IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1544 of 2013

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M/s Shivalok Gas Agency At + P.S.- Brahampura, Sanjay Cinema Road, P.O.- MIt, District- Muzaffarpur, Through Its Proprietor Smt. Rita Singh, W/O Sri Ashok Ranjan

... ... Petitioner/s

Versus

1. Employees Provident Fund Organization (Ministry of Labour, Government of India) Sub Regional Office, New Vakalatkhana Bhawan, Court Compound, Muzaffarpur-842001 Through Its Assistant Provident Fund Commissioner
2. The Assistant Fund Commissioner, Sub Regional Office, EPF, Muzaffarpur
3. Ghuran Jha S/O Late Keshav Jha R/O Roop Patahi, P.S.- Sadar, District- Muzaffarpur

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Aakashdeep, Advocate Mr. Shyameshwar Kumar Singh, Advocate
For the Respondent/s	:	Mr. Amrendra Narayan Rai, Advocate
For the EPFO	:	Mr. Prashant Sinha, Advocate Mr. Aniket Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
CAV JUDGMENT
Date : 23-04-2026

Heard learned Counsel for the petitioner and learned Counsel for the Employees Provident Fund Organization. However, no one appears on behalf of respondent No.3.

2. The present writ petition has been filed by the petitioner challenging the order dated 03.12.2012, passed by the Regional Provident Fund Commissioner, Muzaffarpur, contained in letter No.559 dated 03.12.2012, whereby the

Regional Provident Fund Commissioner, Muzaffarpur, in exercise of power vested under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act No.19 of 1952) has been pleased to order for the coverage of the establishment of the petitioner as well as assessed a liability of Rs.2,15,163/- payable by the petitioner in respect of the provident fund dues of the Thela Vendor.

3. In this case respondent Nos.1 and 2 Employees' Provident Fund Organization and its officials were appeared and filed their counter affidavit. On issuance of notice respondent No.3 has not appeared. Thereafter, this Hon'ble Court has pleased to direct the petitioner for paper publication in local Hindi News Paper, Hindustan, on or before 12.01.2026 for securing the appearance of respondent No.3. The petitioner has published the notice for appearance in the paper publication and filed the cutting of the paper publication through supplementary affidavit in Hindi News Paper, Hindustan, Muzaffarpur, dated 09.01.2026, but even then respondent No.3 has failed to appear even after paper publication. Finally after completion of 30 days from the paper publication hearing started on 24.03.2026. Further hearing took place on 02.04.2026 and arguments had been concluded

and case was fixed for judgment.

4. Learned Counsel for the petitioner submits that the order under challenge is completely without jurisdiction. He submits that petitioner is a Gas Agency engaged in supply and distribution of Cooking Gas as a Proprietor Firm. The Proprietor is a citizen of India. The working area of the petitioner is at Muzaffarpur district situated in Bihar. Counsel submits that there were only seven employees in the petitioner’s establishment. No manufacturing process is being carried out. The petitioner remits the amount of cylinders supplied to him by the Indian Oil Corporation in which cooking gas cylinders are supplied to the consumers who are registered with the petitioner’s Gas Agency as per their demand. Counsel submits that the petitioner used to facilitate the delivery of gas cylinders to the consumer for the amount paid by the consumer at the rate of rupees eight per cylinder realizing from the consumers as commission. The delivery of gas cylinders used to be made from gas godown/office premises of the petitioner’s Gas Agency to the consumers house. Counsel submits that respondent No.3, an ex-thela Vendor associated with the petitioner’s Gas Agency in the past and on account of

