

IN THE HON'BLE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 151 OF 2007

IN THE MATTER OF:

State of U.P. & Ors.

...Appellants

Versus

M/s Lalta Prasad Vaish

...Respondents

WRITTEN SUBMISSION OF MR. BALBIR SINGH,
SENIOR ADVOCATE ON BEHALF OF RESPONDENT -
THE STATE OF MAHARASHTRA

PAPER BOOK

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ADVOCATE FOR RESPONDENT: AADITYA A. PANDE

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1. It is the case of the State of Maharashtra that the State legislatures have the legislative competency, under Entry 8 of List II of the Constitution, to regulate manufacturing and post manufacturing activities relating to intoxicating liquors, which includes both potable and non-potable liquor. In any event, Section 18G of the Industries (Development & Regulation) Act, 1951 (hereinafter: 'IDR Act') does not oust State's power in making any laws relating to trade, commerce, production, supply and distribution of non-potable alcohol and such power is also traceable to Entry 33 of List III. There is no law made by the Parliament which is repugnant to any of the impugned State laws.
2. **Entry 8, List II governs the entire field of legislation relating to intoxicating liquor:**
- 3.1 Entry 8 of List II reads as under:

“8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.”

3.2 From a plain reading of the aforementioned Entry, it is evident that it covers manufacturing and post manufacturing activities relating to intoxicating liquors. This entry is of a wide amplitude covering all aspects relating to handling to intoxicating liquor and it is even wider than the scope of Entry 33 of List III. Furthermore, Entry 8 of List II is not subject to any limitations nor is it subject to List I or List III of the Seventh Schedule. It is settled law that the legislative fields in Seventh Schedule should be given the widest possible meaning (*Union of India vs. H.S. Dhillon, (1971) 2 SCC 779 at page 817, para 113*).

3.3 The question then arises regarding the interpretation to be accorded to Entry 52 of List I and Entry 33 of List III. Entry 52 gives Parliament the power to make laws in the field of notified Industries. It is submitted that the specific power conferred on the State under Entry 8 of List II cannot be subjected to the general power for controlling industries conferred upon the Parliament. Such an interpretation would render Entry 8 of List I subject to Entry 52 of List II/Entry 33 of List III, which is clearly not the intention of the framers of the Constitution. Further, it would result in whittling down of specific power conferred upon the State to control and regulate intoxicating liquor.

- 3.4 The constitutional bench of this Hon'ble Court in *Calcutta Gas Company (Proprietary) Ltd. vs. State of West Bengal & Ors.*, AIR 1962 SC 1044 was concerned with the validity of the State's legislation which allowed State to take over the Gas Company, in the context of Entries 24, 25, 26 and 27 of List II, Entry 52 of List I and Entry 42 of List III and the IDR Act. The Court clarified that the term "Industry" included manufacture but not raw materials as held in case of *Ch. Tika Ramji & Ors. vs. State of U.P. & Ors.*, 1956 SCR 393. It further held "gas and gas-works" under Entry 25, List II to be entirely and exclusively within State's domain, while rejecting the Union's contention that the term "Industry" should be given widest possible meaning in Entry 24, List II in order to include "gas and gas-works". In fact Entry 25 of List II uses the expression "Gas and Gas Works" whereas Entry 8 is much wider in scope and ambit covering all possible regulatory aspects relating to Intoxicating Liquor.
- 3.5 Furthermore, in the leading judgment for the majority, C.J. S.M. Sikri, in the seven judge bench decision in *Union of India vs. H.S. Dhillon*, (1971) 2 SCC 779, laid down the test for determining the constitutional validity of a Parliamentary legislation. It was held that if a Central Act is challenged as being beyond the legislative competence of Parliament, it is enough to enquire if it is a law with respect to matters or taxes enumerated in List II. If it is not, no further question arises. Further, in context of relevant of the Entries 1 to 96 in List I, the Court noted that if there had been no List I, many items

in List II would perhaps have been given much wider interpretation than can be given under the present scheme (para 67). Therefore, it is submitted that in the scheme of the division of powers between the Parliament and the State, Entry 52 of List I should be interpreted in light of specific Entry 8 of List II. Once the concerned legislation falls within the specific domain of the power of the State Legislature, primacy must be given to such specific power.

