

NATIONAL CAMPAIGN COMMITTEE

For Central Legislation on Construction Labour

Justice V.R. Krishna Iyer

Founder Chairperson

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10th January, 2020

To,
Director General (Labour Welfare)
Jaisalmer House, Man Singh Road
New Delhi -110011

Sir,

This is to draw your attention very urgently towards the proceedings of the Kali Charan Vs State (of Delhi) and others – CrI M.C. 5889/2014 before the Honourable High Court of Delhi. On the face of the proceedings, it appears that the honourable High Court and the Committee constituted on its Orders have not been informed of the following facts:--

1. that the Honourable Supreme Court of India has already examined in detail the functioning of the BOCW Welfare Board, including the Delhi BOCW Board, and passed a detailed judgment on 19th March 2018 on the NCC-CL Petition (CWP 318 of 2006).
2. that the Govt of India had constituted a Committee to implement the Supreme Court Judgment and a detailed Action-Plan and Model Welfare Scheme prepared by this Committee was circulated by the Union Labour Secretary to the Chief Secretaries of all State and Union Territory Administrations and including to the Delhi Government on 30th October 2018.
3. that in accordance with the Supreme Court directions the DG (LW) had circulated the Social Audit Frame Work to the Labour Secretaries of all the State Government & Union Territory Administrations, includes the Labour Secretary of the Delhi Government in August 2019.
4. that the Delhi BOCW Board has not yet examined the above mentioned two sets of directions issued by the Central Govt under Section 60 of the BOCW Acts of 1996.
5. that the Monitoring Committee functioning at the Central Government level under the BOCW Acts, 1996, consisting of Labour Secretaries of all State Governments and UT Administrations, held on 4th June 2019, and 12th December 2019, both, have endorsed

the implementation of the Supreme Court judgment through the implementation of the Action-Plan Model Welfare Scheme and the Social Audit Framework.

6. that the Report of the Committee under the Convenorship of Shri Sanjoy Ghose contradicts the above mentioned Action-plan and Model Welfare Scheme and this Committee Report has **not** been placed before the Delhi BOCW Board due to delay in the periodical reconstitution of the Board. It appears that the members of this Committee are not aware of the above facts. The haste in calling the quotation from the Public Sector Insurance Companies smells of the vested interest of spending the Board funds before the Board is reconstituted or before the Board can review the recommendations of this Committee.

The Supreme Court judgement and the Model Welfare Scheme both have made it clear that all the State/UT BOCW Board should adopt **uniforms and portable Schemes**, suggested by the Central Government, which has been violated by the Recommendations of the Committee working under the Convenorship of Shri Sanjoy Ghose.

The expenses of Rs. 6.9 Crore to 12.4 Crore, at the lowest and highest quotation, will be recoverable from the Govt of NCT of Delhi if it is incurred in a hurry and without the approval of the duly- constituted Delhi Building & Other Construction Workers Welfare Board as mentioned in various interim Orders of the Supreme Court in the above-mentioned Petition.

It is further required to be noted that the constitution of this said Committee is in direct violation of the statutory mandate of requiring all such committees and bodies to have tripartite representation from the Board, the Employers and the Building Workers. In this case, particularly when the subject matter is concerning welfare provision for the construction workers, it is ironical that the Committee failed to call upon a single representative from the workers and trade unions representing their interests. Even at the time of formation of this Committee, NCC-CL had duly made representations to the Court-appointed Chairman of the Committee, Shri Sanjoy Ghose, that NCC-CL would like to assist the Committee in its deliberations. The said Chairman failed to act upon the representations that were made. It is evident from the Report submitted before the Hon'ble High Court that the Report has actually been made by lawyers and bureaucrats, bereft of inputs from the workers, who are the actual intended beneficiaries. There are various crucial aspects which the Committee has failed to deliberate upon, which the workers or their representatives would have most definitely raised in the meetings. It is highly crucial that the following aspects are discussed and deliberated at this stage itself, before the Hon'ble Court issues directions to the Board to pursue implementation of the recommendations of the Committee, as the Board would be thereafter bound to agree to whatever terms set by the insurer thereafter-affecting the interests of the workers as a whole. The said aspects which must be discussed and deliberated at this stage, inter alia, include:

1. The Committee in its deliberations with insurance companies must identify various nuances such as documents that would be required to be submitted by the workers at the time of filing of the claim. It has failed to reach an understanding with the insurance companies as to with whom would the the workers be filing the claims, with the Board or directly with the insurers.

2. The Committee in its deliberations must also identify the remedy and grievance redressal mechanism that would be made available for the workers incase the claim filed by them is rejected/denied/not processed. It must reach an understanding with the insurance companies as to before whom would such remedy lie and demarcate the role of the Board in clear terms. The Board must continue to play the role of overseeing body, and must assist the workers in filing of their claims and provide remedy incase the insurer for some reason, fails to process/rejects/denies the claim of the worker.
3. The Committee in its deliberations with the insurance companies must reach a common ground as to the role of the Board in administration of such claims and regarding financial oversight as well.

