

PETITIONER:
ISPAT INDUSTRIES LTD. AND ANOTHER

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT: 31/03/2000

BENCH:
D.P.Wadhwa, A.P.Misra

JUDGMENT:

D.P. WADHWA, J.

Petitioners seek leave to appeal under Article 136 of the Constitution from the judgment dated February 3, 2000 of the Division Bench of Calcutta High Court.

First petitioner is engaged in the manufacture of steel. Second petitioner is a shareholder of the first petitioner and is also a director. First petitioner established its factory for production of steel in 1998. The petitioners in the writ petition filed in the High Court claimed the following reliefs: -

"a) A declaration do issue declaring that the petitioners and similarly placed other units in the steel industry are eligible and entitled to avail of financial assistance from the Steel Development Fund;

b) Declaration do issue declaring that granting of financial assistance and/or loans out of the Steel Development Fund, to the fifth respondent, TISCO and Rashtriya Ispat Nigam Ltd., to the exclusion of the petitioners and similarly placed other units in the steel industry is arbitrary, discriminatory, unconstitutional, illegal and bad in law;

c) A Writ of Mandamus do issue commanding the respondents not to convert the loans, granted to the fifth respondents and others out of the Steel Development Fund, into equity share capital in any manner whatsoever;

d) A Writ and/or in the nature of Mandamus do issue commanding the respondents to grant financial assistance and/or loans to the petitioners out of the said Steel Development Fund;

e) A Writ and/or in the nature of Mandamus do issue directing the concerned respondents and each of them to forthwith recover the loans granted by them to the fifth respondent, TISCO and Rashtriya Ispat Nigam Ltd. so that such funds, upon realisation may be utilised for the new projects of the petitioner company and similarly situated other new entrants in the steel industry;

f) Writ of Prohibition prohibiting the concerned respondents and each of them, their men, servants and agents, from converting any part of the loans and/or interest owned by the fifth respondent, TISCO and Rashtriya Ispat Nigam Ltd. into equity share capital in any manner whatsoever and also from granting any further loan or financial assistance, directly or indirectly, to the said fifth respondent, TISCO and Rashtriya Ispat Nigam Ltd.;

g) A Writ of Certiorari do issue directing the concerned respondents and each of them to certify and transmit to this Hon'ble Court all records pertaining to the decision of conversion of loans into equity, so far as the fifth respondent concerned and decision for renewal of loans for a long period at a nominal rate of interest so far as TISCO is concerned so that such purported decisions and/or proposals may be quashed and/or set aside and conscionable justice may be done;

h) Rule Nisi in terms of prayers above;

i) An injunction do issue restraining of the concerned respondents and each of them, their servants and agents from converting the loans granted to the fifth respondent and/or TISCO or Rashtriya Ispat Nigam Ltd. into equity share capital and also from granting any further intention or renewal of the loans granted to the said respondent may manner whatsoever;

j) An order do issue directing the respondent Nos. 1 to 4 to forthwith take steps for (illegible) of the outstanding (illegible) to the fifth respondent and others with interest accrued thereon and not to grant any renewal of the outstanding loans or any fresh loans without first considering the case of the petitioners;

k) Ad interim order in terms of prayers above;

l) Cost of and incident to this application be borne and paid by the respondent;

m) Such further order or orders be made and/or direction or directions be given as this Hon'ble Court may deem fit and proper."

In effect the petitioners want restraint on the Union of India and the Joint Plant Committee from utilisation of the Steel Development Fund for the sole benefit of SAIL and TISCO. Learned single Judge of the High Court by his order dated August 5, 1999 dismissed the writ petition and imposed cost of Rs.10,000/- on the petitioner in favour of each of the appearing respondents intervening in the proceedings. Aggrieved petitioners filed appeal before the Division Bench of the High Court which, as noted above, was dismissed by judgment dated February 3, 2000 by concluding: -

"To sum up.

