

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

Present:-

The Hon'ble Justice Aniruddha Roy

WPO 70 of 2006

IA NO: GA/3/2008 (Old No: GA/3490/2008),

IA NO: GA/4/2009 (Old No: GA/1840/2009)

TATA Steel Ltd. & Anr.

Vs.

Union of India & Ors.

For the petitioners:

**Mr. Ratnanko Banerji, Sr. Advocate,
Ms. Vineeta Mehria, Advocate,
Mr. Jaydeb Ghorai, Advocate,
Mr. Suman Chatterjee, Advocate,
Mr. Diptesh Ghorai, Advocate.**

For J.P.C.:

**Mr. Anindya Kumar Mitra, Sr. Advocate,
Ms. Supriya Dubey, Advocate,
Ms. Sneha Dutta, Advocate.**

For Union of India:

Mr. S.K. Tiwari, Advocate.

Reserved on:

30.06.2022

Judgment on:

03.08.2022

ANIRUDDHA ROY, J.:

Facts:

1. TATA Steel Ltd., the successor-in-interest of the TATA Iron Steel Ltd. is the first writ petitioner. The petitioner has its one of the largest integrated steel manufacturing plants in the country at Jamshedpur, Jharkhand. Since its establishment, the

petitioner had consistent investments in continuous modernization, research, development with various innovative ideas in respect of its integrated steel plant.

2. The Essential Commodities Act, 1955 (for short, the said Act of 1955) was enacted in the interest of general public for the control of production, supply, distribution of and also for trade and commerce in certain commodities. Section 2 (a) of the said Act of 1955 defines **“Essential Commodities”**. Under such provision **“Iron and Steel, including manufactured products of iron and steel”** were declared as essential commodities. Section 3 of the said Act empowers the Central Government, the first respondent herein, to control the production, supply, distribution of trade and commerce for the commodities specified thereunder. The Iron and Steel (Control) Order, 1956 (for short, the Control Order of 1956) was introduced under Section 3 of the act of 1955. Clause 17A and 17B of the said Control Order were introduced w.e.f. March 29, 1971. Clause 15 of the said Control Order of 1956 empowered the first respondent to fix the price of Iron and Steel and Clause 17B envisaged the setting up of a committee for the purpose of giving effect to the provisions of the said Control Order.
3. The first respondent appointed a committee in 1963, under the Chairmanship of a noted economist Dr. K.N. Raj to examine the existing system of distribution and pricing of Steel. The committees principle recommendations were as follows:

“(i) A Joint Plant Committee (JPC for short, the Respondent No. 2 herein) of the main steel producers be setup to take over the functions of the Iron and Steel Controller.

(ii) The said JPC be responsible for fixing producers prices subject to the approval of Government of India”.

4. The recommendations of the Raj Committee were accepted by the first respondent as well as the main steel producers. Accordingly by a notification dated February 29,

1964 in exercise of power conferred under Clause 17 of the said Control Order of 1956, a Joint Plant Committee (for short, **JPC**), the second respondent herein, was constituted. The JPC comprised of Iron and Steel Controller as its Chairman, and the petitioner, inter alia, as a member along with one member each from Indian Iron and Steel Company (for short, **ISSCO**) and the erstwhile Hindustan Steel Ltd. the predecessor-in-interest of the Steel Authority of India (for short, **SAIL**) and a member representing the Ministry of Railways. The Bokaro Steel Plant, setup under the SAIL became a member plant. Finally, Rashtriya Ispat Nigam Ltd. also became a member of the said JPC.

5. Under the same Notification dated February 29, 1964, the first respondent notified the procedures to be followed by the concerned authorities in connection with pricing of Iron and Steel. The Ministry of Steel of the first respondent by a Notification dated February 29, 1964 determined the controlled and free categories of the Iron and Steel under Clause 17 of the Iron and Steel (Control) Order, 1956 and stated that procedures to be adopted in connection with the distribution and pricing of Iron and Steel products in the controlled categories. Subsequently on April 07, 1971 under the same Clause 17B of the Iron and Steel (Control) Order 1956, the Central Government setup two committees, the Joint Plant Committee (for short, **JPC**) and defined their compositions and functions in terms of distribution, functions and pricing of controlled category products. The functions of **JPC**, inter alia, included:-

“8. The Committee may determine, announce list prices (base prices as well as extras) from time to time of 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 equalized 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.

9. The Committee shall endeavour to equalize freight for those categories of iron and steel, if any, which are subject to price control under clause 15 of the Iron and Steel (Control) Order, 1956 and for this purpose take such measures as it considers necessary or desirable”.

6. The relevant provisions from the said 1971 Notification being **Annexure P-4** to the writ petition, are reproduced below:-

“2a. The Joint Plant Committee

Composition

- (i) *The iron and Steel Controller- Chairman Member*
- (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 Steel Limited, Rourkela, the Hindustan Steel Limited, Bhilai and the Hindustan Steel Limited, Durgapur.*
- (iii) *One representative of the Ministry of Railways.*

Functions

- (1) *The Joint Plant Committee shall be responsible for carrying out generally the functions of co-ordinating the working of the main land joint action in regard to planning of indents, despatch, distribution and pricing of products and drawing up of rolling programmes.*
- (2) *The Committee may obtain from the products, indentors and authorized dealers such information and data as it may require in connection with the planning of production, scrutiny of indents and allocation to different plants and may also form such statistical and other units as may be necessary for this purpose.*
- (3) *The Committee shall handle all indents for all categories of steel as are to be executed by the main steel plants.*
- (4) *The Committee may formulate terms and conditions which are to be fulfilled by the indentors to the extent not covered by any specific orders issued under the Iron and Steel (Control) Order, 1956.*
- (5) *The Committee shall give wide publicity to the procedure to be followed by the indentors and may revise, if necessary, forms of indents from time to time. The Committee shall scrutinize the indents submitted to it and after the scrutiny forward the indents to the Steel Plants cominated by the indenter for booking of orders. The Committee may prescribe the financial and other formalities to be completed by the various classes of indentors prior to the steel plant accepting the indent for issue of sale orders.*
- (6) *The Committee shall help the steel priority Committee in deciding the priorities for despatch of iron or steel. For this purpose, in the light of the recommendations made to the Committee by the sponsoring authority regarding the requirements of individual consumers, the Committee shall discuse with the main Producers and such of the sponsoring authorities as it considers necessary, the extent to which their requirements and*

estimated production can be matched and thereupon send its consolidated proposal with its recommendations to the Steel Priority Committee. In making such proposals, the Committee shall have due regard to the need to minimise to the extent possible the freight payable for the movement of any category of iron or steel indented for.

- (7) *The Committee shall, subject to any overall directions from the Steel Priority Committee, prescribe the particulars of information which consumers seeking priority should furnish, the proforma for this purpose and the last dates and time table by which information should be furnished, scrutinised and completed in order to enable effective deliveries against priority allocations in each quarter.*
- (8) *The Committee may determine, announce and list prices (base prices as well as extras) from time to time of 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 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.*
- (9) *The Committee shall endeavour to equalize freight for those categories of iron or steel, of any, which as subject to price control under clause 15 of the Iron and Steel (Control) Order, 1956 and for this purpose take such measures as it considers necessary or desirable.*
- (10) *The Committee shall meet as often as necessary but not less than once a month so that it can effectively discharge its supervisory and co-ordinating functions.*
- (11) *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, in particular, the despatches from the different steel plants to ensure that the priorities laid down by the Steel Priority Committee are complied with to the maximum extent possible and for this purpose the Committee shall arrange for effective and timely flow of information from the steel plants and sponsoring authority.*
- (12) *The Committee shall submit regular and comprehensive information to the Steel Priority Committee to enable the latter effectively to review and regulate distribution.*
- (13) (A) *The 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 foreign quality.*
 - (iii) *Bars and rods including wire rods other than those of foreign 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 Coils.*
- (ix) *HR Sheets and Coils*
- (x) *Defectives and cutting of all categories.*
- (xi) *Re-rollable and other scrap.*
- (xii) *Plates including Coils.*
- (xiii) *Foreign quality Steels of all categories.*

**Substituted vide notification No.S.O.123(E)/ESS.COMM/Iron & Steel dated 20.12.1975.*

And for this purpose the Committee may prescribe uniform procedures and systems for the distribution and sale of the aforesaid categories for adoption by all the steel plants and review the same from time to time.

