

(2014) 09 DEL CK 0196
In the Delhi High Court
Case No : W.P.(C) 3014/2000

Vir Arjun Newspapers Pvt. Ltd.

APPELLANT

Vs

The Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 05-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 14, 14-A, 16, 16(1)(b)

Citation : (2014) 4 LLJ 206

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : D.K. Malhotra, Advocate for the Appellant; Rajesh Manchanda and Rajat Manchanda, Advocate for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J.—The challenge in this writ petition is to the order dated July 12, 1999 passed by the Respondent no.1 i.e. The Regional Provident Fund Commissioner, Delhi (Commissioner) and order dated May 09, 2000 passed by the Respondent no.2 i.e. The Employee's Provident Fund Appellate Tribunal ("Tribunal" in short), whereby the Commissioner has concluded that the petitioner herein i.e. M/s Vir Arjun Newspapers Pvt. Ltd. and M/s Sandhya Vir Arjun are not entitled to infancy protection as envisaged u/s 16 of the Act as these are a continuation of the old establishment M/s Daily Vir Arjun. They were directed to report compliance in respect of the employees of M/s Daily Vir Arjun and M/s Sandhya Vir Arjun with effect from January, 1983 after excluding the amount deposited by the establishment earlier, and the appeal against the order of Commissioner was dismissed by the Tribunal.

2. It was the case of the petitioner that M/s Daily Vir Arjun, the newspaper published by Mr.K.Narendra, as proprietor, was started sometime in the year 1971. It was a proprietary concern which was closed down in the year 1981. It

published a newspaper called "Daily Vir Arjun". The establishment was covered under the Act and its code number was DL-111. Mr.K.Narendra was registered with the Registrar of Newspapers for India and the registration number allotted was 511/57. On the closure of "Daily Vir Arjun", all employees employed at that time were removed from service and their full and final payment was made before the Conciliation Officer. These employees had withdrawn their provident fund from the Commissioner's office. Thereafter the proprietary firm was never re - started by Mr.K.Narendra or any other person.

3. That after closure of "Daily Vir Arjun", an evening paper was started by Mr.Anil Narendra. The newspaper was called and registered as "Sandhya Vir Arjun". Sandhya Vir Arjun was registered with the Registrar of Newspaper for India and was allotted the registration number 47311/88 dated May 25, 1988. Mr.Anil Narendra was the sole proprietor of "Sandhya Vir Arjun". It was the case of the petitioner that the total number of employees had always remained less than 20.

4. It is the petitioner's case that it was incorporated on December 15, 1987. It started publishing newspaper called "Vir Arjun (Hindi Daily)" with effect from April 18, 1988. The newspaper was published by Mr.Anil Narendra and was also registered with the Registrar of Newspapers for India and was allotted registration No. 511/57 vide certificate dated June 16, 1988. After 5 years of the commencement of the business, the petitioner vide its letter dated March 29, 1993 addressed to the Respondent no.1 requested to allot an Establishment Code Number in order to facilitate the petitioner to deposit the deductions of the employees contribution along with other charges but no communication was received back. The petitioner sent numerous reminders to the respondent no.1 vide its letter dated December 05, 1994, May 25, 1995 and September 05, 1995 to issue Establishment Code Number to the petitioner and also informed the respondent no.1 vide its letter dated May 25, 1995 that the petitioner, suo motu started depositing Provident Fund in the State Bank of India. However, the petitioner did not receive any reply to the said letters.

5. That it may be necessary to state here that summons dated June 29, 1988 were issued to "Daily Vir Arjun", Pratap Bhawan, 5, Bahadur Sahib Marg, New Delhi. Pursuant thereto the Area Enforcement Officer visited the petitioner's establishment on August 29, 1988 and found that establishment was not reporting compliance of the provisions of the Act with effect from January, 1983. It is noted that the Area Enforcement Officer has in her report stated as under:-

a. "Two establishments are functioning - i) M/s Daily Vir Arjun Sandhya [Evening Edition]; & ii) M/s Vir Arjun News Paper Pvt. Ltd. [Morning Edition]. Daily Vir Arjun Sandhya is a sole proprietary establishment and Shri Anil Narendra is the Proprietor and M/s Vir Arjun News Paper Pvt. Ltd. is a private limited company and Shri Anil Narendra & Smt. Juhi Narendra are Directors therein.

b. As stated by the establishment M/s Daily Vir Arjun Sandhya started its trial production on 30.11.1984 and regular production was started w.e.f. Jan" 85.

Record produced before her, only for the period Jan" 87 to Jul" 88 from which she took the details of salary paid to the employees and list of employees. Further, M/s Vir Arjun News Paper Pvt. Ltd. stated to have started w.e.f. 19.04.1988. Attendance register and salary register in respect of M/s Vir Arjun News Paper Pvt. Ltd. are stated to haven't been maintained by them. In the enclosed annexures, M/s Daily Vir Arjun Sandhya was found employing 9 to 14 persons varying from month to month and M/s Vir Arjun News Paper Pvt. Ltd. was found employing 30 persons as on May" 88."

6. A reply to the show cause notice was filed by the respondent No. 2. In his written statement, Mr.K.Narendra stated that after permanently closing down his establishment, he has not started the concern. It was the case of respondent No. 1 in its reply dated August 07, 1989 that the establishment was re-started in the name of "Sandhya Vir Arjun". It was also mentioned that another establishment in the name and style of M/s Vir Arjun Newspaper Pvt. Ltd. has also been started with effect from December 15, 1987. According to the respondent No. 1, both the establishment i.e. M/s Sandhya Vir Arjun and M/s Vir Arjun Newspaper Pvt. Ltd. are housed in the same premises doing same nature of business with common control and supervision stands covered.

7. In rejoinder to the reply filed by respondent No. 1 it was the stand of Mr.K.Narendra that he had surrendered his paper namely "Daily Vir Arjun" with the Deputy Commissioner (Licensing) and as per law the name Daily Vir Arjun can be used by any person and public at large. He further stated that he did not have any plant and machinery in his proprietary concern. He was getting his printing job done from outside on payment of bill basis. He had stated that the property of Pratap Bhawan, 5 Bahadur Shah Zafar Marg, New Delhi, is a huge plot jointly owned by him and Mr.Anil Narendra and several establishments are operating from the same address. In a affidavit filed later, he had stated that he had no connection whatsoever with M/s Vir Arjun Newspaper Pvt. Ltd. and had no control, supervision or common business with M/s Vir Arjun Newspaper Pvt. Ltd. i.e. the petitioner herein or "Sandhya Vir Arjun". It is noted from the writ petition that criminal proceedings were initiated against Mr.Anil Narendra, one of the Director of the petitioner company. Be that as it may, notice dated January 05, 1998 was issued to the petitioner company, even though the proceedings u/s 7A of the Act against "Daily Vir Arjun" had not culminated, as to why the petitioner be not treated as part of the establishment of Daily Vir Arjun (respondent No. 2) and Sandhya Vir Arjun.

