[2025] 8 S.C.R. 174 : 2025 INSC 849

M/s Torino Laboratories Pvt. Ltd.
v.
Union of India & Ors.

(Civil Appeal No. 9540 of 2018)

15 July 2025

[K.V. Viswanathan* and Joymalya Bagchi, JJ.]

Issue for Consideration

Whether the EPF Authorities were justified in treating the appellant and the Respondent No.3 as one unit for the purpose of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Headnotes†

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 – s.2A – Establishment to include all departments and branches – Appellant's unit manufactured tablets and syrups, while the Respondent No.3 manufactured injections and capsules – Assistant Provident Fund Commissioner (APFC) held that the appellant was part and parcel of the Respondent No.3 for the purpose of applicability of the EPF Act on account of having various common factors *inter alia* unity of management with commonality of some Directors belonging to the same HUF; unity of finance; both the units dealing with products of pharmaceutical industry, etc. – Order upheld by the Appellate Tribunal and High Court:

Held: Appellant and respondent No.3 were engaged in the same industry i.e. pharmaceutical; they carried on business in premises built on contiguous plots of land; shared common telephone and facsimile numbers; had common website and e-mail IDs; their Registered Office/Head Office and administrative office were the same; both employed common security to guard the premises; there was unity of management inasmuch as while the two brothers were Directors of respondent No.3; one of them was also the Director of the appellant while another brother and wife of one the brothers were Directors in the appellant Company – There was also unity of finance inasmuch as the HUF of one the brothers and his family members funded both the companies – These findings by the APFC cumulatively establish beyond doubt that the two entities were

* Author

rightly treated as common for the purpose of the EPF Act – Plea of the appellant that since the appellant and respondent No.3 are two different juristic entities thus, s.2A cannot be applied and also, the theory of clubbing cannot be invoked is rejected – Authorities justified in seeking remittance of the dues from September 1995 – No merit in the appeal – Theory of clubbing. [Paras 12, 31, 34-37]

Theory of clubbing – Determination of unity of ownership; unity of management and control; features demonstrating the presence of functional integrality – Tests for:

Held: No absolute and invariable test can be laid down for all cases – The real purpose of the test is to find out the true relation between the Parts, Branches and Units – If in their true relation they constitute one integrated whole, it could be said that establishment is one and if not, they are to be treated as separate units – Each case has to be decided on its own peculiar facts, with regard to the scheme and object of the statute under consideration and in the context of the claim – In a given case, unity of ownership, management and control may be the important test, while in certain other cases Functional Integrality or general unity may be the determinative consideration – In some instances, unity of employment could be the most vital test – The employer/management's own conduct in mixing up or not mixing up the capital, staff and management could in a given case be a significant pointer – Mere separate registration under the different statutes cannot be a basis to claim that the units are separate – Similarly, maintenance of separate accounts and independent financial statement is also not conclusive – Onus lies on the employer/management to lead necessary evidence to bring home their contention – Employees' Provident Funds and Miscellaneous Provisions Act, 1952 – s.2A. [Para 34]

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 – s.2A – Establishment to include all departments and branches – Plea of the appellant that since the appellant and respondent No.3 are two different juristic entities thus, s.2A cannot be applied and also, the theory of clubbing cannot be invoked:

Held: Rejected – While s.2A sets out that the establishment will include all departments and branches it does not deal with a scenario as to the tests for determining whether two juristic entities are set up as an artificial device and subterfuge to sidestep the provisions of the Act – Artificial devices, subterfuges and facades are commonly

resorted to, to create a smokescreen of separate entities for a variety of purposes – Courts faced with such a scenario have a duty to lift the veil and see behind applying the well-established tests to determine whether the entities are really separate entities or are they really a single entity – Hence, the contention that s.2A cannot be applied if ostensibly two separately registered entities under the Companies Act are involved is rejected, especially when the Court is interpreting a beneficial legislation like the EPF Act. [Paras 12, 31]

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 – s.16(1)(d) – Benefit of infancy protection for the period 26.09.1995 to 22.09.1997 u/s.16(1)(d) as it then stood, if to be given:

Held: No – In the present case, the claim for infancy protection under the erstwhile s.16(1)(d) would not arise in view of the finding of clubbing – Being an integrated unit of respondent no.3 since 1995, no separate infancy protection will enure to the benefit of appellant. [Para 36]

Case Law Cited

Management of Pratap Press, New Delhi v. Secretary, Delhi Press Workers' Union, Delhi and Another, **AIR 1960 SC 1213;** *Regional Provident Fund Commissioner and Another v. Dharamsi Morarji Chemical Co. Ltd.* **(1998) 2 SCC 446;** *Regional Provident Fund Commr. v. Raj's Continental Exports (P) Ltd.* **[2007] 3 SCR 636 : (2007) 4 SCC 239;** *Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani v. Workmen* **[1960] 1 SCR 703 : AIR 1960 SC 56;** *L.N. Gadodia & Sons v. Regional Provident Fund Commissioner* **[2011] 11 SCR 5008 : (2011) 13 SCC 517;** *Shree Vishal Printers Ltd. v. Provident Fund Commissioner* **[2019] 12 SCR 146 : (2019) 9 SCC 508;** *Regional Provident Fund Commissioner v. Naraini Udyog* **[1996] Supp. 3 SCR 202 : (1996) 5 SCC 522;** *Sayaji Mills Ltd. v. Regional Provident Fund Commissioner* **[1985] 2 SCR 516 : (1984) Supp. SCC 610;** *The Honorary Secretary, South India Millowners' Association and Others v. The Secretary, Coimbatore Distruict Textile Workers' Union* **[1962] Supp. 2 SCR 926;** *Management of Wenger and Co. v. Their Workmen* **[1963] Supp. 2 SCR 862;** *Rajasthan Prem Krishan Goods Transport Co. v. Regional Provident Fund Commissioner, New Delhi and Others*, **[1996] Supp. 3 SCR 1 : (1996) 9 SCC 454;** *Sumangali v. Regional Director, Employees' State Insurance Corporation* **[2008] 10 SCR 1129 : (2008) 9 SCC 106 – referred to.**

