
(1978) 09 AHC CK 0027

In the Allahabad High Court

Case No : Writ Petition No's. 2826, 3327, 3499, 3607, 3613, 3699, 3759, 3762, 3767, 3812, 3832 to 3836, 4164, 4212, 4713, 5112, 5113, 5164, 5240 and 6253 of 1978

Vir Narain Tyagi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-09-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 254(2), 301, 47
Drugs and Cosmetics Act, 1940 — Section 3
Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 2
Uttar Pradesh Excise Act, 1910 — Section 1, 10, 11, 12, 13

Citation : AIR 1978 All 490

Hon'ble Judges : R.R. Rastogi, J;N.D. Ojha, J

Bench : Division Bench

Advocate : S.P. Gupta, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

N.D. Ojha, J.—These writ petitions challenge the validity of certain notifications issued by the State Government of Uttar Pradesh and Excise Commissioner, U. P. under various sections of the U. P. Excise Act (hereinafter referred to as the Act). Notification No. 1130-E/XIII-523-72 u/s 4, No. 1128-E/XIII-523-72 u/s 40, No. 1131-E/XIII-523-72 u/s 75 and No. 1132-E/XIII-523-72 u/s 76 of the Act were issued by the State Government. All these notifications are dated February 13, 1978. A fifth Notification No. 11719/XXV-19 was issued on the same date by the Excise Commissioner, U. P. All these five notifications were published in the U. P. Gazette Extraordinary dated Feb. 13, 1978. By the notification u/s 4 it was declared that 16 spirituous medicinal preparations specified therein shall be deemed to be liquor for the purposes of transport, possession and sale only within the meaning of the Act. One of these 16 spirituous medicinal preparations, viz., Mrit San.ii-wani Sura, is an Ayurvedic preparation and the remaining 15 are spirits and tinctures. The notification u/s 40 contained rules framed by the State

Government under the said section known as the Uttar Pradesh Transport and Possession of Notified Restricted Spirituous Preparations (Prevention of Misuse) Rules, 1978. By the notification u/s 75 the State Government directed that the provisions of Sections 1 to 74 of the Act and the Uttar Pradesh Transport and Possession of Notified Restricted Spirituous Preparations (Prevention of Misuse) Rules, 1978, shall apply to the possession, sale or supply of 16 "bona fide medicated articles for medicinal purposes by medical practitioners, chemists, druggists, apothecaries and keepers of dispensaries." These 16 medicated articles are the same as were declared liquor by the notification u/s 4. By the notification u/s 76 the State Government exempted throughout Uttar Pradesh the "Notified Restricted Spirituous Preparations" as denned in Rule 2 (ii) of the Uttar Pradesh Transport and Possession of Notified Restricted Spirituous Preparations (Prevention of Misuse) Rules, 1978, from the operation of the provisions of the U. P. Excise Act, other than Sections 1, 3, 4, 6 to 8, 10, 11, 13, 14 to 16, 20, 21, 32 to 41, 48 to 55, 57, 58, 60 and 63 to 79 of the Rules made under the aforesaid Act other than the Uttar Pradesh Transport and Possession of Notified Restricted Spirituous Preparations (Prevention of Misuse) Rules, 1978. The notification u/s 41 contained Rules framed by the Excise Commissioner with the previous sanction of the State Government known as the Uttar Pradesh Sale of Notified Restricted Spirituous Preparations (Prevention of Misuse) Rules, 1978.

2. Subsequently the State Government issued two more notifications on May 30, 1978 -- one being No. 5368-E/XIII-564-77 u/s 4 of the Act declaring that homeopathic dilutions containing alcohol and Mrit Sanjiwani as well as Mrit Sanjiwani Sudha shall be deemed to be liquor for the purposes of transport, possession and sale only within the meaning of the Act, and the other being No. 5369-E/XIII-564-77 u/s 75 of the Act directing that the provisions of Sections 1 to 74 of the Act and the 1978 Rules aforesaid framed u/s 40 shall apply to the possession, sale or supply of homeopathic dilutions containing alcohol and Mrit Sanjiwani as well as Mrit Sanjiwani Sudha. It is these seven notifications which are sought to be quashed in one or the other of these connected 23 Writ Petitions which broadly speaking can be placed in three sets. One set of these writ petitions challenges the aforesaid notifications in so far as they relate to Mrit Sanjiwani Sura and the other in so far as they relate to the 15 spirits and tinctures as specified in the relevant notifications dated February 13, 1978. The third set challenges them as also the two notifications dated May 30, 1978, in so far as they relate to the homeopathic dilutions. During the pendency of these Writ Petitions certain amendments have been made by different notifications issued simultaneously on August 5, 1978, and published in U. P. Gazette Extraordinary of the same date. By the notifications dated August 5, 1978, the following amendments have been made:--

"(1) The definition of the term "notified restricted spirituous preparation" has been substituted in the notifications issued under Sections 40 and 41 of the Act on February 13, 1978. The said term has now been defined as "notified restricted spirituous preparation means a medicinal or toilet preparation containing alcohol

which is capable of being misused as ordinary alcoholic beverage or spirituous preparation and which has been or is declared to be liquor by the State Government under Sub-section (1) of Section 4 of the U. P. Excise Act, 1910, whether or not included in the Schedule to the Medicinal and Toilet Preparations (Excise Duties) Rules 1956."

(ii) The definition of the term "spurious preparation" has been deleted.

(iii) In the two notifications issued u/s 75 on Feb. 13, 1978, and May 30, 1978, between the word "following" and the words "bona fide medicated articles" the words and figures "spirituous medicinal preparations declared liquor under Sub-section (1) of Section 4 of the aforesaid Act for use as" have been inserted.

(iv) In the notification u/s 76 dated Feb. 13, 1978 between the figure "37" and the figure "38" the figure and the letter "37-A" have been inserted.

3. Having cleared the ground we now proceed to consider the submissions made by counsel for the petitioners appearing in each of the three sets of petitions stated above. Some of these submissions are common and we propose to deal with them first.

4. The foremost contention raised by counsel for the petitioners in support of their challenge to the impugned notifications was that the State Legislature has no jurisdiction to make any legislation in regard to the various medicinal preparations specified in the impugned notifications as stated above inasmuch as the jurisdiction to make laws in respect of medicinal preparations and drugs vested in the Central Government. It was urged that as a necessary corollary the State Government in the exercise of its delegated legislative power did not have the jurisdiction to issue the impugned notifications. In this connection it would be seen that a perusal of Entry 45 of List I, viz., Federal Legislative List, and Entry 40 of List II, viz., Provincial Legislative List, of the 7th Schedule to the Government of India Act, 1985, indicates that the power to legislate in respect of dues of excise on medicinal and toilet preparations containing alcohol vested in the Provincial Legislature. On the other hand Entry 84 of List I, i.e., Union List, and Entry 51 of List II, i. e., State List, of the 7th Schedule to the Constitution of India make it clear that the power to levy dues of excise on medicinal and toilet preparations containing alcohol vests in the Parliament and not in the State Legislature. Entry 8 of List II of the 7th Schedule to the Constitution is "intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors". Entry 19 of List III, viz., the Concurrent List, reads :

"Drugs and poisons subject to the provisions of Entry 59 of List I with respect to opium."

