

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 20<sup>th</sup> September, 2012*

+ WP(C) 524/2010

Peoples Union for Democratic Rights & Ors. .... Appellants  
Through: Mr. Colin Gonsalves, Sr. Adv. with  
Mr. Tariq Addeb, Adv.

versus

Union of India & Ors ..... Respondents  
Through: Mr. Ruchir Mishra, Adv. for UOI  
Mr. V.K. Tandon, Adv. for GNCTD  
Mr. Ajay Verma, Adv. for DDA  
Ms. Sujata Kashyap, Adv. for  
DTTDC  
Mr. Anil Amrit, Adv. for NDMC  
Mr. Abhishek Sharma, Mr.  
Sarojanand Jha, Adv. for DIAL  
Mr. R.V. Sinha, Mr. Kumar Rajesh  
Singh, Adv. for Northern Railways  
Ms. Suparna Srivastava, Advocate for  
MCD.  
Mr. Anil Grover, Advocate for SAI.  
Mr. Raj Birbal, Sr. Adv. with  
Ms. Raavi Birbal, Adv. for DLF

**CORAM:**  
**HON'BLE THE ACTING CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**A.K. SIKRI (Acting Chief Justice):**

1. The plight of the construction workers was exposed to the hilt as it became so obvious and apparent, during the construction work for the

preparation of Commonwealth Games which were scheduled for 2010 (hereinafter referred to as CWG, 2010). Seeing the deplorable conditions of the labourers at many of the CWG, 2010 sites, living in inhuman, undignified and unsafe conditions, Peoples Union for Democratic Rights (PUDR) and Nirmaan Mazdoor Panchayat Sangam (NMPS) came forward and filed the present petition under Article 226 of the Constitution of India for a writ of mandamus and other directions to ameliorate the working conditions of these workers with endeavour to get them their rights guaranteed under the Constitution as well as in the Building and Other Construction Workers (Regulation of Employment and Condition of Services) Act, 1996 (hereinafter referred to as 'the Act') and Rules framed thereunder relating to health and safety of these workers. The respondents impleaded in this petition are Union of India (respondent No.1), Government of NCT of Delhi (respondent No.2), Sports Authority of India (respondent No.3), Delhi Development Authority (respondent No.4), Director General of Inspection in the Ministry of Labour (respondent No.5), Central Public Works Department (respondent No.6), New Delhi Municipal Council (respondent No.7), Municipal Corporation of Delhi (respondent No.8), Delhi Building and Other Construction Workers Welfare Board (respondent No.9), Delhi International Airport Ltd. (respondent No.10), Delhi Metro Rail Corporation (respondent No.11) and Chief Inspector of Inspections of Building and Construction of Delhi appointed under the Act (respondent No.12).

2. It is a matter of common knowledge that for the aforesaid CWG-

2010, which were held in October, 2010, over Rs.70000 Crores were provided only for improving the city infrastructure and sports facilities. Naturally, this necessitated construction projects which were assigned to respondents No.2, 3, 4, 11 and 12. They, in turn, gave these projects to agencies like respondent No.6 and 7. For execution of the various construction projects of massive sizes, respondents No.6 and 7 gave the construction work to various contractors/real estate developers and construction companies. When the work was at peak in mid May, 2008 to mid May, 2009, more than one lakh workers were employed in all these projects. Even at the time of filing of the petition in January, 2010, 15000 contract/daily wage workers were working in these projects. However, it was found that these workers were not given their legitimate dues under the aforesaid Act as well as other labour laws. The petitioners in this petition alleged that even minimum wages were not paid to these workers. It is pointed out in the petition that the petitioners in the case of *People's Union for Democratic Rights & Ors. v. Union of India & Ors., (1982) 3 SCC 235*, on receiving reports of violation of workers' rights at the Commonwealth Games construction sites, investigated the work conditions at one of the construction sites, the Commonwealth Games village, near Akshardham temple and published a report in April, 2009. It was found that the provisions of the Act of 1996, Minimum Wages Act, 1948, Interstate Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979, Contract Workers (Prohibition and Regulation) Act, 1970 are widely violated. The specific findings of the investigation were:

- (i) That one worker had died in an accident in December, 2008 and the workers claim that there had been several deaths which were not recorded.
- (ii) That minimum wages were not paid to most of the workers.
- (iii) That double wages for overtime were not paid.
- (iv) That the wages were irregularly paid with considerable delays and with contractor's often withholding part of the wages.
- (v) That safety equipments were often not made available to workers.
- (vi) That identity card was not given to the workers as required under law.
- (vii) That wage slips were not given to the workers in accordance with law. As a result, the workers had no proofs whatsoever that they were employed.
- (viii) That the provisions of the Act were not being implemented and that the workers were not being registered with the Welfare Board.
- (ix) That many of the workers were living in rooms, often without doors, without protection during winter, without electricity and without toilets.
- (x) That many of the camps where the workers were staying were not hygienically maintained and full of mosquitoes.
- (xi) That in the camps water was stored in pvc tanks which were not cleaned.
- (xii) That the workers who came from Bihar, Jharkhand, Orissa, Madhya Pradesh, Uttar Pradesh, West Bengal and Punjab were

not given the benefits of the Interstate Migrant Workers Act and were totally at the mercy of the contractors.

- (xiii) That workers were never given a weekly off with wages as required by the Minimum Wages Act and were required to work on all 7 days.
- (xiv) That the women workers were paid less than their male counterparts.
- (xv) That very primitive medical facility is available for the workers.
- (xvi) That no representative of the Principal employer is present at the time of disbursement of wages as is required under the law.

Aforesaid violations are merely a glimpse of what was happening at site though the petitioners have pointed out various other violations which were noted.

3. The petitioners state that in accordance with the Act, the Rules were notified in 2002 and the Construction Workers Welfare Board set up in Delhi. In accordance with the Act, Cess collection started in 2005 and picked up pace in 2007. From the cess collections, the Welfare Fund stands at Rs.300 Crores today. The Welfare Board in Delhi is, however, dysfunctional. It has met, on an average, twice a year as opposed to the requirement of meeting once in two months. It has no full time secretary to ensure functioning of any kind. Most of the workers' representatives on the Welfare Board have no track record of commitment to labour issues. It has no staff to scale up new registrations and renew old ones. The worker registration process

launched in late 2005 has covered over 20,000 workers from among the estimated 6-8 lakh workers in the city (according to construction workers' trade unions, NMPS and SEWA Delhi). Live registrations amount to approximately 10% of registered workers so far because of cumbersome procedures and the absence of publicity about benefits. To date, only Rs.15 Lakhs, or thereabouts, have been spent on providing concrete benefits to the workers.

4. Thus, according to the petitioners, even when substantial amounts are available, they were not meaningfully spent for these workers on whose behest these funds are collected under the Act. In these circumstances, in the writ petition, following prayers have been made:

- “(a) Pass a writ of mandamus or any other writ or direction setting up an Independent Commission of this Court to visit the various sites where construction work is going on in connection with the Commonwealth Games, interview the workers and make a report with respect to the grievances set out in this petition.
- (b) Pass an order permitting the above Commission to co-opt such NGOs, experts and others as they deem fit.
- (c) Pass an order directing the respondents to ensure compliance of the provisions of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the rules made thereunder relating to health and safety of construction workers are duly complied with.
- (d) Pass an order directing the respondents to ensure

that all construction workers employed in connection with the Commonwealth Games 2010 are registered with the Welfare Board constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, within two weeks from today, are provided with appropriate documentation as required under the Act and are given due benefits with retrospective effect from the dates of starting work.

- (e) Pass an order directing the respondents to ensure that all the workmen employed in connection with the Commonwealth Games are given identity cards, insurance cover under Jan Shree Bima Yojana/Rashtriya Swasthya Bima Yojana, Wage slips, at least the minimum wage, double wages for overtime, a paid weekly off, proper medical facilities, workmen's compensation in all cases of accidents, clean drinking water and toilet facilities.
- (f) Pass an order directing the respondents to ensure that the quarters where the workers are staying are properly designed and maintained and have secure doors, electricity supply, adequate number of toilets which are cleaned daily, and have hygienic surroundings.
- (g) Pass such other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.”

5. Noticing the aforesaid plight, this Court sprung into action by issuing notice on January 27, 2010. Thereafter various interim directions were given from time to time in order to provide relief to these workers. It would be in the fitness of things to state in brief such

orders passed as these orders would reflect the nature of actions already taken in this petition. Summary of the important directions which are reflected in these orders is given below:

<i>Date of Order</i>	<i>Factual Background/Grievance/Contention</i>	<i>Direction passed by the Hon'ble Court</i>
26/5/2010	<p>This petition filed in public interest draws attention of the court to the plight of construction workers and seeks directions for compliance of the provisions of The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the Rules framed thereunder. It is inter alia pleaded that minimum wages are not being paid to most of the workers; the wages are paid irregularly after considerable delays; safety equipment and identity cards and wage slips are not being made available to the workers and no provisions for residence of the workers and their family members, as required to be made are being made. It is further pleaded that though the welfare fund set up in accordance with The Building and Other Construction Workers? Welfare Cess Act, 1996 stands at Rs.300 crores but the Welfare Board in Delhi is dysfunctional and has not been meeting regularly and has not shown any track record of commitment to labour issues; only Rs.15 lacs or thereabouts out of the sum aforementioned of Rs.300</p>	<p>The Court after discussing the factual matrix and the complexity of the problem had issued the following directions :</p> <p>A. All the authorities who are involved and are covered by the Committee constituted by this Court shall make all possible efforts to <u>register the workers</u> so that no worker remains unidentified and further is <u>in a position to avail the statutory benefits</u> and future litigation is avoided.</p> <p>B. The <u>passbooks should be opened in respect of all the workers. All benefits that are accruable on the basis of issuance of passbooks shall be monitored by the Labour Department.</u> Be it noted, we are not finding any fault with the functioning of the department but we are only stating that one must remind oneself of one's duty, more so, when dealing with the people who are working in an atmosphere to have their food, shelter and clothing and live a life with acceptable dignity.</p>

