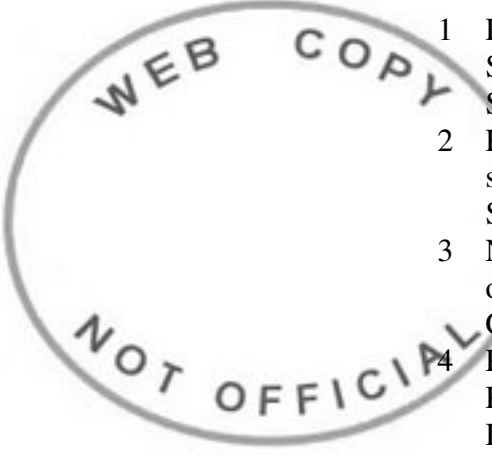


## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.7921 of 2016

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- 1 Raj And Sons through its Proprietor, Ravi Raj Sinha Proprietor Raj and Sons, son of Mudrika Rai, Resident of Mainpura, Danapur, Police Station-Danapur, District-Patna, 801503.
  - 2 R.C. Gupta and sons through its proprietor, R.C. Ramesh Chand Gupta son of Late Ram Ratan Gupta, Resident of Sadar Bazar, Danapur, Police Station-Danapur, District-Patna, 801503.
  - 3 Naresh Chand Agarwal through its partner Rakesh Kumar Agarwal son of Late Naresh Chand Agarwal, Resident of Grand Square, Danapur Cantt. Police Station-Danapur, District-Patna, 801503.
  - 4 Praveen Enterprises through its partner Praveen Kumar son of Late R.S. Pathak, Resident of Cemetery Road, Danapur Cantt. Police Station-Danapur, District-Patna, 801503.
  - 5 Shanti and Sons through its partner Binod Kumar son of Shree Ambika Prasad, Resident of Grand Square, Danapur Cantt. Police Station-Danapur, District-Patna, 801503.
  - 6 Vaishnavi Construction through its proprietor Ajay Kumar @ Ajay Kumar Gupta son of Late Vidya Sagar Gupta, Resident of Sadar Bazar, Danapur, Police Station-Danapur, District-Patna, 801503.

.... .... Petitioners

Versus

1. The Secretary, Ministry of Defence, Office at 101-A, South Block, New Delhi, PIN 110001.
2. The Secretary Ministry of Labour and Employment Office at Sharm Shakti Bhawan, Rafi Marg, New Delhi, 110001.
3. The Central Provident Fund Commissioner Office at Bhavishya Nidhi Bhawan, 14, Bhikaiji Coma Place, New Delhi. 110066.
4. The Regional Provident Fund Commissioner Office at Secretariat Bihar at Patna.
5. The Under Secretary to the Government of India, Department of Labour and Employment Office at Sharm Shakti Bhawan, Rafi Marg, Room No.12/A, New Delhi 110001.
6. The Director (Contract) for Engineer-in-Chief, Military Engineer Services, Integrated, HQ of MOD (Army), Kashmir House, Raja Ji Marg, New Delhi. 110011.
7. The Chief Engineer Central Command, Nehru Marg, Dilkusha, Lucknow (Uttar Pradesh). 226002.
8. The Chief Engineer Jabalpur, Ridge Road, Jabalpur, (Madhya Pradesh) 482001.
9. The Chief Engineer (AF) Air Force Station, Bangrauli, Allahabad (Uttar Pradesh) 211012.
10. The Commander Works Engineer MES, Dipatoli Cantt. Ranchi, Jharkhand 834009.
11. Garrison Engineer, Danapur Cantt, Patna. (Bihar) 801503.
12. Garrison Engineer (A/F) Air Force Station, Bihta, District-Patna (Bihar) 801103.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Dr. Umashankar Prasad, Sr. Adv. with  
Ms. Aparna Bharti, Advocate  
For the Union of India : Mr. S.D Sanjay (Addl. Soc. Gen.)  
Mr. Ram Anurag Singh, C.G.C.  
For the EPF Organisation : Sri R.S. Pradhan, Sr. Advocate with  
Mr. Jainendra Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**  
ORAL JUDGMENT  
**Date: 16-05-2016**

Heard Dr. Umashankar Prasad, learned Senior Counsel appearing for the petitioner, learned counsel for the State, Mr. S.D. Sanjay, Additional Solicitor General for the Union of India and Mr. R.S. Pradhan, learned Senior Counsel appearing for the Employee Provident Fund Department.

