

Bihar Distillery and Another

Vs

Union of India and Others

Writ Petition (C) No. 322 of 1996

(Sujata V. Manohar, B. P. Jeevan Reddy JJ)

29.01.1997

JUDGMENT

B. P. JEEVAN REDDY J.

1. Until the commencement of the Constitution and for a few years thereafter, rectified spirit was mainly used for the purpose of manufacturing country liquor, Indian Made Foreign Liquors (IMFL) and other intoxicating drinks. Its use for industrial purposes was not significant. The rapid pace of industrialisation from mid-fifties onwards brought into existence several industries, which required rectified spirit as one of their raw materials, with the result the demand of rectified spirit for industrial purposes went up substantially and has been going up. Evidently, in recognition of this fact, did the Union of India amend, in the year 1956, the Schedule to the Industries (Regulation and Development) Act, 1951 including the alcohol industry therein.

2. Notwithstanding the aforesaid amendment of the Schedule to the Industries (Regulation and Development) Act, 1951, the establishment of a distillery, its working and the distribution and sale of the rectified spirit produced by it continued to be regulated by the States as before, under various enactments in force in those States. Similar was the position in the State of Bihar where the first petitioner-distillery is located. As a matter of fact, right up to the year 1991-92, it was getting its licence renewed under the provisions of the Bihar Excise Act. The original licence itself was granted under the Bihar Act. In or about the year 1992, the authorities of the Bihar State proposed to cancel the petitioner's licence for certain reasons assigned by them. The petitioner objected to it on the ground that the grant and cancellation of licence in respect of a distillery manufacturing rectified spirit is the exclusive province of the Government of India and that the State Government had no say in the matter. With this contention it has approached this Court. It relies upon the seven-Judge Constitution Bench decision of this Court in Synthetics and Chemicals Ltd. v. State of U.P. [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623] The petitioner says that it was licensed to manufacture and manufactures only "industrial alcohol" and no other alcohols or liquors.

3. According to the division of legislative powers contained in the Seventh Schedule to the Constitution (relatable to Article 246), the power to legislate on the subject of "industries" is assigned to the States. Entry 24 in List II reads : "24. Industries subject to the provisions of Entries 7 and 52 of List I." [Prior to Constitution (Seventh Amendment) Act, 1956 only Entry 52 was referred to in this entry. By the said Amendment Act, Entry 7 was also added.] Entries 7 and 52 in List I, referred to in Entry 24 of List II, read thus :

"7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

* * *##

52. Industries, the control of which by the Union is declared by 7 Parliament by law to be expedient in the public interest."

4. In the year 1951, Parliament enacted the Industries (Development and Regulation) Act, 1951 (IDR Act). Section 2 contains a declaration in terms of Entry 52 of List I. By virtue of this enactment, Parliament took over the control of the industries specified in the First Schedule denuding the States of that power. In the year 1956, the Schedule to the IDR Act was amended, as stated hereinbefore, including inter alia Item 26. Item 26 reads : "26. Fermentation Industries : (i) alcohol; (ii) other products of fermentation industries". As a matter of fact, however, the several State enactments continued to regulate the establishment, functioning and disposal of rectified spirit and other products of these distilleries even after 1956. Nobody ever questioned it until an industry, Synthetics and Chemicals Limited (Synthetics) did so by way of writ petitions filed in the Allahabad High Court in or about the years 1975-78. Synthetics was a licensee for the wholesale vend of denatured spirit [Denatured spirit is rectified spirit. Denaturants are added to it to make it unfit for use in manufacture of IMFLs, other intoxicating liquors or for diluting it to obtain country liquor. Denaturing is not necessary for its use for industrial purposes. Indeed, some industries cannot use denatured rectified spirit. But, by and large, rectified spirit supplied to industries is denatured.]. It questioned the levy of vend fee on denatured spirit imposed by the State of Uttar Pradesh under the provisions of the Uttar Pradesh Excise Act and the Rules made thereunder. It contended that the power to levy excise duty or tax on denatured spirit vested exclusively in Parliament and that the State was totally incompetent to levy the same. The High Court rejected the contention holding that the expression "intoxicating liquors" occurring in Entry 8 of List II of the Seventh Schedule to the Constitution took in its fold denatured spirit as well and, therefore, the State had exclusive privilege to deal in denatured spirit. The matter was carried to this Court wherein it was contended that by virtue of Item 26 of the Schedule to the IDR Act, the Union has taken under its control the industries engaged in the manufacture of industrial alcohol and that the States have been denuded of any power to deal with denatured spirit including the power to levy vend fees. The contention was rejected by this Court (A.C. Gupta and P.S. Kailasam, JJ.) as well, vide *State of U.P. v. Synthetics and Chemicals Ltd.* [(1980) 2 SCC 441 : (1980) 2 SCR 531]. This Court referred inter alia to the history of State excise laws in this country and to the wide definition of "liquor" in those enactments and observed that while enacting the Government of India Act, 1935, the British Parliament must have been aware of and must be deemed to have accepted the said wide definition (i.e. including non-potable liquors as well). Synthetics was not satisfied with the judgment. It filed a petition to review the same. Meanwhile, several other industrial units approached this Court by way of writ petitions raising contentions similar to those raised by Synthetics. The matter was referred to and heard ultimately by a larger Constitution Bench of seven learned Judges whose decision is reported in *Synthetics and Chemicals* [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623]. Sabyasachi Mukharji, J. spoke for himself, E.S. Venkataramiah, C.J., Ranganath Misra, B.C. Ray, K.N. Singh and S. Natarajan, JJ., while G.L. Oza, J. rendered a separate concurring opinion. This decision, reversing the decision in *State of U.P. v. Synthetics and Chemicals Ltd.* [(1980) 2 SCC 441 : (1980) 2 SCR 531] and upholding the contention of the writ petitioners, brought about a sea change in the thinking on the subject. It held that the expression "intoxicating liquors" in Entry 8 of List II means and refers to only potable liquors and that the portability is determined by the standards specified by ISI (Indian Standards Institute), i.e., alcohol content not exceeding 43% v/v. Entry 51 of List II was also similarly held limited to potable liquors. The power of the States to legislate in respect of liquors was held to be restricted to potable liquors alone. The Court held further that "rectified spirit" (which expression was used interchangeably with the expression "ethyl alcohol" and "industrial

