IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE ARJUN RAY MUKHERJEE

MAT 967 of 2023
with
CAN 1 of 2023
With
CAN 2 of 2026

Shyam Steel Industries Ltd.
vs.
Union of India & Ors.

With

MAT 1157 of 2023
With
CAN 1 of 2023

Gobind Beriwal
Vs
Union of India & Ors.

For the Appellant
(in MAT 967 of 2023) : Mr. Mukul Rohatgi, Sr.Adv.,
Mr. Soumyo Mazumdar, Sr.Adv.,
Mr. Mahesh Agarwal, Adv.,
Ms. Vaibhavi Pandey, Adv.,
Mr. Naman Chowdhury,
Ms. Sanskriti Agarwal

For the Appellant
(in MAT 1157 of 2023) : Mr. Ratnanko Banerjee, Sr. Adv.,
Mr. Aman Khemka

For the Respondent Nos. 2 & 3 : Ms. Madhavi Divan, Sr. Adv.,
Mr. Ajay Gaggar, Adv.
Mr. Uttiyo Mallick, Adv.
Mr. Sayan Banerjee, Adv.
Ms. Aishani Narain, Adv.

Judgment reserved on : **01.10.2026**

Judgment pronounced on : **06.10.2026**
Judgment uploaded on : **06.10.2026**

Shampa Sarkar, J.

1. These two appeals arise out of the same impugned order passed by the learned Single Judge in WPA 10107 of 2023. Hence the appeals were heard together.
2. The appeals arise out of an order dated May 18, 2023. The learned Single Judge refused to pass an interim order staying the investigation which was being carried on by the Director General, Competition Commission of India (CCI). The investigation commenced on the basis of an order passed by the Madras High Court.
3. Her Lordship was of the opinion that the Competition Act, 2002 (hereinafter referred to as the said Act), authorized the Commission to direct the Director General (DG) to cause an investigation, under Section 26(1) of the said Act, either on receipt of a reference from the Central Government or a State Government, or a Statutory Authority or on the basis of the knowledge of the Commissioner or on an information received under Section 19 of the Act. The Commission was empowered to enquire into any contravention of the provisions contained in sub section (1) of Section 3 or sub section (1) of Section 4 of the said Act.
4. It was held that, Section 41(1) of the said Act was a follow up action to Section 26(1), which conferred upon the DG, the power to investigate into any contravention of the said Act. Section 26(1) of the said Act required formation of a, prima facie, opinion of the Commission justifying an investigation by the DG, but in the present case, as the Madras High

Court by its order dated July 29, 2021 directed investigation by the DG while disposing of an application filed by Coimbatore Corporation Contractors Welfare Association (hereinafter referred to as the Welfare Association) alleging profiteering and hiking of steel prices by a syndicate of steel owners, formation of a, prima facie, opinion by the Commission was not necessary. In the order, the Madras High Court recorded the submissions of the special public prosecutor for the CBI on the anti-competitive activities of the steel companies, resulting in artificial increase of the price of steel. The High Court was of the view that, as the complaint had already reached the DG, the DG must proceed in accordance with law and take appropriate action on the basis of the complaint filed by the Welfare Association.

5. According to Her Lordship, the allegations made by the Welfare Association fell within the purview of Sections 3(1) and 4(1) of the said Act and as such, the allegations themselves formed the substratum of the inquiry under Section 19 and catalysed the procedure for inquiry under Section 26(1) of the Act. The Madras High Court's order subsumed the consequential steps to be taken by the Commission in forming a, prima facie, opinion prior to the DG proceeding with the investigation.

6. In spite of the direction of the High Court, had the Commission proceeded to form a, prima facie, opinion as to whether an investigation was necessary or not, both the DG and the Commission would be violating the order of the High Court.

