

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1713 of 2017

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Bihar Distillers & Bottlers Pvt. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at SCO 140-141, Sector - 34A, Chandigarh - 160022 and factory at Village - Devri, Anumandal Arrah, Block - Garhani, District - Bhojpur, Bihar through its Director Amit Kumar Modi, son of Shri S K Modi, resident of House No. 133, Sector -9B, PS Sector - 3, Chandigarh, State - Punjab.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Collector, Bhojpur.
5. The Assistant Commissioner of Excise, Bhojpur, Ara.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 1623 of 2017

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Globus Spirits Ltd., a Company incorporated under the Companies Act, 1956 having Corporate office at F - 0, Ground Floor, the Mira Corporate Suites, Plot No. 1 & 2, Ishwar Nagar, Mathura Road, New Delhi - 110065 through its Senior Manager (HR & Administration) Pritam Singh, Son of Shri Kali Prasad Singh, resident of M.B.J. 283, Kailashpur, Husenabad, P.S. Line Bazar, District - Jaunpur (U.P.)

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Collector, Vaishali.
5. The Superintendent of Excise, Vaishali.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 1629 of 2017

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M. J. & Sons Distillery & Breweries Pvt. Ltd., a Company incorporated under the Provisions of the Companies Act, 1956 having its Corporate office at Janki Villa, 23 - A Basant Vihar Colony, Boring Road, P.S. S.K. Puri, District - Patna and Distillery at Village - Raghunathpur, P.S. Amarpur, District Banka through its Director Shri Shiv Kumar Bhagat, Son of Late Madhusudan Bhagat, resident of Janki Villa, 23-A Basant Vihar Colony, Boring Road, P.S. S.K. Puri, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.



2. The Principal Secretary, Registration, Excise and Prohibition Department,
Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Collector, Banka.
5. The Superintendent of Excise, Banka.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 1737 of 2017

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S C I India Ltd., a company incorporated under the Companies Act, 1956 having its
registered office at D N Singh Road, Bhagalpur and factory at Rajaun, District-
Banka, Bihar through its Director Sajjan Kumar Kishorepuria, son of Late Sagarmal
Kishorepuria, resident of D N Singh Road, PS Kotwali, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department,
Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Collector, Banka.
5. The Superintendent of Excise, Banka.

... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Senior Advocate

Mr. P. K. Shahi, Senior Advocate

Mr. Satyabir Bharti, Advocate

Mr. Alok Chandra, Advocate

For the Respondent/s : Dr. Rajiv Dhavan, Senior Advocate

Mr. Dinesh Dwivedi, Senior Advocate

Mr. Lalit Kishore, PAAG-I

Mr. Keshav Mohan, Advocate

Mr. Manish Kumar, Advocate

Mr. Piyush Choudhary, Advocate

Mr. Kabir Ghose, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE MR. JUSTICE SUDHIR SINGH



C. A. V. JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 03-05-2017

Challenging the constitutional validity of certain provisions under the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as ‘the Prohibition Act’), these writ petitions have been filed and the reliefs claimed are to declare Section 2(40) (ii), Section 13, Section 23 and Section 24(1) of the Prohibition Act as *ultra vires* to the Constitution and in excess to the legislative power of the State, so far as they prohibit manufacture and prevent renewal of license pertaining to industrial alcohol vis-à-vis spirit including silent spirit or ENA. It is said that by including spirit or ENA within the definition of ‘intoxicant’ as provided under Section 2(40) (ii), the State Legislature has acted in excess of the jurisdiction vested in it. Further prayer is to declare Sections 23 and 24(2) as *ultra vires* being in conflict to Article 300A of the Constitution inasmuch as it mandates that no compensation in consequence to withdrawal or non-renewal of distillery license shall be paid to the distillers so also on account of the fact that it confers unguided and uncontrolled power on the executive authority. Further prayer is to declare as null and void and to issue a writ in the nature of certiorari for quashing the Notification dated 24th January, 2017 issued by the State in exercise of the powers conferred upon it under Section 24(1) of the Prohibition Act whereby it prohibits renewal of license in



Form 28A issued to the petitioners-distilleries with regard to manufacture of ENA after 1st of April, 2017.

2. The petitioners are engaged in the business of manufacture of Extra Neutral Alcohol (ENA), which is unfit for human consumption, and according to the petitioners, as the entire power to legislate with regard to ENA and other industrial alcohol or alcohol unfit for human consumption is exclusively with the Union, the power exercised by the State is *ultra vires*.

3. It is said that the State Government floated its Industrial Incentive Policy in the year 2011 for promoting industrial growth in the State of Bihar and in furtherance thereto, various incentives were offered to companies, firms and individuals intending to set up industries within the State. The incentives offered were in the form of reimbursement of VAT, capital subsidy, subsidy for capital power generation and Distillery was an industry which was brought within the ambit of the aforesaid Industrial Policy. The Industrial Policy has been brought on record as Annexure-1 in CWJC No.1713 of 2017 and suffices it to say that it provided various incentives.

4. It is the case of the petitioners that being encouraged and influenced by the incentive so offered, they set up their establishment, namely, a distillery plant of various capacities after investing huge amount ranging from Rs.150 to 200 Crores for the production of Extra



Neutral Alcohol (ENA), rectified spirit and impure alcohol and the units were grain based. For the purpose of establishment of the industry, captive (generation) power plant were also set up, various documents and materials have been adduced in detail in the writ petitions to show that in pursuance to the policy, applications and offers were submitted. They were discussed and thereafter the State Cabinet approved the same. The State Investment Promotion Board issued certain clarifications, the Registration, Excise and Prohibition Department in the Government of Bihar, granted permission and the industries in question have been set up by all the petitioners after investing huge amount and obtaining loans and capital from various Banks. Documents evidencing these facts have been brought on record and there being no dispute with regard to these factual aspects of the matter, it is not necessary to go into various details thereto as canvassed in the writ petitions.

5. However, it may be relevant to take note of the fact that all the petitioners are manufacturing Extra Neutral Alcohol (ENA), its' a grain based industry and the spirit so obtained has a strength of 96% v/v, is a non- potable highly toxic substance and is totally unfit for human consumption. However, it is also an admitted position that if subjected to certain further processing, the product can be converted into potable liquor fit for human consumption. Primarily, the ENA produced is used as a raw material for various Chemical and Allied Industries and can



also be used as a material for manufacturing of potable liquor, like Indian Made Foreign Liquor.

6. It is the case of the petitioners that immediately after they established the industries in pursuance to the Industrial Policy of the State, the new Excise Policy was notified on 21st December, 2015. In this policy, a decision was taken to prohibit manufacture and sale of country made liquor in the entire State and to regulate the sale of Indian Made Foreign Liquor/Beer only in urban areas. Various decisions were taken and implemented in this Excise Policy announced by the State Government on 21st December, 2015, vide Annexure-8 in the record of CWJC No.1713 of 2017. However, so far as the present petitions are concerned, it is stated that the policy contemplated a provision that distilleries be permitted to manufacture ethanol from molasses and certain directions were issued, vide Annexure-9 in a meeting held on 11.01.2016, wherein it was recommended that necessary provisions be made to permit distilleries to manufacture Ethanol from molasses so that there would be no difficulty in sale of its product and it is said that this decision was only limited to permitting distilleries to manufacture Ethanol so that its product may not be held up due to lack of buyers in the market. The policy enables the industries as per the requirement to manufacture ENA or rectified spirit or Ethanol, but thereafter by an official Gazette Notification issued on 4th of February, 2016, a direction



was issued that with effect from 1st of April, 2016 all distilleries shall ensure that 100% utilization of molasses for manufacturing of Ethanol can be permitted for supply to Oil Companies for blending with petrol/diesel or they can manufacture Extra Neutral Alcohol from grains. It was further provided that grain based distilleries will ensure that it is used only for production of ENA. The Notification further made certain provisions for destruction of entire denatured spirit or any other by-products which were purchased during the course of manufacture of Ethanol or ENA. It is the case of the petitioners that till issuance of the Notification dated 21st December, 2015, vide Annexure-8, the Government had never shown or indicated any intention with regard to prohibiting manufacture of ENA from grain. There was no such intention which could be gathered till the Notification was issued on 4th February, 2016.

7. Thereafter, certain amendments were made to the Bihar Excise Act, 1915. By the Amending Act of 2016, Section 19(4) of the Said Act was amended and an absolute prohibition in the manufacture, sale, possession etc. of all kind of intoxicants was introduced. In the definition of 'intoxicant' it was indicated that it would include "spirits obtained by distillation". Thereafter, in exercise of the powers conferred by the amended provisions of Section 19(4) of the Bihar Excise Act, by Notification issued on 5th April, 2016 (Annexure-12), possession,



consumption of Foreign Liquor/India Made Foreign Liquor and Beer was prohibited in the entire State of Bihar. Therefore, with effect from 5th of April, 2016, there was total prohibition in the matter of consumption, sale, possession etc. of Foreign Liquor and India Made Foreign Liquor and Beer within the entire State.

8. In spite of this total prohibition imposed in the entire State, it is said that on 18th of April, 2016, a policy was disclosed by the State Government for promoting growth of distilleries manufacturing Ethanol and ENA from grains and in furtherance thereto, it was notified that no export duty shall be levied on export of ENA by distillation in the State of Bihar. A copy of the Notification is filed as Annexure-13.

9. It is said that in furtherance thereto, the petitioners have been granted licence in Form-28A for manufacturing of Extra Neutral Alcohol from grain and in CWJC No.1713 of 2017 petitioner M/s Bihar Distillers & Bottlers Private Limited having their manufacturing unit in the district of Bhojpur, have been granted license for the period 29.04.2016 to 31.03.2017. Similarly, in CWJC No.1629 of 2017, petitioner M/s M. J. & Sons Distillery & Breweries Pvt. Ltd. having their plant in Village Raghunathpur, District-Banka, have been granted license renewed up to the financial year 2016-17 and even after issuance of Notification on 18th April, 2016, the petitioner in this case bring on record, letters dated 10.05.2016 and 13.05.2016, Annexure-9 and 9/1, to



say that the Excise Commissioner, Bihar directed for renewal of distillery's licence of this petitioner for the years 2016-17 up to 2018-19. As far as petitioner M/s Globus Spirits Pvt. Ltd in CWJC No.1623 of 2017 are concerned, they have their manufacturing unit in the district of Vaishali and after the Notification dated 18th April, 2016 was issued by the State Government, they have been granted licence in Form-28A which is valid up to the period 31.03.2017 and the Excise Commissioner in their case has also directed, vide Annexure-12 and 12/1 on 10.05.2016 and 13.05.2016 for renewal of their licence for the periods 2016-17 to 2018-19. Finally, petitioner S C I India Limited in CWJC No. 1737 of 2017, contend that they have their unit in the District of Bhagalpur and after the Notification was issued on 18th April, 2016, they have been recommended for renewal of licence like all the other petitioners for the period 2016-17 to 2018-19 and vide license, Annexure-12, their licence have been renewed, not only for the period 2016-17, but have been further renewed for the period 2017-18.

10. Accordingly, it is the contention of each of the petitioners that even on 18th of April, 2016, there was no intention or remotest indication given by the State Government that there would be any prohibition or restriction in the matter of carrying out the manufacturing activities with regard to ENA produced from grain. However, it is the case of the petitioners that notwithstanding complete



prohibition being imposed in the State of Bihar, the petitioners were permitted and were granted renewal of license in furtherance to the Industrial Excise Policy, but all of a sudden, the State, based on the recommendation and decision taken by the State Cabinet on 24th of January, 2017, in purported exercise of powers of Section 24(1) of the Prohibition Act, a total prohibition has been imposed and it has been indicated that the license held by the distilleries manufacturing ENA from grain shall not be renewed from the financial year 2017-18. In the meanwhile, the Prohibition Act, 2016 was also notified and were brought into effect with effect from 2nd of October, 2016 and in this Notification, the definition to 'intoxicant' as contemplated under Section 2(40) included spirit including silent spirit or ENA or Ethanol whether denatured or not. It is said that based on the aforesaid amended provision and the Notification issued, the impugned action has been taken.