List of Acts

Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

List of Keywords

Establishment to include all departments and branches; One unit for the purpose of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; Two entities treated as common for the purpose of the EPF Act; Common factors; Both units dealing with products of Pharmaceutical industry; Both units engaged in the same industry; Part and parcel; Tablets and syrups, Injections and capsules; Assistant Provident Fund Commissioner (APFC); Business in premises built on contiguous plots of land; Common telephone and facsimile numbers; Common website and e-mail IDs; Same registered Office/Head Office and administrative office; Common security to guard the premises; Unity of ownership; Unity of finance; Unity of management; Two different juristic entities; Theory of clubbing invoked; Remittance of the dues; Functional integrality; General unity; Unity of employment; Mixing up/not mixing up the capital, staff and management; Separate registration under different statutes; Separate units; Maintenance of separate accounts; Independent financial statement; Artificial devices, subterfuges and facades; Duty to lift the veil; Infancy protection; Integrated unit; Beneficial legislation; Unity of labour; Transferability of employees.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9540 of 2018

From the Judgment and Order dated 22.04.2016 of the High Court of Madhya Pradesh at Indore in WP No. 2503 of 2011

Appearances for Parties

Advs. for the Appellant:
Gagan Gupta, Sr. Adv., Ananta Prasad Mishra.

Advs. for the Respondents:
Brijender Chahar, A.S.G., Vishnu Jain, Ms. Mani Munjal, Shantanu Sharma, Aaditya Dixit, Amrish Kumar, Raj Bahadur Yadav, Siddharth, Prateek Goyal, Harshit Manwani, Ujjwal Singh.

Judgment / Order of the Supreme Court

Judgment

K.V. Viswanathan, J.

1. The present appeal arises out of a judgment and order of the Division Bench of the High Court of Madhya Pradesh, Bench at Indore dated 22.04.2016 in Writ Petition No. 2503 of 2011. By the said judgment and order, the High Court dismissed the writ petition under Article 227 of the Constitution of India filed by the appellant-herein and upheld the order of the Employees' Provident Fund Appellate Tribunal, (for short 'the Appellate Tribunal') New Delhi dated 24.01.2011 which order had, in turn, upheld the order dated 17.02.2006 passed by the Assistant Provident Fund Commissioner, (for short 'APFC') Indore. The APFC had held that the appellant was part and parcel of M/s Vindas Chemical Industries Private Limited (hereinafter referred to as 'Vindas') – the third respondent herein for the purpose of applicability of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short the 'EPF Act') with effect from September, 1995. Appropriate consequential directions to remit the dues were also passed. Aggrieved by the judgment and order of the High Court, the appellant has preferred this appeal, by way of special leave.

BRIEF FACTS: -

2. Indisputably, on 22.11.1988, Dr. Darshan Kataria and his brother Niranjan Kataria set up the respondent No.3-Vindas for manufacturing injections and capsules of certain specified drugs.

   2.1 The factory was situated at Plot No.65, Sector-1, Pithampur, District Dhar, Madhya Pradesh. Vindas was incorporated with the Registrar of Companies, Madhya Pradesh.

   2.2 Subsequently, on 05.09.1990, Shri Vasudev Kataria and Smt. Rajni Kataria, wife of Darshan Kataria incorporated the appellant-Company with the Registrar of Companies in the State of Maharashtra. Later it transpires from the record that Mr. Darshan Kataria was also a director in the appellant-Company.

2.3 However, the factory of the appellant was set up and business of production of tablets and later liquid syrups was set up at Plot No. 65/1, Sector-1, Pithampur, Dhar, Madhya Pradesh. It is also undisputed that Vindas was covered under the EPF Act.

2.4 Inspections were carried out at the appellant's premises on 17/20.01.2005 and a communication was sent on 24.01.2005 to deposit the provident fund contribution and administrative charges w.e.f. 01.04.2004, though it was mentioned that the date was liable to change and a final decision would be taken after the inspection of previous records.

2.5 The appellant, by its reply of 04.02.2005, opposed the applicability of the EPF Act on the ground that the workers/ employees did not exceed the prescribed number. It must also be pointed out that in the communication of 20.01.2005, the issue that was highlighted by the Department was about the number of employees exceeding twenty.

2.6 Another inspection was carried out on 28.03.2005 and in the inspection note it was categorically stated that the establishment of the appellant was situated within the premises of Vindas-the third respondent and common security was employed for both the establishments and that the Managing Director of Vindas was Dr. Darshan Kataria.

2.7 Thereafter, on 29.04.2005, a summons to appear in person under Section 7A of the EPF Act was issued to the appellant. Section 7A empowers the authorities to conduct such enquiry as they may deem necessary and pass orders with regard to disputes about coverage of establishments under the EPF Act. The appellant was asked to produce all the attested copies of the relevant records to determine the amount due for the period April, 2004 to March, 2005.

2.8 The appellant, though by its reply dated 03.05.2005, denied any liability however, stated that they were voluntarily accepting coverage of the unit and will start contributing from 01.04.2005. Hence, this appeal really concerns the period prior to 01.04.2005 and the liability thereon. The appellant also responded to the summons by its letters of 13.06.2005, 10.10.2005 and 17.10.2005.

2.9 What is significant is in the submission of 10.10.2005, the appellant adverted to the proceedings at the hearing on 23.09.2005 wherein they were informed that the authorities are evaluating the possibility of clubbing the unit of the appellant with Vindas-respondent No.3 and that the appellant was provided with the inspection reports of the unit of Vindas-Respondent No.3. The appellant also in the submission of 10.10.2005 dealt with in detail as to how clubbing with Vindas-Respondent No.3 was not warranted and how the appellant was an independent and separate entity.

2.10 It is also not in dispute that the Inspection Report of 28.03.2005 along with the Inspection Report of 17.01.2005 and 20.01.2005 have been furnished to the appellant on 10.10.2005, as set out in the written submissions filed before us.

2.11 When matters stood thus, it appears that there was a further report of 10.11.2005 where again clubbing of the two units, namely, of the appellant and of Vindas was adverted to by the Department to which the appellant filed its submission on 20.12.2005 disputing the said position.

