

(1995) 02 PAT CK 0010

In the Patna High Court

Case No : Civil Writ Jur. Case No's. 9317 to 9325 of 1993

New India Sugar Mills Ltd. and

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 02-02-1995

Acts Referred:

Constitution of India, 1950 — Article 166, 226, 254, 301
Industries (Development and Regulation) Act, 1951 — Section 18G

Citation : AIR 1996 Patna 94 : (1995) 43 BLJR 861

Hon'ble Judges : K. Venkataswami, C.J;B.P. Singh, J

Bench : Division Bench

Advocate : G. Ramaswamy, Y.V. Giri and S.J. Mukhopadhyay, Ramesh Agarwal, H. Devrajan, J. Saran and R.N. Mukhopadhyay, Sunil Kumar Addl. SCCG, Chakradhari S. Singh and Rajeev Prakash, for the Appellant; Rameshwar Prasad (A.G.) and C.K. Prasad (AAG III), for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, J.—The petitioners in this batch of writ petitions are Sugar Companies, which have challenged the constitutional validity of the Bihar Molasses control Act, 1947 (hereinafter referred to as the State Act), mainly on the ground of legislative competence of the Bihar Legislature to continue the provisions of the Act after the enactment of the Industries (Development and Regulation) Act, 1951, and more particularly after the insertion of Section 18G in the aforesaid Act in the year 1953. They have also challenged the Bihar Molasses Control Rules 1955 framed under the Act, and the action taken by the Authorities of the State pursuant to the aforesaid Act and the Rules. The State Act has also been challenged on the ground of its being violative of Articles 14, 19(1)(g) and 301 to 304 of the Constitution of India. It is therefore, necessary to notice the factual background in which the legislative competence of the Bihar legislature has been challenged.

2. The Bihar Molasses Control Act, 1947, was enacted with effect from 16th

March, 1947, by the Bihar legislature with the assent of the Governor General. The said Act was enacted by the Bihar legislature by virtue of the power conferred by Entry 29 of List II of the Government of India Act, 1935. The Act was originally enforced for a period of one year only -- vide Notification No. 2335 dated 16-3-1947. Certain amendments were brought about to the Act by the Bihar Molasses Control (Amendment) Act, 1948. Thereafter on 28-6-1950 the Bihar Molasses (Control and Validation) Act, 1950 (Act 24 of 1950) was enacted by which the said Act was enforced for a period of five years i.e., from 16-3-1947 to 15-3-1952. Again by Amending Act 8 of 1952 the life of the Act was extended for two more years i.e. upto 15th March, 1954.

3. The Industries & Regulation) Act, 1951 (hereinafter referred to as IDR Act) came into force with effect from 8th May, 1952. By the Industries Development and Regulation (Amendment) Act, 1953 (Act 26 of 1953) Section 18G was inserted in the IDR Act. By Amending Act 6 of 1954, the Bihar Molasses (Control) Act, 1947 was given a life of five years more i.e., upto 15-3-1959. The Bihar Molasses Control Rules 1955 were framed under the said Act on 16th March, 1956. Again by Amending Act 9 of 1959 the Bihar Act was enforced upto 15-3-1964, and the aforesaid Amended Act was passed with the assent of the President of India. It is not necessary to notice the amendments brought about by various Amending Acts to the Bihar Molasses (Control) Act, 1947, but it is significant that by Bihar Amending Act 1 of 1964 which was passed with the assent of the President of India, Section 1 (3) of the said Act was omitted, and as a consequence, the Act ceased to be a temporary Act and became a permanent Act.

In exercise of power conferred by Section 18G of the IDR Act, the Central Government issued the Molasses Control Order 1961 on 29-3-1961. Thereafter on 3-5-1961 Ethyl Alcohol (Price Control) Order, 1961, was issued by the Central Government also u/s 18G of the IDR Act. Two subsequent Ethyl Price Control Orders were issued by the Central Government in the years 1966 and 1971. Finally on 10th June, 1993, the Central Government rescinded both the Molasses Control Order as well as Ethyl Alcohol (Price Control) Order with immediate effect by notification dated 10-6-1993. The State Governments were informed accordingly.

4. Under the Bihar Molasses (Control) Act, 1947, a Controller was appointed. Every owner or occupier of a factory and every stockist was required to furnish to the Controller such returns relating to stocks of molasses as the Controller may by order from time to time direct. Without the permission of the Controller, no molasses produced by the factories or held by stockists could be removed by road or river from any place in the Province to any other place. For the supply of molasses, the owner or occupier of a factory or stockist was required to seek permission of the Controller before entering into any agreement or contract with any person other than Provincial Government, or a person, firm, Company, or Association licensed by the Controller in this behalf. Power was vested in the

Controller to issue directions from time to time u/s 8 of the Act. No owner or occupier of a factory or stockist could sell molasses at a price exceeding that fixed by the Provincial Government by notification, as the price for the area for which the molasses were held. Such was the scheme of the Bihar Molasses (Control) Act, 1947, some of the provisions whereof were subsequently amended by Amending Acts. Initially the Act being temporary, was to continue in force for such period as the Provincial Government may by notification fix, but subsequently, as earlier noticed, the Act became a permanent legislation with effect from 13th March, 1964.

5. The grievance of the petitioners is that notwithstanding the recession of both Ethyl Alcohol (Price Control) Order 1971 and Molasses Control Order 1971, the Excise Commissioner-cum-Molasses Controller under the Bihar Act issued an order u/s 7 thereof on 9-6-1993 for selling molasses at controlled rates to different distilleries of the State. The Commissioner clarified that the Central Government did not rescind the State Act and, therefore, the Act continued to operate and cannot be deemed to have been rescinded. The State Government clarified that the State Act will apply in the State of Bihar. Consequently, the Molasses Controller continued to issue directions u/s 6 of the Bihar Act and issued letters of allotment for supply of molasses at the controlled rate. The petitioners are aggrieved by the issuance of such directions by the Molasses Controller, as it is their case that the Central Government having rescinded the Control Order in respect of Molasses, the State Act also ceased to have effect.

6. One fact which is very significant is that the Molasses Control Order 1961 promulgated by the Central Government in exercise of power conferred by Section 18G of the IDR Act, was never applied to the State of Bihar, though by separate notifications the said Order was applied to the other States. The petitioners contend that since the Central Government had promulgated the Molasses Control Order 1961, and thereby decided to control the prices at which the Molasses, a produce of the controlled industry, were to be sold, the petitioners had no occasion to challenge the provisions of the State Act, because in any event the petitioners were bound to be controlled under the provisions of the Molasses (Control) Order 1961, it being a Central Order and being administered by the authorities of the State. Moreover, the prices at which the Molasses were directed to be sold under the Central Government Order were more or less the same, as the prices fixed by the State Government purporting to exercise powers under the State Act. However, according to them, once the Central Government took a decision to rescind the Control Order relating to molasses, the Bihar Act also ceased to operate, because its continuance would be inconsistent with the policy of the Central Government to decontrol Molasses.

