

IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. 151 OF 2007

IN THE MATTER OF:

State of U.P. & Ors.

...Appellants

Versus

Lalta Prasad Vaish

...Respondents

(VOLUME I-A)

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FILED BY:-

SAMAR VIJAY SINGH

ADVOCATE ON RECORD

STATE OF UTTAR PRADESH

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**WRITTEN SUBMISSIONS BY SHRI DINESH DWIVEDI, SENIOR
ADVOCATE ON BEHALF OF THE STATE OF U.P.**

The issue involved in this case is primarily concerning States jurisdiction over "industrial alcohol" or rectified (for short I/A), which is also a non- potable alcohol.

In Synthetic II it was categorically held that rectified/denatured spirit is I/A and is outside States jurisdiction under entry 8 list II of the Seventh Schedule to the Constitution. Entry 8 List II when it refers to "intoxicating liquor", deals only with potable alcohol when it is had as it is. Synthetic II further went to the extent of denying jurisdiction to States, in relation to I/A, even under entry 33 list III, as product of a notified/scheduled industry under the Industries Development And Regulation Act 1951 (IDR Act). Namely declaration

by the Parliament under Section 2 of the IDR Act, read with Section 18 of the IDR Act, covers the entire field ousting States jurisdiction.

The sole issue broadly is whether States have legislative jurisdiction to deal with and regulate I/A, as well as the expanse of it – whether the jurisdiction is exclusive or Concurrent? Synthetics II is erroneous on both the counts. It is for this reason, that the reference order of the Constitution Bench dated 8.12.2010 doubts the correctness of it, after meticulously examining the judgment.

The States jurisdiction over I/A can be exercised in two ways:-

- A.** States have jurisdiction and control over I/A under entry 8 List II or,
- (B).** States have jurisdiction in respect of I/A under entry 33 list III, as product of notified/scheduled industry under IDR Act and that the field is unoccupied.

A. “Intoxicating liquor” under Entry 8 List II:-

- (A1).** It is important to note that the word “industrial alcohol” (I/A for short) is nowhere used in any of the lists. Entry 8 List II only uses the phrase “intoxicating liquor”, which has a rich and deep history and the legislative practice accompanying it. It is therefore relevant to

notice the history behind this phrase. It has been repeatedly held that legislative Entries are fields of legislation and therefore:-

1. They have to be read widely and a most liberal construction is to be given. Plain meaning of a wide word is not to be cut down. If an object can be reasonably held to be within the field, it is enough. Power to legislate includes power to legislate on incidental and ancillary matters.

- 1956 SCR 393	- Pages 415-416
- AIR 1960 SC 424	- Para 11
- (1977) 4 SCC 608	- Paras 83-95
- (1983) 4 SCC 45	- Para 41-42
- (1997) 6 SCC 12	- Paras 8-11
- (1995) Supp 1 SCC 707	- Para 16
- (2008)13 SCC 5	- Paras 37,41
- (2004)10 SCC 201	- Paras 31,50
- (1996) 7 SCC 637	- Paras 20-21
- (2017) 12 SCC 1	- Paras 79

The literal interpretation has always been regarded as destructive. There is a shift to purposive and contextual approach.

- (2018) 8 SCC 501	- Paras 135-146,155
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2. It is not right to construe words in a vacuum but as occurring in a complex instrument. To construe word in the light of basic framework, objects and consequences flowing from one interpretation or the other. .

- **(2017)12 SCC 1** - **Para 14**
- **(2002) 9 SCC 232** - **Para 63**

3. Textual interpretation to match the contextual and the contextual interpretation out of necessity starts with the historical perspective, particularly the legislative practice.

- **(2017) 12 SCC 1** - **Paras 14,30-34,77-88**
- **1951 SCR 682** - **Pg 702-706**
- **1956 SCR 393** - **Pg 399**

4. The delicate federal balance in our Constitution is to be preserved and protected, conscious whittling down of the States powers should not be the approach.

- **(2017)12 SCC 1** - **Paras 14,15,30-37,77-88**
- **(2004) 10 SCC 201** - **Paras 50**
- **(2002) 9 SCC 232** - **Paras 57-63, 50,58-59**

5. The legislative competence of State legislature can only be circumscribed by express prohibition contained in the Constitution itself.

