2019 INSC 1021

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4474 OF 2010

M/S. SHREE VISHAL
PRINTERS LTD., JAIPUR ….Appellant(s)

VERSUS

REGIONAL PROVIDENT
FUND COMMISSIONER, JAIPUR & ANR. ….Respondent(s)

WITH

CIVIL APPEAL NO. 4476 OF 2010
CIVIL APPEAL NO. 4475 OF 2010

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. Welfare economics, enlightened self-interest and the pressure of trade unions led larger factories and establishments to introduce schemes that would benefit their employees, including schemes like that of the

provident fund.[1] However, with an increasing number of small factories and establishments coming into the market, the employees of such fledgling units remained deprived of these benefits. In order to diffuse such benefits in establishments across the market, the legislature promulgated the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'said Act'). The said Act was enacted with the avowed object of providing for the security of workers in organised industries, in the absence of any social security scheme prevalent in our country. To avoid any hardship to new establishments, a provision was made for exempting them from the aegis of the said Act, for a period of five years. This period was reduced to three years in 1988 and the exemption provision was completely removed from 22.9.1997.

2. The relevant provision of the said Act is reproduced hereinunder:

> "**16. Act not to apply to certain establishments. -** (1) This Act shall not apply-
> …. …. …. …. …. ….
> (d) to any other establishment newly set up, until the expiry of a period of three years from the date on which such establishment is, or has been, set up.

1 L.N. Gadodia & Sons and Anr. v. Regional Provident Fund Commissioner, (2011) 13 SCC 517

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

3. The present appeals are concerned with this exemption provision as the three establishments in question claimed exemption in respect of application of this provision of the said Act.

4. The three appeals filed before us are by three limited companies (two separate legal entities and one, an establishment of the parent company), though the question of their exemption has been dealt with by a common order of the Regional Provident Fund Commissioner, Rajasthan (for short 'RPFC'). This is so, as all the three establishments are sought to be denied exemption on the ground that they are effectively part of the same parent establishment, being M/s. Bennett, Coleman & Company Limited (for short 'BCCL'), Mumbai. Civil Appeal No. 4475/2010 is by BCCL, Jaipur. We may note that the said Company is not a separate legal entity but was really claimed to be an establishment of the parent company, albeit set up in Jaipur. Civil Appeal No. 4476/2010 is by M/s. Times Publishing House Limited, Jaipur (for short

'TPHL, Jaipur') while Civil Appeal No. 4474/2010 is by M/s. Shree Vishal Printers Limited, Jaipur (for short 'SVPL, Jaipur').

5. Before we proceed with the factual matrix as to how the controversy arose, it would be appropriate to examine the contours within which this aspect would have to be examined. It would be appropriate to take note of another provision, Section 2A of the said Act, which was inserted by Act 46 of 1960, w.e.f. 31.12.1960. We may note that there is no definition of an "establishment" under the said Act, and thus, the jurisprudence that developed resorted to the provisions of the Industrial Disputes Act, 1947 (for short 'ID Act') for the said purpose. Section 2A of the said Act reads as under:

> "**2A. Establishment to include all departments and branches.** - For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment."

6. The aforesaid provision was introduced so as to obviate the chances of creation of different departments and branches by an

establishment and then seek exemptions on the basis of the same being new establishments.

7. There is really no dispute on the jurisprudential aspect, as all the learned counsels for the parties, i.e., Mr. Joydeep Gupta, learned senior counsel in Civil Appeal Nos. 4475/2010 and 4476/2010 and Mr. Dhruv Mehta, learned senior advocate in Civil Appeal No. 4474/2010, as well as the counsel for the Department, Mr. Keshav Mohan, Advocate have relied upon the same set of judicial pronouncements. To put the legal perspective at the threshold would, thus, be appropriate.