8. The petitioner vide its reply to the notice dated January 05, 1988, denied any connection with "Daily Vir Arjun". The petitioner had also taken a stand that it has not employed any person employed by the earlier firm. Being a juristic person itself it cannot be construed to be a successor of any other company or any other newspaper named and styled as "Daily Vir Arjun". The petitioner prayed for the benefit of infancy period. It was established after eight years from the closure of earlier firm namely "Daily Vir Arjun" with new employees, new

machinery, new capital, new management and new office premises. Objections were also filed by Pratap Bhawan Employees' Union. The Union filed certain photocopies of the documents in support of its case. The validity of the photocopies was challenged by the petitioner herein. On the basis of pleadings and written arguments filed by the parties, the Authority u/s 7A passed the order dated July 12, 1999. The Authority has concluded that the Daily Vir Arjun initially was running a partnership firm. Mr. K.Narendra and Smt. Juhi Narendra were the partners. Later on the partnership dissolved in 1976 but the establishment continued and functioned under the proprietorship of Sh. K.Narendra who started the publication on July 01, 1977. The Commissioner noted from newspaper Vir Arjun (Weekly) dated March 15, 1981 and July 26, 1982 publication that the activity of the establishment might have discontinued for a short period due to labour problem and publication periodically might have also been changed from daily to weekly as per the requirement of the circulation. The AEO who visited the establishment in the year 1988 also reported that the copy of newspaper Vir Arjun dated May 12, 1988 was showing 5th year of publication. Similarly Vir Arjun (Weekly) dated March 15, 1981 of which Mr.K.Narendra was the Editor was showing 4th year of its publication. Also copy of newspaper Vir Arjun dated August 30, 1997 showed 13th year of its publication. According to the Commissioner, the RNI number of the newspaper Vir Arjun dated August 23, 1997 was 511/57 with Anil Narendra as Editor, whereas M/s Vir Arjun Newspaper Pvt. Ltd. was incorporated only in December, 1985 (should read 1987). According to the Commissioner, Mr.Anil Narendra was publishing newspaper Vir Arjun (Daily) even prior to incorporation of M/s Vir Arjun Newspaper Pvt. Ltd. On perusal of the copy of newspaper dated July 26, 1982 the RNI number is found as 511/57 and the editor is shown as Mr.Anil Narendra. In other words, according to the Commissioner Mr.Anil Narendra was publishing newspaper even prior to 1985 (should read 1987) and the activities of the establishment Daily Vir Arjun were interrupted only for a short period due to labour dispute but after normalcy the publication started sometime daily or weekly.

9. In para No. 18 of the order dated July 12, 1999, the Commissioner was of the view that the newspaper shows continuity of circulation and existence of the establishment from time to time. The Commissioner was of the view that although the status of the establishment has been changed from time to time as proprietorship, partnership or private limited company but this change of status does not affect the continuity of the establishment for the applicability of the Act. The Commissioner was also of the view that Mr.K.Narendra has failed to submit letters surrendering the license of Daily Vir Arjun to the Deputy Commissioner of Licensing. According to the Commissioner, despite many opportunities Mr.K.Narendra did not cooperate in the inquiries to avoid revelation of truth. According to him, on one side Mr.K.Narendra filed an affidavit that he closed Daily Vir Arjun in 1981. On the other hand, Vir Arjun newspaper was continuously published as is evident from the copy of the newspaper dated March 15, 1981 and July 26, 1982. He also referred to the additional affidavit filed by

Mr.K.Narendra in this Court showing the effect of increase of burden due to increase of D.A. He also held that Mr.Anil Narendra could not justify why he became the proprietor of Daily Vir Arjun in September, 1985; who purchased the machinery in the month of January, 1985 and who published the newspaper prior to 1985. He also referred to a bill of State Trading Corporation to show supply of newsprint to Vir Arjun in the month of January, 1985. He also referred to the bill of A.J Printers issued to Daily Vir Arjun for printing of Daily Vir Arjun in the month of January, 1985 which shows the existence of Daily Vir Arjun in the year 1985. He also referred to newspaper dated April 28, 1991 to show the 7th year of publication. It was his conclusion that the establishment under the proprietorship of Mr.K.Narendra continued even after 1982 as newspaper was published between 1982-85 even prior to the proprietorship of Mr.Anil Narendra. If Mr.K.Narendra had stopped publishing the newspaper in 1981 why newspaper was published after 1982 till 1985 was his query. According to the Commissioner, how did Mr.K.Narendra showed the increase in liability of Daily Vir Arjun in his affidavit before the Court. He also relied upon the municipal licence to hold that Mr.Anil Narendra became the proprietor in September, 1985 while the newspaper was being published and machinery purchased even prior to that. The aforesaid was his basis that there has been continuity of establishment after 1981 onwards and M/s Vir Arjun Newspaper, private limited, a company was incorporated by the proprietor of M/s Daily Vir Arjun by adding one more partner. The Commissioner held that the petitioner has failed to discharge the onus of seeking the benefit of infancy by proving it to be a separate establishment. The Commissioner has held that the petitioner has failed to produce any evidence in deference to its case. He held that there is a strong presumption in the circumstances that the establishment is nothing but a continuation of Daily Vir Arjun.

10. The petitioner invoked the appellate jurisdiction of the Tribunal by filing an appeal u/s 7(I) of the Act. Several grounds were raised by the petitioner in the appeal. The Appellate Authority agreed with the conclusion of the authority u/s 7A of the Act and dismissed the appeal. The Appellate Authority was of the view that the same family was publishing newspapers daily with morning and evening editions and sometimes weekly, therefore, the publication of different papers in different names of the firm will not create a new establishment each time. It shall be deemed to be continuing from the year 1957 and the closures, if any, shall be deemed to be temporary closure. The Appellate Authority had directed compliance to be made in respect of present employees from the date of their employment and in respect of any other employee who has left the job or who has been dismissed from the date of employment and till the date of dismissal or leaving the job. There was a dispute with respect to 10 persons who according to the petitioner were never employed by it. According to the petitioner, 13 have left the job or have been dismissed and 1 is employee of Sandhya Vir Arjun which should not be covered as it did not employed 20 or more persons. The Tribunal held that in view of the finding that all the establishments are one, it

had directed that all the employees of Sandhya Vir Arjun the PF benefit from the date of their employment. Insofar as 10 persons are concerned, the Tribunal has left it to the 7A authorities to determine the dues with reference to the identifiable members of the Scheme.