	<p>crores have been spent for the benefit of the workers.</p>	<p>C. The <u>education scheme</u>, which has been introduced, has to be appropriately implemented so that a child of a worker gets necessary education. <u>It should be borne in mind by all concerned that “education is the spine of a civilized society”.</u></p> <p>D. As far as the <u>medical benefits, maternity benefits and death benefits</u> are concerned, the same be provided as <u>per the provisions in the Acts and the schemes</u> framed thereunder.</p> <p>E. The petitioner is at liberty to have the assistance of the senior persons from the field of academics and other personalities whose names find mention at page 32 of the petition to assist the workmen to fill up the forms to have the benefit.</p> <p>F. All the respondents shall file their requisite response/steps taken within four weeks keeping in view the aforesaid directions.</p>
7/7/2010	<p>1. The learned standing counsel for the State that more than 31,000 workmen have been registered. However, learned counsel for the State could not clarify whether all the employees who have been registered are employed in Common Wealth Games or anywhere else. <u>It is worth noting the figures which have</u></p>	<p>1. It was directed that the competent authority of GNCTD to verify the registrations that have been made in the meantime and which are under process and what is the exact number of workers as per Common Wealth Games is concerned.</p> <p>It was further directed that</p>

	<p><u>been stated in the affidavit do not really refer to the employees who are being employed for the purpose of Common Wealth Games.</u></p> <p>2. It was urged that there are more <u>children whose applications are being submitted to obtain scholarship and assistance</u> for the same have not yet been attended to. It was urged by learned counsel for the petitioner that more than <u>10,000 applications are pending.</u></p> <p>3. With regard to <u>grant of medical benefits, maternity benefits and death benefits</u> were concerned, the Court was apprised that 15 applications were pending for determination by the Welfare Board. A grievance was made that though the said applications were filed long back yet the authority concerned paid a deaf ear to the same.</p> <p>4. The learned counsel for the petitioner submitted that there was a direction on the earlier occasion to hold camps to sensitize the workers about their rights under the enactments and the welfare schemes <u>but no effective camps have been held.</u></p>	<p><u>such exercise shall be done site-wise so that it would have some kind of scientific methodology and the grievance that has been pyramided by the learned counsel for the petitioner would possibly be assuaged.</u></p> <p>2. The Court without expressing any opinion on the said contention directed that the petitioner shall give the list of the applications that have been submitted before the authority and the competent authority of NCT of Delhi shall look into the same regard being had to <u>the fact that the education is the spine of a nation and no child upto the age of fourteen as per the mandate of the Constitution should be denied education.</u></p> <p>3. The Court directed that the Board <u>shall decide the said applications and if the benefits are extendable, the same should be extended within a period of 15 days.</u> To the grievance pending applications the Court directed that <u>'when applications of this nature are filed, needless to emphasize, the same have to be attended to in quite promptitude, for the same come from the needy and marginalised section of the people.</u> We hope and trust that the competent authority shall keep the same in view and not show any kind of apathy to such applications. <u>It</u></p>
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		<p>As far as the living conditions of the workmen was concerned, who were engaged for the purpose of Common Wealth Games, the Court <u>directed that they shall be provided adequate facilities so that they do not suffer any catastrophe and cataclysm due to the cruel rain.</u></p>
<p>4/08/2010</p>	<ol style="list-style-type: none"> <li>1. The Court was apprised by Ms. Moushumi Basu, Secretary of the petitioner organization that workers face difficulties at the time of registration because there are no photographers and Notaries. As far as photographers are concerned, the Court was informed that it was the duty of the contractors to arrange the photographers.</li> <li>2. The Court was informed that despite earlier directions the <u>Contractors have not supplied safety equipments to the workers.</u></li> </ol>	<ol style="list-style-type: none"> <li>1. The Court on the statement of learned counsel for UOI directed that the Competent Authority of UOI will issue instructions to the contractors as well as to other Principal employers within three days to arrange the photographers to be provided by the concerned contractors at the time of registration and if the contractors fail to arrange the photographers, the Principal employers including CPWD shall deduct the amount from their bills for such expenses.</li> <li>2. <u>No contractor shall take recourse to any kind of deviancy for they must realise that it is their statutory obligation and if they violate the same, the tentacles of law would not excuse them.</u> As far as notaries are concerned, the notary shall be present as requested by the Member Secretary, DLSA. As far as stamp duty and other expenses are concerned, they shall be borne by the workmen. <u>The UOI was directed to</u></li> </ol>

		<p><u>instruct all the agencies who have awarded the work to deal with contractors strictly so that there should not be any kind of deviation in their dealing with the workers who sweat their blood in building structures which are eventually used for the nation.</u></p>
1/9/2010	<p>1. It was submitted that no photographers were available to facilitate the registration even after directions of the Court.</p> <p>2. The Court was apprised by Ms. Basu that a <u>girl child aged about two years has breath her last while she was run over by a truck</u> in the Jawahar Lal Nehru Stadium.</p> <p>3. The Member Secretary of DLSA submitted a Report containing certain suggestions where the first two related to the mode of making payment to the Workers. They were as under:</p> <p>i. <u>Payments to construction workers must be in the same manner as has been prescribed under the NREGA, that is by ECS transfer into the account of the worker from which he or she alone can draw.</u> This would ensure payment of Minimum Wages by the contractor to the workers.</p> <p>ii. The source of payment can</p>	<p>1. It was directed that Labour Commissioner (Central ) shall depute an authority to go to the districts and coordinate with the Member Secretary, DLSA on every alternate day so that the problem that has cropped up which affects the workers should not subsist for no unfathomable reasons.</p> <p>2. The Court noted <u>that death is not only tragic but speaks in volumes about the negligence. One cannot expect a small child of two years to be aware about the rules because for her the whole world is a play ground. But unfortunately the Labour Commissioner or the Deputy Labour Commissioner for that matter and the contractor who is incharge of the work cannot really realize the same. None of the authorities should conceive the idea that life can be bartered for money. Life has its own glory and significance. The cry of a child rings in the Universe and the same should ring and disturb the ears of the authority. It is unfortunate that despite number of orders passed by this Court, they</u></p>

	<p>be worked out. But it is suggested that since labour costs are part of construction costs, the Government, or the person or organization on whose demand the construction activity has been undertaken should transfer adequate funds into the Worker's Wages Fund to meet the draws by the workers. There would be no scope for the workers claiming to be on the rolls of the Government just as in the NREGA.</p> <p>4. It was submitted by Ms. Basu that a worker who is working at a site in a big stadium cannot be treated as an unperson and for that matter no person should be treated as an unperson. The submission of Ms. Basu is that when there is lot of water logging as a consequence of which there is spread of malaria and dengue in an epidemic manner.</p>	<p><u>remain undisturbed and behave as if they are epitome of obstinacy.</u></p> <p>In view of the aforesaid the Court directed that the Labour Commissioner to go to the site and make an enquiry. It also directed the Deputy Commissioner of Police of that area to go to the site and submit a report and also apprise what steps have been taken in law.</p> <p>The Court also added that Labour Commissioner or the Deputy Labour Commissioner as well as the Regional Labour Commissioner (Central) and such other authorities are not supposed to sit in their air conditioned offices and monitor the sites. None in the world ever in history had monitored a site by sitting in a room. Even the greatest protagonist in the history have to move to the site to watch and judge. We expect the authorities should learn from the history as well as the practical wisdom.</p> <p>3. The Court quoting the first two suggestions directed that <u>the bank shall open the accounts on zero balance as we have been told that the same is permissible for the workman.</u> In view of the aforesaid it was directed that the aforesaid suggestion as mentioned in para-1 shall be worked out within a week hence so that the</p>
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		<p>workers shall know what is the minimum wages and get the same and no contractor take recourse to any subterfuge to avoid the law.</p> <p><u>The Court emphasized on the aspect that it should be highlighted in all the awareness camps with a note of caution to the contractors that the contractors shall not deviate from the law or to play with life and finances of the workers by engaging series of sub-contractors.</u> They must remember one day the law shall book them and they cannot escape and when they come under the clutches of law, every one of them shall realise the catastrophe is on and it may metamorphoses either to tsunami or a volcanic disaster.</p> <p>4. The Court agreed to that the <u>MCD shall send the Health Officers and Health Inspectors to the site within three days</u> and report with regard to what steps have been taken shall be filed by them within a week. It was emphasized that a report, should not mean a paper tiger but the work done which has a ripened effect.</p>
22/9/2010	<p>1. The Court took up the fatal accidents that happened with workmen of DMRC and made a record of their status as below :</p> <p>Accidents occurred = 109  Compensation paid = 65 + 9</p>	<p>1. The Court directed that ex-gratia payment amounting to Rs. 2 lacs be paid within a period of two weeks from today by way of bank draft to the legal heirs of the deceased workmen on proper</p>