(B) In laying down the detailed procedures and systems under sub-paragraph A

- (a) the Committee shall ensure that the demands of Defence, Power and Irrigation, Exports of Engineering Goods, Steel and Coal Sectors, Atomic Energy Organisations, Railways, and other priority sectors are met in full and only the balance quantities available are distributed to other consumers.*
- (b) *Steel Priority Committee”.*

7. With the object of modernization and upgrading the Iron Steel Industry and to enable the integrated steel producers to undertake agricultural research and development work in the field of steel making, a development fund was created by JPC at the instance of the first respondent in June, 1978. The said fund was formulated pursuant to a letter dated June 05, 1978 addressed to the Chairman JPC.
8. From the said letter dated June 05, 1978 it appeared that the first respondent had approved the imposition of a **development surcharge** of Rs. 100/- per ton on Category II and Category III items of steel (**non-priority category**). The development fund was decided to be utilized for the development and rehabilitation of steel industry, pending the drawing up of detailed scheme for the creation of fund and the organization of necessary administrative arrangements which would take a little time, it was directed that the said development surcharge should be collected along with the

revised price of steel effective from the mid night of fourth or fifth June and accounted for by the JPC. Accounts of such collection should be kept separately and the money so released may be kept in distinct bank account by the JPC. Monthly returns of the accounts due for collection, actually collected, etc. may be submitted to the ministry till the ministry is able to make an alternative administrative arrangement in this regard.

9. Producers members started remitting to this fund in terms of the said letter dated June 05, 1978. Consequent upon the establishment of the fund, a circular was issued by JPC by which prices of several steel items produced, inter alia, by the petitioner no.1 stood increased w.e.f. June 05, 1978. The increased quantum was transferred by way of remission to the said development fund by the integrated steel plant members of the JPC. JPC at the relevant point of time recommended and published the final selling price of steel produced, inter alia, by the first petitioner, which included the element of the remittance to the said fund. The first petitioner alike other members of JPC only sold its products at such price and under such terms as published by JPC circulars from time to time. Pursuant to the said letter dated June 05, 1978, the price circular was added with an amount of Rs. 100/- per ton which was required to be remitted to the development fund, inter alia, by the first petitioner.
10. On June 07, 1978 the JPC opened a current bank account wherein the entire collection on account of the said **development fund** were deposited and the said account was year marked as the **Steel Development Fund** (for short, **SDF**).
11. By a Notification dated December 27, 1978 the Central Government in exercise of its powers under Clause 17B of the said Control Order of 1956 amended the previous Notification dated April 07, 1971 and added the following clauses as functions of the JPC:

“(9A) The Committee may add an element to the ex-works prices determined under sub-clause (8) for consulting a fund for modernization, 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 as may be issued by the Central Government from time to time.

(9B) 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”.

12. By a communication dated September 06, 1979, the first respondent issued detailed directions regarding the operation of the said SDF and for the administration of fund, including granting of loans by way of development finance out of the SDF. Under the same communication a Managing Committee was also constituted for the said SDF, which was as follows:

*“Secretary, Steel Mines and Coal- Chairman;
Secretary, Expenditure-Member;
Secretary Planning Commission-Member;
Iron and Steel Controller-Secretary”.*

13. Under the said Communication dated September 06, 1979 the first respondent laid down certain directions and regulations concerning the operation of SDF, which were:

“(a) The surcharges paid into the fund by the various producers will lose their identity and will form part of the corpus from which finance will be made available to the various plants in accordance with the criteria and procedures laid down in the regulations.

(b) So far as the public sector steel plants are concerned, development finance from the SDF will be in the form of loans on terms which would be the same as were applicable to Plan loans from the Government from time to time.

(c) So far as the private-sector steel plants are concerned, finance would be made available on the same terms and conditions as those on which finance would normally be available to them from financial institutions for this purpose”.

14. By a Notification dated October 08, 1979 the first respondent **substituted sub-clause 9-A** of the previous Notification dated December 27, 1978 to the following effect:

“9-A(1) The Committee may add an element to the ex-works price determined under sub-clause (8) for consisting a fund for-

- (i) Financing schemes, projects and other capital expenditure for modernization, research and development, rehabilitation, diversification, renewals and replacements, balancing additions to capacity, major new investments, or any other programmes for improving the quantum or technology or efficiency of production of iron and steel, or their quality;*
- (ii) For compensation the main steel producers for increases in costs of production over a base date and for elements of costs not covered or inadequately covered in the JPC prices in force on the said base date”.*

15. By a subsequent Notification of January 16, 1992, the first respondent in exercise of its power under Clause 17B of the Control Order of 1956 caused a further amendment to the said previous Notification dated April 07, 1971 to the following effect:

“AMENDMENTS

In clause 2 of the said Notification, in sub cause (a) under the heading “Functions” for the existing paragraphs (1) to (13) the following paragraphs shall be substituted, namely:-

(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 member 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 and such information and data as it may require in discharging the functions specified under this Notification a will as for maintaining a comprehensive data base in respect of any matter including production, movement and prices. It may also from 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 elements listed below to their ex-works prices of all or 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 and other capital expenditures for modernisation, research and development, rehabilitation, diversification, renewals and replacements, balancing, additions to capacity, major new investments or any other programme for improving the quantum or technology or 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 Export Assistance Fund”.*

16. By another Notification dated April 21, 1994 the first respondent further amended the said erstwhile Notification dated April 07, 1971 to the following effect:

“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 any action taken or things done under that item on or before such omission.

(b) After paragraph 4, the following paragraph 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”.

17. The first petitioner, however, remitted the sum to the SDF till 1994.

18. Since 1981-82 till 2000 loans were granted to the first petitioner from the said SDF as per the details, according to the petitioners, as mentioned in **Annexure P-11** to the writ petition, under the terms and conditions of loan agreements executed from time to time. One such agreement, is **Annexure P-12** to the writ petition.
19. The other three members, who contributed in terms of the SDF notification, had either been refunded their respective contributions or portion of their loans had been written off by the first respondent. The entire contribution was refunded and SAIL secured a write off about Rs.5,323.71 crores of loans against its remittance. The said sum of Rs. 5,323.71 crores loan waiver to SAIL included Rs. 250.71 crores by the 11th respondent and its Managing Committee as would appear in its 35th meeting held on May 06, 1998. It could thus, according to the petitioners, apart from the first petitioner all other remitters had either been refunded their remittance or a large portion of their loans against their respective contribution had been written off. The petitioner contributed a sum of Rs. 1007.78 crores.
20. The loan waiver granted to SAIL for a sum of Rs. 5323.71 cores by the SDF Managing Committee. The representations were made by the first petitioner from time to time during the period March 10, 1993 till February 20, 2003 the first respondent chose not to adhere thereto.
21. On January 29, 2003, in the 207th meeting of the JPC, the first petitioner under Agenda No.11 raised the demand of allocation of the balance of the SDF corpus to it in an equitable manner, after taking into account the loans granted to it. The JPC chairman agreed to refer the matter for an appropriate decision before the respondents.

