A STATE OF U.P. AND ORS.

v.

M/S. LALTA PRASAD VAISH

OCTOBER 25, 2007

B **[H.K. SEMA, ALTAMAS KABIR AND LOKESHWAR SINGH PANTA, JJ.]**

Industries (Development and Regulation) Act, 1951 — ss.18G and C *2—Dispute as to whether State had any power to regulate manufacture and sale of denatured spirit under Entry 33 of List III of the Seventh Schedule of the Constitution—Contention of State that the mere existence of s.18-G of the Act did not oust the competence of State legislature—7 Judge Bench of this Court in the Synthetics and* D *Chemicals case had interpreted the provisions of s.18-G—Held: If decision in that case with regard to interpretation of s.18-G is allowed to stand, it would render the provisions of Entry 33(a) of List III nugatory or otiose—Therefore, this aspect of the matter requires reconsideration by a larger Bench of this Court, particularly, when* E *views expressed by the 7 Judge Bench have been distinguished in several subsequent decisions of this Court, including two decisions rendered by Constitution Benches of five Judges—Questions formulated and referred to larger Bench—Constitution of India, 1950—Seventh Schedule, List III, Entry 33—Uttar Pradesh Excise Act, 1910.*

F **Dispute arose as to whether the State had any power to regulate the manufacture and sale of denatured spirit under Entry 33 of List III of the Seventh Schedule of the Constitution notwithstanding Section 2 and Section 18G of the Industries (Development and Regulation) Act, 1951. While Section 2 of the Act provides for a** G **declaration as to expediency of control of specified industries by the Union in public interest, Section 18-G empowers the Central Government to secure the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry, to provide and regulate the supply and distribution thereof,**

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and trade and commerce therein by a notified order. The said Act was amended in 1956 and item No. 26 was inserted in the First Schedule of the said Act which, *inter alia,* empowers the Central Government to control the fermentation industry including alcohol industries.

Appellants submitted before this Court that the mere existence of Section 18-G in the Statute book did not oust the competence of the State legislature to enact legislation in respect of matters falling under Entry 33 of List III of the Seventh Schedule to the Constitution and that even if a notified order is issued under Section 18-G the effects of the same stand nullified by clause (a) of Entry 33. According to the Appellants, this aspect of the matter had not been gone into by the 7 Judge Bench of this Court in the *Synthetics and Chemicals case** while interpreting the provisions of Section 18-G of the Act, and therefore, requires reconsideration by a larger Bench of this Court.

Referring the matter for reconsideration by a larger Bench, the Court

HELD: 1.1. The submissions of the Appellant have a good deal of force, since by virtue of the interpretation of Section 18-G of the Industries (Development and Regulation) Act, 1951 in the *Synthetics and Chemicals case* the power of the State to legislate with matters relating to Entry 33 of List III have been ousted, except to the extent as explained in the Synthetics and Chemicals case, where the State's power to regulate, as far as regulating the use of alcohol, which would include the power to make provisions to prevent and/or check industrial alcohol being used as intoxicant liquor, had been accepted. It was also stated in the judgment that the Bench recognised the power of the State to regulate not as an emanation of police power but as an expression of the sovereign power of the State.

[Para 35] [686-B-D]

1.2. The 7 Judge Bench in the *Synthetics and Chemicals case* did not have the benefit of the views expressed by this Court earlier in *Ch. Tikaramji* case where the State's power to legislate under the

A **Concurrent List stood ousted by legislation by the Central Government under Entry 52 of List I and also in view of Section 18-G of the Act. [Para 35] [686-E]**

1.3. If the decision in the *Synthetics and Chemicals case* with regard to the interpretation of Section 18-G of the Act is allowed to stand, it would render the provisions of Entry 33(a) of List III nugatory or otiose. [Para 36] [686-F]

1.4. Therefore, this aspect of the matter requires reconsideration by a larger Bench of this Court, particularly, when the views expressed by 7 Judge Bench on the aforesaid question have been distinguished in several subsequent decisions of this Court, including the two decisions rendered by Constitution Benches of five Judges. [Para 37] [686-G]

1.5. This Court, accordingly, formulated the following questions, for being referred to a larger Bench :

Q.1. Does Section 2 of the Industries (Development and Regulation) Act, 1951, have any impact on the field covered by Section 18-G of the said Act or Entry 33 of List III of the Seventh Schedule of the Constitution?

