IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **CWP-20743-2015 (O&M)**
Reserved on: 22.05.2026
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GAJANAND DALMIA CHARITABLE TRUST

-PETITIONER

V/S

ASSISTANT PROVIDENT FUND COMMISSIONER AND ANR.

-RESPONDENTS

2. **CWP-20750-2015 (O&M)**

SETH MURLIDHAR DALMIA CHARITABLE TRUST

-PETITIONER

V/S

ASSISTANT PROVIDENT FUND COMMISSIONER AND ANR.

-RESPONDENTS

3. **CWP-20776-2015 (O&M)**

PURNI DEVI DALMIA CHARITABLE TRUST

-PETITIONER

V/S

ASSISTANT PROVIDENT FUND COMMISSIONER AND ANR.

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Akshay Bhan, Sr. Advocate, assisted by
Mr. Vivek Salathia, Advocate, and
Mr. Abishai A. George, Advocate
for the petitioners.

Mr. Rajesh Hooda, Advocate
for the respondents.

KULDEEP TIWARI, J.

1. These three writ petitions call in question the legality and validity of the order dated 10.12.2002 passed by the Assistant Provident Fund Commissioner, whereby, in exercise of powers under Section 2-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the EPF Act"), the three petitioner-trusts were held to constitute a single establishment and were consequently directed to deposit the provident fund dues assessed under Section 7-A of the EPF Act. Aggrieved thereby, the petitioners preferred statutory appeals before the Employees' Provident Fund Appellate Tribunal. However, the appeals were dismissed vide order dated 21.08.2015. The order dated 21.08.2015 has, therefore, also been assailed in these writ petitions.

2. Since all these writ petitions arise out of identical facts and involve the determination of a common question of law, they are amenable to be decided by a common verdict. The principal issue that emerges for consideration is ***"whether the three petitioner-trusts constitute a single establishment within the meaning of Section 2-A of the EPF Act or whether each of them is a separate and independent establishment".***

FACTUAL MATRIX

3. All three petitioner-trusts are charitable trusts incorporated under the provisions of the Societies Registration Act on different dates during the years 1968 and 1969. Each of the petitioner-trusts is separately registered under the Income Tax Act and has been granted exemption thereunder on account of its charitable nature and engagement in

providing free medical services. On 14.10.1999, the Assistant Provident Fund Commissioner issued a show cause notice in the name of M/s Dalmia Charitable Hospital and also allotted Provident Fund Code No.PN/22064 in the said name. By the said notice, the petitioner-trusts were called upon to furnish various statutory returns, both monthly and annual, for the period from August 1998 to February 1999, besides submitting their response thereto. In reply, the petitioner-trusts asserted that no institution or trust by the name of M/s Dalmia Charitable Hospital existed or was owned or managed by them and, accordingly, requested that the show cause notice be withdrawn. Despite this, further show cause notices continued to be issued to the petitioner-trusts, to which they consistently reiterated that no institution or trust by the name of M/s Dalmia Charitable Hospital was in existence, nor did they own, possess or manage any such establishment. It was further asserted that each of the petitioner-trusts independently employed fewer than twenty persons and, therefore, none of them was covered by the provisions of the EPF Act.

4. Notwithstanding the consistent stand of the petitioner-trusts, the Assistant Provident Fund Commissioner initiated proceedings under Section 7-A of the EPF Act. During the course of the proceedings, the Enforcement Officer was directed to examine the matter and submit a comprehensive report regarding the applicability of the provisions of the EPF Act to M/s Dalmia Charitable Hospital. Upon receipt of the report, the Assistant Provident Fund Commissioner proceeded to club the three petitioner-trusts as a single establishment under the name of M/s Dalmia Charitable Hospital and passed the assessment order dated 10.12.2002

under Section 7-A of the EPF Act. Aggrieved by the assessment order, the petitioner-trusts preferred statutory appeals under Section 7-I of the EPF Act. The Appellate Tribunal, however, dismissed the appeals vide order dated 05.04.2010.

5. Deriving grievance from the orders dated 10.12.2002 and 05.04.2010, the petitioner-trusts approached this Court by filing CWP Nos.10662, 10667 and 10685 of 2010. The said writ petitions were allowed by a common order dated 06.05.2015, whereby the matter was remanded to the Appellate Tribunal for fresh adjudication of the statutory appeals. Pursuant to the remand, the Appellate Tribunal reconsidered the matter but once again dismissed the appeals vide order dated 21.08.2015. Consequently, the petitioner-trusts have instituted the present writ petitions assailing the assessment order dated 10.12.2002 passed under Section 7-A of the EPF Act as well as the appellate order dated 21.08.2015.

