

Delhi High Court

Delhi High Court

Peoples Union For Democratic ... vs Union Of India & Ors on 29 September, 2012

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 19th September, 2012

+ LPA 524/2010

Peoples Union for Democratic Rights & Ors. Appellants Through: Mr. Colin Gonsalves, Sr. Adv. with Mr. Tariq Addeb, Adv.

versus

Union of India & Ors Respondents Through: Mr. Ruchir Mishra, Adv. for UOI Mr. V.K. Tandon, Adv. for GNCTD

Mr. Ajay Verma, Adv. for DDA

Ms. Sujata Kashyap, Adv. for Sports

Authority of India

Mr. Anil Amrit, Adv. for NDMC

Mr. Sarojanand Jha, Adv. for DIAL

Mr. Kumar Rajesh Singh, Adv. for

Northern Railways

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI (Acting Chief Justice):

1. The plight of the construction workers was exposed to the hilt as it became so obvious and apparent, during the construction work for the preparation of Commonwealth Games which were scheduled for 2010 (hereinafter referred to as CWG, 2010). Seeing the deplorable conditions of the labourers at many of the CWG, 2010 sites, living in

LPA 524/2012 Page 1 of 46 inhuman, undignified and unsafe conditions, Peoples Union for Democratic Rights (PUDR) and Nirmaan Mazdoor Panchayat Sangam (NMPS) came forward and filed the present petition under Article 226 of the Constitution of India for a writ of mandamus and other directions to ameliorate the working conditions of these workers with endeavour to get them their rights guaranteed under the Constitution as well as in the Building and Other Construction Workers (Regulation of Employment and Condition of Services) Act, 1996 (hereinafter referred to as 'the Act') and Rules framed thereunder relating to health and safety of these workers. The respondents impleaded in this petition are Union of India (respondent No.1), Government of NCT of Delhi (respondent No.2), Sports Authority of India (respondent

No.3), Delhi Development Authority (respondent No.4), Director General of Inspection in the Ministry of Labour (respondent No.5), Central Public Works Department (respondent No.6), New Delhi Municipal Council (respondent No.7), Municipal Corporation of Delhi (respondent No.8), Delhi Building and Other Construction Workers Welfare Board (respondent No.9), Delhi International Airport Ltd. (respondent No.10), Delhi Metro Rail Corporation (respondent No.11) and Chief Inspector of Inspections of Building and Construction of Delhi appointed under the Act (respondent No.12).

2. It is a matter of common knowledge that for the aforesaid CWG- 2010, which were to be held in October, 2010, over Rs.70000 Crores were provided only for improving the city infrastructure and sports facilities. Naturally, this necessitated construction projects which

LPA 524/2012 Page 2 of 46 were assigned to respondents No.2, 3, 4, 11 and 12. They, in turn, give these projects to agencies like respondent No.6 and 7. For execution of the various construction projects of massive sizes, respondents No.6 and 7 gave the construction work to various contractors/real estate developers and construction companies. When the work was at peak over mid May, 2008 to mid May, 2009, more than one lakh workers were employed in all these projects. Even at the time of filing of the petition in January, 2010, 15000 contract/daily wage workers were working in these projects. However, it was found that these workers were not given their legitimate dues under the aforesaid Act as well as other labour laws. The petitioners in this petition alleged that even minimum wages were not paid to these workers. It is pointed out in the petition that the petitioners in the case of People's Union for Democratic Rights & Ors. v. Union of India & Ors., (1982) 3 SCC 235, on receiving reports of violation of workers' rights at the Commonwealth Games construction sites, investigated the work conditions at one of the construction sites, the Commonwealth Games village, near Akshardham temple and published a report in April, 2009. It was found that the provisions of the Act of 1996, Minimum Wages Act, 1948, Interstate Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979, Contract Workers (Prohibition and Regulation) Act, 1970 are widely violated. The specific findings of the investigation were:

(i) That one worker had died in an accident in December, 2008 and the workers claim that there had been several deaths which

LPA 524/2012 Page 3 of 46 are not recorded.

(ii) That minimum wages were not paid to most of the workers. (iii) That double wages for overtime were not paid. (iv) That the wages were irregularly paid with considerable delays and with contractor's often withholding part of the wages. (v) That safety equipments were often not made available to workers.

(vi) That identity card was not given to the workers as required under law.

(vii) That wage slips were not given to the workers in accordance with law. As a result, the workers had no proofs whatsoever that they were employed.

(viii) That the provisions of the Act were not being implemented and that the workers were not being registered with the Welfare Board.

(ix) That many of the workers were living in rooms, often without doors, without protection during winter, without electricity and without toilets.

(x) That many of the camps where the workers were staying were not hygienically maintained and full of mosquitoes. (xi) That in the camps water was stored in pvc tanks which were not cleaned.

(xii) That the workers who came from Bihar, Jharkhand, Orissa, Madhya Pradesh, Uttar Pradesh, West Bengal and Punjab were not given the benefits of the Interstate Migrant Workers Act and were totally at the mercy

of the contractors.

LPA 524/2012 Page 4 of 46 (xiii) That workers are never given a weekly off with wages as required by the Minimum Wages Act and are required to work on all 7 days.

(xiv) That the women workers are paid less than their male counterparts.

(xv) That very primitive medical facility is available for the workers.

(xvi) That no representative of the Principal employer is present at the time of disbursement of wages as is required under the law.

Aforesaid violations are merely a glimpse of what was happening at site though the petitioners have pointed out various other violations which were noted.

3. The petitioners state that in accordance with the Act, the Rules were notified in 2002 and the Construction Workers Welfare Board set up in Delhi. In accordance with the Act, Cess collection started in 2005 and picked up pace in 2007. From the cess collections, the Welfare Fund stands at Rs.300 Crores today. The Welfare Board in Delhi is, however, dysfunctional. It has met, on an average, twice a year as opposed to the requirement of meeting once in two months. It has no full time secretary to ensure functioning of any kind. Most of the workers' representatives on the Welfare Board have no track record of commitment to labour issues. It has no staff to scale up new registrations and renew old ones. The worker registration process launched in late 2005 has covered over 20,000 workers from among the estimated 6-8 lakh workers in the city (according to construction

LPA 524/2012 Page 5 of 46 workers' trade unions, NMPS and SEWA Delhi). Live registrations amount to approximately 10% of registered workers so far because of cumbersome procedures and the absence of publicity about benefits. To date, only Rs.15 Lakhs, or thereabouts, have been spent on providing concrete benefits to the workers.

4. Thus, according to the petitioners, even when substantial amounts are available, they are not meaningfully spent for these workers on whose behest these funds are collected under the Act. In these circumstances, in the writ petition, following prayers have been made:

"(a) Pass a writ of mandamus or any other writ or direction setting up an Independent Commission of this Court to visit the various sites where construction work is going on in connection with the Commonwealth Games, interview the workers and make a report with respect to the grievances set out in this petition.

