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**(2007) 04 RAJ CK 0038**  
**In the Rajasthan High Court**

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|--------------------------------------------------------|------------|
| Regional Provident Fund Commissioner (The) and Another | APPELLANT  |
| Vs                                                     |            |
| Moti Warping Factory                                   | RESPONDENT |

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**Date of Decision :** 02-04-2007

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

**Citation :** (2007) 114 FLR 394 : (2007) 4 RLW 2952

**Hon'ble Judges :** S.N. Jha, C.J.; Mohammad Rafiq, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

Mohammad Rafiq, J.—This special appeal is directed against the judgment dated 4.5.1993 passed by the learned Single Judge whereby writ petition filed by the respondent was allowed and the order dated 14.9.1980 passed by the Regional Provident Fund Commissioner (for short "the Commissioner") with regard to coverage of the respondent u/s 7A of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (for short "the Act of 1952") was set aside.

2. Factual matrix of the case is that the respondent M/s. Moti Warping Factory which was a partnership firm comprising of two partners namely Shri Shanker Lai Garg and his son Shri Suraj Narain Garg, was registered under the Factories Act, the Rajasthan Sales Tax, Central Sales Tax, ESIC Act and was also registered as the Small Scale Industry. According to the case set up by the respondent-petitioner before the learned Single Judge in the writ petition, this factory was erected on a piece of land belonging to Mrs. Uma Garg wife of Shri Suraj Narain Garg, who is the partner of the firm by getting lease deed executed in favour of the firm. The factory started its production on 23.8.1973. Number of its employees always remained less than fifty upto 1978. In view of the provisions contained in the Act of 1952, the provisions of the said Act were not applicable to the petitioners' factory for a period of five years from the date such factory was set up i.e. on 23.8.1973. It is so because the factory never employed more than fifty employees for any single day during that period of five years. After

23.8.1973, the petitioners themselves requested the Commissioner for its registration under the provisions of the Act of 1952 with effect from 1.9.1978.

3. Bone of contention between the parties is as to from which date the Act of 1952 should apply to the factory in question. According to the respondent, the factory was entitled to 5 years exemption from 23.8.1973 but the case of the appellant is that the factory is entitled to only 3 years exemption from the provisions of the Act of 1952. Thus, dispute in substance is whether the factory would be covered under the Act of 1952 w:e.f. 1.9.1978 as asserted by the respondent or from 31.8.76 as is the case of the appellant.

4. Grievance of the respondent is that the Commissioner applied the provisions of the Act to its factory on the basis of addition in the number of its employees by adding therewith number of employees on the strength of another factory known as M/s. Jyoti Seizing Factory. And as such, the provisions of the Act of 1952 were made applicable to both the factories from 31.8.1976. Provident Fund Inspector submitted his report sometime in the year 1978 and on that basis a notice was issued to the petitioners by the respondent on 2.5.79 that both the factories are to be treated as one establishment and therefore covered under the provisions of the Act of 1952. The respondent submitted a representation to the appellant on 1.5.79 requesting them to give it an opportunity of hearing to convince the Commissioner as to why their claim that these factories were one establishment was not correct. The Commissioner however started the proceedings by issuing notice u/s 7A of the Act of 1952 dated 28.9.79 requiring the respondent to appear before him with relevant records for the period September 1976 to July 1979. The respondent filed before the Commissioner copies of the relevant records of both the factories along with affidavits of the Managers of both the factories contending that two factories cannot be treated as one establishment as their employees are distinct and separate and are not inter transferable and further that there was no functional integrity between two factories. The Commissioner however by order dated 14.9.1981 held that both, the respondent factory as well as the other factory, namely M/s. Jyoti Sizing Factory is one establishment and ordered that contributions be paid from September 1976 to August 1978 under the Act of 1952 within 15 days failing which further proceedings u/s 7A of the Act of 1952 would be taken for determining the amount payable by the respondent-firm. The learned Single Judge however allowed the writ petition and quashed the order passed by the Commissioner. It is against this order that the present appeal, has been preferred by the Commissioner.

5. We have heard Shri R.P. Vijay, the learned Counsel for the appellant and Shri Manoj Kumar Sharma, the learned Counsel for the respondent.