It is further pertinent to highlight, that during 2007-10 the Delhi BOCW Board had spent over Rs. 15.92 lakh rupees on nine group policies of Jan Shree Bima Yojana (JSBY) but not a single construction worker got a single benefit because the Delhi BOCW Board failed in providing any data to the L.I.C.

Later, about 98 lakh Rupess were spent by the Delhi Board during this period on the RSBY advertisement on which interim order was passed by the Hon'ble Supreme Court to recover this amount from Delhi Govt.

Another aspect which makes the entire exercise undertaken by the Committee highly arbitrary and impractical is that they invited quotes from the insurers on basis of present number of registered workers, which is, quotedly-31,000. The insurers accordingly gave quotes regarding premium on basis of the said number of workers. The Committee seems to be very poorly informed and ignorant that the said number of registered workers with the Board is at all time low. In 2017, there were nearly 3 lakh workers in Delhi registered with the Board, out of a total of 10 lakh construction workers in the entire city. The number has drastically fallen to 31,000 due to mismanagement, lack of adequate staff and the fact that the Board itself had, consciously, closed the registration window in 2018 for nearly nine months-making it impossible for the then-registered workers to renew their registrations, as they are required to do so by law, annually. It would be highly irresponsible and in direct contempt of Supreme Court directions if the Board does not immediately expand its registration machinery in order to register all the ten lakh construction workers. It seems that the Committee, was in a hurry to fulfil its mandate, without seeking adequate inputs from the Board regarding future projections of registration of workers, it has asked the insurers to give quotes, assuming as if only 31,000 workers would remain registered with the Board in future as well.

In this regard, it is also brought to your attention sir, that Welfare Boards in several other states such as Karnataka, Andhra Pradesh and Telangana provide the very said benefit regarding accidental claims to the workers, registered as well as unregistered. The said Boards provide the benefit themselves and not through any third party. It is again urged, as it was previously urged to the Convenor of the said Committee that they must study the models of the said three Boards, which have been seemingly successful and efficient in the implementation. The said plea however, has been completely ignored by the Committee and not even considered in its minutes.

NCC-CL will also like to inform you that the following time line given by the Committee to the Delhi BOCW Board **“to take all necessary approvals to bring the police/scheme in**

operation” as given on page 4 of the enclosed Report filed on behalf of the committee before the Hon’ble High Court :- (taken from para 10 of the Minutes of the Committee held on 6-11-2019 –

By*

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| a. Member Representative of the Board will furnish, to the respective insurance Companies, data as requested, within 7 days from today; | 13-11-19 |
| b. Respective insurance companies would furnish a quote for the proposed policy within 7 days of receipt of data from the Board; | 20-11-19 |
| c. Having received the respective quotes, the same will be put up for approval of the Secretary, Board, within 7 days thereafter. | 22-11-19 |
| d. The Secretary, Board will put up the quotes, along with the proposal For insurance coverage contemplated herein, before the Chairman, BOCW Board within 7 days of receipt of the same; | 29-11-19 |
| e. The Chairman shall thereafter, after giving due notice of 14 days, put Up the same before the Advisory Committee of the Board, for in principal Approval thereof; | 13-12-19 |
| f. Thereafter, the proposal shall be put up for approval by the Labour Department, within 4 days thereafter; | 17-12-19 |
| g. The proposal shall thereafter, within 10 days, be forwarded to the Board; | 27-12-19 |
| h. The proposal shall thereafter, within 5 days, be forwarded by the Board to the Lieutenant Governor, through appropriate channels, for approval. | 1-1-2020 |

** (dates added by NCC-CL)*

This time frame is not feasible because the notification for the re-constitution has not been done for Delhi BOCW Board term which expired on 30 Sept. 2019 as per section 251(3) of the Delhi BOCW Rules 2002 as yet.

Therefore we request you to please call for the Report of the above mentioned Committee immediately and direct it to the Secretary Delhi Building & Other Construction Workers Welfare Board, who has been recently appointed in this position, to wait for the next meeting of the duly constituted Delhi BOCW Board before considering this Committee Report or pay any amount to the insurance companies. It is further called upon you sir to direct the Secretary of the Board to

place the said Report before a duly reconstituted Committee comprising members from the Board as well as from the workers representatives, as is mandated by the BOCW Act.

With thanks.

Your Sincerely,
Subhash Bhatnagar

Copies to:-

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- 1. Lt. Governor, Govt of NCT of Delhi**
- 2. Director General Labour Welfare, Ministry of Labour & Employment, Govt of India.**
- 3. The Chairman of Delhi Building & Other BOCW Board.**
- 4. The Chairman and member of the above mentioned Committee constituted by the Honorable High Court Order in KaliCharan Vs State Govt of Delhi.(Crl.MC 5889/2014)**

Your Sincerely

Subhash Bhatnagar