IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15176 of 2021

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M/s Mars Dial Net Private Limited a company incorporated under the Companies Act, 1956 having its office at 203- Hem Plaza, Frazer Road, Police Station Kotwali, Town and District - Patna through its authorized signatory Navneet Vats male aged about 30 years Son of Deo Prakash Singh resident of B- 126, Budha Colony, Hospito India, East Boring Canal, P.S. Budha Colony, Patna - 800001.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Labour, Government of India, New Delhi.
2. The Employees' Provident Fund Organization through the Regional Provident Fund Commissioner, R- Block, Road No.- 6, Bihar, Patna.
3. The Regional Provident Fund Commissioner-II, Employees' Provident Fund Organization, R- Block, Road No. 6, Bihar, Patna.
4. The Assistant Provident Fund Commissioner (Coordination), Employees' Provident Fund Organization, R- Block, Road No. 6, Bihar, Patna.
5. The Bank of Baroda, Main Branch, Patna through its Branch Manager.
6. The State Bank of India, Mourya Lok Branch, Patna through its Branch Manager.
7. The HDFC Bank Ltd. Boring Road Branch, Patna through its Branch Manager.
8. The Syndicate Bank/Canara Bank, Exhibition Road Branch, Patna through its Branch Manager.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 15175 of 2021

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M/s Mars Mountain Security Services Private Limited a Company incorporated Under the Companies Act, 1956, haing its Office at 203-Hem Plaza. Frazer Road, Police Station Kotwali, Town and District Patna through its authorised Signatory Navneet Vats Male aged about 30 Years Son of Deo Prakash Singh Resident of B-126, Budha Colony, Hospito India, East Boring canal, P.S.-Budha Colony, Patna-800001.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Labour, Government of India, New Delhi.
2. The Employees Provident Fund Organization through the Regional Provident Fund Commissioner, R-Block, Road No.6, Bihar, Patna.
3. The Regional Provident Fund Commissioner-1, Employees Provident Fund

Organization, R-Block, Road No.6, Bihar, Patna.

4. The Assistant,Provident Fund Commissioner (Coordination), Employees Provident Fund Organization, R-Block, Road, No.6, Bihar, Patna.
5. The Bank of Baroda, Main Branch, Patna through its Branch Manager
6. The Punjab National Bank, Newmarket Branch, Patna through its Branch Manager.
7. The State Bank of India, Mourya Lok Branch, Patna through its Branch Manager
8. The HDFC Bank Ltd., Boring Road Branch, Patna through its Branch Manager
9. The Syndicate Bank/Canara Bank, Exhibition Road Branch, Patna through its Branch Manager.

... ... Respondent/s

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Appearance:
(In Civil Writ Jurisdiction Case No. 15176 of 2021)
For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Dr. K.N. Singh (ASG)
For the EPFO : Mr. Prashant Sinha, Advocate
For the respondent no. 5 & 7 : Mr. Apurv Harsh, Advocate
For the respondent no. 6 : Mr. Dayanand Singh, Advocate

(In Civil Writ Jurisdiction Case No. 15175 of 2021)
For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Dr. K.N. Singh (ASG)
For the EPFO : Mr. Prashant Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT
Date : 08-10-2021

1. Regard being had to the commonality of the controversy in both the aforesaid writ petitions, it was thought apposite to hear them analogously and, accordingly, they were heard together with the consent of the parties and are being disposed off by the present singular order.