3.6 In *State of A.P. & Ors. vs. McDowell & Co. & Ors.*, (1996) 3 SCC 709, a 3 Judge Bench of this Court upheld validity of the State's legislation prohibiting sale and consumption of intoxicating liquors, after considering Entries 8, 24 and 51 of List II, Entry 52 of List I and Entry 33 of List III and the IDR Act. The Court categorically held that Entry 24, List II was general entry relating to "Industries" whereas Entry 8, List II was specific and special entry relating *inter alia* to industries engaged in production and manufacture of "intoxicating liquors" and applied the principle of special excludes general, to hold that industries engaged in production and manufacture of intoxicating liquors fell with Entry 8 and not within Entry 24. Once this was so, Union's declaration under Entry 52, List I had no effect of transferring/transplanting the industries engaged in production and manufacture of intoxicating liquors from the State List to the Union List. It further clarified that ambit and scope of constitutional entry cannot be determined with reference to Parliamentary enactment and rejected the argument that Entry 52, List I could impinge over Entry 8, List II. The Court relied on para 86

of *Synthetics & Chemicals Ltd. vs. State of U.P., (1990) 1 SCC 109*, to hold that prohibition of production and manufacture of intoxicating liquors squarely fell within Entry 8 read with Entry 6 of List II and Entry 26 of First Schedule to IDR Act was to be read as subject to the aforesaid Entries. It further held Entry 8, List II as more specific than Entry 25, List II dealt with in *Calcutta Gas*.

Intoxicating Liquor covers potable and non-potable alcohol:

3.7 It is further submitted that the expression “*Intoxicating liquor*” in Entry 8 of List II is different than the expression used in Entry 51 of List II which uses the expression “*alcoholic liquor for human consumption*”. The expression “Intoxicating liquor” being an expression in the field of legislation must be given the widest possible meaning and therefore it must be interpreted to cover both potable and non-potable liquor. This interpretation is also supported by various legislations governing intoxicating liquor at the time when the constitution was being framed.

3.8 In fact the Union of India, in *Synthetics & Chemicals Ltd. vs. State of U.P., (1990) 1 SCC 109* specifically took a position that Intoxicating liquor would cover both potable and non-potable liquor. This is evident from para 41 of the said case which reads as under:

“41. The only question which has to be determined is whether intoxicating liquor in Entry 8 in List II is confined to potable liquor or includes all liquors. According to the Union of India, in view of the difference of language in Entry 8 and Entry 51 of List II, it is

reasonably possible to take the view that intoxicating liquors include both liquors.”

- 3.9 In *Indian Mica and Micanite Industries vs. State of Bihar [(1971) 2 SCC 236*, this Hon’ble Court while upholding the Bihar Orissa Excise Act held that the State had the competency to regulate trade and business of denatured spirit and that Entry 8 of List II comprehends all liquors containing alcohol. Similarly, in *State of Bombay & Anr. vs. F. N. Balsara, (1951) SCR 682*, which held that the term “*liquor*” covers not only alcoholic liquids used as beverages and producing intoxication but also all liquids containing alcohol and that such meaning could not be intended to be excluded from the term “*Intoxicating liquors*” as used in Entry 31, List II of Government of India Act 1935, which is analogous to the current Entry 8, List II, of Seventh Schedule of the Constitution of India. It is also relevant to note Entry 66, List II, which grants exclusive jurisdiction to the State Legislatures for making laws with respect to “*Fees in respect of any of the matters in this List, but not including fees taken in any court*”. Thus, States are empowered to charge fees and other taxes with respect to “*Intoxicating liquors*” under Entry 8, List II.
- 3.10 It is submitted that once Union of India does not contest this position and when ex facie the State Entry covers the legislative field, then a private party cannot be allowed to contend that such a power is vested with the Union and not with the State.

