
(1992) 09 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4169 of 1989

Mathura Bai Fatechand Damani Maternity Home

APPELLANT

Vs

The Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 14-09-1992

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3)(b),
16, 2, 2A, 4
Factories Act, 1948 — Section 7
Industrial Disputes Act, 1947 — Section 25E, 25FFF
Trusts Act, 1882 — Section 3

Citation : (1992) WLN 206

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—The brief facts and circumstances in which the present petition has been filed may be summarised as follows:

2. In the town of Bikaner, three charitable Institutions/projects were being run. One is Mathura Bai Fatechand Damani Maternity Home, which was established in the year 1959 and is situated in ground floor of a building situated at Naya Shar of Bikaner. This Institution is registered as a "public trust", under the Rajasthan Public Trust Act, 1959. The institution is run by trustees of a Trust, known as S.R. Damani Medical Trust, Bombay, which is founded by one Madan Gopal Chandmal Damani under indenture dated 28th December, 1970. The founder-trustees of this Trust are-Suraj Ratan Fatehchand Damani, Ratan Bai Suraj Ratan Damani and Madan Gopal Chandmal Damani. The primary object of the Trust, as is suggested in the name itself, is related with relief to poor in the field of medical assistance and related matters, in general and, with specific direction to expend such sums of money from time to time from the conduct, use and benefit of medical institution, that is, the Mathura Bai Fatehchand Maternity Home, Bikaner (hereinafter referred to as "the Maternity Home"). It is alleged that in

September, 1973, the trustees of the aforesaid. Trust were Shri Madan Gopal Damani, Shri Brij Gopal Damani and Shri Mathura Das Mohta.

3. Certain persons are employed as employees at the Maternity Home. Vide the impugned order Annx. 16, the Maternity Home employed 16 persons in September, 1973. According to the petitioner. It employed 12 persons whereas according to the Inspector's report, it employed 10/11 persons in September, 1973. The Trust-deed under which the Trust was created, has been filed before the Regional Provident Fund Commissioner, Rajasthan, Jaipur and has been produced with the writ petition as Annx. 1.

4. The another project, known as Mathura Bai Fatehchand Famil Welfare Center, Bikaner (hereinafter known as "the Center"), was started in the year 1967. This was being run in the same premises where the Maternity Home functions. As the name suggested, the activity of this Centre is related to family planning. The 80 percent of expenses of this Centre were met through the aid from the Government of Rajasthan and rest by the S.R. Damani Medical Trust, Bombay (hereinafter referred to as "the Trust"), which was running the Maternity Home. This Centre employed 2 persons at the relevant time, that is, in September, 1973.

5. The third institution, with which this petition is concerned, is Fatehchand Damani Jan Kalyan Kendra, Bikaner (hereinafter referred to as "the Kendra"). This was started somewhere in the year 1965-66 and is situated in a premises near Gopinath Temple, Jasoli Talabi, Bikaner, at a distance of about 200 yards from the premises where the Maternity Home is being run. The Kendra is registered under the Rajasthan Society Registration Act, 1958 and is run by Suraj Ratan Fateh Chand Damani Janhlt Nidhi, which was founded by Suraj Ratan Fatechand Damani, under an indenture dated 20th June, 1963 at Bombay. Its founder trustees who were discharging obligations under this Trust are Sh. Suraj Ratan Fatehchand Damani, Shri Shairu Ratan Fatehchand Damani, late Smt, Ratanbai S. Damani, late Shri Bhawandas S. Binoni, late Shri Kishanchand R. Jhaver, Shri Surendra Kumar M. Somany, late Shri Jainarain M. Dega and Shri Madan Gopal M. Damani.

On the relevant date, in September, 1973, the trustees of the said Trust (Janhlt Nidi), were as under : Shri Suraj Ratan F. Damani, Late Shri Bhairu Ratan F. Damani, Late Smt. Ratan Bai S. Damani, Shri Bhawani Das M. Binani, Shri Surendra Kumar M. Somany, Late Shri Jainarain M. Daga, Shri Madan Gopal C. Damani

6. At the relevant time, that is to say, in September, 1973, this Kendra employed 2 persons. The Trust-deed under which this Trust was created was produced before the Regional Provident Fund Commissioner and has been filed along with the writ petition as Annx. 7. The object of this Kendra was primarily to work for advancement and propagation of education and learning and, its activities and other objects were stated in that context in its General Objects in the Trust-deed, in the field of education.