22. In 2005 the petitioners came to know that the respondents were attempted to appropriate the balance corpus of SDF and to transfer the same to Consolidated Funds of Government of India.
23. In the above facts and circumstances, in 2006 the petitioners filed instant writ petition praying for the following reliefs:

“a) A Writ of and/or in the nature of Mandamus be issued directing the respondent authorities to act in accordance with law and to forthwith do the following acts:

- i) to return and refund to the petitioner the balance of the contribution lying in the Steel Development Fund on account of the petitioners;*
 - ii) to waive the purported outstanding loans which have been taken from Steel Development Fund by the petitioner alongwith purported outstanding interest;*
- b) A writ of or in nature of Certiorari do issue calling upon the Respondents and each one of them to transmit to this Hon’ble Court the records relating to the purported loan agreements referred to in the schedule being Annexure P-17 hereto including purported loan agreement dated 3rd April, 2000 so that the same may be quashed and conscionable justice might be rendered.*
- c) A writ of or in nature of Mandamus do issue commanding the Respondents and each one of them to forthwith refund to the petitioners a total sum of Rs. 1580.37 crores as per particulars set out in a schedule as Annexure “P-18” hereto.*
- d) Declaration that Steel Development Fund is being held by the Respondents for the exclusive benefit and for the purposes of the petitioners and the Respondent No.16;*
- e) A Writ of and/or in the nature of Mandamus be issued restraining and prohibiting the respondent authorities from using the Steel Development Fund or any part thereof for the purposes or for the benefit of any other steel producers or persons excepting the Petitioners and the Respondent No.16;*
- f) A Writ of and/or in the nature of Mandamus be issued restraining and prohibiting the respondent authorities from transferring or from using the Steel Development Fund or any part thereof for their own purpose or at all;*
- g) A writ of or in nature of Mandamus do issue commanding the Respondents and each one of them to refrain from invoking any of the covenants contained in the said purported divers loan agreements or in respect of any other claim/claims answering out of the said Fund.*
- h) A writ of or in nature of Mandamus do issue restraining and prohibiting the Respondents from in any manner enforcing purported the loan agreements and/or appropriating the fund to the extent of Rs.1580.37 crores or part thereof.*
- i) Appropriate Writ or Writs be issued as would afford complete relief to the petitioners;*
- j) Rule NISI in terms of prayers above;*

- k) If no cause or insufficient cause is shown the Rule be made absolute;*
- l) An order of injunction restraining the respondent authorities from using the Steel Development Fund or any part thereof for any other purpose except for the use and benefit of the Petitioner Company and the respondent No.16;*
- m) Injunction restraining the respondents and each one of them from in any manner dealing with, disposing of and/or encumbering the fund lying to the credit of the said SDF or any other fund lying or otherwise in the credit of SDF with JPC or to appropriate the same in any manner whatsoever.*
- n) An order of injunction directing the respondent authorities and each one of them from relying and/or invoking any of the alleged covenants forming annexure P-17 hereof.*
- o) An order of injunction directing the respondent authorities to waive the loan and interest outstanding from Steel Development Fund to the petitioners;*
- p) Injunction restraining the respondents and each one of them from relying and/or invoking any of the alleged covenants forming annexure P-17 hereof.*
- q) Ad-interim order in terms of prayer above;*
- r) Costs of and incidental to this application be paid by the Respondents;*
- s) Such further or other order or orders and/or direction or directions be given as to Your Lordship may deem fit and proper”.*

24. Pursuant to the direction made by the court, parties filed and exchanged their affidavits.
25. A composite affidavit-in-opposition was filed on behalf of the respondent nos. 1 to 4 and 10 to 15 affirmed on April 20, 2006.
26. An interim order was passed in this writ petition on February 13, 2006 whereby respondents were restrained from utilizing any amount from contribution of the first petition to the SDF save and except for utilization of its member steel producers until further orders. Another interim order was passed July 20, 2009 whereunder the respondents were directed to wait from demanding for interest from the first petitioner till disposal of the writ petition.

Submissions:-

27. Mr. Ratnanko Banerji learned senior counsel, being ably assisted by Ms. Vineeta Mehria, advocate appearing for the writ petitioners made his submissions principally on two counts:-

(a) He submitted that, the first petitioner was, inter alia, a **Main Steel Plant** as defined under the said 1971 Notification was dealing with **Controlled Categories** of Iron and Steel Materials. The first petitioner along with other Main Steel Plant who were defined under the said notification, had a legal right to the corpus of the SDF, as because the corpus was created from the remittance made by the main steel producers, inter alia, including the first petitioner and was exclusively for the main steel producers.

(b) The first petitioner received a discriminatory treatment from the first respondent and/or by the JPC, by not receiving the treatment as that of the favourable financial provisions made and effected from the corpus of the SDF for SAIL, though both the first petitioner and the 16th respondent at the relevant point of time were similarly circumstanced.

28. Referring to the various provisions from the said 1971 Notification, Mr. Banerji, learned senior counsel described the formation, constitution and purpose of the said JPC and the SDF and submitted that, the sole and whole purpose for formation of the said SDF was for the development, research of the Main Steel Plants, in the manner and mode as stated in the said 1971 Notification.

29. It was submitted that, JPC was empowered to determine, announce and list prices (base prices as will be extras) from time to time for all the categories of Iron and Steel subject to Price Control Order under clause 15 of the said Control Order of 1956. The prices so determined would be **Ex-works Prices**.

30. He then drew attention of this court to a letter dated June 05, 1978, **Annexure P-5** to the writ petition and submitted that, the first respondent had approved the imposition of a **Development Surcharge** of Rs. 100/- per ton on the mentioned Iron and Steel Material. The development fund, so to be generated, to be utilized for the development and rehabilitation of the Steel Industry. It was stipulated that the said Development Surcharge should be collected along with the revised price of Steel effective from June 05, 1978 and accounted for by the JPC. Accounts of such collection should be collected separately and the money so realised may be kept in a distinct bank account by the JPC. Monthly returns of the accounts due for collection, actual amount collected etc. would be submitted to the ministry till the latter was able to make an alternative administrative arrangement in this regard.
31. Referring to the 1978 Notification, the learned senior counsel submitted that, **Clauses 9A and 9B** were introduced under the heading functions as mentioned under the said 1971 Notification by way of an amendment. Clause 9A specified that the Committee might add an element to the Ex-works prices determined under sub clause 8 of the said 1971 Notification for constituting a fund for modernization, 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**. The JPC was however, empowered to add any other element of Ex-works prices determined to enable it to discharge its functions and to implement specific schemes entrusted to it by the Central Government, clearly denoted that the added element to the Ex-works prices as was proposed to be utilized for the modernization, research and development by the **Main Steel Plants** only and not for anybody else or any other purpose. He submitted that, any other purported provisions contrary to the said clause 9A with an attempted to

deprive the Main Steel Plants would be illegal, arbitrary and wrongful exercise of discretion.

32. By a letter dated September 06, 1979, **Annexure P-7** to the writ petition, by the under Secretary to the Government of India, Ministry of Steel Mines and Coals, the Iron and Steel Controller who was the Chairman of the JPC was intimated about the modes and modalities of the said SDF. Referring to the said letter dated September 06, 1979, the learned senior counsel for the writ petitioners submitted that, the development Surcharge collected by the Main Steel Plants were being regularly remitted by them into the SDF and the Central Government fixed certain modes and nodalities as to the regulations concerning the operation of the SDF. He submitted that, the finance from the SDF would be made available only for the schemes/projects/other capital outlays for the Main Steel Plants including for the necessary development of finance/outlays. It was submitted that, at all material time the purpose for creation of the SDF with the remittance made by the Main Steel Plants was solely for the use and to meet the utilities for the Main Steel Plants, which includes the first petitioner in the instant writ petition.
33. The Notification dated October 08, 1979, **Annexure P-8** to the writ petition, by which a further amendment was carried out in the said 1971 Notification, to the following effect:-

“In the said notification in clause 2, in sub-clause (a), under the heading ‘Functions’, for sub-clause (9A), the following sub-clause shall be substituted, namely:-

“9A(1) The Committee may add an element to the ex-works price determined under sub-clause (8) for constituting a Fund for-

- (i) financing schemes, projects and other capital expenditure for modernization, research and development, rehabilitation, diversification, renewals and replacements, balancing, additions to capacity, major new*

investments, or any other programmes for improving the quantum or technology or efficiency of production of iron and steel, or their quality;
 (ii) *for compensating the main steel producers for increases in costs of production over a base date and for elements of costs not covered or inadequately covered in the JPC prices in force on the said base date.*

(2) In the matter of operation of the Fund referred in Sub-clause (1), the Committee shall perform its functions in accordance with, and subject to, such regulations or directions, as may be issued by the Central Government from time to time.”

