

(1980) 07 BOM CK 0015
In the Bombay High Court
Case No : Sp. C.A. 908/977

Maharashtra State Electricity Board

APPELLANT

Vs

M.C. Chitale and others

RESPONDENT

Date of Decision : 14-07-1980

Acts Referred:

Bonus Act, 1965 — Section 10(1), 2(11), 2(16), 32
Companies Act, 1956 — Section 617
Electricity (Supply) Act, 1948 — Section 1, 12, 26, 5, 57
Industrial Disputes Act, 1947 — Section 12(5), 2
Merchant Shipping Act, 1958 — Section 3
State Financial Corporations Act, 1951 — Section 3A

Citation : (1980) 41 FLR 199 : (1981) 1 LLJ 462

Hon'ble Judges : V.S. Deshpande, J; V.A. Mohta, J

Bench : Division Bench

Judgement

Mohta, J.—Point of some importance regarding the applicability of the Payment of Bonus Act, 1965, ("Bonus Act" for short) to the Maharashtra State Electricity Board, is involved in the present petition.

2. To discuss the core question, it will be necessary to notice some basic facts and so also the background, which is as under :

3. Two trade unions, viz., Maharashtra Veej Mandal Nogar Sangh and the Maharashtra Veej Mandal Kamgar Sangh demanded bonus for the years 1965-66 to 1969-70 at 20% of the annual earnings in terms of the Bonus Act and this led to a reference under S. 10(1)(d) read with S. 12(5) of the Industrial Disputes Act, 1947, by the State Government for adjudication to the Industrial Tribunal. The Petitioner-Board took the stand that the Bonus Act does not apply to it in view of the exemption granted under S. 32 of the Bonus Act. On quantum of the claim, the stand was that there was no "available surplus" and nothing beyond the minimum prescribed could be given. After ransacking oral as well as documentary evidence and the records of the petitioner, contention about absence of available surplus was accepted by the tribunal, after rejecting the

preliminary objection with regard to the applicability of the exemption clause. It seems that the minimum bonus was already paid by the petitioner. There has been no challenge to the quantum part of the award. Thus what survives is the preliminary point raised.

4. As the question depends upon the exemption clause, it will be necessary to quote the same in verbatim :

"32. Nothing in this Act shall apply to -

(i) Employees employed by any insurer carrying on general insurance business and the employees employed by the Life Insurance Corporation of India;

(ii) Seamen as defined in cl. 42 of S. 3 of the Merchant Shipping Act, 1958,

(iii) Employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948, and employed by registered or listed employers;

(iv) Employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority;

(v) Employees employed by -

(a) the Indian Red Cross Society or any other institution of a like nature (including its branches);

(b) universities and other educational institutions;

(c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;

(vi) Employees employed through contractors on building operations.

(vii) Employees -

(a) who have entered before the 29th May, 1965 into any agreement or settlement with their employers for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits;

or

(b) who have entered or may enter after that date into any agreement or settlement with their employers for payment of such annual bonus in lieu of the bonus payable under this Act, for the period for which such agreement or settlement is in operation;

(viii) Employees employed by the Reserve Bank of India;

(ix) Employees employed by -

(a) the Industrial Finance Corporation of India;

(b) any Financial Corporation established under S. 3 or any Joint Financial Corporation established under S. 3A of the State Financial Corporations Act, 1951;

(c) the Deposit Insurance Corporation;

(d) the Agricultural Refinance Corporation;

(e) the Unit Trust of India;

(f) the Industrial Development Bank of India;

(g) any other financial institution being an establishment in public sector, which the Central Government may, by notification in the Official Gazette, specify, having regard to -

(i) its capital structure;

(ii) its objectives and the nature of its activities;

(iii) the nature and extent of financial assistance or any concession given to it by the Government; and

(iv) any other relevant factor;

(x) Employees employed by any establishment in public sector, save as otherwise provided under this Act.

(xi) Employees employed by inland water transport establishments operating on routes passing through any other country."

5. It may be noticed that cl. (x) and few more clauses have been omitted with effect from 25th September, 1975, by Act No. 23 of 1976. As the period covered by the demand is prior to amendment, it will be necessary to read the provision as it then stood.

