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SPECIAL REFERENCE NO. 1 OF 2001

MARCH 25, 2004

[S. RAJENDRA BABU, K.G. BALAKRISHNAN, P. VENKATARAMA
REDDI, B.N. SRIKRISHNA AND G.P. MATHUR, JJ.]

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Constitution of India, 1950:

Article 246 and Schedule VII List I Entry 53 and List II Entry 25—

C *Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001—Legislative competence of the State Legislature to enact the Act—Held: The provisions relating to natural gas or liquefied natural gas are without legislative competence and the Act to that extent is **ultra vires** the Constitution.*

Article 246 Schedule VII List I Entry 53—“Petroleum and petroleum products”—Legislative competence to enact legislation on “natural gas”—

D *Held: Natural gas and liquefied natural gas are included in the expression “petroleum and petroleum products”—Hence, Natural gas and liquefied natural gas are Union subjects and, therefore, the Union has exclusive legislative competence to enact laws on natural gas.*

E *Article 246 Schedule VII List II Entry 25—“Gas and gasworks”—Legislative competence to enact laws on—Held: Entry 25 of List II covers only manufactured gas and not natural gas—Hence, State Legislatures do not have legislative competence to enact laws on natural gas and liquefied natural gas.*

F *Articles 245 & 246 Schedule VII Lists I, II and III—Pith and Substance Rule—Applicability of—Distribution of Legislative power—Tests to determine—Held: Parliament might incidentally trench upon the subject covered by State list—Conversely, the State Legislature might also do so in respect of a subject in the Union list—If the conflict could not be resolved, the central legislation would prevail—However, attempts should be made to reconcile the difference.*

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Words and Phrases:

“Gas and gasworks”—Meaning of—In the context of Constitution of India, 1950, Sch. VII List II Entry 25.

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"Petroleum", "natural gas" and "liquefied natural gas"—Meaning of A

The following questions were referred to this Court under Article 143(1) of the Constitution:

- (1) Whether natural gas in whatever physical form including Liquefied Natural Gas (LNG) is a Union subject covered by Entry 53 of List I and the Union has exclusive legislative competence to enact laws on natural gas. B
- (2) Whether States have legislative competence to make laws on the subject of natural gas and Liquefied Natural Gas under Entry 25 of List II of the Seventh Schedule to the Constitution. C
- (3) Whether the State of Gujarat had legislative competence to enact Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001.

Answering the reference, the Court

HELD: 1. The controversy in the instant case could only be resolved by examining the question whether the expression 'petroleum' and 'petroleum products' or 'mineral oil resources' mentioned in Entry 53 of List I of the Seventh Schedule would take in its compass the natural gas or its derivative forms. [550-C] D

QUESTION NO. 1

2.1. "Natural gas" is defined as a naturally occurring mixture of hydro-carbon and non-hydrocarbon gases found in the porous geologic formations beneath the earth's surface, often in association with petroleum. [550-E] F

Kirk-Othmer: Encyclopaedia of Chemical Technology, 3rd Edn. Vol. 11 p. 630, referred to.

2.2. Natural gas is found in areas of the earth that are covered with sedimentary rocks. These sediments contain the organic source materials from which natural gas and petroleum were produced. [550-G] G

2.3. Gas and oil are found in huge subterranean caverns. They both occur in minute pores of such rocks as sandstone and limestone. They are held captive under great pressure by surrounding rock formations that H

A are impervious to seepage. Finally they are released when the shifting of the earth's surface cracks the cap rock. [552-B-C]

3.1. Petroleum is an oily, inflammable liquid made up mostly of hydrocarbons - compounds containing only hydrogen and carbon. The hydrogen content of petroleum ranges from 50 percent to 98 percent. The rest is made up chiefly of organic compounds containing oxygen, nitrogen or sulphur.

The New Popular Science Vol. 2, referred to.

3.2. Natural gas has also been defined as "A mineral in the form of a vapour". A gas characterized by hydrocarbons in mixture, occurring naturally in the crust of the earth, obtained by drilling, and piped to cities and villages, industrial and commercial centres, for use in heating, illumination and other purposes. [552-D-E]

Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal, [1962]
D Supp. 3 SCR 1, held inapplicable.

Borys v. Canadian Pacific Railway Co., (1953) 1 All ER 451, referred to.

Webster's New 20th Century Dictionary, unabridged 2nd Edn. and
E *Bailantine's Law Dictionary, 3rd Edn., 1969, referred to.*

4.1. In various legislations covering the field of petroleum and petroleum products, either the word 'petroleum' or 'petroleum products' has been defined in an inclusive way, so as to include natural gas.

F [553-F-G]

4.2. The word 'petroleum' literally means 'rock oil'. It originated from the Latin term petra-oleum, (petra - means rock or stone and oleum - means oil). Thus, Natural Gas could very well be comprehended within the expression 'petroleum' or 'petroleum product'. [553-H; 554-A]

G *Encyclopaedia Britannica, 15th Edn. Vol. 19 p. 589 (1990), referred to.*

5. It is important to consider the legislative practice in interpreting the various words used in the Constitution. [554-A-B]

H *State of Madras v. Gannon Drunkenly & Co., [1959] SCR 379, relied*

on.

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Croft v. Dumpy, (1933) AC 156, cited.

