

Comments of the Builders' Association of India

on

The Building and other construction workers (Regulation of Employment & Conditions of Services) Bill, 1988

Along, it has been the stand of the Builders' Association of India that building and construction activity has got its own peculiar characteristics. The entire activity is seasonal, mobile, intermittent and non-repetitive. The construction site is not at fixed place. It shifts from place to place according to the requirement of the planners and owners of the project. The duration of each project also differs ranging from very short to very long periods depending upon the nature and type of construction. Unlike any other conventional industries, in construction activity, the duration of employment of workers with any particular employer is not certain. Since the employment is basically linked with the duration of the project, it cannot be of a permanent nature except in case of certain highly skilled and specialised categories. The Employer-Employee relationship in this activity cannot, therefore be on the same pattern as is generally seen in other conventional establishments or industries. Keeping in view, the above unique nature of Employer-Employee relationship, it has been the stand of BAI that this activity should not be treated on par with other industries in the matters of labour laws and that there should be one comprehensive law regulating service conditions and other measures such as Health, Safety, Welfare and Social Security exclusively for Building and other Construction Workers.

Builders' Association of India has been emphasising the need of such a legislation at various Government and Private Forums on different occasions and it is gratifying that the stand of Builders' Association of India has been appreciated by all concerned including Government and Labour Organisations.

It is, however, unfortunate that Government has once again come out with a Bill, which totally fails to achieve the desired objective of one comprehensive law covering all the aspects of service conditions, including Welfare, Health and Social Security. The proposed Bill, if enacted, will add one more piece of enactment to the already existing long list of Acts made applicable to the construction activity, completely ignoring the difficulties already identified and accepted in implementing the existing laws. Besides, the proposed Bill would hardly serve the purpose of improving the working and living conditions of Building and other Construction workers as almost all the provisions listed in the Bill already exist in one form or the other in various labour laws made applicable to this sector at present. It would then be an exercise in duplication, which would further increase the difficulties of Employers by adding obligation in the form of getting one more registration and in the maintenance of one more set of new registers, records etc. It is, therefore, the considered opinion of Builders' Association of India that Government should defer the proposed draft Bill and should start making fresh efforts to draft a comprehensive Bill as suggested above.

This law, if at all enacted should be made applicable only to new contracts for Building and other Construction works finalised after the

Act comes into force, to avoid hardship to contractors as they have not included such costs in their quotations for the existing contracts.

Contract Labour Regulation and Abolition Act deals with similar things like Advisory Board, Registration of establishment, revocation of registration, effect of non-registration, revocation etc. It also provides for setting up of Canteen, Crèches etc. It is felt that too many authorities supervising and controlling the matters relating to Labour Welfare in respect of the same worksite will only create confusion.

We are enclosing a chart of similar provisions of different Welfare Acts such as Contract Labour (Regulation And Abolition) Act, Inter State Migrant Workmen Act, Workmen's Compensation Act and the proposed bill quoting the relevant sections. This type of overlapping provisions may create the following problems:

- (i) The same worker in the same accident may claim compensation under two different enactments.
- (ii) The same worker can claim the same benefits under more than one enactment.
- (iii) Action can be taken by the enforcement authorities under several acts against a single contractor for single offence.
- (iv) Conflicting provisions in several acts on the same subjects is bound to result in disputes between the employer and the employee.
- (v) There will be multiplicity of appellate authorities for the same offence.

Subject to the above general observations, the following specific comments are offered on some of the important provisions of the draft bill:

- (1) We are now in the year 1994, but the date of the bill is still 1988. The Bill, therefore, needs to be updated.
- (2) In 'Explanation' to Section 2(1)(a)(ii), the words 'Central, State or provincial' are used. They should be replaced by words 'Central or State'. Now provinces are called States only. Hence this amendment.
- (3) Section 2 of the draft Bill, which defines various terms used in the Bill, has left many terms undefined such as Advisory Boards, Expert Committee, Registering Authority, Appellate Office etc. To avoid confusion and to make interpretation easier while enforcing various provisions of the Act, it is essential that all the terms used in the Act are properly and precisely defined. Any term left undefined creates problems at the time of actual enforcement.
- (4) In the definition clause 2(1)(a) 'building worker' has been defined as a person employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work. In the

sub-clause regarding exclusion, those employed in supervisory capacity, drawing wages exceeding Rs.1600/- p.m. have been excluded. We suggest exclusion criteria should be the amount of salary drawn and not the rank, to obviate future litigations. Controversy will arise as to who is a supervisor & who is not and this will give rise to litigation.

