

(2014) 12 SC CK 0098

In the Supreme Court Of India

Case No : W.P.(C) No. 318/2006 and C.P. (C) No. 52/2013 in W.P.(C) No. 318/2006

National Campaign Commit., C.L.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 — Section 3

Citation : (2015) 3 SCALE 146

Hon'ble Judges : Uday Umesh Lalit, J; Madan B. Lokur, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. We have heard Learned Counsel for the parties as also Mr. P.S. Narsimha, learned Additional Solicitor General. This case pertains to the implementation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 as well as the Building and Other Construction Workers Welfare Cess Act, 1996.

2. This Court has issued some directions from time to time, more particularly on 18.01.2010, which read as follows:

"The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, (For short the "Act") came into force on 1.3.1996. In this petition filed Under Article 32, the Petitioner (National Campaign Committee for Central Legislation on Construction Labour) contends that many of the States and Union Territories have not effectively implemented the provisions of the said Act. The object of the Act is to confer various benefits to the construction workers, like fixing hours for normal working days, weekly paid rest day, wages for overtime, basic welfare amenities at site, temporary living accommodation near site, safety and health measures etc. Every state is required to constitute a State Welfare Board to provide assistance in case of

accident, to provide pension, to sanction loans, to provide for group insurance, to provide financial assistance for educating children, medical treatment etc. Though the Welfare Boards were to be constituted with adequate full time staff, many States have not constituted the Welfare Boards. In some states, even though the Boards are constituted, they are not provided with necessary staff or facilities. As a result, welfare measures to benefit the workers are not been taken.

Section 3 of the Building and Other Construction Workers' Welfare Cess Act, 1996 (for short "the cess Act"), provides for collection of cess from every employer at the rates prescribed, on the cost of construction incurred by an employer. We are told that many of the State Governments have collected the cess as contemplated under the Cess Act. But these amounts have not been passed on to the welfare Boards to extend the benefits to the workers as contemplated by the Act. Even the registration of building workers as beneficiaries under the Act is not being taken up. Overall, the implementation of the provisions of the Act is far from satisfactory. There is an urgent need to extend the benefits of the Act to unorganised section of building workers in a meaningful manner.

After hearing the Learned Counsel, we are of the view that the following measures require to be implemented by the States without further delay:

- "1. Welfare Boards have to be constituted by each State with adequate full time staff within three months.
2. Welfare Boards will have to meet at least once in two months or as specified in the rules, to discharge their statutory functions
3. Awareness should be built up, about the registration of building workers and about the benefits available under the Act. There should be effective use of media AIR and Doordarshan, for awareness programmes regarding the Act, the benefits available thereunder and procedures for availing the benefits.
4. Each state government shall appoint Registering Officers and set up centres in each district to receive and register the applications and issue receipts for the applications.
5. Registered trade unions, Legal Service Authorities and NGOs are to be encouraged to assist the workers to submit applications for registration and for seeking benefits.
6. All contracts with Governments shall require registration of workers under the Act and extension of benefits to such workers under the Act.
7. Steps to be taken to collect the cess under the Cess Act continuously.
8. The benefits under the Act have to be extended to the registered workers within a stipulated time frame, preferably within six months.
9. The Member Secretary of the Welfare Boards and the Labour Secretary shall

be responsible for due implementation of the provisions of the Act. The Labour Ministry of each state shall carry out special drives to implement the provisions of the Act.

10. The CAG should audit the entire implementation of the Act and use of the funds.

11. All Boards shall submit a comprehensive reports as required under the Act and Rules to the respective Government."

The above directions shall be brought to the notice of Chief Secretaries of all States by sending copies of this Order to ensure effective implementation. Responses and compliance reports shall be filed by the States within a period of twelve weeks. As this Act is enacted by the Parliament, the Labour Ministry of the Government of India is also requested to explore the possibility of a national conference for implementation of the provisions of the Act."

3. Subsequently, the matter was also considered on 10.09.2010 and some of the directions were reiterated.

4. The orders passed subsequently by this Court indicate that the implementation of both the statutes mentioned above is not being taken up with the deserved seriousness.

5. In fact, it has been noticed in several orders passed by this Court that the Chief Secretaries of many of the States are in contempt of the orders passed by this Court.

6. Under the circumstances, we direct the Secretary in the Ministry of Labour, Government of India to convene a meeting of all the Secretaries in the Ministry of Labour or the corresponding Ministry of all the States and Union Territories on or before 16th January, 2015 and to discuss with them the modalities for effective implementation of both the statutes and arrive at a consensus, particularly, since they involve the living conditions of the construction workers and collection of huge amounts for their benefit.

7. In the event no final conclusions are arrived at in the meeting to be chaired by the Secretary in the Ministry of Labour, Government of India on or before 16th January, 2015, other meetings may be held, but there must be some finality to the issues that have been raised in the writ petitions. Needless to say that the implementation of both the statutes mentioned above is of considerable importance and Mr. P.S. Narsimha, learned Additional Solicitor General agrees that the matter needs to be taken up with promptitude and great seriousness.

8. We adjourn the matter to 13th February, 2015 at 2.00 p.m., by which time we expect that the Secretary in the Ministry of Labour, Government of India, the Secretaries in the Ministry of Labour or corresponding Ministry of various States and Union Territories will arrive at some consensus on the effective implementation of both the statutes mentioned above and present before us a

document indicating the modalities on which they propose to proceed further.

9. It has been mentioned in the order dated 18.01.2010, in direction No. 10, that the Comptroller and Auditor General (CAG) should audit the entire implementation of the Cess Act and use of the funds. No one is present on behalf of CAG even though an application (IA No. 10) was filed on 23.04.2012 seeking eight weeks' time to do the needful. There is nothing on record to suggest that the orders passed by this Court have been fully complied with by the CAG.

10. Mr. P.S. Narsimha, learned Additional Solicitor General submits that he will be in touch with the CAG and ensure that the order dated 18.01.2010 is complied with.

11. We request Mr. Vivek Tankha, learned amicus curiae to be present on the next date of hearing and assist us in the matter. The writ petitions are adjourned to 13th February, 2015 at 2.00 p.m. We expect our orders and directions to be complied with by that date.