

LABOUR UPDATE

The Ordinances on Construction Workers: A Critique

(The National Campaign Committee for Central Legislation on Construction Labour has formulated a comprehensive legislation based on the experience of labour in the unorganised sector across the country. It has carried on a sustained campaign for the adoption of such a legislation since November 1985.)

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A little more than thirty, yes, thirty, years ago, the Industrial Committee on Building and Construction Industry, a tripartite body under the Ministry of Labour, agreed that there should be one comprehensive legislation covering safety, welfare and other aspects of employment in the building and construction Industry.

Now after thirty years, these two ordinances, one for regulation of employment and conditions of service of building and construction workers and the other for the levy and collection of a cess to augment the resources of the welfare boards for building and construction workers have been promulgated by the President. It is necessary to point out that the first ordinance gives effect with certain modifications, to the provisions of an earlier bill introduced in Parliament but which has not yet been passed. That this earlier bill was introduced in the Rajya Sabha almost eight years ago-on the 5th of December 1988, to be precise-and that this Bill was found by the Petitions Committee

of the Lok Sabha, is as early as July 1989 i.e. within less than 8 months of its introduction, to be so inadequate that is noted, "the Committee therefore recommends that the Bill pending in the Rajya Sabha be withdrawn and a fresh comprehensive Bill be introduced so as to cater to the long felt demands of a hereto-fore neglected segment of the working class".

It is fairly common knowledge by now, and the Government of India is more than well aware of the fact, that the National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) has been agitating for the adoption of a comprehensive legislation on the lines of a formulation worked out by the Campaign Committee from its inception in November 1985, i.e. exactly ten years ago. One does not have to extol the provisions of the NCC-CL proposals except to point that the Petitions Committee in its Report stated: "The Committee desires that the legislation proposed by the Campaign Committee may be examined, considered and all its good features thereof may be suitably incorporated in the Government Bill".

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Despite all these and the subsequent attempts by the NCC-CL to persuade the Government of the day to go ahead with legislating on the pattern of the NCC-CL formulations, what we now have is an Ordinance for the reason that "The President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the same Bill with certain modifications". Some immediacy, some action!

The first ordinance of 1995, is almost, word for word, a reproduction of the provisions of the earlier 1988 Government Bill with addition of two new chapters, one relating to registration of building workers as beneficiaries and the other relating to building and other construction workers welfare boards, and some in-consequential additions to the 1988 Bill. The second Ordinance is only an adjunct to the first Ordinance and merely provides for the levy and collection of a cess to augment the resources of the Welfare Boards, set up under the new chapter in the first Ordinance.

There seems to be some problem about Commencement Clauses in the two Ordinances. Whereas the second Ordinance comes into force at once i.e. from the date of promulgation, the first Ordinance shall come into force on such date as the Central Government may appoint and different dates may be appointed for different states. Considering that the rule making power under the first Ordinance is with the appropri-

ate government and a delay in the publication of the rule will effectively delay the implementation of the Ordinance even if it is brought into force in a particular State, would it not be better to provide for a uniform date of commencement, to be decided by the Central Government, the date not being later than eighteen months from the date of the promulgation of the Ordinances; also, in the event of delay in the framing of rules by any State Government, the law must provide for the application of the Central Rules for the State concerned (hoping that the Central Rules are notified without delay) and the Central rules will prevail till the State Government publishes its rules. Unless this is done, the operation of the second Ordinance itself will be stultified, as collection of cess itself may not be possible in respect of a State where the first Ordinance has not come into force. It is not clear from the Ordinances what the position of Union Territories will be. Are they sought to be treated as "Central Government" for purposes of "appropriate government"?

Let us now look at the provisions and intentions of these two Ordinances. (A lot has been said already about the inadequacies of the 1988 Bill, and, the Petitions Committee of the Lok Sabha also found it wanting. The interested reader can approach the NCC-CL Secretariat for details.)

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The second Ordinance provides for the levy and collection of a cess at such rate not exceeding one per cent of the cost of construction incurred by an employer, as the Central Government may, from time to time, specify. This levy and collection is for the purposes of the first Ordinance (section 3 [1] of the second Ordinance). The levy is not on all building and construction activities, but only those activities which come within the purview of the first Ordinance. And to whom does the first Ordinance apply?

It applies, according to section 1 (4) of that Ordinance to every establishment which employs or had employed on any day of the preceding twelve months, fifty or more building workers in any building or other construction work. Apart from the fact that establishment as defined in section 2 (1) (j) of the first Ordinance does not include an individual who employs such workers in any building or construction work in relation to his own residence, it is any body's guess what the total number of 'beneficiaries' as described in Chapter IV of the first Ordinance who would be benefited when the Ordinance restricts itself to establishments which employs or had employed fifty or more workers; but one wonders whether such beneficiaries may be

even a quarter of the total number of workers who depend on this activity for a living. This restriction of 'fifty' is mindless and should be deleted. And, under clause 14 (1) of the first Ordinance, a beneficiary would cease to be one if he is not engaged in building or construction work for not less than ninety days in a year (such engagement should, of course, be in an establishment employing 50 or more workers).