6.1. Under Entry 53 of List I, Parliament has got power to make legislation for regulation and development of oil fields, mineral oil resources, petroleum, petroleum products, other liquids and substances declared by Parliament by law to be dangerously inflammable. Natural gas product extracted from oil wells predominantly comprises of methane. Production of natural gas is not independent of the production of other petroleum products; though from some wells the natural gas alone would emanate, other products may emanate from subterranean chambers of earth. But all oil fields are explored for their potential hydrocarbon. Therefore, the regulation of oil fields and mineral oil resources necessarily encompasses the regulation as well as development of natural gas. For free and smooth flow of trade, commerce and industry throughout the length and breadth of the country, natural gas and other petroleum products play a vital role. [557-C-E]

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6.2. The people of the entire country have a stake in the natural gas and its benefit has to be shared by the whole country. There should be just and reasonable use of natural gas for national development. If one State alone is allowed to extract and use natural gas, then other States will be deprived of its equitable share. This position goes on to fortify the stand adopted by the Union and will be a pointer to the conclusion that "natural gas" is included in Entry 53 of List I. Thus, the legislative history and the definition of "petroleum", "petroleum products" and "mineral oil resources" contained in various legislations and books and the national interest involved in the equitable distribution of natural gas amongst the States - all these factors lead to the inescapable conclusion that "natural gas" in raw and liquefied form is petroleum product and part of mineral oil resource, which needs to be regulated by the Union. [557-E-H]

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Re: Cauvery Water Dispute Tribunal, [1993] Supp. 1 SCC 96, relied on.

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7. In view of the above, the first question is answered as follows:

Natural Gas including Liquefied Natural Gas (LNG) is a Union subject covered by Entry 53 of List I and the Union has exclusive legislative competence to enact laws on natural gas. [559-B]

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A **QUESTION NO. 2.**

8. Going by the definition of gas as given in Section 2(g) of the Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001 wherein "gas" has been defined as "a matter of gaseous state which predominantly consists of methane", it would certainly include natural gas

B also. Under Entry 25 List II of the Seventh Schedule, the State would be competent to pass legislation only in respect of gas and gasworks and having regard to the collocation of words "gas and gasworks", this Entry would mean any work or industry relating to manufactured gas which is often used for industrial, medical or other similar purposes. Entry 25 of

C List II will have to be read as a whole. The expressions therein cannot be compartmentally interpreted. The word 'gas' in the Entry will take colour from other words 'gasworks'. In Ballantine's Law Dictionary, 3rd. edition, 1969 'Gasworks' is defined as "a plant for the manufacture of artificial gas". Similarly, in Webster's New 20th Century Dictionary, it is defined as "an establishment in which gas for heating and lighting is manufactured". In the www.freedictionary.com 'gasworks' is explained as "a manufactory of gas, with all the machinery and appurtenances; a place where gas is generated". The meaning of the term 'gasworks' is well understood in the sense that the place where the gas is manufactured. So it is difficult to accept the proposition that 'gas' in Entry 25 of List II includes Natural Gas, which is fundamentally different from manufactured gas in gasworks. Therefore, Entry 25 of List II could only cover manufactured gas and does not cover Natural Gas within its ambit. This will negative the argument of States that only they have exclusive powers to make laws dealing with Natural Gas and Liquefied Natural Gas. Entry 25 of List II only covers manufactured gas. This is the clear intention of

F framers of the Constitution. This reading will in no way make that Entry a 'useless lumber' as feared by the States, because Natural Gas was never intended to be covered by that Entry. It is also difficult to accept the argument of the States that all 'gas' could be categorized as dangerously inflammable and thus arriving at the conclusion that Natural Gas is also covered in the State List because the differentiation is based not on the characteristic of gas, but on the manner of its origin. Entry 25 of List II covers the gas manufactured and used in gasworks. In view of this specific Entry 53, for any petroleum and petroleum products, the State Legislature has no legislative competence to pass any legislation in respect of natural gas. [558-A-G]

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Ballantine's Law Dictionary, 3rd. edition, 1969, Webster's New 20th A Century Dictionary and www.freddiectionary.com, referred to.

9. Thus, the second question is answered as follows: The States have no legislative competence to make laws on the subject of natural gas and liquefied natural gas under Entry 25 of List II of the Seventh Schedule to the Constitution. [559-C]

QUESTION NO. 3

10. The third question is answered as follows: The Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001, so far as the provisions contained therein relating to the natural gas or liquefied natural gas (LNG) are concerned, is without any legislative competence and the Act is to that extent *ultra vires* of the Constitution. [559-D-E]

11. The Constitution of India delineates the contours of the powers enjoyed by the State Legislature and the Parliament in respect of various subjects enumerated in the Seventh Schedule. The rules relating to distribution of powers are to be gathered from the various provisions contained in Part XI and the legislative heads mentioned in the three lists of the Schedule. The legislative power of both the Union and State Legislatures are given in precise terms. Entries in the lists are themselves not powers of legislation, but fields of legislation. However, an Entry in one list cannot be so interpreted as to make it cancel or obliterate another entry or make another entry meaningless. In case of apparent conflict, it is the duty of the court to iron out the crease and avoid conflict by reconciling the conflict. If any entry overlaps or is in apparent conflict with another entry, every attempt shall be made to harmonise the same.

[547-B-D]

12. Although Parliament cannot legislate on any of the Entries in the State List, it may do so incidentally while essentially dealing with the subject coming within the purview of the Entry in the Union List. Conversely, State Legislature also while making legislation may incidentally trench upon the subject covered in the Union List. Such incidental encroachment in either event need not make the legislation *ultra vires* of the Constitution. The doctrine of pith and substance is sometimes invoked to find out the nature and content of the legislation. However, when there is an irreconcilable conflict between the two legislations, the Central legislation shall prevail. However, every attempt would be made

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A to reconcile the conflict. [548-A-C]

The Central Provinces and Berar Act No. XIV of 1938 1939 ELR 18, Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna, (1947) 74 IA 23 and Subramanyan Chettiar v. Muttuswami Goundar, (1940) FCR 188, relied on.

B ADVISORY JURISDICTION : Special Reference No. 1 of 2001.

(Under Article 143(1) of the Constitution of India.)

WITH

C W.P. (C) No. 852/91, C.A. No. 3575, 3576 of 1991.

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G The following Judgment/Order of the Court was delivered :

K.G. BALAKRISHNAN, J. This is a Reference made by the President of India under Article 143(1) of the Constitution of India. The Gujarat State legislature passed an Act by name "Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001" (hereinafter being referred to as "Gujarat

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Act"), which came into force w.e.f. 19th December, 2000. The object of the enactment is to provide for regulation of transmission, supply and distribution of gas, in the interests of general public and to promote gas industry in the State, and for that purpose, to establish Gujarat Gas Regulatory Authority and for matters connected therewith and incidental thereto. The term "Gas" has been defined in the Gujarat Act under Section 2(h) as follows:-

"Gas" means a matter in gaseous state which predominantly consists of methane."