2. The aforesaid two writ petitions have been filed for holding that the sudden attachment of bank accounts of the

petitioner company existing with the respondent banks i.e. Bank of Baroda/SBI/HDFC Limited/Syndicate Bank/Canara Bank/Punjab National Bank by the respondent Employees Provident Fund Organization authorities without any prior notice much less without any order of assessment and consequent demand notice as also without any admitted dues being pending is illegal, arbitrary and high handed action unknown to the acceptable principle of law and practice. Consequently, it has been prayed that the respondent no. 4 i.e. the Assistant Provident Fund Commissioner (Co-ordination), Employees Provident Fund Organization, Bihar, Patna be directed to revoke the attachment order/instruction issued to the respondent bank regarding attachment of the bank accounts of the petitioner company, quash the show cause notice issued by the respondent no. 4 dated 05.11.2020 and further restrain the respondents from taking any action against the petitioner company for recovery of any such amount allegedly diverted from the Employees Provident Fund Organization (hereinafter referred to as the ‘EPFO’) to the bank accounts of fake entities in absence of any such power under the Act.

3. The brief facts, sufficient for adjudication of the case in hand is that the petitioner of the first case is engaged in

providing human resources outsourcing and allied activities and the petitioner of the second case is engaged in providing security services, human resources outsourcing and allied activities. The provisions of the Employees Provident Funds And Miscellaneous Provisions Act, 1952 (herein after referred to as the "Act, 1952") govern the whole mechanism of registration of employer and employee with the Employees Provident Fund Organization, payment of contribution by the employer, payment of employer’s contribution, maintenance of funds, determination and assessment of liabilities of a particular employer, protection and safety of the interest of employee in terms of the provisions of the Act, recovery of assessed liabilities from the employer, offences and penalties and remedies against the orders passed by the assessing authorities under the Act, 1952. The petitioners are stated to be holding an Employees Provident Fund code with the Employees Provident Fund Organization at Patna. It is the case of the petitioners that they have always been strictly complying with the requirements of payment of contribution of each and every employee since registration with the said organization and they have always maintained complete and accurate records of its employees and have made payment of contribution from time to time in respect of all such employees.

4. It is the further case of the petitioners that the respondent no. 4, vide letter no. 1587 dated 28.08.2019 intimated the petitioners about detection of some suspicious payment of Provident Funds into one single bank accounts on the basis of Form F/19 and F/10 C forwarded allegedly by the petitioner. The said letter further called upon the petitioner of the first case to deposit a sum of Rs. 10,07,534/- within a period of seven days against proposed legal action in case of failure. As far as the petitioner of the second case is concerned, it was called upon to deposit a sum of Rs. 19,36,799/-. It is stated that along with the aforesaid letter dated 28.08.2019, the respondent no. 4 had not forwarded any piece of paper as regards the evidence of such diversion of fund into some accounts which were suspected to be fake and not genuine. In fact no report of the audit section of the Employees Provident Fund Organization much less any sheet of paper was forwarded to the petitioners so that they could know about the nature of occurrence. It is thus submitted that service of the said letters to the petitioners by the respondent no. 4 without enclosing any documents and without affording any prior opportunity to the petitioners to place their stand is violative of the principles of natural justice and

reflective of bias. In such a situation, it was not possible for the petitioner to offer any explanation or to furnish any reply before the respondent no. 4, disputing and rebutting the allegations levelled against the petitioner in the said letter. Accordingly, the petitioners vide letter dated 02.09.2019 requested the respondent no. 4 to first provide certain documents, enumerated therein as also requested to provide a set of all such documents which were relevant and important for the purposes of assessment regarding the correctness of the occurrence and involvement of the petitioner company, as was alleged in the aforesaid letter. The said request of the petitioners was neither responded to nor acted upon by the respondent no. 4 and the petitioners were not provided with the relevant and important documents which were material evidence, so as to enable the petitioners to file proper reply to the letter dated 28.08.2019 issued by the respondent no. 4. It is, thus submitted that the petitioners were intentionally deprived from filing a reply and resisting the preconceived decision of the respondent no. 4. Nonetheless, all of a sudden, the respondent no. 4 served show cause notices upon the petitioners vide letter no. 2259 and letter no. 2557 dated 05.11.2020 and 24.11.2020 respectively, seeking explanation against the proposed legal action on account of alleged failure on the part of the petitioners in forwarding claims of the employees of their establishment in a rightful and proper manner, containing the correct details of the employees to avoid fraudulent multiple payment into a single bank account. It was further alleged that as per the special audit report it was learnt that as many as 169 and 269 cases respectively of suspicious multiple payments into one single bank account were found due to forwarding of claim forms No. 19, 10 C and 31, in respect of the employees attached to the petitioners company. In the said show cause notice, the respondent no. 4 called upon the petitioners to remit a sum of Rs. 13,87,928/- and Rs. 13,87,563/- respectively, which were allegedly paid in a single bank account due to alleged incorrect forms forwarded by the petitioners.