7. Mr. G. Ramaswamy, Senior Advocate appearing on behalf of the petitioners, urged the following contentions assailing the State Act: --

(a) By Section 2 of the IDR Act, Parliament declared that it was expedient in public interest that the Union should take under its control, industries specified in

the first schedule which included "sugar", which figures as Entry 25 of the first schedule. Once an industry is taken under Union control, the State cannot rely upon its power under any of the entries in List II or Entry 33 of List III, to regulate the products of a controlled industry. Section 18G of the IDR Act evinced clear intention to occupy the whole field, and consequently the State legislature lost its competence to legislate in the same field.

(b) The State Act being a pre-Constitution Act could continue to have legal effect only so long as it had not been altered, repealed or amended by a competent legislature or other competent authority. u/s 18G of the IDR Act, the power to control the price and movement of articles relatable to sugar industry has been vested in the Central Government, and it casts an obligation on the Central Government to ensure equitable distribution at fair prices of the articles relatable to the scheduled industries. The provision, therefore, brought about a change in the authority which could control and regulate the production, distribution and price of Molasses. It also brought about a change in the laws, inasmuch as Section 18G directs that "fair price" should be fixed for the Molasses. Thus, the State law had been altered by the Central enactment, namely, IDR Act and consequently the State Act ceased to have effect after insertion of Section 18G in the IDR Act in the year 1953.

(c) Molasses Control Order 1961 had the effect of altering the State law by a competent authority. The effect of a statutory order promulgated by the Central Government under a Central Act over a pre-Constitution Act was that the pre-Constitution Act ceased to have effect and the Central Control Order would prevail. In the instant case, the State Act being a pre-Constitution Act, it could have continued to remain in force only till it was altered, repealed or amended by a competent legislature or other competent authority.

(d) Even if the Molasses Control Order, 1961, had not been extended to the State of Bihar, the law in Bihar in relation to the control of Molasses was that there was no control of molasses at all. Once Section 18G of the IDR Act came into force control, if any, could only be effected in accordance with the directions of the Central Government and not in accordance with the State Act.

(e) The doctrine of occupied field also operated to make ineffective the State Act. Since the IDR Act was promulgated by the Parliament, under Entry 52, List 1, which also contained Section 18G which was inserted by amendment in the year 1953, it amounted to the exclusion of the jurisdiction of the State legislature to enact any law which covered the field occupied by the IDR Act, not because of any repugnancy between the two Acts, but because the State legislature had no jurisdiction to pass the law.

(f) The State Act was also violative of Articles 14, 19(1)(g), 301 and 304 of the Constitution of India.

(g) The order dated 11th June, 1993, and the wireless messages dated 19th June, 1993 and 14th June, 1993, were contrary to the directions contained in the

Central Government Circular dated 11th June, 1993. u/s 26 of the IDR Act the Central Government was empowered to give directions to any State Government to execute any of the provisions of the IDR Act or any order or direction made thereunder. The State was bound by such directions issued by the Central Government and could not issue any order contrary thereto, and such orders were consequently bad in law.

8. The learned Advocate General appearing on behalf of the State of Bihar urged the following contentions :-

(a) Even if sugar industry was a controlled industry, as the same was included as item No. 25 of the first schedule of the IDR Act 1951, the State did not lose its competence to legislate in respect of the products of that industry. Notwithstanding the fact that the field was occupied in relation to "sugar" in industry under Entry 52 , List 1, the State legislature still retained legislative competence to legislate in regard to trade and commerce in, and the production, supply, and distribution of, the products of any controlled industry. Such a law enacted by the State legislature was a valid piece of legislation, unless it was shown that it was inconsistent with any provision of law enacted by the Union Parliament. In the absence of repugnancy, the State law could not be assailed.

(b) By mere enactment of Section 18G of the IDR Act, the State legislature was not denuded of its legislative competence to legislate in regard to the products of a controlled industry under Entry 33 of List III. Even an order issued u/s 18G of the IDR Act, did not, and could not, have the effect of invalidating the State legislation under Entry 33, List III, because it was not a law enacted by the Union Parliament. A control order issued u/s 18G of the IDR Act was subordinate legislation, which could not override the law made by the State legislature in exercise of plenary legislative power.

(iii) Assuming that an order issued u/s 18G of the IDR Act may be equated with a legislative enactment, in the instant case there was no question of repugnancy between the said order and the State law, because the said Order was never applied to the State of Bihar. The question of inconsistency, therefore, did not arise at all. The power of the State legislature, therefore, to enact a law under Entry 33, List III remained intact, and consequently any pre-constitution law, which was referable to the exercise of power under Entry 33 , List III after the Constitution came into force, continued to have force. If the operation of the Central Control Order did not affect the continuance and validity of the State law, the repeal of the Central Order could also have no effect on the State law.

(iv) The State Act does not offend any of the provisions of Articles 14, 19(1)(g), 301 and 304 of the Constitution of India.

(v) Since the State Act is a valid piece of legislation, the orders passed by the Controller of Molasses under the State Act, and the rules framed thereunder are valid.

9. Counsel of the Union of India urged the following contentions :--

fa) By mere incorporation of Section 18G in the IDR Act 1951, the State legislature does not become incompetent to legislate under Entry 33, List III in respect of the products of a controlled/scheduled industry, and/or any Act of the State legislature, whether pre-Constitution or post-Constitution, under the said entry in respect of the products of a controlled/scheduled industry will not be impliedly repealed. Under Entry 27 of List II the State legislature is competent to make laws relating to the products of an industry, but as soon as an industry is declared to be a controlled/scheduled industry by the Parliament, the products of the said scheduled/ controlled industry come out of List II and fall under Entry 33 of List III. In that event the Parliament as well as the State legislature have competence to make laws relating to products of controlled/scheduled industry under Entry 33 of List III. Under Article 254 of the Constitution of India, in the case of inconsistency or repugnancy between the State law and the law made by Parliament, the latter would prevail.

(b) There is no implied repeal of an Act of State legislature, whether pre-Constitution or post-Constitution, in respect of the products of a controlled/scheduled industry by mere notifying of an order u/s 18G of the IDR Act covering the same subject matter. Section 18G by itself does not cover any field, since the same is in general terms, taking within its sweep the whole lot of unspecified articles relating to any of the scheduled industries. As such, an Act of State legislature in respect of the products of controlled/ scheduled industry, like the Bihar Molasses Control Act, cannot be said to be impliedly repealed by incorporation of Section 18G in the IDR Act, 1951.

