AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 7689 of 2010

M/s. Sabera Sanket, Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. The Regional Provident Fund Commissioner, Raipur, Chhattisgarh
2. The Enforcement Officer, Raipur, Chhattisgarh
3. Employees Provident Fund Appellate Tribunal (Ministry of Labour & Employment, Government of India) Scopeminar, Core-II, 4th Floor, Laxmi Nagar, District Centre, Laxmi Nagar, New Delhi, 110092

---- Respondents

For Petitioner	:	Mr. H.B. Agrawal, Sr. Advocate along with Ms. Ruchi Dwivedi, Advocate
For Respondents/E.P.F. Deptt.	:	Mr. Sunil Pillai, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23/06/2021

1. 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 present writ petition has been filed. Vide the said order, the Appellate Tribunal has affirmed the order passed by the E.P.F. authority in a 7-A proceedings. The core issue in the present writ petition is the clubbing of the petitioner-establishment with that of M/s. Sabera Printers for the purpose of coverage under the E.P.F. Act.

2. The brief facts of the case necessary for the adjudication of the present writ petition is that the 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 7-A of the E.P.F. Act. on 31.01.1995 (Annexure P/1) to the 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 petitioner preferred a writ petition before the High Court of Madhya Pradesh, at Jabalpur vide W.P. No. 2121/1995. The writ petition finally got disposed of on 06.03.1996, whereby the High Court did not interfere with the notice issued permitted the petitioner to participate in the inquiry and reserved the right of the petitioner to challenge the outcome of the said proceedings.

3. Subsequently, the Regional Provident Fund Commissioner, Raipur passed an order holding that M/s. Sabera Sanket i.e. the 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 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 Annexure P/5 dated 17.08.2010 affirmed the order of the Regional Provident Fund Commissioner, Raipur dated 13.10.1999, which has led to the filing of the present writ petition.

4. The substantial ground of the petitioner in challenging the impugned two orders are 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. According to the petitioner, 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.

5. The counsel for the petitioner canvased on the fact that the judgments relied upon by the E.P.F. Authorities and also the Appellate Authority were not under the context of the E.P.F. Law, therefore the ratio laid down in the said judgments cannot be applied for the purpose of covering one establishment under the E.P.F. Act by clubbing it with another establishment, particularly when there is no commercial relationship between the two.

6. It was also the contention of the counsel for the petitioner 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 2-A of the E.P.F. Act, 1952. According to the petitioner, 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 for the impugned two orders be set-aside and the petitioner-establishment be excluded from the coverage under the E.P.F. Act.

7. Per contra, the learned counsel appearing for the E.P.F. Department drawing the attention of this Court to the two orders, one passed by

the Regional Provident Fund Commissioner, Raipur and the other affirming the same by the Appellate Tribunal submitted that from the pleadings of the petitioner itself, 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”. 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.

8. The other fact, which the learned counsel for the E.P.F. organization drew the attention of the Court is that the two establishments is being run from the same premises. Both these firms are being run by the members of the same family. It was also the contention of the respondents 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 2-A of the E.P.F. Act.

9. According to the counsel for the E.P.F Organization, considering the findings given by the Regional Provident Fund Commissioner in his order dated 13.10.1999 (Annexure P/3), it would reveal that the finding is a finding of fact based on the submissions made by the petitioner himself. 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. Moreover, according to the counsel for the respondents, the plain reading of the contents of the writ petition also would not in any manner show that the findings given by the Regional Provident Fund Commissioner to be either perverse or contrary to Rules or contrary to evidence on record. On this count also the counsel for the respondents prayed for rejection of the writ petition.

10. From the contentions put forth on either side, 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 2-A, which deals with including of all departments and branches of an establishment as part of the same establishment. For ready reference Section 2-A is reproduced hereinunder:

> **"2-A. 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."**

11. It would also be germane to refer at this juncture to the judgment, which has been relied upon by the Regional Provident Fund Commissioner as also by the Appellate Tribunal in the case of **"The Associated Cement Companies Ltd. Chaibasa Cement Works, Jhinkpani v. Their Workmen"** reported in **AIR 1960 Supreme Court 56**. In the said case 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 igand 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 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 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."**

12. From the aforesaid factual matrix of the case, now what requires to be considered is to put the test of trial while determining whether “Sabera

Sanket" and "Sabera Printers" can be clubbed as a one establishment. It requires determination as to whether there is Geographical Proximity, Unity of Ownership, Management Igand Control, Unity of Employment, Functional Integrity, etc. If the establishment meets most of the aforementioned tests, the findings given by the E.P.F. Organization and which has since been affirmed by the Appellate Tribunal would not warrant interference.

