

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 151 OF 2007**

**IN THE MATTER OF:**

**STATE OF UP & ORS**

**...APPELLANTS**

**VERSUS**

**M/S LALTA PRASAD VAISH**

**...RESPONDENT**

**WRITTEN SUBMISSIONS ON BEHALF OF THE STATE  
OF WEST BENGAL**

**PAPER – BOOK**

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**ADVOCATE FOR THE STATE OF WEST BENGAL:**

**ASTHA SHARMA**

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1. A Full Bench of this Hon'ble Court in *State of U.P. v. Lalta Prasad Vaish (2007) 13 SCC 463*, referred the following six questions to a larger bench by the order dated 25-10-2007:
  - i. Does Section 2 of the Industries (Development and Regulation) Act, 1951, have any impact on the field covered by Section 18-G of the said Act or Entry 33 of List III of the Seventh Schedule of the Constitution?
  - ii. Does Section 18-G of the aforesaid Act fall under Entry 52 of List I of the Seventh Schedule of the Constitution, or is it covered by Entry 33 of List III thereof?
  - iii. In the absence of any notified order by the Central Government under Section 18-G of the above Act, is the power of the State to legislate in respect of matters enumerated in Entry 33 of List III ousted?
  - iv. Does the mere enactment of Section 18-G of the above Act, give rise to a presumption that it was the intention of the Central Government to cover the entire field in

respect of Entry 33 of List III so as to oust the States' competence to legislate in respect of matters relating thereto?

- v. Does the mere presence of Section 18-G of the above Act, oust the State's power to legislate in regard to matters falling under Entry 33(a) of List III?
  - vi. Does the interpretation given in Synthetics and Chemicals case [(1990) 1 SCC 109] in respect of Section 18-G of the Industries (Development and Regulation) Act, 1951, correctly state the law regarding the States' power to regulate industrial alcohol as a product of the scheduled industry under Entry 33 of List III of the Seventh Schedule of the Constitution in view of Clause (a) thereof?
2. By Order dated 08.12.2010, five-judge bench referred this matter to a bench of nine judges and passed the following order:
- “Having meticulously examined the judgement of the Constitution Bench of seven learned Judges in the case of Synthetics and Chemicals Limited. vs. State of Uttar Pradesh, in 1990 (1) SCC 109, we are of the view that the matter requires consideration by a Bench of nine Judges. Notice be issued to the Attorney General for India.”*
3. It is respectfully submitted that the matter in controversy relates to legislative competence of the State to regulate alcohol in its raw form, whether denatured or not, following the 1956 amendment to the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as “**IDR Act**”) bringing alcohol under industries as Item 26 of the First

Schedule to IDR Act. It has been held by Hon'ble Supreme Court in *Synthetics and Chemicals Case (1990) 1 SCC 109*, that the power to regulate and impose levy on manufacture alcohol is vested in the Central Government and the State cannot claim exclusive right to produce and manufacture industrial alcohol and the State cannot claim that under Entry 33 of List III, it can regulate industrial alcohol as a product of the scheduled industry because the Union, under Section 18G of IDR Act has evinced the clear intention to occupy the whole field.

4. The key issue involved herein is the interpretation of Section 18-G of the IDR Act as to whether the State government has the legislative competence and power to regulate sale and manufacturing of "denatured spirits" which lay within the Union government's domain according to Section 18-G of the Act.

**Interpretation of Article 246 of Constitution of India**

5. The Article 246 of Constitution of India deals with the distribution of legislative powers between the Union and State Legislatures, with reference to the different lists in Schedule VII. This Hon'ble Court in the case of *State of West Bengal vs. Committee for Protection of Democratic Rights, (2010) 3 SCC 571* has observed that Article 246(3) of the Constitution lay down the principle of federal supremacy, viz., that in case of inevitable conflict between the Union and the State, the power as enumerated in List I shall prevail over the State power enumerated in List II and List III, and in case of overlapping between List II and List III, the latter shall prevail.

