

IN THE SUPREME COURT OF INDIA

CIVIL WRIT JURISDICTION

I.A. No. 17 of 2016

IN

WRIT PETITION (CIVIL) 318 OF 2006

In the matter of:

National Campaign Committee for Central

Legislation on Construction Labour (NCC-CL)

...Petitioner

Versus

Union of India

- ① Delhi Ed. Scheme
 - ② Community Games order
 - ③ CAG report.
 - ④ Social work report
 - ⑤ Unnat order.
- Respondents

- ~~18-11-16~~
~~Amicus Act/Rules~~ - ①
- Orders: 6, 7, 9
 Enact: 15
 Shakti: 17, 18
 27,000 crps: 19
 workers not | 21
 Motions |
 Ed/Health 23
 CAG - 24 →
 U.O. I off - ③7 ✓
 Amicus - ③8
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 Division |
 U.O. I off - ⑤2
 Reliefs - ⑥4
 My Chart - ⑥7
 NALSA - ⑦5 ⑦7 ✓

APPLICATION FOR DIRECTIONS

⑥ ESI mfrs

90 days work

Remuneration

PAPER BOOK

Division
39, 64

Amicus

(Jyoti Mendiratta)

Advocate For Petitioners

FILED ON: 29/6/2016

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APPLICATION FOR DIRECTIONS

TO

THE HON'BLE CHIEF JUSTICE

AND HIS HON'BLE COMPANION

JUSTICES OF THE HON'BLE

SUPREME COURT OF INDIA

THE HUMBLE PETITION OF

THE PETITIONER ABOVENAMED

MOST RESPECTFULLY SHEWETH:

1. This petition has been pending in this Hon'ble Court since 2006. It relates to the implementation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and The Building and Other Construction Workers (Welfare Cess) Act, 1996.

The Act and Rules

2. Section 1 of the former Act requires registration of every establishment in which 10 or more workers are working. Chapter 2 requires the setting up of the Advisory Committees and the Expert Committees. Section 6 requires the appointment of Registering Officers by the State Government. Section 7 requires the compulsory registration of establishments within 60 days of commencement of work. Section 11 and 12 states that construction workers are entitled to be registered and get certain benefits. Section 13 requires identity cards to be given to the workers. Section 15 requires the employer to maintain a register of construction workers. Section 16 lays down that the workmen shall make certain contributions. In Delhi, for example, the contribution is Rs. 20 per year. Section 18 requires the setting up of a Welfare Board. Section 22 sets out the functions of the Board. Chapter VI enumerates the welfare measures for construction workers. Chapter VII sets out the health and safety provisions. Section 27 requires the CAG report to be done of the money lying with the Welfare Board. Section 60 permits the central government to give direction to the state government.

3. Section 3 of the Cess Act, 1996 requires the collection of cess from every employer of construction workers to the extent of 1-2% of the cost of construction.
4. Rule 10 of the Delhi Rules requires an advisory committee to be formed. It is not functioning in Delhi. Rule 34 provides for health and safety measures. Rule 206 provides for safety committees. Rule 223 provides for medical facilities. Rule 226 sets out the role of the trade unions. Rule 227 is in respect of workers' registration. Rule 271 is in respect of maternity benefit. Rule 272 relates to pension. Rule 274 relates to house loans. Rule 275 relates to disability pension. Rule 278 relates to death penalty. Rule 280 relates to medical assistance and Rule 281 relates to education.

Court orders

5. On 5.12.08, this Court made the following order:

“Various States have filed their affidavits and the compiled list has been filed by the petitioner. It shows that several States have collected substantial amount which is intended to benefit the construction workers. But we see that the benefits are not given to the workers.”

6. On 13.1.09, this Court made the following order:

"It is alleged that many of the provisions of the enactment are not put in practice and the respective authorities have not complied with the statutory provisions.

The learned counsel appearing for the writ petitioners filed a chart before us indicating the steps that had been taken by the various state governments. It says that many of the governments had not taken steps as per the provisions of the Act. Though some of the state governments have collected cess but the benefits have not been fully passed on to the construction workers. Some of the State governments have not constituted either the State Advisory Committee or the expert committee or the Welfare Board as envisaged under the Act. The Delhi Government has framed detailed Rules, namely, the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002.

These Rules exclusively deal with the matter and gives various model forms also for compliance of the provisions of the Act. The State Governments and Union Territories which have not framed the rules as per Section 62 of the Act can very well take the Delhi Building and Other Construction Workers

(Regulation of Employment and Conditions of Service) Rules 2002, as a model and the same can be adopted for the purpose of this Act.”

7. On 18.1.10, this court made the following order:

“After hearing the learned counsel, we are of the view that the following measures require to be implemented by the States without further delay:

1. Welfare Boards have to be constituted by each State with adequate full time staff within three months.

2. Welfare Boards will have to meet at least once in two months or as specified in the rules, to discharge their statutory functions.

3. Awareness should be built up, about the registration of building workers and about the benefits available under the Act. There should be effective use of media, AIR and Doordarshan, for awareness programmes regarding the Act, the benefits available thereunder and procedures for availing the benefits.

4. Each state government shall appoint Registering Officers and set up centres in each district to receive and register the applications and issue receipts for the applications.

5. Registered trade unions, Legal Service Authorities and NGOs are to be encouraged to assist the workers to submit applications for registration and for seeking benefits.

6. All contracts with Governments shall require registration of workers under the Act and extension of benefits to such workers under the Act.

7. Steps to be taken to collect the cess under the Cess Act continuously.

8. The benefits under the Act have to be extended to the registered workers within a stipulated time frame, preferably within six months.

9. The Member Secretary of the Welfare Boards and the Labour Secretary shall be responsible for due implementation of the provisions of the Act .The Labour Ministry of each state shall carry out special drives to implement the provisions of the Act.

10. The CAG should audit the entire implementation of the Act and use of the funds.

11. All Boards shall submit a comprehensive reports as required under the Act and Rules to the respective Government.

The above directions shall be brought to the notice of Chief Secretaries of all States by sending copies of this Order to ensure effective implementation. Responses

and compliance reports shall be filed by the States within a period of twelve weeks. As this Act is enacted by the Parliament, the Labour Ministry of the Government of India is also requested to explore the possibility of a national conference for implementation of the provisions of the Act.”

8. On 22.11.10, this Court made the following order:

“We give liberty to the petitioner to take out contempt motion State-wise, for non-implementation of the provisions of Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

The writ petition shall stand over for four weeks.”

9. On 15.3.11, this Court made the following order in Contempt Petitions 42 and 43 of 2011:

“From the various status reports and the affidavits filed on behalf of the respondents, it is clear that the appropriate Governments have, admittedly, not complied with their statutory duties and functions. All the application/petitions, subject matter of the present order, are supported by affidavit filed by the coordinator of the petitioner organization. Number of States, particularly Union Territory of Lakshadweep

and States of Meghalaya and Nagaland has not even constituted the Welfare Boards in terms of Section 18 of the Act. The State of Uttar Pradesh has completed the formality of constituting a Board but it is a one man Board instead of having a minimum of three or more members as required under Section 18 of the Act. The charts submitted by the petitioner further show that no worker has been registered by the States of Assam, Mizoram, Sikkim and Jammu and Kashmir. The appropriate Governments and Registering Authorities, wherever constituted, particularly the respondent State Governments in these application/petitions have failed to either collect the requisite cess amount or have collected the same inadequately and in any case have failed to distribute the benefits and facilities to the beneficiaries.

In this manner and for a considerable period, the respondents in these application/petitions have, on the one hand disobeyed the orders of this Court particularly orders dated 18.01.2010, 13.08.2010 and 10.09.2010, while on the other they have failed to perform their statutory obligations under the provisions of the Act despite directions of this Court. Default on the part of these respondents, thus, has persisted over a long period and the Court is left with no alternative

except to pass appropriate directions/orders in accordance with law on these two contempt petitions.”

10. On 7.2.12, this Court made the following order:

“In view of the persistent defaults and unacceptable conduct of the officers of the concerned states, we passed the following order on 28th November, 2011:-
“Since almost every State is in contempt, we have no option but to take further steps in the matter. However, in order to give opportunity to the States, the matter is being adjourned to the last week of December, 2011, to enable each defaulting State to file its reply as to why contempt action should not be taken against the concerned officers.” Still, a few States have neither filed affidavits nor have they placed on record any documentation to demonstrate that they have fully complied with the directions of this Court and have completely discharged their statutory obligations under the provisions of the Act. Keeping in view the fact that, despite our order dated 28th November, 2011, these states have failed to show obedience to the orders of this Court, the matter was again placed before this Court on 16th December, 2011, on which date we had reserved the contempt petitions for orders. [3] Category – I - Under Category-