It may also be noticed that none of the three Lists of Schedule 7 to the Government of India Act, 1935, included "drugs" in general as has been done in Entry 19 of List III of Schedule 7 to the Constitution. Entry 19 of List III of

Schedule 7 to the Government of India Act was about "Poisonous and dangerous drugs". It, however, appears that the power to legislate in respect, of drugs as such was treated to be with the provincial legislature in view of Entry 14 of List II, viz., the Provincial Legislative List of the 7th Schedule to the Government of India Act, 1935, which inter alia included "public health and sanitation". This conclusion finds support from the fact that the Drugs and Cosmetics Act (Act 23 of 1940) was passed by the Federal Legislature as is clear from the preamble to the Act itself on the strength of resolutions in terms of Section 103 of the Government of India Act, 1935, passed by the legislatures of all the provinces. Section 103 reads :--

"If it appears to the Legislatures of two or more Provinces to be desirable that any of the matters enumerated in the Provincial Legislative List should be regulated in those Provinces by Act of the Federal Legislature, and if resolutions to that effect are passed by all the Chambers of those Provincial Legislature, it shall be lawful for the Federal Legislature to pass an Act for regulating that matter accordingly, but any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province."

Thus power u/s 103 could be exercised only if it was considered desirable by two or more legislatures that "any of the matters enumerated in the Provincial Legislative list should be regulated in those Provinces by Act of the Federal Legislature". Further the words "any Act so passed may, as respects any Province to which it applies, be amended or repealed by an Act of the Legislature of that Province" are also important. So it is clear that the subject-matter of this Act was covered by List II of the 7th Schedule to the Government of India Act, 1935, and the power to legislate on this matter vested in the Provincial legislature. That such an enactment would be covered by the Entry of "public health" also finds support from para. 17 of *State of Bombay v. F. N. Balsara* (AIR 1951 SC 318) where in relation to the Bombay Prohibition Act, 1949, it was observed that the power even to prohibit use, consumption, possession and sale of intoxicating liquor could be referable to Entry 14 which refers inter alia to "public health".

5. The power to legislate in respect of intoxicating liquors and narcotic drugs (Entry 31 of List II) also vested in the Provincial legislature. The provisions in regard to drugs as may be contained in the U. P. Excise Act too were thus intra vires the powers of the State Legislature. Article 246 of the Constitution deals with "subject-matter of laws made by Parliament and by the Legislatures of States" with reference to the three Lists of the Seventh Schedule. The other two Articles which are relevant on the point are Articles 254 and 277 which read :

"254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States :--

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which 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, then, subject to the provisions of Clause (2), the law made by 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 and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a 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 received his assent prevail in that State:--

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

"277. Savings.-- Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law".

6. It was urged by counsel for the petitioners that since the definition of "drug" in Section 3(b) of the Drugs and Cosmetics Act, 1940, as substituted by Act 11 of 1955 and Act 35 of 1960 includes, inter alia, all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals and the definition of "medicinal preparation" u/s 2(g) of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, includes all drugs which are a remedy or prescription prepared for internal or external use of human beings or animals and all substances intended to be used for or in the treatment, mitigation or prevention of disease in human beings or animals, the terms "medicinal preparations" and "drugs" were almost interchangeable and since the power to legislate in respect of drugs was contained in Entry 19 of the Concurrent List the power of the State Government to legislate in respect of medicinal preparations or drugs stood repealed and any law made by it was rendered void on relevant enactments being passed by the Parliament in respect of these matters as contemplated by Article 254(1) of the Constitution.

7. Our attention was invited by counsel for the petitioners to the Drugs (Amendment) Act, 1955 (Act No. 11 of 1955) and the Drugs and Cosmetics (Amendment) Act, 1964 (Act No. 13 of 1964) by which certain amendments were made by the Parliament in the Drugs and Cosmetics Act, 1940, as also to

the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, and it was with reference to these enactments that it was urged that since the Parliament had passed these enactments with reference to medicinal preparations and drugs the power of the State legislature to legislate in respect of these matters stood repealed. It was further urged that the established principle of interpretation of the various entries in the Schedule to a Constitution Act was that they had to be read in juxtaposition and if it was found that on a subject which was either exclusively in the Union List or in the Concurrent List, an enactment had been passed by the Parliament the State legislature would not be competent to legislate on the same subject except as provided for by Article 254(2). Reliance in regard to the rule of interpretation of Entries in the Schedule was placed on AIR 1939 1 (Federal Court) , Madras Province v. Boddu Paidamma and Sons (AIR 1942 FC 33), AIR 1945 98 (Privy Council) , Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, and Lachmandas Balachand, Paradise Lottery Centre, 124, Park Lane Secunderabad and Others Vs. The State of Andhra Pradesh and Others, .

In view of the aforesaid cases it is of course apparent that if a particular subject appears in the Union list the State legislature certainly does not have any power to make an enactment on that subject. It is also apparent that if the subject appears in the Concurrent List or even if it appears in the State List but some aspects thereof are overlapping either because they also can be brought under some Entry in the Union List or in the Concurrent List and the Parliament has occupied the field by enacting on that subject which is in the concurrent list or on that part of the subject which is overlapping the State Government will not be in a position to make an enactment on that point and the law made by the State legislature will have to yield before the law made by the Parliament except in the circumstances enumerated in Article 254(2) of the Constitution. In this connection, however, it would be useful to refer to certain observations made by the Supreme Court in Harakih Chand's case (supra). It was held in that case that it is well established that the widest amplitude should be given to the language of the entries, the reason being, that allocation of subjects is not by way of scientific or logical definition but is a mere enumeration of broad and comprehensive categories. Some of the entries in the different Lists or in the same List may overlap or may appear to be in direct conflict with each other. It is then the duty of the Court to reconcile the entries and bring about a harmonious construction. An endeavour must be made to solve the conflict by having recourse to the text and scheme of the Act and a reconciliation attempted between two apparently conflicting jurisdictions by reading the two Entries together and by interpreting and where necessary by modifying the language of the one by that of the other. It is a well recognised canon of construction that a general power should not be so interpreted as to nullify a particular power conferred by the same instrument.

8. Having given our anxious consideration to the submissions made by counsel for the petitioners in this behalf in the light of the law laid down in the aforesaid

case we are of opinion that there is no repugnancy between the provisions of the Drugs and Cosmetics Act as amended by Act 11 of 1955 and Act 13 of 1964 and Medicinal and Toilet Preparations (Excise Duties) Act, 1955, on the one hand and the provisions of the U. P. Excise Act with regard to the enforcement of the policy of prohibition in furtherance whereof the impugned notifications have been issued on the other.