The State legislature passed the said enactment by tracing its legislative competence under Entry No. 25 of List II of the Seventh Schedule of the Constitution. The Parliament has passed various enactments under Entry No. 53 of List I dealing with the matters of petroleum and petroleum products. The Entry No. 53 of List I of the Seventh Schedule reads as follows:-

"Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable."

Entry No. 25 of List II reads as follows:-

"Gas and gas works"

Article 246 of the Constitution lays down the principle that the Parliament alone has exclusive powers to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule. As regards entries in List II, the legislature of the State has exclusive power to make laws subject, of course, to clause (i) and (ii) of Article 246. Article 246 reads as follows:-

"246. Subject matter of laws made by Parliament and by the Legislature of States:

(1) Notwithstanding anything in clause (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List");

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as "Concurrent List").

- A (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").
- B (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included [in a State] notwithstanding that such matter is a matter enumerated in the State List."

When the State of Gujarat passed the Gujarat Act, the question arose whether the State Government can pass an enactment in respect of gas, including natural gas in all its forms by virtue of the legislative competence based on Entry 25 of List II of the Seventh Schedule. The Federal Legislature passed Petroleum Act, 1934. The Union of India, *inter alia*, enacted various legislations, namely, The Oil Fields (Regulation and Development) Act, 1948; Oil Industry (Development) Act, 1974; The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962; the Oil Industry (Development) Act, 1974. All these legislations have been passed by the Union of India on the basis of the legislative competence under Entry 53 of List I of the Seventh Schedule. Oil and Natural Gas Commission increased the price of natural gas supplied by them. The Association of Natural Gas Consuming Industries of Gujarat and others filed Civil Writ Petition before the High Court of Gujarat wherein they challenged the legislative competence of the Union to make laws on "gas and gas works." Therefore, the question arose whether "Natural Gas" is a Union subject or State subject and whether the State of Gujarat and the other States have the legislative competence to make laws on the subject of "Natural Gas." It is in this background, the following questions were referred to this Court under clause 1 of Article 143 of the Constitution of India:

- G (1) Whether natural gas in whatever physical form including Liquefied Natural Gas (LNG) is a Union subject covered by Entry 53 of List I and the Union has exclusive legislative competence to enact laws on natural gas.
- G (2) Whether States have legislative competence to make laws on the subject of natural gas and Liquefied Natural Gas under Entry 25 of List II of the Seventh Schedule to the Constitution.
- H (3) Whether the State of Gujarat had legislative competence to enact Gujarat Gas (Regulation of Transmission, Supply and

Distribution) Act 2001.

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After the receipt of the Reference, notices were served on the States and the Union Territories. The learned Attorney General for India appeared for the Union of India and all the States were represented through various Counsel. We heard learned Attorney General for India and the learned Senior Counsel who appeared for various States and Union Territories.

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The learned Attorney General contended that the various definitions in different enactments indicate that 'petroleum and petroleum product' include 'natural gas' and it was urged that 'natural gas' is a Union subject covered by Entry 53 of List I. It was contended that the Union Government passed various legislations in respect of 'Petroleum and Petroleum Products' and 'Mineral Resources', namely, The Oil Fields (Regulation and Development) Act, 1948; The Oil Industry (Development) Act, 1974; Petroleum and Minerals Pipelines (Acquisition of Right of User in Land), Act, 1962; and Petroleum & Natural Gas Rules, 1959, Industries (Development and Regulation) Act, 1951, as the Parliament alone is competent to do so under Entry 53, List I of the Seventh Schedule. It was contended by the Attorney General that various definitions indicate that there is uniform and consistent legislative practice and it is evident that the terms "Petroleum and Minerals" include natural gas. The Central Government has undertaken the task of ensuring balanced growth in supply, transmission and distribution of natural gas and natural gas being a 'petroleum product' falls exclusively in the domain of the Central legislation. The 'natural gas' in whatever physical form, including Liquefied Natural Gas (LNG) is a Union subject covered under Entry 53 of List I and Entry 25 under List II of the Seventh Schedule deals with "gas and gas works" and it relates to manufacture of synthetic gas. Initially manufactured gas was used for lighting street lamps and such other allied purposes. Certain gases like acetylene, oxygen, carbon-dioxide are locally manufactured and used in industries such as for welding purposes, or in hospitals, or for preparing aerated drinks, etc. and Entry 25 under List II enables the State Government to regulate and control the manufacture and distribution of these gases by the local industry and mineral oil resources or petroleum products would not fall under Entry 25 of List II. It was further contended that the provisions of the Gujarat Act seek to trench upon the field reserved for the Union. It was submitted that the Gujarat Act confers authority upon the State Government to regulate the business of distribution and transmission of gas and the provisions of that Act, ex facie, provide for taking over the mineral oil fields and intermeddle in the activities relating to the drilling for oil, etc. It was also

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A pointed out that some other provisions of the said enactment, *inter-alia*, deal with the licensing and distribution of gas and these provisions are ultra vires of the legislative competence of the State.

The learned Counsel for the State of Gujarat, Shri Ashok Desai contended that the expression "gas" used in Entry 25 of List II would include all types of gases and, therefore, any legislation related to "gas and gas works" is perfectly within the legislative competence of the State. It was submitted that in *Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal and Ors.*, [1962] (Suppl.) 3 SCR 1, the scope and ambit of Entry 25 of List II had been authoritatively pronounced by this Court and this Court held that the field of entire industry, dealing with "gas and gas works" would fall under Entry 25 of List II. It was further submitted that the entries in the three Lists were only legislative heads or fields of legislation and they demarcated the area over which the appropriate Legislature could operate and the widest amplitude should be given to the language of the entries. It was submitted by the learned Counsel for the State that when there is a conflict between two entries, the Court should reconcile the entries and attempt should be made to harmonise the apparently conflicting entries and the State should not be denuded of its power to legislate on the subject. The learned Counsel strongly urged that the State has exclusive powers to make laws dealing with 'natural gas' in whatever physical form, and that it also would include the Liquefied Natural Gas (LNG). The learned Counsel for the State elaborately argued and brought to our attention the various publications and research papers on the subject to show as to what is 'natural gas' and its derivative forms.

