

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2961 OF 2018

1. Shri. Vile Parle Kelvani Mandal }
a Society registered under the }
Societies Registration Act, 1860 }
and also a Public Charitable Trust }
registered under the Maharashtra }
Public Trust Act, 1950 having its }
office at Shri. Bhaidas Maganlal }
Sabhagriha Bldg., North South Road }
No. 1, Juhu Scheme, Vile Parle }
(West), Mumbai-400 056. }
2. SVKM's Narsee Monjee Institute }
of Management Studies, }
deemed to be University u/s 3(1) }
of the University Grant Commission }
and having its office at V. L. Mehta }
Road, Vile Parle (West), }
Mumbai-400 056. }
3. Narsee Monjee College of }
Commerce and Economics, }
a recognized educational institution, }
having its office at Juhu Scheme, }
Vile Parle (West), Mumbai-400 056. }
4. Smt. Gokalibai P. P. High School }
and Acharya Ambalal V. Patel }
Junior College, }
a recognized educational institution }
having its office at Dadabhai Road, }
Vile Parle (West), Mumbai-400 056 }
5. Shri. M. V. Nanavati Prathamik }
Shala, a recognized educational }
institution having its office at }
Dadabhai Road, Vile Parle (West), }
Mumbai-400 056. }

6. Mithibhai College of Arts,
 Chauhan Institute of Science,
 Amrutben Jivanlal College of
 Commerce and Economics,
 a recognized educational institute
 having its office at Bhakti Vedanta
 Swami Marg, Gulmohar Road,
 Suvarna Nagar, Vile Parle (West),
 Mumbai-400 056.

7. Chatturbhuj Narsee Memorial
 School, a recognized educational
 Institution, having its office at
 Dadabhai Road, Vile Parle (West),
 Mumbai-400 056.

8. C. B. Patel Research Centre,
 a Society registered under the
 Societies Registration Act, 1860,
 having its office at Bhaidas Maganlal
 Sabhagriha Bldg., North South Road
 No. 1, Juhu Scheme, Opp. Mithibai
 College, Vile Parle (West),
 Mumbai-400 056.

9. D. J. Sanghvi College of
 Engineering, a recognized
 educational institution, having its
 office at J. V. P. D. Scheme, Bhakti
 Vedanta Swami Marg, Opposite
 Cooper Hospital, Vile Parle (West),
 Mumbai-400 056.

10. M. R. Patel School of Technology,
 Management and Engineering,
 a recognized educational institution
 having its office at J.V.P.D. Scheme,
 Bhakti Vedanta Swami Marg, near
 Cooper Hospital, Vile Parle (West),
 Mumbai-400 056.

Petitioners

versus

1. State of Maharashtra,
 Industries, Energy and Labour

Ministry, through Government	}	
Pleader, High Court (Original Side),	}	
PWD Building, Fort,	}	
Mumbai-400 023.	}	
	}	
2. Tata Power Company Ltd.,	}	
a public limited company having its	}	
registered office at Bombay House,	}	
24, Homi Modi Street,	}	
Mumbai-400 001.	}	
	}	
3. Reliance Infrastructure Limited	}	
a public limited company having its	}	
corporate office at RNA Corporate	}	
Park, Old Kala Mandir, Bandra	}	
(East), Mumbai-400 051.	}	
	}	
4. Adani Electricity Mumbai Ltd.	}	
CTS 407 (New), 408 Old Village	}	
Eksar, Devidas Lane, Off SVP Road,	}	
near Devidas Lane Telephone	}	
Exchange, Borivali (West),	}	
Mumbai 400 013.	}	Respondents

Dr.Milind Sathe-Senior Advocate with
Mr.Bhushan Deshmukh, Ms.Kavita
Srivastav, Mr.Gaurav Srivastav and
Ms.Manorama Mohanty I/b.
M/s.S.K.Srivastav and Co. for the
petitioners.

Mr.A.A.Kumbhakoni-Advocate General
with Mr.Ashutosh Kulkarni and
Mr.H.B.Takke-AGP for respondent no.1.

Mr.Rushi Mathur with Mr.H.N.Vakil I/b.
M/s.Mulla and Mulla and Craigie Blunt
and Caroe for respondent no. 2.

**CORAM :- S. C. DHARMADHIKARI &
M. S. KARNIK, JJ.**

**RESERVED ON 22nd JANUARY, 2019
PRONOUNCED ON 28th FEBRUARY, 2019**

JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

2. The petitioners before us have filed this writ petition seeking the following three reliefs:-

“a) That this Hon'ble Court be pleased to issue writ of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records, papers and proceedings of the present case and after going into the legality and propriety thereof, be pleased to quash and/or set aside the impugned letter dated 04/06/2018 and the legal opinion annexed thereto at Exhibit 'B' hereto;

b) That this Hon'ble court may be pleased to issue writ of Mandamus or any other writ, order or direction under Article 226 of the constitution of India directing the Respondents to quash, cancel and/or withdraw the Impugned Bills thereby levying electricity duty on the Petitioners and their Educational Institutions at Exhibits E-1 to E-7, G-1 to G-21, J-1 to J-40, K-1 to K-20 hereto;

c) That this Hon'ble Court may be pleased to issue writ of Prohibition or any other writ, order or direction under Article 226 of the constitution of India prohibiting the Respondents from levying or issuing any bills levying electricity duty on the Petitioners and their Educational Institutions.”

3. The petitioners state that they are about 10 educational institutions run and managed by petitioner no. 1. That is a society registered under the Societies Registration Act, 1860 and is also a public charitable trust registered under the Maharashtra Public Trust Act, 1950.

4. The first respondent is the State, whereas, respondent nos.2, 3 and 4 are public limited companies having their offices at the addresses mentioned in the cause title. These respondent nos. 2 to 4 are licencees who have been granted licences under section 14 of the Electricity Act, 2003. The fourth respondent has acquired the third respondent's business of generation, transmission and retail electricity distribution in Mumbai. The further facts relevant for the purposes of deciding the issue in this petition are set out hereinbelow;

5. The Petitioners says that the Petitioners have taken the following electric connections for power supply to their Educational Institutions from Respondent No.2 i.e. Tata Power Company Ltd.

Sr. No.	Name of the Institution	Consumer No.	Meter No.
1	Shri Vile Parle Kelwani Mandal (Petitioner No.1)	900000168229	RI-7668801
2	Shri Vile Parle Kelvani Mandal (Petitioner No.1)	900000168197	RI-7277310
3	Shri Vile Parle Kelvani Mandal (Petitioner No.1)	900000168212	RI-7709650
4	SVKM Narsee Monjee Institute of Management Studies	900000064314	LHD-00156
5	Narsee Monjee College of Arts, Commerce & Economics. (Petitioner No.3)	900000104554	RI-7587610

6	Smt.GPP High School (Petitioner No.4)	900000108980	RI-L980361
7	Shri M.V.Nanavati P. Shala (Petitioner No.5)	900000204888	RI-L977204

6. The Petitioners have taken the following electric connections for power supply to their Educational Institutions from Respondent No.3 i.e. Reliance Infrastructure Ltd.:-

Sr. No.	Name of the Institution	Account No.	Meter No.
1	Mithibai College of Arts, Chauhan Institute of Science, Amrutben Jivanlal College of Commerce & Economics (Petitioner No.6)	150780599	H953025
2	Chhaturbhuja Narsee Memorial School (Petitioner No.7)	102691847	L972887
		150779518	L978829
		150779536	L980166
		151311656	L978116
		151314064	L980525
3	C.B.Patel Research Centre (Petitioner No.8)	102691598	L976480
4	D.J.Sanghvi College of Engineering (Petitioner No.9)	151221590	L979196
		151447613	L979767
		102691590	L965701 L968948 & L972571
5	M.R. Patel School of Technology, Management & Engineering (Petitioner No.10)	151284170	L979018
		151284169	L978772
		151284168	L978769
		151126200	L978770
		150889846	L975761
		150489079	L973820
		150585588	L973721

		150585591	L973818
		150588081	L975181
		150588083	L975182

7. The Petitioners say that the State of Maharashtra in the year 1958 enacted the Maharashtra Electricity Duty Act, 1958 and the same received assent of the Governor on 06th May, 1958. The said assent was published in the Maharashtra Government Gazette Part IV on 09th May, 1958. The said Act was enacted to provide for levy of duty on consumption of electricity energy in the State of Maharashtra.