6. The petitioner has based preliminary point on three clauses of S. 32, viz., (iv), (v) (c) and (x). It will also be necessary to notice the definitions of certain relevant terms used in exemption clause. We are chiefly concerned with the terms "corporation" and "establishment in public sector" respectively defined by sub-ss. (11) and (16) of S. 2 of the Bonus Act. That the petitioner is a corporation in terms of sub-s. (11) of S. 2 is undisputed position before us. But whether the petitioner is "establishment in public sector" is a point about which serious dispute has been raised. Sub-sections (11) and (16) of S. 2 read as under :

"(11) "Corporation" means any body corporate established by or under any Central, Provincial or State Act but does not include a company or a co-operative society;"

"(16) "establishment in public sector" means an establishment owned, controlled or managed by -

- (a) a Government company as defined in S. 617 of the Companies Act, 1956;
- (b) a corporation in which not less than forty per cent of its capital is held (whether singly or taken together by -
 - (i) the Government; or
 - (ii) the Reserve Bank of India; or
 - (iii) a corporation owned by the Government or the Reserve Bank of India;"

7. In order to trace the percentage and pattern of the petitioner Board, it will be necessary to refer to the provisions of the Electricity (Supply) Act, 1948 ("the Supply Act" for short). Section 5 of the Supply Act deals with the subject of constitution and composition of the State Electricity Board. Section 12 provides that the Board as constituted under S. 5 will have a perpetual succession and the common seal with power to acquire and hold property and be sued in its own name. Thus, it is clear that such Board becomes a juridical person capable of holding property, having independent name and existence with power to sue and be sued in its own name. It appears not only from preamble of the Act but also from the Statement of Object and Reason given in the bill that the Supply Act was brought on Statute book with the object of rationalisation of production and supply of electricity, for taking measures conducive to electrical development and all matters incidental thereto. Before the Supply Act was brought on the Statute book, one enactment known as the Indian Electricity Act, 1910. ("the Electricity Act" for short) was holding the field. But it was thought that there was legal hurdle in creating a trading Corporation for achieving the objectives referred to above, as a result, it was necessary to bring about another piece of legislation. We may quote at this very stage the following passage from the Statement of object and reason given in the bill :

"(ii) the necessity for the constitution of semi-autonomous bodies like Electricity Boards to administer the "Grid System". In the view of Government it is bodies like these which are likely to be the most suitable organization for working the "Grid System", on quasi commercial lines. Such Boards cannot however, be set up by Provincial Governments under the existing Constitutional Acts as they would be in the nature of trading corporation within the meaning of Entry 33 of the Federal Legislative List."

8. Having noticed that the Board is a legal entity, it will be necessary also to notice its structure. In terms of S. 26 of the Supply Act, the Board assumes all powers and obligations of a licensee under the Electricity Act. Duties and obligations of a licensee have been specified in various Schedules of the Electricity Act. Section 57 of the Supply Act provides for application of the provisions of Sixth Schedule and Seventh Schedule to a licensee like the Board. These Schedules deal with the financial principles and their application. They provide that the clear profit in any accounting year shall not as far as possible exceed the amount of reasonable return. The clear profit, if it is in excess of the

