

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

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

**Civil Appeal No. 151/2007**

**STATE OF UP & ORS**

**Petitioner(s)**

**VERSUS**

**M/S LALTA PRASAD VAISH**

**Respondent(s)**

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1 **CHIEF JUSTICE DY CHANDRACHUD:** For the filing before the Constitution Benches  
2 and other important cases before other Benches as well. We had a circular of 22 August, 2020.  
3 We've just updated it a little bit. Based on our experience it's already been circulated to the  
4 Bars, dated 3rd April, just to sort of fine tune the manner in which things should be filed, et  
5 cetera. Just to make it more...

6

7 **TUSHAR MEHTA:** We saw that yesterday. Henceforth this will be important. Possibly that  
8 may not be in sync with the present status. It would be, My Lord...

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Prospectively.

11

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

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Yes. Mr. Giri

15

16 **V. GIRI:** May I please Your Lordships. Apropos, My Lord, what fell from Your Lordships  
17 yesterday, when Your Lordships were rising, I wish to make a... temper the submission which  
18 I made in answer to a query that fell from Your Lordships. Would Your Lordships kindly  
19 permit me to take Your Lordships to *Bihar Distillery 97(2) SEC 727*, Volume V(a) PDF  
20 91, para 23.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** 76, right?

23

24 **V. GIRI:** Yes, My Lord. This is at para 23. Para 23 is at PDF 91. My Lords got it?

25

26 **JUSTICE PARDIWALA:** Yes.

27

28 **V. GIRI:** Your Ladyship has it?

29

30 **JUSTICE B.V. NAGARATHNA:** Paragraph?

31

32 **V. GIRI:** Paragraph 23 at PDF page 91. Can I proceed? We are with a respectful and  
33 considered opinion that the decision in *Synthetics* did not deal with the aspects which are  
34 arising for consideration herein, and that it was mainly concerned with the industrial alcohol,  
35 that is denatured rectified spirit. While holding the rectified spirit is industrial alcohol, it

1 recognizes the same time that it can be utilized for obtaining country liquor by diluting it for  
2 manufacturing IMFL. When the decision says that rectified spirit with 95% alcohol content is  
3 toxic, what it meant was it taken as it is, it is harmful and injurious to health. By saying toxic,  
4 it did not mean that it cannot be utilized for potable purposes either by diluting it or by  
5 blending it with other items. The undeniable fact is that rectified spirit is both industrial  
6 alcohol as well as a liquor which can be converted into country liquor just by adding water. My  
7 Lord, on this I have a submission, therefore, My Lord, I would most humbly request Your  
8 Lordships to kindly flag this statement. It is also the basic substance from which IMFLs are  
9 made. Denatured, rectified spirit, of course, is wholly and exclusively industrial alcohol. This  
10 basic, factual premise which is not and cannot be denied by anyone before it. But would Your  
11 Lordship, also like to read the note which comes. I don't know how it came about My Lord, the  
12 footnote.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Footnote, yes. In fact yesterday, when it's being  
15 read, I was going to tell the learned counsel that, let's see the footnote.

16

17 **V. GIRI:** Yes.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** I saw the footnote, it's very interesting.

20

21 **V. GIRI:** If rectified spirit is toxic and unfit for human consumption, why is it necessary to  
22 denature it asked the Learned Additional Advocate General for the State of Uttar Pradesh.  
23 "Denaturing is meant precisely for making what is meant for human consumption, unfit for  
24 human consumption" he says. Raises certain aspects for consideration herein, which were not  
25 raised or considered in **Synthetics**. Take the case by two industries, A and B come forward  
26 with proposals to manufacture, rectified spirit. A says it proposes to manufacture rectified  
27 spirit and then denature it immediately and sell it as industrial alcohol, while B says that it will  
28 manufacture rectified spirits and utilize it entirely for obtaining country liquor. *Arrack* or by  
29 whatever the name it may be called, for of a manufacturing Indian made foreign liquors from  
30 out of it, not to supply it to others for the same purpose. According to **Synthetics**, A, is under  
31 the exclusive control of the Union and only powers of the state are those as are enumerated in  
32 para 86, that is para 86 of **Synthetics** quoted above. But what about B? The rectified spirit  
33 manufactured by it is above will be meant only for potable purposes. Can it really be called  
34 industrial alcohol? Can it still be sent to the state concerned there's no power or authority to  
35 control and regulate industry B and that the Union alone will control and regulate it until the  
36 potable liquors are manufactured? The Union is certainly not interested in nor is concerned  
37 who the manufacturer or process of manufacture of country liquor or IMFLs. Does the

1 situation not leave a large enough room for abuse and misuse of rectified spirit? It should be  
2 remembered that according to many states before us, bulk of the rectified spirit produced in  
3 their respective states is meant for and is utilized for obtaining or manufacturing potable  
4 liquors. Can it be said, even in such a situation that the state should fold its hands and wait  
5 and watch till the potable stage is reached.

6  
7 Yet another and additional circumstance is this. It is not brought to our notice that any notified  
8 orders have been issued under 18-G of the IDR Act regulating the sale, disposal or use of  
9 rectified spirit for the purpose of obtaining or manufacturing potable liquors, which means  
10 that by virtue of Entry 33 of List III, the states do have the power to legislate on this field. Field  
11 not occupied by any law made by the Union. It is these and many other situations which have  
12 to be taken into consideration and provided for in the interests of law, public health, public  
13 revenue, and also the interest of proper delineation of the fears of the Union and states. The  
14 line of demarcation and should, can and should be drawn at the stage of clearance/removal of  
15 the rectified spirit My Lord. This is what Mr. Datar was also stressing on My Lord, I beg to do  
16 the same. Where the removal/clearance for the industrial purposes that is other than the  
17 manufacturing of potable liquor, the levy of duties of excise and all of the control shall be of  
18 the Union, but where the removal clearances for obtaining or manufacturing potable liquor,  
19 the levy of duties of excise and all other control shall be that of the states. This calls for a joint  
20 control and supervision to the process of manufacture of rectified spirit and its use and  
21 disposal, we proceed to elaborate. So, far as industries engage in manufacturing with rectified  
22 spirit meant exclusively for supply to industries, that is, industries other than those engaged  
23 in obtaining a manufacturer of potable liquor, whether after denaturing it or without  
24 denaturing it are concerned, they shall be under the total and exclusive control of the Union  
25 and be governed by the IDR Act and the rules and the regulations made thereunder. In other  
26 words, where the entire rectified spirit is supplied for such industry purposes, or to the extent  
27 it is so supplied as the case may be, the levy of excise duties and all other control including  
28 establishment of industry, shall be that of the Union. With the power of the States in case of  
29 such an industry, is only to see and ensure, that rectified spirit whether in the course of its  
30 manufacturers or after its manufacturer, is not diverted or misused for potable purposes. They  
31 can make necessary regulations requiring the industry to submit periodical statements of raw  
32 material in the finished product and are entitled to verify their correctness. For this purpose,  
33 the States will also be entitled to post their staff in the distilleries and levy reasonable  
34 regulatory fees to defray the cost of such staff as held by this court in so and so, so and so. So  
35 far as industries are engaged in the manufacturer of rectified spirit exclusively for the purpose  
36 of obtaining or manufacturing potable liquors, or supplying the same to the government or its  
37 State, or its nominees for the said purpose are concerned, they shall be under the total and

1 exclusive control of the States in all respects and at all stages, including the establishment of  
2 the distillery. In other words, where the entire rectified spirit produces supply for potable  
3 purposes or to the extent it is so supplied as the case may be, the levy of excise duties and all  
4 of the control shall be dealt by the States. According to the State governments, most of the  
5 distilleries fall under this category. So far as the industries are engaged in the manufacturer of  
6 rectified spirit, both for the purpose of supplying it to industries other than industries, engaged  
7 in obtaining or manufacturing potable liquors and intoxicating liquors and for obtaining or  
8 manufacturing or supplying it to Government persons for obtaining manufacturing potable  
9 liquors are concerned, the following is the position. The power to permit the establishment  
10 and regulation and functioning of the distilleries is concerned, it shall be the exclusive domain  
11 of the Union. But so far as the levy of excise duties is concerned, the duties on rectified spirit  
12 removed cleared for supply to industries. Other than industries engage in obtaining or  
13 manufacturing potable liquors shall be levied by the union, while the duties of excise on  
14 rectified spirit cleared, removed for the purpose of obtaining or manufacturing potable liquors,  
15 shall be levied by the State government concerned. The disposal, that is, clearance and removal  
16 of rectified spirit, in the case of such an industry, shall be under the joint control of the Union  
17 and the State concerned, to ensure evasion of excise duties of rectified....

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** It is to ensure against evasion, I think.

20

21 **V. GIRI:** Yes. Now , My Lords read, will Your Lordships kindly come to four...

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Just continue reading it.

24

25 **V. GIRI:** Yes, I'll read.

26

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

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Against evasion. There is a missing word there.

30

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

32

33 **V. GIRI:** It is obvious that in respect of these industries too, the power of the States to take  
34 necessary steps to ensure against the misuse or diversion of rectified spirits meant for  
35 industrial purposes, that is, supply to industries other than those engaged in obtaining or  
36 manufacturing potable liquors to potable purposes, both during and after the manufacturer of  
37 rectified spirit, continues unaffected. Any rectified spirit supply, diverted or utilized for

1 potable purposes, for obtaining or manufacturing potable liquor shall be supplied to and/or  
2 utilized, as the case may be, in accordance with the State excise enactment is concerned and  
3 the rules and regulations made thereunder. If the State is so advised, it is equally competent  
4 to prohibit the use, diversion, or supply of rectified spirit for potable purposes. It is advisable,  
5 near necessary, now the Union Government makes necessary rules, regulations under the IDR  
6 Act directing that no rectified spirit shall be supplied to industries, except after denaturing it  
7 to save those few industries. Other than those industries which are engaged in obtaining or  
8 manufacturing potable liquors, where denatured spirit cannot be used for manufacturing  
9 purposes. So far as rectified spirit meant for being supplied to, or utilized for potable purpose is  
10 concerned, it shall be under the exclusive control of the States from the moment, it is cleared,  
11 removed for that purpose from the distillery, apart from other powers referred to above. The  
12 power to permit the establishment of any industry, engaged in the manufacture of potable  
13 liquors, including, IMFLs be a country liquor and other intoxicating drinks, is exclusively  
14 vested in the States. The power to prohibit and to regulate the manufacture, production, sale,  
15 transport or consumption of such intoxicating liquors is equally that of the States, as held in  
16 **McDowells**. The writ petition is disposed off in the above.

17

18 Now, My Lords, in the query which Your Lordships have put to me yesterday, I made a  
19 submission that Entry 8 covers all varieties of liquor, all varieties of alcohol, except denatured  
20 spirit. I stand by that. But to the further query which Your Lordships had put, therefore, is the  
21 State completely giving up any kind of control over the rectified spirit or which is denatured  
22 spirit as such. In my respectful submission, what I submitted or what I wanted to submit is  
23 that, I don't propose to exercise any control over denatured spirit insofar as Entry 8 is  
24 concerned. But that's not the same thing as saying that I may not do it for the purpose of Entry  
25 33 and because if it doesn't come under Entry 8, then it would fall under Entry 24, but it will  
26 be subject to Entry 51. If it is declared as an industry, if it is not declared as an industry for  
27 public purposes, under Entry 52 of List I, then My Lord, State has complete control anyway  
28 on that. Suppose it is not scheduled to the IDR Act at all. State has complete control. But we  
29 are looking at a situation where fermentation industry is an item scheduled to the IDR  
30 Act? And therefore My Lord what happens? The power exercised under Entry 84 will still have  
31 to be subject to what is mentioned in Entry 33. IDR Act is there, but there is a long line of  
32 judgements which have already been placed before Your Lordship, including **Tika Ramji** and  
33 thereafter My Lord, finally, with ending with **ITC** Justice Ruma Pal's judgment, that unless  
34 there is a notified order under Section 18(g) of the IDR Act, there is no legislative measure  
35 brought into place, by the Central Government, even in relation to any one of the scheduled  
36 industries, which are scheduled in the schedule to the IDR ACT as such. Therefore, while the  
37 field is open for the State government, even for regulatory measures. I'm not saying for fiscal

1 purposes, because it doesn't fall under Entry 8 and therefore I cannot do it. If you look at  
2 Entry 51 of List II, and Entry 84 of List I as it stood prior to the 101st Amendment, anything  
3 other than alcohol for human consumption or liquor for human consumption. It cannot be  
4 taxed by the State. This is what is mentioned...

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Therefore the logical sequitur of your argument  
7 is that denatured spirit will fall outside the purview of Entry 8.

8

9 **V. GIRI:** Yes.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** By virtue of the fact that it falls outside Entry 8,  
12 it must necessarily fall under Entry 24.

13

14 **V. GIRI:** Correct.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Where there's a declaration under Entry 52 it will  
17 fall under Entry 52, and therefore that product ultimately is governed by Entry 33. In case  
18 there's a notified order, then you have to follow the order, to be passed by the Legislation under  
19 Entry 52.

20

21 **V GIRI:** Correct.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Now only one question, in fact, if I'm with my  
24 brother, Justice Manoj Misra's permission. We were both discussing last evening what  
25 happens in the case of an integrated unit because that's the point Brother Manoj Misra had  
26 raised when we had a conversation last evening.

27

28 **V. GIRI:** With respect, My Lord, it struck me also, because what has been mentioned in  
29 *Bihar Distilleries* also and the chart which Mr. Datar had also provided. It starts out with  
30 a union, which has to manufacture EN extra neutral alcohol and then, My Lord, we cannot,  
31 but it is not inconceivable that there could be a unit, My Lord, which says 90% or 70% of it, I'll  
32 take it, I'll use it for potable purposes, but 30% I'll use it for the industrial purposes. What  
33 happens then? Slightly vexed question. With respect to My Lord, I'm just suggesting one  
34 scenario. In my respectful submissions, up to extra neutral alcohol it is within the control of  
35 the State. What happens post-production of extra neutral alcohol, that's a product. And  
36 therefore extra neutral alcohol is also covered by Entry 8. Production of extra neutral... There  
37 could be cases where they produce only ENA and then sell it to other distilleries, which may

1 blend it and then manufacture Indian made foreign liquor. That's what happens in many cases  
2 also. There are very few units which actually manufacture ENA and then also manufacture the  
3 denatured spirit, because it's only denatured spirit, which can be treated as industrial alcohol.  
4 That is why My Lord, there could be some reconsideration, which we respectfully urge that  
5 Your Lordships may do insofar as ***Synthetics and Chemicals*** are concerned. But coming  
6 back to this scenario in my respectful submission, in the production of ENA, the unit still  
7 comes under the control of the State.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** But if it's a unit, as Brother Misra was suggesting,  
10 is there something for the... Manoj, something you can ask from that.

11

12 **JUSTICE MANOJ MISRA:** There are occasions where alcohol is used for converting into a  
13 substance which is not non-alcoholic. Like MEG, for example, there is a process for converting  
14 sugar into molasses. Molasses is fermented. Alcohol is generated. Alcohol is then converted  
15 into MEG. MEG is a polyester raw material. Now that is no longer an alcohol, but it's not a  
16 case where 30% is diverted to 70%. It's a case where it is a complete conversion of the raw  
17 material. What would be the scenario in such a case?

18

19 **V. GIRI:** In my respectful submission till the production of... that is where the question of  
20 clearance comes in. If the clearance is for the purpose of treating it as industrial alcohol, then  
21 probably the State would be out of bounds there.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Attorney and Mr. Solicitor, when you are  
24 responding, don't respond right now because since he is in the midst. This is an area, because  
25 ultimately our answer should not be very simplistic. We must be conscious of what the  
26 permutations and combinations are on the ground. So maybe because your officers will  
27 instruct you for the Union will be very much more conversant with what we expect. So, you  
28 know just, when you are taking instructions because, ultimately this will be a crucial revenue  
29 significance to both sides....

30

31 **TUSHAR MEHTA:** [UNCLEAR] We will take instructions.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Datar any... would you like to share?

34

35 **ARVIND P. DATAR:** To Your Lordships question, if it's an integrated unit now, integrated,  
36 meaning the ENA never comes out, because when you say central excel duty, you have to  
37 decide what is your final product and you get a license under Rule 44, you say, what is my final

1 product? If my final product is MEG or it could be isopropyl alcohol, whatever it is, that is  
2 never meant to be, then My Lord, it will come under my submission. It will be a fermentation  
3 industry other than potable alcohol, it will come under Entry 26 directly. Because if it's  
4 fermentation industry with potable alcohol you're out of the amended 26. So, you could have  
5 a situation where the raw material, what they call the substrate, substrate is still molasses.  
6 Molasses will be converted into alcohol, but that alcohol is never diverted for human  
7 consumption, straight as an integrated process start to finish. You put molasses here you get  
8 MEG outside. It will be an industry based on fermentation, 26 that's my submission.

9

10 **V. GIRI:** But I thought what fell from Your Lordship, is something slightly different.  
11 [UNCLEAR] case where part of the alcohol goes into potable purposes, and part of the ENA  
12 goes for the...

13

14 **JUSTICE MANOJ MISRA:** No, no the whole like, the whole of the alcohol goes conversion  
15 into a final product?

