

**THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL CUM LABOUR COURT/EPF APPELLATE
TRIBUNAL, JABALPUR**

1-NO. CGIT/LC/EPFA-81/2017

**PRESENT: P.K.SRIVASTAVA
H.J.S.(Retd.)**

**M/s Cloth Merchant Association,
Satna**

APPELLANT

Versus

**The Assistant Provident Fund Commissioner
Jabalpur(M.P.)**

RESPONDENT

&

2-NO. CGIT/LC/EPFA-80/2017

C.M.A.Higher Secondary School

APPELLANT

Versus

**The Assistant Provident Fund Commissioner
Jabalpur(M.P.)**

RESPONDENT

(J U D G M E N T)

(Passed on this 15th day of March-2021)

1. Under challenge in these appeal's is the order dated 28-2-3013, passed by the Respondent Authority, holding the Appellant Establishment liable to pay employees provident fund dues of its employees Laxmi Prasad Namdeo and others, holding these employees entitled for getting benefits under the Employees Provident Fund and Misc. Provisions Act,1952, herein after referred to as by the word 'Act' from the date of coverage of the establishment or date of joining of Members in the Establishment, further holding the Appellant Establishment and C.M.A.Higher Secondary School as functionally one establishment.

2. The facts connected in these two appeals, in brief, are mainly that the Appellant Establishment Cloth Merchant Association Satna is a registered Association, registered under the Madhya Pradesh Societies Registration Act,1959 and has never employed more than 10 employees. The aims and objectives of the Societies are mentioned in the memorandum of Association . The C.M.A.Higher Secondary School has been established by the Appellant Association and is separately registered under the M.P.Societies Act. Both the Associations have their separate governing bodies, source of income, books of accounts as well as employees. One Laxmi Prasad Namdeo who is an employee of the Appellant Association filed a case before the consumer forum seeking benefits under the Act at par with the employees of the C.M.A.Higher Secondary School. On the basis of this the Enforcement officer proposed that the C.M.A.Higher Secondary School and the Association both are liable to be clubbed together. A notice to this respect was sent by the Respondent Authority to

the Appellant Establishment . The Appellant submitted specifically, pointing out before the Respondent Authority that the objectives of the Appellant Association and C.M.A.Higher Secondary School are distinct, governing body of both the establishments being independent, hence the provisions of the Act were not applicable on the Appellant Association. The Statement of the complainant Laxmi Prasad Namdeo was recorded before the Respondent Authority and he was cross-examined. The Respondent Authority wrongfully held functional integrality between the two Associations and clubbed the two Associations together. The finding of the Functional Authority is based on conjectures and surmises, is without reasons and malafide . Also the said finding is against evidence on record, based on illegal reading of evidence, hence is perverse and is liable to be set aside. The said finding is in ignorance of the facts supported by evidence that the Two Associations are governed by separate governing bodies, their aims and objectives and the filed in which they work are totally different and their employees are not interchangeable. Their books of accounts and activities are separate and distinct. Accordingly, the Appellant has prayed that setting aside the impugned order, the appeal be allowed.

3. In its counter the Respondent Authority has defended its order with a case that both the Associations are one and the same rather the C.M.A.Higher Secondary School is subordinate of Appellant Association who governs the activities of the School. The main role of the Appellant Association is to promote cloth business, participation in social functions and establishment of

school and colleges and hospitals and for the said purposes of collecting donations and buying and selling of immovable property and it is under this aims and objectives of the Association the C.M.A.Higher Secondary School was established, which shows functional integrality between the two . Further it was stated that only because separate accounts are maintained, source of income being different, functional integrality between the two does not seize. It is also stated that, in fact the Appellant Establishment did not cooperate during the inquiry and the finding of the Respondent Authority does not warrant any interference as they have been recorded according to law , based on evidence.

4. Since the facts in both the appeal's are almost one and the same, the order challenged is one order which is common to both the appeal's, hence after hearing arguments in both these appeal's, the order is passed by one common judgment.
5. I have heard arguments of learned Counsel for the Appellant Shri Uttam Maheshwari and Shri J.K.Pillai , learned Counsel for the Respondent. I have gone through the record's as well.
6. The perusal of the records in the light of rival arguments, reveals the following point for determination:-

“Whether the finding of Respondent Authority regarding the functional integrity of C.M.A

Association and C.M.A.Higher Secondary School is justified in law and fact?.”

7. As the perusal of the impugned order reveals, this order is a bit zero in the last but one paragraph which is the operative portion the facts have been narrated . The last paragraph is the operative portion of the order. This order does not contain marshaling of evidence, nor does it contain findings of fact and law. The basis behind conclusion is also absent in this order.
8. The settled proposition of law is that, when an order is passed judicial/quasi-judicial, it must contain reasons, otherwise the order is vitiated by vice or arbitrariness, reasons are the missing links between the Judge and the Judgment, the foundation stone are the transparency and fairness, which lacks in the impugned order. The Respondent Authorities should avoid passing such cryptic orders.
9. The only reason, which finds place in the operative portion of the order is that since both the establishments are being run by a single body i.e. Cloth Merchant Association, hence they are one for the purposes of the Act, as stated by the Respondent Authority. Before entering into the merits of this finding, some principles of law require to be reproduced here:-

10. Section 2A of the Employees Provident Fund and Misc. Provisions "Act, 1952:

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 situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.]