8. As per Section 3 of the Maharashtra Electricity Duty Act, 1958 the State of Maharashtra was entitled to levy electricity duty on the consumption charged or the units of energy consumed (excluding losses of energy sustained in transmission and transformation by a Licensee before supply to a consumer) at the rates specified in the Schedule to the said Act subject to provisions of sub-section (2) thereof.

9. It is the case of the petitioners that as per section 3(2)(iii) of the Maharashtra Electricity Duty Act, 1958, the electricity duty was not levied on the consumption charges or the energy consumed for the purposes of or in respect of a school or college or institution imparting education or training, students' hostels,

hospitals, nursing homes etc. and thus, there was an exemption not only to educational institutions run by a Trust registered under the Maharashtra Public Trust Act, 1950, but to all schools and colleges, including students' hostels, hospital etc. The exemption was thus extended to provide benefit to various other institutions.

10. The petitioners state that respondent no. 2 company, by its e-mail dated 27th June, 2018 informed that they have received a letter from the Industries, Energy and Labour Department, Government of Maharashtra with reference no. ELD-2016/S.N.239/Urja-1 dated 4th June, 2018 stating that as per Maharashtra Electricity Act, 2016, charitable institutions registered under the Bombay Public Trust Act, 1950 for the purpose of or in respect of school or college imparting education or training in academic or technical subjects are not entitled for electricity duty exemption with effect from 1st September, 2016 and also informed that their billing department is arranging a letter in that regard.

11. The petitioners state that respondent no. 2-company, by its letters, all dated 19th July, 2018, informed the petitioners that they have received a letter (termed as notification) dated 4th June, 2018 from the Industries, Energy and Labour Department,

Government of Maharashtra stating that the existing electricity duty exemption granted to the petitioners being educational institutions registered under the Bombay Public Trust Act, 1950 has been revoked from 1st September, 2016 and stated that the petitioners shall be charged with electricity duty. Respondent no.2 also informed the petitioners that the electricity duty has been levied in the power supply bills of the petitioners from the billing month of June, 2018. Respondent no. 2 further informed the petitioners that supplementary bills for the period from 1st September, 2016 to 31st May, 2018 shall be raised on the petitioners towards electricity duty charges. A copy of the said letter dated 4th June, 2018 (termed as notification) addressed by the Industries, Energy and Labour Department along with the legal opinion given by the Law and Judiciary Department, State of Maharashtra was enclosed to the said letter dated 19th July, 2018 addressed by respondent no. 2. The said letter dated 4th June, 2018 was addressed by the Industries, Energy and Labour Department to MSEDCL, BEST, respondent nos. 2 and 3 to take further action as per the opinion given by the Law and Judiciary Department.

12. The petitioners state that pursuant to the said letter dated 4th June, 2018 issued on the basis of the opinion given by the Law

and Judiciary Department of the State of Maharashtra, respondent no. 3 levied electricity duty @ 21% in the following bills raised on the petitioners and their educational institutions for the period of 1st September, 2016 to 31st May, 2018 and for the month of June and July, 2018:-

Sr. No.	Name of Educational Institution	Bill for the month	Amount of Electricity duty levied by the Respondent No. 3 @ 21%
1	Mithibai College of Arts, Chauhan Institute of Science, Amrutben Jivanlal College of Commerce & Economics (petitioner no. 6)	June	634526.73
		July	16188823.77
2	Chatturbuguj Narsee Memorial School (Petitioner NO. 7)	June	4515248.29
		July	3584900.06
3	C. B. Patel Research Center (Petitioner No. 8)	June	24302.37
		July	546721.45
4	D. J. Sangvi College of Engineering (Petitioner No. 9)	June	112051.21
		July	3737839.4
5	M. R. Patel School of Technology, Management & Engineering (Petitioner No.10)	June	88994.92
		July	3128879.02

13. The petitioners state that respondent no. 4 company thereafter has acquired respondent no. 3 company's integrated business of generation, transmission and retail electricity distribution in Mumbai and Maharashtra and therefore, respondent no. 4 started raising bills on the customers of

respondent no. 3 from the period of August, 2018. Respondent no. 4-company levied electricity duty @ 21% in the following bills raised by them for the month of August, 2018 on the petitioners and their educational institutions:-

Sr. No.	Name of the Institution	Bill for the month	Amount of Electricity duty levied by the Respondent No.4 @ 21%
1	Mithibai College of Arts, Chauhan Institute of Science, Amrutben Jivanlal College of Commerce & Economics (petitioner no. 6)	August	954303.21
2	Chatturbguj Narsee Memorial School (Petitioner NO. 7)	August	200388.21
3	C. B. Patel Research Center (Petitioner No. 8)	August	28429.38
4	D. J. Sangvi College of Engineering (Petitioner No. 9)	August	249092.35
5	M. R. Patel School of Technology, Management & Engineering (Petitioner No.10)	August	151424.76

14. The petitioners further state that the legal opinion annexed to the impugned letter dated 4th June, 2018 is on the face of it contrary to the Maharashtra Electricity Duty Act, 2016 (for short “the MED Act, 2016”). The opinion given by the Law and Judiciary Department stating that after the enactment of MED Act, 2016, the educational charitable institutions registered under the Maharashtra Public Trusts Act, 1950 are not exempted

from payment of electricity duty from 1st September, 2016 is *ex facie* contrary to the provisions of section 3(2) of the MED Act, 2016.

15. The petitioners further state that the impugned letter dated 4th June, 2018, thereby calling upon the electricity companies to charge all educational institutions run and managed by the public charitable trusts registered under the Maharashtra Public Trust Act, 1950, is also illegal and bad in law and required to be quashed and set aside.

16. Thus, the question raised before us is the interpretation of section 3(2) of the MED Act, 2016. Before we do that, we also refer to the apprehensions expressed by the petitioners and of disconnection of the power supply and they state in para 20 of the writ petition that they have addressed letters to respondent nos.2 and 3 to make payment of the electricity duty for the period specified in their letter dated 27th July, 2018 and 30th July, 2018, copies of which are marked as Exhibits 'L' and 'M' to avoid disconnection. Then, there is a reference to an e-mail by respondent no. 3, which is a purported reply to the petitioners' communications at Exhibits 'L' and 'M' and forwarding payment breakup for the payment of electricity duty in installments. Exhibit 'N' is a copy of this e-mail of 11th August, 2018 and then,

there is a reference made to all the notices. In para 22 of the writ petition there is reference to certain notices, which the petitioners construe as notices of disconnection for non-payment of electricity duty. Then, there is reference to Exhibit 'Q' in para 23, whereunder, the petitioners' request in writing to pay arrears of electricity duty in 10 installments is accepted.

17. It is in the above factual backdrop that we have to consider the rival contentions. Dr.Sathe learned senior counsel appearing for the petitioners would submit that the petitioners continue to be exempted under the provisions of the Act. The interpretation placed on the provisions of the amended Act is thus absolutely contrary to the law. It is submitted that there is a legal opinion given by the Law and Judiciary Department, Government of Maharashtra interpreting section 3(2) of the MED Act, 2016 and it is urged that the educational institutions run by the public charitable trusts registered under the Maharashtra Public Trust Act, 1950 are not exempted from payment of electricity duty. In fact, the 2016 Act extends the benefit of exemption from payment of electricity duty. In fact, there is a complete misreading of the provisions of law resulting in violation of constitutional mandate enshrined under Articles 14, 21 and 19(1)(g) as also Articles 29 and 30 of the Constitution of India. Dr. Sathe would submit that

the judgments of the Hon'ble Supreme Court which interpret the exemption notification and provisions of that nature would denote that it is not at all intended that the exemption is only enjoyed by those institutions in the field of education etc. which are run by the local bodies. Such is never the intent and on a plain reading of the language of the statute. Dr.Sathe would invite our attention to the settled principles of interpretation that we must look at the old law as also the new law to find out whether there is any change and whether the legislature intends to completely do away with the old regime. It is in these circumstances that he would submit that we should not allow the law to be defeated.

18. Dr. Sathe relied upon the following judgments:-

- (i) Commissioner of Central Excise, Vadodara vs. Indian Petrochemicals Corporation Limited and Anr., (2015) 15 SCC 783;
- (ii) State of Maharashtra and Ors. vs. Mana Adim Jamat Mandal, (2006) 4 SCC 98;
- (iii) Mohd. Shabir vs. State of Maharashtra, (1979) 1 SCC 568.

