CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, JABALPUR

EPF Appeal No.- 51/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

M/s Lions Higher Secondary School
Mundi,
District Khandwa,
Through its Principal

Appellant

Vs.

Regional Provident Fund Commissioner,
IDA Building,
7th Race Course Road, Indore (M.P.)

Respondent

Shri Uttam Maheswari : Learned Counsel for Appellant.

Shri Harshit Patel : Learned Counsel for Respondent.

JUDGMENT

(Passed on 17th day of July, 2026)

The present appeal is directed against the order dated 2.08.2011, passed by Respondent Authority under section **7A** of ***The Employees Provident Fund & Miscellaneous Provisions Act, 1952***, hereinafter referred to as the **'*Act'***, by which the Respondent Authority has held the Appellant Establishment liable to deposit EPFO dues of its institutions controlled and managed by it for the period from 1992 to 2006 and has assessed the amount at Rs. 16,74,720/-.

The skeletal facts connected to present appeal are mainly that the Appellant Establishment is a school, run by ***Lions Club Educational Society(in short 'the society, or 'the educational society'),*** established in the year 1988 by Lions Club, which is itself engaged in social service and is managed by the said Lions Club. The Lions Club Educational society has established other schools at two other different places namely Narmadanagar and Punasa, which are distinct and far away from the Lions Higher Secondary School, the Appellant Establishment, earlier established by the Society.

Case of the Appellant Establishment is further that these three schools are self governed and self regulated. They have separate Principals and staff to manage these schools separately. They are situated at different places in different buildings. Notice was sent by the Respondent Authority under the Act to show cause as to why these three schools not be clubbed as one entity, liable for deposit of EPF dues of its employees. This notice was responded by the Appellant Establishment with a case that these three schools are not connected with each other, rather run, governed and managed by separate staff for all these three schools, who are the Principals and other staff. They do not have any type of managerial, administrative or financial connection in between them and only due to the fact that they have been established by one ***society***, they cannot be held to be one establishment by way of clubbing them for the purpose of the Act. Respondent Authority after enquiry, passed an order dated 05.04.2007 holding that there was financial, managerial and administrative integrality between the Appellant School and other Schools as they were owned and managed by the ***Lions Club Educational Society*** hence, were governed under the Act and liable to deposit EPF dues of their employees and assessed the amount at Rs. 19,46,932/- u/s 7-A of the Act for the period July, 1992 to October, 2006 after adjusting the amount already deposited which was Rs. 2,72,212/- the remaining balance came to be Rs. 16,74,720/-. The Respondent Authority directed the Appellant Establishment to deposit the amount.

Appeal was preferred by the Appellant Establishment before this Tribunal which was decided my Learned Predecessor after hearing. The matter was remanded vide his order dated 31.11.2010, observing that two establishments could be treated as one only when there existed financial, functional and managerial integrality between them. It was further observed that, the order of the Respondent Authority did not indicate Schools are managed by one person, nor does the order reveals that there exists any financial or functional integrality between the Schools. Without any specific finding in this respect, the order could not be allowed to exist and was set-aside by my Learned Predecessor, who remanded the matter back to the Respondent Authority for considering the matter in the light of directions mentioned in the remand order.

According to the Appellant Establishment, they appeared before the Respondent Authority. The report of the Enforcement Officer Dilip Kosta was also filed, which was cross-examined during the enquiry proceedings. It came out that, these three Schools were registered with the Education Department on three different dates. It also came out that, they were administrated by the separate Principals and staff as well. Among the Principals of these three schools, one of them is the Appellant Establishment. It has filed affidavit stating that there was no financial and functional integrality between them. The Respondent Authority passed the impugned order dated 23.09.2011, rejecting the objections from the side of Appellant Establishment and held that there was managerial and financial as well functional integrality between these three schools, directed the Appellant Establishment, which is one of the these three Schools, to deposit the assessed PF amount for the period in the said order, hence this appeal.