5. The petitioners had then responded to the aforesaid show cause notices dated 05.11.2020 and 24.11.2020 vide letters dated 08.12.2020 and 14.12.2020 respectively, wherein, the petitioners had pointed out the prevailing discrepancies and irregularities in the aforesaid show cause notices. By way of illustration, the issues raised by the petitioner of the first case, are being enumerated herein below, which are more or less similar to the issues raised by the petitioner of the second case:-

“a) There was a gross difference of

figures of the fund allegedly diverted between the previous letter dated 28.08.2019 and the show cause notice dated 05.11.2020.

b) *The documents carrying new significance and vitality to the alleged incidents of diversion of funds and that also due to involvement of the petitioner were never provided to the petitioner despite requests made to the letter dated 02.09.2019 despite passage of 14 long months.*

c) *Petitioner categorically denied issuance of any such claim forms either by Directors of the company or any other person authorized validly through the resolution passed by the Board of Directors of the petitioner company.*

d) *Petitioner claimed any such claim form submitted for recovery of money to be forged and fabricated.*

e) *The petitioner further referred*

to the investigation into such occurrence been there in the hands of top investigating agency CBI wherein the petitioner's role was found to be absolutely non-existent.

f) *The petitioner also referred to the pendency of investigation by CBI.*

g) *The petitioner argued that there was no involvement of the employer in the whole matter as the petitioner had already discharged its obligation in law by depositing the contribution and release of amount was in the hands of the Employees Provident Fund Organization and not a domain of the petitioner.*

h) *The petitioner specifically requested not to draw any conclusion during pendency of investigation by the investigating agency.*

i) *At last the petitioner once again requested for the documents already requested in the letter* *dated 02.09.2019 so that the petitioner could file a befitting reply in the matter."*

6. It is further submitted by the Ld. Counsel for the petitioners that despite such substantive and comprehensive reply furnished by the petitioner, there was no response from the end of the respondent no. 4 nor was the petitioner handed over any piece of paper, however, suddenly in-between 13.08.2021 to 16.08.2021, the petitioners were informed by their bankers i.e the respondents no. 5 to 9 that their bank accounts existing with them had been attached, one after another, at the instance of the respondent no. 4. The petitioners requested the respondents no. 5 to 9 to supply copy of such attachment letters/instructions, issued by the respondent no. 4 but the same was denied. The learned counsel for the petitioner has referred to the provisions contained under Section 7A of the Act, 1952, which deals with determination of liability of employees in terms of the Act. Section 7B of the Act deals with the power of review of the orders passed under Section 7A of the Act. Section 8 deals with mode of recovery of money due from employees. Section 8A deals recovery of money by employers and contractors. Section 8B deals with issuance of certificate for recovery to the recovery officer. Section 8F deals with other modes of recovery of money

due from an employer. Section 8F (i)/(ii) deals with power of the Central Provident Fund Commissioner or any other officer authorized by the Central Board to recover money due from an employer by issuance of a notice to any person who holds or may subsequently hold any money for or on account of the employer or jointly with any other person to pay to the Central Provident Fund Commissioner so much of the money as is sufficient to pay the amount due from the employer in respect of the arrears.