11. I may note here that the present writ petition has been filed by M/s Vir Arjun Newspaper Pvt. Ltd. through Mr. Anil Narendra as the Managing Director of the company. Mr. Anil Narendra as a proprietor of Sandhya Vir Arjun has not challenged the order of dated July 12, 1999 of the RPFC nor the order dated May 09, 2000 of the Tribunal.

12. It is the submission of Mr. D. K. Malhotra, learned counsel appearing for the petitioner that Daily Vir Arjun was the proprietorship firm of Mr. K. Narendra, whereas M/s Vir Arjun Newspaper Pvt. Ltd. is a company registered under the Companies Act in 1987 with Mr. Anil Narendra and his wife as the Directors. He would also state that Sandhya Vir Arjun is the proprietorship concern of Mr. Anil Narendra. He would state that the license of Daily Vir Arjun was surrendered to the licensing authority on November 26, 1984 and has drawn my attention to Annexure-XX in support of his contention. He has also stated that the dues of the employees have been settled. It was in the year 1988 that it was registered with the Registrar of Newspapers and the newspaper "Vir Arjun" was started. He would state that Mr. Anil Narendra has started another newspaper under his proprietorship known as "Sandhya Vir Arjun" in the year 1988 with RNI No. 47311/88. According to him, the petitioner is entitled to the benefit of infancy. He would state that the balance sheet of the petitioner company and Sandhya Vir Arjun are separate. The accounts are duly audited with separate assessment orders. He would draw my attention to the separate advertisement tariff of Vir Arjun with effect from January 01, 1999 and Sandhya Vir Arjun. According to him, there is no functional/financial integrity between the three establishments. He would further state, for establishing functional integrity the authorities must hold that each of the concern could not exist in the absence of other. He further submits that in the facts of this case when Daily Vir Arjun was closed in the year 1981 there is no question of any functional integrity. He would attack the order of RPFC as well as the Tribunal being perverse and unsustainable in law. According to him, no evidence has been placed to show that the petitioner has been publishing any newspaper before its incorporation. He would state that the burden of proving that old establishment had continued and new establishment was not set up is on the respondents. According to him, even if the petitioner has started the new business from the same address would not infer/show continuation of old business. There is no transfer of business from the old entity to new entity. The employees of Daily Vir Arjun had left the employment on closure. He would state, even the unity of ownership, supervision and control are not sufficient to hold functional integrity. He would rely upon the following judgments in support of his case:

(a) The Provident Fund Inspector, Trivandrum Vs. The Secretary, N.S.S. Co-

operative Society, Changanacherry,

(b) Union of India and Others Vs. A.S. Amarnath,

(c) Pratap Ch. Sukhoni Vs. Regional Provident Fund Commissioner,

(d) Jagannath Sahu v. The Regional Provident Funds Commissioner, Bhubaneswar, 1988 Lab.I.Cases 858

(e) United Hoteliers Vs. Government of India,

(f) Regional Provident Fund Commissioner Vs. Raj's Continental Exports (P) Ltd.,

(g) M/s Lakshmi Type Foundary & ors. v. Regional Provident Fund Commissioner, W.P. (C) No. 198/1995

(h) Bajaj Food Products Vs. Central Board Trustee and Others,

(i) Regional Provident Fund Commissioner Vs. Wipro Ltd.,

(j) Regional Provident Fund Commissioner and Another Vs. Dharamsi Morarji Chemical Co. Ltd.,

(k) Periwat Trading Corpn. Vs. Regional P.F. Commissioner,

(l) Evans Food Corporation Vs. Union of India (UOI) and Another,

(m) M/s. Niton Industries Vs. The Union of India and others,

(n) Dharamsi Morarji Chemicals Co. Ltd. Vs. N.G. Desai, The Regional Provident Fund Commissioner and others,

13. On the other hand, Mr.Manchanda, learned counsel for the respondent No. 1 would by referring to the order of RPFC submit that Mr.K.Narendra had not submitted any document before the Commissioner to show his surrendering the licence with regard to Daily Vir Arjun. Vir Arjun was being published before 1987 which is a periodical of Mr.Anil Narendra. He would also state that Daily Vir Arjun was being published by Mr.Anil Narendra. He referred to page No. 220 of the paper book which is of M/s A.J Printers to contend that the retrenchment of the workers was only settled in the year 1997. He would state that the licence of Daily Vir Arjun assuming was surrendered in the year 1984, till 1984 the Daily Vir Arjun was published. He also relied upon the findings of the Commissioner that Mr.K.Narendra had published newspaper between 1982-85. He had also stated that the registration effected by the Registrar of Newspapers for publishing Vir Arjun newspaper with Mr.Anil Narendra as the publisher was also numbered as 511/57 which is the same number as has been allotted to Daily Vir Arjun with Mr.K.Narendra as publisher. According to him, despite many opportunities Mr.K.Narendra has not placed any evidence to prove that the petitioner has been working or publishing any newspaper prior to incorporation. He would support the order of RPFC order as well as the Tribunal's order. He would rely upon the following judgments:

- (a) L.N. Gadodia and Sons and Another Vs. Regional Provident Fund Commissioner,
- (b) Sanjay Automobiles Vs. Regional Provident Fund Commissioner and Another,
- (c) Rajasthan Prem Krishan Goods Transport Co. Vs. Regional Provident Fund Commissioner, New Delhi and Others,
- (d) Dudhiben Dharamshi and Others Vs. New Jehangir Vakil Mills Ltd., Bhavnagar,
- (e) Sayaji Mills Ltd. Vs. Regional Provident Fund Commissioner,

14. Mr.Malhotra in rebuttal would reiterate his submission that the petitioner is a juristic person having come into existence only in the year 1988. According to him, the question of publishing of newspaper before the incorporation by the petitioner would not arise. He would also state that there is no functional/financial integrity between the three concerns.