It was submitted that, the said 9A(1) clause was introduced for compensating the Main Steel Producers. He thus, contended that, all along the intention of the first respondent was to create the SDF for the purpose and requirement of the Main Steel Plants only.

34. Referring to the Notification dated January 16, 1992 whereby the said 1971 Notification was further amended, the learned senior counsel submitted that, under the said amendment the first respondent had consciously introduced provision that the committee may from time to time require the member Steel Plants to add the elements listed therein to their Ex-works Prices for the Iron and Steel and to remit the same to the Committee. Thus, the corpus of the SDF was created with the remittance made by member Steel Plants and/or the Main Steel Plants under the said amendment of the provision in clause 2 of the said 1971 Notification in sub-clause(a) under the heading **“Functions”**, the paragraphs 1 to 13 were substituted.
35. The learned senior counsel then referring to the Notification dated April 21, 1994, **Annexure P-10** to the writ petition, submitted that, the said 1971 Notification was again amended and paragraph 4 item (i) stood omitted. He submitted that, with such omission any further purpose for creation of the SDF had been omitted and the corpus thereof which was created through the remittance made by the Main Steel Plants belonged to them, remained for them only. The purpose of formation of the said SDF

became extinguished with the said Notification dated April 21, 1994, the first petitioner being one of the remitters thereof claims a legal right on the said remaining corpus. He submits that, after a due arithmetic calculation being carried out necessary credit be given to the account of the first petitioner.

36. The learned senior counsel further submitted that, setting up of the SDF was an Administrative Act without any statutory sanction and the funds collected thereunder were not a statutory collections and not owned by the ex-chequer, notwithstanding controlled steel items under the purview of the said Act of 1955 and under the said Control Order of 1956. These Acts and Orders permitted the Government to control the production, despatch and prices of controlled steel but did not give the government any ownership right over the remittance made by the Main Steel Plants to the corpus of the SDF. It is quite apparent from the very nature the creation of SDF, the manner of remittance to SDF and purpose of its utilization, it is a fund created ultimately for the utilization by the member steel producers only. In support, the learned senior counsel relied upon a judgment of the Hon'ble Superme Court ***In the matter of: Ispat Industries Ltd. & Anr. vs. Union of India & Ors., reported at (2000) 4 SCC 137.***
37. It was submitted that, the SDF represented an element of the price that belong to the first petitioner, remitter to the fund and the same was an exercisable component. The SDF fund was meant for the ultimate benefit of and for utilization by the members steel producers/ remitters only. In support, he relied upon a judgment of the Hon'ble Supreme Court ***In the matter of: Tata Iron and Steel Co. Ltd. vs. Collector or Central Excise, Jamshedpur, reported at (2002) 8 SCC 338.***
38. It was submitted that, the SDF was thus, to serve as a trust fund for contributors for the specific purposes for which it was created. With the introduction of the said 1994

Notification the purpose of the said SDF came to an end. The fund was created through the remittance made by the Main Steel Plants. Accordingly, with the extinction of the said purpose for which SDF was created, the left over balance corpus should be utilized for the benefit of the Main Steel Plants only either by returning the same by crediting the account of the main Steel Plants or by way of adjustment/waiver of loans as happened in case of SAIL.

39. Mr. Ratnanko Banerji learned senior counsel for the writ petitioner then referred to the said 1992 notification and submitted that, in the year 1992 price control over iron and steel was withdrawn. Referring to the said 1994 notification he submitted that, the remittance by main steel plants to SDF was also discontinued. Pursuant to the said abolition of price control over the iron and steel and discontinuation of the remittance by the main steel plants towards the corpus of SDF, the main steel plants became eligible to refund to the extent of the remittance made by it and for waiver of loans advanced to them out of the said SDF corpus. Petitioner from time to time made representations claiming such refund and waiver of loans advanced to it from the SDF corpus, all such representations were made part of the **Annexure- 15** to the writ petition.
40. After the steel price was controlled in 1992, SAIL which was also a remitter alike petitioner and also a main steel plant/producer was granted waiver of loan out of the said SDF corpus at the discretion of the Central Government to the extent of Rs. 5073 crores. Granting of such waiver of loan was also an admitted position. It was submitted that, both SAIL and the petitioner being remitters to the said SDF corpus and being the member steel plants were similarly circumstanced. He submitted that, no special privilege, in this regard, could be extended to SAIL just because the same is a public sector undertaking and a government company. He submitted that, the

remittance was made at the same rate by both the petitioner and SAIL at the relevant point of time to the said SDF corpus, therefore, such special treatment of waiver of loan and/or any assistance or advantage extended to SAIL out of the SDF corpus should have been extended to the petitioner in the same manner. The Central Government by extending such special privilege to SAIL and by not extending the same to a similarly placed entity i.e. the petitioner, acted in a manner which was unjust, arbitrary, unfair and in contravention of Article 14 of the Constitution of India. In support, the learned senior counsel relied upon the judgments of the Hon'ble Supreme Court, which are:

a. In the matter of: Union of India & Anr. vs. Tulsiram Patel, reported at (1985) 3 SCC 396.

b. In the matter of: Indra Sawhney vs. Union of India & Ors., reported at (2000) 1 SCC 168.

41. Learned senior counsel then referring to **Annexure P-19** to the writ petition submitted that, the SDF in its 44th meeting held on October 18, 2005 decided to transfer the corpus of SDF to the Public Account of Government of India. The petitioner immediately by its letter dated December 28, 2005 raised its objection. Immediately thereafter on January 05, 2006 the instant writ petition was filed. On February 13, 2006 an interim order was passed in the instant writ petition restraining the respondents from utilising any amount from contribution of the petitioner to SDF save and except for the purpose of utilisation of members steel plants.
42. He submitted that, on June 29, 2009 the JPC raised a claim for interest payable by the petitioner. On July 20, 2009 another interim order was passed in this writ petition, restraining the respondents from taking any step for realisation of such interest from the petitioner.

