

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 318 OF 2006

National Campaign Committee for Central
Legislation on Construction Labour (NCC-CL)Petitioner

Versus

Union of India & Ors.Respondents

WITH

CONMT. PET. (C) No. 52/2013 in W.P. (C) No. 318/2006

J U D G M E N T

Madan B. Lokur, J.

1. Symbolic justice – there is nothing more to offer to several millions of construction workers in the unorganized sector – not social justice, not economic justice. The reason is quite simple. No State Government and no Union Territory Administration (UTA) seems willing to fully adhere to and abide by (or is perhaps even capable of fully adhering to and abiding by) two

laws solemnly enacted by Parliament, namely, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (the BOCW Act) and the Building and Other Construction Workers' Welfare Cess Act, 1996 (the Cess Act). Directions given by this Court from time to time to implement the two laws have been flouted with impunity. What is equally tragic is that multiple directions issued even by the Government of India under Section 60 of the BOCW Act have been disregarded by State Governments and UTAs - and this is candidly admitted in a statement made by the learned Additional Solicitor General in this Court and also by the Union of India on affidavit. Hopefully, the gravity of the situation in the constitutional and federal context, the human rights and social justice context will be realized by someone, somewhere and at some time.

2. We have been informed that under the Cess Act, more than Rs. 37,400 crores have been collected for the benefit of construction workers, but only about Rs. 9500 crores have been utilized ostensibly for their benefit. What is being done with the remaining about Rs. 28,000 crores? Why is it that construction workers across the country are being denied the benefit of this enormous amount? These are some questions that arise in this petition – are the answers blowing in the wind?

Brief background

3. The petitioner is said to be a non-registered Committee of registered trade unions concerned with the rights of workers in the unorganized sector including construction workers, especially in areas of safety, occupational health and welfare measures. The petitioner says that it is “appalled by the attitude and ignorance” of most State Governments and UTAs towards implementation of the BOCW Act. According to the petitioner, the non-implementation of the BOCW Act violates the provisions of Articles 15(3), 39(e) and (f) and also Articles 45 and 47 of the Constitution, which impose a primary responsibility on the State to ensure that all the needs of workers are met and that their basic rights are fully protected. The non-implementation also violates Article 21 of the Constitution, which provides for the right to live with dignity. It is averred that the BOCW Act and the Cess Act are based on an international convention, namely, the Safety and Health in Construction Convention (No. 167) adopted by the International Labour Organization in 1988 and its accompanying recommendation (No.175) which provide for a foundation of law on which safe and healthy working conditions are built.

4. Based on its experiences and studies carried out which indicate the

absence of any effective system for the safe and healthy working conditions for construction workers, the petitioner preferred a writ petition in this Court under Article 32 of the Constitution in which several prayers have been made but essentially the prayer is that the BOCW Act and the Cess Act should be meaningfully implemented in letter and spirit.

The BOCW Act and the Cess Act

5. The BOCW Act and the Cess Act were both enacted in 1996. The Preamble to the BOCW Act states that it is an Act “to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto.” The Preamble to the Cess Act states that it is an Act “to provide for the levy and collection of cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers Welfare Boards constituted under the BOCW Act.”

6. The relevant paragraphs of the Statement of Objects and Reasons for the enactment of the BOCW Act read:

“It is estimated that about 8.5 million workers in the country are engaged in building and other construction works. **Building and other construction workers are one of the most numerous and vulnerable segments of the unorganised labour in India.** The building and other construction works are characterised by their inherent risk to the life and limb of the workers. The work is also

characterised by its casual nature, temporary relationship between employer and employee, uncertain working hours, lack of basic amenities and inadequacy of welfare facilities. In the absence of adequate statutory provisions, the requisite information regarding the number and nature of accidents is also not forthcoming. In the absence of such information, it is difficult to fix responsibility or to take any corrective action.

2. Although the provisions of certain Central Acts are applicable to the building and other construction workers yet a need has been felt for a comprehensive Central Legislation for regulating their safety, health, welfare and other conditions of service. The State Governments and Union Territory Administrations have been consulted in the matter and a majority of them have favoured such a legislation. Also, in a meeting of the Committee of State Labour Ministers constituted pursuant to the decision of the 41st Labour Ministers' Conference held under the Chairmanship of the then Union Labour Minister on the 18th May, 1995, a general consensus had emerged on the need for the proposed Central Legislation.

3. In view of the circumstances explained above, 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. For the said purpose, it has been considered appropriate to bring in a comprehensive legislation by suitably amplifying the provisions of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill, 1988 which was introduced in the Rajya Sabha on the 5th December, 1988. It has also been considered necessary to levy a cess on the cost of construction incurred by the employers on the building and other construction works for ensuring sufficient funds for the Welfare Boards to undertake the social security Schemes and welfare measures." [Emphasis supplied].

