



W.P.No.18730 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.07.2024

PRONOUNCED ON : 10.07.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.18730 of 2021

and

W.M.P.No.19995 of 2021

The Commissioner,
Oulgaret Municipality,
Jawahar Nagar, Reddiarpalayam,
Puducherry-605 005

...Petitioner

versus

1. The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub- Regional Office,
No.101, 100 Ft, Road,
Cholan Nagar,
Olandaikeerapalayam,
Puducherry-605 004.

2. The Assistant Provident Fund Commissioner (Comp)
Employees Provident Fund Organisation,
Sub-Regional office,
No.101, 100 ft., Road,
Cholan Nagar,
Olandaikeerapalayam,
Puducherry-605004.

...Respondents.



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Prayer: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 2nd respondent to issue notice of enquiry under Section 7A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 to the list of contractors submitted by the petitioners in obedience of the order dated 01.10.2020 passed by this Court in W.P.No.23106 of 2018 and consequently direct the 2nd respondent to forebear from taking further action for recovery from the petitioner.

For Petitioner : Mr.R.Udhayakumar

For Respondents : M/s.P.K.Panner Selvam for R1 and R2

ORDER

This Writ Petition is filed to issue a Writ of Mandamus, directing the 2nd respondent to issue notice of enquiry under Section 7A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 to the list of contractors submitted by the petitioners in obedience of the order dated 01.10.2020 passed by this Court in W.P.No.23106 of 2018 and consequently direct the 2nd respondent to forebear from taking further action for recovery from the petitioner.



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2. The facts in brief as per the affidavit enclosed in this Writ Petition are that the petitioner Pondicherry Municipality governed by the Pondicherry Municipality Act 1973. The petitioner Pondicherry Municipality has outsourced certain works to the contractors who were enlisted with the PWD Department of Pondicherry. The petitioner corporation specifically mentioned the contractors to follow the labour related laws applicable.

3. The 2nd respondent Assistant Provident Fund Commissioner of Employment Provident Fund Organization had issued notice on 08.01.2011 to the petitioner Municipality to submit relevant records for the purpose of assessment under Employment Provident Fund Act (herein after called as EPF Act). The petitioner Municipality had challenged the said notification given by the second respondent in W.P.No.23106 of 2018 and the same was disposed on 01.10.2020 with the following observations.

“a. That petitioner and the Contractor engaged by it to give details of the contract labour engaged



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from 08.01.2011 onwards with full particulars of their period of employment and the actual amount of wages paid to them.

b. That after identifying the contractual workers, the concerned authority shall determine the contributions amount that would have to be paid in respect of each of the contractual workers engaged in the establishment of the petitioner for the relevant period.

c. That full opportunity of hearing should be afforded to the petitioner and all other person concerned and a reasonable order shall be passed on merits and in accordance with law.”

4. The second respondent in pursuance of the above mentioned orders in W.P.No.23106 of 2018 issued a letter dated 29.01.2021 to the petitioner to appear for virtual hearing on 12.02.2021 for conducting an enquiry under 7 (A) of the EPF Act and directed to submit the details of the contract labourers engaged from 08.01.2011 upto the period of enquiry. The petitioner Municipality has in obedience to the request made by the second respondent issued circular to the contractor's association to produce the details of the contract labourers with wages



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paid to them from 08.01.2011 to 30.03.2015. However the list of the contractors were already furnished to the second respondent on 04.05.2017. Further on 09.04.2021 the second respondent directed the petitioner Municipality to issue notice to all the contractors to furnish the details of contract labourers engaged by them including the wages paid to them. Again the second respondent sent a letter to the petitioner on 06.08.2021 for enquiry under Section 7 (A) on 11.08.2021. During the course of enquiry proceedings, the petitioner Municipality has submitted that it has already submitted the details of contractors to second respondent and issued notices to few contractors and response is awaited. The petitioner Municipality has requested the second respondent to issue notice on enquiry under Section 7 (A) to the contractors to determine the details of workers and wages paid to them. Instead of giving the notices to the contractors the second respondent insisting the petitioner Municipality to give the details of workers worked on contract. Finally has issued notice under Section 7(A) on 06.08.2021, 12.08.2021 indicating that in case if the petitioner Municipality failed to attend the enquiry warrant will be issued to the petitioner municipality. It is submitted that the petitioner has given whatever information that the