11. *Inter alia* contending that Section 2(40) (ii) which defines 'intoxicant' read with Sections 30 and 31 of the Prohibition Act which prohibits manufacture and sale of non-potable alcohol by defining it as intoxicant or liquor in the State of Bihar and the power granted to the State Government to deny the renewal of existing license held by the distillers in the State of Bihar is *ultra vires* to the Constitution beyond the legislative competence of the State Legislature and its executive. It is



the case of the petitioners that ENA, which is an industrial alcohol unfit for human consumption, cannot come within the purview of intoxicant which is nothing but a substance fit for human consumption. Accordingly, placing reliance on Entries 7 and 52 of List-I, Entries 8, 24, 26 and 27 of List II and Entry 33 of List III of the Seventh Schedule to the Constitution, it is the case of the petitioners that the Parliament, in exercise of the powers conferred on it under Entry 52 of List-I of the Seventh Schedule to the Constitution, having enacted the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as 'the IDR Act') and under Section 2 of the aforesaid Act, having declared certain industries to be controlled industries as specified in the first Schedule and under item No.26 of the first Schedule, fermentation industries, including alcohol and other products of fermentation having been brought under the control of the Union, the State could not have exercised any power with regard to a controlled industry notified and controlled by the Union under the IDR Act.

12. Accordingly, in sum and substance, it is the case of the petitioners that the act of the State in defining 'intoxicant' under Section 2(40) (ii) by including ENA and other products of alcohol, which are unfit for human consumption, and by further exercising their power under Section 24(2), Section 13 and Section 23 in the matter of issuing the Notification prohibiting the renewal of license thereby prohibiting



manufacture of ENA and alcohol and refusing to pay compensation, the State has acted in excess of the legislative power, the act is violative of Article 300A of the Constitution, having rescinded back and taken a decision contrary to the industrial policy, promissory estoppel would operate against such an act, the action should be declared as illegal in view of the principles of promissory estoppel. Provision of Section 23 of the Prohibition Act which prevents payment of compensation is *ultra vires* and contending that as the entire action is taken in an arbitrary and unreasonable manner without any just cause or reason, the prayer made in the writ petitions be allowed, provision of Section 2(40) (ii) so far as it brings within its ambit ENA or other industrial alcohol unfit for human consumption is *ultra vires*, the Notification issued, vide Annexure-19 on 24th January, 2017, so far as it prohibits renewal of licence on grain based distilleries, particularly ENA, be declared as illegal, the power under Section 24(1) available to the Government being unguided and without any restriction be declared as *ultra vires* and the provisions of Sections 13 and 23 be also declared as *ultra vires* for the grounds and reasons indicated in the writ petitions. That, in sum and substance, is the case of each of the petitioners.

13. Sri Y. V. Giri, Senior Advocate and Sri P. K. Shahi, Senior Advocate assisted by Sri Satyabir Bharti, Advocate took us through the pleadings in this regard made by the petitioners, documents



and annexures filed therewith and argued that the State Legislature does not have any legislative competence to amend the definition of 'intoxicant' in the way done by incorporating or including ENA or spirit, including silent spirit in Section 2(40) (ii), powers available under Section 13 of the Prohibition Act so far as it prohibits manufacture and use of ENA or other alcohol unfit for human consumption be declared as *ultra vires*, Section 23 of the Prohibition Act which bars or takes away the right of renewal and also denies compensation so far as these products are concerned be declared as *ultra vires* and Section 24 (1) which gives unguided power to the State Government to withdraw or the decision not to renew the licence be also declared as *ultra vires* as the entire act of the State Government is unreasonable, arbitrary and unsustainable. In support of their contentions, they relied upon the following judgments- viz. **State of Bombay and another v. F. N. Balsara** [AIR 1951 SC 318]; **Synthetics and Chemicals Ltd. and others v. State of U.P. and others** [(1990) 1 SCC 109]; **Khoday Distilleries and others v. State of Karnataka and others** [(1995) 1 SCC 574]; **State of U.P. and others v. Vam Organic Chemicals Ltd. and others** [(2004) 1 SCC 225]; **Mohan Meakin Limited v. State of Himachal Pradesh and others** [(2009) 3 SCC 157]; **The New Swadeshi Sugar Mills Ltd. & Anr. v. The State of Bihar & Ors.** [1983 PLJR 105]; **State of Bihar & Ors. v. New Swadeshi Sugar Mills**



Ltd. & Anr. [2003 (11) SCC 478]; **Industrial Corporation Pvt. Ltd. v. The State of Bihar & Ors.** [1997 (1) PLJR 77]; **State of Bihar & Ors. v. Industrial Corporation (P) Ltd. & Ors.** [(2003) 11 SCC 465]; **Mcdowell & Co. Ltd. v. The State of Bihar & Ors.** [2006 (4) PLJR 269]; **Shivashankar Chemical Industries (Bihar) Ltd. & Ors. v. The State of Bihar & Ors.** [2010 (3) PLJR 973]; **State of Bihar & Ors. v. Arun Chemical Industries Ltd.** [SLP (Civil) CC 22484/2011 order dated 01.02.2012]; **McDowell & Co. Ltd. v. The State of Bihar & Ors.** [2010 (4) PLJR 994]; **United Brewery & Distilleries Ltd. v. The State of Bihar & Ors.** [2011 (1) PLJR 120]; **Bannari Amman Sugars Ltd. v. Commercial Tax Officer & Ors.** [(2005) 1 SCC 625]; **Lloyd Electric & Engineering Ltd. v. State of Himachal Pradesh & Ors.** [(2016) 1 SCC 560]; **Lalaram & Ors. v. Jaipur Development Authority & Anr.** [Civil Appeal No.13940 of 2015]; **M/s Samrat Laboratories v. The State of Bihar & Ors.** [2016 (4) PLJR 714]; **Bihar Sugar Mills Association v. The State of Bihar & ors.** [2009 (4) PLJR 460]; **Devi Multiplex and anr. v. State of Gujarat and others** [(2015) 9 SCC 132]; and **Manuelsons Hotels Pvt. Ltd. v. State of Kerala and others** [(2016) 6 SCC 766].

14. Learned Senior Counsels Sri Y. V. Giri and Sri P. K. Shahi took us through the provisions of the Prohibition Act, the facts as detailed hereinabove, the definition of 'intoxicant' as it appears in



Section 2(40) (ii) of the Prohibition Act, the meaning of the word, 'intoxicant', meaning and import of the provisions of Sections, 13, 23 and 24(1) and placed reliance on various judgments, as are indicated hereinabove, in support of their contentions. They invited our attention to the judgment of the Supreme Court in the case of **F. N. Balsara** (supra), the principles laid down therein based on the discussions contained in paragraph 45 and thereafter took us through in detail with various aspects of the principles discussed and laid down by the Constitution Bench in the case of **Synthetics and Chemicals Ltd.** (supra), particularly paras -2, 41, 53, 54, 63, 64, 67, 68, 74 etc. of the aforesaid judgment. The conclusion and the principles enumerated in para 86 therein and argued that the law laid down by the Supreme Court in the aforesaid case is that with regard to alcoholic liquor unfit for human consumption or industrial alcohol, the power to legislate is with the Central Legislature and the State Legislature has no power to legislate with regard to industrial alcohol. It was their case that the exclusive power to legislate with regard to industrial alcohol and the alcohol, which is not fit for human consumption, is vested with the Parliament and the State cannot legislate on this subject. They took us through the entire judgment in detail and emphasized that the State Legislature is only empowered to lay down regulations with regard to potable alcohol or alcohol suitable for human consumption and not with



regard to industrial alcohol. It was their case that industries manufacturing industrial alcohol are controlled industry falling within the purview of Entry No.26 of the First Schedule to IDR Act and, therefore, the entire power with regard to such an industry vests exclusively with the Union and not with the State. They also placed reliance on the judgment of the Supreme Court in the case of **Khoday Distilleries** (supra) and invited our attention to the principles laid down by the Supreme Court in the said judgment to say that the State cannot prohibit trade or business in industrial alcohol which is not used as beverage but used legitimately for industrial purposes, i.e., alcohol unfit for human consumption.

15. Reference was also made to the judgment in the case of **Vam Organic Chemicals Ltd.** (supra), to make similar contentions and to say that the power exercised by the State Government is unsustainable. Further reference was also made to a judgment of the Supreme Court in the case of **Mohan Meakin Limited** (supra) in support of the aforesaid contentions.

16. Learned Senior Counsel also took us in detail through entries made in List-I, List-II and List III of the Seventh Schedule to the Constitution, Articles 246, 254 and 265 of the Constitution and argued that the powers are not available to the State to legislate on the subject in question. It was their case that industrial alcohol being a subject covered



by Entry 52 of List-I and being a controlled industry by virtue of IDR Act, the State Government, with the aid of Entry 24 of List-II or Entry 27 of List –II or Entry-33 of List III cannot legislate on the subject in question. It is said that as the power to legislate on industrial alcohol is exclusively with the Union, the act of the State impugned is unsustainable and unconstitutional. They thereafter invited our attention to certain judgments of this Court also in the case of the **New Swadeshi Sugar Mills Ltd.** (supra), **Industrial Corporation (P) Ltd.** (supra); and **Shivashankar Chemical Industries (Bihar) Ltd.** (supra) in support of their contention.

17. With regard to the grounds of promissory estoppel and the provision of Section 24(1) being without any restrictions or guidelines, Shri Y. V. Giri, learned Senior Counsel, placed reliance on the judgments in the case of **Bannari Amman Sugars Ltd.** (supra); **Lloyd Electric & Engineering Ltd.** (supra); **Lalaram** (supra); **Devi Multiplex** (supra); and **Manuelsons Hotels Pvt. Ltd.** (supra), to say that in view of the principles of promissory estoppel also, the act of the State Government is unsustainable.

18. The State Government represented by Senior Advocates Dr. Rajiv Dhavan and Sri Dinesh Dwivedi and Sri Lalit Kishore, learned Principal Additional Advocate General refuted each and every contention advanced, took us through the detailed counter affidavit filed



by the State Government and primarily it was their contention that the Government of India vide its communication dated 13th May, 2016, Annexure-B at page 192 of the paper book in CWJC No.1713 of 2017 has put an embargo on the use of grain for production of alcohol. It was argued that as a matter of national policy, grain for food was to be preserved and in this communication dated 13th May, 2016, by referring to the policy of the Central Government, it was tried to be argued that only molasses was to be used for manufacturing of alcohol and there was a complete and total embargo on use of grain. It was said that keeping in view the aforesaid economic policy of the Union of India and the uncompromising policy of the total prohibition with regard to potable liquor enforced in the State of Bihar and in view of the prohibition policy introduced in the year 2016 to ensure that no form of alcohol can be converted into potable alcohol, the impugned actions were taken and in furtherance to implementation of this prohibition policy, the impugned Notification dated 24th January, 2017 was enforced. It was their case that there being possibility of the industrial alcohol, particularly ENA being converted into potable alcohol, fit for human consumption, and by virtue of mandate of the Directive Principles, i.e. Article 47 of the Constitution and for implementing the total prohibition in the State of Bihar, the action in question has been undertaken.



19. It was emphasized by referring to various entries made in Lists-I, II and III of Seventh Schedule to the Constitution, to say that List-II Entry 8 gave unrestricted power to the State in the matter of dealing with intoxicating liquor, List II Entry 24 pertaining to industries gave power to the State Government to deal with the industries subject to Entries 7 and 52 of List-I, Entries 6, 8, 24 and 27 of List II gave power to the State Government in the matter of production, supply and distribution of goods. In the matter of excise on potable alcohol, List II Entry 51 give unrestricted power to the State Government and with regard to trade and commerce in List-III Entry 33, subject to there being no repugnancy with any Act of the Parliament, powers were available to the State Government.

20. By emphasizing on the scheme for distribution of power between the Union and the State as provided in the Constitution, reference was made by both Dr. Rajiv Dhavan, Senior Advocate and Sri Dinesh Dwivedi, Senior Advocate to argue that a particular entry should be construed by giving liberal construction to the words used in the entry so that it may have the widest amplitude and the power to extend to all ancillary and subsidiary matters. In this regard, Dr. Rajiv Dhavan, learned Senior Advocate, invited our attention to a judgment of the Supreme Court in the case of **Jilubhai Nanbhai Khachar v. State of Gujarat** [(1995) Supp. 1 SCC 596], **Elel Hotels and Investment**



Limited & Ors. v. Union of India [(1989) 3 SCC 698] and the judgment in the case of **Ch. Tika Ramji and others v. State of Uttar Pradesh and others** [1956 SCR 393] to say that each entry is to be interpreted as widely as possible, pith and substance of the provision has to be taken note of and the language of each entry should be given the widest scope of their meaning in a fair manner so that it is capable to meet the mechanism settled by the Constitution. It was emphasized by Dr. Rajiv Dhavan by referring to the aforesaid judgment that each general word should extend to all ancillary or subsidiary matters which can fairly and reasonable be comprehended in it. He canvassed a contention of adopting liberal construction to various entries made in the Schedule.