7. The hospitals run by any individual, association or institution, other than the establishments covered by Clause (6) of notification No. GSR/1398 dated 17.4.1964, were notified to be subject to provisions of employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act of 1952"), u/s 1(3)(b) of the Act, by notification dated 15.9.1973 and the Act was made applicable with effect from 31st August, 1973. The Provident Fund Inspector, Jodhpur visited the Maternity Home, the Centre and the Kendra and the notice dated 29.3.1974 was issued to the Maternity Home by the Regional Provident Fund Commissioner, stating that the Act and the scheme made thereunder apply to it. The petitioner denied the applicability of the Act to its establishment. By order dated 1.11.1975, the Regional Provident Fund Commissioner brought the petitioner under the coverage of the Provident Fund Scheme by holding that all the three institutions, namely, the Maternity Home, the Centre and the Kendra are part of the same establishment and constitute one "establishment"; and, the strength of the three institutions taken together being 20, the provisions of the Act are applicable to it; and raised demand for Rs. 7809/- as Provident Fund dues for the period commencing from October, 1973 to September, 1975. The order dated 1.11.1975 was challenged by the present petitioner by Writ Petition No. 299 of 1976, which came to be allowed on 9.1.1984. The Court ordered as under:

the respondents will give the petitioner an opportunity of being heard and come to a finding whether the petitioners are one and the same establishment or different establishments in accordance with Section 2A of the Employees Provident Fund Act. If it is held that these are not, the petitioner is not liable. If, however, it is held, the petitioner is liable u/s 2A, then of course, the respondents will re-fix the amount to be deposited by the petitioner with the Regional Department.

This is,, however, without prejudice to any right of the parties to challenge the final order in the proper forum. There will be no order as to costs.

I however make it clear that I have not decided it on the merits of the case raised by the parties.

8. After the aforesaid order, the petitioner produced as many as 11 documents, including two Trust-deeds referred to above. The statement of Shri J.C. Jain, the Provident Fund Inspector was recorded on behalf of the Department and the petitioner lead the evidence of Shri Gopivallabh Damani, The written arguments were also submitted by both the parties. On 6.7.1989, the Regional Provident Fund Commissioner, Rajasthan, Jaipur, passed the impugned order Ex. 16, again holding the three institutions as part of the same establishment.

9. It is this order, which has been challenged by the petitioner in the aforesaid writ petition. While case of the Department before the Provident Fund Commissioner was that-the location of the three institutions was in the same premises, there is a common Secretary, namely, Shri G.L. Daga, looking after the

three institutions and, there is a common Managing Committee for all the three; on this basis, it was contended that there is a functional, financial and managerial integrity between the three institutions so as to come to the conclusion that all the three constitute one unit. The petitioner's case was that the Kendra and the Maternity Home are entirely different set-ups, rendering social service to the community in different fields and, are independent of each others. The Regional Provident Fund Commissioner took the view that-the premises for Kendra is within close geographical proximity of other two institutions, the Secretary Shri G.L. Daga is same for all the activities, and the functions of the Kendra are related to that of other two units. For arriving at this finding, help was taken from the instance that during the year 1983-84, the Kendra has donated Rs. 2000/- to the Maternity Home. The letter-head of the Family Planning Centre mentions that it is run by Fatehchand Damani Jan Kalyan Kendra. The Managing Committee of the three "branches" is also the same. All these factors taken together, establishes that the Fateh Chand Damani Jan Kalyan Kendra and the Maternity Home could not be taken as separate establishments.

10. In the aforesaid facts and circumstances, the issue has arisen in the present petition-whether the Kendra is a "department or branch" of the principal establishment the Maternity Home, in terms of Section 2A of the Act of 1952? It may be noticed that it is common ground between the parties that unless the three institutions are held to be one single "unit", by itself, it does not come under the coverage of the Act.

