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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 24.05.2017**

\+ **<u>LPA 28/2016 and CAV 32/2016 and CM APPL. 1441/2016</u>**

SURESH NATH JHA

..... Appellant

Through: Mr. Sudhir Makkar, Sr. Advocate (amicus curiae) with Mr. Harsh Prakash, Adv.

versus

INSTITUTE FOR STEEL DEVELOPMENT & GROWTH (INSDAG) & ORS THR ITS PRESIDENT

..... Respondent

Through: M/s Sunil K. Jain, Reeta Chaudhary & Abhishek Jain, Advocates

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>VIPIN SANGHI, J. (ORAL)</u>

1. We have heard the learned *Amicus Curiae* on behalf of the appellant, and learned counsel for the respondent, and proceed to dispose of the LPA. The present appeal is directed against the judgment dated 02.11.2015 passed by the learned Single Judge dismissing the appellant's writ petition i.e. W.P. (C.) No. 5617/2012 on the ground that respondent no.1 i.e. Institute for Steel Development and Growth (INSDAG) is neither an instrumentality, nor an

agency of the government, and that it cannot be said to be an authority and, therefore, not a "State" within the meaning of Article 12 of the Constitution of India. The learned Single Judge has held that the writ petition is not maintainable under Article 226 of the Constitution of India against respondent no.1 INSDAG.

2. The appellant preferred the aforesaid writ petition impleading the President, INSDAG as respondent no.1; the Director General, INSDAG as respondent no.2 and the Govt. of India represented by the Secretary, Ministry of Steel as respondent no.3. The writ petition had been preferred on the premise that INSDAG had issued an advertisement inviting applications for three posts of Chief Manager (Resident), for permanent employment, in Grade E-6 (Reference No.CE-01A) for three extension centres at Mumbai, Delhi and Hyderabad. The appellant applied in response to the said advertisement. He was interviewed by the selection committee and was placed at Sl. No.4 in the panel of selected candidates.

3. The appellant claimed that he was made an offer of appointment on 28.11.2005 to join the Mumbai office of INSDAG as Chief Manager (Resident) on contract basis. He claimed that he was not agreeable to join the said post on contract basis. He claimed that, thereafter, he had been given an assurance that his appointment would be converted into permanent employment as notified in the advertisement, shortly after his joining. The letter of appointment was amended, and the place of duty of the petitioner was changed from Mumbai to Delhi. He claimed that on the basis of the assurance given by the Director General, INSDAG regarding regularisation of his appointment as a permanent employee, he joined INSDAG as Chief

Manager (Resident) at Delhi on contract basis on 01.02.2006.

4. With the grievance that his appointment was not converted from contractual to permanent, he preferred the writ petition to seek regularisation of his services from the date of his appointment i.e. 01.02.2006 with all consequential benefits. He also sought interest on arrears of pay.

5. The respondent, upon being noticed raised a preliminary objection to the maintainability of the writ petition on the ground that INSDAG is a non-profit making organisation registered under the Societies Registration Act; it primarily works towards development of advanced design methodologies and technical marketing - by expanding applications of steel in different segments of industry, upgrading skills and knowhow, creating awareness amongst the potential users and communicating the benefits of steel *vis-a-vis* other competitive materials etc. Its founding members include major steel companies like Steel Authority of India (SAIL), TATA Steel, Jindal Steel, Rashtriya Ispat Nigam Ltd. (RINL), Esssar Steel, Ispat Industries and the Ministry of Steel.

6. The respondent INSDAG, it was claimed, was not performing any governmental function which could be regarded as of essential public importance, or as closely related to governmental/ sovereign functions, or being fundamental to the life of the people. The respondent claimed that it does not perform any statutory duty or obligations towards the public at large. The respondent claimed that it is a society constituted by private and public sector organisations. There is no deep and pervasive control of the government over the management and affairs of the respondent, and there is

nothing to show that the source of funding of the respondent is from the government alone. The respondent INSDAG is run by financial contribution of its members, and its management is carried out by the members only in accordance with its Rules and Regulations. The government does not have any administrative, functional or financial control over the respondent society, and the Ministry of Steel is only one of its members.

7. The learned Single Judge, after considering the rival submissions, held that the respondent INSDAG was not amenable to writ jurisdiction. While returning the said finding, the learned Single Judge took into account the following aspects:

i) That the respondent no.1 is a society registered under the Societies Registration Act as a non profit organisation by various organisations involved in the manufacture of steel, which includes government companies like SAIL and RINL.

ii) The objective of promoting INSDAG was, inter alia, to develop and propagate the proper and effective use of steel and increase the intensity of steel usage, particularly in the construction sector and other related activities. The intent in forming the respondent society was to have an organisation which would promote, develop and propagate the effective usage of steel, particularly in the construction sector. The same was intended to be achieved by bringing the steel manufacturing organisations under one umbrella having common interest. Inspite of the fact that the representatives of Ministry of Steel and Government Companies i.e. SAIL, RINL are part of the respondent society, it also has-as its founding members, several private sector steel manufacture companies. The membership to the respondent society is open to steel plants, steel mills, manufacturer of products using steel in whole or part - including steel processors, fabricators, developers, builders, architects, designers, design institutes, educational and research institutes, engineering firms, consultants etc.