8. The first judgment is in ***Management of Pratap Press, New Delhi v. Secretary, Delhi Press Workers' Union, Delhi & Its Workmen*** [2]. The dispute was one under the ID Act and also dealt with the publication of a newspaper as in the present case. Pratap Press was sought to be treated as part of the same industrial unit as Vir Arjun and Daily Pratap. The tests are taken from an earlier judgment, in ***Associated Cement Companies Limited, Chaibassa Cement Works, Jhinkpani v. Workmen***[3]**,** and it was observed in para 5 as under:

2 AIR 1960 SC 1213
3 AIR 1960 SC 56

“5. In Associated Cement Co., Ltd. v. Workmen, this Court had to consider the question whether the employer's defence to a claim for lay-off compensation by the workers of the Chaibasa Cement Works that the laying off was due to a strike in another part of the establishment, viz., limestone quarry at Rajanka was good. In other words the question was whether the limestone quarry of Rajanka formed part of the establishment known as the Chaibasa Cement Works within the meaning of Section 25E(iii) of the Industrial Disputes Act. While pointing out that it was impossible to lay down any one test as an absolute and invariable test for all cases it observed that the real purpose of 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. It is obvious there is an essential difference between the question whether the two units form part of one establishment for the purposes of Section 25E(iii) and the question whether they form part of one single industry for the purposes of calculation of the surplus profits for distribution of bonus to workmen in one of the units. Some assistance can still nevertheless be obtained from the enumeration of the tests in that case. Of all these tests the most important appears to us to be that of functional "integrality" and the question of unity of finance and employment and of labour. Unity of ownership exists ex hypothesi. Where two units belong to a proprietor there is almost always likelihood also of unity of management. In all such cases therefore the Court has to consider with care how far there is "functional integrality" meaning thereby such functional interdependence that one unit cannot exist conveniently and reasonably without the other and on the further question whether in matters of finance and employment the employer has actually kept the two units distinct or integrated.”

9. The second judgment relied upon for this purpose is in ***L.N. Gadodia & Sons and Anr. v. Regional Provident Fund Commissioner***[4]. This case dealt with the said Act and the question which arose was whether two sister concerns, having different dates of incorporation, could be treated as two separate establishments. The judgments in ***Associated Cement Companies Limited***[5] and ***Management of Pratap Press, New Delhi***[6] were referred to for the said purpose. In para 16 of this case, the observations *qua* the ***Associated Cement Companies***[7] in para 11, insofar as relevant is extracted 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, we say that the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of 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

4 (2011) 13 SCC 517
5 (supra)
6 (supra)
7 (supra)

several tests may fall for consideration at the same time. 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."

10. Thereafter, while discussing some subsequent judgments, the following observations were made:

"18. Accordingly, depending upon the facts of the particular case, in some cases the units concerned were held to be the part of one establishment whereas, in some other cases they were held not to be so. *Regl. Provident Fund Commr. v.. Dharamsi Morarji Chemical Co. Ltd*. reported in [(1998) 2 SCC 446] and *Regl. Provident Fund Commr. v. Raj's Continental Exports (P) Ltd.* reported in [(2007) 4 SCC 239] are cases where the two units were held to be independent. In *Dharamsi Morarji* (supra), the appellant company was running a factory manufacturing fertilizers at Ambarnath in District Thane, Maharashtra since 1921. The appellant established another factory at Roha in the adjoining district in the year 1977 to manufacture organic chemicals with separate set of workers, separate profit and loss account, separate works manager, plant superintendents and separate registration under the Factories Act. The two were held to be separate for the purposes of coverage under the Provident Funds Act. In *Raj's Continental Export* (supra), *Dharamsi Morarji* was followed since the two entities had separate registration under the Factories Act, 1948, Central Sales Tax Act, 1956, Income Tax Act, 1961, Employees' State Insurance Act, 1948 separate balance sheets and audited statements and separate employees working under them.

19. As against that in *Rajasthan Prem Krishan Goods Transport Co.v. Regl. Provident Fund Commr.* reported in [(1996) 9 SCC 454] and *Regl. Provident Fund Commr., v. Naraini Udyog* reported in [(1996) 5 SCC 522] the concerned units were held to be the units of the same establishment. In *Rajasthan Prem Krishan Goods Transport*

Co. (supra) the trucks plied by the two entities were owned by their partners, ten out of thirteen partners were common, the place of business was common, the management was common, the letter-heads bore the same telephone numbers. In *Naraini Udyog* (supra) the two entities were located within a distance of three kilometers as separate small-scale industries but were represented by the members of the same Hindu Undivided Family. They had a common head office at New Delhi, common branch at Bombay and common telephone at Kota. The accounts of the two entities were maintained by the same set of clerks. Separate registration under the Factories Act, the Sales Tax Act and the ESI Act were held to be of no relevance and the two units were held to be one establishment for the purpose of the Provident Funds Act."