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 of the amount available in the Fund (amount available out of 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."

Looking at the prayer in the writ petition, we were at a loss to know as to why TISCO was not made a party. We have not been able to get any satisfactory reply from the petitioners as to why it did not think it necessary to implead TISCO as the respondent when the relief is sought against it. It cannot be just an error. Omission of the name of TISCO from the array of respondent is deliberate. One expects a party to approach the Court honestly and not to play hide and seek. However, TISCO of its own did intervene. We may examine what is Steel Development Fund (SDF) and how it is utilised. Central Government in exercise of its powers under Section 3 of the Essential Commodities Act, 1955 issued the Iron and Steel (Control) Order, 1956 (for short the 'Order'). Clause 15 of the Order gives power to the Controller to fix price at which any iron or steel may be sold. Under Clause 17-B Central Government would set up committee, etc. Central Government set up a Joint Plant Committee (JPC) under Clause 17-B by notification dated April 7, 1971. Composition of the Committee was as under: -

"(a) The Joint Plant Committee

COMPOSITION

(i) The Iron and Steel Controller Chairman

(ii) One representative each of the | main Steel Plants, that is to say | the Tata Iron and Steel Company | Limited, the Indian Iron and Steel | Company Limited, the Hindustan | Members Steel Limited, Rourkela, the | Hindustan Steel Limited, Bhilai | and the Hindustan Steel Limited, | Durgapur. |

(iii) One representative of the Ministry of Railways."

Notification prescribed various functions of the Joint Plant Committee. Paragraph 8 of the notification would be relevant and is as under: -

"(8) The Committee may determine, announce and list prices (base prices as well as extras) from time to time of all categories of iron and 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."

This notification was amended by another Notification dated December 27, 1978. Under the heading "Functions" paragraphs 9A and 9B were inserted, which are as under: -

"(9A) The Committee may add an element to the ex-works price determined under sub-clause (8) for constituting a fund for 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. In the matter of operation of this fund, the Committee shall perform its functions in accordance with and subject to such regulations or directions so may be issued by the Central Government from time to time.

9(B) The Committee may also add any other element to the ex-works prices determined under sub-clause (8) to enable it to discharge its functions and to implement specific scheme entrusted to it by the Central Government."

There was further amendment to this notification by another notification dated January 16, 1992. All paragraphs 1 to 13 under the heading "Functions" in the original notification were substituted by the following paragraphs: -

(1) The Joint Plant Committee shall be responsible for carrying out generally the functions of co-ordinating the demand and the supplies of all or any of the categories of iron or steel produced by the members of steel plants in respect of Defence. Small Scale Industries Sector, the Exporters of Engineering Goods and the North Eastern Region, and shall also assist the Development Commissioner for Iron and Steel in ensuring supplies thereof on priority in terms of the Distribution Guidelines.

(2) The Committee may obtain from producers processors, dealers and consumers of iron and steel such information and data as it may require in discharging the functions specified under this Notification as well as for maintaining a comprehensive data base in respect of duty matter including production movement and prices. It may also form such statistical and other units as may be necessary for the discharge of its functions.

(3) The Committee may evolve suitable organisation, methods and procedures to review carefully the general market situation, fluctuations in free market prices, the trends of production, availability and movement of iron and steel, and for this purpose, the Committee shall arrange for effective and timely flow of information from all concerned, including the iron and steel plants.

(4) The Committee may from time to time require the member steel plants to add the element listed below to their ex-works prices of all or any of the categories of iron and steel and to remit the same to the Committee within such periods as may be specified.

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

Explanation: The Committee shall perform its functions relating to the Steel Development Fund in accordance with the subject to such orders or directions as may be issued by the Central Government in this behalf from time to time.

(ii) an element of price for enabling the Committee to discharge its functions and to implement specific schemes entrusted to it by the Central Government.

(iii) an element of price towards the Engineering Goods Exports Assistance Fund.