(b) Pass an order permitting the above Commission to co-opt such NGOs, experts and others as they deem fit.

(c) Pass an order directing the respondents to ensure compliance of the provisions of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and the rules made thereunder relating to health and safety of construction workers are duly complied with.

(d) Pass an order directing the respondents to ensure that all construction workers employed in connection with the Commonwealth Games 2010 are registered with the Welfare Board constituted

LPA 524/2012 Page 6 of 46 under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, within two weeks from today, are provided with appropriate documentation as required under the Act and are given due benefits with retrospective effect from the dates of starting work.

(e) Pass an order directing the respondents to ensure that all the workmen employed in connection with the Commonwealth Games are given identity cards, insurance cover under Jan Shree Bima Yojana/Rashtriya Swasthya Bima Yojana, Wage slips, at least the minimum wage, double wages for overtime, a paid weekly off, proper medical facilities, workmen's compensation in all cases of accidents, clean drinking water and toilet facilities.

(f) Pass an order directing the respondents to ensure that the quarters where the workers are staying are properly designed and maintained and have secure doors, electricity supply, adequate number of toilets which are cleaned daily, and hygienic surroundings.

(g) Pass such other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the case."

5. Noticing the aforesaid plight, this Court sprung into action by issuing notice on January 27, 2010. Thereafter various interim directions were given from time to time in order to provide relief to these workers. It would be in the fitness of things to state in brief such orders passed as these orders would reflect the nature of actions already taken in this petition. Summary of the important directions which are reflected in these orders is given below:

LPA 524/2012 Page 7 of 46 Factual

Date of Direction passed by the Background/Grievance/Content

Order Hon'ble Court

26/5/2010 This petition filed in public The Court after discussing the interest draws attention of the factual matrix and the complexity court to the plight of construction of the problem had issued the workers and seeks directions for following directions : compliance of the provisions of

The Building and Other A. All the authorities who are Construction Workers (Regulation involved and are covered by of Employment and Conditions of the Committee constituted by Service) Act, 1996 and the Rules this Court shall make all framed thereunder. It is inter alia possible efforts to register the pleaded that minimum wages are workers so that no worker not being paid to most of the remains unidentified and workers; the wages are paid further is in a position to avail irregularly after considerable the statutory benefits and delays; safety equipment and future litigation is avoided. identity cards and wage slips are

not being made available to the B. The passbooks should be workers and no provisions for opened in respect of all the residence of the workers and their workers. All benefits that are family members, as required to be accruable on the basis of made are being made. It is further issuance of passbooks shall be pleaded that though the welfare monitored by the Labour fund set up in accordance with The Department. Be it noted, we Building and Other Construction are not finding any fault with Workers? Welfare Cess Act, 1996 the functioning of the stands at Rs.300 crores but the department but we are only Welfare Board in Delhi is stating that one must remind dysfunctional and has not been oneself of one's duty, more meeting regularly and has not so, when dealing with the shown any track record of people who are working in an commitment to labour issues; only atmosphere to have their food, Rs.15 lacs or thereabouts out of shelter and clothing and live a the sum aforementioned of Rs.300 life with acceptable dignity. crores have been spent for the

benefit of the workers. C. The education scheme, which has been introduced, has to be

appropriately implemented so

that a child of a worker gets

necessary education. It should be borne in mind by all concerned that "education is LPA 524/2012 Page 8 of 46 the spine of a civilized society".

D. As far as the medical benefits, maternity benefits and death benefits are concerned, the same be provided as per the provisions in the Acts and the schemes framed thereunder.

E. The petitioner is at liberty to have the assistance of the senior persons from the field of academics and other personalities whose names find mention at page 32 of the petition to assist the workmen to fill up the forms to have the benefit.

F. All the respondents shall file their requisite response/steps taken within four weeks keeping in view the aforesaid directions.

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7/7/2010 1. The learned standing counsel 1. It was directed that the for the State that more than competent authority of 31,000 workmen have been GNCTD to verify the registered. However, learned registrations that have been counsel for the State could not made in the meantime and clarify whether all the which are under process and employees who have been what is the exact number of registered are employed in workers as per Common Common Wealth Games or Wealth Games is concerned. anywhere else. It is worth

noting the figures which have It was further directed that been stated in the affidavit do such exercise shall be done not really refer to the site-wise so that it would have employees who are being some kind of scientific employed for the purpose of methodology and the Common Wealth Games. grievance that has been pyramided by the learned

2. It was urged that there are counsel for the petitioner

LPA 524/2012 Page 9 of 46 more children whose would possibly be assuaged. applications are being

submitted to obtain scholarship 2. The Court without expressing and assistance for the same any opinion on the said have not yet been attended to. contention directed that the It was urged by learned petitioner shall give the list of counsel for the petitioner that the applications that have more than 10,000 applications been submitted before the are pending. authority and the competent authority of NCT of Delhi

3. With regard to grant of shall look into the same medical benefits, maternity regard being had to the fact benefits and death benefits that the education is the spine were concerned, the Court was of a nation and no child upto apprised that 15 applications the age of fourteen as per the were pending for mandate of the Constitution determination by the Welfare should be denied education. Board. A grievance was made

that though the said 3. The Court directed that the applications were filed long Board shall decide the said back yet the authority applications and if the benefits concerned paid a deaf ear to are extendable, the same the same. should be extended within a period of 15 days. To the

4. The learned counsel for the grievance pending petitioner submitted that there applications the Court was a direction on the earlier directed that â when occasion to hold camps to applications of this nature are sensitize the workers about filed, needless to emphasize, their rights under the the same have to be attended enactments and the welfare to in quite promptitude, for schemes but no effective the same come from the needy camps have been held. and marginalised section of the people. We hope and trust

that the competent authority

shall keep the same in view

and not show any kind of

apathy to such applications. It

should not be treated as a duty

in a routine manner but a duty

which has its sacrosanctity.

4. Awareness Camps: The Court

declining to enter into the said

controversy, directed that the

LPA 524/2012 Page 10 of 46 GNCTD shall constitute a

committee of three officers for

a camp and the camps shall be

held site-wise.

Attendance at Camps: Court

emphasized that the

representative of the PUDR

(petitioner) shall be invited to

attend the camps. Mr. Tariq

Adeeb (Counsel for

Petitioner) shall also be

invited to attend the camps

and the attendance therein

would mean effective

participation.

The Court further directed that

before holding the camps,

adequate pamphlets shall be

circulated by the State

Government among the

workers so that they would be

in a position to understand

their rights under the Act and

the schemes.