6. It is respectfully submitted that Article 246 of the Constitution of India provides exclusive power to the Parliament in making laws with respect to any of the matters enumerated in List I in the Seventh Schedule to the Constitution, referred to as the ‘Union List’. However, Entry 84 of List I, which enables the Union Government to levy Excise Duty on various goods manufactured in India, specifically excludes alcoholic liquor for human consumption.

**Division of power as enshrined under Schedule VII of Constitution in levy of tax or duty by Union & State**

7. That the Entries in the Lists of Schedule VII are designed to define and delimit the respective areas of legislative competence of the Union and State Governments. The tax or duty levied on “alcohol” as mentioned in the different lists under Schedule VII are provided in the following table:

<b>List I – Union List</b>	<b>List II – State List</b>	<b>List III – Concurrent List</b>
<p><b><u>Entry 52</u></b> Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.</p> <p><b><u>Entry 84</u></b> Union Government to levy <b><u>Excise Duty</u></b> on various goods manufactured in India, specifically excludes alcoholic liquor for human consumption, however includes medicinal and toilet</p>	<p><b><u>Entry 8</u></b> Intoxicating liquors, that is to say, the production, manufacture, transport, purchase and sale of intoxicating liquors.</p> <p><b><u>Entry 51</u></b> Power of the State to levy excise duty on alcoholic liquors for human consumption manufactured or produced in the State and countervailing duties at the same or lower rates on similar</p>	<p><b><u>Entry 33(a)</u></b> Trade and commerce in, and the production, supply and distribution of the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products.</p>

<p>preparations containing alcohol, or opium, hemp or other narcotic drugs and narcotics.</p>	<p>goods manufactured or produced elsewhere in India however excludes medicinal and toilet preparations containing alcohol, or opium, hemp or other narcotic drugs and narcotics.</p> <p><b><u>Entry 54</u></b>  <b><u>Taxes on the sale</u></b> of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.</p>	
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8. It is respectfully submitted that the Entry 51 and 54 of List II of the Constitution of India provide exclusive power to the State Legislature for levy of tax on the manufacture and sale of liquor for human consumption.
9. It is pertinent to submit that Entry 52 of List I empower Parliament to vest the control of a particular industry in the Union Government. However, under Entry 33 of List III, the State legislature has the concurrent power to provide for the supervision of the production, supply and distribution of

industrial liquor and to charge the cost of such supervision from the manufacturers and transporters thereof as tax.

**Impact of Section 2 of the Act on the field covered by Section 18-G of the said Act or Entry 33 of List III of Schedule VII of the Constitution of India.**

10. At the outset, it is submitted that industry, as a legislative field, is originally assigned to State Legislature. The said Act owes its origin to Entry 52 of List I. However, Entry 52 is not an independent provision, it is carved out of Entry 24 of List II that deals with “*industry*”. To determine the legislative competence of the State Legislature and the Parliament regarding raw alcohol, the interplay or interconnection between the said Act and Entry 33 of List III must be examined with reference to the term ‘Industry’.
  
11. It is submitted that even though no specific definition of the term ‘Industry’ has been given in the Constitution of India. The industry has been defined in Section 2(j) of the Industrial Dispute Act, 1947. However, it was mainly concerned with the questions related to industrial dispute between employer and employee and did not pertain to regulatory and taxing power of the Union and the State. Thus, the first authoritative interpretation of the term, in the context of the Act, was laid down by the 5-judges Constitutional bench of this Hon`ble Court in *Tika Ramji & Ors Etc. vs the State of Uttar Pradesh & Ors, 1956 AIR 676*, which is applicable in determining the distinct aspects of “*industry*”. The legislative competence of the state legislature and the Parliament has to be determined with reference to particular aspect of ‘industry.’