21. Dr. Rajiv Dhavan, learned Senior Counsel took us in detail through the judgment in the case of **Synthetics and Chemicals Ltd.** (supra) and tried to emphasize that the judgment in the case of **Synthetics and Chemicals Ltd.** (supra) cannot be made applicable in the peculiar facts and circumstances of this case. He referred to various Entries made in the Constitution and argued that for deciding whether an impugned legislation was *intra vires*, regard must be had to its pith and substance. He submitted that if a Statute is found to be in substance to relate to a topic within the competence of the Legislature, it should be held to be *intra vires* even though it might incidentally trench on topics



not within its legislative competence. He had submitted that in this case, if the concept of total prohibition imposed in the State of Bihar, Directive Principles as contained in Article 47 of the Constitution and the legislative intent with regard to impugned action are evaluated in their totality in the backdrop of the ultimate public interest involved, if the State to control the use of alcohol in the State and to prevent its misuse has incidentally trenched upon certain areas reserved for the Union, the same need not be interfered with simply on the basis of law laid down in the case of **Synthetics and Chemicals Ltd.** (supra) when the same is nothing, but a judgment pertaining to the question of imposition of tax or fee, namely, levy of vend fee or duty on industrial alcohol. He invited our attention to the paragraphs 63, 82 and certain paragraphs of the judgment in the case of **Synthetics and Chemicals Ltd.** (supra) to say that this case primarily dealt with the question of imposition of tax or fee and therefore, the principle laid down therein cannot be applied to the present situation. He took us through the judgment in the case of **Tika Ramji** (supra) and the judgments in the case of **Synthetics and Chemicals Ltd.** (supra), **ITC Ltd. v. Agricultural Produce Market Committee** [(2002) 9 SCC 232]; **State of Bihar & Ors. v. Shree Baidyanath Ayurved Bhawan Pvt. Ltd. & Ors.** [(2005) 2 SCC 762]; **Razakbhai Issakbhai Mansuri & Ors. v. State of Gujarat & Ors.** [(1993) 1 SCC 287]; and **Belsund Sugar Co.**



Ltd. v. State of Bihar & Ors. [(1999) 9 SCC 620] to say that in most of these cases also, the principles enumerated by the Constitution Bench in the case of **Synthetics and Chemicals Ltd.** (supra) have been considered, but after taking note of the law laid down in the case of **Tika Ramji** (supra), in the matter of dealing with certain raw material and other products after considering the overlapping provisions of various Entries, legislations made by the States have been upheld. Learned Senior Counsel appearing for the State, therefore, tried to indicate that merely based on the law laid down in the case of **Synthetics and Chemicals Ltd.** (supra), the relief claimed for by the petitioners cannot be granted. It was their contention that the entry should be given their widest interpretation, untrammelled by any other entry and by taking note of the prohibition policy in the State of Bihar, the State's power available in various entries should be upheld. It was argued that even in the case of **Synthetics and Chemicals Ltd.** (supra), regulatory powers available to the State Government for preventing industrial alcohol being made potable alcohol is recognized and if the impugned action of the State is evaluated in furtherance to this aspect of the matter, interference need not be made.

22. It was their contention that on a close scrutiny of various entries made in Lists I, II and III, it is clear that the State has exclusive power over potable liquor and this is an unfettered power available to



the State Government, industry is a State subject, however, this is subject to the regulation by the Union in view of the IDR Act, but industry is also a subject under List II Entry 24 and therefore, the meaning of 'industry' as appearing in both Entry 24 of List II and Entries 7 and 52 of List I has to be analyzed after considering the fact that the 'industry' includes a process of manufacture, certain aspects pertaining to raw material, pre-manufacturing use, past manufacturing use and the import of Section 18(8) of the IDR Act and if the principle laid down in the case of **Tika Ramji** (supra) is applied, then, the State's power to control production of ENA cannot be doubted and if the State of Bihar for implementing its total prohibition policy has taken action in the matter, the same does not call for any interference by this Court.

23. As far as violation of Article 300A of the Constitution is concerned, Dr. Rajiv Dhavan, learned Senior Counsel, argued that Article 300A of the Constitution contemplates that no person shall be deprived of his property save by authority of law. In this case, no property is involved. Petitioners' licenses to manufacture the product in question are not being renewed. Neither their properties, like the factories, the structures constituting the factory, the land, nor any other movable or immovable property is being taken. That being so, it is not a case where the rights of the petitioners to enjoy their property are being taken away or they are being deprived of their property. It is not a case



where contrary to the authority of law, petitioners' properties are being taken away and, therefore, he argued that there is no question of violation of Article 300A of the Constitution and in support of the aforesaid contention, he places reliance on the following judgments: viz. **T. N. Electricity Employees v. T. N. Electricity Board** [(2005) 8 SCC 729, para 49]; **State of U.P. v. Manohar** [(2005) 2 SCC 126]; **Jilubhai Nanbhai Khachar** (supra); and **Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai** [(2005) 7 SCC 627], to say that Article 300A of the Constitution cannot be given a narrow interpretation. It has to be given its widest interpretation and reasonably interpreted. It was their case that in the present facts and circumstances, no property right is involved, no deprivation of property under Property Law is involved, it is only a case of pecuniary loss due to loss of profit or investment and, therefore, Article 300A is not attracted.

24. Thereafter, submissions were made by learned Senior Counsels for the State to say that a plea of promissory estoppel has been raised in view of the fact that promise given and invitation to establish the industry is being rescinded from because of the new Excise Policy and the prohibition imposed and the act of the State Government in refusing to renew the license granted under Form 28A. It is submitted that promissory estoppel will not apply in the present case. Promissory estoppel cannot operate to obviate statutory exercise of powers, public



interest has to be given paramount importance and once the public interest is established, the same has to be upheld. In support of the aforesaid contention, learned Senior Counsel relies upon the judgments in the case of **Mahabir Vegetable Oil (P) Ltd. v. State of Haryana** [(2006) 3 SCC 620]; **MRF Ltd. v. CST** [(2006) 8 SCC 702]; **Pawan Alloys & Castings (P) Ltd. v. UP SEB** [(1997) 7 SCC 251]; and **State of Punjab v. Nestle India** [(2004) 6 SCC 465]; and finally **Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh & Ors.** [(1979) 2 SCC 409], to say that promissory estoppel is an equitable doctrine, it must yield when equity so requires and in this case, the State having implemented a total prohibition in the State of Bihar, their act being in furtherance to this programme and as there is no arbitrariness or unreasonableness, the principle of promissory estoppel cannot be enforced.

25. With regard to the provisions of Section 23 of the Prohibition Act being *ultra vires* on account of non grant of compensation, Dr. Rajiv Dhavan, learned Senior Counsel, argued that hundreds of actions are struck down as arbitrary and *ultra vires* and if compensation is paid in each and every single case, each and every Government would be rendered bankrupt. He submitted that compensation can be provided for deprivation of life or property, but not in such cases. He submitted that there is no principle of restitution or



compensation in law or equity for *ultra vires* act. He submits that merely because compensation is denied, Section 23 of the Prohibition Act would not become *ultra vires*. In support of the aforesaid contention, he has placed reliance on the following three judgments: viz. **Sebastian M. Hongray v. Union of India & Ors.** [AIR 1984 SC 1026]; **Nilabati Behra v. State of Orissa & Ors.** [AIR 1993 SC 1960]; and **D K Basu v. State of West Bengal** [AIR 1997 SC 610].

26. As far as the argument with regard to arbitrariness and the provisions of Section 24 being conferred on the State without any guidelines or controlled provision is concerned, Dr. Rajiv Dhavan, learned Senior Counsel, argues that the exercise of powers for implementing these provisions are controlled by the doctrine of Wednesbury reasonableness and proportionality. He contends that submission of excessive delegation is inapplicable and as laid down by the Supreme Court in the case of **Coimbatore District Central Co-operative Bank v. Coimbatore District Central Co-operative Bank Employees Association & Ors.** [(2007) 4 SCC 669], once the Wednesbury theory of reasonableness and proportionality is applicable, the exercise of power for renewal of license being controlled by these principles, it cannot be said that it is unguided, on the contrary it is said that exercise of the powers for non-renewal or renewal is controlled and provided by the prohibition policy and the nexus related thereto in the



matter of grant or non-grant of renewal, as any action taken in this regard would be guided by the prohibition policy it cannot be said that the powers available under Section 24(1) are unguided.

27. Finally, Dr. Rajiv Dhavan, learned Senior Counsel, argued that all statutes are presumed to be constitutional and valid and onus is on the person who avers unconstitutionality. He refers to various judgments for testing constitutionality of a provision and argues that for testing the constitutionality or otherwise of a statute, the preamble, Directive Principles of the State policy, reasonableness of the law have to be taken note of and while construing the statute, its intention must be given effective and objective meaning. He submits that the rule in Heydon's case has to be applied and a welfare legislation must be given its full potential and if the Bihar Prohibition and Excise Act, which contemplates to enforce, implement and promote complete prohibition of liquor and intoxicants in the State of Bihar, is to be enforced, then, the definition of 'intoxicants' should be given its widest possible interpretation and if that be done, Section 2(40)(ii), construed accordingly, has to be held as *intra vires*. He submits that the Prohibition Act contains various provisions to control and implement the principles of prohibition and Section 13 is one such provision without which the prohibition policy would fail. He argues that except for challenging certain portion of definition and without challenging many



of the provisions, the partial challenge made is not permissible.

28. Various arguments were also made by referring to the license in question issued to the petitioners under Form 28A and efforts were made to say that the license was granted for potable liquor and if it is not renewed, no error has been committed. Accordingly, learned Senior Counsels for the State submitted that the petitions are liable to be dismissed as they are devoid of merits.

29. Before advertizing to consider the rival contentions, it would be appropriate to take note to the various provisions of law which are applicable in the matter. The Bihar Prohibition and Excise Act, 2016 has been promulgated, was published in the Bihar Gazette Extraordinary on 2nd of October, 2016 and the Act enforces and implements and has been incorporated to promote complete ban of potable liquor and intoxicants in the State of Bihar and the Act has been brought into force to have a uniform law with regard to prohibition and regulation of liquor and intoxicants. 'Liquor' has been defined in Section 2(44) to mean country or traditional liquor, Indian Made Foreign Liquor, foreign liquor or any preparation or ingredient, whether solid, semi solid, liquid, semi liquid or gaseous, either made locally or otherwise, that may serve as an alcohol or a substitute for alcohol and is used or consumed for the purposes of getting intoxicated. Likewise, 'intoxicant' has been defined in Section 2(40) and clause (ii) of the same includes spirit including



silent spirit or ENA. There are various other provisions in the Act, which has eleven Chapters dealing from definition to establishment and control by various statutory authorities, prohibitory provisions, provisions for renewal of license and permits, procedure for existing license, excise revenue, offences and penalties, provisions for transportation, manufacture, possession, which have been declared as unlawful, provisions for externment and internment of offenders, detection, investigation and trial of offences, provisions for appeals, revisions, powers of the State Government to grant exemptions, and various other provisions.

30. As far as the present petitions are concerned, Section 2(40) (ii) pertaining to definition of ‘intoxicant’, Section 13 in Chapter III which prohibits manufacturing, bottling, distributing and transporting of liquor and intoxicant, Section 23 creating a bar on the right for renewal and denies compensation and provision of Section 24(1) giving power to the State Government for withdrawal or non-renewal of licence are only relevant and these provisions read as under:-

2 (40) “Intoxicant ” means –

- (i) liquor, or
- (ii) Spirit including silent spirit or ENA, or
- (iii) Methyl Alcohol, or
- (iv) Ethanol, whether denatured or not; or
- (v) any substance from which the liquor may be distilled and which is declared by the State Government by notification in the official Gazette to be an intoxicant for the purpose of this Act, or
- (vi) intoxicating drug, or



- (vii) medicinal preparation as defined under Medicinal and Toilet Preparations (Excise Duties) Acts, 1955 or
- (viii) any preparation or ingredient, either medicinal or otherwise, whether solid, semi solid, liquid, semi liquid or gaseous, either made locally or otherwise, that may serve as an alcohol or a substitute for alcohol and is used or consumed for the purposes of getting intoxicated.