It was further contended that "gas" as defined in the Gujarat Act means matter in gaseous state which predominantly consists of methane and it will not come within the ambit of 'petroleum and petroleum products.' It was argued that "gas" could be extracted from the bowl of the earth without there being any petrol or petroleum products and according to the learned counsel, it would fall within the domain of State legislation under Entry 25 of List II.

The plea made on behalf of the State of Gujarat was adopted by almost all the States. The learned Senior Counsel appearing for the State of Assam submitted that Entry 25 of List II is clear and unambiguous and it is incorrect to suggest that "gas and gas works" should be limited only to manufactured gases or to gases other than natural gas. It was argued that the entries in the legislative lists are to be given widest amplitude and it is constitutionally impermissible to add words of qualification to Entry 25 List II. It was argued

that in commercial, scientific and industrial parlance, "Gas" (including Natural Gas and Liquefied Natural Gas (LNG)) is quite distinct from "Petroleum or Petroleum Products". It was submitted that at a number of gas fields in Assam, operating in places like Pingri, Thangakhat, Chubua, Jorajan, gases were extracted not in association with any other substance and it is distinct from petroleum and oil. It was also pointed out that in a federal structure like ours, a natural resource like gas is fundamental to the very economic existence and prosperity of a State and consistent with the principles of federalism, the State shall not be denied the opportunity to exploit the natural resources. It was submitted, relying on the observation in *Sir Byramji Jeejibhai v. Province of Bombay*, (1939) 3 FLJ (HC) 25 at 31, that the Courts must, if possible, reconcile conflicting items in the Central and Provincial Lists before falling back to the non obstante clause in Section 100 of the Government of India Act, and in applying that principle the Court may restrict the general words of the Federal list so as not to nullify a particular power contained in the Provincial list.

Learned senior Counsel Mr. P. Chidambaram appearing for the Common Carriers Company contended that any industrial activities connected to "gas and gas works" are beneficial to the State and the State must be given power to legislate on the subject. The expression "gas" mentioned in Entry 25 of List II takes within its ambit 'natural gas' which is to be considered as equivalent to electricity and water. It was argued that "natural gas" is defined as a naturally occurring mixture of hydrocarbon and non hydrocarbon gases found in the porous geologic formations beneath earth's surface and is used principally as a source of heat in residential, commercial and industrial service because of its clean burning quality, convenience of utilisation, low cost and abundance. In other words, 'natural gas' is widely used as a energy source. It was submitted that the States alone would be in a position to exploit the resources and distribute it to the consumers. It was also argued that 'natural gas' is classified in several broad categories such as (1) wet gas which contains condensable hydrocarbons such as propane, butane and pentane; (2) lean gas denotes an absence of condensable hydrocarbons; (3) dry gas whose water content has been reduced by dehydration process; (4) sour gas contains hydrogen sulfide and other sulfur compounds and (5) sweet gas denotes an absence of hydrogen sulfide and other sulfur compounds. It was submitted that these natural gases are not associated with any petroleum products. The learned counsel argued that the State had got legislative competence to pass the legislation in respect of natural gas, as it is not a petroleum product.

A Before advertiring to the main question regarding the legislative competence of the State to pass the Gujarat Act, a brief survey of the various provisions thereof may be of relevance. The object of the enactment is to provide the regulation of transmission, supply and distribution of gas, in the interests of the general public and to promote gas industry in the State. Under section 2(h), "gas" has been defined as a matter in gaseous state which predominantly consists of methane. Under section 2(g), "distribution" means distribution of gas at a low pressure by means of pipelines to a consumer other than a bulk consumer. "Transmission" is defined as means of transmission of gas at high pressure by means of pipelines. Chapter II of the Act proposes to appoint an officer to be the Commissioner of gas. Chapter III of the Act provides for establishment and Constitution of authority, namely, Gujarat Gas Regulatory Authority. The authority shall consist of a Chairperson and two other members to be appointed by the State Government. The qualifications and the mode in which vacancies are to be filled up are prescribed under Section 8 and 9 of the Act. The functions and powers of authority are mentioned in Chapter IV, which include, *inter alia*, the function of regulating transmission, supply and distribution of gas, to promote gas industry in the State in accordance with the direction given by the State Government, to give directions to a licensee for ensuring compliance of terms and conditions of a licence held by him. Under Section 18 of the Act, the Authority, for the purposes of any inquiry under the Act, have been given powers of a civil court. Chapter VI of the Act specifically says that no person other than a specified company and a person referred to in sub-section (1) of Section 55 shall carry on the business of transmission in the State and that subject to the rules, if any, a specified company shall carry on the business of transmission in the State. Section 25(2) says that no person shall lay pipelines for distribution in the State unless he is a licensee. Chapter IX of the Act deals with offences and penalties and Section 34(1) and (2) states that whoever carries on business of transmission in contravention of clause (a) of sub-Section (1) of Section 23 or of clause (a) or (b) of sub-Section (2) of Section 55 or whoever carries on business of distribution or lays pipelines for such distribution without a licence in contravention of Section 25, shall on conviction, be punished with imprisonment which may extend to six months or with fine not exceeding five lakhs of rupees or with both and in the case of a continuing offence an additional fine not exceeding twenty thousand rupees for every day after the first, during which the offence continues.

