(1987) 09 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7813 of 1982

Andhra Cement Co. Ltd. — APPELLANT

Vs

Regional Provident Fund Commissioner, Hyderabad and Another — RESPONDENT

Date of Decision : 08-09-1987

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 16, 16(1), 2A
Industrial Disputes Act, 1947 — Section 25E, 25F, 25FF, 25FFF, 25G

Citation : (1988) 2 LLJ 453

Hon'ble Judges : Seetharam Reddy, J

Bench : Single Bench

Judgement

1. The Petitioner, Andhra Cement Company Limited, seeks to issue a writ of certiorari to quash the proceedings dated May 6, 1982 of the Regional Provident Fund Commissioner, Hyderabad.

2. The relevant circumstances in which the impugned proceedings have been issued may be set out : The petitioner-Company, incorporated under the Indian Companies Act, established a cement factory known as ''Andhra Cement Factory'' at Vijayawada in the year 1938. In the year 1978 the management established another factory styled ''Visakha Cement Work''s at Visakhapatnam. The State Government allowed interest-free sales tax loans, a rebate of 25% in power tariff and other facilities as incentives to the new industry. The Commissioner of Labour also recognised it as a separate establishment. The service conditions are totally different from the service conditions of the workmen working in Andhra Cement Factory. The employment also was different. 75 per cent. of the wages as recognised by the Central Wage Board were also being paid from 1st November 1979. The workmen accepted the same. Separate balance sheet and separate accounts are maintained for the new establishment.

3. The Parliament, with a view to encourage the growth of industries, exempted

new establishments from the coverage of the Provident Fund Act for an infancy period of 3 years or 5 years, as the case may be, and so, Visakha Cement Works is not governed by the provisions of the Provident Fund Act for a period of three years from 1st November 1979.

4. However, on the representation made by the employees of Andhra Cement Factory, the A.P. Regional Provident Fund Commissioner, the 1st respondent herein, issued proceedings dated May 6, 1982 advising the petitioner-Company to cover the employees of Visakha Cement Works under the Provident Fund, treating it as part and parcel of Andhra Cement Factory. Thereupon, the petitioner - Company made a representation to the Government of India u/s 19A of the Employees Provident Fund Act (for short ''the Act'') stating that Visakha Cement Works is a new establishment and, therefore, it is entitled for exemption u/s 16 of the Act for the infancy benefit of three years, as it cannot be considered as a branch of Andhra Cement Factory. The said representation, however, was turned down. Hence, this writ petition.

5. The main question that is involved is whether there is a functional integrality between Andhra Cement Factory, Vijayawada and Visakha Cement Works at Visakhapatnam even though the management is common ?

6. The argument advanced for the proposition is that there is absolutely no functional integrity between the two units; they are two separate and independent units and one has nothing to do with the other. The following are the circumstances that have been enumerated :

(1) Visakha Cement Works has been considered and treated as a separate industrial establishment by the Joint Commissioner of Labour and a new set of standing orders from that of Andhra Cement Factory are framed under the Industrial Employment (Standing Orders) Act, 1946.

(2). Section 16 of the Employees Provident Fund Act is meant to provide incentive benefit for the new factory, whether there is any nexus to the proprietorship of the establishment or not.

(3) There was a separate profit and loss accont and balance sheet prepared and maintained for the two establishments.

(4) The new unit does not depend upon the functioning of the other, and so there is no functional dependence.

(5) There is no unity of employment and so, there is no functional integrity.

7. The arguments advanced on behalf of the respondents are :

(1) It is true that the new unit has got a new licence and is registered as a new factory and the State Government has allowed a rebate of 25% in power tariff and is recognised by the Labour Commissioner as a separate new establishment. That does not, however, alter the situation.

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(2) Out of 120 employees working in the Visakhapatnam unit, 100 are members of the main unit employees union which has got its office at Vijayawada.

(3) Initially in the years 1979 and 1980 the clinker which was required by the Visakha Cement Works was supplied by the petitioner as mentioned in the annual reports of the petitioner''s establishment for the years 1980-81 and 1981-82. Further the annual report for the year 1981-82 refers the petitioner''s said unit as mother clinker plant. These two units in fact have been clubbed for the purpose of the Social Security Enactment.

(4) One balance sheet is drawn up in respect of both the establishments.

(5) There is a common pool of top officers, such as Managing Director, General Manager, to recruit and employ the employees for both the units. Officers of both the units are inter-transferable.

(6) In view of the same, the new unit was considered only as a branch to the unit of the petitioner''s establishment and so, is not entitled to fresh infancy protection contemplated u/s 16.

