

CONSTITUTIONAL VALIDITY OF ENACTMENTS MADE BY STATE LEGISLATURES RELATING TO MOLLASSES

The study attempts to examine the constitutional validity of enactments made by State legislatures in respect of raw materials used by industries involved in manufacture of Alcoholic products, with particular reference to the U.P. Sheera Niyanthran Adhiniyam, 1964.

SUMMARY OF STUDY

For the following reasons, Union has power to make laws in respect of molasses.

- Entry 52 in the 'Union List' empowers the Parliament to make laws with respect to *"Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest."* In exercise of such power, the Parliament enacted the IDR Act. Entry 26 of the First Schedule of the said Act is 'Fermentation Industries' which lists 'Alcohol' and 'other products of fermentation industries.'
- Section 18-G(1) of the above enactment empowers the Central Government to control Supply, Distribution, Price, etc. of 'any article or class of article relatable' to any scheduled industry. Therefore, not only what is stated in the List is covered, but also any article or class of article relatable to the industry is included. Indisputably, a raw material used in an industry for manufacture of a product is 'relatable' to that industry and there can be no sustainable ground on which raw materials can be excluded from such phraseology.
- In exercise of the powers conferred by Section 18-G of the IDR Act, the CG made the Molasses Control Order, 1961 which, inter alia, deals with Restrictions on sale, removal, Storage Grading, maximum sale price etc of molasses. It is significant to note that Clause (3) (2)(d)(i), specifically deals with *Distilleries*.

The power of the parliament to make laws being thus beyond doubt, what needs to be examined is if the State may also similarly make laws in respect of molasses.

Some questions examined for this purpose are: is the power of parliament to make laws in respect of molasses exclusive to itself, what are the powers of the State legislatures to make laws, how exclusive is it really, are there variations in degrees of exclusivity of law making power conferred on the Parliament and the States, are State law making powers subject to parliamentary powers (*not only with respect to Concurrent list but also in respect of State list*), can the States make law under an entry in the State list

that will have the effect of destroying the exclusivity of an entry in the Union list etc.

Study of those questions was concluded as follows:

States exclusive powers are not really exclusive

- The power of the Union to make laws in respect of its list is '*notwithstanding*' the power of the States under the State list. (*Vide Article 246(1)*). Therefore, nothing relating to the States power can operate as a limitation on the '*exclusive*' power of the Union.
- States are also vested with some exclusive law making powers. What is significant is that although those powers are supposedly exclusive, they are nevertheless subject to certain limitations. The limitations of the so called *exclusive* power of the States in respect of matters in its list are also evident from the phraseology '*subject to*' employed in *Article 246(3)*. It leaves no doubt that the States powers are '*subject to*' the power of Parliament under the Union list and likewise the power of Parliament under the Concurrent list (*Vide Article 246(3)*)

Since a firm conclusion of the lack of States powers in respect of molasses would not be complete without examining some other aspects also: like the specific entries in the various Lists, the same were examined and the following conclusions emerged.

There is nothing whatever in either State list or Concurrent list that will support State laws on molasses because:

- **State List, Entry 8** which reads "*Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors*" does not contemplate '*supply*', be it of intoxicating liquors or its raw materials. This is because while in various other entries *supply* is specifically mentioned, it is conspicuously absent in Entry 8 of State list. Therefore, Entry 8 cannot save State laws on Molasses.
- **State List, Entry 24** reads '*Industries subject to the provisions of entries 7 and 52 of List I*'. Same will only support State legislations if the concerned industry is not appropriated by the Union. Since the Union enacted IDRA *inter alia* covering Fermentation Industries in exercise of powers under Entry 52 of List I, and further still, since Molasses Control Order has been issued thereunder, Entry 24 will not save State laws on Molasses.
- **State List, Entry 27** Entry 27 reads "*Production, supply and distribution of goods subject to the provisions of entry 33 of List III.*" Although molasses may qualify as '*goods*' it cannot be taken as conferring

competence to States to deal with Production, supply and distribution of the same since it is clearly covered by a valid enactment made by the Parliament under the Union list (IDRA). This is because an entry in State list cannot be so construed as to absolutely change the quality of exclusiveness of an entry in the Union list.

