume 1 SCR 379**. It's in Volume V B, B for
14 Bombay. I'm sorry the term comes, Bombay comes. Page 486 PDF page [UNCLEAR] are My
15 Lord, 59 one SCR 379 [UNCLEAR] 390,391, 397 to 416 and it's a classic case where they
16 considered whether they should accept a popular opinion or the legal sense and they said, no,
17 we should adopt the legal sense. And that is why My Lord, *Gannon Dunkerely* adopted that
18 legal sense. I referred to large number of decisions. My Lord, that gives an element of certainty,
19 otherwise it'll keep on vacillating. Secondly, My Lord, another important aspect of this
20 argument is Entry 51, List II is a taxing Entry. Your Lordships have settled it more than once
21 that taxing Entries are separate, the general regulatory Entries are separate, and they do not
22 cast any kind of shadow on each other. Now, here is the case where we are being told to
23 interpret the regulatory Entry in the light of the taxing Entry. Should that be done, is the
24 question. Your Lordship would permit me to place this server I have elaborated these five, six
25 points, which are essential and that will conclude the matter earlier.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, let's quickly...

28

29 **DINESH DWIVEDI:** Page 3. It begins My Lord. This is a PDF page 4. It begins.

30

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

32

33 **DINESH DWIVEDI:** The scope and expanse of the word intoxicating liquor, in short, My
34 Lord, 'IL', have already been explained in my written submission at pages 2 to 20, under the
35 heading A-1 to A-7. There is a need to analyse this phrase in light of the legislative history, as
36 explained above. Have Your Lordships got it, My Lord? The question to be asked is not how
37 the framers understood it, that is, its legal sense. But as to how makers of the Government of

1 India Act 35 saw it. When they coined this phrase, 'IL', the legislative history as in US or UK
2 and the local excise laws, and had already determined the meaning of intoxicating liquor as
3 including all liquids containing alcohol, including denatured spirit, medicinal toilet
4 preparations containing alcohol, etc. With this background, the makers of the Government of
5 India Act, utilize the phrase intoxicating liquor in Entry 31.

6

7 They further use the phrase alcoholic liquor for human consumption, not the word is not fit
8 for, but for, in Entry 40, List II. It is therefore reasonable to assume that they utilize both
9 intoxicating liquor and alcoholic liquors for human consumption in the same sense in which
10 they had depicted in the local laws as shown in pages 8 to 12 of the written submission. If the
11 intent was otherwise, then the framers and the makers of '35 Act would have simply used the
12 same phraseology in Entry 8, List II as in Entry 40, List II of the Government of India Act '35
13 or Entry 51, List II of the Constitution.

14

15 The two Entries use different words and therefore have to be separately seen as in the light of
16 the legislative history. The sense that emerges from legislative history is the primary sense as
17 can be gathered from the following cases, I have referred that. There is no parallel legislative
18 history in any of the list that may confer regulatory or controlling power in relation to alcoholic
19 liquors not for human consumption, medicinal toilet preparations containing alcohol. The
20 absence of any general regulatory power as above in any of the lists, further corroborates that
21 they were assumed to be under intoxicating liquor in Entry 8, List II. This again, as per the
22 local acts. That the local laws clearly defined and equated intoxicating liquid with all spirits,
23 all liquids containing alcohol, including denatured spirit. The denatured spirit was a spirit
24 being included in intoxicating liquor. This also in a way explains why word alcoholic liquor for
25 human consumption not used in Entry 8, List II. There is no liquor that does not cause
26 intoxication, even denatured spirit causes intoxication. It has been denatured to prevent
27 people from consuming it. What happens is when you denature it, as per the local excise laws,
28 a denaturant is put, that makes it nauseous. Therefore, you don't have it. But it's not that the
29 alcohol content goes. Alcohol content is there. There is a renaturation process. You can
30 renature and then have.

31

32 Therefore, to cut down regulatory Entry 8 with the aid of taxing Entry 51 is to by equating the
33 two, would not be very costly. Entry 8 is an Entry that uses general words and therefore, has
34 to be interpreted widely. It is not made subject to any Entry, unlike Entry 24, 26, 27. Therefore,
35 to make it subject to Entry 52, would be impermissible. The dictionary meaning of the word
36 'intoxicating' includes both the liquor that causes intoxication and the liquor that is capable of
37 causing intoxication. And next... one of the meanings... It is further not permissible to

1 determine the scope of Entry 8, List II, in the light of Parliamentary laws enacted post
2 Constitution and Entry 52, List I. This is amply settled by the above Constitution Benches.
3 Otherwise, there would be grave risk of making the State appendages of the Union destroying
4 the delicately balanced federal structure. The above shows why intoxicating liquor in Entry 8
5 is wider and different from the phrase used in Entry 51, List II. It cannot be cut down by Entry
6 51, taxing Entry. Following points need to be analysed, and this is a reiteration of the same,
7 which I have indicated above. Accepting Lord, if Your Lordship would have it from page 7, top
8 My Lord, the Constitution does not use industrial alcohol. This phrase is not a constitutional
9 phrase, it's not there anywhere in the Constitution, any of the Entries.

10

11 **DINESH DWIVEDI:** And there is no general Entry under any list stating 'industrial alcohol'.
12 If intoxicating liquor is potable liquor, it is clearly shown, while 'IA' is nowhere shown...
13 'Industrial alcohol' is nowhere shown... to be traced by the Courts through complicated logic.
14 There is no Entry for medicinal toilet preparations containing alcohol etc. The reason is these
15 were all included intoxicating liquor, always as Legislative history shows.' Now this is... there
16 are two cases which, My Lord, deal with the 'industrial alcohol', incorporating it in Entry 8.
17 **India Mica & Micanite**, paras are given, My Lord. Then in **(1980), Volume 2 SCC 441**,
18 paragraph 12, 15, 16, 17. Yeah. This is first **Synthetics**. The earlier [UNCLEAR]. Then I have
19 also already referred to that **Southern Pharmaceuticals** which includes medicinal toilet
20 preparations containing alcohol in Entry 8... expressly includes... that is **(1981), Volume 4**
21 **SCC 391. (1981), Volume 4 SCC 391**. This is PDF Page 1985. Then up to Page 8, My Lord,
22 I have given the reasons why intoxicating liquor would include all liquids containing alcohol.
23 Then comes the next point, My Lord - 'The scope of Entry 52, List I.' Now, it is quite uncanny
24 kind of a thing that this question of word 'industry' in Entry 52 is wide and expansive and
25 includes both, raw material and the end product. Of course, I've referred to the judgements
26 which have rejected this contention. But my friend relied upon the debates which he had
27 annexed with the written submission. But before that, there is one judgement which is so well
28 directed as well as well considered... where this point is well considered... is 1996 Allahabad
29 full Bench... 1996 Allahabad 135, full Bench. It's a full Bench judgement. This is Volume five,
30 PDF Page Volume V, PDF Page 2274. And kindly permit me to place this judgement, My Lord.
31 And kindly permit me to place this judgement plot and I'll place what my friend had placed in
32 support of his debate. In fact, that supports my cause rather than their case. In fact, the
33 debates prove that the **Tika Ramji** was correct. Volume V, PDF Page 2274. And the relevant
34 paragraphs, I may give to Your Lordships, Paragraph 7-9, 12-21... 32-39, 47-51, 53-64. All these
35 arguments were raised in the debate before the Drafting Committee, and the Drafting
36 Committee rejected the claim, that the end product regulation which is incorporated in 18-G
37 and then Entry 33 should be put in Entry 52 List I. That was explicitly argued, pressed and the

1 Drafting Committee rejected this submission and said, no, we'll put it in List III Entry 33. The
2 reason was they said that we need States cooperation in these matters. Cooperation where they
3 can, they know the local condition and they will accordingly devise their ways and means. That
4 is what Your Lordships refer to cooperative federalism. Entry 33 is about that only. It refers to
5 all that my friend had annexed. Would Your Lordships want me to place it forward? It's an
6 interesting reading to it. That's why I was.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just show us the relevant part which is one
9 para.

10

11 **DINESH DWIVEDI:** The relevant part, is not in one paragraph, that's the difficulty, it's in
12 various paragraphs, one after the other. But the relevant part of regarding the...

13

14 **JUSTICE HRISHIKESH ROY:** The question is formulated in para one. You may read that
15 and then you may read the conclusion. Justice Khari's judgement, whether by virtue of Section
16 18-G.

17

18 **DINESH DWIVEDI:** Whether by virtue of Section 18-G of the Industrial Development
19 Regulation Act '51, the State Legislature, State Legislature stood denuded of power to legislate
20 regulating supply, distribution and price of molasses a products of sugar industry and was
21 consequently incompetent to enact attention. This is a case where My Lord molasses, which is
22 byproduct of the sugar industry and therefore raw material for liquor industry. So, this was
23 industrial by-product, which is product of the sugar industry manufacture, which is a
24 controlled industry. Therefore, where will it go, that was the question, Entry 33 List III. And
25 then in at least five, six, maybe more, they have come to this conclusion, that the framers had
26 clearly rejected this ground, that the Entry 52 should be wide and it should include the end
27 product regulation as well as other things raw materials. They confined it clearly to production,
28 leaving it to Entry 33, where States could also exercise power cooperative. And this is where
29 they examined from para 16, paragraph 16. Again, the same logic, the legislative history has to
30 be looked into. It starts, actually, from paragraph 14, where the judges have utilized **Shivarao**
31 and narration of the debate and so on, so forth. Then it goes to 16 where they clearly hold that
32 the debate, the Drafting Committee rejected the claim of putting it in Entry 52, List I and then
33 Their Lordships go into the issue of how to examine the Entries in the light of the federal
34 structure features and then they deal with... surprisingly, every time this question was raised
35 by the eminent counsel Shri Shanti Bhushan, every time because he was generally, he was the
36 leading lawyer for the sugar industry, therefore, this question rose frequently, and he raised it
37 up to 2002, Your Lordships. The same argument, the uncanny part is, that the same argument

1 is raised time and again, relying upon the IDR Act for curtailing the expanse of State's power
2 under Entry 33, and the same argument is rejected time and again and I have narrated those
3 8-10 decisions where this argument has been rejected, at times with a reprimand. So, this
4 judgment My Lord, if read carefully, categorically rejects and disperses their contention that
5 industry word in the Entry 52, List I is very wide to include the end product as well as... Now
6 this judgment has been affirmed in **1998, 7 SCC, page 26**. In fact, My Lord, Your Lordships
7 need not take the trouble of writing it, I have indicated in paragraph, page 12, all those cases
8 where this has been approved. Page 12, kindly have and kindly see the times in which, number
9 of times it has been rejected and at times with the reprimand to the Counsel for raising this. It
10 starts from 56 SCR. That's the first case, goes on till 2002, not the other ones, but **2002, Vol**
11 **9 SCC**, this is *ITC* and interestingly, Shri Shanti Bhushan has been raising this argument from
12 1980 that is *Ishwari Khetan 1980, 4 SCC*. Every time it was rejected. Now again, the same
13 argument is being raised on the basis of so, very same, debate which has been repeatedly
14 rejected.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What else Mr. Dwivedi? What else remains?

17

18 **DINESH DWIVEDI:** Yes. Now, question is, this is not only approved in *SIEL Shri Ram*
19 *Industrial Syndicate*. But this is approved in *Belsund*, the Constitution Bench. This is
20 again approved in *ITC*, this judgment in *ITC*, which is 2002. I have narrated in page 12; I
21 have shown that. I have given the paragraphs also. Then kindly come to page 10 of my
22 submission. Page 9, I have narrated those cases which have upheld.

23

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

25

26 **DINESH DWIVEDI:** Then, page 10, the important aspect is, which one of the things which
27 my friends are raising this document, this argument of a composite kind of law made, which
28 is code unto itself. Therefore, even if you don't legislate anything under the law...

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Forbearance.

31

32 **DINESH DWIVEDI:** The field is vacant. Because there is regulation by [UNCLEAR], what
33 you say. Now, two things which I wanted to point out. Kindly have Section 18-G.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We'll come back after lunch.

36

1 **ARVIND DATAR:** Apologies to Justice Roy in the first place, I have given a submission 1-O,
2 but I gave it this morning because all the submissions came on Tuesday afternoon. I was in
3 Calcutta yesterday, but I hand wrote everything, got it typed, so I won't refer to it, since it was
4 after 10:00.

5

6 **JUSTICE HRISHIKESH ROY:** It can fit in now.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It can be incorporated at lunch *naa*? You can
9 just give it to the Court.

10

11 **ARVIND DATAR:** I already gave it in morning but since Your Lordships said now.... In fact,
12 Your Lordships may make it as a part that all submissions must come 24 hours in advance. So,
13 then all of us... what happened was all the submissions...

14

15 **DINESH DWIVEDI:** My apologies, My Lord, for the inconvenience to Your Lordships.

16

17 **JUSTICE HRISHIKESH ROY:** No, not to you. But I think Samar Vijay, right? Samar Vijay,
18 actually, I should not have spoken in that fashion. So firstly... my regret that these kinds of
19 words came out. But let me just put this thing... You see, when it is all paper code, whenever
20 arguments also, we are making notes with our, pen, ink, pencil, whatever, right? Now, your...
21 this 09:45 thing has deprived me of this. That is the thing, right? So don't take it, this thing.
22 But it's just a matter of convenience only that's what we...

23

24 **ARVIND DATAR:** My Lord, in 1-O, I have just attempted to answer those six questions
25 referred by *Lalta Prasad*. Ironically, Entry 8 was never referred to, but we have argued most
26 of Entry 8.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Dwivedi, in another 15 minutes so that
29 then we can hear Mr. Datar for about...

30

31 **ARVIND DATAR:** I'll take...I am not going to...just rapid fire. Just 25-30 minutes... just
32 three points I am going to make.

33

34 **TUSHAR MEHTA:** My Lord, what I intend, subject to Your Lordships' approval, you noted
35 their submissions. I can't argue. There can't be a [UNCLEAR] Their new fresh argument on
36 one side, and our response on the right side will file by tomorrow, or day after.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We will keep it at that Mr. Solicitor. They will
2 also respond to that. Mr. Dwivedi till 2:15, then 2:15 to 2:45 Mr... We will wrap by...

3

4 **COUNSEL:** Would, My Lord, be sitting in alternate Bench?

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This way it never ends. We'll see after Mr
7 Dwivedi ends. First let Mr. Datar start at 2:15...2:45. Then we'll see how much time we have.

8

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

10

11 **DINESH DWIVEDI:** Grateful. My Lord, I was at page 10, last line... of my submission.
12 There's only three more pages and then I conclude. D, My Lord, at the bottom, after 1996. I
13 have given the issues settled in that case. 1996 [UNCLEAR] I've already referred to and this is
14 as I indicated, approved in *SIEL's Case '98, SC*. Then *Belsund* also, '99 and *ITC*, which I
15 have given in the page 12. My Lord, kindly come to paragraph d... Item d, page 10 at the bottom
16 of my written submissions which My Lordships are seeing. 'Scope of inconsistency or
17 conflict...', which was very seriously addressed by my friend, '...doesn't require that the field
18 ought to be actually occupied...', because according to my friend's argument there's a code by
19 itself laid down, IDR Act and therefore, this concept of code *vis-a-vis* IDR has never been
20 accepted. Because fact is the Entry 52 is very limited, doesn't cover the raw material nor the
21 end product. So therefore, IDR by itself regulates production as per the Constitution. Now,
22 you may not infiltrate onto other topics incidentally and otherwise to sustain the law, but then
23 actually the term 'industry' denotes and which Your Lordships have seen, host of cases. The
24 claim of the Union is that Parliament has evinced an intent to cover the whole field. And
25 therefore, even if no order is issued under Section 18-G, it makes no difference. It is the
26 occupation of field by abstinence or forbearance. For this, they have relied upon the cases,
27 following two cases, relating to mines and minerals. My Lords, curiously, as I said, now, this
28 is quite uncanny there. Every time when this question is raised about the expanse of Entry 52
29 to cover both the raw material and the production, then they invariably go on to the Mines and
30 Mineral cases and Lordships would see right from '56 onwards till date, there has been quite
31 a distinction drawn between the two categories. 52, List I and 54, List I. 54, List I relates to
32 Entry 23, List II and 52, List I relates to Entry 24, List II. Now Entry 23, as I had indicated, if
33 Your Lordships would kindly come to this '96 and these are the two cases which are invariably
34 referred to. Invariably. This is what is explained here and approved by Your Lordships in
35 Supreme Court. It is PDF Volume V. PDF Volume V, PDF page 2274. Relevant paragraphs of
36 paragraph 54 to 57, 69 to 72 of the PDF. And again, those two cases are referred and then
37 kindly have paragraphs... kindly have 71, that is PDF page 2294. I'll place only these two

1 paragraphs slightly, then move on. 'The cases referred to above relate to grant of leases.' Your
2 Lordships have got? 'Imposition of cess and royalty in collection of fees in respect of mineral
3 rights and mineral mines and Mineral Development Regulations Act. No doubt, these cases,
4 at first sight, support the contention of learned Counsel from the Petitioner...'

5

6 **JUSTICE HRISHIKESH ROY:** Mr. Dwivedi, which para you are reading?

7

8 **JUSTICE B.V. NAGARATHNA:** 229...

9

10 **DINESH DWIVEDI:** May I, proceed? 'No doubt these...' I'm sorry.

11

12 **JUSTICE B.V. NAGARATHNA:** *Shriram Industrial?*

13

14 **DINESH DWIVEDI:** *Shriram Industry.* That's correct.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's 74... 229...

17

18 **DINESH DWIVEDI:** May I proceed? 'No doubt these cases at first sight support the
19 contention on learned Counsel for the Petitioners, but on scrutiny of the relevant entries of the
20 Schedule VII show that the cases relied upon by the learned Counsel for the Petitioner are of
21 no assistance for the proposition of law advanced by them. The cases referred to above relate
22 to Entry 54 of List I and Entry 23 of List II of the Seventh Schedule, the perusal of Entry 23
23 and 24 would show that Entry 23 of List II is entirely different in its content than Entry 24 of
24 List II. Entry 23 of List II deals with the regulations of mines and minerals subject to the
25 provisions of List I with respect to regulation and development under the control of the Union,
26 whereas Entry 24 of List II relates to industry subject to Entry 7 and 52 of List I. On
27 comparison, it will be found that the Entry 23 of List II deals with mines and minerals, which
28 is industry as well as product, whereas Entry 24 deals with industry only and not with the
29 products of the industry. Since Entry 23 is subject to the provisions of List I and as such, as
30 and when the Parliament enacts any law under Entry 54 of List I for regulation of mines and
31 mineral development, the contents of Entry 23 relating to mines and minerals shifts to Entry
32 54 and thus, the State Legislature is denuded of its power to enact any law on the subject.'
33 That's the case because there the entry is wider. Now My Lord, kindly bear in mind, there was
34 an observation in the *Hingir-Rampur* case and *Tulloch's* case that even if law is not made,
35 rule is not made or regulation is not made, field will still be occupied because of the Composite
36 Act. The reason is this My Lord, because nothing is left for the State. The entire Entry goes to
37 the Centre. Once a declaration is made under Entry 54, both mines and the product both go to

1 the Centre. What is the State going to legislate on? They are totally denuded and therefore,
2 whether they make the rules or not, regulations or not under the law, it makes no difference,
3 because there is no scope available in the State List. The list itself goes, I mean, the item itself
4 goes to the Centre. So therefore, this reliance on this theory of code by itself and therefore,
5 perhaps the Entry My Lord... the field is occupied and the legislation by abstinence, therefore,
6 will hold the field, it's not correct. This analogy with the mines and minerals cases is totally
7 incorrect. Secondly what is important is, if you see Section 18-G of the Act, the IDR Act... do
8 Your Lordships have it, or should I give the volume number? Lordships have. 'Power to
9 control'. My Lord kindly see what chapter says. 'Control of supply, distribution, price, et cetera
10 of certain articles. Power to control supply, distribution, price, et cetera of certain articles. 1)
11 The Central Government so far as it appears to it to be necessary or expedient for securing the
12 equitable distribution and availability at fair price or any article or class of articles related to
13 any scheduled industry, may subject, may not withstanding anything contained in any other
14 provision of this Act by notified order, provide for regulating the supply and distribution
15 thereof and trade and commerce therein.' My Lord on the same note I ask myself, My Lord it
16 says by a notified order you can provide for regulating of supply and distribution, trade and
17 commerce of the commodity, the product. Now the control has to be exercised through an
18 order which has to be for regulating. Now My Lord if I don't... if the Centre doesn't use this
19 power and keeps silent, or as my friend said, abstinence, does it mean that it wants to regulate
20 or it is regulating? This supply and distribution. It's a positive order which has, which is
21 incorporated, which is required here for purposes of regulation of industry.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But this Centre not regulating by a notified
24 order is also consistent with its having formed an opinion that it is not necessary for expedient
25 for securing the equitable distribution and availability at fair price. So, it's not just an issue of
26 forbearance. The Centre may feel that the conditions precedent are not satisfied and therefore,
27 we will not regulate.

28

29 **DINESH DWIVEDI:** Fair enough. But then....

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But then, can any other authority say that
32 'Look according to us, the conditions, requisites are satisfied.'