The petitioners have questioned the directives issued by the Garrison Engineer, Military Engineer Services, Danapur Cantt., Patna dated 17.12.2015 present at Annexure-2 and Annexure 4 series whereby they have been directed to give their Provident Fund Code Number as a pre-condition to their respective eligibility in the tender floated by the respondents for civil construction work.

According to Dr. Prasad, learned Senior Counsel appearing for the petitioners, these petitioners are petty contractors and do not satisfy the conditions as provided under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act of 1952') for being covered under section 1(3) of 'the Act of 1952'. It is submitted that even when these petitioners are not satisfying the requirements for being covered under 'the Act of



1952' but the same is being thrust upon the petitioners by the respondent-Garrison Engineer, Military Engineering Services, Danapur Cantt. under the threat of disqualification in the 'E-Tendering' process as manifest from the letters present at Annexure-2 and 4 series. Dr. Prasad has also referred to an advisory issued by Under Secretary, Ministry of the Labour and Employment dated 15.7.2015, a copy of which is present at Annexure-3 to submit that directions have been issued that all civil constructions carried out under the aegis of the Central/State Government, local bodies and autonomous undertakings or by authorities of the Government involving a large number of the construction workers, the authorities concerned should ensure that the contractors so involved should possess a Provident Fund Code Number.

According to Dr. Prasad, learned counsel appearing for the petitioner, this requirement is unjust for even when a contractor does not satisfy the requisites for being covered under 'the Act of 1952', yet he is being forced to obtain the same. According to Dr. Prasad, this creates an unreasonable classification amongst the set of contractors.

Mr. R.S. Pradhan, learned Senior Counsel appearing for the Provident Fund Department has invited the attention of this Court towards the notification dated 31.10.1980 to submit that contractors

engaged in building and construction work are covered under the notification issued.

It is further informed by Mr. S.D. Sanjay, learned Additional Solicitor General that the said vocation also stands covered under Employees Provident Fund Scheme, 1952 appearing at serial no. XC having being notified by the Ministry of Labour vide GSR No.1069 dated 11.10.1980 which was brought in force with effect from 31.10.1980. Mr. Sanjay also invites the attention of this Court on the records of the proceeding to submit that each of the petitioners have been reclassified in the e-tendering agreement from 15 lacs to 25 lacs accordingly and if these contractors chose to respond to the 'e-tenders' they have to satisfy the condition under the advisory issued by the Ministry requiring a registration under 'the Act of 1952'. He submits that the advisory is in larger public interest and since there have been cases inviting such benefits hence the Ministry of Labour and Employment have decided to issue the advisory in question.

I have heard learned counsel for the parties and I have perused the records.

Although Dr. Prasad has questioned the advisory issued by the Ministry of Labour and Employment on its alleged classification but in my opinion considering that the object behind the advisory is

for the benefit of a larger number of workers serving the contractors in the work assigned to them under a contract with the government or its instrumentalities, I find nothing discriminatory in the same.

The invitation letters present at Annexure-2 and 4 series requiring the petitioners to produce their Provident Fund Code Number also suffers no infirmity considering that these petitioners have been reclassified from Rs.15 lacs turnover to 25 lacs turnover contractors.

No cause for indulgence is made out and the writ petition is disposed of accordingly.

**(Jyoti Saran, J)**

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