(7) The factors to be borne in mind in determining whether enterprises constitute one establishment are (i) unity of ownership, management and control, (ii) functional integrity or general unity and (iii) unity of employment.

8. Section 2-A of the Employees Provident Fund Act reads :

"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 part of the same establishment."

9. Section 16(1)(b) of the Act, which is relevant in this behalf, reads :

"Act not to apply to certain establishments - (1) This Act shall apply -

(a) ....

(b) to any other establishment employing fifty or more persons or twenty or more, but less than fifty, persons until the expiry of three years in the case of the former and five years in the case of the latter, from the date on which the establishments is, or has been, set up.

Exaplanation. - For the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of a charge in its location."

10. The case law in this behalf be now noticed.

11. In The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, :

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"The Act (Industrial Disputes 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 un-employment 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 or 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 Danald L. Nordlong v. Ford Motor Company (1950) 28 ALR 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."

Further held :

"Fortunately for us, such complexities do not present themselves in the case

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under our consideration. We do not say that it is usual in industrial practice to have one establishment consisting of a factory and a mine; but we have to remember the special facts of this case where the adjacent limestone quarry supplies the raw material, almost exclusively, to the factory; the quarry is indeed a feeder of the factory and without limestone from the quarry, the factory cannot function. Ours is a case where all the tests are fulfilled, as shown from the evidence given on behalf of the appellant to which we have earlier referred. There are unity of ownership, unity of management, supervision and control, unity of finance and employment, unity of labour and conditions of service of workmen, functional integrality, general unity of purpose and geographical proximity. We shall presently deal with the legal difficulties at which the Tribunal has hinted and which have been elaborated by learned counsel for the respondent. But apart from them, the only fair conclusion from the facts proved in the case is that the Chaibasa Cement Works consisting of the factory and the limestone quarry form one establishment. The existence of two sets of Standing Orders and a separate attendance register for the limestone quarry have already been adverted to. They have been sufficiently explained by Mr. Dongray, particularly the existence of two sets of Standing Orders by reason of the statutory requirement of approval by different authorities - one set by the Labour Commissioner, Bihar and the other by the relevant Central authority."

12. In Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers'' Union and Its Workmen, the Supreme Court held :

"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 connexion 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."

Further held at pp. 499-500 :

In The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen, this Court had to consider the question whether the employers'' defence to a claim for lay-off compensation by the workers of the Chaibasa Cement Works that 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 at Rajanka formed part of the establishment known as the Chaibasa Cement Works within the meaning of S. 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 test for all cases, it observed that the real purpose of those tests would be to find out the true

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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 owner-ship, 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(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-hypothesis. 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."

In R. Ramakrishna Rao Vs. State of Kerala, the Supreme Court held :

"Now that question in this case is that Hotel Brinda commenced only on Jan. 15, 1959 and the number of employees then exceeded 20 for the first time. Under the provisions of Section 16 an exemption from the Act and the Scheme is claimed for five years and it is submitted no offence was committed because the establishment even if taken together could not be subjected to the provisions till a period of five years had expired from January 15, 1959."

Also held at pp. 684-685 :

"In support of this argument Mr. B. R. L. Iyengar emphasises that the use of the participle ''employing'' in Section 1(3)(b) shows some continuity of employment of 20 persons and not the first point of time when that number is reached. He contends that it is always intended that a period of 3 or 5 years, as the case may be, must elapse before the provisions of the Act and the Scheme are made applicable. This is an ingenious way of putting the matter but is not admissible. The language of Section 16(1)(b) is very precise. The last thirteen words of the clause ''from the date on which the establishment is or has been set up'', show both cases where the establishment is new and where the establishment is old. The word ''is'' shows that a new establishment is meant and the words ''has been'' show that the establishment existed before the number is reached. If it was intended to apply the clause to new establishment the words ''is set up'' would have been sufficient. The construction sought to be placed would render the words ''has been'' otiose. Further the scheme of paragraph 26 quoted earlier relates to a period of service and this qualifying period may be in the past as well as in the future. The intention behind Section 16 read with paragraph 26 quite

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clearly shows that the period is intended to give a breathing time to new establishments. That reason does not hold when the establishment is already old and well founded. The use of the participle is therefore immaterial. Whether a present perfect tense or a participle be used the meaning is the same Clause (b) of Section 1(3) which uses the participle and clause (a) of the same Section employs the present perfect tense both merely describe the establishments and convey no different meanings. The conclusion of the High Court was thus right. The appeals fail and will be dismissed."