differences, he filed an application before the Employees' Provident Fund Organization (hereinafter referred to as the 'EPFO'), Sub Regional Office, Muzaffarpur, on 27.07.2007 making a prayer for extending the benefit under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to the employees of the petitioner's Gas Agency. Learned Counsel for the petitioner submits that on the application filed by respondent No.3, the EPFO authorities issued letter No.1651 dated 15.01.2008 to the petitioner intimating that there were 35 and above employees working in or in connection with the establishment of the petitioner since several years and no EPF benefit is being provided to them in violation of the EPFO Act. Counsel further submits that the petitioner has filed written statement and contested to this letter indicating that there were only seven employees in the establishment of the petitioner and the Thela Vendors are not the paid employees of the Gas Agency but they were being paid from the consumers @ Rs.8/- per cylinder when gas is not distributed the Thela Vendors are not paid. It has also been pleaded that no part of salary is being paid by the petitioner to the Thela Vendors, but in spite of the objection filed by the petitioner, the respondent-EPFO officials have issued a letter bearing No.273 dated 16.05.2008 holding that petitioner's Gas Agency is covered under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and is covered under the act with effect from 01.04.2007. Counsel further submits that after coverage, a letter No.1301 dated 27.11.2008 was issued to the Manager, State Bank of India, MIT Branch, for attaching the account of the petitioner's Gas Agency account for recovery of alleged EPF dues. Thereafter, the petitioner has preferred CWJC No.812 of 2009 before this Hon'ble Court challenging the order of coverage dated 16.05.2008. The above said writ petition filed by the petitioner was allowed vide order dated 26.08.2011 and the order dated 16.05.2008 as well as order dated 27.11.2008, i.e., order of coverage and order for attachment both were quashed with liberty granted to the EPFO to pass fresh order in accordance with law after giving due opportunity of being heard to the petitioner within stipulated time frame. Learned Counsel further submits that petitioner had appeared before the EPFO respondent Nos.2 and 3 through Counsel, filed balance sheets, profit and loss statements for the financial years of the relevant period along with salary details of the employees. But the Regional Provident Fund Commissioner has passed fresh order on 03.12.2012 treating the petitioner's Agency to be covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 without any evidence on record. On the basis of surmises and conjectures has calculated and assessed liability to pay Rs.2, 15,163/- towards PF due under the Act. Counsel submits that the said assessment has been made without any basis, evidence or record or discussion made. The order impugned is annexed with the writ petition as Annexure-7. Counsel submits that since the said decision has been passed in gross violation of earlier order passed by this Hon'ble Court, therefore, the petitioner has filed the present writ petition challenging the said order dated 03.12.2012 contained in letter No.559. Counsel submits that there were only seven names found in the register of wages for the financial year 2007. The earlier coverage dated 16.05.2008, which has already been set aside by this Hon'ble Court in CWJC No.812 of 2009 has been made basis for the present order dated 03.12.2012. Counsel submits that it is due to this reason that the order which has already been set aside has been made basis for the present impugned order, the present impugned order may be treated as a non-jurisdictional order and, therefore, he submits that the order is absolutely bad in law.

5. Learned Counsel further submits that for the purpose of coverage of EPFO, it is necessary that every such establishment in which 20 or more persons must be employed. He submits that here in the present case, only seven persons are employed who are getting wages. Learned Counsel for the petitioner further submits that the EPF contribution is applicable on basic wages. The 14 persons, who alleged to work as Thela Vendors are basically commission paid persons and under definition of basic wage, as defined under Section 2-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 any cash payment paid to an employee on account of commission does not include the basic wages. Therefore, he submits that for the purpose of applicability of the EPF & MP Act upon the petitioner Agency, there is no requisite number of employees working and this aspect has been completely ignored by the authority and, hence, the order passed by the Regional Provident Fund Commissioner dated 03.12.2012, contained in Memo No.559 is completely non-jurisdictional as well as illegal as employees working under petitioner's organization is less than 20. Therefore, he submits that the writ petition be allowed and order dated 03.12.2012

contained in letter No.559 issued by Regional Provident Fund Commissioner under Section 7-A of the Act be set aside.

6. Learned Counsel for the Employees Provident Fund Organization, on the other hand, submits that writ petition is fit to be dismissed. Counsel submits that it is well within the power of Regional Provident Fund Commissioner to pass order under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 about the applicability of the Act over the petitioner's establishment and also dues payable which has been assessed in the said order dated 03.12.2012.

7. Learned Counsel for the EPFO further submits that from the record of the petitioner it is crystal clear that seven employees were engaged and with regard to 14 Thela Vendors job cards were issued by the Labour Department, which is in the name of petitioner. Counsel further submits that petitioner is taking the plea that Thela Vendors were not working on wage; rather they are working on commission basis @ Rs.8/- per cylinder, but the said contention is not correct due to the reason that the petitioner has submitted letter dated 17.04.2007 before the Deputy Labour Commissioner in response to Memo No.2207 dated

11.07.2007 that petitioner is paying the Thela Vendors basic minimum wages applicable at that relevant period of time, which is rupees eighty eight. The said letter has been annexed in the counter affidavit of the writ petition as Annexure-A series. Learned Counsel further submits that at the time of passing of the said order dated 03.12.2012, the Regional Provident Fund Commissioner have considered all the documents which has been annexed in the counter affidavit. He further submits that the office of Labour Superintendent, Muzaffarpur, have issued service card of 14 Thela Vendors and the Proprietor himself submitted a letter before the Deputy Labour Superintendent, Muzaffarpur, in which he has accepted that minimum wages for Thela Vendor is rupees eighty-eight. Therefore, he submits that a letter, which the petitioner has filed, describing the monthly salary of 14 Thela Vendors and in the accounts of the petitioner accepts the seven employees which are in total 21 in number. He also submits that at the time of consideration of those documents, it has been verified by the Regional Provident Fund Commissioner that whether those persons which are seven in number and those persons 14 in numbers as employee and Thela Vendors are same or different. He submits that in the impugned order the name of all employees have been described separately.