(c) In any event the order issued u/s 18G of the IDR Act being in the nature of subordinate legislation by the executive authority cannot be equated with a law passed by Parliament. As such, though a law passed by Parliament may override a law enacted by the State legislature in the concurrent field, an order u/s 18G of the IDR Act does not have that effect. In the instant case there was no question of inconsistency between a law passed by Parliament or even an order notified by the Central Government u/s 18G of the IDR Act, because no law was passed by the Parliament to which the State Act was repugnant, as the Molasses Control Order 1961 notified by the Central Government was never applied to the State of Bihar. There could, therefore, be no question of repugnancy between the Central Order and the Bihar Molasses (Control) Act.

10. The main submission urged on behalf of the petitioners by Mr. Ramaswamy is in two parts. He firstly submits that by reason of the enactment of IDR Act by the Parliament, taking under its control the sugar industry, the State legislature lost its competence to enact any law in relation to the controlled industry, or its products, or goods relating to the controlled industry. The State legislature could not, therefore, enact any law in relation to those subjects either under List II or under List III of the seventh schedule of the Constitution. Secondly, in any event, even if such jurisdiction was retained by the State Legislature despite the

enactment of the IDR Act, its legislative power in regard to such industry and goods came to an end when an order was passed by the Central Government in exercise of power u/s 18G of the IDR Act, namely, Molasses Control Order.

11. The submission takes me to an examination of the scheme of distribution of legislative powers under the seventh schedule to the Constitution. The relevant entry in List I is Entry 52 which is as follows :

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

In the State list which is List II the relevant entries are Entries 24, 26 and 27 which are reproduced below :

"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."

The only relevant entry in the concurrent list (List III) is Entry 33 which is as follows :

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

(a) the products of any industry where the control of such industry by the Union is departed 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 oils;

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

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

(e) raw jute."

12. A mere examination of the entries would show that "industries" as a subject lies within the legislative competence of the State legislature, but this is subject to the provisions of Entries 7 and 52 of the Union List. It, therefore, follows that the State legislature is free to enact any legislation with regard to "industries", but subject to the limitations provided therein. Once the Parliament by law declares that it is expedient in public interest that the control of the specified industries be taken under the control of the Union, the legislature of the State is denuded of its legislative competence to make laws with regard to the "industries" which are brought under the control of the Union. There was considerable controversy at the bar whether the legislature is completely denuded of its competence to legislate in regard to the "industries" brought under the control of the Union, or whether the State legislature retains its

plenary power of legislation with regard to the field not covered by the law vesting the control of the "industries" in the Union. While Mr. Ramaswamy contends that the State legislature cannot legislate at all in regard to such "industries", the Advocate General contends that the exclusion of the legislative jurisdiction of the State legislature is only to the extent the industry is sought to be controlled by the Union, which must be declared by law, I shall deal with this aspect of the matter later.

13. Entries 26 and 27 of List II relate to trade and commerce within the State and production, supply and distribution of goods subject to the provisions of Entry 33 of List III. In the instant case, Entry 27 is significant. It deals with production, supply and distribution of goods, and in this context goods may mean the raw materials which are necessary for the controlled industry, and may also include the products of the controlled industry. Entry 33 of List III, however, clarifies the position and provides that the Union Parliament as well as the State legislature shall have concurrent legislative jurisdiction in the subject of trade and commerce in, and production, supply and distribution of 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.

14. A reading of all these entries together discloses a scheme. In respect of "industries", the power of the State legislature under Entry 25 is curtailed by exercise of legislative power by the Union Parliament declaring by law that it is expedient in the public interest that the control of the scheduled industries be brought under the Union. The Parliament by law is obligated to make a declaration, and one must necessarily examine the law enacted by the Parliament to determine the scope of the declaration and consequent control assumed by the Union. However, what is significant is that List II deals with "industries" as a separate subject, separate from goods, production, supply and distribution where of, is made subject to the provisions of Entry 33 of List III. Such goods must, therefore, be treated differently from a controlled industry. These goods are the products of that industry, and such other goods as are specified in the entry. The jurisdiction to legislate with regard to such goods is retained by the State legislature, subject to the limitation contained therein. Under Entry 33 of List III the power of legislation in regard to the trade and commerce in, and the production, supply distribution of, the products of any controlled industry is brought under the concurrent list, meaning thereby that the Union as well as the State have competence to enact laws on the subject. This obviously is subject to Article 254 of the Constitution of India, so that if any law made by the legislature of a State, is repugnant to any provision of law made by Parliament which the Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the concurrent list, the law made by the Parliament whether passed before or after the law made by the legislature of such State, or as the case may be. the existing law, shall prevail. The law made by the legislature of the State shall, to the extent of repugnancy, be void. This, however, is subject to Clause (2) of Article 254 of the

Constitution with which we are not concerned in the instant case.

15. A declaration under Entry 52 of List I has two important consequences. Firstly, the legislative field of the State legislature is curtailed, and the controlled industry to the extent controlled, is taken out of Entry 24 of List II and becomes part of Entry 52 List I, the Union List, Secondly, the trade and commerce in, and production, supply, and distribution of, the products of the controlled industries is taken out of Entries 26 and 27 of List II and become part of Entry 33 of List III, " the concurrent list.

16. The result, therefore, is that in respect of products of a controlled industry, the State legislature as well as the Union Parliament have competence to enact laws subject to Article 254 of the Constitution of India, Entry 33 List III presupposes the exercise of legislative power by the Union Parliament under Entry 52 of List I, and still carves out a jurisdiction in the concurrent field for exercise of legislative power both by the Union Parliament and the State legislature in regard to products of a controlled industry. This makes it quite patent that despite a declaration made by the Union Parliament under Entry 52 of List 1 in respect of any industry, the State legislature is not denuded of its legislative power to enact laws in regard to the products of such an industry, though the Union Parliament also has concurrent legislative power to enact laws on the same subject. The proposition, therefore, that once a declaration is made under Entry 52, List 1, the State legislature is denuded of its legislative competence to enact laws not only with regard to the controlled industry but also in regard to the products (sic) of the controlled industry is too wide a proposition to be accepted. The scheme postulates that in the case of products of a controlled industry, the power of the State legislature to enact laws in regard thereto is transferred from Entry 27 of List II to Entry 33 of List 111, and in respect of such products the Union Parliament as well as the State legislature may enact laws.