11. Now turning to the facts of the cases before us, we may note at the inception itself, Civil Appeal No.4475/2010 was not really argued before us. In fact, the impression we got was that the counsels appearing for the appellants were of the belief that it was facts of this case which had caused confusion in the mind of the RPFC as, in their perspective, exemption could not have been really sought within the provisions of the said Act in this case. This is so, as BCCL, Jaipur was not a separate legal entity, but, part of the parent company directly. The case would, thus, be fully covered by the provisions of Section 2A of the said Act and mere location of departments and branches in other cities would not have extended the benefit of the exemption to this company. Thus, this appeal, in any case, has to fail.

12. Insofar as Civil Appeal No. 4476/2010 is concerned, learned senior counsel sought to refer to the provisions of the agreement in question, between the two parties, which gave rise to the Provident Fund Commissioner to initiate proceedings. This agreement is dated 25.7.1986. It appears that this agreement was in supersession of an earlier agreement dated 13.12.1985. The business reason stated for entering into this agreement was the commencement of publication of the Jaipur edition of the daily newspapers of BCCL, Mumbai, i.e., The Times of India and Navbharat Times.

13. The agreement records that TPHL had opened an office at 8-9, Anupam Chambers, Tonk Road, Jaipur, where it had equipped itself with trained and experienced staff and all infrastructural, secretarial, administrative and marketing facilities. Since 23.9.1985, it had been providing various services to BCCL, Mumbai, including office space for use and occupation, accounting facilities, stenographers, typing, and so on. The services which were now further sought to be provided to BCCL, Mumbai included marketing, development work, realisation of dues, adequate office space, accounting facilities, infrastructure,

packing/bundling of daily newspapers (at the cost of BCCL, Mumbai), etc. Clause 1(g) of the agreement states as under:

> "1. "TPH" shall render the following services effective from 1st August, 1986 to "Bennett":-
>
> xxxx xxxx xxxx xxxx xxxx
>
> (g) All staff employed by "TPH" will carry out the instructions given by "Bennett" and in case of working problems; "TPH" shall at the request of "Bennett" remove the problems. The staff employed by TPH shall not be considered as employees of "Bennett" but they will remain the staff of "TPH" and "TPH" shall be responsible to the employees."

14. BCCL, Mumbai was to pay to TPHL an amount calculated @ 5% as commissions on Net Advertisement Revenue and Net Circulation Revenue.

15. On all the three establishments being called upon to comply with the provisions of the said Act, all three of them sought exemption under Section 16(1)(d) of the said Act. In view thereof, the RPFC initiated proceedings under the said Act, and issued a notice under Section 7A of the said Act, dated 28.10.1987. The proceedings were held thereafter, and the RPFC passed a common order in respect of all the three

establishments on 4.10.1990 opining that they were not entitled to the exemption. The appeal filed before the Employees' Provident Fund Appellate Tribunal by all the three establishments also failed, as it was dismissed on 10.10.1997. The same fate befell all three in the proceedings before the learned Single Judge, *vide* order dated 20.12.2006 and the Division Bench of the High Court, on 11.4.2008. Thus, practically four forums have scrutinised the cases *qua* all these three establishments.

16. The learned senior counsel, Mr. Joydeep Gupta, appearing for TPHL, however, contended that the fallacy which came in the order of the RPFC was of jumbling of the facts in issue, relating to the three establishments, and thereafter, there has really been no scrutiny before any of the forums, other than giving their imprimatur to the said order. In fact, the High Court effectively refused to look into the matter as two forums had already gone into that aspect.

17. Learned senior counsel for the appellant, TPHL, sought to take us through the order of the RPFC, Rajasthan, as according to him, that was

the material order to show that from the inception, there was a problem arising from the manner in which the facts relating to the three establishments were mixed up. He contended that each of these establishments were required to be connected to BCCL, Mumbai, and, it was not a case which could have been built on with connectivity with BCCL, Jaipur, as was sought to be done.

