

(2000) 02 CAL CK 0030

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 2986 of 1999

Ispat Industries Ltd. and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 19(6), 21, 226
Essential Commodities Act, 1955 — Section 3
Rice Milling Industry (Regulation) Act, 1958 — Section 8(3)

Citation : (2000) 2 CALLT 333

Hon'ble Judges : Yad Ram Meena, J;Gora Chand De, J

Bench : Division Bench

Advocate : Mr. A.M. Sighvi, Mr. G. Mitra, Mr. A. Gangult and Mr. Rajiv Lall, Mr. C.S. Vaidyanathan, Mr. Sunil Kr. Jain and Mr. N. Bhattaharya, Mr. P.K. Mallick and Mr. Nadira Patcherya, for the Appellant; Mr. Dinesh ch. Roy, Mr. Mintu Goswami, Mr. Dipak Dev and Mr. R.K. De, for the Respondent

Judgement

Y.R. Meena. J.

1. This appeal has been directed against the Judgment of a learned single Judge dated 5th August, 1999. The appellant prayed that the Impugned order dated 5th August, 1999 be set aside and the respondents be restrained from converting the outstanding loans granted out of the Steel Development Fund, into equity shares and steps be taken for recovery of loan advanced out of the Steel Development Fund and case of the petitioner/appellant should be considered for loan.

2. The petitioner company is engaged In the manufacture of steel on large scale and for that purpose it has set up a latest available plant. In this connection appellant company has invested huge capital running into thousand crores of rupees. The second petitioner ts a director and a shareholder of the first petitioner and is a citizen of India.

3. The iron and steel at one point of time, were essential commodities and were

governed and controlled under the provisions of the Essential Commodities Act. In exercise of the powers conferred by section 3 of the said Act, the Central Government has framed and Issued the Iron and Steel (Control) Order, 1956 for the purpose of regulating and Improving the operations of the Iron and steel Industry. Paragraph 17-B of the Iron and Steel (Control) Order 1956 empowers the Central Government to set up the committee etc. Under that power the Central Government has set up the committee for the purpose of giving effect to the provisions of this order, with respect to any category of iron or steel, whether such category is subject to or exempt from the operation of all for any such provision. This committee specially was set up to carry out the function, as may be specified. In the notification, under which the committee has been set up.

4. In exercise of the powers conferred under the said clause 17-B various notifications were issued by the Central Government In notification dated 7.4.1971 two committees were set up by Central Government, for the purpose of improving the operations and functions of the iron and steel industries. By a notification dated 27th December, 1978, Issued by the Central Government the notification dated 7.4.1971 was amended and provided that the committee which has already been constituted to regulate the functioning of the iron and steel industry, would add a certain element to the ex-works prices of steel for constituting a fund for modernisation, research and development with the object of ensuring the production of iron and steel in the desired category and grades. The said fund is known and described as the Steel Development Fund (SDF). The Chairman of the Joint Plant Committee is also the Chairman of the Managing Committee of the Steel Development Fund. In pursuance of the notification dated 27th December, 1978 the main 5 steel plants had started collecting some amount in addition to ex-works price of the particular Item of steel and then these main steel plants shall remit that amount to the Steel Development Fund. The committee has advanced the loan out of the Steel Development Fund only to steel plants which were in existence in 1971 and member of Committee.

5. The case of the appellant is that the loan was advanced at a very nominal rate of interest. Neither the loan nor any interest thereon has been recovered from the respondents Including Tata Iron and Steel Company. The fund was constituted for the purpose of development of Iron and Steel Industries in general and proper production and distribution of the controlled terms. Therefore, the fund should be available to the Iron and Steel Industries in general and for production and distribution Iron and Steel fund should be utilised for the purpose, for which it was constituted. The case of the appellant is that when the fund is for the development and production of Iron and Steel in general, the benefit of the fund should be extended to all the Iron and Steel Industries and not to limited few and the loan which is advanced at the rate of 2 or 3 percent should be recovered and should be distributed to other industries in the lines like the petitioners/appellants.

6. Learned single Judge has dismissed the petition on account of false verification

and also found that there is no justification to issue any direction on the writ petition. The writ application was dismissed with costs.

