

STATE'S POWER TO REGULATE INDUSTRIAL ALCOHOL

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Industrial alcohol is denatured, meaning it is made unfit for human consumption by adding chemicals.

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WHAT IS INDUSTRIAL ALCOHOL?

Industrial alcohol, also referred to as industrial ethanol, is a meticulously refined type of alcohol sourced from raw materials such as sugarcane, grains, and wheat. Its production involves the utilization of rectified spirit, an intensely concentrated and frequently hazardous form of alcohol. Unlike ethanol meant for human consumption, industrial alcohol undergoes intentional denaturation, which involves the addition of substances like isopropyl alcohol. This process renders the alcohol unsuitable for ingestion, resulting in an unappealing and nauseating product.

Despite its unsuitability for consumption, denatured industrial alcohol serves a myriad of purposes across diverse industries. In construction, it is utilized in various applications

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including as a solvent and a cleaning agent. Additionally, it plays a crucial role in fuel production, particularly as a component in the manufacturing of biofuels. Moreover, the pharmaceutical industry relies on denatured alcohol for purposes such as sterilization and as a solvent in the formulation of medications.

WHO CONTROLS INDUSTRIAL ALCOHOL?

Potable alcohol falls within the state list as per the 7th Schedule of the Indian constitution, whereas Industrial Alcohol is exclusively placed in the Union List. This indicates that only the union government holds authority over the production of industrial alcohol.

Over the years, there has been an ongoing dispute between the central government and various states regarding the legislative jurisdiction over each type of alcohol.

Denatured alcohol is often modified to some extent to make it suitable for human consumption, leading to potential misuse. State governments argue that since misuse can pose risks to citizens, they should be granted control over the manufacturing and usage of industrial alcohol. However, the Union Government has not agreed to this proposal.

Attorney General R Venkataramani had previously stated in court that a deliberate decision was made to distinguish between alcoholic beverages suitable for human consumption and those not suitable, with the former falling under the authority of provincial legislatures and the latter under the federal legislature.

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WHAT DOES THE LAW SAY?

The Center is empowered to oversee industries considered to be of "public interest" under Entry 52 of the Union List. This authority is conferred by Section 18-G of the Industries (Development and Regulation) Act, 1951, enabling Parliament to regulate certain products associated with scheduled industries on behalf of the Union government. The primary aim of this law is to guarantee equitable distribution and affordable pricing of these products nationwide.

On the other hand, Entry 8 in the State List, found in the 7th Schedule of the Constitution, empowers the states to legislate on the manufacturing, possession, transportation, purchase, and sale of intoxicating liquors. This includes the production, manufacturing, possession, transportation, purchase, and sale of such liquors.

The 33rd entry in the Concurrent List allows both the state and Union governments to create laws for any industry's products, even if the Union has control over the public interest. This has confused regulating industrial alcohol, as it's uncertain if the power lies with the state or Union government.

Parliament and state legislatures have the authority to pass laws related to the matters listed in the Concurrent List, but in case of a conflict, a law enacted by the central government will hold more weight than a law passed by a state government.

PREVIOUS JUDGEMENTS

On 25 October 1989, a significant ruling was made by the Supreme Court's seven-judge Constitution Bench in the case of Synthetics & Chemicals Ltd. v State of Uttar Pradesh. The decision confirmed that the state government had the jurisdiction to control the use of alcohol. Additionally, the Court emphasized that states were entitled to implement measures to curb the improper use of industrial alcohol in the manufacturing of alcoholic beverages.

Later, on 27 October 2007, a Division Bench of the Supreme Court reviewed the understanding of Section 18G of the Industries (Development and Regulation) Act, 1951 by Synthetics & Chemicals in the case of State of U.P. v Lalta Prasad Vaish. The Division Bench determined that Synthetics & Chemicals' interpretation had essentially taken away the state legislature's authority under Entry 33 of the Concurrent list. Section 18G gives the Union the power to control the supply, distribution, pricing, and other aspects of specific items in scheduled industries to ensure their fair distribution and availability at reasonable prices.

BACKGROUND

The case was presented before a nine-judge bench in 2007 regarding the interpretation of Section 18G of the Industries (Development and Regulation) Act, 1951 (IDR Act). Section 18G empowers the Central Government to ensure the equitable distribution and availability of specific products related to scheduled industries at fair prices. This objective can be accomplished by issuing an official notification to oversee the supply, distribution, and trade of these products. However, as per Entry 33 of List III of the Seventh Schedule to the Constitution, the State legislature holds the authority to regulate the trade, production, and distribution of goods from industries under Union control, as well as similar imported goods. It was contended by the seven-judge bench in the Synthetics and Chemical Ltd. vs. State of

U.P. case failed to address the conflict between Section 18G and the State's concurrent powers. Consequently, the matter was referred to a 9 Judge Bench.