18. We may note at this stage itself that though, in principle, there can be no dispute on this proposition, it does not really appeal to us for the reason that it was intrinsically predicated on the ground that BCCL, Jaipur was a different establishment. Once that is conceded as not so, BCCL, Jaipur was really only a part of BCCL, Mumbai. The connection of the other two establishments with BCCL, Mumbai or, for that matter, BCCL, Jaipur would, thus, not cause an intrinsic fallacy in the order of the RPFC.

19. Learned senior counsel sought to emphasise the distinctive features why it could not be said that there was any direct connect between the two establishments, i.e. BCCL, Jaipur and TPHL. A great emphasis was

laid on the facts that these are two separate registered companies, under the then Companies Act, 1956, that there is no commonality of directors or shareholders and no direct financial unity. The balance sheet as well as profit and loss accounts are separate, and there were varying figures of independent and separate employees of the two entities, with there being no transfer of employees *inter se* BCCL, Mumbai and TPHL or, for that matter, between BCCL, Jaipur and TPHL.

20. If the aforesaid factual matrix is analysed within the principles of what would constitute one establishment, as set out in the ***Associated Cement Company*** **case,**[8] it is obvious that there are various parameters dependent on the factual matrix of each case, which have to be examined. Undoubtedly we are not dealing, in this case, with a branch or a unit of BCCL, Mumbai. Thus, a test of unity of ownership, management and control may not really be applicable, but the test would be of functional integrality or general unity of purpose, in the given factual situation. There is no direct unity of employment. In any case, it is the test of functional integrality or general unity of purpose which would have to be applied in the present facts if the two establishments have to be clubbed

8 AIR 1960 SC 56

for the purposes of the provisions of the said Act.

21. We may note that one of the arguments of learned senior counsel for the appellant was based on the business model of outsourcing and it was sought to be suggested that if one aspect of work is outsourced to another company, the same would not satisfy the aforesaid tests. However, we did point out to the learned senior counsel that the business model of outsourcing really does not have history that old or was not much prevalent in respect of the time period which we are discussing; but it is a relatively later phenomenon and, thus, that principle would not really be applicable for testing the nature of linkage, if any, for the time with which we are concerned.

22. Learned counsel for the respondent sought to emphasise that the two companies were functionally dependent. In fact, what was pointed out was that practically all three companies were working from the same building, albeit on different floors, and the office of TPHL was open for the use of BCCL, Mumbai employees. It was also sought to be contended that Mr. Sunil Gupta, Manager of BCCL, Mumbai was signing

papers relating to TPHL and the examples given of the same are notices relating to the closure of offices of the two on *Mahashivratri* and *Holi*. However, a perusal of the documents in question shows that they were really endorsements to TPHL, which would be natural considering that there would be no requirement of work to be sourced in case the office of BCCL, Mumbai itself was closed, and no editing, marketing work was required to be carried out. Similarly, on the issue of security staff, since the building was one, once again, logically common directions were possible. However, what is also emphasised is that the executive of TPHL was using the letterpad of BCCL, Mumbai.

23. The important aspect, in our view, which was emphasised by learned counsel for the respondent was the nature of the agreement which provided for both the space and the staff to be made available by TPHL for the benefit of BCCL, Mumbai. The expenses of the establishment, for example, electricity bill, maintenance costs, etc., were to be borne by TPHL.

24. If we analyse the aforesaid facts on the touchstone of functional

integrality or general unity of purpose, it is difficult, if not impossible, to disagree with the reasoning of four forums, which are sought to be assailed before us.

25. Learned counsel for the appellant sought to rely upon the judgment in the ***Management of Pratap Press case***[9] to contend that in the case of similar facts, it was held to the contrary, and the units were held to be distinct establishments. An examination of the said judgment would show that though they were all in the same nature of business, the functions of the press and the newspaper were held not so interdependent that one could not exist without the other. The activities of the press unit were found to be independent of the activities of the paper unit, and the view of the Tribunal, that they are two distinct and separate industrial units was not found worthy of interference.

26. The aforesaid judgment had emphasized the most important test to be that of functional integrality and opined that unity of ownership exists *ex hypothesi*.