Q.2. Does Section 18G of the aforesaid Act fall under Entry 52 of List I of the Seventh Schedule of the Constitution, or is it covered by Entry 33 of List III thereof?

Q.3. In the absence of any notified order by the Central Government under Section 18-G of the above Act, is the power of the State to legislate in respect of matters enumerated in Entry 33 of List III ousted?

Q.4. Does the mere enactment of Section 18-G of the above Act, give rise to a presumption that it was the intention of the Central Government to cover the entire field in respect of Entry 33 of List III so as to oust the States' competence to legislate in respect of matters relating thereto?

Q.5 Does the mere presence of Section 18-G of the above Act,

oust the State's power to legislate in regard to matters falling under Entry 33(a) of List III ?; A

Q. 6. Does the interpretation given in Synthetics and Chemicals Case in respect of Section 18-G of the Act correctly state the law regarding the States' power to regulate industrial alcohol as a product of the Scheduled industry under Entry 33 of List III of the Seventh Schedule of the Constitution in view of clause (a) thereof ? B

[Para 38] [686-H; 687-A-F]

* *Synthetics and Chemicals Ltd.* **v.** *State of U.P.,* **[1990] Vol. I SCC 109, referred to.** C

State of U.P. **v.** *Vam Organic Chemicals Ltd and Anr.,* **[2004] 1 SCC 225;** *Ch. Tika Ramji and Ors.* **v.** *The State of Uttar Pradesh and Ors.,* **[1956] SCR 393;** *SIEL Limited and Ors.* **v.** *Union of India and Ors.,* **[1998] 7 SCC 26;** *A.S. Krishna* **v.** *State of Madras,* **AIR (1957) SC 297;** *Belsund Sugar Co. Ltd.* **v.** *State of Bihar,* **[1999] 9 SCC 620;** *Ganga Sugar Corporation Ltd.* **v.** *State of Uttar Pradesh and Ors.,* **[1980] 1 SCC 223;** *Shri Bileshwar Khand Udyog Khedut Sahakari Mandal Ltd.* **v.** *State of Gujarat,* **[1992] 2 SCC 42 and** *B. Viswanathiah and Company* **v.** *State of Karnataka and Ors.,* **[1991] 3 SCC 358, referred to.** D E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 151 of 2007.

From the Judgment & Order dated 16.12.2004 of the High Court of Judicature at Allahabad in C.M.W.P. No. 421/1997. F

WITH

Civil Appeal Nos. 152-154 of 2007, SLP (Civil) No. 16505/2004, 26110-26111/2004 and 19275/2004.

G

Dinesh Dwivedi, Dhruv Agarwal, O.P. Sharma, Manish Shankar, Rajeev Dubey, T.N. Singh, Kamlendra Mishra, Anil Kumar Jha, Praveen Kumar, R.C. Gubrele, K.R. Gupta, K.D. Mishra, Santosh Kr. Mishra, Ambhoj Kumar Sinha and Ejaz Maqbool for the appearing parties.

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A The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Special Leave Petition No. 16505 of 2004 was filed by the State of Uttar Pradesh and its officers in the Excise Department on 23rd June, 2004 against the Judgment and Order passed by the Division Bench of the Allahabad High Court on 12th February B 2004 in Civil Misc. Writ Petition No. 1027 of 1999, which had been filed by Shri R.P. Sharma in his capacity as the sole proprietor of M/s Bimal Paints and Chemical Industries situated at Aligarh in Uttar Pradesh.

2. The writ petitioner in the said writ petition is the holder of a licence C in Form FL No. 41 granted under the provisions of the Uttar Pradesh Excise Act, 1910 and the rules framed thereunder. The petitioner was aggrieved by the levy of licence fee on the sale of specially denatured spirit to licencees holding licence in Form FL 41 @ 15% ad valorem on the sale made by a distillery/wholesale vendor to FL 41 licencees D purportedly under the provisions of the U.P. Licences for the Possession of Denatured Spirit and Specially Denatured Sprit Rules, 1976 as amended from time to time. On behalf of the writ petitioners it was contended that the licence fee levied on a FL 41 licence is neither regulatory nor a compensatory fee because no services are rendered to E the licensee which could justify it as a regulatory fee.