7. Learned Additional Solicitor General Shri. Vaidyanathan and Shri Sunil Jain, Advocate for Steel Authority of India Ltd. submits that the petitioner/appellant has no locus standi or a right to seek financial assistance from the Steel Development Fund. As the fund was for the purpose of main steel plant, the petitioner/appellant has not contributed any amount to the fund. The collection of additional amount by the main 5 steel plants were stopped in 1994 even till that time the petitioner/ appellant was not in existence.

8. The petitioner/appellant has no right to consider his case for any financial assistance from the Steel Development Fund. Therefore the petitioner/appellant has no locus standi to claim the financial assistance from the Steel Development Fund. Shri Vaidyanathan further submits that the committee was set up for the development of 5 main steel industries and collection by these 5 main industries, which were remitted to the Steel Development Fund was for the development and modernisation of the 5 steel Industries and they were the member of the joint plant committee. He further submits that in any case the petitioner/appellant cannot be put at par with the Steel Authority of India or public sector Industries which are set up for the public benefit at large, while the petitioner/appellant is an Industry in the private sector and has nothing to do with the public Interest.

9. Mr. Singhvi learned counsel for the petitioner/appellant submits that the writ has been filed not in the public interest but in the Interest of the petitioner/appellant as his right for financial assistance, from the Steel Development Fund, has been denied, by not considering his representation for financial assistance by the Government. The additional amount collected by the main industries and remitted to the Steel Development Fund was meant for the steel industries in general and not limited to main 5 steel plants. Therefore, he has the locus standi to challenge the negative attitude of the Government, in not considering his representation for financial assistance from the Steel Development Fund.

10. He further submits that in the notifications issued at various time one can Infer the intention of the Government as why the joint committee was set up. Why Steel Development Fund was constituted and how the fund is collected? How that will be utilized? The notification issued in 1971 has been further amended by a notification dated 16th January, 1992. Paragraphs 1 to 13 are substituted by new paragraphs 1 to 4 and in paragraph(4)(i) it is provided that an element of price towards the Steel Development Fund for financing schemes, projects and other capital expenditure for modernisation, research and development, rehabilitation, diversification, renewal and replacements, balancing, additions to capacity, major new Investments of any other programme for improving the quantum or technology or efficiency of production of iron and steel or their quality. By this amendment it is made clear that the fund was not only meant for main five steel plants which are the member of the Joint plant

Committee.

11. He further submits that Steel Development Fund was for the assistance of steel Industries in general. The steel industry which has come into existence prior to 1994 or after 1994 does not make any difference. Therefore, the loan which has been advanced at nominal rate of Interest should be recovered and should be redistributed in accordance with the norms and requirement of a particular industry in the line. Other learned Advocates for rest of the respondents have supported the arguments of Mr. Vaidyanathan, Including the learned Advocate Mr. Mallick who represent Tata Iron and Steel Company Limited.

12. It is pertinent to note that liberty was given to all respondents to file the affidavit-in-opposition, including the intervenor TISCO, but they chooses not to file the counter or affidavit-in-opposition. However, Mr. Vaidyanathan has filed the application for recalling the interim order and submits that the application be treated as affidavit-in-opposition. After hearing is concluded liberty was also given to parties to file written submission, all the respondents have filed the written submission.

13. The facts are not in dispute that Steel Development Fund management committee was constituted in pursuance of the notification dated 7.4.1971, issued by he Government of India under the Iron and Steel (Control) Order 1956. In the Joint plant committee, each main steel plants has one member in committee. Clause 8 of the notification specified the function of the committee which reads as under :--

"Clause 8 :--The committee may determine, announce and list prices (base prices as well and extras) from time to time or all categories of Iron or Steel not subject to price control under clause 15 of the Iron and Steel Control Order 1956. The prices so determined will be ex-works prices. The committee shall add a fixed element of equalised freight to the ex-works prices announced from time to time in order to ensure that buyers of steel all over the country pay the same railway freight Irrespective of the distance from the source of supply. The committee may take such measures, as it considers necessary or desirable to ensure that buyers of Iron or Steel all over the country pay the same price."

