

NATIONAL CAMPAIGN COMMITTEE

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26 March 2020

To

The Hon'ble Chief Minister of Delhi

AND

To

The Hon'ble Labour Minister of Delhi

Subject: Appeal for Extending monetary compensation to unregistered construction workers.

Dear sir

1. We are writing this letter to implore you to kindly extend the relief of Rs. 5000/- granted by you to registered construction workers to those construction workers who are not currently registered with the Delhi BOCW Board. Respectfully, restricting the benefit to registered construction workers alone will be disastrous as it will deprive the lakhs of unregistered construction workers of any chance of a livelihood in these trying times.

2. We are grateful that in the present dire circumstances where we are facing a pandemic threatening the existence of the entire humankind, the Delhi Government has stepped up and has decided to provide immediate relief of Rs. 5000 to each registered construction worker. However, the Delhi Government should extend the same relief to all construction workers in the State, regardless

of their registration status. This we say so, is legally possible within the framework of Building and Other Construction Workers Act, 1996 [“**BOCW Act**”] and is also practical so as to be taken up by the BOCW Board to extend relief to lakhs of construction workers, who are the most vulnerable lot in the current scenario owing to ever so extreme and necessary lockdown imposed on us. These construction workers, if not provided relief by this Government today, will suffer immense loss of life and livelihood and may as well perish for no fault of theirs.

Sir, extending this benefit to all the construction workers is utmost important because of the following reasons:

a) The total number of construction workers, and the number who were registered construction workers with the Delhi BOCW Board is as follows:

S.No.	Period	No. of Construction Workers
1	As on date	10 lakh (estimated) in Delhi alone
2	As on date	37,127 (registered)
3	2015	2,86,449 (registered)
4	2017	3,64,974 (registered)

b) As you will appreciate, the number of registered construction workers is very small in comparison to the total number of construction workers in the State. At peak in 2017, only one-third of the workers were registered. It is also evident that this number has fallen further over the years on account of the difficulties faced by the Delhi BOCW Board in terms of shortage of staff and the problems in such a large scale registration process. The renewal/registration process has been extremely slow. Particularly in 2018, the Board had shut its registration/renewal process altogether for a period of eight months; rendering a huge number of hitherto registered construction workers, as unregistered.

c) The Hon'ble Supreme Court had in its judgment in *NCC-CL v. Union of India (2018) 5 SCC 607* issued clear directions to the Delhi BOCW Board **to register all the construction workers in Delhi.** The obligation does not lie upon the workers to get themselves registered, but upon the Board's apparatus to ensure each worker registers themselves. Despite the same, the Board has contemptuously failed to do so; infact, instead of registering the workers who had not been registered thus far, the Board has let the number fall to a mere fraction of the number that were registered in 2017.

d) It is also pertinent to note, that by the very definition of the term 'beneficiary', a registered worker ceases to be one as soon as he reaches the age sixty. It is because the Act envisages the registered worker would then start receiving pension, post-retirement age of sixty. In such a case, not providing compensation would act to the detriment of the registered construction workers who have turned sixty in past few months.

e) It is further important to highlight, that in past 1.5 years, even the pensioners (the erstwhile-registered construction workers) have not been receiving pension from the Board, i.e., the Board has arbitrarily and abruptly stopped transferring meagre amount of Rs. 3000 to their accounts since past 1.5 years. It is therefore important, that such pensioners also get covered under the present compensation scheme, since otherwise, they would become a financial burden on their families, which by all probabilities, are not doing very well.

It is imperative that the Government step for these poor citizens who have no other hope or chance. It is self-evident that the number of construction workers in 2020 cannot possibly be 37,127 when in 2017 itself 3,64,974 construction workers were registered with the Board. If the benefit is limited to the 37,127 workers registered as on date, more than 96% of the intended beneficiaries will be left out.

Sir, it is also important to convey at this point that legally, it is permissible for the Delhi Government and the Board to extend the compensation scheme to cover unregistered workers. A small note is prepared for your consideration:

a) S.24(2)(a) of the BOCW Act empowers the Delhi BOCW Board to utilise the cess collected towards discharge of functions as enumerated in S. 22.

b) S.22(1)(h) empowers the Delhi BOCW Board to utilise funds towards such other welfare measures and facilities ‘as may be prescribed’.

c) The advisory under S. 60 issued by the Central Government also refers to formulating a scheme under S. 22(1)(h). Further, a conjoint reading of sub-sections under S. 22(1), clearly indicate the legislative intent to make provisions and extend welfare measures to **unregistered workers** through an exercise under S. 22(1)(h). Whereas all the other subsections under S. 22(1) enumerate various welfare measures that may be extended to the ‘beneficiaries’, i.e., the registered construction workers, S. 22(1)(h), purposefully, does not put such qualification therein.

d) Reliance on S. 11 of the Act is misplaced. No reading of the said section indicates the legislative intent to limit the utilisation the cess funds only for the benefit of the registered construction workers.