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petitioner municipality is possessing and the second respondent in stead of issuing notice under Section 7(A) to the contractors has issued notices to the petitioner municipality and therefore sought for issuing directions as sought for.

5. The respondents have filed counter affidavit and the contents of which are as under:

The petitioner Pondicherry Municipality has governed under the provisions of EPF Act. It is not complied with the provisions of the and the scheme by way of promptly remitting provident fund contributions and other charges and in filing of monthly annual returns and the date of coverage. Accordingly enquiry under Section 7(A)(1)(b) of the act was initiated in order to determine provident fund dues payable by the petitioner municipality.

6. It is further mentioned in the counter affidavit that though in W.P.No.23105 of 2018, this Court has directed the petitioner to furnish the details of the contract labourer along with the period of employment and wages details, the details were not furnished by the petitioner and the



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petitioner has also not sent the details of the contractors though claimed that the details of 194 contractors stated to have been submitted. It is mentioned further in the counter affidavit affidavit that as per Section 8(A) of the EPF Act and para of the 30 of the EPF scheme it is the duty of the petitioner municipality as a principal employer to ensure that EPF contributions in respect of members engaged by contractors are remitted. The employees engaged directly or through contractors are liable to be enrolled as members under the scheme. It is also mentioned that as per para 36 and 38- B of the employment provident fund scheme both the petitioner as well as contractors are having statutory duty to maintain certain records and submit them to every month, thereby a statutory duty is there upon the petitioner Municipality to maintain records in respect of its employees. Therefore sought for dismissal of this Writ Petition.

7. It is submitted that the learned counsel for the petitioner that the petitioner Municipality has engaged many contractors to carry out certain works and after receiving of various notices from the second respondent under 7(A) the petitioner Municipality has issued notices to the contractors to furnish the details of the workmen engaged by them the



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periods of engagement and the wages paid by them so as to sent the details to the second respondent but there was no response. Same thing was intimated to the second respondent and the list of the contractors were also submitted to the second respondent. It is further submitted that in spite of taking all possible steps by the petitioner Municipality still second respondent has been issuing notice after notice and finally issued impugned notice and thereby seeking for furnishing the information of the details of the workmen required by the contractors failing which threaten to issue warrant of arrest. It is further submitted that the second respondent has failed to comply with the directions of this Court in W.P.No.23105 of 2018 and thereby second respondent cannot issue any notice under Section 7(A) to the petitioner alone and the second respondent required to issue notice to the contractors the list which was furnished by the petitioner and shall conducted enquiry and proceeded further.

8. On the other hand, counsel represented by the second respondent has submitted that as per Section 2(F) of the EPF Act and even the contract workers are also the workers of the petitioner Municipality and



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the petitioner Municipality is under the statutory obligation to maintain the list of the contractors along with the workers and in spite of repeated directions given by the second respondent under 7(A) the petitioner is not furnishing the details of the employees workers through contractors and thereby the second respondent will have a right to proceed further basing on the available records and to fix the liability on the petitioner. It is also submitted that the petitioner is under the obligations as a principal employer under Section 8(A) of the Act to ensure that the EPF contributions in respect of members/employers engaged by the contractors are remitted.