9. In so far as the Drugs and Cosmetics Act, 1940, is concerned it has already been pointed out that this Act was enacted in pursuance of certain resolutions passed by various State legislatures as contemplated by Section 103 of the Government of India Act. As further pointed out above a resolution under this section could be passed only in respect of a matter falling within the Provincial Legislative list. Section 103 of the Government of India Act further provided that any Act passed by the Federal Legislature u/s 103 "may, as respects any Province to which it applies, be amended or repealed by an Act of the legislature of that province". Further on a conspectus of various sections of this Act even after its amendment by Act 11 of 1955 and Act 13 of 1964 it is apparent that the essential feature of this Act is to control the standard and quality of drugs. This view finds support from *Indian Chemical and Pharmaceutical Works Vs. State of Andhra Pradesh and Others*, . It is correlated with public health and does not regulate law in regard to prohibition and checking misuse of medicinal preparations or drugs containing alcohol as alcoholic beverages which if not regulated will necessarily defeat the declared policy of prohibition by the State Government. In so far as the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, is concerned a perusal of the long title of the Act as also the preamble indicates that this is an act to provide for the levy and collection of duties on medicinal and toilet preparations. This conclusion is borne out even by the contents of the Act, viz., the provisions contained in various sections thereof. The Act is meant to provide for the levy and collection of duties and consequential provisions. This Act too does in no way deal with the matter of regulating any law in regard to prohibition and checking the misuse of medicinal preparations and drugs containing alcohol as alcoholic beverages. Our attention was invited to certain provisions of the Rules framed under this Act as also the Rules framed under the Drugs and Cosmetics Act dealing with the matter of manufacture, transport, possession and licence, etc., and with reference to them it was urged that the entire field in regard to medicinal preparations and drugs was covered by these two Acts passed by the Parliament. We, however, find ourselves unable to agree with this submission. The power to make the rules is for carrying out the purpose of the Act and cannot travel beyond it. If the Acts themselves do not provide for enforcement of prohibition and prevention of misuse of medicinal preparations and drugs containing alcohol as alcoholic beverages the rules framed thereunder cannot certainly do so. The incidental provisions about manufacture, transport, possession and licence etc. in such rules will have the effect of repealing only pro tanto similar provision in the Excise Act, i.e., only in so far as they have bearing with regard to the levy and collection of duties and

control of quality of medicinal preparations and drugs. They will not have the effect of repealing those provisions in so far as they relate to the enforcement of the scheme of prohibition or to prevent misuse of medicinal preparations and drugs containing alcohol as alcoholic beverages. As a necessary corollary provisions regulating misuse of medicinal preparations and drugs containing alcohol can be made by the State Government as also by the Excise Commissioner in the exercise of powers conferred on them by various sections of the U. P. Excise Act. Such an interpretation would be in conformity with the rule of interpretation about "harmonious construction," making an endeavour "to solve the conflict" and attempting a "reconciliation" as laid down by the Supreme Court in *Harakchand Ratanchand Banthia and Others Vs. Union of India (UOI) and Others*, .

10. The matter can be looked into from another aspect. The U. P. Excise Act was amended by Amendment Act 6 of the 1972 whereby a new Chapter VI-A containing Section 37-A was inserted. The newly added Chapter VI-A contains special provisions regarding prohibitions whereas Section 37-A deals with prohibition of import, export, transport or possession of intoxicants. The Amendment Act 6 of 1972 was referred for the consideration of the President and received his assent on 19th Jan., 1972. Its validity has been upheld by a Full Bench of this Court in *Sheo Kumar Vs. State of U.P. and Others*, . The provisions contained in Section 37-A would therefore, in view of Article 254(2) of the Constitution, prevail so far as the State of Uttar Pradesh is concerned over all statutory provisions on the subject contained in any Act of Parliament enacted in the exercise of the powers conferred by Entry 1"9 of the Concurrent List. The impugned notifications have been issued to advance the purpose of Section 37-A, viz., prevention of misuse of medicinal preparations and drugs containing alcohol as alcoholic beverage. For this reason as also the reasons already stated earlier we are of opinion that the impugned notifications cannot be held to be beyond the legislative powers of the State Government or its delegate.

11. Before parting with this point we may point out that even though the challenge to the validity of Section 37-A aforesaid on the ground of lack of legislative competence and on several other grounds too was repelled in *Sheo Kumar*'s case 1978 All LJ 581 (FB) (*supra*) it was accepted on the ground that it was hit by Article 14 of the Constitution. After the decision in *Sheo Kumar*'s case the Governor of Uttar Pradesh has promulgated the Uttar Pradesh Excise (Third Amendment) Ordinance, 1978 (U. P. Ordinance No. 11 of 1978) published in U. P. Gazette Extraordinary dated June 26, 1978 whereby Section 37-A has been substituted by a new section in the U. P. Excise Act with retrospective effect from May 1, 1972. The purpose of the new section also is the same as of the old section namely enforcing prohibition in the State of Uttar Pradesh. The Ordinance also contains a validating section being Section 5.

12. The second submission which was made by counsel for the petitioners was that the impugned notifications were hit by Article 19(1)(g) of the Constitution.

Before dealing with the submissions made by counsel for the petitioners it would be pertinent to note that Mrit Sanjiwani Sura contains about 24% volume by volume of alcohol. This alcoholic content comes into being not only due to fermentation but as is clear from the process of its preparation contained at page 797 of Bhaishajya Ratnawali by Govind Das, cited by counsel for the petitioners himself that recourse to the process of distillation has also to be taken. In Adhyaksha Mathur Babu's Sakti Oushadhalaya Dacca (P) Ltd. and Others Vs. Union of India (UOI), it has been held by the Supreme Court that Mrit Sanjiwani Sura is also capable of being used as ordinary alcoholic beverage. That the 15 items of spirits and tinctures aforesaid also contain high percentage of alcohol admits of no doubt. So far as the homeopathic dilutions are concerned the process of preparation of various potencies of these dilutions indicates that they too contain a very high percentage of alcohol. If one drop of mother tincture is mixed with nine drops of alcohol and ten downward strokes are given to the mixture IX (decimal) potency dilution of a particular medicine is prepared. Likewise if one drop of mother tincture is mixed with 99 drops of alcohol and ten downward strokes are given to the mixture IC (Centesimal) potency dilution of a particular medicine is prepared. The higher the potency the higher the percentage of alcohol will be contained in it. As such it is clear that Mrit Sanjiwani Sura, various spirits and tinctures as also the homeopathic dilutions which are the subject-matter of the impugned notifications are medicinal preparations containing fairly high percentage of alcohol. Section 3 (11) of the U. P. Excise Act defines liquor which means "intoxicating liquor and includes spirits of wine, spirit, wine, Tari, Pachwai, beer and all liquids consisting of or containing alcohol, also any substance which the State Government may by notification declare to be liquor for the purposes of this Act, Section 3 (13) of the Act defines "intoxicant" which means "any liquor or intoxicating drug as defined by this Act". In view of the definition of "liquor" and "intoxicant" as aforesaid and in view of the fact that the medicinal preparations which are the subject-matter of the impugned notifications are all liquids consisting of or containing alcohol and a notification declaring them to be liquor has also been issued by the State Government u/s 4 of the Act, these medicinal preparations come within the purview of intoxicants under the Act. The right to carry on trade or business or to deal with medicinal preparations or drugs falling within the definition of intoxicant stands on a different footing than the right to carry on trade or business or to deal with other medicinal preparations not falling within the definition of intoxicant.