3. **In any event, Section 18G of the IDR Act does not oust State's power in making any laws relating to trade, commerce, production, supply and distribution of the products of the alcohol industry:**

4.1 It is respectfully submitted that the finding in *Synthetics (supra)* at para 85 that “*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 the IDR Act, has evinced clear intention to occupy the whole field*” requires to be overruled. The Court failed to take note that Central Government as a matter of fact has not evinced a clear intention to occupy the whole field (control supply, distribution and price) related to regulation of industrial alcohol. The Court failed to consider the ambit and scope of Section 18G and its interpretation by other constitutional bench judgments of this Court. Furthermore, the observations in para 74 of *Synthetics (supra)* also requires to be overruled (as elaborated in the next submission).

4.2 Section 2 of the IDR Act has the consequence of Central Government taking control of the specified industries. Consequently even the trade, commerce, production and supply of such products are governed by Entry 33 of List III (as opposed to Entry 26/27 of List II). The First Schedule to the IDR Act, Item 26 originally covered all alcoholic industries (as a part of fermentation industries).

It was only by the amending act of 2016 that the entry excluded from its ambit potable alcohol.

4.3 Section 18G of the IDR Act is traceable to Entry 33 of List III, as evident from the marginal note of Section 18G. It is submitted that Section 18G of the IDR Act is an enabling provision which gives Central Government the power to control supply, distribution and price of products in limited circumstances, i.e. for securing the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry. Thus, Section 18G requires a determination by the Central Government of the existence of such condition and exercise of power by virtue of a notification. In absence of such a determination and issuance of a notification, there is no law made by the Parliament under Entry 33 of List III.

4.4 In *Ch. Tika Ramji & Ors. (supra)*, the constitutional bench of this Court was deciding the validity of the State's legislation and notifications regulating sale and purchase of sugarcane, in the context of Entries 24 and 27 of List II, Entry 52 of List I and Entry 33 of List III, the IDR Act and the Essential Commodities Act, 1955. It was noted that although State Legislatures had exclusive jurisdiction to make laws w.r.t. production, supply and distribution of goods within their States, the said power was subject to Entry 33, List III which gave concurrent powers to both Union and States to make laws relating to trade, commerce, production, supply and

distribution of goods which have been declared by Central Legislature under Entry 52, List I. On the other hand, Section 2A(4) of the Essential Commodities Act, 1955 allowed Union to exercise powers w.r.t. a commodity for which it has power to make laws under Entry 33, List III. The Court clarified that prior to 1954 Amendment to the Constitution, sugarcane could not be considered as a product of sugar industry (which was a controlled/scheduled industry) in terms of Entry 33, List III and would fall exclusively in the State's domain under Entry 27, List II. However, after the 1954 Amendment which included foodstuffs including edible oilseeds and oils in Entry 33, List III, sugarcane got covered under the said Entry. Thus, both Parliament and State Legislatures had jurisdiction to legislate on sugar and sugarcane and their legislations were enacted concurrently under Entry 33, List III, as a result of which State's power to legislate on the said field was not taken away. It was further clarified that the pith and substance argument could not be taken as both Central and State Legislatures were operating in concurrent field and there was no question of any trespass on exclusive jurisdiction vested in Union under Entry 52, List I. The Court clarified that while the term "*Industry*" included manufacture, raw materials would not be included within the term "article or class of articles relatable to any *scheduled industry*" under Explanation to Section 18G of IDR Act as the same related to finished products. Thus, sugarcane being raw material was not covered under Section 18G of IDR Act and even if it was held to be covered, there was no

notified order for the same. The Court also held that there was no repugnancy between the State and Central Legislations which were enacted under Entry 33, List III, as their respective provisions were exclusive and did not impinge on each other.

4.5 It is thus submitted that the respective State laws regulating non-potable alcohol and levying any fee thereon is traceable to Entry 33 read with Entry 47 of List III.

4. The State Act in question and the impact of giving a restrictive meaning to Entry 8 of List II:

5.1 In case of State of Maharashtra, the Maharashtra Prohibition Act, 1949 (“**Prohibition Act**”) strictly regulates and prohibits the wrongful human consumption of medicinal and toilet preparations under various provisions thereunder.