11. The applicability of the Act of 1952 has been provided u/s 1(3), which rules as under:

1. short title, extent and application:

(1) xx xx xx

(2) xx xx xx

(3) Subject to the provisions contained in Section 16, it applies-

(a) to every establishment which is a factory engaged in any industry specified in Schedule I am in. which twenty or more persons are employed, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months" notice of its intention to so do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

12. Thus, the Act has broadly classified the subject of the Act Into two categories, namely, a factory engaged in an industry and, other establishments.

The terms "factory" and "industry" have been defined under Sections 2(g) and 2(i) respectively as under:

"2(g) "factory" means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power;

"2(i) "industry" means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification u/s 4;

13. The term "establishment" has nowhere been defined in it. It may be noticed that under-taking or units in the present case are not engaged in manufacturing of any goods and do not come u/s 1(3)(a), as "factory" engaged in any industry. The case is to be viewed in the context of Section 1(3)(b). u/s 1(3)(b), hospitals were notified as "establishments", by notification No. GSR 1088 dated 15.9.1975, published in the Gazette of India dated 22.9.1975. The provisions of the Act were made applicable to the educational institutions vide notification No. S.O. 98 dated 19.5.1982, published in Gazette of India dated 6.3.1982 and made effective from 6.3.1982. As has been noticed above, the Maternity Home and the Centre are the establishments, that may be covered under item "hospital", to which the Act may be applicable with effect from 31.8.1975, provided other conditions are satisfied. On the other hand, the Kendra being an institution in the field of educational activity, by itself did not come under the purview of the Act, until 6.3.1982; if it all, it can be said to be covered by the said notification. Any charitable activity by itself does not come under the coverage of the Act, unless the establishment engaged in any charitable work comes under one of the other establishment, to which Act has been made applicable by issuing notification u/s 1(3)(b).

14. In this connection, it may also be noticed that the Act also defines the term "employee" and "employer" under Sections 2(e) and 2(f), which are re-produced hereinbelow:-

2(e) "employer" means-

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal, representative or a deceased owner or occupier and, where a person has been named as manager of the factory under Clause(f) of Sub-section (1) of Section 7 of the Factories Act, 1948, the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

2(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from employer and

included any person:

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, not being an apprentice engaged and the Apprentices Act, 1961, or under the standing orders of the establishment;"

15. From the aforesaid provisions, It is apparent that the provisions of the Act has not been made applicable with reference to whole business or activity of a person-as an employer, but have been made applicable with reference to relationship of number of employees with reference to a "factory" or "other establishment", where such person are employed. Under the Scheme of the Act, It is clear in un-mistakable terms that If a person owns more than one factory or carries on its activities through more than one establishments, all the employees employed in all the factories or establishments cannot be clubbed together for the purpose of applicability of the Act, unless it can be said that one is department or branch of the other. It is perfectly permissible that two different activities of a person may constitute a separate factory or separate establishment, independent of each other, may be owned by the same person, and in that event, the employees of one factory or the establishment cannot be counted for the purpose of arriving at a minimum number of workmen required for applicability of the Act, with the employees of the other factory or establishment, as the case may be; unless the other factory or establishment can be considered to be related to the former as Department or branch.

16. For removal of doubt In this regard, Section 2A was inserted in the Act by Act No. 46 of 1960, with effect from 31.12.1960. Section 2A reads as under:

2-A. Establishment to include all departments and branches:

For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as part of the same establishment.

17. The law was otherwise not different. Section 2A was Inserted to make clear what was implicit in the Act. This position was also clarified by their Lordships of Supreme Court in Union of India (UOI) and Another Vs. Ogale Glass Works, , while explaining that decision of Apex Court in The Regional Provident Fund Commissioner, Bombay Vs. Shree Krishna Metal Manufacturing Co., Bhandara, wherein it was held that the Act and the Scheme apply to all the sections of the glass works on the basis of Section 2A observed as under:

...This Court has elaborately considered the various provisions of the Act, and having due regard to the activities of the Company with which they were dealing held that the Act applies to a composite factory. No doubt this Court has also referred to Section 2A which has been added by the Amendment Act 46 of 1960 only for the purpose of emphasizing that the said provisions make it clear that an

establishment may consist of different departments or may have different branches, whether situated in the same place or in different places yet all such departments or branches shall be treated as part of the same establishment. Reference to this section has been made only for the purpose of giving an additional reason for negating the contention that the establishment u/s 1(3) (a) does not contemplate a composite factory. Therefore, it follows that the Act and the Scheme fully apply to a composite establishment....