I, we will be dealing with the States of Andhra Pradesh, Chhattisgarh, Punjab and Tamil Nadu. All these states had filed their respective affidavits in the years 2010 and 2009 respectively. Thereafter, they have not even cared to file further affidavits as directed by the orders of this Court. Though, all the above States have constituted Welfare Boards, have registered workers and establishments in accordance with the provisions of the Act, notified the prescribed authorities for collection and disbursement of cess under the Cess Act and have collected some cess, however, they have not collected the required quantum of cess and have also not distributed the amount to the registered applicants in furtherance to implementation of the scheme framed. The petitioner has also placed on record material to show that these states are defaulting in this regard. Before we take any action against the officers responsible for enforcing the schemes and proper collection and disbursement of cess, we would grant a last and final opportunity to these states to file affidavits of compliance within four weeks from today, subject to payment of Rs.10,000/- [4] each, as costs. The cost shall be payable to the Supreme Court Legal Services Committee. Category – II Under Category-II, we would pass directions in relation to the states which have constituted Welfare

today and affidavit of compliance of the Secretary (Labour) of the states/union territory be filed within two weeks thereafter. General Directions [7] It is clear from the affidavits filed on behalf of most of the states and union territories that they are not holding meetings of the Welfare Board as required, i.e., at least once in two months, to discharge their statutory functions. Further, it is also apparent that audit by the Comptroller and Auditor General (CAG) has not been conducted of the funds placed at the disposal of the concerned authority. We may also notice that large funds are lying with the said Welfare Boards/authorities, but have not been disbursed. The possibility of these amounts being diverted by the state authority for other heads of expenditure in the respective states/union territories cannot be ruled out. Resultantly, while reiterating our earlier orders, we also issue the following directions for their immediate compliance: a) All the State Welfare Boards shall be subjected to audit by the CAG within two months from today. All the States, Union Territories and the State Boards to initiate the process and ensure its completion under the provisions of Section 27 of the Act. [8] b) Every Welfare Board shall, without fail, hold its meetings at least once in two months and submit its Minutes, as well as the action taken and progress

reports in regard to the framing and implementation of the schemes and disbursement of funds to the eligible applicants, to the Secretary (Labour) of that Government quarterly. c) The funds available with the Welfare Boards which have not been disbursed or are not likely to be disbursed within a short period should be properly invested with the nationalized banks only. Funds available with the Welfare Boards shall not be utilized by the State for any other head of expenditure of the State Government, etc. d) Union of India has filed an affidavit. It is stated in the affidavit that they have taken various steps, including steps for amendment of the Act and the Rules framed thereunder. Union of India is directed to expedite this process. We also direct the Union of India to discharge its various statutory functions under the Act with [9] particular reference to Sections 24 to 27. It shall also issue appropriate directions under Section 60 of the Act to all the State Governments to fully implement the provisions of the Act as well as the Cess Act. The above directions should be complied with by all concerned without fail and within the time afore-stipulated. We make it clear that in the event of any default committed by any officer/official/authority, we will be compelled to take action against the officer/official/authority concerned under the

provisions of the Contempt of Courts Act, 1971 without any further notice. With these directions, we dispose of these four contempt petitions & I.A.6, but make it clear that in the event of default, the petitioner would be at liberty to file fresh contempt petitions before this Court, in view of the above order. Let a copy of this order be sent to each Chief Secretary and Secretary (Labour) of the respective states or union territories.””

11. On 21.3.13, in Contempt Petition 52 of 2013, the following order was made:

“ Heard Mr. Colin Gonsalves, learned senior counsel appearing for the petitioner at length, and also perused the earlier orders passed by this Court and the emphatic directions issued. We have also perused Annexure 'F' attached to the Contempt Petition No. 52 of 2013. We are, prima facie, satisfied that the orders passed by this Court have not been complied with by any of the States/Union Territories in letter and spirit, although lip service has been paid to the same. We have no option but to issue notice to show cause as to why contempt proceedings be not initiated against the Chief Secretary, Labour Secretary and the Chief Inspector in every State/Union Territory. Learned counsel appearing on behalf of individual State/Union Territory accepts notice. Let

counter affidavit be filed to the show cause notice within a period of six weeks together with the latest status report by the individual State/Union Territory.”

12. On 12.12.14, the following order was made:

“Subsequently, the matter was also considered on 10.09.2010 and some of the directions were reiterated. The orders passed subsequently by this Court indicate that the implementation of both the statutes mentioned above is not being taken up with the deserved seriousness. In fact, it has been noticed in several orders passed by this Court that the Chief Secretaries of many of the States are in contempt of the orders passed by this Court. Under the circumstances, we direct the Secretary in the Ministry of Labour, Government of India to convene a meeting of all the Secretaries in the Ministry of Labour or the corresponding Ministry of all the States and Union Territories on or before 16th January, 2015 and to discuss with them the modalities for effective implementation of both the statutes and arrive at a consensus, particularly, since they involve the living conditions of the construction workers and collection of huge amounts for their benefit.”

13. On 31.7.15, the following order was made:

“Learned amicus curiae has placed before us some shocking figures. The State of Haryana has collected, over the years, a total amount of Rs.1314.86 crores under the Building and Other Construction Workers' Welfare Cess Act, 1996 (for short “the Act”), but has disbursed only Rs.52 crores, the details of which are not available. Similarly, the State of Rajasthan has collected Rs.588.36 crores, but has disbursed only Rs.59.45 crores, the details of which are again not available. 5 The State of Uttar Pradesh has collected Rs.1580.1 crores, but has disbursed Rs.180.79 crores, again the details of which are not available. Finally, the NCT of Delhi has collected Rs.1396.58 crores, but has disbursed Rs.39.37 crores and unintelligible details are made available. Learned counsel for the NCT of Delhi has shown us some charts which do not explain anything at all, but are only a jumble of figures. But, we do find from these charts that there has been an enormous spurt in the expenditure in the year 2009-10 (Rs.25.5 crores) and 2012-13 (Rs.9.67 crores). In all the other years, the amount disbursed has been less than one crore except in the year 2014-15 when about Rs.1.8 crores have been disbursed. Other than that, we are not able to get any other assistance from the charts handed over to us in Court today by learned

counsel for NCT of Delhi. Considering the fact that such a huge amount of money is being collected and is not being utilized for the purpose for which it is collected, some drastic steps may have to be taken so that the amounts that are running into thousands of crores can be utilized for the benefit of the workers under the Act. We expect some pro-active assistance and a positive response from the Ministry of Labour since we are told by learned amicus curiae that the total amount involved is 6 in the region of Rs.25,000 to Rs.30,000 crores all over the country.”

14. On 21.8.15, the following order was made:

“We are extremely distressed on going through the affidavits filed which indicate that the State Governments/Union Territories have no clue what to do with the thousands of crores that have been collected under the Building and Other Construction Workers Welfare Cess Act, 1996. We also find from some of the affidavits that the amount is being used for purposes other than for what it was collected. 5 This is particularly distressing since learned amicus curiae states that the total amount collected in question is in the region of about Rs.27,000 crores. Mr. Yashank Adhyaru, learned senior counsel appearing for the Union of India will discuss the

matter with the Secretary in the Ministry of Labour, Government of India and inform us what is proposed to be done with the amount collected. We had specifically mentioned this in our order dated 31st July, 2015, but none of the affidavits indicate what is proposed to be done with this amount. If the State Governments/Union Territories and the Central Government are not in a position to utilise Rs.27000 crores, it would be perhaps more appropriate not to collect this money since it is not being utilized for the benefit of the persons for whom it is collected, but for other purposes. We make it clear that the expenditure incurred by some of the State Governments/Union Territories, particularly NCT of Delhi on advertisements with the amount collected is not at all appropriate and the amount that has been spent by the NCT of Delhi and other Union Territories and States on advertisements should be returned to the accounts of the construction workers. List the matter on 4th September, 2015.”

15. On 4.9.15 the following order was made:

“The attitude of the Ministry of Labour can hardly be appreciated, particularly in view of the fact that the amounts involved are said to be in the region of about Rs.27,000 crores, as informed by learned amicus

curiae. In view of the fact that this matter is being dealt with in such a casual manner by the Union of India, we have no option but to require the presence of the Secretary in the Ministry of Labour, Government of India on the next date of hearing. We, accordingly, direct the Secretary in the Ministry of Labour to be present in Court on 11th September, 2015. The said Secretary will remain present in Court along with a possible action plan and after having fully briefed the learned senior counsel appearing for the Union of India. We have already indicated in our earlier order dated 21.08.2015 that given the attitude of the State Governments/ Union Territories and the Central Government, it may perhaps be more appropriate not to collect this money since it is not being utilized for the benefit of the persons for whom it is collected, but for other purposes. We had hoped that this observation will have some salutary effect on the officers of the State Governments/ Union Territories and the Central Government, but obviously it has had absolutely no effect on the concerned officers. 6 Perhaps, we may have to take steps to devise some way of recording our displeasure, if necessary, in the Annual Confidential Reports (ACRs) of the concerned officers. In view of the unfortunate and casual attitude of the Government of India and the State

Governments and Union Territories in this regard, learned amicus curiae and learned senior counsel for the petitioner have agreed to prepare, on their own, a possible action plan on the utilization of the amount of about Rs.27,000 crores and any other further amounts that may have been collected under the statute."

16. On 11.9.15, the following order was made:

"Mr. Shankar Aggarwal, Secretary in the Ministry of Labour, Government of India is present in Court and we have heard him for quite some time. We have also heard learned Additional Solicitor General, learned amicus curiae and learned counsel for the petitioner.

Mr. Aggarwal has informed us that certain steps have been taken to bring about Universal Access Number (UAN) so that if a construction worker shifts from one place to another or from one State to another, he/she does not lose his/her benefits and does not have to get registered afresh. 5 It is also stated that there are

more than four crores construction workers, but only about 1.5 crores of them have registered themselves

with the concerned authorities. He says that it is expected that registration of the construction workers will be completed before the end of this financial year.

Mr. Aggarwal also says that some other steps have been taken to ensure that the benefits are passed on

to the construction workers, such as, scholarship, skill development etc. All this should be stated on affidavit by Mr. Aggarwal. The affidavit should also state, in the form of a chart attached to the affidavit, whether the State Advisory Committees have been set up, the period of their existence and the meetings held by them in the last twelve months. Similar information will also be given with regard to the Central Advisory Committee. The affidavit will also indicate (in brief) the minutes of the meetings that have been held and referred to in paragraph 30 of the affidavit handed over to us in Court today. Finally, the affidavit will also state the progress and implementation of the orders passed by this Court on 18.01.2010 and 12.12.2014. 6

The affidavit be filed within four weeks with an advance copy to learned amicus curiae and learned counsel for the petitioner. Learned amicus curiae and learned counsel for the petitioner have prepared some recommendations for an action plan for the effective utilization of thousands of crores collected by the States/Union Territories. A copy of this has been handed over to Mr. Shankar Aggarwal in Court today. He should have a look into the action plan and come out with a detailed plan on the subject of utilization of the funds available. The Registry should not accept

any affidavits other than those filed by the Union of India, or under our specific directions.”

17. On 16.10.15, the following order was made:

“Apart from that, during the course of discussions, it has come out that there are five key areas on which the Central Government needs to concentrate for the time being. These are: (i) to ensure maximum coverage of the building and other construction workers; (ii) to ensure distribution of benefits and implementation of the Schemes that are in existence for the benefit of the building and other construction workers; (iii) to lay greater emphasis on education and provide educational facilities to the children of the building and other construction workers; 6 (iv) to provide health benefits and insurance of the building and other construction workers and their families; (v) to activate the State Advisory Boards which, as per the affidavit, have not even met in the last several years. Mr. Shankar Aggarwal assures us that necessary steps will be taken in this regard with due promptitude and diligence. He assures us that some positive results will be shown on or before the next date of hearing.”