9. Heard both sides and perused the records.

10. As per Section 2(F) of the EPF Act all the contract employees engaged by the contractors are deemed to be the employees of the petitioner Municipality for the purpose of payment of contributions under the EPF Act. The petitioner Municipality has admittedly engaged many contractors to carry out their works which were outsourced to them and the said contractors have executed the works during the period by



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engaging the contract labourers. In respect of contributions to be made by the contractors to the EPF authorities. The second respondent has issued notice to the petitioners to furnish the details of the workers employed by the contractors to carry out the outsourced work of the petitioner Municipality. Under Section 8(A) it is the responsibility of the petitioner Municipality to ensure that all the employees engaged by the contractors have remitted their EPF contributions. As per Paragraph No.36 of the scheme, the petitioner municipality is also to maintain the records in respect of the workers employed by the contractors. Similarly, as per Paragraph No.36 (b) the contractors were also under the obligation to maintain the records in respect of the workers employed by them, wages paid by them and the duration in which the said work was done. Learned counsel for the petitioner has furnished the details of the contractors to the second respondent, though the respondent has denied the same. The copy of the list of contractors is filed before this Court as one of the documents.

12. Under the back drop of this it is required to be considered whether the petitioner municipality has discharged its obligation as



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required by the EPF Act, The second respondent has requested the petitioner to furnish the details of the contractors and the workers who worked the contractors for carrying out the petitioner outsourced works the petitioner corporation has addressed the letter to the contractors to furnish the details as sought for by the second respondent but there was no response. While informing the same to the second respondent the petitioner municipality has also submitted the details of the contractors employed by the petitioner corporation. Since then the deadlock is being continued.

13. According to the second respondent it is the petitioner municipality who has to submitted the details of not only the contract but also the workers worked under the contractors. It is submitted by the petitioner municipality to the second respondent that the petitioner Municipality is handicapped for not having the details of the workmen engaged by the contractors. Thereby, they are unable to furnish the same to the second respondent. It is also submitted that the efforts made by the petitioner to get the details of the workers to the contractors also not succeeded. Once the petitioner municipality does not have the record of



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the workers engaged by the contractors, it cannot be insisted upon to give the details. If the Municipality fails to furnish the details which it possess, then the petitioner Municipality can be found fault. But, the petitioner municipality has furnished all the details which are available in its office and thereby the second respondent cannot impose obligation that it shall furnish the details which the petitioner Municipality cannot possess.

14. At this stage, the second respondent has been contemplating to initiate action against the petitioner under Section 7A enquiry and also the learned counsel for the respondent has submitted that since the petitioner municipality is under the obligation to maintain the records of the workmen engaged by the contractors also and since the petitioner is not able to furnish the details of the workers engaged by the contractors, the second respondent will pass orders basing on the available records, so that the petitioner can approach appropriate forum if aggrieved by the orders. This submission of the second respondent is not convincing because the proposed action of the second respondent is in clear violations of the directions issued by this Court in W.P.No.23105 of 2018. The relevant portion of the directions is extracted hereunder for



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more clarity.

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“a. That petitioner and the Contractor engaged by it to give details of the contract labour engaged from 08.01.2011 onwards with full particulars of their period of employment and the actual amount of wages paid to them.

b. That after identifying the contractual workers, the concerned authority shall determine the contributions amount that would have to be paid in respect of each of the contractual workers engaged in the establishment of the petitioner for the relevant period.

c. That full opportunity of hearing should be afforded to the petitioner and all other person concerned and a reasonable order shall be passed on merits and in accordance with law.”

15. On a perusal of the above directions of this Court directed it is clear that this Court directed not only the petitioner Municipality but contractors to furnish the details of contractor labourers engaged during the specific time along with all details. In respect of this, the contention of the learned counsel for the petitioner is that he has not maintained the records of the contractor labourers engaged by the contractors thereby he



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is unable to furnish. The petitioner has however furnished the details of the contractors who worked for the petitioner municipality thereby the petitioner municipality discharged his obligations as directed by this Court.

