

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 2018/2002

The Maharashtra State Electricity Board,
through its Chief Engineer, Nagpur Urban Zone,
Nagpur.

PETITIONER

.....VERSUS.....

1. Employees State Insurance Corporation,
through its Joint Director, Sub-Regional
Office, 'Panchdeep Bhavan', Ganeshpeth,
Nagpur.
2. The Recovery Officer, Sub-Regional Office
Employees State Insurance Corporation,
Panchdeep Bhavan, Ganeshpeth, Nagpur.
3. The State of Maharashtra,
through its Secretary,
Industries, Energy & Labour Department,
Mantralaya, Mumbai.

RESPONDENTS

**WITH
WRIT PETITION NO. 3320/2005**

1. Maharashtra State Electricity Board,
through its Secretary, Prakashgad,
Bandra (East), Mumbai.
2. The Chief Engineer, Nagpur Urban Zone,
MSEB Link Rd., Sadar, Nagpur.
3. The Chief Engineer (Gen. O & M)
Khaparkheda Thermal Power Station,
Khaparkheda, Tq. Saoner, Distt.-Nagpur.
4. Maharashtra State Electricity Distribution
Co. Ltd., through its Managing Director,
'Prakashgad', Plot No.9, Anant Kanekar
Marg, Bandra (East), Mumbai.
5. Maharashtra State Power Generation
Company Ltd., through its Managing
Director, 'Prakashgad', Plot No.9,
Anant Kanekar Marg, Bandra (East), Mumbai.

PETITIONERS

.....VERSUS.....

Corrected as per
Hon'ble Court's order
dated 13.07.2022.

1. The State of Maharashtra,
through its Secretary, Industries, Energy &
Labour Department, Mantralaya,
Mumbai 400 32.
2. The Employees State Insurance Corporation,
through its Joint Director, Sub Regional Office,
'Panchdeep Bhavan', Ganeshpeth, Nagpur.
3. The Recovery Officer, Sub-Regional Office,
Employees State Insurance Corporation,
'Panchdeep Bhavan', Ganeshpeth, Nagpur.
4. The Union of India,
through its Secretary, Department of Labour and
Employment, Shastri Bhavan, New Delhi.
5. Maharashtra Vij Kamgar Mahasangh,
Registered Trade Union 833/Vinay Complex,
Ghatroad, through its Zonal Secretary,
Chandrakant Govindrao Mogre.
6. Vidyut Mandal Tantrik Kamgar Union,
Registered Trade Union 170/Hanuman Nagar, Tumsare
Building through Zone President Rajendra Sulakhe.
7. Maharashtra State National Electricity Workers
Federation (INTUC), NGP 3355 Dt. 17.10.87 through
Vijay Shinde (W.C. Member) Shrikrishna Complex
Dasara Rd. Mahal, Nagpur.
8. Maharashtra Rajya Magasvargiya Vidyut Karmachari
Sanghatana Trade Union R.No.1064, through
Yuvraj Meshram, Zonal President, Sitabuldi, Nagpur.

RESPONDENTS

Shri R.E. Moharir, counsel for the petitioner in W.P. No.2018/2002.
Shri S.V. Purohit, counsel for the petitioner in W.P. No.3320/2005.
Shri N.R. Rode, Assistant Government Pleader for the respondent-State.
Smt. B.P. Maldhure, counsel for the respondent nos.1 and 2 in W.P.
No.2018/2002 and for respondent nos.2 and 3 in W.P. No.3320/2005.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : 30TH JUNE, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

Since similar issues arise in these writ petitions, they are
being decided by this common judgment.

2. The petitioner in both the writ petitions-Maharashtra State Electricity Board (for short, 'the Board') which is a statutory body constituted under the erstwhile Electricity Supply Act, 1948 seeks exemption from the applicability of the provisions of the Employees State Insurance Act, 1948 (for short, 'the Act of 1948'). Initially, various Labour Unions representing the employees working with the Board had approached this Court by filing Writ Petition No.295 of 1997 with a prayer that the Board be exempted from the operation of the provisions of the Act of 1948 under Section 87. This Court found that it was for the Board to approach the Appropriate Government for seeking exemption from the operation of the Act of 1948. On 02.11.1998 that writ petition was disposed of by recording that the Board would make appropriate representation again despite the fact that its earlier representations since 1985 were pending with the State Government. The State Government was directed to consider those representations within a period of six months from that date. It was observed that such representation should be considered either under Section 87 or Section 91 of the Act of 1948.