iii) The initial registration of the society was done by the following members:

S. No.	Name & Address (In Capital)	Occupation	Designation (In Society)
1	S/Shri M.R.P. Nair, Chairman, Steel Authority of India Ltd., Ispat Bhawan, Lodi Road, New Delhi	Service	President
2	Dr. J.J. Irani, MD, Tata Iron and Steel Co. Ltd. Jamshedpur, Bihar.	Service	Vice President
3	J. Mehra, Chairman, RINL, Vizag.	Service	Member
4	N.K. Raghupathy, Jt. Sec., Department of Steel, New Delhi.	Service	Member
5	Sajjan Jindal, Vice-Chairman &	Industrialist	Member

	Managing Director, Jindal Vijaynagar Steel Ltd., Bangalore		
6	Anil Rai, VC & MD, Usha Ispat Ltd., 3, Cama Place, New Delhi.	Industrialist	Member
7	J.K. Singh, Chairman, MESCO, Delhi.	Industrialist	Member
8	S.K. Sinha, Jt. DCI&S, 234/4, AJC Bose Road, Calcutta.	Service	Member

iv) The respondent society INSDAG, in its Rules and Regulations provided for different category of members i.e. founding members, primary members and associate members, who were subjected to payment of annual subscription depending on the nature of their membership in the respondent society.

v) The General Body of INSDAG consists of founding members, primary members and associates, whose names appear on the register of the association. The voting rights are exercised by the members at General Meetings of the respondent society.

vi) The source of income of INSDAG is primarily the subscription of its members, associates and others; corpus contributed by the Ministry of Steel of Members/ Associates/ Hony. Members or Institutional

Members; interest from corpus and other funds and income earned from services rendered i.e. consultancy, publication etc.

vii) The funds of the INSDAG can be utilised towards fulfilment of its objects with the approval of the Executive Council (EC), President or Secretary. The Executive Council of INSDAG is vested with the general management and control of the society/ association. The Executive Council consists of members elected/ nominated from amongst the founding members, primary members and associates; the President of retiring Executive Council; one member nominated by the Executive Council from amongst the associates; a minimum of three members elected from amongst founding members, and; balance members elected by all members including founding and primary members.

viii) The office bearers of INSDAG are the President, Vice President and Members of the Executive Council, who act without remuneration. It shall also have a Secretary and Director General, and as many other officers as may be decided by the Executive Council from time to time.

ix) The annual accounts of the respondent society for the year 2010-11 showed the contribution made by the Ministry of Steel and other members. They showed that out of the total contribution received of Rs.1791.004 lacs, the contribution of the Ministry of Steel, SAIL and RINL (i.e. the government and government companies) aggregated to about Rs.1220 lacs. The remaining about Rs.570 lakhs was contributed by private players/ members.

8. The learned Single Judge then proceeded to apply the tests laid down by the Constitution Bench of the Supreme Court in ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology & Ors.***, (2002) 5 SCC 111, wherein in para 40, it held:

> "*40. The picture that ultimately emerges is that the tests formulated in Ajay Hasia (Ajay Hasia vs. Khalid Mujib Sehravardi, (1981) 1 SCC 722) are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12.* ***The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive.*** *If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State*." (emphasis supplied)

9. The learned Single Judge held that the tests laid down by the Supreme Court in ***Pradeep Kumar Biswas*** (supra) were not satisfied inasmuch, as, there is nothing to suggest that the entire grant-in-aid is received from the Joint Plant Committee (JPC) to meet the entire expenditure of INSDAG. The financial support granted by the JPC was in the nature of corpus and grant-in-aid. There existed other avenues for generating income for the organization. The non-governmental members also contributed substantial amounts. The learned Single Judge also found that the objective of the INSDAG is to promote usage of steel manufactured by various companies -

both in the government and the private sector, and the Rules and Regulations of INSDAG do not reflect that the said organization enjoys monopoly status conferred by the State in respect of its activities. Its functions could not be described as sovereign or governmental functions. The learned Single Judge observed in the impugned judgment, inter alia, as follows:

> "*It is an informal association of Government and private companies. The usage of the steel would be equally beneficial to the private companies as is beneficial to the government companies. It is not the case of the petitioner that all the Members who got the Society registered are from the Government; the Members of the Governing Body are appointed by the Government; the appointees running the organization are through a process of Recruitment Rules framed with the approval of the Government and the selection is undertaken by the Government. That apart, nothing has been pointed out by the petitioner to suggest that the functioning is dominated by or under the control of Ministry of Steel, Government of India. The Rules, which have been reproduced above, suggest the functioning of the organization is through an inbuilt mechanism like the Governing Body/Executive Council. The manner in which the Executive Council is appointed has also been laid down in the Rules. The auditing is done by the Auditors of the Institute. The Rules of the Steel Authority of India have been adopted by the Society to regulate the service conditions of the employees, would not have the effect of the organisation is part of SAIL. The CVC instructions sent to the respondent No.1 by the respondent No.3 does not alter the above position under the MOA and Rules*".