15. I note that during the proceedings before RPFC, Pratap Bhawan Employees" Union had got itself impleaded. A reply was filed to the application opposing the impleadment. The Commissioner had also filed a reply to the said application. In response to a submission made on behalf of Daily Vir Arjun that impleadment application has been filed by two hostile persons making baseless allegations and have fabricated photocopies which have no evidential value and not relating to the applicant establishment i.e. Daily Vir Arjun, it was contended by the Enforcement Officer that the two persons who had sought the impleadment had not made any wrong or baseless allegations against the establishment. It was also contended by the Enforcement Officer that the photocopies are not false documents as the same have been verified by the department and also the original of newspapers were produced before the Commissioner while submitting the photocopies thereof. The Enforcement Officer has also called upon Mr.K.Narendra to file an affidavit stating therein that the union has forged the documents and prove the contrary and cross examine the witnesses. The Enforcement Officer has also stated in his reply that at that stage it cannot be alleged that the documents are false and fraudulent as the management would have full opportunity to contradict the same. I note from the record that the petitioner company M/s Vir Arjun Newspaper Pvt. Ltd. filed a response on the documents sought to be relied upon by the Enforcement Officer, which were 54 in number. Against document Nos. 1 and 31, it was stated that the document being a photocopy, the authenticity of the same cannot be admitted nor the management has knowledge about its existence. For other documents, it was stated that the said documents had not been proved in accordance with law and had no relevancy with respect to the issue to be determined by the Commissioner. In other words, the authenticity of the documents, other than document Nos. 1 and 31 had not been commented upon. I note the aforesaid facts for the reason the learned counsel for the petitioner has challenged the veracity/authenticity of all the documents so relied upon by the Commissioner in the impugned order dated July 12, 1999. It is also necessary to state here that in

the absence of any tenable grounds challenging the authenticity of the documents more particularly keeping in view the reply filed by the petitioner before the Commissioner with regard to all the documents I would hold that the Commissioner was right in considering the documents while adjudicating the 7A proceedings. That apart, I note that the union has filed an affidavit to the writ petition; and was being represented by Mr.B.K.Pal, Advocate. Mr.Pal was informed about the proceedings by the learned counsel for the petitioner, which aspect was noted by the Court in the order sheet dated May 08, 2014 but no one was present to advance arguments on its behalf.

16. Having heard the learned counsel for parties, the only issue which arises is whether the petitioner is entitled to the benefit of infancy u/s 16(2) of the Act.

17. Before I deal with the respective submissions of counsel for the parties, a word on the legal position. The guidelines have been laid down in two judgments of the Supreme Court which have been followed from time to time in *The Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani Vs. Their Workmen*, a Bench of three Judges of the Supreme Court while considering the question as to whether the factory and the limestone quarry belonging to the appellant company should be considered as one establishment for the purpose of Industrial Disputes Act has held as under:-

"11..... What then is "one establishment" in the ordinary industrial or business sense?..... 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 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 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 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. The difficulty of applying these tests arises because of the complexities of modern industrial organization; 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."

18. Similarly in the case of *Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union and Its Workmen*, it was held as under:-

".....While pointing out that it was impossible to lay down any one test as an absolute and invariable test for all cases it observed that the real purpose of these tests would be to find out the true relation between the parts, branches,

units etc. This court however mentioned certain tests which might be useful in deciding whether two units form part of the same establishment. Unity of ownership, unity of management and control, unity of finance and unity of labour, unity of employment and unity of functional "integrality" were the tests which the Court applied in that case.....

19. Thus, it is clear that a conclusion whether two units should be considered as one establishment or otherwise is a question of fact. In the present case, I note that the petitioner company was incorporated in the year 1987 and it relied upon the certificate issued by the Registrar of Newspapers dated June 16, 1988 evidencing publication of newspaper after that. The registration number was 511/57. The registration number is relevant. The number is same as that was allotted to Daily Vir Arjun. Suffice to state, there is no mention of the name of the petitioner company in the certificate. It is not known, whether it was in fact, allotted to the petitioner company. The name of the publisher, printer and the editor has been mentioned as Mr. Anil Narendra. Surely if the company is owning it, the publisher's name must be of the petitioner company. Daily Vir Arjun which is said to have been established in the year 1971 as a proprietorship concern of Mr. K. Narendra and said to have been closed down in the year 1981 was also publishing the newspaper with the same registration number i.e. 511/57. Identical numbers could not have been issued for publishing two newspapers. The later digits denote the year of registration. From a common registration number, it is clear that the petitioner company was publishing the newspaper under the registration number allotted to respondent No. 2. The petitioner/nor the respondent No. 2 has filed the registration certificate issued to respondent No. 2. A peculiar ground has been taken by the petitioner company in its appeal before the Tribunal on this aspect which is reproduced as under:-

"Because the year of publication shown on Daily Veer Arjun dated 30-08-97, published by the applicant company showing 13th year of its publication is not material because the number of years are written for several extraneous purposes also like competing with other similar newspapers. In any event, this is not a sufficient ground to treat the establishment company as a continuation of proprietor firm of Shri K. Narendra. Because the R.N.I. No. 511/57 was obtained by the applicant company from the Registrar of Newspaper for India on 16-06-88. The certificate of registration is Annexure-IV. The registration number granted by the registrar was for unknown reasons same as was granted to Shri K. Narendra for publishing Daily Veer Arjun. At this stage it is pertinent to mention that if "Sandhya Veer Arjun" was also a continuation of Daily Veer Arjun of Shri K. Narendra then why it was granted a separate registration No. 47311/88 the certificate of registration is Annexure-II."

20. The explanation of the petitioner company that the Registrar has granted the same number to Mr. K. Narendra for unknown reasons is vague. That apart I note that the Commissioner has in his order by referring to a newspaper dated July 26, 1982 has noted, on it the registration number as 511/57, the name of the

editor as Mr. Anil Narendra. He has also noted that the RNI number of the newspaper Vir Arjun dated August 23, 1997 as 511/57, Editor Mr. Anil Narendra. The order of the Commissioner, read meaningfully, would signify between the years 1981-1987/1988, newspaper with a similar name, same registration number had been published with Mr. Anil Narendra as Editor, when as per the stand of the petitioner it had started publishing only in the year 1988 and of respondent No. 2 that it had stopped in 1981. The licence alleged to have been surrendered is in the year 1984, gives an interesting reading. The document at Annexure XX only declares that Mr. K. Narendra cease to be a printer and publisher of the periodical "Vir Arjun". The document does not show that the licence with registration 511/57 has been surrendered. The name of the periodical has been titled as Vir Arjun, which is not the periodical Mr. K. Narendra was publishing. He was publishing "Daily Vir Arjun". On facts it appears Mr. Anil Narendra has got his name substituted as publisher, editor and printer of Daily Vir Arjun in place of his father and started publishing the newspaper as "Vir Arjun". Further, I note that the Commissioner has relied upon an additional affidavit filed by Mr. K. Narendra in this Court in CWP No. 1632/86, which petition was filed by M/s Daily Pratap, an Urdu newspaper published by Mr. K. Narendra, the contents of the affidavit referred to the wage bill with respect to two newspapers one of which was the Daily Vir Arjun. The conclusion drawn by the Commissioner was, if M/s Daily Vir Arjun was closed down in the year 1980-81, how Mr. K. Narendra could have shown the increase in liability of Daily Vir Arjun in the additional affidavit filed before this Court. I also note that at page 200 of the paper book, which is part of the affidavit filed by the union before the Tribunal is a certificate issued on July 28, 1986 on the letter head of the Dainik Vir Arjun signed by Mr. Anil Narendra, Proprietor. The Commissioner in para No. 21 & 22 of his order has come to the following conclusion:

"21. On going through the judgments filed by both the parties and on close scrutiny of both the parties and documents provided by the union and judgment of higher courts relied upon by both the parties. I have found that the establishment has been given sufficient opportunities to put their evidence, principles of natural justice have been followed properly, as it is a quasi-judicial enquiry, strict rules of evidence aren't applicable. Further, I have found that the establishment under the proprietorship of Shri K. Narendra continued even after 1982 as Newspaper published during the period 1982-83, 1983- 84, 1984-85 even prior to the proprietorship of Shri Anil Narendra. Shri K. Narendra failed to produce any evidence when he surrendered the licence. If he closed his establishment in 1980 as per his affidavit, how he was publishing newspaper in the year 1982-83 and thereafter? How he had shown increase in the liability of Daily Veer Arjun in the affidavit/additional affidavit filed in the Hon'ble High Court in CWP # 1632 of 1986. As per the municipal licence, Shri Anil Narendra became the proprietor in Sep. 85 while the newspaper was being published and machinery was purchased even prior to that. The letters/documents submitted by the union clearly shows the existence of Daily Veer Arjun even after Jan. 93.

All the factors shows that there had been continuity of establishment after 1982 onwards and as M/s Veer Arjun Newspaper Pvt. Ltd. a private limited company was incorporated by the proprietor of M/s Daily Veer Arjun by adding one more partner.

22. I am further strengthen in my view by the arguments advanced by the department. It has rightly been pointed out by the department that burden of proof of claim of infancy as a separate establishment lies squarely on Daily Veer Arjun under proprietorship of Shri Anil Narendra or on M/s Veer Arjun Newspaper Pvt. Ltd. The establishment M/s Veer Arjun Newspaper Pvt. Ltd. has failed to discharge the onus as enjoined upon them by law. Several opportunities were granted to them. The enquiry continued to be adjourned to different dates on one plea or the other as put forward by the Advocate/Representative of the establishment. The establishment as a custodian of the relevant records maintained by them had every opportunity to bring in evidence any of the documents in defence of its own case that it wasn't a continuation of M/s Daily Veer Arjun, but the establishment M/s Veer Arjun Newspaper Pvt. Ltd. didn't bring on record even an iota of evidence to prove its case. The strong presumption in the circumstances remains that the establishment is nothing else but continuation of Daily Veer Arjun. In the case of Sayaji Mills vs. RPFC, it has been rightly held that mere investment of additional capital or effecting of repairs to the existence machinery before it was restarted, the diversification of line of production or change of ownership wouldn't amount to the establishment of a new factory. The Hon'ble Supreme Court has further held that the provisions of the Act should be construed so as to advance the object with which it is passed. Any construction which would facilitate evasion of the provisions of the Act should as far as possible be avoided."

21. The union in its counter-affidavit before the Tribunal has referred to charge-sheet served on Smt. Asha Malhotra and Mr.Satish Jain dated October 31, 1987 and November 03, 1987 respectively signed by Mr.Anil Narendra as Chief Editor of Daily Vir Arjun and Sandhya Vir Arjun. In rejoinder to this paragraph, the petitioner company except making a bald averment that contents are illegal, misconceived and perverse did not deny the fact that Mr.Anil Narendra had not issued the charge-sheet to two employees as Chief Editor of Daily Vir Arjun as well as Sandhya Vir Arjun. From the perusal of record, I note that Mr.K.Narendra and Mr.Anil Narendra had been publishing and editing newspapers with slight change in the constitution with prefixing and suffixing words with the common name of Vir Arjun and having the same line of business, the place of business with respect to Daily Vir Arjun/ Vir Arjun or Sandhya Vir Arjun being 5, Bahadur Shah Zafar Marg, New Delhi, more particularly the newspaper Daily Vir Arjun and Vir Arjun were being published with the same registration number. They were the editors, publishers and printers of the newspapers. It is noted from the commissioner's order that one Mr.Mehta was a common employee for Vir Arjun and Sandhya Vir Arjun. The Commissioner whose order has been upheld by the Tribunal was right in holding that a strong presumption in the circumstances

remains that the establishment is nothing else but a continuation of Daily Vir Arjun. Insofar as the judgments relied upon by the learned counsel for petitioners are concerned, I deal with the same as under:

In *The Provident Fund Inspector, Trivandrum Vs. The Secretary, N.S.S. Co-operative Society, Changanacherry*, the respondent was prosecuted for failure to pay to Employees' Provident Fund contribution of employees and employer and failure to submit returns. A printing press being maintained by N.S.S. Co-operative Society of which respondent was secretary. Printing press was set up in 1948 and purchased by society in 1961. The Magistrate acquitted respondent on the ground that as printing press had emerged as new establishment in 1961, Act did not apply to it because of bar contained in Section 16(1)(b). High Court upheld Magistrate's acquittal but on different ground. High Court's reason that establishment did come under purview of Act however Section 16(1)(b) protected it for three years as it was infant establishment. The Supreme Court, held that where at the time of transfer of ownership, the old establishment was completely closed and an entirely new establishment was set up three months later, it was entitled to protection u/s 16(1)(b). Wherein, at the time of the purchase, a new owner came in place of the previous owner; the work of the Press was stopped on sale and was restarted after a break of about three months; the machinery in the Press was also altered; a fresh recruitment of employees took place amongst whom only six happened to be previous employees; and compensation was paid to the workmen by the previous owner, it can be concluded that the old establishment was completely closed when the transfer of ownership took place and an entirely new establishment was set up. This judgment would not help the petitioner, inasmuch as from the facts noted and from the findings in the commissioner's order based on the documents, it has been held that the newspaper Daily Vir Arjun was not closed. Rather it was being published as Vir Arjun with same registration number with Mr. Anil Narendra, Managing Director of the petitioner company, as its proprietor, meaningfully read there is no closure of Daily Vir Arjun. It is not the case of the petitioner that it had purchased Daily Vir Arjun.

In *Union of India and Others Vs. A.S. Amarnath*, wherein the question before the Court was whether Respondent's concern was entitled to infancy benefit. The Supreme Court was of the view that merely because the new entity is utilising the licence exploited by the old firm; the name of the new firm is identical with the name of the old firm; and items of machinery utilised by the old firm have been availed of by the new firm, it cannot be said that the business had continued, and thus the claim of infancy benefit was not available to the new firm. This judgment would also not help the petitioner as there is a clear conclusion that the later concern was a new concern.

