

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 3276 OF 1999

Dhule Agricultural Produce Market Committee, Dhule,
Parola Road, Dhule, through its Secretary.

...Petitioner..

Versus

1. The Employees State Insurance Corporation,
Sub Regional Office, PMT Commercial Complex Bldg.,
Swargate, Pune – 411 042.
2. Director,
Employees State Insurance Corporation,
Sub Regional Office, PMT Commercial Complex Bldg.,
Swargate, Pune – 411 042.
3. State of Maharashtra.

..Respondents..

Mr N. B. Khandare, Advocate for petitioner
Mr V. D. Sonawane, Advocate for respondents No. 1 and 2
Mrs A. V. Gondhalekar, AGP for respondent No. 3

**CORAM : A. V. NIRGUDE &
A.I.S. CHEEMA, JJ.**

DATE OF RESERVING THE JUDGMENT : SEPTEMBER 10TH, 2014.
DATE OF PRONOUNCING THE JUDGMENT : JANUARY 7TH, 2015.

JUDGMENT: (PER A. V. NIRGUDE, J.)

1. This petition challenges demand of contribution of the Employees' State Insurance Corporation established under the provisions of Employees State Insurance Act.

2. The petitioner is Agricultural Produce Market Committee, Dhule. The petitioner seeks a direction that the respondent-authority should not enforce the provisions of ESI Act against them. The cause of action for the petition arose when a notice demanding contribution was issued in February – 1999. Earlier to it, the ESI Corporation had asked the petitioner to get themselves registered on furnishing necessary information. The ESI Corporation submitted their reply and opposed the petition. On 12th December, 2002, the Division Bench of this Court dismissed the petition on merits. This judgment was challenged before the Supreme Court. At that time, the Supreme Court was informed that before deciding the petition, the State had not submitted any reply and, therefore, the Supreme Court directed this Court to consider the State Government's stand on the subject and then decide the case once again.

3. Accordingly, the State Government filed an affidavit on 25th March, 2014. They took a definite stand that the ESI Act is not applicable to APMC. It is further stated in the affidavit that APMC, Dhule is a body corporate and not a shop.

4. On the other hand, the Corporation submitted its affidavit reiterating their original stand that the provisions of ESI Act, which is a central legislation, is already made applicable to APMC,

Dhule. Other facts which they highlighted are; the ESI Act was made applicable to Dhule district in the year 1991. Urban Development and Public Works Department, Mantralaya, Mumbai, issued notification on 3rd October, 1981, under the provisions of ESI Act and made applicable the provisions of the Act to all the establishments of Dhule District with effect from 4th October, 1981. The provisions of the Act are applicable to all the factories including factories belonging to the Government. They further stated that ESI Act is a welfare legislation and provide benefits to employees of employers, who are covered under the Act. The Act provides various facilities to such employees. Even the employer is benefited by paying contribution so as to avoid sudden liabilities.

5. The first question that arose for our consideration is: whether the petitioner is a 'Shop'. The answer to this question is in affirmative. The Civil Court in previous litigation recorded a finding to that effect. Even this Court in the previous judgment clearly held that the petitioner is a 'Shop'. This court in the previous judgment placing reliance on the judgment in the case of **Cochin Shipping Co. v. E.S.I. Corporation** reported in **(1992) 4 SCC 245** held that, the petitioner is carrying on systematic economic and commercial activity and, therefore, it is a 'Shop'. Second point that arose for our consideration is: whether the petitioner being a local authority is exempted under

Section 12 of APMC Act and it should be declared that APMC would be a local authority for all purposes.

6. It is clear from the provisions of ESI Act that the provisions of this Act are not applicable to local authorities. The next submission of the learned Counsel for the petitioner was that, on one hand Section 12 of APMC Act declared an APMC a local authority for all purposes and on the other hand the provisions of Bombay Shops and Establishment Act, 1948 Schedule II, declares that the provisions of that Act would not apply to local authorities. This argument was rejected by this Court earlier also by placing reliance on judgment of Andhra Pradesh High Court in the case of **E.S.I. Corporation v. Scientific Fertilizer Co. Ltd.**, reported in 1997(1) L.L.N. 820. The Division bench of Andhra Pradesh High Court held that, concept of Shop is not defined in ESI Act and definition of Shop given in Shops and Establishments Act cannot be adopted with reference to ESI Act. This Court also held that reliance on provisions of General Clauses Act in support of the petitioner's case is not acceptable.

7. In the background of these conclusions, we are not giving much important to what the State Government submitted in their affidavit, which is recently filed. It must be borne in mind that the State Government is the appropriate Government as per the provisions of ESI Act. It is this Government, who issued relevant

notification on 3rd October, 1981, in exercise of powers given to it by Section 1(5) of ESI Act. After following due procedure, it was this Government which has extended the provisions of the Act to certain classes of establishments mentioned in the schedule annexed to it. Clause III of the Schedule states as under:

Description of Establishments situated.	Areas in which the Establishments are
3. The following Establishments whereon twenty or more persons are employed, or were employed for wages on any day of the preceding twelve months, namely -	
i) Hotels;	
ii) Restaurants;	
iii) Shops.	
iv) Road Motor Transport Establishment;	
v) Cinemas including preview theatres and	
vi) News paper Establishment as defined in Section 2(d) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955).	- Same as above.
By order and in the name of the Governor of Maharashtra.	

Sd/-
(V. Srinivasan)
Secretary to Government.

8. We have held above that the petitioner is a 'Shop' as understood by this clause. The controversy erupted in the Court since 1999 and despite of pendency of this petition and despite of issuance of notification, the State of Maharashtra did not clarify its position till recently. Now it is trying to suggest that

the notification would not include APMC. We failed to understand as to why the State of Maharashtra despite having powers under Section 1(5) of the ESI Act, did not issue notification to clarify its intention. The State of Maharashtra could have easily issued a fresh notification under the provisions of ESI Act for excluding APMC of all districts. In absence of such necessary steps, what is stated in the affidavit is of no use. We, therefore, reject the contentions raised in the affidavit of the State of Maharashtra. We also hold that despite of such stand, their own notification of 1981 would clearly cover the establishments of APMCs where the provisions of ESI are made applicable by the notification.

9. In view of this, the petition should fail. The same stands dismissed.

(A.I.S. CHEEMA, J.)

(A. V. NIRGUDE, J.)

LATER ON: -

At the request of learned Counsel for the petitioner interim relief to continue for six weeks from today.

(A.I.S. CHEEMA, J.)

(A. V. NIRGUDE, J.)