Grounds of appeal, taken in the memo of appeal are mainly that, the impugned order and assessment is bad in law, passed by the Respondent Authority without considering the settled proposition of law on the issue of clubbing two institutions, which is that if a establishment has more than one different unit and these units can run without aid of each other, they cannot be clubbed. The Respondent Authority, committed error in law in not considering the fact that, the three schools clubbed together are not dependent on each other, they are under control of separate Management, also their finances and functions are managed by separate staff. The impugned order is arbitrary and the findings of the Respondent Authority that there is financial integrality between these three schools, is against fact. Observations of the Respondent Authority in the impugned order that the schools are located in different places, but failure to look into the facts as to whether, there exists any financial, functional or managerial integrality or not, is unjust, illegal and arbitrary, which is against inspection report as well the statement of the Enforcement Officer.

In its counter to the appeal, the Respondent Authority has taken a case that, the Act is a beneficial legislation, which provides social security to the employees of the Establishments, any Establishment employed more than 20 or more persons, at any date, is covered under the Act and the employer is under obligation in law to deposit PF dues of its employees within time, which is 15^{th} day of next month, in which the employee has worked in the Establishment and dues become payable to him. In case of failure to deposit the PF dues, the PF Organization initiates assessment and recovery proceedings. Since, it is a beneficial legislation, if any provision of this Act, which is capable of two interpretations, one in favor of the beneficiary will be accepted. According to the Respondent Authority, the ***Lions Shikshan Samiti***, Mundi is registered under the Co-operative Society Registration Act, 1983, w.e.f. 07.10.1988, it runs Lions Higher Secondary School, Mandi, which was brought under the per view of the Act, w.e.f. 01.07.2000. It came to the notice of the department that the schools in the names of Lions Higher Secondary School, Narmada Nagar, Lions Higher Secondary School, Punasa, The Lions Higher Secondary School, Shegaon were also run by the said society. Hence**,** taking employment strength of all the schools together, the date of coverage under the Act was fixed to 01.07.1992 and an inquiry was proceeded for PF fund dues payable from July, 1992 to October, 1996, were determined at Rs. 16,74,720/-, which was deposited by the Establishment except an amount of Rs. 5,78,445/- being employee's share of per-discovery period for which waiver has been granted on the request of the President of the Society.

It came out during the inquiry that, fixed deposits done in the balance sheet in the name of ***Lions Shikshan Samiti***, Mundi. Rs. 13,00,000/- (Rupees 13 Lacs) in FDR of Lions Sishu Mandir, Narmada Nagar, Rs. 2 Lacs in FDR of Lions Higher Secondary School, Mundi, Rs. 7,20,400/- in FDR of Lions Higher Secondary School, Punasa were withdrawn by the ***Lions Siksha***

Samiti, which shows the financial and functional integrality between the ***Samiti/Society*** and the Schools.

According to the Respondent Authority, the impugned findings and assessment have been correctly recorded and warrant no interference. In its rejoinder the Appellant Establishment has mainly reiterated it earlier pleadings.

I have heard arguments of Learned Counsel for the Appellant Establishment, Mr. Uttam Maheswari, and Mr. Harshit Patel, Learned Counsel for the Respondent Authority. Both the sides have filed written submissions, which are part of record. I have gone through the written submission as well the record.

Learned Counsel for the Appellant Establishment has referred to following judgments –

1. ***Management of Pratap Press V.s. Secretary, Delhi Press Workers Union (1960) SCC online SC 113** – (Para 2 and 5-reproduced as follows-)*

"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. v. Workmen 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 25-E(iii) of the Industrial Disputes Act. While pointing out that it was impossible to lay down any one test as an absolute and invariable test 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 25-E 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 hypothesie. 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 exists 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.

7. In RPF Commr. v. Dharamsi Morarji Chemical Co. Ltd.2 it was held that unless there is clear evidence to show that there was any supervisory, financial or managerial control, it cannot be said that one is the branch of the other. As noted by the learned Single Judge, the respondent was separately registered under the Factories Act. It was

separately registered under the Central Sales Tax Act and the Employees' State Insurance Act. It has also been found by the learned Single Judge that there was total independence the two units. The learned Single Judge and the Division Bench were right in their conclusion that the respondent is not a branch of M/s Continental Exporters

2. ***Regional Provident Fund Commissioner &Another V.s. Dharamsi Morarji Chemical Company (1998) 2 SCC 446*** ***(Para 2,4 and 5) reproduced as follows-***