16

17 **ARVIND P. DATAR:** My Lord, The good test is what is the final product of this unit. If the  
18 final product is MEG then...

19

20 **V. GIRI:** My Lord, if it's a...

21

22 **JUSTICE HRISHIKESH ROY:** Suppose it is a dedicated industry for producing MEG...

23

24 **ARVIND P. DATAR:** Yes.

25

26 **JUSTICE HRISHIKESH ROY:** Then it will have a different understanding.

27

28 **ARVIND P. DATAR:** Yes.

29

30 **JUSTICE HRISHIKESH ROY:** But suppose it is starting off as a, what is that, extra neutral  
31 alcohol producing and then eventually subject to demand. Let us say you are in that industry  
32 extra neutral alcohol you are up till the state is till then in control. Thereafter, depending upon  
33 how, at the point of removal, what extent you are removing, then State and Union control will  
34 come in. That's what I think Justice Jeevan Reddy had said.

35

36 **ARVIND P. DATAR:** Yes. Your Lordship, answer is in your Your Lordships' example, my  
37 final product will say ENA, Extra Neutral Alcohol.

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**JUSTICE HRISHIKESH ROY:** Your final product will say?

**ARVIND P. DATAR:** My license will say Extra Neutral Alcohol. I have to get permission from the state distillery.

**JUSTICE HRISHIKESH ROY:** Right.

**ARVIND P. DATAR:** But if I'm going to make MEG or if I'm going to make alcohol based final products because there's a host of final products which can be based out of alcohol. Then I will go for an excise license or now a GST license, and I will never come within the purview of the state law because I'm never making ENA at all. I'm never clearing ENA.

**JUSTICE HRISHIKESH ROY:** They are saying you are adding the denatured element.

**ARVIND P. DATAR:** Yes. There my final product is potable alcohol. That's why what they say is intoxicating liquor is intoxicating liquor to the extent you denature it, it doesn't cease to be intoxicated. It becomes unfit for human consumption.

**CHIEF JUSTICE DY CHANDRACHUD:** That is a little area of diversion between you and Mr. Giri's...

**V. GIRI:** Yes, My Lord, I would still stick to the submission with respect.

**CHIEF JUSTICE DY CHANDRACHUD:** Yes, yes.

**V. GIRI:** My Lord, para 3 of...

**ARVIND P. DATAR:** Only thing is My Lord, we both say is in the state control. Though we are denatured here I'm under state under Entry 8 he's under state in Entry 33. But Your Lordships' answer is correct, if the Centre is notified, then under Mr. Giri's argument, denatured will come under Central control.

**CHIEF JUSTICE DY CHANDRACHUD:** Yes.

**ARVIND P. DATAR:** Under 18-G.

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

2

3 **V. GIRI:** My Lord, sub-para 3 of para 23, of *Bihar Distilleries* deals with this aspect. I think  
4 when Your Lordships said integrated Your Lordships, had in mind a case where up to a stage  
5 up to the stage of protection of extra neutral alcohol there is no divergence. But after ENA  
6 comes into being, part of it is My Lord, divert it for an industrial purpose either by denaturing  
7 it or My Lord, for whatever the process, it has to be denatured My Lord. It then becomes  
8 industrial alcohol. Justice Jeevan Reddy's judgment also speaks about a case where without  
9 denaturing it, it is still treated as industrial alcohol because it is not meant for potable purposes  
10 at all. In my respectful submission, since ENA is also My Lord, alcohol which would come  
11 under the Entry 8, it is not unconceivable My Lord, when the state may come out with, like  
12 intermediate products could also be subject My Lord, do an excise duty or a levy. And therefore  
13 ENA is an intermediate product and not the final product as such. ENA could be subjected to  
14 but where ENA goes into the manufacturer of potable alcohol, I don't subject it to an excise  
15 duty at the stage of ENA. I'll probably reserve my right to do it after the final product comes  
16 out. But why should I lose out? Why should the State lose out? If the control comes under  
17 Entry 8, and it says production manufacturer, manufacturers always conceive of the final  
18 product, production is of an intermediate stage. And if therefore, extra neutral alcohol, even if  
19 it is 95% as mentioned in para 74 *Synthetics and Chemicals*, is still a product which is  
20 covered by Entry 8. I would not lose my right, even under Entry 8, to tax it. Before it is clear  
21 for industrial purposes. This is my respectful submission. To that extent subparagraph 3 or  
22 the paragraph 23 may be modified by your, in *Bihar Distilleries* also, should be modified  
23 by Your Lordship's, it's my respectful submission. Just one more aspect and I'll complete it. In  
24 *Synthetics and Chemicals ... Synthetics and Chemicals*. I'll complete my  
25 submissions. *Synthetics and Chemicals* is (1991) SCC, (1990) 1 SCC, 109, My Lord it's  
26 in volume... Volume V, page 9, PDF page 9. Lordships may come to paragraph 74 at PDF page  
27 54.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** At page 50?

30

31 **V. GIRI:** PDF page 54, paragraph 74. My Lords got it? Your Ladyship has it?

32

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

34

35 **V. GIRI:** It has to be borne in mind that by common standards, ethyl alcohol, which is 95%  
36 is an industrial alcohol. This we would respectfully submit. We would most respectfully urge,  
37 requires reconsideration. Why should it be, a question, which I ask to myself, is why should it

1 be treated as an industrial alcohol. Extra neutral alcohol with a higher strength, it can be used  
2 for human consumption of course, by tempering it with water or by any other substance as  
3 such. But there is no question of it becoming irretrievably unfit for human consumption. That  
4 happens only on denature. The Petitioners and the Appellants were manufacturing ethyl  
5 alcohol, also known as rectified spirits. Fair enough, which is an industrial alcohol that doesn't  
6 go as a *sequitur*. ISA specification has divided ethyl alcohol into several kinds of alcohol.  
7 Beverage and industrial alcohols are clearly and differently treated. Rectified spirit for the  
8 industrial purposes is defined as 'Spirit purified by distillation having a strength not less than  
9 95% of volume by ethyl alcohol'. Dictionaries and technical books would show the rectified  
10 spirit is an industrial alcohol and is not potable as such, but then where is the reference to the  
11 legislations which were existing from 1880 onwards? It appears, therefore, that industrial  
12 alcohol, which is ethyl alcohol by itself, is not only non-potable but is highly toxic. The range  
13 of spirits of potable alcohol is from country spirit to whiskey, and ethyl alcohol content varies  
14 between 19 to 43 percent. These standards are according to the ISA specifications. In other  
15 words, ethyl alcohol 95% is not alcoholic liquor for human consumption, but can be used as  
16 raw material input after processing and substantial dilution is the production of whiskey, gin,  
17 country liquor et cetera. Entry 8 relates to production also. Why should ethyl alcohol at 95%,  
18 which is one of the raw materials or which is used, as a base for preparing different varieties  
19 of Indian made foreign liquor or country liquor for that matter, where only there is a dilution  
20 by addition of water. Why should it fall outside the purview of alcoholic liquor for human  
21 consumption as mentioned in Entry 8. What can be used as a raw material input after  
22 processing and substantial dilution to the production of whiskey, gin, country liquor, et cetera.  
23 In many decisions, it was held at rectified spirit is not alcohol fit for human consumption.  
24 Reference may be made in this connection to so and so and so. In this connection, it is  
25 important to bear in mind the actual provision of Entry 8 of List II. Entry 8 of List II cannot  
26 support tax. The above entry contains the word intoxicating liquor. The meaning of the  
27 expression intoxicating liquor has been rightly interpreted by the Bombay High Court in  
28 **Balsara**. The decision of the Bombay High Court reported in so and so, in that lie perhaps  
29 the observation of Justice Fasal Ali in **Balsara's** case requires reconsideration. It appears  
30 that in the light of the new experience in development, it is the necessary to state that  
31 intoxicating liquor must mean 'liquor which is consumable by human being as it is and as such'  
32 . When the word liquor was used by Justice Fasal Ali, they did not have the awareness of full  
33 use of alcohol as industrial alcohol. The point is not that the boot is on the other foot. Can it  
34 be used as potable liquor? It is true that alcohol was used for industrial purposes then also.  
35 But the full potentiality of that user was not then comprehended or understood. With the  
36 passage of time, meanings do not change, but new experiences give new colour to the meaning.  
37 In **Har Shankar's** case, the Bench of 5 judges have surveyed the previous authorities. That

1 case dealt with the option of the right to sell potable liquor. The position laid down in that case  
 2 was that 'the state had the exclusive privilege or right of manufacturing and selling liquor, and  
 3 it had the power to hold public auctions for granting the right of a village to sell liquor and the  
 4 traditionally intoxicating liquors were the subject matters of state monopoly, and that there  
 5 was no fundamental right in the citizen to carry on trade or business in liquor. All the  
 6 authorities from *Cooverjee Bharucha* to *Har Shankar* dealt with the problems or  
 7 disputes arising in connection to the sale option, licensing or use of potable liquor.

8  
 9 Now My Lord, in para 77 Article 47 of the Constitution imposes upon the state the duty to  
 10 endeavour to bring about a prohibition of the consumption, except for medicinal purpose of  
 11 intoxicating drinks and products which are injurious to health. If the meaning of the  
 12 expression intoxicating liquor is taken in the wide sense adopted in *Balsara's* case, it would  
 13 lead to an anomalous result. This Article 47 obliged the state to prohibit even such industries  
 14 as a licensed under the IDR Act, but which manufacture industrial alcohol. This was never  
 15 intended by the above judgments of the Constitution. It appears to us that the decision is  
 16 *Synthetics and Chemicals Limited* the first one was not correct on this aspect. Then, My  
 17 Lord, please come to paragraph 81, the conclusion 81 onwards My Lords. It is not necessary  
 18 for us here to say anything on the impost on potable alcohol is commonly understood. These  
 19 are justified by the list of our legislature practice in this country. See the observations of Justice  
 20 Hidayatullah as the Chief Justice then was in *Guru Swamy*. In that view of the matter, it  
 21 appears to be the relevant provisions of the UP Act, AP Act, Tamil Act, Bombay Prohibition  
 22 Act, as mentioned here and before, are unconstitutional insofar as these purport to levy a tax  
 23 or charge impost upon, industrial alcohol, namely alcohol used and usable for industrial  
 24 purposes My Lord. This is where the shoe pinches. In our respectful submission, this would  
 25 be correct. Para 82 could be affirmed, if instead of industrial alcohol, it is used as denatured  
 26 spirit. But if since in para 74 Your Lordships have synonymously used industrial alcohol and  
 27 rectified spirit and rectified spirit would be 95% ENA My Lord, this would be incorrect in my  
 28 most humble respectful submissions.

29  
 30 **JUSTICE B.V. NAGARATHNA:** While arriving at this conclusion in paragraph 82, there  
 31 must have been a discussion on the content of Entry 8 List II, on the scope and ambit of that?

32  
 33 **V. GIRI:** Para 41 My Lord, contains that. That I have read. I have read para 74. 67? Yes, My  
 34 Lord, could Your Lordships, have a look at para 41 and then 67? There's a reference to it in  
 35 para 41. There is a reference to it in para 41. That is at PDF page 37.

1 **CHIEF JUSTICE DY CHANDRACHUD:** So, currently in para 82, instead of industrial  
2 alcohol if you were to read the word denatured spirit.

3

4 **V. GIRI:** Yes Sir...

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** That would....

7

8 **V. GIRI:** That would suffice. My Lord, your Ladyship is asking about the discussion...

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Which para were you saying, Mr. Giri, 44, is it?

11

12 **V. GIRI:** 41 at PDF page 37. My Lord, the question was formulated, but thereafter My Lord, I  
13 think it went into... the only question which has to be determined is whether intoxicating  
14 liquor and Entry 8 in List II is confined potable liquor or includes all liquors. According to the  
15 Union of India, in view of the difference of language in Entry 8 and Entry 51 of List II, it is  
16 reasonably possible to take the view that intoxicating liquors include both liquors. It was  
17 submitted by the Union of India that there are no ground for overruling *Balsara*. Decided in  
18 '51 after 38 years, particularly when it has been followed and applied in later decisions. In that  
19 case, it upheld the power of the states completely prohibit, manufacture, sell, et cetera, potable  
20 liquor.

21

22 It struck down the provisions of the Bombay Act insofar as it imposed restrictions on medicinal  
23 and toilet preparations as violative of 19(1)(f) of the Constitution. It is stated that this decision  
24 had proceeded on the basis that there could not be a complete prohibition in regard to  
25 medicinal preparations containing alcohol. Hence, it was submitted that so far as alcohol not  
26 fit for human consumption is concerned, it cannot be held that trade and such an article cannot  
27 be considered to be a noxious trade. It will be a noxious trade only where it is produced or  
28 manufactured for purposes of human consumption. It is submitted in *Indian Mica &*  
29 *Micanite Industries vs State of Bihar*, this Court was dealing with denatured spirit and  
30 had held that the Bihar Odissa Excise Act, insofar as it related to denatured spirit, was  
31 regulating trade and business in public interest. And that Entry 8 of List II comprehends all  
32 liquors containing alcohol. The State's privilege to completely prohibit or farm out liquor  
33 containing alcohol for human consumption does not comprehend according to the Union of  
34 India, a similar right of a State with regard to other intoxicating liquids containing alcohol.  
35 According to the Union of India, to so prohibit or collect fee for farming out, would be  
36 unconstitutional under 19(1)(g) of the Constitution. On the same principle on which the  
37 provisions of the Bombay Act was struck down in *Balsara*. It was further stated on behalf of

1 the Union of India, that Parliament has legislative competence with regard to power alcohol,  
2 providing the levy of central excise duty. See the central excise... The discussion remains  
3 unconclusive in 41. Mr. Dwivedi says 67... 74, I have already read. 74 I have already read out  
4 to Your Lordships. My Lord, in my respectful submission, alcohol fit for, in Entry 8... Yes,  
5 intoxicating liquor would take in everything other than denatured spirits in Entry 8 and  
6 therefore, it would take in extra neutral alcohol also, rectified spirit.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

9

10 **V. GIRI:** My Lord, the rest of the areas have been covered.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you, Mr. Giri. Thank you.

13

14 **V. GIRI:** Grateful to Your Lordships. Deeply grateful.

15

16 **BALBIR SINGH:** May it please Your Lordships. I am appearing for State of Maharashtra.  
17 The common thread in 246(1), (2) and (3) is the subject matter enumerated in these three lists.  
18 If the subject matter is not same so far as the List I and List II are concerned, then there is no  
19 fight between these two entries, and State and Union can respectively enact the laws based on  
20 the subject matters enumerated therein. If we carefully look at the entries given in both, the  
21 matters can be in the nature of activities, places, a larger concept like industries and  
22 particularly if we look at the present case the Entry 8 in List II is a product specific subject,  
23 which is there, which is intoxicating liquors. If the intoxicating liquors is a product based  
24 subject matter based on which the state is competent to make law, whether the entry given in  
25 List I, 52, which is an entry pertaining to industries and industry is also subject to qualification  
26 Union to make law to take control. So therefore, this is being debated in these judgments,  
27 whether the Entry 52 per se is law making, enabling entry decision or thereafter, until, unless  
28 law is made the competence is not driven but I'll come to that part.

29

30 If I'm able to satisfy that the industry, the subject matter based on which the IRDA was made  
31 in 1951, till 1956 the alcohol was not the component of the schedule which is being given  
32 therein. And more interestingly, alcohol is not the declared industry there. Fermentation  
33 industry is the declared industry, which has got two products in that. Similarly, if we look at  
34 the chemical industry, it has got 15 or 16 products. If you look at the steel industry, it has got  
35 the 16 and 17 products. So, my first submission, is that when we'll closely read the entry and  
36 that has survived, since last 75 years in my respectful submission, a product-based legislation  
37 which has been made pre-Constitution time also, those are the State excise laws and the

1 subsequent rules which are there. All the provisions in these acts pertains to intoxicating  
2 alcohol. There can be different stages, there can be different activities which are pertaining to  
3 those products. And in order to regulate and control a different procedure has been prescribed  
4 in States. Nowhere in Industrial Development Act has dealt with what is being dealt with the  
5 acts which we are talking of State Laws. There can be a difference between the industrial  
6 license and there can be a difference between the product license. At the industry level, the  
7 governance and regulation can be different, which stems from the provisions of the Industrial  
8 Development Act. At a product level, the regulation and governance can be different with  
9 stems from these excise laws. Neither Union at any stage, made an attempt that we want to  
10 govern a product, and therefore we'll specify that how alcohol is to be manufactured, stored,  
11 moved, removed and to be denatured, renatured, nothing has been dealt with. Our declaration  
12 in Section 2 of the Industrial Development Act very clearly says, Union wants to take control  
13 of the industries given in the Schedule, nothing more, nothing less. If we see the index of the  
14 entire Industrial Development Act that talks of the councils to be framed, councils are going  
15 to guide that how the production of the country to be increased. Subsequent chapter says that  
16 how the ownership is to be looked into. After a particular date, if the industries are existing  
17 industrial license is to be taken. And 18(g) is the only one category, and that's also not the  
18 category is unconditioned. That says, if the Union think it is to be determined fair price, it is  
19 to be distributed in a particular manner, then under 18(g), some category is to be... some  
20 notification is to be issued to be certified products. Now, to look at this, is there a conflict  
21 between Entry 52 and Entry 8, if we look at from the point of view and whether in last 75 years  
22 at any point, at any stage, the issue has arisen in this context the answer with great respect, is  
23 no. Today, there is no law made by Union and that's the reason para 41 of the ***Synthetic***  
24 Union agreed to this position saying that both the products are covered in Entry 8. That was  
25 the basis if we read para 41. So, it is not that there is no basis of para 41 and today Union says  
26 that no, my position is that so far as denatured spirit or industrial alcohol is covered is in the  
27 Union List. That's not the issue. To make this submission good, I'll rely on... I could mail it in  
28 the morning, but I'll give a gist of this case. My Lords, ***Vijay Kumar Sharma***, this is **(1990)**  
29 **2 SCC 562**.