43. During the pendency of the said writ petition on February 12, 2007 **“Iron & Steel”** was deleted from the schedule of Essential Commodities under the said 1955 Act.
44. Learned senior counsel then submitted that, demanding the right on the corpus of the SDF and seeking benefit thereunder, a private steel plant, namely, **ISPAT Industries Ltd.** (for short, the IPAT) filed a writ petition before this court. The said writ petition was dismissed by a Coordinate Bench on technical ground. Being aggrieved thereby ISPAT preferred an appeal being **MAT No. 2986 of 1999 (ISPAT Industries Limited & Anr. vs. Union of India & Ors.)** The said appeal was decided by a division bench of this court by its judgment and order dated February 03, 2000 (for short, **the division bench judgment**). By the said division bench judgment the appeal was dismissed and ISPAT lost on all counts of its challenge. Being aggrieved, ISPAT preferred a special leave petition being **SLPs (C) Nos. 2930-31 of 2000**, the same was decided by the Hon’ble Supreme Court in its judgment dated March 31, 2000 which was reported at **(2004) SCC 137, ISPAT Industries (supra)**.
45. Learned senior counsel submitted that, division bench judgment had merged with the said judgment of the Hon’ble Supreme Court by virtue of **doctrine of merger**. The said division bench judgment ceased to exist and only the Supreme Court judgment is holding the field. In support, he relied upon a judgment of the Hon’ble Supreme Court ***In the matter of: Gojer Bros. (P) Ltd. vs. Ratan Lal Singh, reported at (1974) 2 SCC 453.***
46. Mr. Anindya Kumar Mitra, learned senior counsel, appearing for the respondent nos. 2, 3 and 10 submitted that, since June, 1978 a Development Surcharge at the rate of Rs. 100/- per metric ton was imposed by the first respondent on certain items of steel products without any statutory sanction for modernization and upgrading the Indian Steel Industry. The buyers of steel had paid such surcharge without any protest and

the main producers, as the first petitioner in the instant case, upon collection, remitted to SDF without any objection. This practice was followed till 1994. The question of statutory backing for Development Surcharge was not relevant in the facts of this case. SDF was to be managed by JPC. Under a Notification dated September 06, 1979 the Secretariat of the SDF was made the managing committee thereof. JPC was a mere custodian of the SDF money. The first petitioner was aware of the mode and manner of the operation of SDF. Notifications had been issued from time to time by the Ministry of Steel, Union of India, laying down the terms and conditions for the operation of SDF. JPC managed SDF according to the direction of the SDF managing committee. First petitioner being fully aware of the instructions of SDF managing committee never raised any objection to the management of SDF by JPC. It was, therefore, submitted that all along the first petitioner accepted and acted upon the creation and operation of the SDF and its utilization.

47. Mr. Mitra, the learned senior counsel then submitted that, the corpus of SDF was created by collecting the Development Surcharge from the buyers of steel and then after being so collected by the first petitioner, the same was remitted towards the corpus of SDF. The first petitioner, as such had acted merely as a collecting agent without and having any claim on any part of such remittance. It was never the money of the first petitioner. On the contrary it was the money of the buyers of the steel from whom it was collected by the first petitioner and in turn remitted to SDF. He submitted that, from the said corpus of SDF the main steel producers, inter alia, the first petitioner was granted loan under respective loan agreement under the terms and conditions mentioned therein. Such loan agreement is **Annexure P-12** to the writ petition, wherein the petitioner was defined as the borrower alike other commercial loan agreement. It was submitted that, had the corpus of SDF or any part thereof been

a property of the first petitioner, no loan could have been granted to it from such corpus and more significantly no interest could be charged upon and payable by the first petitioner. He submitted that, no entity can obtain loan from its own money, the same is contrary to the provision of law. The first petitioner and/or other main steel producers had utilized such loan obtained from the corpus of SDF for their infrastructural development at their respective steel plants, had the SDF corpus or any part thereof been the property of the main steel producers like the first petitioner, it could easily receive necessary fund assistance from such corpus and utilize the same for the purposes defined under the development scheme and the question of obtaining any loan there from would not have arisen.

48. Referring to the relevant scheme under which the said SDF was created, the learned senior counsel for the respondents submitted that, the principle criteria to obtain any assistance from the SDF fund by the main steel producers was dependent upon their respective need. It was a **need based** financial assistance. The first respondent was the exclusive authority to determine such need of the main steel producers on their respective applications and after due application of mind and after due consideration of the respective needs, the first respondent was the authority to release fund assistance from the SDF by way of loan. Here a discretion was reserved in favour of the first respondent as to decide the actual and correct need of the main steel producers while granting loan. Had the corpus of SDF been a property of the main steel producers, there would have been no question of reserving the right of the first respondent to consider the need of the respective main steel producers and then only grant loan to them and such discretion would not have been vested with the first respondent had SDF been a property of the main steel producers. The provision that interest was payable for delay in remittance of Surcharge was also accepted by the

first petitioner, while remitting the same to the SDF. The first petitioner always acted as such, by accepting such terms and conditions. This clearly established that the first petitioner never considered the said Development Surcharge collected from its customers as its own property and never considered the amount of surcharge remitted to SDF as its contribution to SDF, because nobody would be required to pay any interest on delay in remitting one's own fund.

49. Learned senior counsel then submitted that, the remittance made by the first petitioner or by SAIL as main steel producers to SDF were never out of their own pocket. Surcharges were collected from their respective buyers of steel and then added to ex-factory price. The amount so collected from the buyers as Development Surcharge was then remitted to SDF. Remittance were out of the several steel buyers, money and not of the first petitioner.
50. It was submitted that, the Development Surcharge was abolished w.e.f. April 21, 1994 under the said 1994 Notification. Thereafter no further remittance to SDF by way of Development Surcharge was made by the first petitioner or SAIL. Even thereafter, the amount lying with SDF was utilized for granting loans to the first petitioner and SAIL. It was submitted that, as on December 18, 2005 the principle amount of loan taken by the first petitioner from SDF was Rs. 1008.43/- crore and interest thereon accumulated to Rs. 1065.43/- crore aggregating to Rs. 2073.80/- crores. Mr. Mitra submitted that, upon adjustment nothing was due and payable to the first petitioner out of the said SDF corpus. The necessary reconciliation statement, he referred to being **Annexure N** to the affidavit-in-opposition, filed by Mr. Mitra's client. The amount repayable as and by way of loan by the first petitioner to the SDF is huge and left outstanding.

51. Referring to the notifications issued by the Union of India from time to time regarding the management and utilization of the SDF, Mr. Mita learned senior counsel submitted that, since establishment of the SDF the same was meant for the main steel producers and/or the member steel plants. Subsequently by virtue of the said 1992 notification the 1971 Notification stood amended and the corpus of SDF was year marked for the steel industries. Significantly the expression main steel producers/main steel plants was omitted. The respondent no.1 carried out this amendment in the 1971 Notification consciously for the development of the steel industries at large, by removing the restriction of utilization of the SDF only amongst the main steel producers. The first petitioner also accepted the said 1992 notifications and acted thereupon. The first petitioner, therefore, cannot contend anything or claim anything to the contrary. The right, if any, the first petitioner had on the SDF, the same stood extinguished with the introduction of the said 1992 Notifications.
52. Relying upon the decision of the Hon'ble Supreme Court ***In the matter of: Ispat Industries Ltd. (supra)***, he submitted that, the Hon'ble Supreme Court had described the main steel producers of steel as remitter and not contributory to SDF.
53. Mr. Mitra, learned senior counsel for the answering respondents then placed intense reliance on the judgment of the Division Bench and placed diverse portions therefrom. He submitted that, the division bench, on clear terms had held that the main steel plants were not owners of the SDF. It had categorically held, according to him, under 1971 Notification, as amended from time to time would reveal that the main steel plants were initially authorized to collect an additional amount to ex-works price of a particular item and that additional amount would be remitted to SDF. It was held that the main steel plants were mere collectors of fund and not contributory to the SDF. Only on the basis of collections of funds, the main steel plants could not become the

owner of the fund. After remittance to SDF, no main steel plant can claim specific amount as a matter of right, from SDF for any financial assistance. After collection of the amount by the main steel plants the amount had to be remitted to SDF. However, before 1992 the fund from SDF could be utilized for the main steel plants as per the objects stated in Clause 9A. But after amendment in 1992 Notification the words “Main Steel Plants” had been omitted. This conscious omission which was accepted by the first petitioner also made it evident that, the first petitioner should not or cannot claim any right over the said SDF or any part thereof. He then submitted that, after 1992 the corpus of the fund should be utilized for the objects referred to in sub clause (i) of clause 4 and also subject to the orders and direction issued by Central Government from time in this regard. Relying upon the Division Bench judgment Mr. Mitra submitted that, after 1992 the benefit of SDF could also be extended to steel industries in private sector.