SUBMISSIONS OF LEARNED SENIOR COUNSEL FOR THE PETITIONER-TRUSTS

6. Learned senior counsel for the petitioner-trusts, at the outset, contends that the very foundation of the impugned orders is contrary to Section 2-A of the EPF Act, which contemplates the clubbing only of different departments or branches of an establishment and does not envisage the clubbing of separate and independent establishments. It is submitted that each of the petitioner-trusts is an independent entity, separately registered under the Income Tax Act, maintaining separate bank accounts, employing separate staff, and carrying on its activities

independently. Despite this, the Assistant Provident Fund Commissioner erroneously clubbed the petitioner-trusts under the name of M/s Dalmia Charitable Hospital without conducting the inquiry mandated by Section 2-A of the EPF Act and without applying the well-settled test of "functional integrality" as propounded by the Hon'ble Supreme Court in ***"Management of Pratap Press, New Delhi vs. Secretary, Delhi Press Workers' Union, Delhi and Another", AIR 1960 SC 1213***. Reliance has also been placed upon ***"Associated Cement Companies Limited vs. Their Workmen", AIR 1960 SC 56.***

7. Elaborating the aforesaid submission, it is submitted that the doctors engaged by the respective petitioner-trusts render services on a part-time basis while carrying on their private practice. Although the clinics operated by the petitioner-trusts are in the same building, each clinic functions independently in distinct medical fields without any interdependence. Reliance has been placed on the inquiry report dated 08.09.1998 to contend that it establishes the independent character and functioning of each of the petitioner-trusts.

8. It is further contended that no inquiry, as contemplated under Section 2-A of the EPF Act, was undertaken by the Assistant Provident Fund Commissioner before clubbing the petitioner-trusts into a single establishment. Placing reliance upon the judgment of the Hon'ble Supreme Court in ***"M/s Torino Laboratories Pvt. Ltd. v. Union of India & Ors.", Civil Appeal No. 9540 of 2018, decided on 15.07.2025***, it is argued that the test of functional integrality is the determinative test for deciding whether different trusts can be clubbed together for the purposes

of Section 2-A of the EPF Act. It is submitted that the basic test is whether the units are so functionally integrated that one cannot exist without the other and whether, in matters relating to finance and employment, the employer has integrated the three units into a single establishment. It is submitted that none of these relevant considerations was examined by the authorities.

9. It is further contended that the mere fact that three trustees are common to the petitioner-trusts cannot, by itself, justify clubbing three distinct entities into a single establishment. In order to lend vigour to this submission, reliance has been placed upon ***"Regional Provident Fund Commissioner vs. Raj's Continental Exports (P) Ltd.", (2007) 4 SCC 239,*** wherein it was held that the mere fact that the proprietor of one concern was the Managing Director of another would not, by itself, establish that one concern constituted a branch of the other.

10. Proceeding further, learned senior counsel submits that there is no evidence on record to establish that the twenty-seven employees, treated by the authorities as employees of M/s Dalmia Charitable Hospital, were receiving their salaries, either directly or indirectly, from one unit of the petitioner-trusts. It is contended that there is no material to demonstrate financial or functional interdependence among the petitioner-trusts, or that the salary of employees engaged by one trust was being paid by another. Consequently, the clubbing of the petitioner-trusts under the impugned assessment order is wholly unsustainable in law. Reliance in this regard has been placed on ***"Khoja Lime Udyog vs. Regional Provident Fund Commissioner", (1992) 1 LLJ 903 (Raj.)***, wherein it was

held that unless it is established that the employees of the concerns sought to be clubbed were receiving wages, directly or indirectly, from the same employer, it would be difficult to hold that such concerns jointly constitute one establishment.

11. Learned senior counsel also assails the findings recorded by the Appellate Tribunal as being factually erroneous. It is submitted that the Appellate Tribunal wrongly assumed that the rental income reflected in the accounts of petitioner Gajanand Dalmia Charitable Trust pertained to the building at Amritsar in which all the petitioner-trusts are functioning. According to the learned senior counsel, the said rental income, in fact, arises from a flat owned by the said trust at Calcutta and has no connection whatsoever with the premises at Amritsar. It is, therefore, contended that the Appellate Tribunal's finding is founded on a complete misappreciation of the factual record.