30

31 **JUSTICE B.V. NAGARATHNA:** 1990?

32

33 **BALBIR SINGH:** I'm sorry. 1990.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Can you just formulate the submission, because  
36 what is exactly the...?

37

1 **BALBIR SINGH:** Yes, my submission is this My Lords...

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

4

5 **BALBIR SINGH:** That Entry 8 on a standalone basis dealing with intoxicating alcohols give  
6 power to the State Government to make laws on it and there is no conflict with the Entry 52 in  
7 List I My Lords, because Entry 52 List I deals with the subject matter pertaining to industries  
8 given in Schedule I which is an industry based legislative competence to be seen, whereas in  
9 the List... Entry 8 List II, the product based legislative matter is provided, which is to be seen  
10 in 246(1), (2) and (3) My Lords. And this issue came before one of the Constitution Benches  
11 and the test prescribed was whether the subject is same in both, and if I'm able to satisfy, My  
12 Lords, are with me...

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** What is the industry, the product in which  
15 respect... if the product is a product of an industry...

16

17 **BALBIR SINGH:** Yes, My Lords.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Which is declared under Entry 52 then what  
20 happens?

21

22 **BALBIR SINGH:** My Lords, if the industry per se... and I'm grateful My Lords, and that's the  
23 reason why this debate came, that what does the industry mean? And why it was, in these two  
24 judgments, specifically restricted to manufacture and not pre-manufacture, not post-  
25 manufacture? So, the industry, per se, My Lords, if you look at it, even if the product is given  
26 and if you look at the law which has been framed, a law which has been framed is not at the  
27 product level which has been framed, which is framed under the Entry 8 in the State subjects  
28 or in the State laws. Now, the industry to be seen for the purpose... even if one of the product  
29 is given My Lords.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Industry is fermentation.

32

33 **BALBIR SINGH:** Industry is fermentation, and what are the laws which can be made about  
34 the industry are and which are very clearly enumerated in the Act itself of the Industrial  
35 Development Act, My Lords. And if we will see the amendment in 2016 precisely gives the  
36 reason, say that under the 1951 Act we have to look at the policy to be made in regard to the  
37 industries which are enumerated in Schedule I, not regarding the product. There is not even a

1 single provision in the Act, which deals with a particular product, how the product is to be  
2 regulated. That's not the provision which has been there, My Lords. The judgment which I am  
3 referring to, I'll just quickly give a background and if we see, My Lords, the Entry 52 in List I,  
4 the industry which is to be seen is not an independent entry, a law to be framed by Parliament  
5 for a reason, to take control. That's a law which used to be framed in terms of the entry. It's  
6 not straight away saying that the law can be made and therefore any industry can be prescribed  
7 in this. So, there has to be law specifying to take control of that particular industry, which is  
8 this particular Act of 1951. So, it's not an open-ended power or legislative competence which  
9 can be driven out of this entry, My Lords. Whereas, if we look at Entry 8, it is neither subject  
10 to any other entry. It is clear open power which is given to State, State since pre-independence,  
11 there are multiple... the excise laws which are prevailing, which has been amended thereafter  
12 and has been sustained over a period of time. I'll come to the *Synthetic* part, My Lord.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Then, under Entry 8, according to you what  
15 stages can the State regulate? At what point does it cross Entry 8 and what is comprehended  
16 in Entry 8?

17

18 **BALBIR SINGH:** Yes, I'm grateful. My Lords, thankfully like the Entry 27 and 28 where gas  
19 and gas works is given. Entry 8 has taken care of trade and commerce in that particular  
20 product also. If you see...

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Entry 33?

23

24 **BALBIR SINGH:** No, My Lord, for the time being, I'm not coming to 33. Kindly see, Entry 8  
25 again with me, My Lord, for a minute. Because one of the angle in the industry...

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Because it says, 'that is to say'.

28

29 **BALBIR SINGH:** Yes, My Lord.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Production, supply, distribution,  
32 transportation...

33

34 **BALBIR SINGH:** Yes. So if I, for understanding purposes, say, what does a trade commerce  
35 mean? Trade commerce potentially can mean the production, manufacture, possession,  
36 transport, purchase and sale. And purchase is an interesting entry in Entry 8 itself of List II.  
37 Kindly see, intoxicating liquors, that is to say, production, manufacture, possession, transport,

1 purchase and sale of intoxicating liquor. Any activity which pertains to this particular product,  
2 and there is a reason behind it why this is being prescribed like this. My Lords are aware and  
3 it has been debated in last two days. Industries are primarily given under Entry 24 in List II.  
4 That's the principal entry for industries. There are two slice in that. The first slice was, the one  
5 which I'm talking of Entry 8, on the same day when the Constitution was made. Second slice  
6 which has been made, is out of leftover entry of 24 and the Entry 51 was carved out thereafter.  
7 And so far as this very product, intoxicating liquor is concerned, that was sliced out in the  
8 beginning itself in the form of Entry 8. This was not available in 24 anymore. And therefore,  
9 till 1956, till the time the fermentation industry was not the part of the industry declared there,  
10 and the alcohol being there, this was not a debate. And that is the reason when we see, I'll show  
11 the provision of both the acts, the State Act, as well as the Union Act and the declaration which  
12 has been given. That slice, which has been carved out in Entry 8, is not available in Entry 51 is  
13 my respectful submission, and that's a discussion. In one of the *McDowell* judgment, this  
14 was precisely the argument Sorabji made before the court, which was accepted by the court.  
15 I'll show that argument My Lords. Sorry, 52. 52. So, once that position is taken and do we  
16 really need to trace the origins? And today we are seeing in the capacity of resolving a dispute.  
17 I'll urge and request My Lords to see that it is to be framed today. My....

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Will intoxicating liquor in your submission  
20 include denatured alcohol also?

21

22 **BALBIR SINGH:** Yes, I'll give my reasons to that, also. First of all, I can straight come to  
23 that, My Lord. And why do we need to split it? 8 is intoxicating liquors. It is the plural. There  
24 was no need to use this. And why this has been done is because....

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** But then if they wanted to include denatured  
27 alcohol, they would have used the expression liquors. Why did they use the word intoxicating?

28

29 **BALBIR SINGH:** Because the content of alcohol is a measure of a product which is liquor,  
30 which is to come out that. That what is the alcoholic strength of a particular product is going  
31 to be determinative factor, that whether it is intoxicating or not. Intoxication, a percentage can  
32 vary, the composition of a product can vary, and therefore the intoxicating word is used.  
33 Because the liquor primarily, that's what the understanding is in my respectful submission,  
34 there is some debate on this... and why this other product, which is denatured, is not carved  
35 out of this is because....

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** What is meant by intoxicating? What is meant  
2 by intoxicating?

3

4 **BALBIR SINGH:** The intoxicating certainly means that it has ability to manipulate the  
5 senses of a consumer.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Right.

8

9 **BALBIR SINGH:** So, in that case... and that can be how it is consumed, at what stage  
10 consumed, can be debated, My Lords. But to get into a scientific measure to determine that  
11 the intoxication not in the common understanding to be seen and we need to derive, with great  
12 respect, may not be the reason. The answer seems to be in the entry itself. Denatured spirit  
13 may arise at some stage of all the activities which are given therein. It may be at the production  
14 stage, it may be at manufacture stage, it may be possession stage, at transportation stage.  
15 Wherever the makers thought it fit, that we have to give a taxing power, it linked with the  
16 human consumption, like in opium. If we see opium regulation is given in the Union List, but  
17 taxing entry is given in the State List. So, in a federal structure, the understanding was that  
18 these units can operate on their own, the States can operate on their own, from the terms of  
19 the financial resources, from the law and order situation, and therefore these were carved out.  
20 That the regulatory requirements so far as anything coming out of Entry 8, which may have a  
21 law and order situation because of alcohol, because we have seen the numerous cases in  
22 *Khoday Distillery* and all they have raised that there a social issue and so on, so forth. And  
23 there is some requirement of a society order to be maintained. It has been, the governance has  
24 been given to the State.

25

26 And Union has been given power because there's a revenue calculation for whatever may be  
27 the reason for human consumption excise duty is there. Sales tax, entry tax, GST -- today state  
28 can do that. After 101st Amendment, there is no restraint except the restraint on the excise  
29 duty. That part is there now to say that, we will read the Entry 52 and where the law has been  
30 framed to take control. It is not an open-ended entry to say that 52 means the Union can do  
31 anything with a particular industry. It is only with the objective, that the control is to be taken.  
32 And that's what we see, Section 11 and 12 of Industrial Development Regulation Act. They say  
33 after this, a particular date, the industrial license is to be taken because Union wants to today,  
34 how much FDI to come into it? That's the precise reason given in their objectives saying that  
35 how much a production of this particular product should be carried out in India? What should  
36 be the land size? What should be the capital size? Are foreign investment, permitted or not?

1 Who should be the owner, which industry can be taken control of that can be very... As a matter  
2 of fact, that has been done by that law. And... please, My Lord.

3

4 **JUSTICE HRISHIKESH ROY:** You have referred to 246 to say that these lists operate on  
5 various subjects.

6

7 **BALBIR SINGH:** Matters, My Lord. Yes, kindly see 246(1) for a minute. Anything,  
8 notwithstanding anything contained in Clause 2-3, Parliament has exclusive power to make  
9 laws with respect to any of the matters enumerated.

10

11 **JUSTICE HRISHIKESH ROY:** So far as Entry 8 is concerned, it is a product-based  
12 enumeration.

13

14 **BALBIR SINGH:** Yes.

15

16 **JUSTICE HRISHIKESH ROY:** And the term intoxicating liquor is used twice in Entry 8.

17

18 **BALBIR SINGH:** Please, My Lord.

19

20 **JUSTICE HRISHIKESH ROY:** So, there has to be given some meaning and understanding  
21 that it's a product-based entry.

22

23 **BALBIR SINGH:** Please, My Lord.

24

25 **JUSTICE HRISHIKESH ROY:** And so far as the industry itself is concerned.

26

27 **BALBIR SINGH:** Yes.

28

29 **JUSTICE HRISHIKESH ROY:** You are talking about the IDR Act, where it talks about that  
30 it is expedient in public interest that Union should take under its control industry specified in  
31 the First Schedule.

32

33 **BALBIR SINGH:** Absolutely.

34

35 **JUSTICE HRISHIKESH ROY:** So, you are trying to make a distinction that when you take  
36 over industries it may have nothing to do with a particular product, unless it is said that this

1 particular industry and this particular product. Of course, the Schedule to some extent gives  
2 a...

3  
4 **BALBIR SINGH:** Yes, it gives a pointer. And then 18(g), My Lords. 18(g) specifically says,  
5 wherever a particular product for some reason, is to be regulated 18(g) is a power which is  
6 being given to the state. It's not that merely because a product related regulation has been  
7 given in Entry 8 that by virtue of the law framed, by virtue of Entry 52, Union is denuded. No,  
8 18(g) is a power which can be given and why I'm saying is, today, we have an experience of 75  
9 years. If we see what the law says, what the Industrial Development Act says, wherever it has  
10 been... and 18(g) also is not independent. When we will read there is a reason behind 18(g) it  
11 has survived. Today, if you see the referral order, the start point is a paint manufacturer in  
12 U.P. said, I want to buy a denatured spirit, I've been asked to take a Form FL 41. And he says,  
13 I have nothing to do with it, I don't want form for this, then therefore, the law is not applicable  
14 to me. That's the start point. Now, all paint manufacturers, all the consumers of denatured  
15 spirit are today, in one way or the other, required to have some kind of a control in possession,  
16 use and therefore need to confirm that, the actual use being there. And the answer is very  
17 simple excise duty on alcoholic... human consumption liquor is 350% in the State of  
18 Maharashtra. If today denatured spirit, for some reason, can be renatured, can be converted  
19 to consumable. And I'll show that the BIS standards which are there, which can be done, then  
20 there is no 350%, which is to be paid.

21  
22 And these are instances after instances which has been taken note of by the State and the  
23 notices have been issued... beside the tragedies which are there because there is a methyl  
24 alcohol is being used instead of ethyl alcohol in those cases. It's been there. So, straight away  
25 the answer is that the if the State is not going to regulate that, and if the alcohol industry, if I  
26 say, that the particularly treated as industry, the word is alcohol in the fermentation process,  
27 a control is given to Union with the law we have in place, what happened to those kind of  
28 possessions which as a matter of fact, has been recorded and that was the very precise basis of  
29 aim and object what Mr. Datar read for 2016 Amendment. That was the reason they said, we  
30 are making this where the human consumption has been taken out of that in spite of whatever  
31 the law laid down till 2016. And the reasoning given in the last para is very clear. We want to  
32 have a policy control on this, which, through the IRDA, which has been done, and never in last  
33 75 years any attempt has been made to say that the particular industry in a particular state, we  
34 want to regulate, control the possession and manufacturing, everything not being done, except  
35 these two judgment where it is said, the question came the industry means what? And there  
36 also it was restricted that because Entry 92 talks of control by the Union and the provisions of  
37 IRDA give some sense and link with this control by the Union to the manufacture and

1 production. Because Government of India want to have an overall view that a particular  
2 commodity. How the steel is manufactured in India? How much steel consumption is available  
3 in India? How much import should be permitted in India? How much of foreign investment  
4 should be permitted in India? That can be done through IRDA. But somebody will say that  
5 each steel product specification should be regulated, we have BIS standards, standard of waste  
6 measures, actions. The multiple other law laws are there. And particularly, when we look at  
7 the industry which has been given this schedule, industry has got 17 products. Assuming one  
8 product is given herein and the subject matter based on places, activity are not new. If you  
9 look at five and six, ammunition manufacturing, firearm manufacturing that has been given  
10 to the Union in List V and List VI. This is the way it has been structured. Now, to say we will  
11 not look at List VIII because it's an industry of alcohol, although industry of alcohol is nothing  
12 there. It's a fermentation industry which has been declared, which has a component of alcohol  
13 or product of alcohol in that. It is not the object, the alcohol word written therein in every  
14 species of alcohol get covered and therefore the State is taken out with great respect that's not  
15 the purpose. And I'll give the facts of this *Vijay Kumar*, which I'm saying, My Lords.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** In 18(g) actually, 18(g).

18

19 **BALBIR SINGH:** Yes, My Lords.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** The IDRA can be partly traceable to Entry 52 of  
22 List I. Some provisions may be traceable to Entry 33 of List III also.

23

24 **BALBIR SINGH:** My Lords, yes.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** That's perfectly permissible to Parliament. So,  
27 when Parliament says you must have a registration of the establishment, licensing, power to  
28 take over management, that is Parliament's power of control, which we will find the first two  
29 sections of the Act. If you just look at the index to the Act it says Chapter 3, regulation of  
30 scheduled industries, registration.

31

32 **BALBIR SINGH:** Yes, My Lords.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Revocation of registration, licensing, license of  
35 producing. Power of Central Government to specify requirements, revocation and amendment  
36 of licenses.

37

1 **BALBIR SINGH:** Yes.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** Power to investigate into the affairs of a company  
4 in liquidation. Then comes Chapter III(A).

5

6 **BALBIR SINGH:** Yes, My Lords.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Direct management or control of industrial  
9 undertakings by Central Government in certain cases. Chapter III(AA), management or  
10 control...

11

12 **BALBIR SINGH:** Yes.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Power to provide relief to certain industry  
15 undertakings.

16

17 **BALBIR SINGH:** Yes.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** III(A) says liquidation or reconstruction of  
20 companies.

21

22 **BALBIR SINGH:** Yes, My Lords.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Right up to there, it may be traceable to Entry 52  
25 of List I.

26

27 **BALBIR SINGH:** Yes, My Lords.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Now when it comes to Chapter III(B), control of  
30 supply, distribution, price, etc., of certain articles, 18G is what we are concerned with. That is  
31 referable to Entry 33 of List III, except that Entry 33 also covers production. Entry 33 covers  
32 production, supply, distribution. Section 18G doesn't cover production. It only covers trade  
33 commerce, supply and distribution.

34

35 **BALBIR SINGH:** And reason is very obvious, My lord.

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** Therefore, 18G is in exercise of Parliament's  
2 power under Entry 33 of List III. Right?

3

4 **BALBIR SINGH:** Please, My Lords.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Now therefore, conceivably Parliament can  
7 control trade or commerce in and though you are saying that IDRA is industry based and Entry  
8 8 is product-based entry... Section 18G is product based.

9

10 **BALBIR SINGH:** Yes, I'll come to 18...

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Certain articles. Certain articles, which are  
13 referred to in the Schedule.