33

34 **DINESH DWIVEDI:** No, when the question arises of a conflict with the State jurisdiction
35 and the Central jurisdiction under Entry 33 then there must be much more than what the
36 Centre tries to indicate by abstinence. There has to be some indication, if the Centre wants to
37 regulate by law regulation, then it must pass an order and say so. But it does not mean that I

1 am not going to regulate and I would not allow others to regulate also. Your Lordship would
2 recall that statement of Justice.... Mr. Govind Ballabh Pant, the paragraph which my friend
3 had relied upon. While answering the queries what he said was, 'we believe in cooperative
4 federalism, and therefore, we want to leave space for the State because these are the matters
5 which are locally better understood and locally better managed. Therefore, we want to leave
6 it'. So, ... kindly have My Lords, 18-G, provides an explanation. Where will it lead to? In this
7 section... may I? Kindly have the explanation. 'In this section, the expression "article or class
8 of articles" relatable to any industry... scheduled industry includes any article or class of
9 articles imported into India which is of the same nature or description as the article or class of
10 articles manufactured or produced in the scheduled industry.' Now, here is a case where
11 imported article is taken in. That is not manufactured in India. Obviously, industry will not
12 take in. The word 'industry' cannot visualise such an article because it is not produced here.
13 The question is, you don't regulate, you don't allow States to regulate. For instance, take the
14 Clause 18-G, 2-A. 'For controlling the prices at which any such article or class of articles may
15 be bought or sold'. 'Controlling the prices'. now Your Lordship has seen under the
16 Constitution, price is Entry 34 in the List III. State can exercise the power, but by doing this
17 what you are doing is, by abstinence, what you are saying is that even State cannot fix the price
18 of the imported product as well as the local product. My Lord as I said, Entry 33 has to be read
19 in the sense of a cooperative federalism where some space should be left for the State as... I
20 placed that portion of, My Lord Shree Govind Ballabh Pant.

21
22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But if it is a declared industry under Entry 52,
23 the power to regulate prices will be traceable to Entry 33.

24
25 **DINESH DWIVEDI:** Entry 33... Entry 34.

26
27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 33.

28
29 **DINESH DWIVEDI:** No, it cannot because...

30
31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It says trade and commerce. Trade and
32 commerce will include all facets of trade and commerce. Entry 34 says price control.

33
34 **DINESH DWIVEDI:** So, which means My Lord...

35

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Price control is not abstracted or accepted
2 away from Entry 33. In respect of declared industry, all trade and commerce should be
3 governed by Entry 33.

4

5 **DINESH DWIVEDI:** I would not make...

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That will include the fixation of price.

8

9 **DINESH DWIVEDI:** There's no issue on that. You include it in Entry 33, you include it in
10 34, it doesn't matter because jurisdiction is the same for both. Both the Centre and the State
11 will have the jurisdiction. What I'm saying is the consequence would be that once you lay down
12 a law broadly and provide for making a regulation, don't make a regulation and say that...
13 Essential Commodities Act. My Lordships had the experience of where Essential Commodities
14 Act deals with food stuff. Now, foodstuff there they have this Section 3 which says Central
15 Government will make rules... they issue orders to regulate the supply and distribution and
16 price of the commodities. But supposing Centre doesn't make any rule, but would the State be
17 deprived?

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right, the Centre doesn't make it because it
20 believes that the conditions precedent under sub-Section (1) are not fulfilled. Then if we allow
21 the States to do it, that would really defeat the purpose of entrusting to the Centre the power
22 to make that condition precedent.

23

24 **DINESH DWIVEDI:** Yes...

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The determination on the condition precedent.

27

28 **DINESH DWIVEDI:** As I said when we read it, we should not read it from the point of view
29 of the Centre only. When we read the List III, then we have to keep in mind that what was
30 there in the mind of the Framers. Now, if I may place My Lord, just for the sake of argument,
31 can we notice that the written submission of... My Lord, kindly have page 14. Page 12 of the
32 written submission of the Solicitor, My Lord.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This is Volume II-D?

35

36 **DINESH DWIVEDI:** Volume II-D. D for Delhi. Starts at 14, page 14. I would answer this in
37 two ways. One is my angle of 'cooperative federalism', where the Framers themselves left the

1 space despite Entry 33-A. And the other answer to that would be, that this issue has been
2 settled at least in ten cases and has been consistently approved by Our Lordships that the
3 conflict has to be, in fact direct and in fact, in real terms and not in possibilities. Now, before
4 that My Lords, I'll place this Volume II-D, page 14 at the bottom. **Govind Ballabh Pant**,
5 PDF page 20. It is 20. It's of great importance what they have said and it is in the context of
6 33-A, List III. Sir, may I please? 'Sir, all the four amendments, so and so and so are
7 interconnected and interlinked and they must stand or fall together. According to the Bill,
8 development of industries where development under dominion control is declared by
9 dominion law to be expedient in the public interest. Regulation and control of such industries,
10 trade, commerce, whether or not within the province, in and production, supply and
11 distribution of products of such industries were to be included in List I, that is, all these
12 subjects were to be brought within the exclusive jurisdiction of the Federal Legislature and the
13 Federal Government. Now, that would have led to several other difficulties and complications.
14 We all realized that so far as the development of industries where development under the
15 dominion control is declared by dominion law to be expedient in public interest and regulation
16 in control, such industry should rest in the Centre. According to the entry already contained
17 in the Federal Legislative List, development of industries where development under dominion
18 control is declared by dominion law to be expedient in the public interest is already included
19 and there is no intention of making any change so far as that is concerned. But as proposed in
20 this amendment, regulation and control of such industries should also be placed under the
21 jurisdiction of the Federal Legislature. So far as, the first two parts of this clause are concerned,
22 they will stand as they are. But with respect to the rest, that is trade and commerce, whether
23 or not within a province, in and production, supply and distribution of products of such
24 industries, it is proposed by the series of amendments to which I referred at the outset that
25 these should be included in the Concurrent List and changes should be made in other
26 amendments.' Now, why is it that they said? Now this would have led to several other
27 difficulties and complications. We all realized that development of industry is essential, but
28 then both State and Centre should participate. Why should Centre say that we'll only deal with
29 it and rest you can't touch it? Otherwise, My Lord, the consequences... My Lord, kindly have
30 this again further, last line of this, last five, six lines. 'So, if these are made the exclusive charge
31 of the Centre, then the provinces will not be free to discharge the duties and obligations which
32 will necessarily devolve on them. In order to enable the provinces to play the part, subject to
33 the overriding powers that will now vest in the Centre, it is necessary to include these items in
34 the Concurrent List and that is what I propose. Even now, when we have got the Essential
35 Supplies Act, Centre generally frames a few basic rules and leaves the rest to the provinces.'
36 Then in the end, last four lines My Lord. 'They require a very extensive network, and I think it
37 is not possible for the Centre to manage these things without the active cooperation and

1 support of the provinces. So, I propose that the amendment to which I have referred to at the
2 outset be accepted unanimously'. And it was accepted. Importantly, if Your Lordships would
3 go back to my written submission, last paragraph, page 11, last paragraph. I'll read the middle
4 paragraph. 'What we have to see...', have Your Lordships got it? Page 11 of my written
5 submissions. Volume I-A. 'What we have to see is whether for inconsistency or repugnancy to
6 operate the field has to be actually occupied and not in the realm of possibilities. It is in this
7 respect, the theory accepted is that there has to be actual occupation of the field, for
8 inconsistency to occur. In other words, there has to be a regulatory order dealing with trade
9 and commerce, supply and distribution under Section 18-G, Article 254. The repugnancy to
10 occur, for Article 254 repugnancy to occur. To come to a conclusion of repugnancy, the field
11 occupied at both the laws has to be analysed.' Now, these are the cases which have approved
12 **Tika Ramji's** principle. My Lord, if I may submit with respect, not for the purposes of
13 repugnancy under 254 Your Lordships have never used this code unto itself argument,
14 covering the entire, and that I would show from the latest Constitution Bench, 2020. What
15 Your Lordships have accepted the principle that there has to be direct conflict in actual terms
16 and not in the realm of possibilities. This is what the latest Constitution Bench also says, 2020.
17 If I may give the reference My Lord, **(2020), Volume 9 SCC**. And I'll come to Your Lordships
18 judgment. What the judgment which was there in Your Lordship's mind 2012, which my friend
19 relied upon My Lord, that is wholly inapplicable. That was a case under Article 254 where the
20 issue was whether the law which has been made by Parliament, signed by the President,
21 assented by the President has not been enforced. Now, what is enforcement of law?
22 Conditional legislation, which is more of an administrative function. To make a regulation
23 under 18-G is not an administrative or executive function. You're creating a law. For instance,
24 My Lord, if executive function is so wide, then under Article 223, the power is vested in the
25 executive to make the ordinance, which is equal to that of law. But will we call that executive
26 function as per 162? It's not. These are the functions which are lawmaking functions ascribed
27 to the executive which is *qua* equal to the law. And Your Lordships have always said, 'law made
28 under... the delegated legislation made under the law is part of the law'. Now, I My Lord,
29 therefore, I would submit with respect, this consistent case of acceptance of this **Tika Ramji**
30 with regard to inconsistency, which my friend says is orbiter and was not needed, it's not
31 correct. That is an additional argument given. Your Lordships very often don't give more than
32 one reason for justifying. So, **Tika Ramji** has given one reason and then he said, let's assume
33 that to be correct and then see what is the position. And then it said that there has to be actual
34 conflict.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What else?

37

1 **DINESH DWIVEDI:** Now in *M.C Mehta v Union of India (Shriram Industries*
2 *Case)*, a very interesting situation arose. I mean, the molasses part. There the control order
3 was issued under Section 18-G but was not applied to State of UP and Bihar. Now therefore,
4 the Court said since it has not been applied, there is no actual controversy or conflict. Now,
5 should we now say that even though that has not been applied since there is 18-G therefore, it
6 covers the field. State cannot. The legislation was to not to apply the order under Section 18-
7 G. *M.C Mehta v Union of India (Shriram Industries Case)*. Now look at the, that's
8 why I'm pointing out various situations where Your Lordship will have to look into the
9 consequence of holding that there is a code by itself argument. An exception will be given to a
10 State in respect of an order under 18-G. Yet we'll say, 'No, it'll apply. State doesn't have the
11 power'. So, the aspect of total denudation which is there in Entry 54 is not there in Entry 52,
12 that's what I am advocating. And when it comes to repugnancy under Article 254, we do not
13 apply the principles of the conflict of entries. In case of conflict of entries, this may be the
14 situation when the entire field is occupied. Therefore, there's nothing left and Lordship has
15 seen the MMDR Act, the earlier Bench. How composite that Act is when everything has been
16 taken away by the Union. Nothing left for the State to do. Therefore, they say, you make a rule
17 or you don't make a rule, makes no difference. It is in that context. And then My Lord, kindly
18 see... as I said, My Lord there is a consistent line of authorities, at least 10 cases where they
19 have approved and now, at this stage, after 70 years, we are seeking reconsideration. In my
20 opinion, with all due respects My Lord, *Tika Ramji* is a case which is most well considered
21 judgment followed in other series and minor tinkering here and there shouldn't take away
22 from the value of that, import of that judgement My Lord.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Anything else now, Mr. Dwivedi?

25

26 **DINESH DWIVEDI:** I'm sorry, My Lord?

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Anything else?

29

30 **DINESH DWIVEDI:** Yes. It is accepting this one small, one minute My Lord. There is this
31 judgment, I wanted to distinguish this case, *(2012), Volume II SCC 773*. 'If the law was
32 held to be made as soon as it is passed by Parliament and assented to by the President.
33 Therefore, once the law is made, mainly because it has not been enforced, doesn't mean that
34 the field is not occupied'. That was the case which my friend relied upon. My friend would
35 pronounce the name better than me *Mar Appraem Kuri 2012 Volume IV*. But that is a
36 case where they interpreted Article 254 and found that the word uses 'law made or making of
37 law'. So, making of law, the procedure prescribed is passing of the bill and signing by the

1 President, the law is made. Once the law is made, the field is occupied. Enforcement is a mere
2 executive act. It makes no difference. But here it is different My Lord. 18-G is not an executive
3 act of conditional legislation. Enforcement is nothing but conditional legislation in executive
4 act. With respect My Lord, that case is therefore, totally distinguishable. Thanks. I'm greatly
5 obliged.

6

7 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr. Dwivedi.

8

9 **ARVIND DATAR:** My Lord, my friend has covered most of the points, so my role is limited.
10 First, let's get to Entry 8 of List II and my submission is, at the end of the day, Lordship has to
11 really decide whether the view taken by Justice Chagla is the better view or the view taken by
12 Justice Fazl Ali is the better view.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The two competing views of Mr. Chagala... In
15 a way Mr. Dwivedi was right that Chief Justice Chagla's view, obviously very weighty
16 expression of authority, but that does not look at the legislative history which Justice Fazl Ali
17 has done. We really have to still weigh in the legislative history.

18

19 **ARVIND DATAR:** I was about to say that V-F, the judgment starts at page 429 and the
20 operative portion of this is at page 439 and as Your Lordships say we are always hesitant to
21 say Justice Chagla is wrong but then I only say Your Lordship has not considered the legislative
22 history, and he has gone merely by the Common Parlance Test, that's my submission. Your
23 Lordships now comes to page 439. He was partly accepted, partly reversed and Lordships will
24 just come to page 439. I'll just point out the paragraph, I won't read it in detail. And my
25 submission is, apart from not considering legislative history or the use of the term in various
26 excise Acts, His Lordship's observation is contrary to the earlier paragraphs, Their Lordships
27 themselves said in the Bombay High Court. So, Your Lordships have to compare V-F, 439...

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But you know, the learned Solicitor, during the
30 cause of his submissions also dealt with the legislative history *per se*, particularly in that
31 Volume IV-B, where he has referred to the Preamble Act of Licensing Act of 1872 and his
32 argument was that it basically deals with drunkenness. But again, he relied upon **Hansar** and
33 the submission was that 'intoxicating liquor has always been understood, even in the
34 legislative history, as a beverage which has been sold for consumption for human beings and
35 there's an intoxicating effect.'

36

1 **ARVIND DATAR:** That's exactly what Justice Fazl Ali says. He says that, "Under the
2 Common Parlance Test, intoxicating liquor is something of an intoxicating drink, something
3 which is consumed by the human being."
4

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

7 **ARVIND DATAR:** So, the importance of Justice Fazal Ali's judgment is he noticed this
8 Common Parlance Test. And I think where we are in error is we are trying to interpret a
9 Constitutional Entry like a Tariff Entry in the Customs Act. We can't go by the Common
10 Parlance Test. If, as Mr. Dwivedi has rightly pointed out, the *Gannon Dunkerley* Test, if
11 there is an expression, whether sale or intoxicating liquor and that expression has not been
12 defined in the Constitution, then one must see how the existing legislation has taken it. And
13 then what, Justice Fazl Ali does is, he goes to the dictionary definition, he goes to the common
14 understanding and he says no doubt as per the common understanding, intoxicating liquor is
15 something which you consume. But if you go to the provinces; Bengal, Madras, Uttar Pradesh,
16 Punjab, all the provinces have taken intoxicating liquor to include denatured spirit also, that's
17 what his Lordships view is. And so, my first submission to save time is Justice Chagla's
18 observation at page 439 does not contain any discussion about the legislative history. His
19 Lordship says, intoxicating liquor is a hard drink as opposed to a soft drink. It means only a
20 beverage. Should I take Your Lordship to that page?
21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, it's the same paragraph. We've got Justice
23 Chagla also.
24

25 **ARVIND DATAR:** Sorry, Your Lordship is saying something My Lord?
26

27 **JUSTICE J.B. PARDIWALA:** We read it in the first...
28

29 **ARVIND DATAR:** Yes, yes, page 439. But if Your Lordship now sees Justice Fazl Ali's
30 analysis, and I would request Your Lordships to permit me to see that because at the end of
31 the day, My Lord, now Your Lordship is sitting in nine judges. In my humble submission there
32 is no need to reinvent the wheel and go back to square one. If Fazl Ali's view is acceptable, it
33 has stood the test of time till 1990, the Union of India said it's a correct view and I will show
34 that the distinction made in *Synthetics and Chemicals* is completely not correct. They
35 simply say, Fazl Ali and the Bench did not comprehend the possible uses of industrial alcohol.
36 That can't be a ground to say that your law is bad. So, My Lord I'll just first go to Fazl Ali's

1 judgment. Yes, Lordship will just come to Volume V at page 1725. My Lord, it will be PDF page.
2 Yes, My Lord.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** If you look at, for instance the... one of the key
5 Acts that *Balsara* relied upon was the Licensing Act of 1872.

6

7 **ARVIND DATAR:** Yes.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, if you just go to the compilation at
10 Volume IV-B. Just to sort of... IV-B...

11

12 **ARVIND DATAR:** IV-B, I'll go to.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Page 578.

15

16 **ARVIND DATAR:** Yes, I'll just go to it. IV-B 578. Just tracing it. Lordships must also see the
17 Spirits Act of 1880 and then the subsequent Excise Act, because Lordship has to see what was
18 the history after... up to 1919, there was no such thing. Then after that, only this problem came
19 up. Now, if Your Lordship kindly sees 578.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** 'For the sale by retail of intoxicating liquor and
22 the regulation of public houses and other places in which intoxicating liquors are sold and to
23 make further provision in respect to the grant of new license to the sale of intoxicating liquors,
24 and the better prevention of drunkenness.'

25

26 **ARVIND DATAR:** Yes. That comes to public. My Lord there's definitely a possible view to
27 say the intoxicating liquor means only beverages for human consumption.

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's right.

30

31 **ARVIND DATAR:** What I'm saying, that will drastically reduce the scope of intoxicating
32 liquors. And on a ground level, it'll be impossible to implement. I'm coming to that as a second
33 stage. My first submission is, please see the observations of Fazl Ali. Justice Fazal Ali, sorry.
34 Does it merit a reversal or an overruling? Kindly see his Lordship's discussion. Now kindly
35 come to Justice Fazl Ali's discussion. Please come to para 38 at page, PDF page 1731. My Lord,
36 para 38. The Bombay Prohibition Act, Volume V, page 1731, para 38. This extracts the
37 definition of liquor in the Bombay Prohibition Act. Now, please come to para 39. Your

1 Lordships come to para 39. Now the discussion starts, after extracting the definition which
2 says, liquor includes... Lordships will note includes spirits or wines, methylated spirits. Just to
3 pausing here, the UP definition says, it refers to spirit and spirit includes denatured spirit that
4 is in the UP Act. Now, kindly come to paragraph 39. 'The High Court has held that the word
5 "liquor" ordinarily means a strong drink as opposed to a soft drink, but it must in any event be
6 a beverage which is ordinarily drunk. Proceeding upon this view, the High Court has held that
7 although the legislature may, while legislating under Entry 31 prevent the consumption of non-
8 intoxicating beverages and prevent the use of drinks of alcoholic liquids which are not
9 normally consumed as drinks, it cannot prevent the legitimate use of alcoholic preparations
10 which are not beverages nor the use of medicine and toilet preparations containing alcohol.
11 This view of the High Court was very strongly supported on one hand, and equally challenged
12 on the other.' And I therefore, proceed to deal with the question at some length. Then My Lord
13 His Lordship takes paragraph 41. 40 is the Oxford Dictionary. Now come to paragraph 41 and
14 then I'll take Your Lordships to paragraph 44. Please come to 41. May I read My Lord? 'Now
15 thus, according to the dictionary, the word "liquor" may have a general meaning in the sense
16 of a liquid or it may have a special meaning, which is the third meaning assigned to it in the
17 extract quoted above, that is, a drink or beverage produced by fermentation or distillation. The
18 latter...'. Sorry. 'The latter is undoubtedly the popular and most widely accepted meaning and
19 the basic idea of beverage seems rather prominently to run through the main provisions of
20 various Acts of this country as well as America and England, relating to intoxicating liquor to
21 which our attention was drawn. But at the same time on a reference to these very Acts, it is
22 difficult to hold that they deal exclusively with beverages and are not applicable to certain
23 articles which are, strictly speaking, not beverages. A few instances may make the point clear.
24 In the National Prohibition Act of America, 1919, they quoted...'. My Lord, I'll just pause here.
25 Your Lordships will just make a note. Your Lordship have got the National Prohibition Act,
26 1919? In that page in the middle? Your Lordships have seen that? There just to pause, The
27 National Prohibition Act was interpreted by the US Supreme Court and I mentioned in my
28 first argument that they said 'intoxicating liquor includes denatured spirit'. That's what the US
29 Supreme Court held. Now, My Lord please come, please come to paragraph 42. 'The Licensing
30 Consolidated Act of England was an Act relating to licenses for sale of intoxicating liquor. The
31 definition of intoxicating liquor was as follows. Intoxicating, liquor means unless inconsistent
32 with the context; spirits, wine, beer, port, etc., etc., and any fermented distilled or spirituous
33 liquor which cannot, according to the in law for the time being enforced, be legally sold without
34 an excise license. The word "spirits", as defined in the Spirits Act of 1818 as meaning spirits of
35 any description and includes all liquors mixed with spirits and all mixtures, compounds,
36 prepared spirits. It was contended before us that the word "spirits" in the Spirits Act should
37 not be imported in the Act of 1910, but in our view, for the purpose of understanding the

1 definition of intoxicating liquors, the two Acts should be read together. I do not suggest that
2 the definition of liquor in the present Act was borrowed from those Acts. But I'm only trying
3 to show that the word "liquor" is capable of being used in a wide sense'. Your Lordships know
4 that the legislative entry give the widest interpretation. Now, 44 is the most critical and most
5 important paragraph. 'Coming now to the various definitions in the Indian Acts, I may refer
6 in the first instance to the Bombay Abkari Act of 1878, as amended by the subsequent Acts
7 where the definition is substantially the same as in the Act with which you are concerned. In
8 the Bengal Excise Act, liquor is said to mean liquid consisting or containing alcohol and
9 includes spirit or wine spirit, wine, *tari patchwai* beer and substance, which the provincial
10 government may declare to be liquor for the purpose of this Act. In several other provincial
11 Acts, for example, Punjab Excise Act, UP Excise Act, liquor is used as meaning intoxicating
12 liquor and as including all liquids consisting or containing alcohol. The definition of liquor in
13 the Madras Abkari Act of 1876 is the same as the Bombay Act of 1878. Even if we exclude the
14 English and American Acts from our consideration, we find that all provincial Acts of this
15 country have consistently include liquids containing alcohol in the definition of liquor and
16 intoxicating liquor. The Framers of the Government of India Act 1935 could not have been
17 entirely ignorant of the accepted sense with which... in which the word "liquor" has been used
18 in the various excise Acts of our country and accordingly, I consider the appropriate conclusion
19 to be that the word "liquor" not only includes those alcoholic liquids which are generally used
20 for beverage purposes and produce intoxication, but all liquids containing alcohol. It may be
21 that the better, that the latter meaning is not the meaning attributed to the word "liquor" in
22 common parlance...', which is what, exactly the Union is attributing. '...in common parlance,
23 especially when the word is prefixed by the qualifying "intoxicating". But in my opinion, having
24 regard to the numerous statutory definitions of the word, such a meaning could not have been
25 intended to be excluded from the scope of the term "intoxicating liquor" as used in Entry 31 of
26 List II.' Then, there is another method of approaching the question with due consideration.
27 Remembering that the object of the Prohibition Act was not merely to levy the excise duty...