16. Further, this Court has mentioned above directed the second respondent authority to determine the contributions amount that would have been paid in respect of each of the contract workers engaged by the petitioner at relevant period after identifying the contract workers. It is further directed by this Court during the hearing full opportunity has to be afforded to the petitioner Municipality Municipality and all the parties concerned and then orders have to be passed. Therefore, basing on the above orders, it is clear that after identifying the list of the workers either from the petitioner or from the contractors a full-fledged enquiry required to be conducted in respect of contributions to be paid to the second respondent authority and during the said enquiry opportunity has to be given to all the parties concerned.

17. Therefore, second respondent has though made efforts to get



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the details of the workers from petitioner, the second respondent has failed to initiate any proceedings against the contractors as per the list furnished by the petitioner Municipality by issuing notices under Section 7(A) of the EPF Act. The respondent has not mentioned anything in the counter affidavit as to why the directions of this Court in W.P.No.23105 of 2018 have not been followed by issuing notices to the contractors asking them to produce the list of workers along with other details required. This Court in W.P.No.23105 of 2018 has also observed as under:

“The petitioner would be entitled for this purpose to make an application under Section 7-A of the EPF Act before the concerned authority in the Employees Provident Fund Organisation to issue summons to the contractors to produce evidence regarding the details of the employment of the contractual workers, and necessary orders would have to be passed in that regard.”

18. Therefore on a perusal of the above observations also it is clear the second respondent authority is required to issue summons to the



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contractors to produce evidence regarding the details of the employment of the contract workers. But admittedly notices have not been issued to the contractors.

19. This Court in W.P.No.23105 of 2018 has observed as under:

“In short, the real focus has to be on identifying the contractual workers, who has been engaged through the Contractors, by relevant evidence and ascertain the exact amount towards contribution for provident fund in respect of each of them. There is no gainsaying that the enforcement machinery provided under the EPF Act should not be converted as a ploy just to fill up the coofers of the Employees Provident Fund Organization, where already several courses of rupees are reportedly lying unclaimed, loosing sight of the beneficent objects of that labour welfare enactment.”

20. Learned counsel for the second respondent has cited decision of this Court in W.P.No.28738 of 2023 and batch dated 12.10.2023 wherein in similar circumstances, this Court has observed that the provident fund



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authority should have proceed against the contractor and not against the principal employer since as per Section 2(f) of the EPF Act, even the contract labourers are also comes within the definition of Section 2(f) and that the principal employer is under the obligation to pay the provident fund contributions of the employees.

21. There is no dispute that the petitioner being principal employer is under the obligation to pay the provident fund contributions of the employees and also the contract workers. However, the petitioner is handicapped that it does not have details of the workers of the contract labourers and the second respondent who is under the obligation to issue notices as directed by this Court in W.P.No.23105 of 2018 has failed to initiate any steps against the contractors to ascertain the details of the workers employed by them and that efforts made by the petitioner to get the details of the workers from the contractors was not helpful. The learned counsel for the petitioner has filed an authority of the Hon'ble Supreme Court of India, reported in (1990) 1 SCC 68, wherein it is observed as under:

“a. That petitioner and the Contractor engaged by it to give details of the



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contract labour engaged from 08.01.2011 onwards with full particulars of their period of employment and the actual amount of wages paid to them.

b. That after identifying the contractual workers, the concerned authority shall determine the contributions amount that would have to be paid in respect of each of the contractual workers engaged in the establishment of the petitioner for the relevant period.

c. That full opportunity of hearing should be afforded to the petitioner and all other person concerned and a reasonable order shall be passed on merits and in accordance with law.”