14

15 **BALBIR SINGH:** Yes.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** So, in relation to 18G, the IDRA also becomes  
18 product based. The point which is, however, being made by the lawyers who appeared before  
19 you was of some weight, which is that 18G will come into existence, will apply, provided there's  
20 a notified order.

21

22 **BALBIR SINGH:** Please, My Lords.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** And till date, the Union government has never  
25 made a notified order, right?

26

27 **BALBIR SINGH:** That's *Tika Ramji*, My Lords.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Right?

30

31 **BALBIR SINGH:** Yes.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** But short of that, for us to say, that Entry 8 will  
34 cover all kinds of alcohol, irrespective of whether it is denatured or otherwise, would be a little  
35 extreme. It would be maybe a very extreme view of Entry 8. A better view may possibly be  
36 subject to hearing the other side, that Entry 8 will not cover...

37

1 **BALBIR SINGH:** Yes, certainly. That's my argument which I make here.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** Denatured, denatured spirit.

4

5 **BALBIR SINGH:** Yes. I'll come to that part. If we see Entry 33 also, doesn't deal with the  
6 industry, it deals with the products.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** And theoretically, Parliament, once it declares  
9 an industry to be a controlled industry...

10

11 **BALBIR SINGH:** Yes.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** It can even deal with the articles of that industry.  
14 It has the power then to even deal with the products. Question is whether Parliament delegate.  
15 That is, if Central Government has done so. So long as it doesn't do so, the power is still with  
16 the States under Entry 33.

17

18 **BALBIR SINGH:** Kindly see 18G with me for a minute.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Except in relation to denatured spirit. On  
21 denatured spirit....

22

23 **BALBIR SINGH:** Yes.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** .... the State's power may be restricted.

26

27 **BALBIR SINGH:** I'll try and persuade, My Lords. Kindly see first of all, My Lords were  
28 saying by virtue of 18G, product specific power also come to...

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** But even on denatured spirit, the State's power  
31 may arise under Entry 33, that's not a fiscal entry. Right?

32

33 **BALBIR SINGH:** Yes, so....

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Even in regard to denatured spirit, which goes  
36 into Entry 52, the States still have a regulatory power under Entry 33. For instance, they can

1 ensure against diversion, they can lay down various regulatory norms, the State is.... and for  
2 that purpose, it may demand a fee.

3

4 **BALBIR SINGH:** Yes, that certainly can be done. I have no difficulty on that part, My Lord.  
5 So far as....

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** What is your wider submission?

8

9 **BALBIR SINGH:** My Lord, my...

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Apart from what everybody else has argued, what  
12 is it? Because...

13

14 **BALBIR SINGH:** My wider submission is, that the first... that so far as Entry 24 is concerned,  
15 which pertains to List II, industry, the industry is in the State List. A carve out is 7 and 52 of  
16 List I.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Right.

19

20 **BALBIR SINGH:** Whereas, if Entry 8 is to be seen, which was existing right from the day  
21 one in the Constitution, that as a matter of fact, along with the trade and commerce, what we  
22 call it, possession, sale, control, and purchase is only in that entry. Purchase is nowhere else.  
23 The reason for that is that, if any controlled commodity is to be purchased, like by the paint  
24 industry, in that case, the FL 41 can be asked for under the State law and that's why the word  
25 purchase is there. In no other entry, the word purchase is there. It's only in Entry 8. But having  
26 said that....

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** What is Maharashtra...? What's the submission  
29 actually?

30

31 **BALBIR SINGH:** My submission is one, the State, as the State of Maharashtra, we are  
32 competent to make the law, which we have made and which we, as on today, are exercising  
33 that the denatured spirit is covered under the Entry 8 of List II. That's my submission, and the  
34 reason for that is two-fold. One is a standalone List 8 gives the State power and IRDA, by virtue  
35 of Entry 52 is not overstepping that domain. That's my first argument. Second argument is,  
36 even if....

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** The State can make law on denatured spirits...

2

3 **BALBIR SINGH:** Yes My Lords, by virtue of same being part of intoxicating liquors.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** That is Mr. Dwivedi's submission also.

6

7 **BALBIR SINGH:** Yes, My Lords, originally Mr Dwivedi's.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Relying on *Balsara*.

10

11 **BALBIR SINGH:** Yes, *Balsara*. Second submission is that Entry 52 of List I is not an  
12 unblocked entry. It is blocked and a specific purpose controlled by Union of an industry a law  
13 is to be made which is IRDA.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** Not an unblocked entry, what do you mean by  
16 that?

17

18 **BALBIR SINGH:** Yes. Unblocked means it's not an unbridled power that in regard to any  
19 industry, the Union can make. That power is in 24. Union needs to make a law to take control  
20 of that industry, the law pertaining to take control, and that Section 2 declaration of the IRDA.  
21 If I can read quickly. The entry itself, My Lords have seen on numerous occasions. Industry,  
22 the control of which, by Union, is declared by Parliament. It is not simpliciter industry and  
23 otherwise, the industry is covered under Entry 24 of List II, My Lords.

24

25 **JUSTICE B.V. NAGARATHNA:** That is the point. What is the nature of industry under  
26 which the Centre... the Parliament can make? You have rightly said fermentation industries.

27

28 **BALBIR SINGH:** Yes.

29

30 **JUSTICE B.V. NAGARATHNA:** Even if you see this 26, fermentation industry there is a  
31 twofold classification, one it is alcohol, the other is other products of fermentation industry.  
32 Under alcohol, they have again made a classification -- alcohol, which is potable and alcohol,  
33 which is not potable.

34

35 **BALBIR SINGH:** Yes.

36

1 **JUSTICE B.V. NAGARATHNA:** That means there's an indication that alcohol that is  
2 potable, only is under Entry 8. Anything not portable, the Parliament has the powers in view  
3 of Entry 52, List I and Entry 24 of List II.

4

5 **BALBIR SINGH:** My respectful submission, My Lord, is, even if you look at that indication  
6 sum which has been given, if it is an industry specific and a product which has been already  
7 given Entry 8, will that entry given in that schedule, will exclude one of the product out of the  
8 product which has been given in Entry 8? With great respect and My Lord the...

9

10 **JUSTICE B.V. NAGARATHNA:** It is not the product; it is a classification of a product.

11

12 **BALBIR SINGH:** It is a subject matter. The subject matter of framing law...

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** But then Mr. Balbir Singh, your submission is  
15 not at variance with what Mr. Datar or Mr. Dwivedi argued. Because their contention also was  
16 that denatured spirit also falls in Entry 8, step one.

17

18 **BALBIR SINGH:** Yes.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Because it falls in Entry 8, it can't fall in Entry  
21 24, right?

22

23 **BALBIR SINGH:** Yes.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Because it's following *Calcutta Gas*. If it can't  
26 fall in Entry 24 then there's no question of it being taken out for the purpose of Entry 52, right?

27

28 **BALBIR SINGH:** Yes.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** That is the line, going from Entry 8 to Entry 24  
31 to Entry 52 and therefore according to them, this retains the power of the State under Entry  
32 8.

33

34 **BALBIR SINGH:** Yes.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** So, your submission is not different from that.

37

1 **BALBIR SINGH:** Effectively not different, but I am trying to take maybe a step prior to that...  
2 So, I'm only on the subject matter, My Lords, I'll just rely on two judgments.

3  
4 **CHIEF JUSTICE DY CHANDRACHUD:** The thing, you know, that while Entry 8 is  
5 product based, Entry 52 is industry based.

6  
7 **BALBIR SINGH:** Industry based, and today the...  
8

9 **CHIEF JUSTICE DY CHANDRACHUD:** There is an answer to it that IDRA is both  
10 product based and industry based. In Section 18(g) it is in its product based, there are some  
11 parts of it which are industry based, of course.

12  
13 **BALBIR SINGH:** My Lord, today, when we look at the declaration, which is given in Section  
14 2, the similar declaration... I can quickly tell the facts of this case, Karnataka, My Lords, the  
15 contract carriage was nationalized. In 1976, law was framed and the all private contract  
16 carriage was taken control of by the government by a law. This was in 1976, went to Supreme  
17 Court, Supreme Court identified seven judges before this Court and Court said that State is  
18 competent and identified the entry with the acquisition and requisition entry in Entry 42 in  
19 Concurrent List. Not tracing to industry, but tracing to saying that the acquisition of property,  
20 or acquisition of property in 42 is there. 1988 Motor Vehicle Act came in. One of the parties  
21 went to the State Authority RTO saying that now the 1988 Motor Vehicle Act has come please  
22 give me the registration or license. This issue came to the Hon'ble Court again. There the issue  
23 came the 1988 Central Act has come in and therefore these provisions are in conflict. Looking  
24 at this provision... and the Motor Vehicle Act was also traced to Entry 35 of Concurrent List.  
25 So, both the conflicting entries were in the State List. This Hon'ble Court said that... just to  
26 explain, the Entry 35 was pertaining to mechanical vehicles. So therefore, two conflicting  
27 entries were requisition and acquisition of property and mechanical vehicle rates. These were  
28 two conflicting entries for Motor Vehicle Act of 1988 and 1976 the acquisition law, My Lords.  
29 This Hon'ble Court said, if the subject matter is not the same even if it is there is an overlap,  
30 then independently those they can prevail, My Lord. Today, to oust the jurisdiction of the State  
31 by carving out the denatured alcohol out of Entry 8 relying on a product given in a schedule...  
32 with respect, My Lords, this is an independent subject, where the industry has been defined.  
33 That's what the argument is.

34  
35 **CHIEF JUSTICE DY CHANDRACHUD:** I think we'll conclude at this point. We will take  
36 Mr. Farasat. Yes, Mr. Farasat. Thank you, Mr. Balbir.

37

1 **BALBIR SINGH:** My Lord, just one part I want to read from the ISD. Mr. Giri argued that  
2 so far as the State of Kerala is concerned that the denatured cannot be converted to renatured  
3 My Lords. BIS standard, which in para 74 which has been looked into in *Synthetics*,  
4 simpliciter said, anything over 95% is industrial alcohol. Although it should be denatured. This  
5 was taken note of by BIS standards. I have placed on record., I'll give the page numbers also  
6 on that. They clearly noted that there can be a complete denaturing. There can be a special  
7 denaturing. As a matter of fact, where the government has faced the problem is special  
8 denaturing, which can be again converted into renaturing because this was specified for some  
9 25 industries and there are live experiences that have been converted and sold in the market  
10 as a country liquor. Based on that finding it has been given that the BIS standard which are  
11 given is in straight conflict with para 74. That's been a foreword, which has been given by BIS.  
12 So therefore, Mr. Datar pointed out...

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** In the case of a special denaturing, capable of  
15 being used again is capable of being renatured.

16

17 **BALBIR SINGH:** Yes, and it's only the boiling point which has to be changed. They note that  
18 it's a very simple process, and they specify also industry. If, My Lords permit, I can quickly  
19 show that BIS standards which have prescribed this. And as a matter of fact, this is been  
20 happening and they specified even what is the boiling point at what the change is going to take  
21 place, My Lords. I'll just quickly show, My Lord, only one page and then I'm done with that.  
22 My Lords. I have filed my written submission in Volume I(k) My Lords, and page 129 My  
23 Lords, which is PDF 129. PDF 130 My Lords.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** BIS standard. What are you referring to?

26

27 **BALBIR SINGH:** I'm referring to only the foreword of those standards where this problem  
28 was specifically noted and what is there...

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Where do we get it? Where do we get it? Volume?

31

32 **BALBIR SINGH:** Volume I(k). PDF 130 My Lords, 1-3-0. I can quickly read that, there's  
33 only two paras. I can just quickly read. The third para, it's completely denatured alcohol, which  
34 is CD and specially denatured alcohol SD formulations are set out in this standard with a  
35 specific composition. Both CD and SD formulations are made from the spirit in accordance  
36 with the international trade practices. These resulting products are not fit for human  
37 consumption, instead, the products are intended for industrial use. CD that is completely

1 denatured alcohol is composed of alcohol and specified denaturants that cannot be easily  
2 removed by a simple process and can be used in number of industrial use. As the denaturants  
3 cannot be easily or economically removed, CD is considered to be low risk of diversion or  
4 abuse. SD which is a specifically denatured alcohol is composed of alcohol and specified  
5 denaturants that are more readily removed by simple chemical process. While specifically  
6 denatured spirit is not fit for human consumption by virtue of denaturants used to denature  
7 the product it can, through certain recovery process, be made potable as a result its use and  
8 control through the registration of users like the paint industry. Otherwise, everybody, user is  
9 going to go out. Today there is no mechanism by virtue of which the user industry, what they  
10 do with the denatured spirit which they procure. There is no control except the State laws  
11 which are controlling like through licensing, returns file by them. There is no law which  
12 prevails. And just one more page on this My Lords, how the formula of these two are given and  
13 look at the extent by which these two type of categories of product... PDF 139, My Lords. (A)  
14 category the formula for denatured alcohol. (A) category is completely denatured alcohol,  
15 which are safe, are low in risk. Look at (B), specifically denatured alcohol these are the  
16 products which are there, and these are regularly being purchased and sold and consumed by  
17 the user industry, My Lords. And this is under the high risk, as a matter of fact, which has been  
18 found to be a problematic area.

19

20 **JUSTICE HRISHIKESH ROY:** [UNCLEAR] in making what is non-potable, potable?

21

22 **BALBIR SINGH:** Yes, I asked this question that why somebody is going to do this? The 350%  
23 of the excise duty is saved straight on these lines. Or medical products, like cough syrups and  
24 so...

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** So, are you done now?

27

28 **BALBIR SINGH:** Done.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you. So Mr. Farasat, we will take your  
31 submissions, 15 minutes or so. You can argue to your heart's content but about 15 minutes. So,  
32 that we will then request the other side to start.

33

34 **SHADAN FARASAT:** May I please My Lords. Because I appear for the State of Punjab and  
35 I have one submission and that is that the semantic meaning of 'intoxicating liquor' which  
36 existed at the time of the Constitution coming into force includes the entire universe of  
37 alcoholic fluids. And that is the meaning Your Lordships to give to the phrase, 'intoxicating

1 liquor'. I've framed the submission in this manner trying to pivot it at the time of enactment  
2 of the Constitution for the reason that the meaning of the word 'liquor' itself has changed over  
3 time. Liquor, what it meant 30, 40 years back, certainly at the time of introduction of the  
4 Constitution is not the meaning which is there in common parlance or the predominant  
5 meaning today. So, my respectful submission to the Court is...

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** One thing is very clear. Coffee has still not  
8 become liquor.

9

10 **TUSHAR MEHTA:** There are many liquor substitutes but it's not liquor under the  
11 Constitution.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Otherwise, we'll have to review what we said  
14 about the Attorney General.

15

16 **TUSHAR MEHTA:** I tried to make good my point.

17

18 **SHADAN FARASAT:** In fact, my submission will be that liquor definitionally includes all  
19 fluids. All fluids. That's one of the primary meanings at the relevant time and I'll take Your  
20 Lordships to the dictionary meaning. So how Your Lordships interpret 'intoxicating liquor' will  
21 first depend on how Your Lordships interpret liquor itself.

22

23 **JUSTICE B.V. NAGARATHNA:** Intoxicating liquor is a species of liquor.

24

25 **SHADAN FARASAT:** That's right. I'm grateful to the Court. So My Lords, 'intoxicating' is a  
26 word which qualifies the word 'liquor'. And in my respectful submission, a great deal will  
27 depend on that. Because if Your Lordships take the view that liquor is all possible fluids, then  
28 it is certainly possible for us to argue that intoxicating liquor includes all liquors which have  
29 alcohol in them, that is, which have the capability to intoxicate, whether they are drinkable by  
30 humans or not. But if Your Lordships take the view that liquor itself means only alcoholic  
31 fluids, then attachment of intoxicating to it will certainly have a different meaning which may  
32 indicate that it has to be fit for human consumption. And My Lords, in my respectful  
33 submission there are two broad cleavages, pre-Synthetics, 1990 that is, pre **Synthetics** 2 and  
34 post 1990. And what is pre-1990? The meaning of liquor was what I am suggesting the Court  
35 to adopt, which is also the meaning in **Balsara**, that is, it's all fluids and therefore,  
36 intoxicating only qualifies it to make all fluids which contain alcohol in any form. And  
37 **Synthetic** breaks that meaning and form and post **Synthetic** some judgments have already

1 been placed before the Court, the meaning changes. And this error begins in paragraph 74... if  
2 I may respectfully say, error of **Synthetics** is in paragraph 74 of the judgment, which is at  
3 PDF page 55. My Lords will just have it. It's been shown...

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** We just saw it in the morning.

6

7 **SHADAN FARASAT:** Yes. The bottom part. I'll just read it, Your Lordships will not go to it.  
8 'The above entry contains words "intoxicating liquor". The meaning of the expression,  
9 "intoxicating liquor" has been rightly interpreted by the Bombay High Court in **Balsara**.' So,  
10 the Supreme Court here goes with the Bombay High Court view in **Balsara**, not the Supreme  
11 Court view. And what does it say about the Supreme Court view, which is Justice Fazl Ali's  
12 view. 'The decision of the Bombay High Court is repeated in so and so. In that light perhaps  
13 the observation of Fazl Ali J. in **Balsara** case requires consideration. It appears that in light  
14 of new experience and development, it is necessary to state that intoxicating liquor must mean  
15 liquor which is consumable by human being as it is and as such, when the word "liquor" was  
16 used by Fazl Ali J., they did not have the awareness of full use of alcohol as industrial alcohol'.  
17 My Lords just... if Your Lordships will just come to that, page 47. There's something which  
18 turns on that. I want to just...