As for establishments which get covered under the first Ordinance, and, as a result, liable to pay the cess, it is not clear why the Second Ordinance provides for levy of cess on the cost of construction incurred by the employer; is this not likely to delay the collection, as the employer can argue that he will not be aware of the cost incurred till the construction is completed and presumably till a Completion Certificate is obtained by him.

On top of all this, there is the ominous provision (Section 6) empowering the Central Government to exempt any employer or class of employers from the payment of Cess; no guidelines are prescribed in the ordinances, except that the Central Government must be "satisfied that it is necessary or expedient to do so in the public interest". The 70 temptation to seek such exemption in respect of building and/or construction work undertaken by the government (Central or State) and by public sector undertakings of both Central and State Governments may be too strong to be resisted. Specious arguments can be advanced to exempt, for example, famine relief works on the plea that these are undertaken by way of providing relief and in any event, will be of very short duration and therefore the workers cannot in any event, expect to be regular beneficiaries keeping in view the provisions of Section 14 (1) of the first Ordinance. This cause must straightaway be deleted.

One is not sure how much will be the amount that will be collected as cess, and what are the nature and extent of welfare and social security benefits that can be provided. Before we examine, it is necessary to refer to section 16 (1) of the first Ordinance which makes it obligatory for the beneficiary worker to contribute to the welfare fund at such rates per month as may be prescribed. Considering that the other statutory welfare funds such as those for Beedi workers, mica mine workers, limestone and dolomite ore mine workers and the iron ore, manganese ore and chrome ore mine workers do not provide for any contribution by the workers, it is difficult to see the need for such contribution from a section of workers who, admittedly, are more

disadvantaged than most other workers. Therefore, this provision should be deleted. Even if it is argued speciously but piously that the beneficiaries feel involved in the activities of the Welfare Fund, then let the law provide for a maximum level of contribution, say not more than Rupees Five per month per beneficiary.

Chapter IV of the first Ordinance relates to registration of beneficiaries; a beneficiary has been defined as a building worker registered under Section 12, which provides for registration as beneficiary every building worker, above the age of eighteen and below sixty, who has been engaged in construction work for not less than ninety days during the last twelve months. Though this section talks of 'every' building worker, it is felt that there is a catch in it, for the reason that the immediate preceding section 11 seems to restrict such prior employment for not less than ninety days to such employment as in establishment engaging 50 or more persons on any day; otherwise, the phrase, 'subject to the provisions of this Ordinance' occurring at the beginning of section 11 has no significance. Thus, apart from restricting coverage to larger establishments, the number of beneficiaries is sought to be further curtailed. Is this by design or by oversight or as it merely that we are being unnecessarily apprehensive or suspicious? 71

Section 14(2) of the first Ordinance states that if a person had been a beneficiary for at least five years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed. It is not clear what is sought to be conveyed by this provision, except that in such cases, the beneficiary will get a pension, as provided for under section 22(1) (ii) or will be eligible for a house building loan vide section 22(i) (iii). This can conversely, be interpreted to mean that a beneficiary will not get pension unless he has been a beneficiary continuously for five years immediately before attaining the age of sixty years i.e. from the age of 55 onwards. If so, all that is needed to deprive him of the benefits is to break this continuity and this, as we all know, is not difficult to arrange. Alternatively if the scheme of regulation of employment is done as suggested in the NCC-CL bill, the matter could be tackled.

A quick look at provisions relating to safety, health, welfare, etc. reveals that the standards in respect of each one of these will vary from state to state. While one does not desire to put all States in a uniform strait-jacket, it is necessary that there is a certain minimum level of standard relating to safety, health, welfare and also social security. This can be achieved by the Central Government in consultation with

the State Governments, experts, trade unions and other interested bodies, like say NCC-CL, working out minimum standards; power may be taken in the law for these minimum standards to be made obligatory. What are these minimum standards that one can settle. Surely, security of employment, adequate wages, safety at the work place and provision for prompt payment of compensation by the Welfare Fund in case of accidents or death, medical health, pension etc. are some of the items that straight away occurs to one's mind. In other words, the law must spell out these minimum standards as a scheme and make them obligatory. One sees that quite a bit of these have been left in the first Ordinance, to be prescribed by the appropriate Government. This won't do. The scheme must be part of the statute, just as in the Tamil Nadu Act.

It is seen that clause 39 of the 1988 Bill does not figure in the first Ordinance. This clause reads as follows:- "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." The implications of this are not clear.

72 Leaving out the nitty-gritty or individual provisions of the two Ordinances, the overall impression that one gets is that they fall far short of what is needed for the welfare of all construction workers and not a mere section of it. We have a deficient and unenforceable law. Obligations and duties are not spelt out. Enforceability will be a tiresome and illusory process. Except few, the bulk of the workers will be left out. The power given to the Central Government to meddle with the cess collected is inappropriate. The old problems of industrial law such as employer accountability continue to exist. This is particularly so when one has at the back of one's mind, what the NCC-CL has been demanding all these years and what the draft Bill and Scheme drawn up by the NCC-CL contain. Obviously, with a view to accommodating these demands, and objections raised by various employing interests in the Government, and at the same time trying to put up a pro-labour face which can be projected in the context of coming elections, this kind of milk and water compromise has been reached. The losers are not merely the workers; the credibility and genuineness of the government have also been lost.