5. (NO. SC/1/6/91-D.III) ASHOK KUMAR, Jt. Secy."

It would be seen that paragraph 9A in the first amended notification was substituted by paragraph 4 above. Yet another notification dated April 21, 1994 was issued further amending notification dated April 6, 1971. It amended the original notification as under: -

"In Clause 2 of the said notification, in sub-clause (a):-

(a) in paragraph 4 item (i) shall be omitted and such omission shall not affect the action taken or things done under that item on or before such omission.

(b) after paragraph 4 the following paragraphs shall be inserted namely:

(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.

(No.SC-II(5) 93-D-II)

S. NAUTIYAL, JR. SECRETARY."

It will thus be seen that SDF has no statutory backing. SDF has been created by administrative orders. Contribution has been from the SAIL and TISCO. The question is what of the petitioner has in the SDF when it was not even born and fund was created and how the petitioner, a competitor, would have any right to claim the fund. Fund

has not passed into the hands of the Government. It finds mention in the books of SAIL and TISCO as credited to the Central Government. Joint Plant Committee itself has no role to play in the utilisation of SDF as such. It acts as per the directions of the Central Government. The purpose for which the SDF has been created is clearly spelt first in para (9A) of notification dated December 27, 1978 and then in para (4) of the notification dated January 16, 1992. There is no challenge to either of the two notifications. This petition was filed on February 14, 2000 and came up for admission on February 28, 2000. On February 18, 2000, Central Government in the Ministry of Steel wrote a letter to SAIL which is as under : "Sub : Financial and Business Restructuring of Steel Authority of India Ltd. Sir, I am directed to your letter No.CH/2/2/-C(iv) dated 16th September 1998 and subsequent clarifications/discussions on the above subject and to state that SAIL's proposal seeking approval of the Government for its financial and business restructuring has been considered by the government and approval for the following proposals is hereby given: 1. Financial restructuring of SAIL by waiving of loans advanced to it from Steel Development Fund to a value of Rs.5073 crore and Rs.381 crore from the Government of India. 2. Provision of Government guarantees with 50% interest subsidy for loan and interest thereon of Rs.1500 crore to be raised by SAIL from the market to finance reduction in manpower through voluntary retirement scheme. 3. Provision of Government guarantee for loan and interest thereon of Rs.1500 crore (including Rs.500 crore already agreed) to be raised by SAIL from the market primarily for meeting repayment obligation on past loans during 1999-2000. 4. To initiate the process of divestment of the following non-core assets while protecting jobs of the existing employees as per milestones to be indicated separately. (a) Power Plants at Bokaro, Durgapur and Rourkela - 2X60 MW Captive Power Plant-II at the Rourkela Steel Plant and the Central Power Training Institute at Rourkela. - 2X50 MW Captive Power Plant-II at the Durgapur Steel Plant. - MW [2X55 MW plus 12 MW Back Pressure Turbine] Captive Power Plant-I, 3X260 MW Captive Power Plant-II and steam generating capacity of 660 MT/hour at the Bokaro Steel Plant. (b) Oxygen Plant-2 of Bhilai Steel Plant. (c) Salem Steel Plant (SSP), Salem. (d) Ally Steel Plant [ASP], Durgapur. (e) Visvesvaraya Iron and Steel Limited (VISL), Bhadravati. (f) Fertilizer Plant at Rourkela. 5. Conversion of IISCO into a joint venture with SAIL holding minority shareholding. The Government noted that this is one of the largest restructuring proposals considered by it involving an amount of over Rs.8000 crore and financial restructuring alone was not a long term solution, Government has directed that Ministry of Steel sign an MOU with SAIL for implementation of a business restructuring plan with detailed milestones. It has been further decided that a Committee of Secretaries must examine and review at appropriate intervals the business restructuring plan with reference to detailed milestones and submit a progress report on a six-monthly basis to the Cabinet Committee on Economic Affairs (CCEA)."