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Paragraph 74, page 54, right?

21

22 **SHADAN FARASAT:** Page 55 PDF begins at 54. At 55 PDF.

23

24 **JUSTICE B.V. NAGARATHNA:** So **Balsara** dealt with a case of prohibition.

25

26 **SHADAN FARASAT:** That's correct. But...

27

28 **JUSTICE B.V. NAGARATHNA:** Prohibition for human consumption..

29

30 **SHADAN FARASAT:** But the..

31

32 **JUSTICE B.V. NAGARATHNA:** Alcohol for human consumption was prohibited. Then it  
33 was challenged on the basis of Article 19(1)(g) because if you have a complete prohibition, then  
34 such product is not available as a raw material for toilet preparation and for another, what is  
35 that? Medicinal. Therefore, they struck it down on that basis.

36

1 **SHADAN FARASAT:** My Lords, the words 'liquor' and 'intoxicating liquor' both were  
2 interpreted in *Balsara*.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** And for Mr. Balsara to have prohibition would  
5 have been blasphemous absolutely, you see.

6

7 **JUSTICE B.V. NAGARATHNA:** That is another aspect.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Of course, *Balsara*...

10

11 **SHADAN FARASAT:** My Lords the Bombay Act, if I may answer. The Bombay Act contained  
12 the entire universe, including spirits of all kinds, varnish everything. So, the Bombay Act in  
13 that sense was the entire scheme of liquor, not just... That's true. It arose in the context of it,  
14 that's true. It arose in that context, but the interpretation was of the entire Act.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Page 55 PDF

17

18 **SHADAN FARASAT:** Volume V, page 55 PDF. 'It appears that in light of the new experience  
19 and development'. My Lords so, the...

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** But can you now just... Okay now this we have  
22 seen.

23

24 **SHADAN FARASAT:** Yes.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** How do you say that you know the definition of  
27 'liquor' pre-Synthetics would include all fluids? Of course, one is, of course, what common  
28 sense. We always say liquor in coffee. "Would you like to have just the liquor or would like the  
29 liquor with some warm water?" They ask you all the time when you go down to Bangalore or  
30 even you go to Chennai but they'll ask even the Attorney General whether he'll have some  
31 liquor, you see. Perhaps... is there something more substantial we are missing to show that  
32 liquor would mean all fluids? That is a conventional meaning. Forget *Balsara*.

33

34 **SHADAN FARASAT:** Your Lordships will have Volume I(i). I have put all the dictionary  
35 meanings of all the dictionaries of the relevant time. The ones I could find. I(i).

36

37 **CHIEF JUSTICE DY CHANDRACHUD:** Page?

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**SHADAN FARASAT:** It's page 1. PDF page 2. The first one is the Law Lexicon of British India, 1940. What was prevalent in British India at the time. I've taken the liberty of putting it all in one place. Liquor, the liquid or fluid substance. Volume I(i), I for India. There are two meanings possible. The second...

**CHIEF JUSTICE DY CHANDRACHUD:** That is in a more limited sense and is more common application, spirituous fluids.

**SHADAN FARASAT:** Your Lordships are absolutely right. So, there were two possible meaning, but this meaning, which was there of liquid has always been there at the relevant time. And my submission is that liquor used in Entry 8 is in the broader sense, which was prevalent at the time. It was a usage available at the relevant time. Today, if Your Lordships go to dictionary, even if Your Lordship Wikipedia it, liquor equal to fluid bracket, it will say 'obsolete'. My Lords, nobody today uses and we should not use our contemporaneous understanding of the word 'liquor, and impose it in 1950, is my respectful submission.

**JUSTICE HRISHIKESH ROY:** It talks about spirituous.

**SHADAN FARASAT:** Also.

**JUSTICE HRISHIKESH ROY:** Not virtuous.

**CHIEF JUSTICE DY CHANDRACHUD:** Virtuous. I also said exactly that... spirituous and not virtuous.

**SHADAN FARASAT:** Kindly have Websters number 2. Liquor, a liquid substance... and then again, the examples are... it's also used in the second context of an alcoholic, drinkable fluid but it's also used as a fluid per se. And if Your Lordships will go down to the etymology of it, liquor effectively is from Greek, which means 'fluid'. I am sorry. Latin, which is essentially fluid. That's the true, pure meaning of liquor. Now, obviously that meaning has evolved, but my respectful submission to the Court is at the relevant time, one of the predominant meanings... possibly the predominant meaning was any fluid.

**CHIEF JUSTICE DY CHANDRACHUD:** Then do we interpret the Constitution in terms of its original understanding or as we understand it...?

1 **SHADAN FARASAT:** I'm so grateful. So, My Lord, that's why I began by framing my  
2 argument as a semantic meaning. Your Lordships will examine the semantic meaning. I'm not  
3 proposing originalist understanding of the Constitution. That's never been our jurisprudence  
4 anyways. But to begin with, Your Lordships will always examine the semantic meaning as it  
5 existed. Then Your Lordships, after having determined what the original semantic meaning  
6 was, expand it if necessary, change it if necessary. What **Synthetics** does, it mixes up. It says  
7 language has changed, therefore, I'll not superimpose that on 1950. For instance, sex does not  
8 include sexual orientation. Your Lordships have included it. But Your Lordships did not say  
9 sex originally included sexual orientation through expansionist process. Your Lordship did not  
10 change the semantic meaning. It remains intact. Your Lordships says situation has changed;  
11 society has changed, therefore, we will now bring this into. What the **Synthetics** Court does,  
12 it changes the semantic meaning. That's what I was reading at 74. It says, experience has  
13 changed. Liquor today means this, therefore, this is what it is. My Lord that, in my respectful  
14 submission is not permissible. It is nobody's case that something has changed. So, the liquor  
15 original meaning is any fluid. The Constitution originally envisaged any fluid. And today's  
16 situation has changed, so that we need to bring in something else. That's not the way. They've  
17 said the language is changed. And I'll place something on that. There's a very good article by a  
18 Yale Law Professor because in US in Article 4 of their Constitution, they use the word 'domestic  
19 violence'.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Domestic?

22

23 **SHADAN FARASAT:** Violence. That's actually internal disturbance. But in 1780s, the word  
24 'domestic violence' was in vogue. What they mean is internal emergency. Today, we will  
25 associate domestic violence with spousal abuse. So the meaning of the word Your Lordship  
26 will first determine what liquor meant, then what intoxicating liquor meant then and then  
27 after that semantic meaning is clear, Your Lordship will interpret it further if necessary. That  
28 the **Synthetics** Court has not done.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** By the way, Mr. Farasat, where did you get all  
31 these dictionaries as of 1950?

32

33 **SHADAN FARASAT:** My Lords, I am grateful to the Court. Actually, I use the Judges Court  
34 Library. Nowadays they permit us. So last two days, my colleagues went to the library and we  
35 could access it from there. I'm really grateful to the Court for that. So Your Lordships will see...  
36 so the meaning 3 and 4 are also there. Then what... if Your Lordships will stay on this, kindly  
37 have page 3. PDF page 4. Borrowing from Justice.... My Lords, we have PDF 4 of the same

1 volume. I've tried to borrow from Justice Hidayatullah's concentric circle in the context of  
2 public order. National security, public order, law and order. And in my respectful submission,  
3 in our case, liquor is the biggest outside circle, which includes all fluids. Within that you have  
4 intoxicating liquor which is all fluid which contains alcohol. And within that, the smallest circle  
5 is alcoholic liquor or intoxicating liquor fit for human consumption. Now what My Lords the  
6 **Synthetics** Court has done. It has gone from liquor to really intoxicating liquor for human  
7 consumption. That middle thing has been missed out, so that's why I'm saying how do we... if  
8 Your Lordships take a meaning of liquor, then your Lordships will see, what does it really  
9 qualify the word 'intoxicating'. And then what is the effect of that? The effect of that is, let's  
10 say denatured spirit. What is troubling the Court? It really is one thing which comes out of it,  
11 for everything else, it is covered in Entry 8. There is no other substantive entry for denatured  
12 spirit or alcohol. So that's the only thing which is plucked out suddenly and hangs in a general  
13 entry of industry. Why should that be the case, I ask myself. Especially if, at the time when the  
14 Constitution was enacted, one of the known accepted meanings of liquor was fluid and  
15 intoxicating liquor does mean clearly that anything which contains alcohol.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** In fact, the argument of denatured spirit is by  
18 the States. Balbir Singh was appearing from Maharashtra. Because the argument is because  
19 even denatured spirit is capable of being renatured in certain cases. Therefore, give us that  
20 power as States to ensure that there is no such abuse.

21

22 **SHADAN FARASAT:** I'm grateful. So, that supports my point, because it's not as if  
23 denatured spirit is a category which is independent and not interchangeable. That's all the  
24 more reason Your Lordships will give intoxicating interpretation, which will include all  
25 alcoholic liquor.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** All right, what else?

28

29 **SHADAN FARASAT:** Just finally, on that. Next is this article by Your Lordship's questions,  
30 the Chief Justice's question on... We are not...

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** Pause for a moment, just to test it. We don't  
33 accept this submission of yours. Can we not reach the same conclusion by saying that, 'look,  
34 assuming therefore, that denatured spirit goes into IDRA, unless there's a notified order, the  
35 State's power under Entry 33 is not taken away'

36

37 **SHADAN FARASAT:** My Lords but...

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**CHIEF JUSTICE DY CHANDRACHUD:** It will arrive at the same conclusion..

**SHADAN FARASAT:** My Lord but...

**CHIEF JUSTICE DY CHANDRACHUD:** Tomorrow, the difference is the Government of India can come out with a notified order. But they have not done it for the last.. they will not do it because they have not done it.

**SHADAN FARASAT:** My Lord, that's true. They have not done it.

**CHIEF JUSTICE DY CHANDRACHUD:** There's also change. There's nothing so great about industrial alcohol that the government has to regulate it.

**SHADAN FARASAT:** It's quite clear, it's possible they may not do it. But the nature of the power itself is different because this is constitutionally demarcated to me if I have it in Entry 8. Because then I'm dependent on their goodwill. As a State, I would press Your Lordships to bring it in that, although immediately it may not impact me, even if it comes there. But then later on, they can obviously bring in something, notify something and I'm ousted.

**CHIEF JUSTICE DY CHANDRACHUD:** No, but also... now you have to also understand IDRA itself is an anachronism. It just survived, that's all. IDRA is one of those, it's one of those you know license *raj* Acts. Which is also the scope of the Act have been reduced now. There's no expansion of IDRA entries. What remained has remained.

**SHADAN FARASAT:** That's quite true, but in the post...

**CHIEF JUSTICE DY CHANDRACHUD:** It's like the control of capital issues. It was a time when you know everything was so tightly regulated.

**TUSHAR MEHTA:** Effectively being monitored.

**CHIEF JUSTICE DY CHANDRACHUD:** Yeah, yeah. Of course.

**TUSHAR MEHTA:** Yeah, it's not just [UNCLEAR]. There is a separate ministry under Ministry of Commerce.

1 **SHADAN FARASAT:** My Lord, I will only...

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** But Mr. Solicitor, what we are saying is IDRA is  
4 now not, we are not, we are not today in a stage of economy where IDRA is being progressively  
5 expanded. It's now...

6

7 **TUSHAR MEHTA:** Broadly. Your Lordships are on a broad...

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** On where the economy is going.

10

11 **SHADAN FARASAT:** My Lords, I'll just say one thing in response to that. That in the post  
12 GST era, for the states, any available spaces...

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Are important.

15

16 **SHADAN FARASAT:** ...are important. My Lords, that's why we would press in entry because  
17 most of those places have been given up.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** All right, thank you.

20

21 **SHADAN FARASAT:** My Lords just one on that. Just so that to elaborate. Your Lordships  
22 will have the article at page 4. And I'm just going to read one page out of it. This is by Yale  
23 professor Jack M. Balkin, constitutional law professor. It actually just states what our legal  
24 position in India, any event is. I mean of course, in the US, originalism is very expansive. We  
25 don't subscribe to it at all in that sense, but we do subscribe to it in the way he frames it, is my  
26 respectful submission and Your Lordships will kindly have PDF page 8.

27

28 **JUSTICE ABHAY S. OKA:** Which volume is it?

29

30 **SHADAN FARASAT:** My Lord, this is I(i).

31

32 **JUSTICE ABHAY S. OKA:** Same?

33

34 **SHADAN FARASAT:** Same volume. And Your Lordships will kindly have PDF page 8. It  
35 begins My Lords PDF page 8 with the first line, 'but fidelity'. My Lords have it? Regular page  
36 7, PDF page 8. 'But fidelity to original meaning does not require fidelity to original expected  
37 application. Original expected application is merely evidence of how to apply text and

1 principle. Each generation is charged with the obligation to flesh out and implement text and  
2 principle in their own time. They do this through building political institutions, passing  
3 legislation, creating precedence, both judicial and non-judicial. Thus, the method of text and  
4 principle is a version of framework originalism, and it views living constitutional as a process  
5 of permissible constitutional construction. The term "original meaning" can be confusing  
6 because we use meaning to refer to at least five different things. Semantic content, practical  
7 applications, purposes of functions, specific intentions as associations. Thus, when we ask the  
8 meaning of equal protection clause, we could be asking what concepts the word in Clause 1...  
9 Clause 1.2, how to apply the clause, the purpose or function of the clause, the specific intention  
10 behind the clause, or what the clause is associated with in our minds or more generally in our  
11 culture. Fidelity to the original meaning in constitutional interpretation refers only to the first  
12 of these types of meaning. The semantic content of the words in the clause. We follow the  
13 original meaning of words in order to preserve the Constitution's legal meaning over time as  
14 required by the rule of law. Otherwise, if the dictionary definitions of word change over time,  
15 their legal effect would also change, not because of any conscious act of lawmaking or even  
16 political mobilization, but merely because of changes in language.' And this is the example. So,  
17 for example, when Article 4 says United States must protect the States from domestic violence,  
18 we should employ the original meaning riots or insurrections, not the contemporary meaning  
19 of spousal assault. I will conclude by saying that Your Lordships will examine first what the  
20 original meaning of liquor in 1950 was. And then see what is the qualification with intoxicating  
21 offers. In our respectful submission, it contains the entire universe and not just until 1990.  
22 Right from 1873, when the first Bombay Act was passed. That's the earliest Act, till 1990, even  
23 denatured alcohol is clearly included in intoxicating.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Till?

26

27 **SHADAN FARASAT:** Till 1990, *Synthetics* judgment. Denatured alcohol is, in effect,  
28 included in intoxicating liquor. It's only *Synthetics* definition, which takes it a changed view  
29 based on the change in what intoxicating liquor means in society. So, it is not as if it's  
30 something new to us. That was the meaning which prevailed from 1873. Mr. Dwivedi showed  
31 Your Lordships from all those Acts. The meaning was quite clear, it would include everything,  
32 including denatured alcohol.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you.

35

36 **SHADAN FARASAT:** I'm extremely grateful.

37

1 **DR. VIVEK SHARMA:** Volume I(b) appearing for the Intervener in IA number 237338 of  
2 2023. Pardon, sir?

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Who's the intervener? Last time you told us you  
5 are the Intervener.

6

7 **DR. VIVEK SHARMA:** No, Sir. I am not the Intervener. That is the private, individual party,  
8 citizen of India and the resident of Uttar Pradesh, Miss Sheela. Miss Sheela Sharma.

9

10 **JUSTICE B.V. NAGARATHNA:** Is she a teetotaller?

11

12 **DR. VIVEK SHARMA:** Pardon?

13

14 **JUSTICE B.V. NAGARATHNA:** Is she a teetotaller? She must have *locus standi*.

15

16 **DR. VIVEK SHARMA:** My Lord. See, I have the *locus standi*... pardon?

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Teetotaller means *chai he peete hain*.

19

20 **VIVEK SHARMA:** Can I start?

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Yes. How she is affected by the issue involved?

23

24 **DR. VIVEK SHARMA:** Pardon, Sir?

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** How she is affected by the issue involved?

27

28 **DR. VIVEK SHARMA:** Yes, Sir. We are talking about the industrial alcohol. And this  
29 industrial alcohol is many times for the direct human consumption and I give the example like  
30 as in the cosmetic industry, the nail polish.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** People drink nail polish?

33

34 **DR. VIVEK SHARMA:** No, no. Human consumption. When we using the nail polish, then  
35 it comes in the direct contact of the skin and it is also the human consumption. We are wearing  
36 this cloth, it is also the human consumption. How can we say if we eat or drink anything, then  
37 it is the human consumption? The constitutional entry mention the word only the human

1 consumption. That is not saying that we should eat, we should drink. So that's why, Sir. Can I  
2 start?

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** But you are done. You have made the point.  
5 Learned Counsel, I thought you have completed.

6

7 **DR. VIVEK SHARMA:** No, Sir. Only I am explaining my *locus*.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Human consumption doesn't necessarily mean  
10 that you have to eat or drink only.

11

12 **DR. VIVEK SHARMA:** Yes, absolutely. Sir, can I start?