10. The learned Single Judge also relied on the decision of the Supreme Court in ***G.Bassi Reddy V. International Crops Research Institute and another*** 2003(4) SCC 225, wherein the Supreme Court held that the International Crop Research Institute (ICRISAT) was not "State" under

Article 12 of the Constitution. The idea behind creation of INSDAG was also on similar lines as ICRISAT though it focused on a different field viz. Steel. In the words of learned Single Judge, "*ICRISAT was set up as a non-profit research and training centre by the Consultative Group on International Agricultural Research (CGIAR). It was found that CGIAR is an informal association of about 50 government and non- government bodies and is co- sponsored by certain wings of the United Nations. The object of setting up of said Crops Research Institute was to help the developing countries in semi-arid tropics to alleviate rural poverty and hunger in ways that are environmentally sustainable. Certain members of CGIAR are providing funds as well*".

11. Similarly, the learned Single Judge also relied on para 8 of the decision in ***General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, UP Vs. Satrughan Nishad and Ors.*** (2003) 8 SCC 639 rendered in respect of Kisan Sahkari Chini Mills Ltd., which reads as follows:

> *"8. From the decisions referred to above, it would be clear that* ***the form in which the body is constituted, namely, whether it is a society or co-operative society or a company, is not decisive. The real status of the body with respect to the control of government would have to be looked into. The various tests, as indicated above, would have to be applied and considered cumulatively. There can be no hard and fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution****. In this context, Bye Laws of the Mill would have to be seen. In the instant case, in one of the writ applications filed before the High Court, it was asserted that the Government of Uttar Pradesh held 50% shares in the Mill which fact was denied in the counter affidavit filed on behalf of the State and it was*

averred that majority of the shares were held by cane growers. Of course, it was not said that the Government of Uttar Pradesh did not hold any share. Before this Court, it was stated on behalf of the contesting respondents in the counter affidavit that the Government of Uttar Pradesh held 50% shares in the Mill which was not denied on behalf of the Mill. ***Therefore, even if it is taken to be admitted due to non traverse, the share of the State Government would be only 50% and not entire. Thus, the first test laid down is not fulfilled by the Mill. It has been stated on behalf of the contesting respondents that the Mill used to receive some financial assistance from the Government. According to the Mill, the Government had advanced some loans to the Mill. It has no where been stated that the State used to meet any expenditure of the Mill much less almost the entire one, but, as a matter of fact, it operates on the basis of self generated finances. There is nothing to show that the Mill enjoys monopoly status in the matter of production of sugar. A perusal of Bye-Laws of the Mill would show that its membership is open to cane growers, other societies, Gram Sabha, State Government, etc. and under Bye-Law 52, a committee of management consisting of 15 members is constituted, out of whom, 5 members are required to be elected by the representatives of individual members, 3 out of co- operative society and other institutions and 2 representatives of financial institutions besides 5 members who are required to be nominated by the State Government which shall be inclusive of the Chairman and Administrator***. *Thus, the ratio of the nominees of State Government in the committee is only 1/3rd and the management of the committee is dominated by 2/3rd non- government members.* ***Under the Bye-Laws, the State Government can neither issue any direction to the Mill nor determine its policy as it is an autonomous body. The State has no control at all in the functioning of the Mill much less deep and pervasive one. The role of the Federation, which is the apex body and whose ex-officio Chairman-cum-Managing Director is Secretary, Department of Sugar Industry and Cane, Government of Uttar Pradesh, is only advisory and to guide its members***. *The* *letter sent by Managing Director of the Federation on 22nd November, 1999 was merely by way of an advice and was in the nature of a suggestion to the Mill in view of its deteriorating financial condition. From the said letter, which is in the advisory capacity, it cannot be inferred that the State had any deep and pervasive control over the Mill. Thus, we find none of the indicia exists in the case of Mill, as such the same being neither instrumentality nor agency of government cannot be said to be an authority and, therefore, it is not State within the meaning of Article 12 of the Constitution."* (emphasis supplied)

12. The said reliance was placed, since, the overall structure and functioning of INSDAG was found to be similar to Kisan Sahkari Chini Mills Ltd., which was the entity in respect whereof the Supreme Court ruled that it was not "State" under Article 12 of the Constitution.

13. The submission of learned Amicus Curiae is that the learned Single Judge has not taken into consideration several aspects which were relevant to the determination of the issue in question. Firstly, Mr. Makkar submits that the Ministry of Steel, Government of India, exercises administrative control over INSDAG. In this regard, he seeks to place reliance on the communication dated 19/23.11.2009 issued by the said Ministry, inter alia, to INSDAG, on the subject of appointment of CVOs/VOs in Organizations other than Ministries/Departments, PSUs, PSBs and Insurance Companies. The Ministry of Steel by the said communication directed INSDAG to set up a proper and structured vigilance mechanism. Mr. Makkar submits that the communication dated 19/23.11.2009 was accompanied by the letter dated 15.10.2009 received from the CVC. The said communication of the CVC related to public servants of, inter alia, Corporations established by or under any Central Act, Government companies, Societies and Local authorities

owned or controlled by the Central Government and for matters connected therewith or incidental thereto. The fact that the Ministry of Steel, Government of India, sent the said communication to INSDAG shows that INSDAG is considered by the Government as a Society owned or controlled by the Central Government. Mr. Makkar submits that though the aforesaid aspect has been taken note of in the impugned judgment by the learned Single Judge in para 25, the effect of the aforesaid communications has not been considered in the impugned judgment. Mr. Makkar has also sought to place reliance on the publication made by Joint Plant Committee (JPC) on jpcindiansteel.nic.in. In the said publication made by the JPC, which is a part of the Government, the JPC states as follows:

> *"Joint Plant Committee (JPC) is the only institution in the country, which is officially empowered by the Ministry of Steel/Government of India to collect data on the Indian Iron and steel industry, resulting in the creation and maintenance of the only basic complete and non-partisan databank on this industry.*
>
> *……………*
>
> ***Dissemination of Information***
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> *Besides collection of data, dissemination of information to all stakeholders of Indian Steel industry is another key activity of JPC. Major channels of information dissemination include;*
>
> *…………..*
>
> *JPC aims to propagate knowledge, awareness on the benefits of usage of steel and bridge the information gap between the producers and end-users of steel. This is achieved through lending support to, as well as organization of, seminars/workshops on technology, infrastructure,*

environment, market trends, budget, policy making and other topical issues.

Education is the stepping stone to greater success. Under the aegis of the Ministry of Steel, the Biju Patnaik National Steel Institute (BPNSI) in Puri/Orissa and the National Institute for Secondary Steel Technology (NISST), Mandi, Gobindgarh are instances initiated in this regard. ***The Indian construction sector has emerged as a key consumer of steel and with infrastructure building in the country poised for a big leap, the potential of steel consumption in the Indian construction sector is immense. It is the realization of this potential that has led to the formulation of the Institute for Steel Development and Growth (INSDAG) in Kolkata with active participation from industry under the patronage of the Ministry of Steel****."* (emphasis supplied)

14. Mr. Makkar submits that even the Ministry of Steel, Government of India, on its website, enlists INSDAG as one of its other bodies. In relation to INSDAG, Ministry of Steel, Government of India, states as follows on its website:

*"****VIII. Institute for Steel Development and Growth –*** *The initiative for setting up of Institute for Steel Development and Growth (INSDAG) emanated from the steel producers and the Institute was registered as a Society on 26th August, 1996. The mission of the institute is to work in unison with all the stakeholders so as to evolve ways and means for efficient use of steel and provide optimum value to the customers.*

The Institute primarily works towards the development of technology in steel usage and market for the steel producers. The headquarter of INSDAG is at Kolkata. ***INSDAG was expected to function and grow on contribution from the industry. However, the membership contribution is barely 20% of the total fund requirement, with the balance being met through grants from the JPC. The establishment cost of INSDAG is met out of JPC funds****."* (emphasis supplied)

15. Mr. Makkar points out that the aforesaid also shows that the JPC is meeting as much as 80% of the total fund requirement of INSDAG, since the membership contribution is merely 20% of the total fund requirement. Thus, there is overwhelming financial contribution made by the Government for running the affairs of respondent INSDAG.

16. Mr. Makkar has also tendered a print out taken from the website of the Ministry of Steel, Government of India, with the heading '*Quality Management Systems Certification*' wherein the names of public authorities under the administrative control of the Ministry of Steel are tabulated. INSDAG is shown as serial number 16 in the said tabulation under the category of '*Subordinate Organization*'.

17. Mr. Makkar also referred to a two page document placed on record at pages 1127 and 1128 - which is not a signed document. It is also not clear as to what is the source of this document, and in what context, and by whom, the same has been prepared. However, the said document talks about formation of INSDAG. The relevant extract of this document reads as follows:

"INSTITUTE FOR STEEL DEVELOPMENT & GROWTH
ISPAT NIKETAN, 1st Floor
52/1A Ballygunge Circular Road, Kolkata 700 019

1. *Formation of INSDAG*

   The Institute for Steel Development and Growth (INSDAG) was registered as a Society on 26th August, 1996 with the Founding Members as given below:

   - *SAIL*
   - ***Tata Steel***

- ***Usha Ispat Limited***
- ***MESCO***
- *Ministry of Steel*
- *DCI &S Office*
- *RINL*
- ***JYSL***

with its registered office at Ispat Bhavan, 40, Chowringhee Road, Kolkata 700 071. The Institute is a non-profit making organization. Its operating office is at Ispat Niketan, 52/1A, Ballygunge Circular Road, Kolkata 700 019.

***The daily affairs of the Institute are looked after by the Director General and his organization. Overall guidance and direction is provided by an Executive Council (EC). Two other functional Committees namely the Executive Committee of INSDAG (ECI) and Project Review Committee (PRC) respectively provide administrative and technical guidance**. The Institute has defined its mission, role and functions and evolved its short, medium and long term Activity Plans.*

***The Institute is a member-based organization with MOS, JPC, Major Steel Companies, Consulting Companies, Architects, Builders, Fabricators, Academics, Contractors and Students as its Members. As on today it has more than 900 members**. The Institute is having an MOU with Steel Construction Institute (SCI) UK.*

2. *Copy of MOU/Registration with the Registrar of Society*

   A copy of MOU and Registration Certificate are placed in Annexure :I.

3. *Objectives/Functions of INSDAG*

   The major objective of INSDAG is to expand steel applications in various segments of industry and infrastructure with special focus on Construction Sector.