54. Mr. Mitra learned senior counsel then referring to the judgment of the Hon’ble Supreme Court ***In the matter of: Ispat Industries (supra)*** submitted that, the said judgment was rendered by the Hon’ble Supreme Court in a special leave petition preferred by the writ petitioner appellant before the division bench of this court in which the division bench judgment was pronounced, namely, Ispat Industries Ltd. The first petitioner did not prefer any appeal or special leave petition from the said division bench judgment. The first petitioner, therefore, cannot contend anything to the contrary to what had been held by the division bench. The Hon’ble Supreme Court while receiving the said special leave petition preferred by the Ispat Industries, thought it fit not to exercise its power under Article 136 of the Constitution of India to grant leave to appeal from the said division bench judgment. This, according to Mr. Mitra the learned senior counsel, clearly signified that the Supreme Court did not

render any decision on merit on the said division bench judgment in the said special leave petition. He submitted that, the view taken by the division bench on the issue had been crystallized and is the governing law on the issue. He submitted that, while the Hon'ble Supreme Court thought it fit not to exercise its power and discretion under Article 136 of the Constitution of India to grant leave to appeal, the decision of the Supreme Court in such a situation is not binding and this court while deciding the issue in the instant writ petition must be abide by the said division bench judgment. As the Supreme Court did not assume the role of court of appeal from the said division bench judgment and did not interfere with or modify the judgment of the Division Bench, the same, became final and binding.

55. Referring to the said division bench judgment and relying thereupon intensely. Mr. Mitra submitted that, the question of any discrimination being adopted or any unequal treatment being granted to the first petitioner comparing to SAIL, did not and could not arise and as such is not tenable in law and facts of the instant case. He submitted that, the division bench had already decided the issue and declared the law that SAIL being a public sector undertaking and a wholly own government company always stands on a special status different from that of a private sector company. He submitted that, SAIL had to incur so much of industrial and social responsibilities including diverse severe financial burdens while acquiring other steel manufacturing plants namely ISSCO etc. SAIL at the relevant point of time was a severe loss making company whereas the first petitioner was a profit making company. On the application of SAIL after considering everything and upon due application of mind the first respondent, thought it fit, that of a need based fund was required to be provided to SAIL by way of financial assistance by granting loan an its waiver and such was not the case of the first petitioner. Again relying said division bench judgment the learned

senior counsel submitted that, the first petitioner and SAIL could be considered similarly circumstanced. He submitted, thus, the violation of Article 14 as against first petitioner or giving any different treatment to the first petitioner did not arise.

56. The learned senior counsel for the answering respondents further submitted that, it is also the settled proposition of law as decided by the Supreme Court on numerous occasions, that a public sector undertaking always stands on a different status rather than a private sector. There was no factual basis for alleging discriminatory treatment nor could the same be established by the writ petitioner.
57. Mr. Mitra submitted that, at best the first petitioner could claim a beneficial ownership on the SDF and not a legal ownership. Money being remitted to the common pool in the SDF had lost its identity of contribution and became a part of a common pool. Out of such common pool first petitioner could not and cannot maintain any claim for its own benefit. The first petitioner had no legal right on the said SDF or any portion thereof.
58. Mr. Mitra learned senior counsel then submitted that, even if, though not admitting the first petitioner had any right to claim, such right had accrued way back in 1992 and 1994. The said 1992 and 1994 Notifications were not challenged by the first petitioner. The present writ petition was filed in 2006, which was much after a reasonable period, which according to the settled proposition of law is three years from the date of accrual of ones right. He submitted that, though the law of limitation has no application in a writ proceeding but its equally true that one must apply under writ jurisdiction within a reasonable period and not after such an inordinate delay. The relief in a writ petition being equitable in nature, cannot be granted in such a delayed action. Inasmuch, as he submitted that, the nature of claim as it appears from the reliefs claimed in the writ petition are not sustainable in the writ jurisdiction.

59. The learned senior counsel then submitted that, since the leave was not granted under Article 136 of the Constitution of India by the Hon'ble Supreme Court, the Division Bench judgment still holds the field and the doctrine of merger would have no application in the facts of this case. As the Hon'ble Supreme Court did not assume the role of court of appeal on the said division bench judgment.
60. To sum up Mr. Mitra submitted that, it is a policy decision of the Central Government which at all material time was acted upon by the petitioner and there was no challenge to it. He submitted that, the writ petition is misconceived, frivolous, and devoid of any merit. The writ petition is, therefore, liable to be dismissed.
61. Learned counsel appearing for the Union of India had adopted the entire submissions made by Mr. Mitra on behalf of respondent nos. 2, 3, and 10. He further submitted that, the Union of India pursuant to its policy decision had created the said SDF by virtue of several notifications in exercise of the statutory power vested with it after the said 1994 notification no remittance was made by the first petitioner main steel producers towards the corpus of the SDF since after the said 1994 notification the entire corpus was classified by the Central Government for the utilisation of various development project of the steel industries at large and was not restricted to the main steel producers. The Union of India had legitimate discretion to transfer the said corpus of SDF to any of its fund and/or consolidated fund. He submitted that the writ petition is devoid of any merit and should be dismissed.
62. Mr. Ratnanko Banerji, learned senior counsel appearing for the writ petitioner in reply submitted that, the division bench judgment on which the entire argument of Mr. Mitra was advanced has lost its force and effect immediately after the said judgment of the Supreme Court was pronounced *In the matter of: Ispat Industries (supra)*. The fate of entitlement on the corpus of SDF has since been decided by the Hon'ble Supreme

Court in Ispat Industries (supra), the entire submissions made by Mr. Mitra, learned senior counsel was devoid of any merit.

63. The parties had filed the respective affidavits which were on record. The writ petitioners and the respondent nos. 2, 3 and 10 had filed their written notes on July 12, 2022.

Decision:-

64. After hearing the learned counsel appearing for the parties and on perusal of materials on record, it appears to this court that, there is a very little scope of adjudication by this court in the instant writ petition. The facts as discussed above are on records and not disputed.
65. This court in exercise of its high prerogative writ jurisdiction under Article 226 of the Constitution of India has very limited scope to enter into the disputes raised by and between the parties herein. In the facts of this case, this Court can consider and decide whether the first petitioner has any right on the corpus of the SDF and in the event such issue is decided in the affirmative, then only this Court can proceed to consider and decide whether the Central Government can utilise or transfer the corpus of the SDF in a manner as it wished to do. To consider and decide these issues the purpose for formation of the SDF, its scope, function and utilisation in view of the notifications issued by the Central Government from time to time since 1961 till 1994 are required to be considered in the light of the said Division Bench judgment and said Supreme Court Judgment ***In the matter of: Ispat Industries (supra).***

66. All other issues raised in the writ petition, as would be evident from the reliefs claimed therein, cannot be decided by this Court at this stage.
67. This court in exercise of its high prerogative writ jurisdiction under Article 226 of the Constitution of India has a very limited scope to enter into the disputes raised by and between the parties herein. This court can only decide upon the issue considering the purpose for constitution of the said SDF, its scope, its function and its utilisation in view of the notifications issued by the Central Government from time to time since 1961 till 1994 and also in the light of the said division bench judgment and its effect on the issue and the judgment of the Hon'ble Supreme Court ***In the matter of: Ispat Industries Limited (supra)***.
68. Before discussing anything any further and it is stated that the notifications issued by the Central Government since 1961 till 1994 and its effect upon the SDF had already been considered extensively in the division bench judgment and also in the said judgment of the Hon'ble Supreme Court *In the matter of: Ispat Industries Limited (supra)*. In both the said two judgments the purpose for formation of SDF, and its status thereafter till 1994 and its utilisation were considered and discussed in detail.
69. For a finer comprehension of the issues, the relevant observations made by both the division bench and the Hon'ble Supreme Court *In the matter of: Ispat Industries Limited (supra)* are essential to be reproduced herein.