19. On the other hand, Mr.Kumbhakoni learned Advocate General appearing for respondent no. 1-State would submit that this is a clear case, as explained in the affidavit in reply, of a restricted exemption from payment of electricity duty. The

learned Advocate General would submit that the MED Act, 2016 provides for a levy and payment to the State Government, on the consumption charges or the units of energy consumed a duty at the rates specified in the Schedule to the said Act. The Act also contains provisions for exemption from levy. In fact, it was found after deliberations between the State Government and respondent no. 2 that there is a clarity required so that the electricity duty is paid by educational institutions which are earning huge income by way of fees etc. In fact, the infrastructure of the educational institutions is used to its maximum potential. Thus, there are commercial gains also made. It is in these circumstances that the State Government decided to implement the law, as it stood. The impugned direction of 4th June, 2018 is thus clearly supportable in law. One cannot ignore the plain language of the statute and to grant any undue benefit is the contention of the learned Advocate General.

20. In support of his contentions, the learned Advocate General relied upon the following judgments:-

- (i) Collector of Central Excise, Bombay-I and Anr. vs. M/s.Parle Exports (P) Ltd., (1989) 1 SCC 345;
- (ii) Novopan India Ltd., Hyderabad vs. Collector of Central Excise and Customs, Hyderabad, 1994 Supp (3) SCC 606;

(iii) Liberty Oil Mills (P) Ltd., Bombay vs. Collector of Central Excise, Bombay, (1995) 1 SCC 451;

(iv) State of West Bengal and Others vs. Swapan Kumar Guha and Others, (1982) 1 SCC 561;

(v) Bihar State Electricity Board vs. Pulak Enterprises and Others, (2009) 5 SCC 641.

21. For properly appreciating the rival contentions, we must first make a reference to the impugned communication itself. That communication is dated 4th June, 2018. By that, the State Government stated that such of the educational institutions which are registered under the Maharashtra Public Trust Act, 1950 are excluded from the purview of the exemption and that exemption is now restricted only to the schools run and managed by the local bodies. This was the view of the Law and Judiciary Department of the State of Maharashtra which was approached for the opinion. The opinion was sought on five issues. The first issue was whether the educational institutions which have been registered under the Maharashtra Public Trust Act, 1950 prior to the 2016 law would be exempted from payment of electricity duty. The second issue was whether the educational institutions which have been registered under the Maharashtra Public Trust Act, 1950 after the implementation of the MED Act, 2016 Act should be exempted from the payment of electricity duty. The third issue

was such of the educational institutions in whose favour perpetual exemption order has been passed under the 1958 Act, but the period of exemption is not specified, whether such educational institution would continue to enjoy the benefit of exemption from payment of electricity duty after the Act of 2016 has been brought into effect. The next issue was whether such educational institutions which have been permanently exempted from the electricity duty would still be entitled to the exemption after the MED Act, 2016 has been brought into effect. Then and finally, the question posed was such of the educational institutions who were not exempted from payment of electricity duty, but still were subjected to such duty and having now applied for either refund or such exemption, can their representations be considered.

22. The opinion of the Law Ministry, based on which the impugned communications were addressed to the electricity distribution company, reads as under:-

“The concerned department by articulating the aforesaid queries made a request to tender opinion.

1. In view of the section 3(2) (a)(iii) of the Maharashtra Electricity Duty, 1958 (Act of 1958 for short) the charitable institution registered under the Bombay Public Trust Act, 1950, for the purpose of, or in respect of, school or college imparting education or training in academic or technical subjects (save in respect of premises used for residential purposes) were exempted from levy of consumption charges or the units of energy consumed. However, the State

Government vide Maharashtra Act No.XXVI of 2016 has enacted the Maharashtra Electricity Duty Act, 2016 and thereby repealed the Maharashtra Duty Act, 1958 (Act of 1958 for short). The Maharashtra Electricity Duty Act, 2016 come into force with effect from 01.09.2016. In this new Act, there is no provision similar to the sub-clause (iiia) of clause (a) of sub-section (2) of section 3 of the repealed Act. Therefore, a reasonable inference flows that, there is no policy and intention of the Government to grant exemption to the school and colleges run by Charitable Institutions registered under Bombay Public Trust Act, 1950 from payment of electricity charges.

2. Since, no provision, similar to the sub-clause (iiia) of clause (a) of sub-section (2) of section 3 of the repealed Act has been made in the new Act, 2016, the Charitable Institutions, whether registered before or after coming into force of the new Act, 2016, are not entitled for availing the benefit of exemption from payment of electricity charges under the New Act, 2016.

3. However, the Repealed Act, 1958 was in force till 01.09.2016 and therefore, the Charitable Institutions registered under the Bombay Public Trust Act, 1950 before coming to in force of the Maharashtra Electricity Duty Act, 2016 are entitled to claim exclusion from payment of electricity duty till the dated 01.09.2016 as such institutions were specifically exempted from payment of duty under the erstwhile Maharashtra Electricity Duty Act, 1958.

4. It is pointed out that, by virtue of statutory provision incorporated in section 3(2)(a)(iiia) of the Repealed Act, 1958, the Charitable Education Institutions were enjoying concession from payment electricity consumption charges and there was no need to issue a specific order in their favour under the said Act. Therefore, if any order had been issued by the department in favour of any Institution, it is neither an order as contemplated under Repealed Act, 1958 nor it is saved by proviso to Section 4 of the Maharashtra Electricity Duty Act, 2016 and therefore, after commencement of the Maharashtra Electricity Duty Act, 2016, such order (s) do (es) not confer right upon the Charitable Education Institution to claim exemption.

5. In view of the above, the queries raised by the concerned department are answered that, since no order was intended to be passed under Repealed Act, 1958 in respect of grant of exemption the Charitable Education Institutions registered under the Bombay Public Trust Act, 1950 before

coming into force of the Maharashtra Electricity Duty Act, 2016 were entitled to get exemption from payment of electricity duty as such institutions were specifically exempted from payment of duty under the Maharashtra Electricity Duty Act, 1958 up to 01.09.2016 i.e. till the Act, 1958 was in force. But after coming in to force of Maharashtra Electricity Duty Act, 2016 such institutions may not be entitled to continue to avail exemption from payment of electricity duty. The Electricity Duty Charges Refund Committee can consider the application of the institutions which are registered under Bombay Public Trust Act, 1950 before coming into force of the Maharashtra Electricity Duty Act, 2016 for refund of duty charges levied to such institutions and such institutions are entitled to get exemption till the date 01.09.2016.”

23. It is the correctness of this view which is challenged in this petition.

24. We must refer to the old Act i.e. the 1958 Act and the new Act, which is the MED Act, 2016. Though the Bombay Act, after a particular time, was also referred as the Maharashtra Electricity Duty Act, 1958, still, for clarity sake, we will say that it is the 1958 Act.

25. The 1958 Act was a law to provide for the levy of a duty on consumption of electrical energy in the State of Bombay (Maharashtra). This Act extends to the whole State and came into effect from 1st July, 1958. Section 2 of this law contains definitions and the material definitions are contained in section 2(a), 2(aa), 2(b) and 2(c) and 2(d). They read as under:-

“2(a) “consumer” means any person who is supplied with energy on payment of charges or otherwise by a licensee or by

any other person who generates energy but does not include a licensee to whom energy is supplied by a bulk licensee within the meaning of clause IX of the Schedule to the Indian Electricity Act, 1910, or by the State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948 and the word “consume” with its grammatical variations shall be construed accordingly;

2(aa) “consumption charges” means the charges levied by the licensee, under the Electricity (Supply) Act, 1948, for the energy consumed by a consumer which charges shall include the energy charges, maximum demand charges, fuel adjustment charges and fuel cost adjustment;

2(b) “energy” means electrical energy when generated, transmitted, supplied or used for any purpose except the transmission of a message;

2(c) “licensee” means any person licensed under Part II of the Indian Electricity Act, 1910, to supply energy and includes any person who has obtained the sanction of the State Government under section 28 of that Act, the Central Government or a State Government when it is engaged in a business of supplying energy and the State Electricity Board constituted under section 5 of the Electricity (Supply) Act, 1948;

2(d) “prescribed” means prescribed by the rules made under this Act.”

26. The charging section is sub-section (1) of section 3 and this very section contains sub-section (2), which, in categorical terms, says that the electricity duty shall not be leviable on the consumption charges or the units of energy consumed by the entities mentioned therein. Section 3 reads as under:-

“3. (1) Subject to the provisions of sub-section (2), there shall be levied and paid to the State Government on the consumption charges or the units of energy consumed (excluding losses of energy sustained in transmission and transformation by a licensee before supply to a consumer), a duty (hereinafter referred to as “electricity duty” at the rates specified in the Schedule to this Act.