As seen above, SDF was created by notification issued under clause 17(B) of the Control Order. Main steel plants form the primary units of the Joint Plant Committee. It were only the member steel plants or the main steel plants who were subjected to add an element of their ex-works-price and remit the same towards the SDF. SAIL and TISCO were the member steel plants. SAIL was having four

plants at Bhilai, Bokaro, Durgapur and Rourkela. Indian Iron and Steel Company Ltd. subsequently got merged with SAIL. By Notification dated January 16, 1992 the Central Government withdrew the price restrictions under the Control Order and thereafter by Notification dated April 21, 1994 contributions by the member steel producers towards the SDF was also discontinued. It is the Central Government, which Exercises control over SDF though there is no backing of any statutory provision for creation of the SDF. The primary object of SDF was to enable the main steel producers for 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. Other steel producers who were known as secondary producers were not members of the Joint Plant Committee. They were not subjected to add an element of ex-works price of steel but could add any element of their choice and not to make remittance of the same to the SDF. It does not stand to reason as to how these secondary producers are entitled to claim any amount from the corpus of SDF or to get some directions issued respecting the use of SDF. The petitioner started production only in April 1998 when four years prior to that remittance to SDF had been discontinued. It is not disputed that the petitioner was not a member of the Joint Plant Committee and did not remit any amount towards the corpus of SDF. The question is if in these circumstances the petitioner could advance a claim or exercise a right on the SDF in any manner. It were the members of the Joint Plant Committee who were made bound to add an element of ex-works price and to remit that amount for the constitution of SDF. It has been stated by the first respondent, Union of India, through the affidavit filed by the fourth respondent, Joint Plant Committee, that funds out of SDF were disbursed to the members Steel Plants by the SDF Managing Committee as per directions issued by the Central Government from time to time. It is then submitted that since early 1990's there has been a general recession in the steel industry. SAIL had approached the Central Government for its financial and business restructuring. SAIL had taken over Indian Iron and Steel Company Ltd., a sick company in the year 1978. Indian Iron and Steel Company Ltd. is wholly owned subsidiary of SAIL. The proposal given by SAIL to the Central Government contained various components and measures including waiver of loans from the SDF made over to members Steel Plants which were under SAIL. It will be noticed that the amount of SDF was not in fact remitted to the Central Government but was shown as credit to the Central Government in the books of SAIL and its members steel plants. This proposal of SAIL, it would appear, has since been accepted by the Central Government by its letter dated February 18, 2000 which we have reproduced above. While there was price control under the Control Order during the period 1978-1994 when the remittance to SDF were made by main steel producers, the petitioner was nowhere in the picture and was not subjected to any price control like the main steel producers. The petitioner and other steel producers were free to produce and sell the iron and steel products in the market on the prevailing prices. It has been pointed that price fixed by the petitioner of its products was much higher than the control price which included elements of SDF. While the collection and remittance to SDF has been discontinued w.e.f. April 1994, the petitioner made its claim for the first time in 1999 which would appear to be rather incongruous. It is submitted that the claim made by the petitioner is not bona

fide and writ petition has been filed with ulterior motives, which are not difficult to fathom. SAIL had stressed immediate need for restructuring and modernising all the main steel plants. Due to recession, SAIL has been passing through severe financial position and has to suffer a loss of Rs.1574 crores in 1998-99. It has further to suffer burden of interest to the tune of Rs.2017 crores per annum for modernisation. In the aforesaid circumstances, the petitioner does not have any right to claim any relief in the writ petition pertaining to utilisation of SDF. It is quite apparent that from the very nature of the creation of SDF, manner of remittance to SDF and purpose of its utilisation, it is a fund created ultimately for the utilisation by the member steel producers only. We do not think it is a fit case where this Court in the exercise of its powers under Article 136 of the Constitution of India should grant leave to appeal from the impugned judgment of the High Court. Leave to appeal is refused. Special Leave Petition is dismissed.