

(1968) 03 BOM CK 0004

In the Bombay High Court

Case No : Reference (I.T.) No. 394 of 1966

Maharashtra State Electricity Board, Bombay

APPELLANT

Vs

Its Workmen (Excluding Those N.M.R. Establishment)
employed under it in The Western Maharashtra and
Marathwada

RESPONDENT

Date of Decision : 04-03-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 12, 12(5), 2
Payment of Bonus Act, 1965 — Section 2, 2(16), 20, 32

Citation : (1968) 2 LLJ 552

Hon'ble Judges : V.A. Naik, J

Bench : Single Bench

Judgement

1. This is a reference made by the Government of Maharashtra, under S. 10(1) (d) read with S. 12(5) of the Industrial Disputes Act, for adjudication of a dispute between the Maharashtra State Electricity Board and the workmen (excluding those on the N.M.R. establishment) employed under it in the Western Maharashtra and Marathwada which arises out of a demand for adequate bonus for the year 1963-64 and 1966-65 made by the workmen. So far as the dispute relating to bonus for the year 1964-65 is concerned, it is undisputed that the case is governed by the Payment of Bonus Act, 1965. Sri N. V. Phadke, on behalf of the Maharashtra State Electricity Board, has raised a preliminary objection contending that the Maharashtra State Electricity Board is exempt from the liability to pay bonus by reason of the fact that it is an establishment in the public sector within the meaning of that expression in S. 2(16)(b) of the Payment of Bonus Act, which for the sake of brevity will hereafter be referred to as the Bonus Act. In this connection Sri Phadke relied upon S. 32 of the Bonus Act, which relates to certain classes of employees to whom the Act is not applicable. He also extensively referred to the provisions of the Electricity (Supply) Act, 1948, to buttress his contention.

2. Section 2 of the Bonus Act is a defining section. Clause (16) of S. 2 defines

"establishment in public sector" to mean 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.

3. Sri Phadke conceded that Clause (a) which relates to a Government company as defined in S. 617 of the Companies Act, 1956, is not attracted in the present case, as the Maharashtra State Electricity Board is not a Government company within the meaning of S. 617 of the Companies Act. He, however, strongly urged that the case of the board falls within Clause (b). According to him the Maharashtra State Electricity Board is a corporation which is almost wholly financed by the State Government. According to Sri Phadke, the board is exempt from the operation of the Bonus Act, under Cls. (iv), (v), (c) and (x) of S. 35 of the said Act, Clause (iv) runs thus;

"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."

4. Clause (v) (c) runs thus :

"Employees employed by -

(a) * * * (b) * * * (c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit."

5. Clause (x) runs thus :

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

5. Another section which is relevant so far as establishments in the public sector are concerned is S. 20 which provides as follows :

"(1) If in any accounting year an establishment in public sector sells any goods produced or manufactured by it or renders any services in competition with an establishment in private sector, and the income from such sale or service or both is not less than twenty per cent of the gross income of the establishment in the public sector for that year, then, the provisions of this Act shall apply in relation to such establishment in public sector as they apply in relation to a like establishment in private sector.

(2) An establishment in public sector to which this Act applies shall continue to

be governed by this Act notwithstanding that in any sub-sequent accounting year, its income from the sale of goods produced or manufactured by it or from services rendered or from both, in competition with an establishment in private sector, falls below twenty per cent of its gross income for that accounting year."

6. I will deal with the effect of the sections on which reliance is placed by Sri M. P. Mehta, on behalf of the employees, at a later stage of the discussion.