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

15

16 **DR. VIVEK SHARMA:** The main issue is the interpretation of the Section 18-G of the  
17 Industry Development and Regulation Act, 1951, with regard to State legislative power for the  
18 industrial alcohol. This is the main issue in this. So, on the last page of my written submission,  
19 the last paragraph, I will read only four lines. And after that I will say anything. 'Mere existence  
20 of section 18-G of 1951 IDR Act in the statute, cannot out of competence of the State legislature  
21 to enact the Legislation in respect of the matter matters falling under Entry 33 of the List III  
22 of the same schedule to the Constitution. State's power to regulate the use of alcohol which  
23 would include the power to make the provision to prevent or check the industrial alcohol being  
24 used as intoxicate and liquor should be recognized.' So, we are talking here... this is the  
25 industrial alcohol. This is the non-industrial alcohol. But there is nowhere the clear-cut  
26 division. Denatured alcohol, intoxicating liquor, as I said previously, is also for the human  
27 consumption. Like as Your Lordship... In this courtroom, we use the spirit polish.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Where?

30

31 **DR. VIVEK SHARMA:** We use the spirit polish on the wooden walls. In this spirit polish,  
32 when we sit on the dais, we direct.. you can say in the shelf. So that's why, how can we say,  
33 many products of the denatured spirit directly in the human consumption and some indirectly  
34 in the human consumption. That is the way and also...

35

36 **JUSTICE HRISHIKESH ROY:** What is your name?

37

1 **DR. VIVEK SHARMA:** Dr. Vivek Sharma.

2

3 **JUSTICE HRISHIKESH ROY:** So Dr. Vivek Sharma, you are saying that *yeh jo liquor ki*  
4 *baat ho rahi hai, iska lips ke saath koi sambandh nahi hai? Hai na? Ye hi kehna chahte hain?*  
5 Consumption, *lips ke saath sambandh nahi hai, haina?*

6

7 **DR. VIVEK SHARMA:** Absolutely, Sir. Absolutely. The things are overlapping, not the  
8 clear-cut division of the human consumption.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Sharma ji, is the intervener also related to you or  
11 no?

12

13 **DR. VIVEK SHARMA:** No, no Sir.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** Just the name is the same.

16

17 **DR. VIVEK SHARMA:** Yes. Sir, with regard to Entry 8...

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Last point.

20

21 **DR. VIVEK SHARMA:** Last point. With regard to Entry 8, when we are talking about the  
22 intoxicating liquor. Many times before 70 and 80s, we can see in the labs, the spirit lamp in  
23 the laboratories are used and also nowadays also in the schools going to children can use that.  
24 Many lecturers of that time and the students directly drink that.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Directly drink what?

27

28 **DR. VIVEK SHARMA:** The intoxicating liquid, denatured spirit which are using to light the  
29 spirit lamp. So that's why there can be no clear-cut demarcation. All the things are overlapping.  
30 Because at that time, in the village and the small towns, schools are available, but not the shops  
31 of the liquor.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

34

35 **DR. VIVEK SHARMA:** Can I start, Sir?

36

37 **JUSTICE HRISHIKESH ROY:** It is not a hop, skip and start.

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**CHIEF JUSTICE DY CHANDRACHUD:** You came to the last para of your written submissions now. Now you have completed it. Time's over now.

**DR. VIVEK SHARMA:** I am...

**CHIEF JUSTICE DY CHANDRACHUD:** Thank you. Thank you, Mr. Sharma. Mr. Attorney General.

**TUSHAR MEHTA:** One interjection My Lord. He took the matter to the level of Mirza Ghalib. Mirza Galib when he was old and he used to drink a lot. He said, *do hathome zumbish na sahi ankho me toh dam hai. Rehne do abhi sagaromina mere aage. Mein utha toh nahi sakta hoon lekin mein aankh se bhi pe sakta hoon.* It took it to that level.

**CHIEF JUSTICE DY CHANDRACHUD:** What a compliment from the Solicitor to you *Sharmaji.*

**R. VENKATARAMANI:** That brings a lot of lighter, lesser intoxication. If you place some broad reflections on why the principle of controlled industry may have different implications at different point of time in the nation's history. If you switch over from a completely controlled economy to a relatively free economy, I suppose even in those circumstances, the need for controlling an industry will always be there, depending upon the implications which an industry may have or may not have on the people of the country.

**CHIEF JUSTICE DY CHANDRACHUD:** Today there may be considerations of defence or national security, which require a controlled industry.

**R. VENKATARAMANI:** So, what I was listening to him, this old 1932, *The Ice Company* case in New York, *New State Ice Co. v. Liebmann*. So, what is charged with a public purpose and public interest. So a process in industry, a thing, a material, an object, any one of them, if they are charged with a public purpose or a public interest, then State will have an interest in dealing with it in such manner as a State may like to do. For Entry 52 (i) may have to be seen from that point of view. While we have moved away from a license *raj*, but I say the importance of control of an industry or a process or a thing or a material would always remain in the contemplation of the State particularly because the Parliament will decide for the entire nation. So, I will try on the lighter side, talking about intoxication, the old historical aspects of intoxication. We are not talking about merely probably in one level the bacchanalian aspect of

1 it. Old Greek word *bacchus*, which is used also in Shakespeare's *Midsummer Night's Dream*.  
2 We call that the root or the riot prior to the tipsy revelry. So we are therefore, we are trying to  
3 look at meaning from a constitutional point of view which may make sense for understanding  
4 the distribution of powers and authorities. Very often, like for instance, the word 'telegraph'.  
5 The inventor did not know telephone. But of course, to interpret telegraph could mean  
6 telephone. There you are supplying a meaning to the word by reason of an additional invention  
7 which has come into the world of science and technology and human experience  
8 comprehensive and therefore says, I'll give this meaning to the word 'telegraph'. Like Article  
9 25 may give a meaning to life and liberty. When it comes to terms and expressions which are  
10 scientific and technical meaning, the Court will not supply a meaning in the abstract. It can  
11 learn a meaning or pick up meaning only from the experience of technology and industry. So,  
12 regardless of the fact that all liquids containing alcohol may be brought within the broad term  
13 of a liquor, the Constitution makers would have thought that, 'why don't we use the expression  
14 liquor? Why use... resort to intoxicating Liquor?' Liquor would have been the most easiest  
15 expression, because that's how common sense, industry, everybody understood it. But an  
16 intoxicating element is brought into it, one must ascribe some relevance to that addition to the  
17 word 'liquor.' I'll come to it a little later, trying to break some broad reflection how do you go  
18 about it. Very often, we have this problem about definitions. Therefore, we are looking at a  
19 thing which is being defined, a liquor, intoxicating, which is a thing and definition of a process  
20 or a matter or an idea or a principle. The definition of a word is different from the definition  
21 of a thing. A thing is defined by reason of its characteristics, features. A word is defined by  
22 what it can convey over a period of time. So if you're looking at the definition of intoxicant as  
23 a thing, I mean, eventually try to probably expand this, saying that reliance on gas and gas  
24 works picked up from out of industry [UNCLEAR] another illustration of picked up from  
25 industry will be valid up to a point, but not beyond a point. And if you're looking at the entire  
26 distribution of powers, we understand that the legislative entries are not exhaustive of what  
27 Parliament or State legislature can do. Whatever came into the imagination of lawmakers at a  
28 given point of time were brought into these broad enumerations. So today we don't have a  
29 public, for instance, public premises was not an entry under anyone's list and Parliament had  
30 to amend the Parliamentarian Salaries and Allowances Act to bring in pension because entry  
31 is only about allowances and salaries. So the mere fact that certain entry or a matter is not  
32 specifically enumerated in any of the list, would not come in the way of the respective  
33 legislatures to go about and acting in terms of out of a necessity to deal with the matter.  
34 Therefore, we don't say that List VIIth Schedule is completely exhaustive of everything and  
35 something which is not there, will fall here or there. I'll presently take Your Lordships through  
36 my written submission, before I thought I'll do that. Therefore, this whole way of  
37 understanding VIIth Schedule will be on the basis of what a State out of necessity would be

1 persuaded to legislate or embark on a course of action. Therefore, the necessity element will  
2 always be built in Entry 52, List I. Entry 33 could not have been brought in List III. If  
3 Parliament thought that by bringing in the concept of an industry under Union control was  
4 sufficient to deal with all matters relating to Union control, then it could have ended so. So, is  
5 there a purpose in saying that both Parliament and the State will have a concurrent  
6 competence under Entry 33? And if, so, what purpose will it serve? Either it will serve a new  
7 purpose or serve a purpose already in existence and expand its use or its exercise.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Entry 33, Mr. Attorney is a clear example or a  
10 clear indicator that even while giving to Parliament the power to declare an industry, the  
11 control over which, by the Union is in public interest, the Framers did not want to oust the  
12 jurisdiction of the States completely because...

13

14 **R. VENKATARAMANI:** I don't propose to say that. The very fact is that they are concurrent.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** They felt that, no, notwithstanding the fact that  
17 the industry is declared as a controlled industry, production, supply, distribution, trade and  
18 commerce will be the subject of a concurrent power. So, Parliament may override the State; it  
19 may not override the State. But the State is also given a power, even though the industry itself  
20 is a controlled industry.

21

22 **R. VENKATARAMANI:** Absolutely, I mean, there's no doubt about that. The very language  
23 of Entry 33...

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** The extent of control under Entry 52 of List I is  
26 itself in a restricted area. It at least excludes trade, commerce, production, supply, distribution  
27 which has taken to List III.

28

29 **R. VENKATARAMANI:** We can probably draw a wall of separation between a product of an  
30 industry and trade, commerce, supply, distribution. Or we look at them as one continuum of  
31 activity, an economic activity or production and thereafter, supply, distribution, et cetera. We  
32 are looking at an economic activity. So for many economic activities today which may end with  
33 merely production, but I don't think today somebody will make sense and say, 'I will produce,  
34 but I will not supply'. So, every production implicitly includes within the activity of production,  
35 the next series of actions- trade, commerce, supply, distribution. They are a continuum of  
36 economic activities. So, that's why even in Entry 33, I'll come a little later about explaining it...  
37 in Entry 33, Clause A, it talks about the products of an industry. The products, plural, number

1 1. Any product of any industry, as many products of any industry. So, the products of an  
2 industry here means, in a very expansive sense, in respect of those products of the industry,  
3 what is the scope of Entry 33? In respect to those products, there can be a trade, there can be  
4 a commerce, there can be supply, there can be distribution. So, once... therefore, I find there  
5 is a symbiotic relationship between Entry 52, List I and Entry 33, List III. You cannot see them  
6 in isolation and I don't think Parliament would simply say, I will enact a law under Entry 52  
7 (1) with a mere declaration that it is in public interest. No law would probably do that. If you  
8 go further and say, how will I achieve the declaration? Therefore, Entry 33 and Entry 52, if  
9 they have to be seen as two branches of one family. There is another way of looking at... My  
10 lords, kindly turn to Volume II(b) of my written submission.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Volume II(b), alright.

13

14 **R. VENKATARAMANI:** I placed another extract from a book which is Volume IV(d). I'll  
15 come to it a little later. Just make a note of that. It's one of the interesting treatises on  
16 linguistics in Volume IV(d). That's a title of the book is, 'meaning of meanings'. Before I go to  
17 that, let me come to my written submissions.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Let's see Proposition 1.

20

21 **R. VENKATARAMANI:** Yes. So, Entry 52, List I has a special significance. Its scope is not  
22 controlled by any other entries. I say, including Entry 8. 'Entry 24, List II contemplates State  
23 control or regulation of industries with in the geographical frontiers of a State. Then Entry 52  
24 provides a control aspect from a national perspective, such a federal control will be based on  
25 principles uniformly applicable to all States as far as control of an industry and to serve a  
26 national interest. Several national and public interests are perceived to be served by federal  
27 control. Namely, subserving the common good, equitable distribution, fair prices, utility of  
28 products of industry for serving the interests of all the States, et cetera. The common control  
29 element under Entry 52, List I is an independent subject and is not a matter carved out of the  
30 subset of industries under Entry 24, List II. If...'. Stopping here for a minute. If 24 and 52 dealt  
31 with distinct classes of industries, one can understand that. Entry 52 is an entirely different  
32 subject. It's about bringing industries under Union control. The Union control is a subject of  
33 Entry 52. Probably it is too stretching to say that from 24 two rules of Entry 52 come. They  
34 serve... occupy a different space, they serve different purposes. But even an Entry 24, what  
35 would a State do in respect of industries. When you talk of a thing, we talk about how do we  
36 go about regulating the use of the thing, the consumption of a thing. When you talk about  
37 industries here, we talk about regulating the industry. So industry is given at 24 is about

1 regulation. It's not anything other than regulation. So, 52 is different. Regulation for national  
2 perspective. 'Entry 24, para 5, on the other hand, stands on a lesser pedestal, namely, the  
3 geographical area. Regulation of industries that dealt with under Entry 24 is distinct. Entry 24  
4 contemplates the competence of the States to enact and to provide all matters in respect of  
5 industries. Entry 52 on the other hand...'.  
6

7 **CHIEF JUSTICE DY CHANDRACHUD:** The reason why they argued that Entry 52 is a  
8 carve out is because the subject of industries is contained in Entry 24 of List II. Entry 24 of  
9 List II says 'industries'. Entry 52 says 'industries, the control of which is declared by law by  
10 Parliament'. Now, which are those industries? Those industries are otherwise comprised in  
11 the subset of 24. Everything falls in 24, but once Parliament declares by law that is abstracted  
12 out of 24 and then taken to 52. That's the way it operates. It's not that industries in 52 is  
13 independent of 24.  
14

15 **R. VENKATARAMANI:** My proposition is the subject of 52 is about Union control.  
16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, of course. There's no difficulty about that.  
18 That you are right.  
19

20 **R. VENKATARAMANI:** The Union control is subject there.  
21

22 **CHIEF JUSTICE DY CHANDRACHUD:** That you are right.  
23

24 **R. VENKATARAMANI:** Therefore, Parliament could have, Constitution could have said  
25 'industries can probably be in List I', but that would not have made sense, in the sense that  
26 States will have to look after processes, manufacturing processes, industries within their  
27 respective geographical areas. So, it is not probably correct to say something is carved out of  
28 Entry 24, but entirely a different subject, namely Union control of all that can be conceived as  
29 industries. So, it's different significance altogether.  
30

31 **CHIEF JUSTICE DY CHANDRACHUD:** But 52 doesn't say industries which have a trans  
32 state location or a trans state operation. It says 'industry is the control of which'.  
33

34 **R. VENKATARAMANI:** Even industries within any one or two or more States, even they  
35 can be brought under control under Entry 52 (I). It depends on the national interest which  
36 industries may serve.  
37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Suppose the IDRA was not enacted, all industries  
2 will then fall under which entry? Not under Entry 97. They'll all fall under Entry 24. Suppose  
3 an industry is not declared as a controlled industry even after the IDRA is enacted, where will  
4 that industry fall? It will fall under Entry 24.

5

6 **R. VENKATARAMANI:** Article 248 for that matter says it gives competence to the  
7 Parliament to enact laws which are not found in Entry 1, List I and List III. So, we refer to the  
8 competence of Parliament to deal with certain matters. Kindly look at Article 248 for a minute.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Article 248 is on the same lines as Entry 97.  
11 Entry 97 is a residuary entry including anything which is not found in any of the lists.

12

13 **R. VENKATARAMANI:** Entry 97 only captures that the element of Article 248. But 248 is  
14 a source.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** So the ultimate residual power is with the  
17 Parliament. It's nobody's case that Parliament is using a residuary power here. It's a specific  
18 power under the Entry 52.

19

20 **R. VENKATARAMANI:** Not enumerated in the Concurrent List or State List. Therefore,  
21 this source of parliamentary power is wider than, let's say, even 97, something which State List  
22 fine..., Parliament can still enact it. So Concurrent List or State List, see Article 248, just not  
23 in the State List. Therefore, the absence of an entry in any of the list should not make a  
24 difference. As a corollary, if the lists have a certain meaning and also, let's say, a connotation.  
25 Parliament cannot not say that 'look here. I don't look at the intoxicating part of it. I only look  
26 at the liquor part of it'. Maybe Parliament can still do that. I'm just giving an example.  
27 Therefore, the Entry 52 competence List I is something which is unchanneled or  
28 unconditioned by any other entry in the VIIth Schedule. Why I wanted to say that is, is  
29 whichever way the Court may look at Entry 8, Entry 8 whichever way one may look at, it will  
30 not control Entry 52, List I. The *Calcutta Gas Company*, judgment has been relied upon  
31 to show that we have three entries in List II, gas and gas works, intoxicating liquor and  
32 probably what are the entry, fisheries. I tried to find out what would probably be any other  
33 entry which can be taken out of or treated as subset of industries. We find these three entries  
34 there. One probably would think that the reason for a gas or gas works or fisheries or  
35 intoxicating liquor to be treated as separate entry, one of the reasons can possibly be that a  
36 special attention is required to be bestowed on these things and aspects, which otherwise,  
37 under the general Entry 24, the State can easily achieve, the same object. If industry means

1 regulation, control, supervision of trade, commerce, supply, distribution, you can't probably  
2 give a narrow meaning to the word 'industry' in 2024. So, if it has all the plenitude of meaning,  
3 a State can even at 24 achieve the same object of controlling, regulating supply, et cetera. But  
4 if there are special attention to be bestowed on a particular subject, for reasons of the historical  
5 significance. So, if from 1880 onwards, liquor has had a meaning, particularly with the  
6 reference to the potability part of it, the human element part of it, the consumption part of it.  
7 For gas and gas works, we did not know prior to 1935, the manner of production of gas and  
8 the new industrial use of gas, et cetera. It was a certain understanding on the historical  
9 meaning given to gas and gas works at the given point of time. Therefore, there are three or  
10 four entries in List II which has specifically taken out, if one may say that, out of industries,  
11 for certain very special reasons. That by itself does not mean... they would not otherwise come  
12 into the scope of industries. In *Calcutta Gas* works, the analysis by the Court, that there is a  
13 possibility of contributing two entries in the State List and having in mind the 1951 Act, if there  
14 is a control element brought in there, look at what should happen to the State law... I'll come  
15 a little later to why *Calcutta Gas* judgment may probably require a reconsideration. May just  
16 go to my second Proposition Number 2. And to give a symbolic or metaphoric... these entries  
17 in the three Lists are not like the Berlin Walls. They always have an interplay and one can  
18 jump.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** But suppose no declaration is issued by  
21 Parliament in a law under Entry 52 in relation to an industry, under what list will that industry  
22 fall?