amount of reasonable return, is to be utilised in a particular manner. One-third of such excess not exceeding 5 per cent of the amount of reasonable return is supposed to remain at the disposal of the undertaking. Of the balance of the excess, one-half is appropriated to a reserve which is called "the tariffs and dividends control reserve", and the remaining one-half is to be distributed either in the form of a proportionate rebate on amounts collected from the sale of electricity and meter rentals or carried-forward in the accounts of the licensee for distribution to the consumers in future in such manner as the State Government may direct. Section 59 deals with the General principles for Board's finance. In terms of that section the Board shall not, as far as practicable and after taking credit for any subventions from the State Government carry on its operation under the Act at a loss and shall adjust its charges accordingly from time to time. Section 63 authorises the State Government, with the approval of the State Legislature from time to time, to make subventions to the Board for the purposes of the Act on terms and conditions to be fixed by the State Government. Under S. 64 the State Government is authorised to advance loans to the Board on such terms and conditions not inconsistent with the provisions of the Act. Section 65 permits the Board to borrow any sum required for the purpose of the Act with the previous sanction of the State Government and subject to the provisions of the Act. The discussion about the structure of the Board will be incomplete without reference to S. 60. It provides that all debts and obligations incurred, all contracts entered into and things done with or for the State Government before the constitution of the Board shall be deemed to have been incurred, entered into or engaged to be done, with or for the Board and all suits or other legal proceedings instituted or which might but for the issue of Notification under sub-s. (4) of S. 1 of the Supply Act have been instituted by or against the State Government, may be continued or instituted by or against the Board. All schemes sanctioned by the State Government, and transferred to the Board shall be deemed to have been sanctioned by the Board. It appears that prior to the constitution of the State Electricity Board, the State Government was running what is known as the electric grid. Undisputed position is that after the constitution of the Board, the State Government transferred all properties, including plants, and machinery to it and treated the value thereof as loans. After the Board came into existence, bonds and debentures were also issued by it. Balance-sheets show the amount received from the State Government as borrowings. Irrespective of the profit or loss, the Board has been paying interest on the amount actually received and/or the values of the property converted into loan. Another admitted position is that the State Government does not have any share in the capital of the Board. Indeed there is no provision in any of the relevant enactments for raising share capital.

9. It is in these factual and legal settings that the various points urged will have to be examined. We will take up, firstly, the contention based upon S. 32(iv) of the Bonus Act. The argument is that in view of the tremendous control and power that the State Government wields over the Board and the huge amount

advanced by the State Government, it is an establishment engaged in industry carried on by or under authority of the department of the State Government. We are not at all impressed by this submission. Now, there is no doubt that the State Government has many plenary powers over the Board and exercises considerable control over its working and constitution. However large the powers of the State Government may be, the determining factor will be whether the Board has independent legal existence or not and whether the State Government is running the industry as its own department. There is no manner of doubt that it is the State which gives birth to this Corporation, but as soon as it comes out of the womb, it becomes an independent entity. By no stretch of imagination it can be said to be an agent of the State. In fact the State found it difficult to run the industry departmentally and that is why the Board was constituted and property of the department was transferred to it, in the form of loan and the responsibility of carrying on the work was diverted. In this connection, we can do no better than to quote the following observations of the Supreme Court in the case of Heavy Engineering Mazdoor Union Vs. State of Bihar and Others,

"In the absence of a statutory provision, however, a commercial corporation acting on its own behalf, even though it is controlled wholly or partially by a Government department, will be ordinarily presumed not to be a servant or agent of the State. The fact that a minister appoints the members or directors of a corporation and he is entitled to call for information, to give directions, which are binding on the directors and to supervise over the conduct of the business of the corporation does not render the corporation an agent of the Government."

In this case also the same terminology "under the authority of" which is used in S. 2 the Industrial Disputes Act was being interpreted and the question had arisen as to whether Heavy Engineering Corporation, though controlled wholly by the Government, could be said to be an industry carried on under the authority of the Government. The point was answered in the negative. Our attention was drawn to the decision of the Supreme Court in the case of Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, . On the face of it, the ratio decided in that case has no application to the point involved in the present petition. That the petitioner is an authority falling within the definition of the term "State" as contemplated under Art. 12 is not the subject-matter of debate before us, as it was in that case. It is difficult to see as to how that aspect of the question at all relevant to the point involved in the present petition. For all these reasons it is difficult for us to accept the contention that the Board is entitled to exemption in terms of S. 32(iv) of the Act.