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But also Mr. Datar, this... let's dwell on this
30 sentence, 'Even if we exclude the American and English Acts from our consideration, we find
31 that all the provincial Acts of this country have consistently included liquids containing alcohol
32 in the definition of liquor and intoxicating liquor.' If we adopt this test then the word
33 'intoxicating' has no relevance at all. It has no meaning at all.

34

35 **ARVIND DATAR:** No. Now I'll tell you why it is like that. Lordship will kindly see; we are
36 now testing how does the State...

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And then see what he says. 'Accordingly, I
2 consider the appropriate conclusion to be that the word "liquor" covers not only alcoholic
3 liquids, which are generally used for beverage purposes and produce intoxication, but also all
4 liquids containing alcohol.' So, liquor may really refer to all liquids containing alcohol. But
5 when the statutory language is, constitutional language is 'intoxicating liquor', then even they
6 liquor *per se* may include all liquids containing alcohol, the moment they prefix 'intoxicating'
7 is added, we can't render that prefix a surplusage.

8

9 **ARVIND DATAR:** Correct.

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 8 was liquor, that is to say, possible view.
12 But then you would ignore... But if you apply that test, then why do the Constitution say
13 'intoxicating liquor'? Liquor would be all liquor, all liquids containing alcohol...

14

15 **ARVIND DATAR:** Add adjective, intoxicating. Add the word 'intoxicating'.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Intoxicating.

18

19 **ARVIND DATAR:** So, there are two answers to that. First is Justice Faizal Ali's explanation
20 that 'if you go by the Common Parlance Test, then 'intoxicating liquor' means only liquor which
21 can be consumed by human beings.' That's the Common Parlance Test. But he says, 'I'm
22 interpreting a legislative Entry and the legislative practice in India in, British India has
23 consistently... because intoxicating liquor was there from the beginning, intoxicating liquor
24 has always included all kinds of liquor, intoxicating and other.' That's a legislative practice,
25 that's what. Mr. Dwivedi highlighted in ***Gannon Dunkerley's*** case. Intoxicating liquor has
26 not been defined in the Constitution. But intoxicating liquor has been defined in a number of
27 Excise Acts in the provinces. So, when the Framers of the Constitution made intoxicating
28 liquor in the Government of India Act of 1935 and in the Constitution, they were using
29 intoxicating liquors as a *nomen juris*. They were using it as a *nomen juris*, which meant this is
30 a wide term. It's a legislative Entry, it's not a tax tariff.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which means all liquids containing liquid... all
33 liquids containing alcohol.

34

35 **ARVIND DATAR:** Yes. Because it was a legislative practice. Every Excise Act, Bombay
36 Abkari Act, Madras Abkari Act, U.P., Bengal Province, all say that intoxicating liquor includes
37 everything because the definition of liquor includes spirit, and spirit will include denatured

1 spirit. So, if you take a combination, intoxicating liquor always included. That's what Your
2 Lordships this is the first reason. I'm giving the second reason. This is the first reason. 'It may
3 be that the latter meaning is not the meaning attributed to it in the common parlance,
4 especially when prefixed by the qualifying word "intoxicating".' Exactly what Your Lordships
5 are asking, why did they add intoxicating? 'But in my opinion, having regard to the numerous
6 statutory definitions of that word, such a meaning could not have been intended to be excluded
7 from the scope of the term 'intoxicating liquor'.' Intended by whom? By the Framers of the
8 Government of India Act and by the Constitution. So, my first submission is Justice Fazl Ali's
9 decision is supported by, because it is considered dictionary definition, legislative practice,
10 Common Parlance Test and on a comprehensive test of all these things, His Lordship says,
11 "Intoxicating liquor must include all." Now, I will tell Your Lordships why the second view will
12 become unworkable in practice. If Your Lordship take the view which the Union is advancing,
13 that intoxicating means beverages, ready to make drinks.

14

15 **JUSTICE HRISHIKESH ROY:** Mr. Datar.

16

17 **ARVIND DATAR:** Sorry.

18

19 **JUSTICE HRISHIKESH ROY:** See, you are trying to say that because in British India these
20 States, each had an Act to deal with this subject and they have taken liquor to contain alcohol,
21 irrespective of whether it is potable or not. Intoxicating element is not...

22

23 **ARVIND DATAR:** No, the word "intoxicating liquor" in all these Excise Acts included
24 everything.

25

26 **JUSTICE B.V. NAGARATHNA:** It will.

27

28 **ARVIND DATAR:** Yes.

29

30 **JUSTICE HRISHIKESH ROY:** And you are saying that this is because when you are
31 interpreting a constitutional provision, we can't sort of blindly say Common Parlance Test
32 would apply, right?

33

34 **ARVIND DATAR:** Yes, yes.

35

36 **JUSTICE HRISHIKESH ROY:** Now in the Entry, so far as Entry 8 is concerned and the
37 Constitutional Entry here, we are talking about intoxicating liquor.

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ARVIND DATAR: I will tell Your Lordships why. I will tell Your Lordships why.

JUSTICE HRISHIKESH ROY: Because the argument has to be tested that way.

ARVIND DATAR: My Lord the point is, the whole thing... correct. I appreciate. The whole thing is we are confusing with intoxicating liquor, intoxicating drinks and beverages. Now, this Entry, how does it operate? Lordship has to interpret an Entry keeping in mind the commercial realities distillery gets a liquor license. Lordship knows in my chart at page 12 it's either molasses or grain. Of course, it can be cashew, like in Feni in Goa, you make it out of cashew. But it's basically grain based or molasses based. Then you come to primary distillation, rectified spirit. Then you come to extra neutral alcohol. And then you either go to Indian made foreign liquor, that is rum, whiskey, gin or you go to denatured spirit, which is for industrial purposes. Now what happens is, if Your Lordship sees intoxicating liquor, I'm saying please don't focus only on the two words. Please see further. That is to say, production, possession, transport, sale, distribution, all that means that the distillery which is manufacturing it makes everything because of the peculiar nature of our excise laws whenever it was cleared for industrial consumption, right from the old Excise Acts, it had to be denatured. Today UP whom I represent, when the liquor which I know, if I have to clear 1000 litres for industrial purposes, I have to pay a denaturing fee of 60 paise per litre, and in the presence of the liquor officer, I file DS 6 or DL 5. I fill that form, and I pay the denaturing fee. Now, if you accept the Union's argument that intoxicating means only ready to make beverages, then you are completely controlling only the IMFL manufacturers because the sugar industry doesn't make alcohol. Many sugar industries, they just make rectified spirits and sell it to whether it's the liquor manufacturers who are making whiskey, rum, et cetera. Very few sugar industries do start to finish. We stop at extra neutral alcohol or rectified spirit. From there, the lorry goes to the IMFL manufacturers. You pay State Excise Duty, you clear it and it goes. You make denatured spirit, you close. Now, if you accept the interpretation, let us visualize that intoxicating liquor means only to make, ready to make beverages. Then who controls the distilleries? Will the Union step in? Because up to extra neutral alcohol, it is intoxicating. And Lordship will kindly see one thing. Let's appreciate one important point. You don't denature alcohol to make it fit for industrial consumption. No, you denature it to make it unfit for human consumption. The denaturing is not to make it as a raw material for paint, varnish, polish, perfume, et cetera, because it can be diverted state loses Excise Duty because Lordship sees for denaturing 60 paise per litre. If it goes for this IMFL 18%. Duty is huge. In some cases, 300%. Duties are huge. So please appreciate this entire gamut from manufacture to distribution is all ENA. Is all Extra Neutral Alcohol. The State controls everything, and you

1 can't have a vivid section of alcohol meant for human consumption and intoxicating liquor
2 meant for this. Sorry, that is not the case. And one more thing what my submission is that if
3 Your Lordship gives that interpretation, it'll lead to a serious breakdown that the sugar
4 industry, which is making ENA, it is not making a soft drink, hot drink, as Justice Chagla calls
5 it or a ready to make beverages. Solicitor said it should be intoxicating drink as in Article 47.
6 With great respect, no. It'll be chaos. So, My Lord, and that is why what happens is in the
7 amendment to the Industrial Development Act, they say the line of demarcation is the point
8 of removal. Please read the Statement of Objects and Reasons. They're very well drafted. They
9 realised ***Synthetics and Chemicals*** has created chaos. Sorry, created hardship. And
10 therefore, they say ***Bihar Distillery*** gives a better formula and Parliament decides to accept
11 the Bihar formula. They say, let's go up to the stage of removal. Up to the stage of removal, it
12 is State control. Whatever is denatured is Central control, Central tax. Your Lordships may see
13 paragraph... sorry.

14

15 **JUSTICE HRISHIKESH ROY:** Intoxicated?

16

17 **ARVIND DATAR:** My Lord, in fact in a lighter way I was just remembering Justice Krishna
18 Iyer's thing of intoxicating. There are 4 stages, I don't know if Your Lordship have seen that
19 judgment of P.M. Kaushal. Yes, yes, there is... what is it... I made a note of it. Four things,
20 Jocese, bellicose, lacrimosa and comatose. So, when you start consuming liquor first, jocese is
21 jolly, you're playful, Then, bellicose, you become aggressive or belligerent. Then lacrimosa, you
22 start weeping, you become tearful. And finally comatose, you go into a deep sleep. Is P.M
23 Kaushal's explanation of intoxication, it's in a lighter way. So, My Lord, I'll just submit that. I
24 would request Your Lordships to accept ***Balsara*** for one reason (a) it is well reasoned (b) it
25 follows the... ***Gannon Dunkerely*** came later, but it synchronises the Gannon Dunkerely
26 test. Words not defined in the Constitution but which have been given a legislative meaning
27 for several decades, must be treated as *nomen juris*. So, it is not the Common Parlance Test,
28 but it's a legislative understanding of the word which is important. Second reason is...

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** One second.

31

32 **ARVIND DATAR:** Sorry. Yes, so, second reason is the... it works in reality if you accept the
33 view that intoxicating liquor includes everything, then the existing system of distilleries
34 manufacturing everything and only denaturing... when does it become less intoxicating? When
35 it's denatured, that's all. Nobody starts making denatured spirit. As I said, denaturing is an
36 offspring, is a child of intoxicating liquor. One baby is in denatured, the majority is the... The
37 second reason is, it works in practicality. If Your Lordship takes the Union view, it could lead

1 to serious problems and only IMFL units will come under State control. Thirdly, and neither
2 the Attorney nor Solicitor has answered this point. In paragraph 41 of *Synthetics*, Mr.
3 Parasaran was the then Attorney General makes a solemn statement that *Balsara* need not
4 be disturbed. It has stood the test for 38 years and it is not a statement made in an SLP
5 admission. It's a statement made with the highest law officer keeping in mind the principle of
6 consistency and till today neither... nobody from the other side has said why we have decided
7 to depart from the *Balsara* view.

8

9 **JUSTICE HRISHIKESH ROY:** What the Solicitor was saying was that, just because you
10 take a particular stand at a given moment or a position, you can definitely take another
11 position at a later point. That is what he was trying to say. And he said that I'll will cite four
12 judgments in support of this proposition.

13

14 **ARVIND DATAR:** True, true. No, the point is... exactly now, I'm not saying that there's an
15 estoppel. I think all over and you not be consistently incorrect. So, I'm not saying no.
16 Consistency need not always be a virtue. My humble submission is this issue came straight
17 front before the Seven Judges Bench. The Attorney General. Mr. Parasaran at that time says
18 we don't want to disturb *Balsara*. We also agree that Entry 8 can include denatured spirit.
19 That's in para 41. So, the burden is on the Union to show that our acceptance that time was
20 faulty. For a, b, c, d reasons we choose to take a different view now, and that is not forthcoming.
21 Principle is yes, I can always change my view. But you must justify to this Bench why the
22 statement made by Mr. Parasaran is wrong and now you have too completely...

23

24 **JUSTICE B.V. NAGARATHNA:** But *Balsara* in the context of prohibition only.

25

26 **ARVIND DATAR:** No. *Balsara* is in the context of interpreting Entry 31 is equal to Entry
27 8.

28

29 **JUSTICE B.V. NAGARATHNA:** In what context? Prohibition?

30

31 **ARVIND DATAR:** Doesn't matter. Doesn't matter.

32

33 **JUSTICE B.V. NAGARATHNA:** Bombay Prohibition Act.

34

35 **ARVIND DATAR:** But *Balsara* has been followed for 38 years in a number of liquor cases,
36 consistent it... My Lord except this somersault... complete change in *Synthetics and*
37 *Chemicals* for 38 years. Lordship knows in every High Court there are numerous cases on

1 prohibition. Every time there is some liquor license. There is case after case on prohibition.
2 **Balsara** was followed consistently and please see what is the reason of **Synthetics**. Please
3 see para 74 for a minute. Please indulge me in 74. Is this the way, with great respect, are we
4 going to reject the proposition of Mr. Bal...? I'm saying this thing even assuming **Balsara**
5 could be... today Your Lordship can take a better view. I mean, a different view. I'm saying, is
6 it necessary? If one view has stood the test of time, accepted by the Union, then unless there
7 are overwhelming, compelling reasons to change it, I'm saying don't disturb it. Please see
8 para...

9
10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But then **Synthetics** has also stood the time
11 now for 35 years minus this reference.

12
13 **ARVIND DATAR:** No, but the point is, as far as **Synthetics and Chemicals** is concerned,
14 in fact, far from settling the law, it unsettled the law and you had different cases. You had
15 **Bihar, Vam (1)** on one side, other case on one side. **Modi Sugar, Deccan Abkari** on the
16 other side. All that is noticed in the Law Commission Report. The Law Commission Report
17 notes to [UNCLEAR] I have prepared a table of cases following the **Synthetics** view, cases
18 opposed to the **Synthetics** view and if **Synthetics** was followed, where was the need to
19 amend the law retrospectively? The Law Commission notes that because of **Synthetics**, a lot
20 of confusion has taken place and we have to set right the law. And then they make a clear
21 demarcation in paragraph 3 of these Statement of Objects and Reasons, that it is now
22 necessary to demarcate the jurisdiction of Union and States. That's paragraph 3 of the
23 Statement of Objects and Reasons. We want to make a clear-cut sense. What is the Union's
24 territory? What is the State's territory? And what is the fence, the time of removal? The time
25 of removal. When you remove denatured alcohol, Parliament, GST. When you remove for
26 IMFL, State Excise, State Laws. That's as simple as that. What **Synthetics** says is industrial
27 alcohol is equal ethyl alcohol. Lordships kindly see **Synthetics** has taken the test of time. But
28 the fundamental error is, they say rectified spirit is industrial. ethyl alcohol is... then they say
29 alcohol means fit for human consumption. There are a series of errors in **Synthetics and**
30 **Chemicals** which led to this Nine Judge Bench and that is also well got out in the Referral
31 Order of **Lalta Prasad** but **Balsara**, nobody has said **Balsara** was wrong. Compared to
32 **Synthetics**, **Balsara** didn't lead to a divergent view. One pro **Balsara** view and anti... no.
33 So, I'm just saying that the analogy of **Balsara** and **Synthetics** may be slightly... Now just
34 see...

35
36 **JUSTICE ABHAYS. OKA:** To say, it's a composite industry. Industry will make ENA. partly
37 it will be converted into liquor. Partly it will be denatured. So, who controls it?

1

2 **ARVIND DATAR:** Majority converted to liquor for liquor and only part is denatured by
3 adding the denaturing in the distillery itself, as per the denaturing rules. Lordship will kindly
4 see, every State has got denaturing rules, has got a denatured table. If you want for use of paint
5 and varnish, add this denaturant. If you want to use for this, add this denaturant. And I'll show
6 you the excise manual of the Kerala in my written submissions last, that all the liquor and
7 denatured is one small corner. So, to your Lordship's answer, it's a dis-composite. Now, if you
8 accept the State that Entry 8 is only for intoxicating beverages, then it will not cover a distillery,
9 it will only cover an IMFL manufacturer. The sugar is the industry which typically makes
10 molasses and then it's a good byproduct for them. It's a good source of revenue to convert
11 molasses...

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In which event, who will control that industry?

14

15 **ARVIND DATAR:** Who will control that industry? It is working perfectly well till
16 *Synthetics* came along.

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, in a situation like this, suppose it's a
19 composite industry. Partly the ENA is sold for IMFL and part of it is, of course, denatured. In
20 such a case, it's a composite industry. Who controls it then? What happens on the...?

21

22 **TUSHAR MEHTA:** The owner controls so far as regulatory control is concerned.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes, regulatory control.

25

26 **TUSHAR MEHTA:** Regulatory control is concerned My Lord. So, far as it is Central
27 Government's part, the central law will apply. So that happens. My Lord local law applies.
28 There are central laws apply. In every case this happens.

29

30 **ARVIND DATAR:** You can't have two excise laws for the same factory.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, you'll have a duality of officers.

33

34 **ARVIND DATAR:** Two excise officers.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What happen to be on the ground then.

37

1 **TUSHAR MEHTA:** On the ground My Lord. On the ground also My Lord, in all factories, all
2 industries, there is a dual control.

3

4 **ARVIND DATAR:** No, no, no, with great respect, utmost respect...

5

6 **TUSHAR MEHTA:** My Lord, I never go by the innocence on the face. Take for example the
7 pharmacy.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Solicitor, on this we'll tell the Solicitor that
10 you're innocent. You have some of the industry representatives here.

11

12 **ARVIND DATAR:** Yes.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What happens, who controls? I mean, what is
15 the ground situation? Because today *Synthetics* holds the field.

16

17 **TUSHAR MEHTA:** My Lord, take for example... My Lord, if there is someone...

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Is anybody here? Mr Pravin Kumar?

20

21 **ARVIND DATAR:** My Lord, I got the entire excise ban... Sorry, sorry.

22

23 **TUSHAR DATAR:** If you don't mind. My Lord, Pharmacy, for example. There is bound to
24 be State laws which are applicable to a pharmaceutical company situated in a State. It would
25 be governed by those State laws. So, far as Central legislations are concerned, they are also
26 governed... governing the pharmaceutical industry. But that is the reason why for a company
27 having more than one particular turnover, you are supposed to have a Company Secretary who
28 is trained, which law of the state is to be complied with, which law of the Centre is to be
29 complied. But that can never be a ground for assisting Your Lordship's on the question of
30 constitutional interpretation. Every industry, My Lord, take any textile industry, there would
31 be... there are bound to be State laws and bound to be Central laws and both are to be complied
32 with.

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But actually, in such a situation, the Central
35 laws are also enforced by the State officials.

36

37 **TUSHAR MEHTA:** That is delegated legislature. I am not on that. That can still be done.

1

2 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No apart from the delegated legislation
3 because our Constitution contains that provision, right? That if it's a Central law, the
4 implementation of the Central law is also interested in the State to the State of [UNCLEAR]

5

6 **TUSHAR MEHTA:** Certainly, My Lord.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, the Centre, the Centre is a very small
9 complement of officers.

10

11 **TUSHAR MEHTA:** Correct, My Lord. We can't have... Suppose, for example IDR...

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, the Industrial Disputes Act, it's enforced
14 by the State officers.