7. The statutory authorities were bound to proceed as directed by the High Court. Her Lordship held that formation of opinion by the Commission under Section 26(1) did not involve any adjudicatory process. The

Commission was only to form an opinion and direct the investigation by the DG. In the absence of any adjudication by the Commission under Section 26(1) of the said Act, the failure to record, prima facie, opinion did not visit the writ petitioners/ appellants with any civil consequences. Under such circumstances, the investigation which was already initiated by the DG pursuant to the direction of the Madras High Court, should not be interfered with. The order of the Madras High Court had attained finality. An order of stay of the summons which had been issued in the course of investigation would be contrary to the very object of the said Act and in the violation of the order of the High Court. Expeditious disposal of such investigations was the very purpose behind the enactment of the statute. The statutory framework required timely completion of such investigations, for the protection of the consumers.

8. With regard to the balance of convenience and inconvenience, Her Lordship held that searches had already been conducted in the office of the appellants in December, 2022 and the writ petition was filed before this High Court on April 24, 2023. It was inconceivable that, the appellants were not aware of the steps taken in aid of the investigation until April, 2023. According to Her Lordship, the writ petition was filed at a belated stage, in order to block the investigation which had progressed. There was no explanation for the delay in approaching the court.

9. With the above reasons, the prayer for interim order was refused. It was held that the appellants had a duty to assist the process of investigation and permit the DG to comply with the direction of the Madras High Court.

10. Mr. Rohatgi and Mr. Banerji learned Senior Advocates have assailed the order on various grounds. First of such ground was that the Madras High

Court only directed the DG to act in accordance with law. The law did not empower the DG to embark upon an investigation without a direction from the Commission. Only when the Commission was of the opinion that there existed a, prima facie, case for investigation, the DG would get the authority to investigate. In the case in hand, the appellants were not aware of the Madras High Court's order. The appellants were not parties to the said proceeding. The appellant company was not one of the identified steel manufacturers against whom the Welfare Association had made any complaint. The investigation by the DG was without jurisdiction. Apart from Section 26(1) of the said Act, Section 41 also provided that the DG could investigate only when directed by the Commission.

11. Reliance was placed on the decision of ***Competition Commission of India Vs. Steel Authority of India Limited and Anr***. reported in ***(2010) 10 SCC 744,*** in support of the contention that the Hon'ble Apex Court had also held that the Commission was expected to satisfy itself and express its opinion that the records produced before it, prima facie, satisfied the requirement of an investigation by the DG. Failure of the Commission to record a, prima facie, opinion upon receiving the order of the High Court went to the very root of the investigation. Such omission vitiated the entire investigation against the appellants. To draw support for such contentions, reference was made to the decision of the Orissa High Court in the matter of ***WP(C) No. 24391 of 2025*** in ***Rungta Mines Ltd., Kolkata & Anr. vs. Union of India & Ors***. It was urged that, formation of an opinion was mandatory and a sine qua non for any investigation by the DG. The very foundation of the investigation was

illegal. Such illegality in the investigation was incurable and should be quashed irrespective of the fact that the investigation had proceeded further. It was urged that, when the law required a thing to be done in a particular way, it should be done in that way, or not at all.

12. According to Mr. Rohatgi, the decision of the Orissa High Court had a persuasive value and as such, the order impugned should be set aside. The investigation which was conducted on the basis of the direction of the Madras High Court, was without any authority of law and equally liable to be set aside.

13. Ms. Divan, learned senior advocate for the respondent submitted that the DG acted on the basis of the direction of the High Court. The order of the Madras High Court had attained finality and nobody challenged the same. A further formation of opinion under such circumstances was neither necessary nor relevant. An investigation contemplated under Section 26(1) and Section 41(1) was a proceeding in rem. The investigation by the DG commenced on August 23, 2021 and a report had been submitted on January 5, 2024 before the Commission. Thereafter, supplementary reports were also filed. Investigation was complete and the matter was pending before the CCI for further steps under Section 26 of the said Act. The refusal to pass an interim order was just and proper. The investigation had been completed. The challenge to the issuance of summons did not survive, inasmuch as, search warrants were issued by the jurisdictional court and search and seizure had already taken place. The writ petition and the appeal had become infructuous.