CAG Reports

18. CAG Audit Reports of the Construction Workers Welfare Boards of many of the states comment on:

- Delay in formation of Boards, notification of Rules, appointment of State Advisory Committees
- Non-functioning government machinery, non-functioning Boards, infrequent Board meetings, insufficient staff for Cess collection and delivery of benefits
- Lack of planning process, lack of survey of workers and establishments to enable planning, lack of a mechanism to coordinate with other government departments for Cess collection
- Poor financial management including poor Cess collection and improper accounting of benefits paid, non-reconciliation of bank records and cash books, lack of utilization certificates etc.
- No budgets prepared, no internal audit process, no regular audit, no annual reports
- No internal monitoring mechanism

1. GUJARAT

Non-transfer of the Labour Welfare Cess collected to the Board

- "State Government was required to transfer entire amount of cess totalling to Rs 333.87 crore collected during 2006-07 to 2011-12 to the Board. However, audit scrutiny revealed that the state government failed to transfer the cess collected to the Board."

Para 2

Non utilization of the funds placed at the disposal of the Board

- "...the Board received Plan Grant of Rs 11.15 crore....from state government to discharge its mandated activities. However out of the above Grant Rs 10.78 crores (96.68%) was invested in fixed deposits...."
- "...resulting in non-utilization of funds for the intended purposes, deprivation of benefits to construction workers and defeating the very purpose for which the Board was constituted."

Section B: Other Irregularities

Para 3

Poor performance of the board vis a vis its mandated activities.

- "The Board has not performed satisfactorily either in terms of number of beneficiaries covered or in terms of quantum of assistance provided."

Para 19

- "The Board had no information regarding the amount of contributions received from the beneficiaries up to March 2012."
- Further," The statutory requirement of crediting the contributions received from beneficiaries into the Board's fund was not observed."

2. HARYANA

- “There was delay of nine years in issuing notification about...Rules, 2005...constitution ofBoard and State Advisory Committee.”
(Para 2.1.8.2)
- “As against the total receipt of Rs 634.71 crore, only an expenditure of Rs 15.11 crore was incurred during 2007-12.”
(Para 2.1.9.1)
- “Cess amounting to Rs 1.50 crore collected by six public health engineering divisions was not deposited with the board. Out of this, Rs 70.05 lakh was deposited in the state receipt head.” **(Para 2.1.9.4)**
- “There was lack of initiative for registration of contractors as employers of construction workers and motivation for renewal of membership of registered workers.” **(Para’s 2.1.10.1 and 2.1.10.2)**
- “Statutory schemes such as pension, family pension, disability pension etc. and also certain schemes such as free travelling facility for construction workers and students, coverage of chronic diseases formulated by the Board were not implemented.” **(Para 2.1.11.1)**
- “There was acute shortage of staff in the Board which was inadequate for the implementation of the provisions of the Act.”
(Para 2.1.12.1)
- “Monitoring at the state level was not adequate as annual budget and returns were not submitted by the Board to the Government.”

There was no internal audit system in the Board.” **(Para’s 2.1.13.1 and 2.1.13.2)”**

3. JAMMU & KASHMIR

The State Government started implementation of the BOCW and Cess Acts after a delay of more than 11 years from their enactments. The J&K Building and Other Construction Workers Welfare Board after its constitution in March 2007 did not take any initiatives to formulate the modalities for implementing the welfare schemes till February 2011. The State Advisory Committee was not constituted even after more than 16 years of enactment....the crucial aspects of identification of beneficiaries and registration of establishments and implementation of welfare schemes for workers were not given due priority. As a result huge funds to the extent of Rs 100.62 crore remained unutilized with the Board as of March 2012. The monitoring mechanism was weak and internal audit and internal control system had also not been instituted by the Board.”

4. JHARKHAND

- “Discrepancy of Rs 23.12 crore between closing balances of cash book and bank accounts.” **(Section B Para 1 (b))**
- “There is no database with the Board to watch the number of beneficiaries, collection of registration fees, their annual contributions, amount of cess received, beneficiaries benefitted....” **(Para 2)**

- "...a sum of Rs 8,62,90,150 was released (May 2011 and March 2012) to Deputy Commissioners and Deputy Labour Commissioners.....Utilization certificates of Rs 8, 43,06584 were not submitted to the Board till the date of audit (5/2012)" **(Para 3)**
- "Scrutiny of annual reports relating to registration of workers as beneficiaries revealed that 16,285 workers were registered and a sum of Rs 21,09,56,099/- was collected as cess as of 31.3.2011." **(Para 4)**
- "...it was observed that the annual accounts and relevant records were not maintained by the Board." **(Para 5)**
- "Non-adherence to rules and procedures in maintenance of cash book was fraught with the risk of misappropriation and defalcation of Board's funds." **(Para 5)**

5. KARNATAKA

Audit Report number 3 of the year 2014

Labour Department

- "...even six years after the formation of the Board, not more than 18 percent of the estimated 15 lakh construction workers had been covered under the Act." **(Section 3.3.4.2, (ii))**
- "The state government directed (January 2007) all government departments.....to deduct cess...from the bills of contractors....It was observed in 23 offices that there was shortfall in collection of

cess amounting to Rs 2.04 crore during 2007-12 from the bills of contractors.” **(Sec.3.3.5.3)**

- “...administrative expenditure during 2008-13 constituted 30 to 54 percent of the total expenditure.....Capital expenditure of Rs 10.16 crore mainly on construction of the office building ...accounted for another 37 percent of the total expenditure. Thus, only 29 percent (Rs 8.92 crore) of the total expenditure had been spent on welfare measures...” **(Sec.3.3.7.3)**
- “In 146 cases the Board irregularly paid Rs 74.79 lakhs to the beneficiaries in violation of the Rules...” **(Sec.3.3.6.3)**
- “There were no adequate checks and balances in the Board on the implementation of the welfare schemes, resulting in several financial irregularities.” **(Sec. 3.3.11)**

6. ODISHA

Inspection Report No 07/2012-13 of the Accountant General (G&SSA)

Odisha

Section 3

- “Loss Sustained by the Board in collecting cess amounting to Rs 275 crore due to delay in implementing the cess rules.”

Section 21

- “In fact, the entire accounting system which is the backbone of the Board was in a most chaotic state of affairs.”

Section 27

- "The Board in fact received handsome amount Rs 207.81 crore as cess including the amount of registration & annual contribution from the beneficiaries, of which Rs 190 crore invested in fixed deposits with United Bank, Bank of India, Andhra Bank, Syndicate Bank, Bank of Baroda & IDBI including Rs 3.97 crore earned as interest on SB a/c as on 31st March, 2012, a sum of Rs 8,81,833 only has been spent on different welfare measures."

7. PUNJAB

Audit Report-Social, General and Economic Sectors (Non PSUs) for year ended 31 March 2012:

Labour and Employment Department

Section 3.3.4

- "The delay in implementation of the BOCW Act/Cess Act and the constitution of the Board/SAC resulted in non-collection of cess and denial of intended benefits to State construction workers for more than 12 years."

Section 3.3.5

- "The expenditure incurred on welfare schemes was nil in 2009-10, 0.15 percent in 2010-11 and 0.98 percent in 2011-12 of total receipts during respective years."

- "The administrative expenditure during 2009-10 to 2011-12 stood between 56 and 100 percent of the total expenses against the admissible limit of five percent as per rule 24(3) of BOCW Act 1996."

Section 3.3.5.2

- "Audit observed that no survey was conducted to ascertain the total number of workers and the construction organizations/companies existing in the State. The Board has no knowledge of the actual number of companies registered with the State Infrastructure Construction Departments viz. Public Works Department (Building & Roads), Water Supply and Sanitation, Central Public Works Department, Police Housing Corporation, Mandi Board, Municipal Corporations, Punjab Urban Development Authority etc."

Section 3.3.6

- "Out of 49816 workers registered during 2010-12 only 1178 workers (2.36%) benefited and Rs 0.39 crore was spent."

Section 3.3.8

- "Even after four years from the notification of scheme (Oct 2008) the Board did not have the information about total registered construction companies and workers employed in the State which is very essential for implementation of welfare schemes as a result

of which only a meagre amount of Rs 0.39 crore (0.15 percent) was expended on welfare schemes.”

8. RAJASTHAN

Audit Report (G&SS) for the year ended 31 March 2012:

Chapter 3 Compliance Audit

Section 3.4.3.4

- “Audit also observed that the Board did not maintain any consolidated database of construction works undertaken in the State...thus the data available with Labour Offices were not correlated with that available in JDA/Nagar Nigam/Nagar Palika/Nagar Parishad and were not comprehensive in the absence of implementation of laid down system of ensuring registration of employers.”
- “The Board has also not taken any punitive action against any of the unregistered employers as per Section 50 of the Act. This resulted in non-collection of penalty and cess....”

Section 3.4.3.5

- “The details of targets fixed for registration of beneficiaries and achievements....revealed that achievement was 12.73 and 14.68 percent only during 2010-12.”
- “Details of applications of workers received for registration and processed were asked for (June 2012). Joint Secretary, Board

replied (July 2012) that the registration of beneficiaries is done by subordinate district offices. It reflects that the necessary data is not maintained at the Board level.”

Section 3.4.3.6

- “It was observed in audit that Rs 239.53 crore towards Cess was deposited in the Consolidated Fund of the State during 2010-11...and 2011-12....of this Rs 10.50 crore (Rs 0.50 crore in June 2010 and Rs 10 crore in July 2011) only was transferred from State Revenue to the Board by the State Government... Thus Rs 229.03 crore remained (March 2012) with the State Government in contravention of the provisions of the Act.”
- “It was observed that the District Labour Officers received Rs 3.62 crore during 2010-12 on account of registration fee of beneficiaries, registration fee of employers and annual contribution of beneficiaries (up to June 2011). However the receipts were deposited irregularly in the Consolidated Fund of State through challans instead of crediting the same to welfare fund.”
- “...the Board spent only a sum of Rs 0.89 crore on the assistance provided under the schemes during the period 2010-12....”
- “The assistance provided was only 8.48 percent of the amount received from the state government and 0.37 percent of the Cess collected.”