The Delhi Legal Services

Authority was requested to
nominate three lawyers to
attend the camps and also
sensitize the workers about
their rights. The schedule of
dates for holding camps
should be circulated early so
that the whole thing can be
facilitated.

As far as the living conditions
of the workmen was
concerned, who were engaged
for the purpose of Common
Wealth Games, the Court
directed that they shall be
provided adequate facilities so

LPA 524/2012 Page 11 of 46 that they do not suffer any
catastrophe and cataclysm due
to the cruel rain.

4/08/2010 1. The Court was apprised by Ms. 1. The Court on the statement of Moushumi Basu, Secretary of learned counsel for UOI the petitioner organization that directed that the Competent workers face difficulties at the Authority of UOI will issue time of registration because instructions to the contractors there are no photographers and as well as to other Principal Notaries. As far as employers within three days photographers are concerned, to arrange the photographers the Court was informed that it to be provided by the was the duty of the contractors concerned contractors at the to arrange the photographers. time of registration and if the contractors fail to arrange the

2. The Court was informed that photographers, the Principal despite earlier directions the employers including CPWD Contractors have not supplied shall deduct the amount from safety equipments to the their bills for such expenses. workers.

2. No contractor shall take

recourse to any kind of
deviancy for they must realise
that it is their statutory
obligation and if they violate
the same, the tentacles of law
would not excuse them. As far
as notaries are concerned, the
notary shall be present as
requested by the Member
Secretary, DLSA. As far as
stamp duty and other expenses
are concerned, they shall be
borne by the workmen.

The UOI was directed to
instruct all the agencies who
have awarded the work to deal
with contractors strictly so
that there should not be any
kind of deviation in their
dealing with the workers who
sweat their blood in building

LPA 524/2012 Page 12 of 46 structures which are
eventually used for the nation.

1/9/2010 1. It was submitted that no 1. It was directed that Labour photographers were available
Commissioner (Central) shall to facilitate the registration depute an authority to go to the even after
directions of thee districts and coordinate with Court. the Member Secretary, DLSA on every alternate day so
that

2. The Court was apprised by Ms. the problem that has cropped Basu that a girl child aged up which affects the workers about two years has breath her should not subsist for no last while she was run over by unfathomable reasons. a truck in the Jawahar Lal

Nehru Stadium. 2. The Court noted that death is not only tragic but speaks in volumes about the negligence.

3. The Member Secretary of One cannot expect a small DLSA submitted a Report child of two years to be aware containing certain suggestions about the rules because for her where the first two related to the whole world is a play the mode of making payment ground. But unfortunately the to the Workers. They were as Labour Commissioner or the under: Deputy Labour Commissioner for that matter and the

i. Payments to construction contractor who is incharge of workers must be in the same the work cannot really realize manner as has been the same. None of the prescribed under the authorities should conceive the NREGA, that is by ECS idea that life can be bartered transfer into the account of for money. Life has its own the worker from which he or glory and significance. The cry she alone can draw. This of a child rings in the Universe would ensure payment of and the same should ring and Minimum Wages by the disturb the ears of the contractor to the workers. authority. It is unfortunate that despite number of orders

ii. The source of payment can passed by this Court, they be worked out. But it is remain undisturbed and behave suggested that since labour as if they are epitome of costs are part of construction obstinacy. costs, the Government, or the

person or organization on In view of the aforesaid the

LPA 524/2012 Page 13 of 46 whose demand the Court directed that the Labour construction activity has been Commissioner to go to the site undertaken should transfer and make an enquiry. It also adequate funds into the directed the Deputy Workerâs Wages Fund to Commissioner of Police of that meet the drawls by the area to go to the site and workers. There would be no submit a report and also scope for the workers apprise what steps have been claiming to be on the rolls of taken in law. the Government just as in the

NREGA. The Court also added that Labour Commissioner or the

4. It was submitted by Ms. Basu Deputy Labour Commissioner that a worker who is working as well as the Regional Labour at a site in a big stadium cannot Commissioner (Central) and be treated as an unperson and such other authorities are not for that matter no person supposed to sit in their air should be treated as an conditioned offices and unperson. The submission of monitor the sites. None in the Ms. Basu is that when there is world ever in history had lot of water logging as a monitored a site by sitting in a consequence of which there is room. Even the greatest spread of malaria and dengue protagonist in the history have in an epidemic manner. to move to the site to watch and judge. We expect the

authorities should learn from

the history as well as the

practical wisdom.

3. The Court quoting the first two

suggestions directed that the

bank shall open the accounts

on zero balance as we have

been told that the same is

permissible for the workman.

In view of the aforesaid it was

directed that the aforesaid

suggestion as mentioned in

para-1 shall be worked out

within a week hence so that the

workers shall know what is the

minimum wages and get the

same and no contractor take

recourse to any subterfuge to

avoid the law.

LPA 524/2012 Page 14 of 46 The Court emphasized on the

aspect that it should be

highlighted in all the awareness

campaigns with a note of caution to

the contractors that the

contractors shall not deviate

from the law or to play with

life and finances of the workers

by engaging series of sub-

contractors. They must

remember one day the law

shall book them and they

cannot escape and when they
come under the clutches of
law, every one of them shall
realise the catastrophe is on
and it may metamorphoses
either to tsunami or a volcanic
disaster.

4. The Court agreed to that the
MCD shall send the Health
Officers and Health Inspectors
to the site within three days
and report with regard to what
steps have been taken shall be
filed by them within a week. It
was emphasized that a report,
should not mean a paper tiger
but the work done which has a
ripened effect.

22/9/2010 1. The Court took up the fatal 1. The Court directed that ex- accidents that happened with gratia payment amounting to workmen of DMRC and made Rs. 2 lacs be paid within a a record of their status as period of two weeks from below : today by way of bank draft to Accidents occurred = 109 the legal heirs of the deceased Compensation paid = 65 + 9 workmen on proper Unsettled matters = 44 identification. The said amount Heirs not eligible = 18 shall not include any sum that Pending Applications = 17 has already been paid. The said amount shall be subject to the

2. The Court was apprised that on final adjudication by the

LPA 524/2012 Page 15 of 46 21/9/2010 notice that there was Labour Welfare Fund an accident yesterday as a Committee and the Committee consequence of which a foot while adjudicating the quantum overbridge near Jawahar Lal shall keep in view the amount Nehru Stadium collapsed and of ex-gratia paid to the legal in the said accident 27 heirs of the deceased workmen construction workers have who come within the last 65 been injured out of which, 4 cases. We have said so as the are critical. doctrine of parity has to be given paramountcy while

3. The Counsel for the petitioner granting ex-gratia payment. that though this Court had

directed with regard to 2. The Court directed as an improvement of living interim measure subject to final conditions of the workmen, yet finding in the appropriate nothing has been done. A proceedings or in this writ report was aslo filed that the petition, that the State living condition has not been Government shall pay a sum of improved. 3,00,000/- to the critically injured persons immediately or

their legal heirs, if they are not

in a position to receive the

same, by way of bank drafts.