13. We now come to the submissions made by counsel for the petitioners. It was urged that the burden of proving that the restrictions placed upon the right of a citizen to carry on trade or business was reasonable was upon the State Government. Reliance in support of this submission was placed by counsel for the petitioners on various decisions of the Supreme Court. On the other hand relying on certain later decisions of the Supreme Court it was urged on behalf of the respondents by the Solicitor General that the recent trend of the decisions of

the Supreme Court indicated that it was not so. In our opinion it is not necessary to go into this large question in the present writ petitions for we are of opinion that even if the burden of proving that the restrictions were reasonable is taken to be on the State Government it has successfully discharged that burden. Counsel for the petitioners referred to Balsara's case (AIR 1951 SC 318) (supra) and invited our attention to the following observation towards the end of para 25 of the said case:--

"I do not consider that it is reasonable that the possession, sale, purchase, consumption or use of medicinal and toilet preparations should be prohibited merely because there is a mere possibility of their being misused by some perverted addicts."

In connection with this submission It would be seen that in Balsara's case (supra) the Supreme Court was considering the provisions of Bombay Prohibition Act, 1949, which placed total prohibition on all liquids containing alcohol including medicinal preparations. That the said Act placed total prohibition is clear not only from certain observations made in column 2 at page 328 of the said case but also from the facts stated in *Fram Nusservanji Balsara Vs. State of Bombay and Another*, against which judgment the appeal to the Supreme Court was decided in Balsara's case (supra) by the Supreme Court. In making the observation quoted above relied on by counsel for the petitioners the Supreme Court had considered the factual aspect in regard to the two American Acts. The Supreme Court, however, did not say that the State Government cannot even regulate the use of such medicinal preparations as containing alcohol so as to prevent them from being misused as alcoholic beverage which will defeat the declared policy of enforcing prohibition. The distinction between regulation and prohibition is obvious and is well settled. Para. 24 of the judgment in Balsara's case (AIR 1951 SC 318) quotes certain observations made by the High Court. One such observation was "Therefore, in our opinion, while it was open to the legislature to provide against the abuse of these articles it was not open to it to prevent its legitimate use." Nothing has been brought to our notice which may indicate that the Supreme Court did not agree with this observation made by the High Court. On the other hand as is apparent from the observations made by the Supreme Court towards the end of para 25 of the report it was substantially in agreement with the line of reasoning adopted by the High Court. Article 47 of the Constitution appearing in Part IV dealing with Directive Principles of State Policy reads:--

"47. Duty of the State Ho raise the level of nutrition and the standard of living and to improve public health:--

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health." It is clear that in view of Article 47 aforesaid

the State is under a duty "to endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health." If medicinal preparations containing high percentage of alcohol which fall within the definition of "intoxicant" as aforesaid are used in prescribed doses it will be beneficial and not injurious to health and such user would be "for medicinal purposes" within the meaning of Article 47, and if such user is sought to be prohibited Article 47 will not apply. But if such preparations are used in larger quantity as a substitute for intoxicating liquor such user will certainly be injurious to health and cannot be said to be "for medicinal purposes." Some of them, particularly homoeopathic dilutions may also have an injurious side-effect. As such if the object of putting restriction on their use is to prevent their misuse as aforesaid and to ensure that the policy of bringing about prohibition of the consumption of intoxicating drinks and drugs is not frustrated by the misuse of such medicinal preparations which misuse would be injurious to health Article 47 will clearly be attracted. In such a case it will not be prohibiting the user of these medicinal preparations "for medicinal purposes" but would be only to regulating their user so as to prevent their consumption as intoxicating drinks which will be injurious to health. In other words if a medicinal preparation can be used both "for medicinal purposes" and also misused by consuming it as a substitute for intoxicating drinks causing injury to health even though prohibition of its user "for medicinal purposes" will be beyond the purview of Article 47, regulation of its user so as to prevent its misuse as aforesaid will be within the scope of Article 47. Viewed in this light it would be seen that the restrictions placed by the impugned rules on the use of medicinal preparations specified therein so as to prevent their misuse as aforesaid cannot be said to be unreasonable. Here no total prohibition of use and possession of the said medicinal preparations has been imposed. For medical practitioners and individual consumers of these medicinal preparations only a limit has been prescribed beyond which these medicinal preparations cannot be possessed by them at one point of time. It is true that in certain circumstances it may be onerous for a person needing these medicinal preparations for regular use to frequently go to the market to purchase these medicines but in our opinion keeping in view the purpose of placing these restrictions it cannot be said that this fact alone would render the restrictions unreasonable. These restrictions do not have the effect of preventing the legitimate use of these medicinal preparations "for medicinal purposes"." The consumers of these medicinal preparations are not to obtain either a licence or a permit to possess them up to the prescribed quantity. The restrictions placed by the impugned notifications cannot, therefore, in our opinion be said to be unreasonable. The view we take finds support from *C.R.H. Readymoney Ltd. and Another Vs. State of Bombay*, and *J. Nageswara Rao Vs. The State of Madras*, .

14. It would further be seen that the constitutional validity of Section 37-A of the U. P. Excise Act inserted by Amendment Act 6 of 1972 had also been challenged on the ground that it was hit by Article 19 of the Constitution. The plea was,

however, repelled by a Full Bench of this Court in Shep Kumar's case (1978 All LJ 581) (supra). The impugned notifications have been issued for furtherance of the purpose of Section 37-A. In our opinion for this reason too the challenge to the impugned notifications on the ground that they are hit by Article 19 of the Constitution cannot be sustained. Consequently the challenge to the impugned notifications on the ground that they contravene the provisions of Article 19(1) (g) of the Constitution also fails.

15. It was then urged that the impugned notifications are hit because they contravene Article 301 of the Constitution which guarantees freedom of inter-State trade and commerce. The Constitutional validity of Section 37-A aforesaid of the U. P. Excise Act was challenged on this ground too in Sheo Kumar's case (1978 All LJ 581 (FB)) (supra) but was repelled by the Full Bench. It is true that in doing so the Full Bench mainly relied on Article 304(b) of the Constitution and on the circumstance that Amendment Act 6 of 1972 which enacted Section 37-A had received the assent of the President which is not the position so far as the impugned notifications are concerned. Since, however, the impugned notifications have been issued for the furtherance of the purpose of Section 37-A aforesaid and no other purpose is apparently sought to be achieved by these notifications we are of opinion that the plea in regard to their invalidity on the ground of contravention of the guarantees provided for by Article 301 of the Constitution too cannot be sustained for otherwise it may lead to anomalous results., viz., even though the provision in Section 37-A would prevail its purpose cannot be achieved by framing necessary rules on the subject of preventing the misuse of medicinal preparations and drugs containing alcohol as alcoholic beverage.

16. In this connection it will also be useful to keep in mind the observations made by the Supreme Court in G.K. Krishnan and Others Vs. State of Tamil Nadu and Others, to the effect that the word "free" in Article 301 does not mean freedom from regulation. There is a clear distinction between laws interfering with freedom to carry out the activities constituting trade and laws imposing on those engaged therein rules of proper conduct or other restraints directed to the due and orderly manner of carrying out the activities. This distinction is described as regulation. The impugned notifications only purport to regulate (see also Chandulal Jethalal Jayaswal and Others Vs. State of Gujarat and Another, .

