

(2011) 03 SC CK 0066

In the Supreme Court Of India

Case No : Contempt Petition No's. 42 and 43 of 2011 in Writ Petition (Civil) No. 318 of 2006 and I.A. No. 6 of 2011 in Writ Petition No. 318 of 2006

National Campaign Committee for Central Legislation on
Construction Labour

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 — Section 12, 16, 18, 22, 4
Building and Other Construction Workers Welfare Cess Act, 1996 — Section 3
Constitution of

Citation : (2012) AIRSCW 1570 : (2011) AIRSCW 2517 : (2011) 4 AWC 3398 : (2011) 3 JT 406 : (2011) 3 KCCR 313 SN : (2011) 3 SCALE 558 : (2011) 4 SCC 647 : (2011) 3 SCR 889 : (2011) 2 Supreme 551

Hon'ble Judges : S. H. Kapadia, C.J.; Swatanter Kumar, J.; K. S. Panicker Radhakrishnan, J

Bench : Full Bench

Advocate : Vivek K. Tankha, ASG, Colin Gonsalves, P.P. Malhotra, A. Mariarputham, AG, Manish Singhvi, Manjit Singh, Jayshree Anand, AAG, Tariq Abeed, Jyoti Mendiratta, Riku Sharma, Navnit Kaur, for Corporate Law Group, Arun K. Sinha, Sunita Sharma, Manpreet Singh Doabia, S.S. Rawat, S.W.A. Qadri, Saima Bakshi, Gargi Khanna, Shailendra Saini, A. Deb Kumar, D.S. Mahra, Anil Katiyar, S.N. Terdal, Nandini Gore, Gopal Singh, Rituraj Biswas, Manish Kumar, B.S. Banthia, Naveen Sharma, Jatinder Kumar Bhatia, T.V. George, Radha Shyam Jena, Ranjan Mukherjee, D. Bharathi Reddy, Sanjay V. Kharde, Asha Gopalan Nair, Pragyan P. Sharma, P.V. Yogeswaran, Hemantika Wahi, Nupur Kanungo, Anil Shrivastav, Rituraj Biswas, Khwairakpam Nobin Singh, Sapam Biswajit Meitei, Aruna Mathur, Yusuf Khan, Avneesh Arputham, Megha Gour, for Arputham, Aruna and Co., Naresh K. Sharma, Radha Rangaswamy, Anil K. Jha, Chhaya Kumari, Anis Suhrawardy, Tara Chandra Sharma, Neelam Sharma, Kamini Jaiswal, T. Harish Kumar, Devanshu Kumar Devesh, Milind Kumar, Balaji Srinivasan, Sanjay R. Hegde, A. Subhashini, Atul Jha, D.K. Sinha, J.K. Bhatia, Savitri Pandey, Shirish Kumar Misra, V.G. Pragasam, S.J. Aristotle, Prabu Rama Subramanian, Edward Belho, K. Enatoli Sema, Sunil Fernandes, Renu Gupta, Sidhan Goel, Vivekta Singh, Kamal Mohan Gupta, G.N. Reddy, V. Pattabhi Ram Vadrevu, R. Satish, S. Geetha, Ajay Pal, D. Mahesh Babu and Ramesh Allanki, for the Appellant;

Judgement

1. By this common order, we shall deal with IA No. 6 in WP No. 318 of 2006 and Contempt Petition Nos. 41 and 42 of 2011.

2. In this petition under Article 32 of the Constitution of India the Petitioner inter alia prayed for issuance of a writ of mandamus or any other appropriate writ or direction directing the Respondents to forthwith implement the Building and Other Construction Workers (Regulations of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as 'the Act') and The Building and Other Construction Workers' Welfare Cess Act, 1996 (hereinafter referred to as 'the Cess Act') in their entirety and, in particular, to establish the Welfare Boards, collect cess, complete the registration and grant benefits to the beneficiaries with immediate effect as per the provisions of the respective Acts. Further, it is also prayed that the rules and regulations relating to the health, safety and welfare of the workers, particularly the workers in relation to building and construction activity, should be framed and safety equipments including safety harness and safety nets should be provided to them at the place of work. The Petitioner has impleaded the Union of India and all the 36 States/Union Territories as party-Respondents to the present petition.