Needless to say, the same shall

be adjusted at the time of final

adjudication.

Quite apart from the above, the

State Government shall see that

all the injured persons are

given adequate medical

treatment.

As far as persons who have

suffered minor injures like

fractures, they shall be given `

1,00,000/- by way of bank

draft within a week hence. The

State Government shall cause

an inquiry and fix the

responsibility and thereafter

realise the aforesaid amount

either from the contractor, the

officers or from any other

person, who are responsible in

LPA 524/2012 Page 16 of 46 overseeing the work.

3. The Court was apprised that it is the duty of the Principal employer to ensure that the living conditions are adequate so that the workmen live in a living healthy condition. It was submitted by the learned counsel for Union of India that whenever officers have gone to sites, they have issued show cause and launched prosecution.

In view of the aforesaid, The Court directed the Principal employers, namely, the respondents, to ensure that the living conditions are improved and the proper safety measures are provided as they cannot treat the workmen as unpersons.

The Court further stated that to have a complete picture, we direct that the Chairman of NDMC, Commissioner of

MCD, Vice-Chairman of
DDA, Director General of
Sports Authority of India,
Director General of CPWD,
Managing Director of Delhi
International Airport Limited
and Executive Director of
DMRC shall be personally
liable if any deviancy is shown.

The said authorities were
further directed to depute
responsible officers to remain
personally present on the next
date of hearing (6/10/2010)
before this Court so that this
Court can get appropriate
assistance.

LPA 524/2012 Page 17 of 46 We may further note that the
contractors who have been
given the work, shall work
with responsibility by
following all the norms of law,
failing which this Court may
think of taking appropriate
action against them as we are
inclined to think, as advised at

present, they are not cooperative with the authorities. If a contractor thinks that he is the law unto himself, he is under an illusion.

The Principal employers shall issue a notice incorporating this aspect to all the contractors.

10/10/2010 In the course of proceedings The Court had to the aforesaid several issues were raised factual matrix, we issue the pertaining to collection and following directions:- deposit of CESS, non-payment of

compensation in the cases of a) All the principal employers certain accidents, inadequate shall verify whether any machinery to verify certain aspects contractor has been left out etc. and submit the list to the Union of India as well as to

the Govt. of NCT of Delhi.

b) The Union of India shall issue

notice to the principal

employers, namely, DIAL,

MCD, DMRC, DDA, CPWD,

NDMC and PWD who will

ensure that the contractors,

who have not supplied the

names of the workers, shall

supply the same within the

period specified by the Union

of India.

c) The Union of India shall issue

such letters/notices within 10

days from today requiring the

LPA 524/2012 Page 18 of 46 principal employers whose

contractors have not supplied

the list so that appropriate

steps can be taken.

d) The list that has been obtained

by the Union of India shall be

supplied to Mr. Gonsalves,

learned senior counsel

appearing for the petitioner

and Mr. P.N. Dwivedi,

Advocate who represent

various NGOs and Unions so

that they would be in a

position to assist the

competent authority and also

to Mr. Subhas Bhatnagar and

Mr. Amjad Hassan who have

been fighting the cause of

workmen.

e) The principal employers to

find out from the contractors

the original addresses of the

workmen who have left Delhi

and it will be their obligation

to supply the same to the

Labour Commissioner of the
Govt. of NCT of Delhi within
six weeks. If any contractor
shows any kind of indifferent
attitude, the principal
employers are at liberty to
take such action against them
as advised in law.

f) The contractors shall file
necessary affidavits with the
principal employers who in
turn shall supply it to the
Union of India as well as to
the Govt. of NCT of Delhi
stating therein that workmen
are eligible for registration
and also indicating whether
they have already been

LPA 524/2012 Page 19 of 46 registered or not.

g) The affidavits filed by the
contractors would not be final
and eligibility facet qua a
workman shall be inquired
into by the Labour
Commissioner by constituting
an appropriate body.

h) The State Government shall

revamp and revitalize the

office of the Labour

Commissioner as the said

authority is required to carry

out such an exercise.

i) The NDMC shall pay a sum

of Rs.3 lakhs to the legal

representatives of the

workman Mukesh Yadav,

who had died in the accident

while working for the NDMC

towards compensation on

ad hoc basis, subject to final

orders by this Court.

j) The Delhi Building and Other

Construction Workers

Welfare Board/Respondent

No.9 shall file requisite

affidavits stating, inter alia,

how many registered workers

have been provided the health

benefits as there is a scheme

for providing health benefits

to the registered workers.

k) The cess collected by the

principal employers shall be

deposited with the Delhi

Building and Other

Construction Workers

Welfare Board/Respondent

No.9 within six weeks, if not

LPA 524/2012 Page 20 of 46 already deposited.

l) The competent authority of

the Delhi Building and Other

Construction Workers

Welfare Board/Respondent

No.9 shall file an affidavit

stating about the amount of

cess received from the

principal employers and the

amount that is due to be

received.

m)The affidavit filed by the State

Government has only stated

that 45 deaths had occurred

but no details have been given

in respect thereof. The State

Government shall file a

further affidavit indicating the

names of the workers and the

place in respect of aforesaid

45 deaths and a copy thereof

shall be supplied to Mr. Tariq

Adeeb, learned counsel

assisting Mr. Gonsalves,

learned senior counsel.

n) Mr. Subhas Bhatnagar and

Mr. Amjad Hassan shall

extend their fullest

cooperation at the time of

registration when intimated by

the competent authority

nominated by the Labour

Commissioner.

19/1/2011 It was submitted by the Counsel The Court directed the Board to for petitioner that the figures devise a rational, logical and representing workmen availing the acceptable scheme to reach out to benefits are far from being the workers and an awareness satisfactory and pointed out that drive should be launched. For the 13,000 applications are still purpose of explaining the benefits, pending. a holistic scheme shall be filed before this court within two

LPA 524/2012 Page 21 of 46 weeks.