10. This takes us to the second question, viz., whether the Board is an "establishment in public sector" and therefore, exempt under S. 32(x) of the Act. That the petitioner is not covered by cl. (a) of sub-s. (16) of S. 2 is an undisputed position. What is contended is that the petitioner is a Corporation as defined under the Bonus Act, and the Government holds not less than 40 per cent of its capital and, therefore, covered by cl. (b). Undoubtedly the petitioner is

a Corporation, but it is difficult for is to see as to how it can be said that the State Government holds not less than 40 per cent of the capital of the Board. The contention raised by Shri Phadke, the learned advocate for the petitioner, is to the effect that no establishment can function without capital and the huge amount received from State Government as loan for the purposes of running an establishment, is the capital of the Board. It cannot be disputed that the source of capital can also be loan, but by that it is difficult to hold that financing by loan is equivalent to investing capital or having a share in the capital. We have already to various provisions of the Electricity Act as well as the Supply Act and also referred to the fact that either in any of the relevant Statues or in the very constitution of the Board there is no provision for raising share capital. The concept of making such a provision relating to holding share in the capital with relation to undertakings in the public sector is not unknown. There are many statutory corporations which do provide for share capital and enjoin upon the Government to subscribe to the same. Few such enactments are : the Warehousing Corporation Act, 1962, the Agricultural Refinance Corporation Act, 1963, the Industrial Development Bank of India Act, 1964, the Unit Trust of India Act, 1944, the Food Corporation Act 1964, the Bank of India Act, 1955, the Life Insurance Corporation Act, 1946, the Deposit Insurance Corporation Act, 1961, and the Oil and Natural Gas Commission Act, 1959. It is clear that neither there is any provision for issue of share capital in the relevant Acts nor any percentage of the capital is held by the Government. May be that the loan advanced by the Government is the major portion of the capital of the Board, but that will not alter the position in law, viz., the State Government thereby becomes only the creditor entitled to receive interest, but can never become the share-holder. The distinction between the two is too obvious to require any elaboration. Admittedly the amount is shown as borrowings in the balance-sheets and huge amount of interest is being paid irrespective of profit or loss and the State Government has not retained any proprietary interest in the assets and/or affairs of the Board. Hence question of percentage in share capital does not arise and conclusion is inevitable that the petitioner is not exempt even in terms of S. 33(x) of the Bonus Act.

11. The third and last contention in this regard based on cl. (v)(c) of S. 32 is rather interesting. This provision has two facets - (1) whether the petitioner is an "institution" as contemplated under this provision and (2) whether it is "established not for the purpose of profit". Shri Phadke has taken us through some dictionary meanings of the term "institution" Our attention was also invited in this connection to the Division Bench decision of the Allahabad High Court in the case of U.P. Engineer Association v. U.P. State Electricity Board, 1973 II L.L.J. 243. It is true that in this case the Allahabad High Court relying upon dictionary meaning of the term "institution" has held that the U.P. Electricity Board can be classified in that category. It is observed :

"The word "institution" has various meanings in the English dictionary. In the Shorter Oxford Dictionary, the relevant definition is as follows :

"An establishment, organisation or association of institutions for the promotion of some object, especially one of public or general utility, religious, charitable, educational, etc"

"Again according to the Webster's Dictionary, a corporation having quasi-governmental powers and authorised to administer a revenue producing public enterprise, can be an institution. The Board was established under the Supply Act and declared to be a corporation. It has to be constituted under S. 5 of that Act by issue of a notification in the Official Gazette by the State Government. The Board under S. 12 of the Supply Act is a body corporate by the name notified under S. 5 and has a perpetual succession. It is thus an establishment. The nature of the establishment is also such that it can be classified as an institution. As will be seen later, the purpose of the establishment is the promotion of an public or general utility. The purpose of the establishment of the Board, as would be discussed later, is the rationalisation of production and supply of electricity and the electrical development in the State. This, in our opinion is an object of public or general utility. The welfare of the society depends upon its economic progress, which, to a large extent, depends on the supply of electrical power. Electricity provides not only power to work the industry and agriculture, but is also a contributor to social welfare inasmuch as it provides light to the people. Hence, the promotion of such an object must be the promotion of an object of public or general utility. Therefore, even according to the dictionary meaning, the Board will be an institution, i.e., establishment for the promotion of an object of public or general utility."