   "2. In view of these salient features found to be well established on the record, in our view, it could not be said that Roha factory only because it is owned by the respondent-Company was not a new establishment or could be treated to be a branch or department of Ambarnath factory which by itself b was an establishment admittedly covered by the Act as it was an old establishment since 1921

   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 2-A 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. g 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 a 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.*

5. *In view of this factual situation which has been borne out on the record of this case, it cannot be said that the High Court was in error in granting infancy benefit under Section 16(1)(b) to Roha factory in the first two years of its establishment. We make it clear that our present decision is rendered in the light of the peculiar facts and circumstances of the case and the findings reached by the learned Single Judge on the facts pressed in service before him by contesting parties."*

3. ***Regional Provident Fund Commissioner V.s. Raj's Continental Exports (2007) 4 SCC 239 (Para 7) reproduced as follows-***

   "7. In RPF Commr. v. Dharamsi Morarji Chemical Co. Ltd. it was held that unless

there is clear evidence to show that there was any supervisory, financial or managerial control, it cannot be said that one is the branch of the other. As noted by the learned Single Judge, the respondent was separately registered under the Factories Act. It was separately registered under the Central Sales Tax Act and the Employees' State Insurance Act. It has also been found by the learned Single Judge that there was total independence the two units. The learned Single Judge and the Division Bench were right in their conclusion that the respondent is not a branch of M/s Continental Exporters".

4. ***<u>Mahakoushal Gasolene Enterprises V.s. Assistant Provident Commissioner (2013) SCC online MP 10956 (Para 6 & 7)reproduced as follows-</u>***

"6. Having heard learned Counsel for the parties and on going through the record, we find that the petitioner's establishment has been held, liability to pay the provident fund dues and the determination of dues under section 7-A is undertaken on the ground that about 20 persons are working in the establishment. However, it is seen that under the ownership of a petitioner, two establishments are functioning and it is by clubbing together both these establishments the total strength of the employees determined. Coverage of the establishment is determined on the basis of clubbing together of both these establishments. However, in the order passed under section 7-A, there is nothing to say as to how and in what manner, there is functional integrity between the two establishments. The learned Single Judge has held that the petitioner has not raised this ground or before the Competent Authority in the proceeding under section 7-A and therefore he was prevented from raising the same in the appeal

and the writ petition for the first time. Under section 1 sub-section 3(b) of the Act of 1952, the. Act of 1952 is made applicable to every establishment employing 20 or more persons or class of such establishment as may be notified by the Central Government. When determination of provident fund dues from a employer is Undertaken under section 7-A, the burden of showing that the Act of 1952 is applicable to the particular employer has to be discharged by the authority who is conducting the enquiry under section 7-A. Merely because the employer has not raised any objection, that does not mean that the Act would become applicable and even for the purpose of clubbing together of various establishment, an enquiry and determination has to be made with regard to the functional integrity of the establishment and in the absence of any material being available to show functional integrity, assessment of the liability is not proper. In the present case only on the ground that the petitioner has failed to produce relevant records, the liability is imposed by clubbing together the activities of two different establishment, one engaged in the business of Gas distribution and the other for transportation of two different companies. Even if any document or material was not, produced by the appellant, the authorities conducting the enquiry was required under law to first determine as to whether the provisions and requirement of section 1 sub-section 3(a) or (b) is made out and then only make assessment. Without discharging this burden and recording a finding with regard to applicability of the Act on the petitioner's establishment proceeding with the matter was hot permissible. Even otherwise, if the provisions of section 1 sub-section 3(a) and

(b) along with section 2(A) of the Act of 1952 is taken note of, it would be clear that the section itself contemplates that the Act would be made applicable only if the eventualities contemplated therein with regard to the number of employees are fulfilled and the question of applicability of the Act is therefore primarily to be determined by the department and the same cannot be shifted to the assessee.

7. In the case of Dharamsi Morarji Chemical Co. Ltd. (supra), it has been held by the Supreme Court that in the absence of supervisory, financial or managerial control, two units cannot be treated as one merely on the basis of common…………….

