

NATIONAL CAMPAIGN COMMITTEE

For Central Legislation on Construction Labour

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	<p style="text-align: center;">Remembering Justice V. R. Krishna Iyer</p> <p>Justice V.R.Krishna Iyer, Chairman of NCC-CL since its formation on 3rd Nov. 1985, provided his guidance to the construction workers' campaign for almost three decades before he left us on 4th Dec. 2014. Just a few days earlier we had celebrated his 100th Birthday on 15th Nov., 2014. We pledge to achieve his dream of providing social security and justice for all the unorganised sector workers and for construction workers in particular.</p> <p>Shri R.Venkataramani, Subhash Bhatnagar, Geetha R. and Swami Agnivesh from NCC-CL participated in the funeral ceremony of Justice V. R. Krishna Iyer to pay homage on behalf of five crore construction workers of the country.</p> <p>NCC-CL will be organising a memorial meeting soon to recall his contribution to Labour Laws in India.</p>
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Dear Friends,

This is further to the 7th January, 2015 Note of the NCC-CL enclosing a few urgent documents.

With New Year's Greetings, we would like **to remind you** once again to give full attention towards enclosures of our above mentioned Note and the key questions they raise and **to remind you of the need to communicate your response to us immediately**. We need to create a nationwide **consensus** from the point of view of Construction Workers and put it before the recently constituted **Social Justice Bench of the Supreme Court** before the next date of hearing, which is **13th Feb, 2015**.

We would like to draw a parallel with the **16th January, 2015** Order of the Special Justice Bench in the case of **Narbada Bachao Andolan** which has **directed the States to submit compliance reports by 10th March, 2015 and has listed the matter for further hearing on 13th March, 2015.** The Social Justice Bench has **also directed the Grievance Redressal Authorities of the three States to dispose of all pending cases by 28th Feb, 2015.**

Unfortunately, in the case of construction workers no Grievance Redressal Mechanism has been provided in the 1996 Act, the Central Rules of 1998 or in any of the State Rules notified during 2002 to 2012. NCC-CL has been raising the demand for the Provision of Grievance Redressal and Dispute Resolution under the 1996 Acts but none of the authorities, the Working Group Recommendations, various Task Forces, the Amendment introduced by the Bill No.XIX of 2013 or Sixteen Meetings of the Central Advisory Committee during the past fifteen years have ever considered the need to constitute a Grievance Redressal Mechanism and Dispute Resolution Mechanism under the 1996 Acts and under the State/UT tripartite Boards. If such a mechanism existed the Supreme Court could have provided for a time limit as it has done in the case of Narmada Bachao Andolan.

Therefore NCC-CL Constituents, representing different segments of Construction Workers should come to a consensus at national Level on the demand of a Grievance Redressal Mechanism and Dispute Redressal Mechanism to be provided under the 1996 Acts and the related Central & State Rules.

In the PIL of NCC-CL, the **Social Justice Bench directed the Union Labour Ministry to convene a meeting of all the Labour Secretaries of the State and Union Territories before 16th Jan,2015 to discuss the modalities for effective implementation of the legislations of Construction Workers.**

The Bench has adjourned the matter to 13th Feb, 2015 and clearly mentioned that **it expects that the Secretaries of the Ministries of various States and Union Territories will arrive at some consensus on the effective implementation of both the Statutes and present before it a document indicating the modalities on which they propose to proceed further. The Court has directed that there must be some finality to the issues that have been raised in the Writ Petition.**

In the 12th Dec, 2014 Order the Bench **reproduced the entire Order of 18th January,2010 giving eleven Measures required to be implemented by the States without delay, along with the concluding paragraph requesting the Labour Ministry of the Govt. of India to explore the possibility of a National Conference for implementation of the Provisions of the Acts.**

MEETING with UNION LABOUR SECRETARY

In the above background a meeting of the Labour Secretaries of all the States and UTs was called on 12th Jan.2015 by the DG (LW) Office of the Union Labour Ministry.

NCC-CL had requested the Union Labour Secretary to allow us to be present at this meeting as Petitioner in the CWP 318 of 2006 before the Supreme Court. Since it was a meeting of the officials, the Labour Secretary Ms. Gauri Kumar instead gave us a personal hearing on 11th January, 2015, so that we could inform her of the key issues worrying the National Campaign of Construction Workers.

At this meeting the main issues we took up were the following four negative amendments in the 1996 Acts which were tabled in the Rajya Sabha by the previous Central Government:

1. The government proposal of deleting ***“who has been engaged in Construction Work for not less than ninety days during proceeding twelve months”*** for the registration of a Construction Worker as a beneficiary under Sec12(1) of the main Act.
2. Insertion of new Section 18.1A proposing to ***accept a team of “Four Officials” as deemed Board for one year.***
3. Amendment in Section 2(i)j of the definition of ‘establishment’ and
4. Amendment in Section 24(3) ***leaving it to the discretion of the Central Government officials to keep on changing the ceiling on the amount spent on administration and also the provision exempting residential housing from payment of cess i.e. “the cost of the Construction of the residential house to be exempted” and removal of “limitation on administrative expenses out of the total expenses during the financial year.”***

Ms. Gauri Kumar asked what are the key amendments to ensure proper implementation of the 1996 Acts, according to the experience of NCC-CL.