12. Having given our anxious thought to this question, we are unable to agree with the view taken and we say this with utmost respect. It is true that the "institution" is a word of very wide import and can include within its sweep even the Government and many statutory corporations which are in terms referred to the exemption clause. But, in our judgment, the term is not used in that general and wide sense. Now, it may be noted that the definition of the word "employer" under S. 2(14) who is statutorily liable to pay the bonus conceives of his being an employer of an "establishment" which carried with it a sense of being commercial undertaking. By the time the Bonus Act enacted in the 1965 enlarged concept of "industry" covered even non-commercial institutions such as hospitals, clubs and charitable institutions. The word "institution" has thus become synonymous with "establishment" and the Act uses both the words without indicating any distinction in their imports. One more factor provides the clue. Under different clauses of S. 32, Government as well as many statutory corporations of public utility, such as Life Insurance Corporation, Indian Red Cross Society, Universities and other Educational Institutions, Reserve Bank of India, Industrial Finance Corporation, Deposit Insurance Corporation, Agricultural Refinance Corporation, the Unit Trust of India, the Industrial Development Bank of India, etc., are exempt. They all are institutions by the same standard and measure as the petitioner is. Thus these clauses deal with different species of the genus "institution" and it is necessary to ascertain which particular category or

species is intended to be brought under this particular clause. Now, the word "institution" has been used not merely in isolation and immediately thereafter there is a bracketed portion giving the inclusive list such as hospitals, chambers of commerce and social welfare institutions. In the absence of any definition of the said word, the context and the collocation of the words can be the best guide to indicate its true import. *State of Assam Vs. Ranga Mahammad and Others*, . It is well-known method of interpreting a statute that when there is a doubt about the meaning of a particular word, it has to be understood in the sense in which it best harmonizes with its subject-matter. If the word is not precise but is general, it has to be restricted to the fitness of the matter. In other words, to construe as particular if the intention be particular. Maxwell on the Interpretation of Statutes (12th Edition) page 76, observes as under;

"The words of a statute, when there is doubt about their meaning, are to be understood in the sense which they best harmonize with the subject of the enactment. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use as in the subject, or in the occasion on which they are used, and the object to be attained. Grammatically, words may cover a case : but whenever a statue or document is to be construed it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the English language as so applied.

Keeping these canons of interpretation as well as the rule of *ejusdem generis*, in view it seems to us that particular types of institutions such as hospitals, social welfare institutions, the chambers of commerce alone are intended to be covered under this clause and not every type of institution including the Statutory Corporation like the Board carrying on semi-commercial activities.

13. This takes us to the second facet, viz., whether the Board is established not for the purposes of profit. Shri Desai and Shri Apte, learned Advocates for the two unions, respondents 3 and 4, respectively have contended that the Board does not answer the description contemplated. Heavy reliance was placed on the provisions of S. 57, Sixth and Seventh Schedules, S. 59 and S. 67 and S. 80 of the Supply Act. Our attention was also invited to the statement of objects and reasons in the Bill, part of which we have already reproduced above, to demonstrate that the Board contemplated under the Supply Act is on semi-commercial lines. Section 59 enjoins upon the Board to carry on the operations not at a loss. Sixth and Seventh Schedules in terms contemplate for making profit and its utilisation in a particular manner, Section 80 provides that the Corporation shall be deemed to be a company within the meaning of the Income Tax Act and shall be liable to pay Income Tax. No doubt there is a ceiling on profit and its utilisation is regulated. Shri Phadke may be right in submitting that profit earning is not the only object of creating the Board. The primary and

dominant purpose of providing for the constitution of such a Board is obviously to serve the public interest by ensuring better amenities of life and raising the standards of life of the community as a whole. For this purpose under different enactments different Corporations are created having their independent indentities. They are controlled and financed by the State, interest and stake being different from Corporation to Corporation. Harnessing the gifts of the nature with the aid of the machines and generate electricity on large scale, co-ordinating of different such generating units, for ensuring the supply thereof to the maximum number of people for various purposes, is all directed at implementing this dominant purpose, which by itself cannot contain any grain of profit motive. However, all such activities, even when undertaken by the State or its creatures like the autonomous Boards are required to be run on commercial basis to prevent strain on the meager revenue and resources of the State and profit making is contemplated.