alcohol") which is of 95% and above purity cannot be treated as a potable liquor and hence lies within the exclusive control of the Union by virtue of the IDR Act. After 1956, the Court held, the power of the States is confined to (1) making a law prohibiting potable liquor and to regulate it, (2) laying down regulations to ensure that non-potable alcohol is not diverted and misused for potable purposes, (3) charging excise duty on potable alcohol and (4) to charge fees for rendering any service. (See para 86 at page 158.) The decision was rendered on 25-10-1989.

5. When the present writ petition came up for admission before a Bench comprising one of us (B.P. Jeevan Reddy, J.) and K.S. Paripoornan, J., it was thought necessary to give notice to all the State Governments and to the Union of India in view of the peculiar nature of the problem arising herein. The order made by the Bench on 9-5-1996, insofar as is relevant, reads thus :

"The question arising herein is a thorny one. It is also arising frequently. The decision of the larger Constitution Bench of this Court in *Synthetics & Chemicals Ltd. v. State of U.P.* [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623] calls for demarcation of the spheres of the Union and the States particularly in the matter of alcoholic liquors. Recently, this Court has held in *State of A.P. v. McDowell & Co.* [(1996) 3 SCC 709] that so far as the intoxicating liquors/potable liquors are concerned, it is the exclusive province of the States. But for manufacturing intoxicating liquors, or for manufacturing industrial alcohol as the case may be, one must have to manufacture or purchase alcohol. It is only thereafter that the alcohol is either converted into industrial alcohol (by denaturing it) or into potable liquors by reducing the strength of alcohol (which is normally of 95% purity or above). Indeed, alcohol can be used for industrial purposes even without denaturing it. Saying that States step in only when alcohol becomes potable and not before it leaves a large enough room for abuse apart from difficulties of supervision and regulation. In the matter of licensing too, problems would arise, as to who should license such industry - whether the Centre alone or the States or both. Having regard to the importance of the question, we think that this is a proper case where notice should go to all the States who will be heard on this question. The Union of India is already a party to the writ petition."

6. Accordingly, notices have been issued to all the State Governments. We have directed notice to learned Attorney General as well. We have heard Shri Bimal Kumar Sinha, learned counsel for the writ petitioner, Shri Shanti Bhushan for the State of West Bengal, Shri Rakesh Dwivedi, Additional Advocate General for the State of Uttar Pradesh for Uttar Pradesh and Bihar, Shri Santosh Hegde for the State of Karnataka, Shri M.S. Nargolkar for the State of Maharashtra, Shri V. Krishnamurthi for the State of Tamil Nadu, Shri K. Ram Kumar for the State of Andhra Pradesh, Shri G. Prakash for the State of Kerala, Ms. Subhashini for the State of Goa, Shri P.N. Misra for the State of Orissa and Shri T. Sridharan for the State of Himachal Pradesh. Shri M.S. Usgaocar, learned Additional Solicitor General appeared for the Union of India. We also requested Shri Harish N. Salve, who was appearing in the connected matter [Special Leave Petition (C) No. 9863 of 1996 - involving inter alia the question at issue herein] to address us on the general question which he has agreed gracefully to do.

