

Association of Natural Gas and Ors. Vs. Union of India (UOI) and Ors. – Case Analysis

Appellants: Association of Natural Gas and Or

Respondent: Union of India (UOI) and Ors.

Decided on: 13.11.1991

Citation: (2004)4SCC489

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FACT OF THE CASE

The Gujarat State legislature passed an Act by name “*Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001*”[\[1\]](#), which came into force 19th December, 2000. The object of the enactment is to provide for regulation of transmission, supply and distribution of gas, in the interests of general public and to promote gas industry in the State, and for that purpose, to establish Gujarat Gas Regulatory Authority and for matters connected therewith and incidental thereto. The term “Gas” has been defined in the Gujarat Act under Section 2(h) as follows:-

“Gas” means a matter in gaseous state which predominantly consists of methane.”

2. The State legislature passed the said enactment by

tracing its legislative competence under *Entry No. 25 of List I*^[2] of the Seventh Schedule of the Constitution. The Parliament has passed various enactments under Entry No. 53 of List I dealing with the matters of petroleum and petroleum products.

Oil and Natural Gas Commission increased the price of natural gas supplied by them. The Association of Natural Gas Consuming Industries of Gujarat and others filed Civil Writ Petition before the High Court of Gujarat wherein they challenged the legislative competence of the Union to make laws on “gas and gas works.”

Acts/Rules/Orders:

- Constitution of India –

Articles 143 – Power of President to consult Supreme Court.

Articles 143(1)

Articles 226-Power of High Court to issue certain writs

Articles 246-Subject –matter of laws made by parliament and by legislatures of states

Entry No. 25 of List II -“Gas and gas works”

Entry No. 53 of List I

- Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001 – Sections 2, 8, 9, 23(1), 25, 25(2), 34(1), 34(2), 55(1) and 55(2).
- Government of India Act, 1935 –
- Sec-100
- Petroleum Act, 1934;
- Oil Fields (Regulation and Development) Act, 1948;

- Oil Industry (Development) Act, 1974;
- Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962;
- Petroleum and Natural Gas Rules, 1959;
- Industries (Development and Regulation) Act, 1951
- Mines Act, 1952;
- Mines and Minerals (Development) Act, 1957;
- Industries (Development and Regulation) Act, 1957;
- Bengal Money Lenders Act, 1940;
- Oriental Gas Company Act, 1960;
- Liquid Fuel Emergency Act, 1984 – Section 3;

CASES REFERRED

Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal and Ors.

Sir Byramji Jeejibhai v. Province of Bombay, (1939) 3 FLJ (HC) 25.

Prafulla Kumar Mukherjee and Ors. v. Bank of Commerce Limited.

Subramanyan Chettiar v. Muttuswami Goudar, (1940) FCR 188.

Borys v. Canadian Pacific Railway Co. and Anr., 1953 (1) All ER 451;

State of Madras v. Gannon Drunkenly & Co.

ISSUES RAISED

- Whether natural gas in whatever physical form including Liquefied Natural Gas (LNG) is a Union subject covered by Entry 53 of List I [\[3\]](#) and the Union has exclusive legislative competence to enact laws on natural gas.

- Whether States have legislative competence to make laws on the subject of natural gas and Liquefied Natural Gas under Entry 25 of List II of the Seventh Schedule to the Constitution.
- Whether the State of Gujarat had legislative competence to enact Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act 2001

ARGUMENT

Arguments put forward on behalf of Appellant are-:

The learned Counsel for the State of Gujarat, Shri Ashok Desai contended that the expression “gas” used in Entry 25 of List II would include all types of gases and, therefore, any legislation related to “gas and gas works” is perfectly within the legislative competence of the State. It was submitted that in *Calcutta Gas Company (Proprietary) Ltd. V State of West Bengal and Ors*^[4], the scope and ambit of Entry 25 of List II had been authoritatively pronounced by this Court and this Court held that the field of entire industry, dealing with “gas and gas works” would fall under Entry 25 of List II. It was further submitted that the entries in the three Lists were only legislative heads or fields of legislation and they demarcated the area over which the appropriate Legislature could operate and the widest amplitude should be given to the language of the entries. It was submitted by the learned Counsel for the State that when there is a conflict between two entries, the Court should reconcile the entries and attempt should be made to harmonise the apparently conflicting entries and the State should not be denuded of its power to legislate on the subject. The learned Counsel strongly urged that the State has exclusive powers to make laws dealing with ‘natural gas’ in whatever physical form, and that it also

would include the Liquefied Natural Gas (LNG). The learned Counsel for the State elaborately argued and brought to our attention the various publications and research papers on the subject to show as to what is 'natural gas' and its derivative forms.