We pointed out that that when the **registration of a Construction establishment** under Section 6 and **payment of Cess** under Section 3 of the Cess Act and under Rule 3 of Cess Rules is **mandatory why has registration of workers been left out as voluntary? Leaving the registration of a construction worker** (under Chapter IV Section 12) as ***optional*** is ***totally illogical.*** Therefore we suggested the addition of sub-clause (c) under Sec10 as one of the key modalities required to ensure the proper implementation of the 1996 Acts all over the country.

Regarding Section 10 on the **“Effect of non-registration”** we suggested the following sub clause to be added as an amendment:

“No employer of an establishment to which this Act applies, shall-

(c) **Employ an unregistered worker and if employed under emergency the worker shall be registered by the employer with the State Construction Workers Welfare Board immediately on the first day of engagement itself by the employer.**

“The board officials will ensure that the registration documents of the Construction Workers are handed over directly to the worker, after duly explaining the utility of such registration, and not to the representative of the employer.”

The positive response of the Labour Secretary encouraged us to add the following issues:

1. **Portability of the registration** of Construction Workers as beneficiary and **portability of the disbursement of benefits** to be provided under Section 22 of the main Act.
2. **Independent status of the Tripartite Boards** on the pattern of ESIC and Provident Fund Organisation.
3. **Special provisions for registration and benefits for migrant workers.**
4. Need to treat the Cess Fund as ‘Corpus Fund’, not to be spent every year but **to be allotted every year proportionately for different key functions**, provided under Section 22 on Functions of the Board.

We reminded her that it is urgent to ***review and reverse*** at the earliest the set of directions under Section 60 issued on 12th July, 2013 which state **“State Boards shall spend every year at least 20% of the balance Cess amount at the beginning of the financial year, on activities related to skill development of registered workers and their dependents”**. We consider this an attempt to divert social security funds.

5. The need of **uniformity** or **“Standardisation of the process of registration and disbursement of benefits”**.

We submitted a copy of **“the comments of NCC-CL on Amendments proposed by the former government along with the Amendments proposed by NCC-CL”** which were earlier submitted to the Standing Committee of the Ministry of Labour and Employment in January, 2014. We also submitted a copy of **“the Notification of the Principal Secretary of the Govt of Punjab dated 7th March, 2014”** which we suggest should **be replicated by all the State and Union Territory Boards.**

ISSUES FOR CONSIDERATION

For achieving uniformity and standardisation of procedure and benefits we need to consider **the possibility of appointing the Chairpersons of all the 36 Tripartite Boards under Section 18(3) of the main Act by the Central Government in accordance with Order dated 13th January, 2009 of the Supreme Court of India on the NCC-CL Petition.**

Now we request all the constituents of NCC-CL to consider **the advantages and disadvantages of appointing Chairpersons of all the 36 Boards by the Central Government.**

An important issue which the Labour Secretary referred to was the taking up of **the Svavlamban Pension Scheme** by all the B&OCWW Boards.

The Labour Secretary also referred to the new **Shramyogi Swasthya Yojna**, the details of which are not yet available.

Need of **adequate staff up to District Levels in all the Tripartite Boards** was also discussed.

We request all the Constituents of the NCC-CL, (1) the Trade Unions of Construction Workers and their Federations affiliated with different Central Trade Unions, (2) the independent Trade Unions of Construction Workers, (3) the Cooperative Societies and Non-Government Organisations working with construction workers, (4) the Legal Aid Committees and the Law Students helping construction workers in the implementation of the 1996 Acts in different States and Union Territories of India, to study all the above mentioned documents and this circular very carefully.

At the end of this Circular, we are enclosing a list of issues which need to be debated by the organisations representing Workers to reach a consensus, before seeking a meeting of all the stakeholders to be called by the government to reach a consensus.

We would like to remind you one of lesson we had learnt from Justice V.R. Krishna Iyer: That we must ensure the participation of as many Construction Workers as possible in these debates and in reaching a consensus.

We will try to obtain and circulate the report of the meeting of State/UT Secretaries held by the Labour Ministry for arriving at a consensus document before the next date of hearing i.e. 13th Feb,2015.

We request you to debate on each and every issue, ensuring active participation of the Construction Workers' organisation in the debates so that the advantages and the disadvantages of different stands on these issues are understood properly for reaching a common understanding and wherever possible.