7. Let us first notice the relevant entries in the Seventh Schedule to the Constitution. Entry 6 in List II deals with "Public Health and Sanitation; Hospitals and Dispensaries". Entry 8 reads : "Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors". Entry 24, which has already been referred to, reads : "24. Entries

subject to the provisions of Entries 7 and 52 of List I". Entry 51, which is one of the taxing entries in List II reads :

"51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India -

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics;

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry."

The last entry in List II, viz., Entry 66 speaks of "fees in respect of any of the matters in this List, but not including fees taken in any court".

8. Entries 7, 52 and 84 in List I which alone are relevant herein read thus :

"7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

84. Duties of excise on tobacco and other goods manufactured or produced in India except -

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry."

9. Entry 33 in List III (Concurrent List) may also be noticed. It reads :

"33. Trade and commerce in, and the production, supply and distribution of, -

(a) 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;

(b) foodstuffs, including edible oil seeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute."

10. A reading of the above entries would immediately disclose that Entry 51 in List II and Entry 84

in List I compliment each other. Both provide for duties of excise but while the States are empowered to levy duties of excise on (a) alcoholic liquors for human consumption and (6) opium, Indian hemp and narcotics manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India [but excluding medicinal and toilet preparation containing alcohol or any substance included in sub-para (b) of this Entry], the Union is empowered to levy duties of excise on tobacco and other goods manufactured or produced in India except (a) alcoholic liquors for human consumption and (b) opium, Indian hemp and other narcotic including drugs and narcotics. Medicinal and toilet preparations containing alcohol or any substance included in sub-para (b) which are excluded from Entry 51 in List II are expressly included in this entry. For our purposes, the relevant expression is "alcoholic liquors for human consumption" which is included in Entry 51 in List II and excluded from Entry 84 in List I. The words employed denote that there may be alcoholic liquors meant for human consumption as well as for other purposes. Now coming to Entry 8 in List II, it does not use the expression "alcoholic liquors for human consumption". It employs the expression "intoxicating liquors" which expression is, of course, not qualified by words "for human consumption". This is for the obvious reason that the very word "intoxicating" signifies "for human consumption". Entry 8, it is necessary to emphasize, places all aspects of intoxicating liquors within the State's sphere; production, manufacture, possession, transport, purchase and sale of intoxicating liquors is placed within the exclusive domain of the States. Entry 6, which inter alia speaks of "public health" is relevant only for the reason that it furnishes a ground for prohibiting consumption of intoxicating liquors. Coming to Entry 33 in List III, the language of clause (a) thereof is significant. Even though control of certain industries may have been taken over by the Union by virtue of a declaration made by Parliament in terms of Entry 52 in List I, yet the "trade, commerce in, and the production, supply and distribution of the products" of such industry is placed in the concurrent field, which in the present context means that though the control of alcohol industry is taken over by the Union, trade, commerce in and the production, supply and distribution of the products of alcohol industry can be regulated both by the Union and the States subject, of course, to Article 254. It also means, as will be explained later, that insofar as the field is not occupied by the laws made by the Union, the States are free to legislate.

11. In the matter of industries mentioned in List II, Entry 24 in List II is in the nature of general entry. It speaks of industries but is made expressly subject to Entries 7 and 52 of List I. By making a declaration in terms of Entry 52 in List I in Section 2 of the IDR Act, Parliament has taken control of the several industries mentioned in the Schedule to the Act. The States have been denuded of their power to legislate with respect to those industries on that account. It has, however, been held by a three-Judge Bench of this Court in *State of A.P. v. McDowell & Co.* [(1996) 3 SCC 709] that Entry 52 overrides only Entry 24 in List II and no other Entry in List II. It has been held that Entry 8 is not overridden or over borne in any manner by Entry 52 - which means that so far as intoxicating liquors are concerned, they are within the exclusive sphere of the States. We may pause at this stage and append a clarification which has become necessary in the light of certain words occurring in para 85 of the judgment of Sabyasachi Mukharji, J. in *Synthetics* [Whenever we refer to "Synthetics" hereafter, it would mean the judgment of the seven-Judge Constitution Bench reported in (1990) 1 SCC 109.]. At the inception of para 85 of the said judgment, the following statement occurs : (SCC p. 157)

"After the 1956 amendment to the IDR Act bringing alcohol industries (under fermentation industries) as Item 26 of the First Schedule to IDR Act the control of this industry has vested exclusively in the Union. Thereafter, licences to manufacture both potable and nonpotable alcohol is vested in the Central Government. Distilleries

are manufacturing alcohol under the Central licences under the IDR Act. No privilege for manufacture even if one existed, has been transferred to the distilleries by the State."