	<p>Unsettled matters = 44  Heirs not eligible = 18  Pending Applications = 17</p> <p>2. The Court was apprised that on 21/9/2010 notice that there was an accident yesterday as a consequence of which a foot overbridge near Jawahar Lal Nehru Stadium collapsed and in the said accident 27 construction workers have been injured out of which, 4 are critical.</p> <p>3. The Counsel for the petitioner that though this Court had directed with regard to improvement of living conditions of the workmen, yet nothing has been done. A report was aslo filed that the living condition has not been improved.</p>	<p>identification. The said amount shall not include any sum that has already been paid. The said amount shall be subject to the final adjudication by the Labour Welfare Fund Committee and the Committee while adjudicating the quantum shall keep in view the amount of ex-gratia paid to the legal heirs of the deceased workmen who come within the last 65 cases. We have said so as the doctrine of parity has to be given paramountcy while granting ex-gratia payment.</p> <p>2. The Court directed as an interim measure subject to final finding in the appropriate proceedings or in this writ petition, that the State Government shall pay a sum of 3,00,000/- to the critically injured persons immediately or their legal heirs, if they are not in a position to receive the same, by way of bank drafts. Needless to say, the same shall be adjusted at the time of final adjudication.</p> <p>Quite apart from the above, the State Government shall see that all the injured persons are given adequate medical treatment.</p> <p>As far as persons who have suffered minor injures like fractures, they shall be given ` 1,00,000/- by way of bank draft within a week hence. The State Government shall cause an inquiry and fix the</p>
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		<p>responsibility and thereafter realise the aforesaid amount either from the contractor, the officers or from any other person, who are responsible in overseeing the work.</p> <p>3. The Court was apprised that it is the duty of the Principal employer to ensure that the living conditions are adequate so that the workmen live in a living healthy condition. It was submitted by the learned counsel for Union of India that whenever officers have gone to sites, they have issued show cause and launched prosecution.</p> <p>In view of the aforesaid, The Court directed the Principal employers, namely, the respondents, to ensure that the living conditions are improved and the proper safety measures are provided as they cannot treat the workmen as unpersons.</p> <p>The Court further stated that to have a complete picture, we direct that the Chairman of NDMC, Commissioner of MCD, Vice-Chairman of DDA, Director General of Sports Authority of India, Director General of CPWD, Managing Director of Delhi International Airport Limited and Executive Director of DMRC shall be personally liable if any deviancy is shown. The said authorities were further directed to depute responsible officers to remain</p>
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		<p>personally present on the next date of hearing (6/10/2010) before this Court so that this Court can get appropriate assistance.</p> <p>We may further note that the contractors who have been given the work, shall work with responsibility by following all the norms of law, failing which this Court may think of taking appropriate action against them as we are inclined to think, as advised at present, they are not cooperative with the authorities. <u>If a contractor thinks that he is the law unto himself, he is under an illusion. The Principal employers shall issue a notice incorporating this aspect to all the contractors.</u></p>
10/10/2010	<p>In the course of proceedings several issues were raised pertaining to collection and deposit of CESS, non-payment of compensation in the cases of certain accidents, inadequate machinery to verify certain aspects etc.</p>	<p>The Court had to the aforesaid factual matrix, we issue the following directions:-</p> <ol style="list-style-type: none"> <li>a) All the principal employers shall verify whether any contractor has been left out and submit the list to the Union of India as well as to the Govt. of NCT of Delhi.</li> <li>b) The Union of India shall issue notice to the principal employers, namely, DIAL, MCD, DMRC, DDA, CPWD, NDMC and PWD who will ensure that the contractors, who have not supplied the names of the workers, shall supply the same within the</li> </ol>

		<p>period specified by the Union of India.</p> <p>c) The Union of India shall issue such letters/notices within 10 days from today requiring the principal employers whose contractors have not supplied the list so that appropriate steps can be taken.</p> <p>d) The list that has been obtained by the Union of India shall be supplied to Mr. Gonsalves, learned senior counsel appearing for the petitioner and Mr. P.N. Dwivedi, Advocate who represent various NGO's and Unions so that they would be in a position to assist the competent authority and also to Mr. Subhas Bhatnagar and Mr. Amjad Hassan who have been fighting the cause of workmen.</p> <p>e) The principal employers to find out from the contractors the original addresses of the workmen who have left Delhi and it will be their obligation to supply the same to the Labour Commissioner of the Govt. of NCT of Delhi within six weeks. If any contractor shows any kind of indifferent attitude, the principal employers are at liberty to take such action against them as advised in law.</p> <p>f) The contractors shall file necessary affidavits with the principal employers who in turn shall supply it to the</p>
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		<p>Union of India as well as to the Govt. of NCT of Delhi stating therein that workmen are eligible for registration and also indicating whether they have already been registered or not.</p> <p>g) The affidavits filed by the contractors would not be final and eligibility facet qua a workman shall be inquired into by the Labour Commissioner by constituting an appropriate body.</p> <p>h) The State Government shall revamp and revitalize the office of the Labour Commissioner as the said authority is required to carry out such an exercise.</p> <p>i) The NDMC shall pay a sum of Rs.3 lakhs to the legal representatives of the workman Mukesh Yadav, who had died in the accident while working for the NDMC towards compensation on adhoc basis, subject to final orders by this Court.</p> <p>j) The Delhi Building and Other Construction Workers Welfare Board/Respondent No.9 shall file requisite affidavits stating, inter alia, how many registered workers have been provided the health benefits as there is a scheme for providing health benefits to the registered workers.</p> <p>k) The cess collected by the principal employers shall be</p>
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		<p>deposited with the Delhi Building and Other Construction Workers Welfare Board/Respondent No.9 within six weeks, if not already deposited.</p> <p>l) The competent authority of the Delhi Building and Other Construction Workers Welfare Board/Respondent No.9 shall file an affidavit stating about the amount of cess received from the principal employers and the amount that is due to be received.</p> <p>m)The affidavit filed by the State Government has only stated that 45 deaths had occurred but no details have been given in respect thereof. The State Government shall file a further affidavit indicating the names of the workers and the place in respect of aforesaid 45 deaths and a copy thereof shall be supplied to Mr. Tariq Adeeb, learned counsel assisting Mr. Gonsalves, learned senior counsel.</p> <p>n) Mr. Subhas Bhatnagar and Mr. Amjad Hassan shall extend their fullest cooperation at the time of registration when intimated by the competent authority nominated by the Labour Commissioner.</p>
19/1/2011	It was submitted by the Counsel for petitioner that the <u>figures representing workmen availing the</u>	The Court directed the <u>Board to devise a rational, logical and acceptable scheme to reach out to</u>

	<p><u>benefits are far from being satisfactory and pointed out that 13,000 applications are still pending.</u></p>	<p><u>the workers and an awareness drive should be launched.</u> For the purpose of explaining the benefits, a holistic scheme shall be filed before this court within two weeks.</p>
23/2/2011	<p>A status report has been filed by the Joint Commissioner, Labour, Government of National Capital Territory of Delhi. On a perusal of the said report, the following aspects come to the surface.</p> <ol style="list-style-type: none"> <li>i. Between last date of hearing and today approximately 9000 workers have been registered and 12765 children have been extended the benefit as provided under the scheme to pursue their education.</li> <li>ii. the learned Standing Counsel for the GNCTD and the Board has submitted that efforts are being made that all the registered workers to extend the benefit under the Act and the Rules framed thereunder at the appropriate time.</li> </ol>	<p>The Court with regard being had to the deliberations that took place in course of hearing and keeping in view the broader canvass, issued the following directions:</p> <ol style="list-style-type: none"> <li>a. All the principal employers who had engaged contractors, viz., DIAL, DMRC, MCD, DDA, PWD, CPWD, All India Tennis Association, DU, NBCC, ONGC, AIR/CCW, NDMC and RITES shall provide the soft copies of the list of contractors and the employees to the Welfare Board within six weeks from today.</li> <li>b. It shall be the duty of all the principal employers mentioned above to issue notice to the contractors to furnish the names and the addresses in details and the workers engaged by them and their sub-contractors as it is the responsibility of the principal employers and the contractors.</li> <li>c. While issuing notice to the contractors, it shall be stated that as per the order passed by this Court, the employer is under obligations to issue the notices and the non-compliance of the same would make the contractor liable to face adverse consequences as</li> </ol>

		<p>provided in law.</p> <p>d. The Director General, Labour Welfare of Union of India shall convene a meeting of all the principal employers, officers of the Board, Labour Secretary, Chief Labour Commissioner, Additional Labour Commissioner and other persons who are responsible on behalf of GNCTD and all the trade unions, the names of which shall be supplied by Mr. Tariq Adeeb, learned counsel for the petitioner, Mr. Bhatnagar and Mr. Amjad Hassan to Mr. Sanjeev Sachdeva, learned counsel for the Union of India within two days. The Member Secretary of Delhi Legal Services Authority along with Officer on Special Duty shall be requested by the Director General, Labour Welfare of Union of India to attend the meeting.</p> <p>e. In the meeting, the Director General, Labour Welfare, Ministry of Labour and Employment, Union of India shall point-wise lay the postulates how the problem that has occurred can be addressed and the workers can obtain their statutory benefit.</p> <p>f. The Chief Engineer of MCD shall visit the linking GT Road with Badli Industrial Area (Auchandi Road) within seven days so that he can find out whether 80 workmen, who were working under the contractor have not yet been</p>
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		<p>registered and if that is the position, shall take appropriate action without any delay or excuse.</p> <p>g. The principal employers, who have collected cess from the contractors under Section 3 of the Building and Other Construction Workers Welfare Cess Act, 1996 shall deposit the same with the appropriate authority under the said Act within six weeks.</p> <p>h. The Board shall accentuate and accept its activities so that the workers can really get the benefit. Any kind of recalcitrant attitude in this regard would be unacceptable. <u>The Board shall keep the same in mind and not only go on doing paper work, for neither a paper tiger or a solace on paper is of any benefit under any circumstances.</u> It is like an executable decree on paper without any fruitful result which is comparable to the photo of a roaring tiger that does not actually roar.</p> <p>i. The Member Secretary of the Board shall file an affidavit duly sworn in showing how many claims have been effectively implemented for the simon pure reason that it is always implementation, which makes the law respectable.</p>
20/04/2011		The Court recalling its directions in order dated 23/2/2011 recorded