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9 (supra)

27. We are, however, not able to persuade ourselves to agree with the submission of the learned senior counsel for the appellant for the reason that what has effectively been done in the present case, under the agreement in question, is that TPHL has handed over its office space, employees and control to BCCL, Mumbai, for all practical purposes, to the extent that the letter pads are also being used without any due regard as to which entity the instructions are being issued from. This is not a case of a singular document being issued, but a number of documents where this practice has been followed. Just to make an endeavour on paper to somehow keep these two segregated for various labour law ramifications would not be an appropriate principle to accept, more so taking into consideration the very purpose for which the said Act was enacted.

28. We have, thus, no doubt in rejecting even the case of TPHL.

29. Now turning to Civil Appeal No. 4474/2010 of SVPL, Mr. Dhruv Mehta, learned senior counsel, while adopting the arguments of Mr. Joydeep Gupta, learned senior counsel, sought to emphasise the same,

possibly in a different perspective.

30. Learned senior counsel contended that since an "establishment" was not defined under the provisions of the said Act, as noticed above, the provisions of the ID Act were resorted to for the said purpose. In the context of the approach adopted both, by the learned single Judge, and the Division Bench of the High Court, it was contended that they ought not to have merely rejected the petitions on a broad principle of non-requirement of the relevant facts being looked into, the same having been dealt with by the RPFC and the appellate authority. It is in this context that he invited our attention to the judgment in the case of ***Associated Cement Company***[10], more specifically to paras 9 and 11. The issue of the Industrial Tribunal under the ID Act, being a final court of facts, was debated in the context of Section 25-E(iii) of the ID Act while referring to the expression "in another part of the establishment." In that context it was opined that this question could not be treated as a pure question of fact as it involved consideration of the tests which should be applied in determining whether a particular unit is part of a bigger establishment. It was, thus, said that "indeed, it is true that for the application of the tests

10 (supra)

certain preliminary facts must be found; but the final conclusion to be drawn therefrom is not a mere question of fact."

31. Elucidating the matter further, *qua* the problem of not having really specific tests, it was observed in para 11 that there were several tests which were required to be resorted to especially where the establishments were in different locations. This paragraph has already been extracted by us before.

32. On the facts of the case, it was stated that SVPL was incorporated on 20.6.1984 and entered into the agreement in question on 1.10.1985. It claimed exemption on 31.12.1986 and has been making provident fund contributions from 24.2.1988. Though it was not disputed that the said Company, for the relevant period of time, was carrying out exclusive work only for BCCL, Mumbai, it was pleaded that there was no commonality of directors and shareholders of the two companies, nor was there a cross shareholding, an aspect for which charts have been filed. The subsequent fact was also that, at some stage, it got merged with another company, i.e., M/s. Raghuvar India Limited.

33. Now examining the agreement with BCCL, Mumbai, dated 1.10.1985, BCCL, Mumbai, having commenced publication of the Jaipur edition of the two newspapers is stated to have approached SVPL for printing the said newspapers on a contract basis. SVPL was to employ the necessary personnel for carrying out various tasks and had to print the newspapers. The remuneration was payable by BCCL, Mumbai to SVPL at Rs.24,000/- per day, for the two daily newspapers. The printing press was elsewhere, but the business office of SVPL was also located in the same building as BCCL, Jaipur, albeit stated to be at a different floor. One of the clauses, which has been referred to, which shows that there was no exclusivity of dealing, is clause 28, which reads as under:

> "28. "SHREE VISHAL" will be at full liberty to undertake any other contract for printing newspaper/journals from any other party/s provided it ensures timely printing of the daily newspapers of "Bennett" and complies with Clause 32 of this agreement."

34. In the aforesaid context, it may be noted that clause 32 referred to in this clause is only a 'Confidentiality Clause'.

35. A great emphasis was laid by learned senior counsel appearing for the said entity on the 'Non-Exclusivity Clause' in the agreement between

the two parties, i.e., clause 28. Once again, the emphasis was on the two companies being separate legal entities, there being no commonality of directors or shareholders, or direct financial control. The balance sheet and profit and loss accounts were also separate. Another aspect emphasised was that the printing press of SVPL was located at a different premises from where the business was really being carried on, though naturally, the control of the business would be from the office located in the same premises as BCCL, Mumbai. It is not, however, disputed that SVPL had, at its own cost, given adequate covered area adjacent to the printing press to BCCL, Mumbai for storing the newspaper/printing. The consideration, which was being paid to SVPL for printing included the cost of making available the aforesaid space for packaging and storage operations.