12. It is obvious that the words "both potable and" occur here as a result of some accidental or typographical error. The entire preceding discussion in the judgment repeatedly affirms that so far as potable alcohols are concerned, they are governed by Entry 8 and are within the exclusive domain of the States. The aforesaid words cannot fit in with the said repeatedly affirmed reasoning. We are, therefore, of the opinion that the said passage cannot be understood as holding that even in respect of the industries engaged in the manufacture or production of potable liquors, the control is vested in the Union by virtue of Item 26 of the First Schedule to the IDR Act. In view of the express language of Entry 8 - as has been clearly explained in McDowell [(1996) 3 SCC 709] - so far as potable liquors are concerned, their manufacture, production, possession, transport, purchase and sale is within the exclusive domain of the States and the Union of India has no say in the matter. For a similar clarification with respect to the power of the State to levy sales tax on industrial alcohol, reference may be had to State of U.P. v. Synthetics and Chemicals Ltd. [(1991) 4 SCC 139]

13. The several State Governments, to whom notices have been given, have responded. Some of them have filed very elaborate counters setting out their case. The first and foremost contention urged on their behalf is that rectified spirit is "intoxicating liquor" within the meaning of Entry 8 of List II. In other words, their contention, based upon the ratio in McDowell [(1996) 3 SCC 709], is that rectified spirit is "intoxicating liquor" within the meaning of Entry 8 of List II and hence, outside the purview of Entry 24 of List II, which in turn means that the Union cannot take over its control by making a declaration in terms of Entry 52 of List I and further that Item 26 of the Schedule to the IDR Act is ineffective and invalid insofar as it seeks to regulate the production, manufacture et al of rectified spirit. In support of their submission, they have relied upon the legislative history of the several State enactments in India apart from a wealth of material including technical data. They submit that the decision to the contrary in Synthetics [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623] is not correct and requires reconsideration. They have also assigned several reasons why the holding in Synthetics [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623] insofar as the meaning of "intoxicating liquor" is concerned should be held to be obiter. They submitted that in the interests of maintaining the balance between the Centre and the States and to preserve the federal nature of our Constitution - which is one of its basic features - the matter must be referred to a larger Bench to consider the correctness of Synthetics [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623]. They submitted that the relevant words in Entry 51 of List II and Entry 84 of List I are "alcoholic liquors for human consumption" and not "alcoholic liquors fit for human consumption". They complained with a good amount of emotion that the decision in Synthetics [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623] reads the word "fit" into the said entries and makes it a basis for curtailing the legislative power of the States. There is no warrant for such addition, they submitted. In addition to the above submissions, the following facts are stated in the affidavit filed on behalf of the State of Uttar Pradesh : the reduction process of converting rectified spirit into country liquor involves mixing of water and stirring. By adding water, the alcoholic content is reduced to 35% v/v to make it country liquor. Adding of spices is optional. Rule 45 of the Uttar Pradesh Excise Rules defines the expression "reduction of liquor". According to the definition, it means "the reduction of liquor from a higher to a lower strength by the addition of water". Mere mixing of water, it is submitted, makes rectified spirit country liquor. On this basis too, it is submitted, rectified spirit is really and essentially an intoxicating liquor and merely because water is required to be added to make it country liquor, it does not cease to be intoxicating liquor. By way of analogy, it is submitted that even the whiskies and brandies are not ordinarily consumed as such but only after mixing water or