14. According to Ms. Divan, the proceedings under the Competition Act were time bound. Anti-competitive practices were to be curtailed within time, in

order to prevent damage or irreparable loss to the country's economy. The appellants would be supplied with a copy of the report and given an opportunity to disprove the charges. Referring to the decision of ***Agni Steels Private Limited & Anr. Vs. Union of India & Ors.*** reported in ***2023 SCC Online Mad 8612,*** Ms. Divan submitted that a similar challenge was thrown to the investigation by the DG, on the basis of the decision of the Madras High Court, and it was held that the decision of the Commission to register a suo motu case was indicative of a, prima facie, satisfaction. The DG was asked to investigate, upon deliberation by the Commission. The Commission's expression of satisfaction was available in the document. The Commission called a meeting, deliberated upon the issue and decided to register a suo motu case. Thus, the investigation against the appellants in suo motu case No. 2 of 2021 was not vitiated for non-compliance of Section 26(1) of the Act.

15. Ms. Divan, further submitted that an order under Section 26(1) operated in rem and not *in personam*. Reference was made to the decision of the Hon'ble Apex Court in ***Samir Agarwal Vs. Competition Commission of India and Ors.*** reported in ***(2021) 3 SCC 136***. Further, reliance was placed on ***Amazon Seller Services Private Limited Vs. CCI*** and ***Flipkart Internet Private Limited Vs. CCI*** reported in ***2021 SCC Online Kar 12626***. According to Ms. Divan, the investigation was to be made 'into the matter' and not 'into the affairs' of an individual party. That being the legal position, the decision in ***Agni Steels*** (supra) would govern the field and operate as a bar in raising a similar challenge with regard to the validity of the self-same investigation over and over again. The validity of the investigation could not be revisited, reinterpreted and divergent views

could not be invited from different High Courts. The Madras High Court directed the DG to proceed in accordance with law and take necessary and appropriate action on the basis of the complaint of the Welfare Association. Investigation into the matter as directed by the Madras High Court would involve, a deep probe into the affairs of the cartel of steel manufacturers. The direction of the Madras High Court should be treated as a common order by which the investigation was set in motion. It was a proceeding in rem.

16. Reference was made to the decision in ***R. Viswanathan & Ors. v. Rukn-ul-Mulk Syed Abdul Wajid*** reported in ***(1963) 3 SCR 22*** and ***Syed Askari Hadi Ali Augustine Imam and Anr. vs State (Delhi Admininstration),*** reported in ***(2009) 5 SCC 528*** in support of the contention that a decision in rem would settle the destiny of the rest of the persons claiming similar interest in a matter. Decisions in rem were binding on all Courts alike. A fresh challenge to the investigation initiated by the DG would defeat the purpose behind enactment of the statute and the statutory framework within which the investigation should be conducted. Reference to the order passed by the **Chief Metropolitan Magistrate, Patiala House, New Delhi** was made, in support of the contention that the DG was in possession of incriminating evidence against the appellants. Under such circumstances, search warrant was issued, and search and seizure was conducted.

17. It was further submitted that the order of the Orissa high Court had been challenged in an appeal and the appeal was being heard. According to Ms. Divan, the order under Section 26(1) was an administrative order and did not require either any adjudication or notice of hearing. It merely triggered

an investigation. The Commission had deliberated over the matter. Thus, the appellants did not suffer any injury even if a detailed, prima facie, opinion had not been recorded by the Commission.