- “The balance amount of Rs 235.53 crore remained with the Board (Rs 6.50 crore)/Consolidated Fund of the State (Rs 229.03 crore).”

Sec. 3.4.3.10

- “State government has also not ensured availability of sufficient manpower and funds at the disposal of the Board for its proper functioning.”

9. ANDHRA PRADESH

Andhra Pradesh State BOCW WB Accounts 2011-2012

CAG Observations

- The AOs were merely accepting the payment of Cess by the Employers submitted in Form I and many employers not submitting Form I.
- In cases of submission of Form I also, the cost of construction furnished by the employer was accepted generally without verifying the information given by the employer.
- The returns filed by employers were not supported by documentary evidence in support of the cost of construction arrived at by them.
- The Board is receiving and accepting the cess whatever paid by the payers voluntarily, there is no system of assessment of actual amount to be paid.
- There is no system of charging interest on delayed payment of cess and penalty for non-payment of cess.

- The cess received by the Board did not have the details of the employer giving the cess. Due to this there is no system of tracing the persons paying the cess.
- ACLs are not discharging all the duties. They could not assess cess to be levied due to non-availability of technical specialization regarding assessment of building and infrastructure.
- In spite of objections by audit and instructions by the Board to DCLs and ACLs the system of assessment and collection of cess was not changed.
- Due to non-establishment of a system of collecting data from plan approval authorities, employing technical staff for proper assessment/ collection of cess, the Board is losing a huge amount of cess.

10. ANDAMAN & NICOBAR ISLANDS

BOCW WB – 20.1. 2009 to 29.2.2012

CAG Findings:

Para 10: Observation on the Beneficiary schemes of BOCW

- The Board is running 7 beneficiary schemes for the benefit of Building and other Construction Workers. But on close scrutiny it was revealed that only in 2 schemes, Educational Assistance and Marriage Assistance, benefits were provided to 117 and 3 number of beneficiaries. In the above mentioned schemes only Rs. 1, 31, 850 were disbursed to beneficiaries against the total accumulation of Rs. 9, 27, 43, 697 as on 31.12.2011.

- Further four numbers of claims had been made under Death Benefit Scheme between 29.03.2011 and 12.08.2011 but till date no benefit was given. The implementation of schemes was very lethargic.
- Moreover under Funeral Assistance, Medical Assistance and Maternity Benefit schemes no benefit was extended to beneficiaries though the schemes relate to daily lives of beneficiaries.

Para 11: Non Conducting of adequate inspection by the Board

- Scrutiny of the records revealed that the Board conducted only three numbers of inspection in 2010 and only 2 nos of inspection in 2011. In this regard the audit observed that a figure of inspection conducted does not commensurate the amount of construction work going on in the islands or the number of workers actually engaged in construction work. Therefore it can be concluded that the Board was not proactive in conducting inspection so as to ensure required cess collection as well as implementation of safety measures and other needs of workers to be undertaken/ provided by the employer.
- The Board in its reply stated that it had no control on enforcement of various provisions of BOCW Act 1996. The enforcement mechanism solely lies with Labour Department which is grossly short of inspecting staff.

19. UOI Affidavit dated 15.1.16**Cess Collected and Cess spent**

(with the affidavit of the Union labour Secretary dt. 15 Jan. 2016 filed in the

Supreme Court on 61 in CWP 318 of 2003)

State-wise position of Number of Workers Registered, Cess Collected and Amount Spent under the Building and Other Construction Workers Acts, 1996					
As on 31-12-2015 (Provisional)					
Sl. No.	Name of the States/UTs	No. of Workers registered with the Board	Amount of Cess Collected (Rs. in Crore)	Amount Spent (Rs. in Crore)	Percentage of expenses from Total Cess
1	Andhra Pradesh	1,545,190	1117.25	177.33	15.87
2	Arunachal Pradesh	8,550	22.96	4.56	19.86
3	Assam	20,900	205.09	1.82	0.88
4	Bihar	682,836	668.17	71.37	10.68
5	Chhattisgarh	1,006,660	539.27	345.44	65.73
6	Goa	1,400	69.03	0	0
7	Gujarat	215,060	1090.62	19.82	1.82
8	Haryana	434,846	1514.59	114.44	7.56
9	Himachal Pradesh	87,798	281.16	24.8	8.82
10	Jammu & Kashmir	283,072	170.66	149.6	40.36
11	Jharkhand	423,199	234.41	86.93	37.08
12	Karnataka	943,992	3171	157.77	4.98
13	Kerala	1,570,360	1233.92	1152.38	93.42
14	Madhya Pradesh	2,653,163	1575.62	552.04	35.04
15	Maharashtra	430,193	3579.89	213.9	5.98
16	Manipur	28,259	21	10.99	52.33

17	Meghalaya	1,960	72.75	0.83	11.41
18	Mizoram	21,387	30.29	21.08	69.59
19	Nagaland	4,271	14.6	1.47	10.07
20	Odisha	1,191,204	892.62	349.03	39.50
21	Punjab	789,211	1118	118.03	10.56
22	Rajasthan	385,715	733.62	254.08	34.63
23	Sikkim	24,466	54.65	10.77	19.71
24	Tamil Nadu	2,540,860	1290.9	511.9	39.65
25	Telangana	765,501	231.02	39.31	17.02
26	Tripura	63,092	108.4	7.28	6.72
27	Uttar Pradesh	2,301,784	2157.8	287.56	13.33
28	Uttarakhand	70,057	96.87	15.27	15.76
29	West Bengal	2,590,772	1251.53	461.65	36.89
30	Delhi	316,865	1536	174.71	11.37
31	A & N Island	12,019	32.79	1	3.05
32	Chandigarh	15,375	64.49	3.1	4.81
33	Dadra & Nagar Haveli	0	3.08	0	0
34	Daman and Diu	670	18.28	0.05	0.27
35	Lakshadweep	179	3.33	0	0
36	Puducherry	39,820	71.72	31.2	43.60
TOTAL		21,540,696	25477.43	5371.51	21.08

$$\frac{\text{collected}}{\text{Spent-}} = 20,000$$
 Recommendations of Amicus

on how the cess should be spent

20. Preliminary Observations

We have spoken and sought information from various States before this Hon'ble Court about the plight of construction workers; accordingly the

biggest problem confronting implementation of the act and scheme are as under –

1. That as per the information qua National Sample Survey Report - 2011 -2012 there are more than 5 Cr workers in India;
2. That as per statistics received from most of the States including States of Haryana, Rajasthan, Delhi and UP, the registered workers would be less than 1.3 Cr, thus majority of the workers are neither registered nor having an identity card;
3. That, registration to avail benefit under facilitated schemes is sine quo non ;

21. Survey cum centralized registration

- That as a pilot project, the Govt. Of NCT of Delhi shall immediately commission a study to be conducted by a reputed social society like the Delhi School of Social Work Society, Department of Social Work, University of Delhi, mapping the construction activity and workers in NCT Delhi, building upon the report of a study conducted by the Delhi School of Social Work Society in 2009.
- While doing the survey of the construction sites, the residential sites workers where the construction labourers live and the labour chowks, the investigators conducting the survey shall simultaneously register the construction labourers and hand over to them the identity card with a booklet in the appropriate Indian language explaining how the benefits under the Building and Other

Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and rules framed thereunder may be accessed. The registration form shall be modified to include the details required under the ESIC Act. The investigators, in collaboration with the authorities, shall also hand over to the Construction Labourers an identity card in accordance with regulation 17 of the Employees State Insurance (General) Regulation, 1950 together with a booklet in the appropriate Indian language explaining how the benefits may be accessed.

- That, centralized registrations of worker should pan India in order to assist the workers to more effectively use these cards;
- Central architecture of central registration for workers, the Central Government should formalise a 'central information software' and 'interstate portability'
- Registration should be on lines of Aadhar Seeded ie unique registration number across India
- Registered workers should be issued ID Cards/ Smart Card as in the case of RSBY: Rashtriya Swasthya Bima Yojna which is provided to unorganized workers including BPL workers;

22. Workers Facilitation Centre

Setting up of WORKERS FACILITATION CENTRE, pari materia to Section 9 of the Unorganized Worker's Social Security Act, 2008–

1. Disseminate information available under schemes for workers;

2. Facilitate filling, processing and forwarding application forms for registration of workers;
3. Assist in seeking registration form District Administration
4. Full time State Employees should be heading the Board for efficient implementation of the schemes and disbursements thereof.

23. Education of Children

1. As soon as the workers are registered as above, the Delhi Building and Other Construction Workers Welfare Board shall without requiring the construction worker to produce any document, independently verify the details from the school concerned, open an account in the names of the worker and his children, and begin payment of financial assistance for education in accordance with the entitlements approved by the Board read together with the decision of the Delhi High Court dated 20.9.12 in Writ Petition (Civil) No. 524 of 2010 which increased the entitlements by a multiple of three and the report of the Expert Committee of the Board, which approved the revised rates.

24. Health Benefits – ESIC & Social Security

1. That, by Press Release dated 23.7.15, the Employees State Insurance Corporation (ESIC) announced that the construction site workers would get ESI coverage as under:

“ESIC is also now going to cover the construction site workers under the ESI Scheme thereby enabling them to avail benefits of complete medical care (from primary to tertiary medical care), as well as a range of cash benefits in times of exigencies of employment injury, death, disablement, maternity and unemployment. Construction activity has been covered by the ESIC under Sec 1(5) treating them as establishment.”

2. The Board shall pay the employees’ contributions as required under section 39 of the ESIC Act and the authorities under the ESIC Act shall be responsible for ensuring that the employers contribution are collected on time.
3. To provide social security for old age to construction workers/ beneficiaries, a scheme to be devised to provide lump sum gratuity in the joint name of the construction worker or spouse;

25. Staff of the Board

1. The Board shall immediately estimate the staff requirement, frame rules for the appointment, inter alia, of such exclusive and regular staff as are necessary to professionally and efficiently manage the affairs of the Board, and appoint such staff within three months from today.
2. The Board shall take serious note of the objections taken in the CAG Audit reports and, since the Board has accepted the audit observations, immediate steps shall be taken, subject to the other

directions given herein, to overcome all the shortcomings and implement all the recommendations.

