

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (C) No. 1119 of 2018

Tata Hitachi Construction Machinery Co. Pvt. Ltd. (previously known as Telco Construction Equipment Co. Ltd.), represented through its Head Finance (Plants), Keshava Kumar Sinha, S/o Dr. Krishna Kumar Sinha, at present R/o Tata Hitachi General Office, Block 1, C/o Tata Motors Premises, P.O.-Telco, P.S.-Telco, Town-Jamshedpur, District-East Singhbhum Petitioner

Versus

1. Employees' Provident Fund Organization, Regional Office, Purulia Highway, P.O.-Azad Nagar, P.S.-Mango, Town-Jamshedpur, District-East Singhbhum
2. Assistant Provident Fund Commissioner, Jamshedpur, Purulia Highway, P.O.-Azad Nagar, P.S.-Mango, Town-Jamshedpur, District-East Singhbhum
3. Assistant Provident Fund Commissioner (Compliance), Employees' Provident Fund Organization, Purulia Highway, P.O.-Azad Nagar, P.S.-Mango, Town-Jamshedpur, District-East Singhbhum
4. Recovery Officer, Employees' Provident Fund Organization, Purulia Highway, P.O.-Azad Nagar, P.S.-Mango, Town-Jamshedpur, District-East Singhbhum
5. M/s. Earth Mover Consultancy Pvt. Ltd., through its Managing Director, Mr. Aziz Hussain, having its registered office at Plot Nos. 3 & 5, Phase-V, Adityapur-Kandra Road, Usha More, P.O. & P.S.-Gambharia, Jamshedpur, District-East Singhbhum

.... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner : Mr. Sachin Kumar, Advocate
[through V.C.]
For the Res.-EPFO : Mr. Rupesh Singh, Advocate
For the Res.-State : Mr. Manish Mishra, G.P.-V

Reserved on 30.09.2026 **Pronounced on 12.10.2026**

1. The present writ petition has been filed for the following reliefs: -

(i) For issuance of a writ of certiorari to quash

and cancel the order dated 31.07.2017 (Annexure-5)

bearing no. JH/RO/JSR/7A/JH/14191/2017/1332

passed u/s 8F of Employees' Provident Funds and

Miscellaneous Provisions Act, 1952 (hereinafter

referred as 'the Act, 1952'), whereby and

whereunder the petitioner has been directed to pay an amount of Rs.28,03,041/- (Rupees Twenty Eight Lakh Three Thousand Forty One only) by way of Demand Draft payable to the Regional Provident Fund Commissioner, at Jamshedpur.

(ii) For a further writ of certiorari to quash and cancel the certificate dated 05.01.2018 (Annexure-7) bearing no. SPL.RRC.NO.RO/JH/JAM/14191/2018/2530 issued under Section 8 of the Act, 1952 by the respondent No. 3 to the Recovery Officer, Regional Office, Jamshedpur (the respondent No. 4 herein), whereby the petitioner has been informed that the said Revenue Recovery Certificate is being forwarded to the said respondent for recovery of an amount of Rs.28,03,041/- from its establishment in accordance with the provisions of the Act, 1952.

(iii) Further be pleased to quash and cancel the notice dated 19.01.2018 (Annexure-8) bearing no. SPL-RRC No.JH/RO/JSR/0014191/2018/2530/428 addressed to the petitioner whereby and whereunder the petitioner has been required to pay the amount of Rs.28,03,041/- within 15 days of receipt of the notice, failing which the recovery would be made in accordance with the provisions of Section 8B of the Act, 1952.

Contention of the petitioner:

2. The learned counsel for the petitioner makes following submission:-

- a. The petitioner (previously known as Telco Construction Equipment Company Limited i.e., Telcon) entered into a dealership agreement with M/s Earth Mover Consultancy Pvt. Ltd. (the respondent no.5 herein) vide agreement dated 29.07.2008 appointing the said respondent as a dealer for providing its customers with the best sales and after-sales support to a selected range of products manufactured and marketed by the petitioner on the terms and conditions as contained in the dealership agreement. The recruitment and selection of the manpower was at the choice of the dealer and the relationship between the petitioner and the respondent no.5 was on principal-to-principal basis.
- b. The petitioner by way of a separate Work Order No. FMC/West Bokaro/Manpower/12-13/4 dated 22.08.2012 issued to the Respondent No.5 (subsequently renewed from time to time), availed its services for providing manpower support pertaining to FMC (Full Maintenance Contract) at Tata Steel's work site, West Bokaro.
- c. The employees of the respondent no.5 made a complaint before the Assistant Provident Fund Commissioner, Employees' Provident Fund Organization, Jamshedpur (respondent no. 2), stating that the respondent no. 5 had

not deposited the provident fund amount in their accounts from October 2012 to March 2015 however, the deductions against the provident fund from their salary were made on monthly basis.