12. That after scrutinizing the framework of distributing legislative powers outlined in the Government of India Act, 1935, which preceded the Constitution, and also under the Constitution itself, the Hon`ble Constitution bench in the case of *Tika Ramji (supra)* defined three dimensions of the term 'Industry' in a broad sense:
  - a. raw materials which are an integral part of the industrial process, and which represent activities antecedent to actual manufacturing process,
  - b. the process of manufacture or production, and
  - c. the distribution of the products of the industry.
  
13. That this Hon'ble Court has also noted that "raw materials" would fall under Entry 26 of List II, subject to Entry 33 of List III. Typically, the manufacturing or production process would fall under Entry 24 of List II. However, if the industry is designated as a scheduled industry under Section 2 of the IDR Act, the manufacturing process conducted by such scheduled industry would fall under Entry 52 of List I, thereby falling under Parliamentary control. The products of the industry would be categorized under Entry 27 of List II, except in cases where they are products of controlled industries, in which case they would fall under Entry 33 of List III.
  
14. Therefore, in summary, the jurisdiction over industries ordinarily falls under the State's domain as per the State List. The different aspects of industry are to be dealt with under Entries 24, 26, and 27 of List II. It should be noted that Entry 52 of List I, empowers Parliament to enact laws by which the control of any industry is vested in the Union Government if

deemed necessary in the public interest. Consequently, the State legislature loses control over the production or manufacturing processes of such industries. However, both Parliament and State Legislature retain the authority to legislate regarding the other two aspects of the industry i.e, raw materials and post-production activities as outlined in Entry 33 of List III. Thus, it's important to clarify that Entry 52 of List I, doesn't affect Entries 26 or 27 of List II, with the latter two entries being subject to Entry 33 of List III. Nevertheless, in cases of conflict between Union and State control, the laws enacted by the Parliament will prevail under Article 254 of the Constitution.

15. Upon the bare perusal of List II, it is evident that whenever a specific entry was intended to be made subject to an Entry in List III, it has been explicitly declared in the Constitution. Given the structural inter-relationship of the entries, Constitution does not completely rule out the jurisdiction of State legislature in respect of any raw material or the final product of a scheduled industry. On the contrary, Entry 33 of List III permits the exercise of legislative power of the State concurrently with the Union.
16. The delineation of the limits of legislative competence of the State legislature and the Parliament based on three distinct aspects of 'industry' as laid down by this Hon`ble Court in *Tika Ramji (Supra)* has subsequently been followed in a long line of similar cases adjudicated by this Hon`ble Court such as:

1. *Ganga Sugar Corporation Ltd. vs State of Uttar Pradesh & Ors*, (1980) 1 SCC 223;
  2. *Kannan Devan Hills Co. Vs State of Kerala*, (1972) 2 SCC 218;
  3. *B. Viswanathiah & Co. & Ors vs State of Karnataka & Ors.*, (1991) 3 SCC 358;
  4. *Indian Aluminium Company Ltd. and Anr vs Karnataka Electricity Board & Ors*, (1992) 3 SCC 580;
  5. *The Calcutta Gas Company (Prop) Ltd. vs State of West Bengal*, AIR 1962 SC 1044;
  6. *Harakchand Ratanchand Banthia & Ors vs Union of India*, (1969) 2 SCC 166;
  7. *I.T.C Ltd. vs Agro Marketing Cooperative Ltd.* (2002) 9 SCC 232.
17. That the 5-Judges Constitutional Bench of this Hon'ble Court, in the case of *I.T.C. Ltd. (Supra)*, overturned the previous decision rendered in *I.T.C. Ltd. etc. vs. State of Karnataka, 1985 Supp SCC 486* after examining it in light of the principles laid down in the *Tika Ramji (Supra)* wherein the issue of legislative competence of the Parliament under Entry 52 of List I regarding the sale of raw tobacco was decided. That this Hon`ble Court held that State Legislatures have the authority to enact legislation for imposing and collecting a market fee on the sale of tobacco within a market area.
18. That the Section 2 of the IDR Act is an enabling provision that authorises the Union Government to take control of certain industries in the public interest. The First schedule of the IDR Act contains a list of such industries notified under

Section 2 of the IDR Act. Therefore, the First schedule is an enumeration of such industries.