- **Concurrent List, Entry 33** reads *“Trade and commerce in, and the production, supply and distribution of,*
 - a. the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;*
 - b. foodstuffs, including edible oilseeds and oils;*
 - c. cattle fodder, including oilcakes and other concentrates;*
 - d. raw cotton, whether ginned or unginned, and cotton seed; and*
 - e. raw jute”.*

It is true that molasses is a product of the sugar industry. However, since the sugar industry is no more a scheduled industry under the Unions IDR Act (*enacted vide powers under Entry 52 of the Union list*) Clause (a) cannot lend competence to State legislatures to make law in respect of molasses. If it did while the industry in question was a scheduled industry, the same would have ceased simultaneous with the Union dropping the concerned industry from the schedule of the IDR Act.

It is possible to theorize that since “Fermentation industries” are covered under Item 26 in the First Schedule to the IDR Act and Molasses being indisputably a product of fermentation industry, the States will derive power to make legislation in respect of Molasses under Concurrent List, Entry 33 (a). Notwithstanding the fact that it is indeed factually correct that Molasses is a product of fermentation industry and fermentation industry being an industry declared by Parliament as being expedient to be controlled in the public interest, the States will not be competent to legislate in respect of Molasses by operation of another insurmountable constitutional objection. The States cannot make laws in respect of anything that is specifically covered under the Union List. Had the IDR Act merely specified Fermentation industries, the States might have still derived power under Concurrent List, Entry 33 because molasses is a product of fermentation industry and not an industry itself. However, Entry 26 of the First Schedule to the IDR Act goes further and adnumbers (1) *Alcohol* and (2) *Other products or fermentation industries*. Therefore, the argument is that since Molasses is a product of fermentation industry covered by the Union jurisdiction specifically, the States cannot take resort to Concurrent List, Entry 33 (a) to make laws in respect of Molasses. (As such, the Judgment of a Division Bench of the Apex Court delivered in the year

1998 (comprising the then chief justice MM Punchhi and justice Sujata V Manohar) declaring that the States does have competence to make laws in respect of molasses may be in error and merits reconsideration, especially since the same had not examined this aspect.)

Before concluding the lack of states powers in respect of molasses, two more aspects were examined. One related to the aspect of presidential assent to state laws and the other to the synthetics and chemicals case of the Apex court.

Presidential assent is invalid

- Presidential assent can be sought and granted only in respect of laws made by State in exercise of power under Article 246(2) (*Concurrent list*),
- Presidential assent wherever obtained to such laws as the U.P. Sheera Niyanthran Adhiniyam, 1964 are without constitutional sanctity and are null and void since they cannot trace their competence to the Concurrent list,
- The fact that the State sought presidential assent and the further fact that the President granted such assent will amount to constructive admission by both the Union and the State that the U.P. Sheera Niyanthran Adhiniyam, 1964 was enacted by powers presumed to exist under the Concurrent list and further that it contains provisions that are repugnant to Union law.
- That in view of the constructive admission, in the event the concerned enactments are challenged in court, neither the Union nor the States may be in a position to derogate from the said questions of fact and try to save it by a plea that they were enacted vide powers under the State list and that they do not contain provisions that are repugnant to the Union law.

CONCLUSION

The conclusion drawn from the above study is that State legislatures lack constitutional competence to legislate law in respect of molasses.

(All rights reserved. No part of this publication may be used, reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior permission of the author. Please note that the article herein is purely academic in nature and reflects the sole opinion of the author and is circulated for purpose of academic discussions and/debate and any consequence of any action taken/abandoned based on opinion expressed herein shall be at the sole risk of such person or entity.)