14. In 1978, the notification dated 7.4.1971 has been amended by inserting clause 9A and 9B, whereby committee has been empowered to add element in the ex-works price and that amount shall be remitted to Steel Development Fund. Clause 9A of the notification empowers the main steel producers namely Tata Iron and Steel Company Limited, The Indian Iron and Steel Company Limited, the Hindustan Steel Ltd., Rourkela, the Hindustan Steel Ltd., Bhilai and the Hindustan Steel Ltd., Durgapur to collect the additional amount in addition to their ex-works price and remit the same towards the Steel Development Fund. The over all control of the fund shall remain with the Government. The amount from the fund shall be distributed as per direction of the respondent No. 1 that is Central Government.

15. Learned counsel Mr. Vaidyanathan mainly emphasised on the ground that petitioner/appellant has no right to claim any assistance from the Steel Development Fund. The appellant was not in existence when the fund was collected. The fund was only for main plants. Therefore, appellant has no locus standi.

16. Mr. Singhvi learned counsel for the petitioner/appellant submits that the fund was created in 1978 and the main steel Industries were only collectors on behalf of the Government for remitting that collected amount to the Steel Development Fund. Therefore, that was a public money and that should be available for the purpose for which it was collected that is for development of the Steel Industries in general. Petitioner/appellant being steel industry has a legal right that its case should be considered for financial assistance from the fund. If its case is not considered it will be a hostile discrimination and in that event petitioner has locus standi to invoke the jurisdiction under Article 226 of the Constitution.

17. The other counsel for the respondents including the counsel for Tata Iron and Steel Company Ltd. supported the arguments of Shri Vaidyanathan whether petitioner/appellant has locus standi it is to be seen whether he has any legitimate right in the Steel Development Fund, if he has any right or even the right to consider his case for financial assistance from the Steel Development Fund then our answer will be affirmative that he has a focus standi. Before we go into facts of this case for locus standi, we deem it proper to refer some observation of the Apex Court in this regard.

18. In case of Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, Their Lordships observed as under:--

"34. This Court has laid down in a number of decisions that in order to have the locus standi to Invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or Individual right in the subject matter of the application, though in the case of some of the writs like habeas corpus or quo warrant to this rule is relaxed or modified. In other words, as a general rule. Infringement of some legal right or prejudice to some legal Interest Inhering in the petitioner is necessary to give him a locus standi in the matter."

19. In case of Mithllesh Garg and Others v. Union of India and Others (1992) SCC 168 in para 7 Their Lordships has quoted its observation made in the case of Jasbhai Motibhai Desai v. Roshan Kumar. Haji Bashir Ahmed and others and their Lordships observed as under :--

"The Instant case falls well-nigh within the ratio of this Court's decision in Nagar Rice and Flour Mills v. N.T. Gowda, wherein it was held that a rice mill owner has no locus standi to challenge under Article 226, the setting up of a new rice mill by another--even if such setting up be in contravention of section 8(3)(c) of the Rice Milling Industry (Regulation) Act, 1958--because no right vested in such an applicant is infringed.

For all the foregoing reasons, we are of opinion that the appellant had no locus standi to invoke this special jurisdiction under Article 226 of the Constitution. Accordingly, we answer the question posed at the commencement of this judgment, in the negative....."

20. From the observation of the Apex Court it is clear that for locus standi, it is necessary to show that there is an infringement of its legal right. For that purpose we have to see the intention of the Central Government behind the notifications issued in this regard. It is also pertinent to note that the notifications are not challenged by either of the party. Therefore, we have to go by the notifications Issued by the Central Government from time to time in this regard.

