

NATIONAL CAMPAIGN COMMITTEE

For Central Legislation on Construction Labour

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To
Shri Narendra Singh Tomar
Union Minister for Labour and Employment
Government of India
Shram Shakti Bhawan, Rafi Marg
New Delhi-110001

Subject: - Examination of the Building & Other Construction Workers Related Laws (Amendment) Bill, 2013.

Dear Sir,

We have learnt the government is once again considering the Amendment in the 1996 Acts of construction workers which were recently rejected by the Standing Committee on Labour which included many Members of Parliament belonging to the present ruling government. We have called a meeting of the NCC-CL on 8th July,2014 at Delhi in which we wish to invite both the Labour Ministers and the Labour Secretary or representatives of the three of them. However, before the 9th July 14 meeting we are submitting our proposals which is almost the same which had submitted to the Standing Committee of Labour in January, 2014

As the organization that was pivotal in demanding and having the above legislation enacted for the benefit of Construction Workers, since these Unorganised Sector workers were outside the purview of most labour laws, we feel we have a right and duty to make this representation to you.

You may be aware that the National Campaign Committee on Central Legislation for Construction Labour was constituted in 1985 under the Chairmanship of Justice V.R.Krishna Iyer, former Judge of the Supreme Court of India, as a common platform which included almost all the Central Trade Unions. It was the Petition of the NCC-CL to the Petitions Committee of the Lok Sabha in 1986 and the follow-up Campaign which resulted in the enactment of the 1996 Acts for Construction Labour.

Regrettably over the next ten years only ten states bothered to implement these Acts. NCC-CL then filed a Public Interest Litigation in the Supreme Court with the help of the Human

Rights Law Network (WP-C No.318 of 2006) seeking directions to all the State and Central governments to fully implement the 1996 Acts.

It was as a result of this PIL that Rules were notified and Tripartite Boards finally set up in all the 35 States and UTs by February 2012.

In the course of our work we have come to a full understanding of the shortcomings of the two central Acts for Construction Labour and the problems faced by the various stakeholders in their implementation process all over the country. We believe that the Amendments which are being reconsidered by the Government are completely inadequate in addressing these issues. In some instances they are retrogressive.

We have organized consultations with several organizations of Construction Workers from different parts of the country on the proposed Amendments. On the basis of these Consultations we had prepared our comments on the proposals of the government and suggested some more Amendments which are urgently needed for effective implementation of the 1996 Acts. Almost all important suggestions of the NCC-CL were full accepted by the Standing Committee.

We request the new government to seriously consider the enclosed comments and amendments proposed by NCC-CL on behalf of various organizations of Construction Workers of the country. This is an issue of vital concern to the country's 4.5 crore Construction Workers who are eagerly awaiting the legal protections and social security long promised to them,

With Best Regards,

Yours Sincerely,

Subhash Bhatnagar

Coordinator

Part-A

Comments of NCC-CL on the Amendments proposed by the Government

1. The Amendment of Section 2 sub section (1), clause (j) “ establishment”

The government proposal in section 2 clause (J) that the words “**the cost of such construction being not exceeding such amount as the Central government and may, by notification, specify in this behalf**” shall be substituted” should be rejected by the Standing Committee.

NCL-CL request the Standing Committee to agree that the following ending part of Section 2(1)(j) .

“but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such constructions not being more than rupees ten lakh”

This provision in the main Act is being interpreted by some of the States **to exclude the construction workers working on small residential construction sites from the social security provisions.**

All the construction workers, whether working on small sites or big sites, residential sites or non-residential sites need social security.

Alternatively the registration of construction workers and the payment of the cess by the construction sites on which they are working must be clearly delinked. Exception to very small sites from paying Cess must not work against the interest of poor and vulnerable construction workers from getting registered as a beneficiary to become entitle to get Social Security coverage

Amendments to Section 2

2. The government proposal of deleting “who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months” should be rejected by the Standing Committee of Labour.

Withdrawing this provision, as proposed by the Government, will lead to a rush of non-construction workers for registration as beneficiary in every State/UT Board and it will be almost impossible to weed them out. This will sink the ship of social security meant for construction workers which has a limited fund of 1% of the total cost of construction.

Administrative steps should be taken against the ‘**employers**’ and ‘**board officials**’ who are misusing the provision ‘of completing 90 days of work at the current site of

construction’ for not registering the Construction Workers as beneficiary. This deliberate attempt to distort the interpretation of “not less than 90 days of work during the preceding twelve months (anywhere in the country) must not be accepted as an excuse to amend this section 12(1). There is nothing wrong in accepting that for availing lifelong social security a worker must work in Construction Work at least for 90 days in every year. The certificate of employment is hardly ever provided by the ‘employer’ or ‘labour officials’ but only by the trade union of which he is a member.

Amendments to Section 12 (1)

3. Insertion of new Section 18.1A proposed by the Government must be rejected by the Standing Committee as it destroys the fundamental concept of the ‘Tripartite Board’ with **equal** number of members representing the State government, the employers and the building workers as a substitute to the absence of a long term employer-employee relationship and the absence of a permanent ‘management’ team in the construction industry.