17. Another argument advanced by counsel for the petitioners was that since in the notification u/s 76, Section 31 was not mentioned the power of issuing a licence ceased to be exercisable in regard to medicinal preparations. We find this argument too to be untenable. Since Sections 40 and 41 were mentioned in the said notification which confer all necessary powers on the State Government and the Excise Commissioner in this behalf and rules had already been framed by them including rules in regard to the grant of licence the circumstance of Section 31 not being mentioned in the notification issued u/s 76 is, in our opinion, of no consequence.

18. The next submission made by counsel for the petitioners was that the notifications issued under Sections 4 and 40 being prior to the issue of the notification u/s 75 of the U. P. Excise Act are invalid inasmuch as the issue of a notification u/s 75 was a condition precedent to the exercise of power under any of the preceding sections, viz., Sections 1 to 74. Reliance was placed on Section 75 in this behalf which reads:--

"75. Exception of medicated articles :--

Nothing in the foregoing provisions of this Act applies to the import, manufacture, possession, sale or supply of any bona fide medicated article for medicinal purposes by medical practitioners, Chemists, Druggists, apothecaries or keepers of dispensaries except in so far as the State Government may by notification so direct."

In this connection our attention was invited to the numbers of the various notifications which have already been given in the opening paragraph of this judgment. Even though the first five notifications were of February 13, 1978, and were published in the U. P. Gazette Extraordinary of the same date the numbers of these notifications, it was urged by counsel for the petitioners, indicate that the notification u/s 75 was in point of time issued subsequent to the notifications under Sections 4 and 40. Notification u/s 75 dated February, 13, 1978, bears No. 1132 whereas the notification u/s 4 bears No. 1130 and the notification u/s 40 bears No. 1128. The sequence of these notifications with reference to their numbers thus was that the notification u/s 40 was the first one to be issued whereas the notifications under Sections 4 and 75 were the second and the third one. The same was the position in regard to the two notifications dated May 30, 1978, inasmuch as the notification u/s 4 was numbered 5368 whereas the notification u/s 75 was numbered 5369. It was urged that in view of Section 75 of the Act the provisions contained in Sections 1 to 74 which include Sections 4, 40 and 41 did not apply to the import, manufacture possession, etc. of any bona fide medicated article for medicinal purposes by medical practitioners etc. except in so far as the State Government had by notification issued u/s 75 directed. According to counsel the power of issuing a notification declaring a bona fide medicated article for medicinal purposes (hereinafter for the sake of brevity referred to as the medicinal preparations) as liquor u/s 4 (1) as also the power to frame rules u/s 40 or 41 for purposes of regulating the import, manufacture, possession, sale or supply of any medicinal preparation did not vest in the State Government or the Excise Commissioner till a notification u/s 75 had been issued and consequently the notifications issued under Sections 4, 40 and 41 were ultra vires the powers of the State Government.

19. It was also urged that these notifications cannot be treated to have been validated on the issuance of the notification u/s 75 inasmuch as the doctrine of relation-back will not apply in such a case. In our opinion the submission made by counsel for the petitioners on this point has substance. It cannot be disputed that the notifications which were issued under Sections 4, 40 and 41 of the Act

were issued for the purpose of regulating the import, manufacture, possession, sale or supply of medicinal preparations which were the subject-matter of those notifications. The power to issue notifications for these purposes has been conferred by Sections 4, 40 and 41 which fall within the purview of "nothing in the foregoing provisions of this Act" contained in Section 75 of the Act and could not be exercised except in so far as the State Government may have by notification directed. In other words the power to issue notifications under the aforesaid sections comes into being only after the notification containing the relevant direction u/s 75 has been issued. Section 77 of the U. P. Excise Act provides that all the rules made and notifications issued under the Act shall be published in the official gazette and would have effect as if enacted in this Act from the date of such publication or from such other date as may be specified in that behalf. As such by virtue of Section 77 all the five notifications dated Feb. 13, 1978, came into effect simultaneously on the same point of time on Feb., 13, 1978. Likewise the two notifications issued on May 30, 1978, also came into effect simultaneously at the same point of time on that date. When several notifications come into effect simultaneously it is apparent that there is no interregnum and as such it cannot be said that the notifications under Sections 4, 40 and 41 were issued in accordance with the directions contained in the notification u/s 75. Power which is to be exercised in accordance with some direction contained in a notification can obviously be exercised only after the notification containing the direction has been published as contemplated by Section 77 of the Act. When the notifications under Sections 4, 40 and 41 have come into effect simultaneously with the notification u/s 75 it cannot be said that they have been issued on the basis of the directions contained in the notification u/s 75. In *Smt. Somavanti and Others Vs. The State of Punjab and Others*, a question arose as to whether notifications under Sections 4 and 6 of the Land Acquisition Act could be issued simultaneously or not. It was held that if the provisions of Section 5A of the Act were to be complied with, notifications under Sections 4 and 6 could not be issued simultaneously but if the Government takes a decision to dispense with the compliance with the provisions of Section 5A and to declare that the land comprised in the notification u/s 4 is in fact needed for a public purpose, notifications under Sections 4 and 6 can be issued simultaneously. The following observations are relevant (at page 171 of AIR) :--"A notification under Sub-section (1) of Section 4 is a condition precedent to the making of notification under Sub-section (1) of Section 6. If the Government, therefore, takes a decision to make such a notification and, thereafter, takes two further decisions, that is, to dispense with compliance with the provisions of Section 5A and also to declare that the land comprised in the notification is in fact needed for a public purpose, there is no departure from any provision of the law even though the two notifications are published on the same day. In the case before us the preliminary declaration u/s 4(1) was made on August 18, 1961 and a declaration as to the satisfaction of the Government on August 19, 1961 though both of them were published in the Gazette of August 25, 1961. The preliminary declaration as well as the subsequent declaration are

both required by law to be published in the official gazette. But the law does not make the prior publication of notification under Sub-section (1) of Section 4 a condition precedent to the publication of a notification under Sub-section (1) of Section 6. Where acquisition is being made after following the normal procedure the notification under the latter section will necessarily have to be published subsequent to the notification under the former section because in such a case the observance of procedure u/s 5A is interposed between the two notifications. But where Section 5A is not in the way there is no irregularity in publishing those notifications on the same day. The serial numbers of the notifications are Nos, 5809/41 (B)(I)/61/18755 dated August 18, 1961 and 5809-4 IB (I)/61/18760 dated August 19, 1961 and it would appear from them that the preliminary notification did in fact precede the final declaration." It would be seen that importance was attached in the aforesaid case even to the serial numbers of the notifications. Emphasis was also laid in the aforesaid case on the circumstance that even though a notification under Sub-section (1) of Section 4 is a condition precedent to the making of notification under Sub-section (1) of Section 6 and even though the preliminary declaration as well as the subsequent declaration are both required by law to be published in the official gazette, the law does not make the prior publication of the notification under Sub-section (1) of Section 4 a condition precedent to the publication of notification under Sub-section (1) of Section 6. This observation was obviously based on the language of the two sections. Had the language of these sections made prior publication of a notification under Sub-section (1) of Section 4 a condition precedent to the publication of a notification under Sub-section (1) of Section 6 the decision of the Supreme Court would obviously have been that notifications under Sections 4 and 6 could not be issued simultaneously. In the cases before us, we are of opinion that in view of the words "except in so far as the State Government may by notification so direct" occurring in Section 75 and the manner of issuing such a notification provided for in Section 77 of the U. P. Excise Act the prior publication of a notification u/s 75 is a condition precedent to the exercise of any power under Sections 1 to 74 in so far as they relate to the import, manufacture, possession, sale or supply of any bona fide medicated article for medicinal purposes by medical practitioners etc. referred to in Section 75. It is obvious that if effect is to be given to the legal requirements of Sections 75 and 77 the words "published in the official gazette" would have, for purposes of interpretation, to be inserted between the word "notification" and the words "so direct" towards the end of Section 75. And if so done the words "except in so far as the State Government may by notification published in the official gazette so direct" clearly make out the difference between the requirement of Section 75 of the U. P. Excise Act on the one hand and of Sections 4 and 6 of the Land Acquisition Act on the other which do not have such a provision.