3. The Board shall appoint an internal audit wing consisting of reputed and impartial persons and full time accounts staff.
4. The Board shall submit in accordance with section 25 and 26 of the Act, annual budgets and annual reports to the State and Central Govts.
5. The Board shall maintain its accounts, relevant records and annual statement of accounts as required by section 27 in consultation with CAG and shall furnish its accounts and other records to CAG in accordance with section 27 (3) and 27 (4) for an audit to be done by CAG.

26. Collection of Cess at source

1. It is proposed that all contracts with government, public sector undertakings and local authorities involving construction activity shall mandate a clause for compulsory deduction of the estimated cess which will be deducted from contract considerations and paid directly by the government, public sector undertakings and local authorities to the Board.
2. That for transparency all such contracts will be uploaded on a website;
3. That, similar exercise will be conducted by government and local authorities while sanctioning/authorising/permitting private construction activity;

4. That similar exercise will be conducted for earlier contracts where the cess was not collected.

27. Registration of workers at source

1. That, all contracts with government, public sector undertakings and local authorities involving construction activity will include a declaration by the contracting party regarding the estimated number of construction workers to be employed by the contracting party and the sub-contractors.
2. That, in a time mandated schedule the construction activities starting the contracting party shall on his behalf as well as on behalf of all the sub-contractors submit a list to the government/public sector undertaking/local authority providing details of all the construction workers and simultaneously submit documentation showing registration of all the workers with the Board.
3. That, the contracting party simultaneously shall also collect the employees' contribution for and on behalf of himself and the sub-contractors for the entire year, pay the same over to the government/public sector undertaking/local authority who shall in turn deposit the same with the Board.
4. The contracting party shall also simultaneously submit a statement in prescribed form to the government/public sector undertaking/local authorities showing that the registration of the work under the ESI Act have been done and the identity cards given to the workers. A similar exercise be done on a yearly basis.

28. Publicity and media – to reach the unreached Workers

That, at present discernable efforts have been made by press, media, print, etc to reach the unreached workers, thus it is recommended as under through –

1. camps at appointed places and dates after due publicity through press and media, the State Welfare Boards must schedule a pre-decided programme to hold such camps;
2. AIR by way "jingles" encouraging workers to seek registration under the Act;
3. local Doordarshan;
4. photo print media, since there is hardly any knowledge of the benefits available for the workers under various schemes, there is a needs to widely publicize the schemes and procedure, thereof, to avail benefits of such schemes; and
5. camps, media and publicity in registered trade unions, Legal Service Authorities and NGOs are to be encouraged to assist the building workers to seek benefits.

New Delhi Government diversion of cess

29. At the 29th Welfare Board meeting scheduled to held on 2.6.16 the following agenda was circulated:

1.	Confirmation of the 28 th meeting held on 02-03-2016
2.	Intimation of joining of new Secretary in the Board

✓	3.	Discussion on tentative allocation of Rs 100 crore for opening of schools
✓	4.	Discussion on tentative allocation of Rs 200 crore for opening of Hospitals.
✓	5.	Discussion on tentative allocation of Rs 400 crore for opening of Anganwadi
✓	6.	Discussion on tentative allocation of Rs 200 crore for opening of temporary accommodation.
	7.	Discussion on tentative allocation of Rs 50 crore for issuing cycles to eligible registered beneficiaries to commute to their workplace
	8.	Approval for the certificates issued by the MLA's also be accepted for registering the construction workers
	9.	Approval on self declaration on affidavit/undertaking on plain paper as accepted document for the registration of construction workers.
	10.	Discussion on pension amount, which is to be granted at par with the old age pension given by the Department of Social Welfare, Govt Of NCT of Delhi.
	11.	Any other issue with the permission of the Chair.

Amended ✓
1000

30. In response to this the petitioner wrote letter dated 2.6.16 stating therein as under:

"2nd June,2016

The Chairperson
Members of the Building and Other Construction
Workers Welfare Board
New Delhi.

Subject: Agenda for the 29th Board meeting scheduled on 2.6.16

Sir,

We, the undersigned, are shocked by the agenda circulated for the 29th Board meeting which was received by us today i.e. 1.6.16 even though it is dated 30.5.16.

There is a blatant attempt by certain members of the Board to siphon away the money of the Welfare Board meant for the construction workers. The whole attempt is to spend the money on the construction through contractors which will involve kickbacks and bribery. Money of the Welfare Board that was not spent for years despite warning of the Supreme Court is now proposed to be squandered in a few days. The timing is very important because the Supreme Court is closed and just before the Court hears the matter the money is proposed to be siphoned away.

You are aware, that in respect of how the money should be spent, the amicus appointed by the Supreme Court has submitted a recommendation for action which we are enclosing at Annexure A to

this protest letter. It recommends to the Supreme Court that the money should be spent (i) on the education of children by putting scholarships in the accounts of the families and (ii) on health benefits namely ESI coverage for all construction workers.

The sinister underhand scheme is to take money away from the Welfare Board and park it in 3 Ministries of the Delhi Government namely (i) Health Department (200 crores), (ii) Education Department (100 crores), (iii) Social Welfare Department (400 crores) and (iv) PWD Department (200 crores).

Regarding education, may we draw your attention to Rule 281 which states that the money will be used for financial assistance for the children of construction workers. The Board has already passed resolutions regarding scholarship amounts to be paid to the children of construction workers depending on the class in which they are studying and the said scheme has been notified on 4.3.16. Therefore, the Board and those members interested in squandering the money have no business using the money for the construction of schools. It appears as if the scheme is designed to engage architects and contractors for the construction of the schools for the general public and take kickbacks from the contractors. Such a use would be illegal and we are putting you on notice that legal action will be taken for misuse of the amount.

Similarly, the money spent on hospitals is illegal and misuse of the powers of the Board for the same reasons as above. In this regard,

we draw your attention to Rule 280 which speaks of medical assistance to beneficiaries. On the last occasion in the Supreme Court the Union Labour Secretary Shri Shankar Agarwal spoke up in the Supreme Court agreeing to the suggestion of the amicus that all construction workers would be covered by ESI. Not only that, an advertisement has been issued by ESI to this effect that from 1.8.15 all construction workers would be covered. Now the money that would be used to pay for the workers contribution to ESI as agreed by the Union Labour Secretary in the Supreme Court is going to be squandered on the construction of hospitals which is contrary to the Rules and a misuse of the money lying in the Board.

Some members of the Board seem to be under the wrong impression that the money lying the Board is to be used for subsidizing the Delhi Government. Please get rid of this impression as this is cess money and under the Act and Rules and even in the orders of the Supreme Court it is stated that the money lying with the Board cannot be used for any other purposes.

No Rule provides for Aanganwadis. The Delhi Government receives aid from the central government under the ICDS for the construction of Aanganwadis, and the Board money should not be misused for this purpose.

Now, dealing with housing, we draw your attention to Rule 274 which deals with advances to be given to construction workers for the purchase or construction of their own house.

It appears that somebody influential in the Board has some great friendship with some builders/contractors and in the guise of helping the poor construction workers is actually trying to help the builders/contractors.

Therefore, we call upon you to immediately cancel the proposal and implement, in the first instance, the two main schemes for construction workers as recommended by the amicus in the Supreme Court and accepted by the Union Labour Secretary.

Finally, may I draw your attention to the order dated 16.10.15 which is, *inter alia*, as under:

"Apart from that, during the course of discussions, it has come out that there are five key areas on which the Central Government needs to concentrate for the time being. These are:

- (i) to ensure maximum coverage of the building and other construction workers;
- (ii) to ensure distribution of benefits and implementation of the Schemes that are in existence for the benefit of the building and other construction workers;
- (iii) to lay greater emphasis on education and provide educational facilities to the children of the building and other construction workers;


- (iv) to provide health benefits and insurance of the building and other construction workers and their families;
- (v) to activate the State Advisory Boards which, as per the affidavit, have not even met in the last several years.

Mr. Shankar Aggarwal assures us that necessary steps will be taken in this regard with due promptitude and diligence. He assures us that some positive results will be shown on or before the next date of hearing."

We complain that some members of the Board are deliberately trying to sabotage the Supreme Court proceedings and to siphon the money away before the Supreme Court can hear the matter taking undue advantage of the fact that the Supreme Court is on vacation. The status report that was to be filed by the Board and the Central Government for the consideration of the Court by 15.1.16 has not been filed.

Sincerely,

Yours Sincerely



Subhash Bhatnagar"

31. The Union of India also issued directions dated 7.6.16 under section 60 of the Act stating therein as under:

"No. Z-2001/08/2014-BL

GOVERNMENT OF INDIA

MINISTRY OF LABOUR AND IMPLEMENT

Jaisalmer House, Mansingh Road,

New Delhi – 110011, Dated the 7th June 2016

Order under Section 60 of BOCW (RE&CS) Act, 1996

Subject : Utilization of Building and Other Construction Workers Welfare
Cess-Reg

Read : Section 60 of the Building and Other Construction Workers
(Regulation of Employment and Conditions of service) Act, 1996
{BOCW(RE&CS) Act, 1996}

Ref : Order under section 60 of BoCW Act, 1996, dated 9.9.15, 23.9.2015
and 08.10.2015

Whereas, The BOCW (RE&CS) Act, 1996 aims at regulating the safety,
health, welfare and other conditions of service of BOC Workers through
the Welfare Board in every State/UT which are administered by the State
Government/UT Administration;

Whereas, Section 24(2)(a) mandates the Welfare Board to utilize the
BOCW fund for discharging the functions under section 22 of the said Act;

Whereas Section 60 of the said Act also empowers the Central
Government to give directions to the state Government or to a Board as
to the carrying into execution of any of the provisions of this Act;

Whereas, the implementation of the BOCW(RE&CS) Act, 1996, and the BOC Workers' Welfare Cess Act, 1996 is under close scrutiny of the Hon'ble Supreme Court in WP © No.318/2006 and vide the orders dated 21.08.2015 and 04.09.2015, the Hon'ble Court was extremely distressed to note that the cess fund is not being utilized for the benefit of persons for whom it is collected, but for other purposes;

In the order dated 21.08.2015, the Hon'ble Court observed:

"...We make it clear that the expenditure incurred by some of the State Governments/ Union Territories particularly NCT of Delhi on advertisements with the amount collected is not at all appropriate and the amount that has been spent by the NCT of Delhi and other Union Territories/ and States on Advertisements should be returned to the accounts of the construction workers..."