7. It is common ground that the Maharashtra State Electricity Board has been established by the Government of Maharashtra under the provisions of the Electricity (Supply) Act, 1948. Exhibit C. 4 is a copy of the Government resolution relating to the establishment and constitution of the Bombay Electricity Board. The resolution says that the Government of Bombay has constituted a State Electricity Board by the name of the "Bombay Electricity Board" in exercise of the power conferred by S. 5 of the Electricity (Supply) Act, 1948. After the reorganization of the Bombay State, a notification was issued on 31 January, 1957 stating that in exercise of the power conferred by S. 5 of the Electricity (Supply) Act, 1948, read with Sub-section (4) of S. 106 of the State Reorganization Act, the Government of Bombay constitutes, with effect from 1 February, 1957, the State Electricity Board under the name of the Bombay State Electricity Board. Section 5 of the Electricity (Supply) Act provides that the State Government shall, as soon as may be after the issue of the notification under Sub-section (4) of S. 1, constitute by notification in the official gazette a State Electricity Board under such name as shall be specified in the notification. What was originally constituted as the Bombay Electricity Board under the erstwhile Government of Bombay was later turned into the Bombay State Electricity Board, after the reorganization of the State. Again on 20 June, 1960 the Government issued another resolution stating that the Government of Maharashtra in exercise of the power conferred under S. 5 of the Electricity (Supply) Act, 1948, read with S. (68)(4) of the Bombay Reorganization Act, 1960, was pleased to constitute the Maharashtra State Electricity Board. The present board functions under the name of the Maharashtra State Electricity Board by virtue of the said resolution, dated 20 June, 1960. Section 5 of the Electricity (Supply) Act empowers the State Government to constitute a State Electricity Board but that does not necessarily mean that the board is an establishment in the public sector. Power to constitute a board is one thing and the nature and complexion of the board is another. In order to ascertain the nature and complexion of the Electricity Board, it is necessary to refer to some of the relevant provisions and in fact Sri Phadke's argument was almost entirely based on these provisions.

8. Chapter II relates to the Central Electricity Authority. Under S. 3 it is for the Central Government to constitute a body called the Central Electricity Authority generally to exercise such functions and perform such duties under the Act and in such manner as the Central Government may prescribe or direct. Chapter III relates to State Electricity Boards. I have already referred to S. 5 which empowers the State Government to constitute a State Electricity Board. Section

6 relates to inter-State agreement to extend board's jurisdiction to another State. In the absence of such an inter-State agreement the jurisdiction of the State Board is confined to the limits of the State. Section 12 provides for the incorporation of the board and says that the board shall be a body corporate by the name notified under Sub-section (1) of S. 5, having perpetual succession and a common seal, with power to acquire and hold property both movable and immovable, and shall by the said name sue and be sued. That means that the Electricity Board is a corporation sole having a juridical person and being capable of holding property. It is on this ground that Sri Phadke relied upon S. 2(16)(b) which refers to a corporation in which not less than forty per cent, of the capital is held by the Government. Chapter VI deals with the Board's finance, accounts and audit. Section 59 provides that the board shall not as far as practicable and after taking credit for any sub-ventions from the State Government under S. 63, carry on its operations under this Act at a loss, and shall adjust its charges accordingly from time to time. Section 60 provides that all debts and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for the State Government for any of the purposes of this Act before the first constitution of the board shall be deemed to have been incurred, entered into or engaged to be done by, with or for the board; and all suits or other legal proceedings instituted or which might but for the issue of the notification under Sub-section (4) of S. 1 have been instituted by or against the State Government may be continued or instituted by or against the board. It is common ground that before the constitution of the State Electricity Board the Government was running what is known as an electric grid. It appears that after the board was constituted. Government transferred all properties including plant and machinery to the Electricity Board and treated the value of the property as loans. Under S. 60 all contracts entered into by the State Government before the constitution of the board become binding on the board and suits which could be instituted by Government could be instituted by the board and those already instituted could be continued. Section 63 speaks of sub-ventions made to the board and provides that the State Government with the approval of the State Legislature may from time to time make sub-ventions to the board for the purposes of this Act on such terms and conditions as the State Government may determine. Under S. 64 the State Government may guarantee the repayment of any loan proposed to be raised by the board. Exhibit C. 2 is the statement of accounts for the year 1965-66 and pp. 4 and 5 contain the balance sheet in a simplified form, as on 31 March, 1986. Under "Liabilities" we notice that the board has taken a loan of Rs. 8,188.55 lakhs. Besides, it has raised in the form of bonds and debentures from the public a sum of Rs. 1,828.09 lakhs. The working result of the board from 1961-62 to 1965-66 is printed at p. 5. Under the heading Borrowings, sub-head (a) relates so borrowings from Government. These borrowings are again sub-divided into two classes :

- (i) non-repayable loans, and
- (ii) repayable loans.