soda. Addition of water or soda, it is submitted, does not change the character of whisky or brandy either. It is next submitted that bulk of rectified spirit manufactured in Uttar Pradesh is used for the purpose of obtaining country liquor or IMFLs. Only a small quantity is used for industrial purposes. Having regard to the predominant use to which rectified spirit is put, it is submitted, it must be understood as intoxicating liquor. The adding of denaturants is only with a view to ensure that the rectified spirit is not used for potable purposes. Yet another submission put forward by the State of Uttar Pradesh is that even during the course of manufacture of rectified spirit, potable liquor comes into existence. It is submitted that the main raw material for rectified spirit is molasses. The process of manufacture is elaborately set out, supported by technical literature. The samples taken from certain distilleries by the excise staff and the result of the analysis of the said samples is also relied upon. It is submitted that the process of manufacture of rectified spirit involves increasing the alcoholic content by repeatedly processing it. The alcoholic content keeps on rising from stage to stage. It is submitted that at several intermediary stages, the liquor can be taken out and used for drinking purposes, whether as it is or after mixing water, as the case may be. Shri Rakesh Dwivedi, learned Additional Advocate General for the State of Uttar Pradesh, placed strong reliance upon the reasoning and conclusions in the judgment of the Allahabad High Court in *Vam Organic Chemicals Ltd. v. State of U.P.* [WP (C) No. 16782 of 1990 decided on 9-9-1991], which, it is brought to our notice by written submissions, has since been affirmed by this Court in *Vam Organic Chemicals Ltd. v. State of U.P.* [(1997) 2 SCC 715] by a Bench consisting of the Hon'ble Chief Justice and Sen, J.

14. On the other hand, it is submitted by the learned counsel for the petitioner and Shri Salve that there are no good and valid reasons for doubting the correctness of the decision in *Synthetics* [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623] or for referring the issue to a larger Constitution Bench of nine or more Judges. The acceptance of the States' submission would make Item 26 in the Schedule to the IDR Act superfluous and meaningless. The decision in *Synthetics* [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623], Shri Salve submitted, has correctly drawn the dividing line between the respective spheres of the Union and the States and there is no good reason to doubt its correctness. The learned counsel took us through the judgment of Sabyasachi Mukharji, J. at considerable length to emphasise his submission that what all is urged now was indeed urged before the larger Bench and considered. The law laid down after an elaborate consideration of submissions made by several parties and several State Governments cannot and need not be reopened, urged Shri Salve. The learned counsel for the petitioner submitted that the petitioner-factory is engaged in the manufacture of industrial alcohol alone and that the rectified spirit manufactured by it is not allowed to be moved out except after denaturing it.

15. Shri Usgaocar for the Union of India took the stand that the decision in *Synthetics* [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623] lays down the law correctly and that the powers of the States are only those as are specified therein.

16. Inasmuch as strong reliance is placed by the learned Additional Advocate General for the State of Uttar Pradesh on the decision of a Division Bench of the Allahabad High Court in *Vam Organic* [WP (C) No. 16782 of 1990 decided on 9-9-1991] (rendered by one of us, B.P. Jeevan Reddy, as the Chief Justice of that Court), it is necessary to notice the relevant reasoning and the findings in the said judgment in view of the fact that the same have been affirmed by this Court. The High Court first dealt with the factual situation on the basis of the pleadings and material placed before it and recorded the following finding, which it repeatedly affirmed, was central to the entire reasoning and conclusion in that judgment.

"Ethyl alcohol, which is also called rectified spirit, the alcoholic content of which is

95% v/v, can be used both as an industrial alcohol and also for obtaining country liquor and other liquors. Even without denaturing it, rectified spirit can be used for industrial purposes. But it is not correct to say that ethyl alcohol/rectified spirit can be used only for industrial purposes and for no other purpose. As stated by the respondents, just by mixing water with it, it becomes country liquor and is sold and taxed as such by the State. Further, it can also be used as a raw material for producing Indian made foreign liquors (IMFL), wines, rums, etc. Denaturing is insisted upon by the State with a view to ensure that a particular quantity of rectified spirit/ethyl alcohol is not misused or diverted for being utilised for human consumption, viz., either for obtaining country liquor or for manufacturing IMFLs, wines etc. Once denatured, the rectified spirit/ethyl alcohol cannot be used either for obtaining country liquor or for manufacturing IMFLs, wines, etc. unless, of course, it is re-natured again."

17. Referring to the decision of this Court in Synthetics [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623], the High Court made the following observations :

"It must, however, be made clear that in the said decision, the distinction between ethyl alcohol/rectified spirit as such and denatured spirit was not in issue, nor was it considered. It was generally mentioned that ethyl alcohol/rectified spirit containing 95% alcohol v/v is an industrial alcohol. As we have pointed out hereinabove, even without denaturing, such ethyl alcohol/rectified spirit can be used for industrial purposes... The distinction, which is brought out in this case, was not in issue before the Supreme Court in Synthetics and Chemicals [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623] (main judgment). It, therefore, cannot be said that the Supreme Court has ruled, as a matter of law, that any and every rectified spirit/ethyl alcohol is an industrial alcohol."