H Apart from the pre-constitutional laws, the Union has passed series of

legislations relating to petroleum and petroleum products. The Mines Act, 1952; the Mines and Minerals (Development) Act, 1957; Oil Fields (Regulation and Development) Act, 1948; Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962; The Oil Industry (Development) Act, 1974; Industries (Development and Regulation) Act, 1957; Petroleum and Natural Gas Rules, 1959 are some of the legislations made by the Central Government. A
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The Constitution of India delineates the contours of the powers enjoyed by the State Legislature and the Parliament in respect of various subjects enumerated in the Seventh Schedule. The rules relating to distribution of powers are to be gathered from the various provisions contained in Part XI and the legislative heads mentioned in the three lists of the Schedule. The legislative power of both Union and State Legislatures are given in precise terms. Entries in the lists are themselves not powers of legislation, but fields of legislation. However, an Entry in one list cannot be so interpreted as to make it cancel or obliterate another entry or make another entry meaningless. In case of apparent conflict, it is the duty of the court to iron out the crease and avoid conflict by reconciling the conflict. If any entry overlaps or is in apparent conflict with another entry, every attempt shall be made to harmonise the same. C
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When the question arose about reconciling Entry 45 of List I, duties of excise, and Entry 18 of List II, taxes on the sale of goods, of Government of India Act, 1935, Sir Maurice Gwyer, C.J., in *In re: The Central Provinces and Berar Act No. XIV of 1938* 1939 ELR 18 at page 42-44 observed:

“A grant of the power in general terms, standing by itself, would no doubt be construed in the wider sense, but it may be qualified by other express provisions in the same enactment, by the implication of the context and even by considerations arising out of what appears to be the general scheme of the Act.” E
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It was further observed :

“.....an endeavour must be made to solve it, as the Judicial Committee have said by having recourse to the context and schemes of the Act, and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two entries together and by interpreting, and, where necessary modifying the language of the one by that of the other. If indeed such a reconciliation should prove impossible, G
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A then, and only then, will the non-obstante clause operate and the federal power prevail.”

Although Parliament cannot legislate on any of the Entries in the State List, it may do so incidentally while essentially dealing with the subject coming within the purview of the Entry in the Union list. Conversely, State B Legislature also while making legislation may incidentally trench upon the subject covered in the Union List. Such incidental encroachment in either event need not make the legislation ultra vires of the Constitution. The doctrine of pith and substance is sometimes invoked to find out the nature and content of the legislation. However, when there is an irreconcilable conflict between C the two legislations, the Central legislation shall prevail. However, every attempt would be made to reconcile the conflict.

In *Prafulla Kumar Mukherjee and Ors. v. Bank of Commerce Limited, Khulna*, 1947 (74) IA 23, which was an appeal from the Federal Court of India, the question arose regarding the validity of the provisions of Bengal D Money Lenders Act, 1940. The main attack by the respondent therein was that the Provincial Legislature had no power to make any enactment under Entry 27 List II — “Money lending and Money lenders” — as it incidentally trenches on “promissory notes” and “banking” which is a subject matter reserved for Federal Legislature. It was observed :

E “It is not possible to make so clean a cut between the powers of the various legislatures : they are bound to overlap from time to time. Moreover, the British Parliament when enacting the Indian Constitution Act had a long experience of the working of the British North America Act and the Australian Commonwealth Act and must have known that it is not in practice possible to ensure that the powers entrusted F to the several legislatures will never overlap.”

The following observations of *Sir Maurice Gwyer, C.J. in Subramanyan Chettiar v. Muttuswami Goundar*, (1940) FCR 188 were quoted with approval:

G “It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind observance to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved H

by the Judicial Committee, whereby the impugned statute is examined to ascertain its 'pith and substance,' or its 'true nature and character,' for the purpose of determining "whether it is legislation with respect to matters in this list or in that." Their Lordships agree that this passage correctly describes the grounds on which the rule is founded, and that it applies to Indian as well as to Dominion legislation."

The learned counsel for the State of Gujarat submitted that Entry 25 of List II of the Seventh Schedule gives power to the State Legislature to make legislation on any subject relating to gas and gas-works and that this was considered by this Court in *Calcutta Gas Company (Proprietary) Limited* (supra) and the Act passed by the State legislature, namely, the Oriental Gas Company Act, 1960 was held to be constitutionally valid. The brief facts of the case are : The Oriental Gas Company was registered in England. It was empowered to lay pipes in Calcutta and its suburbs and to excavate the streets for the said purpose. A firm carrying a business in India purchased 98 per cent of the shares of the said Oriental Gas Company and floated a limited liability company named the Calcutta Gas Company (Proprietary) Limited. By an agreement, the Calcutta Gas Company was appointed as the Manager of the Oriental Gas Company. The West Bengal Legislature passed an Act whereby the State Government took over for a period of five years the management and control of the Oriental Gas Company. The appellant Calcutta Gas Company (Proprietary) Limited filed a petition under Article 226 of the Constitution challenging the constitutional validity of the said Act. The State Government contended that by virtue of Entry 25 of List II, the West Bengal Legislature was competent to make laws effecting the gas industry. Speaking for the Bench, Subba Rao, J., as he then was, observed thus:

"Entry 24 in the List II in its widest amplitude takes in all industries, including that of gas and gas-works. So too, entry 25 of the said List comprehends gas industry. There is, therefore, an apparent conflict between the two entries and they overlap each other. In such a contingency, the doctrine of harmonious construction must be invoked..... If industry in entry 24 is interpreted to include gas and gas-works, entry 25 may become redundant, and in the context of the succeeding entries, namely, entry 26, dealing with trade and commerce, and entry 27, dealing with production, supply and distribution of goods, it will be deprived of all its contents and reduced to "useless lumber." If industrial, trade, production and supply aspects are taken out of entry 25, the substratum of the said entry would disappear : in

A that event we would be attributing to the authors of the Constitution ineptitude, want of precision and tautology."

Though it is stated in the *Calcutta Gas Company's* case (supra) that under Entry 25 of List II the State Legislature has got powers to make any legislation regarding gas and gas-works, it cannot be of any assistance to B support the constitutional validity of the 'Gujarat Act' as the definition of the word 'gas' under the Gujarat Act is an inclusive definition and any matter in gaseous state which predominantly contains methane would come within that definition. In *Calcutta Gas Company's* case, the question whether the gas and gas-works mentioned in Entry 25 List II would come within the expression C 'petroleum or petroleum products' was not directly involved nor it was considered in that case.