7. The Ld. Counsel for the petitioners has thus submitted that the Primary question of law involved in the present case is that any such recovery of amount has to first fall due against the employer and for any amount to fall due against the petitioners, it is either the admitted liability by the petitioners or a liability determined by the respondent no. 4 or any other assessing officer/authority, empowered to carry out such process of assessment under Section 7A of the Act. It is stated that Section 7A (b) prescribes the powers of the assessing authority under the Act, 1952 to determine the amount due from any employer under the provisions of the Act, 1952 or other schemes under the Act. Sub-section 3A of Section 7A of the Act, 1952 further prescribes that after conducting required enquiry, in

case the employee fails in turning up to attend the enquiry proceeding, the assessing authority shall have powers to decide the liability on the basis of materials on record. It has been submitted that in the instant case, at no point of time, any liability has been determined by the respondent no. 4, in connection with any contribution or payment remaining unpaid by the petitioners under section 7A of the Act and moreover, the respondent no. 4 has never issued any show cause notice for determination of liability of the petitioners under the Act, 1952. In fact there is no order of any sort, passed by any authority much less the respondent no. 4 determining any liability of the petitioners as against the contribution payable by them with respect to their employees under the Act, 1952. Thus, it is submitted that there is no question of the provisions contained in Section 8, 8B and 8F of the Act, 1952 being attracted in the present case inasmuch as no amount is due, as against the petitioners. It is submitted that in absence of any such determination of liability and any amount being due against the petitioners, no action for recovery is permissible in terms of the aforesaid provisions of the Act, 1952. Therefore, it is submitted that the impugned action of attachment of bank accounts of the petitioners existing with the respondents no. 5 to 9 is wholly without jurisdiction as it constitutes an exercise of power conferred under Section 8 of the Act which presupposes the existence of a determined liability due against the petitioner. Hence, the attachment of bank accounts of the petitioners by the respondent no. 4 without any determination of liability in terms of section 7A of the Act is an action suffering from jurisdictional error and as such is illegal, arbitrary and unsustainable in the eyes of law.

8. The learned counsel for the petitioner has also submitted that neither any process of assessment under Section 7a of the Act, 1952 has ever been initiated nor any liability has been determined by the respondent no. 4 in connection with any contribution or payment which has remained unpaid by the petitioners under section 7a of the Act, 1952 nor any show cause notice has been issued by the respondent no. 4 for determination of liability under the Act, 1952, thus it is an admitted position that no amount is due as against the petitioners, hence there is no question of any recovery being made by the EPFO authorities or for that matter attaching the bank accounts of the petitioners, hence the action of the EPFO in attaching the bank accounts of the petitioners is arbitrary, tainted with mala fide and contrary to the provisions of law. It is further submitted that

apparently in order to save their own skin, the EPFO authorities have illegally attached the bank accounts of the petitioners with a view to cover up their misfeasance and misappropriation made by the EPFO authorities. The learned counsel for the petitioners has relied upon a judgment rendered by the Hon'ble Apex Court in the case of ***M/s Radha Krishan Industries vs. The State of H.P. & Ors***., reported in ***2021 SCC online SC 334***, paragraph nos. 79 (iv & v) whereof are reproduced herein below:-

> ***"79.*** *For the above reasons, we hold and conclude that:*
>
> *(iv) The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled;*
>
> *(v) The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it is necessary so to do for the purpose of protecting the interest of the*

government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue."

9. The learned counsel for the petitioners has also referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Raman Tech & Process Engineering Company & Anr. Vs. Solanki Traders*** reported in ***(2008) 2 SCC 302***, paragraph nos. 5 & 6 whereof are reproduced herein below:-

"5. *The power under Order 38 Rule 5 CPC is a drastic and extraordinary power. Such power should not be exercised mechanically or merely for the asking. It should be used sparingly and strictly in accordance with the Rule. The purpose of Order 38 Rule 5 is not to convert an unsecured debt into a secured debt. Any attempt by a plaintiff to utilise the provisions* *of Order 38 Rule 5 as a leverage for coercing the defendant to settle the suit claim should be discouraged. Instances are not wanting where bloated and doubtful claims are realised by unscrupulous plaintiffs by obtaining orders of attachment before judgment and forcing the defendants for out-of-court settlements under threat of attachment.*