   The four main objectives set up for INSDAG are –

- *Cost effective steel design options*
- *Favourable Codes and Standards*
- *Independent expert advisory service and membership base*
- *Mass Scale education of Professionals/ Teachers/Students"* (emphasis supplied)

18. Mr. Makkar submits that the daily affairs of the respondent INSDAG are looked after by the Director General and his organization. The over-all guidance and direction is provided by the Executive Council (EC). There are two other functional committees, namely, the Executive Committee of INSDAG (ECI) and the Project Review Committee (PRC) which provide the administrative and technical guidance respectively. Mr. Makkar submits that the Executive Secretary, JPC, is always the Chairman of the ECI of INSDAG. In this respect, he places reliance on the minutes of the 21st Meeting of ECI of INSDAG held on 28.07.2009 which reflects the aforesaid position. The said minutes also show that INSDAG requested for enhancement of grant-in-aid by JPC to Rs. 150 lacs, which was under consideration at the relevant time. The JPC was also issuing instructions with regard to the manner in which the amounts advanced by JPC - which were written off, should be declared in the accounts of INSDAG. The involvement of JPC into the affairs of the respondent INSDAG is sought to be established by reference to the following minutes recorded in the meeting of 28.07.2009 of the ECI;

> *"JPC observed that an amount written off should be declared in a separate heading under "write off" and not to be clubbed with any other head. INSDAG confirmed that henceforth it will follow the same.*

Regarding investing in various instruments by INSDAG, JPC indicated that the rule of INSDAG may be revalidated in the next EC meeting. On this, the Society's Act may once be examined and a note would be put up to DG.

It was further discussed that authorisation of signatories on the Accounts of INSDAG may be included in the next EC agenda."

19. Mr. Makkar has also referred to the communication dated 13.03.2008 sent by the Joint Secretary in the Ministry of Steel, Government of India, to the Joint Secretary, Ministry of Human Resources Development on the aspect of introduction of a compulsory course of structural steel design in technical institutions approved by AICTE. In this communication, the Ministry of Steel takes note of the contribution made by INSDAG in revising the course for Structural Steel Design IS:800 (general construction in steel – Code of Practice) using Limit State Method. It also takes note of the training imparted by INSDAG. Thus, the submission of Mr. Makkar is that INSDAG is performing an important function of public importance, inter alia, in the matter of evolving BIS standards and imparting training in the field of structural steel design.

20. Mr. Makkar has also referred to the communication dated 30.11.2010 issued by the Ministry of Steel, Government of India, inter alia, to the Director General, INSDAG, seeking materials pertaining to the respondent INSDAG, to be included in the annual report of the Ministry of Steel. It also states that material pertaining to INSDAG was included in the previous year's annual report (2009-10) of the Ministry of Steel under "Chapter XXI: Technical Institutes under Ministry of Steel". Thus, the Government of India consciously treats INSDAG as a technical institution under the

Ministry of Steel. Mr. Makkar submits that it is not for the respondent INSDAG to, therefore, claim that it is autonomous, or independent from the administrative and financial control of the Ministry of Steel.

21. Mr. Makkar has also referred to a few clauses of the Memorandum of Association of the respondent INSDAG. He refers to clause 3.3 which provides that the main object to be pursued by the respondent Society, inter alia, would be to carry out, '*development and other work in connection with the use of steel*'. Clause 3.5, 3.9 and 3.13 provide another main objects to be pursued by the respondent Society, which are:

> *"3.5 To provide a common forum for steel users including builders, construction companies, industrial units, steel and allied product manufacturers, processors, building designers, architects, engineers, specifiers, fabricators, marketing personnel and other interested entities/persons."*
>
> *"3.9 To identify the potential areas for using steel as a constructional material for the benefit of ultimate users as well as for the benefit of producers through education and market development activities.'*
>
> *"3.13 To conduct studies and bring out the economics of using steel vis a vis other conventional materials, both in the short run as well as in the long run. The additional facets like environment friendliness etc. may also be brought out. Also to conduct research and find out solutions to tackle deficiencies, like fire hazard, corrosion etc. in steel based structures."*

22. Mr. Makkar submits that these are all functions which are of national importance to the economic development of the country. Thus, it cannot be said that the respondent is not discharging an important public duty in the interest of the country.

23. Lastly, Mr. Makkar has placed reliance on the judgment of the Supreme Court in ***Zee Telefilms Ltd. and another Vs. Union of India and others*** (2005) 4 SCC 649 to submit that Supreme Court held that the Board of Control of Cricket in India (BCCI) is amenable to writ jurisdiction under Article 226 of the Constitution of India, even though it was held to be not "State" under Article 12 of the Constitution of India, since it did not meet the tests and guidelines laid down in ***Pradeep Kumar Biswas*** (supra). Mr. Makkar submits that on the same parity of reasoning, the respondent should also be declared as amenable to the writ jurisdiction of this Court under Article 226 of the Constitution.

24. On the other hand, learned counsel for the respondent has defended the impugned judgment. Learned counsel submits that on a cumulative appreciation of each and every aspect relevant to the matter, including, the ones relied upon by the appellant, it cannot be said that the government exercises financial, functional or administrative control or dominance over the affairs of the respondent INSDAG, which could be said to be deep or pervasive.

25. Having heard learned Amicus Curiae, learned counsel for the respondent, perused the impugned decision and the record, including the documents relied upon by the appellant, we are of the view that there is no merit in the present appeal and the impugned judgment rendered by the learned Single Judge does not call for interference by us in the present appeal.