18. The crucial question that arises for consideration is as to what are the tests or characteristics, which goes to determine the question as to what constitute one establishment?

19. In the *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, ; the question arose whether the Cement factory and Lime Stone Quarry under one ownership and management could constitute one establishment for the purpose of Section 25E of the Industrial Disputes Act? Their Lordships of Supreme Court, observed as under:

The Act not having prescribed any specific tests for determining what is "one establishment", in considering the question whether a cement factory and the adjacent lime quarry supplying limestone to it, are one establishment, one 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 Industrial Disputes Act and other relevant provisions of the Mines Act, 1952, or the Factories Act, 1948. 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, the establishment is one; if on the contrary they do not constitute one integrated whole, each unit then is 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 given the right of unemployment compensation and also prescribes a disqualification therefor. Thus, in one case the unity of ownership, management and control may be the important test; in another case, 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....

20. The Court, on the evaluation of the facts and circumstances, found that the case satisfied all the tests-there was 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. On the facts, it was held that the activities of the two were so inter-connected that the lay-off in the factory was due to the non-supply of lime stone was due to strike in the lime-stone quarry. Thus, one was dependent on the other, and, in these circumstances, the two activities were held to be part of the one establishment.

21. In *The Honorary Secretary, South India Millowners' Association and Others Vs. The Secretary, Coimbatore District Textile Workers' Union*, , the Court was dealing with a case of Industrial Disputes arising out of declaration of bonus. Their Lordship observed as under:

...In dealing with the problem, several factors are relevant and it must be remembered that the significance of the several relevant factors would not be the same in each case nor their importance. Unity of ownership and management and control would be relevant factors. So would the general unity of the two concerns; the unity of finance may not be irrelevant and geographical location may also be of some relevance; functional integrality can also be a relevant and important factor in some cases. It is also possible that in some cases, the test would be whether one concern forms and integral part of another so that the two together constitute one concern, and in dealing with this question the nexus of integration in the form of some essential dependence of one on the other may assume relevance. Unity of purpose of design, or even parallel or co-ordinate activity intended to achieve a common object for the purpose of carrying out the business of the one or the other can also assume relevance and importance....

22. The Apex Court further observed:

...In the complex and complicated forms which modern industrial enterprises 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 co-relating 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....

23. It would be noticed that a great deal of emphasis was laid on unity of ownership for the purpose of arriving at a decision about the inter-relationship between the two undertakings for the purpose of constituting one establishment.

24. In *The Regional Provident Fund Commissioner, Bombay Vs. Shree Krishna Metal Manufacturing Co., Bhandara*, , which was a case where one factory was engaged simultaneously in four different activities. The question arose, while one of these was related to an "industry" specified in Schedule I and others were engaged in industrial activities not specified in the Schedule I; to be considered, whether such factory could be brought under the coverage of Section 1(3)(a) of

the Act of 1952. Their Lordships answered the question in affirmative on the principle of test as to which is the primary principle or Dominant activity, and held as under:

The clause "engaged in any industry specified in Schedule I" in Section 1(3)(a) should be interpreted to mean "mainly engaged in any industry specified in Schedule 1". If a factory is engaged in two industrial activities one of which is its primary, principal or dominant activity and the other is a purely subsidiary, incidental, minor or feeding activity, then it is the primary or the dominant activity which should determine the character of the factory u/s 1(3)(a).

25. In *The Associated Industries (P) Ltd. Vs. The Regional Provident Fund Commissioner, Kerala Trivandrum*, , their Lordships observed as under:

...The question about the subsidiary, minor, or feeding industries can legitimately arise only where it is shown that the factory is really started for the purpose of running one primary industry and has undertaken other subsidiary industries only for the purpose of supervising and feeding the purposes and objects of the primary industry; in such a case, these minor industries merely serve as departments of the primary industry; otherwise if the industries run by a factory are independent, or are not so integrated as to be treated as part of the same industry, the question about the principal and the dominant character of one industry as against the minor or subsidiary character of another industry does not fall to be considered.