21. In exercise of the powers conferred by 17B of the Iron and Steel (Control) Order, 1956 the Central Government has Issued the notification dated 7.4.1971 and thereby set up two commodities known as the Joint Plant Committee and the Steel Priority Committee, for the function given in para 1 to 13 under the head "Function" referred in notification. The committee comprising the Iron and Steel Controller as Chairman and 5 members one each from the main steel plants and one member of the Ministry of Railway and 13 functions of the committee are also specified in the notification. Clause 13 of the committee notification provides that committee shall regulate the distribution and sale, on a uniform basis for all producers of the following categories of steel namely :--

- (i) Pig Iron
- (ii) Billets and semis other than those of forging quality.
- (iii) Bars and rods including wire rods other than those of forging quality.
- (iv) Structural sections.
- (v) Electrical Steel Sheets.
- (vi) GP/GC sheets Including coils.
- (vii) Rails-with light and heavy rails,
- (viii) CR Sheets and Colls.
- (ix) HR Sheet and Colls.
- (x) Defectives and cuttings of all steels
- (xi) Re-rollable and other scrap.
- (xii) Platos including Coils.
- (xiii) Forging Quality Steels of all categories.

22. Thereafter two notifications were issued in the years 1975 bat they were not placed before us than the next notification was Issued on December 27, 1978.

By that notification clause 9A and 9B was inserted in the notification Issued in 1971. Clause 9A of notification empowers the committee to add an element to the ex-works price for constituting a fund, for modernisation, research and development with the object of Improving the production of Iron and Steel in the desired categories and grade by the main steel plants. The main plants are Tata Iron and Steel Company Ltd., The Indian Iron and Steel Company Ltd., The Hindustan Steel Ltd., Rourkela, The Hindustan Steel Ltd. Bhilai and the Hindustan Steel Ltd. Durgapur. In 1992 paragraphs 1 to 13 are substituted by new paragraphs 1 to 4 in a notification dated 16th January, 1992. By that notification the committee was entrusted with the function including the power to add the element in the ex-works price of all or any of the categories of Iron and Steel and after collection that additional amount that shall be remitted to the fund within a period specified. Clause(1) of para(4) has described the objects for which the fund has been collected and will be used, which reads as under :

"(i) an element of price towards the Steel Development Fund for financing schemes, projects and other capital expenditures for modernisation, research and development, rehabilitation, diversification, renewals and replacements, balancing additions to capacity, major new investments of any other programme for Improving the quantum of technology or efficiency of production of iron and Steel or their quality".

23. In an explanation to clause (11) it is made clear that the committee shall perform its functions as per directions as may be issued by the Central Government in this behalf from time to time and last notifications was issued on 21st April, 1994 thereby the notification S.P. 1567 dated 7th April, 1971 has been further amended, whereby Item No.1 of paragraph 4 was omitted and new para 5 has been inserted after para 4 of the notification. Para 5 of the notification reads as under :--

"(5) The committee shall be responsible for the management and operation of the corpus of the Steel Development Fund and interest received and accrued thereon in accordance with and subject to such orders or directions as may be issued by the Central Government in this behalf from time to time."

24. After omission of Clause (i) of paragraph 4 the additional amount which was collected under the authority of committee was stopped and the committee was made the custodian of the corpus of the Steel Development Fund and that will operate the fund as per direction of the Central Government, issued from time to time in this behalf.

25. The plain reading of the notification 1971, as amended from time to time reveals that the main plants were initially authorised to collect an additional amount to ex-works price of a particular item and that additional amount will be remitted to the Steel Development Fund. The main steel plants are the collectors of the fund and not contributory to the fund. Only on the basis of collections of fund, main steel plants cannot be the owner of the fund. After remittance to the

fund, no plant can claim specific amount as matter of right, from the Steel Development Fund, for financial assistance. After collection of the amount by the main plants, that amount has to be remitted to the Steel Development Fund. But however before 1992 the fund could utilised for Main Steel Plants and for the objects stated in Clause 9A, for the main steel plants. But after amendment in the notification in 1992 the words "main steel plants" have been omitted in sub-para 1 of para 4 of the notification.

26. Learned counsel Shri Vaidyanathan submits that when there was an substitution of paragraphs 1 to 13, whatever the things done or action taken has not been saved, as there is no saving clause. Therefore, the loan advanced before 1992 that cannot be questioned.

27. Learned counsel Shri Singhvi submits that after 1992 notification which has been Issued in substitution of paragraphs 1 to 13, the right of main plants, if any under the previous notifications, has gone and whatever the amount available in the Steel Development Fund that should be used only for the purpose enumerated in sub-clause(1) to clause 4 of the notification issued in January, 1992.