e) In addition to above, Para 3 of the Statement of Objects and Reasons may be adverted to. The said para clearly states that: “...it has been considered necessary to constitute Welfare Boards in every State so as to provide and monitor social security schemes and welfare measures for the benefit of building and other construction workers”. The said para nowhere states that the social security schemes and welfare measures should be limited only for the registered construction workers.

f) In such a case, a reference to S. 17 proviso is also essential. S. 17 provides:

“17. Effect of non-payment of contribution.—When a beneficiary has not paid his contribution under sub-section (1) of section 16 for a continuous period of not less than one year, he shall cease to be a beneficiary:

Provided that if the Secretary of the Board is satisfied that the non-payment of contribution was for a reasonable ground and that the building worker is willing to deposit the arrears, he may allow the building worker to deposit the contribution in arrears and on such deposit being made, the registration of building worker shall stand restored.”

It is therefore submitted that under the BOCW Act itself, the Delhi Government and the Board are not only empowered to restore the registration of all the workers who have been de-registered due to failure to renew their registrations (Proviso to S. 17), the Act clearly provides that the scheme under S. 22(1)(h) could be framed to cover all construction workers, irrespective of their registration status. The same would be in consonance with the Objects and Reasons of the BOCW Act and also in accordance with the advisory issued by the Central Government under S. 60 of the Act.

It is also to bring to your notice that several states (such as Telangana, Andhra Pradesh and Karnataka) in fact, do extend benefits under various schemes to unregistered construction workers.

It is also not to be forgotten that the Delhi BOCW Board has been sitting on a corpus of more than Rs. 2500 crores; the corpus consists of cess money-which can only be put to use for the benefit of construction workers alone. Each year, it earns cess of Rs. 300 crores on an average, whereas it has been expending less than Rs. 15-20 crores each year for the welfare of construction workers.

The question, upon crossing the present legal hurdle, arises regarding how the compensation amounts be disbursed immediately, keeping in mind the norms of social distancing that are required to be followed.

We propose the following steps for your consideration:

1. **Step I:** The Delhi Government should notify and constitute Delhi BOCW Board immediately via a notification under S. 18(1) read with S. 18(3) of the BOCW Act read with Rule 251 of the Delhi BOCW Rules. To the best of our knowledge, the previous Board's term had come to an end in September 2019. Since then, there is no Board in place.

2. **Step II:** The Delhi Government should give blanket concurrence in terms of Rule 263(2) of the Delhi BOCW Rules, and empower the Board to make as many immediate (ad-hoc or otherwise) appointments as it deems necessary.

3. **Step III:** The appointed staff could be given the charge of collating bank account details and for transferring funds en masse to each account directly.

4. **Step IV:** It is pertinent to note, that since the introduction of new Registration form in November 2019, the Board has been taking the bank details of each worker who has registered/renewed their registration. The Board therefore has a ready database of bank account details of 37,127 registered workers alongwith 9149 workers whose registration/renewal is pending. **Thus, the Board is in a position and can seamlessly immediately disburse through bank transfers to 46,276 workers.**

5. **Step V:** In 2017, there were atleast 3,64,974 construction workers who were registered with the Delhi BOCW Board. Their details are readily available with the Board. **Thus, there should be no difficulty in transferring the compensation amount to the accounts of all the said 3,64,974 workers directly.**

6. **Step VI:** The Delhi BOCW Board transfers amounts under welfare schemes directly to the accounts of the workers. Therefore, the Board already has ready data of bank account details of all the workers who have ever availed or have applied for any welfare scheme

under the Board. Through this mode, even those workers who currently stand de-registered due to failure to renew their registration, could be covered.

7. **Step VII:** DoE has been transferring money into the accounts of construction workers children in primary schools, non DoE-schools and those pursuing higher education. The bank details of such workers would also be available with DoE.

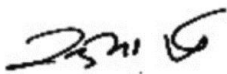
8. **Step VIII:** Pensioners are not registered workers anymore. There are many who have just crossed the age of sixty, and many like (Late) Sh. Ishwar Sharma who had applied in 2017 but had not gotten pension all these years. The compensation must be transferred into bank accounts of such pensioners as well. The details thereof are available with the Board's offices.

9. **Step XI:** The Board could also consider transferring compensation amount on basis of self-declaration, i.e., transfer the amount to any worker who calls a certain helpline number (which could be easily set up). The transfer on basis of self-declaration could be done by providing a condition that verification of such person would be carried out later, if found false, the amount would be recovered from him/her.

10. **Step X:** The Delhi Government and Board should also consider formulating separate scheme under S. 22(1)(h) to cover unregistered workers at major construction sites and labour chowks. The said workers could be provided compensation in kind if not in terms of monetary relief.

NCC-CL is ready to extend all its energies if called upon by your government sir. We hope that this representation will be acted upon immediately.

REGARDS



SUBHASH BHATNAGAR

NATIONAL COORDINATOR