20. In this connection we may further point out that in year 1960 also similar notifications were issued in regard to medicinal preparations. The notification u/s 4 was dated October 12, 1959, and was published in the Government Gazette of

Uttar Pradesh Part I-A dated Nov. 5, 1960. This notification contained rules framed by the State Government u/s 40. These rules were, however, brought into force by a subsequent notification dated Nov. 9, 1960, published in Uttar Pradesh Gazette Part I-A dated Nov. 12, 1960. The notification u/s 4 was dated Nov. 9, 1960, and was published in Uttar Pradesh Gazette Part I dated Nov. 12, 1960, whereas the notification u/s 75 was dated Nov. 16, 1960, published in Uttar Pradesh Gazette Part I dated Nov. 26, 1960. These notifications were challenged in Writ Petn. No. 330 of 1960 (Navin Ghandra Agarwal v. State of U. P.). When that writ petition came up for hearing and after it was heard on one date the then learned Advocate General conceded that the two notifications in question were, as they had been framed, not enforceable. The impugned notifications were quashed by this Court by order dated 10th Feb., 1961.

21. We now proceed to consider the question as to whether on the issue of the notification u/s 75 the notifications under Sections 4, 40 and 41 could become valid. In *Sunil Kumar v. West Bengal Govt.*, (AIR 1950 Cal 274 (SB)) a question came up for consideration whether certain provisions of Bengal Criminal Law (Amendment) Act, 1930, and the West Bengal Security Ordinance, 1949, which became void on the commencement of the Constitution in view of Article 13(1) thereof could be held to have been validated in view of the Preventive Detention (Extension of Duration) Order, 1950, made by the President of India. It was pointed out by a Special Bench of the Calcutta High Court that the Constitution came into force at midnight on 25th January, 1950. The President was not sworn as President until 10.15 A.M. on 26th Jan., 1950. In other words there was no President until the Constitution came into force. As soon as the Constitution came into force the two above mentioned laws became void by reason of the provisions of Article 13(1) of the Constitution. It was held that the Acts having become void they could not be vivified or revived by the Presidential Order which purports to have passed in exercise of the powers conferred by Sub-clauses (a) and (b) of Clause (7) of Article 22 of the Constitution read with Article 373 thereof. In coming to this conclusion reliance was placed inter alia on the following observations made by the Chief Justice of Patna High Court in *Brahmeshwar Prasad Vs. The State of Bihar and Others*, .

"In my judgment no such order made by him under Clause (7) could in any way prevent an Act becoming void under Article 13(1) and this for two reasons. The first and primary reason is that under Article 13(1) quite clearly provisions become void, if they become void at all directly and instantaneously with the Constitution coming into force whereas an order by the President can only originate and become valid after the Constitution has come into force. There can be no such order of the President except as a consequence of the Constitution having come into force and given him power to make it. That is to say such order must be logically subsequent to the voidability which the coming into force of the Constitution itself effects. That, in my opinion follows directly and logically from the laws of cause and effect. But it is in fact not necessary to enter into philosophical questions of the infinite divisibility of time and the nature of

simultaneity, because in fact we are here concerned with a time lapse of over ten hours. The Constitution came into force on the mid-night of 25th and the Act, if it became void at all, became void then. But the President did not enter upon this office until he took the oath on 26th at 10.15 A.M. It is quite apparent that the subsequent order of the President could not restore an Act which had already become void and ceased to exist. Nor does his order purport to do so."

In *Adarsh Bhandar Vs. Sales Tax Officer*, a similar question came up for consideration before a Full Bench of this Court. Sec. 3-A of the U. P. Sales Tax Act was amended by Section 4 of the U. P. Sales Tax (Amendment) Ordinance 1956. In view of Section 1 (2) of the Ordinance the amendment in Section 3-A aforesaid did not have effect until 1st April, 1956. A notification was issued by the Governor on 31st March, 1956, in exercise of powers "conferred by Section 3-A of the U. P. Sales Tax Act, 1948, as amended from time to time". This notification could be effective only u/s 3-A of the Act as amended by Section 4 of the Ordinance and not otherwise. It was found that the notification had been issued u/s 3-A prior to its amendment by Section 4 of the Ordinance. A question arose as to whether on the coming into force of Section 4 of the Ordinance on 1st April, 1956, the notification issued on 31st March, 1956, could be held to be valid. The answer to this question was given by the Full Bench in the negative. It was further held that recourse to Section 22 of the U. P. General Clauses Act could not be taken inasmuch as recourse to the said section could be taken only if a notification was issued under an Act or ordinance which had been published but had not then come into force. Since that was not the position in that case it was held that Section 22 of the U. P. General Clauses Act failed to validate the notification dated 31st March, 1956.

22. In *Re Seaford* (1968) 1 All ER 482, the doctrine of relation-back came up for consideration in the following circumstances. In March 1965 a wife obtained decree nisi of divorce and the husband's appeal was dismissed in June of the same year. At 11.30 A.M. on July 6, 1965, the husband was found dead in bed and medical evidence established that he could not have died later than 4 A.M. on July 6 but it was not possible to say whether death occurred before the end of July 5, 1965. At 8.30 A.M. on July 6, 1965, the District Registry received a notice of application for the decree nisi to be made absolute which had been posted by the wife's solicitors on the previous afternoon, this constituted lodgment of the notice for the purposes of Rule 40 (2) of the Matrimonial Causes Rules, 1957, which provided that on the filing of such a notice the decree nisi should become absolute. At 10 A.M. the District Registry filed the notice of application and endorsed the court minutes with a note that the decree had been made absolute at that time. In proceedings by the wife for the grant of letters of Administration to the deceased husband's estate as his lawful widow the question arose about the effect of lodgment of the notice for the purposes of Rule 40 (2) aforesaid and the endorsement made by the District Registry at 10 A.M. on the court minutes that the decree had been made absolute at that time. It was held that no decree

could be made absolute before a notice of application had been lodged and as in the present case the husband had died before the lodgment of the notice of the application with the consequence that by then the notice was a nullity and no decree could be made absolute. The doctrine of relation-back of a judicial act to the earliest moment of the day on which it was made was inapplicable in the circumstances and the wife was entitled to the letters of administration of her husband's estate. Russell L. J. observed :--

"Without authority binding me to do so I should decline to import into the law of England the equation nullity plus fiction equals reality. At 10 A.M. when the judicial act was purported to be performed of filing the lodgment application so as to determine the marriage by decree absolute, the marriage had ceased to exist, and the ability of the court to determine it was equally non-existent, whether the court knew or was ignorant of that situation. Whom God had put asunder no man could join together, even for the purpose of putting them asunder again."