2.12 On 17.02.2006, the APFC passed an order rejecting the contentions of the appellant, including the contention on the *locus standi* of the Trade Union which had raised the issue of the two units being the same by holding that the issue of *locus standi* was immaterial if otherwise a case for clubbing was established. The APFC found the following common factors:-

a) that both the units dealt with products of pharmaceutical industry;

b) that both worked from the same premises with the common entry and without any visible demarcation with addresses of the appellant being Plot No. 65/1, Sector-1, Pithampur and of Vindas – Respondent No.3 being Plot No. 65, Sector-1, Pithampur, District Dhar;

c) that the telephone nos. of both the appellant and Vindas-respondent No.3 were common and the order set out the actual telephone no. That the entire factory was guarded by the same security personnel, namely, M/s Benaras Security Services;

d) that both the companies maintained their common Administrative Office at 102, Prabhudeep Apartment, 11 Indrapuri Colony, Indore and the Administrative Office had common telephone nos. and facsimile no.;

e) That the two companies shared the same website and same e-mail IDs;

f) that the Registered Office of the appellant at 210, Adamji Building, 413, Narsi Natha Street, Masjid Bunder Road, Mumbai was the Head Office of Respondent No.3-Vindas with same telephone no. and facsimile no.

g) That there was commonality of some Directors and that too belonging to the same Hindu Undivided Family.;

h) That the source of finance was the same Hindu Undivided Family in the name of Director, Creditor or Shareholder;

2.13 In view of this, the APFC found that there was Unity of Purpose and Functional Integrality as there was common factory, common administration/Head Office/Registered Office, common e-mail ID/website and common source of finance. The APFC disregarded the aspect of separate registration with the Registrar of Companies and different Government Departments and held that the two units are one and the same for the purpose of the EPF Act.

2.14 The appellant filed an appeal under Section 7-I of the EPF Act before the Appellate Tribunal. According to the appellant, after the Appellate Tribunal adjourned the hearing to 09.12.2010, the files were not traceable and no further notice of hearing after 09.12.2010 was received. In spite of that, on 24.01.2011, the Appellate Tribunal dismissed the appeal.

2.15 A Writ Petition being W.P. No. 2503 of 2011 filed before the High Court of Madhya Pradesh, Indore Bench was unsuccessful. That is how the case presents itself before us.

CONTENTIONS OF LEARNED COUNSEL: -

3. We have heard Mr. Gagan Gupta, learned Senior Advocate, for the appellant and Mr. Siddharth, learned counsel for the APFC-Respondent No. 2 Authorities and Mr. Brijender Chahar, learned Additional Solicitor General for the Union of India.

4. Mr. Gagan Gupta, learned Senior Advocate, contends that initially the Authorities proceeded on the basis of the numerical strength of the employees being in excess of 20 at the appellant's unit and the aspect of clubbing was introduced as an afterthought. That notice of clubbing ought to have been issued to Vindas-respondent No.3 instead of issuing to the appellant; that Section 2A of the EPF Act cannot apply to two juristic entities; that both the appellant and the respondent No.3-Vindas are separately registered under the Drugs and Cosmetics Act, 1940, the Factories Act, 1948 and the two entities hold separate account numbers/registrations under the Central Sales Tax, Central Excise, Service Tax, ESI and also hold separate PAN and Corporate Identification Nos.

5. Learned Senior Advocate contends that the electricity and water connections for both the establishments are separate and that the Municipal Corporation Property Tax is being separately levied. Learned Senior Advocate further contends that the summon issued was for the period April, 2004 to March, 2005. However, the APFC, by its order, has directed compliance from September, 1995. Learned Senior Advocate contents that admittedly there was no interchange of employees. Learned Senior Advocate relied on the award of the Labour Court dated 21.07.2010 where the stand of the employees of the appellant that they should be permitted to work at Respondent No.3-Vindas was rejected. Learned Senior Advocate contended that there was no functional integrality or interdependence between the two establishments and that while the appellant manufactures tablets and syrup, respondent No.3-Vindas manufactures injections and capsules. Without prejudice, learned Senior Advocate contends that in the event of the submissions being rejected, the benefit of infancy protection be given for the period 26.09.1995 to 22.09.1997 under Section 16(1)(d) of the EPF Act as it then stood. Learned Senior Advocate relied on the judgments of this Court in ***Management of Pratap Press, New Delhi*** vs. ***Secretary, Delhi Press Workers' Union, Delhi and Another***, AIR1960 SC 1213, ***Regional Provident Fund Commissioner and Another*** vs. ***Dharamsi Morarji Chemical Co. Ltd.,*** (1998) 2 SCC 446 and ***Regional Provident Fund Commr.*** vs. ***Raj's Continental Exports (P) Ltd***, (2007) 4 SCC 239 in support of his submissions.

6. Mr. Siddharth, learned counsel for the EPF Authorities countered the submissions by contending that the question as to what constitutes an establishment is a mixed question of fact and law which ought to

be answered in the context of the facts of the given case, keeping in mind the object of the statute. The learned counsel contended that the appellant and Vindas-Respondent No.3 constituted a common establishment for the purpose of the EPF Act and that the findings of the APFC on the aspect of the two entities being engaged in the pharmaceutical business, carrying on the business in the same factory premises by sharing the common telephone/facsimile nos., same website and e-mail ID called for no interference. According to the learned counsel the unity in management and unity in finance and the existence of common administrative/Head Office/Registered Office also pointed to the functional integrality. Learned counsel contended that the burden to establish that there was no unity was on the appellant which the appellant failed to discharge; that since the appellant and respondent No.3 would be collectively assessed but since the liability will be only for the respective employees of the units there was no need to issue separate summons to Vindas-Respondent No.3; that the order of the Labour Court cannot bind the authorities under the EPF Act as the rights under the two Acts are different and that the Labour Court when it decided that there was no unity of employment did not have occasion to deal with the other aspects dealt with by the APFC. Learned counsel refuted the arguments of the appellant that they were not heard by the Tribunal since no document was placed to establish the fact that no notice was issued to the appellant by the Tribunal and that, in any event, the said argument was not raised before the High Court. Learned counsel relied on the judgments of this Court in ***Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani*** vs. ***Workmen***, AIR 1960 SC 56, ***L.N. Gadodia & Sons*** vs. ***Regional Provident Fund Commissioner***, (2011) 13 SCC 517, ***Shree Vishal Printers Ltd.*** vs. ***Provident Fund Commissioner***, (2019) 9 SCC 508 and ***Regional Provident Fund Commissioner*** vs. ***Naraini Udyog***, (1996) 5 SCC 522 to make good his submissions.

