



Petition filed in Supreme Court challenging the constitutional validity of orders passed by the Ministry of Home Affairs and the Government of Maharashtra making payment to workers mandatory during the lockdown period

COVID-19 pandemic has resulted in nationwide lockdowns causing disruption and bringing to a halt all business activities. In order to protect livelihood of workers the Central Government and State Governments have issued various notifications, which were mostly in the nature of advisories, directing employers not to resort to salary cuts as well as not to terminate employees.

However, it was only on 29 March 2020 that the Ministry of Home Affairs (“MHA”) issued an order, exercising powers under the Disaster Management Act, 2005 (“DM Act”), pursuant to which it directed all employers to make payment of wages, without any deduction and on the due dates, to their workers for duration of the lockdown.

Taking a cue from the order of the MHA, various State Governments, including the Government of Maharashtra, issued an order mandating employers to pay full salaries to their workers for the duration of the lockdown. In fact, the order passed by the State Government of Maharashtra, on 31 March 2020, extended the ambit of the order to contract workers as well as casual workers.

While the action taken by the Central and State Governments to protect the interest of the workers is understandable, the lack of business during the lockdown period has made it difficult for businesses to sustain themselves. This has resulted in a feeling amongst the business community that the economic cost of the pandemic is, to a large extent, being imposed on them without any financial assistance.

It was only a matter of time before the constitutionality of such orders was challenged, and on 18 April 2020 a petition was filed in the Supreme Court of India by Nagreeka Exports Limited, a Mumbai based textile company. The petition challenges the constitutional validity of the 29 March 2020 order issued by the MHA as well as that of the 31 March 2020 order passed by the State Government of Maharashtra.

The petitioner has claimed that due to the lockdowns, on account of COVID-19, it has incurred huge losses (around INR 15 million) and that in case it is compelled to pay full salaries the business would become unsustainable and there would be far reaching consequences.

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In its petition, the petitioner has requested the Supreme Court to allow it to pay 50% of the basic pay plus dearness allowance (without payment of PF and ESIC contribution) to its workers during the pendency of the plea.

The main contention raised by the petitioner is that the DM Act, under which these notifications for payment of salaries have been issued, does not provide for continued payment of wages by employers to their workers/employees during any disaster.

The petition, which seeks to have the orders set aside, has raised the following issues, amongst others, to be considered by the Supreme Court:

(a) Whether the Government of India and Government of Maharashtra is empowered to issue direction to a private establishment, like the Petitioner, to pay 100% wages under Disaster Management Act, 2005?

(b) Whether the directions to compulsorily pay wages to all workers, without any deduction, for the entire period when the establishment is closed during lockdown, is factually feasible for such an employer?

(c) Whether the Government was right in issuing vague directions without specifying as to whether they are applicable to employers of migrating workers, or is it a blanket direction to all employers?

(d) Whether directions are reasonable as they were issued without intelligent care and deliberation and without considering the financial capacity of the employer to bear the burden of payment of salary to its workers without their being any production?

We will track the developments in this regard, and keep you posted.

Clasis Law supports 'Stay Home, Stay Safe' initiative to fight against pandemic COVID-19 crisis. We continue business as usual and our attorneys and staff are available to provide our clients uninterrupted service. Please do not hesitate to reach out with questions or concerns at any time. We hope that you and your family remain healthy and safe throughout this global health challenge.

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