15

16 **TUSHAR MEHTA:** Correct, My Lord. Except, possibly taxation, excise, etcetera, few
17 subjects, all are implemented by the officials of the State Government. They implement
18 respective or whichever is applicable, Central law or State law, as the case may be.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Article 73. You see, Article 73, the proviso says
21 provided Union executive power. Provided, just see 73(1), 'subject to the provisions of this
22 Constitution, the executive power of the Union shall extend (a) to the matters with respect to
23 which Parliament has power to make laws and to the exercise of such rights, authority and
24 jurisdiction as exercisable by the Government of India. Now, provided that the executive
25 power referred to in sub-Clause A, shall not save as expressly provided in this Constitution or
26 in any law made by Parliament extend the naming state to matters with respect to which the
27 legislature of the State has also the power to make laws.' That's why, and as you rightly said,
28 for say Income Tax, Income Tax. The Income Tax Act provides for a whole administrative
29 machinery.

30

31 **TUSHAR MEHTA:** Your Lordship, see 256, Article 256.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Datar is trying to says...

34

35 **ARVIND DATAR:** Just to save time, we've got all the excise manuals of all the states. There
36 is not a single excise manual which has got a role for a Central excise officer to play a part. No,

1 we pay the duty when it goes for denaturing, we put the excise duty *chalan*. And we pay excise
2 duty and remitted to under this...

3

4 **TUSHAR MEHTA:** Because of the present regime, My Lord obviously because of the present
5 regime.

6

7 **ARVIND DATAR:** It goes to State treasury. Excise... all my colleagues are here. In all our
8 distilleries in all the IMFL plants, it's only the State officer who is present.

9

10 **TUSHAR MEHTA:** Because of this law... Because the law is being settled by...

11

12 **ARVIND DATAR:** The amendment says the object and reason stays, the new law. The State
13 has everything till the time of removal. What is the time of removal?

14

15 **TUSHAR MEHTA:** Can I, Can I?

16

17 **ARVIND DATAR:** We go to denatured spirit.

18

19 **TUSHAR MEHTA:** You rightly...

20

21 **ARVIND DATAR:** No, I'm saying...

22

23 **TUSHAR MEHTA:** You're at the right point. My Lord, Article 256. 'Obligation of States and
24 the Union. The executive power of every State shall be exercised so as to ensure compliance
25 with the laws made by the Parliament and any existing laws which apply in that State and the
26 executive power of the Union'. My Lord, that is corresponding provision. My Lord for example,
27 there is a law made under Entry 52 that we, the Centre, the Parliament wish to regulate coffee
28 industry in a particular way and the law provides that this would be the format prepared by
29 the State authorities, this would be the reports to be filed, returns to be filed prepared by the
30 State authorities. That can be done. Right now, the question is whether that power is traceable
31 to Entry 52 or not? How... My Lord, the industry is run in an era or a regime where Your
32 Lordships are yet to take the call can never be a ground to say that that call may not be taken
33 because we are running it right now in this particular fashion. If Your Lordships takes the view,
34 this is subject to Entry 52 read with Entry 33 with or without Entry 33. Then My Lord the
35 Constitution will take care of itself. But to say that right now there is no system and only State
36 is implementing is no legal answer to a constitutional question.

37

1 **ARVIND DATAR:** My Lord, I've got a legal answer to that. My Lord...

2

3 **TUSHAR MEHTA:** Only a minute, let me complete.

4

5 **ARVIND DATAR:** Your Lordships may give us sometime next Tuesday. We can't finish.

6

7 **TUSHAR MEHTA:** No, no, that's... My Lord, one more thing.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Even at the stage of ENA, it is alcohol basically.

10

11 **TUSHAR MEHTA:** Yes. One more thing. Entry 52 says 'control of the industries'. Control
12 may not be restricted to the control my learned friend is expressing himself to me. That my
13 officer is there, State's officer is there. That's not the control. Control would mean controlled
14 by law made by the Parliament. The law may say that we would exercise control, we would
15 regulate. We would examine ABCD through the officials as may be appointed by us and those
16 officers can be State officials also.

17

18 **JUSTICE ABHAY S. OKA:** No, Solicitor we can ignore all this. Who actually manages this
19 today, we are not concerned with that. But question is, what is the meaning of intoxicating
20 liquor? Because take a case of a sugar industry. What will be manufactured will be ENA, which
21 is alcohol, which is intoxicating liquor.

22

23 **TUSHAR MEHTA:** My Lord, it is... it can be abused as an intoxicating liquor.

24

25 **ARVIND DATAR:** ENA diluted into country liquor.

26

27 **JUSTICE ABHAY S. OKA:** Whether the grain is used or whether any other fruit is used or
28 a sugar cane is used, it is ENA only and ENA it is also intoxicating liquor.

29

30 **TUSHAR MEHTA:** The purpose of...

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You add, you dilute
33 ENA with water, it becomes...

34

35 **ARVIND DATAR:** It becomes country liquor.

36

37 **TUSHAR MEHTA:** My Lord that's correct. But that's not the way in which Entry 8 uses it.

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CHIEF JUSTICE D. Y. CHANDRACHUD: No, no.

TUSHAR MEHTA: Entry 8 uses it as something which can be consumed as it is.

CHIEF JUSTICE D. Y. CHANDRACHUD: Mr. Solicitor, ENA... who will regulate ENA?
ENA is not... ENA is not denatured spirit.

TUSHAR MEHTA: It's not. My Lord...

CHIEF JUSTICE D. Y. CHANDRACHUD: It is an intoxicating liquor.

TUSHAR MEHTA: Kindly see. The law is clear.

CHIEF JUSTICE D. Y. CHANDRACHUD: It's not denatured spirit.

TUSHAR MEHTA: They have confused denatured spirit, ENA, this-that. The law is very clear. Potable and non-potable. If it is non-potable, it is Centre. If it is potable, it is State and potable would...

JAIDEEP GUPTA: This is going far away, My Lord.

TUSHAR MEHTA: Mr. Gupta, also rarely does this. I really have a strong case. There's one more factor in my favour.

CHIEF JUSTICE D. Y. CHANDRACHUD: What is Mr. Gupta is saying? Just in 10 seconds.

JAIDEEP GUPTA: ENA is a raw material for IMFL.

TUSHAR MEHTA: No. Raw material is either sugarcane etc. You don't get...

JAIDEEP GUPTA: This is a fundamental misunderstanding.

TUSHAR MEHTA: How do you get ethanol? How do you get ENA?

JAIDEEP GUPTA: ENA, My Lord is cleared, it's cleared as an excisable product.

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ARVIND DATAR: My Lord if it is denatured, it goes to GST Entry 2207. If it is not denatured, it is ethyl alcohol coming under ENA, coming under State law. I put GST Entry also there. The GST comes...

TUSHAR MEHTA: Only a minute, let us not be confused on this. For every kind of alcohol, the raw material is either sugarcane, grain, grapes, etc., etc., etc. molasses, etc. Thereafter, what you get is spirit. It can be denatured. It can be any other name. And thereafter, by distillation, you get potable alcohol.

ARVIND DATAR: No. Sorry, sir.

TUSHAR MEHTA: You should be sorry but not for this.

ARVIND DATAR: Yes, fundamentally wrong. Fundamentally.

TUSHAR MEHTA: Raw material means from where you get it, you don't... Is it available? Is the ENA available in a natural form, from where I can get it and I can manufacture say whiskey or scotch or some whatever, My Lord? No, you have to make ENA and then that is used as a raw material for the purpose, but for the purpose of making intoxicating liquor.

JUSTICE ABHAY S. OKA: But ENA is intoxicating liquor. There's no dispute on that. It's alcohol.

TUSHAR MEHTA: Intoxicating liquor, but not for consumption. Not potable. You have to do something.

JUSTICE ABHAY S. OKA: No. We want to understand one thing. ENA is alcohol. So, it can be intoxicated in liquor?

TUSHAR MEHTA: Let us not give meaning to a constitutional provision which is unnatural. When the Constitution says My Lord, 'Intoxicating liquor for human consumption mean something which is as it is capable of being consumed.' That's as simple as that. Not that it can be converted into something which is... Can I go and say that give me one litre of ENA because I want to consume it after adding something into it, I cannot. It's as simple as that.

1 **JUSTICE ABHAY S. OKA:** So therefore, according to you, it will not cover ENA according
2 to you? Is that your submission?

3

4 **TUSHAR MEHTA:** Yes. It cannot.

5

6 **ARVIND DATAR:** My humble submission is Entry 8 covers ENA. Parliament has no role to
7 play. One very serious thing comes here. There are totally 168 General Entries. 168. 82 Entries
8 are with the Central Government, Parliament. 81 Entries plus 97. 82 Entries. There are 46
9 Entries in the Concurrent List. There are only 40 General Entries in the State List.

10

11 **TUSHAR MEHTA:** Before you start, give me two more minutes. Page 53 of my written
12 submissions. It is already filed. Please see My Lord, from where the process starts. It's really
13 unfortunate that industry saying that what is...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And we'll come back to you in a moment, that
16 is the Solicitor is done. Solicitor, which page are you?

17

18 **TUSHAR MEHTA:** Page 53, My Lord, Volume II-D. It starts from definition. My Lord,
19 kindly go a page before. 'Where alcohol is concerned, the following details are relevant. Alcohol
20 is derived through a distillation process where carbohydrate, that is sugar or starch is
21 fermented and then distilled to extract alcohol. There is no other...'. I'm sorry. 'Then alcohol
22 can be made from any feedstock which has high content of carbohydrates such as sugarcane,
23 rice, maize, potato, beetroot, etcetera. In India, alcohol is predominantly made from sugarcane
24 juice, molasses, a byproduct of sugar production, broken rice, damage of food grains and
25 maize. Major types of alcohols are given below. Rectified spirit. Rectified spirit generated after
26 distillations out of those raw materials having minimum 95% ethanol content is used only for
27 industrial purpose. It is used for industrial purposes such as usage as solvent in paints,
28 industrial chemicals, etcetera. Then Extra Neutral Alcohol, ENA. This neutral spirit having
29 minimum 96% ethanol content is made by further purifying the rectified spirit. This is used
30 both for potable alcohol and industrial purposes.'

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now Mr. Solicitor, just I would...

33

34 **TUSHAR MEHTA:** Only a minute more, My Lord.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No difficulty. Otherwise, I'll lose, I'll forget the
37 question.

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TUSHAR MEHTA: I'm sorry.

CHIEF JUSTICE D. Y. CHANDRACHUD: Now Extra Neutral Alcohol, ENA, you say that this is neutral spirit having a minimum 96% ethanol content, which you produce after further purifying rectified spirit.

TUSHAR MEHTA: Yes.

CHIEF JUSTICE D. Y. CHANDRACHUD: Then you say this is used Both for portable alcohol and industrial purposes, right?

TUSHAR MEHTA: For making potable. It should be for making. It comes...

CHIEF JUSTICE D. Y. CHANDRACHUD: Then use for making. Now, in that case, at the point when ENA is cleared, the stage of removal takes place and it is removed for the purpose of the manufacture of potable alcohol.

ARVIND DATAR: IMFL.

CHIEF JUSTICE D. Y. CHANDRACHUD: IMFL, that is. Right? It is being removed. At this stage of removal, why is it being removed? It is being removed for use in the manufacture of IMFL.

TUSHAR MEHTA: Potable, yes.

CHIEF JUSTICE D. Y. CHANDRACHUD: Will not that fall within the domain of the State? If it is removed at the point of removal, it for industrial purpose, I'm not... we want you to respond to it. We want clarity on it. At the point of removal, if it is being removed for industrial purposes, certainly then it doesn't fall under Entry 8.

TUSHAR MEHTA: Not for the simple reason that Extra Neutral... according to Datar sir...

ARVIND DATAR: Sorry My Lord...

TUSHAR MEHTA: It's not, it's indecent. Apart from anything else, it's indecent. You're not...

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, Mr. Datar won't do anything like that.

2

3 **TUSHAR MEHTA:** No, My Datar would never do that. I'm saying, I'm calling him.

4

5 **ARVIND DATAR:** My Lord, I'm only saying I've replied to so many points.

6

7 **TUSHAR MEHTA:** Whenever I argue... *tch tch tch*... that's what he does. So, I said, it's
8 indecent.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Not Mr. Datar.

11

12 **TUSHAR MEHTA:** No, no, no, he would never do it. He would never do it My Lord. He
13 seems to be not practicing here. Just as a younger brother, I'm telling him not to do this,
14 anywhere, before anyone.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just say sorry to the Solicitor.

17

18 **TUSHAR MEHTA:** It's not in anger or something, this happened fifth time. So, sixth time I
19 just said, couldn't resist.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** All right. He's apologised.

22

23 **TUSHAR MEHTA:** No, no that's okay. That's over. Now, My Lord, this is a product which I
24 purchase... if I am the IMFL manufacturer, I purchase that product. And thereafter, the third
25 quality, the third category of alcohol is absolute ethanol.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just one second. Solicitor, your point
28 therefore, appears to be that it is only IMFL which falls within the purview of Entry 8 because
29 that is the only thing which classifies as potable...

30

31 **TUSHAR MEHTA:** Potable alcohol which can be consumed as it is.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Not sure on that. There's a little bit of, we're
34 not sure on that because at the stage when ENA is removed for the purpose. ENA is capable of
35 being used both, for potable liquor, right? Now what happens if you have, say, somebody
36 whose business is dealing with ENA, he's removing it for the purpose of potable alcohol,
37 mainly for IMFL. Then can you say that when it will not fall within the purview of Entry 8? In

1 your submission it will not fall in the stage of Entry 8 until IMFL is manufactured. I'm not sure
2 that's a correct position, Solicitor.

3

4 **TUSHAR MEHTA:** May I say, may I show the difference according to...?

5

6 **JUSTICE ABHAY S. OKA:** Just one second. So, is it your case that ENA will not be covered
7 by Entry 8 and only IMFL is covered by Entry 8. Is it your case specifically?

8

9 **TUSHAR MEHTA:** Yes, My Lord. Number two, why it is? ENA can be used as it is for other
10 purposes, like industrial purposes, etc. ENA cannot be used as it is as a potable alcohol. And if
11 you have to undertake some activity or some process to make it potable, that is the distinction.
12 ENA as it is, is used for polish industry, etc., etc My Lord. There are several industrial uses. In
13 this context, please see page 53, the chart. Page 53 My Lord for my satisfaction. Have a look at
14 page 53. This is how it happens. My Lord molasses, sugar syrup, syrup or grains. This is the
15 raw material. I'm being very clear about it. For any process which is subsequent, this is the raw
16 material. Then preparation, that is, adding water and enzymes for fermentation plus grinding
17 in case of grains. Then comes fermentation. My Lord, Justice Oka, has it?

18

19 **JUSTICE ABHAY S. OKA:** Yes.

20

21 **TUSHAR MEHTA:** Then comes fermentation. That is time taken up to 72 hours. Then comes
22 distillation, means to remove water and impurities to get pure alcohol. Then we get either of
23 these three things, depending upon the nature. Absolute alcohol, rectified spirit only to be used
24 for industrial purposes such as paint chemicals etc. Then upon further purification of the RS,
25 it becomes Extra Neutral Alcohol.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now, for the purpose of my question, are you
28 all on the same page? Page 53 of the chart?

29

30 **ARVIND DATAR:** Yes.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just one second. Look at the right-hand side
33 of your chart. Under 3. 'Upon further purification of rectified spirit, ENA Extra Neutral Alcohol
34 minimum 96% ethanol b/v. Now there are two branches. One, industry who is depending upon
35 market conditions or alcoholic beverage. So, your contention is that until it becomes an
36 alcoholic beverage, even at the anterior stage, it falls outside the purview of...

37

1 **ARVIND DATAR:** The middle box is wrong. Rectified spirit only for purposes is
2 fundamentally wrong. The middle box. 'Rectified spirit only for industrial purpose'. That is
3 wrong. The rectified spirit is primary distillation. It can be both. In the old days, rectified spirit
4 was used for country liquor at 26% dilution. Now with advanced technology, it is in ENA. So,
5 it is distillation RS ENA but RS for industrial purpose is fundamentally wrong. Which the same
6 error which *Synthetics* made.

7

8 **TUSHAR MEHTA:** No, no. *Synthetics* doesn't go into this.

9

10 **ARVIND DATAR:** *Synthetics* says RS is equal to industrial alcohol.

11

12 **TUSHAR MEHTA:** Kindly My Lord...

13

14 **ARVIND DATAR:** This box is wrong.

15

16 **TUSHAR MEHTA:** My Lord, rectified spirit is used. It's very, very hazardous. This is what
17 the Hooch tragedies come. Rectified spirit can be used. It's 'use' is a wrong word. 'Abuse'. My
18 Lord, there are certain elements which are mixed and when I say depending upon market
19 conditions, sometimes the requirement of industrial use... My Lord, only two more minutes.
20 My Lord when I say depending upon market condition, some My Lord depending upon the
21 market condition from the ENA, they make more this ENA if the demand is more. Otherwise
22 it goes into making of... on the basis of use Your Lordships may not define the term. The
23 definition is 'it can be capable of being converted into many things'. Rectified spirit is used in
24 making not just country liquor, the hooch also, the hooch tragedy.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We now got that. Yes Mr. Datar, what do you
27 have to say?

28

29 **TUSHAR MEHTA:** And My Lord, my apologies to my friend, but I got irritated on the 6th
30 occasion. That's all.

31

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

33

34 **ARVIND DATAR:** My Lord quickly. Your Lordship recommend *Balsara* should be
35 accepted and paragraph 74 and 77 of *Synthetics* where they distinguish *Balsara* on the
36 ground that they did not comprehend industrial use is not a ground to overturn *Balsara*.
37 *Balsara* consistently, the application of *Balsara* had created certainty. *Synthetics* creates

1 uncertainty. I would pray that Your Lordship restores the **Balsara** provisions. Secondly My
2 Lord, my submission is intoxicating liquor is an exclusive State subject not subject to anything,
3 and I want...

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Not subject?

6

7 **ARVIND DATAR:** Not subject to Parliament. The word 'subject to' is not there. So
8 ultimately, there are 40 Entries in the State List today.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We'll just take it down.

11

12 **ARVIND DATAR:** 40 Entries in the State List and out of the 40 Entries, 13 Entries are
13 subject to List I or List III. So, virtually out of 168 legislative Entries throughout general
14 Entries, I'm not including tax, out of 168 general Entries there are only 40 in the State List,
15 and out of 40, 13 are subject to either List I or List III. So, only 27 are left to the States. So, my
16 humble submission is Entry 8 should be interpreted to preserve the State's legislative
17 competence in its widest amplitude. When the Attorney... Solicitor... I was just thinking to
18 myself. This thought came to my mind.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** According to you, admittedly, even according
21 to your position, would be outside the field of Entry 8.

22

23 **ARVIND DATAR:** Outside Entry 8. Not only according to me, according to Parliament, after
24 the amendment. Once the liquor is removed from my factory, then it comes under
25 parliamentary control. Once it is purchased by the paint factory for making a paint or purchase
26 by a perfume company or by somebody else, I have no control over it. U.P. Government has
27 no control over it. But I'm just giving... suppose, for example, I decide as a legislative policy, I
28 want to maximize my revenue. I'll say we are not allowing denaturing. Everything should be
29 cleared for IMFL. I can do that. Take Bihar. They'll say no clearing for IMFL, only for industrial
30 purpose, because there's prohibition. So, right up to denaturing, it's the State subject and let
31 us not dilute that, is my humble request. I'll come to the next point on **Tika Ramji**. I just
32 wanted to say that in the para 32 observed, see My Lord, basically **Tika Ramji**, U.P.
33 Sugarcane Act was to be *ultra vires* IDR Act and Essential Commodities Act. In para 32, they
34 say even assuming... if My Lordship sees my submission, written submission, which I have
35 given...

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** You have made the point, even assuming.

1
2 **ARVIND DATAR:** Yes. Even assuming. I'm saying it's an obiter. It is Article 141. What
3 Justice Bhagvati is saying is, 'Even assuming 18-G is there, unless there is a Notified Order,
4 the State's power is not taken away. It is not obiter, it is a *ratio decidendi*. Obiter is something
5 which doesn't fall for consideration, and it's a passing observation.' Now further, **Tika Ramji**
6 has been accepted to be correct law in **Belsund**, Five Judges and three other cases, that's in
7 my written submission. I have given those four cases. So, **Tika Ramji's** observation, that
8 unless there's a Notified Order, 18-G doesn't operate, is Article 141, good law, not obiter. Now
9 just see the Industrial Disputes Act in the IDR Act for a minute and I'll just close my
10 submissions. My Lord, in my written submissions... if Lordship takes my written
11 submissions...

12
13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Datar, in case you require five or ten
14 minutes more, please don't feel rushed.

15
16 **ARVIND DATAR:** My other friends also. I'll take five minutes and give it to them because...

17
18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We'll... since you are concluding we'll... or if
19 you want to come tomorrow at about 03:00, we can wrap up. We can continue now.

20
21 **ARVIND DATAR:** What I can suggest Your Lordships, tomorrow at 03:00 the others can
22 reply.

23
24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Not there tomorrow? So, let's conclude today.
25 We'll conclude today. We'll go a little longer also. We'll go a little longer so all of you don't feel
26 rushed for time. We will go a little longer. No difficulty.

27
28 **ARVIND DATAR:** If your Lordships want to take a break and come back also, we'll wait.

29
30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We will do that. We will just use the comfort
31 break and come back. There's an Eid celebration by the Bar, so the Bar can wait for another
32 ten minutes. It's alright.