18. Considered the rival contentions of the parties.

19. The prayers in the writ petitions are quoted below:-

> (a) A writ of or in the nature of Certiorari and/or order or orders and/or direction or directions of like nature do issue commanding the Respondents to certify and transmit the records relating to Suo Motu Case No. 02 of 2021 before this Hon'ble Court, and upon perusal thereof, to quash the same including setting aside the Impugned Summons dated 13 April 2023, so as to render conscionable justice;
> (b) A writ of or in the nature of Certiorari and/or order or orders and/or direction or directions of like nature do issue commanding the Respondents to certify and transmit the records relating to Suo Motu Case No. 02 of 2021 pending before the Respondent No.3 and upon perusal thereof, to quash all proceedings arising out of the same;
> (c) A writ of or in the nature of prohibition do issue prohibiting the Respondent and/or its officers and/or its men and/or its agents and/or its servants and/or its assignees from giving any effect or further effect or acting in terms of or in furtherance to the Impugned Summons and any other proceedings arising out of Suo Motu Case No. 02 of 2021 in any manner whatsoever;
> (d) Rule NISI in terms of prayers a) to c) above;
> (e) Rule NISI be made absolute, if no cause or insufficient cause is shown by the Respondents;
> (f) Injunction restraining the Respondents, and their officers from giving any effect or from in any manner acting in aid or pursuance of the Suo Motu Case No. 02 of 2021 including Impugned Summons dated 13 April 2023, in any manner whatsoever till the disposal of this application;
> (g) Injunction restraining the Respondents, and their officers from in any manner to carry out further proceedings arising out of Suo Motu Case No. 02 of 2021 before both Respondent Nos. 2 and 3, till the disposal of this application;
> (h) Ad interim orders in terms of prayers above;
> (i) Costs and costs incidental to this application be borne by the Respondents;
> (j) Such further and/or other order or orders be passed, direction or directions be given as Your Lorships may deem fit and proper."

20. Apart from a prayer to quash the suo motu case No. 2 of 2021, prayers were also made for setting aside the summons dated April 13, 2023 and

all further proceedings arising out of the suo motu case. The interim payers were for injunction upon the respondents from proceeding with the investigation of suo motu case No. 2 of 2021 and from taking steps on the basis of the summons dated April 13, 2023.

21. In our opinion, the learned Single Judge rightly held that, as the investigation was a one in rem, the DG was empowered by law to expand the scope of the investigation to ascertain whether the activities of the named steel manufacturer in the petition before the Madras High Court or all those members of the cartel, should be the subject matter of investigation. Secondly, the direction by the Madras High Court upon the DG to investigate on the basis of the complaint filed by the Welfare Association against the cartel of steel manufacturer was binding. Although, Her Lordship recorded that, the DG did not have any option, but to comply with the order of the High court and the Commission was not required to form a further opinion as to the existence of a, prima facie, case, we propose to supplement such finding of the learned Single Judge, by holding that the Commission had formed a, prima facie, opinion. The Commission called a meeting and had held a detailed deliberation upon receipt of the order of the Madras High Court. The DG was directed to investigate into the matter in terms of the directions contained in the order dated July 29, 2021 passed by the Hon'ble High Court of Judicature at Madras in CRL OP No. 6153 of 2021, after such deliberation by the Commission. An urgent special meeting of the Commission was convened virtually on August 17, 2021. The contents of the relevant document dated August 23, 2021 are set out here under:-

"No: 3(2)/2021-22-Sectt (S-06) Date- 23.08.2021

Subject: Alleged cartelization by Steel Manufacturers

Ref.: Letter dated 16.08.2021 of the Director General (DG) and the Order dated 29.07.2021 passed by the Hon'ble High Court of Judicature at Madras in Crl. O.P. No. 6153 of 2021 enclosed therewith.

With the permission of the Chairperson, an urgent Special meeting of the Commission (06(ii) of 2021-2022) was convened virtually on 17.08.2021 on the subject cited above.

A. The meeting was attended by:

1. Shri Ashok Kumar Gupta, Chairperson
2. Dr. Sangeeta Verma, Member
3. Shri Bhagwant Singh Bishnoi, Member
4. Shri Sugata Ghosh Dastidar, Secretary

B. The following Officers also participated in the meeting:

1. Shri Atul Verma, DG
2. Ms. Jyoti Jindgar, Adviser (Eco)
3. Dr. Bidyadhar Majhi, Adviser (Eco)
4. Shri Sukesh Mishra, Director (Law)
5. Dr. K.D. Singh, Director (Law)

The decisions of the Commission subsequent to detailed deliberations are as under.