It was further contended that "gas" as defined in the Gujarat Act means matter in gaseous state which predominantly consists of methane and it will not come within the ambit of 'petroleum and petroleum products.' It was argued that "gas" could be extracted from the bowl of the earth without there being any petrol or petroleum products and according to the learned counsel, it would fall within the domain of State legislation under Entry 25 of List II.

Learned senior Counsel Mr. P. Chidambaram appearing for the Common Carriers Company contended that any industrial activities connected to "gas and gas works" are beneficial to the State and the State must be given power to legislate on the subject.

The plea made on behalf of the State of Gujarat was adopted by almost all the States. The learned Senior Counsel appearing for the State of Assam submitted that Entry 25 of List II is clear and unambiguous and it is incorrect to suggest that "gas and gas works" should be limited only to manufactured gases or to gases other than natural gas. It was argued that entries in the legislative lists are to be given widest amplitude and it is constitutionally impermissible to add words of qualification to Entry 25 List II.

Arguments put forward on behalf of Respondent are-:

The learned Attorney General contended that the various definitions in different enactments indicate that 'petroleum and petroleum product' include 'natural gas' and it was urged that 'natural gas' is a Union subject covered by *Entry 53 of List I*[\[5\]](#). It was contended that the Union Government passed

various legislations in respect of 'Petroleum and Petroleum Products' and 'Mineral Resources', namely, The Oil Fields (Regulation and Development) Act, 1948; The Oil Industry (Development) Act, 1974; Petroleum and Minerals Pipelines (Acquisition of Right of User in Land), Act, 1962; and Petroleum & Natural Gas Rules, 1959, Industries (Development and Regulation) Act, 1951, as the Parliament alone is competent to do so under Entry 53, List I of the Seventh Schedule. It was contended by the Attorney General that various definitions indicate that there is uniform and consistent legislative practice and it is evident that the terms "Petroleum and Minerals" include natural gas. The Central Government has undertaken the task of ensuring balanced growth in supply, transmission and distribution of natural gas and natural gas being a 'petroleum product' falls exclusively in the domain of the Central legislation. The 'natural gas' in whatever physical form, including Liquefied Natural Gas (LNG) is a Union subject covered under Entry 53 of List I and Entry 25 under List II of the Seventh Schedule deals with "gas and gas works" and it relates to manufacture of synthetic gas. Initially manufactured gas was used for lighting street lamps and such other allied purposes. Certain gases like acetylene, oxygen, carbon dioxide are locally manufactured and used in industries such as for welding purposes, or in hospitals, or for preparing aerated drinks, etc. and Entry 25 under List II enables the State Government to regulate and control the manufacture and distribution of these gases by the local industry and mineral oil resources or petroleum products would not fall under Entry 25 of List II. It was further contended that the provisions of the Gujarat Act seek to trench upon the field reserved for the Union. It was submitted that the Gujarat Act confers authority upon the State Government to regulate the business of distribution and transmission of gas and the provisions of that Act, ex facie, provide for taking over the mineral oil fields and intermeddle in the activities relating to the drilling for oil, etc. It was also pointed out that some other provisions of the said

enactment, inter-alia, deal with the licensing and distribution of gas and these provisions are ultra vires of the legislative competence of the State

JUDGEMENT

Natural gas being a petroleum product, we are of the view that under Entry 53 List I, Union Govt. alone has got legislative competence. Going by the definition of gas as given in Section 2(g) of the Gujarat Act wherein "gas" has been defined as "a matter of gaseous state which predominantly consists of methane", it would certainly include natural gas also. We are of the view that under *Entry 25 List II* [\[6\]](#) of the Seventh Schedule, the State would be competent to pass a legislation only in respect of gas and gas-works and having regard to collocation of words 'gas and gas works', this Entry would mean any work or industry relating to manufactured gas which is often used for industrial, medical or other similar purposes. Entry 25 of List II, as suggested for the States, will have to be read as a whole. The expressions therein cannot be compartmentally interpreted.