18. At a later stage, the Bench dealt with the distinction between regulatory fees and fees for services rendered with reference to the decision of this Court in *Corpn. of Calcutta v. Liberty Cinema* [(1965) 2 SCR 477 : AIR 1965 SC 1107] and held, that in the case of regulatory fees the State is not bound to prove quid pro quo.

19. Yet another finding recorded by the High Court is that by virtue of enactment of the IDR Act (after insertion of Item 26 aforementioned) the State is not totally denuded of any power to make a law with respect to rectified spirit or for that matter industrial alcohol. After noticing Entry 33 of List III in the Seventh Schedule, Section 18-G read with other provisions of the IDR Act and the Rule (made by the State excise authority) concerned therein, the High Court observed :

"All this discussion is for the purpose of establishing that by virtue of the IDR Act, the State Legislatures are not completely and totally deprived of the power conferred upon them by Entry 24 of List II, but that the deprivation is only partial, viz., to the extent indicated in the IDR Act. This discussion is equally relevant for the purpose of determining whether the field indicated by Entry 33 of List III has been totally occupied by Parliament or whether any field is still left unoccupied for the State Legislature to make a law. Entry 33, it may be reiterated, empowers both Parliament and State Legislatures to make a law with respect to trade and commerce in products of any industry included in the First Schedule to the IDR Act. The said entry further empowers both Parliament and State Legislatures to make a law with respect to

production, supply and distribution of the products of such industry. Rectified spirit is, without a doubt, a product of an industry specified in the First Schedule to the IDR Act. If so, both Parliament and State Legislatures can make a law with respect to the production, supply and distribution of products of such industry. By virtue of Section 18-G of the IDR Act, the State Legislature cannot, of course, make a law regulating the supply and distribution of and/or trade and commerce in such products for securing the equitable distribution and availability at fair prices of such product; such an order can be made only by the Central Government under that Section, but in other respects, the field is open for the State Legislatures."

20. Relying upon the holding in *Tika Ramji v. State of U.P.* [1956 SCR 393 : AIR 1956 SC 676], the High Court observed that "the possibility of an order under Section 18-G being issued by the Central Government would not be enough. The existence of such an order would be the essential prerequisite before any repugnancy could ever arise". It was held that the rule made by the State and Section 18-G of the IDR Act "operate on different fields" and not even on cognate fields if examined applying the doctrine of pith and substance.

21. The reasoning in the said judgment has been approved by this Court in all respects in its judgment dated 21-1-1997 [(1997) 2 SCC 715]. The following observations in the judgment dated 21-1-1997 in *Vam Organic* [(1997) 2 SCC 715] are apposite :

"This Court dealt with the question of legislative competence of the State to impose tax or levy on industrial alcohol in the case of *Synthetics and Chemicals Ltd. v. State of U.P.* [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623] and ruled in the negative. The High Court took the view that the distinction between ethyl alcohol/rectified spirit as such and denatured spirit was not in issue, nor was it considered in that judgment and held that this Court cannot be said to have ruled that every rectified spirit/ethyl alcohol is industrial alcohol. The High Court reiterated that once denatured, the alcohol becomes exclusively industrial alcohol since it cannot be used for obtaining country liquor or for manufacturing IMFLs and said that it is to ensure that ethyl alcohol meant for industrial use is not misused or diverted for human consumption that impugned regulation is provided for by the State and further that the regulation being part of general regulation of the trade in alcohol in the interest of public health is relatable to Entries 6 and 8 of List II."

At a later stage, the learned Chief Justice, speaking for the Bench, observed :

"A careful reading of that judgment [*Synthetics*] [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623] shows that the Court was fully aware of the fact that rectified spirit was the ingredient for intoxicating liquor or alcoholic liquor for human consumption although rectified spirit/ethyl alcohol as well as denatured spirit are referred to as 'industrial alcohol' in that judgment. This Court did not hold that the State will have no power whatsoever in relation to 'industrial alcohol'."

This Court observed further :

"It is to be noticed that the States under Entries 8 and 51 of List II read with Entry 84 of List I have exclusive privilege to legislate on intoxicating liquor or alcoholic liquor for human consumption. Hence, so long as any alcoholic preparation can be

diverted to human consumption, the States shall have the power to legislate as also to impose taxes, etc."

