

Note on proposed law regulating employment and for prescribing conditions of services of construction workers.

The nature of Industry:-----

1. The construction industry employs, next only to agriculture, the largest number of workers in our country. This industry covers a variety of workers and operations ranging from construction dams, power houses and bridges, harbours, roads, railway tracks and runways to factories and offices, schools, hospitals, hotels and ordinary residential buildings. These activities cover the entire length and breadth of our country. Most of these operations are seasonal and at times involve fluctuations in the employment pattern.

2. The nature of the construction industry being so different from other occupations that the normal patterns of relationship between the employers and employees are not relevant. Frequent changes take place in the employers as far as the workmen are concerned and in the workmen as far as the employers are concerned. In this industry the product of the industry remains stationary while the employers and the employees move out after completion of the work to different locations and may be, to different activities. Because of its seasonal nature and the uncertainty of continued availability of work both for the employers and the workmen, it has become necessary to regulate the Industry.

The extent of work Force:

3. The exact or even the approximate number of persons employed in this industry is not known. In the words of the National Commission of Labour" the last census (1961) estimated that over two million workers were



employed in major sectors of Construction and maintenance. According to the estimates of the Planning Commission the Construction industry was expected to have added about 2.3 millions work opportunities during the 3rd Five Year Plan." Of the 24.46 crore economically active population reported in the 1981 census, 35.65 lakhs were in Construction of which 10% were women. Another estimate, based on the assumption that every one lakh rupee worth of Construction generates 3100 mandays of unskilled labour and 1300 mandays of technical/managerial personal, puts the economically active population engaged in construction in 1982-83 at 1.333 crores. Thus the estimates of employment vary widely. The Pocket Book of Labour Statistics 1984 published by the Labour Bureau, Simla estimates employment in Construction at the end of March, 1982 at 1.112 millions in the public sector and 71 thousand in the private sector. Considering that a very large portion of the Construction activity takes place in the private sector in the rural areas and in non-project activities, as also house buildings in the urban areas also, the figures of the Labour Bureau in respect of the private sector could be off and mark. It may be Noticed that a large portion of the total outlay on plan and non-plan activities of Governments and also private investment is spent on Construction activities an estimate of employment in the industry for the country as a whole at about 1.5 crores will appear reasonable. 10% of this would constitute women workers. It is no doubt true that a very high percentage of the work force



in the construction industry would be of the unskilled type who do the work of helpers or are engaged in other unskilled activities and may seek other avocations, particularly in agriculture, during the slack season.

4. It is also necessary to recognize that when we refer to the construction industry, we also include in it persons engaged in quarrying stone breaking and stone-crushing and those engaged in the brickkiln Industry. Despite their large numbers, the work force is highly unorganised. The results of verification of membership of Central Trade Union Organisations as on 31.12.80 undertaken by the Chief Labour Commissioner (Central) show that the verified membership of workers in the organised sector of the industry largely under Government Departments or in public sector corporations engaged in construction activities.

Need for Central Legislation:

5. It is no doubt true that a number of labour laws can be said to apply to the workers in the construction industry, such as the Minimum Wages Act, 1948, the Contract Labour (Regulation and Abolition) Act, 1970, the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, the Equal Remuneration Act, 1976 etc. and in certain exceptional cases, the Employees Provident Fund Act, the Employees State Insurance Act, the Payment of Gratuity Act and the like. Despite this in actual practice the workmen in this industry are totally neglected and helpless. The nature of the industry, the shifting employ-employee relationship,



the seasonal and discontinuous nature of employment, the general apathy of the labour administration, and above all, their total lack of organisation have resulted in the bulk of the workmen in the industry not merely being denied their rights and benefits under these statutes but also even the minimum wages prescribed under law. The judgment of the Supreme Court in the Asiad case and the Bandhna Mukthi Morcha are a standing endorsement and indirectment of the conditions of these workmen, even in the capital city of Delhi.

6. Another major contributing cause to this state of affairs is the total inapplicability of the normal type of labour laws to the situation obtaining in the construction industry. If the benefits of labour legislation will have to reach this large mass of workers it is then necessary that the law should take note of the unique features of the industry and should provide not merely for welfare of the workmen, but also for the regulation of employment itself in the industry. Such regulation could not be left to be taken care of by the employers or by the administrative hierarchy, but must be entrusted to an autonomous body statutorily set up and consisting of representatives of the workers government and the employers. Arrangements for regulating employment on the basis of compulsory registration of the employers and of the workmen, restriction on employment in the industry to only those workers who are registered under the law to be employed by employers who are registered under the law to be employed by employees who



are registered under the law, equitable sharing of the available employment on the basis of rotational looking of workmen category-wise vesting of responsibility for determining and disbursement of wages in the autonomous body, provision of all facilities including Social Security and a minimum guarantee of employment by the autonomous body are some of the features that must be incorporated in a law that must be centrally enacted and implement through a statutory constituted body at the national level for purposes of co-ordination and similar bodies at the level of State Governments/ Union Territory administration below for purposes of implementation.

