

BREAKING NEWS

By S K Gupta , Advocate , Supreme Court

Email : skpfdelhi@gmail.com , M:9891170907

Two writ petition got filed in the Supreme Court by challenging the Home Ministry Affairs' order dated 29.03.2020 and Labour Ministry's order dated 20.03.2020 and 23.03.2020 . The details of the Petitioners are as under:

1. Ludhiana Hand Tools Association Vs. Union of India , filed on 21.04.2020 ,

2. Nagreeka Exports Ltd. vs. Union of India, WP (C) No. 471/2020, registered on 18.04.2020.

Not listed for hearing so-far.

In both writ petition which are identical and the Petitioners have challenged the MHA order dated 29.03.2020 in respect of the issue for payment of full wages , without deduction , during lock-down period . The tenable grounds, in brief, in the both petition are as under:

(i) The DM Act, 2005 never says for the payment of wages by the employers during any disaster. Hence, lacks legislative jurisdiction competence to enact law a directing private establishment

to pay the wages of their workers /employees whether work/duties are done by them or not. Therefore, directions given by the Central Government / State Government and their competent authorizes are violative of fundamental rights guaranteed under Article 14, 19(1) (g) of the Indian Constitution.

(ii) The Ministry of Corporate Affairs says that “it should not be treated as corporate social responsibility (CSR) and it is a moral responsibility, not legal.

(iii) The petitioners have also relied the Article 265 , 10 and 300A of the Indian Constitution

(iv) The Petitioners have relied following Shayara Bano Vs. UOI, (2017) 9 SCC 1, Kunnathat Thathuni Moopil Nair Vs. the State Kerala (1961) 3 SCR 77, Supdt of Taxes Vs. Onkarmal Nathmeril Trust (1976)1 SCC

(v) The both petitioners have also relied the Layoff provisions i.e. 2(kkk) , 25-C and 25-M of the I D Act on ground of natural calamity.

(vi) Both Petitioners have relied the Letters/request of the CM of Punjab and HP .

But no petitioners have discussed the Section 72 of the DM Act,2005 i.e. (Act to have overriding effect): Doctrine of non-obstante clause (non ob·stan·te) or ‘Doctrine of Repugnancy’ .

There is no discussion about the Article 254 of the Indian Constitution

.

Prayer of the Petitioners (in brief)

For quashing the MHA order (supra) , being unconstitutional , illegal and against the law. (both petitioners)

For paying 50% wages (basic + DA) without deduction of PF and ESI (only Nagreek Export)

But the Ludhiana Tools Association has discussed about the layoff provision and not prayed for giving layoff compensation .

Unfortunately there is no discussion in respect of sickness benefits (Section 46 of ESI Act) during lock down period for insured person or unemployment allowance under the provision of ESI Act,1948 (Rs.84000 Cr idle in ESIC corpus) or Building and Construction Cess of Rs.9600 Cr. Both funds can be utilize for doing welfare of the employees /workers during lock down period.

In these two funds can be utilize for most of the workers' welfare and migratory labour .