17. The learned Advocate General in support of the above legal proposition has rightly relied upon several decisions of the Supreme Court. Mr. Ramaswamy on the other hand relied upon the Judgment of the Supreme Court in Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, and submitted that the correct legal position, as it obtains today, has been stated in the aforesaid decision of the Supreme Court. I shall, therefore, first consider the decisions relied upon by the learned Advocate General and then consider whether the judgment of the Supreme Court in Synthetic and Chemicals Ltd. (supra) has brought about a change in the law as earlier declared by the Supreme Court.

18. The first decision, and the most important one, relied upon by the learned Advocate General is Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, , The validity of the Uttar Pradesh Sugar Cane (Regulation of Stock and Produce) Act, 1953 was impugned, and it was submitted that the State of U.P. had no power to enact the impugned Act, as the Act was with respect to the subject of industries, the control of which by the Union was

declared by Parliament by law to be expedient in the public interest within the meaning of Entry 52 of List I and was, therefore, within the exclusive privilege of Parliament. The impugned Act was, therefore, ultra vires the powers of the State legislature and was colourable exercise of legislative power by the State. The impugned Act was also challenged on another ground, namely, that the same was repugnant to Act 65 of 1951 (IDR Act) and Act 10 of 1995 (Essential Commodities Act) and in the event of the Court holding that the impugned Act was within the legislative competence of the State legislature, it was void by reason of such repugnancy. The Court proceeded to consider the scheme of distribution of legislative power under Lists I, II and III of the seventh schedule, and having noticed the relevant entries, held as follows (at pp. 690-691 of AIR):--

"(18) Production, supply and distribution of goods was no doubt within the exclusive sphere of the State Legislature but it was subject to the provisions of Entry 33 of List 3 which gave concurrent powers of legislation to the Union as well as the States in the matter of trade and commerce in, and the production, supply and distribution of, the products of industries where the control of such industries by the Union was declared by Parliament by law to be expedient in the public interest.

The controlled industries were relegated to Entry 52 of List 1 which was the exclusive province of Parliament leaving the other industries within Entry 24 of List 2 which was the exclusive province of the State Legislature. The products of industries which were comprised in Entry 24 of List 2 were dealt with by the State Legislatures which had under Entry 27 of that List power to legislate in regard to the production, supply and distribution of goods, goods according to the definition contained in Article 366(12) including all raw materials, commodities and articles.

When, however, it came to the products of the controlled industries comprised in Entry 52 of List 1, trade and commerce in, and production, supply and distribution of these goods became the subject-matter of Entry 33 of List 3 and both Parliament and the State Legislatures had jurisdiction to legislate in regard thereto. The amendment of Entry 33 of List 3 by the Constitution Third Amendment Act, 1954, only enlarged the scope of that Entry without in any manner whatever detracting from the legislative competence Of Parliament and the State Legislatures to legislate in regard to the same.

If the matters had stood there, the sugar industry being a controlled industry, legislation in regard to the same would have been in the exclusive province of Parliament and production, supply and distribution of the product of sugar industry, viz., sugar as a finished product would have been within Entry 33 of List 3.

Save for that, sugarcane, being goods, fell directly within Entry 7 of List 2 and was within the exclusive jurisdiction of the State Legislatures. Production, supply and distribution of sugarcane being thus within the exclusive sphere of the State

Legislatures, the U.P. State Legislature would be without anything more, competent to legislate in regard to the same and the impugned Act would be intra vires the State Legislature."

It was also urged before the Supreme Court that the word "industry" was a word of wide import and should be construed as including not only the process of manufacture or production, but also activities antecedent thereto, such as acquisition of raw materials, and subsequent thereto, such as disposal of the finished products of that industry.

Repelling the argument the Court held :

"Industry in the wide sense of the term would be capable of comprising three different aspects : (1) raw materials which are an integral part of the industrial process, (2) the process of manufacture or production, and (3) the distribution of the products of the industry. The raw materials would be goods which would be comprised in Entry 27 of List 2. The process of manufacture or production would be comprised in Entry 27 of List 2. The process of manufacture or production would be comprised in Entry 24 of List 2 except where the industry was a controlled industry when it would fall within Entry 52 of List 1 and the products of the industry would also be comprised in Entry 27 of List 2 except where they were the products of the controlled industries when they would fall within Entry 33 of List 3.

This being the position, it cannot be said that the legislation which was enacted by the Centre in regard to sugar and sugarcane could fall within Entry 52 of List 1. Before sugar industry became a controlled industry, both sugar and sugarcane fell within Entry 27 of List 2 but, after a declaration was made by Parliament in 1951 by Act 65 of 1951, sugar industry became a controlled industry and the product of that industry, viz., sugar was comprised in Entry 33 of List 3 taking it out of Entry 27 of List 2. Even so, the Centre as well as the Provincial Legislatures had concurrent jurisdiction in regard to the same.

In no event could the legislation in regard to sugar and sugarcane be thus included within Entry 52 of List 1. The pith and substance argument also cannot be imported here for the simple reason, that, when both the Centre as well as the State Legislatures were operating in the concurrent field, there was no question of any trespass upon the exclusive jurisdiction vested in the Centre under Entry 52 of List 1, the only question which survived being whether, putting both the pieces of legislation enacted by the Centre and the State Legislature together, there was any repugnancy, a contention which will be dealt with hereafter."

Dealing with the submissions based on repugnancy, the Court held :

"(41) There is also a further objection to which Clause 7(1) of the Sugarcane Control Order, 1955 is open. The power of repeal, if any, was vested in Parliament and Parliament alone could exercise it by enacting an appropriate

provision in regard thereto. Parliament could not delegate this power of repeal to any executive authority. Such delegation, if made, would be void and the Central Government had no power, therefore, to repeal any order made by the State Government in exercise of the powers conferred upon it by Section 16 of the impugned Act.

The U. P. Sugarcane Regulation of Supply and Purchase Order, 1954, could not, therefore, be validly repealed by the Central Government as was purported to be done by Clause 7 of the Sugarcane Control Order, 1955, and that repeal was of no effect with the result that the U. P. Sugarcane Regulation of Supply and Purchase Order, 1954 stood unaffected thereby.

The result, therefore, is that there was no repeal of the impugned Act or the U. P. Sugarcane Regulation of Supply and Purchase Order, 1954 by Section 16 of the Act 10 of 1955 or by Clause 7 of the Sugarcane Control Order, 1955 as contended by the petitioners."