(2) (a) Electricity duty shall not be leviable on the consumption charges or the units of energy consumed,-

(i) by the government of Maharashtra (save in respect of premises used for residential purposes;

(ia) by or in a respect of any municipal corporation, municipality, municipal committee, town committee, notified area committee, Cantonment Board, Zilla Parishad or *village panchayat* constituted under any law for the time being in force in the State, for the purpose of, or in respect of a school or college imparting education or training in academic or technical subjects, a hospital, nursing home, dispensary, clinic, public street lighting, public water works and system of public sewers or drains (save in respect of premises used for residential purposes);

(ib) by any licensee for purposes directly connected with construction, maintenance or operation of any generating, transmitting and distributing system of the licensee;

(ii) by a tramway company, save in respect of premises used for residential and office purposes;

(iii) by or in respect of any statutory University and institutions run by the statutory University for the purpose of or in respect of education, research and training (save in respect of premises used for residential purposes);

(iia) by or in respect of charitable institution registered under the Bombay Public Trusts Act, 1950, for the purpose of, or in respect of, school or college imparting education or training in academic or technical subjects (save in respect of premises used for residential purposes);

(iv) where the energy is generated by any person for the purpose of supplying it for the use of vehicles or vessels;

(v) where the energy is generated at a voltage not exceeding 100 volts;

(vi) in respect of such industrial or agricultural purposes in such areas and subject to such terms and conditions and for such period as the State Government may, having regard to the need and conditions of industrial and agricultural development in the areas by general or special order specify in that behalf;

(vii) for any industrial purpose or process, in the Vidarbha region, Marathwada region, in the Raigad, Sindhudurg and Retnagiri Districts and in the Thane District (but excluding therefrom the part adjoining Greater Bombay, which is encircled by the Thane-Bassein creek) in respect of any new industrial undertaking during a period of five years from the date on which such undertaking has begun to manufacture or produce articles for the first time before the commencement of the Maharashtra Tax Laws (Levy and Amendment) Act, 1988:

Provided that, a new industrial undertaking which begins to manufacture or produce articles for the first time on any date after the commencement of the Bombay electricity Duty (Amendment) Act, 1986 (hereinafter referred to in this sub-clause as "the said date"), shall make an application in the prescribed manner and from within two years from the said date; and thereupon the provisions of this sub-clause shall apply to such undertaking from the said date:

Provided further that, the State Government may, either prospectively or retrospectively, by notification in the *Official Gazette*, exclude,-

(a) any areas aforesaid or any part thereof (regard being had to the price of energy prevailing therein and to the state of industrial development thereof), or

(b) any new industrial undertaking or class of new industrial undertaking, subject to such conditions and restrictions, as may be specified in this behalf by the State Government in such notification;

and thereupon the provisions of this sub-clause shall not apply in those areas or part thereof or in relation to such new industrial undertaking or class of new industrial undertaking.

(b) In those parts of the State not mentioned in sub-clause (vii) of clause (a) (but excluding Greater Bombay) electricity duty of the units of energy consumed by any new industrial undertaking for any industrial purpose or process, shall, during a period of five years commencing from the date from which such undertaking manufactures or produces articles for the first time and where the undertaking has already has begun to manufacture or produce articles for the first time before the commencement of the Maharashtra Tax Laws (Levy and Amendment) Act, 1988:

Provided that, a new industrial undertaking which begins to manufacture or produce articles for the first time on any date after the commencement of the Bombay Electricity Duty (Amendment) Act, 1986 (hereinafter referred to in this sub-clause as “the said date”), shall make an application in the prescribed manner and form within two years from the said date; and thereupon the provisions of this sub-clause shall apply to such undertaking from the said date:

Provided further that, the State Government may, either prospectively or retrospectively, by notification in the *Official Gazette*, exclude,-

(a) any area aforesaid or any part thereof (regard being had to the price of energy prevailing therein and to the state of industrial development thereof), or

(b) any new industrial undertaking or class of new industrial undertaking, subject to such conditions and restrictions, as may be specified in this behalf by the State Government in such notification,

and thereupon the provisions of this clause shall not apply in those areas or part thereof or in relation to such new industrial undertaking, or class of new industrial undertaking.”

27. Section 4 provides for payment of electricity duty, whereas, sections 4A, 5 provide for a reference for decision to authority on any question as to part or clause of Schedule under which any consumption of energy falls and obligation to keep books of account and submit returns. There is separate power to exempt conferred by section 5A, whereas, the rest of the provisions of the statute enable recovery of duty levied. It also contains a 'savings' provision in section 13 and thus, the tax on the consumption or sale of electricity consumed by the Government of India or sold to

the Government of India for consumption by that Government or the consumption in the construction, maintenance or operation of railway of the Government of India or sold to that Government for consumption in the construction, maintenance or operation of any railway, cannot be imposed. Thus, consumption or sale of electricity, whether produced by a Government or other person, which is consumed by the Government of India or sold to the Government of India for consumption by that Government does not attract the tax. It is clear that there is a power to make rules and the matters on which rules can be provided, which are not exhaustive, are to be found in section 12.

28. A perusal of section 3 would leave us in no manner of doubt that subject to provisions of sub-section (2) of section 3, there shall be levied and paid to the State Government, on the consumption charges or units of energy consumed, a duty which is referred to as the electricity duty at the rates specified in the Schedule to the 1958 Act. It is clear that losses of energy sustained in transmission by a licensee before supply to a consumer are excluded from levy. Then, by sub-section (2), it is very clearly stated that this duty shall not be leviable on the consumption charges or on the units consumed by the Government of Maharashtra (save in respect of premises used for

residential purposes) and we must at once note that sub-section (2) was amended by the Maharashtra Act 26 of 1962, Maharashtra Act 21 of 1998 and by the Maharashtra Act 13 of 1986. The exemption under section 3(2)(ia) was also enjoyed by or in respect of any municipal corporation, municipality, municipal committee, town committee, notified area etc. constituted under any law for the time being in force in the State. However, sub-section (2) applies only for the purposes or in respect of a school or club imparting education or training in academic or technical subjects, hospitals, nursing homes etc. Thus, the first part of this amended provision says that electricity duty shall not be leviable on the consumption charges or the units of energy consumed by or in respect of any municipal corporation and as was contended by the learned Advocate General, what is set out in the portion of clause (ia) is independent and therefore, this duty shall not be leviable on an education institution, hospital, nursing home, dispensary, clinic, public street lighting, public water works and system of public sewerage or drains (save in respect of premises used for residential purposes).

29. The learned Advocate General says that we must also note that there were clauses (iii) and (iiia) present in the 1958 Act or inserted by amendments, which, independently excluded the

institutions run for the purpose or in respect of education, research or training and by or in respect of charitable institutions run by them for the purpose of or in respect of school or college imparting education or training in academic or technical subjects. Throughout, it is undisputed that residential premises, even belonging to the Government were not excluded. The submission of the learned Advocate General is that when the local body is not totally excluded from the levy, but such of the activities of the local bodies restricted to education, health, public street lighting or public amenities and conveniences are exempted, then, the exemption or exclusionary provision is not absolute in terms. The learned Advocate General highlighted that even in respect of any statutory university, it is only the educational and related activities which enjoy this exclusion. The learned Advocate General would submit that independent of the local bodies and the university, a charitable institution under the then Bombay Public Trust Act, 1950, but in the field of education was covered by the exclusionary provision. Since the learned Advocate General laid heavy emphasis on the MED Act, 2016, we note that Act in great details. The preamble to that Act reads thus:-

“MAHARASHTRA ACT NO. XXVI OF 2016.

An Act to provide for levying a duty on consumption of electrical energy in the State of Maharashtra and for matters connected therewith or incidental thereto.