(i) The Secretariat Division is directed to register and number the captioned matter as suo moto case and convey the same to DG/ATD

(Action: Secretariat Division)

(ii) The DG to investigate the matter in terms of the directions contained in the Order dated 29.07.2021 passed by the Hon'ble High Court of Judicature at Madras in Crl.O.P. No. 6153 of 2021.

(Action: Director General)

(Sugata Ghosh Dastidar)
Secretary"

22. We find that, the DG communicated the direction of the Madras High Court to the Commissioner. He did not proceed straight away. Upon receipt of the letter of the DG and the order of the Madras High Court, a

meeting of the Commission was held virtually and upon detailed deliberation, the DG was directed to investigate. The expression 'detailed deliberation' which was used by the Commission, itself indicates that an opinion was formed, before registration of a suo motu case. This in our, prima facie, view amounts to substantial compliance of Section 26(1) of the said Act. Relevant paragraphs of ***Agni Steels*** **(supra)** are quoted below:-

> "**4.** Thereafter, on 17.08.2021, an urgent special meeting of the Commission was convened virtually. The meeting was attended by the Chairperson, two Members and Secretary of the Commission. Besides five officers, including Director General, two Advisors (Eco) and two Directors (Law) also attended the meeting. After deliberation, the following decisions were taken and the minutes reflected in the communication, dated 23.08.2021 as such is reproduced hereunder:
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> "The decisions of the Commission subsequent to detailed deliberations, are as under:
>
> (i)The Secretariat Division is directed to register and number the captioned matter as Suo Moto case and convey the same DG/ATD (Action : Secretariat Division)
>
> (ii)The DG to investigate the matter in terms of directions contained in the Order dated 29/07/2021 passed by the Hon'ble High Court of Judicature at Madras in Crl.O.P. No. 6153 of 2021. (Action : Director General)"
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> **5.** The Director General commenced investigation and on 29.11.2022, an application for search and seizure was moved before the learned Chief Metropolitan Magistrate, New Delhi, which was allowed. Pursuant to the warrant, search was conducted in the premises of the writ petitioner on 16.12.2022 and 17.12.2022. On 17.12.2022, the Executive Director of the petitioner Company e-mailed to the respondent authorities seeking marker status for filing a leniency application. It is contended on behalf of the petitioners that the Executive Director was co-erced to write such a communication.
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> **19.** We have considered the rival submissions made on either side and perused the material records of the case. The following questions arise for determination in the instant cases:
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> **(i)** Whether or not the investigation against the writ petitioner in Suo Moto Case No. 2 of 2021 is vitiated for noncompliance of Section 26(1) of the Act?

(ii) Whether or not the presence of Director General and other officials would render the meeting of Commission, dated 17.08.2022 illegal?

(iii) Whether or not the investigation is liable to be interfered on the ground that the petitioner Company has been cherry picked?

Question (i):

20. In order to answer this question, Section 26 of the Act is extracted for ready reference:

"26. Procedure for inquiry on complaints under section 19.—

(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:

Provided that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be…."

Thus, it mandates that the Commission shall form a prima facie opinion before directing investigation. A reading of the judgment of the Hon'ble Supreme Court of India in *Competition Commission of India* v. *Steel Authority of India's case* (cited supra) and *Excel Crop Care's case* cited supra, it would be clear that (i) the Director General can investigate only after the direction of the Commission; (ii) the Commission has to form an opinion about the existence of prima facie case before directing investigation; (iii) that the Commission need not issue notice or hear the parties but express its mind that a prima facie case exists with reference to the information furnished to the commission.