23

24 **R. VENKATARAMANI:** No, it need not be. It need not fall under any particular entry  
25 anywhere.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** No, it has to fall somewhere.

28

29 **R. VENKATARAMANI:** Today, there's an industry which is not in any other list or even...

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** No. Suppose there's no declaration issued by  
32 Parliament in respect of a particular industry, industry 'A', where will it fall?

33

34 **R. VENKATARAMANI:** That inquiry, from my understanding, that inquiry may or may not  
35 be relevant. Wherever it falls, I'll just come...

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** No, relevancy we'll decide later. But suppose a  
2 declaration is not issued by Parliament?

3

4 **R. VENKATARAMANI:** If a declaration is not made under Entry 52, List I, then Entry 24  
5 will certainly operate. That's not the problem. But the question is Entry 24, operating *ex proprio*  
6 *vigore*, right? In the absence of a law under Entry 52, List I, that may have no relevance to  
7 what Parliament can do in Entry 52, List I. It may be an industry under 24, whatever be the  
8 industry but 52 occupies an entirely different issue altogether, subject altogether. So whatever  
9 be the industry, can Parliament now control it. So, it is not... it is the nature of the industry, I  
10 said, the various purposes that will be served by controlling the industry. The moment you  
11 enter into discussions on what are the other entries in State List which may have a bearing  
12 relationship or otherwise with Entry 24 and therefore, will it control Entry 52 List I? I think  
13 that's a long line of inquiry. We get them from a wrong side because it's unparallel, as I say. So  
14 if tomorrow Parliament says, I don't need an Industrial Development Regulation Act and so  
15 be it. But as long as the law occupies a field and Parliament has continued to say, well I will  
16 insert various industries in the schedule, it means it [UNCLEAR] an intention to have a Union  
17 control principle in position and to bring in, from time-to-time industries within the schedule.  
18 Please come to page 3 then. Proposition Number 2. 'Certain entries in Schedule VII constitute  
19 a family of entries in as much as an element of interconnectedness between them exists.  
20 Entries falling within such a family cannot be seen in isolation, and in a sense, they are  
21 complementary. Entry 52, List I and Entry 33, List III should be is such a family of special  
22 class. The principle of control enunciated in Entry 52 of List I can also include and touch upon  
23 all matters relating to an industry that is brought under Union's control. These matters can be  
24 production, trade, commerce, supply, distribution, et cetera. Depending upon the nature of  
25 the industry to be controlled and the public purpose such control of the industry will serve,  
26 Parliament can deal with any one or more or all of the above-mentioned aspects of the  
27 industry. To the extent that the Parliament may deal with these matters, the competence of  
28 the State to legislate under Entries 26 and 27 of List II will be excluded or deluded. Entry 33  
29 of List III however, is a coordinating branch of the principle of control. Trade, commerce,  
30 production, supply and distribution of commodities of products are interconnected aspects of  
31 an industry. Entry 33 contemplate that Parliament will have the primary competence of  
32 legislating in relation to any one or more or all of the above matters as may be deem necessary  
33 towards the control of an industry. The primary competent dimension flows from the control  
34 aspect. The foundation for any other, for any further legislative exercise. Depending on the  
35 scope and extent of parliamentary legislation providing for control, the subjects which are not  
36 occupied by parliamentary law, will be available to be dealt with by the States.' When I say the  
37 primary competence of legislating, therefore, Entry 52 flows into Entry 33. Then para 5, 'the

1 view taken in paragraphs 14 and 15 of *SIEL versus Union of India*, suggesting that a  
2 division with Entry 52 List I and Entry 33, List III does not offer a correct view on the reading  
3 or the above said entries. The aforesaid paragraphs are extracted here under. If you apply the  
4 same principle of harmonious construction to Entries 24, 26, and 27 of List II, the term  
5 "industry" in Entry 24 would not take within his ambit trade and commerce of production,  
6 supply and distribution of goods, which are the express province of Entries 26 and 27 of List  
7 II.' Stopping here for a minute. I suppose 24, 26 and 27 are a family of entries. 24 talks about  
8 industries. Once an industry, an industrial process, a production happens. Everything that  
9 after that is the continuum of an economic activity. For the purpose of felicitation and easy  
10 dealing with those matters, 26 and 27 are subdivided. Even if 26, 27 are not there, 24 can still  
11 take care of all that under 26 and 27. Let me read paragraph 14 again. 'If you apply the same  
12 principle of harmonious construction, re-entries 24, 26 and 27 of List II, the term "industry"  
13 in 24 would not take within its ambit, trade and commerce of production, supply and  
14 distribution of goods, which are the express province of Entries 26 and 27 of List II.

15

16 Similarly, Entry 52 in List I, which deals with industry, also would not cover trade and  
17 commerce in our production, supply and distribution of the products of those industry which  
18 fall under Entry 52 of List I. But the industry is falling in Entry 50, List I, these subjects are  
19 carved out and expressly put out put in Entry 33 of List III. So what I find there is what I call  
20 the Berlin Wall. So, Entry 52 and Entry 33 are so interconnected that they carve out for the  
21 facility of a State dealing with the subject. Let me read paragraph 50. 'In *Calcutta gas*, the  
22 Court in *Tika Ramji* was relied upon. *Tika Ramji* is a case the Court *inter alia* considered  
23 the interrelation between Entry 52, List I Entry 24, List II and Entry 27, List II and Entry 31,  
24 List III as it stood prior to its amendment and is amended. This Court examined the  
25 contention. The term "industry" should be widely constituted to include all activities, including  
26 activities preceding production, such as acquisition of raw materials and activities subsequent  
27 to production such as disposal of finished products of that industry. Negating this contention,  
28 in light of the legislative entries, this Court held that what would fall under Entry 24 of List II  
29 would be the process of manufacture or production, etc. The industry was a controlled industry  
30 when it would fall within Entry 52 of List I. The products of industry would be comprised in  
31 Entry 27, List II, except where they were products of the control industry. When they would  
32 fall under... within Entry 33. Therefore, the subject matter falling within Entry 26, and Entry  
33 27 of List II would not be covered by Entry 24 of List II. And similarly, the subject matter  
34 falling under Entry 33 would not fall under Entry 52 of List I. At one level, it is correct but at  
35 a different level, it is not. Because Entry 33 is not about Union control of industries. But what  
36 happens along with civilian control, is what is stated in Entry 33. So Union control must be  
37 something beyond mere Union control. It has been the aspects and dimensions of Union

1 control. Therefore, I find in that this reasoning in *SIEL* some kind of a wall of separation  
2 which probably is not the adequate way of reading entries within the same place. Since I would  
3 like to make some submissions with regard as regards what happened in *Calcutta Gas*. So,  
4 if Entry 24, 26 and 27... they all fall in List II. So there is no need or a necessity for suggesting  
5 a conflict between these entries. They may overlap or they may be some distinction between  
6 these entries. In *Calcutta Gas*, what the Court came close to suggesting... there's some kind  
7 of a conflict between entries... between Entries 24, 26 and 27 or gas works and Entry 24.

8

9 **JUSTICE B.V. NAGARATHNA:** 27. They have to yield to Entry 52, List I or Entry 33 as the  
10 case may.

11

12 **R. VENKATARAMANI:** That's true.

13

14 **JUSTICE B.V. NAGARATHNA:** So they have to yield.

15

16 **R. VENKATARAMANI:** That's true. I come to it immediately but what I'm trying to find out  
17 is the Entries 24, 26 and 27 in the State List. If I call them a family of entries, it's only a  
18 distribution of a certain dimensions or facets of economic activity amongst them. Industry,  
19 trade and commerce, supply, distribution as I said, to repeat, are part of an economic activity  
20 and interconnected. Therefore, as I said, for the facility suppose you only want to do a deal  
21 with trade and commerce in an industry. You may do it under Entry 26. You want to deal with  
22 supply and distribution, you may deal with it under Entry 27.

23

24 **JUSTICE B.V. NAGARATHNA:** Should be declared first under Entry 52.

25

26 **R. VENKATARAMANI:** That's right. As far as they are being subject to Entry 33 is a  
27 different issue altogether. Because I have some difficulty in going ahead with the reasoning in  
28 *SIEL*. Therefore, I'll come back to it a little later.

29

30 **JUSTICE B.V. NAGARATHNA:** Entry 33, List III is also with regard to a declared industry.  
31 That is the common thread.

32

33 **R. VENKATARAMANI:** That's right, That's right. Let me now continue to read at page 5,  
34 PDF page 5, paragraph 6. 'The reliance in the above judgment on *Tika Ramji* for his  
35 conclusion does not seem to be correct. As stated about Entry 52, List I and Entry 33, List III  
36 are two branches of one tree and they reinforce each other. On this understanding, the further  
37 conclusion that can be drawn is that is open to the Parliament to enact in respect of matters

1 relating to trade and commerce, production, supply and distribution and also deal with the  
2 necessary elements of control and regulation touching upon the above subjects. The Industry  
3 Development Regulation Act, 1951, has enacted in respect of and provided for aspects of  
4 control and regulation, touching upon trade, commerce, production, supply and distribution.  
5 For the purposes of exclusion of competence of States from entering into any one of the above  
6 matter, namely production, et cetera, it is sufficient for the 1951 Act that touched upon the  
7 area and the nature of control and regulation *vis a vis* the schedule industry. When a law is  
8 said to be complete and made insofar as it contains all the essential features of a legislation,  
9 including provisions in relation to delegated legislation. The mere fact that the details of the  
10 working of the legislation will be dealt with by way of rules, regulations, notification...'.  
11

12 I was reading paragraph 8. 'There mere fact the details of the working of the legislation may  
13 be dealt with by way of rules, regulations, notifications and other orders, cannot be the reason  
14 for the assertion that the law is incomplete or that the field is unoccupied. The enforceability  
15 or otherwise, a law by reason of non-emanation of the subordinate legislation can have no  
16 relevance to the actual occupation for the field in question. It is the occupation and not as  
17 enforceability that matters. Not speaking at all or silence on a subject is different from the  
18 absence of measures towards enforceability of the statute.' Then **Tika Ramji** versus case  
19 dealing with raw materials not falling within the scope of the scheduled industry. 'It was in  
20 that context that the Court noticed that no order was issued by Central Government in  
21 exercise, for the powers resident under Section 18-G. Because sugarcane raw material did not  
22 fall under the scheduled industry, the Court felt that possibility of an order under Section 18-  
23 G being issued by the Central Government would not be enough. The case on hand is no  
24 parallel to **Tika Ramji**. The entire fermentation industry has become a scheduled industry.  
25 After the amendment in 2015, one part of the fermentation industry, namely so and so,  
26 continues to be a scheduled industry. As a result, the subject matter, the fermentation industry  
27 as a whole or otherwise, stands within the scope of the 1951 Act and within the details of  
28 Section 18-G. Its submitted **Tika Ramji** principle cannot be said to be a principle of universal  
29 application, that is, in the absence of an order under Section 18-G of the IDR Act 1951, it will  
30 be a dormant law and the States will derive the competence to deal with any matter... all or  
31 any matters otherwise exhaustively dealt with by Section 18-G. In other words, since the 1951  
32 Act has enacted in respect to the entire spectrum of control and regulation and also the details  
33 of their working, for instance, as spelt out in Section 18-G, the said Act, there is no unoccupied  
34 field at all available to States.'  
35

36 Then Proposition Number 3. Why Entry 8 of List 2 cannot be of any avail to the States? 'The  
37 litmus test of Entry 8 is from the point of human factors, namely human consumption. The

1 word "intoxicating" was seen only with reference to the impact owing to human consumption.  
2 That which is not consumable by humans will not fall within the meaning of intoxicating. Entry  
3 51 talks about human consumption but in a different context.' I'll come to Entry 51 in a short  
4 while. 'So, notwithstanding the long history of definitions of liquor to include liquids with  
5 alcohol content, it cannot be canvassed that a human consumption part can be kept aside. All  
6 uses of liquids containing alcohol other than meant for human consumption would all fall  
7 under one heading of non-potable alcohol. Even Entry 51 of List II talks about alcoholic liquors  
8 for human consumption. Its immaterial there is no entry in the VIIth Schedule specifically  
9 designed as industrial alcohol. The 2016 Amendment, where we have substitution of Entry 26  
10 schedule to IDR Act 1931 must be taken to clarify this position. The reason for focus and  
11 intoxication and human consumption is not fought to seek. The manifold increase in the uses  
12 of alcohol-based products was neither known nor contemplated while legislating with  
13 reference to liquor, save prior to under the time of enactment of the Constitution. The focus  
14 was on temperance, regulation of trade and commerce in humanly consumable alcoholic  
15 preparations.'

16

17 **JUSTICE HRISHIKESH ROY:** Like an intoxicated bee.

18

19 **R. VENKATARAMANI:** That's for some fireworks in the name of the bee.

20

21 **JUSTICE B.V. NAGARATHNA:** Think of the bee and nothing else.

22

23 **R. VENKATARAMANI:** These are like some footnotes.

24

25 **JUSTICE HRISHIKESH ROY:** It just fell off. On the table itself, it just fell off. So I thought  
26 that it was being a little heady with all those words. And today, when I made that comment of  
27 intoxicated bee, they thought that now the man has also become... intoxicated by your  
28 arguments.

29

30 **R. VENKATARAMANI:** I think that is intellectual stimulus versus the intoxication. So you  
31 go heady sometimes by reason of the home state, fire in the theatre. You get intoxicated by  
32 some thought or an idea. So paragraph 4, the last line. 'The focus was on temperance,  
33 regulation of trade and commerce in humanly consumable alcohol preparations.' If I am not  
34 wrong, therefore, I think when it is open to the legislature to pick up any of the definitions in  
35 various statutes, pre-British and pre-independence, they could have picked up liquor. If liquor  
36 conveyed the same meaning on various classes of liquids with alcohol with different impact by

1 different consumption processes. By supposing 1888, when the Spirits Act was there, nobody  
2 thought of using it for a toilet or the medicinal preparation the way we are doing it today.

3

4 So the multi or the manifold uses which liquids of alcohol in different combination, strength,  
5 et cetera, can be made or put to use is something which is emerging science and technology,  
6 invents and discovers from time to time. Before the Constitution could have said 'liquor' and  
7 it had the same meaning. But at some point of time, I suppose, when more and more  
8 understanding about the use of liquids containing alcohol come within its fold of experience,  
9 then it is open to Parliament or the statute authority to amend it, modify it or in a given case  
10 where it's possible to give a meaning and I said telegraph includes telephone, the Court may  
11 give a meaning. But where it is not possible, the Court will not supply that meaning by itself.  
12 So, it has to be based on the experience and knowledge which flows into technology and  
13 engineering and science. That's why I thought this... our argument on reading 8, Entry 8  
14 narrowly or you know expansively, may or may not have any relevance on Entry 52, List I and  
15 Entry 33, List III.

16

17 **JUSTICE B.V. NAGARATHNA:** So, we have to give a constitutional meaning.

18

19 **R. VENKATARAMANI:** It all... Yes, yes.

20

21 **JUSTICE B.V. NAGARATHNA:** Meaning within the Constitution means a constitutional  
22 meaning. Not a meaning in the business sense or anything as such.