Reliance was placed by the Advocate General on M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another, wherein it was held:--

"If a law is on a field not within the domain of the legislature, it is absolutely null and void and a subsequent cession of that field to the legislature will not have the effect of breathing life into what was a still-born piece of legislation and a fresh legislation on the subject would be requisite. But if the law is in respect of a matter assigned to the legislature but its provisions disregard constitutional prohibitions, though the law would be unenforceable by reason of those prohibitions, when once they are removed, the law will become effective without re-enactment."

It was urged by the Advocate General that the present notifications fall within the second category aforesaid and as such even if it is held that the notifications under Sections 4, 40 and 41 were issued prior to the issue of the notification u/s 75 and were thus invalid they became effective on the issue of the notification u/s 75, We, however, find ourselves unable to agree with this submission. If the power to issue the notifications under Sections 4, 40 and 41" was dependent on the issue of a notification u/s 75 it would be a case where the power itself to issue these notifications by the State Government was lacking. If the power itself was lacking a subsequent conferment of power by the issue of the notification u/s 75 would not have the effect of breathing life in notifications under Sections 4, 40 and 41 which were stillborn on the analogy of a law made by a legislature on a field not within its domain and a subsequent cession of that field to the legislature. The submission made by the Advocate General could be accepted if the State Government had the requisite power at the time of the issue of these notifications but due to some other defects the notifications were not enforceable, then the notifications could become enforceable on the removal of those defects. Reliance was also placed by the Advocate General on The State of Rajasthan Vs. The Mewar Sugar Mills Ltd., Bhopalsagar, . It was a case to which

the provisions of Section 22 of the General Clauses Act were applicable and since as held by a Full Bench of this Court in *Adarsh Bhandar Vs. Sales Tax Officer*, the provisions of Section 22 cannot be applied to a notification similar to the impugned notifications we are of opinion that this case is clearly distinguishable. Reliance was further placed on *Jagannath Vs. The Authorised Officer, Land Reforms and Ors.* That was a case in which certain provisions of Madras Ceilings Act were unenforceable on the ground that they infringed Fundamental Rights and it was held that on the said Act being placed in the 9th Schedule to the Constitution it assumed full force and vigour. In our opinion this case too does not support the submission made by the Advocate General for the reasons already given in regard to the case of *Sundaramier & Co.* (supra). In view of the foregoing discussion we are of opinion that the impugned notifications issued under Sections 4, 40 and 41 of the Act cannot be sustained.

23. We are further of the opinion that these notifications are hit by Article 14 of the Constitution. The submission that Article 14 of the Constitution could not be invoked was repelled in almost similar circumstances by a Full Bench of this Court in *Sheo Kumar's case* (1978 All LJ 581) (supra). Contravention of Article 14 was invoked by counsel for the petitioners in two ways. We agree with one of them but not the other. Firstly, it was urged that prohibition has been imposed in the State of Uttar Pradesh only in 12 districts and not in the remaining districts. It was pointed out that it was the case of the State Government itself that the impugned notifications had been issued for the furtherance of the policy of prohibition. Even the long title of the two sets of Rules framed by notifications under Sections 40 and 41 of the Act by the State Government and the Excise Commissioner respectively indicate that restrictions were placed on medicinal preparations which are subject-matter of those notifications in order to prevent their misuse as alcoholic beverage. Emphasis in this behalf was placed on the words within brackets, namely "prevention of misuse". With reference to various sections of the U. P. Excise Act and the Rules and the forms in which licences are issued as also the Government orders issued from time to time placing partial restrictions on the import, transport and possession of foreign liquor in respect of premises used as "hospital, restaurant, cafe, hotel and bar etc." it was urged that even after these partial restrictions it was abundantly clear beyond any doubt that in the districts other than the 12 districts where prohibition has been imposed both foreign liquor and country-made liquor could be had by anyone in almost abundant quantity. They can further be sold, possessed and transported in these districts almost without any restriction and it was paradoxical to impose restrictions in so far as these districts are concerned on the transport, possession and sale of medicinal preparations containing alcohol on the ground that unless these restrictions were placed they were likely to be misused as alcoholic beverages. It was contended by counsel for the petitioners that no one who was habituated or desired to use either foreign liquor or country liquor would misuse medicinal preparations as alcoholic beverage to satisfy his craving for such liquors when these liquors themselves are available to him in abundance and on

this basis it was urged that when no restrictions were placed on the liquor itself in these districts placing of restriction on medicinal preparations containing alcohol was discriminatory and based on no reasonable classification. It is settled law that even though Article 14 forbids class legislation it does not forbid reasonable classification. As such if it is shown that classification is reasonable the bar of Art, 14 will not apply. In view of the circumstance pointed out by counsel for the petitioners which is apparent and has indeed not been disputed that in the districts other than 12 districts of Uttar Pradesh prohibition has not been imposed except that certain minor restrictions have been placed in regard to premises used as hospital, restaurant, etc. as already pointed out above and in view of the fact that impugned notifications have been issued with the object of preventing misuse of medicinal preparations containing alcohol as alcoholic beverage so as to enforce the policy of prohibition it is difficult to understand how placing of restrictions on the medicinal preparations, can be held to be reasonable when no prohibition has been imposed in those districts. How would the avowed purpose of enforcing prohibition be achieved by placing restrictions on medicinal preparations containing alcohol in such districts is not at all clear. The reply to this submission as given by the Advocate General was that some of these medicinal preparations contain a very high percentage of alcohol and are cheaper than liquor and as such are likely to be misused by poor persons, and since there is a phased or gradual programme of the State Government to introduce prohibition, it is in pursuance of this phased programme that restrictions were placed on these medicinal preparations even in the districts other than the 12 districts where prohibition has been imposed. In connection with these submissions it may be pointed out that no convincing material has been placed before us that each and everyone of the medicinal preparations which are contained in the impugned notifications is cheaper than even country liquor. Nor has any convincing evidence been brought to our notice that these medicinal preparations have been found to be misused in the districts other than the 12 districts where prohibition has been imposed. An-nexure 3 to the supplementary counter-affidavit of K. Section Bisariya no doubt states that the 15 spirits and tinctures which are the subject-matter of the impugned notifications are cheaper than whisky but it has not been stated therein that they are cheaper than even country liquor. A supplementary rejoinder-affidavit has been filed by V. A. K. Saxena in para. 5 whereof it has been stated that the aforesaid spirits and tinctures are not cheaper than country spirit. As such there is no danger of loss of revenue because these tinctures cannot replace country spirits in wet areas and there has never been any complaint about them being misused by persons who can afford whisky.