36. Learned counsel for the respondent, once again, sought to emphasise the functional dependence between the companies. The aspect of Mr. Sunil Gupta, Manager of BCCL signing papers relating to SVPL was emphasised, including notices of closure, as discussed in the case of TPHL. The common factor, again, is of BCCL, Mumbai issuing orders

on the letter pad of SVPL. In fact, the nature of communications and orders issued do suggest that all three were working towards the common object of bringing out a newspaper.

37. The aforesaid would not have been sufficient by itself, but for the application of the functional integrality test, which linked them to be part of the same establishment.

38. We may add here that in the impugned orders it is not very clear as to whether the reference is being made to BCCL, Mumbai or to BCCL, Jaipur. However, as noticed before, the same is not of much consequence for the reason that BCCL, Jaipur is admittedly a branch office of BCCL, Mumbai.

39. We have examined this case more closely because of the factual pleas raised by learned senior counsel for SVPL. We have also taken note of the fact that as per the submissions of the learned senior counsel, the said unit was subsequently merged into another company, an aspect already noticed aforesaid.

40. Despite the aforesaid, in the complete conspectus of facts, after divorcing different aspects of the three establishments, we are unable to come to a conclusion different from the one which we have come to for TPHL. We believe that the very nature of the working of SVPL and the other two entities show the functional integrality test to be satisfied. They may be different legal entities, an arrangement may have been made to have different directors and shareholders, but the nature of control and integrality of functionality, between the three entities is quite apparent from the facts set out hereinabove. Each one of the facts by itself may not be conclusive, but taken as a whole, there can be no other conclusion, than the one arrived at by the RPFC. We are doing so, quite conscious of the fact that there is undoubtedly some jumbling which has arisen in the order of the RPFC, which has been affirmed throughout. But then, the case of the appellants was built on the principle that all these three entities have really no functional integrality vis-à-vis BCCL, Mumbai. As it emerged subsequently, and was conceded before us; there is little doubt that BCCL, Jaipur is a unit of BCCL, Mumbai, and the other two units have linkages and are controlled by BCCL, Jaipur in a

manner which would satisfy the functional integrality test.

41. The said Act being a beneficial legislation, the object of excluding the infancy period of five years (later reduced to three years) from the rigours of the Act, was only to provide to new establishments, a period to establish their business, and not to permit different kinds of routes to be created to evade the liability under the said Act.

Conclusion:

42. We have, thus, no hesitation in coming to the conclusion that the findings *qua* all the three appellants satisfy the functional integrality and the general unity of purpose test, and the same are met in the facts of the present case.

43. We may also notice another aspect before parting with the case. On a Court query as to what would be the liability arising from the impugned orders, it was stated to be in the range of only about Rs.15 lakh for which five judicial forums have now been troubled. The other aspect is that this matter has been prolonged over so many years and the only avenue open for the RPFC is to impose damages under Section 14B of the said Act, which, at the relevant time, limited the damages amount to twice the original amount. The net result is that the liability would only

double during this long period, over the last more than thirty years. It is only by a subsequent legislative amendment, now repealed, by introduction of Section 7Q, inserted w.e.f. 1.7.1997, that the provision was made for interest to be payable at 12 per cent per annum, which would naturally apply prospectively. Thus, the appellants are getting away lightly on the issue of such liability, the exact amount of which is to be determined. The liability of each of these establishments would be co-extensive with BCCL, Mumbai.

44. In view of the aforesaid facts, we are inclined to impose costs on all the three appellants, but of varying amounts. As there was no case whatsoever of BCCL, Jaipur, appellant in Civil Appeal No. 4475/2010, we, thus, dismiss that appeal with costs of Rs.50,000/-, while imposing costs on the other two appellants of Rs.20,000/- each.

45. The appeals are accordingly dismissed.

....……J.
[Sanjay Kishan Kaul]

....……J.
[K.M. Joseph]

New Delhi.
September 12, 2019.