23/2/2011 A a status report has been filed by The Court with regard being had the Joint Commissioner, Labour, to the deliberations that took place Government of National Capital in course of hearing and keeping in view the broader canvass,

Territory of Delhi. On a perusal of

issued the following directions:

the said report, the following

aspects come to the surface. a. All the principal employers who had engaged contractors,

i. Between last date of hearing viz., DIAL, DMRC, MCD, and today approximately DDA, PWD, CPWD, All India 9000 workers have been Tennis Association, DU, registered and 12765 children NBCC, ONGC, AIR/CCW, NDMC and RITES shall

have been extended the

provide the soft copies of the

benefit as provided under the list of contractors and the scheme to pursue their employees to the Welfare education. Board within six weeks from today.

ii. the learned Standing Counsel

for the GNCTD and the b. It shall be the duty of all the Board has submitted that principal employers mentioned above to issue notice to the

efforts are being made that

contractors to furnish the

all the registered workers to names and the addresses in extend the benefit under the details and the workers Act and the Rules framed engaged by them and their sub- thereunder at the appropriate contractors as it is the time. responsibility of the principal employers and the contractors.

c. While issuing notice to the

contractors, it shall be stated

that as per the order passed by

this Court, the employer is

under obligations to issue the

notices and the non-

compliance of the same would

make the contractor liable to

face adverse consequences as

provided in law.

d. The Director General, Labour

Welfare of Union of India shall

convene a meeting of all the

LPA 524/2012 Page 22 of 46 principal employers, officers of

the Board, Labour Secretary,

Chief Labour Commissioner,

Additional Labour

Commissioner and other persons who are responsible on behalf of GNCTD and all the trade unions, the names of which shall be supplied by Mr. Tariq Adeeb, learned counsel for the petitioner, Mr. Bhatnagar and Mr. Amjad Hassan to Mr. Sanjeev Sachdeva, learned counsel for the Union of India within two days. The Member Secretary of Delhi Legal Services Authority along with Officer on Special Duty shall be requested by the Director General, Labour Welfare of Union of India to attend the meeting.

e. In the meeting, the Director General, Labour Welfare, Ministry of Labour and Employment, Union of India shall point-wise lay the postulates how the problem that has occurred can be addressed and the workers can

obtain their statutory benefit.

f. The Chief Engineer of MCD

shall visit the linking GT Road

with Badli Industrial Area

(Auchandi Road) within seven

days so that he can find out

whether 80 workmen, who

were working under the

contractor have not yet been

registered and if that is the

position, shall take appropriate

action without any delay or

excuse.

LPA 524/2012 Page 23 of 46 g. The principal employers, who

have collected cess from the

contractors under Section 3 of

the Building and Other

Construction Workers Welfare

Cess Act, 1996 shall deposit

the same with the appropriate

authority under the said Act

within six weeks.

h. The Board shall accentuate and

accept its activities so that the

workers can really get the

benefit. Any kind of

recalcitrant attitude in this regard would be unacceptable. The Board shall keep the same in mind and not only go on doing paper work, for neither a paper tiger or a solace on paper is of any benefit under any circumstances. It is like an executable decree on paper without any fruitful result which is comparable to the photo of a roaring tiger that does not actually roar.

i. The Member Secretary of the Board shall file an affidavit duly sworn in showing how many claims have been effectively implemented for the simple reason that it is always implementation, which makes the law respectable.

20/04/2011 The Court recalling its directions in order dated 23/2/2011 recorded the compliance with the same respectively :

a. The Court was apprised by learned standing counsel for

the Government of NCT of

LPA 524/2012 Page 24 of 46 Delhi as well as the Welfare

Board that certain informations

have been given by DIAL,

MCD, DDA and CPWD.

Mr.Waziri submitted that there

are certain defects in supplying

of the said copies. The Court

further stated that Welfare

Board could have done this on

its own though the said

principal employers are not

parties to the case as that is the

statutory function of the Board.

It is really shocking why the

Welfare Board is taking steps

at the pace of a tortoise.

b. With respect to direction B &

C the court recored the

statement of Counsels for

concerned parties that the

names of almost all workers

have been supplied by them.

c. As per the direction a meeting

was convened where the

following decisions were

taken:

i. A small Group consisting of

Assistant Labour

Commissioner from Labour

Department of Delhi

Government and two

representatives from

petitioner's organizations be

constituted. Shri B.B.

Bhatnagar, Regional Labour

Commissioner (Central) will

act as Chief Coordinator of

the Group. The Group will

identify the locations and

visit such locations to

ascertain nature of the

problems on each of these

locations. The Group will

LPA 524/2012 Page 25 of 46 also interact with the

principal employer but the

principal employer will not

be the part of Group. The

Group members will be

given an authorization letter

by the Chief Labour

Commissioner/State Labour

Commissioner for visiting the sites. The Group will complete its task within one month. The Group need not wait for completion of one month time. It will submit its report in intervals as and when it visits the locations.

This report will be submitted to Dy. Director General, Labour Welfare, who will coordinate these activities at the Central level.

ii. On the basis of suggestions received from the representatives of petitioners, it was decided that the DLF multilevel parking should be taken up as the first site for evolving an action plan which can then be replicated as more and more site get identified by the Group constituted above.

iii. A camp will be organised on

29th March, 2011 at 1100

hrs. at DLF site for

registration of construction

workers. NDMC, the

principal employer, will

provide the workers related

data on excel sheet to the

State Welfare Board. The

LPA 524/2012 Page 26 of 46 Welfare Board will send

necessary registration forms

in advance and they shall be

filled by the NDMC.

NDMC will also get the

workers photographed in

advance and those that

remain will be photographed

during the camp. In order to

certify the date of birth of

the workers, Notary will be

arranged by Delhi Legal

Services Authority. Pass

book will be issued to the

workers on the spot on the

day of registration itself.

iv. Pamphlets containing details

of welfare schemes will also
be provided to the workers
at the camp site. The
workers Union agreed to
assist in providing
information about different
welfare schemes and
facilities to the workers.

v. After 15 days of the camp, a
camp for providing smart
cards under RSBY will be
organised at the DLF
multilevel parking site itself.

For this necessary
groundwork will be done by
the State Welfare Board as
the first step towards
providing social security to
such workers.

10/08/2011 It was submitted that at various The Court noted that the DMRC sites the workers are not registered has incorporated a clause in its and are not getting the minimum agreement in its that a contractor is wages and camps shall be liable for registration of its organized to make them aware of workers under the Act with

LPA 524/2012 Page 27 of 46 their entitlements under the Act. Welfare Board.

The Court directed that DDA,
NDMC, PWD, MCD, DAIL and
all other organizations who have
entered into contracts, shall

incorporate such a clause in future. In the existing contracts they shall deliberate with the contractor and incorporate such a clause as this kind of a clause is required to be incorporated regard being to the nature of the statute.

6. A glimpse of the aforesaid directions would demonstrate that adequate measures have been taken and the rights which accrued to the workers engaged in the construction activity for CWG-2010 have been taken care of. It would also be important to point out that all the respondents and Government agencies did not treat this petition, going by the spirit thereof, as adversarial and during the proceedings, gave their full cooperation to ensure that the construction workers get their legitimate dues.