5.2 The Prohibition Act provides promotion, control and regulation of import, export, transport, manufacture, sell etc. in accordance with provisions and the rules made thereunder. Under the Rules issued thereunder, there are various tasks taken by the State Authorities in order to ensure that the rectified alcohol is as per the specified parameters and further the transport is in accordance with the prescribed norms and under proper supervision so that no misuse or diversion occurs, which results in expenditure by the State. The State, by virtue of the Prohibition Act and the Rules made therein, regulates and controls the production, manufacture, possession,

transport and sale of intoxicating liquor which power emanates from Entry 8, List II and Entry 33, List III.

5.3 Section 11 of the Prohibition Act grants the State Government the authority to regulate various activities related to intoxicants, including manufacturing, possession, import, export, transport, use, and sale. These activities can be permitted by the State Government in accordance with the provisions of the Prohibition Act, its rules, regulations, or orders, or as specified in licenses, permits, passes, or authorizations granted under the Act. Additionally, according to Section 27 of the Prohibition Act, no intoxicant can be removed from any distillery, warehouse, or other licensed storage facility established under the Prohibition Act without a pass. This pass is issued upon payment of any applicable duty or execution of a bond for the payment of duty. This provision ensures that proper procedures are followed for the movement of intoxicants and that any applicable taxes or duties are duly accounted for.

5.4 Section 105 of the Prohibition Act empowers the State Government to impose excise duty on specific commodities, namely (a) any alcoholic liquor meant for human consumption, (b) any intoxicating drug or hemp, (c) opium, and (d) any other excisable article. Meanwhile, Section 106 outlines the procedures for levying excise duty, ensuring a systematic approach to taxation. Furthermore, Section 143 of the Prohibition Act empowers State Government to make rules for the purpose of carrying out the provisions under the

Act for regulating various activities related to intoxicants. Specifically, Section 143(2)(h1)(i) and (h)(ii) detail measures such as setting prices, quantities, or potency levels for intoxicants to be supplied, as well as arrangements for denaturing spirits. These regulations aim to maintain control and oversight over the production, distribution, and consumption of intoxicants, ensuring adherence to legal frameworks and safeguarding public welfare.

5.5 The State Government has established the Bombay Rectified Spirit Rules, 1951, which govern the possession and utilization of rectified spirit for industrial, educational, and research purposes. These Rules entail obtaining a license in Form F.R.S., which permits the possession and use of rectified spirit, including absolute alcohol, as outlined in Rule 3(1)(a). Additionally, compliance with Rules 24 and 30 is mandated, necessitating adherence to the Bombay Rectified Spirit (Transport-in-Bond) Rules, 1951, and the Bombay Foreign Liquor and Rectified Spirit (Transport) Fees Rules, 1954. According to Clause (h) of Rule 2 within the Transport-in-Bond rules, transport-in-bond refers to the movement of rectified spirit from designated government distilleries, warehouses, or licensed facilities to bonded laboratories without the obligation to pay duty. This provision allows for the use of rectified spirit for non-potable purposes under a bond, subject to excise supervision, without the imposition of excise duty on rectified or denatured spirit. However, Rule 8 provides the State Government with the authority to recover excise duty in the event of transit loss exceeding the permissible limit. This regulatory

framework ensures responsible handling and monitoring of rectified spirit, balancing its legitimate use and preservation of public safety.

5.6 The precise information about types of alcohol and process of preparation of rectified spirit, extra neutral alcohol, absolute alcohol and denatured spirit is appended below:

Sr. No	Manufactured Product	Base/ Raw Material	Process	Minimum Percentage of Alcohol	Chemical Formula	Remarks
01	Rectified Spirit for Beverages	Molasses / Sugarcan e Juice	Distillation	96% as per IS:6613:2002	C ₂ H ₅ OH	Potable. Used for manufacturing Country liquor
02	Rectified Spirit	Denature d Spirit	Renatured by removing denaturants from it by fractional distillation.	95% as per IS:6613:2002 & IS:323:2009	C ₂ H ₅ OH	Potable. Can be used for manufacturing Country liquor.
03	Extra Neutral Alcohol (ENA)	Rectified Spirit	Re-distillation to remove impurities	96% as per IS:6613:2002	C ₂ H ₅ OH	Potable. Used for manufacturing IMFL
04	Absolute Alcohol (Etanol)	Rectified Spirit	Re-distillation for removal of water contents	99.5% as per IS:321:1964	C ₂ H ₅ OH	Potable intoxicating Commodity. Used for manufacturing IMFL/country liquor Can also be used for blending with petrol after denaturing.
05	Denatured Spirit	Rectified Spirit	Adding denaturants to render it unfit for human consumption	IS:323:2009	C ₂ H ₅ OH	Non-Potable. Used for Industrial purposes only.