19. The learned Advocate General then relied upon the decision of the Supreme Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, . The Court while considering what is the meaning of the expression "industry" in Entry 24 of List II observed that that expression both in Entry 24 of List U, and Entry 52 of List I must bear the same meaning, for the two entries are so inter-connected that conflicting and different meanings given to them would snap the connection. It was further held that ordinarily industries are in the field of State Legislatures; but if Parliament by law makes relevant declaration or declarations, the industry or industries so declared would be taken of its field, and passed on to Parliament. Reliance was placed on *Tika Ramji (supra)* and the submission that the word "industry" was a word of wide import and should be construed as including not only the process of manufacture or production, but also activities antecedent and subsequent thereto was rejected on the basis of the law as laid down in *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, . It may be noticed that principles "laid down in *Tika Ramji (supra)* have been consistently followed in subsequent decisions of the Supreme Court, but it is not necessary to deal with all the decisions. I may only notice the decisions on which reliance was placed by the learned Advocate General, and they are *The Kannan Devan Hills Produce Vs. The State of Kerala and Another*, , *Mohan Meakin Breweries Ltd. Vs. The Commissioner of Excise, Bihar and Others*, *Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others*, *Sukhnandan Saran Dinesh Kumar and Others Vs. Union of India (UOI) and Others*, *Msc. Pvt. Ltd. Vs. Union of India (UOI) and Others*, and *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*, .

20. I shall now consider the decision on which counsel for the petitioners placed strong reliance.

In *Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others*, , levy of vend fee or duties in respect of industrial alcohol, by different States under

different legislations Was challenged. The apex Court having regard to the principles of interpretation, particularly the correct principles of harmonious interpretation of legislative entries, considered the meaning to be given to the entries in the Seventh Schedule which fell for interpretation in that case. Entry 84 of List 1 vested in the Union Parliament power to impose duties of excise on tobacco or other goods manufactured or produced in India, but excluded from the ambit of that entry power to impose duties of excise on alcoholic liquors for human consumption. On the other hand, Entry 51 of List II, the State list, authorised the State to impose duties of excise on alcoholic liquors for human consumption, opium etc. manufactured or produced in the State, and the countervailing duties at the same or lower "rates elsewhere in India. Entry 8 of List II reads as follows: "Intoxicating liquors, that is to say, that production, manufacture, possession, transport, purchase and sale of intoxicating liquors". Clearly, therefore, all duties of excise save and except the items specifically excepted in Entry 84 of List I fell generally within the taxing power of the Central legislature. The State legislature had only a limited power to impose excise duty. Since a tax cannot be levied under a general entry, and the State legislature did not derive power to tax alcoholic liquors for human consumption from a specific taxing entry, it could not levy tax on intoxicating liquors relying upon Entry 8 of List II of Seventh Schedule, nor could it levy tax in the guise of a fee.

21. It was accepted that the States have power to regulate the use of alcohol, and that power must include power to make provisions to prevent and/ or check industrial alcohol of ten being used as intoxicating or drinkable alcohol. However, in the garb of regulation, a legislation which was in pith and substance fee, or levy having no connection with the cost of expenses administering the regulation, could not be regarded as a regulatory measure. Their Lordships then considered the nature of the levies or duties imposed by the States, and came to the conclusion that they were in the nature of tax on industrial alcohol, which the States could not impose, and which lay within the ambit of legislative competence of the Centre. It was, therefore, held that the levies being in the nature of tax, were unconstitutional. It was held:

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"82. Having regard to the principles of interpretation and the constitutional provisions, in the light of the language used and having considered the impost and the composition of industrial alcohol, and the legislative practice of this country, we are of the opinion that the impost in question cannot be justified as State imposts as these have been done. We have examined the different provisions. These are not merely regulatory. These are much more than that. These seek to levy imposition in their pith and substance not as incidental or as merely disincentives but as attempts to raise revenue for States" purposes. There is no taxing provision permitting these in the lists in the field of industrial alcohol for the State to legislate."

22. The Court also considered what meaning should be given to the expression

"intoxicating liquor" appearing in Entry 8 of List II. It was clearly of the view that in the light of the new experience and development, it was necessary that "intoxicating liquor" must mean liquor which is consumable by human being as it is. When *Balsara's case* AIR 1951 SC 318 was decided by the Supreme Court in 1951, the Court 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. Most of the earlier cases dealt with the problems or disputes arising in connection with the sale, auction, licensing or use of potable liquor. In *Indian Mica Micanite Industries Vs. The State of Bihar and Others*, , denatured spirit required for the manufacture of mica-nite was not regarded as being within the exclusive privilege of the State. The power of taxation with regard to alcoholic liquor, not fit for human consumption, was within the legislative competence of the Central legislature. The impost by the State was held justifiable only if it was a fee, thereby -impliedly and clearly denying any consideration or price for any privilege. For the first time in *State of Uttar Pradesh and Others Vs. Synthetics and Chemicals Ltd. and Others*, , the concept of exclusive privilege was introduced into the urea of industrial alcohol not fit for human consumption. Overruling the aforesaid decision it was observed :

"76. 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's case* AIR 1951 SC 318, 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 judgment or the Constitution. It appears to us that the decision in the *State of Uttar Pradesh and Others Vs. Synthetics and Chemicals Ltd. and Others*, was not-correct on this aspect."

23. The second ground on which the levies imposed by the States were struck down was that the entire field was occupied under Entry 52 of List I, by amendment of the IDR Act in 1956 bringing alcohol industries as Item 26 of the First Schedule to IDR Act. The control of this industry thereafter vested exclusively in the Union. Strong reliance has been placed by Mr. G. Ramaswamy on the observations of the Court in this regard, which are contained in paragraph 84 of the report at page 1955. It was observed :

"84. After 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 these 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, u/s 18G of the IDR Act, has evinced clear intention to occupy the whole field. Even otherwise sections like Section 24A and 24B 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 the List III."

24. The question then arises as to what is the ratio of the decision in Synthetics and Chemicals. It must be remembered that the States justified the levy on the basis of its legislative competence derived from Entry 8 of List II. It was not the case of the States that the levy was justifiable by reference to Entry 33 of List III. The Court held, by reference to settled legal principles, that so far as the States were concerned, they had no power to tax alcoholic liquors for human consumption, as that power belonged exclusively to the centre. The States only enjoyed a limited power to impose duties of excise. Having examined the nature and extent of the levies, the Court held that they were not in the nature of fees, nor were they regulatory in nature. They were in the nature of tax, which the States could not impose.

The second aspect of the matter which the Court considered was the meaning to be given to Entry 8 of List II, and it is here that the Court departed from its earlier view, and held that "intoxicating liquors" in that entry did not include industrial alcohol, and therefore the concept of exclusive privilege into the area of industrial alcohol was not justified.

Lastly it was held that by reason of the inclusion of the industry relating to industrial alcohol in the first schedule to IDR Act, the area was fully occupied by the Centre, and the States were denuded of their competence to legislate in that field.