The meaning of the term 'gas works' is well understood in the sense that the place where the gas is manufactured. So it is difficult to accept the proposition that 'gas' in Entry 25 of List II includes Natural Gas, which is fundamentally different from manufactured gas in gas works. Therefore, Entry 25 of List II could only cover manufactured gas and does not cover Natural Gas within its ambit. This will negative the argument of States that only they have exclusive powers to make laws dealing with Natural Gas and Liquefied Natural Gas. Entry 25 of List II only covers manufactured gas. This is the clear intention of framers of the Constitution. This reading will no way make that entry a 'useless lumber' as feared by the

States, because Natural Gas was never intended to be covered by that entry. It is also difficult to accept the argument of States that all 'gas' could be categorized as dangerously inflammable and thus arriving at the conclusion that Natural Gas is also covered in State List because this differentiation is based not on the characteristics of gas, but on the manner of its origin. Entry 25 of List II covers the gas manufactured and used in gas works. In view of this specific Entry 53, for any petroleum and petroleum products, the State Legislature has no legislative competence to pass any legislation in respect of natural gas. To that extent, the provisions contained in the Gujarat Act are lacking legislative competence.

ORDER

Under Article 143(1) of the Constitution of India, the Writ Petition and the Civil Appeals are dismissed.

PRINCIPLE OF THE CASE

HARMONIOUS CONSTRUCTION

Harmonious construction is to be invoked when there is a *conflict of entries* between Union and State list. _

"The Constitution of India delineates the contours of the powers enjoyed by the State Legislature and the Parliament in respect of various subjects enumerated in the Seventh Schedule. The rules relating to distribution of powers are to be gathered from the various provisions contained in Part XI and the legislative heads mentioned in the three lists of the Schedule. The legislative power of both Union and State Legislatures are given in precise terms. Entries in the lists are themselves not powers of legislation, but fields of legislation. However, an Entry in one list cannot be so interpreted as to make it cancel or obliterate another entry

or make another entry meaningless. In case of apparent conflict, it is the duty of the court to iron out the crease and avoid conflict by reconciling the conflict. If any entry overlaps or is in apparent conflict with another entry, every attempt shall be made to harmonize the same. [\[7\]](#)”

“It is the duty of the court, however difficult it may be, to ascertain in what degree, and to what extent, authority to deal with matters falling within the jurisdiction of each legislature exists and to define in the particular case before them the limits of their respective powers. It could not have been the intention that a conflict should exist; and in order to prevent such a result, entries of the two lists must be read together and the language of one interpreted and, where necessary, modified by that of the other. In *Calcutta Gas Co. v State of W.B.* [\[8\]](#) the Supreme Court said. [\[9\]](#)

“It is also well settled that widest amplitude should be given to the language of the entries, but some of the entries in different list may also appear to be in direct conflict with each other. It is then duty of this Court to reconcile the entries and bring about harmony between them. It is only when such thing does not work then, and only then the non obstante [\[10\]](#) clause will operate and Union will prevail. [\[11\]](#)

In *Gujarat University v. Krishna* [\[12\]](#) , Supreme Court, speaking through Shah, J. for the majority stated that the power to legislate with respect to medium of instruction is not a distinct legislative head. Also under item 66 the power to legislate in respect of medium of instruction insofar as it has a direct bearing and impact upon the legislative head of the co-ordination and determination of standards in institution of higher education must be deemed to be vested in union. Two entries undoubtedly overlap and must therefore be harmoniously construed. [\[13\]](#)

In O.N.Mahindroo v. Bar Council[\[14\]](#), the Supreme Court applied the rule of harmonious construction and held that the Union Parliament is exclusively empowered to legislate in respect of persons entitled to practice in Supreme Court or High Court, and power to legislate in respect of the practitioners falls under Entry 26 of List III[\[15\]](#). [\[16\]](#).

In D.G. Bose & co.v State of Kerala [\[17\]](#) it was held that one's building may imperceptibly be the subject matter of tax as a component of his assets under Entry 86 of List I[\[18\]](#) and also may be subjected to direct tax under Entry 49 of List II[\[19\]](#), but as the two taxes are separate and distinct imposts, they cannot be said to overlap each other, and would be within the competence of the legislature concerned[\[20\]](#).