26. In the aforesaid case, it was clearly explained that unless there is interdependence between undertakings as primary and subsidiary activity, the two independent or not so interrelated undertakings cannot be treated as part of the same industry.

27. In *Western India Match Co. Ltd. Vs. Their Workmen*, , the question that fall for consideration before their Lordships was whether the Sales office and the Factory of the same owner part of one and same unit of industrial production or are independent of each other. Their Lordships observed as under:

Among the many tests that have been evolved for deciding the more difficult question, namely whether the sales office and the factory form part of one and the same unit of industrial production or are independent of each other, functional integrality, interdependence, or community of financial control and management, community of man-power and its control, recruitment and discipline, the manner in which the employer has organised the different activities, whether he has treated them as independent of one another or as inter-connected and interdependent, enjoy pride or place. But this list by no means exhaustive.

Nor can the tests and the principles that have been laid down be applied mechanically or by way of syllogism. For, while, such ways are set with risk of error in all branches of law, they are even more unsafe and inexpedient in

industrial law, where sensitive problems of human relations have to be solved in the midst of all complexities of modern industrial organization. That is why in applying the well settled tests and principles on the seproblems while all tests are possible of application should be applied, the value and importance to be attached to the individual tests will vary according to the nature of the industrial activities and according to nature of disputes in which the problem has arisen, viz., whether it is in respect of lay off, retrenchment, production bonus, profit bonus of something else.

28. In *Management of Wenger and Co. Vs. Their Workmen*, their Lordships held as under:

...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 really two separate and independent units, must be decided on the facts of each case....

29. In *Management of Hindustan Steel Ltd. Vs. The Workmen and Others*, ; their Lordships observed as under while considering the case of one establishment in the context of Section 25FFF of the Industrial Disputes Act:

...The work undertaking as used in Section 25FFF seems to us to have been used in its ordinary sense connoting thereby any work, enterprise, project or business undertaking, it is not intended to cover the entire business or industry of the employers was suggested on behalf of the respondents. Even closure or stoppage of a part of the business or activities of the employer would seem in lay to be covered by this sub-section. The question has indeed to be decided on the facts of each case. In the present case, the Ranchi Housing Project was clearly a distinct venture undertaken by the appellant and it had a distinct beginning and an end. Separate office was apparently set up for this venture and on the completion of the project or enterprise that undertaking was closed down....

30. In *Workmen of The Straw Board Manufacturing Co. Ltd. Vs. Straw Board Manufacturing Co. Ltd.*, , which was also a case arising out of closure of an undertaking and the question related to applicability of Section 25FFF; in the context of facts where a company owned two mills-S Mill and R Mill situated in close proximity to each other. While the activity of S Mill very closed and R Mills were continuing; the question that arose was whether it was closure of an "establishment" or it was a closure of an "under-taking of an establishment"? While the Court held that-broadly the common features of the two units emphasised before the Court, viz., unity of ownership, ultimate control and supervision, unity of finance, similarity of service conditions and general similarity of general wages structure, proximity of units, some work for Army being performed in S Mill common boiler located in S Mill supplying steam to R Mill, location of the processfurance of the R Mill in the S Mill, identical bonus scheme for both the units except for one year, inter-transferability of employees

from one unit to other, identical working conditions, maintenance of one balance-sheet and profit and loss account and, one consolidated account for the Company, including both the units; depreciation fund; same occupier for both the Mills and, treatment by the Company for both the units as one in certain matters and, products of both the units bearing the name of the Company, exist; yet, their Lordships of Apex Court came to the conclusion that the two units were independent and separate establishments, and not one. Their Lordships opined that all the aforesaid commonalties are not decisive to come to a conclusion that the two units are operationally part of one establishment. Their Lordship observed as under:

...for the purpose of economy a common employer may arrange his matters insuch a way that there is certain operational co-corporation between units, not necessarily wholly interdependent one upon the other. The most important aspect in this particular case relating to closure, in our opinion, is whether one unit has such commonental relation that closing of one must lead to the closing of the other or the one cannot reasonably exist without the other. Functional integrality will assume an added significance in a case of closure of a branch or unit. That the R. Mill is capable of functioning in isolation is of very material import in the case of closure. There is bound to be a shift of emphasis in application of various tests from one case to another.