33
34 **ARVIND DATAR:** There's definitely no alcohol there, My Lord. Now, what I did was, I
35 analysed this Industrial Development Regulation Act. Now, the argument was that 18-G *per*
36 *se* creates an occupied field. If Your Lordship now sees my written submission, 1-O, very
37 interesting. Of all the sections every section except one section, every section says Central

1 Government by notified order, by order, by instruction, by notification in official gazette, by
2 rules. Section 20 is the only section which says that on management and control State law will
3 not operate. Section 20 is the only which Your Lordship mentioned last time. Once Section 20
4 says that management and control is by IDR Act, all State laws get repugnant. But every other
5 provision, Lordship just see my written submission at page 1 is now 1-O. Please come to... I
6 made an analysis. My Lord what I've done is I've answered the question individually and
7 Lordship will just come to Question 3, 18-G. Now, may I request Your Lordship to see 18-G for
8 a minute? 18-G, if Your Lordship can just see the bare Act. We all have read 18-G(1). Nobody
9 has read 18-G(2). Your Lordships have got 18-G(1)? 18-G(1). Your Lordship has seen number
10 1 number of times, I won't read it again, by a notified order. Please see 18-G(2). 'Without
11 prejudice to the generality of the powers conferred by sub-Section 1, a notified order may
12 thereunder may provide for A to H.' Now my humble submission is, today there is no notified
13 order at all. So our submission is the whole field is open to states. Tomorrow, My Lord
14 hypothetically, the notified order may cover only A, D, F. My submission then is, whatever is
15 not covered will be open to the State Legislature because the notified order has got a scope of
16 covering a territory of A to H. If Parliament chooses to cover only A,B,C and doesn't touch the
17 others, technically, nothing wrong.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Except that 18(1) is expressly confers the
20 power on the Central Government.

21

22 **ARVIND DATAR:** Exactly. Exactly.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So now where do the states get their power?

25

26 **ARVIND DATAR:** No, if the Central Government doesn't confer it because Entry 18-G
27 states...

28

29 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's a little farfetched. See the Central
30 Government before it decides whether to exercise or not exercise the power has to be satisfied
31 about the conditions precedent which are spelt out in sub-Section 1, because Central
32 Government comes to a conclusion that the conditions precedent are not satisfied and
33 therefore does not exercise the power, the State can't say that well, I'm taking a different view
34 of the conditions precedent, and I'm exercising the power because the Central Government
35 has not exercised.

36

1 **ARVIND DATAR:** Your Lordship is right. I will not make such an argument. What I wanted
2 to see, what *Tika Ramji* said.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's right... it says, the states can exercise
5 power only under Entry 33 of List III.

6

7 **ARVIND DATAR:** Exactly.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because in respect of a controlled industry,
10 except for the fact that to the extent to which the field under Entry 33 is covered by the IDRA,
11 because now one, we are very clear that 18-G is an exercise of the legislative domain under
12 Entry 33.

13

14 **ARVIND DATAR:** 33, same language here.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Therefore, once 18-G has occupied the field,
17 then the states cannot say that I will bring about other legislation or exercise power under 18-
18 G because the Central Government is not exercising.

19

20 **ARVIND DATAR:** No, no. I don't say that. 18-G is Central Act. There's no question of
21 exercising powers of the State.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Obviously. So, you're saying that the State can
24 then enact a law?

25

26 **ARVIND DATAR:** No, I'm saying that Entry 33 is Concurrent List.

27

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

29

30 **ARVIND DATAR:** So trade, commerce, production, supply, distribution is both Parliament
31 and State. Entry G, 18-G, the power to prescribe except production, they don't touch
32 production, all other things, the State can make a notified order. The argument of the Union
33 is once 18-G is there, that is enough. According to me, because Your Lordship will kindly see,
34 when Parliament makes a law, it can either make a law fully, which is fully operational per se,
35 like the Income Tax Act or Centralized, like GST, it's fully operational. Nothing is required. It
36 can make a law which has to be implemented through a notification, through a notified order

1 subject to rules. So in that case, the law is still not there. Only the power is there, but it's not
2 exercised. I am putting for the...

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But except for the fact conceptually, a failure
5 or let me not use the word failure, the absence of a notified order by the Central Government
6 may be an indicator that the Central Government is a delegate of Parliament does not consider
7 it expedient to regulate that particular Act...

8

9 **ARVIND DATAR:** In fact, I was going to tell Your Lordship...

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** ...at this stage.

12

13 **ARVIND DATAR:** No, in fact, Your Lordship will kindly...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In which case, can the State say that well,
16 because this falls in a Concurrent List subject, the Parliament's delegate has come to the
17 conclusion that it is not expedient to regulate for a variety of reasons. The State will still
18 regulate. That may be a little farfetched.

19

20 **ARVIND DATAR:** No, what I'm submitting is Entry 33 must be read with Entry 26 and 27.
21 Supply distribution is open to the State legislature subject to Entry 33. What happens is once
22 a notified order comes, it becomes an occupied field, Entry 33, and it's a no-go zone for the
23 State.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Until the State has a notified order, there is no
26 occupied field.

27

28 **ARVIND DATAR:** There is no occupied field.

29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The doctrine of occupied field is not dependent
31 on the administrative exercise of power.

32

33 **ARVIND DATAR:** My Lord, I'm only submitting...

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's postulated on the existence of a legislative
36 instrument.

37

1 **ARVIND DATAR:** My Lord, I'm submitting about the doctrine of occupied field should not
2 be mixed up with the doctrine of occupiable field. Occupied field means Parliament has
3 occupied that field.

4

5 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It has occupied the field by legislating, not by
6 providing for an administrative order under the...

7

8 **ARVIND DATAR:** No, I'm just leaving to Your Lordships interpretation.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Conceptually, it may make very different...

11

12 **ARVIND DATAR:** No, please see conceptually. Please see conceptually Entry... Section 20,
13 they clear bar of the states. Now there are many cases management, takeover etc. is there.
14 Many things of regulation, other provisions are there. We are only concerned with 18-G.

15

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

17

18 **ARVIND DATAR:** Only 18-G. I am submitting, the Entry 33 will prevail over the State's
19 power under Entry 25 or 26 of List II. Lordships will just take Entry 25 of List II which is
20 subject to Entry 33.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entry 26, 27.

23

24 **ARVIND DATAR:** Yeah, Entry 26, 27. So trade and commerce within the State. Production
25 and supply within, of course, within the State will be subject to Entry 33. So I'm only
26 submitting that if Entry 33 has not been exercised by Parliament by issuing a notified order
27 under 18-G, my powers under Entry 26 and 27 are there.

28

29 **JUSTICE B.V. NAGARATHNA:** So long as a notified order is not issued.

30

31 **ARVIND DATAR:** Not there, because what I'm submitting is in a law made by Parliament
32 must necessarily mean a law made by... How does a Parliament make a law? It may make a
33 law per se or it may make a law which is implemented through a notification. If the notification
34 is not there, no. In taxing law we say, if the competition provision is not there, there is no
35 charging provision. So there's no prescribed rate, there's no duty. So I'm only submitting Your
36 Lordship Entry 18-G. That's why *Tika Ramji*, I use the word occupiable field.

37

1 **JUSTICE ABHAY S. OKA:** So, Mr. Datar, is it your contention that today, because there is
2 no notification, State can register it on subject touching 18-G? Can there be a State legislation
3 dealing with the aspects covered by 18-G today?

4

5 **ARVIND DATAR:** Yes. My submission is, take for example milk products. Take Entry 27.

6

7 **JUSTICE ABHAY S. OKA:** That could be a State legislation touching the aspects covered
8 by 18-G.

9

10 **ARVIND DATAR:** Yes, scheduled industry, it can be. So please take the scheduled industry.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So what you are effectively arguing is this that
13 if there's no notification under Section 18 -G, the subject falls under Entry 26 and Entry 27 of
14 those...

15

16 **ARVIND DATAR:** I'm not saying no, no. That'll be a wrong argument. I'm not making that
17 argument. See, Lordships will kindly see the Industry Development Regulation Act covers 39
18 industries under the scheduled industry. The schedule covers 39 types of industries. Now the
19 Centre can occupy that field by issuing a notified order under 18-G. It can control supply,
20 distribution, trade, commerce. No problem on that. Today Centre has not done it at all.

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But your argument postulates that the
23 occupation of the field ensures only when the Centre has issued a notified order.

24

25 **ARVIND DATAR:** Yes.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The answer to that is that the occupation of the
28 field operates at the stage anterior when Parliament is legislated.

29

30 **ARVIND DATAR:** No, that's the point I'm making. I'm saying it's an... Parliament can
31 occupy the field. It's an occupiable field. Please see the schedule My Lord.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's an occupied field.

34

35 **ARVIND DATAR:** No. My humble submission is...

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The implementation cannot be equated with
2 the [UNCLEAR]

3

4 **ARVIND DATAR:** Your Lordships will kindly see...

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, no, we'll consider it. One last point on what
7 the Solicitor was saying, and then we can ask the others to argue. At what point does
8 jurisdiction kick in?

9

10 **ARVIND DATAR:** Yes. No. Just see the schedule for a moment.

11

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

13

14 **ARVIND DATAR:** Now let's take, for example, take Entry 27.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The last part may not be a very correct.

17

18 **ARVIND DATAR:** Now, Lordships kindly see Entry 27. For example, food processing
19 industries, canned fruits, milk foods, malted foods, flour, etc.. Now, two points I'm going to
20 make here. I am saying that suppose there is no notified order with regard to milk foods or
21 canned products, why can't Tamil Nadu Government or let's say Maharashtra Government
22 make a law regarding distribution of mango, say for example, regulated within that State?
23 There is no notified order. But tomorrow, Parliament says that with respect to canned mango
24 slices, this is the law. Maharashtra power is gone. That's why I use the word 'occupiable field'
25 and 'occupied field', because that's why *Tika Ramji* says there must be a repugnancy in fact,
26 not a *de jure*. It should be, 'in fact'. Otherwise, what will happen? The danger is Parliament
27 will make a law under Entry 3 and never implement it. You'll paralyze the State Legislatures.
28 And if Your Lordship kindly sees there are 46 items in List III. Technically, Parliament can
29 make a law with respect to any of these Lists and not bring it into force.

30

31 **JUSTICE B.V. NAGARATHNA:** But food industry, it is a declared industry.

32

33 **ARVIND DATAR:** Exactly.

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35 **JUSTICE B.V. NAGARATHNA:** The Food Safety Act. It's a declared industry.

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37 **ARVIND DATAR:** No, I'm on a different point.

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JUSTICE B.V. NAGARATHNA: Entry 52, it is a declared industry.

ARVIND DATAR: No dispute there. I'm answering My Lord, Chief Justice's question that is it your case that a State can make any laws with regard to the scheduled industries? My answer is yes. Say, for example, can take, for example, glass, ceramics, timber, plywood. The State can regulate timber, but if there's a notified order, quit timber, then I have no power. But if there's no notified order, why can't me within Tamil Nadu or Maharashtra make laws regarding movement of timber products and My Lord, the whole irony is surprisingly, it's now become a Centre-State issue. This Act from 1979, there is no rule. We are arguing on a law which is not being implemented at all. The strangest irony is that after 1979 and Your Lordships will see at the end of the footnote, there is no rule made under this act after 1979. In the 2019, only four items are now regulated.

CHIEF JUSTICE D. Y. CHANDRACHUD: For licensing.

ARVIND DATAR: For licensing. This only licensing. So, what is legislatively progressing, they want to bring it back judicially in the reverse gear. With great respect, we should not do that. If Parliament has chosen, it has made the law. It has chosen not to occupy the field. It sends the States, you please do whatever you want. We respect your autonomy. But if there's some emergency, I will step in and regulate food, soaps, timber, etc.. No problem. But I am saying today, that if there is no 18-G order...

CHIEF JUSTICE D. Y. CHANDRACHUD: Those industries which have been exempted today, they can always bring back. The exemption can be withdrawn.

ARVIND DATAR: We don't know what will happen tomorrow. Suppose there's some serious deforestation... who thought of Covid. So, the final point I'm making...

JUSTICE B.V. NAGARATHNA: State will be acting under Entry 33, List III?

ARVIND DATAR: No, the State will be acting under Entry 26 or 27. What I'm submitting is when the State is regulated... Let us say, for example, Maharashtra, mangoes. Suppose the State is regulating the canned fruits, fruit products or milk products in Bombay, it will be acting under Entry 26 or 27. Trade and Commerce within the State, production, supply, distribution of goods. Your Lordships said goods includes raw materials, until 33 kicks in. So, 26, 27 operate full vigour till a notified order kicks in under 33. That's my humble submission.

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CHIEF JUSTICE D. Y. CHANDRACHUD: The point when... what the Solicitor General was mentioning. He said that, "Well even it's only in respect of potable alcohol and even the stage of ENA that States have no power at all." He said that part you may want to respond to.

ARVIND DATAR: My humble submission is...

CHIEF JUSTICE D. Y. CHANDRACHUD: The chart which he showed us at page 53.

ARVIND DATAR: I have given my chart at page 12.

CHIEF JUSTICE D. Y. CHANDRACHUD: Last page of your submissions.

ARVIND DATAR: Yes. Page 12 I have given my chart. And in this latest submission, kindly see the last page again. The last page is the chart, in the latest submission which I... where Kerala manual have shown. Everything is controlled by the excise manual. Please see the last chart. All these are potable. This corner is denatured spirit. Everything is in the excise manual. It's under Chapter- Liquor. What is happening in potable alcohol is as per the Law Commission and as per the Parliament, is once it is potable, it is exclusively State's domain. If it is non-potable, it becomes a Centre's domain. When does it become non-potable? When it is removed from the factory after denaturing and that denaturing must necessarily be controlled by the states. It can't happen otherwise. Because it's for the State to decide... these are all, as Your Lordships, as Justice Oka, rightly pointed out...

CHIEF JUSTICE D. Y. CHANDRACHUD: Give your chart for a moment.

ARVIND DATAR: Which, the latest?

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

ARVIND DATAR: Here I said, manual. This is liquor.

JUSTICE HRISHIKESH ROY: No, the chart that you have given in your last argument.

CHIEF JUSTICE D. Y. CHANDRACHUD: 1-0

JUSTICE ABHAY S. OKA: Your latest arguments.

1

2 **ARVIND DATAR:** Yes, yes. My Lord, except denatured spirit, order is special. Everything
3 else is potable or fit for or it can be for human consumption. It's a red box in Your Lordships
4 colour, I think. In my thing, it's black.

5

6 **JUSTICE ABHAY S. OKA:** So according to you, except this denatured spirit, everything is
7 intoxicating liquor?

8

9 **ARVIND DATAR:** No, denatured spirit is actually intoxicating liquor. But it has become
10 unfit for human consumption. It doesn't cease to be.... Your Lordship will kindly see.

11

12 **JUSTICE ABHAY S. OKA:** But it is also intoxicating liquor.

13

14 **ARVIND DATAR:** Yes, because if I add methyl alcohol, I'll go blind. But if I add some other
15 denaturant, I won't go blind. I will become sick. But I can get my kick or whatever, I want to
16 drink it. So, the hooch tragedy is only when you put methyl alcohol, because that illegal person
17 doesn't know what is the denaturant.

18

19 **JUSTICE HRISHIKESH ROY:** The crimson colour that you have put on the right.

20

21 **ARVIND DATAR:** Yes.

22

23 **JUSTICE HRISHIKESH ROY:** That is on denatured. I think it should have been put on the
24 left side of the column.

25

26 **ARVIND DATAR:** No, I just wanted to say...

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What about rectified spirit? You say... your
29 topmost column is foreign, fermented and distilled. Then distilled takes us to whiskey, brandy,
30 rum, gin, vodka, rectified spirit.

31

32 **ARVIND DATAR:** Rectified spirit. Actually, this rectified spirit should come on top near
33 country liquor because rectified spirit diluted with water becomes this thing. But this is the
34 manual which they have given. What they have said is what are the types of liquors. What are
35 the types, country liquor is of two types.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** No, it's not potable alcohol.

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JUSTICE B.V. NAGARATHNA: It's not potable.

ARVIND DATAR: Which one?

CHIEF JUSTICE D. Y. CHANDRACHUD: Rectified spirit is not potable, Mr. Datar.

ARVIND DATAR: Rectified spirit is the most potable thing. What I submit... why I gave this chart was because the whole control is by the State Government. Your Lordship will see page 12 of my chart, the first chart which I gave in my first submission, where I said rectified spirit is primary distillation. ENA is secondary distillation. Both at primary stage and ENA stage till 90's it is used as rectified spirits. We used to make it. There are two brands [UNCLEAR] 26% concentration, 32% concentration, with a colour added to it. It was only rectified spirit diluted with, brought down from 90% to 26%. Now because of modern technology, it's become extra neutral. What we say when you say, when you say 95% alcohol, what does it mean? If you got one litre of ENA, only 5% is water, 95% is alcohol by volume. So, ENA now has taken the place of rectified spirit, and I'm told by the Association that except Maharashtra, most of the states want to convert only ENA to country liquor.

CLAIMANT'S COUNSEL: You're intervening because [UNCLEAR] only on facts first. In common parlance, the words which are used is undenatured, methyl alcohol and denatured alcohol. My Lord, undenatured methyl alcohol is Ena which as it is, is potable which is used for potable purpose. My Lord I buy around... my share of IMFL produce is around 50% of the entire Indian market. I will put ENA as it is, it is coming to my factories, getting bottled and being manufactured for producing IMFL. Now undenatured has to be treated with denaturants so as to make them denatured. Once it becomes denatured, all my bottlers have common plants. What happens is there's a common distillery. The common distillery will manufacture both ENA. Once that ENA is manufactured, then a denaturant is added. There is an excise officer who's sitting there. I'm paying a license fee. I'm taking a license from the State authorities. A fee is paid, then it is being cleared. And once it is being cleared for the purpose of paints etcetera, then it is used for industrial purposes on self-assessment basis. My Lords, I'm paying the Union excise duty. Otherwise, everything is under the GST.

ARVIND DATAR: And Lordships now from 1968, we got self-removal procedure. There is no officer present. But for State, excise officer is present. But I clear this and whatever goes for denatured that goes to Central excise thing and my friend said that GST Central Excise. Earlier Central Excise will be shared by the states. Now GST is centred by Central Excise.

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CLAIMANT'S COUNSEL: And all these are composite plants, just to give... 95% is composite.

TUSHAR MEHTA: You consume ENA as it is, you die. It's toxic. It's poisonous. My learned friend says, it can't even be smelt.

ARVIND DATAR: Going back to this beverage for human consumption. My Lord, rectified spirit...

TUSHAR MEHTA: Yes. Therefore, it is used as toxic in *Synthetics*.

ARVIND DATAR: No, but even today under them, rectified spirit is potable alcohol. ENA is potable alcohol. Under the GST what is not potable is denatured spirit. Only when the denatured is added, it ceases to be potable. Otherwise, everything else is potable. Let us not... otherwise we'll come back to the *Synthetics* confusion. Everything is potable. Only thing is, what happens is you can't consume it fully. You have to dilute it and use it. My Lord for example, just to take, I was speaking to some doctors, why do you suddenly get an intoxication? If the volume and the speed is very high, you get completely intoxicated because the liver can't metabolize it. That's how you get drunk. But if you take 30 ml and drink it over one and a half hours, nothing will happen to you. That's the whole problem My Lord.

TUSHAR MEHTA: That's IMFL, not...

ARVIND DATAR: So, My Lord just to summarise, I would say, now, what's happened is if my State's argument is accepted, the industry which is making alcohol ENA will neither be under State control nor Central, that's a paradox. So, I would only humbly submit that please restore the *Balsara* position. *Tika Ramji's* good law under Article 141. I would request Your Lordship to consider this theory of occupied field and occupiable field. Secondly, *Mar Appraem Kuri* has to be overruled because *Mar Appraem Kuri* did not consider *Belsund Sugar*. *Belsund Sugar* says 'till you bring it into force, it is not law'. It's a five judge Bench. So, *Mar Appraem Kuri* apart from being *per incuriam*, not considering a Coordinate Bench. Coordinate Bench should have considered it and Lordships will just see the danger to federalism if you have the theory that just making a law eclipses the power of the States. The power of the State is eclipsed or taken away only... not only when the law is made if that law requires a notified order or the law requires a notification or a rule. That complete process must be done. Only then occupation takes place. Deeply obliged.

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CHIEF JUSTICE D. Y. CHANDRACHUD: Thank you, Mr Datar.

ARVIND DATAR: In case, we have used a high decibel because it was...

TUSHAR MEHTA: Between us, there are never high decibels.

ARVIND DATAR: I am sorry.

TUSHAR JARWAL: Would Your Lordships be taking a break now? Should I start? I can finish in 10 minutes.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes, we will continue.

DINESH DWIVEDI: We need about 10-15 minutes.

ARVIND DATAR: Financial implications for all the States, huge, huge. Because after *Synthetics*, you're not able to collect any rent fee.

CHIEF JUSTICE D. Y. CHANDRACHUD: We'll take a five-minute break and come back; I think you know because... Come back in five minutes. We'll just take a small break, just a comfort break and we'll come back. We'll hear you and... entertain themselves until we arrive there.

ARVIND DATAR: My Lord, in case I'm not at... I'll try to be here as much as I can.