In the order dated 04.09.2015, the Hon'ble Court also observed:

".....it may perhaps be more appropriate not to collect the money since it is not being utilized for the benefit of the persons for whom it is collected, but for other purposes. We had hoped that this observation will have some salutary effect on the officers of the State Government/ Union Territories and the Central Government, but obviously it has had absolutely no effect on the concerned officers.

Perhaps, we may have to take steps to devise some way or recording or recording our displeasure, if necessary, in the Annual Confidential Reports (ACRs) of the concerned officers....."

Whereas, it has come to the notice of the Central Government that some of the States by taking convenient interpretation of Section 22 in general or section 22(h) of the BOCW(RE&CS) Act, 1996 in particular, are spending the cess fund for construction of buildings for schools, training centres, labour shed-cum-night shelters, waiting hall, hostels, etc which is in violation of the provisions of the Act;

Whereas construction of buildings for schools, hospitals, training centres, labour shed-cum-night shelter, waiting hall, hostels etc are the substantive functions of the respective departments of a State Government, having their own Budget allocation to cater to the needs of the general public of which BOC Worker is a miniscule subset;

Whereas, Section 22(h) does not allow diversion from BOCW Cess fund for any purpose other than for welfare of BOCW workers and their families exclusively;

Whereas, it is felt expedient in the larger public interest to issue directions for utilization of the cess fund;

Now, therefore, in exercise of the powers conferred on the Central Government, the Ministry of Labour & Employment directs all the State Governments and UT Administrations not to spend the cess fund for construction of buildings for schools, hospitals, training centres, labour shed-cum-night shelter, waiting hall, hostels, etc., or for any purpose other than for welfare of BOCW workers and their family exclusively. In case of any such violation, immediate corrective steps should be taken and the fund so spend should be recouped in the BOC Workers Welfare

Cess Fund with immediate effect under intimation to the Central Government.

By Order and in the name of the President of India, this 7th day of June, 2016

A.K.Singh)

Under Secretary to the Government of India”

32. At the 29th Welfare Board meeting held on 2.6.16 the following decisions were taken by the Board:

“Agenda 3

Tentative allocation of Rs. 100 crore for opening of schools

It was proposed that the some schools are under verge of closure and the board may take over these schools and provide necessary facilities for the study of the children of the construction workers and it was also decided that the board shall initiate proposal for opening of 5 new schools where construction workers are living in large numbers. It was also decided that the land has to be obtained from the govt. Of Delhi free of cost , for construction of these schools and only the construction has to be carried out from board’s fund.

The board has further decided to keep Rs 100 crore for tentative allocation for this project.

Agenda 4.

Tentative allocation of Rs 200 crore for opening of hospitals and for Health Insurance cover.

The board has decided that many hospitals are run by Govt. Of Delhi hence few beds to be earmarked for the construction workers and their family members and the reimbursement of expenditure incurred on them shall be borne by the board. Also the Delhi Govt. is bringing an insurance scheme in near future and the registered workers and their family should be added in that scheme. Premium for the same will be paid by the board. The board has decided to keep Rs 100 crores as tentative allocation for the said Health Insurance scheme.

It was further decided to construct one or more hospitals for construction workers and their families at a tentative expenditure of Rs. 100 crores.

Agenda 5

Tentative allocation of Rs. 400 crores for opening of Anganwadi

The board has decided that the name of this project is to be called as " Creche for the wards of construction workers" and decided to open few new crèches where construction workers are working in large numbers.

The board has further decided to keep Rs 200 crores for tentative allocation for this project.

Agenda 6

Tentative allocation of RS. 200 Crore for opening of temporary accommodation

Further it was decided that mobile accommodation (container type) shall be constructed in the construction site where large number of workers are working and after the work is over the same can be shifted to another site of work. The payment should be charged from the contractors for such accommodation .

The board has further decided to keep rs. 200 crores for tentative allocation for this project.

Agenda 10

Discussion on pension amount , which is to be granted at par with the old age pension given by the department of Social welfare , Govt. Of NCT of Delhi.

For universal reaching of the pension benefits the board has decided on majority , to change the existing provision for disbursement of pension to the beneficiaries and it has further decided that it shall be at par with the old age pension given by the Department of Social Welfare , Govt of NCT of Delhi. However , no caste/community differentiation will be made while disbursing such payment which will be at par with the amount being disbursed by Department of Social Welfare , Govt of NCT of Delhi.

The proposal was accepted by all the members except the four members namely :-

1. Shri Mohan Kumar
2. Shri Satish Kumar Pandey
3. Shri Ramender Kumar
4. Miss Lata

Agenda 11

Discussion on providing subsidised food for the construction workers (agenda item proposed by the chairman.)

The board has decided that food subsidy to be provided to the construction workers and the same maybe either interlinked with the proposed new scheme (being launched) of GNCT of Delhi, namely " Aam Aadmi Canteen" or the subsidised food maybe delivered through the vans at the construction sites from the base kitchen. Further ,it was decided that the modality / rate of subsidiary will be decided later.

The board has decided to keep Rs. 200 crores for tentative allocation for this project."

33. Apart from the criticism of agenda 3, 4, 5, and 6 already made above in respect of agenda 10 the pension is sought to be reduced from Rs. 3,000 per month + Rs. 300 increase per year for every year of membership of the Board, to Rs. 1,000 which is equal to the pension of the destitute.

from the Welfare Board. Anganwadi centres by their very nature cater to all the persons in the locality and no discrimination can be made on the basis of occupation.

38. In respect of temporary accommodation which is the responsibility of the employer, once again moneys are sought to be diverted from the Welfare Board towards the construction of shelters.
39. Similarly the minutes of the Delhi Welfare Board at its 30th meeting held on 15.6.16 is as under:

"Agenda 1: Briefing of Agenda of 29th Board meeting held on 02.06.2016

Since the 29 Board meeting was chaired by the Chairman In-charge, the agenda of the 29th Board meeting was briefed to the regular Chairman and the Board members, again by the Secretary (Board) and he also informed to the Board that the minutes of the 29th Board meeting has been approved by the Chairman and will be circulated in a day or two, to all concerned.

Agenda 2: Acceptance of Registration Form with self declaration of Construction workers.

The issue was discussed in detail and it was decided that registration form with self declaration of the construction worker should be accepted henceforth. Later, if any of the entry/ given detail is found to be false, then the applicant will be held responsible for such wrong declaration and that

applicant will be liable to be proceeded against as per the relevant law. Such registration form may be supported by any of the government issued identity documents i.e. Voter Id, Ration Card, Aadhar Card etc.

Agenda 3: Procedure for submitting pension application by the construction workers.

The Board has decided that henceforth self declared pension application has to be forwarded by the concerned Area M.L.A. and all other procedure in this regard should be withdrawn.

Agenda 4: Constitution of committee for implementing various schemes for which the tentative allocation of Fund has been done.

The Board decided to constitute a committee for implementing various schemes as

decided in the item no. 5 of the 27th Board meeting dated 12.10.2015 and for which

the tentative allocation of Fund has been done as per the decision taken in the 29

Board meeting held on 02.06.2016. The committee will identify the sites/ areas

collusion between the labour departments of the state governments and the construction companies.

NALSA Scheme

41. NALSA has framed the NALSA (Legal Services to the Workers in the Unorganised Sector) Scheme, 2015 (**Annexure B** hereto). The relevant part of the Scheme for construction workers is as under:

- **Setting up of the state Social Security Board and Building & Other Construction Workers Welfare Boards**

“Wherever the Social Security Board and Building & Other Construction Workers Welfare Boards have yet not been set up, the State Legal Services Authorities shall coordinate with the state government and if necessary, institute with the approval with the Hon’ble Executive Chairman, SLSA, Public Interest Litigation in the respective High Courts for getting these boards set up as soon as possible.”

- **Utilization of cess**

“State Legal Service Authorities shall coordinate with the Building and Construction Workers Welfare Board to ensure that the cess collected by them does not keep lying in fixed deposits and is actually utilized for the benefit of the needy workers as per the schemes available. The State Authorities shall seek relevant information from the boards, encourage the workers to apply for the benefits and then, coordinate with the Boards to provide the said benefits.

In case of denial of due benefits to any worker, legal remedies can be prosecuted on his behalf by the State Legal Service Authority through the special cells for Unorganized Workers.

Prayer

It is therefore prayed most humbly that your Lordships may be pleased to pass the following:

- ✓ a. For an order quashing the decisions taken by the Delhi Building and Other Construction Workers Welfare Board at its 29th and 30th meetings held on 2.6.16 and 15.6.16 as above set out.
- ✓ b. For an order directing the respondents to implement the recommendations of the amicus as to how the cess collected and lying in the Welfare Board should be spent.
- c. For an order directing the respondents to estimate the number of construction workers working in every state, estimate the number of registration officers and inspectors required to carry out the functions under the Act and to appoint such officers and full time staff so as to ensure that the registration of all the construction workers are completed within one year from today.
- d. For an order directing the respondents to prepare a comprehensive report regarding the identity, address and the number of establishments engaged in construction work in every state as well as the estimate of the cess to be collected.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

Date: 29.6.2016
New Delhi

JYOTI MENDIRATTA
(Advocate for the Petitioner)

IN THE SUPREME COURT OF INDIA
WRIT ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) 318 OF 2006

IN THE MATTER OF:

National Campaign Committee for Central
Legislation on Construction Labour (NCC-CL) ...Petitioner

Versus

Union of India & Ors. ...Respondents

AFFIDAVIT

I, Subhash Bhatnagar, S/o V. S. Bhatnagar, aged about 69 years, R/o B-19, Subhavana Niketan, Pitampura, New Delhi-110034, do hereby affirm and declare as under:

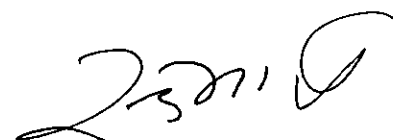
1. That I am the Coordinator of the Petitioner Organization in the above named matter and in such capacity I am well conversant with the fact and circumstances of this case as derived from official records and hence competent to swear this affidavit.
2. That I have gone through the contents of this application for direction and the same is being filed under my instructions and the contents thereof are true to the best of my belief and nothing material has been concealed.