WHEREAS due to the enactment of the Electricity Act, 2003 by the Central Government, radical changes have been ushered in the management of generation, transmission and supply of electricity, and new concepts like power trading, exchange of power, open access, de-licensing of electricity generation, etc. have been introduced which are not the part of the Maharashtra Electricity Duty Act;

AND WHEREAS after considering the changes made by the said Electricity Act, the Government of Maharashtra considers it expedient to make a comprehensive law to provide for the levy of a duty on consumption of electrical energy in the State of Maharashtra covering all categories of electricity consumers as per the said Electricity Act, by repealing the existing Maharashtra Electricity Duty Act; it is hereby enacted in the Sixty-seventh Year of the Republic of India as follows:-

30. Section 1 of this law says that this law extends to the State of whole Maharashtra. It is common ground that this law has been brought in to force on 8th August, 2016. Once again, we note certain definitions contained in section 2 reading as under:-

“2(d) “consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Electricity Act, or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

(e) “consumption charges” means the charge levied by the licensee under this Act for the energy consumed by a consumer which shall include the fixed charges such as demand charges, variable charges such as energy charges, fuel adjustment charges and reliability charges, as per the tariff approved by the Commission, but does not include the penal charges or incentives, for delayed or prompt payment, power factor, harmonics, load factor, interest charged thereof and compounding charges on assessment, as the case may be;

(h) “Electricity Duty Inspector” means a person appointed by the State Government under sub-section (1) of section 8;

(i) “energy” means electrical energy generated, transmitted, distributed, consumed, traded or wheeled for any purpose;

(k) “Government” or “State Government” means the Government of Maharashtra;

(n) “licensee” means a person who has been granted licence under section 14 of the Electricity Act, for transmission, distribution, supply, trading in electricity and includes those who hold status of a deemed licensee and also those exempted under section 13 of the Electricity Act;

(p) “prescribed” means prescribed by rules made under this Act;

(s) “Schedule” means the Schedule appended to this Act;

(u) “unit” means unit of measurement of energy consumed in Kilowatt per hour (kWh)”

31. Section 3 is the charging section. It reads as under:-

3. (1) Subject to the provisions of sub-section (2), there shall be levied and paid to the State Government, on the consumption charges or the units of energy consumed, a duty (hereinafter referred to as “Electricity Duty”) at the rates classified as per the Tariff Schedule of the Commission, from time to time, on the basis of use of the premises by the consumer on whose name energy is supplied by the licensee, or a consumer who is consuming energy produced from an independent source other than that supplied by the licensee, for his own use as specified in the Schedules, which are based on the following classifications:-

(a) the consumption charges where energy is supplied by the licensee;

Explanation.- For the purpose of this sub-section “use of the premises by the consumer on whose name energy is supplied” means the basis of purpose for which the consumer in whose name supply has been released and measured by the meter installed at point of supply by the licensee, on which the consumption charges are billed as per the tariff, however, in huge industrial parks, commercial premises or malls where electricity is supplied at single point or as bulk consumers any further it is re-distributed as one of the utility service provided by the owner of the premises to the end users

occupying the area on lease or rent or otherwise, whose purpose of use of electricity at the user's end may vary categorically;

(b) units of energy consumed by a person and energy produced through the-

(i) Captive generation;

(ii) Co-generation;

(iii) Standby generation;

(iv) Renewable Energy; or

(v) Independent Power Producer (IPP);

(2) Electricity duty shall not be levied on the consumption charges or energy consumed,-

(i) by the State Government excluding the public undertakings;

(ii) by the Central Government excluding the public undertakings;

(iii) for the purposes of, or in respect of a school or college or institution imparting education or training, students' hostels, hospitals, nursing homes, dispensaries, clinics, public streets lighting, public water works, sewerage systems, public gardens including zoos, public museums, administrative offices forming whole or, as the case may be, a part of system run by any local bodies constituted under any law for the time being in force in the State of Maharashtra;

(iv) by the Government hostels;

(v) by any licensee, or by any other person engaged in the business of supplying electricity to the public under the Electricity Act, for the purposes directly connected with construction, maintenance, operation of any transmitting and distributing system, including the losses incurred therein;

(vi) by any generating company for the purposes directly connected with construction, maintenance and operation of generating plant;

(vii) where the energy is generated by any

person for the purpose of supplying it for the use of vehicles or vessels excluding Metro and Monorail;

(viii) where the electricity is generated at a voltage not exceeding 100 volts.

(3) Notwithstanding anything contained in sub-section (2), in respect of the premises used for residential purposes there shall be levied and paid to the State Government an electricity duty on the consumption charges as per Schedule A.”

32. Pertinently, in this, we find that section 3 is independent of sections 4, 5 and 6, which read as under:-

4. Subject to the conditions as it may imposes, the State Government may, if considers it necessary in the public interest so to do, by notification in the *Official Gazette*, exempt, prospectively or retrospectively, the electricity duty on the consumption of energy, in the whole or any part of the State, in respect of any class of premises or purposes, in such areas and for such period as may be specified therein, or in respect of energy consumed up to a specified limit, from the payment of the whole or any part of the electricity duty payable as per the Schedules, having regard to -

(i) the availability and price of energy prevailing therein and to the state of industrial or agricultural development, educational, medical aid, facilities, social conditions; and

(ii) the various policies and need, and conditions of overall development in the areas declared by general or special order, specified in this behalf;

Provided that, nothing contained in this Act shall affect any order issued in this regard before the commencement of this Act, and such order shall continue to be in force till the period mentioned therein expires, and where such period is not mentioned, any further order is issued in that respect under the provisions of this Act.

5. The State Government may, by notification in the *Official Gazette*, subject to such terms and conditions as may be specified therein, modify the rates of electricity duty in respect of such class of consumers, such type of generation, in such areas and for such period as specified.

6. (1) Every licensee shall collect and pay to the State Government at the time and in the manner prescribed, the proper electricity duty payable under this Act, based on-

(i) the consumption charges in respect of energy supplied by him to consumers classified under clause (a) of sub-section (1) of section 3, as per Schedule A;

(ii) the units of energy consumed in respect of energy supplied by wheeling to the consumers availing open access facility classified under clause (c) of sub-section (1) of section 3, as per Schedule C and also as per prevailing rates of consumption charges of distribution company or licensee which are mentioned in Schedule A.

(2) The duty so payable shall be a first charge on the amount recoverable by the licensee for the energy supplied or wheeled by him, and shall be a debt due by him to the State Government :

Provided that, where the licensee has been unable to recover his dues for the energy supplied or wheel by him, he shall not be liable to pay the duty in respect of the energy so supplied.

(3) Every person, who falls under clause (b) of sub-section (1) of section 3, who consumes the energy fully or partly for his own use or supplies to any other person or persons, shall pay to the State Government, at the time and in the manner prescribed, the proper electricity duty payable under this Act in respect of the energy consumed by him or by the consumers to whom he has supplied energy, as per Schedule B. He may recover the portion of the electricity duty on the energy consumed by the other person or persons to whom he has supplied energy.

(4) Every person, not being a licensee or generating company, who falls under clause (c) of sub-section (1) of section 3, consumes energy and utilises fully or partly for his own use or supplies to any other person or persons, shall pay to the State Government, through the licensee, at the time and in the manner prescribed, the proper electricity duty payable under this Act in respect of energy consumed by him or by the consumers to whom he has supplied energy, as per Schedule C. He may recover the portion of the electricity duty on the energy consumed by the other person or persons to whom he has supplied the energy :

Provided that, where a person falling under sub-section (3) or sub-section (4) has been unable to recover his dues for the energy supplied by him to any other person or persons, he shall be liable to pay the duty in respect of the energy so supplied.

(5) Nothing contained in sub-sections (3) and (4) shall apply if the energy is supplied to the licensee.

(6) Where any person fails or neglects to pay, at the time and in the manner prescribed, the amount of electricity duty due from him, the licensee, or as the case may be, the person supplying energy, may, without prejudice to the right of the State Government to recover the amount under section 11, deduct such amount of electricity duty from the amount, if any, on account of deposit or refund due, with the licensee or the person supplying energy, after giving not less than seven clear days' notice in writing to such consumer or person to whom energy is supplied, cut off the supply of energy to such consumer or person, if the dues are not recoverable from the deposit or refund available with him; and he may, for that purpose, exercise the powers conferred on a licensee by sub-section (1) of section 56 of the Electricity Act, for the recovery of any charge or sum due in respect of consumption charges on the energy consumed.

(7) The licensee shall be entitled to a rebate of such amount as may be determined by the State Government, from time to time, regard being had to the cost of collection of the duty incurred by such licensee.