22. On a perusal of the above directions of this Court directed it is clear that this Court directed not only the petitioner but contractors to furnish the details of contractor labourers engaged during the specific time along with all details. In respect of this, the contention of the learned counsel for the petitioner is that he has not maintained the records of the contractor labourers engaged by the contractors thereby he is unable to furnish. The petitioner has furnished the details of the contractors who



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worked for the petitioner municipality thereby the petitioner discharged his obligations as directed by this Court. Further, this Court has mentioned above directed the second respondent authority to determine the contributions amount that would have been paid in respect of each of the contract workers engaged by the petitioner at relevant period after identifying the contract workers. It is further directed by this Court during the hearing full opportunity has to be afforded to the petitioner and all the parties concerned and then orders have to be passed. Therefore, basing on the above orders, it is clear that after identifying the list of the workers either from the petitioner or from the contractors a full-fledged enquiry required to be conducted in respect of contributions to be paid to the second respondent authority and during the said enquiry opportunity has to be given to all the parties concerned.

23. Therefore, second respondent has though made efforts to get the details of the workers from petitioner, the second respondent has failed to initiate any proceedings against the contractors as per the list furnished by the petitioner by issuing notices under Section 7(A) of the EPF Act. The respondent has not mentioned anything in the counter



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affidavit as to why the directions of this Court in W.P.No.23105 of 2018 have not been followed by issuing notices to the contractors asking them to produce the list of workers along with other details required. This Court in W.P.No.23105 of 2018 has also observed as under:

“The petitioner would be entitled for this purpose to make an application under Section 7-A of the EPF Act before the concerned authority in the Employees Provident Fund Organisation to issue summons to the contractors to produce evidence regarding the details of the employment of the contractual workers, and necessary orders would have to be passed in that regard.”

24. Therefore on a perusal of the above observations also it is clear the second respondent authority is required to issue summons to the contractors to produce evidence regarding the details of the employment of the contract workers. But admittedly notices have not been issued to the contractors.

25. This Court in W.P.No.23105 of 2018 has observed as under:

“In short, the real focus has to be on identifying the contractual workers, who has been engaged through



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the Contractors, by relevant evidence and ascertain the exact amount towards contribution for provident fund in respect of each of them. There is no gainsaying that the enforcement machinery provided under the EPF Act should not be converted as a ploy just to fill up the coofers of the Employees Provident Fund Organization, where already several courses of rupees are reportedly lying unclaimed, losing sight of the beneficent objects of that labour welfare enactment.”

26. Learned counsel for the second respondent has cited decision of this Court in W.P.No.28738 of 2023 and batch dated 12.10.2023 wherein in similar circumstances, this Court has observed that the provident fund authority should have proceed against the contractor and not against the principal employer since Section 2(f) of the EPF Act, even the contract labourers are also comes within the definition of Section 2(f) and that the principal employer is under the obligation to pay the provident fund contributions of the employees. There is no dispute that the petitioner being principal employer is under the obligation to pay the provident fund contributions of the employees and also the contract workers. However,



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the petitioner is handicapped that it does not have details of the workers of the contract labourers and the second respondent even though is under the obligation as directed by this Court in W.P.No.23105 of 2018 has failed to initiate any actions against the contractors to ascertain the details of the workers employed by them and that efforts made by the petitioner to get the details of the workers from the contractors was not helpful. The learned counsel for the petitioner has filed an authority of the Hon'ble Supreme Court of India, reported in (1990) 1 SCC 68, wherein it is observed as under:

“5. The grievance complained of by the Corporation is that it was denied of reasonable opportunity to produce material in proof of identification of the workers in respect of whom the contribution was payable. It is urged that the contractors are in possession of the relevant lists and the Commissioner has not even given notice to contractors nor made them parties to the proceedings in spite of repeated requests made by the Corporation. Counsel for the Union of Workmen, however, contended that under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 the



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Corporation being the principal employer has to maintain list of workers; that it has failed to produce such list and, therefore, it cannot throw the burden on the contractors to prove the case.