26. The learned Single Judge has examined threadbare the background in which, and the manner by which, INSDAG had been constituted. The

purpose of constitution of INSDAG has also been taken note of. INSDAG is a registered society and is a non-profit organization. It has been jointly promoted by the Government and private manufacturers of steel products, so as to develop and propagate proper and effective technologies for use of steel, and increase the usage of steel, particularly in the construction section, and other related activities. The range of fields from which private participation - as members of INSDAG, is drawn is extremely wide. It has different categories of members, namely, founding members, primary members and associate members, who are subjected to payment of annual subscription depending on the nature of their membership in the respondent Society.

27. The source of income of INSDAG is primarily from subscription from members, associates and others. No doubt, a substantial contribution has historically been made by the Government into the corpus of the respondent, and amounts have been contributed as grant-in-aid by the JPC as well. Interest on the corpus and other funds, income from services rendered; consultancy provided; publications made etc. are other forms of income generated by INSDAG. The utilization of its funds towards fulfillment of its objectives is to be done with the approval of the Executive Council, President or Secretary.

28. The accounts for the year 2010-11 placed on record shows that out of the total contribution received aggregating Rs. 1791.004 lacs, over 30% i.e. Rs.570 lacs of the contribution came from private players. Thus, the situation is not that the Government or its agencies are completely funding the activities of INDSDAG. Even more important it is to note that the

appellant has not pointed out any prescription or condition that may be found either in the Rules and Regulations governing INSDAG, or any other communication from the Government - to say that the contribution by way of subscription or corpus was made subject to the condition that the Government shall retain complete, or even substantial, financial control over the affairs of INSDAG.

29. The Executive Council of INSDAG is vested with general management and control of the Society. The Executive Council itself consists of elected / nominated members from amongst founding members, primary members and associate members. It also has the President of the retiring Executive Council, one member nominated by the Council from amongst the Associate members, and a minimum of three members elected from amongst the founding members. The balance members are elected, including, from amongst the founding and the primary members. Thus, INSDAG is a broad based Society consisting of different kinds of members who are, inter alia, involved in running steel plants, steel mills, manufacturing products using steel in whole or part, those engaged in steel processes as fabricators, developers, builders, architects, designers, those running design, educational and research institutes, engineering firms, and consultancies.

30. The appellant has not been able to point out any provision from the Articles of Association of the respondent INSDAG to show that the Government - through the Ministry of Steel or the JPC exercises domination in the matter of running of the affairs of INSDAG. The Society, as noticed above, has broad-based representative which includes private players hailing

from different fields of businesses, which are somehow or the other interested in propagating the use of steel and steel products in different walks of life, particularly, in the construction industry.

31. As noticed hereinabove, INSDAG functions through its Executive Council, which has representative from wide spectrum of members. It has not been claimed by the appellant that under the Articles of Association, the representatives of the Government are in majority, or have the power to over-rule or veto any decision of the Executive Council.

32. The functions being performed by INSDAG can also not be described as sovereign functions or governmental functions. Such functions could be performed by even private players or private associations. The appellant does not claim that INSDAG enjoys any State protection or statutory monopoly in respect of its activities. From the materials placed on record, it appears that INSDAG carries out its activities with independence and autonomy and with the contribution of its members, to attain its stated objectives. The appellant has also not been able to point out any aspect to infer deep and pervasive control of the Government in the administration or functioning of the respondent INSDAG.

33. We may now proceed to examine and deal with the several documents sought to be relied upon by the appellant to claim that the facts and circumstances noted therein are sufficient to bring INSDAG within the jurisdiction of this Court under Article 226 of the Constitution of India.

34. Reliance placed by Mr. Makkar on the communication dated 19/23.11.2009 issued by the Ministry of Steel, Govt. of India to INSDAG

and the accompanying communication from the CVC dated 15.10.2009, in our view, is of no avail. The communication dated 15.10.2009 of the CVC was in respect of "*Corporations established by or under any Central Act, Government Companies, Societies and Local Authorities owned or controlled by the Central Government*". INSDAG is neither a corporation established by or under any Central Act, nor a Government Company nor a Society owned or controlled by the Central Government.

35. We have also noticed herein above that the founding members of INSDAG include several private players in the field of manufacture of steel items. The contribution is made towards corpus and subscription by the members depending on the nature of membership. Thus, it certainly cannot be said that INSDAG is "owned" by the Central Government. So far as control of INSDAG by the Central Government is concerned, once again, we find that the deep and pervasive control of the Central Government is not shown to be in existence in the financial, administration or functional matters of INSDAG. Thus, the communication dated 15.10.2009 of the CVC, on the basis of which the Ministry of Steel, Govt. of India issued its communication dated 19/23.11.2009 was not applicable to INSDAG. Merely because the Ministry of Steel, Govt. of India may have forwarded the said communication and required compliance by INSDAG of the said direction issued by the CVC, would not be sufficient to conclude that INSDAG is a society owned or controlled by the Central Government. Pertinently, the communication dated 19/23.11.2009 was sent to four different entities including JPC, National Institute of Secondary Steel Technology, Biju Patnaik National Steel Institute apart from the respondent

INSDAG. It appears to us that in one stroke, without due application of mind, the said communication was also addressed by the Ministry of Steel, Govt. of India to the respondent INSDAG, even though the communication of the CVC dated 15.10.2009 does not pertain to it.