		<p>the compliance with the same respectively :</p> <p>a. The Court was apprised by learned standing counsel for the Government of NCT of Delhi as well as the Welfare Board that certain informations have been given by DIAL, MCD, DDA and CPWD. Mr.Waziri submitted that there are certain defects in supplying of the said copies. The Court further stated that Welfare Board could have done this on its own though the said principal employers are not parties to the case as that is the statutory function of the Board. <u>It is really shocking why the Welfare Board is taking steps at the pace of a tortoise.</u></p> <p>b. With respect to direction B &amp; C the court recored the statement of Counsels for concerned parties that the names of almost all workers have been supplied by them.</p> <p>c. As per the direction a meeting was convened where the following decisions were taken:</p> <p>i. A small Group consisting of Assistant Labour Commissioner from Labour Department of Delhi Government and two representatives from petitioner's organizations be constituted. Shri B.B. Bhatnagar, Regional Labour Commissioner (Central) will act as Chief Coordinator of the Group. The Group will</p>
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		<p>identify the locations and visit such locations to ascertain nature of the problems on each of these locations. The Group will also interact with the principal employer but the principal employer will not be the part of Group. The Group members will be given an authorization letter by the Chief Labour Commissioner/State Labour Commissioner for visiting the sites. The Group will complete its task within one month. The Group need not wait for completion of one month time. It will submit its report in intervals as and when it visits the locations. This report will be submitted to Dy. Director General, Labour Welfare, who will coordinate these activities at the Central level.</p> <p>ii. On the basis of suggestions received from the representatives of petitioners, it was decided that the DLF multilevel parking should be taken up as the first site for evolving an action plan which can then be replicated as more and more site get identified by the Group constituted above.</p> <p>iii. A camp will be organised on 29th March, 2011 at 1100 hrs. at DLF site for registration of construction</p>
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		<p>workers. NDMC, the principal employer, will provide the workers related data on excel sheet to the State Welfare Board. The Welfare Board will send necessary registration forms in advance and they shall be filled by the NDMC. NDMC will also get the workers photographed in advance and those that remain will be photographed during the camp. In order to certify the date of birth of the workers, Notary will be arranged by Delhi Legal Services Authority. Pass book will be issued to the workers on the spot on the day of registration itself.</p> <p>iv. Pamphlets containing details of welfare schemes will also be provided to the workers at the camp site. The workers Union agreed to assist in providing information about different welfare schemes and facilities to the workers.</p> <p>v. After 15 days of the camp, a camp for providing smart cards under RSBY will be organised at the DLF multilevel parking site itself. For this necessary groundwork will be done by the State Welfare Board as the first step towards providing social security to such workers.</p>

10/08/2011	It was submitted that at various sites the workers are not registered and are not getting the minimum wages and camps shall be organized to make them aware of their entitlements under the Act.	<p>The Court noted that the DMRC <u>has incorporated a clause in its agreement in its that a contractor is liable for registration of its workers under the Act with Welfare Board.</u></p> <p>The Court directed that DDA, NDMC, PWD, MCD, DAIL and all other organizations who have entered into contracts, shall incorporate such a clause in future. In the existing contracts they shall deliberate with the contractor and incorporate such a clause as this kind of a clause is required to be incorporated regard being to the nature of the statute.</p>
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6. A glimpse of the aforesaid directions would demonstrate that adequate measures have been taken and the rights which accrued to the workers engaged in the construction activity for CWG-2010 have been taken care of. It would also be important to point out that all the respondents and Government agencies did not treat this petition, going by the spirit thereof, as adversarial and during the proceedings, gave their full cooperation to ensure that the construction workers get their legitimate dues.
7. Though, in the aforesaid manner, the present petition has served its purpose, yet the parties were unanimous in their positive approach to ensure that such things do not recur again and, therefore, some mechanism must be in place which would ensure that the rights under the Act are secured by the construction workers and they are able to get their dues. In this behalf, not only the petitioners but even

respondents came forward to give their suggestions which we highly appreciate. In so far as petitioners are concerned, they have mentioned that total construction workers who were involved in CWG-2010 were 111019 since cost of construction was Rs.70000 Crores. The Cess which should have been collected under the aforesaid Act comes to Rs.700 Crores. However, as per the affidavits of the respondents, total Cess collected is Rs.200 Crores. Notwithstanding the same, total Cess amount which is available with the Board, i.e. general plus CWG-2010 Cess, is Rs.780 Crores. Total workers (CWG-2010 plus others) registered as per the Labour Department are 65356. However, it is not mentioned as to what welfare benefits are given to these workers. Mr. Gonsalves, learned senior counsel appearing for the petitioners, referred to the judgment of Supreme Court in *People's Union for Democratic Rights & Ors. v. Union of India & Ors.*, (1982) 3 SCC 235 wherein the Court had noticed similar plight of these workers during Asiad Games which held in the year 1982 in the following words:

“16. Having disposed of these preliminary objections, we may turn to consider whether there was any violation of the provisions of the Minimum Wages Act 1948, Article 24 of the Constitution, the Equal Remuneration Act 1976, the Contract labour (Regulation and Abolition) Act 1970 and the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 by the contractors. The Union of India in its affidavit in reply admitted that there were certain violations committed by the contractors but hastened to add that for these violations prosecutions were initiated against the errant contractors and no violation of any of the labour laws was allowed to go unpunished. The Union of India also conceded in its

affidavit in reply that Re. 1/- per worker per day was deducted by the jamadars from the wage payable to the workers with the result that the workers did not get the minimum wage of Rs. 9.25 per day., but stated that proceedings had been taken for the purpose of recovering the amount of the short fall in minimum wage from the contractors. No particulars were however given of such proceedings adopted by the Union of India or the Delhi Administration or the Delhi Development Authority. It was for this reason that we directed by our order dated 11th May 1982 that whatever is the minimum wage for the time being or if the wage payable is higher than such wage, shall be paid by the contractors to the workmen directly without the intervention of the jamadars and that the jamadars shall not be entitled to deduct or recover, any amount from the minimum wage payable to the workmen as and by way of commission or otherwise. He would also direct in addition that if the Union of India or the Delhi Administration or the Delhi Development Authority finds and for this purpose it may hold such inquiry as is possible in the circumstances that any of the workmen has not received the minimum wage payable to him, it shall take the necessary legal action against the contractors whether by way of prosecution or by way of recovery of the amount of the short-fall. We would also suggest that hereafter whenever any contracts are given by the government or any other governmental authority including a public sector corporation, it should be ensured by introducing a suitable provision in the contracts that wage shall be paid by the contractors to the workmen directly without the intervention of any jamadars or the kadars and that the contractors shall ensure that no amount by way of commission or otherwise is deducted or recovered by the Jamadars from the wage of the workmen. So far as observance of the other labour laws by the contractors is concerned, the Union of India, the Delhi Administration and the Delhi Development Authority disputed the claim of the petitioners that the provisions of these labour laws

were not being implemented by the contractors save in a few instances where prosecutions had been launched against the contractors. Since it would not be possible for this Court to take evidence for the purpose of deciding this factual dispute between the parties and we also wanted to ensure that in any event the provisions of these various laws enacted for the benefit of the workmen were strictly observed and implemented by the contractors, we by our order dated 11<sup>th</sup> May 1982 appointed three Ombudsmen and requested them to make periodical inspections of the sites of the construction work for the purpose of ascertaining whether the provisions of these labour laws were being carried out and the workers were receiving the benefits and amenities provided for them under these beneficent statutes or whether there were any violations of these provisions being committed by the contractors so that on the basis of the reports of the three Ombudsmen, this Court could give further direction in the matter if found necessary. We may add that whenever any construction work is being carried out either departmentally or through contractors, the government or any other governmental authority including a public sector corporation which is carrying out such work must take great care to see that the provisions of the labour laws are being strictly observed and they should not wait for any complaint to be received from the workmen in regard to nonobservance of any such provision before proceeding to take action against the erring officers or contractor, but they should institute an effective system of periodic inspections coupled with occasional surprise inspections by the higher officers in order to ensure that there are no violations of the provisions of labour laws and the workmen are not denied the rights and benefits to which they are entitled under such provisions and if any such violations are found, immediate action should be taken against defaulting officers or contractors. That is the least which a government or a governmental authority or a public sector corporation is expected to do in a social welfare state.”

8. He also referred to the directions given by the Supreme Court vide its order dated 7.2.2010 in directing all State Governments to implement the Act fully and pointed out that inspite of the aforesaid directions, no meeting of Delhi Board had been held for over nine months. Mr.Gonsalves also referred to orders dated 10<sup>th</sup> July, 2012 passed by the Regional Provident Fund Commission (North) and orders dated 29<sup>th</sup> July, 2011 passed by the Regional Provident Fund Commission (South). These orders reflect that inquiries under Section 7A were initiated by the RPF Commission against various establishments for determination of dues in respect of employees engaged by the establishments for construction of CWG-2010 site projects and a sum of Rs.54,57,34,315/- and Rs.592,76,54,931/- respectively was found due. Learned senior counsel also drew our attention to Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 which imposes obligation on the principle employer to pay the wages in case the contractor fails in making payment of wages to the contract workers. It is also pointed out that CAG audit by the Delhi Building and Other Construction Workers Welfare Board is being done by the Labour Department. In order to take care of the existing construction workers in Delhi, the figures given by the petitioners are as under:

“The estimate of construction labourers in Delhi is 10,00,000. 20% of construction workers are women. Taking a conservative estimate of the number of construction workers families at 4,00,000 and an estimate of 2 children per family, the number of construction worker children would be about 8,00,000. As against this, the Additional Labour Commissioner has informed

that 'financial assistance during the last 3 years benefitted 37,553 children'. This statement is deliberately misleading because it gives the impression that 37,553 children were given their financial assistance every year which is not true. Therefore, the number of getting financial assistance every year is less than this figure. Further, all these 37,553 children are from the Director (Education) Schools of NCT Delhi. Not a single child from the MCD, NDMC, Cantonment Board and Higher Studies have been granted financial assistance.