7. We have considered the submissions of the respective parties and carefully perused the records of the case.

QUESTION FOR CONSIDERATION: -

8. The question that arises for consideration is whether the EPF Authorities were justified in treating the appellant and the Vindas-Respondent No. 3 as one unit for the purpose of the EPF Act?

CERTAIN PRELIMINARY ASPECTS: -

9. Before we deal with the main issue, we would, at the outset, dispose of certain preliminary points raised for consideration. The aspect of violation of natural justice before the Tribunal was not argued before the High Court. In any event, we are considering the matter in detail on merits here and, as such, that aspect need not detain us any further. The contention based on the award of the Labour Court dated 21.07.2010 also does not carry the case of the appellant any further. First of all, the APFC, by its order of 17.02.2006, elaborately considered the matter applying the various tests and concluded that the two units are the same for the purpose of the EPF Act. The issue before the Labour Court was about the entitlement of the workers of the appellant to claim employment in Vindas-respondent No.3 and while answering that reference the Labour Court held that there was no clear evidence regarding the aspect of the workers of the appellant having worked in the unit of respondent No.3-Vindas. None of the other indicia for clubbing referred to by the APFC were considered relevant. In any case, in view of the multiplicity of factors adverted to by the APFC, the award has no bearing for the determination of the issue.

ANALYSIS AND REASONS: -

EPF ACT - A BENEFICIAL LEGISLATION

10. The EPF Act is a beneficial legislation intended to provide for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments. It is a welfare legislation intended to ameliorate the conditions of workmen in factories and other establishments. This Court in ***Sayaji Mills Ltd.*** vs. ***Regional Provident Fund Commissioner***, 1984 Supp. SCC 610 has held that the EPF Act should be construed so as to advance the object with which it is passed and any construction which would facilitate evasion of the provisions of the Act should be avoided.

LAW ON CLUBBING: -

11. The crucial issue that arises for consideration in this case is - whether the authorities were justified in treating the appellant and Vindas-respondent No.3 as one unit for the purpose of the EPF Act and

were the correct tests to determine the same applied? Section 2-A of the EPF Act reads as under:-

> "**2A. Establishment to include all departments and branches**.—For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment."

12. The argument of the learned Senior Counsel for the appellant that since the appellant and Vindas-respondent No.3 are two different juristic entities and that would not be covered within the sweep of Section 2A is only stated to be rejected. While Section 2A sets out that the establishment will include all departments and branches it does not deal with a scenario as to the tests for determining whether two juristic entities are set up as an artificial device and subterfuge to sidestep the provisions of the Act.

13. The question in this case has to be answered by applying the well-established theories to determine what would constitute unity of ownership or unity of management and control and the features that will demonstrate the presence of functional integrality. This issue is no longer *res integra* and has been settled by a long line of judgments of this Court.

14. The earliest case where this issue was discussed was in ***Associated Cement Companies Ltd. (supra)*** where this Court had to examine the question whether the lay off of the workers in certain sections of the Chaibasa Cement Works due to a strike on the part of the workmen at the Rajanka limestone quarry was justified under Section 25-E (iii) of the Industrial Disputes Act, 1947. Section 25-E (iii) of the I.D. Act stated that no compensation was to be paid to workmen who have been laid off due to a strike or slowing-down of production on the part of workmen in another part of establishment. In the process of examining the said question, this Court held as under:-

> "11. The Act not having prescribed any specific tests for determining what is 'one establishment', we must fall back on such considerations as in the ordinary industrial or business sense determine the unity of an industrial establishment, having regard no doubt to the scheme and

object of the Act and other relevant provisions of the Mines Act, 1952, or the Factories Act, 1948. What then is 'one establishment' in the ordinary industrial or business sense? The question of unity or oneness presents difficulties when the industrial establishment consists of parts, units, departments, branches etc. If it is strictly unitary in the sense of having one location and one unit only, there is little difficulty in saying that it is one establishment. Where, however, the industrial undertaking has parts, branches, departments, units etc. with different locations, near or distant, the question arises what tests should be applied for determining what constitutes 'one establishment'. Several tests were referred to in the course of arguments before us, such as, geographical proximity, unity of ownership, management and control, unity of employment and conditions of service, functional integrality, general unity of purpose etc. To most of these we have referred while summarising the evidence of Mr Dongray and the findings of the Tribunal thereon. It is, perhaps, impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units etc. If in their true relation they constitute one integrated whole, we say that the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes disqualification therefor. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same time. The difficulty of applying these tests arises because of the complexities of modern industrial organisation; many enterprises may have functional integrality between factories which are separately owned; some may be integrated in part with

> units or factories having the same ownership and in part with factories or plants which are independently owned. In the midst of all these complexities it may be difficult to discover the real thread of unity. In an American decision (*Donald L. Nordling v. Ford Motor Company, (1950*) 28 AIR, 2d 272 there is an example of an industrial product consisting of 3800 or 4000 parts, about 900 of which came out of one plant; some came from other plants owned by the same Company and still others came from plants independently owned, and a shutdown caused by a strike or other labour dispute at any one of the plants might conceivably cause a closure of the main plant or factory."

15. As was rightly pointed out, it is impossible to lay down any one test as an absolute and invariable test for all cases.