22. The decision also affirms the reasoning and conclusion of the High Court on the interplay of the IDR Act and the rule impugned therein in the context of Entry 33 of List III, referred to hereinbefore. (We may say that this aspect has been kept in mind by us while demarcating hereinafter the respective spheres of the Union and the States in the matter of control over production and disposal of rectified spirit.) The learned Chief Justice also relied upon the earlier decision of this Court in McDowell [(1996) 3 SCC 709] and in particular upon the following holding therein : (SCC p. 732, para 35)

"It follows from the above discussion that the power to make a law with respect to manufacture and production and its prohibition (among other matters mentioned in Entry 8 in List II) belongs exclusively to the State Legislatures. Item 26 in the First Schedule to the IDR Act must be read subject to Entry 8 - and for that matter, Entry 6 - in List II. So read, the said item does not and cannot deal with manufacture, production or with prohibition of manufacture and production of intoxicating liquors. All the petitioners before us are engaged in the manufacture of intoxicating liquors. The State Legislature is, therefore, perfectly competent to make a law prohibiting their manufacture and production - in addition to their sale, consumption, possession and transport - with reference to Entries 8 and 6 in List II of the Seventh Schedule to the Constitution read with Article 47 thereof."

23. We are of the respectful and considered opinion that the decision in Synthetics [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623] did not deal with the aspects which are arising for consideration herein and that it was mainly concerned with industrial alcohol, i.e., denatured rectified spirit. While holding that rectified spirit is industrial alcohol, it recognised at the same time that it can be utilised for obtaining country liquor (by diluting it) or for manufacturing IMFLs. When the decision says that rectified spirit with 95% alcohol content v/v is "toxic", what it meant was that if taken as it is, it is harmful and injurious to health. By saying "toxic" it did not mean that it cannot be utilised for potable purposes either by diluting it or by blending it with other items. The undeniable fact is that rectified spirit is both industrial alcohol as well as a liquor which can be converted into country liquor just by adding water. It is also the basic substance from which IMFLs are made. (Denatured rectified spirit, of course, is wholly and exclusively industrial alcohol.) This basic factual premise, which is not and cannot be denied by anyone before us [If rectified spirit is toxic and unfit for human consumption, why is it necessary to denature it, asks the learned Additional Advocate General for the State of Uttar Pradesh. Denaturing is meant precisely for making what is meant for human consumption unfit for human consumption, he says.] raises certain aspects for consideration herein which were not raised or considered in Synthetics [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623]. Take a case where two industries 'A' and 'B' come forward with proposals to manufacture rectified spirit; 'A' says that it proposes to manufacture rectified spirit and then denature it immediately and sell it as industrial alcohol while 'B' says that it will manufacture rectified spirit and utilise it entirely for obtaining country liquor (arrack or by whatever other name, it may be called) or for manufacturing IMFLs from out of it or to supply it to others for the said purpose. According to Synthetics [(1990) 1 SCC 109 : 1989 Supp (1) SCR 623], 'A' is under the exclusive control of the Union and the only powers of the State are those as are enumerated in para 86 quoted above. But what about 'B' ? The rectified spirit manufactured by it is avowedly meant only for potable purposes. Can it yet be called "industrial alcohol" ? Can it still be said that the State concerned has no power or authority to control and regulate industry 'B' and that the Union alone

will control and regulate it until the potable liquors are manufactured ? The Union is certainly not interested in or concerned with manufacture or process of manufacture of country liquor or IMFLs. Does this situation not leave a large enough room for abuse and misuse of rectified spirit ? It should be remembered that according to many States before us, bulk of the rectified spirit produced in their respective States is meant for and is utilised for obtaining or manufacturing potable liquors. Can it be said even in such a situation that the State should fold its hands and wait and watch till the potable stage is reached. Yet another and additional circumstance is this : It is not brought to our notice that any notified orders have been issued under Section 18-G of the IDR Act regulating the sale, disposal or use of rectified spirit for the purpose of obtaining or manufacturing potable liquors which means that by virtue of Entry 33 of List III, the States do have the power to legislate on this field - field not occupied by any law made by the Union. It is these and many other situations which have to be taken into consideration and provided for in the interests of law, public health, public revenue and also in the interests of proper delineation of the spheres of the Union and the States. The line of demarcation can and should be drawn at the stage of clearance/removal of the rectified spirit. Where the removal/clearance is for industrial purposes (other than the manufacture of potable liquor), the levy of duties of excise and all other control shall be of the Union but where the removal/clearance is for obtaining or manufacturing potable liquors, the levy of duties of excise and all other control shall be that of the States. This calls for a joint control and supervision of the process of manufacture of rectified spirit and its use and disposal. We proceed to elaborate :