3. In Writ Petition No.2018 of 2002 the Board has prayed that the State Government be directed to consider and decided its application dated 27.08.1997 seeking exemption from the applicability of the provisions of the Act of 1948. It is the grievance of the Board

that despite such application having been made the same was not adjudicated upon. The said writ petition was admitted on 11.07.2002 and it was recorded that the amounts deposited pursuant to the demand made by the Employees State Insurance Corporation would be without prejudice to the rights and contentions of the parties. Accordingly, the Board has paid the amounts as demanded by the Employees State Insurance Corporation.

4. In Writ Petition No.3320 of 2005 the Board has challenged the notifications dated 16.09.2004, 24.09.2004, 15.12.2004 and 14.02.2005 by which various schemes of the Employees State Insurance Corporation were sought to be implemented and the request for grant of exemption from the applicability of the provisions of the Act of 1948 was turned down. A declaration was sought that the provisions of the Act of 1948 were not applicable to the establishment of the Board. On 11.07.2005 the writ petition was admitted and an interim order was passed restraining the Employees State Insurance Corporation from proceeding with recovery of the amounts demanded on account of applicability of the provisions of the Act of 1948.

5. By the communication dated 25.07.2003 the request made by the Board on 07.03.2001 for grant of exemption was refused by the State

Government but without indicating any reason for the same. Hence, while hearing both the writ petitions on 14.03.2022 this Court in paragraph 3 observed as under:-

“3. It is the case of the petitioners that medical benefits offered by it to its employees are superior than the benefits granted under the Act of 1948. It is seen that on 25.7.2003 the representation made by the petitioner on 7.3.2001 seeking exemption from the provisions of the Act of 1948 has been rejected. There does not appear any reason indicated for rejection of that representation. There is no affidavit filed by the State Government opposing the prayer made in these writ petitions. To facilitate adjudication of the writ petitions, it would be necessary for the State Government to place on record its stand in this regard and especially the reasons for refusing to grant exemption to the Board from the provisions of the Act of 1948.”

Pursuant to the aforesaid order, affidavit has been filed by the Joint Secretary, Industries, Energy and Labour Department of the State Government. In paragraph 3 thereof it has been observed as under:-

“3. As per the order dated 14.03.2022, the Hon’ble High Court has ordered the State Government to file an affidavit, explaining its stand and especially the reasons for refusing to grant exemption to the Maharashtra State Electricity Board (MSEB). In connection with the filing of the affidavit on behalf of the State Government in the Hon’ble High Court, work is underway to search for the documents pertaining to this case from the year 2002 to 2005. However, the said documents have not yet been traced & without those applications/documents, it becomes difficult explaining the stand of the State Government and the reasons on which basis the proposal of Maharashtra State Electricity

Board (MSEB) dated 17.3.2001 was rejected. Therefore, in this case, if the applicant files a fresh application for exemption from the implementation of the Employees State Insurance Act, 1948, the State Government will consider the said application and take a decision as provisions as now exist.”

Thus, from the affidavit filed by the Joint Secretary, it is clear that the reasons for refusing to grant exemption to the Board from the applicability of the Act of 1948 cannot be gathered. It will therefore have to be held that the communication dated 25.07.2003 refusing to grant such exemption is without any reasons.

6. In the aforesaid backdrop, the learned counsel for the petitioners submitted that since 1987 the Board was seeking exemption from the applicability of the provisions of the Act of 1948. In the writ petition preferred by the Employees Union, this Court had directed the State Government to consider the representations made by the Board in that regard. Pursuant thereto, exemption was granted from the applicability of the Act of 1948 for a period of one year by notification dated 27.06.2000. Since the request made by the Board by its application dated 27.08.1997 seeking exemption from the applicability of the Act of 1948 has remained undecided, such request was liable to be considered by the State Government. Depending upon such adjudication, the demand made by the Employees State Insurance Corporation could be

thereafter considered. It was thus submitted that the State Government be directed to decide the application dated 27.08.1997 seeking grant of exemption and consequentially the demand as made by the Board for the period from 03.03.1997 to 20.06.2000 was liable to be set aside.

7. The learned counsel for the Employees State Insurance Corporation submitted that by notification dated 27.06.2000 exemption was granted for a period of one year from the operation of the provisions of the Act of 1948. As a result of this notification it would have to be assumed that the request made by the Board for grant of exemption for the earlier period stood denied. If at all any request for grant of exemption was to be considered the same ought to be for the period after expiry of one year from 27.06.2000. The Board was liable to pay the amounts as demanded by Employees State Insurance Corporation from 03.03.1997 to 20.06.2000. In that regard the learned counsel placed reliance on the order passed by this Bench in Writ Petition No.2473 of 1986 on 14.09.1990 as well as the decision in *Indian Coffee Workers' Co-op. Society Ltd., Mumbai Versus Secretary, Industries, Energy & Labour Department, Government of Maharashtra, Mumbai & Another* [2019 II CLR 63]. It was thus submitted that no relief was liable to be granted in Writ Petition 2018 of 2002 while the representations if made in Writ Petition No.3320 of 2005 could be directed to be considered by granting an opportunity to the Employees State Insurance Corporation.

