CHHATTISGARH HIGH COURT
Hon'ble Mr. Ramesh Sinha, CJ.
Hon'ble Mr. Arvind Kumar Verma, J.
W.A. No. 324/2021, Dt/– 29-4-2025

M/s. Sabera Sanket Rajnandgaon, Chhattisgarh
v.
The Regional Provident Fund Commissioner, Raipur and Others

EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 – Section 7A – Applicability of the Act – EPF Authority issued notice as to why the establishments of the petitioner be not covered under the Act – Petitioner submitted reply thereto – EPF Authority passed order covering the establishment under the Act – Appellant filed appeal against order of EPF Authority but failed – Appellant filed writ petition which was dismissed by the Writ Court – Appellant has filed writ appeal against the orders of the lower authorities – Held, contention of appellant is that clubbing the two establishments is illegal since both the establishments distinct entities – Both establishments have separate nature of business and separate ownership – Contention of EPF Authority is that firstly both establishments were having whole business at one point of time was by the same name "Sabera Sanket" – Initially both firms were under same proprietor , *i.e.*, Proprietor "Sharad Kothari" – Both firms are being run from the same premises, by the members of the same family having interdependency – There are various tests such as geographical proximity, unity of ownership, management and control, unity of employment and conditions of service, functional integrality, general unity of purpose, the profits and losses if usually pooled, together, unity of finances etc. – Since there is unity of ownership, functional Integrity having Interdependence between the two establishments, impugned order meets the required tests for clubbing – Unit Sabera Sanket is in the business of publishing newspaper, but their entire printing works is done at Sabera Printers, at same premises – Thus writ petition stands rejected. Paras 15 to 18

For Appellant: Mr. Sudeep Johri, Advocate.

For Respondent: Mr. Sunil Pillai, Advocate.

IMPORTANT POINTS

- **When there is unity of ownership, functional Integrity having Interdependence between the two establishments, the clubbing of two units is appropriate.**
- **Since Unit Sabera Sanket is in the business of publishing newspaper, but their entire printing works is done at Sabera Printers, at same premises, hence their clubbing is in order.**
- **Clubbing of two establishments would be proper when they were owned by the members of the same family and initially the whole business was a single entity.**
- **Partnership enter into between the parties at the time of establishment of an initial single entity would show that the same is nothing but an extension or expansion of the same business of the family.**

JUDGMENT

Ramesh Sinha, CJ. –1. Heard Mr. Sudeep Johri, learned counsel for the appellant as well as Mr. Sunil Pillai, learned counsel appearing for the respondents.

2. By way of this writ appeal, appellant has prayed for following relief(s):

"It is, therefore, prayed that the Hon'ble Court may be kind enough to allow the Writ Appeal in the interest of justice by quashing the impugned order."

3. The present intra Court appeal has been filed against the order dated 23-06-2021 passed by the learned Single Judge in Writ Petition (L) No. 7689 of 2010 (*M/s. Sabera Sanket, Rajnandgaon, Chhattisgarh* v. *The Regional Provident Fund Commissioner, Raipur, Chhattisgarh and others*), whereby the writ petition filed by the appellant/writ petitioner has been dismissed.

4. The case projected by the writ petitioner/appellant before the learned Single Judge is that the appellant/writ petitioner-establishment, which was in the business of publishing a Hindi Daily Newspaper by the name "Sabera Sanket" was operating from Lal Bagh, Rajnandgaon, Chhattisgarh. The office of the Employees Provident Fund Organization issued a notice under section 7A of the E.P.F. Act. on 31-01-1995 to the appellant/writ petitioner seeking their explanation as to why their establishment should not be covered under the E.P.F. Act. The respondents submitted their response to the said notice. Immediately on receiving the said notice, the appellant/writ petitioner preferred a writ petition before the High Court of Madhya Pradesh, at Jabalpur bearing W.P. No. 2121/1995, which was disposed of on 06-03-1996, whereby the High Court did not interfere with the notice issued permitted the appellant/writ petitioner to participate in the inquiry and reserved the right of the appellant/writ petitioner to challenge the outcome of the said proceedings.