We hope you will agree with the need of an urgent meeting of all the organisations who represent the interests of the construction workers,

Yours Sincerely,

Subhash Bhatnagar

Coordinator

Sl. No.	With the Circular we are once again enclosing the following documents, which had been circulated by NCC-CL earlier for your ready reference:
1	Order dated 13th Jan,2009 of the Supreme Court of India on the NCC-CL Petition (CWPN0318 of 2006).
2	The Recommendations of the Working Group constituted under the convenorship of Shri Ravichandran of ILO.
3	Clarification regarding vocational training to be added under Sec 22(1)(h) in the letter dated 21 st May, 2013 from Dy. DG(LW) to Labour Department of all State/UTs.
4	DG (LW)'s letter dated 12 th July,2013 to Labour Departments of all the States/UTs regarding suggested improvements in the implementation of the 1996 Acts.
5	The Notification of the Principal Secretary of Punjab dated 7th March,2014
6	The Building and Other Construction Workers related laws (Amendment) Bill, 2013 Amendment Bill No-XIX of 2013

Sl. No.	With the 7th January, 2015 note we had circulated to all constituents the following documents:
1	The 12 th December, 2014 Order of the Social Justice Bench of the Supreme Court of India.
2	Agenda of 16 th meeting of the Central Advisory Committee.
3	Minutes of the 16 th Meeting of the Central Advisory Committee.
4	Comments of NCC-CL on the Amendments in 1996 Acts proposed by the government in 2013 and the Amendments proposed by NCC-CL.

List of main issues to be debated
to finalise the Modalities for the effective implementation
of the 1996 Acts of Construction Workers

1. The appointment of the fulltime Chairperson of all the 36 State/Union Territory Building & Other Construction Workers Welfare Board by the Central Government:

This is going to be a land-mark change which can help in achieving **uniformity in the procedures of registration** of Construction Workers as beneficiaries and **standardisation in the disbursement of all the benefits**. So far not a single State or UT has appointed a full time Chairperson of its BOCWW Board. This will facilitate registration of 100% construction workers as “beneficiary”, ensure collection of the entire due cess regularly, ensure proper record of the “**live registrations**” of those construction workers who are regularly depositing their annual contribution, ensure **portability of the registration in each and every State/UT Board** and ensure **portability in the disbursement** of the benefits.

2. Certification of Employment.

Section 12(1) of the B&OCW (RE&CS) Act, 1996 provides for the employment of “**not less than ninety days during the proceeding twelve months**” as one of the eligibility criteria for the registration of building workers as beneficiary. But most of the State/UT Rules notified so far are not clear about the authorities who can provide this certificate. In the DELHI B&OCW(RE & CS) Rules, 2002, Rule No. 266 Membership, sub Rule (3) provides as follows :

Certificate from the employer or contractor that the applicant is a construction worker shall be produced along with the application for registration. In case such a certificate is not available, a certificate issued by the registered construction workers unions or a certificate issued by Assistant Labour Commissioner of the concerned are or by the Executive Officer of the Panchayat may also be considered.

NCC-CL in its petition before the Supreme Court has requested for a direction to all the States/UTs to accept the Delhi Rules as model Rules whenever the Rules were not yet notified or not clear.

It is a known fact that **the employer or contractor are not willing to issue a certificate** because of its implication regarding the coverage of the **Employees' State Insurance Act, 1948** and Employees' Provident Funds & Miscellaneous Provisions Act, 1952. No Assistant Labour Commissioner is willing to issue an employment certificate and risk his/her and employment. Therefore a certificate issued by the registered construction workers unions is the only documents on the basis of which most of the 2.5 lakh construction workers out of ten lakh construction workers working in Delhi have been registered so far in Delhi and have deposited their annual contribution.

Self certification has been suggested as an alternative by the Working Group Constituted by the Labour Ministry in 2011 which has **no merits over the certificate by a trade unions** of construction workers.

3. Annual Contribution Versus Long-term contribution of 3 to 5 years or no contribution from Construction Workers.

In many States/UTs lakhs of Construction Workers have been failed in depositing annual contribution, leading to a suggestion that registration as beneficiary should be extended to three years, five years or life time. This suggestion has ignored a simple principle- **a longer date of depositing annual contribution will increase the chances of forgetting it.** In fact the "regularity in the disbursement of benefit" only can lead to the regularity in the depositing of the annual contribution. Free registration will totally destroy the 'tripartite spirit' of the board as has happened in Tamilnadu.

Depositing Annual Contribution along with a "certificate of 90 days of employment during the proceeding twelve months" has another very crucial aspect of the process of **"weeding out the registration of non-Construction Workers from the list of the registered beneficiaries"**. If the process of weeding out non-Construction Workers is **deleted the Board is bound to collapse over a period of time with the load of the non-Construction Workers on it.** This will lead to **the end to the possibility of providing "Social Securities" to rest of the forty crore Unorganised Sector Workers through the mechanism of "Tripartite Boards"**. Only the success of the implementation of providing social security to the construction workers through Tripartite Board can ensure **'replication' of the model of 'Tripartite Board'** for rest of the Unorganised Sector Workers.

PS:- Incomplete ,this list only giving three examples ,Rest of issues will be emailed to you later.You are also requested to add and communicate to us the issues which need to be added in view of the situation in your State/UT Board.