(emphasis added).

31. This view was again reiterated and reaffirmed in S.G. Chemicals and Dyes Trading Employees" Union Vs. S.G. Chemicals and Dyes Trading Limited and Another,

32. This Court has also occasion to consider the question whether Mahi Dam Project-as a whole is one "establishment" or a unit of, it constitute separate establishment? After taking into consideration the facts and circumstances of the case, it was observed in Mahi Karmchari Sagah v. State of Rajasthan and Ors. S.B. Civil Writ Petition No. 1186 of 1991, decided on April 13, 1982; as under:

....It is not in dispute that the present case, there is unity of ownership and unity of managerial, functional integrality. But to my mind, having regard to the provisions of the standing orders there is no unity of employment or functional integrality in employment....

In the facts of the particular case, this Court laid emphasis on the unity of employment and functional integrality for the purpose of arriving at a decision about the one-ness of otherwise, of the establishment concerned. The aforesaid decision was affirmed by the Division Bench in Mahi Karmchari Sangh v. State of Rajasthan and Ors. D.B. Civil Special Appeal No. 365 of 1982, decided on November 22, 1985.

33. A close scrutiny of the decisions refered above leads one to an inescapable conclusion that the term "establishment", by itself is not intended to cover the

entire industry or business of the employer, and the question has to be decided in the facts of each case, by taking into consideration various factors for applying the tests of unity of ownership, unity of employment, financial, managerial and functional integrality, geographical proximity of locality, extent of interdependability, transferability of employees etc. etc. No one test is decisive to conclude the question. Emphasis to one or other test in arriving at conclusion of one establishment may vary from case to case depending upon the object and purpose and context, in which the question arises. The decided cases, as such, in the context, are of little assistance.

34. Even then, it can be said with reasonable certainty, that, in arriving at a decision about the question whether two undertakings taken together constitute one establishment or, for that matter, one is department or branch of other has to have one condition precedent, that is to say, there must be a unity of ownership. It is only where there is unity of ownership and diversity of activities, that the question can crop up for determination whether the two are part of the one or are separate and independent establishment. But, in no case, this question can be germane where there is no unity of ownership. In each one of the decided cases, one common factor on the premises of which the contentions arose, was that there unity of ownership.

35. The second most important factor that emerges from the aforesaid enunciation of the principles of the Apex Court of this Land, is that the unity of employment", and, functional integrality, that is to say, inter-dependence of one over the other. These are the principle factors, for arriving at a decision in the complex issue about oneness of two diverse activities of one owner or employer. The commonality of management, finance, supervision and geographical proximity of the premises; all furnish relevant consideration, but, not decisive or conclusive evidence of one-ness.

36. In my opinion, the Regional Provident Fund Commissioner In the present case, has apparently ignored the very first question-whether there is unity of ownership amongst the three undertakings for the purpose of further investigation to find out whether the three are part of the one and same establishment or, are separate establishment? No thread of unity of ownership has been unveiled to exist between the questioned undertakings.

37. It is not disputed, and perhaps can not be disputed, that the Maternity Home, Famil Planning Centre as well as the Kendra, are Trust properties. While the Kendra is run and managed by a Trust settled by Suraj Ratan Fateh Chand Damani in the year 1963; the Maternity Home, though established in 1957, is being run and managed since 1970 by a Trust settled by Madan Gopal Damani. The issue of unity of ownership, in the present case, has to be considered with reference to principle governing ownership of trust-properties. While in the Anglo-American Law, the Trust has been described in varying letters, the Indian Trust Act has defined the Trust", u/s 3, as under:

3. Interpretation Clause: "trusts". - A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another or of another and the owner;

"Author of the trust"; "trustees"; "beneficiary"; "trust property"; "beneficial interest" - "Instrument of trust". The person who reposes or declares the confidence is called the "trustee "; the person for whose benefit the confidence is accepted is called the "beneficiary"; the subject matter of the trust is called "trust property" or "trust money"; the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust property; and the instrument, if any the trust is declared is called the "instrument of the trust";

38. An analysis of definition shows that the essential features of the Trust Act are - (1) Obligation arising out of ownership of the property; (2) This may not be a personal obligation; but is with reference to property held by a person who is called a trustee, (3) Such obligation arises out of confidence reposed in the owner of the property; (4) The obligation is to use the property for the benefit of a third person or the third person and the owner or a class of persons; and such third person or class of persons, for whose benefit the property is held, is called "beneficiary".