In *Pratap Ch. Sukhoni Vs. Regional Provident Fund Commissioner*, wherein the Regional Provident Fund Commissioner issued summons u/s 7A of Act to Petitioner No. 1 stating that it was obligatory on petitioners to comply with

provisions of Employees' Provident Funds Scheme, 1952, from date of starting new business. The Calcutta High Court has held that dissolution of original partnership and commencement of another business in the same name and at the same place would not lead to an inference that the two establishments are same or that the latter is continuation of the earlier, even if some of the employees of the earlier establishment were employed in the subsequent establishment, whereas in the case in hand in view of the finding that the petitioner company newspaper is in continuation of Daily Vir Arjun with Mr. Anil Narendra as Publisher, Editor, this judgment would not help the petitioner.

In *Jagannath Sahu v. The Regional Provident Funds Commissioner, Bhubaneswar*, 1988 Lab.I.Cases 858, wherein 3 brothers doing individual transport business collectively using the same vehicles, staff, stores, assets and movables. All the individual assets and liabilities were transferred and taken over to the partnership business with effect from date of its constitution. The firm was called to pay Provident Fund contribution and admission charges for the first five years of its constitution holding the partnership business is in continuation of old individual business of the brothers. The Orissa High Court held that business carried on by individuals and business carried on by partnership cannot be called the same, or in continuation of the same, business. An individual may be a partner of partnership business and yet carry on his own individual business. Constitution of a partnership business by three brothers gave rise to a different legal entity even though the resources were pooled together and there was identity of business carried on by them individually. On facts this judgment would not be of any help to the petitioner.

In *United Hoteliers Vs. Government of India*, , wherein there was a boarding and lodging establishment at Calicut under the style "Santha Bhavan Boarding and Lodging" which belonged to a company known as Messrs. C. Krishnan Nair & Co. (P) Ltd. That business was wound up by the company. Its goodwill, licences and other privileges and also the utensils used in that establishment were sold individually on 14-2-1965 to certain persons who by a deed dated 15-2-1965 constituted themselves into a partnership under the name United Hotels. On 15-2-1965 Messrs. C. Krishnan Nair & Co. (P) Ltd., retrenched all their workers settling their claims in full. On 20-2-1965, the petitioner firm took an usufructuary mortgage of the building in which the company was running the business Santha Bhavan Boarding and Lodging. With effect from 1st March, 1965, the petitioner started the business of boarding and lodging in the same premises under the style Santha Bhavan. The petitioner claimed that its business is a new establishment entitled to the benefit of Section 16(1)(b) of the Act as already stated. The Central Government, by its order dated 24-10-1970 after stating the above facts, held that there was sufficient continuity between the business run by Messrs. C. Krishnan Nair & Co. (P) Ltd., and the petitioner, and that a mere change in the ownership of the establishment would not affect the date of setting up of the establishment for the purpose of Section 16(1)(b) of the Act. Pursuant to the above decision, the Regional Provident Fund Commissioner,

Kerala issued a notice dated 25-10-1970 to the petitioner, calling upon it to comply with the provisions of the Act with effect from 1-3-1965. The Kerala High Court has held that an essential ingredient for holding that one establishment is continuity of the old one is the existence of old business immediately before the commencement of the new one; and thus there is no question of continuity if the old business was really wound up and ceased to exist before the commencement of the new one. It is not the case here that the Daily Vir Arjun has closed down, more so in view of my conclusion above. This judgment would not help the petitioner.

In Regional Provident Fund Commissioner Vs. Raj's Continental Exports (P) Ltd., , wherein Respondent claimed in-fancy protection under the provisions of the Act. It started production in 1984. The respondent was of the view that it was an extension of the branch of M/s Continental Exporters, a proprietorship concern of one Sampathraj Jain, who was also the Managing Director of the respondent-company. The Supreme Court has held that where there was nothing in common between the two establishments, merely because the proprietor of one concern was the Managing Director of the other, is not sufficient to hold that one was the branch of the other. On facts, this judgment would not help the petitioner.

In M/s Lakshmi Type Foundry and Others Vs. Regional Provident Fund Commissioner, , M/s Lakshmi Type Foundry and Others Vs. Regional Provident Fund Commissioner, , wherein the Petitioner No. 1 was established in the year 1957 and since then it has been manufacturing and marketing printing types at Okhla Industrial Area. It had 11 employees. Gian Chand Aneja and Vinod Kumar Aneja were its partners. This unit was closed down on 11th April, 1990. In the year 1966 the Petitioner No. 2 was established which carried on the business of sole selling agents in India and Chinese printing, binding and allied machinery and also as sole selling agents of lazer printers from USA etc. It had 6 employees. Gian Chand Aneja and Mrs. Veena Aneja were its partners. This concern closed down on 30th December, 2003. The Petitioner No. 3 was established on 2nd April 1979 and was involved in marketing of machinery and equipments and were the sole selling agents for Northern India of offset machinery. As per the letter dated 3rd July, 1989 it was stated that the factory was engaged in manufacturing of printing type which was included in Schedule I, it had employed 22 persons as on 1st April, 1989 and had completed its infancy period. On 20th February, 1990 again a letter was sent by the Respondent stating that the case of the Petitioners was examined and they were rightly found to be under the purview of EPF & MP Act. The Petitioners again replied reiterating their contentions. On 31st May, 1990 a letter was received from the Respondent giving the reasons for clubbing the three firms i.e. (a) all the three units were operating from the same premises and engaged in related activities similar to each other, (b) all the firms were owned, managed and controlled by closely related sets of persons with Mr. G.C. Aneja as partner in all the three firms and (c) all the firms were managed and controlled by G.C. Aneja either in the

capacity of partner or karta. On 19th July, 1990 summons were sent to the Petitioners to appear in person or through authorized representative along with attendance register, membership eligibility register, cash book and vouchers, payment register/ pay bills and any other documents necessary for ascertaining the attendance, payments, etc. Pursuant to the summons, an affidavit of Shri G.C. Aneja was filed on behalf of the Petitioners. The Petitioners were granted opportunity to cross-examine Mrs. S. Sharma the enforcement officer and written arguments were filed by the Petitioners. The impugned order was passed on 12th December, 1994 holding that since the three establishments are one for the purposes of coverage under the EPF & MP Act and as on 1st April, 1989 the combined employment strength of the firm was 22 persons, the establishment was covered under the provisions of EPF & MP Act and thus the Petitioners were summoned to come with records for determination of the dues. The Petitioners impugned the order dated 12th December, 1994 before this Court when this Court directed that though the proceedings under the aforesaid Act will go on but demand if any raised shall not be enforced. The Delhi High Court held that merely on the basis of common premises or common ownership, it cannot be held that there is a functional integrity in the establishments. Again, the facts of this case being different from the case in hand, I do not think this judgment would be of any help to the petitioner to sustain its case.