13. The Hon'ble Supreme Court in the case of **"Noor Niwas Nursery Public School v. Regional Provident Fund Commissioner & others" (2001) 1 SCC 1**, again held while determining a similar issue in paragraph No.5 held as under:

> **"5. In the present case, when two units are located adjacent to one another and there are only two teachers with an aaya, a clerk and a peon, it is difficult to believe that the society which runs 30 schools would run a separate school consisting of such a small number of staff. If the unit of the appellant School was not part of the unit of Francis Girls Higher Secondary School, the Head Clerk, Mrs., Wadhavan could not have been in possession of the particulars of the appellant School and could not have furnished such particulars to the Inspector when he visited the school in connection with the grant of a code number. Undisputably, the two units are run by the same society and they are located in one and the same address thereby establishing geographical proximity and nothing worthwhile has been elicited in the cross-examination of the Inspector in regard to inquiries made by him from Mrs. P. Wadhavan. Mrs. P. Wadhavan was not examined before the Provident Fund Commissioner. All these facts clearly point out to one factor that the two units constitute one single establishment. After all the appellant School caters to nursery classes, while the higher classes are provided in Francis Girls Higher Secondary School. Thus, the link between the two cannot be ruled out. In the facts and circumstances of the case, we hold that the view taken by the Provident Fund Commissioner as affirmed by the High Court in this regard is correct."**

14. 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"** in paragraph Nos.16 & 17 held as under:

> **"16. In view of above, what should be the dominant and real test to be adopted to hold that two or more units form part and parcel of the same establishment, will depend upon the facts and circumstances of each case. It is not necessary that in all cases, the dominant test would be of functional integrality. Where the admitted position is that there is no functional integrality or there is unity of ownership, the other tests of unity of management and control, unity of finance, unity of labour and employment would gain more significance. The Court will also have to find out as to whether the employer has expanded the existing business under different name or whether he has treated two units as different or integrated. Apart from this, the object and purpose of the provision for which such exercise is being carried out will have to be kept in mind.**
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> **The Court will have to proceed cautiously and balance the conflicting interests. While doing this, it will have to be seen that neither the real and genuine units are deprived of the exemption nor such exemption is made available to undeserving and ineligible units.**
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> **17. xxxxxxxxxxxxxxxxxx. While interpreting the provision of exemption under Section 16(1)(d) of the EPF Act, the Court will have to keep in mind that it is a beneficial piece of social welfare legislation aimed at promoting and securing the well-being of the employees and the Court cannot adopt narrow interpretation, which will have the effect of defeating the very object and purpose of the Act. It is the question of entitlement to an infancy period, as stipulated under Section 16(1)(d) of the EPF Act, which is available strictly speaking to an infant industry or unit. It is available to every such establishment or unit only once in its life-time and it cannot be availed of repeatedly at different stages.**
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> **ig If a newly set up unit or industry is nothing but a part and parcel of or an expansion of the business of another unit or industry, which is already set up, and has availed the benefit of such exemption at the time of its setting up, then such newly set up unit or industry will not be entitled to an exemption, as provided under Section 16(1)(d) of the EPF Act. If such an industry is granted benefit, then it would not only defeat the purpose of granting exemption, but would amount to extending such benefit on repeated occasions to the same establishment, which is not intended by the legislation."**

15. It is all the more relevant at this juncture to refer to the judgment of the Hon'ble Supreme Court in case of **"Sayaji Mills Ltd. v. Regional Provident Fund Commissioner" AIR 1985 Supreme Court 323**, wherein in paragraph No.5 referring to the reason and object behind framing of the E.P.F. Act held as under:-

> **"5. At the outset it has to be stated that the Act has been brought A into force in order to provide for the institution of provident funds for the benefit of the employees in factories and establishments. Article 43 of the Constitution requires the State to endeavour to secure by suitable legislation or economic organisation or in any other way to all workers, agricultural,**

> **industrial or otherwise among others conditions of work ensuring a decent standard of life and full enjoyment of leisure. The provision of the provident fund scheme is intended to encourage the habit of thrift amongst the employees and to make available to them either at the time of their retirement or earlier, if necessary, substantial amounts for their use from out of the provident fund amount standing to their credit which is made up of the contributions made by the employers as well as the employees concerned. Therefore, the Act should be construed so as to advance the object with which it is passed. Any construction which would facilitate evasion of the provisions of the Act should as far as possible be avoided. Section 1 (3) of the Act during the relevant period declared that subject to section 16 thereof, it applied to every establishment which a factory engaged in any industry specified in Schedule I thereof and in which fifty or more persons were employed. The material part of section 16 of the Act as it stood at the relevant time alongwith the marginal note read as follows:-**
>
> > **" 16, Act not to apply to factories belonging to Government or Local Authority and also to infant factories- F (1) This Act shall not apply to-**
> >
> > > **(a) any factory belonging to the Government or a local authority; and**
> > >
> > > **(b) any other factory, established whether before or after the commencement of this Act, unless three years have elapsed from its establishment.**
> > >
> > > **Explanation:-For the removal of doubts, it is hereby declared that the date of the establishment of a factory shall not be deemed to have been changed merely by reason of a change of the premises of the factory."**

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 is 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.

Sd/-
(P. Sam Koshy)
Judge

Ved