8. He further submits that in case of Regional Provident Fund Commission Vs. Sibu Metal Work reported in 1965 AIR SC 1976, Hon'ble Supreme Court has held that the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a social welfare legislation and in construing the material provisions of such Act if two views are reasonably possible, the Court should prefer the view, which helps the achievement of the object of the Act. He further submits that in the present case, it is apparent from the conduct of the petitioner that it is trying to evade the extention of beneficial legislation upon the poor Thela Venodrs with a wrong plea that they were being paid with commission only as he is not paying any wages to such persons. While from his own letters, it is very much clear that contention of the establishment is wrong. He further submits that by making such type of plea an attempt has been made by the petitioner to deny the employees with legitimate dues which they have rightfully earn in terms of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and, therefore, he submits that the present writ petition be dismissed and the petitioner be directed to assure, payment make payment of the EPF contribution to the EPFO

so that the poor employee may receive their benefits.

9. After hearing the parties and going through the records, it is necessary to quote the specific provisions which are relevant with a view to decide the present writ petition. Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 empowers the Regional Provident Fund Commissioner to pass order. Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 states as follows:

> *"**7A. Determination of moneys due from employers.**—[(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—*
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> *(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and*
>
> *(b) determine the amount due from any employer under any provision of this Act, the Scheme or the 3 [Pension] Scheme or the Insurance Scheme, as the*

case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary];

(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:—

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses;

and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) No order shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.

(3-A) Where the employer, employee or any other person required to

attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.

(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry:

Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show cause notice if the officer is satisfied that the employer had notice of the *date of hearing and had sufficient time to appear before the officer.*

(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party."

10. Section 1(3) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 which talks about the coverage of the Act is as follows:

"(3) Subject to the provisions contained in section 16, it applies-

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which [twenty] or more persons are employed, and

(b) to any other establishment employing [twenty] or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply *the provisions of this Act to any establishment employing such number of persons less than [twenty] as may be specified in the notification."*

11. Similarly definition of basic wages has been defined under Section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 which states as follows:

"2.(b) "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include—

(i) the cash value of any food concession;

(ii) any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment;

(iii) any presents made by the employer;"

12. Subsequently, what was the direction made in CWJC No.812 of 2009 is to be taken care of, the extract of which states as follows:

> "*Considering the rival contentions of the parties, it appears that after due investigation, by the Enforcement Officer, of the petitioner's Organization only seven employees were found working though 14 Service Cards of vendors were found. Even the impugned order does not reflect that those 14 Service Cards were inclusive of the seven employees found the Enforcement Officer.*
>
> *The Labour Department's Information also suggests about 14 service cards of vendors hence, prima facie on the basis of the materials on record it appears doubtful whether the Establishment of the petitioner comes under the purview of the Act. Section 1(3) (b) of the Act stipulates the minimum number of employees in any Establishment to bring the same within the ambit of the Act which reads as follows:*
>
> *"1. Short, Title extent and application (1) this Act may be called the Employees' Provident Funds and*

Miscellaneous Provisions Act, 1952.

(3)(b) Subject to the provisions contained in Section 16, it applies-(b) to any other Establishment employing (twenty) or more persons or class of such Establishments which the Central Government may, by Notification in the Official Gazette, specify in this behalf:

Provided that the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than (twenty) specified in the notification.

Hence, there is no definite finding by the respondent authorities that petitioner employed twenty or more persons.

So far as providing opportunity is concerned, the impugned order reflects that after filing two of show cause, only two opportunities were given to the petitioner. One on 07.02.2008 i.e., admittedly, prior to submission of the show cause but after submission of the show cause only one opportunity was given on 15.05.2008. That can not be treated to be as *giving reasonable opportunity to the petitioner to defend his case. Though in the counter affidavit the respondents took the stand that eleven notices were transmitted but only one was accepted by the petitioner. This contention is only supported by a letter of the Enforcement Officer, as no specific documents have been brought on record to justify the stand of issuance of notice on eleven occasions. Moreover, there is no reference of these opportunities in the impugned order as mentioned in the counter affidavit. Hence, respondents not supplement its stand through counter affidavit, on such issue which is not there in the impugned order. Hence, it can not be said that petitioner was given opportunity to defend its case.*

On the basis of discussions made the above, order dated 16.05.2008 as contained in Annexure-4 and order dated 27.11.2008 as contained in Annexure-5 are hereby quashed.

However, the respondent authorities are liberty to pass afresh order in accordance with law after giving due opportunity of being heard to the petitioner within stipulated time frame. With the above observation, this P application is allowed.”