70. The relevant observations from the judgment rendered by the **Division Bench**
In the matter of: Ispat Industries Limited & Anr. vs. Union of India &
Ors., MAT No. 2986 of 1999 are set-out below:

“ 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 be utilised 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.

.....
.....
 We do not find any force in the submission of Mr. Vaidyanathan that, by notification dated 16th January, 1992, the notification dated 7.4.1971 has been repealed. In fact amendment had 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 is 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.

.....
.....
 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.

.....
.....
 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 priced was continued. Therefore, it appears that after 1992 the restriction for financial assistance from the fund to the main steel 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(1) of clause(4) of the notification and subject to order or direction of the Central Government.

.....
.....
 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.

.....
.....
 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 representations should be considered as per the object specified in the notification, along with the other steel plants in private sector, similarly situated.

.....
.....
 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. 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 of 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 production the same item of iron or steel.

.....
.....
 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.

.....
.....
 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.

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 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.”

71. The relevant observations from the judgment of the **Hon’ble Supreme Court**

In the matter of: Ispat Industries (supra) are set-out below:

“3. 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 5-8-1999 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, the petitioners filed appeal before the Division Bench of the High Court which, as noted above, was dismissed by judgment dated 3-2-2000 by concluding:

“To sum up:

1. *The 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 accordingly stands disposed of.”

5. We may examine what the Steel Development Fund (SDF) is and how it is utilised.

6. The 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 the price at which any iron or steel may be sold. Under clause 17-B the Central Government would set up a committee, etc. The Central Government set up a Joint Committee (JPC) under clause 17-B by notification dated 7-4-1971. The 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
Tata Iron and Steel Company Limited, Indian Iron and Steel
Company Limited, Hindustan Steel Limited, Rourkela, Hindustan
Steel Limited, Bhilai and Hindustan Steel Limited, Durgapur

Members

7. The notification prescribed various functions of the Joint Plant Committee Para (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 measure 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 27-12-1978. Under the heading "Functions" paras (9-A) and (9-B) were inserted, which are as under:

"(9-A) The Committee may add an element to the ex-works price determined under para (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 direction as 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 para (8) to enable it to discharge its functions and to implement specific scheme entrusted to it by the Central Government."

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

"(No. SC-1(6)91-D-III)

(1) The Joint Plant Committee shall be responsible for carrying out generally the functions of coordinating 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 database 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 and 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.

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

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

In para (2) of the said notification, in sub-para (a):

(a) in para (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 para (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.

sd/-

S. Nautiyal, Junior Secretary.”

10. It will thus be seen that SDF has no statutory backing. SDF has been created by administrative orders. Contribution has been from SAIL and TISCO. The question is what does the petitioner have in SDF when it was not even born when the Fund was created and how the petitioner, a competitor, would have any right to claim the Fund. The 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. The 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 SDF has been created is clearly spelt first in para (9-A) of notification dated 27-12-1978 and then in para (4) of the notification dated 16-1-1992. There is no challenge to either of the two notifications. This petition was filed on 14-2-2000 and came up for admission on 28-2-2000. On 18-2-2000, the 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 crores and Rs 381 crores from the Government of India.*
- 2. Provision of government guarantees with 50% interest subsidy for loan and interest thereon of Rs 1500 crores 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 crores (including Rs 500 crores 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—

— 2 × 60 MW Captive Power Plant-II at Rourkela Steel Plant and Central Power Training Institute at Rourkela,

— 2 × 50 MW Captive Power Plant-II at Durgapur Steel Plant,

— MW (2 × 55 MW plus 12 MW back pressure turbine) Captive Power Plant-I, 3 × 260 MW Captive Power Plant-II and steam generating capacity of 660 MT/hour at Bokaro Steel Plant.

- (b) Oxygen Plant-II of Bhilai Steel Plant;
- (c) Salem Steel Plant (SSP), Salem;
- (d) Alloy Steel Plant (ASP), Durgapur;
- (e) Visveswaraya Iron and Steel Limited (VISL), Bhadravati;
- (f) Fertilizer plant at Rourkela.

5. Conversion of TISCO 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 crores 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)."

11. 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 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 16-1-1992 the Central Government withdrew the price restrictions under the Control Order and thereafter by notification dated 21-4-1994 contributions by the member steel producers towards 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 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 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 SDF in any manner.

12. 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 member 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 1990s 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 a wholly-owned subsidiary of SAIL. The proposal given by SAIL to the Central Government contained various components and measures including waiver of loans from SDF made over to member 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 member steel plants. This proposal of SAIL, it would appear, has since been accepted by the Central Government by its letter dated 18-2-2000 which we have reproduced above.

13. While there was price control under the Control Order during the period 1978-94 when the remittance to SDF was made by the 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 the 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 the 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 a severe financial position and has to suffer a loss of Rs 1574 crores in 1998-99. It has further to suffer the 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, the 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.

14. 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”.

72. In view of the observation made by the Hon’ble Supreme Court in the last paragraph **(paragraph 14)** of its judgment *In the matter of: Ispat Industries (supra)*, the submission made by Mr. Mitra, learned senior counsel, that the said judgment of the Supreme Court has no binding effect, needs to be considered and examined at the threshold, for proper understanding of the prevailing effect and/or binding effect of the said two judgments. It is true that while rendering the said judgment *In the matter of: Ispat Industries*, the Hon’ble Supreme Court refused to exercise its power under Article

136 of the Constitution of India to grant leave to appeal from the said division bench judgment and had dismissed the special leave petition. However, from a reading of the said judgment rendered by the Hon'ble Supreme Court *In the matter of: Ispat Industries (supra)*, it would be evident that elaborate discussions with reasons on the relevant issue was there. It further appeared that, the dismissal of the special leave petition was not a summary dismissal simpliciter by a non speaking order.

73. The Hon'ble Supreme Court ***In the matter of: Supreme Court Employees Welfare Association vs. Union of India & Anr., reported at (1989) 4 SCC 187*** had observed as under:

“22. It has been already noticed that the special leave petitions filed on behalf of Union of India against the said judgments of the Delhi High Court were summarily dismissed by this Court. It is now a well settled principle of law that when a special leave petition is summarily dismissed under Article 136 of the Constitution, by such dismissal this Court does not lay down any law, as envisaged by Article 141 of the Constitution, as contended by the learned Attorney-General. In *Indian Oil Corporation Ltd. v. State of Bihar* it has been held by this Court that the dismissal of a special leave petition in limine by a non-speaking order does not justify any inference that, by necessary implication the, contentions raised in the special leave petition on the merits of the case have been rejected by the Supreme Court. It has been further held that the effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where special leave petition should be granted. In *Union of India v. All India Services Pensioners' Association* this Court has given reasons for dismissing the special leave petition. When such reasons are given, the decision becomes one which attracts Article 141 of the Constitution which provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. It, therefore, follows that when no reason is given, but a special leave petition is dismissed simpliciter, it cannot be said that there has been a declaration of law by this Court under Article 141 of the Constitution.

23. It is true that by dismissal of a special leave petition in limine, this Court does not lay down any law under Article 141 of the Constitution, but the question is whether after the dismissal of the special leave petition the judgment against which the special leave petition was filed becomes final and conclusive so as to operate as *res judicata* between the parties thereto. In repelling the contention of the petitioners that the Delhi High Court judgments relating to the LDCs and class IV employees operate as *res judicata* between the parties, the learned Attorney-General has strongly relied upon the decision of this Court in *Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy*. In that case, this Court observed as follows (SCC pp. 616 and 618, paras 5 and 11)

“The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law...

“It is true that in determining the application of the rule of res judicata the court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, decided in the earlier proceeding by a competent court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But where the decision is on a question of law, i.e. the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression ‘the matter in issue’ in Section 11, Code of Civil Procedure means the right litigated between the parties, i.e. the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the court or a decision of the court sanctioning something which is illegal, by resort to the rule of res judicata, a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.”