7. The BOCW Act provides, *inter alia*, for the constitution of Central and State Advisory Committee(s) to advise the appropriate Government on matters concerning the administration of the BOCW Act (Sections 3 and 4);

the constitution of Expert Committee(s) for advising the appropriate Government to frame Rules under the BOCW Act (Section 5); appointment of registering officers and registration of establishments employing building and construction workers by making an application to the registering officer (Sections 6 and 7); registration of building and construction workers as beneficiaries under the BOCW Act and issuance of identity cards to them (Sections 12 and 13); constitution of State Welfare Boards with identified functions including providing necessary benefits and assistance to beneficiaries (Sections 18 and 22); creation of a Welfare Fund for the benefit of building and construction workers (Section 24) and providing hours of work, welfare measures relating, *inter alia*, to safety and health and other conditions of service of building and construction workers (Chapters VI and VII of the BOCW Act).

8. Clearly, the BOCW Act is a welfare legislation intended and enacted for the benefit of the unorganized sector of building and construction workers. It has a strong flavour of social justice and is a serious attempt by Parliament to ensure that building and construction workers are not exploited because of their poverty and their children do not suffer their fate in terms of education, healthy living and whatever it takes to live a life of dignity. It is in this background and context that the BOCW Act was

enacted by Parliament.

9. Parliament simultaneously enacted the Cess Act which enables the State Governments and the UTAs to collect a cess from every employer as defined in the BOCW Act to be utilized for the benefit of registered construction workers.

10. The Cess Act provides for the levy and collection of cess in terms of Section 3 thereof. This Section enables the deduction of cess at source in relation to building or other construction work of a government or a public sector undertaking or advance collection through a local authority. The cess so collected shall be paid to the Welfare Board constituted under the BOCW Act after deducting the cost of collection which shall not exceed 1% of the amount collected. Section 3 of the Cess Act reads as follows:

“3. Levy and collection of cess.—(1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, at such rate not exceeding two per cent but not less than one per cent of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify.

(2) The cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the cess collected under sub-section (2) shall

be paid by the local authority or the State Government collecting the cess to the Board after deducting the cost of collection of such cess not exceeding one per cent of the amount collected.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the cess leviable under this Act including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.”

11. Sections 4 and 5 of the Cess Act require every employer to furnish a return to the concerned officer or authority and that officer or authority is obliged to make an assessment of the amount of cess payable by the employer. The concerned officer or authority is also empowered to specify the date within which the cess shall be paid by the employer on assessment. In the event of any delay in payment of cess, interest is liable to be paid under Section 8 of the Cess Act at 2% for every month or part thereof. There is of course a provision for an appeal as well as an enforcement provision whereby penalty can be levied under the provisions of the Cess Act.

12. The constitutional validity of the BOCW Act and the Cess Act was challenged in the Delhi High Court by the Builders Association of India. As regards the BOCW Act it was contended that it is bad for vagueness and as far as the Cess Act is concerned, it was contended that the cess is a compulsory and involuntary exaction without reference to any special

benefit for the payer of the cess and therefore the cess was in fact a tax. It was contended that Parliament lacked legislative competence to impose a tax on lands and buildings which was the effect of the Cess Act.

13. In *Builders Association of India v. Union of India*¹ the contentions urged were repelled by the Delhi High Court and the constitutional validity of the BOCW Act and the Cess Act was upheld.

14. The Delhi High Court relied upon *Hingir-Rampur Coal Co. Ltd. v. State of Orissa*² in which the Constitution Bench explained the difference between a tax, a fee and cess in the following words:

“.....It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. If specific services are rendered to a specific area or to a specific class of persons or trade or business in any local area, and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade or business the cess is distinguishable from a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas a cess levied by way of fee is not intended to be, and does not become, a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the

¹ ILR (2007) 1 Del 1143

² (1961) 2 SCR 537

service and therefore they should be exempted from the payment of the cess. Though there is an element of quid pro quo between the tax payer and the public authority there is no option to the tax-payer in the matter of receiving the service determined by public authority. In regard to fees there is, and must always be, co-relation between the fee collected and the service intended to be rendered. Cases may arise where under the guise of levying a fee Legislature may attempt to impose a tax; and in the case of such a colourable exercise of legislative power courts would have to scrutinise the scheme of the levy very carefully and determine whether in fact there is a co-relation between the service and the levy, or whether the levy is either not co-related with service or is levied to such an excessive extent as to be a pretence of a fee and not a fee in reality. In other words, whether or not a particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case.....”

15. With regard to the objectives of the enactments, the Delhi High Court took sustenance from the decision of this Court in *Bandhua Mukti Morcha v. Union of India*.³ The following passage was referred to and relied upon with regard to the purpose behind Article 21, Article 39, Article 41 and Article 42 of the Constitution. It was stated in *Bandhua Mukti Morcha*:

“.....It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in *Francis Mullin case* [Francis Coralie Mullin v. Administrator, Union Territory of Delhi and others]⁴ to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in

³ (1984) 3 SCC 161

⁴ (1981) 1 SCC 608

conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State — neither the Central Government nor any State Government — has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a Court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21.....The Central Government is therefore bound to ensure observance of various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy.”

