

## COVID-19 LOCKDOWN RELATED LABOUR MEASURES: AN OVERVIEW

TRISHNA MENON\*

Since the outbreak of COVID-19 pandemic in India, the unprecedented nation-wide lockdown mandating closure of commercial, private and industrial establishments (with limited exceptions) has been extended from time to time since 24.04.2020. Presently, the lockdown has been extended till 31.05.2020.

One of the most significant fallouts of the government mandated lockdown across India, has been the exodus of migrant workers who were left without daily employment or wages, and also payment of wages to workers for the time they have been unable to attend work due to implementation of lockdown-related measures.

This articles provides an overview of the measures taken by the Government of India, through the Ministry of Home Affairs (“MHA”) and Ministry of Labour and Employment (“MLE”), to address the labour law issues arising in the wake of the nation-wide lockdown. Labour being a concurrent subject, the State governments have also issued notifications in this regard, some of which are discussed below.

### A. Central Government measures

The MLE has provided a number of advisories for the benefit of employees and workers. On 20.03.2020, the MLE advised employers of public and private establishments to extend their cooperation by not terminating their employees, particularly casual or contractual workers, or reducing their wages. If a worker takes leave, he/she should be deemed to be on duty without any consequential deduction in wages for this period. If the place of employment is made non-operational due to COVID-19, the employees of this unit would be deemed to be on duty.<sup>1</sup>

The MHA, on 29.03.2020, in an order to States and Union Territories (**‘MHA Order on Migrant Workers’**), directed them to take additional measures to deal with the movement of large number of migrants in different parts of the country during the lockdown period. Some of the important measures specified by the MHA are:

- States/UTs to ensure adequate arrangements of temporary shelters, food for the poor and needy that are stranded due to lockdown measures,
- Migrant people who have moved out to reach their home states to be kept in the nearest shelter by respective State/ UT government quarantine facilities after proper screening for at least 14 days,
- All employers to make payment of wages to their workers on the due date without deduction for the period of lockdown,
- Landlords of rented premises shall not demand payment of rent for a period of one month from the workers,
- Landlords forcing labourers/ students to vacate premises would be liable for action under the Disaster Management Act, 2005.<sup>2</sup>

However, this obligation has been modified by the latest order of the Ministry of Home Affairs dated 17.05.2020, which extends the lockdown until 31.05.2020 (**‘MHA Lockdown-4 Order’**),<sup>3</sup> which provides that (unless otherwise specified) all Orders issued by NEC under Section 10(2)(I) of the Disaster Management Act, 2005, shall cease to have effect from 18.05.2020. Therefore, from 18.05.2020, the MHA Order on Migrant Workers, which was issued by the Chairperson of the National Executive Committee under Section 10(2)(I) of the Disaster Management Act, 2005, will cease to have effect.

<sup>1</sup> MLE Advisory Letter No. D.O. No. M-11011/08/2020-Media, ‘Advisory to public/private establishments to not terminate the employees from their jobs or reduce their wages’, dated 20.03.2020.

<sup>2</sup> MHA Order No. 40-3/2020-DM-I(A), dated 29.03.2020.

<sup>3</sup> MHA Order No. 40-3/2020-DM-I(A), dated 17.05.2020.

Therefore, the obligation that was earlier placed on employers to pay their workers/employees is not in effect anymore.

The MLE also notified an amendment to the Employees' Provident Funds Scheme, 1952 on 27.03.2020 to the effect that the Commissioner or any officer subordinate to him (where so authorised by the Commissioner), may permit withdrawal of a non-refundable advance from the provident fund account, for an amount which is lesser of the following: (i) not exceeding the basic wages and dearness allowances of that member for three months; or (ii) up to 75% of the amount standing to his credit in the Fund. Such an advance can be released upon application being made by a member of the Scheme employed in any establishment or factory located in an area declared as affected by the outbreak of the epidemic by the appropriate Government.

The Ministry of Skill Development and Entrepreneurship ('MSDE') vide office memorandum dated 30.03.2020 notified that as per the lockdown imposed by Government of India due to the COVID-19 pandemic, all establishments must pay full stipend as applicable to the apprentices engaged in their respective establishments, under both designated and optional trade during this time period. Reimbursement of stipend to establishments under National Apprenticeship Promotion Scheme (NAPS) shall be paid by the Government for the lockdown period as per the NAPS guidelines.<sup>4</sup>

The Ministry of Corporate Affairs ('MCA') also released a series of Frequently Asked Questions ('FAQs') and clarifications regarding payment of wages and Corporate Social Responsibility ('CSR'), which clarified that:

- Payment of salary/wages to employees and workers during the lockdown period is a moral obligation of the employers, as they have no alternative source of employment or livelihood during this period. Therefore, payment of salary/ wages to employees and workers during the lockdown period would not qualify as admissible CSR expenditure.<sup>5</sup>
- Payment of wages to temporary/casual/daily-wage workers during the lockdown period is part of the moral/humanitarian/contractual obligations of the company and is applicable to all companies irrespective of whether they have any legal obligation for CSR contribution under section 135 of the Companies Act 2013. Therefore, payment of wages to temporary or casual or daily wage workers during the lockdown period shall not count towards CSR expenditure.<sup>6</sup>
- However, if any ex-gratia payment is made to temporary/casual/daily-wage workers over and above the disbursement of wages, specifically for the purpose of fighting COVID-19, the same would be admissible towards CSR expenditure, as a one-time exception, provided there is an explicit declaration to that effect by the Board of the company, which is duly certified by the statutory auditor.<sup>7</sup>

## **B. State Government Measures: Some examples**

The Constitution of India specifies 'labour' as a concurrent subject, on which both the Centre and States are competent to enact laws. In addition to the measures/ advisories notified by the MLE, various State Governments have also actively notified measures to address grievances of the workforce arising due to COVID-19 related lockdown and circumstances. A few examples are as follows:

- The Government of NCT of Delhi, vide its notification dated 22.03.2020, which was valid until 31.03.2020, required that employees of private establishments (including

---

<sup>4</sup> MSDE O.M. No. MSDE- 1(3)/2020AP(PMU), 'Clarification on payment of stipend to apprentices and reimbursement of stipend to establishments under NAPS during COVID-19 lockdown', dated 30.03.2020.

<sup>5</sup> Ministry of Corporate Affairs MCA General Circular No. 15/2020 (F. No. CSR-01/4/2020-CSR-MCA), 'COVID-19 related Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR)' dated 10.04.2020, FAQ 5.

<sup>6</sup> Ministry of Corporate Affairs MCA General Circular No. 15/2020 (F. No. CSR-01/4/2020-CSR-MCA), 'COVID-19 related Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR)' dated 10.04.2020, FAQ 6.

<sup>7</sup> Ministry of Corporate Affairs MCA General Circular No. 15/2020 (F. No. CSR-01/4/2020-CSR-MCA), 'COVID-19 related Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR)' dated 10.04.2020, FAQ 7.

temporary/contractual/outsourced etc.) required to stay at home in view of this order would be treated as “on duty” and be paid in full.<sup>8</sup>

- The Government of Telangana, in a similar order, mandated that all Government and private establishments must make payments of wages/salaries fully to workers/employees, including those working under contract and outsourcing basis during the lockdown period. Violations would invite penal action under The Epidemics Disease Act, 1897.<sup>9</sup>
- In Haryana, the Director, Industries and Commerce, Haryana, advised that all industrial and commercial establishments transfer salaries to the bank accounts of their employees through Direct Benefit Transfer.<sup>10</sup>
- In Maharashtra, the government mandated (**‘GoMH Order’**) that all workers (whether on contract basis, or outsourced workers/employees, temporary workers/employees or daily-wage workers) working in private organisations, industries, companies, shops (except essential services organisations) etc., who have to stay at their houses due to the spread of COVID-19 shall be assumed to be on work and these workers/employees shall be given complete salaries and allowances to which they are entitled.<sup>11</sup>
- The Office of the District Collector and District Magistrate, Gandhinagar, notified certain instructions under Section 34 of the National Disaster Management Act, 2005, on 02.04.2020 (**‘Gujarat Notification on Contract Labour’**), specifying that all employment-providing industries, commercial establishments/shops, contractors will pay all their employees in full without any kind of deduction during the lockdown period, even if their industries, commercial establishments/shops remain closed. The principal employer will have to make such payment through the contractors in respect of the contractor's employee-workers.

### C. Related Ongoing Litigation

The courts in India are already seized of the question regarding validity of government orders mandating payment of wages during the lockdown period. Several petitions have been filed before the Supreme Court and High Courts challenging notifications requiring payment of full salaries.

- In the matter of ***Nagreeka Exports Ltd. v. Union of India and Ors.***<sup>12</sup>, the petitioner sought the setting aside of both the MHA Order on Migrant Workers and the GoMH Order, to the extent that payment of full salaries were mandated. In another proceeding, ***Ficus Pax Pvt. Ltd. v. Union of India and Ors.***<sup>13</sup>, the petitioner challenged Clause iii of the MHA Order on Migrant Workers, which mandated that employers make full payment of wages to their workers, for the period their establishments are under lockdown. In this matter, vide order dated 27.04.2020, the Supreme Court noted that the Solicitor General of India will be filing a response to the writ petitions, and that the matter would be listed after two weeks.<sup>14</sup>
- A similar proceeding was also initiated before the Bombay High Court (Aurangabad Bench), in which the MHA Order on Migrant Workers was challenged. The Court, vide order dated 30.04.2020<sup>15</sup>, observed that since the Supreme Court was dealing with a similar cause of action, it

<sup>8</sup> Government of NCT of Delhi (Health and Family Welfare Department) Order No. F.51/DGHS/PH-IV/COVID-19/2020/prsecyhfw/3064-3163, dated 22.03.2020, ¶ 5.