16. ***Associated Cement Companies Ltd. (supra)*** was followed in ***Pratap Press (supra)***. In ***Pratap Press (supra),*** the issue was whether the profit or loss of the Press and the publications "Vir Arjun" and "Daily Pratap" were to be pooled for the question of deciding bonus. While the employer contended that the press and Vir Arjun were one establishment and Daily Pratap was a separate partnership firm, the workers contended that the accounts of all the three should be taken into account or alternatively only the Press should be taken into account. While answering the issue, the Court acknowledged that the question whether the two activities in which the single owner is engaged are one industrial unit or two distinct industrial units was not always easy of solution and no hard and fast rule could be laid down. It was also acknowledged that each case has to be decided on its own peculiar facts. It was held that in some cases, two activities would be so closely linked that no reasonable man would consider them as independent industries. Para 2 of the said judgment is set out hereunder:-

> "2. The question whether the two activities in which the single owner is engaged are one industrial unit or two distinct industrial units is not always easy of solution. No hard and fast rule can be laid down for the decision of the question and each case has to be decided on its own peculiar facts. In some cases the two activities each of which by itself comes within the definition of industry are so closely linked together that no reasonable man would

consider them as independent industries. There may be other cases where the connection between the two activities is not by itself sufficient to justify an answer one way or the other, but the employer's own conduct in mixing up or not mixing up the capital, staff and management may often provide a certain answer".

17. This Court first examined the question whether the Press and the paper were so interdependent that one could not exist without the other. It concluded that there was no functional interdependence between the press unit and the paper unit for the two to be considered one industrial unit. Not stopping there, this Court also held that it was necessary to further consider the conduct of the businessman himself to see whether he mixed up the capital of the two, the profits of the two and the labour force of the two units. This Court also considered whether there was evidence to show as to whether the capital employed in the two units came out from one fund. Para 6 and 7 of ***Pratap Press (supra)*** are extracted hereinbelow:-

> "6. Coming now to the facts of the present appeals we find that the functions of the Press and the Vir Arjun paper cannot be considered to be so interdependent that one cannot exist without the other. That many presses exist without any paper being published by the same owner is common knowledge and is not seriously disputed. Nor is it disputed that an industry of publishing a paper may well exist without the same owner running a press for the printing of the paper. The very fact that Daily Pratap owned by a partnership firm, was being printed at the Pratap Press belonging to Shri Narendra itself shows this very clearly. It cannot therefore be said that there is such functional interdependence between the press unit and the paper unit that the two should reasonably be considered as forming one industrial unit.
>
> 7. Along with this it is necessary to consider the conduct of the businessman himself. Has he mixed up the capital of the two, the profits of the two and the labour force of the two units? These are matters on which the employer is the best person to give evidence from the records of his concerns. No evidence has however been produced

> to show that at any time before the dispute was raised he treated the capital employed in the two units as coming from one single capital fund, nor anything to show that he pooled the profits or that the workmen were treated as belonging to one establishment. It is interesting to note that there is no record showing whether for his own purposes he treated the assets of the two units as forming one composite whole or the assets of two distinct units has been produced. The profit and loss accounts which we find on the record appear to have been prepared sometime in 26-12-1951, — apparently after the reference had been made and the dispute whether these units were one or two, had arisen. No weight can therefore be attached to the fact that in this profit and loss account — both the receipts from the press and the receipts from the Vir Arjun were shown as the income."

Ultimately, this Court concluded that the Press was a standalone unit.

18. ***The Honorary Secretary, South India Millowners' Association and Others*** vs. ***The Secretary, Coimbatore Distruict Textile Workers' Union***, [1962] Supp. 2 SCR 926, was a case that arose in the context of award of bonus to employees. This Court considered the question whether Saroja Mills Ltd. Coimbatore and Thiagaraja Mills, Madurai run by Saroja Mills Ltd. constituted separate units or they were to be treated as one. While the Management contended that the units were separate, the workmen contended to the contrary. Answering the question, this Court while acknowledging that the issue has to be determined in the light of the facts of each case (at page 943) set out the following principles:-

> "The question thus raised for our decision is not always easy to decide. In dealing with the problem, several factors are relevant and it must be remembered that the significance of the several relevant factors would not be the same in each case nor their importance. Unity of ownership and management and control would be relevant factors. So would the general unity of the two concerns; the unity of finance may not be irrelevant and geographical location may also be of some relevance; functional integrality can also be a relevant and important factor in some cases. It is

> also possible that in some cases, the test would be whether one concern forms an integral part of another so that the two together constitute one concern, and in dealing with this question the nexus of integration in the form of some essential dependence of the one on the other may assume relevance. Unity of purpose or design, or even parallel or co-ordinate activity intended to achieve a common object for the purpose of carrying out the business of the one or the other can also assume relevance and importance, vide *Ahmedabad Manufacturing & Calico Printing Co. Ltd.* v. *Their Workmen [1951] 2 LLJ 657*."

19. It will be seen that this Court held that several factors are relevant and the significance and importance of the several relevant factors would not be the same in each case. It was also held that unity of ownership and management and control, general unity of the two concerns; unity of finance; geographical location, functional integrality would all be relevant factors depending on the facts of each case. It was further held that unity of purpose or design or even parallel or coordinate activity intended to achieve a common object for the purpose of carrying out the business of the one or the other would also assume relevance and importance.

20. Specifically repelling the argument of the Management that the test of functional integrality was the only test and absent functional integrality the units will have to be considered separate, this Court in ***South India Millowners' Association (supra)*** held as under: -