7. For the purposes of the law, there is no need to bring in the concept of the Principal employer, unlike in the Contract Labour (Regulation and Abolition) Act, 1970. The actual employer-employee relation subsists, howsoever temporarily, and between the actual contractor who execute the work and the concerned workmen and it is the Contractor employer who should be responsible as employer for fulfilling all the obligations cast on the employees. In the case of a private individual who undertakes a Construction activity say building a house, directly not through a Contractor, he will be treated as his own Contractor and thus as employer under the law.

8. While there are a few laws purporting to relate inter alia, to regulation of employment such as the Contract Labour (Regulation and Abolition) Act, 1970, the



Inter State Migrant Workmen (Regulation of Employment, and Conditions of Service) Act, 1979 etc., the proposed law for the construction workers is patterned on the lines of the Dock Workers (Regulation of Employment) Act, 1948. In fact, the conditions obtaining among the dock workers before implementation of the above law was similar to the conditions that now obtain in the construction industry, the only difference being that the construction industry is spread over the length and breath of the country unlike the dock industry which is confined to the ports.

9. Clauses (a) (d) (e) and (f) of Article 39 enjoins the State to direct its policy towards securing

- (a) that the citizens, men and women equally, have right to an adequate means to livelihood;
- (!) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41 directs the State to make effective provisions for securing the right towards, to



education and to public assistance in cases of ~~an~~employment, old-age, sickness and disablement, and in other cases of undeserved want.

Article 42 provides that the State shall make provision for securing just and human conditions of work and for maternity relief.

Article 43 commands that the state shall endeavour to secure, by suitable legislation of economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work a living wage , . . . conditions of work ensuring a decent standard of life and full employment of leisure and social and cultural opportunities.

Article 43A provides that the state shall take steps by suitable legislation or in any other way, to secure the participation of workers in the Management of undertakings, establishments or other organisations engaged in any Industry.

Having regard to the abovesaid obligations of the State, and the need to secure to citizens engaged in Construction Industry as Construction Workers, the right which are latent in the abovesaid provisions, It has been felt that a Central Legislation for Construction Labour is a Constitutional imperative and hence this legislation.



The proposed legislation is in two parts, (1) the main Act and (2) the Scheme thereunder. While amendments to the provisions of the Act can be made only by Parliament, the scheme can be amended by the concerned Governments subject to the provisions laid down in the Act in this regard. Thus a State Government may by notification in the official Gazette carry out amendments to the scheme but this can be done only in consultation with the State Construction Labour Board and subject to the conditions of previous publication and with the prior approval of the Central Government who in according the approval will consult the Central Construction Board.

Keeping in view the difficulties that are encountered in proper implementation of the various labour laws, it is recognised that the usual type of labour laws which generally pre-supposes the existence of continuous and continuing employer-employee relationship over an indefinite period of time, will not be adequate to meet the peculiar problems of the Construction Industry. It is for these reasons that the basic purpose of the law has been to enable the Central and the State Governments to set up Tripartite Construction Labour Boards which will have the sole responsibility of not merely ensuring prompt payment of wages provision of social security benefits, ensuring of minimum guaranteed wages etc. but also regulation of employment in the industry regulating registration of employers and workers and regulating the employment; thus, restricting



entry into the industry of only those employers (contractors) who are registered with the Board and of employees who again are registered with the Board. The law also envisages proper machinery for dealing with and solving disputes that may arise between employers and workmen.

Given the nature of the industry which is spread through out the length and breath of the country, the law provides for establishment of offices . . . of the boards at various levels.

The entire expenditure of the activities of the Board including payment of wages, provision of social security benefits and minimum guarantee wages, cost of adminstering the scheme etc. will be met by appropriate levies and charges from the contractors on the project.

The law enables the Central Government to set up Construction Labour Boards in the Union Territories.

To ensure that the interest of the workers are adequately protected. It is sought to be provided that the number of representatives representing Government and the contractors shall not exceed the number of representatives of Construction workers. It is also provided that the representatives of workers on the Boards shall be elected on the basis of secret ballot in the manner to be prescribed.

It is not proposed to refer to much less discuss in detail, the individual provision of the Act and the scheme. These can be discussed clause by clause in the discussions in groups that are proposed to be organised in the workshop.