<sup>9</sup> Government of Telangana (General Administration Department) Order G.O.Ms. No. 45, dated 22.03.2020, ¶ 14.

<sup>10</sup> Government of Haryana (Industries and Commerce Department) Memo No. PS/DI2C/2020/324, ‘Advisory to Industries regarding payment of salaries to the employees’, dated 27.03.2020.

<sup>11</sup> Government of Maharashtra (Industries, Energy and Labour Department) No. Sank.2020/ प्र. क्र. 45/काप्र-9, dated 31.03.2020.

<sup>12</sup> Writ Petition (Civil) No. 471 of 2020.

<sup>13</sup> Diary No. 10983/2020, heard with ***Aditya Giri v. Union of India and Ors.***, Diary No. 10981/2020, and ***Ludhiana Hand Tools Association v. Union of India***, Diary No. 10993/2020.

<sup>14</sup> ***Ficus Pax Pvt. Ltd. v. Union of India and Ors.***, Diary No. 10983/2020, Record of Proceedings dated 27.04.2020.

<sup>15</sup> ***Align Components Pvt. Ltd. and Anr. v. Union of India and Ors.***, Writ Petition Stamp No.10569 of 2020, Order dated 30.04.2020, ¶¶ 6, 8.

would not interfere with the impugned order and would expect the petitioners to pay the gross monthly wages to the employees, save and except conveyance allowance and food allowance, if being paid on a monthly basis, in the cases of those workers who are not required to report for duties.

The Bombay High Court also clarified that since the State of Maharashtra has partially lifted the lockdown in certain industrial areas, workers would be expected to report for duties as per the shift schedules subject to adequate protection, from COVID-19 infections, by the employer. If such workers voluntarily remain absent, the management would be at liberty to deduct their wages for their absence subject to the procedure laid down in law, while initiating such action.

- In **K. Amsa Kannan v. Chief Secretary, Government of Tamil Nadu**,<sup>16</sup> a public interest litigation was filed seeking that a deduction be made to the salaries of government servants, who were not discharging their duties due to the COVID-19 lockdown. The Madras High Court rejected this prayer on the basis that the policy decision in this regard is left with the State Government and the Court could not issue a positive direction towards deduction of a portion of the salary of government servants.<sup>17</sup>
- Conversely, the Government of Kerala had issued an executive order on 23.04.2020, which mandated that all Government employees who are in receipt of a gross salary of above Rs. 20,000/- would be subjected to a deferment of a small portion of their salary. The deferment would be on the salary payable for the period April 2020 till August 2020, and the quantum of salary proposed to be deferred was the salary equivalent of six days for each of these months. By the end of five months, the said order contemplated the deferment of salary of one month due to a Government employee. This order was challenged in **Kerala Vydyuthi Mazdoor Sangham and Anr. v. State of Kerala and Anr.**<sup>18</sup> The High Court of Kerala held that it could not find a legal justification for the issuance of this order in either the Epidemic Diseases Act, 1897 as amended by the Epidemic Diseases (Amendment) Ordinance, 2020, nor in the Disaster Management Act 2005. The High Court observed that Sections 38 and 39 of the Disaster Management Act, 2005, do not specify or confer any power upon any Government to defer the salary due to its employees during any kind of disaster. Moreover, the Court found that there was an ambiguity in the manner in which the amounts obtained from the proposed deferment of salary were planned to be utilised. The financial difficulty faced by the Government of Kerala is not a ground to defer the payment of salary by an executive order. The Court found, *prima facie*, that deferment of salary for any purposes, amounts to denial of property, and therefore, stayed the operation of the executive order for a period of two months.<sup>19</sup>

**This Article is authored by Trishna Menon, who is an Associate at Clarus Law Associates.**

**(Disclaimer: This article is for information purposes only, and does not constitute legal opinion or advice.)**



---

<sup>16</sup> Writ Petition No. 7505 of 2020.

<sup>17</sup> **K. Amsa Kannan v. Chief Secretary, Government of Tamil Nadu**, Writ Petition No. 7505 of 2020, Order dated 21.04.2020.

<sup>18</sup> WP(C) TMP. No. 182/2020.

<sup>19</sup> **Kerala Vydyuthi Mazdoor Sangham and Anr. v. State of Kerala and Anr.**, WP(C) TMP. No. 182/2020, Order dated 28.04.2020.