5. Subsequently, the Regional Provident Fund Commissioner, Raipur passed an order holding that M/s. Sabera Sanket, i.e., the appellant/writ petitioner-establishment and M/s. Sabera Printers, they constitute one integrated whole establishment and order of the Regional Provident Fund Commissioner, Raipur was dated 13-10-1999. Against the said order dated 13-10-1999 passed by the Regional Provident Fund Commissioner, Raipur the appellant/writ petitioner preferred an appeal under section 7-I of the E.P.F. Act before the E.P.F. Appellate Tribunal, New Delhi. The Appellate Authority, i.e., the Appellate Tribunal also vide the impugned order dated 17-08-2010 affirmed the order of the Regional Provident Fund Commissioner, Raipur dated 13-10-1999.

6. Being aggrieved by the order dated 17-08-2010 passed by the Employees Provident Fund Appellate Tribunal in case No. ATA No. 207(8)2000, the writ petition being Writ Petition (L) No. 7689/2010 has been filed, which was dismissed by the learned Single Judge vide order dated 23-06-2021.

7. Challenging the aforesaid order passed by the learned Single Judge in writ petition, the instant appeal has been filed by the appellant/writ petitioner.

8. Learned counsel for the appellant submits that the impugned order is illegal and bad in the eyes of law. He further submits that there is no interdependence between the two establishments and that the two establishments are two distinct establishments in all respects, therefore clubbing of the two establishments is illegal and arbitrary on the part of the respondents. It has been contended that the two establishments have separate nature of business and have separate ownership, therefore also the clubbing of the two establishments is improper and the same deserves to be set-aside. It has been further contended that the two orders passed by the Authority and the Tribunal also would not be sustainable for the reason that the two establishments, i.e., "Sabera Sanket" and "Sabera Printers" do not meet the necessary ingredients, which are otherwise required under section 2A of the E.P.F. Act, 1952. It has been argued that the respondent-organization has failed to satisfy the test which is otherwise required while determining whether the two can be said to be one establishment for the purpose of coverage under the E.P.F. Act, and thus prayed that the appellant/writ petitioner-establishment be excluded from the coverage under the E.P.F. Act. It has been further argued that the learned Single Judge has erred in passing the impugned order, which needs to be interfered with. As such, appeal be allowed and the impugned order dated 23-06-2021 passed in Writ Petition (L) No. 7689/2010 passed by the learned Single Judge, be set-aside.

9. Reliance has been placed by the learned counsel for the appellant upon the judgments rendered by the Hon'ble Supreme Court in the matters of *The Association Cement, Companies Limited, Chaibassa Cement Works, Jhinkpani* v. *Their Workmen*, AIR 1960 SC 56; *Management of Wenger and Co*. v. *Their Workmen*, AIR 1964 SC 864; *Regional Provident Fund Commissioner and Another* v. *Dharmasi Morarji Chemical Co. Ltd*., (1998) 2 SCC 446; *Food Corporation of*

India v. *Provident Fund Commissioner and Others*, (1990) 1 SCC 68 as well as the judgment rendered by the Bombay High Court in the matter of *M/s. Ebrahim Currim & Sons* v. *The Regional Provident Fund Commissioner, Maharashtra and Goa and Another*, 1993 Lab. I.C. 1740 as also the judgment rendered by the Kerala High Court in the matter of *Evans Food Corporation* v. *Union of India and Another*, 1994 Lab. I.C. 1439, to buttress his submissions.

10. On the other hand, learned counsel appearing for the respondents opposes the submissions made by the learned counsel for the appellant and submits that it was explicit that the two establishments "Sabera Sanket" and "Sabera Printers" are liable to be clubbed for the reason that firstly, the whole business at one point of time was being run by the same name "Sabera Sanket" and subsequently, the establishment of "Sabera Printers" took place and initially both these firms were under the same proprietor, i.e., in the name of Sharad Kothari, and subsequently the "Sabera Printers" fell in the hands of the sons of the Sharad Kothari, the initial proprietor of the said firm. He further submits that the two establishments are being run from the same premises and both these firms are being run by the members of the same family. It is contended that the printing work of Sabera Sanket was being done at Sabera Printers and these are facts which shows the interdependency of the two establishments and the fact that they are interlinked, thus it meets the test which is otherwise required under section 2A of the E.P.F. Act. It is further contended that considering the findings given by the Regional Provident Fund Commissioner in his order dated 13-10-1999, it would reveal that the finding is a finding of fact based on the submissions made by the appellant/writ petitioner. The said finding of fact has been further subjected to scrutiny in an appeal before the Appellate Tribunal and the order getting affirmed by the Appellate Tribunal by giving reasons while deciding the appeal, the scope of interference by the High Court now in exercise of its writ jurisdiction gets reduced to the minimal. It has been argued that the learned Single Judge after considering all the aspects of the matter, has rightly passed the impugned order, which does not call for any interference.