25. The question of inconsistency between an order passed u/s 18G of the IDR Act and a legislation by the State, did not, therefore, arise for consideration, and therefore any observation in that regard cannot be regarded as the ratio. The question could have arisen only if the legislation by the State was in the legislative field covered by Entry 33 of List III, whereas in that case the States traced their power to Entry 8 of List II, which was exclusively State's legislative domain, and which was held to be curtailed in view of the declaration under

Entry 52 of List I.

26. What then is the effect of the observation contained in paragraph 84 of the judgment which is as follows:

"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, u/s 18G of the IDR Act, has evinced clear intention to occupy the said field.

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".

In my view, the aforesaid observations must be understood in the context of the findings earlier recorded by the Court that the entire field relating to industrial alcohol was occupied by the Centre, by reason of inclusion of that industry in the First Schedule of IDR Act. Section 18G after all is also apart of the IDR Act, and cannot apply to an industry unless the same is controlled by the aforesaid Act. Since the entire field relating to industrial alcohol was occupied, the States could not legislate with regard to industrial alcohol save for the limited purpose of regulation in exercise of sovereign power.

So understood, the observations can be read consistently with the earlier decisions of the Court, including *Tika Ramji*, which has held the field for almost four decades, and has been relied upon in a subsequent decision of the Court in *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*, . Otherwise it must be held that the judgment sought to overrule the earlier decisions of the Court on this point. The judgment does not purport to do so. *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, has not even been noticed, since it was not necessary to do so. If an earlier judgment is not overruled, a later judgment must be understood in the light of the earlier judgment. The ratio of a decision must prevail over an observation or obiter contained in any other decision, where the question involved did not directly fall for consideration, and therefore there was no necessity for the court to express its opinion. I am, therefore, of the considered view that the question that arises for consideration in this batch of writ petitions, did not directly arise for consideration in *Synthetics and Chemicals*, and that decision cannot be relied upon as a authority for the proposition that by reason of Section 18G of the IDR Act, the State of Bihar was denuded of its competence under Entry 33 of List III to legislate in regard to trade and commerce in, and the production, supply and distribution of molasses, which is the product of a controlled industry, namely, sugar. In *Synthetics and Chemicals*, the Court was examining a legislation by the State under Entry 8 of List II, which directly related to a controlled industry. In the instant case, the impugned legislation is covered by Entry 33 of List III, and therefore no question of lack of legislative competence can arise. Only a question of repugnancy (sic) may arise if there be a Central legislation on the same

subject. As to what would be the consequence in case of inconsistency between a State law under that entry, and an order u/s 18G of the IDR Act, is a different question, to which I shall advert later.

27. In the view I have taken, it is not necessary for me to consider whether the decision in *Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others*, was rendered per incuriam. I shall rather rest my decision on the ground that in that case the question with regard to the exercise of legislative power by the State legislature under Entry 33 of List III did not arise for consideration, since that case was with regard to the imposition of levy under Entry 8 of List 11 on industrial alcohol, which was a controlled industry, and not the product of a controlled industry. Some observations made in the judgment regarding legislative competence of the State legislature by reference to Entry 33 of List III must, therefore, be considered to be obiter, and must be understood in the light of the earlier binding precedents, namely, the decision of the Apex Court in *Ch. Tika Ramji*, and other decisions which followed that decision.

28. Having held that the enactment of the IDR Act, including its amendment in 1953 incorporating Sec. 18G therein, does not denude the State legislature of its competence to enact laws with regard to the products of a controlled industry, it still remains to be considered whether issuance of an order u/s 18G of the IDR Act in regard to molasses by the Central Government has that effect. Mr. Ramaswamy contends that after the promulgation of the Molasses Control Order 1961 by the Central Government, the State Act ceased to be effective. The respondents strongly challenge this proposition.

29. Mr. Ramaswamy urged that the State Act being a pre-Constitution Act could continue to have legal effect only so long as it had not been altered or amended by a competent legislature or other competent authority. He relied upon Article 372 of the Constitution of India and further submitted that since Section 18G of the IDR Act empowers the Central Government to issue a notified order for controlling the production, supply, distribution, and fixing fair prices of articles relatable to the sugar industry, the Molasses Control Order 1961 issued by the Central Government in exercise of such power had the effect of altering the State law by a competent authority. He relied upon a decision of this High Court in 1968 PLJR 179 (*A.K. Jain v. Union of India*) and the judgment on appeal against that decision by the Supreme Court in *A.K. Jain and Others Vs. Union of India (UOI) and Others*, .

30. The respondents contend that there is no warrant for the proposition that an Act of the State legislature, which is a law in force, can be repealed by an executive authority competent to make subordinate legislation with respect to the same subject matter. Neither Article 372 of the Constitution of India, nor the authorities relied upon, support that proposition. The respondents rely upon the decision of the Supreme Court, reported in *S.K.G. Sugar Ltd. Vs. State of Bihar and Others*, .

31. In *A.K. Jain v. Union of India*, the High Court, and thereafter the Supreme Court in the appeal arising from that judgment, considered the provisions of the Essential Commodities Act, 1955, and the Sugar Cane (Control) Order 1955 issued thereunder, and its effect on a pre-Constitution State law known as Bihar Sugar Factories Control Act 1937 (Act 7 of 1937). The State Act was a temporary enactment, and originally it was to remain in force until June 30, 1941. Its life was however extended from time to time by different amending Acts. The last extension was made by Bihar Act 6 of 1950 up to January 30, 1955. The assent of the Governor was published in the Gazette on 9-1-1950 and, therefore, the Act came into force on that date. It, therefore, was an existing law within the meaning of clause (10) of Article 366, and, therefore, after commencement of the Constitution, was to continue until altered, repealed, or amended by a competent legislature. Thereafter, Bihar Act 7 of 1955 which came into force on March 30, 1955, amended Section 1(6) of Act 6 of 1950 extending the life of Act 7 of 1937 indefinitely, beyond June 30, 1955. It is worth noticing that Bihar Act 7 of 1955, did not receive the assent of the President in accordance with the procedure prescribed in Clause (2) of Article 254 of the Constitution of India.

In the meantime, the Essential Commodities Act 1955 was enacted by the Union Parliament which came into force after receiving the assent of the President on April 1, 1955. Section 18(1)(b) of the said Central Act expressly repealed "any other law in force in any State immediately before the commencement of this Act in so far as such law controls or authorises the control of the production, supply and distribution of, and trade and commerce in, any essential commodity."

The Bihar Sugar Factories Control Act 1937 did contain provisions with regard to supply and distribution of, and trade and commerce in, an essential commodity. It also contained taxing provisions.