- (5) 'Establishment' has been defined in clause 2(1)(c)(h) as 'an establishment belonging to or under the control of Government, Body Corporate or firm and includes an establishment belonging to a contractor....'

Quite obviously the organisation set up by a contractor in a project site is an establishment. But in clause 2(1)e, a contractor is defined as one who undertakes to produce a given result for an establishment. This is anomalous and contradictory to the definition of Establishment. It is suggested that clause 2(1)e be redrafted on the following lines :

'contractor means

- (a) a person who undertakes building or other construction work for
- (i) the owners of a Factory, a Project, a Govt. or Semi-Govt authority, a local body
 - (ii) an individual or individuals by employment of building workers
- (b) a person who supplies building workers for building and other construction work and include a sub-contractor."
- (6) Sections 6 to 10 of the draft Bill make elaborate provisions for registration of construction establishments, revocation of registrations, appeals and effects of non-registration and revocation etc. There is, however, no provision for restoration of registration once revoked and confirmed in appeal. It is felt that restoration of registration should be made possible if the Employer rectifies the defects and stops contravention of the provisions of the Act and the rules framed thereunder. It is, therefore, suggested that a new section 10A with the caption : 'Restoration of Registration' may be added after Section 10 of the draft Bill.
- (7) Chapter VIII of the Bill, pertains to penalties and prosecutions. U/s.32(2) powers of imposing fine have been vested in the Director General in the case of Central Government and in the Chief Inspector in relation to State Government. Giving such judicial power to Executive Authorities is not desirable. The Builders' Association of India feels that only Courts should be empowered to impose such penalties. Accordingly, it is suggested that Section 32 should not have any other Sub-Section and the existing Sub-Sections 2 to 5 should be deleted.
- (8) As the contractors have to execute several contracts in distant places all over India, it is not possible for the Proprietors/Directors/Partners of the contractor-firms to keep personal control on implementation of the Act. They have to depend on their employees. The provision of imprisonment is, therefore, too stringent & needs to be deleted.
- (9) the existing Section 36 (Cognisance of Offences) will become Section 34. Under sub-clauses (b) and (c) of this Section, vol-

untary organisations registered under the Societies Registration Act, 1860, and Office-Bearers of the concerned Trade Union; registered under the Trade Union Act, 1926, have been given powers to file complaints in the Courts for the offences punishable under this Act. Giving such powers to voluntary Organisations and trade unions, it is feared, will vitiate Employer-Employee relationship and do much harm than good to the building workers. The Builders' Association of India feels that powers to make complaint must remain only with the enforcing authorities. After removing sub-clauses (b) and (c) the renumbered Section 34, would read as under :

Section 34 — Cognisance of Offences' :

No Court shall take cognisance of any offence punishable under this Act except on a complaint made by or with the previous sanction in writing of the Director General or the Chief Inspector and no court inferior to that of a Presidency Magistrate or a Magistrate of first class shall try any offence under this Act.

- (10) The proposed Act imposes the responsibility of Canteen, Safety measures etc. on each individual contractor. If the responsibility was fixed on the owners of the Project, there could be considerable economy in costs. Instead of each contractor firm setting up its own canteen and creche, there can be only one setup belonging to the Owner. Besides, it is easier for the owner to provide such facilities because the land belongs to them/him. Considerable economy would be effected because there will be one set-up instead of several set-ups by several contractors.

A contractor who has employed less than 500 workers will not be required to set up the Safety measures, or one employing less than 50 female workers will not be required to set up a room for children's care i.e. creche. Thus in the same worksite some people will not get the benefit simply because their employer has not employed the required number of women/workers building workers. Whereas if the owner sets up the facilities, all the employees of all contractors will have the benefit. After all such costs will form part of the contractors price and thus will be ultimately passed on to the owners. It is more straight forward to fix the responsibility on the owners who ultimately bear the cost.

- (11) Existing Section 39, states that the provisions of this Act shall be in addition to and not in derogation of any other law for the time being applicable to Building Workers immediately before the commencement of this Act. It has always been the stand of Builders' Association of India that construction activity is quite distinct and different from other industries, and that there should be a separate law, which takes care of its unique characteristics, and that application of other labour laws to it should be withdrawn. The existing Section 39 of the Bill keeps alive the application of other laws. If it is so, then there appears a need to have one more law on the lines of the proposed Bill. On the contrary, Builders' Association of India strongly feels that there is a need to have a clear and a specific provision in the Bill stating that on the date of coming into force of the provisions of the Act, application of all of the labour laws to Building and Construction establishments shall cease.