(1) So far as industries engaged in manufacturing rectified spirit meant exclusively for supply to industries (industries other than those engaged in obtaining or manufacture of potable liquors), whether after denaturing it or without denaturing it, are concerned, they shall be under the total and exclusive control of the Union and be governed by the IDR Act and the rules and regulations made thereunder. In other words, where the entire rectified spirit is supplied for such industrial purposes, or to the extent it is so supplied, as the case may be, the levy of excise duties and all other control including establishment of distillery shall be that of the Union. The power of the States in the case of such an industry is only to see and ensure that rectified spirit, whether in the course of its manufacture or after its manufacture, is not diverted or misused for potable purposes. They can make necessary regulations requiring the industry to submit periodical statements of raw material and the finished product (rectified spirit) and are entitled to verify their correctness. For this purpose, the States will also be entitled to post their staff in the distilleries and levy reasonable regulatory fees to defray the cost of such staff, as held by this Court in *Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd. v. State of Gujarat* [(1992) 2 SCC : (1992) 1 SCR 391] and *Gujchem Distillers India Ltd. v. State of Gujarat* [(1992) 2 SCC 399 : (1992) 1 SCR 675].

(2) So far as industries engaged in the manufacture of rectified spirit exclusively for the purpose of obtaining or manufacturing potable liquors - or supplying the same to the State Government or its nominees for the said purpose - are concerned, they shall be under the total and exclusive control of the States in all respects and at all stages including the establishment of the distillery. In other words, where the entire rectified spirit produced is supplied for potable purposes - or to the extent it is so supplied, as the case may be - the levy of excise duties and all other control shall be that of the States. According to the State Governments, most of the distilleries fall under this category.

(3) So far as industries engaged in the manufacture of rectified spirit, both for the purpose of (a) supplying it to industries (other than industries engaged in obtaining or manufacturing potable liquors/intoxicating liquors) and (b) for obtaining or manufacturing or supplying it to Governments/persons for obtaining or manufacturing potable liquors are concerned, the following is the position : The power to permit the establishment and regulation of the functioning of the distillery is concerned, it shall be the exclusive domain of the Union. But so far as the levy of excise duties is concerned, the duties on rectified spirit removed/cleared for supply to industries (other than industries engaged in obtaining or manufacturing potable liquors), shall be levied by the Union while the duties of excise on rectified spirit cleared/removed for the purposes of obtaining or manufacturing potable liquors shall be levied by the State Government concerned. The disposal, i.e., clearance and removal of rectified spirit in the case of such an industry shall be under the joint control of the Union and the State concerned to ensure evasion of excise duties on rectified spirit removed/cleared from the distillery. It is obvious that in respect of these industries too, the power of the States to take necessary steps to ensure against the misuse or diversion of rectified spirit meant for industrial purposes (supply to industries other than those engaged in obtaining or manufacturing potable liquors) to potable purposes, both during and after the manufacture of rectified spirit, continues unaffected. Any rectified spirit supplied, diverted or utilised for potable purposes, i.e., for obtaining or manufacturing potable liquors shall be supplied to and/or utilised, as the case may be, in accordance with the State excise enactment concerned and the rules and regulations made thereunder. If the State is so advised, it is equally competent to prohibit the use, diversion or supply of rectified spirit for potable purposes.

(4) It is advisable - nay, necessary - that the Union Government makes necessary rules/regulations under the IDR Act directing that no rectified spirit shall be supplied to industries except after denaturing it save those few industries (other than those industries which are engaged in obtaining or manufacturing potable liquors) where denatured spirit cannot be used for manufacturing purposes.

(6) So far as rectified spirit meant for being supplied to or utilised for potable purposes is concerned, it shall be under the exclusive control of the States from the moment it is cleared/removed for that purpose from the distillery - apart from other powers referred to above.

(7) The power to permit the establishment of any industry engaged in the manufacture of potable liquors including IMFLs, beer, country liquor and other intoxicating drinks is exclusively vested in the States. The power to prohibit and/or regulate the manufacture, production, sale, transport or consumption of such intoxicating liquors is equally that of the States, as held in McDowell [(1996) 3 SCC 709].

24. The writ petition is disposed of with the above directions and clarifications. The show-cause notice issued by the Bihar excise authorities to the writ petitioner shall be disposed of in the light of the law declared herein, after making necessary enquiry into relevant factual position, according to law.

25. No costs.