28. We do not find any force in the submissions of Mr. Valdyanathan that, by notification dated 16th January, 1992, the notification dated 7.4.1971 has been repealed. In fact amendment has been made in the notification dated 7.4.1971 and thereby paras 1 to 13 have been substituted by paras 1 to 4 in a notification 1992. Thus it a case of amendment in the notification dated 7.4.1971. The only effect of amendment in 1992 that after 1992 committee will discharge the function enumerated in the amended notification of 1971. After 1992 the corpus of the fund shall be utilised for the objects referred in sub-clause (1) of clause 4 and also subject to the orders and directions issued by the Government from time to time in this regard, as required in the Interest of public in general.

29. In 1992 amendment the other significant change can also be noticed that after 1992 the benefit which was restricted to main steel plants is missing. Therefore, after 1992 the benefit of the fund can also be extended to steel Industries in private sector.

30. When we are of the view that the benefit of the fund after 1992 should be extended to steel industries in private sector also, the appellant has a legal right that its representation should be considered for financial assistance from the Steel Development Fund along with other industries in private sector. If Government is considering the financial assistance to any Industry in private sector and deny to appellant in that case the jurisdiction under Article 226 of the Constitution can be invoked.

31. Now it brings us to the Issued whether petitioner can claim parity with the plants in public sectors, which are under the control of Steel Authority of India Ltd. Whether public sector is a different and separate class than the Industries private sector for the purpose of Article 14, we would like to cite some

observations of the Apex Court in this regard which reads as under :--

In case of Sukhdev Singh v. Bhagat Ram 1975 (1) SCC, the Court has observed in para 85 to 87 as under :--

"the tasks of government multiplied with the advent of the welfare State and consequently the framework of civil service administration became increasingly insufficient for handling the new tasks which were often of a specialised and highly technical character. At the same time. "Bureaucracy" came under a cloud. The distrust of Government by civil service. Justified or not, was a powerful factor in the development of a policy administration through separate corporations which would operate largely according to business principles and be separately accountable.

The public corporation, therefore, became a third arm of the Government. In Great Britain, the conduct of basic industries through giant corporations is not a permanent feature of public life.

A public corporation is legal entity established normally by Parliament and always under legal authority, usually in the form of a special statute, charged with the duty of carrying out specified government functions in the national Interest, those functions being confined to a comparatively restricted field and subjected to control by the Executive, while the corporation remains juristically an Independent entity not directly responsible to Parliament. A public corporation is not generally a multipurpose authority but a functional organisation created for a specific purpose. It has generally no shares or shareholders. Its responsibility generally is to Government. Its administration is in the hands of a Board appointed by the competent Minister. The employees of public corporation are not civil servants. It is, in fact, likely that in due course a special type of training for specialized form of public service will be developed and the status of the personnel of public corporation may more and more closely approximate to that of civil service without forming part of it. In so far as public corporations fulfil public tasks on behalf of Government, they are public authorities and as such subject to control by Government."

"In France,

An enterprise publique is an enterprise the whole or the majority of whose capital belongs to the State or other public agencies. By reason of its industrial or commercial activities it is basically subject to private law (and particularly to commercial law) as are private enterprises, but, because of its public nature, it finds itself subjected to a certain degree of dependence on and control by public authorities.

The motivation for the creation of public corporation naturally plays much larger part in under-developed and poor countries than in Industrially advance countries. This accounts for the emergence of public corporations and the present significance of public enterprise carried on by them. The Government of

India Resolution on Industrial policy dated April 6, 1948 stated, among other things, that management of State enterprise will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this.

The Government of India Resolution on Industrial Policy dated April 30, 1956 stated.

Accordingly, the State will progressively assume a predominant and direct responsibility for setting up new industrial undertakings and for developing transport facilities. It will also undertake State trading on an increasing scale."