7. Though, in the aforesaid manner, the present petition has served its purpose, yet the parties were unanimous in their positive approach to ensure that such things do not recur again and, therefore, some mechanism must be in place which would ensure that the rights under the Act are secured by the construction workers and they are able to get their dues. In this behalf, not only the petitioners but even respondents came forward to give their suggestions which we highly appreciate. In so far as petitioners are concerned, they have mentioned that total construction workers who were involved in

LPA 524/2012 Page 28 of 46 CWG-2010 were 111019 since cost of construction was Rs.70000 Crores. The Cess which should have been collected under the aforesaid Act comes to Rs.700 Crores. However, as per the affidavits of the respondents, total Cess collected is Rs.200 Crores. Notwithstanding the same, total Cess amount which is available with the Board, i.e. general plus CWG-2010 Cess, is Rs.780 Crores. Total workers (CWG-2010 plus others) registered as per the Labour Department are 65356. However, it is not mentioned as to what welfare benefits are given to these workers. Mr. Gonsalves, learned senior counsel appearing for the petitioners, referred to the judgment of Supreme Court in People's Union for Democratic Rights & Ors. v. Union of India & Ors. (1982) 3 SCC 235 wherein the Court had noticed similar plight of these workers during Asiad Games which held in the year 1982 in the following words: (To be marked by Sir)

8. He also referred to the directions given by the Supreme Court vide its order dated 7.2.2010 in directing all State Governments to implement the Act fully and pointed out that inspite of the aforesaid directions, no meeting of Delhi Board had been held for over nine months. Mr.Gonsalves also referred to orders dated 10 th July, 2012 passed by the Regional Provident Fund Commission (North) and orders dated 29th July, 2011 passed by the Regional Provident Fund Commission (South). These orders reflect that inquiries under Section 7A were initiated by the RPFV against various establishments for determination of dues in respect of employees engaged by the establishments for construction of CWG-2010 site projects and a sum

LPA 524/2012 Page 29 of 46 of Rs.54,57,34,315/- and Rs.592,76,54,931/- respectively was found due. Learned senior counsel also drew our attention to Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 which imposes obligation on the principle employer to pay the wages in case the contractor fails in making payment of wages to the contract workers. It is also pointed out that CAG audit by the Delhi Building and Other Construction Workers Welfare Board is being done by the Labour Department. In order to take care of the existing construction workers in Delhi, the figures given by the petitioners are as under: "The estimate of construction labourers in Delhi is 10,00,000. 20% of construction workers are women. Taking a conservative estimate of the number of construction workers families at 4,00,000 and an estimate of 2 children per family, the number of construction worker children would be about 8,00,000. As against this, the Additional Labour Commissioner has informed that a financial assistance during the last 3 years benefitted 37,553 children. This statement is deliberately misleading because it gives the impression that

37,553 children were given their financial assistance every year which is not true. Therefore, the number of getting financial assistance every year is less than this figure. Further, all these 37,553 children are from the Director (Education) Schools of NCT Delhi. Not a single child from the MCD, NDMC, Cantonment Board and Higher Studies have been granted financial assistance.

Additional Labour Commissioner has now informed that benefits regarding maternity, pension, advance for purchase or construction of house, disability pension benefit, loan for purchase of tools, funereal assistance, natural death, accident death, financial assistance for marriage and family pension have been increased and notified. None of these enhanced benefits have been

LPA 524/2012 Page 30 of 46 advertised on Air or Doordarshan and, as a result, these revised benefits remain only on paper.

The benefits regarding financial assistance for the education of the children of construction worker has, however, not been increased. The rates fixed under the 2002 Rules (which are obsolete particularly in view of the rapidly rising education fees) are as follows:

(i) Class-I to Class-VIII is Rs.100 per month (ii) Class-IX to Class-X is Rs.200 per month (iii) Class-XI to Class-XII is Rs.500 per month (iv) Graduation level is Rs.1500 per month (v) ITI Courses Rs.1500 per month (vi) Polytechnic Diploma Rs.2500 per month (Three year Courses)

(vii) Technical courses such as Rs.5000 per month. Engineering, Medicine, MBA

On the aforesaid terms, following directions are sought:

(i) For an order directing the Regional Provident Fund Commissioner, Delhi (North) and the Regional Provident Fund Commissioner, Delhi (South) to investigate in respect of the provident fund of all the Commonwealth Game Workers and to make appropriate orders in accordance with the provisions of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 and take further action in accordance with law; (ii) For an order directing CAG to complete an audit in respect of the Delhi Building and Other Construction Workers Welfare Board and to submit its report to this Hon'ble Court within two months from today;

LPA 524/2012 Page 31 of 46 (iii) For an order directing the Delhi Building and Other Construction Workers Welfare Board to forthwith identify the 8 lakh children of construction labourers in Delhi and to disburse the financial assistance for education to all of them within 6 months from today;

(iv) For an order directing the Government of NCT of Delhi to prominently advertise on prime time on AIR and Doordarshan the revised benefits available and further that applications by construction workers for benefits can be made at all the 9 district offices headed by Deputy Labour Commissioner. For a further order that all applications made shall be considered and disposed of within one month.

(v) For an order directing the financial assistance for the education of children of construction workers be increased three times.

9. The petitioners have also given various suggestions for amendment in Rules and registrations of the establishments during construction work in order to streamline the system. (Summary of Suggestions)

10. Learned counsel for the DDA referred to the definition of 'employer' and 'establishment' and on that basis submitted that the aim of the Act is to treat the entity which is directly responsible for the construction activity to be an 'employer' and the Government/ department/authority/legal authority would be treated as 'employer' only when the building or construction work is carried out directly

without any contractor. According to the learned counsel, this was the position accepted by the Supreme Court in Dewan Chand

LPA 524/2012 Page 32 of 46 Builders and Contractors v. Union of India & Ors., (2012) 1 SCC 101 wherein, after analyzing the Act, the Court held as under:

"The BOCW Act and the Cess Act break new ground in that, the liability to pay Cess falls not only on the owner of a building or establishment, but under Section 2(i)(iii) of the BOCW Act

'in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor.'

The extension of the liability on to the contractor is with a view to ensure that, if for any reason it is not possible to collect Cess from the owner of the building at a stage subsequent to the completion of the construction, it can be recovered from the contractor. The Cess Act and the Cess Rules ensure that the Cess is collected at source from the bills of the contractors to whom payments are made by the owner. In short, the burden of Cess is passed on from the owner to the contractor." (emphasis supplied)

11. Therefore, his submission was that there is no concept of a principal employer under this Act and thus, the entire responsibility was that of the contractor. In this view, the suggestions of the DDA, as given, are as under:

(i) The Act in Section 12 sets out the eligibility of building workers for being registered and requires an application to be made for such registration.