3. Although, on behalf of the petitioner reliance was placed on the decision of this Court in *State of U.P.* v. *Vam Organic Chemicals Ltd and Anr.*, [2004] 1 SCC 225, such stand was held to be untenable by the High Court inasmuch as, in the said case it was held that denatured F spirit is outside the seisin of the State Legislature which has jurisdiction over only potable alcohol.

4. However, the High Court held the impugned licence fee to be wholly illegal upon observing that in the case before it, the respondents had not claimed that the fee in question was being charged for ensuring G that the rectified sprit is not diverted and used for human consumption, but that the fee was being charged for sale/purchase of denatured spirit. The High Court was of the view that having regard to the findings of this Court in *Vam Organic's* case (supra) imposition of fee on such ground was not acceptable since legislation with regard to denatured spirit was H

outside the perview of the State Legislative powers. Paragraph 42 of the judgment in *Vam Organic's* case (supra) has been quoted in its judgment by the High Court and reads as follows:-

> "Assuming that de-natured sprit may by whatever process be renatured, (a proposition which is seriously disputed by the respondents) and then converted into potable liquor this would not give the State the power to regulate it."

5. On the basis of the aforesaid reasoning the impugned licence fee was declared to be illegal by the High Court. The High Court also directed the respondents to refund the fee collected from the writ petitioners along with interest at the rate of 10% per annum from the date of realization/ deposit till the date of refund within two months of production of the certified copy of the judgment before the respondent No. 2.

There is further discussion with regard to the direction given regarding interest with which we are not concerned.

6. As mentioned hereinbefore, Special Leave Petition (C) No. 16505 of 2004 was filed against the said judgment and order of the Allahabad High Court and the same was taken up for admission on 22nd August, 2004, when this Court directed notice to issue and also granted interim stay in the meantime. The interim relief as prayed for as indicated in Prayer (a) of the Special Leave Petition reads as follows:-

> "Ad-interim ex-parte stay of the impugned final judgment and order dated 12.02.2004 passed by the Hon'ble High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 1027 of 1999."

7. Subsequently, several other similar writ petitions were filed by several licence holders holding licences in Form FL Nos.16, 17, 39 and 41 which were all disposed of by applying the decision in *R.P. Sharma's* case.

8. Seven of the writ petitioners filed special leave petitions in this Court and on leave being granted in four of the matters, they were converted into Civil Appeals, being C.A. No. 151 of 2007, C.A. No.152 of 2007, C.A. No. 153 of 2007 and C.A. No. 154 of 2007. The

A remaining three matters are sill at the special leave petition stage. On 29th November, 2004, SLP(C) No. 26110 of 2004 (*State of U.P.* v. *Anil Kumar Sharma*) together with SLP (C) No. 26111 of 2004 (*State of U.P.* v. *Priyambada Jaiswal*) were directed to be tagged with *R.K. Sharma's* case, namely, SLP(C) No. 16505 of 2004. Similarly, SLP(C) B 19275 of 2004 (*State of U.P.* v. *Somaiya Organic (India) Ltd.*) was tagged with SLP(C) No. 16505 of 2004 on 16th August, 2005. The four other matters, which were converted into appeals, were also tagged with SLP(C) 16505 of 2004 by order dated 26th April, 2007.

C 9. It is on account of the aforesaid orders, that all the eight matters have come up before us for final hearing and disposal.

10. When these matters were taken up for hearing, Mr. Dhruv Agrawal, Senior Advocate, appearing for the respondent in SLP(C) No. 19275 of 2005 (M/s. Somaiya Organic (India) Ltd.), submitted that this D matter was different from the seven other matters since the respondent therein was the holder of licence in Form FL 39, which was meant for possession of denatured spirit, including specially denatured spirit for industrial purposes, in which alcohol is destroyed or converted chemically in the process into other products which did not contain alcohol, such as, E Ether, Styrene, Butadiene, Acetone, Polythene, etc., whereas those holding licence in Form FL 41 were entitled to be in possession of denatured spirit for use in industries in which alcohol is used directly or as solvent or vehicle and appears in the final product to some extent, such as, Lacquers, Varnishes, Polishes, Adhesive, Anti-freezers and Brake fluid, F etc.