TUSHAR MEHTA: Only one line, My Lords, before they start. Your Lordships are examining Entry 52, 33, 24, etc. The real fight appears to be, when the association entered, regarding GST, nobody has argued GST, please bear that in mind. Whether it is ENA or not, will have an impact there. And one of my friends jokingly said, one of my colleagues, that the test is simple, after completion of the matter let us have celebration that the matter is over. We'll IMFL and we'll also have ENA. Let's see who celebrates with what. As simple as that, My Lord. They can add as much water as they can and celebrate.

JUSTICE ABHAY S. OKA: SG, are you going to participate in that celebration?

1 **JUSTICE HRISHIKESH ROY:** Brother Oka, I'm sure the SG can... for the purpose of
2 celebration only *lassi* will be deemed to be alcohol.

3

4 **TUSHAR MEHTA:** Yes, deeming provision, My Lord would be...

5

6 **JAIDEEP GUPTA:** My Lord, just ten minutes. The reason why, there is a certain amount of
7 doubt still floating around is because there are two different cases on the table as far as we are
8 concerned. The first case is of Mr. Dwivedi, who is saying that denatured spirit is intoxicating
9 liquor because of *Balsara*. And therefore, the entire rigour of Entry 8 applies not only to
10 potable liquor, but also to denatured spirit. That's his case. The second proposition on the
11 table, My Lord, is assuming that denatured spirit is not intoxicating liquor then also, what is
12 the consequence? That's the second aspect. Now, in the process, My Lord, we have slightly lost
13 sight of Entry 8. Which is the product which we are saying is covered by Entry 8? Intoxicating
14 liquor includes denatured spirit. Then production, manufacture, possession, transport,
15 purchase, sale of denatured spirit is also outside Entry 20. Therefore, cannot be taken into
16 Entry 52, List I, and therefore, it cannot be included in the Schedule to the IDR Act. That is
17 the sum and substance of what Mr. Dwivedi has said. Because if *Balsara* is upheld by Your
18 Lordship, then the phrase 'intoxicating liquor' has been interpreted in *Balsara* to include
19 denatured spirit.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just one second.

22

23 **JAIDEEP GUPTA:** That is, My Lord, his primary proposition. Everything else he has said is
24 in reply to what has been argued. Now the primary test here is not so much how much water
25 has to be mixed or what is to be mixed to make it potable and what is not to be mixed to make
26 it potable. That's not the point. The point is intoxicating liquor in its legal sense means and
27 includes denatured spirit. That's what he has argued. Now what will happen, My Lord... We'll
28 leave that aside for the time, Your Lordship will take a call on that. What will happen if
29 'intoxicating liquors', as a phrase, does not include denatured spirit, is the next question. Now,
30 IMFL, clearly an intoxicating liquor, on all definitions everybody has agreed. The entire
31 process of production, manufacture, possession, transport, purchase, sale of IMFL is certainly,
32 My Lord, State List. It cannot be taken away anywhere. That's why it is excluded, in so many
33 words, in the Schedule, in the IDR Act today.

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Entire process for IMFL? Production?

36

1 **JAIDEEP GUPTA:** Includes, My Lord, production, manufacture. No, IMFL is an
2 intoxicating liquor.

3

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

5

6 **JAIDEEP GUPTA:** And its production and manufacture are included in Entry 8, without a
7 doubt.

8

9 **JUSTICE ABHAY S. OKA:** Including ENA?

10

11 **JAIDEEP GUPTA:** Including ENA. And, My Lord, if my Learned friend is right, which My
12 Lord, of course, we deny entirely, even if it is molasses, even then, My Lord, if it goes for the
13 manufacture of IMFL, ultimately it is in Entry. 8. There cannot be any question about it. The
14 entire process of manufacture of IMFL is included in 8. So, ENA under no circumstances, ENA
15 which is used for the purpose of manufacture of IMFL, under no circumstances can it come
16 within Central domain. My Lord, the only reason why we have pointed out that you can't make
17 a distinction between the raw materials up to the stage of ENA is because ENA may be used
18 for IMFL, it may be used for denatured spirit. We are not saying, My Lord, that something is
19 not possible legislatively because of any administrative chaos but, My Lord, whenever Your
20 Lordship decides any question of interpretation, the factual background must be clear in front
21 of, My Lord, the Court. The fact is...

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Therefore, ENA is capable of being used both
24 for IMFL and for denatured spirit?

25

26 **JAIDEEP GUPTA:** Yes, My Lord, and this is noted in Bihar Industries.

27

28 **CHIEF JUSTICE D. Y. CHANDRACHUD:** *Bihar Distilleries*.

29

30 **JAIDEEP GUPTA:** *Bihar Distilleries*. *Bihar Distilleries* holds so and says that
31 therefore, the correct point at which to distinguish between them is when they are being
32 cleared for the purpose of excise and this is noted in the Law Commission Report also. Till that
33 point, regulation, physical regulation cannot happen on two different standards. There can be
34 My Lord situations where Sales Tax is payable to the Centre, Sales Tax is payable to the State
35 or whatever. There are those laws where both Central and State laws can be applied. But when
36 you are regulating the manufacture of ENA the process of manufacture cannot be regulated by
37 two laws. So, if the Centre says the wastage allowed is 10%, and the State says that the wastage

1 allowed is 7%, both cannot, My Lord coexist at the same time. The process can only generate
2 one amount of wastage. That's the kind of thing My Lord, which cannot be done. You cannot
3 add two sets of circumstances, two sets of regulations. Physical regulation will not be possible.
4 That's, My Lord....

5

6 **CHIEF JUSTICE D. Y. CHANDRACHUD:** On your second limb, even assuming that we
7 do not accept Mr. Dwivedi's wider submission that Entry 8 would also cover denatured spirit,
8 if we accept that submission, of course and then...

9

10 **JAIDEEP GUPTA:** That's the end of the matter, My Lord.

11

12 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's *Balsara*.

13

14 **JAIDEEP GUPTA:** That's *Balsara*.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But even assuming we don't accept it and say
17 that denatured spirit lies outside Entry 8...

18

19 **JAIDEEP GUPTA:** Yes.

20

21 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Even so, the stage which leads up to the
22 clearance of ENA has to be regulated by the State.

23

24 **JAIDEEP GUPTA:** Has to be regulated by the State on the manufacture.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** On the manufacture. And if ENA is cleared
27 according to you for denatured spirit, then obviously, at that point of time onwards, it becomes
28 a part of Central control.

29

30 **JAIDEEP GUPTA:** Yes, yes.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** When ENA is clear for the purpose of IMFL it
33 continues to retain.

34

35 **JAIDEEP GUPTA:** Has to be, My Lord, Entry 8.

36

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The Solicitor was arguing that all ENA not
2 being potable liquor has to be under Central control.

3

4 **JAIDEEP GUPTA:** That's correct, My Lord and that is based on, My Lord, the question as to
5 whether ENA is intoxicating liquor. He is arguing, My Lord, that ENA itself is not intoxicating
6 liquor. It may or may not be potable. I'm not getting into that dispute. The point is intoxicating
7 liquor is IMFL and ENA, My Lord, is a raw material in the production of IMFL, which is clearly
8 intoxicating liquor. And even if it is molasses, molasses is then included in the production
9 process. We say My Lord, that the raw material is ENA. If my learned friend wishes to say that
10 the raw material is molasses even then, because of Entry 8, if it is ultimately used for IMFL in
11 that event, it will be covered by Entry 8. Centre will not be able to regulate it. And My Lord
12 they have understood that, My Lord, by putting in the Schedule, no potable liquor. Now, what
13 happens, My Lord, if to the regulation, My Lord, of anything... No. Now, My Lord, I come to
14 the next step. We are now not arguing on the basis of intoxicating liquor including denatured
15 spirit. I have explained the position, My Lord, as far as this is concerned.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** For that purpose, you are proceeding on the
18 basis that *Balsara* is wrong?

19

20 **JAIDEEP GUPTA:** Now assume *Balsara* is wrong or that Your Lordship will not uphold
21 *Balsara*. Let us assume Your Lordships will not...

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Right, it's a demurrer that you're arguing.

24

25 **JAIDEEP GUPTA:** Yes. Now then we come to what to, My Lord, what is the consequence of
26 *Tika Ramji* and whether Your Lordship should accept at least *Tika Ramji* or not, because
27 the consequence of that is... or I don't want to go ahead of myself. *Tika Ramji* in paragraph
28 24. Please note, My Lord the paragraph, because it's very difficult to find that passage. It's, My
29 Lord, in a large paragraph. Even though, My Lord, it is central to discussion for over decades,
30 it is very difficult to find it. Paragraph 24 in the middle. I'll just read, My Lord. "It also follows
31 as a necessary corollary that even though sugar industry was a controlled industry none of
32 these acts enacted by the Centre was in exercise of its jurisdiction under 52, List I." Then next
33 sentence, "Industry, in the wide sense of the term would be capable of comprising of three
34 different aspects. One, raw materials which are integral part of the industrial process. Two,
35 the process of manufacture or production. Three, the distribution of the products of the
36 industry. The raw material would be goods, which would be comprised in Entry 27 of List II.
37 The process of manufacture or production would be comprised in Entry 24 of List II, except

1 where the industry was a controlled industry when it would fall within Entry 52 of List I. And
2 the products of the industry would also be comprised in Entry 27 of List II, except where the
3 products of controlled industries when they would fall under Entry 33 of the List III." So, they
4 split it up into three parts, saying that the word industry could have a broad interpretation to
5 include all these three. That was being argued by the Appellant there. They rejected that and
6 said that only the second part of it is going to be industry. The first and the third part will not
7 be industry. So, therefore, the conclusion, this being the position, it cannot be said that the
8 legislation which was enacted by the Centre in regard to sugar and sugar cane could fall within
9 Entry 52 of List I. Now, this is the threefold test. The consequence of this threefold test is...
10 and most importantly, that the raw material for the manufacture of intoxicating... sorry, IMFL
11 or denatured spirit, either of these two, the raw material is not covered by IDR Act. So, IDR
12 Act has taken over the production and manufacture of non-potable alcohol. But it has not
13 taken over ENA because that is a raw material in the process of manufacture of the scheduled
14 item. Therefore, there is nothing wrong in the State legislating as far as the manufacture of
15 ENA is concerned. First, because what is used in IMFL is in Entry 8. And second, because what
16 is used for denatured spirit, it is only a raw material, and therefore outside the definition of
17 industry as far as **Tika Ramji** is concerned. So, the entire process can be correctly, legally be
18 regulated by the State.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Now tell us one thing. One of the submissions
21 of the learned Solicitor General was that in making that threefold bifurcation of industry; raw
22 material, manufacture and distribution, **Tika Ramji** has adopted a very artificially
23 constricted ambit of the expression 'industry' and bearing in mind the purpose of the IDRA
24 there's no reason to exclude the raw materials from the scope of regulation. What do you have
25 to say to that?

26

27 **JAIDEEP GUPTA:** Yes, My Lord. First of all, the IDR Act cannot be taken into consideration
28 because the question is whether IDR Act has correctly interpreted the entries in the
29 Constitution? So, we have to keep IDR Act out of the picture, strictly speaking.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright, keep away, keep aside the IDRA?

32

33 **JAIDEEP GUPTA:** Yes. The first proposition...

34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Can you really make that... when ultimately
36 the Entry 52, speaks of industries?

37

1 **JAIDEEP GUPTA:** Yes.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Can you then bifurcate that industry into these
4 artificial...

5

6 **JAIDEEP GUPTA:** So, therefore, My Lord...

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** How would everything which is necessary for
9 the regulation of industry, not fall in that?

10

11 **JAIDEEP GUPTA:** Yes, I'll answer that. *Tika Ramji* was expressly asked to decide whether
12 the narrow definition of industry will be taken or the wide definition of industry will be taken.
13 It is not *obiter dicta* because this question was specifically raised as question number 1. For
14 that purpose, My Lord...

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Even so is *Tika Ramji* right on that?

17

18 **JAIDEEP GUPTA:** That is the next question, and I will tell Your Lordship, I'll give two
19 submissions as to why Your Lordship should uphold *Tika Ramji*. Assuming that you are not
20 impressed by all the submissions that it has been followed for so many years, I respectfully
21 submit on principle it should be accepted. Now, first of all, it is not *obiter*, because in
22 paragraph 14, the first question, which was argued by learned Counsel for the Petitioner, this
23 is at page 99 of PDF 100 of... No, My Lord, let me not confuse the picture. I'll just read Volume
24 V, page 72, the judgment starts and I am on para 14.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** At page?

27

28 **JAIDEEP GUPTA:** Page 88 and My Lord this is question number 1. "Learned Counsel for
29 the Petitioner urges before us that the State of U.P. has no power to enact the impugned Act,
30 as the Act is with respect to the subject of industries, the control of which, by the Union, is
31 declared by Parliament by law to be expedient in the public interest within the meaning of
32 Entry 52 of List I and is therefore within the exclusive province of Parliament. The impugned
33 Act is therefore, *ultra vires* the powers of State Legislature and is a colourable exercise of
34 legislative power." The discussion on this starts by noting all the Entries and then from
35 paragraphs 18 to 24 or 25 actually, My Lord, the judgment gives reasons why it is coming down
36 in favour of the narrow interpretation and rejecting the wider interpretation. And, My Lord,
37 the reason given, it has followed, My Lord, judgment after judgment on interpretation of

1 statutes and Constitution. And the primary reason, as far as I can make out is that we must
2 have a harmonious construction. The Constitution made a distinction between industry in 24
3 and distribution in 27. If you now say, that everything is covered by 2024 then you render 27
4 nugatory. These are questions of interpretation only. Harmonious construction. Even Entry
5 33 in List III will become meaningless if all aspects of industry are part of 24 and goes to List
6 I. Now, My Lord, just as an obiter from my side, My Lord, the best definition, My Lord, the
7 one I find most easy to understand of what is a harmonious construction is contained, My
8 Lord, in the **Venkataramana Devaru** matter, which is in relation to My Lord, the Moolky
9 Petta. Where, My Lord, Your Lordship said that how do we go about harmoniously
10 interpreting? If there are two interpretations possible, one which will lead to a portion of the
11 statute becoming *otiose*, will be rejected in preference to one which gives some meaning to all
12 the provisions. My Lord the citation is My Lord, **(1958) SCR 895, Venkataramana**
13 **Devaru**. So, this is the first reason My Lord, I put forward before Your Lordships, for Your
14 Lordships, My Lord, to uphold the correctness of **Tika Ramji** on a point of principle. The
15 second point I put forward, My Lord, is this, that if my learned friend's interpretation is to be
16 accepted, then it would invite Parliament to legislate on raw materials used for potable alcohol
17 as well, thereby creating, My Lord, an impermissible conflict with Entry 8. Indeed, My Lord,
18 the whole vertical becomes subject to Central control then, molasses upwards. So, where will
19 we stop? Raw materials of IMFL or denatured spirit, raw material of ENA, raw material of
20 rectified spirit, raw material of molasses? Where will we stop if raw material is to be included
21 in this fashion? Just by mentioning the product in the Schedule to the IDR Act. But more
22 specifically My Lord, in this case, Your Lordship sees how it will actually impinge upon the
23 State's power to legislate as far as the raw of IMFL is concerned, intoxicating liquor, admittedly
24 intoxicating liquor.

25

26 **JUSTICE HRISHIKESH ROY:** If we accept the point of removal interpretation, then we'll
27 be able to save both?

28

29 **JAIDEEP GUPTA:** Yes, correct, My Lord. If ENA is accepted to be raw material and
30 therefore, outside the definition of industry and therefore, **Tika Ramji** is good law and it
31 holds that raw materials will not be covered. If we accept that interpretation, then no conflict
32 will result.

33

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

35

36 **JAIDEEP GUPTA:** Please see, My Lord, in my submission whether it conforms to the other
37 arguments in this segment or not, I have treated ENA to be a raw material or let us say

1 molasses also. I have treated ENA to be the raw material, and therefore outside the Schedule
2 of the IDR Act because of *Tika Ramji*.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's a broader interpretation of the expression
5 'industry'. In the case of a controlled industry, that it will also include the raw material in the
6 alternative.

7

8 **JAIDEEP GUPTA:** Yes. If Your Lordship takes that view, My Lord, in that event, the raw
9 material ENA comes under the control of the Centre and there that problem arises...

10

11 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Or would it be that it is at the point of
12 removal... it is up to the point of removal, the States will have control. At the point of removal
13 whatever part of the raw material will go into denatured spirit would come under the Centre's
14 jurisdiction.

15

16 **JAIDEEP GUPTA:** Yes, My Lord. I have no difficulty with that in my second argument. In
17 the second limb of the arguments that we have put forward, we have no difficulty with the
18 conclusion that up to ENA, the State can regulate. Beyond that only if it is being cleared for
19 IMFL. This is the second argument. But My Lord if Your Lordships, accept the first argument,
20 which is that intoxicating liquor includes denatured spirit...

21

22 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Dwivedi's arguments.

23

24 **JAIDEEP GUPTA:** Yes, then My Lord, that's a different situation. My Lord, I'm trying to lay
25 out all the consequences, all the possibilities. Because sometimes, it becomes difficult to deal
26 with arguments unless all of it is on the table. Even the ones which are against us. Just a
27 footnote to this, My Lord, and I'll move on to my next point. If I am right in saying that the
28 raw material is ENA and because of *Tika Ramji* it is not part of industry within Entry 52, if
29 that is so, then Section 18-G and Entry 33 also does not apply because ENA is not a controlled
30 item.

31

32 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Because it doesn't fall within the...

33

34 **JAIDEEP GUPTA:** It doesn't fall within it.

35

36 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What in the alternative, that we don't accept
37 your point that ENA...

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JAIDEEP GUPTA: Is a raw material... No, that *Tika Ramji* is right.

CHIEF JUSTICE D. Y. CHANDRACHUD: No, if we don't accept the narrow interpretation of industry which is placed by *Tika Ramji*, then what is your alternate submission?

JAIDEEP GUPTA: My Lord, the raw material... then I'm saying, My Lord, we will have that situation where they will end up controlling the raw material for IMFL, as well. That can't be allowed. That's what I'm saying. That's why, My Lord, I'm saying *Tika Ramji* should be accepted. This is the second of my main argument as to why *Tika Ramji* is the correct law, is the right law. First, because they consciously applied principles of interpretation and particularly harmonious construction, and secondly, because otherwise, it would entrench upon entry... the interpretation would be such that it would entrench upon Entry 8.

CHIEF JUSTICE D. Y. CHANDRACHUD: Just, if there's anything you would like to add. The way I have formulated your submissions is... you are saying this actually, "If the Respondents were to be correct, Parliament could legislate on raw material used for IMFL as well."

JAIDEEP GUPTA: Yes, absolutely.

CHIEF JUSTICE D. Y. CHANDRACHUD: "If ENA is accepted as raw material and therefore outside the scope of 'industry' then no conflict will result."

JAIDEEP GUPTA: Yes.

CHIEF JUSTICE D. Y. CHANDRACHUD: "Because ENA is raw material and therefore outside the scope of the Schedule of the IDRA."

JAIDEEP GUPTA: I'm deeply obliged, My Lord. That is exactly what we wish to say. Then I go on to...

CHIEF JUSTICE D. Y. CHANDRACHUD: Really speaking your argument does not hinge on whether *Balsara* is accepted to be correct or not?

1 **JAIDEEP GUPTA:** No. It's my alternative argument. I am not going to the extent of saying
2 that the first argument I am opposing. I am accepting the first argument. My instructions...

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's in the alternative.

5

6 **JAIDEEP GUPTA:** Yes, it's only in the alternative. My instructions are very clear that we are
7 accepting the first argument as well. This is the alternative argument.

8

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

10

11 **JAIDEEP GUPTA:** Now, I go on to My Lord, only one other area which I wanted to deal
12 with, and that is this confusion about occupying a field, what is the consequence of that
13 declaration in Section 2. Now, for this, My Lord, my learned friends have relied upon *Hingir-*
14 *Rampur* and *M. A. Tulloch*.

15

16 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And *Forum*?

17

18 **JAIDEEP GUPTA:** And My Lord?

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** My judgement in *Forum*.

21

22 **JAIDEEP GUPTA:** Yes, yes, Your Lordship's judgment. Now, My Lord, here there are two
23 words which, My Lord, has sometimes gone into some difficulty even in judgments of this
24 court. Repugnancy, number one, and denudation, number two. It has created problems
25 because the words themselves can be used in different senses. My Lord, the correct position is
26 specified in *Hoechst* judgment, which Mr. Dwivedi mentioned in the morning and because,
27 My Lord, there was some contradictory statements in some Two Judge Bench, Three Judge
28 Bench judgments, in *Innoventive*, Your Lordships, My Lord, again affirmed *Hoechst*,
29 quoted the entire passage from *Hoechst*, My Lord. That is the easiest to understand passage
30 as far as, My Lord, the relationships are concerned. And the difference is My Lord, the word
31 'repugnancy' should correctly be used only for the Concurrent List, List III. Two legislations in
32 List III, Central Legislation and a State Legislation in List III. Repugnance...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** This is Article 254?

35

36 **JAIDEEP GUPTA:** Repugnance is not to be used when there is an apparent conflict between
37 legislation in List I vis-a-vis legislation in List II.

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JUSTICE B.V. NAGARATHNA: There is a pith and substance doctrine.

JAIDEEP GUPTA: Precisely, My Lord.

JUSTICE B.V. NAGARATHNA: Incidental and ancillary.