14. The Supreme Court in The Management of Indian Cable Co., Ltd., Calcutta Vs. Its Workmen, :

"Having regard to the popular sense of the words "industrial establishment" or to the limitation of relief u/s 25-G of the Industrial Disputes Act to workmen in the same category, the conclusion would appear to be inescapable that each branch of a company would normally be regarded as a distinct industrial establishment for the purposes of applying the principles embodied in Section 25G of the Industrial Disputes Act. Having regard to the principles deducible from the language of the Section already stated (Section 25G) the decisive elements in our judgment are the location of the establishment and the functional integrality i.e., the existence of one code relating to the categories of workmen and their scales of wages."

15. In Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd., :

"After giving due consideration to all the aspects pointed out by the learned counsel for the appellants, we are unable to hold that the R. Mill is not an independently functioning unit and that there is any functional integrality as such between the R. Mill and the S. Mill. The fact of the unity of ownership, supervision and control and some other common features, which we have noticed above, do not justify a contrary conclusion on this aspect in the present case. There is considerable force in the submission of Mr. Chitaley that the R. Mill is a different line of business and the closure of the S. Mill has nothing to do with the functionaing of the R. Mill. The matter may be absolutely different when in an otherwise going concern or a functioning unit some workmen''s services are terminated as being redundant or surplus to requirements. That most of the conditions of service of the two Mills were substantially indentical can be easily explained by the fact that, being owned by the same employer and two units being situated in close proximity, it will not be in the interest of the management and peace and well-being of the company to treat the employees differently creating heart-burning and discrimination. For the same reason, there is no particular significance in this case even in the application of the standing orders of the company to the employees of the R. Mill which, because of the non-requisite number of employees employed in the latter, is not even required under the law to have separate standing orders. It is, in our opinion, a clear case of closure of an independent unit of a company and not a closure of a part of an

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establishment. Even so, this kind of closure cannot be treated as lay-off or lock-out under the U.P. Act. The S. Mill was intended to be closed and was in fact closed and, therefore, the question of lay-off u/s 2-N of the U.P. Act does not arise. Similarly it is also not a case of lock-out within the meaning of Section 2-0 of the U.P. Act. In both lay-off and lock-out the unit is not closed completely and there is also no intention of the employer to close the concern."

16. In Sayaji Mills Ltd. Vs. Regional Provident Fund Commissioner, :

"This is not a case where the old factory was reduced into scrap and a new factory was erected in its place. Nor can it be said that there was total discontinuity brought about between the old factory and the factory which was restarted after the appellant purchased it. The stoppage of production was brought about temporarily as stated earlier by the winding up order and the factory was restarted after it was sold to the appellant by the Official Liquidator. The finding of fact recorded by the trial Court in this case which is affirmed by the High Court clearly establishes that it was the same old factory which recommenced production on November 12, 1955. What is of significance is that a substantial number of workmen and staff who were working under the former management had been employed by the appellant though it is claimed that they had entered into new contracts of employment. Mere investment of additional capital or effecting of repairs to the existing machinery before it was restarted, the diversification of the lines of production or change of ownership would not amount to the establishment of a new factory attracting the exemption u/s 16(1)(b) of the Act for a fresh period of three years"

Also held :

"On behalf of the appellants, reliance was placed on the decision of this Court in Provident Fund Inspector, Trivandrum v. Secretary, N.S.S. Co-operative Society, Changanacherry (1979 II LLJ 693). That was a case in which the Secretary of a Co-operative Society which owned a press had been acquitted by the Magistrate of the charge of not complying with the provisions of the Act. The High Court had confirmed the order of acquittal. On appeal this Court found that there was no ground to interfere with the acquittal. The defence of the accused in that case was that the Co-op. Society of which he was the Secretary had acquired the press in question in Mar. 1961 and had established a new press subsequently and hence the Act was not applicable to the press as the period of three years prescribed by S. 16(1)(b) of the Act had not expired. The evidence in that case showed that after the purchase, a new owner had come in the place of the former owner, the work of the press was stopped on the date of its sale and was started again after a break of three months, the machinery in the press was also altered and the persons employed previously were not continued in service. While a fresh recruitment of workmen had taken place, out of those workmen only six happened to be the former employees and compensation had been paid to the workmen at the time of the sale by the former owner. On these facts it was held that a new establishment had come into existence. In the case before