11. It was also pointed out that in C.A. No. 151 of 2007 (*State of U.P.* v. *M/s Lalta Prasad Vaish*) the respondent was the holder of licences under Form FL 16 and Form FL 17, but the same had also been disposed of by the High Court on the basis of the decision in *R.P.* G *Sharma's* case which declared the licence fee payable by a Form FL 41 licencee to be illegal.

12. Mr. Dhruv Agrawal submitted that the case of *Somaiya Organic* (India) Ltd. should not, therefore, be heard in the light of the decision in H *R.P. Sharma's* case, but should be detached from the other matters and

be heard separately. A

13. Although, it is true that the respondent, Somaiya Organic (India) Ltd., is the holder of licence in Form FL 39, the case as made out in the writ petition and in particular in paragraphs 16, 17 and 20 thereof, is similar to the cases made out in the other writ petitions. The common challenge in all the matters is that the State had no power to regulate the manufacture and sale of denatured spirit in view of Section 2 and Section 18G of the Industries (Development and Regulation) Act, 1951. B

14. It is also the common case in all these matters that by Section 2 of the aforesaid Act of 1951 read with Entry 52 of List I of the Seventh Schedule of the Constitution, the Parliament declared alcohol industry to be an industry, control of which by the Union is expedient in the public interest and consequently the power to legislate in respect thereof is now vested exclusively in Parliament. C

15. Furthermore, all the aforesaid matters have been decided by the High Court relying on the decision of this Court in *State of U.P. and Ors.* v. *Vam Organic Chemical Ltd. and Anr.*, reported in [2004] 1 SCC 225, and also on the decision of the seven Judge Bench of this Court in the case of (*Synthetics and Chemical Ltd.* v. *State of U.P.*, [1990] Vol. I SCC 109. D E

16. Having regard to the aforesaid factual as well as legal position, we are unable to accept Mr. Agrawal's prayer to detach SLP(C) No. 19275 of 2004 and to hear it separately from the other matters.

17. All the eight matters before us have, therefore, been taken up for consideration together. F

18. While deciding the said matters, the Allahabad High Court accepted the contention of the writ petitioners that the questions involved had been decided by this Court in *State of U.P.* v. *Vam Organic Chemicals Ltd. and Ors.*, (supra). The High Court decided the writ petitions on the basis of the decision of this Court in the aforesaid case and declared the imposition of licence fee @ 15% ad valorem vide Notification No.1327 dated 25.5.1999 under the U.P. Licences for the Possession of Denatured Sprit and Specially Denatured Sprit (Fourth G H

A Amendment) Rules, 1999, to be wholly illegal. The writ petitions were accordingly allowed and the impugned licence fee was declared illegal.

19. During the course of arguments, Mr. S.K. Dwivedi, learned senior counsel for the appellants, submitted that the *Vam Organic's* case (supra) referred to and relied upon the Constitution Bench decision in the case of B *Synthetics and Chemicals Ltd.* v. *State of U.P.*, [1990] 1 SCC 109. Mr. Dwivedi pointed out that in the said case what was under consideration, were Lists I, II and III of Schedule VII of the Constitution, as also the provisions of the Industries (Development and Regulation) Act, 1951, Section 2 whereof provides as follows:

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> "2. *Declaration as to expediency of control by the Union* - It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the First Schedule."

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20. In this regard reference was also made to Section 18-G which empowers the Central Government to secure the equitable distribution and availability at fair prices of any article or class of articles relatable to any scheduled industry, to provide and regulate the supply and distribution thereof, and trade and commerce therein by a notified order. It was pointed E out that the said Act was amended in 1956 and item No. 26 was inserted in the First Schedule of the said Act which, *inter alia*, empowers the Central Government to control the fermentation industry including alcohol industries. Item No.26 of the First Schedule reads as follows:

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> "26. Fermentation Industries"
>
> (i) 'Alcohol
>
> (ii) 'Other products of fermentation industries'.

