

## A Summary of Eight Court Orders in CWP 318/2008

15-01-2016

### Annexure 1

In the concluding para of the 18<sup>th</sup> January 2010 Order, the Supreme Court had stated “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”.

Although two national meetings were called since after this order but they were not with reference to this Supreme Court order.

Therefore the 12/12/2014 order passed very clear Order specifying the time limit. Following are the important parts of 12-12-2014 Order which first repeated the entire Order of 18<sup>th</sup> Jan 2010 giving eleven steps to be implemented by all the 36 Boards.

- A. *“We direct the Secretary in the Ministry of Labour, Government of India to convene a meeting of all the Secretaries of all the States and Union Territories on or before 16<sup>th</sup> January, 2015 and to discuss with them the modalities for effective implementation of both the statutes and arrive at a consensus”.*
- B. *“We expect that the Secretary will arrive at some consensus and present before us a document indicating the modalities on which they propose to proceed further”.*
- C. *“It has been mentioned in the order dated 18.01.2010, in direction No. 10, that the Comptroller and Auditor General CAG should audit the entire implementation of the Cess Act and use of the funds”.*
- D. *“Mr. P.S. Narsimha, learned Additional Solicitor General submits that he will be in touch with the CAG and ensure that the order dated 18.01.2010 is complied with”.*
- E. *“Mr. Vivek Tankha, learned amicus curiae to be present on the next date of hearing and assist us in the matter”.*

A meeting of State Labour Secretaries was called on 12<sup>th</sup> January, 2015 but it did not discuss the modalities for effective implementation of both the statutes. After this meeting of several State Labour Secretaries the central government merely provided state wise data for the last three years of the cess collection, registration of beneficiaries and disbursement of benefits. Therefore the Supreme Court in its order of 13-2-2015 gave one more opportunity to the central government and passed the following orders.

**2) Date 13-02-2015**

- A. *“A detailed affidavit, indicating the status of the receipt and utilization of funds, the schemes that are being run by various State Governments. Union Territories, the number of officials involved in each scheme and whether each scheme has a different set of officials, should be filed in the form of a chart within four weeks by the Union of India”.*

**When even after second opportunities the Central Government failed in providing the modalities on which they propose to proceed further the court decided to consider only three States – Haryana, Uttar Pradesh and Rajasthan and NCT of Delhi. on next date of hearing.**

**3) Date 27/03/2015**

- A. *“We propose to take the matter of utilization of funds by the States of Haryana, Uttar Pradesh, Rajasthan and the National Capital Territory of Delhi in the next date of hearing in regard to issues raised in the petition as also implementation of the Building and Other Construction Workers Welfare Cess Act, 1996 and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996”.*

**But even these four State/UT failed to provided provide proposal for utilization of construction workers welfare fund on the next date of hearing. Therefore the court gave one more chance to them to file a detailed affidavit with urgent to collection and utilization of the Construction Workers Welfare cess fund. All the four secretaries were asked to the present in the court on 21-8-2015.**

**4) Date : 31/07/2015**

- A. *“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”.*
- B. *“The three States of Haryana, Rajasthan, Uttar Pradesh and NCT of Delhi should file their submissions on affidavit with regard to collection and utilization of the amounts and proposals for utilization within two weeks from today”.*

**The three State and Union Territory of Delhi Government which failed in providing any clue what they propose to do with the thousand of crore rupees collected, they were given one more opportunities by next date of hearing of 4-09-2015.**

5) **21-08-2015**

- A. *“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”.*
- B. *“We also find from some of the affidavits that the amount is being used for purposes other than for what it was collected”.*
- C. *“Mr. Yashank Adhyaru, 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 31<sup>st</sup> July, 2015, but none of the affidavits indicate what is proposed to be done with this amount”.*

**On 4<sup>th</sup> September 2015 the Court directed the Union Labour Secretary to remain present on the next date of hearing to submit next week, a possible action plan. The Court also accepted to take a possible action plan on the utilization of the fund from *amicus curiae* and the petitioner.**

6) **Date 04-09-2015**

- A. *“There does not seem to have been any progress made pursuant to our order dated 21.08.2015”.*
- B. *“Mr. Yashank Adhyaru, not received any definite instructions in spite of the Central Agency having contacted the Ministry of Labour, Government of India”.*
- C. *“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”.*
- D. *“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”.*