12. Finally, before resting his arguments, learned senior counsel contends that even the assessment of provident fund dues suffers from infirmity, inasmuch as no proper inquiry under Section 7-A of the EPF Act was undertaken for determining the actual liability of the petitioner-trusts.

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENTS

13. *Per contra*, learned counsel for the respondents puts forward a fierce defence to the submissions advanced on behalf of the petitioner-trusts and contends that it is an open-and-shut matter. It is submitted that the three petitioner-trusts, namely, (i) Seth Murlidhar Dalmia Charitable

Trust, (ii) Smt. Purni Devi Dalmia Charitable Trust, and (iii) Gajanand Dalmia Charitable Trust, were constituted to evade the purview of the EPF Act. All three petitioner-trusts operate a hospital from the same building, which is jointly owned by Seth Murlidhar Dalmia Charitable Trust and Smt. Purni Devi Dalmia Charitable Trust, while Gajanand Dalmia Charitable Trust occupies the premises as a tenant. It is further submitted that the petitioner-trusts exist merely on paper and, in substance, function as a single establishment, with complete unity and integration of operations among them, as evidenced by their carrying on the same business activities from the same premises.

14. Learned counsel further submits that the documents produced by the establishment during the proceedings relating to the three petitioner-trusts were attested by the same individual. Likewise, the attendance registers of all the three petitioner-trusts, copies whereof were obtained during the proceedings on 10.12.2002, also bear the signatures of the same person. According to the learned counsel, these circumstances clearly establish that the managerial control of all the three petitioner-trusts vests in the same management. It is further pointed out that Shri R.N. Dalmia, Shri Kamal Dalmia, and Smt. Veena Dalmia are common trustees of all the three petitioner-trusts. Besides this, the letterheads of the petitioner-trusts disclose the same telephone numbers for their respective clinics and offices. It is submitted that all of these facts strengthen the contention of unified management.

15. Lastly, placing reliance upon the judgment of the Hon'ble Supreme Court in "***L.N. Gadodia & Sons and another v. Regional***

Provident Fund Commissioner, (2011) 13 SCC 517", learned counsel submits that, by invoking the provisions of Section 2-A of the EPF Act, not only different branches or departments of one establishment can be clubbed together, but two establishments can also be clubbed together.

ANALYSIS OF JUDICIAL PRECEDENTS GOVERNING THE QUESTION OF LAW ARISING IN THE PRESENT WRIT PETITIONS

16. In ***Associated Cement Companies Limited (supra),*** the Hon'ble Supreme Court, while considering the question whether the Rajanka limestone quarry formed part of the establishment known as Chaibasa Cement Works, held that it is impossible to lay down any one test as an absolute and invariable test for all cases. While examining various indicia, such as geographical proximity, unity of ownership, management and control, unity of employment and conditions of service, functional integrality, general unity of purpose etc., the Supreme Court observed that 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, the establishment is regarded as one; and if on the contrary they do not constitute one integrated whole, each unit is to be regarded as a separate unit. **It was further observed that the manner in which the relationship between the units is to be determined depends upon the facts proved, having regard to the scheme and object of the statute.** The relevant paragraphs of the judgment are extracted hereinbelow:-

*"**7.** The evidence was really one sided and the only witness*

examined was Mr. Dongray, Manager of the Chaibasa Cement Works. Now, the relation between the limestone quarry and the factory can be considered from several points of view, such as (1) ownership, (2) control and supervision, (3) finance, (4) management and employment, (5) geographical proximity and (6) general unity of purpose and functional integrality, with particular reference to the industrial process of making cement. On all that above points Mr. Dongray gave evidence. It was not disputed that the Company owned the limestone quarry as also the factory and there was unity of ownership. Mr. Dongray's evidence further showed that there was unity of control, management and employment. He said that the limestone quarry was treated as a part and parcel of the Chaibasa Cement Works, that is, as a department thereof and he as the Manager was in overall charge of both, though there was a Quarry Manager in charge as a departmental head under him. On this point Mr. Dongray said:-

"XX XX XX"

This was supported by a circular letter dated March 11, 1952, which said that the entire factory and the associated quarries were under the sole control of the Manager, who was responsible for maintaining full output at economic cost up to the expected standard. The circular letter further stated that all orders and contracts were to be issued by the Manager for the working of the factory and quarries and the relevant bills were to be passed by him. As to finance and conditions of employment, Mr. Dongray said:-

"XX XX XX"