21. While dealing with the aforesaid provisions, the Court noticed G the provisions of Entry 8 in List II which empowers the State to legislate in relation to intoxicating liquors i.e. to say the production, manufacture, possession, purchase and sale of intoxicating liquors. The Constitution Bench in Synthetics and *Chemicals Ltd.* case (supra) in para 63 indicated that there was no necessity to dwell on the question whether the States H have police power or not. It was mentioned that the Court must accept

the position that the States have the power to regulate the use of alcohol and that power must include the power to make provisions to prevent and/or check industrial alcohol being used as intoxicating liquor. In para 64 of the judgment the Bench stated that it recognises the power of the State to regulate though perhaps not as emanation of police power, but as an expression of the sovereign power of the State.

22. As against the above, in para 85 a view has been taken which appears to be at variance with what has been stated in paragraphs 63 and 64. In order to appreciate the submission made by the learned counsel, paragraphs 85 and 86 are reproduced:

> "85. 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 non-potable alcohol is vested in the Central Government. Distilleries are manufacturing alcohol under the central licences under IDR Act. No privilege for manufacture even if one existed, has been transferred to the distilleries by the State. The State cannot itself manufacture industrial alcohol without the permission of the Central Government. The States cannot claim to pass a right which they do not possess. Nor can the States claim exclusive right to produce and manufacture industrial alcohol which are manufactured under the grant of licence from the Central Government. Industrial alcohol cannot upon coming into existence under such grant be amenable to States' claim of exclusive possession of privilege. The State can neither rely on Entry 8 of List II nor Entry 33 of List III as a basis for such a claim. The State cannot claim that under Entry 33 of List III, it can regulate industrial alcohol as a product of the scheduled industry, because the Union, under Section 18-G of the IDR Act, has evinced clear intention to occupy the whole field. Even otherwise sections like Sections 24-A and 24-B of the U.P. Act do not constitute any regulation in respect of the industrial alcohol as product of the scheduled industry. On the contrary these purport to deal with the so-called transfer of privilege regarding manufacturing and sale. This

power, admittedly, has been exercised by the State purporting to act under Entry 8 of List II and not under Entry 33 of List III.

86. The position with regard to the control of alcohol industry has undergone material and significant change after the amendment of 1956 to the IDR Act. After the amendment, the State is left with only the following powers to legislate in respect of alcohol:

(a) It may pass any legislation in the nature of prohibition of potable liquor referable to Entry 6 of List II and regulating powers.

(b) It may lay down regulations to ensure that non-potable alcohol is not diverted and misused as a substitute for potable alcohol.

(c) The State may charge excise duty on potable alcohol and sales tax under Entry 52 of List II. However, sales tax cannot be charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the State on industrial alcohol.

(d) However, in case State is rendering any service, as distinct from its claim of so-called grant of privilege, it may charge fees based on quid pro quo. See in this connection, the observations of *Indian Mica* case."

23. The aforesaid paragraphs seem to indicate that under Entry 33 of List III the State cannot regulate industrial alcohol as a product of the industry, because the Union under Section 18-G of the Act had evinced a clear intention to occupy the whole field. It was submitted by Mr. Dwivedi that the aforesaid observations have to be read in the context in which the matter was decided and related to grant of licences for manufacture of potable and non-potable alcohol. It was submitted that while Entry 33 in List III provided for powers to both the State and the Central Government to legislate with regard to the product of any industry, where control of such industry by the Union is declared by the Parliament by law to be expedient in the public interest, the Constitution Bench had not considered the said aspect and had interpreted the provisions of Entry 33 in relation to the concept of manufacture only. According to the learned

counsel, what stood ousted from the legislative powers of the State was the power to legislate on matters relating to manufacture of potable and non-potable alcohol. In order to appreciate the position better, Entry 33(a) of List III is reproduced hereunder:

> "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."

24. Mr. Dwivedi urged that the power of the State to legislate with regard to matters relating to Entry 33(a) in List III of Schedule 7 of the Constitution did not stand ousted merely on the basis of a declaration made under Section 2 of the Industries (Development and Regulation) Act, 1951, which was relatable to Entry 52 of List I of the Seventh Schedule. Mr. Dwivedi also urged that the power conferred on the Central Government under Section 18G to secure the equitable distribution and availability at fair prices any article or articles relatable to any schedule industry, to provide and regulate the supply and distribution thereof, and trade and concurrences therein, would become operative only when a notified order was issued. Without the promulgation of such a notified order, the Central Government did not acquire any power to act, in furtherance of the objects contemplated in Section 18G.