9. Details of the loan advanced or deemed to have been advanced by the State Government under S. 64 of the Electricity (Supply) Act, have been mentioned at p. 9. Section 64 provides that the State Government may from time to time advance loans to the board on such terms and conditions, not inconsistent with the provisions of the Act, as the State Government may determine. It is not the case of the board that Government have retained any proprietary interest in the assets and affairs of the board, nor it is its case that Government has any share or debentures in the board. Under S. 2(16)(b) what is required to be established is that Government has invested capital in the corporation which is not less than 40 per cent of the total capital. Granting of loans or sub-ventions does not amount to investing capital in the corporation. Sri Phadke's argument centred round the admitted fact that the company is financed by loans borrowed from Government. Since no material has been placed before the tribunal by the board it is difficult to say what was the portion of the loan occasioned by the transfer of assets to the board by the State Government. It, however, appears that the sum represents the bulk of the loans taken from the Government and the value of assets is being treated as loans. In the statement of accounts for 1965-66 Ex. C, 2, pp. 8 and 9 contain a statement of the capital raised as on 31 March, 1966 Page 9 contains the details of the loans advanced or deemed to have been advanced by the State Government under S. 64 of the Electricity (Supply) Act, 1948. Apparently the value of the assets transferred is a loan deemed to have been advanced by the State Government under S. 64. As distinguished from loans deemed to have been advanced we also find reference to the loans advanced by the State Government during the year 1965-66. These are probably the actual loans and not deemed ones. It is also clear from p. 5 of the statement accounts for 1964-65 (Ex. C. 2) that interest is being paid to Government on the loans borrowed from them. It is equally clear that what the Government has advanced is being deemed as a loan and not capital. In the net revenue and appropriation account at p. 30 of Ex. C. 2, the following entry has been made under item 9 :

"To interest on loan advanced or deemed to have been advanced under S. 64."

10. and the sum shown in Rs. 2,42,66.583. The distinction between loans and capital is too well-known to require any elaboration. It is the case for the board that from year to year the board has been sustaining heavy losses. Had the Government invested capital as distinguished from loans evidently no payment would have been made to them, but from year to year huge sums are being paid to Government towards interest. In the light of the provisions of the Electricity (Supply) Act, 1918, and in the light of the facts which have emerged, it is impossible to hold that any share or capital is held by the Government. That being the case, the board does not answer to the description "establishment in the public sector" as defined in S. 2(16)(b) of the Payment of Bonus Act. What that section requires is that the State Government should hold capital which is not less than 40 per cent in the corporation concerned in which case alone the corporation becomes an "establishment, in the public sector." In view of the fact

that no evidence of any capital having been advanced by Government has been adduced, it is not necessary to consider the question of percentage. That being the case, Clause (x) of S. 32 of the Bonus Act which speaks of "employees employed by any establishment in public sector, save as otherwise provided under this Act" does not come to the help of the board.

11. I will now proceed to consider whether Clause (iv) of S. 32 is attracted to the present case. Clause (iv) reads thus :

"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."

12. Sri Phadke referred to a number of provisions of the Electricity (Supply) Act in support of his contention that this is an undertaking carried on under the authority of the Maharashtra State. In the first place the board is constituted by an order of the Government and under S. 5 all the members of the board are appointed by the State Government. Section 10 empowers the State Government to suspend from office for such period as it thinks fit or remove from office any member of the board for the reasons elaborated in Cls. (a) to (f). Section 10A gives authority to the State Government to declare certain transactions void and states that the decision of the State Government in that behalf shall be final. Under S. 16 the State Government is required to constitute a State Electricity Consultative Council for the State. Under S. 60 the board assumes obligation in respect of matters to which the Act applies. Under S. 61 the board has been enjoined to submit to the State Government a statement in the prescribed form of the estimated capital and revenue receipts and expenditure for the ensuing year. Under S. 66 the State Government guarantees loans taken by the board. Sri Phadke submitted that these are plenary powers and the affairs of the board are strictly under the control of the State Government. At the same time we cannot ignore the fact that the board is a corporation having an independent legal existence of its own. Large as the powers of supervision and control vested in the Government are, it cannot be gainsaid that the board is still a legal entity independent of the State Government. It may have been brought into existence by the State Government but once it comes into being it enjoys a separate existence. Clause (iv) of S. 32 of the Bonus Act emphasized that an establishment must be carried on by the Government or must be carried on under the authority of the Government. It is impossible to say that the Electricity Board is being carried on by the Government. The generation and distribution of electrical energy was originally carried on by the Government under its own department by forming an electric grid but the very idea of creating a corporation in the form of an Electricity Board was to divest the Government of the responsibility of carrying on the work of generating and supplying electricity. In the same way when we are speaking of an establishment as being carried under the authority of the State Government we postulate an agency which carries on the work as an agent of the State Government. A question similar to the one