(ii) It is clear that registration of building workers as beneficiary is not mandatory. It is optional at the instance of the building

LPA 524/2012 Page 33 of 46 workers.

(iii) As per Section 14, a building worker to continue as beneficiary has to, inter alia, be engaged in building or other construction work for much less 90 days in a year. Moreover, as per Section 16, a building worker who has been registered as a beneficiary is required to contribute to the fund as may be prescribed. (iv) If the beneficiary has not paid his contribution under Section 16 for a period of one year, he ceases to be a beneficiary. (v) The process of registration and maintaining the registration is affected by various factors, inter alia, including the following: a. Majority of the workers are out of Delhi; b. Majority of the workers are illiterate; c. Generally there is no permanent address of such workers; they move from construction site to construction site within Delhi or outside Delhi depending on availability of work; d. Building/construction work by its nature is temporary and the nature of relationship between an employer and a building worker is also temporary. (vi) Therefore, the Act casts responsibility for seeking and maintaining the registration as a beneficiary on the building worker. That being the legislative intent, the Courts would refrain from casting any responsibility on the employer which is contrary to the specific provisions of the Act whether in the manner as petitioner seeks in this writ petition or otherwise. This is possible only after the legislature amends the Act.

12. As pointed out above, Government of NCT of Delhi has also given

LPA 524/2012 Page 34 of 46 the following suggestions:

(i) Registration of construction workers: At present, under Section 12 of the Act, registration of construction workers is done after he has completed 90 days of work in the preceding one year. This limitation of 90 days work experience is acting as a impediment in registration process as large number of construction workers

either do not qualify or contractors do not allow them to complete 90 days of work because they feel that their records and number of workers employed by them should not come on Government records for various reasons. Therefore, it is proposed that this condition be done away with by amending the main Act. Action is required by Government of India in this respect.

(ii) Self Certification by worker for registration: There is no procedure presently for certification of employment in respect of self employed construction workers due to which they face problem in certification of their employment. Due to this reason, large number of self employed construction workers are left out and deprived of various benefits of the schemes of the Board. It is proposed that necessary amendment be made in the Act by incorporating self-certification of profession/ employment by construction worker by himself. Action is required by Government of India in this respect. (iii) Validity of registration: At present, registration of construction worker is valid for one year only, which is required to be renewed every year. However, the experience

LPA 524/2012 Page 35 of 46 shows that most of the construction workers do not deposit their subscription on time due to migratory nature of work, which leads to expiry of their membership with the Board and as a result deprives them from claiming various benefits from the Board. Therefore, it is suggested that registration may be valid for a period of 5 years with one time superscription. Necessary amendments be made in the Act and action is required by Government of India in this respect. (iv) Probability of membership with other construction boards: Presently, there is no coordination/synchronization between various State Construction Boards which means worker contributing his subscription in one State Board is not valid in other State Boards and on transfer or migration, he cannot avail benefits of other State Boards unless he becomes member/beneficiary of that State Board. It is, therefore, proposed that registration of construction workers should have portability on the lines of RSBY scheme. Necessary amendments need to be made in the Act including issuance of smart/biometric card. Action is required by Government of India in this respect. (v) Registration of workers to be made mandatory: Presently, as per Section 12 of the Act, the registration of worker with the Construction Board is voluntary in nature which means it is up to the worker to become member of the Board or not. Due to this reason, large number of workers do not opt to become member of Construction Board due to various reasons including lack of awareness regarding various welfare benefits

LPA 524/2012 Page 36 of 46 which he would be entitled after registration with the Board. It is proposed to make the registration of workers mandatory on the lines of EPF and ESI Act for which necessary amendment is required to be made in the Act by Government of India. (vi) Incorporating a separate clause in agreement of the contractor: In order to ensure registration of construction workers with the Construction Board, a separate clause to be incorporated in agreement between the Principal employer and the contractor, thereby casting responsibility on the contractors to ensure registration of construction workers with the Board right at the time of their employment. The onus of compliance to be strictly supervised by the Principal Employers. In case of default/breach of this clause, penalty to be imposed on Principal Employer as well as on the contractor. For this, necessary amendment be made in the Act and action is required on the part of Government of India.

(vii) Enhancing registration of construction workers: In order to give boost to registration of construction workers employed either directly by Government/PSU agencies or through various contractors as the case may be, officers of appropriate level of the Government/PSU may also be authorized to register construction workers working for them. This will help the workers to get them registered at their working place itself. Intimation in this regard be supplied to construction board through need based IT formatting/software. (viii) Enhancement of various welfare schemes of the Board

LPA 524/2012 Page 37 of 46 (Petitioner's proposal): Financial entitlement prescribed under Delhi Rules, 2002 were found to be very low/minimal and accordingly Expert Committee was constituted by Delhi Government to examine and propose suitable enhancements of various welfare schemes. The Committee submitted It is respectfully submitted its report for enhancement and accordingly the Government accepted the same and 10 numbers of schemes have been enhanced and the same have been gazette notified on 10.02.2012. This action

of enhancement of various welfare schemes addresses the proposal/suggestions given by the petitioner side. (ix) Enhancement of limit of administrative expenditure - 5%: Presently as per Section 24(3) of the Act, no Board can spend more than 5% of its total expenses during the financial year on administrative expenses. This limitation of expenditure on administrative issues is acting as a problem for establishment and providing adequate infrastructure in terms of equipment, machinery or manpower. Due to this problem, Delhi Construction Board has not been in a position to strengthen the establishment and provide adequate infrastructure and manpower for smooth functioning of the board. Experience shows that same and similar problems are being faced by other State Boards. It is proposed to enhance this limit to 20% from existing 5% for which necessary amendment is required in the Act and action is required to be initiated by Government of India.

LPA 524/2012 Page 38 of 46 (x) Exemption of Income Tax on Cess Funds: At present, there is no clarity on the issue of applicability of income tax liability on cess funds. The Act of 1996, the Welfare Cess Act, 1996 and Cess Rules, 1998 have no provision in this respect. Cess funds of Delhi Building and Other Construction Workers Welfare Board have been subjected to income tax liabilities by Commissioner Income Tax Delhi and an amount of Rs.60 Crores have been recovered by way of bank attachment from Cess funds of the Board. The Board has filed an appeal against this recovery in the Court of Income Tax Appellate Tribunal and the issue is being contested well by the Board. The Board has also filed an application under Section 10(46) of the Income Tax Act, 1961 before CBDT requesting for total exemption of income tax on cess funds of the Board. This issue has drained out an amount of Rs.60 crores from cess funds and has imposed upon the Board unwarranted litigation which consumes lot of time, manpower and money to be paid to lawyers defending interest of the Board. It is therefore proposed to make necessary amendments in the Act as well as Cess Act and Rules granting total exemption of income tax on cess funds including filing of income tax returns to income tax authorities.