13. After hearing the parties and upon perusal of the materials on record, particularly the order passed by this Hon'ble Court in CWJC No. 812 of 2009, it is evident that a categorical finding was recorded to the effect that seven employees were found working and fourteen service cards of vendors were detected. However, no specific documents had been brought on record by the Enforcement Officer to substantiate the basis on which coverage under the Act could be ascertained. It was for this reason that the earlier orders dated 16.05.2008 and 27.11.2008 were set aside. Thereafter, this Hon'ble Court was pleased to grant liberty to the authorities to pass a fresh order in accordance with law, after affording due opportunity of hearing to the petitioner within the stipulated time frame.

14. Pursuant thereto, the respondent–EPFO authority passed the order contained in letter No. 559 dated 03.12.2012. Upon scrutiny of the said order, two basic legal contentions have been raised. The first contention is that such an order could not have been passed under Section 7-A of the *Employees' Provident Funds and Miscellaneous Provisions Act, 1952*. A perusal of Section 7-A makes it abundantly clear that the provision empowers the authorities, firstly, to

determine the applicability of the Act to an establishment, and secondly, to determine the amount due from any employer under the provisions of the Act. The procedure for conducting such an inquiry and determination is also well described. The legislature has further provided that, while exercising powers under Section 7-A, the concerned authority shall have the same powers as are vested in a court under the *Code of Civil Procedure, 1908*.

15. In the present case, the total number of persons found to be engaged is twenty-one. Out of these, seven employees were on the payroll, as reflected in the wage register, and fourteen persons were recorded in Form XXI under Rule 12A of the *Bihar Shops and Establishments Act, 1953*, and were treated as Thela Vendors. The complete particulars of these individuals, including their names and addresses, were available in their respective service cards. It was well within the competence of the authorities to verify these documents. From the impugned order, it appears that such verification was duly carried out through the office of the Deputy Labour Commissioner. Reference has been made to Memo No. 2202 dated 11.07.2007 issued by the Deputy Labour Commissioner, and the corresponding response dated

11.07.2007 submitted by the proprietor of the petitioner establishment. By the said communication, it stood certified that the proprietor admitted that the work related to delivery of LPG gas was being carried out through Thela Vendors, who were being paid minimum wages of Rs. 88/- per day. The said document has been annexed as Annexure-A series to the counter affidavit. On the basis of these materials, the Regional Provident Fund Commissioner arrived at the conclusion that, with seven employees on the wage register and fourteen persons working on the basis of service cards, the total strength of twenty-one employees having different identity fully described in impugned order exceeded the statutory threshold for coverage under the Act. The computation and consequential determination have also been duly recorded in the impugned order. Operating part of such decision is quoted hereunder:

> *"Having decided thus I find that there is no room for any dispute with regard to the number of employees as the register of wages for shows 7 employees as mentioned above and the Service Cards available on record are 14 in number issued to the thela vendors enumerated above; the total strength coming to 21 which is the*

number of employees mentioned in the coverage intimation letter date 01.04.2007 as referred above. There are no names which are common in these two set of records.

I, therefore, hold that Shivlok Gas Services at Brahmpura, P.O. MIT, Muzaffarpur allotted code no. BR/20488 has rightly been covered under the Act w.e.f 01.04.2007 at the employment strength of 21.

Dues for the period 04/2007 to 06/2008 has already been assessed. The same has been done on the basis of wages shown in the register of wages for the 7 employees on the roll and by taking minimum wages of Rs.88/- per day for the thela vendors as admitted by the establishment before the Dy. Labour Commissioner in its reply to his memo no. 2202 dated 11.07.2007 Profit and Loss account for the year 2006-07 shown expenses of Rs.5,09,815/- towards salary and wages and Rs.3,74,487/- towards vendor charges substantiating the stand taken by the department. Therefore the establishment was liable to pay Rs.2,15,163/- towards provident fund and allied dues under the provision of Act and *the schemes framed thereunder for the period 04/2007 to 06/2008 as determined by the then 7A authority.”*

16. This Court, upon consideration of the reasons recorded in impugned order based on documents and after examining the provisions of Section 3 and Section 1(3)(b) of the *Employees’ Provident Funds and Miscellaneous Provisions Act, 1952*, is of the firm view that the petitioner is duly covered under the said Act and is liable to make contributions on the grounds mentioned hereinabove. This order is basically fresh consideration and based on earlier order which was set aside by this Hon’ble Court earlier.

17. This Court further finds no infirmity in the order passed by the Regional Provident Fund Commissioner under Section 7-A of the *Employees’ Provident Funds and Miscellaneous Provisions Act, 1952*, as contained in Letter No. 559 dated 03.12.2012 and, hence, the present writ petition is dismissed.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	02.04.2026
Uploading Date	23.04.2026
Transmission Date	