Exhibits 1 to 26 filed on behalf of the management, which showed the working of the quarry and the factory, supported the aforesaid evidence of Mr. Dongray; they showed, as has been observed by the Tribunal itself, that the management was maintaining one common account and the final authority on the spot in respect of the quarry as also in respect of other departments of the factory was Mr. Dongray, the Manager. There were also other documents *to show that the transfer of members of the staff from the quarry to the factory and vice versa was made by Mr. Dongray according to the exigencies of service. It is worthy of note here that the Union itself gave notice to the Manager of the factory with regard to the intended strike in the limestone quarry. The geographical proximity of the limestone quarry was never in dispute. It was adjacent to the factory, being situate within a radius of about a mile. As to general unity of purpose and functional integrality, this was also not seriously in dispute. Mr. Dongray said that limestone was the principal raw material for the manufacture of cement and the cement factory at Jhinkpani depended exclusively on the supply of limestone from the quarry at Rajanka. His evidence no doubt disclosed that some excess limestone was sent to the factory at Khelari as well. On this point Mr. Dongray said:-*

"XX XX XX"

Mr. Dongray explained that the normal number of departmental workers in the quarry before the strike was in the neighbourhood of 250; but there were about 1,000 workers employed by contractors. The number of daily-rated workers was in the neighbourhood of 950 and the total monthly-paid staff varied from 100 to 105. The wages paid to the workers in the quarry were debited to limestone account of the Cement Works, and in the matter of costing, the amount spent on limestone was also debited. The bank accounts, however, were in the name of the Company and the persons who were entitled to operate on those accounts were Mr. Dongray, the Manager, the Chief Engineer, and the Chief Chemist of the Cement Works.

***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 A.L.R., 2d. 272) there is an example of an industrial product consisting of 3,800 or 4,000 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."*

17. The ratio laid down in the judgment (*supra*) was subsequently relied upon by the Hon'ble Supreme Court in ***Management of Pratap Press (supra),*** wherein it was held that 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. It was observed that 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. The Supreme Court further emphasized the significance of the test of functional integrality and held that, where two units belong to a proprietor, there is almost always likelihood also of unity of management, and in all such cases the Court has to consider with care how far there is functional integrality, meaning thereby such functional interdependence that one unit cannot exist conveniently and reasonably without the other and on the further question whether in matters of finance and employment, the employer has actually kept the two units distinct or integrated. The apposite observations enclosed in the judgment read as under:-

*"**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.

***5.** In Associated Cement Co., Ltd. v. Their Workmen, AIR 1960 Supreme Court 56, this Court had to consider the question whether the employer's defence to a claim for lay-off compensation by the workers of the Chaibasa Cement Works that the laying off was due to a strike in another part of the establishment, viz., limestone quarry at Rajanka was good. In other words the question was: whether the limestone quarry of Rajanka formed part of the establishment known as the Chaibasa Cement Works within the meaning of Section 25E(iii) of the Industrial Disputes Act. While pointing out that it was impossible to lay down any one test as an absolute and invariable lest for all cases it observed that the real purpose of these tests would be to find out the true relation between the parts, branches, units etc. This court however mentioned certain tests which might be useful in deciding whether two units form part of the same establishment. Unity of ownership, unity of management and control, unity of finance and unity of labour, unity of employment and unity of functional "integrality" were the tests which the Court applied in that case. It is obvious there is an essential difference between the question whether the two units form part of one establishment for the purposes of Section 25E(iii) and the question whether they form part of one single industry for the purposes of calculation of the surplus profits for distribution of bonus to Workmen in one of the units. Some assistance can still*

> *nevertheless be obtained from the enumeration of the tests in that case. Of all these tests the most important appears to us to be that of functional "integrality" and the question of unity of finance and employment and of labour. Unity of ownership exists ex hypothesi. Where two units belong to a proprietor there is almost always likelihood also of unity of management. In all such cases therefore the Court has to consider with care how far there is "functional integrality" meaning thereby such functional interdependence that one unit cannot exist conveniently and reasonably without the other and on the further question whether in matters of finance and employment the employer has actually kept the two units distinct or integrated."*

18. In ***M/s Torino Laboratories Pvt. Ltd. (supra),*** the Hon'ble Supreme Court again examined the ratio laid down in both the judgments (*supra*) and held that several factors are relevant and the significance and importance of the several relevant factors would not be the same in each case. The 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. Moreover, following the ratio laid down in ***"The Honorary Secretary, South India Millowners' Association and Others vs. The Secretary, Coimbatore Distruict Textile Workers' Union, [1962] Supp. 2 SCR 926,*** the Supreme Court further held 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 fact, Courts are to consider unity of ownership, unity of finance, unity of management and unity of labour and the transferability of employees as relevant indicia. The relevant

paragraphs of the judgment rendered in ***M/s Torino Laboratories Pvt. Ltd.*** are reproduced hereunder:-