14. Before the constitution of the Board, such projects were worked out and operated in private sectors on commercial basis predominantly with profit motive by the licensees. The Board is constituted to do the same work to improve the quality of service at cheaper rates without any profit motive as in the case of private licensees. Working out such projects on commercial basis is however indispensable as it is necessary to provide for the required current or capital expenses and ensure the stability and the continuity of the project. This cannot be achieved without ensuring the surplus of the income over the expenses. Whatever the object such surplus does amount to profit. The element of such profit, to a certain extent is inevitably implicit in any commercial and trading undertaking. That the scale of profit is limited to the purpose is only to work out the scheme effectively does not alter the nature of such surplus or profit. The legislative mandate of S. 59, to ensure prevention of losses, and in the different clauses of the Sixth and Seventh Schedules are consistent only with its commercial complexion and consequently to the profit motive, though on the limited scale. Mr. Phadke is right in contending that, an undertaking cannot be said to have been established for the purposes of profits, merely because of the incidental turn out of such profit or because S. 67 itself makes provisions for taxes on the assumption of it being contemplated to get profits. The test of ascertaining whether the Board is established for the purposes of profits, to our mind lies in its being run avowedly on commercial basis, even though dominant purposes happens to be to achieve the benefits to the community. Under the supply Act the Board becomes a Statutory licensee without being required even to apply to the same. The Board succeeds the several licensees who were in the open field. The manner of working out the projects by the previous licensees and the Board does not differ materially. As seen earlier, the Board has to work it out on commercial basis as the previous licensees were doing. This would also go a long way to demonstrate how it cannot but be said to have been established for the purposes of profits.

15. Our attention was invited to the following passage from the judgment in U.P.

Engineers" Association (supra) in this connection :

"Thus the Supply Act enjoins upon the Board to carry on its operations not at a loss. That points out that the purpose is not make profit but the operations should not be so run that it would set out the capital chiefly to be provided in the form of loans and subventions by the State Government. Learned counsel for the appellant, however, contended that the provision in S. 80 of the Supply Act for payment of Income Tax and super-tax and for payment of loan mentioned in S. 67 indicate that the purpose of the Board was to carry on the trading activity in such a manner as to earn a profit. We are unable to accept this contention in view of what has been mentioned earlier. Board is required by S. 67 to work in such manner that it would not suffer loss. Profits may accrue in its working and it is for this reason that provision has been made for payment of Income Tax and super-tax. The provision for liquidation of debts can also not be said to be such a provision from which inference may be drawn that the establishment was for the purpose of making profits. The provisions under S. 67 of the Supply Act for the transfer of One-half of the balance of the Consolidation fund of the State also indicates that no money is to be kept by the Board and if it incidentally saves some money in the transactions, it has to go to the Consolidation Fund. The Board is not owned by shareholders to whom the profit might go or for whose benefit the profits might be earned. The Board cannot thus be presumed to be an institution established for purposes of profit"

We are unable to endorse the aforesaid line of reasoning adopted by the Allahabad High Court in coming to the conclusion that the Board is established not for profit and is exempt in terms of cl. (v) (c) of S. 32 of the Bonus Act. The reasons are already indicated. Thus in our judgment no clause of S. 32 applies to the Board.

16. Before closing, we may also refer to the more question on which submissions were made before us. In the year 1966, a similar type of claim for bonus was made covering the period 1963-64 and 1964-65. That was Reference (17) No. 394 of 1966. In that reference also similar preliminary objection was raised on behalf of the petitioner. The Industrial Tribunal has passed an order rejecting the said preliminary objection. In the present second reference contention was raised that the previous decision of the Tribunal operated as *res judicata*. The Tribunal came to the conclusion that the previous decision on the point did operate as *res judicata*. However, the Tribunal decided the question afresh on merits also and came to the same conclusion. Under these circumstances, the question as to whether the decision given in the earlier reference operated as *res judicata* in the second reference is redundant and it is not necessary to go into that question especially when we have heard the parties at length on the points of law regarding the exemption and have decided the said point.

17. To conclude, the petition is dismissed and rule discharged. No costs.