DEPONENT

VERIFICATION

Verified at New Delhi on this the 28th day of June 2016 that the contents of the affidavit are correct, no part of it is false and nothing material has been concealed therefrom.



DEPONENT

ANNEXURE A
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Tabular Presentation of the Information on the Implementation of 1996 Acts based on the State wise Information provided under Annexure G with the Affidavit of Union Labour Secretary dated 15-1-2016 with reference of CWP 318/2006 of NCC-CL as GOI & Others along with the number of Construction Workers and the amount of Expected & Actual Cess Collected

16-10-2015 SUPREME COURT DIRECTION										
Sl. No	Name of State/UT	Estimated No. of Construction Workers double of 2011-12 for 2016-17	Registration of Construction Workers 2015	Cess ought to have been collected since 1995 notification (Rs. in crore)	Cess collected (Rs. in crore)	Total Amount of Disbursement/Number of Beneficiary	Ensure disbursement of benefits	Lay greater emphasis on Educational incentive to children of BOCW	Provide health benefits	
1	Andaman Nicobar Islands	46,690	12,407 <53%	100	32.79	Rs. 87,19.330		Details on disbursement of educational benefits	Education provision exists from class I to Highest Class No details provided	Rs. 7,18,000 disbursed

2	Andhra Pradesh	6,060,440	15,45,190 <51%	2500	117.25	Rs. 1,33,78,12,565 disbursed to 4,94,432 beneficiaries	No Education incentive scheme	Rs. 33,11,300 to 388 beneficiaries + 938 under ATRR
3	Arunachal Pradesh	41,724	No information provided <41%	100	22.96			
4	Assam	1,209,852	20,900 <3.45%	500	205.09	Rs. 1,82 crore	No Education incentive from Class I	No details provided
5	Bihar	4,989,030	3,09,587 during April-Nov. 2015 Total 30,958 6,82,836 <27%	2000	668.17	No education incentive from Class I to VIII No details provided	RSBY + Mukhya Mantri Sahayata Cosh exists No details provided	
6	Chandigarh	53,920	15,385 Male-13,724 Female -- 1,661 <57%	200	64.49	No Education incentive from Class I exist	Details expenses not provided	Proposal sent for Administration
7	Chhatisgarh	1,370,718	10,03,976 <146%	1500	539.27	Benefited 8,71,239	Scholarship from Class I to PG 1,64,035 Merit Scholarship 27,351	80 Beneficiaries
8	Delhi	10,00,000	No details provided (<35%)	2000	1536	Rs. 60,52 crores	Rs. 40.45 crore through Directorate of Education extended to MCE & DMC and Cantt. Schools	No details covering establishment with <10 Construction

			<67%				Details of disbursement not provided	
16	Kerala	4,067,488	17,00,000 Live members 15,70,360	1500	1233.92	Details of disbursement not provided Scheme details are provided	Provided only for Higher Education	Details of disbursement not provided Only 3 Schemes are provided
17	Madhya Pradesh	6,267,712	26,53,163 <85%	3000	1575.62	Rs. 552.04 crore to 27,64,202 beneficiaries	Class wise provisions and disbursement not provided	No details provided
18	Maharashtra^a	5,506,194	4,30,193 15%	15000	3579.89	Rs. 213.9 crore district level disbursement within 1 month of application provided	No details provided	No details provided
19	Manipur	329,356	28,259 <17%	100	21	Rs. 1,86,89,990 to 4689 beneficiaries Rs. 83,00,000 to 8,976 beneficiaries During 2015-16 total 3.898 beneficiaries	Rs. 1,41,91,000 provided to 8,483 beneficiaries Schemes from Class I not provided	Rs. 8,35,000 provided to 68 beneficiaries
20	Meghalaya	150,860	1960 <3.5% beneficiaries Cess collected Rs. 72.75 crore	400	72.75	Rs. 83.11 lacs to 2059 beneficiaries	No details provided	No details provided

21	Mizoram	61,988	No Information <69%	200	30.29			
22	Nagaland	29,114	No Information <29%	100	14.6			
23	Odisha	37,67,582	11,91,204 <63%	2500	892.62	Rs. 349.03 crore	No schemes from Class I to X	No details provided
24	Punjab	26,44,000	3,85,715 <29%	2500	1118	Rs. 254.08 crore	Rs. 12.74 crore provided Rs. 5.20 crore During 2015-2016	No details provided
25	Rajasthan	91,47,368	7.89 lacs <17%	4000	733.62	No details provided	No details provided	No details provided
26	Sikkim	35,226	No Information <139%	200	54.65			
27	Tamil Nadu	7,483,760	25,40,860 <68%	2000	1290.9	Rs. 322,01,05,001 disbursed to 10,59,481 beneficiaries	No incentive from Class I to IX provided Rs. 135,64,33,282 disbursed to 8,63,767 wards Anganwadi facilities at 50 sites coasting Rs. 2.31 crore	50 mobile health clinics coasting Rs. 16.39 crore
28	Telangana		No Information	2000	231.02			

29	Tripura	1,050,424	63,092 <12%	500	108.4	Rs. 7.28 crore provided to 27,382 beneficiaries	25,729 children provided education facilities	No details provided
30	Uttar Pradesh	15,172,670	23,01,784 <30%	9000	2157.8	Rs. 287.56 crore	32 nd Board meeting on 10-11-2015 decided to give scholarship from Class I onwards	No details provided
31	Uttarakhand	824,122	70,057 <17%	500	96.87	Rs. 15.27 crore provided	No scheme from Class I to 5 Rs. 23,99,552 provided to 1,207 children	No details provided
32	West Bengal	5,155,934	26,90,772 <104%	2500	1251.53	Rs. 426,14,58,336 provided to 13,28,332 beneficiaries	No details provided	No details provided
33	Dadar & Nagar Haveli	14,514	No Information provided <6%	20	3.08			

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34	Daman & Diu	2,264	No Information provided <81%	40	18.28			
35	Lakshadweep	6,480	No Information provided <5%	10	3.33			
36	Puduchery	131,226	No Information provided <62%	100	71.72			

(Puduchery)

ANNEXURE-B

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**NALSA (Legal Services to the Workers in the
Unorganized Sector) Scheme, 2015**

NALSA (Legal Services to the Workers in the Unorganized Sector) Scheme, 2015

1. Background

- 1.1 One of the major characteristics of the Indian economy is the contribution of a vast majority of labour employed in the unorganised sector. The economic survey of India (2007-2008) and National Sample Survey unorganized sector (2009-2010) have estimated the employment in this sector at about 93-94% of the total workforce. Its contribution to the GDP is estimated to be more than 50%.
- 1.2 Majority of unorganised workers (about 52 per cent) are employed in agriculture. Other major categories include construction workers, workers in small enterprises, workers employed through contractors even in large enterprises, artisans/craftsman, home based workers, workers depending upon forest produce, fisheries, self-employed workers like rickshaw pullers, auto drivers, coolies etc.
- 1.3 The distinguishing feature of the unorganised sector is non-applicability of most of the labour laws and other regulations providing for decent working conditions, job security and social security to the workers. The unorganised workers lack collective bargaining power and are therefore susceptible to excessive exploitation. They work under poor working conditions and receive far lower wages/remuneration as compared to the organised sector, even for comparable jobs. Most of the employment in this sector is seasonal and the workers therefore have no job guarantee. This also leads to large scale migration of workers from one place to another leading to un-stability of work and residence which further often leads to discontinuity of the education of their children. In cities, they live in slums without proper housing and sanitation. Health care and maternity benefits which are statutorily available in the organised sector are not available for them. The

legislations providing for social securities for old-age, health-care and assistance in the event of death, marriage and accidents etc., like the Workmen's Compensation Act, 1923; Employees State Insurance Act, 1948; Maternity Benefits Act, 1961; Industrial Disputes Act, 1974; Payment of Gratuity Act, 1972; Employee Provident Fund and Miscellaneous Provisions Act, 1952 etc., do not apply to them. The combined effect of the above factors is that many of them are generally, forced to lead an undignified and servile life.

1.4 Existing Legal Frame Work

Although there are a large number of categories of employment in the unorganized sector, legislation providing for working conditions etc., have been enacted only in respect of few categories like:-

- Dock Workers (Regulation of Employment) Act, 1948;
- Beedi and Cigar Workers (Condition of Employment) Act, 1966;
- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984;
- Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- Prohibition Of Employment As Manual Scavengers And Their Rehabilitation Act, 2013.

- 1.5 In order to provide for social security to all categories of unorganised workers, the Central Government has also enacted an umbrella legislation by the name of Unorganised Workers Social Security Act, 2008. Various social security schemes have been/are required to be floated for the benefit of the workers under the Building and Construction Workers Act, 1996 and Unorganised Workers Social Security Act, 2008.

2. Scheme for providing legal services.

- 2.1 The enactment of the few statues as mentioned herein above does not appear to have made any appreciable difference to the lives of the workers inter-alia, for the following reasons:-
- a) The Social Security Act,2008 does not statutorily provide any mechanism to implement the schemes and there appears to be no sanction against a refusal of the concerned authorities to extend the benefits of the schemes to eligible workers.
 - b) Very few States have constituted the Social Security Boards and have framed rules as envisaged under Section 14 of the Act. The result is that in many states, no welfare schemes are being administered and even where the schemes are in place, there is no effective monitoring. Similarly, all the states have not yet established the Building and other Construction Workers Welfare Boards as mandated under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act,1996 and consequently, no security schemes have been floated for these workers.
 - c) Although cess is being collected by many states under Building and Other Construction Workers Welfare Cess Act 1996, utilisation of cess amount for the benefit of the workers is abysmally low. This may be due to very low registration of workers and / or non extension of benefits even to the registered workers.
 - d) The schemes and the benefits available thereunder are not being sufficiently publicised. Workers in the unorganized sector being generally uneducated and not unionised are mostly unaware of the schemes.
 - e) Workers Facilitation Centres as envisaged under section 19 of the Social Security Act 2008 have not been set up by any State.
 - f) There is no responsibility of the employer /contractor to get their workers registered under any of the schemes. It is for the workers

to apply for the same and they are unable to do so due to lack of awareness and complexity of the procedure.