JAIDEEP GUPTA: Incidental and ancillary, all those, My Lord, are how you will apply it. What is the principle, My Lord? The principle is that if it is in its correct interpretation, pith and substance, etc., really in List I then List II you cannot legislate at all. And similarly, if pith and substance, it is in List II you cannot legislate. So, this is different from repugnance because in repugnance till somebody legislates the other legislation is valid. Now, My Lord, what is denudation then? Denudation is when you remove an article, remove an entry or some part of an entry from one list to another. So, List II says in Entry 23 regulation of mines and minerals subject to the powers exercised by the Parliament under Entry 54, under Entry 54. Now, when you do that, you remove something from List II and take it to List I, then also, there is no question of repugnancy. Then there is a question of denudation.

CHIEF JUSTICE D. Y. CHANDRACHUD: It's in the nature of an abstraction.

JAIDEEP GUPTA: It is an abstraction.

CHIEF JUSTICE D. Y. CHANDRACHUD: So, one entry is made subject to another Entry so that, that's... the first Entry is in that sense subordinate to the later entry.

JAIDEEP GUPTA: Yes, if you give the declaration.

CHIEF JUSTICE D. Y. CHANDRACHUD: If you issue a declaration.

JAIDEEP GUPTA: If you issue a declaration. Now, *Hingir-Rampur* and *Tulloch* are both cases of...

CHIEF JUSTICE D. Y. CHANDRACHUD: Entry 23.

JAIDEEP GUPTA: They are all, My Lord, Entry 23, vis-a-vis 54. So, there were cases of denudation because there was List I and List II involved. No List III business. There was a separate argument relating to List III

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CHIEF JUSTICE D. Y. CHANDRACHUD: Yes.

JAIDEEP GUPTA: In that context, the court said, Your Lordships said in both those two matters, that it depends upon the extent taken away and put into List I because that's the language also, 'to the extent'.

JUSTICE B.V. NAGARATHNA: How much is carved out of...?

JAIDEEP GUPTA: How much is taken away, how much is staying back?

JUSTICE B.V. NAGARATHNA: Denuded.

JAIDEEP GUPTA: Denuded. What is taken away is denuded. Now, in that context, Your Lordships said in both the two judgments that the field being covered by both is regulation and development of mines and minerals. Sorry, My Lord, control, I think. Control and... Sorry. Conservation and development of minerals. So, what it found was, My Lord, that both... when you make that declaration you take away the entirety of it. The conservation and development of minerals, which was in List II, the entirety of it is taken and put into List I because the declaration is like that. Having said that, in both the two judgments, they said that since the fields are the same, therefore nothing remains. Mere enactment is enough. The very existence of the law is enough. Now, My Lord, the difference between *Hingir-Rampur* and *Tulloch* was very simple. *Hingir-Rampur* dealt with a legislation where the declaration was a pre-Constitutional declaration by the Central Government whereas the State Legislation came in after Independence. So, the result was even though they found that the entire field has been taken away, they said that this declaration is invalid because it cannot cover a post-Constitutional Legislation. The declaration was under a pre-Constitutional law. The power was with the Central Government. Now the State law has come, you cannot declare. In those circumstances, you could not declare. Therefore, *Hingir-Rampur* failed. It remained with the State. Then, My Lord, 1957 legislation MMDR Act came in Mines and Minerals Development and Regulation Act came in. This time, it said Parliament and now that it said Parliament, when the matter went back to Court, they said that from 1958 onwards, the field has got denuded completely. So, you're now out. But in doing so, it said we do not even have to decide the question as to which part of the field has got denuded because it has already been held in *Hingir-Rampur* that the entirety of the field has got denuded. This is the distinction, My Lord, between *Tulloch* and *Hingir-Rampur*. The same State law won the first time, lost the second time. Therefore, it is not enough that there is legislation. Mere existence of

1 legislation is not enough. You have to see what is the field taken away. Now, there is one
2 passage here, which clarifies this situation so much that I am just tempted to read. As far as
3 this case is concerned... Volume V-F page 396, My Lord, is **Hingir-Rampur**. The PDF page,
4 My Lord, is 409 and the paragraph is 24 and after reading Entry 23 with Entry 54 of List I, it
5 says that, "The effect of reading the two entries together is clear. The jurisdiction of the State
6 Legislature under Entry 23 is subject to the limitation imposed by the latter part of the said
7 entry. If Parliament, by its law, has declared that regulation and development of mines should
8 be in public interest, be under the control of the Union to the extent of such declaration, the
9 jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been
10 passed which contains a declaration by Parliament as required, by Entry 54 and if the
11 declaration covers the field occupied by the impugned act." So there are two conditions. One
12 is there must be a declaration, and the other is that the declaration must cover the field
13 occupied by the impugned act. The impugned act would be *ultra vires*, not because of any
14 repugnance between the two statutes but because the State Legislature had no jurisdiction to
15 pass the law. It's gone, denuded. You don't have power under List II. Not because of
16 repugnance because that would take us to Concurrent List. The limitation imposed by the
17 latter part of Entry 23 is a limitation on legislative competence of the State Legislature. This
18 position is not in dispute. And then it says... it then says, My Lord, that it satisfies that test.
19 That that second test, first of course, there was a declaration of a different kind. Secondly, it
20 satisfied the test that the field occupied... the said declaration covered the field occupied by
21 the impugned act. Then it found that the declaration was not a valid declaration. So, the State
22 succeeded in **Tulloch** which is Volume V-B.

23

24 **CHIEF JUSTICE D. Y. CHANDRACHUD:** V-D?

25

26 **JAIDEEP GUPTA:** B for not Mumbai.

27

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

29

30 **JAIDEEP GUPTA:** Page 108 is where it starts. And I'll show Your Lordship para... I'll read
31 out para 5 only.

32

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

34

35 **JAIDEEP GUPTA:** Para 5. No, I don't think 5 is necessary. It says basically, My Lord... Sorry,
36 I'll put the paragraph number. It says that it has already been decided in **Hingir-Rampur**
37 that the field was the same and now that we have a proper declaration, now it is taken out of

1 the jurisdiction of the State. In fact since it is an existing legislation, they say now it has got
2 eclipsed or it has... that is paragraph 14, My Lord.

3

4 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Para 14 and page V-B, right?

5

6 **JAIDEEP GUPTA:** Yes. V-B. The PDF page is 124. So, I'm just reading the first sentence.
7 "We consider that this submission in relation to the Act before us is without force besides being
8 based on a misapprehension of the true position. In the first place the point is concluded by
9 the earlier decision in *Hingir-Rampur*, therefore, it follows it to that extent." Now, if I have
10 to apply it to this case, Entry 52, there is a declaration under Entry 52 here, if *Tika Ramji* is
11 correct then Entry 52 the field is not the same.

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** So, you know, interestingly, in this para 14 that
14 you are reading out from *Tulloch*, they applied the doctrine of occupied field here also, they
15 were really dealing with Entry 23 and 54.

16

17 **JAIDEEP GUPTA:** Yes.

18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Bottom of that para.

20

21 **JAIDEEP GUPTA:** Yes.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Where they say, "That the test of two
24 legislations containing contradictory provisions is not, however, the only criteria..."

25

26 **JAIDEEP GUPTA:** Contradictory provision is not the only criteria of repugnancy, for if a
27 competent legislature with the superior efficacy expressly or impliedly evinces by its legislation
28 an intention to cover the whole field, the enactment of the other legislature, whether passed
29 before or after, would be overborne by the grounds of repugnancy. My Lords, it says so, but it
30 is clear this is... that's why, I've given Your Lordships the passages from *Hoechst* and
31 *Innoventive* where they have clearly said that you cannot have repugnance. You can have
32 repugnance. My Lords, as the word stands it does cover the field, but it's not repugnance. In
33 technical language it is not repugnance, as far as Constitutional law is concerned, it is really a
34 case of denudation. Then only, My Lord, this mere existence of the law is enough. It covers the
35 field. Now, you can't touch it because what has happened by that declaration, you have taken
36 something out from here and put it there. Now what are we arguing? We are arguing that
37 because of *Tika Ramji* raw materials are outside the scope of industry. So, the declaration

1 does not cover the field. The field is not the same. So, the second test fails, My Lord. The field
2 not being the same, you cannot say that mere existence of a legislation is enough. Now, only
3 one more thing and I'm done, My Lord. In fact, My Lord, *Hingir-Rampur* has another
4 passage. I'm not... I think, My Lord, it will complicate things too much, My Lord, if I go into it
5 now. This Entry 52 was also pressed into service there. When the Court did not agree to 54,
6 they My Lord. pressed into, in their argument, My Lord, they went to Entry 52. There, My
7 Lord, it was rejected on the ground that the Industries Development and Regulation Act is not
8 for regulation. So, having analysed the Act it said, "It would thus be seen that the object of the
9 IDR Act is to regulate the scheduled industry with a view to improvement and development of
10 the service that they may render to the society and thus assist the solution of the larger
11 problem of national economy. It is difficult to hold that the field covered by the declaration
12 made by Section 2 of this Act, considered in the light of its several provisions is the same as
13 the field covered by the impugned act. That being so, it cannot be said Entry 52 read with..."
14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Mr. Jaideep, just one last point.
16

17 **JAIDEEP GUPTA:** Yes.
18

19 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What if, I mean, just... since the whole matter
20 is really at large before us. What if we come to the conclusion that *Tika Ramji* in holding that
21 the raw material is outside the fold of industry, is perhaps not correct? If it's a controlled
22 industry, the product goes to Entry 33.
23

24 **JAIDEEP GUPTA:** Yes.
25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Otherwise it will go to 27.
27

28 **JAIDEEP GUPTA:** Right.
29

30 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Otherwise, in the case of a controlled industry
31 it goes to 33, which *Tika Ramji* says.
32

33 **JAIDEEP GUPTA:** Yes.
34

35 **CHIEF JUSTICE D. Y. CHANDRACHUD:** On raw material, suppose we come to the
36 conclusion that the raw material will also fall within the scope of industry.
37

1 **JAIDEEP GUPTA:** Yes, the entire raw material.

2

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

4

5 **JAIDEEP GUPTA:** No, My Lord, the entire raw material then begs the question that if it is
6 going to be used for IMFL then it can't come in because of Entry 8. So, then there has to be a
7 system...

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** To the point of removal then?

10

11 **JAIDEEP GUPTA:** Yes. On the point of removal, but there are various, My Lord, regulatory
12 measures which are taken which are specific to the process of manufacturing. Theoretically,
13 there is no difficulty in saying that if you say that raw material is included, then raw material
14 for the manufacture of denatured spirit will be covered by the word 'industry' and it would be
15 open to the Centre, to Parliament, to legislate in relation to the raw material for the
16 manufacture of denatured spirit. I think, however, My Lord... My Lord, I have a caveat. One
17 caveat, My Lord, Your Lordship will keep it in mind that then production, supply and
18 distribution will be of a notified product and if it is of a notified product, My Lord, then it will
19 be Entry 33, Concurrent List. So, if the Centre does not, in fact, notify... and we are arguing
20 that actual notification is required, and I'll just make one submission relating to that... since,
21 we are arguing that actual notification is required, till such time as actual notification is made,
22 State will be able to regulate.

23

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

25

26 **JAIDEEP GUPTA:** Now, on this aspect, My Lord. Now let us think of repugnancy because
27 now Your Lordship has put that question to me, and I have said that, then only, if there is no
28 legislation by the Centre, by Parliament, then only that question will arise. Now, my learned
29 friends are interested in saying that even if I do not legislate, even then it is covered.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Forbearance, right?

32

33 **JAIDEEP GUPTA:** Forbearance. Then what will happen, My Lord? In a Concurrent List item
34 every non-legislation will also become covering the field.

35

36 **JUSTICE B.V. NAGARATHNA:** Then what is occupied field?

37

1 **TUSHAR MEHTA:** My Lord, it is legislation not acting on that legislation.

2

3 **JAIDEEP GUPTA:** This is not acting on the legislation. This is delegated legislation.
4 Notified, My Lord, means delegated legislation. My Lord, a submission was made in the
5 morning that it is in the nature of an executive order. No. It's a delegated legislation, you're
6 notified, which is why My Lord, Justice Jeevan Reddy in *Bihar Distillery* said that we are
7 also taking into consideration the fact that there is no actual notification under 18-G. He took
8 that into consideration.

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** What is the relevance? How do you explain the
11 Doctrine of Occupied Field? Because we are in the area of Entry 33.

12

13 **JAIDEEP GUPTA:** Now, we have come to repugnancy, the occupied field will mean not that
14 there is merely a law, that it must be that there is a delegated legislation applying the law. The
15 law must be complete. My Lord, Your Lordship has already heard, it is occupied. That's why it
16 is constantly said. And, My Lord, this is important because...

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That was the line which *Belsund Sugar* took.

19

20 **JAIDEEP GUPTA:** That's right. And this is important because when we come to the
21 Concurrent List, the State is also having the power to legislate. It is only that if the Centre
22 legislates on the same, then it'll get occupied and it will cease to have effect. Different, My
23 Lord, from a conflict between List I and List II, where the State never had the power.

24

25 **CHIEF JUSTICE D. Y. CHANDRACHUD:** And Parliament according to you, we'll
26 consider it... Parliament according to you, while legislating intended that the legislation by
27 itself will not be enough but there has to be a notification by the...

28

29 **JAIDEEP GUPTA:** There has to be a notification.

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** By the Central Government. So, in other
32 words, if there is no notification at all, then Parliament did not intend to oust the power of
33 the...

34

35 **JAIDEEP GUPTA:** And it has not in fact occupied the field. It can easily occupy, My Lord,
36 tomorrow they can do it. That's why this argument, My Lord, has limited usefulness.

37

1 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Only thing, Jaideep, a little... conceptually, can
2 you say that the Doctrine of Occupied Field is dependent on the exercise of power by the
3 delegate?

4

5 **JAIDEEP GUPTA:** Yes, My Lord. I'm saying so, because otherwise, it has not occupied the
6 field. It is to occupy the field by issuing a notification.

7

8 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The notification is not necessary for bringing
9 into force the law.

10

11 **JAIDEEP GUPTA:** So, therefore, My Lord, that's why I made...

12

13 **CHIEF JUSTICE D. Y. CHANDRACHUD:** It's a case where you have not brought the law
14 into force.

15

16 **JAIDEEP GUPTA:** So, that's what I'm saying...

17

18 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The notification is only for implementing the
19 provision.

20

21 **JAIDEEP GUPTA:** It's not for implementing.

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's the area where I was a little... Mr. Datar,
24 I was not on all fours... You finish then we can call...

25

26 **JAIDEEP GUPTA:** Very well, My Lord. I'll just make one submission and leave it at that.
27 Your lordships, may consider. The question is this, My Lord, that the legislation says that only
28 if we notify this product, we will control. If we do not notify, we will not control the product.
29 Why should the State in a Concurrent List position lose its power? In a denudation situation
30 mere existence of the Act is enough. But in the case of repugnancy under Concurrent List,
31 actual legislation is required, occupation is required. Till occupation State has.

32

33 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just one second.

34

35 **JAIDEEP GUPTA:** Yes, mere existence is enough.

36

37 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Yes. On the other hand...

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JAIDEEP GUPTA: So, therefore, My Lord, I say that forbearance is not to be applied in the case of a Concurrent List subject.

JUSTICE HRISHIKESH ROY: There is a delegated legislation exercise, only because the law is there the law does not occupy the field... to cause difficulty for the State...

JAIDEEP GUPTA: To cause repugnancy, yes. If it is a Concurrent List subject.

JUSTICE HRISHIKESH ROY: For repugnancy it has to be an occupied field, and you are saying it is not occupied...

JAIDEEP GUPTA: Till the delegated legislation has actually brought it into force.

JUSTICE HRISHIKESH ROY: Exercise is undertaken.

JAIDEEP GUPTA: It's very simple, My Lord. They can today say that I am now notifying. So far, they haven't, that's a different thing. It's in their hands. So, My Lord, those are my submissions. One more thing. My Lord, we haven't spoken about...

TUSHAR MEHTA: Something, My Lords, not on the merits of this case.

JAIDEEP GUPTA: Regulatory measures. My Lord, one thing I have not submitted on is Entry 6 of List II which is on public health. Now, the reason I have not made a submission is that if, in fact there is a legislation by the State which seeks to rely on Entry 6, then we will have to justify that in a Court of law. So, it perhaps does not... It's not necessary for a comment by Your Lordship, but only thing is Your Lordship may keep that in mind that when there is a public health reason then the State again has power to legislate, and that power is not subject to anything at all. That's Entry 6, List II. I just wanted to mention.

CHIEF JUSTICE D. Y. CHANDRACHUD: Thank you, Mr. Jaideep. Thank you.

JAIDEEP GUPTA: Thank you. Deeply obliged.

CHIEF JUSTICE D. Y. CHANDRACHUD: Yes, Mr. Giri?

1 **V. GIRI:** May it please Your Lordships. If Your Lordships recall, My Lord, in my first
2 submissions also I was submitting that Entry 8 would cover every kind of alcohol other than
3 denatured spirit. There was a reason to do that. Firstly, as Your Lordships had taken note of
4 the Entry starts with intoxicating liquor. Denatured spirit which is an end product and
5 therefore, could be synonymous with alcohol being used for industrial purposes, which is
6 industrial alcohol, would not come within the purview of Entry 8, My Lord because Entry 8
7 deals with intoxicating liquor. And we have no material, My Lord, even to assume on a
8 hypothetical basis that denatured spirit could be a raw material for potable alcohol at a later
9 point of time. Entry 8, My Lord, is completely exhaustive of intoxicating liquor, My Lord,
10 coming into being and even after that. My Lord, the words 'manufacture and production'
11 coming in Entry 8 cannot be treated as a repetition nor can the word, My Lord, 'production'
12 be treated as a surplus reach. My Lord, manufacture is generally relatable to the end product
13 and production could be related to the products which come in between, intermediate
14 products. But post-production and manufacture, possession, transport, purchase and sale of
15 intoxicating liquors, every aspect, My Lord, of manufacture or production or manufacture of
16 an intoxicating liquor is covered by Entry 8. Therefore, My Lords, production of ENA which
17 could be treated as a stage prior to the stage at which Indian Made Foreign Liquor or a
18 beverage as the Centre would call it, is also covered, My Lord, by Entry 8. Starting from
19 molasses then to rectified spirit, and then to ENA, and then finally to Indian Made Foreign
20 Liquor, My Lord, which is what is done, in the case of consumable alcohol or what was treated
21 as an intoxicating liquor is covered by Entry 8. My Lord, the legislative competence of the State
22 Legislature insofar as Entry 8 is concerned would therefore, deal with every stage relating to
23 the manufacture of an intoxicating liquor and even stages thereafter. My Lord we can conceive,
24 My Lord, of industries which manufacture only extra neutral alcohol and then sell it, My Lord,
25 to a bottling plant. There are many such industries.

26

27 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Come again? What were you saying?

28

29 **V. GIRI:** There are industries, My Lord, which only manufacture extra neutral alcohol but
30 don't take it to the next stage, My Lord, of an Indian Made Foreign Liquor, they can sell it to
31 any other unit. That is also covered by Entry 8. There are industries, My Lord, which procure
32 molasses or malt, and then, My Lord, come up to the stage of rectified spirit and then sell it to
33 another unit, which, a distillery which manufactures extra neutral alcohol. There are units, My
34 Lord, which deal only with bottling plants, purchase extra neutral alcohol and then convert it
35 into the different brands of liquor that we see in the market. But every aspect of it, My Lord,
36 would be covered by Entry 8. That's why, My Lord, Entry 8 deals, not only with manufacture,
37 but with production, and every aspect of it, even subsequent to manufacture. Therefore, My

1 Lord, to say that I would stop with molasses, I cannot get into the stage of manufacture of
2 Indian Made Foreign Liquor, I cannot get into the stage of manufacture of extra neutral
3 alcohol would be, My Lord, to dissect Entry 8 and then say that it will not deal with production,
4 or it will deal with production only up to a limited extent and not beyond that. Now, My Lord,
5 the part of the production of Indian Made Foreign Liquor, as they call it beverage. I'm taking
6 the path of least resistance... of Indian Made Foreign Liquor would be, My Lord, the
7 production of extra neutral alcohol or even rectified spirit, which comes beyond that. I'm just
8 going by...

9

10 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Material stages are also covered. Lead up to
11 production.

12

13 **V. GIRI:** Yes, correct. My Lord, to do otherwise would be to say...

14

15 **CHIEF JUSTICE D. Y. CHANDRACHUD:** But will the same argument not apply to
16 industry under Entry 52?

17

18 **V. GIRI:** That's, My Lord, where I would respectfully submit that Your Lordships may come
19 to that at a slightly later stage. I am saying that if Entry 8 is comprehensive, it comprehends
20 every stage of manufacture of an intoxicating liquor... My Lord, this is not to give up the
21 argument that ENA is also an intoxicating liquor. That's why I said...

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That was Mr. Dwivedi's first argument.

24

25 **V. GIRI:** No, not denatured spirit. I'm saying, My Lord, that extra neutral alcohol is also an
26 intoxicating liquor. And this is where, My Lord, *Synthetics and Chemicals* has gone
27 completely wrong. In saying that if, unless I am in a position to consume it as it is, it cannot
28 be treated as an intoxicating liquor. No. I'm saying My Lord, intoxicating liquor per se would
29 be anything which will give the effect of intoxication. It can be consumed without really...