13. Prohibition of liquor or intoxicants.—No person shall manufacture, bottle, distribute, transport, collect, store, possess, purchase, sell or consume any intoxicant or liquor; Provided that the State Government may, by notification, allow renewal of the existing licensees for manufacturing, blending, compounding, bottling, storage, import and export of any liquor or intoxicant subject to the provisions of this Act;

Provided also that the State Government may, by notification, allow any state owned company to undertake such activities as may be required under the Act.

Explanation— The words “Existing Licensee” mean persons, firms etc who are holding a valid license on the day of this Act coming into force.

23. Bar to the right of renewal and to compensation.—No person to whom a license or permit has been granted earlier shall be entitled to claim any renewal thereof as a matter of right, and no claim shall lie for damages or otherwise in consequence of any refusal to renew a license or permit on the expiry of the period for which the same remains in force.

24. Power of the State Government to withdraw or not to renew a license.— (1) The State Government may at any time decide either to withdraw or not to renew a license issued to any manufactory, distillery, molasses manufactory, brewery, bottling plant etc in the entire State of Bihar or any part thereof.

(2) For any action taken under Sub-Section (1), nothing shall be paid in consequence thereof, except any license fee or deposit paid in advance after deducting any amount recoverable by the Government.”

(Emphasis supplied)

31. The Industries (Development and Regulation) Act, 1951,



namely IDR Act, was enacted by the Parliament for providing the Central Government powers and means to implement the industrial policy announced on 6th of April, 1948 and for regulation, control and development of industries, which are vital for economic development, Section 2 of the IDR Act gives power to the Central Government to declare certain industries as controlled industries which, according to the Union, are expedient in public interest and controlled industries are those that are notified in the First Schedule to the IDR Act. Item No.26 of the First Schedule to the IDR Act brings fermentation industries, including alcohol and other products of fermentation industries, within the ambit of a controlled industry. However, by an amendment in the year 2016, potable alcohol has been exempted or is taken out from the purview of a controlled industry.

32. Apart from the aforesaid, the following provisions of the Constitution are also relevant for considering various issues related to the cases in hand. They are Articles 245, 246 and 254 of the Constitution and Entries 7 and 52 of List I, Entries 6, 8, 24 and 27 of List II and Entry 33 of List-III.

33. Article 245 of the Constitution, which is in Part XI of the Constitution, pertaining to relations between the Union and the State, contemplates the extent to which laws can be made by the Parliament or the Legislatures of the States. The provision contemplates that subject to



the provisions of the Constitution, Parliament is empowered to make law for the whole or any part of the territory of India and the Legislature of a State for whole or any part of the State.

34. Article 246 of the Constitution contemplates that notwithstanding anything contained in Clauses (2) and (3) of Article 246, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List-I in the Seventh Schedule, i.e. the Union List. Clause (2) of this Article contemplates that both the Parliament, subject to Clause (3), and the State Legislature, subject to Clause (1), will have power to make laws with respect to matters enumerated in List III, i.e. the Concurrent List, and thereafter, Clause (3) speaks about power of the State to make laws on matters enumerated in List –II, i.e. the State List.

35. Finally, Article 254 of the Constitution makes a provision to deal with the laws which are inconsistent and are made by the Parliament and the State. Clause (1) of Article 254 contemplates that if any provision of a law made by a Legislature of a State is repugnant to any provision of a law made by the Parliament, which Parliament is competent to enact or any provision of the existing law with respect to matters enumerated in the Concurrent List, then, subject to provisions of Clause (2), the law made by the Parliament, whether passed before or after the law made by the Legislature of the State shall



prevail. Clause (2) contemplates that when a law made by the State Legislature with respect to a matter enumerated in the Concurrent List contains any provision repugnant to any provision or of any law earlier made by the Parliament and law made by the State has received the assent of the President, the law made by the State shall prevail, otherwise, the law made by the Union shall prevail.

36. As far as various entries in Schedule VII are concerned, they read as under:

List I

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

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

List II

6. Public health and sanitation; hospitals and dispensaries.

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

24. Industries subject to the provisions of entries 7 and 52 of List I.

26. Trade and commerce within the State subject to the provisions of entry 33 of List III.

27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

List III

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

(a) the products of any industry where the control of such



industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
(b) foodstuffs, including edible oilseeds and oils;
(c) cattle fodder, including oil cakes and other concentrates;
(d) raw cotton, whether ginned or unginned, and cotton seed; and
(e) raw jute.

37. It is a well settled principle of law, based on judgments rendered by the Supreme Court and earlier to that by the Privy Council and the Federal Courts, that several entries as are made in three Lists of the Seventh Schedule of the Constitution are mere legislative heads and it is quite likely that very often they may overlap and when such a situation arises, it is held that the issue must be resolved by applying the rule of pith and substance. In fact, this was the principle which was canvassed by Dr. Rajiv Dhavan, Senior Advocate, and Sri Dinesh Dwivedi, Senior Advocate. This principle has been explained by the Supreme Court in the case of **A.S. Krishna Vs. State of Madras** [AIR 1957 SC 297] in the following manner:-

“... it must be remembered that we are construing a federal Constitution. It is of the essence of such a Constitution that there should be a distribution of the legislative powers of the Federation between the Centre and the Provinces. The scheme of distribution has varied with different Constitutions, but even when the Constitution enumerates elaborately the topics on which the Centre and the States could legislate, some overlapping of the fields of legislation is inevitable. The British North America Act, 1867, which established a federal



Constitution for Canada, enumerated in Sections 91 and 92 the topics on which the Dominion and the Provinces could respectively legislate. Notwithstanding that the lists were framed so as to be fairly full and comprehensive, it was not long before it was found that the topics enumerated in the two sections overlapped, and the Privy Council had time and again to pass on the constitutionality of laws made by the Dominion and Provincial legislatures. It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was *intra vires*, regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to a topic within the competence of the legislature, it should be held to be *intra vires*, even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within its competence, the legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the *vires* of the law even as regards the area of encroachment. Vide *Citizens Insurance Co. of Canada v. William Parsons* (1881) 7 AC 96 : (1881-5) ALL ER Rep 1179; *Attorney General for Ontario v. Attorney General for the Dominion of Canada* 1894 AC 189 : 63 LJPC 59 : 70 LT 538; *Attorney General of Ontario v. Attorney General for the Dominion* 1896 AC 348: 65 LJPC 26: 74 LT 533; *Union Colliery Co. of British Columbia v. Bryden* 1899 AC 580: 68 LJPC 118: 81 LT 277; *Attorney General for Canada v. Attorney General for Ontario* 1937 AC 355 : 106 LJPC 37: 156 LT 307; *Attorney General for Alberta v. Attorney General for Canada* 1940 AC 513 : 109 LJPC 68 : (194) 2 ALL ER 220; and *Board of*



Trustees of Lethbridge Northern Irrigation Distt v. Independent Order of Foresters 1940 AC 513 : 109 LJPC 68 : (1940) 2 ALL ER 220..”

38. Accordingly, if a statute is found in substance relatable to a topic, which is within the competence of the Legislature, it has to be held to be *intra vires* even though incidentally it may trench on topics not within its legislative competence and the extent of the encroachments on matters beyond the competence are the elements required for determining whether the legislation is colourable or in the guise of making a law on a matter within its competence where a particular Legislature is making a law which is beyond its competence.

39. The various entries of the Constitution, as have been detailed hereinabove, indicate the following features. The power to make a law with respect to industries lies with the State in view of Entry 24 List II, but this Entry is made expressly subject to provisions of Entries 7 and 52 of List I, meaning thereby that if the Parliament declares by a law, it, to be expedient that in public interest, a particular industry is to be taken over under the control of the Union, then such industry or industries get transplanted into List-I. Accordingly, with regard to such of the industries in respect to which Parliament makes a declaration as contemplated under Entry 52 of List I, the State is denuded of its power to make a law with respect to that particular



industry by virtue of Entry 52 in List I and in this regard, Section 2 of the IDR Act, reproduced hereinabove, speaks about the declaration by the Parliament and in Entry 26 of the First Schedule of the IDR Act, fermentation industries, excluding potable alcohol, i.e., all alcohol and other products of fermentation industries have been notified as a controlled industry under the control of the Union. The IDR Act provides for licensing of industries mentioned in the First Schedule, besides provision for extensive control and regulation with regard to these industries and their products. Therefore, the power to regulate such industries and their products are extensively within the province of the Central Government and the State have no say in the matter. However, Entry 8 of List II speaks of production, manufacture, possession, transport, purchase and sale of intoxicating liquor, meaning thereby that power with regard to these matters vests with the State. Before amendment to the Entry 26 of the First Schedule to the IDR Act, in the case of **Mcdowell & Co.** (supra), this question was considered and it was laid down by the Hon'ble Supreme Court that the formulae to be followed is as under:-

“ In other words, we must first carve out the respective fields of Entry 24 and Entry 8 in List II. Entry 24 is a general entry relating to industries whereas Entry 8 is a specific and special entry relating inter alia to industries engaged in production and manufacture of intoxicating liquors. Applying the well-known rule of interpretation applicable to such a



situation (special excludes the general), we must hold that the industries engaged in production and manufacture of intoxicating liquors do not fall within Entry 24 but do fall within Entry 8. This was the position at the commencement of the Constitution and this is the position today as well. Once this is so, the making of a declaration by Parliament as contemplated by Entry 52 of List I does not have the effect of transferring or transplanting, as it may be called, the industries engaged in production and manufacture of intoxicating liquors from the State List to Union List. As a matter of fact, Parliament cannot take over the control of industries engaged in the production and manufacture of intoxicating liquors by making a declaration under Entry 52 of List I, since the said entry governs only Entry 24 in List II but not Entry 8 in List II.

(Emphasis added)

40. Now, if that was the position and when we take note of the principle laid down in the case of **Mcdowell & Co.** (supra) and when this principle is applied to the industrial alcohol or alcohol unsuitable for human consumption, as they are and cannot be intoxicating substance, we find that there is no corresponding Entry like Entry 8 of List II which protects the rights of the State with respect to an alcohol unfit for human consumption or industrial alcohol.

41. At this stage, it would be appropriate to consider the discussions made in this regard by the Constitution Bench in the case of **Synthetics and Chemicals Ltd.** (supra). In fact, this case is the most crucial case, which was relied upon by the petitioners in support of their



contentions and the State represented by their learned Senior Counsels tried to distinguish this case by contending that it can be applied only in the matter of levy of fee or tax or duties and not for any other purpose, particularly in the backdrop of the total prohibition imposed in the State. In the case of **Synthetics and Chemicals Ltd.** (supra), in para -2, three questions that fell for consideration before the Hon'ble Bench were laid down and the three questions were as under:-

“(i) whether the power to levy excise duty in case of industrial alcohol was with the State legislature or the Central legislature?

(ii) what is the scope and ambit of Entry 8 of List II of the Seventh Schedule of the Constitution?

(iii) whether, the State Government has exclusive right or privilege of manufacturing, selling, distributing, etc. of alcohols including industrial alcohol. In this connection, the extent, scope and ambit of such right or privilege has also to be examined.”