36. Reliance placed by Mr. Makkar on the publication made by the JPC on its website jpcindiansteel.nic.in, relevant extract wherefrom has been extracted herein above, is also misplaced. Firstly, merely because the JPC may state something on its website qua the respondent INSDAG, does not mean that INSDAG is bound by the same. The nature and status of relationship between the JPC and INSDAG cannot be determined only on the basis of a publication made by the JPC on its website. The same can be determined only by reference to the Memorandum and Articles of Association of the respondent. The Memorandum and Articles of Association, and the Rules and Regulations of INSDAG do not show any vesting of control into the affairs of INSDAG in the hands of JPC or the Ministry of Steel. Even otherwise, the said publication recognizes the fact that INSDAG has been created "***with active participation from industry** under the patronage of Ministry of Steel*". Thus, INSDAG was not created exclusively by the Government. The Government, no doubt, has pushed for and facilitated the creation of INSDAG, but it is not a government entity. (emphasis supplied)

37. The publication made by the Ministry of Steel, Govt. of India on its website enlisting INSDAG as one of the "other bodies" is only a statement of fact. There is no denying the fact that INSDAG was jointly set up by the Ministry of Steel, Govt. of India along with several private players.

However, the same publication also recognizes the fact that the initiative for setting up of INSDAG "*emanated from the steel producers ...*". The mission of the institute is to work in unison with all the stakeholders so as to evolve ways and means for efficient use of steel and provide optimum value to the customers. Pertinently, the same publication also states "***INSDAG was expected to function and grow on contribution from the industry. However, the membership contribution is barely 20% of the total fund requirement, with the balance being met through grants from the JPC. The establishment cost of INSDAG is met out of JPC funds***." (emphasis supplied)

38. While, on the one hand, the aforesaid publication records that barely 20% of the total fund requirements are met by the contribution from the industry – the balance being met through the JPC, and that the establishment costs of INSDAG was met out of JPC funds, it also clearly states that INSDAG was expected to function and grow on contribution from the industry. Thus even when INSDAG was constituted, it was not in the contemplation of the Government and other founding members that for the functioning of INSDAG, the Government/ JPC would provide funds. If, on account of funds not being made available by the members of INSDAG, the Government continues to meet a significant part of the expenditure of INSDAG, it cannot be said that the Government exercises financial, administration or functional control over the INSDAG which could be described as deep and pervasive. It is the government's own discretion to make contributions. It is not shown that the Government is obliged to make contribution towards running of the affairs of the INSDAG. It is also not

shown that the contributions were made by the Government for running the affairs of INSDAG with any conditions, which would show that the Government exercises financial, administrative and functional control over the INSDAG, which is deep and pervasive.

39. For the aforesaid reasons, reliance placed on print out from the website from the Ministry of Steel enlisting the names of "*public authority under the administrative control of the Ministry of Steel*", wherein INSDAG is shown as a subordinate organization, is of no avail. For the same reason, reliance placed on the communication dated 30.11.2010 issued by the Ministry of Steel, Govt. of India, inter alia, to INSDAG regarding inclusion of material pertaining to INSDAG in its annual report by the Ministry of Steel is also of no avail.

40. So far as the document placed at pages 1127 and 1128 of the record is concerned, we have already noticed that the same is an unsigned copy. The source of this document, and the context in which, and the person by whom the same was prepared, is not disclosed. In any event, even the said document does not advance the submission of Mr. Makkar. The said document, even if assumed to record the facts correctly, shows that amongst the founding members, there were atleast four private players, namely, TATA Steel, Usha Ispat Ltd., Mesco and JYSL. The said publication also shows that INSDAG has over 900 members. The institute is a member based organization with Ministry of Steel, JPC, Major Steel Companies, Consulting Companies, Architects, Builders, Fabricators, Academics, Contractors and Students as its Members.

41. A perusal of the Rules and Regulations of INSDAG shows that the primary membership of the association is open to "*any individual, proprietary concern, firm, company or undertaking, whether incorporated or not, owning or managing or encouraged in any of the following activities:*

i) Production of Steel including steel plants, or steel mills, rolling mills, cold rolling/ forming, coating/ cladding in whole or part, or

ii) Manufacture of a product using steel in whole or part, including steel processors, fabricators, tube/ section manufacturers, persons involved in construction, developers, builders etc. or

iii) Design, Consultancy, Assembly, Erection, Maintenance, Sales of Construction/ Structures etc. including Architects, Designers, Design Institute, Educational and Research Institutes, Interior Decorators, Engineering Firms, Consultants, Specifiers etc."

42. The subscription of different categories of members is provided in Article 4.1. The founding members are obliged to pay subscription of Rs.10 lacs per annum. The primary members are subjected to payment of annual subscription ranging between Rs.10,000/- and Rs.10 lacs, depending upon the gross sales turnover of their business. The voting rights of the different category of members is dependent upon the annual subscription paid by the members under Article 7.2, which reads as follows:

"7.2 VOTING RIGHTS

The "voting rights" of members shall be calculated according to the annual subscription paid by the members on the following basis:

ANNUAL SUBSCRIPTION	*VOTES*
Upto Rs.10,000	*1*
Above Rs.10,000 and Upto Rs.25,000	*2*
Above Rs.25,000 and Upto Rs.1,00,000	*3*
Above Rs.1,00,000	*4*"

43. The general body of the respondent society consists of:

"*All the Founding members, Primary members and Associates whose names appear on the Register of the Association shall constitute the General Body*".