UTTAR PRADESH'S NOTIFICATION ON INDUSTRIAL ALCOHOL

On January 13, 1990, the government of Uttar Pradesh issued a notification regarding the U.P. Licences for the Possession of Denatured Spirit and Specially Denatured Spirit Rules, 1976 (1976 Rules). This notification is significant as it initiates the main story of the case related to the UP Licence fee. The government of Uttar Pradesh imposed a license fee of 15 paise per litre on the amount of specially denatured spirits acquired from distilleries.

The Rules sparked a series of writ petitions at the Allahabad High Court contesting the notification. The High Court determined that only the Union had the authority to legislate on liquor that was deemed "unfit for human consumption", specifically industrial alcohol.

The Court argued that state governments had limited regulatory power over industrial alcohol. The legislative authority of states was confined to matters such as "payment of salary for the staff" and overseeing the prevention of industrial alcohol being converted into potable alcohol. It was noted, however, that if a state government imposed any regulatory fee related to denatured spirit, it had to demonstrate a "broad correlation" between the fee charged and administrative expenses.

Moreover, the High Court concluded that there was no connection between the 15 paise per litre license fee and any additional costs incurred by the department. Consequently, it determined that this fee was not a regulatory fee but rather a tax.

In 1999, a notification was issued under the 1976 Rules stating that for any sale made by a wholesale vendor to license holders under the U.P Excise Act, 1910, a license fee of 15 per cent ad valorem would be levied. However, once the rectified spirit was converted into industrial alcohol after denaturation, the license fee would no longer be applicable. Denatured alcohol is used in industries, and to prevent its misuse, certain chemicals such as pesticides are added, making it denatured alcohol.

In October 2003, the Supreme Court's Division Bench made a ruling on a Special Leave Petition (SLP) regarding the case of the State of Uttar Pradesh v Vam Organic Chemicals Ltd. This ruling challenged the decision of the Allahabad High Court regarding the additional fee

of 15 paise per litre. The Bench reiterated that the state government had the authority to impose a fee to prevent industrial alcohol from being illicitly converted into potable alcohol. This measure, the Court emphasized, aimed to protect both the State and the public from consuming illegal liquor.

In the Allahabad High Court, R.P. Sharma, a distributor of motor oil and diesel located in Aligarh, challenged the license fee imposed under the 1999 notification. His primary contention revolved around the jurisdiction of the Uttar Pradesh government to regulate the production and sale of "denatured spirits" as per Section 18-G of the Industries Act.

Referring to the decision of the Supreme Court in Vam Organics Chemicals (1997), which held that the state government lacked the authority to impose taxes on industrial alcohol, irrespective of its possible use as an alcoholic beverage, the petitioners contested the licensing fee. On February 12, 2004, the Allahabad High Court declared the license fee as "completely illegal" and found that the Uttar Pradesh government had not demonstrated that the fee was being charged to prevent the diversion of rectified spirit for human consumption.

Referring to Vam Organic Chemicals (1993), the Court deemed the imposition of the fee on such grounds as unacceptable, as the general regulation of denatured spirit fell outside the state legislature's scope. The High Court ordered the Uttar Pradesh government to refund the fee collected from the petitioners and pay an interest of 10 per cent per annum from the date of realization/deposit until the date of refund within two months of the certified copy of the judgement being produced.

On August 22, 2004, following the filing of an SLP against this ruling, the Supreme Court issued a temporary suspension on the order of the Allahabad High Court.

REFERENCE TO A LARGER BENCH

In the State of U.P. v Lalta Prasad Vaish case, a Division Bench of the Supreme Court, headed by Justice Altamas Kabir, mentioned a larger bench. They stated that Section 18-G, as per the Synthetics & Chemicals decision, took away the state legislature's authority from Entry 33 of the Concurrent list. The Court highlighted that states could still regulate potable liquor and had restricted authority over industrial alcohol to avoid its misuse as intoxicating liquor.

However, the Court had overlooked the judgement in Tika Ramji, where it was noted that the

state's legislative competence under the Concurrent list was not affected by the Union's legislation under Entry 52 of the Union list and Section 18-G.

On December 8, 2010, a Constitution Bench consisting of five judges, upon noting that the opinions presented in the Synthetics & Chemicals case had been addressed differently in later rulings, decided to pass the case on to a Constitution Bench led by Chief Justice D.Y. Chandrachud, which comprised nine judges, for a final decision.