Learned Counsel for the Respondent Authority has referred to following judgments. –

1. ***M/sTorino Laboratories V.s. Union of India (2025) INSC 849 (Para 34 & 35) reproduced as follows-***

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

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

35. Applying the above principles to the case, the findings arrived at by the APFC that the appellant and Vindas- respondent No.3 were engaged in the same industry; they carried on business in premises built on contiguous plots of land; that they shared common telephone and facsimile numbers; they shared common website and e-mail IDs; that their Registered Office/Head Office and administrative office were the same; they have employed common security to guard the premises; that there was unity of management inasmuch as while Dr. Darshan Kataria and Niranjan Kataria -the two brothers were Directors of respondent No.3-Vindas; Dr. Darshan Kataria was also the Director of the appellant while the other brother Vasudev Kataria and Mr. Rajni Kumari - wife of Darshan Kataria were Directors in the appellant- Company; that there was unity of finance inasmuch as the Hindu Undivided Family of Darshan Kataria and his family members funded both the

> ***companies, cumulatively establish beyond doubt that the two entities were rightly treated as common for the purpose of the EPF Act. If a common man were to be asked as to whether the two units are the same, the answer will be an emphatic yes."***

On perusal of record, in the light of rival arguments, following points comes up for determination –

1. ***Whether, the finding of the Respondent Authority that the Appellant Establishment i.e. M/s. Lions Higher Secondary School, Mundi has functional, managerial and financial integrality with the other schools i.e. Lions Higher Secondary School Narmada Nagar, Lions Higher Secondary School Punasa and Lions Higher Secondary School Shegaon, hence they are one employer for the purpose of Section 2A of the Act, has been recorded correctly in fact and law?***

Section 2A of the Act is being reproduced as follows –

2A. Establishments 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.

The proposition of law in this respect has been detailed earlier in the Judgments referred to above by the parties.

Now, it is to be seen, whether the **Appellant School has any functional, managerial and financial integrality between the other three Schools or not.** Undisputedly, as it is evident in the impugned order, all the Schools are run, controlled and governed by a Society which is a cooperative society in the name of ***Lions School Shikshan Samiti,*** which is itself established by Lions Club, this society is registered under Society Registration Act and runs all these Schools. In the impugned order, the

Respondent Authority has observed that, Enforcement Officer submitted before him, in his report confirming the managerial/financial relationship between the Schools. Respondent Authority further observes that for clubbing for two or more establishments for the purpose of Act, there should be financial, functional or managerial integrality and it was not necessary that all the three should exists for this purpose. According to the Respondent Authority, only one of these three factors was sufficient for clubbing. According to the Respondent Authority, as he observes in the impugned order, in the case in hand, all the schools were engaged in activity of providing education. Secondly, Rule 14 of the Society mentions that the Society will run institutions and dispense pay, salaries to the employees of the Institutions run by it, appoint staff and own and sell property in the name of society. Hence, the powers and duties of the committee of the Society established financial, managerial and administrative control over the schools run by it. Furthermore, according to the Respondent Authority, balance sheet and correspondence have also been made in the name of the President of Society and that it fixed deposit receipts (detailed above) have been made in the name of the society by the Schools. No doubt, there may be functional, financial and managerial integrality between the Societies and the schools, ***but all these factors did not indicate any managerial, functional and financial relationship between the Appellant school and other Schools. In the impugned order, the findings is that there is financial, functional and managerial integrality between the societies and the schools, whereas one of the school which is the Appellant School has been held liable for deposit of PF dues for employees of the other schools on this basis.*** Certainly, the Respondent Authority has misdirected itself to hold one of the Schools run by the society, liable for deposit of PF dues of employees of the other Schools in spite of the fact that all the factors mentioned above, which are observed by the Respondent Authority in the impugned order, did not indicate any integrality between the Schools itself.

Hence, the impugned findings and assessment so far as with respect to liability of the Appellant establishment cannot be allowed to stand in law.

Point for determination is answered accordingly.

No other point was pressed.

On the basis of above discussion and finding, the Appeal succeeded.

ORDER

Appeal is allowed.

The impugned order dated 23.09.2011, so far as it relates to liability of the Appellant Establishment is set aside. The Respondent Authority is further at liberty to initiate proceedings/enquiry against the Lions Educational Society which runs these schools and after adopting due process, initiate recovery in this respect from the Lions Educational Society/ Lions School Shikshan Samiti.

No order as to cost.

Date:- 17/07/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)

Judgment Signed, dated and pronounced.

Date:- 17/07/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)