6. We have carefully perused the Commissioner's order and also the order of the High Court. The total amount ordered to be payable comes to about Rs. 22,48,000/- in respect of the employees of depots namely: Udaipur, Jaipur, Ajmer, Badmer and Sawai Madhopur. The Commissioner has also directed the Divisional Officer, Jaipur to deposit the Provident Fund Contribution i.e. Rs. 18,72, 194/-to the Fund being maintained by the trustees of the establishment. It is indeed a large amount for the determination of which the Commissioner has only depended upon the lists furnished by the workers Union. It is no doubt true that the employer and contractors are both liable to maintain registers in respect of the workers employed. But the Corporation seems to have some problems in collating the lists of all workers engaged in depots scattered at different places. It has requested the Commissioner to summon the contractors to produce the respective lists of workers engaged by them. The Commissioner did not summon the Contractors nor the lists maintained by them. He



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has stated that the Corporation has failed to produce the evidence.

7. The question, in our opinion, is not whether one has failed to produce evidence. The question is whether the Commissioner who is the statutory authority has exercised powers vested in him to collect the relevant evidence before determining the amount payable under the said Act.

8.

9. It will be seen from the above provisions that the Commissioner is authorised to enforce attendance in person and also to examine any person on oath. He has the power requiring the discovery and production of documents. This power was given to the Commissioner to decide not

abstract questions of law, but only to determine actual concrete differences in payment of contribution and other dues by identifying the workmen. The Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner should exercise all his powers to collect all evidence and collate all material before coming to proper conclusion. That is the legal duty of the Commissioner. It would be failure to exercise the



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jurisdiction particularly when a party to the proceedings requests for summoning evidence from a particular person.”

27. In view of the discussions made above, the petitioner municipality which has outsourced certain works to the contractors who engaged the contract labourer is under the obligation to pay the provident contributions of all the employees including that of the contract labourers as per Section 8(A) of the EPF Act and that since all his efforts have failed to secure the details of the contract labourers from the contractors and since petitioner Municipality has already furnished the list of the contractors to the second respondent and since the second respondent who has the information about the contractors should have initiated steps by issuing summons to the contractors to get details of the workmen engaged by the contractors, thereby the petitioner cannot be found fault. The second respondent has to take steps by issuing summons to the contractors to get the relevant information for which the petitioner municipality shall extend all possible cooperation.

28. The second respondent which is under the obligations as per



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the directions of this Court in W.P.No.23105 of 2018 has to issue notices to contractors seeking the details of the contract workers, their wages and other details, cannot suggest that the second respondent will proceed with basing on the available records and pass orders against the petitioner Municipality. Unless and until, the second respondent take steps to get the information from the contractors about the contract labourers it cannot proceed against the petitioner. However, once the second respondent get some information from the contractors, the petitioner municipality being the principal employer is under the obligation to pay the provident fund contributions irrespective of the fact whether contractors would pay the contributions or not.

29. In view of the discussions made above, the impugned notices issued by the second respondent dated 29.01.2021, 06.08.2021 and 13.08.2021 without making efforts to get the information from the contractors is erroneous and therefore, liable to be set aside. However, this will not exonerate the petitioner Municipality from the liability of payment of provident fund contributions to the second respondent. Once the details of the workers engaged by the contractors are available, the



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petitioner Municipality is under the obligation to discharge its liability under the provisions of EPF Act.

30. Accordingly, this Writ Petition is allowed set and impugned notices dated 29.01.2021, 06.08.2021 and 13.08.2021 passed by the second respondent are set aside. No costs. Consequently, connected miscellaneous petition is closed.

10.07.2024
(2/2)

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citations: Yes/No
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Dr.D.NAGARJUN, J.
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To

1. The Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
Sub- Regional Office,
No.101, 100 Ft, Road,
Cholan Nagar,
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Puducherry-605 004.

2. The Assistant Provident Fund Commissioner (Comp)
Employees Provident Fund Organisation,

Sub-Regional office,
No.101, 100 ft., Road,
Cholan Nagar,
Olandaikerapalayam,
Puducherry-605004.

Pre-delivery Order.
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10.07.2024
(2/2)