11. The settled proposition of law in this respect is being reproduced as follows for deciding whether the two units have functional integrality or not for the purposes of Section 2A of the 'Act'.

A(1) The unity of ownership, management and control unity of employment and conditions of service functional integrality and general unity of purpose.

(2):-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.

(3):-The real purpose of the tests is to find out the true relationship between the two parts, branches, units etc. if they constitute one integrated whole, the establishment is one. If it is to the contrary, then each unit is a separate one.

(4):-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 unit of employment.

(5):- 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.

12. In the case of Subbaraya Picture Place, Ponnur Vs. Regional Provident Fund Commissioner-II (1990) LLR 294, it has been observed that:-

(B):- It must be kept in mind that for purpose of application of the beneficial legislation intended for the benefits of the employees of an establishment, the courts will have to go behind the legal entity to discover the real management and control which alone can show was to who the employer is?

13. In the case of Noor Niwas Nursery Public School Vs. Regional Provident Fund Commissioner, AIR(2001)SC 277 it has been observed as under:-

(C):- the dominant test to determine as to one unit forms the part of others is the geographical proximity and the functional as well as financial integrality. Also it is to be seen whether one unit can conveniently exist independently without the other.

14. In the case of Metazine Pvt. Ltd. V. R.M.Gandhi, Regional Provident Fund Commissioner (1992) 2 Cur L R 977 it has been held as under:-

(D):- When the functional integrality is missing e.g. the concerns are altogether different in their work, functions, though the owner or finances is the same, they cannot be clubbed together to bring them in the ambit of this Act. Thus were three concerns were registered separately and there has been no connection inter se between them, they cannot be regarded as one establishment, though the owner is same.

15. In the case of **Ebrahim Currim & Sons V. Regional Provident Fund Commissioner, Maharashtra and Goa, (1993) LLR 916** it has been observed as under:-

(E):- Provisions contained in Section 2A of the said Act shall have to be kept in mind for purposes of consideration as to whether the test of functional integrality is satisfied. Mere fact of common ownership by itself is not sufficient to satisfy the test of functional integrality. The predominate test is as to whether subsequent unit could survive on closure of first unit or whether the subsequent unit was merely a branch or department of first unit. In the instant case the impugned order found to be suffering from misdirection of law and from crucial omission to apply the relevant rest laid by the Apex Court and High Court on this aspect, the impugned order was set aside and case remanded for fresh adjudication.”

16. In another case Hon’ble the Apex Court in **Noor Niwas Nursery Public School Vs. Regional Provident Fund Commissioner, AIR (2001) SC 277** has observed as under:-

(F):- Where two schools, one Francis Girls Higher Secondary School and the other Noor Niwas Nursery Public School were running at the same address in the adjacent buildings, it has been held

by the Supreme Court that both the Schools will be clubbed together for coverage under the Act.

17. In the case of **Regional Provident Fund Commissioner and another Vs. Dharamsi Morarji Chemical Co. Ltd (1998)2 SCC 446**, case cited by appellant, it was held that:-

G. “in absence of common supervisory, financial or managerial control between two units, mere common ownership, not sufficient to infer that the unit established later was not a new establishment but was part and parcel of the older one.”

18. In another case **Regional Provident Fund Commissioner Vs. Raj’s Continental Exports (P) LTD(2007)4 SCC 239**, it was held that:-

H. “.. if there was total independence in exercise of the management and control of the affairs and the employees were separately appointed and control ,the two concerns could not be held as one and the same under Section 2A of the ‘Act’”.

19. Now coming to the cases in hand, in the light of these settled propositions of law, it is established that Appellant Establishment C.M.A. Association is the organization which has established the Appellant of EPFA No.80/2017 M/S C.M.A. Higher Secondary School as it has been mentioned in the impugned order in operative portion. The Respondent Authority has held functional integrity only on these grounds which cannot be sustained in fact or law. In the light of principles of law laid down earlier in this judgment,

hence the impugned order is liable to be set aside only on this score, but I have gone through the records of the two Appeal's and have found that these two institutions are being run by two different Societies, their area of functioning is also in two different activities. C.M.A. Association is functional for the benefits of Traders Association whereas the C.M.A. Higher Secondary School is meant for imparting education to children. This is also established from the record that the finances and source of income of these two institutions are different. Their location is also different. This is also established that the employees of one institution are not to be meant for the other institution. There is no interchangeability of employees between these two institutions. There is one case of change of service but the employee who changed the institution had to first resign from one and thereafter he could join at the other institutions.

20. In the light of these established facts, it is established that these two institutions are two different ones and they cannot be called one and the same institution for the purposes of Section 2A of the Act. The finding of the Respondent Authority is liable to be set aside. Accordingly, in the light of these findings the appeal is set aside, holding that the two institutions C.M.A. Association and C.M.A. Higher Secondary School are two different and independent institutions having no functional integrality between them.

21. On the basis of the above discussion the appeal's deserve to be allowed with costs.

ORDER

Appeal No.81/2017 and Appeal No.80/2017 are allowed with costs. The impugned order dated 28-2-2013 is set aside. Copy of Judgment be kept in the other Appeal No.80/2017.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

JUDGMENT SIGNED , DATED AND PRONOUNCED.

(P.K.SRIVASTAVA)

PRESIDING OFFICER

Date:15-3-2021