The controversy in the instant case could only be resolved by examining the question whether the expression 'petroleum' and 'petroleum products' or 'mineral oil resources' mentioned in Entry 53 of List I of the Seventh Schedule D would take in its compass the natural gas or its derivative forms. The above question could be considered by properly understanding these terms. The parties on either side produced the extracts from various authoritative books on the subject.

In Kirk-Othomer *Encyclopedia of Chemical Technology*, [Third Edition], E Vol. 11 page 630, 'Natural gas' is defined as a naturally occurring mixture of hydro-carbon and non-hydrocarbon gases found in the porous geologic formations beneath the earth's surface, often in association with petroleum.

To obtain a marketable product, the raw natural gas flowing from gas F or oil wells must be processed to remove water vapor, inert or poisonous constituents, and condensable hydrocarbons. The processed gas is principally methane, with small amounts of ethane, propane butane, pentane, carbon dioxide and nitrogen. This gas can easily be transported from the producing areas to the market in underground pipelines under pressure or liquefied at low temperatures and transported in specially designed ocean-going tankers.

G Natural gas is found in areas of the earth that are covered with sedimentary rocks. These sediments were first laid down during the Cambrian period, ca 500 million years ago, and this process continued until the end of the Tertiary period ca 100 million years ago. These sediments contain the organic source materials from which natural gas and petroleum were produced.

H Gas and petroleum, being less dense than the water present in the rocks,

tended to migrate upward until contained under impervious rock barriers. A

On page 634 of the above Encyclopedia, Natural gas is classified in several broad categories based on the chemical composition, which are : (1) wet gas contains condensable hydrocarbons such as propane, butane, and pentane; (2) lean gas denotes an absence of condensable hydrocarbons; (3) dry gas is a gas whose water content has been reduced by dehydration process; (4) sour gas contains hydrogen sulfide and other sulfur compounds; and (5) sweet gas denotes an absence of hydrogen sulfide and other sulfur compounds. Natural gas sold to the public is described as lean, dry and sweet. B

The composition of natural gas at the wellhead varies widely from field to field. Many undesirable components may be present that must be removed by processing before delivery to the pipeline. C

The technological advancement in the use of liquefied natural gas (LNG) provided the gas industry with new methods to solve the problems of storage and transportation. Natural gas can be reduced to 1/600 of the volume occupied in the gaseous state by cryogenic processing, safely stored or transported in double-walled insulated metal containers at near atmospheric pressure and when required, can be re-gasified. D

Natural gas is used mainly as fuel to provide heat for homes, commercial buildings and industrial processing. E

In Volume 17 on page 119, it is stated that the term 'petroleum', literally, rock oil, is applied to the deposits of oily material found in the upper strata of the earth's crust. Petroleum was formed by a complex and incompletely understood series of chemical reactions from organic material laid down in previous geological eras. Large deposits have been found in widely different parts of the world and their chemical composition varies greatly. Consequently, no single composition of petroleum can be defined. It is not surprising that the composition varies, since the local distribution of plant, animal and marine life is quite varied and, presumably, was similarly varied when the petroleum precursors were formed. F

As per 'The New Book of Popular Science' Vol. 2, petroleum is an oily, inflammable, liquid made up mostly of hydrocarbons compounds containing only hydrogen and carbon. The hydrogen content of petroleum ranges from 50 per cent to 98 per cent. The rest is made up chiefly of organic compounds containing oxygen, nitrogen, or sulphur. G

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A According to a widely held theory, the remains of countless small marine animals and plants dropped to the ocean bottom and were covered over by mud. Many layers of mud and plant and animal remains accumulated in the course of time. These sediments were subjected to great pressure and heat, and were often squeezed and distorted as the earth's crust moved. Gradually they were converted into layers of sedimentary rock. The plant and animal remains contained within them were transformed into petroleum and natural gas. The details of this transformation are not quite clear.

B Gas and oil are found in huge subterranean caverns. They both occur in minute pores of such rocks as sandstone and limestone. They are held captive under great pressure by surrounding rock formations that are impervious to seepage. Finally they are released when the shifting of the earth's surface cracks the cap rock.

'Natural gas' has been defined in the Webster's new 20th Century dictionary, unabridged second edition, as follows :

D **"Natural Gas :** A mixture of gaseous hydrocarbons, chiefly methane, occurring naturally in the earth in certain place, from which it is piped to cities etc., to be used as a fuel." (p-756).

E In *Ballantine's Law Dictionary*, 3rd Edn., 1969, 'Natural Gas' has been defined as "A mineral in the form of a vapor." A gas characterized by hydrocarbons in mixture, occurring naturally in the crust of the earth, obtained by drilling, and piped to cities and villages, industrial and commercial centres, for use in heating, illumination and other purposes.

F Learned Senior Counsel, Dr. A.M. Singhvi, appearing for the State of Assam, placed reliance on the decision of the Privy Council in *Borys vs. Canadian Pacific Railway Co. and Anr.*, (1953) 1 All ER 451 and contended that gas and petroleum are two distinct commodities. That was a case where the appellant owned an estate in Alberta. The property had been acquired by his predecessors from Canadian Pacific Railway Co. (CPR). In the original conveyance, CPR reserved to themselves all coal, petroleum and valuable stone and in reliance on this reservation, they leased to the second respondent all petroleum that might be found within, on or under the land, together with the exclusive right to work, win and carry it away, for a period of ten years, subject to the right of renewal. There was, in fact, under the appellant's property and the lands adjoining it, a large reservoir of petroleum which was found in a bed of porous rock. This bed contained at the bottom water, then