21. …….. Thus, it can be seen that the Commission can order inquiry (i) on its own motion; (ii) on receipt of information from any person; or central government or a state government or a statutory authority. In the instant case, even though this Court by the Order in Crl.O.P. No. 6153 of 2021, had directed to proceed further and take necessary and appropriate action on the complaint, dated 06.02.2021, it can be seen from the minutes of the meeting of the commission held on 17.08.2021, which is extracted above that the Commission ultimately decided to register a 'suo moto' case and not on the reference or information received from the person. The inquiry under the act is held to be neither civil nor criminal but

> sui generis and is inquisitorial in nature. In that view of the matter, the course adopted by the Commission to have the said information received from the association in the back drop and to register a suo moto case cannot be termed as illegal. When the commission in its meeting deliberates and decides to register a 'suo moto' case, the formation of the opinion as to prima facie case is very much pregnant in the said decision. As a matter of fact, a perusal of Section 26(2) of the Act would make this clear that it clearly states only in case of receipt of information from the Central Government or State Government or Statutory Authority or other information received, it can close the complaint and the very act of initiating a suo moto complaint and closing it on the ground of no prima facie case cannot go together. Thus, (i) the satisfaction of prima facie case is impregnant and very much there in the very decision to institute a suo moto case; (ii) the same is adequately expressed by the reference of detailed deliberation, decision to register and also the order of this Court. In the peculiar facts and circumstances of this case, where this Court directed to 'proceed further and take necessary and appropriate action', we find that the Commission's expression of its satisfaction in other words and not expressly using 'that it finds a prima facie case' as appropriate in the context. Therefore, we answer the question that the direction to investigate and the subsequent investigation in the instant case are not in violation of Section 26(1) of the Act."

23. We do not see any reason to differ with such view at the interim stage. We find from the order of the Madras High Court that, the allegations against the steel companies by the Welfare Association had been recorded in detail. Paragraphs 2 to 4 of the said order are quoted below:-

> **"2.** The learned counsel for the petitioner submitted that the petitioner association was registered as Registration No.81 of 2012 under the Societies Registration Act. The petitioner's Association members are engaged in executing several Government contracts viz., Road works, Construction works etc. in various departments viz., Public Works Department, Highways Departments viz., Major Corporations, Water Board etc. The petitioner's association contractors are executing all kind of works in Southern Region of India especially in Tamil Nadu and other States and Union Territories. More than 500 contractors and nearly 100 thousand of employees are surviving in the above field by executing Government project works. Nearly Rs.1 Lakh crors of worth of Government project and Rs.90 crores of Private projects were executed by the petitioner's association members. While so, the steel manufacturers, forming a syndicate for profiteering, resulting in 55% hike in steel prices, the Steel owners during the past six months, making project unviable. Further, the steel companies have hiked price by Rs.2500/- to

Rs.2700/- per tonne of both flat and long products for December on the back of rising iron ore prices and strong demand for steel. With the recent hike, the hot rolled coil price Ex-Mumbai have hit a record high of Rs.47000/- a tonne, in line with the firm price trend in the international market.

3.It has been further submitted that most of the steel companies own iron ores and despite no increase in labour and power charges, they have increased the steel prices. The Steel companies namely, 1. Tata Steel Ltd., 2. JSW Steel, 3. Sail Steel, 4. Vizag Steel, 5. Tirumala TMT, 6. Kamachi TMT, 7. Agni Steel, 8. Indrola Steel, 9. Kiscol TMT, are involved in criminal acts for illegal gain to fix the steel price in the market and these companies manipulate in such a way as to cheat not only the Government but also for illegal profit.

4. The learned Special Public Prosecutor for CBI would submit that It is also alleged that the aforesaid steel companies had indulged in various anti-competitive activities and have collectively sought to control the supply of steel with the intention to control the supply of steel. In order to create artificial scarcity, the steel manufacturers through their concerted actions, had resorted to the practice of restricting the supply of steel to builders and consumers causing artificial increases in the price of steel. In this regard, the petitioner association has forwarded the complaints against the aforesaid steel manufacturers to the respondents 1 and 2. However, in this case though there are incriminating materials available to register the case, the respondents has not taken any action to register the case on the complaint given by the petitioner association. Hence, the petitioner association has filed this Criminal Original petitioner for appropriate direction to the respondent police."