under consideration arose before the Bombay High Court in *Abdul Rehaman Abdul Gafur and Another Vs. E. Paul and Others*, . The facts were as follows : Mazagon Dock, Ltd., Bombay, was incorporated as a public limited company under the Indian Companies Act, 1913. Subsequently, in 1957 it was converted into a private limited company. In 1960 the Central Government purchased the entire share-holdings of the said company and consequently the articles of association of the company were altered. Under the altered articles the President of the Indian Union was given the power to nominate directors and to remove them and also to issue instructions and directions as he may consider necessary in regard to the affairs of the conduct of the business of the company which the directors were bound to obey. The question in the instant case was as to whether the State of Maharashtra or the Central Government was the appropriate Government under S. 2(a)(1) of the Industrial Disputes Act, 1947, for the purposes of commencing the conciliation proceedings under S. 12 of the Act. It was contended on behalf of the petitioner - a trade union of which some of the workmen of the company were members - that the Central Government was the appropriate Government on ground that the industry was carried on by or under the authority of the Central Government. Negating the said contentions, it was held that the phrase "under the authority of the Central Government" contained in S. 2(a)(i) of the Industrial Disputes Act, must mean and is intended to apply to industries carried on directly under the authority of the Central Government. Industries which are carried on for their own purposes by incorporated commercial corporations which are governed by their own constitutions, as authorized by the Indian Companies Act, could not be described as carried on under the authority of the Central Government. Such corporations, are separate legal entities and run the industries for their own purpose. Even when the Central Government controls such corporations, the industries are worked under the authority of their own constitutions or charters. In spite of the fact that Government of India is the sole owner of the whole of the share capital of the company, it is clear that the control that it has on the affairs and businesses of the company is exercised by reason of the provisions in the constitution of the company, viz., memorandum of association and articles of association of the company. The provisions of the Indian Companies Act would continue to apply to the business and affairs of the company. At p. 697 the High Court has discussed the meaning of the phrase "under the authority of the Central Government" and has held that the phrase must mean and is intended to apply to industries carried on directly under the authority of the Central Government. Industries which are carried on for their own purposes by incorporated commercial corporations which are governed by their own constitutions, as authorized by the Indian Companies Act cannot be described as carried on under the authority of the Central Government. The High Court pointed out that the corporations are independent legal entities and run the industries for their own purposes, and the fact that the Central Government controls these corporations does not mean that the industries are worked under the authority of the Government; these authorities are worked under the authority of their own constitutions or charters.

The High Court referred to the decision in *Tamin v. Haranford* 1950 I.K. 18 in which it was held that the only fact, which it could be suggested made the Commission a servant or agent of the Crown was the control over it exercised by the Minister of Transport; but there was ample authority for saying the work control was insufficient for the purpose. When the Parliament intends that a new corporation should act on behalf of the Crown, it, as a rule, so states in the statute constituting the corporation. In the absence of any such provision, the proper inference in the case, at any rate, of a commercial corporation, is that it acts on its own behalf even though it is controlled by a Government department.

13. At p. 24 of the reports it is further observed as follows :

"These are great powers but still we cannot regard the corporation as being his agent, any more than a company is the agent of the shareholders, or even of a sole shareholder. In the eye of law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has more of the immunities or privileges of the Crown. Its servants are not civil servants and its property is not Crown property. It is, of course, a public authority and its purposes, no doubt are public purposes, but it is not a Government department, nor do its powers fall within the province of Government."