> *"**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.*
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> ***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."*

<u>REASONS FOR DISMISSING THE PRESENT WRIT PETITIONS</u>

19. Having tested the rival submissions on the anvil of the legal principles discussed hereinabove and examined the facts of the case in the light thereof, this Court finds that the present writ petitions are devoid of merit and warrant dismissal. The reasons for drawing this conclusion are assigned hereinafter.

20. As regards the principal contention advanced by learned senior counsel for the petitioner-trusts that separate and independent establishments cannot be clubbed together for the purposes of Section 2-A

of the EPF Act, the said contention is devoid of merit. The issue is no longer *res integra*. The Hon'ble Supreme Court in ***L.N. Gadodia & Sons (supra)*** has already considered and rejected the said argument, holding that Section 2-A of the EPF Act is an enabling provision in a welfare enactment and, therefore, it is required to be interpreted accordingly. Moreover, having regard to the fact that the directors of the two petitioner-companies therein belonged to the same family, the Managing Director and two senior officers were common to both companies, and the Enforcement Officer had noticed during inspection that the employees of the two companies were being swapped, the Supreme Court held that all these circumstances pointed to one conclusion that the two entities formed part of the same establishment for the purposes of EPF Act. The paragraphs embodying the relevant observations are extracted hereunder:-

> *"**20.** In the present case the Directors of the two petitioner companies belong to the same family. The Managing Director is common. The two senior officers i.e Commercial Manager and Technical Manager are common. At the time of inspection, the Enforcement Officer noticed that the employees of the two companies were being swapped. Both of them have same registered address and common telephone numbers and a common gram number. The audited accounts revealed that the second petitioner company had given a loan of Rs. 5 lakhs to the first petitioner in the year 1988. The two companies are family concerns of the Gadodia family. Hence, in the facts of the present case we have to hold that there is an integrity of management, finance and the workforce in the two private limited companies. The two companies have seen to it that on record each of the two entities engage less than twenty employees, although the number of employees engaged by them is more than twenty when taken together. The entire attempt of the petitioners is to show that the*

two entities are separate units so that the Provident Funds Act does not get attracted. The material on record however, leads to only one pointer that the two entities are parts of the same establishment and in which case they get covered under the Provident Funds Act.

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 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. (supra). The test has to be the one as laid down in Associated Cement Companies Ltd. (supra) which has been explained in Pratap Press (supra)."*

21. In ***M/s Torino Laboratories Pvt. Ltd. (supra),*** the aforesaid contention was once again raised that there are two separate juristic entities and, therefore, theory of clubbing cannot be invoked. However, the said contention was outrightly rejected. It was observed that nowadays 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. Paragraph 31 of the judgment reads as under:-

> *"**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."*

22. Consequently, following the ratio laid down by the Hon'ble Supreme Court, this Court has no hesitation in rejecting the aforesaid contention of learned senior counsel and in holding that, by invoking the provisions of Section 2-A of the EPF Act, the competent authority is fully empowered to examine whether the three petitioner-trusts are separate and independent establishments or constitute a single unit for the purpose of running a hospital.

23. Now, it is time to deal with another star argument raised by learned senior counsel for the petitioner-trusts pertaining to the clubbing of trusts without applying the test of functional integrality. There is no doubt that functional integrality would be a relevant factor, depending on

the facts of each case. However, it cannot be the sole criterion applicable in every case. The Hon'ble Supreme Court, in ***South India Millowners' Association (supra),*** has once again examined the importance of the test of functional integrality and held that the said test would be relevant and significant when the Court is dealing with different kinds of businesses run by the same industrial establishment or employer. It was further held that, in determining whether two lines of business are functionally integrated or mutually interdependent, the test of functional integrality would not be of equal significance where the employer carries on the same business at two different places. It was also held 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 and, therefore, it cannot, in any manner, be concluded that the two concerns do not constitute one unit. The relevant observations recorded in the judgment are extracted hereinbelow:-

> *".....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….." (emphasis supplied)***

24. Following the aforesaid ratio, the Hon'ble Supreme Court, in ***M/s Torino Laboratories Pvt. Ltd. (supra),*** held that the test of functional integrality 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. The relevant paragraphs of the judgment read as under:-