24. The fact that the High Court had recorded such allegations which formed the subject matter of the application under Section 482 of the Code of Criminal Procedure, indicates that the court had applied its mind to the facts and circumstances leading to the filing of the application. The order also recorded that, when the matter came up before the learned Judge, the special public prosecutor for CBI had sought for an accommodation to obtain instructions. The matter was posted on June 4, 2021. On June 4, 2021, the special public prosecutor produced a letter dated June 25, 2021, wherein it was stated that the complaint of the Welfare Association had been forwarded to the Director General, Competition Commission of

India for necessary action, as the CBI did not have any jurisdiction to take up the matter. As the complaint of the Association had been forwarded to the DG for necessary action, the proceeding was disposed of with the direction upon the DG to proceed further in this regard and take necessary and appropriate action on the complaint dated March 6, 2021, filed by the Welfare Association. Such direction would not have been passed by a Court had the court not been satisfied that the materials existed for a direction upon the DG to investigate. Even though the appellants might not have been in the list of steel manufacturers against whom allegations had been made, the investigation under Section 26(1) of the said Act is one in rem, undertaken to safeguard competition in the market and to protect public interest. The investigation was not confined to only the named manufacturers. The purpose of the investigation was to focus on anti-competitive conduct and its impact on the market.

25. Under such circumstances, we cannot hold that Her Lordship had erred in not passing an interim order by staying the investigation. Whether the suo motu case should be set aside, is not to be decided at this stage and it is left open for the learned writ court to decide the same. In our view, as the investigation is complete and report has been filed, the balance of convenience lies in not staying any further proceeding. The challenge to the issuance of summons has now become infructuous as the investigation is complete. The decision in ***Competition Commission of India*** (supra) was rendered under different facts and circumstances and it was held that, there was no statutory obligation on the part of the Commission to issue notice for grant of hearing to the parties at the stage

of forming an opinion under Section 26(1) of the Act, unless, upon due application of mind, the Commission would find it necessary to invite parties or experts to render assistance and produce documents before the Commission at that stage. The paragraph relied upon by Mr. Rohatgi, learned Senior advocate in the said decision is only a narration of the legal principles. In fact, the issues decided were the interplay between Sections 33, 26(1), 19(1) and 64 of the said Act.

26. We find that the Hon'ble Apex Court took into consideration the objectives behind the promulgation of the law and held that the main objective was to promote economic efficiency by using competition as one of the means of assisting the creation of a market that was responsive to consumer preferences. The Hon'ble Apex court recorded that the advantages of perfect competition were threefold, namely, allocative efficiency, productive efficiency and dynamic efficiency. The establishment of the Commission and the enactment of the law in India, according to the Hon'ble Apex Court were aimed at preventing practices having adverse effect on competition. The objective was to protect the consumer and to ensure that fair trade was being carried on by other participants in the market. The Act and the Regulations framed thereunder required expeditious disposal of matters and the same were time bound. The learned Single Judge being conscious of such situation, denied the interim reliefs.

27. In paragraph 38 of the said decision, the Hon'ble Apex Court noted that, the direction under Section 26, after formation of a, prima facie, opinion was a simple direction to cause an investigation. It was an administrative direction to one of its own wings. It was not akin to an adjudicatory

process and as such, the decision of the Commission under Section 26(1) did not visit anybody with civil consequences. In Paragraph 93, the Hon'ble Apex Court held that, the functions performed under Section 26(1) of the Act was a preparatory measure in contrast to a decision making process. The relevant paragraphs of the ***Competition Commission of India (supra)*** are quoted below:-