14. Similar observations are made in the case of *Carlsbad Mineral Water Mfg. Co. Ltd. Vs. P.K. Sarkar and Others*, by the High Court of Calcutta. The question before the Court in that case directly related to the true construction of the provisions of S. 2(a)(i) of the Industrial Disputes Act and it was observed as follows (at p. 489) :

"It seems to me that what is referred to in Ss. 2(a)(i) and 2(g)(i) in any industry owned by Government which is being carried on by Government itself, either through a department or by some authority created by Government to carry on that industry. An industry carried on by or under the authority of Government is a Government industry, which as I have said, may be carried on directly by Government or by somebody or person nominated by Government for that purpose. No business owned by and carried on by a private person or a limited company can be a business carried on by or under the authority of Government.

It seems to me that the words "under the authority" mean much the same as "on behalf of." It is noticed that in S. 2(g)(ii) "employer" means in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority. With regard to such an industry, even if somebody has been authorized to carry on the work, nevertheless the chief executive officer in all cases is to be regarded as the employer."

15. In this view of the matter it was held that the petitioner's contentions were not well-founded, and the petition was dismissed.

16. I will now consider whether the instant case falls under Clause (v)(c) of S. 32

of the Payment of Bonus Act. That clause runs as thus :

"employees employed by -

(a) * * * (b) * * * (c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit."

17. Sri Phadke contended that the Electricity Board is a public utility undertaking and under the Electricity (Supply) Act it is expected to carry on its business on no-profit; no-loss basis. Clause (c) envisages institutions which have been established not for the purpose of profit and include such institutions as hospitals, chambers of commerce and social welfare institutions. In other words, the object of establishing the institutions contemplated in Clause (c) must be not to make profits. That means that the profit motive is completely absent from the working of those institutions. In this connection Sri Phadke laid emphasis on S. 19 of the Electricity (Supply) Act, which lays down the general principles for the board's finance. The section runs thus :

"The board shall not as far as practicable and after taking credit for any subventions from the State Government under S. 63, carry on its operations under this Act at a loan, and shall adjust its charges accordingly from time to time."

18. What this section contemplates is that the affairs of the board should be conducted in such a way that the board does not incur losses as far as practicable. That does not mean that the board should not make profits much less that the board has been established not for the purpose of profit. In this connection it is necessary to note that under S. 26 of the Electricity (Supply) Act, the board is a licensee in respect of the whole State and has all the powers and obligations of a licensee under the Indian Electricity Act, 1910, and this Act shall be deemed to be licence of the board for the purpose of that Act. Though the board is not required to apply and secure a licence, its position is the same as that of a licensee under the Indian Electricity Act, 1910. Section 57 of the Electricity (Supply) Act provides that the provisions of Schs. VI and VII shall be deemed to be incorporated in the licence of every licensee, not being a local authority, Schedule VI relates to financial principles and their application. Clause I of Sch, VI in substance lays down that the licensee shall so adjust his rates for the sale of electricity whether by enhancing or reducing them that this clear profit in any year of account shall not, as far as possible, exceed the amount of reasonable return. Clause II also refers to clear profit of a licensee and says that if such profit is in excess of the amount of reasonable return, one-third of such excess shall be at the disposal of the undertaking. A perusal of the provisions in Sch. VI and VII makes it clear that the affairs of the company are to be run on business lines and on principles relating to good conduct of business. It is impossible to hold that such an institution is an institution which is established not for the purpose of profit. It can never stand on the same footing as a hospital, chambers of commerce and social welfare institutions.

19. It is significant to note that there is a separate clause, namely, Clause (viii), incorporated in S. 32 of the Bonus Act exempting the employees employed by the Reserve Bank of India from the operation of the Payment of Bonus Act. In the same way under Clause (ix) the employees of some of the corporations such as the Industrial Finance Corporation of India, any other Financial Corporation, the Deposit Insurance Corporation, the Agricultural Refinance Corporation, the Unit Trust of India, the Industrial Development Bank of India and any other financial institution being an establishment in the public sector which the Central Government may, by notification in the official gazette, specify, having regard to its capital structure, its objectives, and the nature of its activities, the nature and extent of financial assistance or any concession given to it by the Government or any other relevant factor. All the corporations mentioned in Clause (ix) are establishments in the public sector. In order to earn the exemption they have been separately listed in Cls. (viii) and (ix) of S. 32. If the legislature intended to exempt the Central Electricity Board or the State Electricity Board from the operation of the Bonus Act, they would certainly have specifically listed them under one of the clauses.