3. This Court, vide its order dated 28th July, 2006 issued notice to all the Respondents. Some of the States and the Union of India had filed their replies and after hearing the learned Counsel appearing for the parties, the Court passed various directions as recorded in different orders of the Court from time to time and the Respondents were required to comply with these directions. Vide order dated 12th May, 2008, a direction was issued by this Court to the Secretary of the Labour Department of each State requiring them to submit a detailed status report within eight weeks as to what steps have been taken by them to implement the provisions of the aforesaid two Acts. Some of the States had submitted their reports and it was evident from the content of those reports/affidavits that the provisions of both the Acts have not been substantially complied with. This resulted in passing of detailed order by this Court dated 13th January, 2009. In this order the Court noticed that u/s 6 of the Act, the appropriate Government has to appoint Registration Officers and u/s 7 of the Act every employer was to register their establishment with the said Officer. Reference was also made to the obligation on the part of the State to constitute the State Welfare Boards under the provisions of Section 18 the Act. After noticing that the Petitioner had filed a chart indicating the steps taken by various Governments, it was evident that many of the Governments had not even taken steps as per provisions of the Act. The Court, thus, directed as under:

We direct the Chief Secretary of the respective States and Secretary (Labour) of each States and the Union Territories to take timely steps as per the provisions

of the Act, if not already done. We would like to have the appraisal report in the first week of May as to what steps have been taken in this regard. If any of the State Government has not done anything pursuant to the Act, urgent steps are to be taken so that the benefits of this legislation shall not go waste. Otherwise the unorganized workers of the construction sector will be denied the benefit of the Act.

4. The Court thereafter passed various orders and directions requiring respective States to implement the provisions of the Act. Vide order dated 18th January, 2010, the Court noticed the object of the Act as well as made reference to various provisions of the Act and issued 11 directions. These directions relate to the constitution of the State Welfare Boards by the respective States, holding of meetings by the said Boards at regular intervals to discharge their statutory duties, creating awareness about the benefits of the Act amongst the beneficiaries through media, appointment of Registering Officers and setting up centres in each district for that purpose. This Court further directed that all contracts with Government shall require registration of workers under the Act to give benefits of the Act to the registered persons, the CAG to conduct audit of the entire implementation of the Act and use of the allocated funds and finally the Boards to prepare detailed reports in regard to the implementation.

5. Despite passing of these clear orders by the Court, the provisions of the Act have not been implemented in their entirety. Further, noticing the persisting default, the Court passed an order dated 10th September, 2010 referring to various provisions of the Act as well as the fact that the Central Government has not even issued any directions u/s 60 of the Act, despite the Court's order dated 18th January, 2010. Noticing the incidences in that regard the Court directed the Central Government to issue appropriate directions to the States as well as furnish the status report of Central Advisory Committee as to what steps had been taken by them with regard to implementation of the provisions of the respective Acts. On subsequent dates, the Petitioner submitted that the directions of the Court as well as the provisions of the Act were not being implemented by various States. The Court, thus, granted liberty to the Petitioner, vide its order dated 22nd November, 2010, to take out contempt motion State-wise.

6. The Petitioner filed IA No. 6 of 2011 on 5th January, 2011 primarily praying for filing of additional documents. In the documents annexed to this application there were charts giving details of the States which had not constituted the Welfare Boards, information about constitution of the Cess Collecting Authority, number of workers registered with each State and the Schemes framed and implemented. From the charts, it was obvious that most of the States had defaulted in complying with the provisions of the Act and some of them, in fact, had not even constituted the State Welfare Boards despite the writ petition being pending in this Court since the year 2006 and the Court having issued various directions in that regard. The Petitioner then filed Contempt Petition Nos. 42 of

2011 and 43 of 2011.

7. In Contempt Petition No. 42 of 2011, the Petitioner has averred that Respondent Nos. 2 to 10 have failed to take even the preliminary steps to constitute the Welfare Boards u/s 18 of the Act and that the Central Government has neither issued any directions nor taken any steps in that behalf. The defaulters, in this regard, are stated to be the Union Territories of Lakshadweep, Government of the State of Meghalaya, Government of the State of Nagaland and the Union of India. The Labour Secretary of the respective States and the Director General of Inspection of the Government of India have been impleaded as Respondents in this petition.