11. Reliance has been placed by the learned counsel for the respondent upon the judgment rendered by the Hon'ble Supreme Court in the matter of *Mathosri Manikbai Kothari College of Visual Arts* v. *Assistant Provident Fund Commissioner*, 2023 SCC OnLine SC 1326, in support of his contentions.

12. We have heard learned counsel for the parties and perused the impugned orders and materials available on record.

13. The core issue which requires determination is whether the different business units within the same family can be construed to be as one establishment. It would be relevant therefore at this juncture to refer to section 2A of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, which deals with including of all departments and branches of an establishment as part of the same establishment. For ready reference section 2A is reproduced here in 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."

14. In the matter of *The Associated Cement Companies Ltd. Chaibasa Cement Works, Jhinkpani* (supra) while dealing with a similar issue though under the provisions of the Industrial Disputes Act, 1947, the Hon'ble Supreme 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 a 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 organization: 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 ALR 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. In the matter of *Management of Wenger and Co.* v. *Their Workmen* (supra), the Hon'ble Supreme Court while dealing with the issue as to whether industrial establishments owned by the same managements constitute separate units or one establishment has been considered, has held in paragraph-13 as under: –

"13. 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 .....

14. 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 (No. VII 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."

16. Further, in the case of *Regional Provident Fund Commissioner and Another* (supra), the Hon'ble Supreme Court has held thus: –

"4. It is true that if an establishment is found, as a fact, to consist of different departments or branches and if the departments and branches are located at different places, the establishment would still be covered by the net of section 2A and the branches and departments cannot be said to be only on that ground not a part and parcel of the parent establishment. However, on the facts of the present case, the only connecting link which could be pressed in service by the learned counsel for the appellant was the fact that the respondent-Company was the owner not only of the Ambarnath factory but also of Roha factory. On the basis of common ownership, it was submitted that necessarily the Board of Directors could control and supervise the working of Roha factory also and therefore, according to the learned counsel, it could be said that there was interconnection between Ambarnath factory and Roha factory and it could be said that there was supervisory, financial or managerial control of the same Board of Directors. So far as this contention is concerned the finding reached by the High Court, as extracted earlier, clearly shows that there was no evidence to indicate any such interconnection between the two factories in the matter of supervisory, financial or managerial control. Nothing could be pointed out to us to contraindicate this finding. Therefore, the net result is that the only connecting link which could be effectively pressed in service by the learned counsel for the appellant for culling out interconnection between Ambarnath factory and Roha factory was that both of them were owned by a common owner, namely, the respondent-Company and the Board of Directors were common. That by itself cannot be sufficient unless there is clear evidence to show that there was interconnection between these two units and there was common supervisory, financial or managerial control. As there is no such evidence in the present case, on the peculiar facts of this case, it is not possible to agree with the learned counsel for the appellant that Roha factory was a part and parcel of Ambarnath factory or it was an adjunct of the main parent establishment functioning at Ambarnath since 1921."

17. Reverting to the facts of the present case in the light of aforementioned rulings rendered by the Hon'ble Supreme Court relied upon by the learned counsel for the appellant/writ petitioner, it is apparent that there is sufficient material by which it could be determined that there was Unity of Ownership and there was Functional Integrity as also there were Interdependence between the two establishments. As such, these rulings do not help the appellant/writ petitioner in any manner and the same are distinguishable on the facts of the present case.

18. Considering the matter in its entirety and after considering the submissions made by learned counsel appearing for the parties as also perusing the impugned order as also applying the rulings rendered by Hon'ble Supreme Court in the matters of *The Associated Cement Companies Ltd. Chaibasa Cement Works, Jhinkpani* (supra), *Noor Niwas Nursery Public School* v. *Regional Provident Fund Commissioner & Others,* (2001) 1 SCC 1; *Sayaji Mills Ltd.* v. *Regional Provident Fund*

Commissioner, AIR 1985 SC 323 as well as ruling rendered by the High Court of Bombay, Bench Nagpur in a judgment rendered on 07-07-2011 in WP No. 5672 of 2010 in the case of *Assistant Provident Fund Commissioner* v. *A.C.C. Nihan Casting Limited*, the learned Single Judge has passed the impugned order by observing as follows:–

"16. Keeping all the aforesaid legal positions as it stands and also considering the reason and object behind the enactment of the E.P.F. Act, from the plain reading of the impugned order of the Regional Provident Fund Commissioner, Raipur itself would show that there are sufficient materials by which, it could be determined that there was Unity of Ownership, there was Functional Integrity and also there were Interdependence between the two establishments.