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us, it is seen that about 70% of the former workmen had been employed by the appellant and there was no change of machinery. Further this is a case where the interruption of work had taken place owing to the order in the winding up proceedings. It is relevant to state here that this Court in the course of its judgment in the above case did not overrule the decision of the Calcutta High Court in Bharat Board Mills Ltd. (1958 I LLJ 285) but only distinguished it. The facts of that case more or less corresponded to the facts of the case before us. It is true that this Court in the above decision approved the decision of the Madras High Court in Vithaldas Jagannathadas v. Regional Provident Fund Commr. Madras (1966 I LLJ 240), but that does not make any difference so far as the case before us is concerned since in the Madras case there was a finding that in reality the old establishment had come to an end and there was a new establishment. In the case before us, the finding of fact of the trial Court is to the contrary. The learned trial judge had held that the intention in this case was to maintain the continuity of the old factory. Hence the decision on which reliance is placed being distinguishable on facts is not of much use to the appellant."

17. In Isha Steel Treatment, Bombay v. Association of Engg. Workers the Supreme Court held : 1987 I-LLJ-427 at 431-433) :

"In the above decision Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd., this Court has held that the unity of ownership, supervision and control that existed in respect of the two mills involved in that case and the fact that the conditions of the service of the workmen of the two mills were substantially identical were not by themselves sufficient in the eye of law to hold that there was functional integrality between the two mills. It held that it was a clear case of closure of an independent unit and not of a part of an establishment. The decision of the learned single Judge of the High Court that the fact that the two units were situate at a distance of 200 meters, the fact that both the units were controlled by the same employer and that the business of heat treatment processing carried on in the two units was identical had left no room for doubt that the two units were really integral cannot be sustained. The decision in S.G. Chemicals and Dyes Trading Employees'' Union Vs. S.G. Chemicals and Dyes Trading Limited and Another, is not of much assistance to the workmen. The management in that case was running its business in Pharmaceuticals at three places. The Pharmaceutical Division was at Worli, the Laboratory and Dyes Division was at Trombay and the Marketing and Sales Division was at Churchgate. In 1984 the company which was managing the said three divisions of business was sold out. As the buyers proposed to handle the future sales of the Company through their own distribution channels, they found that the services of the staff working at the Churchgate office were no longer required. Therefore, the management closed down the office ar Churchgate. The question was whether there was functional integrality between the office at the Churchgate and the factory at Trombay. This Court on a consideration of the material before it in that case, held that the functions of the Churchgate division and the Trombay factory were neither separate nor

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independent but were so integrally connected as to constitute the Churchgate and the Trombay factory into one establishment, because the Churchgate division used to purchase the raw material required by the Trombay factory for producing or processing the goods, it used to market and sell the goods so manufactured or processed by that factory and it also used to disburse the salary and other employment benefits and maintain accounts, etc. of the workmen. These were considered to be integral parts of the manufacturing activities of the factory at Trombay, because the factory could never have functioned independently without the Churchgate division being there. It is not the case of the workmen in the present case that the II Unit, could not continue to function after the closure of the I Unit. As already mentioned, the II Unit is continuing to function as usual even now notwithstanding the stoppage of the activities at the I Unit. The question of application of S. 25G of the Act arises only when the services of the workmen are retrenched. In Santosh Gupta Vs. State Bank of Patiala, it is laid down that if the termination of service of a workman in a given case falls either under S. 25FF or under S. 25FFF of the Act it would not be a termination falling under S. 25F of the Act. This Court has observed in that case that after the enactment of S. 25FF and S. 25FFF retrenchment included every kind of termination of service except those not expressly included in Section 25F or not expressly provided for by other provisions of the Act such as Ss. 25-FF and 25-FFF. Hence, if the case is one of genuine closure then the question of applying S. 25G of the Act which is applicable to a case of retrenchment would not arise."

Further held :

"On a consideration of the entire material before it, the Tribunal had reached the conclusion that the closure of the I Unit was bonafide, that it did not have any functional integrality with the II Unite and that there was no victimisation of workmen for their trade union activities. On going through the award passed by the Tribunal we feel that it had not committed any error in recording the said findings which called for interference at the hands of the High Court under Art. 226 of the Constitution. We are satisfied that this case is one of bona-fide closure of an independent unit of business. The learned single Judge and the Division Bench of the High Court were, therefore, in error in holding that the termination of service of the workmen in this case amounted to retrenchment and not closure and the case of the workmen had to be considered on remand by the Tribunal in the light of S. 25G of the Act.

They overlooked that it would result in a wholly unjust situation in which a corresponding number of workmen in the II Unit would be prejudicially affected even though they had nothing to do with the I Unit".