(Emphasis supplied)

42. Question Nos. (ii) and (iii) have bearing with regard to the issue in question. Various submissions made with respect to the questions are thereafter discussed, provisions of the IDR Act, Schedule-I Entry 26 thereof taken note of, judgment in the case of **F.N. Balsara** (supra) is extensively referred to in para 41 and after considering the judgment in the case of **Indian Mica and Micanite Industries** (supra), it has been held that Entry 8 in List II speaks of intoxicating liquor, the



question would be whether this Entry pertaining to intoxicating liquor is confined to potable liquor or includes all liquors. It seems that, an argument was advanced to say that it is reasonably possible to take the view that intoxicating liquor includes non-potable liquor, but after analyzing various aspects of the matter, in para 53, it has been held that expression of a Constitution must be understood in its common and normal sense, industrial alcohol is incapable of being consumed by normal human being and the argument that the expression ‘consumption’ would include non-potable alcohol unfit for human consumption or otherwise was rejected and it was held that the expression ‘consumption’ appearing in various entries and parts of the Constitution must be understood in the sense of direct physical intake by human beings, in this regard and it was held that the word, ‘consumption’ mean that it is with reference to the alcohol, which is only fit for human consumption, in paras 53 and 54, the matter has been analyzed in the following manner:-

53. It was further submitted by the State that the State has exclusive right to deal in liquor. This power according to the counsel for the State, is reserved by and/or derived under Articles 19(6) and 19(6)(ii) of the Constitution. For parting with that right a charge is levied. It was emphasised that in a series of decisions some of which have been referred to hereinbefore, it has been ruled that the charge is neither a fee nor a tax and termed it as privilege. The levy is on the manufacture, possession of alcohol. The rate of levy differs on



its use, according to the State of U.P. The impost is also stipulated under the trading powers of the State under Article 298 and it was contended that the petitioners and/or appellants were bound by the terms of their licence. It was submitted that the Parliament has no power to legislate on industrial alcohol, since industrial alcohol was also alcoholic liquor for human consumption. Entry 84 in List I expressly excludes alcoholic liquor for human consumption; and due to express exclusion of alcoholic liquor for human consumption from List I, the residuary Entry 97 in List I will not operate as against its own legislative interest. These submissions have been made on the assumption that industrial liquor or ethyl alcohol is for human consumption. It is important to emphasise that the expression of a constitution must be understood in its common and normal sense. Industrial alcohol as it is, is incapable of being consumed by a normal human being. The expression 'consumption' must also be understood in the sense of direct physical intake by human beings in this context. It is true that utilisation in some form or the other is consumption for the benefit of human beings if industrial alcohol is utilised for production of rubber, tyres used. The utilisation of those tyres in the vehicle of man cannot in the context in which the expression has been used in the Constitution, be understood to mean that the alcohol has been for human consumption.

54. We have no doubt that the framers of the Constitution when they used the expression 'alcoholic liquor for human consumption' they meant at that time and still the expression means that liquor which as it is is consumable in the sense capable of being taken by human beings as such as beverage of drinks. Hence, the expression under Entry 84, List I must be understood in that light. We were taken through various dictionary and other meanings and also invited to the process of



manufacture of alcohol in order to induce us to accept the position that denatured spirit can also be by appropriate cultivation or application or admixture with water or with others, be transformed into ‘alcoholic liquor for human consumption’ and as such transformation would not entail any process of manufacture as such. There will not be any organic or fundamental change in this transformation, we were told. We are, however, unable to enter into this examination. Constitutional provisions specially dealing with the delimitation of powers in a federal polity must be understood in a broad commonsense point of view as understood by common people for whom the Constitution is made. In terminology, as understood by the framers of the Constitution, and also as viewed at the relevant time of its interpretation, it is not possible to proceed otherwise; alcoholic or intoxicating liquors must be understood as these are, not what these are capable of or able to become. It is also not possible to accept the submission that vend fee in U.P. is a pre-Constitution imposition and would not be subject to Article 245 of the Constitution. The present extent of imposition of vend fee is not a pre-Constitution imposition, as we noticed from the change of rate from time to time.”

(Emphasis supplied)

43. After so discussing, the judgment proceeds and after holding that the pith and substance of the Legislature has to be looked into, interpretation of the expression ‘intoxicating liquor’ with reference to **Balsara’ case** (supra) have been considered and in paras 74, 75, 76 and 77, the following observations are made:-

74. It has to be borne in mind that by common standards ethyl



alcohol (which has 95 per cent) is an industrial alcohol and is not fit for human consumption. The petitioners and the appellants were manufacturing ethyl alcohol (95 per cent) (also known as rectified spirit) which is an industrial alcohol. ISI specification has divided ethyl alcohol (as known in the trade) into several kinds of alcohol. Beverage and industrial alcohols are clearly and differently treated. Rectified spirit for industrial purposes is defined as “spirit purified by distillation having a strength not less than 95 per cent of volume by ethyl alcohol”. Dictionaries and technical books would show that rectified spirit (95 per cent) is an industrial alcohol and is not potable as such. It appears, therefore, that industrial alcohol which is ethyl alcohol (95 per cent) by itself is not only non-potable but is highly toxic. The range of spirits of potable alcohol is from country spirit to whisky and the ethyl alcohol content varies between 19 to about 43 per cent. These standards are according to the ISI specifications. In other words, ethyl alcohol (95 per cent) is not alcoholic liquor for human consumption but can be used as raw material input after processing and substantial dilution in the production of whisky, gin, country liquor, etc. In many decisions, it was held that rectified spirit is not alcohol fit for human consumption. Reference may be made in this connection to *Delhi Cloth and General Mills Co. Ltd. v. Excise Commissioner, U.P. Allahabad (Special Appeal No.177 of 1970, decided on March 29, 1973).* In this connection, it is important to bear in mind the actual provision of Entry 8 of List II. Entry 8 of List II cannot support a tax. The above entry contains the words “intoxicating liquor”. The meaning of the expression “intoxicating liquor” has been rightly interpreted by the Bombay High Court in the *Balsara case*. The decision of the Bombay High Court is reported in *Nusserwanji Balsara v. State of Bombay, AIR 1951 Bom 210, 214 : 52 Bom LR 799 : 52 Cr. LJ 80: ILR (1951) Bom 17.* In that



light, perhaps, the observations of Fazl Ali, J. in *Balsara case*, 1951 SCR 682 : AIR 1951 SC 318 : 52 Cr LJ 1361, requires consideration. It appears that in the light of the new experience and development, it is necessary to state that “intoxicating liquor” must mean liquor which is consumable by human being as it is and as such when the word “liquor” was used by Fazl Ali, J., they did not have the awareness of full use of alcohol as industrial alcohol. It is true that alcohol was used for industrial purposes then also, but the full potentiality of that user was not then comprehended or understood. With the passage of time, meanings do not change but new experiences give new colour to the meaning. In *Har Shankar case*, (1975) 1 SCC 737 : (1975) 3 SCR 254 : AIR 1975 SC 1121, a bench of five judges have surveyed the previous authorities. That case dealt with the auction of the right to sell potable liquor. The position laid down in that case was that the State had the exclusive privilege or right of manufacturing and selling liquor and it had the power to hold public auctions for granting the right or privilege to sell liquor and that traditionally intoxicating liquors were the subject matters of State monopoly and that there was no fundamental right in a citizen to carry on trade or business in liquor. All the authorities from *Cooverji Barucha case*, 9154 SCR 873 : AIR 1954 SC 220 to *Har Shankar case* dealt with the problems or disputes arising in connection with the sale, auction, licensing or use of potable liquor.

(emphasis supplied)

75. Only in two cases the question of industrial alcohol had come up for consideration before this Court. One is the present decision which is under challenge and the other is the decision in *Indian Mica and Micanite Industries Ltd. case*, (1971) 2 SCC 236 : 1971 Supp SCR 319: AIR 1971 SC 1182. In the latter case, in spite of the earlier judgments including *Barucha case*, denatured



spirit required for the manufacture of micanite was not regarded as being within the exclusive privilege of the State. It appears that in that decision at p. 321 of the report (SCC p. 238), it was specifically held that the power of taxation with regard to alcoholic liquor not fit for human consumption, was within the legislative competence of central legislature. The impost by the State was held to be justifiable only if it was a fee thereby impliedly and clearly denying any consideration or price for any privilege. For the first time, in the *Synthetics & Chemicals Ltd. case* the concept of exclusive privilege was introduced into the area of industrial alcohol not fit for human consumption.

76. *Balsara case* dealt with the question of reasonable restriction on medicinal and toilet preparations. In fact, it can safely be said that it impliedly and sub-silentio clearly held that medicinal and toilet preparations would not fall within the exclusive privilege of the States. If they did there was no question of striking down of Section 12(c) and (d) and Section 13(b) of the Bombay Prohibition Act, 1949 as unreasonable under Article 19(1)(f) of the Constitution because total prohibition of the same would be permissible. In *K.K. Narula case (1967) 3 SCR 50: AIR 1967 SC 1368*, it was held that there was right to do business even in potable liquor. It is not necessary to say whether it is good law or not. But this must be held that the reasoning therein would apply with greater force to industrial alcohol.

77. Article 47 of the Constitution imposes upon the State the duty to endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and products which are injurious to health. If the meaning of the expression “intoxicating liquor” is taken in the wide sense adopted in *Balsara case*, it would lead to an anomalous result. Does Article 47 oblige the State to prohibit even such industries as are licensed under the IDR Act but which manufacture industrial alcohol?



This was never intended by the above judgments or the Constitution. It appears to us that the decision in the *Synthetics & Chemicals Ltd. case* was not correct on this aspect.

(Emphasis supplied)

44. Finally, in para 85, the principle has been crystallized in the following manner:-

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."



(Emphasis supplied)

45. In para 86, the judgment lays down the following principles:-

“ **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*”.

(Emphasis supplied)

46. Finally, in para 88 it is held that with respect to industrial alcohol, States are not authorized to impose the impost and while doing so, in para 86(b), it has been clearly held that the State has got power to lay down regulation to ensure that non-potable alcohol is not diverted or misused as a substitute for potable liquor.

47. If we analyze the judgment of the Constitution Bench in the case of **Synthetics and Chemicals Ltd.** (supra), it is very clear that



the State Government cannot claim to have power to legislate on industrial alcohol, a product of Scheduled industries under the IDR Act by virtue of Entry 8 of List II or Entry 33 of List III. This power is exclusively with the Union of India. The State can only lay down regulations to ensure that non-potable alcohol is not diverted and misused as its substitute for potable liquor. This in sum and substance is a law laid down by the Constitution Bench of the Supreme Court in the case of **Synthetics and Chemicals Ltd.** (supra) and the learned Senior Counsel for the State wanted us to hold that the aforesaid judgment would apply only with regard to imposition of tax or fees and not otherwise. In fact, it was their contention by referring to various judgments that in spite of the aforesaid enunciation of law, we should give a wider meaning to various entries in the Lists so that the purpose for which the Bihar Prohibition and Excise Act, 2016 has been brought into force should be given full effect to. We are required to address this issue also. However, before doing so, we may take note of the law laid down in the case of **Khoday Distilleries Ltd.** (supra), wherein the Supreme Court in categorical terms lays down the following principles in para 60 (1):

“(1) Likewise, the State cannot prohibit trade or business in industrial alcohol which is not used as a beverage but used legitimately for industrial purposes. The State, however, can place reasonable restrictions on the said trade or business in the



interests of the general public under Article 19(6) of the Constitution.”

48. This also is done after analyzing the principles laid down in the case of **Synthetics and Chemicals Ltd.** (supra). In the case of **Khoday Distilleries Ltd.** (supra), the Hon’ble Supreme Court was considering a law with regard to constitutional validity pertaining to the question as to whether rules and regulations made by the Karnataka Government and the Kerala Government in the matter of restrictions imposed pertaining to liquor is valid or not and whether the right to carry on trade and business in liquor is a fundamental right or not.

49. In the case of **Vam Organic Chemicals Ltd.** (supra) also this question has been considered and in paras 22, 23, and 24, the principle laid down in the following manner:-

“22. Article 246 gives to Parliament exclusive power to make laws with respect to the matters enumerated in List I of the Seventh Schedule. Entry 84 of List I and Entry 51 of List II were construed by this Court in *Synthetics case* to hold that Parliament alone has the exclusive power to legislate and levy excise tax in respect of industrial alcohol. It is unnecessary to refer to the law with regard to the comparative competence of the Union and the States with regard to levy of excise, regulation and control of industrial alcohol prior to the decision of the Constitution Bench in *Synthetics*. Whatever the law was earlier, the decision in *Synthetics* now holds the field. In that decision the State’s power to levy excise duty was held



to be limited by Entry 51 to tax on alcoholic liquors for human consumption. It was also held that Section 2 of the Industries (Development and Regulation) Act, 1951 as well as Serial No. 26 of the First Schedule to that Act covered the whole field on industrial alcohol and its products. Therefore, since the coming into force of the IDR Act on 8-5-1952 the State Legislatures are constitutionally incompetent to levy any tax on industrial alcohol.