25. Mr. Dwivedi submitted that the aforesaid question had been considered by this Court as far back as in 1956 while deciding the case of *Ch. Tika Ramji and Ors.* v. *The State of Uttar Pradesh and Ors.*, (1956 SCR 393). It was pointed out that the central issue in the said case was with regard to the question as to whether legislation by the Centre under Entry 52 of List I would also affect the concurrent powers vested in the State by way of Entry 33 in List III of the Seventh Schedule to the Constitution. Although, the said judgment was rendered in the context of the U.P. Sugar Factories Control Act, 1938 (U.P. At 1 of 1938) to provide for the licensing of sugar factories and for regulating the supply of sugarcane intended to be used in such factories and the price at which it could be

A purchased and for other incidental matters, the provisions of both Section 2 as well as Section 18G of the Industrial (Development and Regulation) Act, 1951 fell for consideration in the said case. This Court while dealing with the said provisions held that the provisions of Section 18G of the 1951 Act did not cover sugarcane, nor did it indicate the intention of the B Parliament to cover the entire field of such legislation. It was also held that the expression "any article or class of articles related to any scheduled industry" used in Section 18G, 15 and 16 of the Act did not refer to raw material but only to finished products of the scheduled industries the supply and distribution of which Section 18-G was intended to regulate, its whole C object being the equitable distribution and availability of manufactured articles at fair prices and not to invest the Central Government with the power to legislate in regard to sugarcane. It was also held that even assuming the sugarcane was an article which fell within the purview of Section 18-G of the Act, no order having been issued by the Central D Government thereunder, no question of repugnancy could arise, as repugnancy must exist as a fact and not as a mere possibility and the existence of such an order would be an essential pre-requisite for it.

26. Mr. Dwivedi submitted that the decision in the aforesaid case had not been brought to the notice of the 7 Judge Bench which decided E the *Synthetics* and *Chemicals* case (supra) and it, did not, therefore, have the benefit of the reasoning which prompted this Court earlier to hold that one aspect of Entry'33 of List III was not covered by the U.P. Sugar Industries Control Act, 1938. The 7 Judge Bench did not also have the benefit of the reasoning in *Ch. Tikaramji's* case (supra) which had F held that in the absence of any notified order under Section 18-G of the 1951 Act no question of repugnancy could arise, which Mr. Dwivedi urged, recognised the State's power to legislate with regard to matters under Entry 33 of List III notwithstanding the provisions and existence of Section 18-G in the 1951 Act.

G 27. Mr. Dwivedi then went on to refer to the judgment of this Court in *SIEL Limited and Ors.* v. *Union of India and Ors.*, [1998] 7 SCC 26 wherein the learned Judges relying on the policy decision in *Ch. Tikaramji's* case (supra) explained and distinguished the decision of the 7 Judge Bench in *Synthetics* and *Chemicals* case (supra). Following H

another decision of this Court in *A.S. Krishna* v. *State of Madras,* AIR (1957) SC 297 the learned Judges held that the contention of the appellants that by the enactment of Section 18-G the power of the State to legislate under said Entry 33 of List III was taken away, was untenable. The learned Judges went on to observe that, moreover, apart from the provisions of Article 254(2) of the Constitution the enactment of Section 18-G did not by itself create any repugnancy between the Parliamentary legislation and the State legislation, namely, the U.P. Sheera Niyantran Adhiniyam, 1964. It was, further observed that although the Molasses Control Order, 1961 was issued by the Central Government under Section 18-G of the 1951 Act, the said order was never brought into operation in the State of U.P., and accordingly, the power of the State of U.P. under Entry 33 of List III to legislate in relation to trade and commerce or supply and distribution of Molasses in the State was not taken away, in any event, irrespective of Article 254. It was held that since the aforesaid 1961 order had not been extended to the State of U.P. at any point of time, the question of repugnancy between the Molasses Control Order 1961 and the U.P. Sheera Niyantran Adhiniyam, 1964 which was enacted in legitimate exercise of power of legislation under Entry 33 of List III, did not arise and the same was within the legislative competence of the State Government.

