

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

LD-VC-CW NO. 116/2020

Hariomkar Food Product Pvt. Ltd. & ors.

..VS..

Director General, ESIC & anr.

WITH

LD-VC-CW NO. 46/2020

Bharat Containers (N) Pvt. Ltd. & ors.

..VS..

Director General, ESIC & anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.J. Pathak, Advocate for the petitioner(s)
Ms. B. Maldhure, Advocate for the respondent no. 1
Shri A.S. Fulzele, Addl. GP for the respondent no. 2

CORAM : Z.A.HAQ & ANIL S. KILOR, JJ.

DATED : 24/08/2020

Heard.

By these petitions, the petitioners have sought
reliefs as per the following prayers :-

“A. Issue a writ of Mandamus or any appropriate writ, order or direction and direct the Respondent No. 1 namely the Employees State Insurance Corporation to declare the Pandemic of COVID-19 as a ‘Employment Injury’ and consider the representation of the petitioners dated 03/05/20 and release the sickness benefits to the insured employees during the Lock Down period

B. Direct the Respondent No. 2 to not to initiate any coercive steps against the petitioners for deferring the payment of wages till the financial Arrangements are made.”

According to the petitioners (who are employers), their employees are compelled to stay indoor during the pandemic because of the lockdown from 21/03/2020 and therefore they have not been able to attend their duties. According to the petitioners, this has to be treated as “employment injury” as contemplated by Section 2 (8) of the Employees’ State Insurance Act, 1948 (for short “the Act of 1948”). In support of the submission that the restraint put by the State Government and the Competent Authority under the Pandemic Diseases Act, has to be considered as “employment injury” for the purposes of Section 2 (8) of the Act of 1948, the petitioners relied on the provisions of Section 2 (20) and Section 64 of the Act of 1948. Section 2 (20) of the Act of 1948 defines “sickness” and Section 64 (c) of the Act of 1948 deals with the circumstances under which the employees are entitled for sickness benefits.

Learned advocate for the respondent nos. 1 (a) and (b) submitted that the claim of the petitioners is misconceived and the petitions are liable to be dismissed. It is further submitted that the petitioners have no locus to maintain the petitions as under the scheme of the Act of 1948, the employees are entitled for the benefits and not the employers.

We find substance in the submission made by learned advocate for the respondent nos. 1 (a) and (b) that the petitioners’ employers will not have any locus to maintain these petitions. The Act of 1948 is enacted with the object of providing certain benefits to employees in case of

sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto.

Apart from the above, we find that the petitioners are invoking the extraordinary jurisdiction of this Court for the relief which is not permissible under the provisions of the Act 1948. By any stretch, it cannot be said that the restraint put on the persons including the employees of the petitioners during pandemic because of the lockdown can be considered as “employment injury” as defined by Section 2 (8) of the Act of 1948. Section 2 (8) of the Act of 1948 reads as follows:-

“Section 2. Definitions. —In this Act, unless there is anything repugnant in the subject or context,—

(1)

(2)

(3)

(4)

(5)

(6)

(7)

(8) “employment injury” means a personal injury to an employee caused by accident or an occupational disease arising out of and in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India”

The above provision clearly contemplates a personal injury to the employee caused by accident or an occupational disease arising out of and in the course of employment of the employee. Unless the ingredients of Section 2 (8) of the Act of 1948 are found to exist, it would not be possible to accept the contention of the petitioners. It will amount to reading something in the provision which is not provided by the legislature.

In view of the above, we see no reason to show any indulgence in the matter.

Hence, the writ petitions are **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE

JUDGE