24. The second limb of attack on the basis of Article 14 of the Constitution was that the Schedule to the Medicinal and Toilet Preparations (Excise Duties) Rules 1956, contains a list of about 600 medicinal and toilet preparations containing alcohol which are capable of being consumed as ordinary alcoholic beverage and that even the list of restricted preparations contained in the Schedule to the

Uttar Pradesh Transport and Possession of Notified Restricted Spirituous Preparations (Prevention of Misuse) Rules, 1978, contains a list of more than 350 medicinal preparations which in view of Rule 3 of the said Rules are such preparations which are capable of being misused as alcoholic beverage or spirituous preparation. It was urged that from this long list of medicinal preparations which could be used as alcoholic beverage only 16 have been picked up for restrictions being placed in the relevant notifications dated February 13, 1978 and three including homoeopathic dilutions in the notifications dated May 30, 1978. Counsel for the petitioners submitted that even if these long lists are ignored a perusal of the notifications issued under Sections 4, 40 and 75 of the U. P. Excise Act itself, which were challenged in Writ Petition No. 330 of 1960 aforesaid decided on February 10, 1961, indicates that 68 medicinal preparations were specified therein. It was also pointed out that a perusal of the relevant gazette notification makes it clear that most of these medicinal preparations contain alcohol between 45% and 90%. According to counsel for the petitioners no convincing material had been furnished by the respondents to indicate as to what criteria was adopted in picking up the 16 medicinal preparations including homoeopathic dilutions only for being discriminated against.

We, however, find ourselves unable to agree with this submission. In so far as Mrit Sanjiwani Sura is concerned in paras. 3 and 3-A of the supplementary counter-affidavit of K. S. Bisariya in Writ Petition No. 3836 of 1978 it has been stated that as far back as in the year 1966 a subcommittee was appointed by the Government for making recommendations regarding categorisation of Ayurvedic medicines containing alcohol which were capable of being consumed as ordinary alcoholic beverages. This committee consisted of the Director, Ayurvedic Medicines, U. P., Superintendent, State Pharmacy, U. P., Director of Post Graduate Institute of India (Medicines), B. H. U., Varanasi and one Haji Mohammad Sabbir Raza of Lucknow. The aforesaid Sub-committee came to the conclusion that the Ayurvedic preparation which could be used for potable purposes at a place where no other alcoholic beverages are available is Mrit Sanjiwani Sura. In this view of the matter it cannot be said that inclusion of Mrit Sanjiwani Sura in the list of medicinal preparations by the impugned notifications was discriminatory. In regard to the homoeopathic dilutions suffice it to say that all the homoeopathic dilutions have been placed in the list. Consequently no question of discrimination arises.

It was, however, urged that even mother-tinctures contain alcohol and they have not been included in the list. As pointed out above the percentage of alcohol in homoeopathic dilutions is much higher than that in mother-tinctures inasmuch as for preparing IX (decimal) potency of homoeopathic dilution one drop of mother-tincture is to be mixed with nine drops of alcohol whereas for preparing IC (centesimal) potency of homoeopathic dilution one drop of mother-tincture is to be mixed with 99 drops of alcohol. The reasonableness of the classification is apparent and no exception can be taken to it on the ground that mother tinctures have not been included in the list. In so far as 15 spirits and tinctures

are concerned in para. 9 of the supplementary counter-affidavit of K. S. Bisariya it has been stated these 15 spirits and tinctures are either agreeable in taste or pleasant in flavour and it is for this reason that they were included in the list and not the others which did not have agreeable taste or pleasant flavour. Their details are contained in Annexure 3 to the said supplementary counter-affidavit. In reply to paragraph 9 aforesaid of the supplementary counter-affidavit it has inter alia been stated in para. 14 of the supplementary rejoinder-affidavit that respondents have not mentioned the authority which has described the taste of the 15 medicines. It has also been pointed out that one of the tinctures, viz., Tinchira Chiratae Composita, could not be said to be either agreeable in taste or pleasant in flavour inasmuch as in Annexure 3 to the supplementary counter-affidavit it has been described as bitter and odourless. In our opinion it is not for the courts to go into the wisdom of the legislature or its delegate in making the classification. The courts are concerned only with the question as to whether the classification is reasonable or not. For the reasons which have been given in the said supplementary counter-affidavit we are of opinion that it is not possible to say that the classification is unreasonable.

25. Now we come to such of the submissions which are not common in the three sets of writ petitions stated above. For the petitioners dealing in Mrit Sanjiwani Sura it was urged by their counsel that Mrit Sanjiwani Sura was a medicinal preparation and could not be said to be an intoxicating liquor and consequently no restriction could be placed on it to achieve the object of enforcing prohibition. In our opinion this submission cannot be accepted in view of the decision of the Supreme Court in the case of Adhyaksha Mathur Babu's Sakti Oushadhalaya Dacca (P) Ltd. and Others Vs. Union of India (UOI), where it was held that Mrit Sanjiwani Sura was capable of being used as an alcoholic beverage. Another submission made by counsel was that no forum had been provided to decide as to which medicinal preparation could be placed in the definition of liquor by a notification u/s 4 (1) of the Act nor had any guideline been provided in this behalf. So far as Mrit Sanjiwani Sura is concerned with which the petitioners of this set are concerned the argument is only of academic value because it has already been held by the Supreme Court as pointed out above that this medicinal preparation was capable of being used as alcoholic beverage. Secondly the issuance of notification u/s 4 declaring a certain medicinal preparation to be liquor was a matter of exercise of delegated legislative power and no question of either providing a forum or giving any opportunity of hearing to anyone before issuing such a notification could arise. Further the power has been delegated to the highest executive of the State viz., the State Government and that itself constituted a sufficient safeguard. This submission too, therefore, cannot be accepted.

26. For the petitioners challenging the impugned notifications in so far as homoeopathic dilutions are concerned it was urged by their counsel that there were about 3000 homoeopathic medicines all of which were prepared by homoeopathic dilutions and even if a person was allowed to retain the quantities

fixed for possession for homoeopathic dilutions under the impugned _ notifications and orders that may be issued from time to time he would be in a position to possess a fairly large quantity of homoeopathic dilutions which could defeat the purpose of enforcing prohibition by preventing the misuse of the homoeopathic dilutions. It was also urged that use of homoeopathic dilutions as a substitute for liquor was likely to have bad side-effects on the health of its consumers and consequently the apprehension that these dilutions are likely to be misused was ill-founded. We find no substance in this submission too. As already pointed out above the (homoeopathic dilutions contain a high percentage of alcohol. The fact that their user as a substitute for liquor is likely to be injurious to health, in our opinion, cannot be raised as an argument in support of the submission that no restriction should be placed on the user of homoeopathic dilutions in quantities which could be misused. The fact that there are about 3000 homoeopathic medicines which will be covered under the impugned notifications has been disputed by the Advocate General but in our opinion it is not necessary to go into this question for even if it may be accepted that the number of homoeopathic medicines prepared from homoeopathic dilutions is fairly large, they being medicinal preparations, absolute restriction on their use cannot be placed by the State Government and their use can only be regulated so as to prevent their misuse. If even after regulation likelihood of misuse in a given case remains, this, in our opinion, would not invalidate the regulation itself.

27. In view of the foregoing discussion these writ petitions succeed and are allowed. The impugned notifications dated February 13, 1978, and May 30, 1973, issued under Sections 4, 40 and 41 are quashed. Since the notifications under Sections 75 and 76 have been issued with reference to Uttar Pradesh Transport and Possession of Notified Restricted Spirituous Preparations (Prevention of Misuse) Rules, 1978, which have been quashed, they also cannot be sustained. As a consequential measure they too are quashed. In the circumstances of the case there will be no order as to costs.