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The Spirit / Ethyl Alcohol / Ethanol / Rectified Spirit / Anhydrous Ethyl Alcohol / Neutral Spirit having chemical formula C_2H_5OH are one and the same and is the purest form of alcohol, which can be used as liquor by suitably diluting it with water. The undeniable fact is that rectified spirit is Ethyl Alcohol (95%v/v and above) and is used as both industrial alcohol as well as a liquor. It is also the basic raw material (Extra Neutral Alcohol i.e. ENA) from which I.M.F.Ls. are made. The rectified spirit is denatured to render it unfit for human consumption for its use as industrial purposes under supervision of State Excise authorities.

5.7 The Bureau of Indian Standard has the following standards of Ethyl Alcohol:

- i) IS:321:1964 for Rectified Spirit for Absolute Alcohol
- ii) IS:6613:2002 for Rectified Spirit for Alcoholic Beverages
- iii) IS:323:2009 for Rectified Spirit for Industrial Use/Denatured Spirit
- iv) IS:323:1959 for Rectified Spirit (presently Withdrawn)

5.8 The Bureau of Indian Standard specifications of Rectified spirit for Industrial use, Alcoholic beverages, Absolute alcohol and the chemical analyser reports are appended in the table given below for a precise understanding:

 Alcohol Type 	Rectified Spirit for Industrial	Rectified Spirit for Alcoholic	Rectified Spirit as Absolute	Rectified Spirit for Industria
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Characteristics/Elements	Use IS 323:2009 (Reaffirmed 2019)	Drinks IS 6613:200 2 (Reaffirmed 2019)	Alcohol IS 321:1964 (Reaffirmed 2021)	I Use IS 323:1959 (Presently withdrawn)
Ethanol percent Minimum.	95	96	99.50	94.68
Acidity as acetic acid, mg/l Max	100	15	0.006	0.002
Aldehyde as acetaldehyde mg/l, max	100	0.005	1	0.006
Esters as CH₃COOC₂H₅, mg/l, Max	200	13	0.2	0.02
Methyl Alcohol, mg/l, Max	100	500	Nil	To satisfy the requirement of the test
1-Propanol	1000	Nil	Nil	----

Iso-amyl Alcohol	300	300	Nil	----
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A true copy of BIS for Rectified Spirit for Absolute Alcohol is annexed herewith and marked as **Annexure-R-1 (Page No. 24 – 39)**.

A true copy of BIS for Rectified Spirit for Alcoholic Beverages is annexed herewith and marked as **Annexure-R-2 (Page No. 40 – 46)**.

A true copy of BIS for Rectified Spirit for Industrial Use/Denatured Spirit is annexed herewith and marked as **Annexure-R-3 (Page No. 47 – 61)**. A true copy of BIS for Rectified Spirit (presently withdrawn) is annexed herewith and marked as **Annexure-R-4 (Page No. 62 – 100)**.

- 5.9 The Forensic Science Laboratories, Mumbai, which is recognised as an expert by this Hon'ble Court has opined that rectified spirit has to be classified as potable as it can be consumed as beverage suitably diluted with plain water as per individual requirement and liking. It does not require any chemical alteration or processing what-so-ever to make it potable. They have relied upon technical literature like Kirk Othmer: Encyclopaedia of Chemical Technology, Thrope's Dictionary of Applied Chemistry, Saferstein Criminalistics, the Merck Index, the Shorter Oxford English Dictionary and Chambers 20th century dictionary, which says that rectified spirit is potable and can be consumed as beverage. The said expert opinion states as under:

“Rectified Spirit has to be classified as potable as it can be consumed as beverage, suitably diluted with plain water as per individual requirements and liking. It does not require any chemical alteration or intervention or processing whatsoever to make it potable. Even in the lay or technical literature 1-6(see annexure) alcohol (ethyl alcohol) is, without any reservation, taken as potable intoxicating commodity.