28. Yet another case referred to by Mr. Dwivedi was the decision of a Constitution Bench of 5 Judges of this Court in *Belsund Sugar Co. Ltd.* v. *State of Bihar,* [1999] 9 SCC 620, wherein while discussing Section 18-G of the 1951 Act it was held that since 'flour industry' was listed as one of the scheduled industries as Item 27(4), the production of wheat as a raw material or its sale was not covered by the said Act. Consequently, so far as wheat as agricultural product is concerned, it was outside the sweep of the 1951 Act. In the said case also it was observed by the Constitution Bench that in the absence of promulgation of any statutory order covering the field under Section 18-G it could not be said that mere existence of a statutory provision for entrustment of such power by itself would result in regulation of purchase and sale of flour even if it is a scheduled industry. It may be noted that even while noting the decision of the 7 Judge Bench in *Synthetics* and *Chemicals* case (supra) the Court placed reliance on the decision rendered in the *SIEL Ltd.* case (supra).

29. Mr. Dwivedi also referred to the decision of a Constitution Bench in the case of *Ganga Sugar Corporation Ltd.* v. *State of Uttar Pradesh and Ors.*, [1980] 1 SCC 223 where it was held that in pith and substance the U.P. Sugarcane (Purchase Tax) Act, 1961 was not with respect to a controlled industry namely the sugar industry and hence did not encroach upon Entry 52 of List I.

30. Various other decisions, such as the decision in *Shri Bileshwar Khand Udyog Khedut Sahakari Mandal Ltd.* v. *State of Gujarat,* [1992] 2 SCC 42; and *B. Viswanathiah and Company* v. *State of Karnataka and Ors.*, [1991] 3 SCC 358, were also referred to by Mr. Dwivedi in support of his submission. That even after the decision of the 7 Judge Bench in the *Synthetics and Chemicals* case (supra) this Court had in several other judgments, including the judgments delivered by Constitution Benches of 5 Judges, had held in unequivocal terms that Section 18-G of the 1951 Act did not encroach upon the concurrent powers of the State legislature to legislate with regard to Entry 33 of List III of the Seventh Schedule and, more so, in the absence of any notified order under the said Section. In contrast to the aforesaid decisions, Mr. Dwivedi also referred to the decision of this Court in *VAM Organic's* case (supra), which relying on the decision in the *Synthetics* and *Chemicals* case (supra) held that the State had no power to levy tax on industrial alcohol, whether or not it had the potential to be used as alcoholic liquor. It was held further that the State's power was limited to the regulation of non-potable alcohol for the limited purpose of preventing its use as alcoholic liquor and charging fees based on the principle of quid pro quo. It also held that the State Government was competent to levy a fee for the purpose of ensuring that industrial alcohol was not converted into potable alcohol so as to deprive the State of its revenue on the sale of such alcohol and the public was protected from consuming illicit liquor. But the powers stopped with the denaturing of industrial alcohol, since denatured rectified spirit was wholly and exclusively industrial alcohol.

31. The sum and substance of Mr. Dwivedi's submission was that the mere existence of Section 18-G in the Statute book could not oust the competence of the State legislature to enact legislation in respect of matters falling under Entry 33 of List III of the Seventh Schedule to the

Constitution. The further contention of Mr. Dwivedi was that even if a notified order had been issued under Section 18-G the effects of the same had been nullified by clause (a) of Entry 33 which reads as follows:

> "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;"

32. According to Mr. Dwivedi, this aspect of the matter had not been gone into by the 7 Judge Bench of this Court in the *Synthetics* and *Chemicals* case (supra), while interpreting the provisions of Section 18-G of the 1951 Act, and therefore, requires reconsideration by a larger Bench of this Court.

33. Apart from making a submission that SLP(C) No.19275/05 *State of U.P.* v. *M/s Somaiya Organic (India) Limited* was different from the other matters and should be dealt with independently, Mr. D. Agrawal submitted that the issue being sought to be raised on behalf of the State of U.P. in these matters was no longer res integra, since it had already been decided by the 7 Judge Bench in the *Synthetics* and *Chemicals* case (supra) which has subsequently been followed by this Court in the case of *Vam Organic's* case (supra), which had been relied upon by the High Court in disposing of the writ petitions from which these civil appeals and special leave petitions arise.