> "Mr Sastri, however, contends that functional integrality is a very important test and he went so far as to suggest that if the said test is not satisfied, then the claim that two mills constitute one unit must break down. We are not prepared to accept this argument. In the complex and complicated forms which modern industrial enterprise assumes it would be unreasonable to suggest that any one of the relevant tests is decisive; the importance and significance of the tests would vary according to the facts in each case and so, the question must always be determined bearing in mind all the relevant tests and corelating them to the nature of the enterprise with which the Court is concerned. It would be seen that the test of functional

integrality would be relevant and very significant when the Court is dealing with different kinds of businesses run by the same industrial establishment or employer. Where an employer runs two different kinds of business which are allied to each other, it is pertinent to enquire whether the two lines of business are functionally integrated or are mutually inter-dependent. If they are, that would, no doubt, be a very important factor in favour of the plea that the two lines of business constitute one unit. But the test of functional integrality would not be as important when we are dealing with the case of an employer who runs the same business in two different places. The fact that the test of functional integrality is not and generally cannot be satisfied by two such concerns run by the same employer in the same line, will not necessarily mean that the two concerns do not constitute one unit. Therefore, in our opinion, Mr Sastri is not justified in elevating the test of functional integrality to the position of a decisive test in every case. If the said test is treated as decisive, an industrial establishment which runs different factories in the same line and in the same place may be able to claim that the different factories are different units for the purpose of bonus. Besides, the context in which the plea of the unity of two establishments is raised cannot be ignored. If the context is one of the claim for bonus, then it may be relevant to remember that generally a claim for bonus is allowed to be made by all the employees together when they happen to be the employees employed by the same employer. We have carefully considered the contentions raised by the parties before us and we are unable to come to the conclusion that the finding of the Tribunal that the two mills run by the Saroja Mills Ltd. constitute one unit, is erroneous in law.

In this connection, it would be necessary to refer to some of the decisions to which our attention was drawn. In the case of *Associated Cement Companies Ltd. and their Workmen,* this Court held that on the evidence on record, the limestone quarry run by the employer was another part of the establishment (factory) run by the

same employer within the meaning of Section 25-E(iii) of the Industrial Disputes Act. It would thus be seen that the question with which this Court was concerned was one under Section 25-E(iii) of the Act and it arose in reference to the limestone quarry run by the appellant Company and the cement factory owned and conducted by it which are normally two different businesses. It was in dealing with this problem that this Court referred to several tests which would be relevant, amongst them being the test of functional integrality. In dealing with the question, S.K. Das, J., who spoke for the Court, observed that it is perhaps impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units, etc. If in their true relation they constitute one integrated whole, we say that the establishment is one; if, on the contrary, they do not constitute one integrated whole, each unit is then a separate unit. It was also observed by the Court that in one case, the unity of ownership, management and control may be the important test; in another case, functional integrality or general unity may be an important test; and in still another case, the important test may be the unity of employment. Therefore, it is clear that in applying the test of functional integrality in dealing with the question about the interrelation between the limestone quarry and the factory, this Court has been careful to point out that no test can be treated as decisive and the relevance and importance of all the tests will have to be judged in the light of the facts in each case."

21. In ***Management of Wenger and Co.*** vs. ***Their Workmen***, (1963) Supp. 2 SCR 862, one of the questions considered was whether industrial establishments owned by the same management constituted separate units or they constituted one establishment. In the said case, the question was whether the wine shops and the restaurants form part of one establishment or not. For the Management, in that case, it was contended that absent functional integrality, it has to be necessarily concluded that the units are separate in all cases. Rejecting this argument, this Court held as under:-

> "The question as to whether industrial establishments owned by the same managements constitute separate units or one establishment has been considered by this Court on several occasions. Several factors are relevant in deciding this question. But it is important to bear in mind that the significance or importance of these relevant factors would not be the same in each case; whether or not the two units constitute one establishment or are really two separate and independent units, must be decided on the facts of each case. Mr Pathak contends that the Tribunal was in error in holding that the restaurants cannot exist without the wine shops and that there is functional integrality between them. It may be conceded that the observation of the Tribunal that there is functional integrality between a restaurant and a wine shop and that the restaurants cannot exist without wine shops is not strictly accurate or correct. But the test of functional integrality or the test whether one unit can exist without the other, though important in some cases, cannot be stressed in every case without having regard to the relevant facts of that case, and so, we are not prepared to accede to the argument that the absence of functional integrality and the fact that the two units can exist one without the other necessarily show that where they exist they are necessarily separate units and do not amount to one establishment. It is hardly necessary to deal with this point elaborately because this Court had occasion to examine this problem in several decisions in the past, vide *Associated Cement Companies Ltd.* v. *Their Workmen; Pratap Press, etc.* v. *Their Workmen*, *Pakshiraja Studios* v. *Its Workmen; South India Millowners' Association* v. *Coimbatore District Textile Workers Union; Fine Knitting Co. Ltd.* v. *Industrial Court* and *D.C.M. Chemical Works* v. *Its Workmen."*

22. Hence, it is very clear that while the test of functional integrality, namely, the test whether one unit can exist without the other may be important in some cases, it may not be stressed in every case without having regard to the relevant facts of the case and it is not the correct legal position that absent functional integrality the units have to be necessarily concluded as separate. Thereafter, applying the law to the facts, this Court held as under:-

"Let us then consider the relevant facts in the present dispute. It is common ground that wherever the employer runs a restaurant and a wine shop, the persons interested in the trade are the same partners. The capital supplied to both the units is the same. Prior to 1956, wine shops and restaurants were not conducted separately, but after 1956 when partial prohibition was introduced in New Delhi, wine shops had to be separated because wine cannot be sold in restaurants. But it is significant that the licence for running the wine shop is issued on the strength of the fact that the management was running a wine shop before the introduction of prohibition. In fact, LII licence to run wine shops has been given in many cases to previous restaurants on condition that the wine shops are run separately according to the prohibition rules. It is true that many establishments keep separate accounts and independent balance-sheets for wine shops and restaurants; but that clearly is not decisive because it may be that the establishments want to determine from stage to stage which line of business is yielding more profit. Ultimately, the profits and losses are usually pooled, together. Thus, generally stated, there is unity of ownership, unity of finances, unity of management and unity of labour; employees from the restaurant can be transferred to the wine shop and vice versa. Besides, it is significant that in no case has the establishment registered the wine shops and the restaurants separately under Section 5 of the Delhi Shops and Establishments Act, 1954 (7 of 1954). In fact, when Mr Nirula, the Secretary of the Employers' Association, was called upon to register his wine shop separately, he protested and urged that separate registration of the several departments was unnecessary; and that clearly indicated that wine shop was treated by the establishment as one of its departments and nothing more. The failure to register a wine shop as a separate establishment is, in our opinion, not consistent with the employers' case that wine shops are separate and independent units. Having regard to all the facts to which we have just referred, we do not think it would be possible

> to accept Mr Pathak's argument that the Tribunal was in error in holding that the wine shops and restaurants form part of the same industrial establishments."