- **(1977) 4 SCC 608** - **Para 88**

- **(2017) 12 SCC 1** - **Para 28-29**

6. Not to read residuary power expansively to whittle down the powers of the State legislature. It would disturb the delicate balance and jeopardize the federal principle embedded in our Constitution.

- **(2017) 12 SCC 1** - **Para 87**

- **(1981) 2 SCC 318** - **Para 6A**

- **(2004) 10 SCC 201** - **Paras 100-103**

7. Lastly lists of the Seventh Schedule are not scientific or rational enumeration of subjects but are only by way of simple enumeration of broad categories which cover all ancillary and incidental matters. It is based on common sense and experience.

- **(1983) 4 SCC 45**

- **(2004) 10 SCC 201 - Para 31(4) & (6)**

In case of overlapping and conflict an attempt should be made at reconciliation of meaning and scope. To give Entry in the Union List

lesswide meaning than it might otherwise have and then give proper meaning to the State entry.

- | | |
|---------------------------|---|
| - 1956 SCR 393 | - Page 414-419 |
| - (2002) 9 SCC 232 | - Para 21,26,32,57-63,
73- 81,84-88,90 |
| - (1991) 3 SCC 358 | - Para 5-9 |
| - (1980) 1 SCC 223 | - Para 28-37 |

Avoid interpretation that would role the State Entry of its content.

(A2). It is therefore necessary to trace the history and genesis of the word "Intoxicating liquor" (I/L for short) Constitution is not a document sui generis. It barrows heavily from Government of India Act 1935. Infact the federal structure, the power to Legislate being plenary, and the three list are all traceable to Government of India Act 1935. Entry 31 list II of Government of India Act 1935 was verbatim the same i.e., "Intoxicating Liquor". This was an enactment of British Parliament, and it has therefore to be seen as to what it could have intended. In this regard it has to be noticed that these words were not unknown in legal and common parlance in Britain. They form the context of entry 31.

The legislative practice leads us to British position and therefore to Laws prevailing therein.

(A) License Consolidations Act of 1910 – Section 110.

(B) Spirit Act 1980- Section 3,4,5,116.

Spirit act defined "Spirit very widely to cover both potable and non Potable liquor. [Section 3 to 5, 116] It deals with manufacture, distillation and retailing etc. of Spirits. While Licensing Act of 1910 deals with licensing of distribution. Word "Intoxicating liquor" is defined there to include "Spirit" of all kinds including fermented and distilled. British position is clear that Intoxicating Liquor includes all kinds of Spirits. The later 1910 Act used this term compendiously to include all kinds of Spirits, while Spirit under 1880 Act included "liquor of all kinds". Thus in England both the terms were understood and used interchangeably.

(A3). The Government of India Act 1915 [Sections 45A, 79 to 81] , the Devolution Rules made under Section 45A and Section 129 of Government of India Act 1915, distinguish the functions and jurisdictions of local Governments from that of the Governor-General, or, the Indian Legislature. The subjects have been classified as Central or Provincial subjects. Part II of the Schedule I of the Rules mentions item 16 as "excise" and "alcoholic liquor". It is around this time or there- about various State enactments were framed pertaining to alcoholic liquors. The following statement in relation to

such enactments is relevant. This constitutes the second Phase of legislative practice and is referable to the Excise laws made in India for various States, as they existed then. They are as follows:-

CHART OF IMPORTANT DEFINITIONS IN PRE - CONSTITUTION EXCISE ACTS OF VARIOUS STATES.

Excise Act	Important definition
Bombay Abkari Act, 1878	Section 3(7) "Liquor" includes- (a) spirits of wine, methylated spirits, spirits, wine, toddy, beer and all liquid consisting of or containing alcohol, and "spirits" means any liquor containing alcohol and obtained by distillation, whether it be denatured or not; (b) any other intoxicating substance which Government may by notification in the Bombay Government Gazette declare to be liquor for the purposes of this Act Section 3(15) "excisable article" means and includes any liquor or intoxicating drug as hereinbefore defined
Madras Abkari Act, 1886	Section 3 (8) "spirits" means any liquor containing alcohol and obtained by distillation [whether it is denatured or not]. [Explanation.--"Denatured" means subjected to a process prescribed by the [State Government] by notification for the purpose of rendering unfit for human consumption. Section 3(9) "liquor" includes spirits' of wine, methylated spirits, spirits, wine, toddy, beer and all liquid consisting of or containing alcohol. Section 3 (23) "Excisable article."