The proposed bureaucratization of the Board will result in destroying the concept of the Tripartite Board and will definitely lead to several scams or looting of the huge amount of money already collected for providing social security.

Amendment to 18.1.A

4. The proposed amendment of Section 24sub-sec (3) of the BOCW Act, deleting **the provision of a limit of 5% expenditure on administration** and leaving it to the Central Government to fix and notify from time to time is another step towards bureaucratization of the Act which must be rejected by the Standing Committee. The Cess is specifically meant for social security and must not be diverted for paying huge rents for office space, paying high salaries to staff and consultants, buying vehicles and assorted wasteful expenditure that the bureaucracy tends to indulge in. The Cess is the workers’ wage that is being returned to them as social security; it comes from the profits made through their labour.

5. Amendments to Section 24(3)

This aspect was discussed in detail by the Working Group constituted by the DG(LW) office which gave four alternate ‘**opinions**’. All the four recommendations are in favor of keeping a limit and not for leaving it to the Central Government.

This deletion proposed by the government is likely to lead to human error and misuse of this provision. Most of the State Boards are not spending anything at all on Social

Security and Welfare of Construction Workers in spite of repeated directions by the Supreme Court, including contempt notices. The proposed deletion of the limit will legitimize it.

Part-B

Amendments proposed by NCC-CL

We propose that no worker be excluded and the definition of Construction Worker be made more inclusive and comprehensive as at present many who work in the industry are left out of the two Acts. Accordingly we suggest:

1. Section 2.1(d) **“building or other construction work”**

We request the Standing Committee to recommend that in Section 2.1 (d) after the word “transmission towers” the following words shall be added in the said definition:

“landscaping, tank construction, brick manufacturing and transportation, stone crushing and its transportation, sand excavation and its transportation and transportation of all the construction material in the unorganised sector without which the construction cannot be performed”

.....
Amendment of Section 2.1.d

2. Section 2.1.(e) (ii) **“building worker”**

We request the Standing Committee to recommend that the following part **“draws wages exceeding one thousand six hundred rupees per monsoon”**is deleted as almost no one is getting less than Rs.1600 per month these days

Amendment of Section 2.i.e

3. We request the Standing Committee to recommend that The following Section shall be added at the end of Section 10(b):

(c) Employ 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 employer.

Amendment of Section 10 (c)

4. Government proposals have left out an important amendment required in construction work, which largely employees migrant workers, to provide for **portability** of the ID cards for the workers who are constantly on the move. We request to Standing Committee to recommend that the following provision which has already been recommended by the Working Group referred earlier by us.

13(4) The identity card issued by a Board shall be portable across India and beneficiary can continue to pay subscription to another Board where he/she has migrated and engaged in Construction Work and avail the benefits extended by the said Board.

Amendment of Section 13 (4)

5. We request the Standing Committee to recommend the insertion of following new clause at the end of Section 18

18 (5) The State B&O CW Board shall be an independent body like ESI and EPF Organization .

Amendment of Section 18 (5)

6. To eliminate differences in State Rules on the benefits provided under Section 22(1) of the Main Act as “Function of the Boards” the Standing Committee should recommend the adding of the following provisions with each clause.
- (a) At the end of this clause add “**at least Rs.5 Lakh in case of total accident and according to the percentage of disability for non-fatal injuries.**”
 - (b) At the end of this clause add, “**which should not be less than 50% of the current minimum wage**”. We further request the Standing Committee to recommend the reduction of the age of pension to **fifty years in case of female workers and fifty five in case of male workers.**
 - (c) At the end of this clause the Standing Committee should recommend inclusion of the following lines in Section 22(1) d after the words **Scheme of the beneficiaries,**
 - (d) “**including ESI Provisions of OPD and in-patient treatment/facilities specially designed for the Construction Workers registered through the State Tripartite Boards on concessional rate of contribution**”.
 - (e) At the end of this clause “**from class 1 to higher education, in addition to other benefits**”.
 - (g) at the end of the clause before ‘and’ “**first installment in the 8th month of pregnancy and 2nd installment soon after delivery**”.

Amendment of Section 22

7.. We request the Standing Committee to recommend that at the end of (h) the following instruction should be added:.

All the Migrant Workers should be registered compulsorily with the State Construction Workers Board where they are working and be entitled to all the benefits in addition to temporary ration cards, facilities for education of children in their mother tongue, Crèches, Mobile Health facilities, Migrant Assistance Centres, inter-departmental committee .

Amendment of Section 22

8. We request The Standing Committee to recommend that the Building & Other Construction Workers (RE&CS), 1996 Act shall provide the following Section at the end of Chapter X on **Penalties and Procedures**:

Section 55A

The State Board will set up a tripartite mechanism for **Grievance Redressal** in every State, if required, with its units at District levels, regarding to the functioning of the Board.

Amendment of Section 55 A

Section.55 B

9. We request the Standing Committee to recommend that the B&OCW (RE&CS) Act shall provide the following Section:

The State Board will set up a tripartite mechanism to provide for the resolution of disputes between employer and employee, with its units at the District levels.

Amendment of Section 55 B