(8) Notwithstanding anything contained in the foregoing sub-sections, where the State Government is satisfied that there is a *bona fide* mistake, on the part of any licensee or a person supplying energy to the consumers or consuming energy for his own use, in paying the proper electricity duty, on account of wrong meter reading or misclassification of consumption falling under any particular Part or clause in the Schedule, the State Government may, at any time, by an order, waive or write-off, with retrospective effect, the recovery of the amount of the electricity duty or any part thereof due at the proper rate and the amount of interest thereof, if any, payable for delayed payment under section 11."

33. Thus, there is an independent power to exempt electricity duty, to modify rates of electricity duty and regarding payment

and recovery of electricity duty. Pertinently, this duty is based on the consumption charges in respect of energy supplied by the licensee to consumers classified under clause (a) of sub-section (1) of section 3 as per the Schedule 'A' and the units of energy consumed in respect of energy supplied by wheeling to the consumers availing open access facility classified under clause (c) of sub-section (1) of section 3 as per Schedule 'C' and also as per prevailing rates of consumption charges of distribution company or licensee which are mentioned in Schedule 'A'.

34. There is a separate power conferred by sub-section (7) of section 6 to grant rebate of such amount, as may be determined by the State Government. Sub-section (1) of section 56 of the Electricity Act, 2003 can also be resorted to by the person supplying the energy or a licensee as the case may be. The other obligations in terms of the 1958 Act continue, but there is constitution of an appellate authority under section 10 and there is an obligation prior thereto by section 9 of the Electricity Duty Inspectors. They have been given powers to direct production for inspection of such books and records as may be necessary for ascertaining or verifying the amount of electricity duty leviable under this Act and they can search the premises also. The delay in payment of electricity duty attracts interest in terms of section

11 and then, there are further provisions in common to the 1958 Act. The rule making power is conferred by section 15 and by section 16 the 1958 Act is repealed. Then, there is a power to remove difficulties and in terms of the Schedules 'A', 'B' and 'C', the rates are specified.

35. Particularly, in Schedule 'A' electricity duty on consumption charges insofar as residential premises is covered by Part 'A', Part 'B' - commercial, Part 'C' - agricultural, Part 'D' - temporary, Part 'E' advertisements and hoardings, Part 'F' industrial, Part 'H' mono and metro rail and we are not concerned with Schedules 'B' and 'C'.

36. A minute look at the difference in the language between section 3 of both statutes, namely, prior 1958 Act and the later MED Act, 2016 is very much necessary. As far as the 1958 Act is concerned, it excludes from the purview of the levy the Government of Maharashtra, then the municipal corporation, municipality, municipal committee etc. Then, the schools, colleges, hospitals, nursing homes, dispensary, clinics, public street lighting, public water works and system of public sewerage and drains are excluded. It specifically excludes the statutory university and institutions run by statutory university for the purpose of or in respect of education, research and training and

separately by clause (iia), the units of energy consumed by or in respect of charitable institution registered under the Bombay Public Trust Act, 1950, for the purpose of or in respect of school or college imparting education or training in academic or technical subjects are excluded. Thus, all the local bodies set out in clause (ia) of sub-section (2) of section 3 were covered by the exclusionary provision. The statutory universities and institutions run by them were covered by a separate exclusionary clause. Equally, charitable institutions registered under the Bombay Public Trust Act, 1950, which consume the units for the purpose of or in respect of school or college imparting education or training in academic or technical subjects, were covered by the exclusionary provision.

37. As far as the MED Act, 2016 is concerned, section 3(2) in clearest terms says that the electricity duty shall not be leviable on the consumption charges or the energy consumed by the State Government excluding the public undertakings. Then, by the Central Government excluding the public undertakings. Thereafter, the electricity duty shall not be levied on the consumption charges or energy consumed for the purpose of or in respect of a school or college or institution imparting education or training, students' hostels, hospitals, nursing homes,

dispensaries, clinics, public street lighting, public water works, sewerage systems, public gardens including zoos, public museums, administrative offices forming whole or as the case may be a part of system run by any local bodies constituted under any law for the time being in force in the State of Maharashtra.

38. Sub-section (2) of section 3 of the old Act (1958 Act) had as many as 7 clauses and the arrangement of the clauses of sub-section (2) of that time denotes that the Government of Maharashtra was covered, in the sense, this duty was not leviable on the consumption charges or the units of energy consumed by the Government, municipal corporation, municipality, municipal committee, town committee etc. for the purpose of or in respect of a school or college imparting education or training in academic or technical subjects, hospital, nursing home, dispensary etc. and then, the public services such as public street lighting, public water works and system of public sewers or drains etc. The education by statutory university or institution run by it was covered by the exclusionary provision and equally, charitable institutions which consume the electricity energy for the purpose or in respect of its school, college imparting education or training in academic or technical subjects. Such of the charitable institutions, which had consumed the units of energy or on whose

consumption charges duty is levied, were covered by the exclusionary provision separately.

39. Pertinently, in this case, the petitioners before us claim to be charitable institutions. They are covered by the same law, namely the then Bombay and Now Maharashtra Public Trust Act, 1950. Further, they paid the consumption charges for such energy which is consumed by their educational institutions. We will have to find out from the new law as to whether there was an intent to cover such organisations or institutions registered under the Maharashtra Public Trust Act, 1950. That we do not find to be separately covered by the MED Act, 2016 by sub-section (2) of section 3. However, what the words employed in section 3(2)(iii) of the new law would indicate is that the electricity duty shall not be levied on the consumption charges or energy consumed for the purpose of or in respect of a school or college or institution imparting education or training, students' hostels, hospitals, nursing homes, dispensaries, clinics. That is how the exclusionary provision excludes from the levy the consumption charges or energy consumed for the purpose of or in respect of educational institutions, students' hostels, hospitals, nursing homes, dispensary, clinics and public street lighting. It also covers, by this exclusionary provision, the consumption charges

for energy consumed for the purpose of or in respect of public water works, sewerage system, public gardens; including zoos, public museums and administrative offices forming whole or as the case may be a part of system run by any local bodies constituted under any law for the time being in force in the State of Maharashtra. The word “local body” is not defined. Such a word is not defined in the Electricity Act, 2003. However, what is defined in section 2(41) of the Electricity Act, 2003 is the word “local authority”. That definition reads as under:-

“2(41) “local authority” means any Nagar Panchayat, Municipal Council, Municipal Corporation, Panchayat constituted at the village, intermediate and district levels, body of port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with the control or management of any area or local fund.”

40. Thus, the local authority means any Nagar Panchayat, Municipal Council, Municipal Corporation, Panchayat constituted at the village, intermediate and district levels, body of port commissioners or other authority legally entitled to, or entrusted by the Union or any State Government with the control or management of any area or local fund. We can safely rely upon this definition so as to understand what is contemplated by the expression “local body” constituted under any law for the time being in force in the State of Maharashtra appearing in clause (iii) of sub-section (2) of section 3 of the MED Act, 2016.

41. The sweep of the exclusionary provision under the 1958 Act required the legislature to separately indicate school or college imparting education or training in academic or technical subjects, hostels, hospitals, nursing homes, public street lighting, public water works, sewerage systems and drains etc. in one clause of sub-section (2) of section 3 and the statutory university and institutions run by statutory university for the purpose of or in respect of education, research and training, separately. It also required the legislature to exclude from the levy the consumption charges or the units of energy consumed by or in respect of charitable institutions registered under the Maharashtra Public Trust Act, 1950 for the purpose of or in respect of educational activities. Now, this is all done away with and in clause (iii) of sub-section (2) of section 3, several activities which are in the nature a service and rendered not necessarily with a profit motive are covered. Therefore, education and health, irrespective of whether service in such fields is rendered by public body or private body, is covered. The other category is, the services which are rendered as a part of a public duty and obligation by the local bodies and they render this by operating the systems and administrative offices of such local bodies which bear the burden of consumption charges or charges for energy consumed for its administrative offices, but such administrative offices must

form whole or a part of system run by local bodies constituted under any law for the time being in force in the State of Maharashtra. Thus, the village, district or intermediate level body and Nagar Panchayat, municipal council, municipal corporation are all covered as local bodies. The other pointer is, students' hostels are covered by exclusionary clause (iii) of sub-section (2) of section 3 of the MED Act, 2016 separately. Government hostels are also covered. Thus, The Government hostels may not be necessarily students' hostels. They would house several others, but in premises which are belonging to or owned by the Government. We have, therefore, the State Government excluding the public undertakings, the Central Government excluding the public undertakings, the services in the nature referred above and the Government hostels, all of which are covered by the exclusionary provision. The rest of the exclusionary provisions would apply to the licencees, generating companies and generation of electricity for the purpose of supplying it for the use of vehicles or vessels excluding Metro and Monorail and where the electricity is generated at a voltage not exceeding 100 volts. Thus, we find that there is no intent to restrict the exclusion or the provision regarding non-application of the levy or non-application of the charging section to only Government premises or premises belonging to local bodies. The

services in the field of health, education etc. run by local bodies or by institutions like the petitioners would equally be covered by the exclusionary clause or non application of the charging section.