	<p>"excisable article " means-- (a) any alcoholic liquor for human consumption; or (b) any intoxicating drug.</p>
<p>The Bengal Excise Act 1909</p>	<p>Section 2 (7) "excisable article" means-- (a) any liquor for human consumption, or (b) any intoxicating drug, but does not include medicinal preparations or toilet preparations containing alcohol or any intoxicating drug;</p> <p>Explanation--In this clause the expressions "medicinal preparations" and "toilet preparations" have the same meaning respectively as in the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, (Act 16 of 1955)</p> <p>Section 2 (12a) "intoxicant" means-- - (i) any liquor, or (ii) any substance from which liquor may be manufactured and which is declared by the State Government by notification to be an intoxicant for the purpose of this Act, or (iii) any intoxicating drug</p> <p>Section 2 (14) "liquor" means liquid consisting of or containing alcohol and includes spirits of wine, spirit, wine, tari, pachwai, beer and any substance which the State Government may, by notification, declare to be liquor for the purposes of this Act.</p> <p>Section 2 (19) "spirit" means any liquor containing alcohol obtained by distillation, whether it is denatured or not.</p>
<p>The Bihar Excise Act 1915</p>	<p>Section 2 (6) "excisable article" means--</p>

	<p>(a) any alcoholic liquor for human consumption; or (b) any intoxicating drug.</p> <p>Section 2 (14) "Liquor" includes all liquids consisting of or containing alcohol, such as spirits of wine, spirit, wine, fermented tari, pachwai and bear, and also unfermented tari, and also any other substance which the State Government may, by notification, declare to be liquor for the purposes of this Act.</p> <p>Section 2 (19) "spirit" means any liquor containing alcohol obtained by distillation, whether it is denatured or not.</p>
<p>M.P. Excise Act 1915</p>	<p>Section 2 (6) "excisable article" means -</p> <p>a. any alcoholic liquor for human consumption; or b. any intoxicating drug or</p> <p>[(c). opium as defined in clause (xv) and poppy straw as defined in clause (xviii) of Section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (No. 61 of 1985)].</p> <p>Section 2 (13) liquor" means intoxicating liquor, and includes spirits of wine, spirit, wine, tari, beer, all liquid consisting of or containing alcohol, and any substance which the State Government may, by notification, declare to be liquor for the purposes of this Act.</p> <p>Section 2 (17) "spirit" means any liquor containing alcohol obtained by distillation whether it is denatured or not.</p>
<p>The Punjab 'article' Excise Act 1914 (Applicable in Delhi, Harayana &</p>	<p>Section 2 (6) excisable article means-</p> <p>a. any alcoholic liquor for human consumption; or b. any intoxicating drug.</p>

<p>Himanchal Pradesh during pre-Constitution period)</p>	<p>Section 2 (14) 'Liquor' means intoxicating liquor and includes all liquid consisting of or containing alcohol also any substance which the Lieutenant Governor of Delhi may, by notification declare, to be liquor for the purpose of this Act.</p> <p>Section 2 (19) 'spirit' means any liquor containing alcohol obtained by distillation, whether denatured or not (a) any alcoholic liquor for human consumption; or (b) any intoxicating drug; or (c) opium as defined in clause (xv) and poppy straw</p>
<p>The Chhattisgarh Excise Act, 1915</p>	<p>Section 2 (6) "excisable article" means— (a) any alcoholic liquor for human consumption; or (b) any intoxicating drug; or (c) opium as defined in clause (xv) and poppy straw as defined in clause (xviii) of Section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (No. 61 of 1985).</p> <p>Section 2 (13) "liquor" means intoxicating liquor, and includes spirits of wine, spirit, wine, tari, beer, all liquid consisting of or containing alcohol, and any substance which the State Government may, by notification, declare to be liquor for the purposes of this Act.</p> <p>Section 2 (17) "spirit" means any liquor containing alcohol obtained by distillation whether it is denatured or not.</p>
<p>U.P. Excise Act</p>	<p>Section 3 (8) "Spirit" means any liquor containing alcohol obtained by</p>