13. The Central Government through its counsel has also given issue- wise suggestions which are as under: A. Non-payment of minimum wage

LPA 524/2012 Page 39 of 46 A.1 Apart from the enforcement procedure pertaining to inspection and prosecution, the issue of non-payment of minimum wage can be redressed by making payment of wage through the Bank. This would ensure that there is a record of the amount paid.

A.2 The payment deposited in any bank would be accessible through an ATM of the bank.

A.3 The registration card of the worker or even a certificate from a registered trade union could facilitate the opening of a bank account.

A.4 The banks provide the facility of a zero balance accounts and a cost free ATM.

A.5 The problem in this method is that under the existing framework of the law, the payment has to be made in currency or coin.

A.6 Some employees are making payment only through bank. A.7 The penalties provided under the statute are now unrealistic as the quantum of punishment and fine that has been fixed by the statutes was fixed many years ago and has with the cost of inflation become miniscule and needs an upward revision. A.8 The settlement of claim case and prosecution in some instances take a substantial time and in the meantime the worker changes the place of work or residence and as such does not get the benefit of the claim or is not available for availing the benefit. A.9 Directions could be issued to the authorities to dispose of claim cases and prosecutions under labour laws within a stipulated

LPA 524/2012 Page 40 of 46 period.

A.10 Illiteracy of the workers coupled with unscrupulousness of the employers is the most important factor contributing to the ignorance of the workers about the minimum rates of wages fixed by the Government. This ignorance in turn induces them to accept whatever wages are paid. It is, therefore, necessary that the Government (Central as well as State) devises and adopts a policy to give wide publicity to the minimum rates of wages through print and electronic media at regular intervals and also through other means.

A.11 Government should therefore, make it mandatory to outrightly reject tenders quoting prices where the component of wages and other allied benefits based on wages such as provident fund, Employees State Insurance, bonus, gratuity, etc. are calculated at less than the minimum rates of wages. A.12 The mobility of workers from one project/site to another has fast increased. The workers who were seen at one place a few days back are not noticed there today. It becomes difficult to trace them once they have left the site. Unfortunately, no registers/records maintainable by the employer under the Minimum Wages Act, 1948 or the rules framed thereunder require the local and/or permanent addresses of the workers to be recorded thereby making it difficult at times for any amount to be remitted to them in compliance with an inspector's/court's/authority's order. The local as well as permanent addresses of the employees should be required to be

LPA 524/2012 Page 41 of 46 recorded by the employer through an amendment of the Act/Rules.

B. Benefit of Cess

B.1 The Cess collected under the Act is not to be disbursed to the workers as is the misconception of the petitioners. B.2 The Cess is collected to create a corpus for the implementation of the various schemes to be formulated by the State Government. No cash disbursement is to take place to the workers.

B.3 The problem in grant of benefit is that as per the scheme as formulated by the Government, the worker has to first complete the mandatory period of 90 days to be eligible for registration. B.4 The act of registration is voluntary and is not mandatory. B.5 The worker has to make initial and regular contributions and has to keep the registration alive to avail the benefits. B.6 To avail the benefit the worker has to make the application to the board and if the worker is found eligible then the benefit can be granted.

B.7 The period of 90 days could be waived for the purposes of registration. However, for availing the benefits, the period of 90 days could be insisted upon.

B.8 It could be made mandatory for the employer/contractor to ensure registration. Like in cases of registration of births, the onus is on the hospitals to ensure registration. The onus could be placed on the contractors/principal employer to compile the data and register the workers within a stipulated period of the

LPA 524/2012 Page 42 of 46 commencement of work.

B.9 The Labour unions could help in taking up the task of registration of workers.

C. Mobility of Workers

C.1 The Cess collected and the registration of workers is with the State authorities.

C.2 The workers at times come from other States and work in Delhi like during the Commonwealth projects. The Cess is collected by the State Government and given to the Board constituted under the Delhi Act.

C.3 The mobility of the workers and their registration would imply that the benefits under the schemes are available to the workers from other States even if they migrate and go to other States. This may have a problem as the other States may not agree to provide benefits to the workers who have not worked in their

State unless there is reciprocity and sharing of the Cess. D. Payment of Bonus

D.1 Under Section 19(b) of the Payment of Bonus Act, 1965, bonus is payable within a period of 8 months from the close of the accounting year meaning thereby if an employee worked in an establishment till, say 31st May, 2011, bonus is payable to him within 8 months from 31st March, 2012 i.e. by 30.11.2012. Given the duration of 18 months since he left employment, it is most unlikely that the worker will be available to receive the bonus. Even there are chances that the construction activity might have come to an end and, therefore, the employer may

LPA 524/2012 Page 43 of 46 not even be traceable.

D.2 It is, therefore, desirable that the local and the permanent addresses of the employees should be required to be maintained by the employer under the Act through an amendment and the bonus should be required to be remitted by him to the employees at their recorded addresses when bonus is declared after close of the accounting year.

D.3 Additionally, the law should be amended to provide for payment of minimum bonus @ 8.33% of wages every month to the employee so that the employees are paid the minimum bonus on pro rata basis before they leave the place of employment or the employer becomes untraceable, as the case may be.

E. Lack of safety equipment and proper working conditions E.1 The responsibility should be fastened on the principal employer to ensure strict compliance with the laws pertaining to provision of safety equipment and proper working conditions. E.2 It should be part of the contract conditions that the laws pertaining to provision of safety equipment and proper working conditions have to be strictly complied with by the contractor, failing which the principal employer should be authorized to deduct the amount from the bill of the contractor and make available the same.

F. Strict compliance with the Labour Laws F.1 One of the reasons for non-compliance of the labour laws is the delay in finalization of the claim cases and prosecutions and the

LPA 524/2012 Page 44 of 46 ultimate quantum of fines prescribed. F.2 Appropriate directions could be issued to the authorities/ courts to dispose of the labour cases within a stipulated time. F.3 Directions could be issued to the appropriate Government to re- fix the quantum of fines so that the fines are more meaningful and act as a deterrent.

F.4 The quantum of fine prescribed in an Act for violation of various provisions of that Act remain the same without being revised for year together thereby diluting the deterrent effect substantially due to the inflationary pressure.

14. It is clear from the above that we have to address the following aspects on which suggestions were solicited and given by the petitioner and the authorities as noticed above: i. Registration of Workers.

ii. Minimum Wages to workers.

iii. Living Conditions and Safety measures. iv. Financial assistance for education of children. v. Maternity and pensionary benefits. vi. Issues relating to collection of CESS, definition of employer.

15.

ACTING CHIEF JUSTICE

LPA 524/2012 Page 45 of 46 RAJIV SAHAI ENDLAW, J

SEPTEMBER 19, 2012

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