The toxicity of Rectified Spirit is not different from that of alcoholic beverages like IMFLs, Country Liquor etc. In as much as the toxic dose is in terms of the total alcoholic content ingested, raising the blood alcohol concentration, to toxic level rather than the original strength, whether 95% (Rectified Spirit) or 43% (IMFL) or less (other alcoholic liquors), overlooking the local (dehydrating) action with high alcohol strength.

Rectified Spirit, being the king-pin constituent of the potable alcoholic beverages, would therefore in all fairness, reasonableness and clarity, be classified as nothing but potable intoxicating liquor.”

A true copy of Expert Opinion of Forensic Science Laboratory, Mumbai is annexed herewith and marked as **Annexure-R-5 (Page No. 101 – 103)**.

5.10 It is further submitted that another reference can also be made to the standards of potable Ethyl Alcohol/Spirit of United States of America, Republic of China, Argentina, Hungary and Ghana and European Union. All of them confirm that Ethyl Alcohol / Spirit / Ethanol / Rectified Spirit / Anhydrous Ethyl Alcohol/ Neutral Spirit having 95% v/v and above alcohol content is potable. A true copy of standards of potable Ethyl Alcohol/Spirit of different countries is annexed herewith and marked as **Annexure-R-6 (Page No. 104 – 116)**.

5.11 Further reference can also be considered that in few countries Rectified Spirit having 95% and above alcohol content is available for sale in retail market worldwide as 'Ready to drink" bottles. The examples of such potable drinks are Everclear (95%), Wratislavia (96%), StrawskiLuksusowy (96%), Ceibo (96%), Golden Grain (95%), Caiman (96%) and Familia De Luxe (96%). A true copy of examples of 'Ready to drink" bottles of rectified spirit having alcohol content above 95%v/v is annexed herewith and marked as **Annexure-R-7 (Page No. 117 – 123)**.

5.12 It is further submitted that in the matter of *Synthetics (Supra)*, the Hon'ble Court held in para 74 as follows:

“It has to be borne in mind that by common standards ethyl alcohol (which has 95%) is an industrial alcohol and is not fit for human consumption. The petitioners and the appellants were manufacturing ethyl alcohol (95%) (also known as-rectified spirit)

which. is an industrial alcohol. ISI specification has divided ethyl alcohol (as known in the trade) into several kinds of alcohol. Beverage and industrial alcohols are clearly and differently treated. Rectified spirit for industrial purposes is defined as "spirit purified by distillation having a strength not less than 95% of volume by ethyl alcohol". Dictionaries and technical books would show that rectified spirit (95%) is an industrial alcohol and is not potable as such. It appears, therefore, that industrial alcohol which is ethyl alcohol (95%) by itself is not only non potable but is highly toxic. The range of spirits of potable alcohol is from country spirit to Whisky and the Ethyl Alcohol content varies between 19 to about 43 percent. These standards are according to the ISI specifications. In other word, ethyl alcohol (95%) is not alcoholic liquor for human consumption but can be used as raw material input after processing and substantial dilution in the production of Whisky, Gin, Country Liquor, etc. In many decisions, it was held that rectified spirit is not alcohol fit for human consumption. Reference may be made in this connection to Delhi Cloth and General Mills Co. Ltd. v. Excise Commr. U.P. Allahabad, Special Appeal No. 177 of 1970 decided on 29th March, 1973. In this connection, it is important to bear in mind the actual provision of entry 8 of list II. Entry 8 of list II cannot support a tax., The above entry contains the words "intoxicating liquor". The meaning of the expression "intoxicating liquor" has been rightly interpreted by the Bombay High Court in the Balsara's case (AIR 1951 SC 318)