6. Shri R.P. Vijay, the learned Counsel for the appellant argued that the learned Single Judge has erred in law by interfering with the order passed by the Commissioner on the basis of appreciation of evidence on record that two factories had a functional integrity and unity of purpose and that both of them

were therefore covered under the provisions of the Act of 1952 as one single establishment. The order passed by the Commissioner did not suffer from any legal infirmity and that the learned Single Judge erred in law in reversing that order. In doing so, the learned Single Judge has neither taken into consideration the findings, reasons and conclusions recorded by the Commissioner nor has given his own reasons. When the Commissioner has given detailed reasons for recording the finding of fact that the two factories had a functional integrity, the learned Single Judge was required to give reasons for reversing such finding as to why and how the functional integrity was not proved. Shri R.P. Vijay, the learned Counsel for the appellants submitted that there were two partners namely Shankar Lai Garg and Suraj Narain Garg in M/s. Moti Warping Factory. Shri Suraj Narain Garg is the son of Shri Shanker Lai Garg. Thus, father and son were the partners of the respondent firm. In another establishment, namely M/s. Jyoti Sizing Factory also there were two partners namely Prem Narain Garg and Ramesh Chand Garg. Both these partners were sons of Shanker Lai who was one of the partners in the respondent-firm. There was thus a common management and that both the factories were engaged in the business of wrapping and sizing of the yarn. These two activities fall in the broad category of textile. Shri R.P. Vijay in support of his arguments relied on the judgment of the Hon''ble Supreme Court in the Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others, . He therefore submitted that the judgment passed by the learned Single be set aside and the appeal be allowed.

7. On the other hand, Shri Manoj Sharma, learned Counsel for the respondent opposed the appeal and argued that the judgment passed by the learned Single Judge does not suffer from any legal infirmity inasmuch as merely because the partners in the other firm happened to be son of one of the partners in the respondent- firm, that does not by itself prove the factum of functional integrity. A family member in one or the other partnership firm may decide to start his separate business. He argued that textile by itself is very large subject within which there may be several dozens of branches but that does mean that all would be liable to be treated as one establishment, just because two factories happened to have been erected in one premises. He submitted that the learned Single Judge has passed the order on consideration of the relevant criterion. The impugned judgment does not call for any interference and therefore the appeal be dismissed.

8. We have considered the rival submissions made by the learned Counsel for both the parties and perused the material on record. Basically it is the order passed by the Commissioner which has been reversed by the learned Single Judge, we deem it appropriate to first scrutinise the order passed by the Commissioner before we proceed to examine the judgment passed by the learned Single Judge on merits. The case set up by the respondent before the Commissioner was that both the firms are separately registered as partnership firms and there was separate ownership. While M/s. Moti Warping Factory was located in the property owned by Smt. Uma Garg wife of Shri Suraj Narain Garg

and one of the partners in respondent-firm, M/s. Jyoti Sizing Factory was located in the premises belonging to Smt. Beena Devi Garg Wife of Shri Prem Narain Garg. There further case was that the land and building tax for both the premises is assessed separately and therefore the premises are separate. There is no common management for finance between these two factories. Financial year of both the factories is also different which are separately assessed for the purpose of Income Tax and Central Sales Tax Act. Both of them have been separately registered as small scale units with the Director of Industries and have got separate registration under, the Rajasthan Sales Tax Act, the Factories Act and ESIC Act. Power connections of both the units were separate and the employment of, workers and staff of the factories was also completely separate who were not inter transferable.

9. The Commissioner on the basis of evidence especially the statement of Shri Prem Kumar Vaid, Manager of the respondent-firm found that the firm was engaged in warping of yarn and warped yarn was sold in the open market. Shri O.P. Gupta, Manager of M/s. Jyoti Sizing Factory also stated that his factory purchased warped beams from M/s. Moti Warping Factory and also from others in the open market. The Commissioner found that M/s. Moti Warping Factory and M/s. Jyoti Sizing Factory are owned and managed by the members of one family as the partners in M/s. Jyoti Sizing Factory who are brothers are sons of Shri Shanker Lai Garg, one of the partners in the respondent-firm. From the statement of sales of M/s. Moti Warping Factory, it would appear that out of total sales of Rs. 6.19 lacs during the year 1972-73, sales worth Rs. 5.61 lacs were made to M/s. Jyoti Sizing Factory alone. Again during 1973-74 out of total sales of Rs. 95.5 lacs sales made to M/s. Jyoti Sizing Factor were to the tune of Rs. 74.7 lacs. The percentage of the sales made by M/s. Moti Warping Factory to M/s. Jyoti Sizing Factory during the years 1974-75 onwards has also been very high. Similarly, out of the total purchases of raw materials by M/s. Jyoti Sizing Factory during the year 1973-74 of Rs. 51.00 lacs, purchases worth Rs. 43 lacs were made from M/s. Moti Warping Factory. In 1974-75 also, out of total purchases of Rs. 80.00 lacs, purchases from M/s. Moti Warping Factory alone were to the tune of Rs. 57.7 lacs. During the year 1975-76 and onwards also substantial purchases of raw material were made by M/s. Jyoti Sizing Factory from M/s. Moti Warping Factory. The Commissioner on the basis of analysis of these facts held that the test of functional integrity and general unity of purpose is fully satisfied. Both the units are located in the precincts of each other and the test of geographical proximity is also, therefore, satisfied. Merely because they obtained separate registration under CST Act, Rajasthan Sales Tax Act, Factories Act, ESIC Act and other enactments which have to be secured by the establishment in compliance of various provisions of the relevant statute, would have no bearing on the applicability of the act.