Similarly in *Bajaj Food Products Vs. Central Board Trustee and Others*, , the facts were the Mill was located in a non-conforming area and it can no longer continue the industrial activities at the present site and in fact the heavy and large scale industries are not permitted to be located in the Union Territory of Delhi. Apart from it, the contention was that the industrial undertaking per se is economically unviable and unprofitable. This Court held that the fact that two of the erstwhile partners have started a new business in the same premises under a new name is not sufficient to prove that the new establishment is a continuation of the old establishment. The old firm was dissolved, its machinery disposed of, employees were retrenched, benefits admissible under law were given to them, Sales Tax Registration number was surrendered, new partnership came into existence carrying on a new business, partners of the new partnership firm have raised their own capital from their own resources; thus there was no semblance between the two and the new business started was not in continuity of the old one. I am afraid, this judgment would be of no help to the petitioner.

In *Regional Provident Fund Commissioner Vs. Wipro Ltd.*, , wherein *M/s. Margarine and Refined Oil Company Pvt. Ltd.* which was closed long back had stopped its operation completely in 1980 after paying the retrenchment compensation to the employees. This closed establishment was purchased by the respondent and according to the respondent it was their new establishment and there was no continuity. The RPF commissioner initiated Sec 7A proceedings and also issued a notice under Sec. 14/14-A. The Karnataka High Court has held that where old concern had stopped its functioning, its employees were completely discharged and on purchase, it employed two or three employees of the old

concern that by itself would not make the old concern as continuing one. This judgment can be differentiated on facts.

In *Regional Provident Fund Commissioner and Another Vs. Dharamsi Morarji Chemical Co. Ltd.*, wherein the Ambarnath Factory was established as long back as in the year 1921 or thereabout while the Roha factory was established as late as in July 1977. The Ambarnath factory manufactures heavy inorganic chemicals and mainly fertilizers while the Roha factory manufactures only organic chemicals. The products manufactured at these two factories are thus separate, distinct and different. The workers of these two factories are also separate. Though at the time when the Roha factory was established or set up, about 5 or 6 employees of the Ambarnath factory were sent to Roha factory to take advantage of their expertise and experience and help set up the Roha factory, this circumstance by itself has hardly any significance in deciding as to whether in law the two factories constitute one or separate establishments. The Supreme Court has held that unless there is evidence of supervisory, managerial or financial control between the units, mere common ownership by itself is not sufficient to hold the firms to be one. I note, in this case the findings of the Commissioner do prove that the petitioner company is in continuity of Daily Vir Arjun, more particularly it has come on record that Daily Vir Arjun was being published by Mr. Anil Narendra as proprietor later on converted as a company.

In *Periwal Trading Corpn. Vs. Regional P.F. Commissioner*, wherein the facts of the case were:

"M/s Periwal Trading Corporation (hereinafter to be referred to as the firm) is a firm with Shri Rurendra Periwal son of Shri B.P. Periwal, Shri Hari Shankar son of Shri G. P. Periwal, Smt. Shakuntala Devi wife of Shri B.P. Periwal and Smt. Savitri Devi wife of Shri G.P. Periwal as its four partners. This firm carries on the business of distribution of Usha Water Coolers and Electronic Accessories besides service and repair work of the Godrej products sold by the company. Vide letter dated March 19, 1983 the firm requested the Commissioner for its voluntary coverage under Sub-section 4 of Section 1 of the Act w.e.f. April 1, 1983 stating that it had never employed more than 19 persons to come under the provisions of the Act otherwise, the Commissioner acceded to the request of the firm and allotted it Code No. RJ/3490 and the firm started depositing the provident fund dues from April 1983. The Commissioner received a report from the Provident Fund Inspector to the effect that both the company and the firm were part and parcel of the same establishment and that the total number of persons employed by the said combined establishment was 21 as on April 30, 1976 and, as such, on that date that condition for coverage under Clause (b) of Sub-section (3) of Section 1 of the Act had been fulfilled. After issuing notice, the Commissioner conducted an enquiry u/s 7-A of the Act and, vide the impugned order dated August 18, 1988, held that the company as well as the firm were the family concerns of Shri B.P. Periwal and Shri G.P. Periwal. the two Directors of the company and were one establishment for the purpose of the Act. He further held

that a sum of Rs. 77,915/- was payable by the company as provident fund dues and administrative charges for the period from May, 1976 to January, 1982 and a sum of Rs. 59,858/- was payable in the same account by the firm for the period from May, 1976 to March, 1983 and directed that if the amounts were not deposited within 15 days of the receipt of the order the same be recovered as arrears of land revenue. The copies of the order were sent to the company as well as to the firm vide letter dated August 20, 1988, (Annr.-1) with a direction to report compliance within the period specified in the order. The company as well as the firm challenged the impugned order dated August 18, 1988 by filing writ petitions No. 697/89 and 342/89 respectively, on the grounds that they were separate establishments independent of each other and had no functional integrality and further that the establishment owned by the company could not be clubbed with the establishment owned by the firm."

The Rajasthan High Court has held that in absence of a common employer, no test can be applied to consider whether two establishments are part of each other or not.

In *Evans Food Corporation Vs. Union of India (UOI) and Another*, wherein Evans commenced its business in 1973, as a proprietary concern, of Evan Punnen, the petitioner. On January 1, 1983, it was reconstituted and made a firm by adding Babu, the second son of the Managing Director as a partner. On August 18, 1988, Biju Evan, another son of the Managing Director of Evans as proprietor of "Super", was the sole distributor of the product of Evans. On November 1, 1983, Super was constituted as a firm by admitting Ms. Rani Susan, the daughter of the Managing Director as a partner. On April 1, 1985, Mrs. Chandi, the mother of the Managing Director and Mrs. Saramma, the wife of the Managing Director, were added as partners of Super. The Kerala High Court held that the broad tests to find out the true relationship between the two establishments are unity of ownership, management and control, functional integrality, general unit and unit of employment. Suffice to state, this judgment would be of no help to the petitioner.

In *M/s. Niton Industries Vs. The Union of India and others*, wherein Inventa Value Industries (Bombay) Private Limited (Res. No. 3) was a covered establishment under the Act. The Department had sought compliance from the establishment, in respect of M/s. Niton Industries treating them as part and parcel of the establishment. The Bombay High Court has held that when there is no inter-dependency in management, control and finance, it cannot be said that there is functional integrality between the establishments. Inter-dependency of two units can be inferred by observing if one unit is adversely affected or is closed down because of the closure of the other unit and it cannot survive unless the other unit also functions.