the petroleum and on top a layer of gas. The porous rock and the other substances were held in a container, which was impervious and shut them off from the surrounding land which lay outside it, but within the container they could move from place to place, and, therefore, any withdrawal of water, petroleum or gas from one portion of the container would normally result in filling of the vacant space by one of those three substances. The particular substance of which the appellant claimed to be owner, and to interference with which he objected, was the gas contained in a cap situated on top of the petroleum and also any gas which was in solution in the petroleum under his land or might be withdrawn from under his land. Therefore, the problem arose when they proceeded to bore for oil, but before they reached the container, the appellant, maintaining that their working would remove his gas, whether free or in a solution, applied for, and obtained, an interim injunction inhibiting them from penetrating into the chamber. At the same time, he brought an action claiming a declaration that he was the owner of the natural gas within his lands. It was decided that although the right to work the petroleum granted in the lease to the second respondent was a right which had been in the original conveyance, the absence of such a clause did not abrogate or limit the powers of the respondent. The second respondent had direct grant of petroleum whereas the appellant had merely such residual rights as remained in him subject to the grant to the respondents and it was held that respondents were under no obligation to conserve the free gas within the appellant's land with the consequent denial of their right to recover the petroleum in the usual way.

In that case, the question was whether the lease-holder had the right to extract petroleum without causing loss of the natural gas embedded in the earth's crust. That question arose because of the nature of conveyance obtained by the lease-holder and the specific lease granted to the lease-holder. Therefore, the decision in *Borys*' case (supra) is of no assistance.

All the materials produced before us would only show that the natural gas is a petroleum product. It is also important to note that in various legislations covering the field of petroleum and petroleum products, either the word 'petroleum' or 'petroleum products' has been defined in an inclusive way, so as to include natural gas. In *Encyclopaedia Britannica*, 15th Edn. Vol. 19, page 589 (1990), it is stated that "liquid and gaseous hydrocarbons are so intimately associated in nature that it has become customary to shorten the expression 'petroleum and natural gas' to 'petroleum' when referring to both." The word petroleum literally means 'rock oil'. It originated from the

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A Latin term petra-oleum. (petra-means rock or stone and oleum-means oil). Thus, Natural Gas could very well be comprehended within the expression 'petroleum' or 'petroleum product.'

In the *State of Madras v. Gannon Dunkerley & Co.*, [1959] SCR 379, it was observed that it is important to consider the legislative practice in interpreting the various words used in the Constitution. Venkatarama Aiyar, J., speaking for the bench, said:

C "Turning next to the question as to the weight to be attached to legislative practice in interpreting words in the Constitution, in *Croft v. Dumphy*, (1933) AC 156, the question was as to the validity of certain provisions in a Canadian statute providing for the search of vessels beyond territorial waters. These provisions occurred in a customs statute, and were intended to prevent evasion of its provisions by smugglers. In affirming the validity of these provisions, Lord Macmillan referred to the legislative practice relating to customs, and observed :

E "When a power is conferred to legislate on a particular topic it is important, in determining the scope of the power, to have regard to what is ordinarily treated as embraced within that topic in legislative practice and particularly in the legislative practice of the State which has conferred the power."

In *Walace Brothers & Co. Ltd. v. Commissioner of Income-tax*, Bombay City and Bombay Suburban District, Lord Uthwatt observed:

F "Where Parliament has conferred a power to legislate on a particular topic it is permissible and important in determining the scope and meaning of the power to have regard to what is ordinarily treated as embraced within that topic in the legislative practice of the United Kingdom. The point of the reference is emphatically not to seek a pattern to which a due exercise of the power must conform. The object is to ascertain the general conception involved in the words in the enabling Act."

G A survey of the various legislations on the topic would show that the term 'petroleum' or 'petroleum products' has been given a wide meaning to include natural gas and other similar products.

H In the Pipelines Act, 1962 of the United Kingdom, 'petroleum' has

been defined as follows :

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“Petroleum includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, whether or not it has undergone any processing; but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.”

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Petroleum has been variously defined in different Acts, noted hereinbelow :

Petroleum (Production) Act, 1934 (UK)

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“Petroleum includes any mineral oil or relative hydro-carbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other shales or other stratified deposits from which oil can be extracted by destructive distillation.”

Petroleum Act, 2000 (Sec. 4), Australia

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“Petroleum” means a naturally occurring substance consisting of a hydrocarbon or mixture of hydrocarbons in gaseous, liquid or solid state but does not include coal or shale unless occurring in circumstances in which the use of techniques for coal seam methane production or in situ gasification would be appropriate.”

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Liquid Fuel Emergency Act, 1984 (Sec. 3)

“petroleum” means :

- a. any naturally occurring hydrocarbon or mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- b. any naturally occurring mixture of a hydrocarbon or hydrocarbons and of another substance or other substances, whether in a gaseous, liquid or solid state.

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The various legislations passed by the Indian Parliament and the relevant rules also would show that ‘natural gas’ was treated as mineral oil resource or petroleum product.

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1. The Oil Fields (Regulation & Development) Act, 1948

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A 3(c)"Mineral Oils" include natural gas and petroleum.

2. *Mines Act, 1952*

2(jj) "minerals" means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation and includes mineral oils (which in turn include natural gas and petroleum)"

B 3. *The Mines & Minerals (Development and Regulation) Act, 1957*

3. (b) "minerals oils" includes natural gas and petroleum.

C 4. *Petroleum and Natural Gas Rules, 1959*

3(k) "Petroleum" means naturally occurring hydrocarbons in a free state, whether in the form of natural gas or in a liquid viscous or solid form, but does not include helium occurring in association with petroleum, or coal, or shale, or any substance which may be extracted from coal, shale, or other rock by the application of heat or by a chemical process."

D 3(n) "petroleum product" means any commodity made from petroleum or natural gas and shall include refined crude oil, processed crude petroleum, residuum from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil residuum, casing head gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, waste oil, blended gasoline, lubricating oil, blends or mixture of oil with one or more liquid products or by-products derived from oil condensate, gas or petroleum hydrocarbons, whether herein enumerated or not."

E 5. *The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962*

F 2. (c) "petroleum" has the same meaning as in the Petroleum Act, 1934, and includes natural gas and refinery gas."