74. The Hon’ble Supreme Court ***In the matter of: Kunhayammed & Ors. vs. State of Kerela & Anr., reported at (2000) 6 SCC 359*** had observed as under:

“27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under

Article 141 of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the Apex Court of the country. No court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. At it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.

30. In *Junior Telecom Officers Forum v. Union of India* [1993 Supp (4) SCC 693 : 1994 SCC (L&S) 366 : (1994) 26 ATC 367] also the view taken by a two-Judge Bench of this Court is that the dismissal of the SLP, though in limine, was “on merits” and the Court had declined to interfere with the impugned judgment of the High Court except to a limited extent as noticed therein whereafter the tribunal could not have reopened the matter. The order passed earlier by the Supreme Court is quoted in para 5 of the report. It clearly states that on SLP itself the Court heard counsel of both the sides. While dismissing the special leave petition on merits, this Court had to some extent interfere with the order of the High Court which was put in issue before the Supreme Court. It is clear that the Supreme Court had exercised appellate jurisdiction vested in it under Article 136 of the Constitution and heard both the sides though the leave was not formally granted and the special leave petition was not formally converted into an appeal. Hence this decision rests on the special facts of that case.

31. In *Supreme Court Employees' Welfare Assn. case* [(1989) 4 SCC 187 : 1989 SCC (L&S) 569] this Court held: (SCC Headnote)

“When Supreme Court gives reasons while dismissing a special leave petition under Article 136 the decision becomes one which attracts Article 141. But when no reason is given and the special leave petition is summarily dismissed, the Court does not lay down any law under Article 141. The effect of a non-speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that the Supreme Court had decided only that it was not a fit case where special leave petition should be granted.”

(emphasis supplied)

32. *It may be that in spite of having granted leave to appeal, the Court may dismiss the appeal on such grounds as may have provided foundation for refusing the grant at the earlier stage. But that will be a dismissal of appeal. The decision of this Court would result in superseding the decision under appeal attracting doctrine of merger. But if the same reasons had prevailed with this Court for refusing leave to appeal, the order would not have been an appellate order but only an order refusing to grant leave to appeal.*

44. *To sum up, our conclusions are:*

(i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.

(ii) The jurisdiction conferred by Article 136 of the Constitution is divisible into two stages. The first stage is upto the disposal of prayer for special leave to file an appeal. The second stage commences if and when the leave to appeal is granted and the special leave petition is converted into an appeal.

(iii) The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter.

(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the court, tribunal or

authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as res judicata in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC”.

75. The Hon’ble Supreme Court when dismisses a special leave petition summarily without any reason under Article 136 of the Constitution, by such dismissal no law is laid down in terms of Article 141 of the Constitution. A summary dismissal of a special leave petition under Article 136 of the Constitution of India by a non speaking order does not amount to any interference with the judgment impugned before it. Whereas if sufficient reasons are given by the Hon’ble Supreme Court while dismissing the special leave petition, such a decision becomes one a declaration of law and attracts Article 141 of the Constitution. Such declaration of law by the Supreme Court is always binding on all the courts within the territory of India, which automatically includes this court.
76. The statements in such a case, when the decision of the Supreme Court attracts Article 141 of the Constitution of India, other than on points of law would also be binding on the court or tribunal, whose order was under challenge on the principle of judicial discipline, the Supreme Court being the Apex Court of the country. No Court or Tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by the Supreme Court.

77. When a special leave petition is dismissed or leave under Article 136 was not granted by the Supreme Court with sufficient reasons, it attracts Article 141 of the Constitution of India as a declaration of law and in the light of those recorded reasons and discussions, the special leave petition was considered not fit for grant of leave. The declaration of law would be governed by Article 141 of the Constitution but still, the case not be one where leave was granted and **the doctrine of merger would not apply** and the contention of the petitioners that the division bench judgment had merged with the Supreme Court judgment is rejected.
78. In view of the above, the arguments made by Mr. Mitra, learned senior counsel appearing for the respondent nos. 2,3 and 10 is devoid of any merit that though the Supreme Court in the last paragraph (Paragraph 14) of its judgment *In the matter of: Ispat Industries (supra)*, clearly mentioned that the court had not exercised its power under Article 136 of the Constitution to grant leave for special leave to appeal, therefore, the said judgment had no binding effect. The reasons given by the Hon'ble Supreme Court ***In the matter of: Ispat Industries (supra)*** had attracted Article 141 of the constitution.
79. The ratio *In the matter of: TATA Iron & Steel Co. Ltd. (supra)* was on the issue whether the Development Surcharge collected by the first petitioner in addition to the base price of the material sold by it, would be considered as an excisable component or not. The dictum of the Hon'ble Supreme Court ***In the matter of: Ispat Industries Ltd. (supra)*** clearly laid down the character of the SDF and is the most relevant one to consider the issue in this writ petition.
80. In view of the foregoing discussions and reasons and following the dictum laid down by the Hon'ble Supreme Court ***In the matter of: Ispat Industries (supra)***, this court is of the considered opinion and of the firm view that, from the very nature of creation

of SDF, the manner of remittance to SDF and performance of its utilisation, the SDF was created ultimately for the utilisation by the member steel producers, which includes the first petitioner herein. The respondents cannot contend anything contrary thereto. The corpus of SDF was and continued to be and should be year marked for the main steel producers, which necessarily includes the first petitioner herein also.

81. The first petitioner along with other main steel producers has a clear right over and above the said SDF. The Central Government cannot utilise the said SDF corpus for any other purpose other than the purposes for which the same was created for the main steel producers, which essentially includes the first petitioner herein. The SDF corpus cannot and shall not be disturbed or disrupted and transferred to any other fund as was proposed by the Central Government including to the consolidated funds of Government of India or otherwise. Decision, if any, taken by the Central Government to transfer the said SDF corpus to any other account or to deal with it in any other mode or manner or to change its character in any manner other than for the purpose of its creation and utilisation since its inception and contrary to the dictum of the Hon'ble Supreme Court ***In the matter of: Ispat Industries (supra)***, stands set aside or quashed and/or cancelled.
82. From the purpose and nature of creation of the said SDF and following the dictum of the Hon'ble Supreme Court ***In the matter of: Ispat Industries (supra)***, it is already settled that, the SDF fund ultimately is for the utilisation by the member steel producers only, which, inter alia, include SAIL and the first petitioner.
83. The provision in the 1994 notification reserved an authority of the Central Government to give its orders and directions for the management and operation of the corpus of the SDF. In view of the reservation of such authority on the part of the Central Government in terms of the said 1994 Notification, the argument advanced by

Mr. Banerji , learned senior counsel for the petitioners on the issue of violation of Article 14 of the Constitution as against his client by treating SAIL as a privileged entity, would not stand in law, such contention of the writ petitioner, thus, stands rejected.

84. However, in the event the first petitioner will apply for receiving any assistance of whatsoever nature, from the corpus of the said SDF, the same shall be considered by the appropriate authority of the Central Government in the light of the dictum of the Hon'ble Supreme Court ***In the matter of: Ispat Industries (supra)***, upon giving an opportunity of hearing to the first petitioner in accordance with law and then to come to a reasonable conclusion with a reasoned decision thereupon as expeditiously as possible. The Central Government shall communicate the reasoned decision to the first petitioner immediately after the said reasoned decision to be taken.
85. On the above terms this writ petition **WP No. 70 of 2006** stands allowed.
86. Consequently, **IA NO: GA/3/2008 (Old No: GA/3490/2008)** and **IA NO: GA/4/2009 (Old No: GA/1840/2009)** also stand disposed of.
87. There shall, however, be no order as to costs.

(Aniruddha Roy, J.)