6. *A defendant is not debarred from dealing with his property merely because a suit is filed or about to be filed against him. Shifting of business from one premises to another premises or removal of machinery to another premises by itself is not a ground for granting attachment before judgment. A plaintiff should show, prima facie, that his claim is bona fide and valid and also satisfy the court that the defendant is about to remove or dispose of the whole or part of his property, with the intention of obstructing or delay-*

ing the execution of any decree that may be passed against him, before power is exercised under Order 38 Rule 5 CPC. Courts should also keep in view the principles relating to grant of attachment before judgment. (See Premraj Mundra v. Md. Manech Gazi [AIR 1951 Cal 156] for a clear summary of the principles.)"

10. Per contra, the learned counsel appearing for the respondent nos. 2 to 4 has though submitted that the petitioners have been informed about fraudulent payment of the provident fund amount lying in the accounts of various beneficiaries into single bank account resulting in lodging of a complaint by the EPFO on 24.12.2019 with the Sachivalaya Police Station, Patna, which later on has been referred to CBI for investigation leading to institution of a case by the CBI bearing RC-05/(4)/2020 dated 25.02.2020, but no assessment order/any order determining liability of the petitioners has been brought on record of this case. Nonetheless, it has been merely submitted that a special audit was conducted in the EPFO Regional Office, Patna and in that special audit, it was detected that from 2010 to 2018, a total amount of Rs. 1.33 crores an odd had been fraudulently paid.

After preliminary inquiry, it was detected that there are 13 such establishments, whose owners and employees were involved in criminal conspiracy for payment of the amount of the Employees Provident Fund and the Employees Pension Scheme in a single account. The petitioners establishment are stated to be such establishments and they have also been named in the FIR. It is further submitted that the petitioners being the employers certainly have a role to play in such fraudulent payments inasmuch as in terms of paragraph-72(5), no payment can be made without attestation of the claim form and other details by the employer. In this regard, the provisions contained in paragraphs No.-72(5) (a) to (c) have been referred to, which are quoted herein below:-

> *"[(5) (a) Every employer shall, at the time when a member of the Fund leaves the service, be required to get the claim application, for payment of provident fund in cases specified in clauses (a) to (dd) of sub-paragraph (1) of paragraph-69, duly filled in and attested, and to forward the said application [within five days of the receipt] to the Commissioner or any*

other officer authorized by him in this behalf.

(b) Every employer shall, at the time when a member of Fund leaves the service, be required to get the claim application, for payment of provident fund in cases specified in clause(e) of sub-paragraph (1), and in sub-paragraph (2) of paragraph-69, duly filled in and attested, and to give the said application to the member, for submission, on completion of the period specified in sub-paragraph (2) of paragraph-69 [provided the member to remain unemployed in a factory or other establishment to which the Act applies] either through post or in person with proper identification, to the Commissioner or any other officer authorized by him in this behalf.

(c) Every employer, shall, on the death of the member and on receipt of an application for receiving the amount standing to the credit of such member, for-

ward forthwith [but not later than five days of its receipt] the said application to the Commissioner or any other officer authorized by him in this behalf."

11. It is thus submitted that it is clear from the above quoted provision that no payment can be made without attestation of the employer or his authorized representative over the statutory claim form, such as, Form-19 and Form-10D, etc. It is stated that the employer, at the time of attestation of the claim form, gave one bank account number for payment of claim amount of various employees while each employee should have a separate bank account for payment of Provident Fund and pension amount, which is a clear cut case of cheating and forgery with the EPFO, aimed at diversion of fund of the employees and on account of such action of the employers, the EPFO sustained loss, therefore the amount of loss is being sought to be recovered by attachment of Bank accounts of the employers. It is stated that since the EPFO has sustained loss due to fraudulent payment on account of wrong attestation by the employers, EPFO is fully justified in making recovery of the amount of loss caused to it, since the employers have been found to be involved in siphoning of the amount of provident

fund of the genuine employees, thus depriving the poor employees of their due amount.