	<p>distillation, whether it is denatured or not;</p> <p>Section 3 (11) "Liquor" means intoxicating liquor and includes spirits of wine, spirit, wine, tari, pachwai, beer and all liquid consisting of or containing alcohol, also any substance which the [State Government] may by notification declare to be liquor for the purposes of this act;</p> <p>Section 3(13) ["intoxicant"] means any liquor or intoxicating drug as defined by this Act;</p> <p>Section 3(22-a) "excisable articles" means:</p> <ul style="list-style-type: none">a. any alcoholic liquor for human consumption; orb. any intoxicating drug;
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In all the State laws words "liquor" and "Sprit" are defined as including all liquids containing alcohol. In some Acts word "intoxicant" is used to define liquor as comprising of all liquids containing alcohol. Additionally in some local Acts liquor means I/L and includes all liquids containing alcohol. It is also noticeable that all the local Acts were alive and aware of industrial alcohol and denatured spirit, being integral part of "spirit" or "liquor". Reading all the above definitions it becomes apparent that:-

- a.** Excise, liquor and spirit have always been part of State jurisdiction including industrial alcohol. Centre did not have any jurisdiction in this regard.
- b.** The legislatures were always aware of the industrial use of alcohol and the local legislatures were dealing with it.
- c.** "Liquor" and "spirit" traditionally included all liquids consisting of alcohol and industrial alcohol is a liquid containing alcohol.
- d.** There cannot be any alcohol or liquor which does not cause intoxication therefore "any liquid containing alcohol would be capable of causing intoxication. It was in this sense words I/L were designed.

I/L only follows the past Legislative history for convenience as part of settled vocabulary/position, which it had come to denote.

- e.** Act before 1910 did not use the term I/L. Later Acts use this term to equate it with liquor which meant all liquids containing alcohol. Spirit also meant the same.

It was in this sense that the I/L was dealt with under Spirits Act 1880 as well as Licensing (Consolidation) Act 1910. These were Acts of British Parliament.

From the above legislative practice it clearly emerges that:-

- a.** I/L is comprehensive enough to include industrial alcohol/rectified spirit. All liquids containing alcohol fall in it.
- b.** "Liquor" has always been in the legislative sphere of the States.
- c.** All alcohols or liquors will have intoxicating element and cause intoxication.
- d.** In large number of Local Acts word "liquor" was defined to mean I/L and included "spirit" and all liquids containing alcohol. These definitions equate liquor with intoxicating liquor as well as "spirit" and "all liquids" containing alcohol. This follows from the use of phrase "means and includes" which can notes exhaustive definition. Statutory interpretation by Justice G.P. Singh, 15th Edition – Para 140-141.

The importance of legislative practice and past history can never be minimized. This constitutes an important aspect of "context" as indicated above. For determining the scope of legislative power/field one has to have regard to what in legislative practice it ordinarily re embraces.

- **(2017) 12 SCC 1** - **Paras 14,30-34,77-88**
- **AIR 1933 PC 16** - **Paras 19,20**
- **AIR 1948 PC 118** - **Paras 15-18**

- **1951 SCR 682** - **Page 702-707**
- **Principles of Interpretation of Statutes by Justice G.P. Singh 15th Edition – Pages 12,15,24,25-26,27,28,237**

(A4). Third phase begins when the term “Intoxicating Liquor” is incorporated in entry 31 list II of Government of India Act 1935. This is an Act of British Parliament and would definitely reflect the native meaning and characteristics. The Legislative history clearly indicates that “Intoxicating Liquor” refers to both potable and non-potable alcohol. Besides if it really meant only potable alcohol then there was no need to use different phraseology in Entry 31 and 40 of list II, (a taxing entry) of Government of India Act 1935 or the Constitution Entry 8 and 51 of List II. Two widely different expressions would not be used by framers to denote the same thing. They would have used the same phraseology in Entry 31 as in Entry 40. That would have precisely reflected the intent.

- **(1955) 2 SCR 842 (846)**
- **(1980) 2 SCC 441** - **Para 11**
- **(1989) 1 SCC 760** - **Para 7**
- **(1999) 9 SCC 700** - **Para 69-70**
- **(2001) 5 SCC 175** - **Para 19**
- **(2003) 4 SCC 305 (313)**

This interpretation of "Intoxicating Liquor" was accepted in **1951 SCR 682 (703-7)**. Though this case was interpreting the word "liquor" in the Bombay Act yet the Act was traced to Entry 31 list II that uses the words "Intoxicating Liquor". The wide definition of "liquor" in Bombay Act was traced to "Intoxicating Liquor" in the entry 31. The rationale of the judgement appear to be that liquor is equal to "Intoxicating Liquor". This shows that the concept of prohibition under Entry 33 List II was wide and that even "Industrial Alcohol" could be regulated. This is also based on the analysis of the above local laws and the legislative practice.