- g) Separate registration is required for each scheme which makes it difficult for workers to avail benefits under all the schemes available to them in case of need.
- h) The registration under the scheme is generally non-portable and therefore, workers in most of the categories being migrant workers are unable to avail the benefits and are therefore reluctant to register themselves under the scheme.

2.2 The Legal Services Institutions can play an important role in bridging the gap between the implementing authorities and target beneficiaries. With this object in view, the National Legal Services Authority had adopted the Scheme i.e. National Legal Services Authority (Legal Services to the Workers in the Unorganised Sector) Scheme, 2010 in the meeting of the Central Authority of NALSA held on 08.12.2010.

2.3 However, the magnitude of the problem and the fact that the benefits of the legislations are still elusive to the needy workers even after several years of their enactment has given rise to the need for more focused attention to this sector. The present revised scheme is meant to achieve this purpose.

The terms PLVs, Legal Services Clinics, Front Office, Panel Lawyers and Retainer Lawyers will mean the same as defined under the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 and National Legal Services Authority (Legal Services Clinics) Regulations, 2011 and the NALSA Scheme for Para Legal Volunteers (Revised) and Module for the Orientation – Induction – Refresher Courses for PLV Training.

3. Name of the Scheme

The Scheme shall be called "**NALSA (Legal Services to the Workers in the Unorganized Sector) Scheme, 2015**".

4. Objectives

1. To institutionalize essential legal services to all unorganized workers.
2. To get the gaps in legislation/implementation plugged through coordination with government authorities and by initiating public interest litigation.
3. To mobilize the machinery of the State Government and the District Administration to identify and register all unorganized workers in all categories and to extend the benefits of all government schemes, as applicable to them.
4. To spread awareness among the employers regarding the statutory provisions and the need for providing decent working conditions, living wages and social security to the workers.
5. To disseminate information among the workers regarding their entitlements under the existing legislations and schemes.
6. To provide counselling and assistance to all categories of unorganized workers for their registration with the concerned authorities under the schemes available for their category.
7. To assist the workers in availing the benefits of the scheme for which they are registered as per their need/entitlements.

5. Guiding Principles

The following principles shall be borne in mind by all Legal Service Institutions while implementing the scheme for the unorganized workers:-

- 5.1 The Preamble of the Constitution of India assures equality of status and opportunity to all citizens and to promote among them fraternity, assuring the dignity of the individual. Article 42, mandates that the State shall make provision for securing just and humane conditions of work and for maternity relief. By virtue of

Article 43, the State is obliged to secure to all workers, work, a living wage, condition of work ensuring a decent standard of life and full enjoyment of leisure, social and cultural opportunities.

- 5.2 The Preambular promise of upholding the dignity of the individual cannot be fulfilled unless the dignity of labour is ensured.
- 5.3 The unorganized sector is one of the marginalized sections of the society and they, as citizen of the country, are equally entitled to the right to work, just and humane conditions of work, living wages, maternity relief and a decent standard of life. It is the statutory mandate of the Legal Services Authorities to facilitate realization of this Constitutional assurance. The Legal Services Authorities have to act as watchdogs against administrative inaction.
- 5.4 The welfare measures initiated by the Government in the form of legislations or schemes etc. require the intended beneficiaries or the victims to mobilize the system for realization of their rights/entitlements. The workers in the unorganized sector belonging as they do, to the deprived and vulnerable sections of the society do not possess the capacity to mobilize the system. It is the job of the Legal Services Authorities to provide them support in getting justice to their doorsteps.
- 5.5 The large number of categories of the unorganized workers,, large population in each category and their vast geographical spread necessitates a project-approach to the issue of providing legal services to them. An institutionalized setup, committed work force and sustained efforts for a considerable period of time are required to be able to make them capable of realizing their constitutional rights.

Plan of Action

6. Setting up of Special Cells

- 6.1 In order to provide effective legal services to the workers in this sector, each State Legal Services Authorities (SLSAs) shall

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constitute a special cell focusing exclusively on these services. The cell shall be manned by one panel lawyer specialising in Labour Laws, one counsellor/consultant having requisite qualification/experience in relevant field, wherever feasible, representative of an NGO doing demonstrably good work in the area and such number of Para Legal Volunteers, as the SLSA may prescribe .

6.2 The functions of the special cell shall be:

- i) to organize and conduct Legal Awareness/Literacy programmes, training programmes and seminars for unorganized workers;
- ii) to co-ordinate with government authorities in relation with registration and extension of the benefits of the schemes to the unorganized workers;
- iii) to facilitate and provide assistance in filing , processing and furnishing application form for registration and in availing benefits of the schemes to the unorganized workers;
- iv) to provide legal assistance and legal aid to the unorganized workers in respect of any claim or defence before any court or other authority;
- v) any other function that the State Authority may prescribe for them.

6.3 The special cell shall work under the guidance of the Member Secretary or any other officer of the Authority, as nominated by the State Authority, and shall file periodic reports of the progress of its assigned duties with him.

- 6.4 The members of the cell shall be paid honorarium for each of the duties at such rates, as may be fixed by the State Authority.

7 Identification of Unorganized Workers

- 7.1 The first job for the Legal Services Institutions is to identify the categories and population of unorganised workers operating in their respective areas, by seeking the data available with the Labour Department/Social Welfare Department of the State and if necessary, conducting surveys either themselves or in collaboration with law students and NGOs operating in the area.
- 7.2 In the process of identification, special efforts should also be made to identify any child labour or bonded labour and in case any workers in the said prohibited categories are found, the Legal Services Authorities shall inform the concerned authorities and facilitate their rescue, release and rehabilitation, as provided under the Bonded Labour System (Abolition) Act 1976, The Child Labour (Prohibition and Regulation) Act 1986 and Juvenile Justice Act 2000.
- 7.3 The State Authority may fix timelines for identification of all categories depending upon the area, population and other relevant factors in each state.

8 Conditions of work and minimum wages

The State and District Legal Service Authorities shall, in collaboration with the State and District Administration and local NGOs, assess the need of statutory regulation of conditions of work and minimum wages etc., for the categories of Unorganized Workers particularly, of Domestic Workers and if found necessary, the State Legal Services Authority shall take the requisite steps to get the same notified.

9 **Setting up of State Social Security Board and Building & Other Construction Workers Welfare Boards**

Wherever the Social Security Board and Building & Other Construction Workers Welfare Boards have yet not been set up, the State Legal Services Authorities shall coordinate with the State Government and, if necessary, institute, with the approval of the Hon'ble Executive Chairman, SLSA, Public Interest Litigation in the respective High Courts for getting these boards set up, as soon as possible.

10 **Utilisation of Cess**

State Legal Services Authorities shall coordinate with the Building and Construction Workers Welfare Boards to ensure that the cess collected by them does not keep lying in fixed deposits and is actually utilised for the benefit of the needy workers as per the schemes available. The State Authorities shall seek relevant information from the boards, encourage the workers to apply for the benefits and then, coordinate with the boards to provide the said benefits.

In case of denial of due benefits to any worker, legal remedies can be prosecuted on his behalf by the State Legal Services Authority through the Special Cell for Unorganized Workers.

11 **Government Schemes under the statues**

Legal Services Authorities shall move the State Governments to notify the schemes relevant to the category of unorganised sector operating in the States. This also, if necessary, can be achieved through institution of Public Interest Cases, with the approval of the Hon'ble Executive Chairman.

12 **Legal Awareness**

12.1 After identification of the unorganised workers in each category, legal awareness programmes may be organised about the different schemes and social security measures available for such categories. The special cells for unorganized workers shall

organize legal literacy camps for this purpose preferably, at their place of work itself or at community centres etc.

- 12.2 All State Legal Services Authorities shall publish booklets/pamphlets containing the details of the available schemes, their eligibility criteria and procedure for registration for obtaining the benefits as per the requirements of the workers. Copies of the booklets/pamphlets shall be kept available in all Front Offices, Legal Services Clinics and the place of sitting of the Special Cell and shall be distributed in the legal awareness/literacy programmes.
- 12.3 Information regarding the abovesaid details should also be disseminated through Doordarshan, All India Radio and Community Radio.
- 12.4 The Labour and Social Welfare Departments of the State should be requested to display the telephone numbers and helpline numbers of the Legal Services Institutions and the members of the Special Cell.

13 **Specialised Training for PLVs**

State Legal Services Authorities shall conduct specialized training programs for the paralegal volunteers focusing on the needs of the particular categories of Unorganised Workers as are operating in that area and the benefits which they can avail from the government schemes. PLVs should be trained inter-alia to educate the workers, help them identify the benefits they should seek and to liaise with the authorities for making the said benefits available to the needy workers.

14 **Workers Facilitation Centres**

State Legal Services Authorities shall coordinate with the Labour Departments of the State for setting up of worker's facilitation centres as envisaged under Section 9 of the 2008 Act. They may also set up legal services clinics manned by specially trained PLVs/NGOs, to be attached to such centres.

(AKNE Galy)

Case No. 1

ITC No. 35

DATED: 1/7/2016

SECTION P1L

IN THE SUPREME COURT OF INDIA

I.A. (Crl. /Civil) No.....Of 20

In

Special Leave Petition (Crl. /Civil) No.....Of 20

Civil /~~Criminal Appeal~~ /~~Transfer~~ /Writ Petition No. 318 of 2006

IN THE MATTER OF:

NATIONAL CAMPAIGN Committee for CENTRAL Petitioner's/Appellant's
LEGISLATION ON CONSTRUCTION LABOUR (NCC-CL)

Versus

UNION OF INDIA & ORS. Respondent's/ Caveater's

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