17. From the pleadings of the petitioner before the E.P.F. Organization itself, it stands established that the two establishments were owned by the members of the same family. Another fact, which cannot be brushed aside is the fact that initially the whole business was a single entity, where the publication and the printing both were done under the same name of Sabera Sanket. It is only much later that the printing work was given under the banner of Sabera Printers. Another fact, which needs consideration is that initially the proprietor of the two firms also remained the same namely Sharad Kothari. Even when the firm Sabera Printers was established, Sharad Kothari remained as one of the partners and he retired from the said partnership much later. This itself would establish the Unity in Ownership of the two establishments. Another fact, which needs consideration is that though the Sabera Sanket is in the business of publishing newspaper, but their entire printing works including the printing of newspapers is done at Sabera Printers. To top it all two establishments also is running from the same premises. The partnership entered into between the parties at the time of establishment of Sabera Printers itself would show that the same is nothing but an extension or expansion of the same business within the family.

18. For all the aforesaid findings of fact based on the pleadings brought on record before the Commissioner, this Court does not find any strong case made out by the petitioner calling for an interference with the impugned order, the writ petition thus stands merit and is accordingly rejected. No order as to costs."

19. Recently, Hon'ble Supreme Court while dealing with same issue in the matter of *Mathosri Manikbai Kothari College of Visual Arts* (supra), has observed as follows: –

"13. The facts of the case in *Noor Niwas Nursery Public School* (supra) are almost identical to the case in hand. Therein, two educational institutions were being run by the same society. One institution was the Higher Secondary School and another one was the Nursery School (the appellant therein). The appellant contended that since the two institutions have separate and independent accounts and are managed by the two different managing committees, thus both the institutions can't be treated as one establishment for the purpose of clubbing and coverage under the EPF Act. The issue before this Court was to determine how far there is functional integrity between the two units and whether one unit can exist conveniently and reasonably without the other. This Court after pursuing the material available on record, held that two institutions were run by the same society and are located in one premises having same address, thereby, establishing geographical proximity, hence, were rightly clubbed for coverage under the EPF Act.

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22. The mere fact that two Institutes, managed and controlled by the same management, offer different courses or were established at different times is not relevant for their clubbing under the EPF Act. The fact that one of the institutes receives 100% grant-in-aid from the government while the other is receiving to the extent of 70%, is also not relevant. After coverage of the establishments, the benefits, as determined for the purpose of assessing dues under the EPF Act, have already been assessed by the Commissioner.

23. From a perusal of the material available on record and the settled position of law, it can be safely opined that there is financial integrity between the Society of the appellant as well as the Ideal Institute as substantial funds have been advanced to the Institutes by the Society. Further, both the Institutes are functioning from the same premises."

20. Considering the matter in its entirety as also considering the reason and object behind the enactment of the E.P.F. Act as well as from the plain reading of the order of the Regional Provident Fund Commissioner, Raipur itself would show that there are sufficient materials by which, it could be determined that there was Unity of Ownership, there was Functional Integrity and also there were Interdependence between the two establishments.

21. Taking into account the overall facts and circumstances of the case, we are of the firm view that learned Single Judge has rightly passed the impugned order with cogent and justifiable reasons by holding that the two establishments were owned by the members of the same family and initially the whole business was a single entity, where the publication and the printing both were done under the same name of Sabera Sanket and it is only much later that the printing work was given under the banner of Sabera Printers. Even when the firm Sabera Printers was established, Sharad Kothari remained as one of the partners and he retired from the said partnership much later, which itself shows Unity in Ownership of the two establishments. Further, the partnership entered into between the parties at the time of establishment of Sabera Printers itself would show that the same is nothing but an extension or expansion of the same business within the family.

22. From perusal of the materials available on record and the settled position of law, it can be safely opined that there is Unity of Ownership, Functional Integrity as also Interdependence between the two establishments. In the facts and circumstances of the instant case, on a plain reading of impugned order dated 23-06-2021, we do not notice any such palpable infirmities or perversities, as such, we are not inclined to interfere with the impugned order dated 23-06-2021 passed in Writ Petition (L) No. 7689/2010.

23. In the result, the writ appeal lacks merit substance, is liable to be and is hereby dismissed.

Ref: LLR