42. Today we have a changed scenario. Post liberalisation, privatisation era, we have enormous presence of private sector in several fields. The service sector is now dominated by private entities. It has now been understood and as a matter of policy measure that it is impossible to reach out to a large section of our population and render all services to it. The Government has itself allowed the participation of the private sector and we have several services rendered by adopting PPP method. This means, Public Private Participation Method. The private sector has joined the Government or the public bodies, including local authorities in providing varied services which are essential for the public. Now, there is an increasing trend of handing over administration of public hospitals as well to charitable trusts and organisations. There is also encouragement provided to the private sector to independently enter the field of these services. In this field, the public services, which were hitherto provided only by the Government, public bodies and local authorities, are now either provided in the PPP method or by exclusive

permission granted to the private sector to provide it. This may be done additionally. Therefore, it will not be proper to hold, as is suggested by the learned Advocate General, that it is only the educational, health, public services, which are provided either wholly or as a part of a system run by the local bodies constituted by any law for the time being in force in the State of Maharashtra, which are covered by the exclusionary provision or non application of the charging section. Meaning thereby, it is only the consumption charges or the energy consumed by public bodies providing the above services on which the levy will not be charged is his submission. That is difficult to accept. A specific provision is necessary so as to exclude the universities, or statutory universities, charitable institutions registered under the Maharashtra Public Trust Act, 1950 providing health and educational services from the purview of the exclusion. Pertinently, we find that in sub-section (1) of section 3 of the MED Act, 2016, which is the charging section, it is stated that subject to the provisions of sub-section (2), there shall be levied and paid to the State Government, on the consumption charges or the units of energy consumed, a duty at the rates classified as per the Tariff Schedule of the Commission, from time to time, on the basis of use of the premises by the consumer on whose name energy is supplied by the licensee, or a consumer who is consuming energy

produced from an independent source other than that supplied by the licensee, for his own use as specified in the Schedules which are classified in sub-section (1) itself. Clause (a) of sub-section (1) of section 3 contains an *Explanation*. It refers to the consumer in whose name supply has been released and measured by the meter installed at point of supply by the licensee, on which the consumption charges are billed as per the tariff. Then, the explanation says that where this supply is at single point or as bulk consumers and further it is re-distributed as one of the utility services provided by the owner of the premises to the end users occupying the area on lease or rent or otherwise, whose purpose of use of electricity at the users' end may vary categorically. Then, there is clause (b) inserted in sub-section (1) of section 3. It is in these circumstances that sub-section (2) says that this duty shall not be levied on the consumption charges or energy consumed by the entities specified in sub-section (2) of section 3 of the MED Act, 2016. The intent becomes further clear by a perusal of sub-section (3). Sub-section (3) opens with a non obstante clause and says that notwithstanding anything contained in sub-section (2), in respect of the premises used for residential purposes, there shall be levied and paid to the State Government, an electricity duty on the consumption charges as per Schedule 'A'. If this sub-section (3) was not enough to

understand the legislative intent, then, that is understood if one peruses carefully section 4. That gives a power to exempt electricity duty and the State Government can exercise this power to exempt from the levy, in public interest, by issuance of a notification and publish it in the Official Gazette, having regard to the availability and price of energy prevailing therein and to the state of industrial or agricultural development, educational, medical aid, facilities, social conditions and the various policies and need and conditions of overall development in the areas declared by general or special order specified in that behalf.

43. The learned Advocate General relies upon this section and its language to say that the exemption can be granted by exercising the powers conferred by this provision to the educational institutions run and managed by charitable institutions registered under the Maharashtra Public Trust Act, 1950, but they enjoy no absolute exclusion. They can avail of the exemption if granted conditionally or unconditionally. However, we cannot accept this argument of the learned Advocate General for what we find is that clause (iii) of sub-section (2) of section 3 of the MED Act, 2016 does not precede the words school or college or institution imparting education or training, students' hostels, hospitals, nursing homes, dispensaries, clinics etc., by the word

“public”. Public street lighting, public water works, public sewerage system, public gardens; including zoos, public museums and administrative offices forming whole or as the case may be part of the system run by local bodies are thus clubbed together with public or private institutions in the field of education, health and that is how the intent is not to levy this duty on them.

44. Once we take the above view, then, the writ petition must succeed. We do not think that we can uphold the stand of the State Government as noted in the foregoing paragraphs.

45. The reliance placed by Mr.Kumbhakoni-learned Advocate General on several judgments dealing with the power of exemption and how such exemption needs to be construed need not detain us. It is clear that we are not construing any exemption notification in this case. We are not interpreting any provision in the law empowering the Government to grant exemption. Once we are interpreting a provision like sub-section (2) of section 3 of the MED Act, 2016, which excludes certain legal entities and services from the purview of levy of electricity duty, then, we must go by the plain language of such provision which excludes the levy the category of persons or institutions, including the Government. We have noted in great details as to how this exclusionary provision does not necessarily exclude

every service. It only excludes the entities and the services from the purview of the levy which are specifically mentioned. Thus, it is the consumption charges or energy consumed for the purposes noted in this clause of sub-section (2) of section 3 which are excluded. The levy will not fall on the consumption charges or energy consumed by them. That is how we have understood this sub-section and interpreted it. Once the electricity duty shall not be levied on the consumption charges or energy consumed, then, employment of the words “for the purpose of or in respect of” can be very well understood. If the consumption charges are for the purpose of or in respect of energy consumed, then, the bill raised for the same will include the component of electricity duty on it. If the consumption charges are for the purposes of or for the energy consumed in respect of the activities mentioned in clause (iii), then, the charges or the amount would have to be paid, but minus the duty. Once this is the sweep of sub-section (2) of section 3 of the MED Act, 2016, then, the reliance on all the decisions by Mr.Kumbhakoni, which only set out the principles of interpretation of exemption provision or exemption notification need not be referred in details.

46. From the language of the provision, it is apparent that the legislature has employed the words “in respect of” and “for the

purpose of". These words are not surplusage. They are employed with a definite intent.

47. In the Advance Law Lexicon by P. Ramanatha Aiyar, 3rd Edition, Reprint 2007, the learned Author, after referring to the Hon'ble Supreme Court's judgments, has stated that the expression "in respect of" is wider in its connotation than the word "in" or "on". They are wide enough and ordinarily, this expression admits of a wider connotation and could mean "being connected with".

48. In a judgment rendered in the case of *Shahdara (Delhi) Saharanpur Light Railway Company Ltd. vs. Upper Doab Sugar Mills Ltd. And Anr.*¹, these words were construed by a three Judge Bench as under:-

"(19). We do not propose, however, to rest our decision on this narrow question of haulage from the station platform to point A, as in our view the assumption made above as regards the definition of terminals in S. 3(14) is not justified. The definition as has already been stated is in these words. "Terminals" includes "charges in respect of stations, sidings, wharves, depots, warehouses, cranes and other similar matters, and of any service rendered thereat". Thus, two clauses of charges are included in the definition. The first is "charges in respect of stations, sidings, wharves, depots, warehouses, cranes and other similar matters." The second is "charges in respect of any service rendered thereat." Whether or not therefore any services have been rendered "thereat" that is, at the stations, sidings, wharves, depots, warehouses, cranes and other similar matters the other class of terminals in respect of these stations, sidings, wharves, depots, warehouses, cranes and similar other matters remain. A further question thus arises as regards the interpretation of