19. That the Section 18-G of the IDR Act confers power upon the Union to regulate the supply, distribution, trade & commerce in the articles produced/manufactured by industries which have been notified under Section 2 of the IDR Act. It contemplates, *inter alia*, executive action by a notified order to control the price of the product, its transport, possession and use, and regulate the consumption, financial and commercial transactions relating to such product. Section 18-G of the Act comes into play only after such scheduled industry is notified under Section 2 of the Act. A declaration under section 2 is a condition precedent for exercising power by Union on matters prescribed under section 18-G of the Act.
20. It is noteworthy to mention that Entry 33 of List III pertains to the same subject as section 18-G of the IDR Act. Both provisions concern products from scheduled industries and align with the overarching framework outlined in *Tika Ramji(supra)*.
21. That the Entry no. 52 of List I does not have any independent existence. It is carved out of Entry 24 of List II, empowers Parliament to enact legislation in respect of any industry, with the aim to vest control of such industry in the Union Government in public interest. In exercise of this power, the Parliament enacted the said Act, and as per Section 2 of which the Union can declare of an industry as a scheduled industry. However, the power under section 18-G shall be

exercised concurrently with State legislature as the subject matter of section 18-G falls under entry 33 of List III. If the Constitution has made the operation of Entry 26 and 27 in List II subject to entry 33 in List III, the Parliament cannot, by a law, alter that distribution of legislative power and declare that the entire matter be governed under Union list. Such interpretation only renders entry 33 of List III as otiose and redundant.

22. Thus, it can be determined that Section 18-G of the Act falls under the Entry 33 OF List III. To trace its origin under entry 52 of List I would be violative of the federal scheme which is a basic feature of the Constitution and also contrary to the broad principle of law enunciated in *Tika Ramji case (Supra)*.

**Amendment of First Schedule of the IDR Act**

23. Vide notification No. 27/2016 dated 14.05.2016, the Industries (Development and Regulation) Amendment Act, 2016 came into force wherein Section 29E was inserted in the IDR Act and First Schedule was substituted as “*Fermentation Industries (OTHER THAN POTABLE ALCOHOL)*”. As per the amendment, the control over its licensing and regulation of the manufacture, storage, acquisition, possession, use, consumption, transportation, trade and commerce, supply, distribution and it's movement including intra-state and inter-State movement, thereof and the grant or issue of such licences, permits or other documents and charging/levying of fees, if any, etc. are under the exclusive control of Government of India and the States can legislate to control

and/or levy taxes and duties on liquor meant for human consumption only.

24. It is submitted that when the amendment in the Act, excluded potable alcohol from the purview of the said Act, there is no embargo exists on the State to levy vend fees on rectified spirit or special spirit for obtaining or manufacturing potable alcohol meant for human consumption.

**Jurisdiction & power the power of the State to legislate in respect of matters enumerated in Entry 33 of List III in respect to Entry 18-G of the Act.**

25. Once a notified order is issued pursuant to Section 18-G of the Act, concerning the supply, distribution, trade, and commerce of articles produced or manufactured by industries specified under section 2 of the Act, the question then arises as to whether there exists any contradiction or inconsistency between the said notified order and any law enacted by a State Legislature (or rules made thereunder by the State Government as delegated legislation).
26. Any conflict between the above two laws need to be judged in terms of the tests laid down in this Hon'ble Court in *M. Karunanidhi vs Union of India*, (1979) 3 SCC 431 and reiterated in subsequent decisions of the Court including *Hoechst Pharmaceuticals Ltd. v. State of Bihar*, (1983) 4 SCC 45, *Deep Chand v. The State of Uttar Pradesh & Ors*, AIR 1959 SC 648, *T. S. Balliah v. T. S. Rangachari*, (1969) 72 ITR 787. Identical parameters have been laid down by *H.S Nicholas in his Australian Constitution*, 2nd ed., p. 303, refers to following three tests of inconsistency or repugnancy which is reiterated in *Tika Ramji*(supra):