20. The union has filed a statement at Ex. U. 7 relating to a number of corporations which have been brought into existence under special Acts. It is pointed out that there is no provision for share capital made in the Electricity (Supply) Act, 1948, and provisions have been made only for borrowings. The Warehousing Corporation Act, 1962 (58 of 1962), makes provision for share capital and shareholders and Sub-section (2) of S. 4 enjoins the Central Government to subscribe 40 per cent of the share capital issued at any time. The Agricultural Refinance Corporation Act, 1963 (10 of 1963), also provides for share capital and shareholders under S. 5. The Industrial Development Bank of India Act, 1964 (18 of 1964), refers to authorized and issued capital under S. 4. The Unit Trust of India Act, 1963 (52 of 1963), provides for initial capital of trust under S. 4. The Industrial Finance Corporation Act, 1948 [23 of 1948 (?)], refers to share capital and shareholders under S. 4. The Food Corporation Act, 1964 (37 of 1964), refers to capital of the corporation under S. 5. In the same way the State Bank of India Act, 1955 (23 of 1955), the Life Insurance Corporation Act, 1956 (31 of 1956), the Deposit Insurance Corporation Act, 1961 (47 of 1961), and the Oil and Natural Gas Commission Act, 1959 (43 of 1959), all refers to capital or share capital. On the other hand; the provisions of Ss. 63 to 65 of the Electricity (Supply) Act clearly imply that the board must carry on its affairs on the basis of subventions from the State Government, loans from the State Government and other sources and by issuing bonds or stock or making arrangements with the bankers. There is no provision for raising share capital. That being the case, there is no question of the board having any capital as such. That being the case, the question of the percentage of the capital held by the Government does not fall to be considered.

21. Sri M. P. Mehta contended that S. 20 of the Bonus Act would come into the picture. If it is established that the income from services rendered by the board

in competition with other establishments in the private sector is not less than 20 per cent of the gross income of the establishment in the public sector for that year, then the provisions of the Act will apply to such establishment in the public sector. Sri Phadke countered the argument by pointing out that the board has acquired a sort of monopoly for the generation and distribution of electrical energy. In particular he referred to the provisions contained in Ss. 18 and 19 of the Electricity (Supply) Act; Under Sub-section (2) of S. 19 no licensee shall; notwithstanding the provision of his licence; be entitled without the consent of the board to supply electricity for that purpose in that area. Sri Phadke, therefore, contended that there is no scope for competition in this matter as no operators would be permitted by the board to operate in a field where they want to operate. This argument refers to a theoretical possibility. It is open to the board to declare its intention to supply electricity in any area and when such intention is declared, the licensees cannot continue operations without the consent of the board. It is however necessary to note that it may not be possible for the board to cover the area of the entire State at the same time. It may, therefore, give certain areas for operation to private licensees. A private licensee may be allowed to generate electricity energy on his own or he may borrow electrical energy from the board. Sri Mehta contended that as a matter of fact there are several electrical undertakings operating in certain areas side by side with the Maharashtra State Electricity Board. He has mentioned them in Ex. U. 2 and also the units generated by each of them. These companies are Tatas, Bombay Suburban, Bhusaval, Jalgon, Bhiwandi, Thana and Chalisgaon. At Ex. U. 4 the union has pointed out that the sugar factories in Maharashtra generate electricity for their use in various areas. They have also pointed out that licences have been issued to private parties in Dondaicha, Shehuda, Chandwad, Trambak and Nandanna. At Ex. U. 5 it is pointed out that Tatas are bulk licensees. Sri Mehta therefore contended that since there are competing units it must be shown that the income from services rendered by the board is not less than 20 per cent of its gross income. It is not necessary to consider this aspect of the matter because the board has not claimed exemption on the basis of S. 20. I, therefore, hold that the Maharashtra State Electricity Board cannot claim exemption from the operation or application of the Payment of Bonus Act. The reference is, therefore, to proceed and is posted for hearing on merits on 27 March, 1968 at 11 a.m.