8. The learned Assistant Government Pleader for the Ministry of Industries, Energy and Labour Department of the State Government has referred to the affidavit filed by the Joint Secretary and submitted that application for exemption if made would be considered in accordance with law.

9. We have heard the learned counsel for the parties and we have perused various documents placed on record. The issue with regard to grant of exemption from the operation of the Act of 1948 for a temporary period under Section 87 and permanently under Section 91A of the Act of 1948 is being agitated by the Board since 1987. Since the Workers' Union had approached this Court earlier, the Board was permitted to approach the State Government for seeking such exemption. It was noted that such steps were being taken since 1985. The Board's application dated 27.08.1997 seeking such exemption is not shown to have been adjudicated upon by the State Government. On the contrary, it is the stand of the Industries, Energy and Labour Department that old records were not traceable and hence it was willing to re-consider the aspect of exemption from the applicability of the provisions of the Act of 1948. We also find that in Writ Petition No.3320 of 2005 various representations on same lines have been made by the Board seeking such exemption. There has been no adjudication of the same. It is true that on

27.06.2000 a notification was issued by the Industries, Energy and Labour Department granting exemption from the operation of the provisions of the Act of 1948 for a period of one year. At the same time, the Board's application dated 27.08.1997 has not been decided. Considering the aforesaid and taking an overall view of the matter, we are of the opinion that the issue with regard to grant of exemption from the applicability of the provisions of the Act of 1948 needs to be adjudicated upon finally so as to give a quietus to the said question. Since there is no material on record placed by the State Government to indicate the reasons behind its refusal to grant such request for exemption as per the communication dated 25.07.2003, we find that the State Government would be required to examine this issue in its entirety.

10. In that view of the matter, the following order is passed:-

(I) The Industries, Energy and Labour Department of the State Government shall consider the application dated 27.08.1997 preferred by the Board seeking grant of exemption from the applicability of the provisions of the Act of 1948. Similarly, it shall also consider the subsequent representations made by the Board on those lines. Since it has been stated by the Joint Secretary of the State Government that the old records are not traceable, the Board should supply copies of the application dated 27.08.1997 and all subsequent representations making such request for grant of exemption. In addition, it is open for the Board to substantiate the

request for grant of exemption by placing on record additional documentary material.

- (II) Since the communication dated 25.07.2003 does not indicate any reason for refusing to grant exemption the same is set aside keeping in view the direction issued for re-considering the request for grant of exemption.
- (III) It would be open for the representative of the Employees State Insurance Corporation to participate in the deliberations before the Secretary, Industries, Energy and Labour Department of the State Government when the request for grant of exemption as made by the Board would be considered. The Employees State Insurance Corporation would be entitled to place before the said Authority such documentary material that is found relevant. Similarly, it would be open for the Employees' Union to also participate in those deliberations.
- (IV) It would be open for the Employees State Insurance Corporation to urge that the request for grant of exemption ought to be considered for the period after 26.06.2001 while the Board can seek exemption from the applicability of the provisions of the Act of 1948 since inception. That aspect is kept open for being considered by the State Government in accordance with the position of law prevailing on the date when the application for exemption was made.
- (V) The Board shall submit copies of the earlier representations alongwith fresh documentary material within a period of eight weeks from receipt of copy of this judgment. The said documents shall also be supplied to the Employees State

Insurance Corporation as well as the Employees' Unions. It would be open for the Employees State Insurance Corporation as well as the Employees' Unions to file documentary material before the State Government within a period of four weeks thereafter.

- (VI) After all documentary material is placed before the State Government, the Secretary, Industries, Energy and Labour Department shall consider the same after giving due opportunity to all the parties and take a decision within a period of eight weeks thereafter.
- (VII) Depending upon the outcome of such exercise, it would be open for the Board as well as Employees State Insurance Corporation to seek refund of amounts paid/demand payments in accordance with law.
- (VIII) All the points raised on merits in these writ petitions are kept open.

11. Rule is made absolute in aforesaid terms. No costs.

(URMILA JOSHI-PHALKE, J.)

(A.S. CHANDURKAR, J.)

APTE