- i. There may be inconsistency in the actual terms of the competing Statutes.
  - ii. Though there may be no direct conflict, a state law may be inoperative because the Union law is intended to be a complete exhaustive code,
  - iii. Even in the absence of intention, a conflict may arise when both State and Union seek to exercise their powers over the same-subject.
27. With respect to Indian Constitution, it is stated that above three tests can be interpreted as *firstly*, there is a clear, direct and irreconcilable inconsistency between the Central Act and the State Act. *Secondly*, the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where both cannot co-exist. In short, it is impossible for both of them to stand together. *Thirdly*, though there may be no direct conflict, the State law yields to the Parliamentary law because the latter is intended to be a complete exhaustive code on the subject and *lastly*, **repugnancy must exist in fact, and not depend merely on a possibility.**
28. Moreover, concerning alcohol meant for industrial use, as observed in *Bihar Distillery & Anr vs U.O.I, (1997) 2 SCC 727*, the Union has not made any notified order under section 18-G of the Act which is in conflict with regulations already made under State Excise. Existence of an order is a pre-requisite before repugnancy arises.

29. It is submitted that the object and ambit of section 18-G of the Act are entirely different from that of state Excise regulations relating to alcohol meant for industrial use. The objective behind State Excise regulations is to prevent misuse or diversion of alcohol which is meant for industrial use into potable sector. The objective is sought to be achieved by various machinery provisions, i.e, grant of license for storage and issue of alcohol, permit or pass to accompany any consignment of alcohol, verification of stock, periodical inspection of the premises where the alcohol is stored, denaturation of plain alcohol to render it unfit for consumption as a beverage. Neither do the regulations envisaged under State Excise law encroach upon the territory reserved for Union Government under Section 18-G, sub-section (2) of the Act, nor such regulations interfere with supply, equitable distribution, trade, commerce in alcohol for industrial use.
30. The State regulations are connected with concern for public health and to prevent loss of Excise revenue caused by spurious liquor made from plain alcohol. The power to make law for protection of public health and for safeguarding Excise revenue is relatable to Entry 6 and Entry 8 of List II. These two entries are exclusive preserve of the State and not subject to Entry 33 of List III or any other entry in Union list. Therefore, it is contended that the power to regulate alcohol by the State flows from List II and List III.

**Interpretation given in Synthetics and Chemicals Case (1990) 1 SCC 109, in respect of Section 18-G of the Act.**

31. It is submitted that the interpretation given by this Hon'ble Court in the *Synthetics and Chemicals case (Supra)*



concerning Section 18-G of the Act and the legislative competence of State under Entry 33 of List III w.r.t. alcohol is not based on consideration of the ratio of *Tika Ramji Case (Supra)*. The three distinct aspects of the term 'Industry' as identified in *Tika Ramji Case* and upheld by this Hon'ble Court in subsequent cases addressing the legislative competence of State vis-a-vis the I.D.R Act were not brought to the notice of this Hon'ble Court in *Synthetics and Chemicals case (Supra)*. Therefore, the decision in the *Synthetics and Chemicals case (Supra)* may be considered as taken per *in curium*. The view taken by this Hon'ble Court that the field with respect to alcohol is wholly occupied by the Union under Section 18-G of the Act, is not viable and sustainable.