39. In its legal sense, it involves what is usually called "three certainties" - namely; a person who is "trustee", property which may be movable or immovable, and, the person or class of persons for whose benefit the property is held. The combination of three elements must exist. It is true, that Trust is not a juristic person, and the legal ownership of property vests in the trustees; but it has to be seen that the ownership cannot be divorced from the obligation attached to it. The ownership of a Trust property has to be seen in the light of obligation attached to it. It is quite possible, that different property may vest in the same person as "trustee", but for different obligations attached with such ownership in respect of different properties. In that event, the ownership of trustee with obligation A attached thereto cannot be the same as ownership of another trust-property with obligation B, attached thereto; notwithstanding the physical personality of the trustee being the same. There is no unity of ownership in the two cases, and the execution of two separate obligations by the trustee cannot be considered; as one dependent on the other or one execution of the Trust as primary and other execution of Trust as subsidiary or ancillary, to other main objects. Both the obligations which are expressed or confidence deposed or properites settled on Trust, are independent and separate from each other.

40. Applying the aforesaid test, I find that no unity of ownership exist between the two undertakings known as Maternity Home and, the undertaking known as the Kendra. While running of the Maternity Home is execution of the Trust settled by Madan Gopal Damani vide Ex. 7, the execution of the activities of running the-Kendra is done by Trust settled by Suraj Ratan Fateh Chand Damani vide Ex. 1. The obligations attached to the properties of two trusts, are different from each

other Object of two Trusts are also different. The community of persons in who property under trust-deed Annx.7 vest, is distinct from the community of person in whom the property under indenture Ex.1 vest. The obligation for the discharge of which two trusts have been executed and which are attached with the ownership of trust property in the two cases, are entirely different and independent of each other. While the object of Medical Trust is to operate in the filed of medical assistance to poor and needy; the object of Jan Kalyan Nidi is to operate the charitable work within the field of education. The Provident Fund Commissioner has committed a mistake apparent on the face of record in not taking into consideration at all these facts, which goes to establish absence of unity of ownership.

41. As I have noticed above, that the Provident Fund Scheme is applicable with reference to employees of a particular establishment; and not with reference to all the employees of a particular employer; therefore, while considering the question of whether one undertaking is rials or might otherwise be interdependent, but if the employees or a unit governed by the Act and the scheme are not working for and have nothing to do with the other unit, it would be wrong to hold that for purposes of the Act also, the various units could not be treated as such."

42. The Regional Provident Fund Commissioner has not at all adverted to the question whether there is a unity of employment vis-a-vis each undertaking between the employee of each of the undertakings. In the absence of unity of employment, functional integrality cannot be assumed, merely on the basis of some commonness in the management.

43. For satisfying test of functional integrality, intedependents of one unit over the other is required. No material has been brought on record to establish that Kendra is so interconnected with the Maternity Home, and dependent on each other that-one cannot exist without the other. Unity of employment and interdependence is the hall mark of functional Integrality.

44. It appears that the Regional Provident Fund Commissioner has been led away by the consideration that the Managing Committee of the Kendra as well as of the Maternity Home is manned by one and same personnel, for the purpose of arriving at the conclusion that there exist a functional integrality between the three undertakings, coupled with the factor that there is one common Secretary to all the three undertakings. But, the ownership of the trust-property does not vest in the Managing Committee, it vest in trustees. As it has been noticed from narration of facts above, the trustees in whom legal ownership vest, are also not one and the same, both in respect of the Kendra and the Maternity Home. The fact that the respective Board of Trustees have left day to day arrangement of the two projects in the hands of the same person, does not lead to any decision conclusion that there is any unity of ownership, or financial integrality, or unity of employment, between the three. Since the question of treating the three units as one fails on the very first premises; that there is no unity of ownership, it itself is

sufficient to allow the writ petition.