G 6. *The Oil Industry (Development) Act, 1974*

H 2. (h). "mineral oil" includes petroleum and natural gas."

2. (m). "petroleum product" means any commodity made from

petroleum or natural gas and includes refined crude oil, processed crude petroleum, residuum from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil residuum, casing head gasoline, natural gas, gasoline, naphtha, distillate gasoline, kerosene, bitumen, asphalt and tar, waste oil, blended gasoline, lubricating oil, blends or mixture of oil with one or more liquid products or by products derived from oil or gas and blends or mixtures of two or more liquid products or by-products derived from oil condensate and gas or petroleum hydrocarbons not specified hereinbefore.”

Under Entry 53 of List I, Parliament has got power to make legislation for regulation and development of oil fields, mineral oil resources; petroleum, petroleum products, other liquids and substances declared by Parliament by law to be dangerously inflammable. Natural gas product extracted from oil wells is predominantly comprising of methane. Production of natural gas is not independent of the production of other petroleum products; though from some wells the natural gas alone would emanate, other products may emanate from subterranean chambers of earth. But all oil fields are explored for their potential hydrocarbon. Therefore, the regulation of oil fields and mineral oil resources necessarily encompasses the regulation as well as development of natural gas. For free and smooth flow of trade, commerce and industry throughout the length and breadth of the country, natural gas and other petroleum products play a vital role.

In *Re: Cauvery Water Dispute Tribunal*, [1993] (Supp.) SCC 96, the right to flowing water of rivers was described as a right ‘*publici juris*’, i.e. a right of public. So also the people of the entire country has a stake in the natural gas and its benefit has to be shared by the whole country. There should be just and reasonable use of natural gas for national development. If one State alone is allowed to extract and use natural gas, then other States will be deprived of its equitable share. This position goes on to fortify the stand adopted by the Union and will be a pointer to the conclusion that “natural gas” is included in Entry 53 of List I. Thus, the legislative history and the definition of ‘petroleum’, ‘petroleum products’ and ‘mineral oil resources’ contained in various legislations and books and the national interest involved in the equitable distribution of natural gas amongst the States - all these factors lead to the inescapable conclusion that “natural gas” in raw and liquefied form is petroleum product and part of mineral oil resource, which needs to be regulated by the Union.

A Natural gas being a petroleum product, we are of the view that under Entry 53 List I, Union Govt. alone has got legislative competence. Going by the definition of gas as given in Section 2(g) of the Gujarat Act wherein "gas" has been defined as "a matter of gaseous state which predominantly consists of methane", it would certainly include natural gas also. We are of the view that under Entry 25 List II of the Seventh Schedule, the State would be competent to pass a legislation only in respect of gas and gas-works and having regard to collocation of words 'gas and gas works', this Entry would mean any work or industry relating to manufactured gas which is often used for industrial, medical or other similar purposes. Entry 25 of List II, as suggested for the States, will have to be read as a whole. The expressions therein cannot be compartmentally interpreted. The word 'gas' in the Entry will take colour from other words 'gas-works'. In Ballantine's Law Dictionary, 3rd edition, 1969 'Gas Works' is defined as "a plant for the manufacture of artificial gas". Similarly in Webster's New 20th Century dictionary, it is defined as "an establishment in which gas for heating and lighting is manufactured". In the www.freidictionary.com 'gas works' is explained as "a manufactory of gas, with all the machinery and appurtenances; a place where gas is generated." The meaning of the term 'gas works' is well understood in the sense that the place where the gas is manufactured. So it is difficult to accept the proposition that 'gas' in Entry 25 of List II includes Natural Gas, which is fundamentally different from manufactured gas in gas works.

E Therefore, Entry 25 of List II could only cover manufactured gas and does not cover Natural Gas within its ambit. This will negative the argument of States that only they have exclusive powers to make laws dealing with Natural Gas and Liquefied Natural Gas. Entry 25 of List II only covers manufactured gas. This is the clear intention of framers of the Constitution. This reading will no way make that entry a 'useless lumber' as feared by the States, because Natural Gas was never intended to be covered by that entry. It is also difficult to accept the argument of States that all 'gas' could be categorized as dangerously inflammable and thus arriving at the conclusion that Natural Gas is also covered in State List because this differentiation is based not on the characteristics of gas, but on the manner of its origin. Entry 25 of List II covers the gas manufactured and used in gas works. In view of this specific Entry 53, for any petroleum and petroleum products, the State Legislature has no legislative competence to pass any legislation in respect of natural gas. To that extent, the provisions contained in the Gujarat Act are lacking legislative competence.

H In the result, the Reference is answered in the following terms :

Q. 1. Whether Natural Gas in whatever physical form including Liquefied Natural Gas (LNG) is a Union subject covered by Entry 53 of the List I and the Union has exclusive legislative competence to enact. A

A.1. Natural Gas including Liquefied Natural Gas (LNG) is a Union subject covered by Entry 53 of List I and the Union has exclusive legislative competence to enact laws on natural gas. B

Q.2. Whether States have legislative competence to make laws on the subject of natural gas and liquefied natural gas under Entry 25 of List II of the Seventh Schedule to the Constitution. C

A.2. The States have no legislative competence to make laws on the subject of natural gas and liquefied natural gas under Entry 25 of List II of the Seventh Schedule to the Constitution. D

Q.3. Whether the State of Gujarat had legislative competence to enact the Gujarat Gas (Regulation of Transmission, Supply & Distribution) Act, 2001. D

A.3. The Gujarat Gas (Regulation of Transmission, Supply & Distribution) Act, 2001, so far as the provisions contained therein relating to the natural gas or liquefied natural gas (LNG) are concerned, is without any legislative competence and the Act is to that extent *ultra vires* of the Constitution. E

ORDER

In the light of the opinion rendered in Special Reference No. I/2001 under Article 143(1) of the Constitution of India, the Writ Petition and the Civil Appeals are dismissed. F

V.S.S.

Answered the Questions/Petition
and Appeals dismissed.