12. I have heard the learned counsel for the parties and perused the materials on record. This Court finds that there has been no determination of liability by the EPFO authorities regarding the amount due from the petitioners much less any demand having been made pursuant to proper assessment proceedings under the Act, 1952, hence the respondent EPFO authorities could not have taken steps to recover the aforesaid amount in question inasmuch as the same is neither due nor recoverable under the provisions of the Act, 1952, as is apparent from the facts and circumstances of the case, hence the attachment of the bank accounts of the petitioners, made by the respondent EPFO authorities is illegal, arbitrary and mala fide especially in view of the fact that there is no provision in the Act, 1952 which empowers the respondents to recover any amount from the bank accounts of the petitioner in case of alleged payment made by the EPFO to one single account at the behest of the fraudsters.

13. It may be pointed out that Section 7A (b) of the Act, 1952 prescribes the powers of the assessing authority under the Act, 1952 to determine the amount due from any employer

under the provisions of the Act, 1952 or other schemes under the Act. Sub-section 3A of Section 7A of the Act, 1952 further prescribes that after conducting required enquiry, in case the employee fails in turning up to attend the enquiry proceeding, the assessing authority shall have powers to decide the liability on the basis of materials on record. In the instant case, at no point of time, any liability has been determined by the respondent no. 4, in connection with any contribution or payment remaining unpaid by the petitioners under section 7A of the Act and moreover, the respondent no. 4 has never issued any show cause notice for determination of liability of the petitioners under the Act, 1952. In fact there is no order of any sort, passed by any authority much less the respondent no. 4 determining any liability of the petitioners as against the contribution payable by them with respect to their employees under the Act, 1952. It is an admitted position that no amount is due as against the petitioners, hence there is no question of any recovery being made by the EPFO authorities or for that matter attaching the bank accounts of the petitioners. Thus the impugned action of attachment of bank accounts of the petitioners existing with the respondents no. 5 to 9 by the respondent no. 4, without any determination of liability in terms of section 7A of the Act is wholly without jurisdiction and the same suffers from jurisdictional error, as such is illegal, arbitrary and unsustainable in the eyes of law.

14. In fact upon an enquiry made by this Court, the learned counsel for the respondent EPFO has failed to either show that there has been any determination of liability by the respondent EPFO authorities or any order has been passed by them against the petitioners determining any amount due and recoverable from the petitioners or there is any provision in the Act, 1952 empowering the respondent EPFO authorities to recover any amount from the bank accounts of the petitioners in case of alleged illegal payments made by the respondent EPFO authorities to the suspected fraudsters.

15. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, this Court finds that the respondent EPFO authorities have wrongfully attached the bank accounts of the petitioners and for the said misdeeds of the EPFO authorities, the respondent Banks, except the State Bank of India, have also become their accomplice and have illegally heeded to the request of the respondent EPFO authorities and attached the bank accounts of the petitioners without there being any valid and legal order of attachment of

the bank accounts of the petitioners, hence the action of the banks in question is also deprecated and they are warned to be careful in future, failing which this Court may take appropriate penal action against them in case such incident comes to the notice of this Court in future. Consequently, the respondent EPFO authorities are forthwith directed to instruct the respondent banks that the attachment of the Bank accounts of the petitioners has been revoked and further in case any money has been misappropriated/illegally withdrawn by the respondent EPFO authorities from the bank accounts of the petitioners, the same is directed to the credited to the accounts of the petitioners within a period of 72 hours from today, failing which the respondent nos. 2 to 4 shall not draw their salary. The respondent Banks are also directed not to interfere with the right of the petitioners to operate their bank accounts in question.

16. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	10.09.2021
Uploading Date	13.10.2021
Transmission Date	