10. The learned Single Judge however reversed the order passed by the Commissioner holding that there was no common supervisory, managerial, financial control or functional integrity between the two factories. The labour of

the two units is different and is not inter-transferable. Financial/managerial and functional integrity cannot be said to be established on the basis of relationship between partners of the two firms alone. Even if the sales are being effected by one to another, it is natural phenomenon if the persons involved are related to each other, then they give the preference to such concern and for that reason alone, it cannot be said that there is a functional integrity or that the unit itself would be closed if the other unit stops supplying the goods. Having thus recorded his finding, the learned Single Judge has omitted to give reasons as to how the reasons given by the Commissioner were not justified in arriving at the satisfaction which he finally reached.

11. Their lordships of the Supreme Court in *A.C.C. v. Their Workmen* 1960 1 LLJ 1 were called upon to decide whether the cement factory and a lime stone quarry situated at two different places could be treated as one establishment. The lime stone quarry was situated at a distance of one and half miles from the cement factory. It was held that there was unity of purpose and functional integrity between quarry and the factory. The Supreme Court held that the tests which could be applied to decide as to what constitute one establishment would be unity of ownership, unity of management, supervision and control, unity of finance and employment, unity of labour and service conditions, functional integrity, general unity of purpose and geographical proximity.

12. In *The Honorary Secretary, South India Millowners' Association and Others Vs. The Secretary, Coimbatore District Textile Workers' Union*, their lordships of the Hon'ble Supreme Court again held that several factors are relevant in dealing with such problem. However, significance of several relevant factors would not be the same in each case. Unity of ownership, management and control would be a relevant factor. General unity or functional integrity may also be relevant factor. Unity of finance may not be an irrelevant factor. Geographical proximity may also be of some relevance. In some cases the test would be whether one concern forms an integral part of another so that together they constitute one concern. Their Lordships held that the nexus of integration in the form of some essential dependence of the one on the other may assume relevance. Similarly, unity of purpose or 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 may also assume relevance and importance.

13. Their lordships of the Supreme Court in *Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and Others*, while reversing the judgment passed by this Court and restoring the order passed by the Commissioner in somewhat similar circumstances made similar observations. In that case, the Commissioner found that two units had a common branch at Bombay and common telephone at Kota for residence and factory. Office of one unit was situated in the premises of the other and accounts of both the units were maintained by the same set of clerks. In those facts, the Commissioner held that both of them constituted one establishment. It was held by the

Supreme Court that even if they were separately registered under Factories Act, the Sales Tax Act, the ESIC Act and are located at a distance of 3 Kms, in totality of circumstances, they would still be liable to be treated as same establishment.

14. A critical analysis of law so succinctly laid down by their Lordships in all the aforesaid cases, we find that there are some such factors in this case too which are determinative of the fact that two factories are in fact a common establishment. Applying various tests enumerated above clearly prove functional integrity and unity of purpose between these two units. Wrapped yarn, which was end product of the respondent-firm was raw material for M/s. Jyoti Sizing Factory. Substantial quantity, if not total, of wrapped yarn manufactured by the respondent-firm was sold to M/s. Jyoti Sizing Factory for its sizing. No doubt, close relationship between partners of the two firms alone may not be determinative of functional Integrity but when proximity of relationship coupled with proximity of the location of the factories Is analysed with their business relationship of sale by one to another In substantial proportions in which the same product is subjected to two different kind of process first by one and then by another, it certainly becomes a case of not only functional integrity but also of unity of purpose. In the context of these facts, therefore, in spite of there being separate registration of the two factories under various enactments such as CST Act, RST Act, Central Excise Act, ESIC Act, Factories Act and their separate registration as small scale industries notwithstanding, they would still be liable to be treated as one establishment for the purpose of Section 7A of the Act. In our considered opinion, therefore, the learned Single Judge erred in law in interfering with the satisfaction arrived at by the learned Commissioner based on objective consideration of the material before him as to unity of purpose and functional integrity of these two units.

15. In view of what has been discussed above, the special appeal deserves to be allowed and is accordingly allowed. The impugned order passed by the learned Single Judge is set aside and that of the Commissioner is restored. There shall be no order as to costs.