Additional Labour Commissioner has now informed that benefits regarding maternity, pension, advance for purchase or construction of house, disability pension benefit, loan for purchase of tools, funereal assistance, natural death, accident death, financial assistance for marriage and family pension have been increased and notified. None of these enhanced benefits have been advertised on Air or Doordarshan and, as a result, these revised benefits remain only on paper.

The benefits regarding financial assistance for the education of the children of construction worker has, however, not been increased. The rates fixed under the 2002 Rules (which are obsolete particularly in view of the rapidly rising education fees) are as follows:

- |       |   |                    |
|-------|---|--------------------|
| (i)   | Class-I to Class-VIII is                                | Rs.100 per month   |
| (ii)  | Class-IX to Class-X is                                  | Rs.200 per month   |
| (iii) | Class-XI to Class-XII is                                | Rs.500 per month   |
| (iv)  | Graduation level is                                     | Rs.1500 per month  |
| (v)   | ITI Courses   | Rs.1500 per month  |
| (vi)  | Polytechnic Diploma<br>(Three year Courses)             | Rs.2500 per month  |
| (vii) | Technical courses such as<br>Engineering, Medicine, MBA | Rs.5000 per month. |

On the aforesaid terms, following directions are sought:

- (i) For an order directing the Regional Provident Fund Commissioner, Delhi (North) and the Regional Provident Fund Commissioner, Delhi (South) to investigate in respect of the provident fund of all the Commonwealth Game Workers and to make appropriate orders in accordance with the provisions of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 and take further action in accordance with law;
- (ii) For an order directing CAG to complete an audit in respect of the Delhi Building and Other Construction Workers Welfare Board and to submit its report to this Hon'ble Court within two months from today;
- (iii) For an order directing the Delhi Building and Other Construction Workers Welfare Board to forthwith identify the 8 lakh children of construction labourers in Delhi and to disburse the financial assistance for education to all of them within 6 months from today;
- (iv) For an order directing the Government of NCT of Delhi to prominently advertise on prime time on AIR and Doordarshan the revised benefits available and further that applications by construction workers for benefits can be made at all the 9 district offices headed by Deputy Labour Commissioner. For a further order that all applications made shall be considered and disposed of within one month.
- (v) For an order directing the financial assistance for the education

of children of construction workers be increased three times.

9. The petitioners have also given various suggestions for amendment in Rules and registrations of the establishments during construction work in order to streamline the system, which is as under:

	<b>Suggestion</b>
<p>266. Membership.- Every building workers who has completed eighteen years of age but has not completed sixty years of age and who is not a member in any other welfare fund established under any law for the time being in force and <b>who has completed ninety days of service as a building worker in the year immediately preceding shall be eligible for membership</b> in the Fund.</p> <p>(2) A <b>Certificate to prove age</b> as specified below, shall also be submitted along with the application:-</p> <p>(i) School records.</p> <p>(ii) Certificate from the Registrar of Births and Deaths.</p>	<p><b><u>Rule 266:</u></b> regarding Membership should be reframed making it mandatory for the principal employer to make all the employees of the principal employer, the contractor and sub contractors members of the Welfare Board automatically on commencement of work and to ensure that such membership is renewed automatically.</p> <p><b>Remarks:</b> The rule lays down a cumbersome procedure where the burden is on the worker to fulfill the formalities of becoming a member. The rule requires firstly a worker to produce a proof of age, secondly certificate of employment certified by the employer or contractor. This procedure should be simplified and a twofold</p>

<p>(iii) In the absence of the above certificates, a certificate from a Medical Officer not below the rank of an Assistant Surgeon in Government Service.</p> <p><b>(3) Certificate from the employer or contractor</b> that the applicant is a construction worker shall be produced alongwith 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 area or by the Executive Officer of the Panchayat may also be considered.</p> <p>(4) Every building worker eligible to become a beneficiary to the Fund shall submit an application in Form No.XXVII to the Secretary or to an officer authorised by him in this behalf. Every such application shall be accompanied by the documents mentioned in this rule and a</p>	<p>approach may be adopted wherein a worker can avail the membership himself and primarily it shall be the responsibility of the employer or contractor to fulfill the formalities.</p>
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registration fee of twenty five rupees.	
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10. Learned counsel for the DDA referred to the definition of ‘employer’ and ‘establishment’ and on that basis submitted that the aim of the Act is to treat the entity which is directly responsible for the construction activity to be an ‘employer’ and the Government/department/authority/legal authority would be treated as ‘employer’ only when the building or construction work is carried out directly without any contractor. According to the learned counsel, this was the position accepted by the Supreme Court in *Dewan Chand Builders and Contractors v. Union of India & Ors.*, (2012) 1 SCC 101 wherein, after analyzing the Act, the Court held as under:

“The BOCW Act and the Cess Act break new ground in that, the liability to pay Cess falls not only on the owner of a building or establishment, but under Section 2(i)(iii) of the BOCW Act

'in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor.'

The extension of the liability on to the contractor is with a view to ensure that, if for any reason it is not possible to collect Cess from the owner of the building at a stage subsequent to the completion of the construction, it can be recovered from the contractor. The Cess Act and the Cess Rules ensure that the Cess is collected at source

from the bills of the contractors to whom payments are made by the owner. **In short, the burden of Cess is passed on from the owner to the contractor.**”

(emphasis supplied)

11. Therefore, his submission was that there is no concept of ‘principal employer’ under this Act and thus, the entire responsibility was that of the contractor. In this view, the suggestions of the DDA, as given, are as under:
- (i) The Act in Section 12 sets out the eligibility of building workers for being registered and requires an application to be made for such registration.
  - (ii) It is clear that registration of building workers as beneficiary is not mandatory. It is optional at the instance of the building workers.
  - (iii) As per Section 14, a building worker to continue as beneficiary has to, inter alia, be engaged in building or other construction work for much less 90 days in a year. Moreover, as per Section 16, a building worker who has been registered as a beneficiary is required to contribute to the fund as may be prescribed.
  - (iv) If the beneficiary has not paid his contribution under Section 16 for a period of one year, he ceases to be a beneficiary.
  - (v) The process of registration and maintaining the registration is affected by various factors, inter alia, including the following:
    - a. Majority of the workers are out of Delhi;
    - b. Majority of the workers are illiterate;
    - c. Generally there is no permanent address of such workers;

they move from construction site to construction site within Delhi or outside Delhi depending on availability of work;

d. Building/construction work by its nature is temporary and the nature of relationship between an ‘employer’ and a ‘building worker’ is also temporary.

(vi) Therefore, the Act casts responsibility for seeking and maintaining the registration as a beneficiary on the building worker. That being the legislative intent, the Courts would refrain from casting any responsibility on the ‘employer’ which is contrary to the specific provisions of the Act whether in the manner as petitioner seeks in this writ petition or otherwise. This is possible only after the legislature amends the Act.

12. As pointed out above, Government of NCT of Delhi has also given the following suggestions:

(i) **Registration of construction workers:** At present, under Section 12 of the Act, registration of construction workers is done after he has completed 90 days of work in the preceding one year. This limitation of 90 days work experience is acting as a impediment in registration process as large number of construction workers either do not qualify or contractors do not allow them to complete 90 days of work because they feel that their records and number of workers employed by them should not come on Government records for various reasons. Therefore, it is proposed that this condition be done away with by amending the main Act. Action is required by Government of India in this respect.

- (ii) **Self Certification by worker for registration:** There is no procedure presently for certification of employment in respect of self employed construction workers due to which they face problem in certification of their employment. Due to this reason, large number of self employed construction workers are left out and deprived of various benefits of the schemes of the Board. It is proposed that necessary amendment be made in the Act by incorporating self-certification of profession/employment by construction worker himself. Action is required by Government of India in this respect.
- (iii) **Validity of registration:** At present, registration of construction worker is valid for one year only, which is required to be renewed every year. However, the experience shows that most of the construction workers do not deposit their subscription on time due to migratory nature of work, which leads to expiry of their membership with the Board and as a result deprives them from claiming various benefits from the Board. Therefore, it is suggested that registration may be valid for a period of 5 years with one time superscription. Necessary amendments be made in the Act and action is required by Government of India in this respect.
- (iv) **Probability of membership with other construction boards:** Presently, there is no coordination/synchronization between various State Construction Boards which means worker contributing his subscription in one State Board is not valid in other State Boards and on transfer or migration, he cannot avail

benefits of other State Boards unless he becomes member/beneficiary of that State Board. It is, therefore, proposed that registration of construction workers should have portability on the lines of RSBY scheme. Necessary amendments need to be made in the Act including issuance of smart/biometric card. Action is required by Government of India in this respect.

- (v) **Registration of workers to be made mandatory:** Presently, as per Section 12 of the Act, the registration of worker with the Construction Board is voluntary in nature which means it is up to the worker to become member of the Board or not. Due to this reason, large number of workers do not opt to become member of Construction Board due to various reasons including lack of awareness regarding various welfare benefits which he would be entitled after registration with the Board. It is proposed to make the registration of workers mandatory on the lines of EPF and ESI Act for which necessary amendment is required to be made in the Act by Government of India.
- (vi) **Incorporating a separate clause in agreement of the contractor:** In order to ensure registration of construction workers with the Construction Board, a separate clause to be incorporated in agreement between the Principal employer and the contractor, thereby casting responsibility on the contractors to ensure registration of construction workers with the Board right at the time of their employment. The onus of compliance to be strictly supervised by the Principal Employers. In case of default/breach of this clause, penalty to be imposed on

Principal Employer as well as on the contractor. For this, necessary amendment be made in the Act and action is required on the part of Government of India.