23. The principle was succinctly reiterated in *State of U.P. v. Modi Distillery*, (1995) 5 SCC 753, where it was said that the State's power to levy excise duty was limited to alcoholic liquor for human consumption and

that the framers of the Constitution, when they used the expression "alcohol liquors for human consumption", meant, and the expression still means, that liquor which, as it is, is consumable in the sense that it is capable of being taken by human beings as such as a beverage or drink. ... Dictionaries and technical books showed that rectified spirit (95 per cent) was an industrial alcohol and not potable as such. ... Therefore even if ethyl alcohol (95 per cent) could be used as a raw material or input, after processing and substantial dilution, in the production of whisky, gin, country liquor etc. nevertheless, it was not "intoxicating liquor" which expression meant only that liquor which was consumable by human beings as it was.

(emphasis supplied)

Thus the State cannot legislate on industrial alcohol despite the fact that such industrial alcohol has the potential to be used to manufacture alcoholic liquor.

24. A somewhat contrary view was taken by a Bench of two Judges of this Court in *Bihar Distillery v. Union of India*,



(1997) 2 SCC 727. It was held that the decision in *Synthetics* did not deal with rectified spirit which could be converted into potable alcohol and was merely concerned with industrial alcohol which could not be so converted i.e. denatured rectified spirit. A distinction was drawn between industries engaged in manufacturing rectified spirit meant exclusively for supply to industries (industries other than those engaged in obtaining or manufacturing of potable liquor), whether after denaturing it or without denaturing it and industries engaged in manufacturing rectified spirit exclusively for the purpose of obtaining or manufacturing potable liquor. In the first case, the industry was to be under “the total and exclusive control of the Union and be governed by the IDR Act and the rules and regulations made thereunder” (SCC p. 743, para 23). As far as the second case is concerned, “they shall be under the total and exclusive control of the States in all respects and at all stages including the establishment of the distillery” (SCC p. 744, para 23).”

50. The observations of the Constitution Bench in the case of **Synthetics and Chemicals Ltd.** (supra) is taken note of and in para 29, it has been held that the State’s power in the matter of legislation is limited to regulation of non-potable alcohol for the limited purpose of preventing its use as alcoholic liquor and the principles laid down in the case of **Synthetics and Chemicals Ltd.** (supra) was upheld.

51. In the case of **Mohan Meakin Limited** (supra) also, this issue has been considered and it has been held that there cannot be any doubt that the State possesses the right to have complete control over all



aspects of intoxicants, but cannot regulate or legislate with regard to alcoholic liquor not fit for human consumption. It has been held in para 24 of the aforesaid judgment after referring to entries 8, 51 and 66 of List II of the Seventh Schedule that the Constitution of India confers upon the State only to exercise its legislative control in respect of matters which are covered thereby and industrial alcohol or spirit being a matter covered under Entry 52 of List I of the Seventh Schedule, it is said that these cannot be subject to control by the State.

52. However, in spite of all these judgments, both the learned Senior Counsels for the State had relied on the judgments of **SEIL Ltd.** (Supra); **ITC Ltd.** (supra); and **Belsund Sugar Co. Ltd.** (supra), to say that in the aforesaid judgments, the case of **Synthetics and Chemicals Ltd.** (supra) was taken note of and it was observed that the said judgment only deals with the question of imposition of certain tax or duty and cannot be made applicable to matters beyond the said provision and reference was also made to the judgment in the case of **SIEL Ltd.** (supra) to canvass the aforesaid contention. In para 15 of the judgment in the case of **SIEL Ltd.** (supra), the judgment in the case of **Tika Ramji** (supra) is taken note of and after referring to the inter-relationship between Entry 52 List I, Entry 24 List II, Entry 27 List II and Entry 33 of List III, it is observed that the term, 'industries' should be widely construed to include all activities preceding production such



as acquisition of raw material and activities subsequent to production such as disposal of finished products of that industry. In fact it was argued that the judgment in the case of **Synthetics and Chemicals Ltd.** (supra) will not be applicable in the present cases. We will deal with this issue separately but before doing so we may take note of certain judgments relied upon on behalf of the State. In the case of **SIEL Ltd.** (supra), in paras 17 and 18, it is held that:

“17. In the light of these entries, if one looks at Section 2 of the Industries (Development and Regulation) Act, 1951, Section 2 clearly declares an industry which is in the First Schedule as an industry falling under Entry 52 of List I. Section 18-G, however, deals with control over supply, distribution, price, etc. of certain articles or products of such industry. Section 18-G empowers the Central Government to provide by notification for regulating the supply and distribution of a product of such industry and trade and commerce therein. Section 18-G is, therefore, an exercise of the powers of legislation conferred by Entry 33 of List III. By its express language, Section 18-G is clearly covered under Entry 33 of List III and is excluded from Entry 52 List I. Any notification, therefore, issued under Section 18-G would be an exercise of power conferred by Entry 33 of the Concurrent List. Since the exercise of power under Section 18-G falls under the Concurrent List in the Seventh Schedule of the Constitution and not under Entry 52 of List I, the State Legislature is equally competent to legislate in respect of the same subject-matter, subject to Article 254 of the Constitution.

(Emphasis supplied)



18. Article 254 expressly deals with a situation where any provision of a law made by the legislature of a State is repugnant to any provision of law made by Parliament in respect of one of the matters in the Concurrent List. Under clause 2 of Article 254, where the law made by the legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament, or an existing law with respect to that matter, then, the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has been given his assent, prevail in the State subject to the proviso contained therein.

53. Thereafter in para 24, after considering the case of **Synthetics and Chemicals Ltd.** (supra), the principle analyzed is as under:-

“**24.** The respondents have pointed out that the U.P. Sheera Niyantaran Adhiniyam, 1964 has also received the President’s assent under Article 254(2). In any event, looking to the fact that the Molasses Control Order of 1961 passed by the Central Government in exercise of powers conferred by Section 18-G was not extended at any point of time to the State of U.P. or the State of Bihar, the question of repugnancy between the Molasses Control Order, 1961 and the U.P. Sheera Niyantaran Adhiniyam, 1964 does not arise. In fact, the present litigation has commenced after the Molasses Control Order, 1961 of the Central Government has been rescinded and the only legislation which holds the field is the U.P. Sheera Niyantaran Adhiniyam of 1964 which is in legitimate exercise of power of legislation under Entry 33 of List III.”



54. Similarly, in the case of **Belsund Sugar Co. Ltd.** (supra) also, the matter has been considered in the backdrop of various entries, IDR Act and in para 118 and 119, the principles have been summarized in the following manner:-

“**118.** It was contended by Shri Ranjit Kumar relying on these observations that mere declaration under the IDR Act is enough to exclude the jurisdiction of the State Legislature in connection with such a declared industry. It is difficult to appreciate this contention. It has to be kept in view that any legislation in exercise of legislative power under Entry 54 of List I would enable Parliament to regulate mines and mineral development by taking them under the control of the Union in public interest. Thus all aspects of the mining industry would be covered by the general sweep of such a declaration.

119. However, so far as the IDR Act is concerned, it is enacted under Entry 52 of the First Schedule which deals with industries in general. Simultaneously in the State List itself there is Entry 24 which deals with industries subject to the provisions of Entries 7 and 52 of List I. Consequently, the products of such controlled industries would necessarily not be governed by the sweep of the general legislation pertaining to such industries as per Entry 52 of the Union List. The aforesaid Constitution Bench judgment was not concerned with any State legislation enacted under Entry 24. On the contrary, it dealt with legislation of the Union Parliament under Entry 54 of the Union List read with Entry 23 of the State List. The scheme of the aforesaid legislative entries is entirely different from the scheme of Entry 52 of List I read with Entry 24 of List II with which we are concerned. On a conjoint reading of the aforesaid two



entries, therefore, the ratio of the decision of the Constitution Bench in the aforesaid case cannot be effectively pressed into service by Shri Ranjit Kumar for supporting his contention. In this connection, we may usefully refer to a decision of this Court in *SIEL Ltd.* wherein one of us, Sujata V. Manohar, J. was a Member. It has rightly distinguished the ratio of the Constitution Bench decision in the case of *Hingir-Rampur Coal Co., Ltd AIR 1961 SC 459 : (1961) 2 SCR 537*, and taken the view that merely because an industry is controlled by a declaration under Section 2 of the IDR Act enacted by Entry 52 of the Union List, the State Legislature would not be denied of its powers to regulate the products of such an industry by exercise of its legislative powers under Entry 24 of the State List. In that case the question was whether the U.P. Sheera Niyantran Adhiniyam, 1964 could be said to be repugnant to the Molasses (Control) Order issued by the Central Government under Section 18-G of the IDR Act imposing restrictions on the sale of molasses and fixing the maximum price of molasses. Answering the question in the negative, it was held that the term “industry” in Entry 24 would not take within its ambit trade and commerce or production, supply and distribution of goods which are within the province of Entries 26 and 27 of List II. Similarly, Entry 52 in List I which deals with industry also would not cover trade and commerce in, or production, supply and distribution of, the products of those industries which fall under Entry 52 of List I. For the industries falling in Entry 52 of List I, these subjects are carved out and expressly put in Entry 33 of List III. It was also held that since the Molasses (Control) Order of 1961 passed by the Central Government in exercise of powers conferred by Section 18-G was not extended at any point of time to the State of U.P. or the State of Bihar, the question of repugnancy between the Molasses Control Order,



1961 and the U.P. Sheera Niyam Adhiniyam, 1964 does not arise. Consequently, it must be held that in the absence of a statutory order promulgated under Section 18-G of the IDR Act, it cannot be said that the field for regulation of sale and purchase of products of the flour industry like atta, maida, suji, bran, etc. would remain outside the domain of the State Legislature.”

(Emphasis supplied)

55. In fact, a detailed analysis of the submissions made on behalf of the State has also been considered by the Supreme Court in the case of **B. Viswanathiah and Company and others v. State of Karnataka and others** [(1991) 3 SCC 358] and in the aforesaid case also the same argument, based on the law laid down in the case of **Tika Ramji** (supra), was canvassed and it was contended that with regard to Silk Industry where a declaration was made with respect to Silk Industry, Parliament can only enact a provision and not the State Legislature, but with respect to certain raw products, like the raw silk, an argument was canvassed that the State can make legislative enactment and the judgments in the case of **Tika Ramji** (supra) and **Ganga Sugar Corporation Ltd. v. State of U.P.** [(1980) 1 SCC 223] were referred to. The Hon’ble Supreme Court in the aforesaid case analyzed the entire principle in the backdrop of the law laid down in the case of **Tika Ramji** (supra). The discussions start from para-6 onwards which reads as under:-



6. It will at once be seen that the point raised by the petitioners/appellants has been repelled by the High Court on the basis of a series of decisions of this Court regarding scope of Entry 52 of List I in the Seventh Schedule to the Constitution. The High Court has pointed out that when Entry 52 talks of control of industry it does not mean all aspects of the industry in question. An industry comprises of 3 important aspects:

- (i) raw materials;
- (ii) the process of manufacture or production; and
- (iii) the distribution of the products of the industry.

Legislation in regard to raw materials would be permissible under Entry 27 of List II, notwithstanding a declaration of the industry under Entry 52 to be one within the purview of parliamentary legislation. The process of manufacture or production can be legislated on by States under Entry 24 of List II so long as the industry is not a controlled industry within the meaning of Entry 7 or Entry 52 of List I. So far as the third aspect viz. the distribution of the products of the industry are concerned, the State legislature would be quite competent to legislate thereto in regard thereto under Entry 27 of List II. However, when the industry is also a controlled industry legislation in regard to the products of the industry would be permissible by both the Central and the State legislatures by virtue of Entry 33 of List III. This in short is the decision of the High Court based, as already pointed out on a series of decision of this Court. Observations by this Court to a like effect in *Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B.*⁶ may also be seen. We entirely agree with this view.”