> **"38.** In contradistinction, the direction under Section 26(1) after formation of a prima facie opinion is a direction simpliciter to cause an investigation into the matter. Issuance of such a direction, at the face of it, is an administrative direction to one of its own wings departmentally and is without entering upon any adjudicatory process. It does not effectively determine any right or obligation of the parties to the lis. Closure of the case causes determination of rights and affects a party i.e. the informant; resultantly, the said party has a right to appeal against such closure of case under Section 26(2) of the Act. On the other hand, mere direction for investigation to one of the wings of the Commission is akin to a departmental proceeding which does not entail civil consequences for any person, particularly, in light of the strict confidentiality that is expected to be maintained by the Commission in terms of Section 57 of the Act and Regulation 35 of the Regulations.
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> **39.** Wherever, in the course of the proceedings before the Commission, the Commission passes a direction or interim order which is at the preliminary stage and of preparatory nature without recording findings which will bind the parties and where such order will only pave the way for final decision, it would not make that direction as an order or decision which affects the rights of the parties and therefore, is not appealable.
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> **93.** We may also usefully note that the functions performed by the Commission under Section 26(1) of the Act are in the nature of preparatory measures in contrast to the decision-making process. That is the precise reason that the legislature has used the word "direction" to be issued to the Director General for investigation in that provision and not that the Commission shall take a decision or pass an order directing inquiry into the allegations made in the reference to the Commission."

28. Reliance was placed on paragraphs 40, 46, 48, 62 and 64 of the decision of the Orissa High Court in ***Rungta Mines Ltd., Kolkata & Anr. (supra).*** The same are quoted below:-

> **"40.** The record indicates that the Commission, in its minutes dated 23.8.2021, appears to have treated the High Court's order as the basis for directing investigation, without undertaking any independent evaluation. Such an approach reflects a misappreciation of the scope of the judicial direction.
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> **46.** The next issue that falls for consideration goes to the root of the controversy, namely, whether the investigation undertaken by the Director General suffers from a jurisdictional infirmity on account of the absence of a prior order under Section 26(1) of the Competition Act, 2002. The Petitioners contend that such an order is a sine qua non for the initiation of investigation and that its absence renders the entire proceedings qua them, void ab initio. The Opposite Parties, however, seek to sustain the investigation by contending that the decision to proceed itself reflects the formation of a prima facie opinion. The issue, therefore, calls for an examination of the statutory framework, the law laid down by the Hon'ble Supreme Court, and its application to the facts at hand.
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> **48.** The legal position stands settled by the Hon'ble Supreme Court in Competition Commission of India v. Steel Authority of India Limited2. The Hon'ble Apex Court, while interpreting Section 26(1), held that the Commission must form an opinion as to the existence of a prima facie case and must indicate such opinion, even if briefly. It was also clarified that the Director General cannot initiate investigation suo motu and is required to act pursuant to a direction issued under Section 26(1).
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> **62.** This Court is also mindful of the submission that an order under Section 26(1) is administrative in nature. While that proposition is correct, it does not obviate the requirement of compliance with the statutory precondition. The administrative character of the order does not dispense with the necessity of forming the opinion mandated by the statute.
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> **64.** Such investigation, in the absence of jurisdictional foundation, cannot be sustained in law. Accordingly, this Court holds that the investigation initiated against the Petitioner is vitiated for want of a prior order under Section 26(1) of the Competition Act, 2002."

29. We respectfully disagree with the finding of the learned Judge in ***Rungta Mines Ltd. and Anr. vs UOI and Ors.*** decided in ***W.P (c) No. 24391 of 2025,*** for the reasons, discussed in the foregoing paragraphs.

30. Under such circumstances, we are of the, prima facie, view that when the issue was discussed and deliberated and direction to the DG to investigate was passed after the Registry started a suo motu case, such action amounted to sufficient compliance of the law. Section 26(1) does not contemplate recording of a reasoned order by the Commission.

31. We are not inclined to pass any interim order at this stage, for the reasons and grounds stated hereinabove. We have supplied our own reasons. The writ court will decide the matter, independently and without being influenced by our order.

32. Accordingly, the appeals and connected applications are dismissed.

I Agree.

(Arjun Ray Mukherjee, J.) **(Shampa Sarkar, J.)**