The Supreme Court in *A. K. Jain's* case MR. 1970 SC 267 observed :

"Assuming here that Bihar Act 7 of 1937 is severable and can be bifurcated into two parts, one dealing with the control of sugar industry, a topic falling under Entry 52 of List I and the other dealing with sugarcane, a topic, as held by me above, falling under Entry 33 of List III, it follows that the Central Parliament was competent under Article 246 to repeal law in relation to sugarcane and thus the Bihar Act and the Rules in relation, to sugarcane stood repealed and - . became unenforceable in accordance with the provisions of Article 372 of the Constitution."

Following the principle laid down by the Supreme Court, this Court in a subsequent decision *The Belsand Sugar Co. Ltd. Vs. Thakur Girja Nandan Singh*, , held that the provisions of the State Act being repugnant to the provisions of the Central Act could not have any effect.

32. The same legislations came up for consideration before the Supreme Court in *S.K.G. Sugar Ltd. Vs. State of Bihar and Others*, , though in a different context. The question before the Supreme Court was whether the taxing provisions in the

State law also became void. The contention was negated and it was held :

"10. Act 7 of 1937 dealt with two distinct and separate matters viz. (a) the regulation of production, supply and distribution of sugar-cane, and (b) imposition and collection of cesses and taxes in respect of sugarcane.

20. Matter (a) was referable to Entry 33 of the Concurrent List III and matter (b) to Entry 52 of the State List II in the 7th Schedule of the Constitution which corresponds to Entry 49 of the Provincial Legislative List (List II) of the Government of India Act, 1935. The Central Act 10 of 1955 related to matter (b) only. Bihar Act 7 of 1937 and Bihar Act 7 of 1955 which purported to re-enact the former permanently, in so far as it provided for regulation of production, supply and distribution of sugarcane -- a matter falling under Entry 33 of the Concurrent List -- was repugnant to the Central Act 10 of 1955, and, in view of Article 254 of the Constitution, to the extent of that repugnancy or inconsistency would be void. In the light of Article 372 of the Constitution read with Section 16(1)(b) of the Central Act, the Bihar Act would be deemed to have been repealed with effect from April 1, 1955, only in so far as, it controlled or authorised the control of the production, supply and distribution of, and trade and commerce in sugarcane. The taxing provisions of the Bihar Act were not in any way repugnant to the Central Act or any other law passed by Parliament. Those taxing provisions, as already noticed, fall under Entry 52, List II and that was why Section 16 of the Central Act confined the repeal only to those provisions which were covered by Entry 33, List III. The taxing provisions of the Bihar Act, therefore, never lost their validity and continued to be in force. The notification issued under the Bihar Act of 1937, and continued under the Acts of 1955 and 1963), imposing the tax or cess, also remained operative during the period in question, till it was replaced by another notification issued on January 12, 1968 under the Ordinance 3 of 1968. It is, therefore, incorrect to say that there was any period, much less in January 1968, during which the tax was levied without the authority of law.

26. It will bear repetition that the taxing provisions of the Bihar Act were advisedly kept out of the purview of Section 16(1)(b) of the Central Act which repealed the State laws only in so far as they controlled or authorised control of the production, supply and distribution of sugarcane. The taxing provisions of the Bihar Act therefore were neither rendered inoperative by Article 254(1), nor repealed or altered by the competent legislature within the contemplation of Article 372 of the Constitution."

33. The earlier decision of this Court and of the Supreme Court in *A. K. Jain's* case, as also the judgment of this Court in *Bels and Sugar Co.* (AIR 1969 Patna 8) were noticed by the Supreme Court. From the facts stated in the judgments aforesaid, it becomes clear that the State law was not altered or amended by a Central Order passed under the Central law, namely, Essential Commodities Act. In fact, the law enacted by Parliament with the assent of the President (Essential Commodities Act) itself by Section 16(1)(h) repealed any other law in force in

any State which controlled or authorised "the control of the production, supply and distribution of, and trade and commerce in, any essential commodity". Moreover, the State Act did not enjoy the protection under Clause (2) of Article 254 of the Constitution. On the contrary, in the instant case the Bihar Act 1 of the 1964 which extended the life of Bihar Molasses (Control) Act indefinitely and made it permanent, was assented to by the President of India.

34. I have, therefore, no hesitation in coming to the conclusion that the authorities relied upon by the petitioners do not support the proposition that a control order issued by the Central Government in exercise of its power to make subordinate legislation can alter, amend or repeal a law enacted by a State legislature. On the contrary, there is good authority to support the proposition that alteration, amendment or repeal of such a State law can only be brought about by legislation enacted by the Parliament in exercise of its plenary power of legislation. Even at the cost of repetition I may refer again to the Constitution Bench decision of the Supreme Court in *Tika Ramji (supra)*, the relevant passage wherefrom has been extracted earlier in this judgment, holding that the power of repeal, if any, under Article 254(1) was vested in Parliament, and Parliament alone could exercise it by enacting an appropriate provision, but could not delegate that power to an executive authority. It may be that in the case of rules, regulations etc. which may be "law in force", an executive authority if competent to do so may alter, amend or repeal such rules or regulations. The observations of the Supreme Court in *State of Madhya Pradesh and Another Vs. Lal Bhargavendra Singh*, , also support the above legal proposition.

35. Counsel for the respondents further submitted that in the peculiar facts of this case, the question of repugnancy could never arise, even if it is held that a Central Order would prevail if provisions of a State law were repugnant thereto. It is "well settled that repugnancy must exist in fact, and not depend merely on a possibility. The possibility of an order u/s 18G being issued by the Central Government would not be enough. The existence of such an order would be the essential pre-requisite before any repugnancy could ever arise (See *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*,).

Admittedly, the Central Order, namely, the Molasses Control Order 1961 was never applied to the State of Bihar. There was, therefore, no order issued u/s 18G of IDR Act which operated in the State of Bihar. The laws passed by the Bihar legislature have no extra territorial jurisdiction. The question of repugnancy could arise only if it was shown that the State law in its operation was repugnant to the Central Order. If there was in fact no Central Order on the subject operating in the State of Bihar, there was nothing to which the State law could be repugnant. When the field was not occupied by a Central Order, obviously no question of repugnancy arose. It must therefore be concluded that even if it is assumed that a question of repugnancy may arise between a Central Order and a State law, in the facts of this case, no such question arose as no Central Order on the subject ever operated in the State of Bihar. Consequently, since the field

was not occupied by a Central law, the law passed by the State legislature, referable to Entry 33 of List III alone continued to occupy the field.

36. While on this subject, I may consider the submission urged by Mr. Ramaswamy that in view of the IDR Act, the State legislature has no competence to legislate in respect of any matter pertaining to the scheduled industries, because Parliament has evinced an intention to cover the entire field.

