



**MOOT COURT SOCIETY | SYMBIOSIS LAW SCHOOL, NOIDA**  
**Symbiosis International (Deemed University)**  
**8<sup>th</sup> ASCENT Moot Court Competition, 2019**

**Moot Proposition**

1. Flyhigh Limited was a company that started in the business of importing and selling premium foreign liquor in Bombay. Within a couple of years, it set up a few factories in Uttar Pradesh and began manufacturing IMFL for selling across India. Growing quickly, the company diversified into a large number of products, eventually coming to manufacture pure alcohol for industrial use. Its factories began supplying denatured alcohol across the country, including Bombay. Flyhigh Limited itself relocated to Uttar Pradesh. However, Crashandburn Limited took over the vacuum left by Flyhigh Limited in Mumbai, and began selling denatured alcohol in Mumbai, though always sourced from Flyhigh Limited.
2. The excise law applicable in Bombay was modified in 1988 and manufacturing of all forms of alcohol in Bombay was prohibited with instant effect. Section 5 of the Bombay Excise Act required that any entity that was desirous of importing alcohol of any kind into Bombay, even if from another state, had to obtain a permit, and a per-litre-fee was payable for the permit. Rigorous prohibition was also enforced in respect of possession and consumption of alcohol. After intense lobbying from the industry, the excise department relented and reduced the fee payable for denatured alcohol to being a tenth of that applicable on other alcohol, however the prohibition stayed.

3. Since the introduction of the law, Crashandburn Limited applied for import permits on a monthly basis. It sought (and was granted) an exemption every month from paying the fee, contending that the alcohol it imports is being used in hospitals, chemistry labs of schools and colleges and for industrial purpose. Being the largest supplier in Bombay, and being the only entity to obtain the exemption on a regular basis, Crashandburn Limited soon became the only source of denatured alcohol in Bombay.
4. However, in a tragic incident, revealed by an exposé, around fifteen people went blind after consuming illicit liquor, which was found to contain substantial amounts of denaturants. A huge furore broke out and the issue was discussed at length in the Legislative Assembly, which unanimously condemned the incident and called for stricter controls on denatured alcohol.
5. The next month, though Crashandburn Limited was issued the import permit, it was refused the exemption for nearly 95% of the alcohol it was importing – the remaining 5% was to be used in hospitals and educational institutions. Flyhigh Limited challenged Section 5 of the Bombay Excise Act by way of a Writ Petition under Article 32 of the Constitution of India. The Supreme Court listed the matter for final hearing on 24<sup>th</sup> October, 1989 before a bench of five judges, and directed parties to file their memorandum of submissions. It framed the following issues for the hearing, and directed that unless compelling reasons are shown, no further issues would be taken up for hearing<sup>1</sup>:
  - 5.1. Whether the Petitioner has *locus standi* to maintain the present Petition?
  - 5.2. Whether the Respondent State was competent to enact Section 5 of the Bombay Excise Act in respect of denatured

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<sup>1</sup> This proposition has been drafted by Mr. R. Arunadhri Iyer. Any attempt to contact him to seek clarification/advice/opinion etc. relating to the proposition by any member of a registered or a potential team or their friends/relatives/acquaintances shall disqualify the team from ASCENT 2019.

alcohol, especially in view of the Industries (Development and Regulation) Act, 1951.

5.3. Whether the import permit fee was a fee or a tax, and whether the Respondent State was competent to levy the same.

**Notes:**

- i) The problem is a work of fiction created for academic purposes.
- ii) The issues can be re-drafted as multiple issues, and be dealt with in any order. However, all the issues above have to be dealt with specifically.
- iii) The other provisions of the Bombay Excise Act are irrelevant, and Section 5, as described above is the only portion relevant.
- iv) For the purposes of the proposition, the Industries (Development and Regulation) Amendment Act, 2016 was passed, and came into force with effect in 1987.
- v) For the purposes of the proposition, control orders were passed by the Central Government in respect of sugar, cement and fertilisers as on the date of hearing, and for no other.
- vi) Flyhigh Limited and Crashandburn Limited have a contract for supply of denatured alcohol, whereunder Flyhigh Limited was liable to pay to Crashandburn Limited the import duty, if levied. Crashandburn Limited has not objected to the levy of the import fee on the import permit. No permit is issued to Flyhigh Limited in Bombay.

\*\*\*\*\* ALL THE BEST! \*\*\*\*\*