32. In case of *R.D. Shetty v. International Airport Authority* 1979 (3) SCC 507 the Apex Court has held that

"In the early days, when the Government had limited functions, it could operate effectively through natural persons constituting its civil service and they were found adequate to discharge governmental functions, which were of traditional vintage. But as the tasks of the Government multiplied with the advent of the Welfare State, it began to be increasingly felt that the framework of civil service was not sufficient to handle the new tasks which were often specialised and highly technical character. The inadequacy of the civil service to deal with these new problems came to be realised and it became necessary to forge a new instrumentality or administrative device for handling these new problems. It was in these circumstances and with a view to supplying this administrative need that the public corporation came into being as the third arm of the Government. As early as 1819 the Supreme Court of the United States in *Mac Cullough v. Maryland* held that the Congress has power to charter corporations as incidental to or in all of government functions and, as pointed out by Mathew, J., in *Sukhdev v. Bhagat Ram* (supra) such federal corporations would ex-hypothesis be agencies of the Government. In Great Britain too, the policy of public administration through separate Corporation was gradually evolved and the conduct of basic industries through giant corporations has now become a permanent feature of public life. So far as India is concerned, the genesis of the emergence of corporations as instrumentalities or agencies of Government is to be found in the Government of India Resolution on Industrial Policy dated April 6, 1948 where it was stated inter alia that "management of State enterprise will as a rule be through the medium of public corporation under the statutory control of the Central Government who will assume such powers as may be necessary to ensure this". It was in pursuance of the policy envisaged in this and subsequent resolutions on industrial policy that corporations were created by Government for setting up and management of public enterprises and carrying out other public functions,"

33. In case of *Hindustan Paper Corpn. Ltd. Vs. Government of Kerala and Others*, has observed as under :--

"As far as Government undertakings and companies are concerned, it is to be

held that they form a class by themselves since any profit that they may make would in the end result in the benefit to the members of the general public. The profit, if any, enriches the public coffer and not the private coffer. The role of industries in the public sector is very sensitive and critical from the point of view of national economy. Their survival very often depends upon the budgetary provision and not upon private resources which are available to the Industries in the private section. They are often established to break the power of strangulation on economy which the industries in private sector may have developed and may use to choke the industrial growth of the country. An exemption or a concession might provide them some breathing time or settling down time. It may be treated as a subsidy at the worst. This appears to be the policy behind Article 19(6)(ii) of the Constitution. In appropriate cases in order to place an Industry owned by the Government on an enquiring basis in the national Interest, some concession may have to be shown to it."

34. The same views have been expressed by the Hon'ble Supreme Court in case of Union of India and others Vs. Hindustan Development Corpn. and others,

35. In case of Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled], the Hon'ble Supreme Court has held that :--

"It must be remembered that the Constitution adopted a mixed economy and control over the Industry in its establishment, working and production of goods and services. After recent liberalized free economy private and multinational entrepreneurship has gained ascendancy and entrenched into wider commercial production and services, domestic consumption goods and large-scale industrial production. Even some of the public corporations are thrown open to the private national and multinational Investments. It is axiomatic, whether or not industry is controlled by Government or public corporations by statutory form or administrative clutch or private agents. Juristic persons, corporation whole or corporation sole, their Constitution, control and working would also be subject to the same constitutional limitations in the trinity, viz., Preamble, the Fundamental Rights and the Directive Principles. They thrown open an element of public interest in its working. They share the burden and shoulder constitutional obligations to provide facilities and opportunities enjoined in the Directive Principles, the Preamble and the Fundamental Rights enshrined in the Constitution."

36. Considering the above observations, special treatment or preference to public sector is legitimate and lawful. The Hon'ble Supreme Court has held that public Corporation is "third arm of Government" and are set up with "The duty of carrying out specified governmental functions in the national interest." Keeping these objectives in mind SAIL as a public sector undertaking has many other obligations in a welfare state. Under the directions of the Central Government. SAIL had to take over 3 ailing companies namely IISCO in West Bengal, VISL Bhadrabati in Karnataka and Maharashtra Electros melt Ltd. (MEL) in Maharashtra which otherwise would have been closed. Closure of these units would have

rendered over 35,000 of employees jobless. SAIL has spent around Rs. 3,000 crores on these units thus fulfilling the social obligations of the nation. At present SAIL has 1,60,000 work force and if the remedial measures are not taken right now the entire work force may become surplus.