(Emphasis supplied)

56. Thereafter, in para 7, the law laid down is that once an



industry is declared as a controlled industry, power of which is vested in the Parliament, State cannot legislate and in para 8, the law has been crystallized in the following manner:-

"8. We are of the opinion that it is unnecessary, for the purposes of the present case, to consider the contentions raised in the *I.T.C. case, 1985 Supp SCC 476..* That was a case in which the State enactment was held to be competent by the High Court on the narrow ground that the Central legislation covered only Virginia tobacco and did not deal with the industry insofar as it related to other varieties of tobacco. On a consideration of the provision of the Act, this Court came to the conclusion that this interpretation of the Act was not correct and that the Central legislation did purport to regulate and control the entire tobacco industry. In the light of this conclusion the court declared the State law to be incompetent, having regard to the provisions of Entry 52 of List I and the declaration in the Indian Tobacco Act under that provision. In the present case, however, the matter is on a totally different footing. It is true that the Central Silk Board Act purports to control the raw silk industry in the territory of India. But, as pointed out by the High Court in the light of the earlier decisions of this Court therein referred to, the control of the industry vested in Parliament was only restricted to the aspect of production and manufacture of silk yarn or silk. It did not obviously take in the earlier stages of the industry, namely, the supply of raw materials. For instance, as already pointed out, even in regard to the silk industry, the reeling, production, development and distribution of silkworm seeds and cocoons was regulated by Act 5 of 1960. These items can be perhaps legitimately described as the raw materials of the silk industry. The control being vested in Parliament under Entry 52



of silk industry did not in view of the earlier rulings of this Court affect the control over these raw materials. That is perhaps the reason why the industry did not challenge the provisions of the 1959 Act, when it was originally enacted, on the ground that is now being put forward. The present legislation, as a result of the amendments, controls the supply and distribution of the goods produced by the industry. As rightly pointed out by the High Court this is the third aspect of the industry which falls outside the purview of the control postulated under Entry 52. In other words, though the production and manufacture of raw silk cannot be legislated upon by the State legislature in view of the provisions of the Central Act and the declaration in Section 2 thereof, that declaration and Entry 52 do not in any way limit the powers of the State legislature to legislate in respect of the goods produced by the silk industry. To interpret Entry 52 otherwise would render Entry 33 in List III of the Seventh Schedule to the Constitution otiose and meaningless. In this view of the matter the limitation contained in Entry 52 does not affect the validity of the present legislation. This is an aspect which was not touched upon and which did not arise in the *Indian Tobacco case*. There both the Central Act and the State Act purported to legislate in regard to the industry, namely, in regard to the production and manufacture of tobacco.”

57. By referring to the cases of **Tika Ramji** (supra); **Belsund Sugar Co. Ltd.** (supra); and **SEIL Ltd.** (supra), it was tried to be indicated that in all these cases, even after considering the law laid down by the Constitution Bench in the case of **Synthetics and Chemicals Ltd.** (supra), the impugned legislations were upheld as



Synthetics and Chemicals Ltd. (supra) only deals with taxing provision and not with other aspects of regulations in the matter of production, manufacture and control over the industry.

58. We are unable to accept the aforesaid contention. In fact, if we go through the judgments in the case of **Tika Ramji** (supra); **Belsund Sugar Co. Ltd.** (supra); and **SEIL Ltd.** (supra) and even the case of **Razakbhai Issakbhai Mansuri** (supra), we find that all these cases relate to the question of legislation pertaining to certain raw material or material that can be used for producing the main product, which falls in the category of controlled industry or in the category of a particular entry beyond the legislative competence of the State and it was while considering all these aspects that the explanation with regard to non-applicability of the law laid down in the case of **Synthetics and Chemicals Ltd.** (supra) observed or observations made in that regard. No where in these judgments, there is anything to indicate that the principles laid down in the case of **Synthetics and Chemicals Ltd.** (supra) have diluted, overruled or dealt with in a manner which indicates to us that it may not apply in the facts and circumstances of present case.

59. In fact, most of the cases cited before us are pertaining to bye-products or raw materials. For example, in the case of **Belsund Sugar Co. Ltd.** (supra), the matter was dealt with regard to sugarcane, which was used for manufacturing sugar, a controlled industry. In the



case of **Razakbhai Issakbhai Mansuri** (supra), the question was being dealt with a product of rotten *Gur*, a jaggery, and to control the said product by introducing a concept of having permit to prevent it being converted into illicit liquor or potable liquor in the State of Gujarat where there was complete prohibition. In this case, the Hon'ble Supreme Court while considering somewhat similar circumstances have held that for preventing possible misuse of *Gur* to be converted into consumable alcohol, if the State has brought some regulatory method by introducing a permit system, it cannot be said that the State has acted in a manner so as to trench upon the powers of the State Government. In fact, following observations made by the Supreme Court in the case of **Razakbhai Issakbhai Mansuri** (supra) clarifies the position:-

“9. While considering the argument, addressed on behalf of the petitioners, it should be kept in mind that the impugned provisions do not place absolute restriction or prohibition either against the possession of “rotten gur” or the manufacture, use or consumption thereof. The law requires only a permit to be taken in advance and admittedly there is no hurdle in obtaining such a permit which is readily available on the payment of a nominal fee. The purpose of the permit is to make available information to the authorities concerned as to the persons dealing in “rotten gur” to facilitate vigilance against misuse of “rotten gur” for preparation of intoxicating liquors.”

(Emphasis supplied)

60. Thereafter in para 11, the Directive Principles of the



State Policy, Article 47 of the Constitution and the complete prohibition enforced in the State of Gujarat were considered and in para 13, it has been so laid down by the Supreme Court.

13. The problem which faced the State was that unscrupulous persons while pretending to be engaged in business of “rotten gur” or for that matter, ‘gur’ were aiding and abetting bootlegging on large scale. For checking effectively this illegal activity it was considered necessary to require a person in possession of “rotten gur” in excess of the prescribed quantity to obtain a permit. This would help the administration in keeping a vigilant eye on the violaters of the law. We have examined the materials placed before us by the parties. We are fully satisfied that the impugned steps were taken after a detailed, careful and deep deliberation of the problem and its solution and that the impugned amendments fully satisfy the public interest test.”

61. In the present case also, as was done in the case of **Razakbhai Issakbhai Mansuri** (supra), for preventing rotten *gur* for being converted into the consumable alcohol, if regulatory methods were adopted, the same would always be within the power of the State Government. We are informed that in the State of Bihar already even for the purpose of bringing into the said alcohol, unfit for human consumption, and for their movement within the State, various regulatory processes have been enforced, which include use of digital lock, security guards and patrolling of vehicles carrying these products



within the State of Bihar and other methods. These, being the regulatory methods, can be enforced by the State, but in the garb of exercising these powers of regulatory method to prevent the misuse, the State cannot usurp itself the power of legislation, which is beyond the competence of the State Government. To that effect, inclusion of ENA in the definition clause has to be held as impermissible.

62. That being the position, we are of the considered view that the contention of the learned counsel for the State cannot be accepted. The Constitution Bench judgment in the case of **Synthetics and Chemicals Ltd.** (supra) deals with various aspects of the matter and the law laid down in the said case is that with regard to industrial alcohol or alcohol not fit for human consumption, the State Government is not competent to make an enactment. In fact, the arguments advanced by learned senior counsel based on the liberal construction theory and giving a general word an extended meaning to cover ancillary and subsidiary matters cannot be acceded to or accepted for the simple reason that once with regard to industrial alcohol, like ENA, complete control is vested with the Central Government, the State Government is denuded of its power to enforce any prohibition with regard to industrial alcohol. Industrial alcohol is a distinct and separate entry and an item separate from potable alcohol. The State Government may bring about regulations or measures to ensure that non-potable alcohol, like ENA, is



not diverted or misused or converted or used as substitute for potable alcohol, but in the garb of power of regulation made in this regard, they cannot impose total prohibition in the manufacture of the industrial alcohol, like ENA. In fact, what has been done by the State Government in the present case is by extending the definition of 'intoxicant', the State Government has legislated and encroached into the field reserved for the Central Government. Inclusion of ENA within the definition of Section 2(40) (ii) is nothing but an indirect method of prohibiting the manufacturer of industrial alcohol, like ENA which is not fit for human consumption.

63. By artificially extending the definition of 'intoxicant', in fact, the State has done something, which is not permissible or contrary to the constitutional mandate. Entry 26 of First Schedule to the IDR Act empowers the Union of India to take under its control fermentation industries, excluding potable alcohol, and other products in fermentation industries. With the aid of the expression 'industries' indicated in Entry 24 List II, an argument was tried to be built up that to harmonize various entries and if the purpose of bringing about the impugned legislation by the State of Bihar is viewed in the backdrop of the mandate of the Directive Principles as contained in Article 47 of the Constitution and when total prohibition has been enforced in the State of Bihar, this Court should adopt the policy of liberal interpretation and uphold the



impugned act of the Legislature and in support thereof Dr. Rajiv Dhavan, Senior Advocate, had invited our attention to the following observations made by the Supreme Court in the case of **Jilubhai Nanbhai Khachar** (supra) as under:-

“It is settled law of interpretation that entries in the Seventh Schedule are not powers but fields of legislation. The legislature derives its power from Article 246 and other related articles of the Constitution. Therefore, the power to make the Amendment Act is derived not from the respective entries but under Article 246 of the Constitution. The language of the respective entries should be given the widest scope of their meaning, fairly capable to meet the machinery of the Government settled by the Constitution. Each general word should extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. When the vires of an enactment is impugned, there is an initial presumption of its constitutionality and if there is any difficulty in ascertaining the limits of the legislative power, the difficulty must be resolved, as far as possible in favour of the legislature putting the most liberal construction upon the legislative entry so that it may have the widest amplitude.”

64. In **Elel Hotels and Investment Limited** (supra), the expression ‘industry’ as mentioned both in Entry 52 of List I and Entry 24 of List II, is considered and it is observed that the mandate of the Constitution is that if an industry is declared as a controlled industry in public interest by the Union of India, which has been done in this case,



then the entry to that extent under Entry 24 of List II stands deleted and the industry stands transported to Entry 52 of List I in which case the State is denuded of its legislative competence and the net effect would be that such an industry in this eventuality may come under the purview of entry 33 of List III, i.e. trade and commerce in, and the production, supply and distribution of goods of the declared industry and in such case by virtue of Article 254 of the Constitution, the legislation by the Parliament would prevail unless the State Legislature in respect thereof has received assent of the President. That being the constitutional position, this is not a case where there is a mere overlap of the power exercised or a case where the words used in the entries should be so construed that all ancillary or subsidiary matters may fairly and reasonably be comprehended in it. This is a case where contrary to the mandate of the Constitution and in the absence of legislative competence being available, something has been done by the State Government, which is impermissible under the Constitution and if that be the actual position, we are afraid that we cannot accede to the submissions made by learned Senior Counsel appearing for the State and apply the concept of liberal construction or fair or reasonable interpretation in furtherance to the interest and the purpose for which the Prohibition Act is permissible. We cannot do it in the facts and circumstances of the present case as this would run contrary to the constitutional mandate and



is impermissible in law.

65. The principle with regard to the legislation on industrial alcohol, which is not used for human consumption, and the power of the State to legislate or impose prohibition on such a product has been considered in the case of **Khoday Distilleries** (supra) as detailed hereinabove, so also in **Vam Organic Chemicals Ltd.** (supra) and in para 23 of the judgment in the case of **Vam Organic Chemicals Ltd.** (supra), the Supreme Court made the following observations:-

“23. The principle was succinctly reiterated in *State of U.P. v. Modi Distillery*, (1995) 5 SCC 753, where it was said that the State’s power to levy excise duty was limited to alcoholic liquor for human consumption and

that the framers of the Constitution, when they used the expression “alcohol liquors for human consumption”, meant, and the expression still means, that liquor which, as it is, is consumable in the sense that it is capable of being taken by human beings as such as a beverage or drink. ... Dictionaries and technical books showed that rectified spirit (95 per cent) was an industrial alcohol and not potable as such. ... Therefore even if ethyl alcohol (95 per cent) could be used as a raw material or input, after processing and substantial dilution, in the production of whisky, gin, country liquor etc. nevertheless, it was not “intoxicating liquor” which expression meant only that liquor which was consumable by human beings as it was.

(emphasis supplied)

Thus the State cannot legislate on industrial alcohol despite the fact that such industrial alcohol has the potential to



be used to manufacture alcoholic liquor.”