- d. The petitioner received Order No. JH/RO/JSR/7A/14191/2017/1332 dated 31.07.2017 issued by the respondent no. 2 in purported exercise of the power conferred u/s 8F of the Act, 1952 directing the petitioner to pay an amount of Rs.28,03,041/- by way of Demand Draft payable to the Regional Provident Fund Commissioner, at Jamshedpur. The petitioner was also given liberty to submit a reply to the said order, if no such amount or part thereof was held by it.
- e. The petitioner vide letter dated 31.08.2017 submitted its reply before the respondent no. 2 stating that the respondent no. 5 was appointed as its dealer for distribution of the products (construction, earth moving and mining equipment) as well as for providing after sales services thereto, however, due to mismanagement of the dealership and fraudulent intentions of the respondent no. 5, its business got deteriorated and it failed to pay a huge amount to the petitioner towards equipment supplied to it. It was also pointed out that no amount of the respondent no. 5 was due with the petitioner, rather the petitioner had to recover a considerable amount from the Respondent no.5 for which

arbitration as well as criminal proceeding were pending.

- f. The petitioner's reply was never considered by the respondent no. 2 and a certificate was issued on 05.01.2018 by the respondent no. 2 to the respondent no. 4, a copy of which was also sent to the petitioner informing that revenue recovery certificate was being forwarded to the respondent no. 4 for recovery of an amount of Rs.28,03,041/- from the petitioner-establishment.
- g. The respondent no. 4 issued a demand notice on 19.01.2018 to the petitioner directing it to pay a sum of Rs.28,03,041/- within 15 days of the receipt of the said notice, failing which the recovery was to be made in accordance with the provisions of Section 8B of the Act, 1952.
- h. The petitioner and the respondent no.5 are separate entities. The respondent no. 5 is duly registered under the relevant provisions of the Act, 1952, with a separate EPF establishment code number. Thus, if the provident fund dues had not been deposited by the respondent No. 5 in the provident accounts of their employees despite deducting the same from their monthly salary, the petitioner cannot be said to be liable for that the same. The respondent no. 2 passed the order dated 31.07.2017 on a presumption that the petitioner is the principal employer in respect of respondent no. 5 without

affording any opportunity of hearing to it.

- i. The petitioner is not the principal employer of the respondent no. 5, rather the petitioner used to pay a fixed amount in lieu of the services rendered by the respondent No. 5. As per the agreement between the petitioner and the respondent no. 5, the later had to comply with the applicable laws including payment of provident fund, ESI etc.
- j. As per the work order/dealership agreement, the petitioner had no control over the employees of the respondent no. 5 during execution of the work as it was agreed and understood by both the parties that the contractual relationship and all other dealings between the petitioner and the respondent no. 5 were purely on 'principal-to-principal' basis which means that neither of them would claim, represent or hold itself out, to be an agent or representative of the other, or pledge the credit of the other or make or attempt to make any financial or other commitments on behalf of the other.
- k. The respondent no.5 was using manpower as per its convenience and the petitioner never insisted it to engage a particular employee/worker. Thus, the petitioner had no role either in the engagement of the workers by the respondent no.5 or in deciding the manner in which the assigned works were to be executed by the respondent no. 5. The petitioner had also no

concern with the workers through whom the work was executed by the respondent no. 5.

Submission on behalf of the respondent-EPFO:

3. The learned counsel for the respondent-EPFO submits that the respondent no. 5 is an establishment within the meaning of the Act, 1952 and was brought under the purview of the said Act w.e.f. 22.03.2004. It was allotted Provident Fund Code No. JH/JAM/14191 for the period from 03/2012 to 04/2016.
4. A grievance/complaint was received by the EPFO on 16.12.2015 from some of the employees of the aforesaid establishment, which was verified by a squad led by Area Enforcement Officer. The squad submitted its report on 24.05.2016 and on the basis of the same, a notice was issued to the respondent no. 5 on 12.09.2016.
5. An enquiry under Section 7A of the Act, 1952 was initiated for the period from March, 2012 to April, 2016. In that enquiry, a summon was issued to the respondent no. 5 for production of records to assess the dues. Thereafter several opportunities were provided to the respondent no. 5, but it deliberately evaded the proceeding and did not appear. Subsequently, a notice was issued to the petitioner being the Principal Employer of the respondent no. 5 whereupon the petitioner appeared in the proceeding on 12.01.2017, 18.01.2017 and 16.05.2017 through its representatives.
6. Thereafter, on the basis of the records available in the office of the EPFO and the records provided by the petitioner, an order was passed on 09.06.2017 by the respondent No. 2 directing the

respondent no. 5 to deposit a sum of Rs. 19,98,087 /- under Section 7A towards Provident Fund, Pension Fund, Insurance Fund as well as Administrative Charges and Rs. 8,04,954/- as interest under Section 7Q of the Act, 1952.

7. It is contended that the respondent no. 5 defaulted in payment of the assessed amount and accordingly the petitioner was directed to deposit the said amount in view of the provisions contained in Section 8A of the Act, 1952 read with Para-30 and Para-36(B) of the Employees' Provident Fund Scheme, 1952 which impose a statutory obligation on the petitioner to make good the amount outstanding against its own contractor.
8. It is further contended that as per section 8A of the Act, 1952, any contribution paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from the amount payable to the contractor under any contract or as a debt payable by the contractor. Para-30 of the Employees Provident Fund Scheme, 1952 (in short Scheme 1952) imposes a duty on the principal employer to pay the contribution in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor.
9. It is argued that in terms with the provisions of the Act, 1952 the petitioner being the principal employer is liable to remit the dues defaulted by its contractor i.e., the respondent no. 5 towards the employer's share of contribution in addition to the deducted amount of the employee's contribution with

administrative charges.

10. It is further submitted that section 8A of the Act, 1952 also prescribes that the amount of employer's as well as the employee's contribution under the statutory compliance of the Act, 1952 shall be treated as a debt, payable by the contractor to the employer. Therefore, it is not a situation where the liability of the respondent no. 5 is being completely transferred to the petitioner rather, the petitioner has got legal recourses to recover the amount paid under the provisions of Act, 1952 as a legal debt from the contractor.
11. It is lastly argued that before passing the order dated 31.07.2017, ample opportunity of hearing was given to the petitioner and as such the principles of natural justice was duly followed by the respondent no. 2.
12. Heard the learned counsel for the parties and perused the materials available on record.
13. On perusal of the record, it appears that a summon was issued to the respondent no. 5 under the provisions of the Act, 1952, however, the same could not be served to him. A notice was also published in the daily newspapers having wide circulation at Gamharia, Adityapur and Jamshedpur. The Superintendent of Police, East Singhbhum Jamshedpur was also directed to ensure service of notice upon the respondent no. 5. Even the warrant of arrest was issued against the respondent no. 5 but the same could not be executed as the whereabouts of the respondent no. 5 was not found. Despite the several efforts made by the district

administration, the respondent no. 5 is untraceable.

14. In any event, on bare perusal of the impugned order dated 31.07.2017, it is evident that the respondent no. 2, in exercise of the power conferred under section 8F of the Act, 1952, had directed the petitioner to make payment of Rs. 28,03,041/-.
15. Here, it would be profitable to refer the relevant part of Section 8F of the Act, 1952 which is reproduced hereinbelow: -

"8F. Other modes of recovery.

(1) Notwithstanding the issue of a certificate to the Recovery Officer under section 8B, the Central Provident Fund Commissioner or any other officer authorised by the Central Board may recover the amount by any one or more of the modes provided in this section.

(2) If any amount is due from any person to any employer who is in arrears, the Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may require such person to deduct from the said amount the arrears due from such employer under this Act, and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Provident Fund Commissioner or the officer so authorised, as the case may be: Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908).

(3) (i) The Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the employer or, as the case may be, the establishment or any person who holds or may subsequently hold money for or on account of the employer or as the

case may be, the establishment, to pay to the Central Provident Fund Commissioner either forthwith upon the money becoming due or being held or at or within the time specified in the notice not being before the money becomes due or is held so much of the money as is sufficient to pay the amount due from the employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the employer jointly with any other person and for the purposes of this sub-section, the shares of the joint holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the employer at his last address known to the Central Provident Fund Commissioner or as the case may be, the officer so authorised and in the case of a joint account to all the joint holders at their last addresses known to the Central Provident Fund Commissioner or the officer so authorised.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under

this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the employer or that he does not hold any money for or on account of the employer, then nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Central Provident Fund Commissioner or the officer so authorised to extent of his own liability to the employer on the date of the notice, or to the extent of the employer's liability for any sum due under this Act, whichever is less.