**On 11<sup>th</sup> Sep.2015, Union Labour Secretary, for the first time gave an action plan where instead of asking any state/UT Board to execute the functions provided u/s 22 of the Act he has proposed that all the board to invest more the entire annual cess collection in recently floated central schemes. This position was further improved in his 9<sup>th</sup> Oct. 15 affidavit and 16<sup>th</sup> Oct.15 affidavits. So far the Court has not passed any Order on the proposals of the Union Labour Secretary (ULS). The proposal of the ULC amounts to infringement of the rights of States/UT Governments and Boards. Instead of guiding them how to allocate the collected cess funds**

between different mandatory provisions u/s 22 of the BOCW Act 1996 the ULS has merely proposed the ‘investment’ of the entire annual collection of cess fund into the recently floated, and hence untested, central schemes. Even unclear the last provision of Sec. 22 (h) “make provision and facilities as may be prescribed”, the State/UT Governments and Boards have been not spent any thing and told that all such expenses have to be borne by the State/UT government through its own resources.

All State/UT governments and Boards must reply to the directions issued by the Central government u/s 60 of BOCW Act on 9<sup>th</sup> Sept. 2015, 23<sup>rd</sup> Sept. 2015 and 8<sup>th</sup> Oct. 2012. All schemes which have been notified in different States & UTs. Which are better than the schemes proposed by the Union Labour Secretary must prevail upon these three sweeping directions.

All Governments/Boards must direct the Advocates representing them in the Supreme Court to present their objections before the Social Justice bench before passing further Order.

The understanding of NCC-CL is that the Union Labour Secretary has not applied his mind at all to the proposal given by the *amicus curiae* and the petitioner.

The ULS is also not aware of the real situation in the 36 States and Union Territories. He has not made any reference to the Audit of Reports of these State & UT Boards prepared by the CAG and its recommendations. This Audit was done by the CAG on the direct direction of the Supreme Court in the present petition and the copies of Audit Reports were filed by the Petitioner in the Court. The Central Government never bothered about the provision of the Audit by CAG in the BOCW Act of 1996, it had never issued any directions in this regard. The central government is not willing to appoint a dedicated full time team of officials at the Central Government Level to monitor the filing of periodical reports by 36 Boards and to take care of the Recommendations of the CAG Audit, Central Advisory Committee Reports etc.

In case the Court issues an Order in response to the proposal of Central government, supporting the proposals, the State & UT Boards and Government will have no way out. Therefore they must submit their positions on the crucial directions issued by the Central Government before the Supreme Court passes any Order. The next date for filing such objections/report is 15<sup>th</sup> Jan.2016, a week before the next date of hearing of 22<sup>nd</sup> January,2016

**7) Date 11-09-2015**

A. “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.”

- B.** *“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”.*
- C.** *“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”.*
- D.** *“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”.*
- E.** *“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 State/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”.*
- F.** *“The Registry should not accept any affidavits other than those filed by the Union of India, or under our specific directions”.*

**8) Date 16-10-2015**

- A.** *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.*
- B.** *“Needless to say, we expect the State Governments and the Union Territories to assist the Central Government in 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 understanding of NCC-CL is that the Union Labour Secretary has not applied his mind at all to the proposal given by the *amicus curiae* and the petitioner. Nor does he understand the specific mandate and provisions of the BOCW Act.**

**The ULS is also not aware of the real situation in the 36 States and Union Territories. He has not made any reference to the Audit of Reports of these State & UT Boards prepared by the CAG and its recommendations. This Audit was done by the CAG on the direct direction of the Supreme Court in the present petition and the copies of Audit Reports were filed by the Petitioner in the Court. The Central Government never bothered about the provision for Audit by CAG in the BOCW Act of 1996. It had never issued any directions in this regard. The central government is not willing to appoint a dedicated full time team of officials at the Central Government Level to monitor the filing of periodical reports by 36 Boards and to take care of the Recommendations of the CAG Audit, Central Advisory Committee Reports etc.**

**In case the Court issues an Order in response to the proposal of the Central government, supporting the proposals, the State & UT Boards and Government will have no way out. Therefore they are expected to submit their positions on the crucial directions issued by the Central Government before the Supreme Court passes any Order. The next date for filing such objections/report is 15<sup>th</sup> Jan. 2016, a week before the next date of hearing of 22<sup>nd</sup> January, 2016.**