66. Thereafter in the case of **Mohan Meakin Limited** (supra) in paras 24 and 25, the principles has been crystallized in the following manner:-

“24. The State has to make distinction between a malt spirit of overproof strength and potable liquor. Entries 8, 51 and 66 of List II of the Seventh Schedule of the Constitution of India confer jurisdiction upon the State only to exercise its legislative control in respect of matters which are covered thereby. Industrial alcohol or spirit having regard to Entry 52 of List I of the Seventh Schedule of the Constitution of India cannot be the subject-matter of any regulation or control by the State, it being not alcoholic liquor for human consumption. The question is well settled in view of the decision of a seven-Judge Bench of this Court in *Synthetics and Chemicals Ltd. v. State of U.P.*.....

25. The doctrine of *res extra commercium* as applied by this Court in respect of potable alcohol in its various judgments including *Khoday Distilleries Ltd. v. State of Karnataka* and *State of Punjab v. Devans Modern Breweries Ltd* would have no application to industrial alcohol which is produced in an industry controlled and regulated in terms of Entry 52 of List I of the Seventh Schedule of the Constitution of India.”

67. Analyzing the entire provisions impugned before us in the backdrop of the legal principle, as detailed hereinabove, and the constitutional mandate, we have no hesitation in holding that the act of the State of Bihar in extending or including within the definition of



‘intoxicant’ in Section 2(40) (ii), ENA or industrial alcohol, is an act, which is beyond the legislative competence of the State Government, and to that extent, the declaration and mandamus, as prayed for by the petitioners, will have to be granted.

68. Once from the materials available on record and a complete reading of the IDR Act, it is clear that ENA, an industrial alcohol, not fit for human consumption, is a material or item covered under Entry 52 of Schedule I, the State Government is denuded of its power to prohibit its manufacturer. The only power available to the State Government as detailed and laid down by the Constitution Bench in the case of **Synthetics and Chemicals Ltd.** (supra) is that the State may lay down regulations to ensure that non-potable alcohol, like ENA is not diverted or misused as a substitute for potable alcohol. The State cannot be permitted to do something, which is not permissible in law, and in the garb of regulating in furtherance to the policy of prohibition, this Court cannot permit the State to enact a law totally prohibiting the manufacturer of an item or a product, which is within the exclusive domain of the Central Government. This is not permissible and to that extent, relief has to be granted to the petitioners.

69. Accordingly, we hold that Section 2(40) (ii) so far as it includes within its ambit ENA, an industrial alcohol, unfit for human consumption is concerned, is *ultra vires* to the IDR Act, *ultra vires* to



the Constitution and therefore, to that extent, the petitions have to be allowed.

70. Having held so, we are not required to consider as to whether Sections 13, 23 and 24 as also *ultra vires* as prayed for. Once we have held that the State Government does not have any power to include ENA within the definition of 'intoxicant' under Section 2(40) (ii) and once ENA is not treated to be an intoxicant, then, there is no question of declaring the provisions of Sections 13, 23 or 24 as *ultra vires* as these provisions will not apply so far as it relate to the product of the petitioners are concerned, i.e. ENA an alcohol not fit for human consumption, and once these provisions are not applicable in the case of the petitioners' product, it is not necessary for us to go into the prayer made declaring these provisions as *ultra vires* for the reasons canvassed by the petitioners.

71. In the backdrop of the aforesaid findings, the act of the State Government in issuing the Notification dated 24th January, 2017 and the provisions contained therein with regard to denying renewal of license so far as the production of ENA from grain based industries are concerned, to that extent and limited to the denial of license or its renewal to production of ENA has to be quashed and is, accordingly, quashed. Remaining part of the Notification which does not affect the right of the petitioners to carry on production and manufacturing of



ENA need not be struck down by this Court.

72. The impugned legislation was thereafter being tried to be supported or legitimized by pointing out that it has been implemented in furtherance to the food grains policy of the Union, to prevent misuse of the ENA, which is potential of being converted into potable liquor. It is, in fact, a preventive measure in furtherance to the prohibition policy as if this is not done, the entire prohibition policy of the State may be adversely affected. These submissions may give justifiable reasonableness for the act of the State or may be good enough for substantially holding that the State has acted in a reasonable manner, but even for doing so, the State has to function within the four corners of the Constitutional powers available to it in the matter of legislative competence and once we have held on due analysis of various factors that the State of Bihar lacks legislative competence to do so, we cannot uphold the action on the principles of upholding certain policies of the Union or steps taken in furtherance to bringing into effect the prohibition policy in the State of Bihar in its letter and spirit and to prevent misuse of any product, which may adversely affect the prohibition policy. If the State feels that they have to prevent misuse of the product from being converted to a potable alcohol and thereby adversely affecting the prohibition policy in the State, the State under the law and the Constitution can use preventive and deterrent methods,



but in the garb of prevention, a complete stoppage of the industry is not permissible.

73. The IDR Act which empowers the Central Government to declare an industry as a controlled industry, contemplates or rather mandates that the Act has been enforced to enable the Central Government to control the development and regulation of certain important industries as development of these industries are considered to be vital to the economic development of the country. There are various factors connected with these aims and objects for which the IDR Act is enforced and the State is empowered to regulate the control over such an industry only to the extent as permissible under the Constitution or under the IDR Act. It cannot do anything, which is the effect of complete stopping the functions of such an industry in a State. This, in our considered view, goes contrary to the mandate of the IDR Act and cannot be approved.

74. Having held so, even though now it may not be necessary for us to go into various other arguments advanced, i.e. violation of Article 300A, promissory estoppel, non-payment of compensation, arbitrariness etc., we deem it appropriate to address these issues also as they were canvassed before us very forcefully.

75. As far as promissory estoppel is concerned, it is very well settled principles of law that when anything is done in furtherance



to the statutory exercise of powers and in public interest, merely because it operates as an estoppel with regard to rights of the petitioners, the provision cannot be struck down.

76. In the case of **Monnet Ispat and Energy Limited Versus Union of India and others** [(2012) 11 SCC 1], the principle, which guides the Courts, where an issue about applicability of promissory estoppel arise, has been crystallized in paragraph 182.7 of the aforesaid judgment in the following manner:

“182.7. The doctrine of promissory estoppel cannot be invoked in abstract. When it is sought to be invoked, the court must consider all aspects including the result sought to be achieved and the public good at large. The fundamental principle of equity must forever be present to the mind of the court. Absence of it must not hold the Government or the public authority to its promise, assurance or representation.”

77. If we analyze the case, in hand, in the backdrop of the aforesaid principle taking note of the stand of the State Government with regard to their action being in furtherance of being implementing the State Policy of complete prohibition and when a law imposing prohibition is in operation of the State of Bihar, we are of the considered view that plea of promissory estoppel may not be applicable in the present cases.

78. Similarly, in the case of **Motilal Padampat** (supra), in



para 24, the principle has been so laid down:-

“24. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it.....

The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden.....”

79. If the law mandates that promissory estoppel must yield if the equity requires, we feel that in the present cases, promissory estoppel cannot be said to be existing in favour of the petitioners.

80. In the case of **Bannari Amman Sugars Ltd.** (supra) relied upon by the learned Senior counsel for the petitioners, the Hon’ble Supreme Court has laid down that while considering the applicability of the question of doctrine of promissory estoppel, the Court is bound to



consider all aspects, including the result sought to be achieved and the public good at large. It has been held by the Supreme Court that while considering the applicability of this doctrine, the Courts have to do equity and if there is a supervening public equity, the Government should be allowed to change its stand and has power to withdraw from representation made by it. It has been held by the Supreme Court that the principle does not mean that the Government cannot amend or should not change its policy under any circumstances. The Government, if feels that overwhelming public interest so demands or if the change in policy is found to be not infringing the principle of reasonableness or arbitrariness, interference should not be made. If the change in policy has been made fairly, if it is not done arbitrarily or with ulterior motive, but has been done keeping in view the interest of general public, it should be not interfered with.

81. If the applicability of doctrine of promissory estoppel in the present cases is analyzed in the backdrop of various principles as can be made out from the judgments relied upon by the parties, we are of the considered view that principle of doctrine cannot be applied or said to be existing in favour of the petitioners. The arguments advanced by learned Senior Counsel for the petitioners in this regard have to be rejected.

82. As far as the contention of Article 300A of the



Constitution is violated and because of non-payment of compensation depriving the property of the petitioners is violative of Article 300A is concerned, we fully agree with the submissions made by learned Senior Counsel Dr. Rajiv Dhavan, Senior Advocate. Article 300A of the Constitution mandates that no person shall be deprived of his property saved by authority of law. In this case, no property rights of the petitioners are involved. There is no deprivation of the property of the petitioners. The property of the petitioners, their entire land, factory infrastructure everything remains in their custody and in their possession and, therefore, Dr. Rajiv Dhavan, learned Senior Counsel is right in contending that no property right is involved and there is no deprivation of property and therefore, Article 300A of the Constitution is not applicable. Merely because the Government is refusing to renew the license to carry on manufacturing process, it cannot be said that it violates the mandate of Article 300A of the Constitution as canvassed by Dr. Rajiv Dhavan, learned Senior Counsel. At best, it is a case of pecuniary loss due to loss of profit or investment of the petitioners and in this regard, the judgment relied upon by Dr. Rajiv Dhavan, Senior Advocate, particularly in the case of **Hindustan Petroleum Corporation Ltd.** (supra) indicates and we hold that there is no violation of Article 300A of the Constitution.

83. Dr. Rajiv Dhavan, learned Senior Counsel, had also



made submissions to us by placing reliance on various judgments to say that presumption of constitutionality of a provision or a statute should be presumed unless proved otherwise and the onus on the person who avers unconstitutionality. He relied upon various judgments in this regard. He also argued that when testing the constitutionality of the statute, aid can be taken of the preamble, Directive Principles of the State Policy to judge the reasonableness of a law. He also highlighted the rule of Heydon's case to canvass his contention on various issues in the matter and finally tried to indicate that merely by challenging some of the definitions and not attacking other provisions, petitioners are trying to make out a case which otherwise is not permissible. He argued that only challenging some of the provisions and the penal provisions and without attack to the others provisions, the other provisions would be rendered un-implementable and therefore, the petitioners cannot be permitted to challenge only some of the provisions.

84. We are of the considered view that once we are convinced and we have held that by including alcohol unfit for human consumption within the definition of 'intoxicant' which is nothing, but consumable alcohol or alcohol fit for human consumption, the State has acted in excess of its legislative power. This contention of Dr. Rajiv Dhavan, learned Senior Counsel need not be dealt with in detail now. They would have been of much consequence if it was the case where we



were satisfied with the legislative competence of the State and we were examining the matter in the matter of overlap of provisions, reasonableness of State's action or the argument of arbitrariness. Once the legislative competence of the State is answered in favour of the petitioners, various other aspects of the matter are not required to be addressed in detail now in these cases.

85. Similarly, we have already held that except for the fact that the State does not have legislative competence to deal with the subject of alcohol unfit for human consumption, we see no reason to hold the provisions of Sections 13, 23 and 24(1) of the Prohibition Act as unconstitutional or *ultra vires*, as in the light of the declaration with respect to including ENA within the definition of 'Intoxicant' to be not permissible, the applicability of these provisions to alcohol unfit for human consumption does not arise now.

86. Accordingly, we allow these petitions to the extent of holding that the definition of 'intoxicant' as contained in Section 2(40) (ii) of the Bihar Prohibition and Excise Act, 2016 so far as it includes ENA within the ambit of the word, 'intoxicant' is *ultra vires* to the Constitution and the IDR Act and to that extent the definition is struck down and in view of this, the provisions of Sections 13, 23 and 24 will not have any application and the meaning of the word 'intoxicant' appearing in Section 13 has to be read accordingly. That apart, we



further set aside the Notification dated 24th January, 2017 issued by the State Government so far as it prevents or denies the right of renewal of an existing license for production of ENA from grain based distilleries. To that effect, the Notification is struck down and set aside and the petitioners’ case for renewal of license is directed to be considered by the State Government in accordance with the requirement of law.

87. With the aforesaid, all the petitions stand allowed and disposed of.

(Rajendra Menon, CJ)

Ajay Kumar Tripathi, J I agree.

(Ajay Kumar Tripathi, J)

Sudhir Singh, J I agree.

(Sudhir Singh, J)

Sunil

AFR/NAFR	AFR
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