In *Dharamsi Morarji Chemicals Co. Ltd. Vs. N.G. Desai, The Regional Provident Fund Commissioner and others*, wherein the petitioners were a public limited company in existence since about the year 1921. It had then established a

factory at Ambarnath, District Thane. This factory manufactured heavy inorganic chemicals and fertilisers, but predominantly fertilisers. Several years thereafter the Company established on 9th July, 1977 another new factory at Roha. District Kolaba for the manufacture of certain organic chemicals which are not manufactured at the Ambarnath factory. The Bombay High Court has held that where the products manufactured at two factories are separate and different, the workers are separate, registration numbers are different, work managers and plant supervisors are separate, each factory has a separate and independent set of workmen who are not transferable from one factory to another, the workers at one factory are recruited directly from outside sources, there is no supervisory control by either of the factories over the other, the two factories have no inter-connection in the matter of supervisory, financial or managerial control; the conclusion is irresistible that two factories constitute different entities and separate establishments. The mere fact that the company which owned both the factories ultimately consolidated the accounts of the two factories for the purpose of Companies Act and Income Tax Act cannot result in the conclusion that two factories constitute one establishment. The facts being not similar, would not help the petitioner in any manner.

22. Insofar as the judgments relied upon by the learned counsel for respondent are concerned, I deal with the same as under:

In *L.N. Gadodia and Sons and Another Vs. Regional Provident Fund Commissioner*, wherein Petitioner No. 1 and Petitioner No. 2 were sister concerns. The office of the Respondent wrote to them vide their letter dated 11.6.1990 calling upon them to comply with the provisions of the Provident Funds Act, failing which legal action would be initiated against them. The Petitioner filed an application, and disputed clubbing of the two concerns for the purposes of their coverage under the provisions of the said Act. The application was accordingly heard by the Regional Provident Fund Commissioner (Enforcement and Recovery) Delhi, under the provisions of Section 7A of the Provident Funds Act. The Supreme Court held that when the two establishments are run by the same family under a common management, with a common workforce and with financial integrity, they are treated as branches of one establishment.

In *Sanjay Automobiles Vs. Regional Provident Fund Commissioner and Another*, wherein the petitioner's establishment was a new establishment set up in May 1969 and was as such exempt from the provisions of the Act for a period of five years. The Regional Provident Fund Commissioner, Respondent No. 1, has held that it was not a new establishment, but there was only a change of ownership. The business of servicing automobiles and allied work was being carried on in the same premises earlier also and the same business was being continued by a new set of persons from May, 1969. The Regional Provident Fund Commissioner has determined a sum of Rs. 40, 517.00 payable by the Petitioner as employers' and employees' share of Provident Fund contributions including Family Pension

Fund contributions for the period May 1969 to June 1974 and a further sum of Rs. 1215.50 as administrative charges for the same period. The Allahabad High Court has held that a newly set up establishment is one having all the ingredients of having been started from scratch. Where the business was carried on in the same premises and with the same machinery, mere change in the ownership and management would not make it a new establishment. Moreover, the period of infancy has to be calculated from the date of setting up of the business initially and it would not relate back to the date when the establishment had twenty or more workmen or from the date of change of management and ownership of the establishment.

In *Rajasthan Prem Krishan Goods Transport Co. Vs. Regional Provident Fund Commissioner, New Delhi and Others*, wherein the appellant is aggrieved against the action and orders of the authorities established under Employees Provident Fund and Miscellaneous Provisions Act, 1952 in treating the appellant and the 3rd respondent as one and holding the ostensible separate existence of these two as artificial and non-existent. The Supreme Court held that there was unity of purpose on each count inasmuch as the place of business was common, management was common, letterheads bore same telephone numbers and ten out of thirteen partners were same; the two entities are to be treated as one.

In *Dudhiben Dharamshi and Others Vs. New Jehangir Vakil Mills Ltd., Bhavnagar*, wherein the employee who belonged to the second shift the mill working at 3-30 p.m. had in the day in question, i.e., April 4, 1966, started from his house to go to the mill on that afternoon. The mill had devised a rule in order to see that the second shift start at 3-30 p.m., that the workers should be inside the mill compound five minutes before the shift commenced. The learned Judge believed the presence of the witness Bhikha Mohan, Ext. 26, a co-worker near the gate of the mill about the time when the deceased was knocked down by a cyclist and he died as a result of this accident. The deceased was standing and talking possibly with fellow workers at about 3.20 p.m. when the incident was said to have occurred. It is on these facts that the Commissioner as well as the learned single Judge held that the theory of notional extension of the premises could not be invoked on these facts. Therefore, the claim of compensation having been negatived, the dependents have filed appeal. The Gujarat High Court observed upon the "incident of employment" while observing that where the employer has prescribed the time and place for convenience and orderly ingress and egress of the workmen so as to punctually start the second shift, the doctrine of notional extension would apply to such a case if the workman while obtaining access from the prescribed gate meets with an accident because this was the only incident of employment which brought him in the special danger zone in order to fulfil the conditions of his employment. This case was primarily related to grant of compensation and has no relevance to the issue in hand.

In *Sayaji Mills Ltd. Vs. Regional Provident Fund Commissioner*, wherein prior to December, 1954 a company called "Hirji Mills Ltd" was carrying on the business

of manufacture and sale of textile goods in its factory situated at, Fergusson Road, Lower Parel, Bombay. That company was ordered to be wound up by the High Court of Bombay and its assets were ordered to be sold by the Official Liquidator. At the sale held by the Official Liquidator, the appellant which was a Public Limited Company, purchased the above said factory. It is stated that the workmen had been discharged earlier and the goodwill of the company in liquidation had not been acquired by the appellant. There was discontinuance of the work of the factory for some time. The appellant restarted the factory on November 12, 1955. The appellant claims that it invested some fresh capital in the business, renovated the machinery and also employed workmen on fresh contracts though about 70 per cent of the workmen were formerly working in that factory. It is also contended that the appellant commenced to produce certain new types of goods at the factory after obtaining a new licence to run it. When by the end of February, 1956 the Regional Provident Fund Commissioner made certain enquiries about the working of the factory in order to enforce the Act against it the appellant wrote to him stating that the factory was an infant factory as it had established it on November 12, 1955 and the period of three years had not elapsed from that date. The appellant claimed exemption from the operation of the Act relying upon Section 16(1)(b) thereof. The Supreme Court held that wherein the production in the factory was stopped pursuant to the winding up order; subsequently the factory was sold and production recommenced by absorbing substantial number of employees under old management; it was the same old factory and not a new one.

23. In view of my conclusion in para Nos. 19 to 21, coupled with the fact that two authorities below have held that the petitioner establishment is in continuity of Daily Vir Arjun, it is surely not a case where the findings of the Commissioner and the conclusion of the Tribunal can be interfered with. The interference by High Court in exercise of power under Article 226 of the Constitution is very limited more particularly if it is a case of no evidence, which this Court is of the view, is not.

24. I do not see any merit in the writ petition. The same is, accordingly, dismissed.

25. No costs.