34. Similar submissions were made by Mr. K. D. Mishra, learned counsel appearing for the respondents in C.A. Nos.152/2007 and C.A. No.153/2007. It was also urged by him that the respondents in the said two appeals were holders of licences in Form No. FL 16 and FL 17 and deal with licensing of manufacture of denatured spirit and that the impugned levy imposed by the State of U.P. was exorbitant and excessive and was not regulatory in nature and could not be imposed on ad valorem basis as the sale price had no nexus with the amount incurred by the State. While dealing with the said question the question of powers under Section 18-G of the 1951 Act was also in question, as the control of supply,

A distribution of an article relatable to a scheduled industry was occupied by the Parliament and the State legislature could not legislate for the purpose of regulating by licence/ permit or otherwise the distribution, transport, disposal, acquisition, possession, use or consumption of any such article or class thereof.

B 35. On consideration of the aforesaid submissions made on behalf of the respective parties, we are of the view that Mr. Dwivedi's submissions have a good deal of force, since by virtue of the interpretation of Section 18-G in the *Synthetics* and *Chemicals* case (supra) the power of the State to legislate with matters relating to Entry 33 of List III have C been ousted, except to the extent as explained in the Synthetics and Chemicals case in paragraphs 63-64 of the judgment, where the State's power to regulate, as far as regulating the use of alcohol, which would include the power to make provisions to prevent and/or check industrial alcohol being used as intoxicant liquor, had been accepted. It was also D stated in paragraph 64 of the judgment that the Bench recognised the power of the State to regulate not as an emanation of police power but as an expression of the sovereign power of the State. As submitted by Mr. Dwivedi, the 7 Judge Bench did not have the benefit of the views expressed by this Court earlier in *Ch. Tikaramji* case (supra) where the E State's power to legislate under the Concurrent List stood ousted by legislation by the Central Government under Entry 52 of List I and also in view of Section 18-G of the Industries (Development and Regulation) Act, 1951.

F 36. In our view, if the decision in the *Synthetics and Chemicals* case (supra) with regard to the interpretation of Section 18-G of the 1951 Act is allowed to stand, it would render the provisions of Entry 33(a) of List III nugatory or otiose.

37. We are, therefore, also of the view that this aspect of the matter G requires reconsideration by a larger Bench of this Court, particularly, when the views expressed by 7 Judge Bench on the aforesaid question have been distinguished in several subsequent decisions of this Court, including the two decisions rendered by Constitution Benches of five Judges.

38. We, accordingly, formulate the following questions, which, in our H

view, may be referred to a larger Bench : A

Q.1. Does Section 2 of the Industries (Development and Regulation) Act, 1951, have any impact on the field covered by Section 18-G of the said Act or Entry 33 of List III of the Seventh Schedule of the Constitution?

B

Q.2. Does Section 18G of the aforesaid Act fall under Entry 52 of List I of the Seventh Schedule of the Constitution, or is it covered by Entry 33 of List III thereof?

Q.3. In the absence of any notified order by the Central Government under Section 18-G of the above Act, is the power of the State to legislate in respect of matters enumerated in Entry 33 of List III ousted? C

Q.4. Does the mere enactment of Section 18-G of the above Act, give rise to a presumption that it was the intention of the Central Government to cover the entire field in respect of Entry 33 of List III so as to oust the States' competence to legislate in respect of matters relating thereto? D

Q.5. Does the mere presence of Section 18-G of the above Act, oust the State's power to legislate in regard to matters falling under Entry 33(a) of List III ?; E

Q.6. Does the interpretation given in *Synthetics and Chemicals* Case [1990] 1 SCC P 109, in respect of Section 18-G of the Industries (Development and Regulation) Act, 1951, correctly state the law regarding the States' power to regulate industrial alcohol as a product of the Scheduled industry under Entry 33 of List III of the Seventh Schedule of the Constitution in view of clause (a) thereof ? F

39. Let these matters be placed before the Hon'ble Chief Justice of India for consideration and appropriate orders.

G

B.B.B. Referred to Larger Bench.