- (vii) **Enhancing registration of construction workers:** In order to give boost to registration of construction workers employed either directly by Government/PSU agencies or through various contractors as the case may be, officers of appropriate level of the Government/PSU may also be authorized to register construction workers working for them. This will help the workers to get them registered at their working place itself. Intimation in this regard be supplied to construction board through need based IT formatting/software.
- (viii) **Enhancement of various welfare schemes of the Board (Petitioner's proposal):** Financial entitlement prescribed under Delhi Rules, 2002 were found to be very low/minimal and accordingly Expert Committee was constituted by Delhi Government to examine and propose suitable enhancements of various welfare schemes. The Committee submitted its report for enhancement and accordingly the Government accepted the same and 10 numbers of schemes have been enhanced and the same have been gazette notified on 10.02.2012. This action of enhancement of various welfare schemes addresses the proposal/suggestions given by the petitioner side.
- (ix) **Enhancement of limit of administrative expenditure – 5%:** Presently as per Section 24(3) of the Act, no Board can spend more than 5% of its total expenses during the financial year on

administrative expenses. This limitation of expenditure on administrative issues is acting as a problem for establishment and providing adequate infrastructure in terms of equipment, machinery or manpower. Due to this problem, Delhi Construction Board has not been in a position to strengthen the establishment and provide adequate infrastructure and manpower for smooth functioning of the board. Experience shows that same and similar problems are being faced by other State Boards. It is proposed to enhance this limit to 20% from existing 5% for which necessary amendment is required in the Act and action is required to be initiated by Government of India.

- (x) **Exemption of Income Tax on Cess Funds:** At present, there is no clarity on the issue of applicability of income tax liability on cess funds. The Act of 1996, the Welfare Cess Act, 1996 and Cess Rules, 1998 have no provision in this respect. Cess funds of Delhi Building and Other Construction Workers Welfare Board have been subjected to income tax liabilities by Commissioner Income Tax Delhi and an amount of Rs.60 Crores have been recovered by way of bank attachment from Cess funds of the Board. The Board has filed an appeal against this recovery in the Court of Income Tax Appellate Tribunal and the issue is being contested by the Board. The Board has also filed an application under Section 10(46) of the Income Tax Act, 1961 before CBDT requesting for total exemption of income tax on cess funds of the Board. This issue has drained

out an amount of Rs.60 crores from cess funds and has imposed upon the Board unwarranted litigation which consumes lot of time, manpower and money to be paid to lawyers defending interest of the Board. It is therefore proposed to make necessary amendments in the Act as well as Cess Act and Rules granting total exemption of income tax on cess funds including filing of income tax returns to income tax authorities.

13. The Central Government through its counsel has also given issue-wise suggestions which are as under:

**A. Non-payment of minimum wage**

A.1 Apart from the enforcement procedure pertaining to inspection and prosecution, the issue of non-payment of minimum wage can be redressed by making payment of wage through the Bank. This would ensure that there is a record of the amount paid.

A.2 The payment deposited in any bank would be accessible through an ATM of the bank.

A.3 The registration card of the worker or even a certificate from a registered trade union could facilitate the opening of a bank account.

A.4 The banks to provide the facility of zero balance accounts and cost free ATM.

A.5 The problem in this method is that under the existing framework of the law, the payment has to be made in currency or coin.

- A.6 Some employees are making payment only through bank.
- A.7 The penalties provided under the statute are now unrealistic as the quantum of punishment and fine that has been fixed by the statutes was fixed many years ago and has with the rise in inflation and increase of cost has become miniscule and needs an upward revision.
- A.8 The settlement of claim case and prosecution in some instances take a substantial time and in the meantime the worker changes the place of work or residence and as such does not get the benefit of the claim or is not available for availing the benefit.
- A.9 Directions could be issued to the authorities to dispose of claim cases and prosecutions under labour laws within a stipulated period.
- A.10 Illiteracy of the workers coupled with unscrupulousness of the employers is the most important factor contributing to the ignorance of the workers about the minimum rates of wages fixed by the Government. This ignorance in turn induces them to accept whatever wages are paid. It is, therefore, necessary that the Government (Central as well as State) devises and adopts a policy to give wide publicity to the minimum rates of wages through print and electronic media at regular intervals and also through other means.
- A.11 Government should therefore, make it mandatory to outrightly reject tenders quoting prices where the component of wages and other allied benefits based on wages such as provident fund, Employees State Insurance, bonus, gratuity, etc. are

calculated at less than the minimum rates of wages.

A.12 The mobility of workers from one project/site to another has fast increased. The workers who were seen at one place a few days back are not noticed there today. It becomes difficult to trace them once they have left the site. Unfortunately, no registers/records maintainable by the employer under the Minimum Wages Act, 1948 or the rules framed thereunder require the local and/or permanent addresses of the workers to be recorded thereby making it difficult at times for any amount to be remitted to them in compliance with an inspector's/court's/authority's order. The local as well as permanent addresses of the employees should be required to be recorded by the employer through an amendment of the Act/Rules.

B. **Benefit of Cess**

B.1 The Cess collected under the Act is not to be disbursed to the workers as is the misconception of the petitioners.

B.2 The Cess is collected to create a corpus for the implementation of the various schemes to be formulated by the State Government. No cash disbursement is to take place to the workers.

B.3 The problem in grant of benefit is that as per the scheme as formulated by the Government, the worker has to first complete the mandatory period of 90 days to be eligible for registration.

B.4 The act of registration is voluntary and is not mandatory.

B.5 The worker has to make initial and regular contributions and

has to keep the registration alive to avail the benefits.

- B.6 To avail the benefit the worker has to make the application to the board and if the worker is found eligible then the benefit can be granted.
- B.7 The period of 90 days could be waived for the purposes of registration. However, for availing the benefits, the period of 90 days could be insisted upon.
- B.8 It could be made mandatory for the employer/contractor to ensure registration. Like in cases of registration of births, the onus is on the hospitals to ensure registration. The onus could be placed on the contractors/principal employer to compile the data and register the workers within a stipulated period of the commencement of work.
- B.9 The Labour unions could help in taking up the task of registration of workers.

C. **Mobility of Workers**

- C.1 The Cess collected and the registration of workers is with the State authorities.
- C.2 The workers at times come from other States and work in Delhi like during the Commonwealth projects. The Cess is collected by the State Government and given to the Board constituted under the Delhi Act.
- C.3 The mobility of the workers and their registration would imply that the benefits under the schemes are available to the workers from other States even if they migrate and go to other States. This may have a problem as the other States may not agree to

provide benefits to the workers who have not worked in their State unless there is reciprocity and sharing of the Cess.

D. **Payment of Bonus**

D.1 Under Section 19(b) of the Payment of Bonus Act, 1965, bonus is payable within a period of 8 months from the close of the accounting year meaning thereby if an employee has worked in an establishment till, say 31<sup>st</sup> May, 2011, bonus is payable to him within 8 months from 31<sup>st</sup> March, 2012 i.e. by 30.11.2012. Given the duration of 18 months since he left employment, it is most unlikely that the worker will be available to receive the bonus. Even there are chances that the construction activity might have come to an end and, therefore, the employer may not even be traceable.

D.2 It is, therefore, desirable that the local and the permanent addresses of the employees should be required to be maintained by the employer under the Act through an amendment and the bonus should be required to be remitted by him to the employees at their recorded addresses when bonus is declared after close of the accounting year.

D.3 Additionally, the law should be amended to provide for payment of minimum bonus @ 8.33% of wages every month to the employee so that the employees are paid the minimum bonus on pro rata basis before they leave the place of employment or the employer becomes untraceable, as the case may be.

E. **Lack of safety equipment and proper working conditions**

- E.1 The responsibility should be fastened on the principal employer to ensure strict compliance with the laws pertaining to provision of safety equipment and proper working conditions.
  - E.2 It should be part of the contract conditions that the laws pertaining to provision of safety equipment and proper working conditions have to be strictly complied with by the contractor, failing which the principal employer should be authorized to deduct the amount from the bill of the contractor and make available the same.
  - F. **Strict compliance with the Labour Laws**
  - F.1 One of the reasons for non-compliance of the labour laws is the delay in finalization of the claim cases and prosecutions and the ultimate quantum of fines prescribed.
  - F.2 Appropriate directions could be issued to the authorities/ courts to dispose of the labour cases within a stipulated time.
  - F.3 Directions could be issued to the appropriate Government to revise and re-fix the quantum of fines so that the fines are more meaningful and act as a deterrent.
  - F.4 The quantum of fine prescribed in an Act for violation of various provisions of that Act remain the same without being revised for years together thereby diluting the deterrent effect substantially due to the inflationary pressure.
14. Respondent No.9 Delhi Workers Welfare Board has also given certain suggestions which are as under:

<p><b>1. Registration of construction workers:-</b></p>	<p><b>Suggestion/Change</b></p>
<p>At present, under section 12 of the Main Act, 1996, registration of construction workers is done after he has completed 90 day of work in the preceding one year. This <u>limitation of 90 days work experience</u> is acting as a impediment in registration process as large number of construction workers either do not qualify or contractors do not allow them to complete 90 days of work because they feel that their records and no. of workers employed by them should not come on Government, records for various reasons.</p>	<p>Therefore, it is proposed this condition be done away with by amending the Main Act. Action is required by Govt, of India in this respect.</p>
<p><b>2. Self Certification by worker for registration:-</b></p>	<p><b>Suggestion/Change</b></p>
<p>There is no procedure presently for certification of employment in respect of self employed construction workers due to which they face problem in certification of their employment. Due to this reason large number of self employed construction workers are left out and deprived of various benefits of the schemes of the Board.</p>	<p>It is proposed that necessary amendment be made in the Main Act of 1996 by incorporating self certification of profession / employment by construction worker by himself. Action is required by Govt, of India in this respect.</p>
<p><b>3. Validity of registration:-</b></p>	<p><b>Suggestion/Change</b></p>
<p>At present registration of construction worker is valid for one year only, which is required to be renewed every year. However, the experience shows that most of the construction workers do not deposit their subscription on</p>	<p>Therefore, it is suggested that registration may be valid for a period of 5 years with one time subscription. Necessary amendments be made in die Main Act, 1996 and action is required</p>

time due to migratory/ nature or' work, which leads to expiry of their membership with the Board and as a result deprives them from claiming various benefits from the Board.	by Govt, of India in this respect.
<b>4. Portability of membership with other construction boards:-</b>	<b>Suggestion/Change</b>
Presently, there is no coordination / synchronization between various state construction boards. Which means worker contributing his subscription in one state Board is not valid in other state Boards and on transfer or migration he cannot avail benefits of other state Boards unless he becomes member / beneficiary of that state Board.	It is therefore, proposed that registration of construction workers should have portability on the lines of RSBY Scheme. Necessary amendments to be made in the Main Act, 1996 including issuance of smart / biometric card. Action is required by Govt of India in this respect.
<b>5. Registration of workers to be made mandatory:-</b>	<b>Suggestion/Change</b>
Presently, as per Section 12 of Main Act. 1906. the registration of worker with the construction Board is voluntary in nature which means it is upto the worker to become member of the Board or not. Due to this reason large number of workers do not opt to become member of construction board due to various reasons including lack of awareness regarding various welfare benefits which he would be entitled after registration with the Board.	It is proposed to make the registration of workers mandatory on the lines of EPF and ESI Act for which necessary amendment is required to be made in the Main Act by Govt, of India.
<b>6. Incorporating a separate clause in agreement of the contractor:-</b>	<b>Suggestion/Change</b>

<p>There is a need to ensure that all construction workers are registered with the Board. It is not clear as to whom the responsibility of registering the workers lies upon.</p>	<p>In order to ensure registration of construction workers with the construction Board, a separate clause to be incorporated in agreement between the Principal employer and the contractor, thereby casting responsibility on the contractors to ensure registration of construction workers with the board right at the time of their employment. The onus of compliance to be strictly supervised by the Principal Employers. In case of default / breach of this clause penalty to be imposed on Principal Employer as well as on the contractor. For this necessary amendment be made in the Main Act and action is required on the part of GOI.</p>
<p><b>7. Enhancing registration of construction workers:-</b></p>	<p><b>Suggestion/Change</b></p>
<p>To augment the registration of workers at every place there is a need to adopt simplified procedures and approach.</p>	<p>In order to give boost to registration of construction workers employed either directly by Govt./ PSU agencies or through various contractors as the case may be, officers of appropriate level of the Govt. / PSU may also be authorized to register construction workers working for them. This will help the workers to get them registered at their working place itself. Intimation in this regard be supplied to construction board through need based IT formatting / software.</p>

15. Some suggestions have also come from a non-registered society consisting of 25 students of the National Law University, Delhi to the following effect:
- a. As per the existing provision, Section 12 of the Act along with Rule 26 of Delhi BOCW Rules, 2002, the responsibility of registration along with the payment of the prescribed registration fee falls on the workers. Therefore, the registration process must be simplified for the benefit of the workers. The burden of registration must be placed on the employer as these workers are socially and economically disabled. Majority of them are ignorant about these provisions and would be unable to finish the registration process as they are illiterate or uneducated. Furthermore, since the workers are largely migratory, they often do not possess the requisite documentary evidence and face language barriers. In case of daily wage labourers, the completion of this long drawn process of registration would result in loss of wages for approximately 10 days. Therefore, a system must be devised wherein the management assists the workers to be registered for availing their statutory entitlements, non-compliance of which would frustrate the purpose of the Welfare Board and the cess collector under the BOCW Welfare Cess Act, 1996.
  - b. Additionally, if the employer fails to facilitate the process of registration for the worker, the existing provision of Section 8 of the Act would result in the revocation of this Act. This would place a compelling duty on the management to register the workers and maintain individualized electronic database of each

worker which can be used for multiple purposes across closely interrelated labour legislations.

- c. Section 16 of the Act along with Rule 267 of the Delhi BOCW Rules, 2002 require the registered workers to contribute Rs.20/- per year, non-payment of which can result in cancellation of his registration under Section 17 of the Act. The beneficiary may resume his membership upon payment of arrears along with a fine of Rs.2/- per month. Such a provision is in conflict with the purpose of the Act.
- d. According to Section 30 of the Act read with Rule 241 of Delhi BOCW Rules, an employer is mandated to maintain a muster roll, a register of wages etc. containing the names and wages paid to these workers. However, due to the laxity of the employers, the muster rolls are not properly maintained. For instance, in the L&T Site in Section 16-B, Noida, only 300 workers are enrolled on the muster roll, although approximately 3000 workers are employed on that particular construction site. Therefore proper records of the total number of employed workers must be maintained by the employers which should be regularly inspected by the labour inspector.
- e. According to Section 12(b) of the Inter-State Migrant Workers Act, 1976, a contractor must issue a passbook to every migrant worker who is employed, which must contain the name and place of establishment along with the period of employment. Therefore, for the purposes of Section 12(1) of the Act along with Rule 266(1) of the Delhi BOCW Rules, this passbook must be

considered as a sufficient record for proving the previous employment of 90 days by the worker.

- f. According to Section 15 of the Act along with Rule 268 of Delhi BOCW Rules, every employer shall maintain a monthly record of the number of workers who are required to be registered and the total number of workers employed at the close of that month. These records must be regularly maintained by the employers and should be submitted to the Secretary or any other officer as per the requirements of Form XXX, Delhi BOCW Rules, 2002. This requirement has not been fulfilled by the employer and should be effectively enforced.
  - g. Therefore the obligation of contractors under the Inter-State Migrant Workers Act, 1976 read with the employers' responsibility of maintaining a muster roll makes it clear that there is a statutory duty on the management to have an authentic database in respect of workers. However, these statutory obligations have been grossly flouted.
16. In view of the above submissions, the students of NLU sought the following orders/directions:
- a. For issuing appropriate directions to the State Government to re-frame rules in consultation with trade unions and academic institutions like National Law University, Delhi to facilitate proactive enrolment of workers so that the accumulated Welfare Cess Fund is utilized for achieving the statutory objectives.
  - b. For issuing appropriate directions to the State Governments to

- have simpler registration process for the workers mandating the employers to conduct the same.
- c. For issuing appropriate directions to the employers to regularly maintain proper muster rolls as per the provisions of the Act.
  - d. For issuing appropriate directions for the appointment of an Enquiry Commission for computing the total number of registered workers in registered establishments in the NCT region and estimate the total monetary value of the Welfare Fund which is expended for the welfare of these workers every year.
  - e. For issuing appropriate directions to the labour inspectors to inspect the file returns of the employers indicating the number of registered workers and the total number of employed workers.
  - f. For issuing appropriate directions to the Inspectors under the Inter-State Migrant Workers Act, 1976 to inspect the issuance of passbooks by the employers.
17. It is clear from the above that we have to address the following aspects on which suggestions were solicited and given by the petitioner and the authorities as noticed above:
- i. Registration of Workers.
  - ii. Minimum Wages to workers.
  - iii. Living Conditions and Safety measures.
  - iv. Financial assistance for education of children.
  - v. Maternity and pensionary benefits.
  - vi. Issues relating to collection of CESS, definition of 'employer'.

18. After taking into consideration suggestions made by all the parties before us and taking note of above, we are of the opinion that matter needs thorough consideration by the concerned authorities, for carrying out necessary amendments in the provisions of the Act and the Rules and also the Executive is required to take certain positive steps for effective implementation of the laws to enable these construction workers to receive the benefit, which accrue to them under the Act and the Rules, in real terms. We accordingly issue certain suggestions hereinbelow insofar as they relate to amendment in the Act and Rules etc. along with certain other necessary directions:

**1. REGISTRATION OF WORKERS:**

This aspect in the present matter has caused immense grievance and is one of the vital aspects which need urgent attention.

- a. The requirement u/s 12 of the BOCW Act i.e. 90 days' work in previous year is acting as a hindrance in the registration process. The court feels that this requirement shall be done away with, to the extent of registration. Amendment to be made by the government to the extent of doing away with this provision. This will help in keeping a check on employers who dismiss the employees before they complete 90 days.
- b. The registration is not mandatory, it should be made mandatory and onus shall be put on employer and the contractor to get the

workers registered as soon as they commence work. To make such workers a member of welfare board automatically.

- c.** Proper identity cards should be issued to the workers currently engaged in any establishment.
- d.** Moreover the registration of workers should be quantified in database which shall be made available electronically so as to facilitate the process in case of migrant workers. A Centralized Government authority may be set up to supervise the entire process and this process to be carried out within three months from now.
- e.** Cumbersome procedure under Rule 266 of Delhi BOCW Rules to be done away with. Amendment of rule 266 is required. Burden to be put on employer to get the worker registered.
- f.** The validity of registration as of now is just one year. This limit needs to be enhanced up to a minimum of five years on payment of a single subscription fee. The fee shall not be such, which the workers are unable to afford.
- g.** Lack of coordination between state boards of different states is another major set-back; therefore a uniform system shall be initiated, wherein the workers who are registered with one state board are given membership for state boards all over India for a minimum period of 5 years. Violation may be prevented by issuing smart card to workers for their unique identification. Necessary provisions need to be included in the Act.