8. Contempt Petition No. 43 of 2011 has been filed primarily on the ground that the Respondents in that petition had willfully disobeyed the orders of this Court, particularly the order dated 18th January, 2010 and they have not implemented the provisions of the Act. The Registering Officers have not been appointed and the workers are not being registered, resulting in non-implementation of the schemes for grant of benefits and the facilities to such workers. Defaulters in this regard are the States of Maharashtra, Goa, Himachal Pradesh, Rajasthan, Uttarakhand, Uttar Pradesh, Manipur and the Union Territories of Daman & Diu, Dadra & Nagar Haveli, Chandigarh, Andaman & Nicobar Island. Their Labour Secretaries, Chief Inspector of Inspection and Administrators have been impleaded as Respondents in this petition along with the Director General of Inspection, Government of India.

9. Having referred to the facts on record and the orders of this Court passed from time to time, we may now refer to some of the provisions of both the statutes which impose a statutory obligation upon the Respondents to carry out their functions and duties in accordance with those provisions and the directions issued by this Court. Every State is required to constitute a State Welfare Board in accordance with the provisions of Section 18 of the Act which Board, upon its constitution, is required to discharge its functions u/s 22 of the Act. Some of the defined functions are to provide immediate assistance to the beneficiaries, sanction loans, give financial assistance for education of children and even make payment of maternity benefits to the female beneficiaries. The appropriate Government is further required to appoint Registering officers in terms of Section 6 of the Act and the establishments are required to be registered with that officer as per the provisions of Section 7. The beneficiaries/workers are to be registered with the officer authorized by the Board in that behalf in accordance with the provisions of Section 12 of the Act. The beneficiaries are required to make their respective contributions in terms of Section 16 of the Act. The consequences of default both of the beneficiary and the establishment are provided under the statute itself and accordingly appropriate steps are to be taken by the Registering Authority and the appropriate Government, as the case may be.

10. There shall be levy and collection of cess at the rate of and in the manner specified u/s 3 of the Cess Act and every employer has to furnish returns in

accordance with Section 4 of that Act. After its assessment in accordance with law, the cess is to be paid and collected. The default in payment thereof bears the penal consequences as well as interest has to be paid on delayed payment of cess. Offences committed by the company and other defaulters are punishable under the provisions of the Cess Act.

11. From the various status reports and the affidavits filed on behalf of the Respondents, it is clear that the appropriate Governments have, admittedly, not complied with their statutory duties and functions. All the application/petitions, subject matter of the present order, are supported by affidavit filed by the co-ordinator of the Petitioner organization. Number of States, particularly Union Territory of Lakshadweep and States of Meghalaya and Nagaland have not even constituted the Welfare Boards in terms of Section 18 of the Act. The State of Uttar Pradesh has completed the formality of constituting a Board but it is a one man Board instead of having a minimum of three or more members as required u/s 18 of the Act. The charts submitted by the Petitioner further show that no worker has been registered by the States of Assam, Mizoram, Sikkim and Jammu and Kashmir. The appropriate Governments and Registering Authorities, wherever constituted, particularly the Respondent State Governments in these application/petitions have failed to either collect the requisite cess amount or have collected the same inadequately and in any case have failed to distribute the benefits and facilities to the beneficiaries. In this manner and for a considerable period, the Respondents in these application/petitions have, on the one hand disobeyed the orders of this Court particularly orders dated 18.01.2010, 13.08.2010 and 10.09.2010, while on the other they have failed to perform their statutory obligations under the provisions of the Act despite directions of this Court. Default on the part of these Respondents, thus, has persisted over a long period and the Court is left with no alternative except to pass appropriate directions/orders in accordance with law on these two contempt petitions. In the Circumstances afore-referred, we hereby issue notice to show cause why proceedings under the Contempt of Courts Act, 1971 be not initiated against all the Respondents in Contempt Petition Nos. 42 and 43 of 2011. Further we are also compelled to direct the following officers of the respective/appropriate Governments to be present in the Court on the next date of hearing:

1. The Labour Secretary, Ministry of Labour, Sharam Shakti Bhavan, Rafi Marg, New Delhi.
2. The Labour Secretary Lakshadweep, U.T. of Lakshadweep, Karvarthi - 682 555.
3. The Labour Secretary, Meghalaya, Government of Meghalaya, Department of Labour. Rilang Building, Shillong - 793 001.
4. The Labour Secretary, Nagaland, Government of Nagaland, Department of Labour. Civil Secretariat, Kohima - 797 001.
5. Director General of Inspection, Government of India, Mansingh Road, New

Delhi - 110 011.

12. With the above orders, we direct these application/petitions to be listed after four weeks. Notice to all the Respondents returnable on the same date.