(A5). Entry 8 list II in the Seventh Schedule to the Constitution borrows the words "Intoxicating Liquor" from Entry 31 List II of Government of India Act 1935. Therefore it must be deemed to have the same meaning as in Entry 31 in the Government of India Act 1935. It is significant to remember that it was an Act of British Parliament. The legislative history clearly shows that the words "Intoxicating Liquor" are wide enough to include Industrial Alcohol and all the liquids consisting of alcohol. If not so, then one has to look hard as to under which legislative Entry of the three lists, I/A would fall. It would appear unreasonable that the Framers would expressly include potable liquor as I/L under Entry 8 List II, but would

leave the I/A to be traced by the Courts through complicated process of reasoning or may be to Residuary Entry **[(1981) 2 SCC 318 – Para 6,6A]**. It would also appear irrational that the Framers would use two widely different phraseologies to denote the same thing; namely I/L, or, alcoholic liquor for human consumption in Entry 8 and 51 of list II. The basic question, why the Framers opted not to expressly specify I/A, or “alcoholic liquor not for human consumption in list I (other than Entry 84) and left it to be identified or discovered elsewhere, is left unanswered. It would likewise appear irrational to equate I/L to “Intoxicating drinks” in Article 47.

(A6). Additionally there are two more reasons which reveal the intent of framers:

Legislative Entry is always to be interpreted widely and not restrictively unless there are clear indicators, like in Entry 51 list II. Entry 8 list II is an independent regulatory Entry and is therefore to be widely interpreted. “Word Intoxicating” can mean both (a) capable of causing intoxication or has the potentiality for it, (b) Causes intoxication when had as it is, namely as beverage. Both the aspects should fall under Entry 8 to include “all liquids containing alcohols”.

- AIR 1942 FC 17

- (1951) SCR 682

- Pages 702-707,715

- AIR 1959 SC 544

- AIR 1960 SC 424

- (1977) 4 SCC 608

- (1980) 2 SCC 441

- (1981) 4 SCC 391

- Para 11

- Pras 80,94, 95

- Paras 7-11,12,18

- Paras 6,12-14,17

Union/Respondents claim that liquor industry falls under Entry 52 List I after IDR notification. As per the claim it would be an industry taken over by the Union by making requisite declaration under entry 52 list I. If so, the fallout of this is that Intoxicating liquor, including Industrial alcohol, is a State subject, which as per the interrelationship of Entry 52 list I, and Entry 24 list II, would travel down to Entry 52 list I on the requisite declaration/notification under IDR Act. Thus even this claim of the respondents accepts the position that even non- potable alcohol is a State subject under Entry 24 List II because Entry 52 does not itself provide a field of legislation. Only on a declaration by Parliament the control of Scheduled Industry is taken over **(1980) 4 SCC 136 – Para 4,7** . Therefore if the intent was to put I/A in the State list in any case, then why would the framers not put it under entry 8 list II and end all confusion. Otherwise one has to track and trace I/A through complicated method of judicial interpretation. This would further create a problem of placing Industrial Alcohol in any other Entry in any of the lists [other

then Entry 8 list II]. Entry 52 list I can only takeover from State list Entry 24 and not from list I. all this would be more confusing. Besides only those Industries can be taken over that are not expressly indicated in the State List- Entry 25 and 8 List II.

- **(2002) 9 SCC 232**
- **(1980) 4 SCC 136** - **Para 7-11,24**
- **(1996) 3 SCC 709** - **Para 25-38**
- **(1999) 9 SCC 620**
- **1956 SCR 393**
- **AIR 1962 SC 1044** - **Para 10,11**

It is therefore clear that words Intoxicating Liquor in entry 8 list II are to be taken widely as including all liquids consisting of alcohol including I/A. Beside we would do well to remember that the Lists of the Seventh Schedule are not scientific or, rational enumeration of subject but simple enumeration of broad categories, based on experience and maybe convenience. Entry 51 List II cannot colour or limit Entry 8 being a tax Entry.