1 AIR 1960 SC 695

the phrase “in respect of”. Does it mean charges for the mere provision and maintenance of stations, sidings, depots, wharves, warehouses, cranes and other similar matters are the terminals or does it contemplate charges only for use of sidings, stations, wharves, depots, warehouses, cranes and other similar matters? The words “in respect of” are wide enough to permit charges being made as terminals so long as any of these things, viz., stations, sidings, wharves, depots, warehouses, cranes and other similar matters have been provided and are being maintained. The question is whether the import of this generality of language should be cut down for any reason. It is well-settled that a limited interpretation has to be made on words used by the legislature in spite of the generality of the language used where the literal interpretation in the general sense would be so unreasonable or absurd that the legislature should be presumed not to have intended the same. Is there any such reason for cutting down the result of the generality of the language used present here? The answer, in our opinion, must be in the negative. It is true that in many cases stations, sidings, wharves, depots, warehouses, cranes and other similar things will be used and it is arguable that in using the words “in respect of” the legislature had such user in mind. It is well to notice however that the legislature must have been equally aware that whereas in some cases accommodation provided by stations will be used, in some cases sidings will be used, in others wharves, in others aware houses and in other cases cranes, and in certain cases several of these may be used, in most cases there will be no use of all of these. From the practical point of view it is impossible to regulate terminal charges separately in respect of user of each of these several things mentioned. When therefore the legislature authorised the Central Government to fix terminals as defined in S.3(14), the intent must have been that the terminals leviable would not depend on how many of these things would be used. It is also worth noticing that the user of a depot, warehouse and cranes would necessarily mean some service rendered “thereat”. If terminals did not include charges in respect of the provisions of depots, warehouses and cranes unless these were used, there would be no need of including these in the first portion as they would be covered by the second part of the definition, viz., “of any services rendered thereat”. Far from being there any reason to cut down, the consequence of the generality of language used viz., “in respect of”, there is thus good ground for thinking that the legislature used this language deliberately to cut across the difficulty of distinguishing in a particular case as to which of these things had been used or whether any of them had been used at all. Innumerable people carry goods over the Railways and many of them, for

the purpose of the carriage make use of the stations, sidings, wharves, depots, warehouses, cranes and other similar matters, while many do not. Though at first sight it might seem unreasonable that those who had not used would have to pay the same charge as those who had made use of these, it is obvious that that interminable disputes that would arise between the Railway Administration and the Railway users, if the fact of user of stations, sidings and other things mentioned had to determine the amount payable, would be unhelpful not only to the Railway Administration but also to the using public. The sensible way was therefore to make a charge leviable for the mere provision of these things irrespective of whether any use was made thereof. That was the reason why such wide words “in respect of” was used. We are therefore of opinion that the words “in respect of” used in S.3(14) mean “for the provision of” and not “for the user of”.

(20) it is worth considering in this connection that the definition of “terminal charges” in the Indian Act is a verbatim reproduction of the definition appearing in the English Railway and Canals Traffic Act, 1888 and that only three years before the English Parliament passed that Act an English Court had held in *Hall & Co. v. London, Brighton and South Coast Rly., Co.*, (1885) 15 QBD 505, that for the purposes of interpretation of section 51 of the London, Brighton, and South Coast Railway Act, 1863 which did not include such a definition of terminal charges, the words “any service incidental to the duty or business of a carrier”, does comprise providing such station accommodation and such sidings, and such weighing, checkage and labelling as is incidental to the duty which they undertake, of collecting and dealing with the goods as carriers”. It is reasonable to think that the English Parliament in defining “terminal charges” in the Railway and Canals Act, 1889 intended to give effect to this view that provision of station accommodation and sidings entitled the Railway Administration to levy “terminal charges.” When the Indian Legislature adopted the same definition in its own Act it is proper to think that it also was aware of the view taken in *Hall's Case*, *1885) 15 QBD 505. This consideration fortifies the conclusion which we have already reached on an examination of the scheme of our own Act, apart from authorities, that the words “in respect of” used in S.3(14) in the definition of “terminal charges” mean “for the provision of” and not “for the user of”.

49. In an earlier decision in the case of *Tolaram Relumal and Anr. vs. The State of Bombay*², these words are held to be conveying the widest meaning, namely, “in relation to” or “with reference to”.

50. Finally, in a decision in the case of *Commissioner of Income-tax, Bihar and Orissa, Patna vs. Chunilal Rameshwar La*³, the meaning ascribed to these words is as under:-

“8. The Bihar and Orissa Municipal Act, 1922, in clause (b) of Sub-Section (1) of Section 82 provides for the imposition of a tax on a holding situated within the municipality, different from the tax on trades, professions, calling and employments described in clause (ff) of the same Sub-Section; but, by virtue of the Fourth Schedule (already quoted), for certain categories of taxes on trades, professions, callings and employments, the value of the premises, where the business is carried on, is taken as the basis. But, on that account, it cannot be said to be a tax on a holding. Clause (ix) of Sub-Section (2) of Section 10 of the Income-tax Act does not refer either to a holding tax or a tax on professions, but merely says that the sum paid on account of municipal tax in respect of such part of the premises as is used for the purposes of the business, profession or vocation shall be deductible.

It is well known that the expression “in respect of” is of wider connotation than the word “in” or “on”. Hence, a class of municipal tax, though not a tax on the premises or buildings, may nevertheless be a tax in respect of the premises or building used for the business. Hence, the payment of the impugned amount of Rs.125 as professional tax under Section 150A read with Section 82(1)(ff) of the Municipal Act is in substance a municipal tax in respect of the business premises, and is covered by clause (ix) of Sub-Section (2) of Section 10 of the Income-tax Act. The assessee is entitled to get allowance for the same under Section 10(1) of the Indian Income-tax Act, 1922. The Appellate Tribunal was right in giving allowance to the assessee for a sum of Rs.125 paid by him under the Bihar and Orissa Municipal Act, 1922.”

² AIR 1954 SC 496

³ AIR 1968 PATNA 364

51. In the case of *Union of India and Anr. vs. Vijay Chand Jain*⁴, it is held as under:-

“4. The contravention alleged is of Section 4(1) which prohibits, inter alia, sale of any foreign exchange. Foreign exchange as defined in Section 2(d) means foreign currency. Under Section 23 (1B) any currency, security, gold or silver, or goods or any other money or property “in respect of which” the contravention has taken place is liable to be confiscated to the Central Government. The currency confiscated in this case was Indian currency. The question is whether the Indian currency constituting the sale proceeds of foreign exchange seized from the respondent was currency in respect of which the contravention had taken place. The words “in respect of” admit of a wide connotation: Lord Geene M. R. in *Cunard's Trustees v. Inland Revenue Commissioners*, (1946) 174 LT 133 calls them colourless words. This Court in *S. S. Light Railway Co. Ltd. v. Upper Doab Sugar Mills Ltd.*, (1960) 2 SCR 926 = (AIR 1960 SC 695) construing these words in Section 3(14) of the Indian Railways Act, 1890 has held that they are very wide. It seems to us that in the context of Section 23 (1B) ‘in respect of’ has been used in the sense of being ‘connected with’, and we have no difficulty in holding that the currency in respect of which there has been contravention covers the sale proceeds of foreign currency, sale of which is prohibited under Section 4(1). The intention of the legislature is clear from the explanation to sub-section (1B) of Section 23 which provides that “for the purposes of the sub-section property in respect of which contravention has taken place shall include deposits in a bank, where such property is converted into such deposits.” if for this sub-section any property in respect of which a contravention has taken place includes deposits into which the property may be converted and can be reached even where the deposits are in a bank, it is not reasonable to think that the sale proceeds in Indian currency of any foreign exchange would be outside the scope of Section 23(1B) and therefore not liable to be confiscated. In our opinion the High Court was wrong in quashing the order of confiscation which we consider valid and lawful.”

52. The expression “for the purposes of” has been construed as carrying a meaning “so as to give effect to” the provision in which they appear. In the case of *Shri Ram Krishna Dalmia and Ors. vs.*

4 AIR 1977 SC 1302

*Shri Justice S.R.Tendolkar and Ors.*⁵, these words were interpreted as under:-

“(6) The words “for the purposes of” indicate that the scope of the inquiry is not necessarily limited to the particular or specific matters enumerated in any of the entries in the list concerned but may extend to inquiries into collateral matters which may be necessary for the purpose, legislative or otherwise, of those particular matters.”

53. In these circumstances, it is not possible to agree with Mr.Kumbhakoni that what was separately enumerated in the earlier or unamended provision is now completely omitted from the amended law.

54. As a result of the above discussion, the writ petition succeeds and the Rule is made absolute in terms of prayer clauses (a) and (b). However, the bills raised on the petitioners for consumption or supply of energy would stand and to that extent, the amount would have to be paid. We clarify that what cannot be recovered under the bills is the component of electricity duty and there will be a relief in terms of prayer clause (c) as well prohibiting levy and recovery of such duty from the petitioners. In these circumstances and because a pure legal issue has been decided, there would be no order as to costs.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)

5 AIR 1958 SC 538