23. Thus, it will be seen that this Court considered unity of ownership, unity of finance, unity of management and unity of labour and the transferability of employees as relevant indicia.

24. It will be clear from ***South India Millowners' Association (supra), Wengers (supra)*** and ***Pratap (supra)*** that Courts cannot stop with only examining whether the two units are so functionally integrated that one cannot exist without the other and absent functional integrality conclude that the units are separate. In the facts of the present case, it is the case of the appellant that while the appellant's unit manufactures tablets and syrups, the respondent No.3-Vindas manufactures injections and capsules. According to the written submissions, the appellant contends that the establishments have completely different range of products and any movement of man and material between the two of these may cause gross contamination and there is no interdependence of any raw material. On the other hand, the authorities contend that while the manufactured products may be different the industrial activity is common, namely, they are part of the pharmaceutical industry.

25. In ***Rajasthan Prem Krishan Goods Transport Co.*** vs. ***Regional Provident Fund Commissioner***, ***New Delhi and Others***, (1996) 9 SCC 454, the authorities found unity of ownership, management, supervision and control, employment, finance, and general purpose to treat M/s Rajasthan Prem Krishan Goods Transport Co. and M/s Rajasthan Prem Krishan Transport Company as a single establishment for the purpose of the EPF Act. This was on the finding that ten partners were common for both the entities; the place of business, address and telephone numbers were common and the management was also common. It was also found that the trucks plied by the two entities were owned by the partners and were being hired through both the units. This Court endorsed the finding of the authorities and upheld the clubbing of the two units.

26. In ***Regional Provident Fund Commissioner, Jaipur*** vs. ***Naraini Udyog and Others***, (1996) 5 SCC 522, the question was whether two entities M/s Naraini Udyog, Kota and M/s Modern Steels, Kota were to be treated as one for the purpose of the EPF Act. The

authorities found that there was common Head Office, common Branch Office, common telephone for residence and factories. It was found that the submission of the Department that the office of M/s Modern Steels was situated in the premises of M/s Naraini Udyog and accounts of the two units were maintained by the same set of clerks was not controverted by the employer. The contention of the employer was that they have registered the two entities separately under the Factories Act, Sales Tax Act and ESIC Act; that the units were located at a distance of three kilometers apart and had separate central excise nos. and were registered as separate small-scale industries and hence should be treated as separate units. The employer also denied the assertion of the authorities that workers of one unit were working in the other. The authorities considered the aspect of separate registration as a point devoid of merit. With regard to denial of interchange of workers, the authorities held that the aspect was not crucial to the point at issue. On a challenge before the High Court, the Division Bench in the said case held in favour of the employer by holding that since they were registered under the Companies Act as two different individual identities though represented by members of the same family, and that the companies were independent. On a challenge to the said judgment by the authorities, this Court held that the findings of the High Court that due to the separate registration under the Companies Act, they were different individual identities was wholly unjustified. This Court held that there was functional unity and integrality and that the authorities were justified in clubbing the two units.

27. In ***Regional Provident Fund Commissioner and Another*** vs. ***Dharamsi Morarji Chemical Co. Ltd.***, (1998) 2 SCC 446, this Court held in favour of the employer on the finding that there was no evidence of supervisory, financial or managerial control and the only communicating link was that both was owned by the common owner. It was held on facts that that by itself was not sufficient unless there was interconnection between the two units and there was common supervisory, financial or managerial control. This case cannot help the appellant as it turned on its own peculiar facts as was clearly recorded in para five of the said judgment.

28. In ***Raj's Continental Exports (P) Ltd. (supra)***, this Court found for the employer that there was total independence of the two units and upheld the judgment of the learned Single Judge and of the Division

Bench. Here again, the case turned on the peculiar facts of the case and can be of no assistance to the appellant.

29. In ***Sumangali*** vs. ***Regional Director***, ***Employees' State Insurance Corporation***, (2008) 9 SCC 106, this Court found that the authorities had held that the clubbing of the entities was justified and there was functional integrality, unity in management, financial unity, geographical proximity, unity in supervision and control and general unity of purpose. It was also found by the authorities and the High Court that even if each unit had separate registration under different statutes, all units were inter-dependent and were supplementary and complementary to each for the sake of their textile business. This Court upheld the finding of the authorities and the High Court and dismissed the appeal of the employer.

30. In ***L.N. Gadodia and Sons and Another*** vs. ***Regional Provident Fund Commissioner***, (2011) 13 SCC 517, the issue was whether the appellant - L.N. Gadodia and Sons and appellant No.2 in that case M/s Delhi Farming and Construction (P) Ltd. were rightly clubbed by the authorities as one entity for the purpose of the EPF Act? The Registered Office was common; one Director was admittedly common; the authorities found that there was a common Managing Director; that there were loans advanced by the appellant No.2 in that case to appellant No.1; two officers were found to be common, the telephone numbers were common and even the gram nos. "*Gadodia Son*" were common. The Tribunal reversed the finding of the authorities on the ground that the entities were separately registered. On a challenge by the authorities before the High Court, the High Court restored the finding of the Provident Fund Commissioner, after holding that the Tribunal was swayed by the factum of the companies being separate legal entities. On a further challenge to this Court, this Court upheld the finding of the Provident Fund Commissioner. Dealing with the question on the interpretation of Section 2-A of the Act and the submission that only different departments of an establishment can be clubbed but not different establishments altogether, this Court, while rejecting the submission held as under:-

> "23. The petitioners have contended that the two entities are two separate establishments. They have tried to draw support from Section 2-A of the Act which declares that where an establishment consists of different departments

> or has branches whether situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. It was submitted that only different departments or branches of an establishment can be clubbed together, but not different establishments altogether. In this connection, what is to be noted is that, this is an enabling provision in a welfare enactment. The two petitioners may not be different departments of one establishment in the strict sense. However, when we notice that they are run by the same family under a common management with common workforce and with financial integrity, they are expected to be treated as branches of one establishment for the purposes of the Provident Funds Act. The issue is with respect to the application of a welfare enactment and the approach has to be as indicated by this Court in *Sayaji Mills Ltd.* [1984 Supp SCC 610.] The test has to be the one as laid down in *Associated Cement Companies Ltd.* [AIR 1960 SC 56] which has been explained in Pratap Press [AIR 1960 SC 1213]."