He submitted that in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, , the Supreme Court laid down that if Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration, the jurisdiction of the State legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as declared by Entry 54, and the said declaration covers the field occupied by the impugned Act, the impugned Act would be ultra vires, not because of any repugnancy between the two statutes, but because the State legislature had no jurisdiction to pass the law. The limitation imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State legislature itself. Counsel submitted that the law laid down in *Hingir Rampur* held the field till the year 1964, and thereafter the Supreme Court in *H.R.S. Murthy Vs. Collector of Chittoor and Another*, reversed the position and stated that the State legislature is denuded only to the extent of physical occupation, and merely evincing interest was not sufficient. Till the year 1990 this view held the field, but -according to counsel, the judgment of the Supreme Court in *India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others*, reversed the view and restated the law as laid down in *M/s. Orissa Cement Ltd. and Others Vs. State of Orissa and others*, , according to counsel for the petitioners, the principles laid down in *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, and *State of Orissa Vs. M.A. Tulloch and Co.*, were affirmed. The same view was reiterated in *Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others*, .

On the other hand, learned Advocate General submits that the law laid down in *H.R.S. Murthy Vs. Collector of Chittoor and Another*, has been consistently followed by the Supreme Court, and in particular he placed considerable reliance upon the judgment of the Supreme Court in *Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others*, and contended that the declaration made by the Parliament by law prescribed the extent and scope of control of the Union over any controlled industry. He, therefore, contended that to the extent declaration is made and extent of control laid that much, and that much alone, is abstracted from the legislative competence of the State legislature. It is, therefore, not correct to say that once a declaration is made in respect of an industry, that industry as whole is taken out of Entry 24, List II. He also submitted that the same view was expressed in *Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others*, .

To my mind the question urged on behalf of the petitioners as to the extent of

exclusion of the legislative power of the State legislature, once a declaration is made by law under Entry 52 of List I, does not arise for consideration in the instant case. As observed earlier, under Entry 24, List II, the State legislature is competent to enact laws on the subject of "industries", subject to the provisions of Entries 7 and 52 of List I. If the Parliament by law evinces an interest for the control of an industry by the Union in public interest, the State legislature is denuded of legislative competence to legislate on that subject in relation to the "industry" in question. To what extent it is denuded of its legislative competence is a question which may arise if the State legislature enacts a law under Entry 24 of List II in regard to a controlled industry, claiming legislative competence to do so having regard to the extent of control taken over by the Union under the declaration. If the State contends that the control of the Union is not complete in respect of a particular controlled industry, it may claim legislative competence to legislate on that subject in the unoccupied field though in relation to the controlled industry, but without trenching upon the field occupied by the declaration. Obviously, therefore, this question could only arise if the impugned Act of the State legislature was one referable to the subject under Entry 24, List II. In the instant case, the impugned State Act does not legislate on the subject "industries", but is a legislation referable to Entry 33 of List III as it relates to the products of a controlled industry. The question as to the extent to which the legislative competence of the State legislature has been denuded, therefore, does not fall for consideration. Under Entry 33, List III the State legislature has concurrent power with the Union Parliament to legislate on the subject, subject to repugnancy.

37. It was then faintly submitted by the petitioners that the State Act is violative of Articles 14 19(1)(g) 301 and 304(b) of the Constitution of India. It was argued that the potable alcohol industry was the greatest beneficiary at the cost of the sugar industry. Such a policy was contrary to the mandate of Article 47 of the Constitution, and, therefore, the State Act was discriminatory. In my view, the argument must be rejected. The mere fact that a particular industry may benefit from the provisions of the Act is no ground to hold that the Act is discriminatory, unless there be something which is so irrational or unreasonable that it may be characterised as arbitrary. Another argument that has been advanced in the written submissions is that the State law does not permit uniformity throughout the country even with regard to controlled industries. The price of molasses is not in accordance with the principles laid down in Section 18G of the IDR Act, and that there is no justification for controlling molasses when sugar and Ethly alcohol have been decontrolled. There is no present need to impose controls on price or movement of molasses, even if such need existed in the past.

38. The fact that the price and movement of molasses is not controlled in other States is no justification for holding the State Act to be discriminatory. The learned Advocate General rightly relied upon the decision of the Supreme Court in *The State of Madhya Pradesh Vs. G.C. Mandawar*, wherein it was held:

"The power of the Court to declare a law void under Article 13 has to be examined with reference to specific legislation, which is impugned. It is conceivable that when the same Legislature enacts two different laws, but in substance they form one legislation, it might be open to Court to disregard the form and treat them as one law and strike it down, if in their conjunction they result in discrimination. But such a course is not open where, as here, the two laws stay in conjunction by different Governments and by different Legislature. Article 14 does not authorise the striking down of a law of one State on the ground that in contract with a law of another State, on the (sic) subject, its provisions are discriminatory, (sic) does it contemplate a law of the Centre or of a State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two enactments. The source of authority for the two statutes being different Article 14 can have no application."

39. So far as the question of need to control price and movement of molasses is concerned, there is no bar to it in law. Moreover, that is a matter of policy, with the Court is not concerned, unless it is shown to be arbitrary, unreasonable or otherwise illegal.

40. In support of the argument that the State law was violative of Article 19(1) (g), it is submitted that since all curbs on the movement or price of ethyl alcohol have been removed, there is no reason for continuing restrictions on molasses. This again is a matter of policy, and if the law permits such a policy, the Courts will not examine the wisdom of the policy.

41. Lastly, it was submitted that the Act impedes inter-state movement because there can be no movement of goods without permit. The argument is hardly sufficient to hold that the State law is violative of Article 301 of the Constitution of India. The insistence on permits is purely a regulatory measure, and is not such as to impede inter-State trade and commerce. Moreover Act 1 of 1964 which made the State Act a permanent Act was enacted with the assent of the President of India, and, therefore, even if it is assumed that the State Act impedes inter-State trade and commerce, it is saved from challenge on that ground.

42. The validity of the order dated June 11, 1993 and wireless messages dated 14th and 19th June, 1993, was challenged on the ground that they were contrary to the notification of the Central Government rescinding the Molasses Control Order u/s 18G of IDR Act. They are contrary to the directions of the Central Government. Since the Molasses Control Order was never applied to the State of Bihar, its rescission by the Central Government could have no effect in the State of Bihar, where throughout the State Act operated to control the price and movement of molasses, and provided for other regulatory measures. The argument, therefore, has no substance, and must be rejected.

43. I, therefore, find no merit in any of the submission urged on behalf of the

petitioners. The writ petitions are devoid of merit, and are accordingly dismissed but without any order as to cost.

K. Venkataswami, C.J.

44. I agree.