(supra). The decision of the Bombay High Court is reported in AIR 1951 Born 210, at p. 214. In that light, perhaps, the observations of Fazal Ali, J. in Balsara's case (*supra*) requires consideration. It appears that in the light of the new experience and development, it is necessary that "intoxicating liquor" must mean liquor which is consumable by human being as it is and as such when the word "liquor" was used by Fazal Ali, J, they did not have the awareness of full use of alcohol as industrial alcohol. It is true that alcohol was used for industrial purposes then also, but the full potentiality of that user was not then comprehended or understood. With the passage of time, meanings do not change but new experiences give new colour to the meaning. In Har Shankar's case (AIR 1975 SC 1121)(*supra*), a Bench of five Judges have surveyed the previous authorities. That case dealt with the auction of the right to sell potable liquor. The position laid down in that case was that the state had the exclusive privilege or right of manufacturing and selling liquor and it had the power to hold public auctions for granting the right or privilege to sell liquor and that traditionally intoxicating liquors were the subject matters of state monopoly and that there was no fundamental right in a citizen to carry on trade or business in liquor. All the authorities from Cooverji Bharucha's case, 1954 SCR 873 : (AIR 1954 SC 220) to Har Shankar's case (*supra*) dealt with the problems or disputes arising in connection with the sale, auction, licensing or use of potable liquor.

5.13 The present status of the Bureau of Indian Standard specifications (IS:323:1959) relied on in *Synthetics (Supra)*, has been withdrawn by the Bureau of Indian Standard and new BIS standards have been introduced in 2002 & 2009 respectively. In the light of the new introduction of standards, the Bureau of Indian Standard specifications (**IS:323:1959**) which was relied in *Synthetics (Supra)* as the main pillar of the judgments, does not exist now. If the pillars are removed now, the building is collapsed; therefore, *Synthetics (Supra)* cannot be relied today in absence of the Bureau of Indian Standard specifications (**IS:323:1959**).

5.14 It is further submitted that para 74 of *Synthetics (Supra)* is not in consonance with the expert opinion of the Director of Forensic Science Laboratory, Alcohol potability standards of different countries and 'Ready to drink' bottles of rectified spirit having alcohol content above 95% v/v in addition to the latest changes in BIS specifications. Hence the abovementioned para. is bad in law and cannot be relied today.

5.15 In fact, recognizing this error, the Government of India, through the Ministry of Law and Justice, has amended Entry 26 of the First Schedule of IDR Act bringing fermentation industries (other than potable alcohol) thereunder vide notification dated 14.5.2016 and has issued clarification to all Chief Secretaries of the States stating that States can legislate, control and/or levy taxes and duties on liquor meant for human consumption only. Other than that, i.e. de-

natured ethanol, which is not meant for human consumption will be controlled, legislated etc. only by the Central Government. This very clearly indicates that the Central Government itself considers rectified spirit in its pure form as potable spirit or liquor itself.

5.16 It is further submitted that the denatured alcohol which is rectified spirit for industrial purposes which is rendered unfit for human consumption by adding the specific denaturants in it, can also be converted into un-denatured alcohol and made potable after removing the denaturants from it through fractional distillation process. The reference can be made to the Bureau of Indian Standard specification IS:4117:2008(Para-5) held that:-

“Specially Denatured (SD) is composed of alcohol and specified denaturants that are more readily removed by simple chemical processes. While Specially Denatured Spirit (SDA) is not fit for human by virtue of denaturants used to denature the product, it can, through certain recovery processes, be made potable. As a result, its use is controlled through the registration of users.”

A true copy of the Bureau of Indian Standard specification IS:4117:2008 is annexed herewith and marked as **Annexure R-8 (Page-124 – 156)**

5.17 Thus, it is an intoxicant and can be controlled/regulated by the State Government under Entry 8, List II, Seventh Schedule to the Constitution of India. Consequently, the endeavour to centralise regulation of the "Fermentation Industry" primarily for taxation

purposes encounters practical limitations due to insufficient staffing for effective supervision of activities such as import, export, purchase, sale, and transportation of spirit and molasses. Recognizing the need for comprehensive regulatory supervision, it is suggested that control over intoxicants, including both denatured and non-denatured spirit and molasses, may be better managed by individual states. This approach seeks to ensure responsible management and prevent potential misuse or diversion of intoxicants for human consumption.

Filed By:-

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The State of Maharashtra

Place: New Delhi
Date: 03.04.2024