**Directions given by this Hon'ble Court in Bihar Distillery & Anr vs U.O.I, (1997) 2 SCC 727**

32. It is further submitted that in the *Synthetics and Chemicals case (Supra)*, the Hon'ble Court also proceeded on the assumption that by common standards ethyl alcohol or plain rectified spirit (which has 95%) is an industrial alcohol. To state the correct position, at a strength of 95 % by volume, plain spirit cannot be consumed as a beverage but it cannot be classified as industrial alcohol either. It acquires the identity as industrial alcohol only if and when it is dispatched from distillery, after denaturing or without denaturation, for industrial use. It is the final destination or end-use that determines the identity of plain spirit as industrial. Spirit which is dispatched from distillery for use in manufacturing intoxicant cannot be regarded as industrial alcohol.

33. The twin propositions that rectified spirit, in itself, is industrial alcohol and by virtue of section 18-G of the IDR Act the entire field in respect of industrial alcohol is controlled by Union give rise to certain situations referred in *Bihar Distillery case (Supra)*. The interpretation adopted in the Synthetics' case does not offer any answer for these scenarios which may arise due to existence of three types of distilleries as described below-
- i. A distillery manufacturing plain spirit and supplying it exclusively for industrial use. The dispatch may take place after denaturation or without denaturation.
  - ii. A distillery manufacturing spirit for supply as raw material to liquor manufacturing unit.
  - iii. A distillery supplying spirit to both destinations, industrial as well as potable sector.
34. It is henceforth submitted that the directions passed by this Hon'ble Court in the *Bihar Distillery Case (Supra)* need to be incorporated while re-considering the law laid down by this Hon'ble Court in *Synthetics and Chemicals Case (Supra)*.
35. It is also submitted that power to legislate with respect to 'intoxicating liquors' rests with State Legislature under Entry 8 of List-II. It is well settled that entries in the three lists are broad topics or fields of legislation. Where a particular entry is not fettered by the phrase 'subject to', the entry should be construed in a broad, liberal manner and not in a narrow, pedantic sense. A power to legislate as to the principal matter specifically mentioned in the entry shall also include within its expanse the legislations touching incidental and ancillary

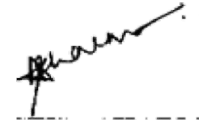
matters. Reliance is placed on the decisions in *Hoechst Pharmaceuticals Ltd.(Supra), and Bharat Sanchar Nigam Ltd. & Anr vs The State of Chattisgarh & Anr, SLP(C) No(S).16014-16015 of 2020.*

36. The broad sweep of activities relating to intoxicating liquor on which the State can legislate under Entry No. 8 of List-II begins from production or manufacture of such liquor. Plain alcohol is the main ingredient of intoxicating liquor. Therefore, alcohol, despatched from a distillery and meant for its destination in liquor manufacturing plant, shall come within the regulatory fold under Entry 8 of List-II. Regulation is also necessitated by concerns of public health under Entry 6 of List-II. In respect of alcohol, denatured or not, meant for industrial use the need for regulation arises on ground of public health.
37. It is respectfully submitted that power to tax includes the ancillary power to take necessary measures to guard the revenue generated from such tax. So far as Excise duty on 'alcoholic liquor for human consumption' under Entry 51 of List-II is concerned, the taxable event arises after production of final beverage is complete. Loss of plain alcohol, which was specifically meant for manufacture of the final beverage, translates into a loss or escapement of revenue that would have been collected after production of the final beverage. Therefore, the State is competent to take appropriate regulatory measures to minimise the loss of revenue that occurs due to loss of such plain alcohol.

38. It is respectfully submitted that the submissions made herein above may kindly be considered while deciding the issues arising in the present matter.

**SETTLED BY: MR. JAIDEEP GUPTA, SR. ADV**

**DRAWN & FILED BY**

A handwritten signature in black ink, appearing to read 'Astha Sharma', is written over a horizontal dashed line.

**[ASTHA SHARMA]  
ADVOCATE FOR  
STATE OF WEST BENGAL**

Place: New Delhi  
Date: 01.04.2024