45. Even, the factors taken into consideration by the Regional Provident Fund Commissioner otherwise suffer from errors on the face of record. The coverage of the Act was being considered in September, 1973. While the Inspector reported that the three units are functioning in the same premises, the petitioner disputed this fact. The Commissioner has also not found that all the three undertakings are functioning in the same premises. It has only recorded the finding that the premises are in close geographical proximity. The geographical proximity in itself cannot lead to any conclusion by itself that the three units are part of each other. While the orders speaks about the financial integrality, no material has been placed on record, nor it appears that there was any material before the Regional Provident Fund Commissioner, except a donation of Rs. 2000/- in the year 1983-84 by the Trust running the Kendra to the Maternity home. On the basis of this solitary instance, alone, no conclusion of financial integrality between the two can be arrived at by any reasonable person, much less, it can be said that any financial integrality existed in September, 1973.

46. In this conclusion, it may also be noted that all charitable institutions as such have not been covered under the Act. It is only If any activity of a charitable institution comes under one or other trade notified u/s 1(3)(b) or is engaged in an industry mentioned in Schedule I; that it can come under the coverage of the Act. As has been noticed above, "Hospital", as establishment, was brought under the provisions of the Act in 1973 and "Educational Institutions" were brought under coverage of the Act in the year 1982. This is also indicative of the fact that medical assistance and educational service, are different and independent charitable purposes and cannot, ipso facto,...together on cenerality of charitable purpose.

47. Learned Counsel for the respondents tried to support the order of the Regional Provident Fund Commissioner, on the ground that the order is based on the admission of the petitioner for which reliance was placed on Ex. R/2, which is From 3-A, alleged to be filed by the erstwhile Secretary of the petitioner disclosing the names of members of the Managing Committee. On the basis of that document, it is stated by learned Counsel for the respondents that this is an admission of the fact that a common Managing Committee was managing the affairs of all the three institutions. I am unable to read any such admission in Annx. R/2 as to the question of inter-dependence or one-ness of the three units as one establishment. It may be noticed that the Regional Provident Fund Commissioner has not based his decision on the document Ex. R/2. Ex. R/2, is purported to be dated 14.3.1974, whereas from their own communication dated 5.2.1976, it appears that no particulars of ownership in the prescribed Form 5-A were submitted to the Commissioner until 5.2.1976 and were not on the record of the Regional Provident Fund Commissioner. This document has also not been referred to in the order at all. It does not appear from the order that Ex. R/2 was made the basis of the order or that "the petitioner was ever calined upon to

explain in what circumstances this document has come into existence. Even in the Statement of Shri T.C. Jain, the Provident Fund Inspector, it is apparent that he has not recorded any statement of Hari Kishan from whom he is alleged to have gathered information. It is true that admission is a good piece of evidence, and an order can be based thereon, but it is equally true that admissions can be explained away and before they are to be acted upon, it has to be brought to the notice of the person against whom it is sought to be used. The respondents cannot be permitted to support a quasi judicial order on the ground and on the material which has not been taken into consideration while passing the impugned order and which has not even been relied in support of the order by the Commissioner. The decision cited in support of the plea that an order based on admission cannot be interfered with, thus, have no application in the facts of the present case.

48. From the aforesaid conclusions, I am of the view that there was no material before the Regional Provident Fund Commissioner to come to the conclusion that there is any unity of ownership or unity of employment, so as to consider the Kendra and the Maternity Home as one establishment, in September, 1973. As I have noticed above, if any of the institution is not considered part of the other, it does not have the requisite number of employees strength so as to fall-under the coverage of the Act.

49. In view of my aforesaid discussion, I do not propose to further examine the question whether the Maternity Home and the Family Planning Centre constitute one establishment or not?, and, I also do not propose to go into the question with regard to alleged mistake apparent on the face of record in calculating the number of employees, in each unit, as suggested by learned Counsel for the petitioner. I hold that order of the Regional Provident Fund Commissioner suffers from errors apparent on the face of record, in as much as, it ignored the question of unity of ownership and unity of employment and, in the absence of any such finding about these; the Kendra and the Maternity Home could not have been considered as one unit merely, on the basis of geographical proximity and managerial unity, as one establishment.

50. As a result of aforesaid discussion, the petition is allowed. The order Annx. 16 dated 8th July, 1989, passed by the Regional Provident Fund Commissioner, is quashed. There shall be no order as to costs.