In ITC Ltd v. Agricultural Produce Market Committee[\[21\]](#) Sabrarwal J. observed that under Entry 52 of List I[\[22\]](#) only an industry can be declared as an industry .If an activity could not be regarded as an industry Entry 52 will have no applicability to that activity. As industry in Entry 52 was held to include only the process of manufacture or production the States were competent to legislate for the levy and collection of market fee on the sale of tobacco in a market.
[\[23\]](#)

The 3 lists are very detailed and the Constitution makers have made an attempt to make the entries in 1 list exclusively of those in other list. But as no drafting can be perfect, some conflict and overlapping occurs. This gives rise to the question of Harmonious Construction.

“Petroleum includes any mineral oil or relative hydro-carbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other shales or other stratified deposits from which oil can be extracted by destructive distillation[\[24\]](#).”

“Petroleum” means a naturally occurring substance consisting of a hydrocarbon or mixture of hydrocarbons in gaseous, liquid or solid state but does not include coal or shale unless occurring in circumstances in which the use of techniques for coal seam methane production or in situ gasification would be appropriate [\[25\]](#)”

“Petroleum” means: [\[26\]](#)

—

- any naturally occurring hydrocarbon or mixture of hydrocarbons, whether in a gaseous, liquid or solid state;

- any naturally occurring mixture of a hydrocarbon or hydrocarbons and of another substance or other substances, whether in a gaseous, liquid or solid state

Petroleum” means naturally occurring hydrocarbons in a free state, whether in the form of natural gas or in a liquid viscous or solid form, but does not include helium occurring in association with petroleum, or coal, or shale, or any substance which may be extracted from coal, shale, or other rock by the application of heat or by a chemical process.

“petroleum product” means any commodity made from petroleum or natural gas and shall include refined crude oil, processed crude petroleum, residuum from crude petroleum, cracking stock, untracked fuel oil, fuel oil, treated crude oil residuum, casing head gasoline, natural gas gasoline, naphtha, distillate, gasoline, kerosene, waste oil, blended gasoline, lubricating oil, blends or mixture of oil with one or more liquid products or by-products derived from oil condensate, gas or petroleum hydrocarbons, whether herein enumerated or

not.”[\[27\]](#)

[\[1\]](#) Gujarat act 2001

[\[2\]](#) Gas and Gas Work

[\[3\]](#). Entry 53 of List I- regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable

[\[4\]](#) AIR 1962 SC 1044:1962 Supp (3) SCR 1

[\[5\]](#) Id at p 3.

[\[6\]](#) Id at p1

[\[7\]](#) Calcutta gas co. v State of W.B.

[\[8\]](#) Id. at p.5.

[\[9\]](#) Shukla. V. N. Constitution of India; [11th edition, 2008; p.737].

[\[10\]](#) The clause “notwithstanding anything in clause (2) and (3)” is known as *non obstante* clause

[\[11\]](#) . Id.

[\[12\]](#) . AIR 1963 SC 703: 1963 Supp (1) SCR 112.

[\[13\]](#) Id at 8

[\[14\]](#) AIR 1968 SC 888

[\[15\]](#) *Entry 26 of List III*-legal medical and other professions

[\[16\]](#) Id.

[\[17\]](#) (1979) 2 SCC 410, 421, 422.

[\[18\]](#) *Entry 86 of List I-Taxes on capital value of the assets, exclusively of agricultural land, of individuals and companies, taxes on capital of companies*

[\[19\]](#) Taxes on land and building

[\[20\]](#) . Id.

[\[21\]](#)(2002) 9 SCC 232: AIR 2002 SC 852

[\[22\]](#) Industries, the control of which by Union is declared by parliament by law to be in public int.

[\[23\]](#) Id.

[\[24\]](#) Petroleum (Production) Act 1934 (UK)

[\[25\]](#) Petroleum Act, 2000 (Sec. 4), Australia

[\[26\]](#) Liquid Fuel Emergency Act, 1984 (Sec. 3)

[\[27\]](#) Petroleum and Natural Gas Rules, 1959