44. Considering the fact that the respondent has over 900 members, the Government and Government Companies/ entities such as the JPC, SAIL and RINL etc. are clearly outnumbered and overpowered so far as their voting power and rights are concerned. Amongst the functions, duties and powers of the general body, is the power to elect members of the council i.e. the Executive Council for the ensuing year. Thus, the executive body of INSDAG i.e. the Executive Council/ Governing Council under Article 9 is primarily elected by the general body of members which, overwhelmingly consists of private persons/ entities. Under Article 9.2, the Executive Council shall consist of not more than 15 members. It is for the Executive

Council to appoint the Secretary and Director General under Article 9.3.2. The Secretary and Director General are the administrative head of the institute's permanent staff and secretariat. Thus, even the appointment of the Secretary and Director General is not within the control of the Government, or its representatives/ nominees.

45. The submission of Mr. Makkar that the Executive Secretary of the JPC is always the Chairman of the Executive Committee of INSDAG (ECI)– which itself is one of the two functional committees constituted by the Executive Council, is also of no avail. Firstly, Mr. Makkar has failed to point out any specific provisions of the Rules and Regulations of INSDAG, which stipulates the formation of the two functional committees, namely, ECI and Project Review Committee (PRC). Secondly, he has also failed to point out any Rule or Regulation - to state that the Chairman of the ECI shall always be the Executive Secretary of the JPC. Thirdly, he has not pointed out as to what exactly is the function of ECI. Fourthly, the EC being the governing body of INSDAG would, obviously, have command and power over any of its other committees such as the ECI or PRC.

46. The minutes of the meeting of ECI dated 28.07.2009 referred to and relied upon by Mr. Makkar show that the Executive Secretary of the JPC acted as the Chairman of ECI. However, the same does not throw any light on any Rule or Regulation which may provide that the Chairman of the ECI would always be the Executive Secretary of the JPC. In the same minutes, the decision No.3 - dealing with administrative and personnel matters, does not show any governmental control over such matters in the affairs of INSDAG. In fact, the same shows that INSDAG follows its own method of

selection and screening for employment of manpower. It does not act in accordance with the rules and systems of the government in relation to appointment of its employees. The said minutes show that the request of INSDAG for enhancement of grant-in-aid to Rs.150 lacs was under consideration by the JPC. By its very nature, the grant and aid, is an aid granted by the JPC to INSDAG, without any consideration. As we have noticed above, no conditions which would imply governmental control of financial, functional and administrative matters of INSDAG, while making the grant-in-aid has been shown to exist by the appellant. The other aspects on which JPC may have made suggestions in the matter of accounts maintained by INSDAG, does not reflect deep and pervasive control over the functional, financial or administrative matters of INSDAG. Such suggestions could come from any quarter/ member of the ECI.

47. The role played by INSDAG in the revision of the basic code for structural design IS:800 (general construction in steel – Code of Practice) using Limit State Method in consultation with experts in the country from academia, R&D Institute and Consulting Firms, which has been released by BIS, no doubt, is important in the matter of evolving BIS standards and imparting training in the field of structural steel design. However, the same cannot be described as a sovereign function, since such functions could be performed, and such roles played by private institutions and associations such as private universities and research centres/ institutions as well.

48. Reliance placed on clauses 3.3, 3.5, 3.9 and 3.13 which stipulate some of the main objects of the respondent INSDAG do not show that the respondent performs sovereign governmental functions. A perusal of the

said clauses shows that the said functions could be carried out even privately. Even if the Government has had a role to play in the establishment of the respondent organization with the aforesaid aims, objects and mandate, that by itself does not make the respondent a government organization.

49. Reliance placed by Mr. Makkar on ***Zee Telefilms Ltd.*** (supra) is also of no avail. In ***Zee Telefilms Ltd.*** (supra), the Supreme Court applied the test laid down in ***Pradeep Kumar Biswas*** (supra) to examine whether the Board of Control for Cricket in India (BCCI) falls within the meaning of the expression "State" under Article 12 of the Constitution of India. The Supreme Court held that the BCCI could not be described as State within the meaning of Article 12. However, the Supreme Court held that BCCI would be amenable to writ jurisdiction under Article 226 of the Constitution of India, since it could not be denied that BCCI discharges some public duties. The Supreme Court, inter alia, observed:

> *"31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32.But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary*

course of law or by way of a writ petition under Article 226 of the Constitution which is much wider than Article 32".

50. Mr.Makkar has not been able to point out even one duty performed by the respondent INSDAG which is akin to public duty or state function. Thus, the decision in ***Zee Telefilms Ltd.*** (supra) has no relevance to the facts of the present case.

51. For all the aforesaid reasons, we find absolutely no merit in the present appeal and dismiss the same leaving the parties to bear their respective costs.

52. We place on record our appreciation of the sincere efforts made by the learned amicus curiae to advance the submissions in favour of the appellant.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 24, 2017
sr/sl