- h.** Requirement as per Section 16 of the BOCW Act and Rule 267 of BOCW Rules, 2002; the cancellation registration due to non-payment of fee and fine for same need to be removed.
- i.** Under Section 15 the requirement of maintaining monthly record of workers and registering them in the end of month if not registered to be adhered to.
- j.** Section 12(b) of Inter-state Migrant workers Act, the requirement of issuance of pass-book by contractor to worker should be implemented, so as to entitle the worker to avail benefits as the pass-book serves as a record of 90 days' work.
- k.** Muster roll as per Section 30 to be maintained properly, defaulting principal employer/employer/contractor shall be fined as the case may be.
- l.** Registration process to be facilitated by allowing government officers and PSU's to register workers on a single electronic database so as to help in avoiding duplicity as well as aiding the daily-wage labourers in registering themselves. Directions shall be issued in this respect by appropriate government.
- m.** No provision for self-certification by workers, amendment to be made in this regard.
- n.** Permanent and local addresses to be recorded by employer or contractor as the case may be which is to be supervised by the principal employer in case of workers from outside Delhi.

- o.** In case contractor fails to register the employee and principal employer fails to supervise the conduct of contractor, penalty shall be levied for the same on both.
- p.** Awareness programmes shall be initiated for facilitating the process and spreading awareness about advantages of registration. Camps for the same should be held once in every three months.

## **2. Minimum Wages:**

Minimum wages are those which are to be paid to the worker in every industry or establishment. These are different from fair or living wages. These aid the worker in at least affording the basic necessities for sustenance.

- a.** Payment shall be made via banks, instead of cash or other forms of currency. This will help in keeping a check on flow of black-money in the market as well as will prove as a record for payment of the wage. Amendment needed.
- b.** The registration card given to worker or a certificate from a registered trade union shall operate as a proof of address for opening bank account.
- c.** The banks shall provide zero balance accounts and ATM facility free of cost.
- d.** Claims pending in respect of minimum wages need to be disposed of in a stipulated period of three months and

compensation for not tendering the amount earlier should also be paid. Directions sought.

- e. The penalties for non-payment of minimum wages need to be revised and duly amended as due to passage of time they have now become miniscule and inappropriate due to inflation and other factors. The penalty needs to be increased to such a level, which acts as a deterrent and provides the workers with a decent level of sustenance.
- f. Minimum wage rate needs to be publicised in media or other sources regularly, as the illiterate section of labourers lack awareness about the same.
- g. If any establishment floats a tender and where the minimum wage rate is less than the one which is to be amended or even the current one, then tender shall be rejected with penalty.
- h. Section 28 (1) (a) provides for payment of overtime if person made to work on day of rest. This provision to be duly complied with.
- i. Wage slips to be issued to the workers.

### **3. Issues Relating to Cess:**

Issues relating to collection, disbursement and use of cess are listed hereunder. This heading also addresses the issues relating to enhancement of related monetary schemes.

- a.** Cess to be deposited with the Delhi Building and other Construction workers Welfare Board.
- b.** Affidavit to be filed by competent authority, i.e. Vice Chairman of Respondent No. 4, Director General of Respondent No.6, Chairman of Respondent No.7, Commissioner of Respondent No.8, Managing Director of Respondent No.11 and Managing Director of Respondent No.12 stating the exact amount collected as cess.
- c.** Benefit may not be paid to every worker. It may be paid to the workers who have a record of working for 90 days' in previous year. But such a requirement can only be imposed if pass-book is issued to the worker, if not issued then cess to be distributed in form of schemes for the workers.
- d.** The issue of mobility of workers may also be addressed under this heading. The workers who come from outside Delhi may have a problem in claiming cess because no provision for centralised disbursement of cess by all state boards to the workers registered with the state board other than them. Amendment required in respect of membership to all state boards and also the sharing of cess with workers from outside the state by all state boards. No discrimination is permitted.
- e.** As of now, cess may be paid in form of schemes or other suitable methods to be devised by the appropriate authority for

disbursement of the same shall be carried out within three months.

- f.** Provision to be laid down, exempting the cess from Income Tax Rules and Act. Cess rules shall also be amended to this effect. The petition filed for recovery of amount paid as tax on cess, may be allowed if viable.
- g.** The limit to spend only 5% as per section 24(3) for administrative processes during a financial year should be enhanced to 20% so as to facilitate the authority in dealing with rising expenses. A report shall be filed before the competent authority or the Court stating the objectives as to why the enhancement is needed.
- h.** The report for enhancement of 2002 rules has been submitted but no proof of its implementation. A proof shall be given of the enhancement for the rules and the implementation of same. Benefit cannot be shown on paper alone.

#### **4. Living Conditions and Safety Measures:**

- a.** Safety equipment of international standard viz. hard hats, gloves, shoes, etc. shall be provided to all the workers by the contractor and the principle employer shall monitor the same and submit a compliance report with the appropriate authority. Necessary directions to be issued by Government. All necessary equipments to be provided to the workers free of cost.

- b.** Responsibility on the principle employer for ensuring strict compliance to the measures prescribed in the Act and otherwise. If non-compliance noted, then the registration of establishment may be cancelled or the Principle Employer be fined or both.
- c.** If Contractor fails to adhere to the rules and conditions laid down, then an amount as fine shall be deducted from his bill that is submitted to the principle employer.
- d.** Adequate living conditions i.e. decent housing, lighting, water supply, ventilation etc. shall be provided to the worker, as laid down in the Act.
- e.** Protection from epidemics and acts of nature like malaria, dengue, rain etc. respectively shall be accorded to the workers.
- f.** Proper drainage system at the place where workers are provided accommodation.
- g.** MCD officers and officers of the Labour Department shall regularly visit the site and file status reports.
- h.** Section 36 of the Act provides for first-aid facilities, compliance sought.
- i.** Rule 34-38 of BOCW Rules, 1989 provide for check on excessive noise at workplace; adequate fire protection from hazards; emergency action plans in case of fire, explosion etc.

and the limit for lifting and carrying of excessive weights. Such provisions shall be strictly adhered to.

- j.** Workers employed in construction of flyovers widening or repair of roads or any other public utility construction to be provided with adequate accommodation with all basic facilities.

#### **5. Financial assistance for education of Children:**

Education is right guaranteed under the constitution and the same cannot be denied by any one, may it be an individual or an institution.

- a.** The education scheme has to be appropriately implemented so that a child of a worker gets necessary education.
- b.** The petitioner has the liberty to have the assistance of senior persons from field of academics to assist the workers in filing forms to avail this benefit.
- c.** All education applications which are pending (if any) need to be looked into immediately and appropriate action shall be taken. The required action to be carried out within four months.
- d.** Financial benefit to be provided on the basis of revised 2002 rules and not at the old rate. Non-compliance shall attract penalty.
- e.** Section 22(1) (e) provides for financial assistance for education of children of the beneficiaries. The financial assistance for

education to be increased 3 times if the revised rate not sufficient.

- f. Respondent No.8 to advance appropriate amount to Director of Education, MCD and to ensure that registration and scholarship forms are circulated, verified and duly deposited within three months by all the children of the workers engaged in MCD, NDMC or otherwise.
- g. Respondent No.9 to disburse appropriate amount for the applications which have been verified.

**6. Maternity benefits and provisions for pension and bonus:**

Maternity benefit to female workers shall be provided along with pensions to retired persons and also the provision of bonus is laid down.

- a. Bonus shall be declared at the end of the year and shall be remitted on permanent or local address as the case may be or deposited with the bank.
- b. The provision which states that bonus is payable only till 8 months after end of accounting year in which the person was employed needs to be re-considered and revised or amended as the employer may abscond or the employee may go missing after the expiry of such period or even during it.
- c. Additional bonus @ 8.33% of the wages payable per month, the bonus to be paid on monthly basis on pro-rata basis, so that

bonus is received even for the period of employment.  
Amendment required in related rules.

- d.** Medical applications which are still pending (if any) shall be disposed of after following proper procedure at the earliest.
- e.** Pregnant workers shall be provided with necessary facilities and also should be allowed paid leaves.
- f.** Section 35 provides for Creches for children below the age of six years which shall have adequate accommodation; properly lighted and ventilated; proper sanitation. Provisions to be complied with.
- g.** Pension shall be payable to the workers who have retired due to attaining old age or if any age is prescribed or if involuntary retirement is the case due to any injury during the course of employment. Section 22(1)(b) of the BOCW Act provides for payment of pension to the beneficiaries who have completed the age of sixty years.
- h.** Section 22(1)(g) provides for payment of maternity benefit to female beneficiaries. Amount shall be determined by state Government or appropriate authority.

## **7. Regarding administration and future monitoring**

- a.** Since discrepancies have been reported in the functioning of the Board under the Act, a fully operational Board shall be set

up with one full time secretary and the required regular and full time staff to implement the provisions of the Act and the Rules.

- b.** All registered Trade Unions, registered NGOs and Civil Society groups dealing with human rights are allowed to visit construction sites and interview the workers and file reports with the Labour Secretaries of respondents No.1 and 2 who, on receiving such reports, shall take appropriate action in accordance with the law.
- c.** The Board thus constituted shall meet at least four to six times in one accounting year.

19. The writ petition is disposed of in the aforesaid manner. However, we expect that on the aforesaid suggestions and directions, authorities shall be activated and action taken report shall be filed within six months. The matter is listed for directions for this purpose on 29<sup>th</sup> April, 2013.

**ACTING CHIEF JUSTICE**

**RAJIV SAHAI ENDLAW, J**

SEPTEMBER 20, 2012  
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