23

24 **R. VENKATARAMANI:** Correct. Let's try to take a little further. So if I give a very narrow  
25 meaning to Entry 8, to mean only that which is orally consumable. So that is orally consumable  
26 can be an intoxicant. If you go back to the word 'toxic', even in Latin '*toxicus*', poisonous. But  
27 we can't go to that stage. So therefore, when all these legislation, the pre-British and the pre-  
28 constitutional legislation they probably talked about what is the impact on temperance and  
29 oral consumption. What deleterious impact it may have on human consumption. Therefore,  
30 in that context, regulation of trade, supply, distribution, et cetera. But if you look at it very  
31 widely, now because you are talking about manifold increase in liquid containing alcohol. Even  
32 if you give that twentyfold, taking into account, give that very expansive reading, I say  
33 whichever way one reads that, it's immaterial for the purpose of Entry 52, List I and Entry 33,  
34 List III. They cannot control what Parliament would say and how do I bring it within Union  
35 control. For what purposes. The entire argument is... look at *Calcutta Gas Works*. What  
36 did it do? It kept gas and gas was out of Entry 24. The same thing you should do as far as Entry  
37 8 is concerned. Entry 8 will have a very expansive meaning. Such a parallel, I think is probably

1 looking at the wrong side of Entry 52, List I. And therefore, I was trying to find out whether...  
2 whatever be the concept of industries under Entry 24, Entry 52, List I is in a different footing  
3 altogether. But at the same time, there is some kind of a connectedness between Entry 24 and  
4 Entry 50 because they are talking about industries. So the industrial processes. So industry,  
5 ultimately, whichever way one decides for purpose of Industrial Disputes Act or even  
6 otherwise, an organised activity by reason of it which a product emerges. Something emerges  
7 out of an organised activity. That's why labour, capital, dredge, whatever may call. So we have  
8 the area of surplus value flowing from that only. So organised activity leading to emergence of  
9 a product or a thing or a matter, that's an industry. So when you want to deal with that as an  
10 economic activity, then I may look at various facets of that economic activity. So essentially,  
11 industry, in my understanding is an economic, organised economic activity which is  
12 susceptible of being controlled under Entry 24 and to a different level under Entry 52, List I  
13 because of a national consideration. May I just quickly in the same volume... because even  
14 yesterday... sorry. Mr. Datar referred to a judgment to the US Supreme Court on intoxicating  
15 liquor. Earlier there was a...

16  
17 The 18th Amendment was enforced between 1919 to 1933. 18th Amendment, Your Lord have  
18 it? Let me just quickly read that. Section 1. 'After one year from the ratification of this Article,  
19 the manufacture, sale or transportation of intoxicating liquor.' This year... 'Manufacture, sale,  
20 or transportation of intoxicating liquors within the importation thereof into or the exportation  
21 thereof from the United States and all territory subject to the jurisdiction thereof, for beverage  
22 purposes, for beverage purposes is hereby prohibited. The Congress and several States shall  
23 have concurrent power to enforce this Article by appropriate legislation.' That is what Entry 8  
24 is about. Then on the right-hand side. Now, we have the 21st Amendment. Some slight changes  
25 here. The 21st Amendment reads like this. 'The 18th Article of amendment to the Constitution  
26 of United States hereby repealed, Section 2, the transportation or importation into any State,  
27 territory or possession of the United States for delivery or use therein of intoxicating liquors  
28 in violation of the law thereof, is hereby prohibited.' So, what the 21st Amendment thought  
29 was the relevance to beverages may or may not be relevant because it's talking about  
30 intoxicating liquor as the one common element, both in the 18th Amendment and the 25th  
31 Amendment. I've looked into all those case law under the 23rd... 21st Amendment. They all  
32 talk about interstate... various interstate movements of intoxicating liquor as beverages from  
33 one state to state. So, the beverage idea is oral consumption of a liquor. Wherever that oral  
34 consumption by an industrial process or by any human process makes it possible, at that stage  
35 it is humanly possible to consume a liquor. At that stage, the intoxication dimension of oral  
36 consumption comes into play. Otherwise, why would you talk about intoxication at all?

37

1 **JUSTICE B.V. NAGARATHNA:** So, something which is used for industrial use cannot be  
2 a beverage though it may be consumed otherwise.

3

4 **R. VENKATARAMANI:** There are non-intoxicating beverages...

5

6 **JUSTICE B.V. NAGARATHNA:** It's not a beverage in the normal sense.

7

8 **R. VENKATARAMANI:** So, we are not talking about non-intoxicating beverage, but in  
9 beverage, the moment it has an impact on human frame, mind, body, whatever you may call  
10 that, for the intoxication element is the only necessary and essential element of looking at  
11 Entry 8. But as I said, even if we give a very broad and expansive meaning to intoxicating  
12 liquor, taking into account the various classes of liquids containing alcohol, denatured,  
13 denatured, whatever one may call them, industrial alcohol... if you give a very broad meaning  
14 even thereafter, Entry 8 will not be a springboard for the State to argue Entry 52 (1) cannot  
15 indirectly come and enter into a field in State List. Then we will employ pith and substance,  
16 entrenchment, et cetera, et cetera. I don't think that's the way of looking at Entry 52, List I at  
17 all. May I just quickly take Your Lordships to... I have set out in the next few pages 8,9,10  
18 onwards. Picked up those paragraphs in various judgments from **Balsara** onwards, to give  
19 how the thought process in comprehending liquor, intoxicating liquor has received a broad  
20 understanding in notwithstanding certain shades of difference in different judgments. Let me  
21 quickly take Your Lordships to that. We have **Balsara**. Your Lordships have page 8? The PDF  
22 page 8. Then we have **Balsara** on the right-hand side. 'After examining various definitions in  
23 various provincial Acts concluded, the Framers of the Government of India Act 1935 could not  
24 have been entirely ignorant of the accepted sense into the word "liquor" has been used in  
25 various excise acts of the country and accordingly it was construed the word "liquor" covered  
26 not only those alcoholic drinks which are generally used for beverage purpose and produce  
27 intoxication, but also all liquids containing alcohol.' That's a broadest meaning possible. I'll  
28 skip **Synthetics and Chemicals** now. I'll come back to it later. Then if Lords come to serial  
29 number 3 which is subsequent to **Synthetics. State of U.P. vs Khoday Distillery**. Look  
30 at what this judgment says. So it says, 'in the light of experience and development, it was  
31 necessary to say that intoxicating liquor meant only that liquor which was consumable by  
32 human beings as it was.' I don't think it will be necessary for our understanding of Entry 52 or  
33 33 to get into this very detailed discussions on what classes of liquids containing alcohol exist  
34 and which one of them are consumable or not consumable. But if the Court were to give that  
35 meaning which Entry 8 would necessarily carry having regard to the use of the word  
36 'intoxicating', probably the Court would be asked to stretching Entry 8 to such an extent that  
37 the Court would like to efface out the word 'intoxicating' altogether. You can't by any reading

1 of intoxicating say, I will efface it out. See there's only one or two or three meanings of  
2 intoxication. Then that meaning which I'll have with a more core element for Entry 8 but that  
3 meaning will be probably the meaning with the Court will take into account. Kindly now, come  
4 to page 14. 'Entry 8 of List II cannot be taken to be the point of anchor for determining the  
5 scope of Entry 52, List I or Entry 33, List III. Entry 8 does not cast any shadow on above said  
6 entries. The *ITC* ruling was in the context of overlapping entries or in the context of the  
7 doctrine of pith and substance for the purpose of comparison to legislation and locating the  
8 dominant purpose et cetera. In the instant case, there's no room for suggesting that the State  
9 legislation or the rules made by it or within their competence under the field in relation to  
10 fermenting industries was unoccupied. As stated above, the 1951 Act is a complete code by  
11 itself and has dealt with all matters referred to in Entry 33 of List III and relating to the  
12 fermenting industry. It is submitted, *ITC* judgment cannot be any parallel or of any assistance  
13 to the instant case.' Having said that, may I invite Your Lordships attention to the judgment  
14 in *Fateh Singh* which is Volume V(b), PDF 554.

15

16 **JUSTICE B.V. NAGARATHNA:** Article [UNCLEAR] is also an indication of how  
17 intoxicating drinks which are injurious to health. Naturally it means something which is  
18 natural drink. intoxicating... it can't be an alcohol.

19

20 **R. VENKATARAMANI:** The possibility of an intoxicating liquor having injurious elements.

21

22 **JUSTICE B.V. NAGARATHNA:** Yes, but it should be a beverage

23

24 **R. VENKATARAMANI:** So that mischievous...

25

26 **JUSTICE B.V. NAGARATHNA:** For human consumption.

27

28 **R. VENKATARAMANI:** That's it. That needs to be the subject of the law. So, if it is a non-  
29 intoxication element of a liquor, it can be controlled under industries. So therefore, the  
30 connection between 8 and 24. Entry 8 is not simply something which is taken out of Entry 24  
31 as an industrial process, but as a subject by itself, as a thing. Liquor is a thing to be dealt with.  
32 This is at PDF 554, Volume V(d). The discussion was about [UNCLEAR] control act. The  
33 Maharashtra Debt Relief Act.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Justice Krishna Iyer.

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37 **R. VENKATARAMANI:** Paragraph 2 sets out the factual context.

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**CHIEF JUSTICE DY CHANDRACHUD:** 'Money lending is not trade'.

**R. VENKATARAMANI:** That's right. Against the vires of the Maharashtra Debt Relief Act. Then focused on Article 301, et cetera. Then at paragraph 5 thereafter, at page 558. Discussion. Another short, legal objection to a part of the law. 'There is a legislative incompetency for the State legislature because it had forfeited the power to legislate on money lending for gold loans are involved. Since, the Parliament had occupied the field under Entry 52, List 1, by enacting the Gold Control Act 1965 and thereby elbowed out the State legislature from that field.' We'll talk more about that elbowing out as we look into 33 and 52. Now, next, page 577. Kindly turn paragraph 54. I'm so sorry.

**CHIEF JUSTICE DY CHANDRACHUD:** You'll be wrapping up today? Then on Tuesday, we don't hear the...

**R. VENKATARAMANI:** I don't think. I may have a little more time.

**CHIEF JUSTICE DY CHANDRACHUD:** Just see if we can wrap up because now we've got the drift, because your submissions are very precise. We've got the judgments. We can make a note of and we look at them over the week. We have this long weekend coming up.

**R. VENKATARAMANI:** I may take maybe some judgments where I need to give some explanations and commentary, because I find this *Calcutta Gas* and *Balsara* present some possible way of looking at it, which is being repeatedly invoke to say that this perspective is the correct perspective. Otherwise, my proposition...

**CHIEF JUSTICE DY CHANDRACHUD:** Your perspectives have been covered fully.

**R. VENKATARAMANI:** Kindly turned to paragraph 54 at page 577. 'What then is that incompetence of the State legislature? So and so urge that the wiping out of private debt is formed. The capital assets of money lenders on the main thing done by the Debt Act was not in any of the legislative list and even a parliamentary residuary power under 97, the State had none. Entry 30 in List II is money lending and money lenders, relief of agriculturally indebtedness. If common sense in common English or components of constitutional construction, relief against loans by scaling down the charging, reducing so and so, will among other things, fall squarely within the topic and that in a country of hereditary indebtedness on a colossal scale is a common place to say legislative heads must receive large and liberal

1 meanings and the sense of the rubrics of must embrace the widest range, even incidental  
2 cognitive matters covered in the purview, that's what we normally say.' Now turn to paragraph  
3 55. 'Next ground of attack in this multiform presentation is that the gold loan part of Debt Act  
4 is void because Parliament has occupied the field. It's also been heard that there is  
5 inconsistency. It's a Debt Act to the Gold Control Act and *pro tanto*, the former fails to have  
6 effect. Let us look at the basics of the legal situation before examining the wealth of learning  
7 counsellors accumulated. Article 246 vests executive power on matters enumerated in List I.  
8 State legislatures enjoy power of topics List II, so and so and so. Plainly therefore, the State  
9 can legislate upon any entry in the State List. We may visualize situations where parliamentary  
10 occupation may exclude State legislature, where, for instance, Parliament, while enacting in a  
11 matter of the Union List, State makes as it is entitled to make necessary incidents, provision  
12 affecting the principal legislation. Such an ancillary extension may trench upon state field in  
13 List II. In such a case, if the state makes a law on an entry in its exclusive list, and such law  
14 covers and runs counter to what's already been occupied by Parliament through incidental  
15 provisions, we argue that a state law stands pushed out an account of the superior potency of  
16 Parliament's power in our constitutional scheme.' Again there are certain telltale heads of  
17 legislation, in the least where one may possibly invoke the Doctrine of Occupied Field. All that  
18 is stated here. Now, skipping Entry 52, List I. 'Parliament in the Industry Development  
19 Regulation Act has made the necessary declaration contemplated in Entry 52 and has occupied  
20 the field of gold industry, as is evident from reading Section 2, the 1st Schedule therein. This  
21 expression of Parliament... parliamentary intent to legislate upon the gold industry is enough  
22 to expel from the field the State legislature. This is Nariman's contention. But what is the  
23 *sequitur*? Assuming the appropriation by Parliament, the power to legislate gold or follows, it  
24 can make law directly on the industry and ancillary in every allied area where the effective  
25 excise the parliamentary power necessitated. So much so business in gold, licensing of gold  
26 merchants, regulation of making of pledging gold ornaments, keeping your jewellery,  
27 disclosure of gold possession and the like are incidental to the parliamentary power and  
28 purpose of the Gold Control Act and the rules made there under. Several sections of the Act,  
29 some rules and a few rulings right before they drive home the point that gold loans are already  
30 within the ken of the law made and the Entry 52 List I and if so on. There it spells death  
31 sentence on the Debt Act or maintain it or leave it intact. Here we turn to Entry 24, of List II  
32 which runs industry is subject to so and so. This means that the State Legislature loses its  
33 power to make laws regarding gold industry, since Entry 24, List II is expressly subject to the  
34 provision of Entry 52, List I. This does not mean that other entries in the State List become  
35 important even regarding gold. The State Legislature can make laws regarding money lending.  
36 Even gold is involved in Entry 34, gambling in gold, impose sales tax on gold. Entry 54 regulate

1 municipal law under Entry 5, trade and sections Entry 26, type of buildings or gold shops, et  
2 cetera. To multiply...

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Actually this part goes against you Mr. Attorney  
5 General, that once there's a declaration under Entry 52, it is abstracted from Entry 50... Entry  
6 24. The state can still legislate under the other entries which are not subject to.

7

8 **R. VENKATARAMANI:** But it may also depend on whether the law controlling it is fully  
9 occupied a space or not. That's a different exercise altogether. Then paragraph 59. They refer  
10 to *Kannan Devan Hills*, paragraph 58. This Court put the point, firstly, while dealing with  
11 Entry 52 of Union List. How possibly the federal structure is balanced, this judgment is an  
12 authority. So if you look at how the Court looked at any other aspect which may have a relation  
13 to gold, but not gold as an industry, that is in paragraph 59. 'These authority for the  
14 proposition that while Entry 23 of List II in the light of the fact that an Entry 52 of List I,  
15 Parliament has made a Gold Control Act has become inoperative to legislate on industry. There  
16 is no inhibition whatever in State Legislation on subjects other than that particular industry.  
17 Money lending is one such subject and the power to legislate that remains intact.' So, the  
18 attempt made here to say that Entry 8 is other than industry relating to liquor or a fermenting  
19 industry would fall under this test.

20

21 **JUSTICE HRISHIKESH ROY:** Para also, 60.

22

23 **R. VENKATARAMANI:** Paragraph?

24

25 **JUSTICE HRISHIKESH ROY:** 60. The next one.

26

27 **R. VENKATARAMANI:** 60, *achha*. 'We are free to agree that the word "industry" as a  
28 legislative topic has to be interpreted in the wider amplitude. We also find that the fact that  
29 dealings in gold, including pledging have been covered in part with a Gold Control Act. Even  
30 so, nothing prevents the state from making the impugned act that is because about money  
31 lending. In *Paresh Chandra Chatterjee* so and so was dealt with an apparent continuity  
32 in the Central Act, the Tea Act and the State Legislation, the Assam Land Requisition and  
33 Acquisition Act, 1948. After examining the scheme of the two laws, the learned judge  
34 concluded a comparative study of both the Acts makes it clear. Two Acts deal with a different  
35 matter and were passed for different purposes.' So what is that purpose that we served by State  
36 Act in under Entry 8? Because Entry 51 in List II, which enables the State to impose excise  
37 duty or any other taxes. So we are not concerned with that aspect of the matter. That aspect of

1 the regulation of an economic activity stands in an entirely different field. But any other aspect  
2 of regulation. So Entry 8 would probably enable the state to deal with any other aspect of  
3 resolution. They are in the realms of trade, commerce, supply and distribution. And they're so  
4 important because it keeps in mind, as I said, the impact on human consumption of liquor that  
5 may have an intoxicating effect. Whatever be that liquor, it is immaterial.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** In that case, there's no conflicting entry like  
8 Entry 8 of List II. In that case, there was no entry corresponding to Entry 8 of List II, right?

9

10 **R. VENKATARAMANI:** That's right.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Now that we are rising, you can give us for the  
13 remaining judgments, *Calcutta Gas* and the other judgments just one-half page note each  
14 and you can tender it...

15

16 **R. VENKATARAMANI:** I will do that but I will want to read a couple of judgments and to  
17 have some commentaries on them. I would be very grateful.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** What we can suggest is we'll close now here and  
20 you can give us just maybe two pages of the judgements. So that then we don't have to trouble  
21 you then again to... Thank you, Mr Attorney General. So, Mr. Solicitor, then we'll start on  
22 Tuesday with your submissions.

23

24 **TUSHAR MEHTA:** Yes, My Lord.

25

26 **R. VENKATARAMANI:** Now, I may require about 10-15 minutes to just complete that  
27 narration.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Just give us in writing, two pages, two or three  
30 pages.

31

32 **R. VENKATARAMANI:** I will give it to you it in writing and read it out, subject to Your  
33 Lordship's permission.

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