A broad criteria emerging out of the above conspectus of case law are : In order to hold that different parts, units, branches and so forth are merely constituents of one establishment, the salient features, which are enumerated below, must be satisfied; this is, however, by entering a caveat that no hard and fast rule could

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be laid down as to how many of the following shall have to be satisfied - in other words each case has to be considered in the light of its own circumstances as to whether it is a new establishment or a branch, part or constituent of the old establishment. There cannot however be a straight jacket formula.

(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, we say that 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 unity 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.

19. Bearing in mind the above, the case on hand may now be examined.

20. The undisputed facts are. The petitioner-Company established Andhra Cement Factory at Vijayawada in 1938. In 1978, it established another factory styled "Visakha Cement Works" at Visakhapatnam. This was registered as a separate factory and as a separate management. A separate licence also was granted. The State Government allowed interest-free sales tax loans and a rebate of 25% in power tariff. The Commissioner of Labour also recognised it as a separate establishment.

21. The Central Government finally on representation by the petitioner-Company passed the impugned order holding in substance that the Managing Director and General Manager are one and and the same for both the units; there is a management service pool consisting of managers, officers, supervisors and other service personnel working in all the units. The officers have been transferred from one unit to the other. Out of 120 employees in the Visakhapatnam unit, 100 were stated to be members of the main unit at Vijayawada. Initially in 1979 and 1980, the entire clinker was supplied by the Vijayawada unit to the Visakhapatnam unit. The annual report of 1981-82 refers to the Vijayawada unit as the mother clinkering plant. The petitioner has itself referred to Visakha

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Cement Works as a unit and has advised in the classified directory of members of the Andhra Chamber of Commerce that Visakha Cement Works is a branch. Visakha Cement Works was started by the petitioner pursuant to its companion scheme for setting up a clinkering unit. So the Central Government held "in the face of all this overwhelming evidence, it is clear that Visakha Cement Works is a branch of the petitioner-Company."

22. It is true, it is not easy of solution in adjudicating whether the unit is a branch of the main establishment or a separate establishment. But yet the Court, in the face of set of given circumstances, must try to take the grain out of the chaff.

23. The question is whether the petitioner-Company is entitled to ''infancy benefit'' as postulated u/s 16 of the Employees Provident Fund Act. The said Section reads :

"Act not to apply to certain establishments :- (1) This Act shall not apply -

(a) to any establishment registered under the Cooperative Societies Act, 1912 or under any other law for the time being in force, in any State relating to cooperative societies, employing less than fifty persons and working without the aid of power; or

(b) to any other establishment employing fifty or more persons or twenty or more, but less than fifty, persons until the expiry of three years in the case of the former and five years in the case of the latter, from the date on which the establishment is, or has been, set up.

(2) If the Central Government is of opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so do to, it may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, exempt that class of establishments from the operation of this Act for such period as may be specified in the notification."

24. In this case, however, it does not present with much difficulty. The features as have been found by the Central Government based on material on record are that the management is common, there is a management service pool, officers have been transferred from one unit to the other and out of 120 employees in the new unit, 100 are members of the main unit. For a couple of years, the entire clinker was supplied by the main unit to the new unit. By reference in the annual report, Vijayawada unit has been styled as ''mother clinkering plant''. Indeed it has been mentioned in the classified directory of the members of the Andhra Cement Company as a branch of the Vijayawada unit. The Area Inspector, after due examination, reported that the balance sheet, Income Tax and sales tax registration numbers, and provident fund account for both the units are one and the same. Thus there is not only unity of ownership but also unity of management and also to a great extent functional integrality including the unity

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of employment. In the face of this wide coverage of the common features, I have absolutely no hesitation in concluding that Visakha Cement Works is a branch of the petitioner-Company and, therefore, cannot claim the benefit of exemption as postulated u/s 16 of the Employees Provident Fund Act for the infancy benefit. This is so notwithstanding the fact that Visakha Cement Works has been registered separately, licensed separately, granted interest-free sales tax loans as well as a rebate of 25% in power tariff and also recognised by the Commissioner of Labour as a separate unit, as these cannot be reckoned as contributing factors to be taken as guidelines in finding whether the unit is a separate establishment or a branch of the main unit.

25. Hence in any judgment, the impugned order does not suffer from any erroneous approach and so warrants no interference by certiorarising the same. Resultantly, since the contentions advanced on behalf of the petitioner-Company are devoid of merit and substance and so deserve to be rejected, the writ petition is dismissed. No costs.

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