(vii) The Central Provident Fund Commissioner or the officer so authorised may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Central Provident Fund Commissioner or the officer so authorised shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the employer to the extent of the amount so paid.

(ix) Any person discharging any liability to the employer after the receipt of a notice under this sub-section shall be personally liable to the Central Provident Fund Commissioner or the officer so authorised to the extent of his own liability to the employer so discharged or to the extent of the employer's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Central Provident Fund Commissioner or the officer so authorised he shall be deemed to be an employer in default in respect of

the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear due from him, in the manner provided in sections 8B to 8E and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 8B."

16. Thus, section 8F of the Act, 1952 provides the other modes of recovery of any amount due from the employer as mentioned in section 8 of the Act, 1952. It empowers the Central Provident Fund Commissioner or any other officer authorised by the Central Board to recover the arrears of provident fund from any person against whom money is due or may become due to the employer. Thus, the condition precedent to exercise the power under section 8F of the Act, 1952 is that a third person holds or likely to hold money of the employer.
17. The respondent no. 2, vide order dated 31.07.2017, had provided opportunity to the petitioner to respond to the said order if the amount mentioned in the said order or part thereof was not held by it. The petitioner vide letter dated 31.08.2017, specifically stated that no amount was due to be paid by it to the respondent No. 5, rather the respondent no. 5 had failed to pay huge sum of money to the petitioner towards the equipments supplied and the petitioner had initiated criminal proceeding against the respondent no. 5 with respect to dishoured cheques. It was further stated by the petitioner that an arbitration proceeding was also pending against the respondent no. 5 besides a petition being pending against it before a Bench of this Court, which was filed for winding up its businesses, selling its assets and paying its debts. Despite

that the respondent No. 3 issued a certificate under section 8 of the Act, 1952 and requested the respondent No. 4 to recover the amount of Rs. 28,03,041/- from the petitioner which was due to be recovered from the respondent no. 5.

18. Thus, though an opportunity was afforded to the petitioner to respond to the order dated 31.07.2017, but none of the grounds mentioned in the letter dated 31.08.2017 was taken into consideration and straightway a certificate under section 8 of the Act, 1952 was issued for recovery of the amount in question. The respondent-EPFO has also failed to bring on record any such document before this court to show that any amount of the respondent no. 5 was lying with the petitioner or it had any liability towards the respondent no. 5.
19. The doctrine of administrative fairness requires any public authority to act reasonably and impartially. If a public authority issues a show cause notice to a person calling upon him to do certain act and that person responds to the said notice, it is imperative for that authority to pass appropriate order supported with reasons disclosing as why the said reply is not acceptable.
20. Learned counsel for the respondent-EPFO has given much emphasis to the argument that the petitioner being the principal employer is liable to make payment of the due amount of the respondent No. 5 under section 8 of the Act, 1952. In support of the said contention the learned counsel has also referred few provisions of the Act, 1952 as well as the Scheme, 1952 which speak of the liability of the principal employer to pay due amount

under the Act, 1952. The said contention does not hold good in view of the fact that these issues are completely alien to the order dated 31.07.2017. Since the order dated 31.07.2017 was issued invoking section 8F of the Act, 1952, the respondent-EPFO cannot be allowed to supplement new grounds before this court so as to justify the said order.

21. In the case of ***Mohinder Singh Gill & Another vs. The Chief Election Commissioner, New Delhi & Others*** reported in ***(1978) 1 SCC 405*** the Hon'ble Supreme Court has held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and it cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. If it is permitted, an order bad in the beginning may, by the time it comes to court on account of challenge, gets validated by additional grounds later brought out.
22. In view of the discussions made hereinabove, the order dated 31.07.2017 and further consequential actions are quashed and set aside. The writ petition is, accordingly, allowed.
23. The respondent-EPFO is, however, at liberty to take any other lawful action in accordance with law for recovery of the due amount from the respondent No. 5.
24. Pending interlocutory application, if any, also stands disposed of.

(Rajesh Shankar, J.)

12.10.2026

Vikas/A.F.R.

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