31. Hence, it will be clear from this judgment that the contention of the appellant herein that once there are two separate juristic entities, theory of clubbing cannot be invoked is completely untenable and is only stated to be rejected. It is common knowledge that artificial devices, subterfuges and facades are commonly resorted to, to create a smokescreen of separate entities for a variety of purposes. The Court of law faced with such a scenario has a duty to lift the veil and see behind applying the well-established tests to determine whether the entities are really separate entities or are they really a single entity. Myriad fact situations may arise. Hence, the contention that Section 2A cannot be applied if ostensibly two separately registered entities under the Companies Act are involved, has only to be stated to be rejected. This is especially so when the Court is interpreting a beneficial legislation like in the present case, namely, the EPF Act.

32. In ***L.N. Gadodia (supra)***, dealing with the aspect of burden of proof, this Court had the following pertinent observations to make:-

> "24. The Provident Fund Department had issued notice to the petitioners on 11-6-1990 on the basis of their inspection. It had relied upon the 1988 Audit Report of the petitioners.

> The petitioners had full opportunity to explain their position in the inquiry before the Provident Fund Commissioner conducted under Section 7-A of the Provident Funds Act. The petitioners, however, confined themselves only to a facile explanation. If according to them, the management, workforce and financial affairs of the two companies were genuinely independent, they ought to have led the necessary evidence, since they would be in the best know of it. When any fact is especially within the knowledge of any person, the burden of proving that fact lies on him. This rule (which is also embodied in Section 106 of the Evidence Act) expects such a party to produce the best evidence before the authority concerned, failing which the authority cannot be faulted for drawing the necessary inference. In the facts and circumstances of the present case, the Provident Fund Commissioner was therefore justified in drawing the inference of integrity of finance, management and workforce in the two petitioners on the basis of the material on record."

33. The last in the line that we propose to discuss is ***Shree Vishal Printers Limited, Jaipur*** vs. ***Regional Provident Fund Commissioner, Jaipur and Another***, (2019) 9 SCC 508. This Court emphasised that facts would have to be viewed as a whole while each one of the facts by itself may not be conclusive. What is important is to consider cumulatively the facts of the case while applying the different tests laid down (See para 40).

34. A survey of the cases cited hereinabove reveal that it will be impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of the test is to find out the true relation between the Parts, Branches and Units. If in their true relation they constitute one integrated whole, it could be said that establishment is one and if not, they are to be treated as separate units. Each case has to be decided on its own peculiar facts, regard being had to the scheme and object of the statute under consideration and in the context of the claim. In a given case, unity of ownership, management and control may be the important test, while in certain other cases Functional Integrality or general unity may be the determinative consideration. In some instances, unity of employment could be the most vital test. Several tests may fall for consideration at the same

time since the mandate of the law is that the facts will have to be viewed as a whole. While each aspect may not by itself be conclusive, what is important is to consider cumulatively the facts while applying the different tests. The employer/management's own conduct in mixing up or not mixing up the capital, staff and management could in a given case be a significant pointer. Mere separate registration under the different statutes cannot be a basis to claim that the units are separate. Similarly, maintenance of separate accounts and independent financial statement is also not conclusive. The onus lies on the employer/management to lead necessary evidence to bring home their contention.

35. Applying the above principles to the case, the findings arrived at by the APFC that the appellant and Vindas-respondent No.3 were engaged in the same industry; they carried on business in premises built on contiguous plots of land; that they shared common telephone and facsimile numbers; they shared common website and e-mail IDs; that their Registered Office/Head Office and administrative office were the same; they have employed common security to guard the premises; that there was unity of management inasmuch as while Dr. Darshan Kataria and Niranjan Kataria – the two brothers were Directors of respondent No.3-Vindas; Dr. Darshan Kataria was also the Director of the appellant while the other brother Vasudev Kataria and Mr. Rajni Kumari – wife of Darshan Kataria were Directors in the appellant-Company; that there was unity of finance inasmuch as the Hindu Undivided Family of Darshan Kataria and his family members funded both the companies, cumulatively establish beyond doubt that the two entities were rightly treated as common for the purpose of the EPF Act. If a common man were to be asked as to whether the two units are the same, the answer will be an emphatic yes.

36. The claim for infancy protection under the erstwhile Section 16(1)(d) would also not arise in view of our finding of clubbing. Being an integrated unit of Vindas respondent no. 3 since 1995 no separate infancy protection will enure to the benefit of appellant. Equally, untenable is the argument that the show cause notice originally being issued for coverage from 01.04.2004 the authorities were not justified to direct deposit of dues from September 1995. In fact, as would be clear from the factual narration hereinabove from the submissions of 10.10.2005 of the appellant itself it is clear that the authorities were evaluating the possibility of clubbing. Apart from

this, in the communication of 24.01.2005 it was clearly indicated that the stipulated date of 01.04.2004 was liable to change and a final decision was to be taken after inspection of previous report. The further report of 10.11.2005 furnished to the parties clearly dealt with the aspect of clubbing and appellant also responded to the same by its submission of 20.12.2005. In view of the same, we have no hesitation in rejecting the submissions of the appellant that the authorities were not justified in seeking remittance of the dues from September 1995. Similarly, the contention of the appellant that notice of clubbing ought to have been issued to Vindas-respondent No.3 also lacks merit. As rightly contended for the Authorities since the ultimate contribution was to be levied only for the respective employees of the units and since employees of Vindas-respondent No.3 were already covered for the period in question, there was no necessity for issuing notice to Vindas-respondent No.3.

37. For the reasons stated above, we find no merit in the appeal. The appeal is dismissed. No order as to costs.

Result of the case: Appeal dismissed.

†*Headnotes prepared by:* Divya Pandey