(A7). Once it is established that the words Intoxicating liquor in entry 8 list II include Industrial Alcohol then the State would have exclusive jurisdiction in all the spheres denoted in Entry 8 List II including production/manufacture. It also follows that Industrial Alcohol, being part of entry 8 list II would be outside Entry 24 list II (Industry).

Parliament cannot take over States exclusive jurisdiction under Entry 8 list II by making a declaration under Entry 52 list I. Following have to be kept in mind:-

(1). States exclusive jurisdiction cannot be made to depend on Parliamentary Legislation as it would be against the very essence of Federal Structure where both Legislative units have plenary powers of legislation in respect of subjects contained in their own lists. This is the essence of Art 246 read with Article 1. Article 245 is subject to Article 246 and therefore has to respect the division of Legislative powers. If Parliament cannot directly encroach upon subjects contained in list II then it cannot do so indirectly by making any kind of declaration under Entry 52 list I or, under IDR Act, which is a law under Entry 52 List I. Entry 52 connects and controls only Entry 24 List II. "Industry" therein have same meaning of scope. Entry 8 being special is outside the general entry 24 List II.

- AIR 1962 SC 1044

- pages 10-11

- (1980) 1 SCC 223

- Paras 28-37

- (1980) 2 SCC 441

- Paras 6-9,10-12,14,16-30

- (1981) 4 SCC 391

- Paras 12-13,15,21

- (1996) 3 SCC 709

- Para 25-38

- **(1999) 9 SCC 620** - **Paras 168-171**
- **(2002) 9 SCC 232** - **Paras 21,26,32,57-
63,73-81,84-88,90**
- **(2018) 8 SCC 501** - **Paras 98-113,123,129-133**

(2). Entry 8 list II like entry 25 list II is not "subject to" entry 52 list I or to any other entry. Therefore jurisdiction under Entry 8 cannot be taken over by any kind of declaration under Entry 52 List I otherwise Entry 8 List I would become subject to Entry 52 List I, which it is not.

- **(1996) 3 SCC 709**
- **AIR 1962 SC 1044**
- **(2002) 9 SCC 232 -Para 57**

(3). "Industry" as a subject matter of Legislation in Entry 24 list II is a State subject primarily. Word "Industry" has been held to mean "manufacture" only and that, "manufacture/Industry" in the Entry 24 List II would not include those independent Entries specified in other heads in list II, like Entry 8,25,26,27 and 28 which are not subject to any other Entry 52. The following cases establish this:-

- **1956 SCR 393**
- **AIR 1962 SC 1044**
- **(1972) 2 SCC 218**
- **(1980) 1 SCC 223**

- **(1980) 4 SCC 136 - Para 12-24**
- **(1991) 3 SCC 358**
- **(1992) 3 SCC 580 - Para 12-17,23**
- **AIR 1998 Alld. 135**
- **(1996) 3 SCC 709 - Para 25-38**
- **(1998) 7 SCC 26**
- **(1999) 9 SCC 620**
- **(2002) 9 SCC 232**

Therefore any declaration under entry 52 list I only draws jurisdiction from Entry 24 list II and cannot effect States Legislative Power under any Entry, other than Entry 24 List II. This is a settled position by various Constitution benches of this Hon'ble Court. Entry 24 is a general Entry while special Entries are excluded from it. This is also settled by the above judgments particularly the following:-

- **AIR 1962 SC 1044 - Para 10-11**
- **(1980) 4 SCC 136**
- **(1981) 4 SCC 391 - Para 21**
- **(1996) 3 SCC 709- Para 25-38**
- **(2002) 9 SCC 232**

(A8). Synthetic and Chemicals case (1990) 1 SCC 109

(A)- The approach of this Hon'ble Court was wrong. The major reason for the judgment is, perhaps that the Courts or may be framers were not aware of the new developments, as the usage

of Industrial Alcohol was far between. Its industrial user was not fully exposed.

This is an incorrect approach. The legislative Entries are to be read widely to include all the subsidiary and ancillary matters. These are expounded widely keeping in view the new realities or situations that may emerge in future. But this does not mean that it loses its original meaning and scope. It is to be elastic to also cover newer situations that were not in view at the stage of enactment. The intended original scope given by the framers cannot be tinkered with.