30

31 **CHIEF JUSTICE D. Y. CHANDRACHUD:** In fact, the words, "that is to say", are words of
32 expansion.

33

34 **V. GIRI:** Expansion. It's always been. My Lord, suppose Your Lordships are pleased to, just
35 hypothetically Entry 8 intoxicating liquors, leave it at that. This argument may have... could
36 have been received at that point of time, but it is not necessary. I don't have to go to that extent.
37 I'm saying, My Lord, that if Your Lordships say manufacture, production; production means,

1 My Lord, of an intermediate product and then manufacture is the final product. And therefore,
2 My Lord, every aspect of it, every aspect of the process by which ultimately, we get into the
3 stage of manufacture of Indian Made Foreign Liquor would be covered by Entry 8. My
4 respectful submission is under Article 245 or 246 in respect of any Entry which is covered in,
5 which is contained in List I, without even resorting to pith and substance argument, that is in
6 relation to two legislations, competing legislations, which come under List III. For List I,
7 exclusive competence to legislate on any aspect of, coming under an Entry under List I would
8 be Parliament. Similarly, My Lord, with regard to every aspect that comes under a specific
9 Entry in List II, the legislative competence, My Lord, is solely that of the State. Now, My Lords
10 when Your Lordships go back to Entry 52, would it be possible, for us to urge that Your
11 Lordships construe the competence under Entry 52, as also My Lord, to take in something
12 which is completely covered by Entry 8. Please don't come to Entry 24 or... I'm saying that for
13 the purpose of anything which is wholly, comprehensively covered by an entry in List II. One
14 doesn't have to fall back on, My Lords, the Entry 24. Therefore, the competence of the
15 Parliament to legislate under Entry 52 of List I cannot take in legislating on any aspect which
16 otherwise could be covered by Entry 8. State does not have to fall back upon Entry 24.

17

18 **JUSTICE B.V. NAGARATHNA:** Why can't the reverse apply? Anything, like fermentation
19 industries is covered under Entry 52.

20

21 **V. GIRI:** Fermentation industry, My Lord, it is only...

22

23 **JUSTICE B.V. NAGARATHNA:** But how much of fermentation is covered is the question.

24

25 **V. GIRI:** No, I'm saying, My Lords, fermentation industry, suppose it takes in any aspect of
26 the manufacture or production of intoxicating liquor, then it is completely covered by Entry 8.
27 My Lord, there's no question of supremacy of Parliament in this. The amendment of 2016,
28 again, makes it clear, probably, that's what Mr. Balbir Singh, my learned friend says but I'm
29 saying that to construe, My Lord, the scope of an entry one cannot go into a legislation which
30 has been enacted under that. And therefore, I am stopping short of it. Maybe they have done
31 it right in 2016. But in my respectful submission, a declaration under Entry 52 of List I cannot
32 take in anything which is exclusively covered by an entry in List II. I don't have to challenge
33 the IDR Act. I'm only there before Your Lordships to... where Your Lordships can construe
34 that this therefore will not cover anything under Entry 8. But for all this, I'll have to still
35 convince Your Lordships that every aspect of it, every aspect of intoxicating liquor is covered
36 by Entry 8. If that is so, the exclusive legislative competence to legislate on those aspects of
37 intoxicating liquor would lie with the State in which case consequently the legislative

1 competence of the Centre under Entry 52 would not take in anything that is already, that is
2 completely covered by Entry 52. This is not a case of competing entries. This is not a case of
3 competing entries under List III. For that I'll have to... the List III, Entry 33 will have to be
4 looked into. I'm saying that the declaration under Entry 52 will have to stop short of any aspect
5 that is covered by a comprehensive Entry in List II. And consequently, My Lord, the industry
6 or industries which are mentioned in Entry 24 for this aspect, for this purpose will not take
7 in... Sorry. Some parts of IDR Act could be traced to Entry 33. And therefore, My Lord, the
8 argument on the question of repugnance, denudation all comes in when the legislation is
9 treated as one under Entry 33. Entry 33 would kick in only when, only if there is a declaration
10 by a legislation under Entry 52. In my respectful submission, one really does not have to go
11 into that to find out whether... if Your Lordships find that Entry 8 covers comprehensively
12 every aspect of production, manufacture, among other things of intoxicating liquor, then My
13 Lord its hands off. Insofar as the legislative competence of the Parliament, under the Entry 52
14 is concerned. They are in water tight compartments, My Lord. In List I, just as it applies to List
15 I, it applies to List II also. And that is what Your Lordships have held in several judgments and
16 that's the cornerstone of the federal structure of the Constitution also. There is not a question
17 of comparison of the legislation. It's a question... nor is it a question of challenge to the
18 Parliamentary Legislation. Your Lordships are construing IDR Act and whether IDR Act could
19 touch anything which is covered by Entry 8 of List II. And if Your Lordships are pleased to
20 accept my submission, then the question of IDR occupying the field really need not be gone
21 into. Why should it be gone into? Because that has gone into only for the purpose of Entry 33
22 of List III. That is why Your Lordships will have to look into the question as to whether there
23 is a denudation, whether there is a repugnancy and whether, My Lord, the conflict cannot
24 otherwise be solved. Harmonious construction and things like that. My Lord, two aspects on
25 which, My Lord, I have already made submissions. I'm not taking Your Lordships to those.
26 Para 74 ***Synthetics and Chemicals***, and this is something which Your Lordships may
27 kindly note, My Lord, made an assumption that extra neutral alcohol is industrial alcohol. My
28 Lord, on what basis? With the utmost respect, I pose this question to myself. There is nothing,
29 there is no... That's why, My Lord, I respectfully submit it that substitute, extra neutral alcohol
30 as found in paragraph 4 with denatured spirit. Everything else will fall into place. Denatured
31 spirit would be industrial alcohol. My Lord, Mr. Datar in his second chart also mentioned that
32 denatured spirit is manufactured from extra neutral alcohol add denaturants, and then you
33 get industrial alcohol, which is denatured spirit. It's not an intermediate product. But extra
34 neutral alcohol is an intermediate product from the manufacture of potable liquor, and that is
35 admitted. If Entry 8 is, My Lord, construed in such a manner as to deal with every aspect of
36 production, including every aspect of manufacture of intoxicating liquor, including, My Lord,
37 what ultimately is the penultimate product which is necessary, My Lord, in the stages, in the

1 different stages of manufacture of Indian Made Foreign Liquor, that is extra neutral alcohol.
2 Before that rectified spirit, before that, My Lord, the molasses. If Entry 8, therefore covers it,
3 then obviously, My Lord, it has to cover extra neutral alcohol. It will not cover denatured spirit,
4 My Lord, in my respectful submission because it is not intoxicating liquor. My Lord, one has
5 to construe it, My Lord, logically. My Lord, a denatured spirit may also give an intoxication,
6 nobody takes it that way, it's fatal. Methylated spirit, My Lord, in small quantity also results
7 in the death. Therefore, denatured spirit would go out of it is my respectful submission.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** The point still remains that your argument on
10 Entry 8, that production would cover every anterior stage, including ENA, which is really a
11 raw material in that sense, in the manufacture of... Would then run contrary to the logic of
12 *Tika Ramji*. That part.

13

14 **V GIRI:** My Lord, I really, I really don't... My Lord, *Tika Ramji* has been argued, My Lord,
15 in...

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Alright. Anyway, we'll... but your argument on
18 this part has some compelling attraction to it. I mean, you've made a point. We'll reflect on it.

19

20 **V. GIRI:** My Lord, I really submit that this is not generated from a quest for Your Lordships
21 to affirm *Tika Ramji*, this is My Lord, placed as...

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Of course.

24

25 **V. GIRI:** Before Your Lordship. Therefore, My Lord keep aside *Tika Ramji* also. My Lord, I
26 would also respectfully submit that *Tika Ramji* maybe affirmed by Your Lordship, that's for
27 the purpose of Entry 33 of List III, My Lord, and that is how it has been gone into in *Tika*
28 *Ramji* also. But if Your Lordships are pleased to accept and this is a submission, My Lord,
29 which I respectfully place before Your Lordships. And this is in sync with My Lord my
30 submission that except denatured spirit every other sect of alcohol would be covered by Entry
31 8. And that, My Lord, in my respectful submission that should be an answer, My Lord to the
32 question of whether, My Lord, the fact, My Lord, that in para 74 of...

33

34 **CHIEF JUSTICE D. Y. CHANDRACHUD:** We have got an answer to it because even if we
35 accept... suppose what the Solicitor argued that *Tika Ramji* is really wrong in constricting
36 the scope of industry and therefore industry would also cover raw material.

37

1 **V. GIRI:** Correct.

2

3 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Your argument really is that it falls within
4 Entry 8 because Entry 8 says intoxicating liquor, that is to say production, and therefore every
5 stage of production leading up to, to intoxicating liquor is covered by Entry 8.

6

7 **V GIRI:** I don't have to go to Entry 52.

8

9 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Then Entry 52 once again specifically falls in
10 Entry 8, then a declaration and the 52 will not really affect.

11

12 **V GIRI:** Will not, will not, My Lord.

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** That's the point.

15

16 **V GIRI:** It's a question of, My Lord, lack of legislative competence on the part of the
17 Parliament, My Lord to, under Entry 52 to touch any subject which is comprehensively covered
18 by Entry 8 of List II. This is my respectful submission.

19

20 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Therefore, 2016 they set it right. Parliament,
21 that's how Parliament...

22

23 **V. GIRI:** 2016, My Lord, apparently they must have set it right and then gave it retrospective
24 effect.

25

26 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Thank you, Mr. Giri. Anything else that you
27 have?

28

29 **V. GIRI:** My Lord, except that, My Lord, the question of revelation by forbearance and My
30 Lord, the reference, My Lord, to the judgment in **Forum**, My Lord, for the purpose of
31 repugnance. In my respectful submission, My Lord, para 132 of the judgment in **Forum** which
32 has been, My Lord, copiously extracted in the learned Solicitor's submissions. My Lord, it dealt
33 with this aspect. Your Lordships formulated the three tests. In fact, there is a conspectus of all
34 earlier judgments on the point on question of repugnance. And then Your Lordships said, there
35 are three tests. Then Your Lordship said, one, two, three. My Lord, I'm not taking Your
36 Lordships time, My Lord, to go through it again. But in every one of the test, what are the
37 words, the keywords that Your Lordships have used is, 'text and context'. How do you really

1 assist, My Lord, the repugnance unless there is an actual text of the legislation there? My Lord,
2 I'll try to answer the learned Solicitor's submission that the legislation is the IDR Act. That's a
3 different matter. But for the purpose of repugnance when there are already, My Lord,
4 regulations of the State in place and you want to take it away, My Lord, I respectfully submit I
5 am not regulating it. The Centre says under 18-G, I have the power to regulate it. I'm not
6 regulating it. Why am I not regulating it? I am forbearing from bringing about a legislation.
7 Where is the question repugnance in that? My Lord, 18-1 speaks about expediency to be
8 considered, assessed and then acted upon by the Centre. Nobody has a case, My Lord, that the
9 Centre would step in there. That's not the case at all. The question is, unless there is a
10 regulatory mechanism put in place, My Lord, even in relation to an action taken under 18-G.
11 The question of, My Lord, the regulative, or what the learned Solicitor calls as regulation by
12 forbearance really does not come in. That does not answer any test which Your Lordships have
13 over the years and which is My Lord, which is completely in place and which has been
14 reproduced, My Lord, there is a conspectus in **Forum**. All the three tests contemplate either
15 a head on collision as Your Lordships call it; or My Lord, the question of compliance with one,
16 disabling compliance with the other; or what Your Lordships said, suppose there is a scheme
17 in place, do you encroach into it by another legislation? That is where, My Lord, the question
18 of repugnance comes in. But for all this, there must be something in place. Forbearance does
19 not bring about a scheme. Therefore, in respect of that, My Lord, I would respectfully submit
20 that Doctrine of Regulation by Forbearance really does not apply in this case. But I would
21 respectfully submit, the question of the jurisdiction getting transformed to or transferred to
22 the Centre should arise at the stage of removal or clearance of the extra neutral alcohol. This
23 is what has been, My Lord, put in place in para 23 of **Bihar Distilleries** in my respectful
24 submission, so succinctly, My Lord, in **Bihar Distilleries**, paragraph 23. **Vam Organics**
25 also, My Lord, said the same thing. In fact, those two judgments are in **(1997) 2 SCC** one after
26 the other, back-to-back. Significantly, My Lord, the High Court judgment in **Vam Organic**,
27 which is confirmed by this Hon'ble Court is by Justice Jeevan Reddy, who's the author of
28 **Bihar Distilleries**. I'm saying, My Lord, para 23 gives a complete answer, My Lord, to the
29 how to regulate it. Regulate it at the stage when extra neutral alcohol is cleared for the purpose
30 of industrial use. Beyond that, yes. But even then My Lord, what **Bihar Distilleries** says is
31 this, "Regulation by the State for the purpose of preventing and misuse of the denatured spirit,
32 so that, it doesn't make its way to the circuit of potable alcohol, or alcohol, which is meant for
33 human consumption." We have a right to charge a liquidatory fee. The States have a right to
34 charge a regulatory fee on manufacture, which is a tax. Excise duty covered by Entry 84 of List
35 I. My Lord, I would most humbly submit, Your Lordships would have been taken through para
36 23 of **Bihar Distilleries**, I would most humbly submit that if Your Lordships are pleased to
37 affirm that, it would solve any problem that arises out of this. There is no dual control, My

1 Lord. It's a question of control up to the stage of clearance by the State and beyond that, My
2 Lord, by the Centre, if it's for the purpose of industrial alcohol. Every aspect of this movement
3 is completely covered by *Bihar Distilleries* is my respectful submission. My Lord, I would
4 respectfully submit, therefore, *Synthetics and Chemicals*, Your Lordships may reconsider
5 it. Grateful to Your Lordships.

6

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

8

9 **BALBIR SINGH:** My Lords, before this case the Union and Centre have never been on
10 loggerheads. The Union has always been making a statement on the States' side. So, the
11 harmonious operation has prevailed all this while. And if you see that...

12

13 **TUSHAR MEHTA:** We are still not on loggerheads. It's the constitutional interpretation.

14

15 **BALBIR SINGH:** No, it's only on the... what I meant was only on this.

16

17 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Which State are you appearing for?

18

19 **BALBIR SINGH:** State of Maharashtra.

20

21 **TUSHAR MEHTA:** Maharashtra.

22

23 **BALBIR SINGH:** And we can't be, My Lords.

24

25 **TUSHAR MEHTA:** And in any case Balbir Singh can never be.

26

27 **BALBIR SINGH:** Certainly I can't be. I certainly can't be. But it's only on the law and the
28 Constitution, My Lords. So, where that red line to be drawn is and when the baton is to be
29 handed over by the State, My Lords, it's a relay race in my respectful submission. That till the
30 time Entry 8, which is the alcoholic liquor is carried out and till the stage of denaturing, the
31 control till today, which has not been disturbed, remains with the States, My Lords. Today, the
32 distilleries which are operating the State authorities prescribe forms, documents and the
33 processes to be carried out, including the charging of excise duty and finally handing over the
34 product to the bottlers or to the final distributors, My Lords. It's only at the denaturing stage
35 the product... if ENA is cleared, then it goes to the denaturing industry and at that stage, the
36 Union's control starts. Pre that the line is very clear and if we see, My Lords, this in the light
37 of not only Entry 8, but Entry 24 and Entry 52 of List I. And if I may try and see the sense of

1 **Tika Ramji. Tika Ramji** talks of the industries in Schedule, only 18-G talks of articles and
2 talks of distribution and supply. Rest of the other Act talks of the industries which are given.
3 Industries can have multiple products. And one of the objects, if we see of this Act is control
4 by the Union in public interest. And if we look at the scheme of that Act is, one of the schemes
5 is to have a control that what is the requirement of a country in respect of a particular product
6 in a particular industry? What is the employment? What is the capital? These all statistics are
7 also collected through different committees which are formed over in different regions in the
8 country. One of the objects is, that in one particular industry, what is the country's
9 requirement and what is the country's production which is there. **Tika Ramji** seems to be in
10 line with that, to say that when we talk of industry and why we should not look at the raw
11 material is because raw material potentially can belong to a different industry. Let's say,
12 somebody says that the garment industry to be seen, whereas the fabric industry may be
13 different. So, if we look at the industrial control of garment industry is to be taken may not
14 necessarily be the fabric industry to be taken. India needs how many garments in a year? How
15 many jobs to be created, how much capital to be required in one industry may not be there.
16 So, **Tika Ramji**, in that sense has seen that. If we see or contrast this with the requirement
17 of 18-G is, a fair price and fair distribution of a particular article for supply and distribution in
18 public interest is to be seen. If we see this in that particular light, and the control on a product
19 or an article to be seen, although it constitutes a part of industry. In my respectful submission
20 and especially in light of Entry 8, which we say, that is to say, and all aspects of, right from the
21 beginning of manufacture and final supply transportation, even including a purchase which
22 has been there, that has been given to the State in my respectful submission. And if we see
23 **Bihar Distilleries**, that makes it very clear that in this sense, if we harmonize two laws,
24 looking at Entry 8 and even if we pitch it at the level that how do we resolve a conflict of Entry
25 24, although the first submission is that the Entry 8 is a carve out of Entry 24; even if we stop
26 at that, and we compare Entry 24 with Entry 52, then we have to have two segments in the
27 1951 Act. One act is an industrial level which is to be seen, which is **Tika Ramji** when we say
28 production and manufacture. And second is at 18-G till which today... till the time it has not
29 been... There is no delegated legislation, there is no notification which has been there. So,
30 looking at this, I don't want to go in any other area. If you look at it and I've been informed in
31 the Industrial Association is there, 95% of industries today are operating, which are...
32 industries which are carrying out the process of making IMFL products and denaturing also.
33 So, in a composite industry which is operating today, distilleries which are operating in this
34 sense, can it be said that, the entire, whether it's starting from molasses or from the grain
35 stage, the control should go to the Union and not to the State? Which in my respectful
36 submission is Entry 8 is good to be redundant. But that seems to be the very purpose.
37 Comparing with one industry which is not doing denaturing, finally clearing ENA or IMFL, in

1 that case, that industry certainly will not be within the domain of Union or the legislative
2 competence of Union. Handing that over to say that the denaturing to be carried out in those
3 sense, if you look at the harmonious construction as My Lords have pointed out, and I see that
4 at what stage a clearance makes it very clear that up to a certain point, the State is carrying on,
5 the baton is handed over, the moment this goes into denaturing product which is being carried
6 out. That's in my respectful submission, that's the way of looking at it. Grateful.

7

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

9

10 **TUSHAR MEHTA:** Obligated, Your Lordships. Only one line My Lord. My Lord, I did not
11 address Your Lordships because I concluded My Lord, little early... Just pointing out on the
12 question of the term 'industry' my note is II-G. II-G, kindly, My Lord...

13

14 **CHIEF JUSTICE D. Y. CHANDRACHUD:** Just one second.

15

16 **TUSHAR MEHTA:** On raw material, whether it should include within the term industry or
17 not. But since, My Lord, I stopped at... It was filed earlier, My Lord, but since I stopped at, My
18 Lord occupying field question, I did not take Your Lordships. This may kindly, My Lord, be
19 treated as...

20

21 **PAWAN SHREE AGARWAL:** Only one, Your Lordships only one last thing...

22

23 **CHIEF JUSTICE D. Y. CHANDRACHUD:** I would like to conclude by thanking all of you
24 for your very erudite arguments, on an issue which have confounded generations of judges and
25 lawyers. Thank you very much.

26

27 **BALBIR SINGH:** Grateful.

28

29 **PAWAN SHREE AGARWAL:** Will Your Lordships just permit me last thing, as a matter of
30 fact, only. So far as excise duty is concerned because that is not what Your Lordships are
31 considering, no State has ever charged excise duty on extra neutral alcohol. That has been the
32 position because that Entry is different that talks about alcohol liquor for human consumption.
33 That is not intoxicating liquor. So, no State has ever charged excise duty, that's a factual
34 situation that Your Lordships will consider.

35

36 **TUSHAR MEHTA:** Kindly My Lord, take care of, My Lord, if they are indirectly, they may
37 not get any relief, in GST regime nobody has argued that.

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CHIEF JUSTICE D. Y. CHANDRACHUD: We are not dealing with the GST issue.

TUSHAR MEHTA: My Lord, that's the intention of the industry.

JUSTICE HRISHIKESH ROY: If I may just have a word I'm looking at the watch.

TUSHAR MEHTA: Yes, My Lord.

JUSTICE HRISHIKESH ROY: Which is facing us but behind you. This intoxicating liquor argument going on over so many days, and today we've had a very long day. Are we concluding so that everyone can go and have a happy hour?

BALBIR SINGH: My Lords, lawyers maybe but we don't know about the judges, My Lords, if they have a happy hour.

PETITIONER'S COUNSEL: My Lords, I appear for UT of Puducherry, My Lords. Our written submissions is on record I-L, My Lord. We adopt the arguments of the learned seniors.

TUSHAR MEHTA: Grateful to Your Lordships. Deeply Obligated.

V. GIRI: Grateful, My Lords.

END OF DAY'S PROCEEDINGS