37. The object of the steel plants in public sector to fulfil public tasks on behalf of the Government and they are accountable to Government, the steel plants in the public sector are class by themselves. Any profit or loss in those steel plants will be the profit or loss to the public. But the profit If any by Private Sector that will not go to the public. Therefore, the steel plants in public sector cannot be treated at par with the steel plants in private sector.

38. As discussed above the main steel plants were authorised to add an element that is an additional amount to the ex-works price of the Item and that additional amount collected shall be remitted to the Steel Development Fund and that amount will be utilised for the purpose enumerated in para 8 of the notification 1971, as per directions of the Central Government, through committee set up under the notification. Para 9A of the notification however provides that the fund be utilised for the purpose of modernisation, research and development with the object of ensuring the production of Iron and Steel in the desired categories and grades by the main steel plants. This shows that in the Initial stage the benefit was restricted to the main steel plants only. But after amendment in the year 1992 vide notification dated 16th January, 1992, the word main steel plants has been omitted, though the power of the committee so far direction for collection of the additional amount. In addition to ex-works price was continued. Therefore. It appears that after 1992 the restriction for financial assistance from the fund to the main plants only, has been removed and after 1992 amendment, the amount in fund is available for financial assistance to the industries in private sector also, but for the purpose enumerated in sub-para (i) of clause (4) of the notification and subject to order or direction of the Central Government.

39. Thus after 1992 the Government can also consider the representations the steel plants or steel industries in private sector for financial assistance from amount available in the Steel Development Fund, but the financial assistance from the fund shall also be subject to the orders or directions issued by the Central Government from time to time.

40. In view of these facts we are of the view that when the petitioner/ appellant has prayed for financial assistance from corpus available in fund, Its representation should be considered as per the object specified in the notification, along with the other steel plants in private sector, similarly situated.

41. However, it is made clear that before considering the representation of appellant the Government should take a policy decision to the effect that from the amount available in the S.D.F., how much should be utilised for the Industries in private sector. The Government should also take further decision that in what cases and to what extent the financial assistance can be given to the steel plants

and industries in the private sector, and after that policy decision, consider the case of the applicant along with other similarly situated applicants for financial assistance from the amount available in the Fund.

42. As stated above the steel plants and industries in private sector cannot be put at par with the steel plants Industries in public sector. The steel plants and industries in Public Sector are for the public Interest and if any help or financial aid given to them that cannot be extended to steel plants and Industries, only on the ground that both steel plants and industries producing the same item of iron and steel.

43. In view of the facts stated above so far the steel plants and Industries in the public sector is concerned we left it to the Government to take any decision in respect of loan or financial assistance from Steel Development Fund. The Government can not only waive the interest but even can write off the loan and can extend any financial assistance to Industries in public sector.

44. So far the steel plants in private sector is concerned only Tata Iron and Steel Company is a steel plant to which the loan has been advanced from the Steel Development Fund on a nominal rate of interest. Whether the loan should be recovered or not? As referred above the loan advanced from the fund is subject to the order and directions of the Government. Therefore, we leave it to the Government to take any appropriate decision in this regard.

45. To sum upm

1. Petitioner/appellant has locus standi and can invoke the Jurisdiction under Article 226 of the Constitution of India.
2. The appellant cannot claim parity with the plants/industries in the public sector.
3. Steel plants/industries in public sector can be treated differently than the plants/Industries in the private sector, including the matter of loan advanced from the Steel Development Fund.
4. In case of Public Sector Industries (SAIL) Government can waive the interest or even can write off the loan Itself.
5. If Government decides to extend any financial help to Private Sector Industries out the amount available in the Fund (amount available out the Fund means corpus of the fund excluding loan advanced to SAIL and TISCO). The representation of the petitioner for loan/ financial assistance from the Steel Development Fund may be considered along with other similarly situated steel plants/industries in Private Sector.

The appeal is accordingly stands disposed of.

46. Appeal disposed of

G.C. De. J.

47. I agree.