- (1999) 7 SCC 209 (Para 19)

(B)- Even the concept of natural and grammatical meaning is of limited application and is not very helpful. Firstly the word "Intoxicating Liquor" in Entry 8 List II traditionally included both potable as well as Industrial Alcohol. There is no overlap with any other specific Entry nor conflict. Issue is one of proper interpretation keeping in mind the principles indicated earlier. Word "Intoxicating liquor" therefore can be read broadly as liquor capable of causing intoxication due to alcohol content, as well as liquor that causes intoxication when had as it is, as a beverage. The natural and common sense meaning cannot be

departed from when words Intoxicating liquor are seen in the clear context of Legislative History as above. The words are capable of two meanings to include all liquids containing alcohol as explained earlier. Synthetic II ignores the entire legislative history behind the phrase "intoxicating liquor" that had met Courts approval before it was incorporated in Entry 8 List II.

Principles of Interpretation of Statutes by Justice G.P. Singh (14th Edition Pgs. 91-93 & 102-104)

(C)- Synthetics also fails to notice all the previous Constitution Bench decisions particularly that of Tika Ram ji, which not only define the meaning of word "Industry" in Entry 24 List II and Entry 52 List I, but also indicate the scope of declaration under Entry 52. They clearly hold that the end product of declared or notified Industry does not fall under Entry 52 List I. Instead they fall under Entry 33 List III. Since Central government has not issued any order Under Section 18 G of the Industrial Development and Regulation Act 1956 there is no restriction on States' power. State being the dominant legislature [Para 85-86 of Synthetics]

- **1956 SCR 393**

- **(1992) 3 SCC 580** - **Paras 12-17,23**

- **AIR 1996 All 135**
- **(1996) 3 SCC 709 - Paras 25-26**
- **(1998) 7 SCC 26**
- **(1999) 9 SCC 620 - Paras 116-119, 150-153, 168-169**
- **(2002) 9 SCC 232 - Para 93-94**

(D)- The Scope and the width of Entry 8 List II cannot be curtailed with the aid of Entry 51 List II which is a taxing Entry deliberately limited by its own wording and that of Entry 84 List I. The intent is clear, to restrict word "alcoholic liquor" under Entry 51 List II for levy of Tax, Synthetic II also overlooks that Constitution Article 47 uses the phrase intoxicating drinks to denote potable alcohol. Why would framers use different expression to denote the same thing in Article 47 and Entry 8 & 51 List II. Unlike Entry 51 List II and Entry 84 List I, Entry 8 List II is not limited in any way nor is it subject to any other Entry. By restricting or interpreting Entry 8 in the light of Entry 51 List II and Entry 84 List I, would be doing violence to Entry 8. It is a clear case of misreading and ignores separation between the taxing as well as regulatory Entries.

B(1). The States power to regulate Industrial alcohol can also be traced to Entry 33 list III. Entry 52 list I as shown above only includes "manufacture:" and not trade and commerce, supply and distribution

of products of notified Industry under entry 52 list I. IDR Act notified "fermentation industry" therefore manufacturing in such industry would go to entry 52 list I. But not trade and commerce and supply and distribution, which go to entry 33 list III. The power of State to regulate Industrial Alcohol survives. However it would be subject to Article 254 as the said entry is in the Concurrent list. IDR Act contains Section 18G which purports to regulate Industrial Alcohol only by means of a notified Legislative Order. Section 18 G is only traceable to Entry 33 of List III. The Central Government has not issued any Order to regulate Industrial Alcohol as per Section 18G. Therefore there cannot be a case of conflict or occupied field. The field is unoccupied and the States power to legislate to regulate Industrial Alcohol is untrammelled and complete. This position has been made clear in the following judgments.

- **(1956) SCR 393**
- **(1991) 3 SCC 358**
- **(1880)4 SCC 136**
- **(1992) 3 SCC 580 - Para 11**
- **AIR 1996 All 135**
- **(1998) 7 SCC 26**
- **(1999) 9 SCC 620**
- **(2002) 9 SCC 232**

The conflict has to be in fact and existing and not in the realm of possibilities:-

- **(1979) 3 SCC 431 - Para 24**
- **(1980) 1 SCC 223**
- **(1999) 9 SCC 620**
- **(2002) 9 SCC 232**
- **(2004) 7 SCC 68 - Para 42**
- **(2004) 8 SCC 621 - Para 12**
- **(2008) 13 SCC 5 - Para 48**
- **(2012) 7 SCC 106 - Para 9**
- **(2022) 7 SCC 394 - Para 64-67**

Therefore despite declaration under IDR Act 1951, in the absence of any order being issued under Section 18G, the States jurisdiction in relation to I/A cannot cease merely on denaturation of Rectified spirit making it unfit for human consumption.