> ***"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."*

25. In the case at hand, all three petitioner-trusts are engaged in carrying on the same business, namely, running a hospital, and that too in the same building. The employees of the three petitioner-trusts are interchangeable and work in tandem for the effective functioning of the hospital. Therefore, in view of the ratio laid down by the Hon'ble Supreme Court in ***South India Millowners' Association (supra),*** this Court is of the considered opinion that the test of functional integrality is not determinative for deciding whether the three petitioner-trusts constitute a single establishment. Rather, the issue is required to be examined in the light of other relevant indicia, such as unity of finance, geographical proximity, unity of ownership, management and control, and general unity of the three trusts.

26. In order to determine the relationship among the three petitioner-trusts, due regard must be given to the scheme and object of the statute. Reference may be made to ***Associated Cement Companies Limited (supra).*** To provide an institution of provident funds for employees working in factories and other establishments, Parliament enacted the EPF Act. Two other social security schemes were subsequently added, *viz.* the pension fund and the deposit-linked insurance scheme. To achieve the object of creating a mechanism for the social security of industrial workers after retirement, or for their

dependents in the event of early death, the EPF Act makes institutional provident fund contribution compulsory, with both workers and employers contributing. The accumulated amount is payable on retirement or on specified contingencies. A perusal of the Preamble to the EPF Act makes it clear that the Act is a social welfare measure and should be liberally interpreted to achieve the desired object, i.e. employees have a mechanism of social and economic security. The EPF Act provides that contributions to the provident fund should be made on the basis of basic pay plus dearness allowance.

27. It is now apposite to examine the provisions of Section 2-A of the EPF Act upon which the entire controversy revolves. Section 2-A reads as follows:-

> *"**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."*

28. As noticed hereinabove, the controversy is no longer *res integra* in view of the authoritative pronouncement in ***L.N. Gadodia & Sons (supra)*** that not only different branches or departments of a single establishment may be aggregated, but, in appropriate circumstances, two distinct establishments may also be clubbed together for the purposes of the EPF Act. It must, therefore, now be examined whether the three petitioner-trusts can be clubbed together by invoking Section 2-A of the EPF Act.

29. It is an undisputed position that all three petitioner-trusts operate the hospital from the same building, which is jointly owned by Seth Murlidhar Dalmia Charitable Trust and Smt. Purni Devi Dalmia Charitable Trust, whereas Gajanand Dalmia Charitable Trust occupies a portion thereof as a tenant. The competent authority has recorded a finding of fact that all three petitioner-trusts function as a single establishment with complete unity and integration of their operations. The letterheads of the petitioner-trusts disclose identical telephone numbers for their respective clinics and offices. Further, the attendance registers of all three petitioner-trusts, which were produced during the proceedings under Section 7-A of the EPF Act, bear the signatures of the same individual. These circumstances clearly demonstrate that the managerial control of all three petitioner-trusts is vested in one and the same management.

30. Besides the unity of geographical location and common management and control, there also exists unity of ownership inasmuch as Shri R.N. Dalmia, Shri Kamal Dalmia, and Smt. Veena Dalmia, all of whom are members of the same family, are common trustees of each of the three petitioner-trusts.

31. In view of the foregoing discussion, and upon applying the relevant indicia, *viz.* geographical proximity, unity of ownership, unity of management and control, and unity of purpose, this Court is satisfied that the three petitioner-trusts constitute a single establishment within the meaning of Section 2-A of the EPF Act. The material on record clearly establishes that the petitioner-trusts are collectively operating a single

unit, namely, a hospital. Accordingly, the competent authority was fully justified in clubbing the three petitioner-trusts and treating them as one establishment for the purposes of the EPF Act.

32. Insofar as the contention of learned senior counsel for the petitioner-trusts is concerned that no proper inquiry under Section 7-A of the EPF Act was undertaken to determine the actual liability of the petitioner-trusts, he has failed to substantiate the argument by pointing to any procedural infirmity or defect. Accordingly, the said contention is devoid of merit.

<u>FINAL ORDER</u>

33. As an upshot of the discussion made hereinabove, this Court finds no illegality or perversity in the impugned orders. Accordingly, the impugned orders are upheld, and the present writ petitions, being devoid of merit, are **dismissed**.

34. Pending application(s), if any, stand disposed of accordingly.

35. A photocopy of this order be placed on file of each connected case.

(KULDEEP TIWARI)
JUDGE

July 13, 2026
devinder

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No