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BBMP MANDATES VACCINATION FOR EMPLOYEES

A. Introduction

The Chief Commissioner of Bangalore's municipal corporation, Bruhat Bengaluru Mahanagara Palike (**BBMP**) has issued a circular dated August 26, 2021 (the "**Circular**")¹ instructing employers of commercial establishments, industries, hotels, restaurants, offices, *etc.*, ("**Workplaces**") mandating the Covid-19 vaccination for their staff/employees and other appropriate protocols.

B. Key Takeaways

As per the Circular:

1. Employers at Workplaces must ensure compliance with the following conditions ("**Conditions**"):
 - Regular testing of their staff;
 - 100% vaccination of their staff working on-premises at either government/BBMP vaccination centers or private hospitals, at the cost of the employer;
 - At least one dose of vaccination has been taken by employees by August 31, 2021; and
 - Employees are to maintain proof of their vaccination status and produce the same as and when required.
2. From September 1, 2021, BBMP marshals and health officials are authorised to verify if employers are being compliant with the Conditions, by visiting work-premises during working hours.
3. Any violations shall result in penalties and punishment under Section 188 (*Disobedience to order duly promulgated by public servant*) of the Indian Penal Code, 1860 (**IPC**), as defined in the Epidemic Diseases Act, 1897 ("**EDA**").²

C. Comment

Some High Courts (**HCs**) have opposed respective state governments' orders mandating the vaccinations. Gauhati HC opined that differentiating between vaccinated and unvaccinated persons for the issuance of work permits in public and private sectors, violates Articles 14, 19(g) and 21,³ of the Constitution and further stated that classification between vaccinated and unvaccinated persons is unfounded, as both persons are capable of spreading the Covid-19 virus.⁴ Similar views were expressed by the HCs of

¹ Circular No. CHI.COM.PSR/135/2021-22.

² Section 3 of the EDA.

³ 'Right to Equality', 'Right to practice any profession, or to carry on any occupation, trade or business', and 'Right to Life and Personal Liberty', respectively.

⁴ *Madan Mili v. Union of India* (2021 SCC OnLine Gau 1503).

Meghalaya⁵ and Manipur.⁶ On the contrary, the Madras HC observed that when there is a wider interest of public health and safety, the right to refuse the vaccine may not exist.⁷

The EDA was passed in 1897, following the breakout of the bubonic plague in Bombay (Mumbai), in British India. This law prescribes that if the Central and/or state governments determine that the existing provisions of law are not adequate to control the outbreak of a ‘*dangerous epidemic disease*’, they may take temporary measures and prescribe regulations to help control its spread.⁸

Interestingly however, the EDA does not expressly extend these powers to local governments such as municipal corporations. Hence, the BBMP mandating the vaccinations for employees of Workplaces is questionable. Further, Section 188 of IPC punishes disobedience of order promulgated by a public servant, who is, importantly, lawfully empowered to promulgate such an order.

BBMP imposing the Conditions *via*. the Circular may not qualify to be a ‘promulgation of order’. Unsurprisingly, the Circular is reported to have received mixed reactions from the public,⁹ with the possibility of inviting opposition from employees. That said, in the meantime, establishments situated in Bangalore can mandate Covid-19 vaccinations in respect of their employees under the authority of the Circular. However, the Circular could also be called to question before a court of law.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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⁵ *Registrar General v State of Meghalaya* (MANU/MG/0061/2021).

⁶ *Osbert Khaling v. State of Manipur* (2021 SCC OnLine Mani 234).

⁷ *M. Karpagam v Commissionerate for the Welfare of Differently Abled and Ors.* (MANU/TN/4399/2021).

⁸ Section 2A of the EDA.

⁹ <https://timesofindia.indiatimes.com/city/bengaluru/bengaluru-support-resentment-greet-bbmps-vaccination-diktat/articleshow/85674978.cms>.