Mines and mineral cases are different as the Entries 24 List II and Entry 54 List I include both the industry of mine and its product the mineral. Unlike Entry 52 list I.

- **AIR 1996 All 135**
- **(2002) 9 SCC 232 - Para 31,83**
- **(1999) 9 SCC 620**

It is also to be borne in mind that when a declaration is made under Entry 52 List I by the Parliament then the power of the State is denuded only to the extent specified in the law making the declaration. There is no whole sale of denudation power in relation to the notified Industry. The law containing a declaration under Entry

52 List I has to specify the extent of denudation of the States power. The IDR Act does not do so. It only confers enabling power under Section 18G to be exercised by means of an "Order".

- **(2004) 10 SCC 201** - **Para 31**
- **(2004) 10 SCC 1** - **Para 31**
- **(1980) 4 SCC 136** - **Para 12-24**

Therefore Synthetics II is wrong when it holds that the IDR Act covers the whole field. It overturns the earlier judgment of 38 Years vintage in ***Balsara [(1951) SCR 682]*** ignoring even the request of the Union of India to not to do so.

Date: 16.03.2024

Filed by

***SAMAR VIJAY SINGH
Advocate for the Appellant
State of Uttar Pradesh***

IN THE SUPREME COURT OF INDIA

(CIVIL APPELLATE JURISDICTION)

CIVIL APPEAL NO. 151 OF 2007

IN THE MATTER OF:

State of U.P. & Ors.

...Appellants

Versus

Lalta Prasad Vaish

...Respondents

QUESTIONS FOR CONSIDERATION

Whether State can regulate and control industrial Alcohol commonly called Rectified Spirit of more than 95% v/v including denatured spirit?

This has two aspects:-

A (I)- Whether industrial alcohol is included in Entry 8 List II and is therefore within its exclusive jurisdiction and control? Or,

(II)- Whether it falls under Entry 24 of List II and therefore can travel on to Entry 52 List I on specification of "Fermentation" industry as a notified industry under Industrial Development and Regulation Act 1951?

B (I)- Whether State can, despite Fermentation industry being notified under IDR Act, legally control Rectified Spirit/

Industrial Alcohol under Entry 33 List III as product of "industry notified under IDR Act as per Entry 52 List I ?

(II)- Whether Union has made any law to regulate Industrial Alcohol under Section 18G of IDR Act 1951 or is the field unoccupied ?

Entries Relevant in Constitution:-

List I- Entries- 52,53,54,55,56,57

List II- Entries- 8,23,24,25,26,27,28,51

List III- Entries- 33,34

Entries in GOI 1935:- List I- Entries 34,36

List II- Entries 31,26,27,29,40

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ARTICLES & ENTRIES

- Articles and Entries – Article 47, Entries 8 & 51 List II
- Entry 7, 24, 25, 26, 27 & 33 List II
- Entry 52, 97 of List I

A. What is the scope of Entry 8 and meaning of the words Intoxicating Liquor (I/L)?

- 1.** Do they include Industrial Alcohol (I/A) ? Its effect ?
- 2.** If I/A not in Entry 8 then where, in terms of a regulatory entry, can it be traced?
- 3.** Can it be traced to Entry 52 or 97 of List I.

B. What is the scope of Entry 52 List I?

- 1.** What is the relationship between Entry 52 List I and Entry 24 List II?
- 2.** Does Entry 52 include I/L which is a product of controlled Industry under IDR ?

- 3.** Can Entry 52 control or override the power of State to legislate on I/A under Entry 8 if it includes I/A?
- 4.** Does question of repugnancy arise by mere presence of IDR or Section 18G?
 - 1.** Do they by their mere presence occupy the whole field to Oust States jurisdiction under Entry 33 List III? Or,
 - 2.** Does the question of repugnancy arise under Article 254 by mere enactment of IDR Act 1951 with Section 18G?

(DINESH DWIVEDI)