16. In short, the Delhi High Court held that the BOCW Act was not vague but in keeping with the Directive Principles of State Policy and Parliament was justified in levying the cess through the Cess Act.

17. The decision of the Delhi High Court was challenged in this Court and that challenge was repelled in *Dewan Chand Builders & Contractors v. Union of India*⁵. This Court noted the scheme of the BOCW Act in the context of Article 21 of the Constitution and observed as follows:

⁵ (2012) 1 SCC 101

“It is thus clear from the scheme of the BOCW Act that its sole aim is the welfare of building and construction workers, directly relatable to their constitutionally recognised right to live with basic human dignity, enshrined in Article 21 of the Constitution of India. It envisages a network of authorities at the Central and State levels to ensure that the benefit of the legislation is made available to every building and construction worker, by constituting Welfare Boards and clothing them with sufficient powers to ensure enforcement of the primary purpose of the BOCW Act. The means of generating revenues for making effective the welfare provisions of the BOCW Act is through the Cess Act, which is questioned in these appeals as unconstitutional.”

18. This Court referred to the Constitution Bench decision in *Hingir-Rampur Coal Co. Ltd.*, and another Constitution Bench decision being *State of W.B. v. Kesoram Industries Ltd.*⁶ This Court referred to the views expressed by Justice R.C. Lahoti (speaking for the majority in *Kesoram Industries*) in the following words:

“146.The term cess is commonly employed to connote a tax with a purpose or a tax allocated to a particular thing. However, it also means an assessment or levy. Depending on the context and purpose of levy, cess may not be a tax; it may be a fee or fee as well. It is not necessary that the services rendered from out of the fee collected should be directly in proportion with the amount of fee collected. It is equally not necessary that the services rendered by the fee collected should remain confined to the persons from whom the fee has been collected. Availability of indirect benefit and a general nexus between the persons bearing the burden of levy of fee and the services rendered out of the fee collected is enough to uphold the validity of the fee charged.....”

⁶ (2004) 10 SCC 201

19. The Court then came to the conclusion that there is a clear distinction between a tax and a fee and looking to the purpose of the BOCW Act and the Cess Act, it was held that the levy of cess was a fee and not a tax.

20. The interpretation of the BOCW Act and the Cess Act was again considered in *A. Prabhakara Reddy and Company v. State of Madhya Pradesh*.⁷ The emphasis in this case was on registering the construction workers and providing them necessary benefits. Since the levy of cess is a fee, it was urged that urgent steps should be taken for implementation of the two Acts. It was further observed that merely because there was some delay in the effective implementation of both the statutes it could not be a ground for invalidating the levy of cess, nor could the levy of cess be said to have retrospective application. It was held as follows:

“The fact that the task of registering the workers and providing them the benefit may take some time, would not affect the liability to pay the levy as per the Cess Act. Any other interpretation would defeat the rights of the workers whose protection is the principal aim or primary concern and objective of the BOCW Act as well as the Cess Act. Cess is a fee for service and hence, its calculation, as per settled law is not to be strictly in accordance with quid pro quo rule and does not require any mathematical exactitude. The scheme of the BOCW Act, the Cess Act and the Rules warrant that the lawfully imposable cess should be imposed, collected and put in the statutory welfare fund without delay so that the benefits may flow to the eligible workers at the earliest. The scheme of the BOCW Act or the Cess Act does not warrant that unless all the workers are already registered or the welfare fund is duly credited or the welfare measures are made available, no cess can be levied. In other words

⁷ (2016) 1 SCC 600

the service to the workers is not required to be a condition precedent for the levy of the cess. The rendering of welfare services can reasonably be undertaken only after the cess is levied, collected and credited to the welfare fund.

We also find no merit in other submission advanced on behalf of the appellants that there is a legal impediment in charging levy on the cost of construction incurred by the employer from a particular period on account of constitution of the Board from a particular date or for any other reason. This argument is fallacious. Such beneficial measures for the welfare of the workers are applicable even to the construction activity which may have commenced before coming into force of the BOCW Act and the Cess Act, if they are subsequently covered by the provisions of these Acts. There can be no legal obstacle in ignoring the construction cost incurred before the cess became leviable by distinguishing it from the cost of construction incurred later, from a date when the Board is available to render service to the building and other construction workers. The levy of cess in these facts and circumstances cannot be faulted for any reason. The demand of cess in the given facts cannot amount to retrospective application of the Cess Act. Hence the appeals must fail.”

21. Notwithstanding the law being absolutely clear and constitutionally valid, it was not being implemented in accordance with the intent of Parliament. Therefore, there was a need for the petitioner to move this Court and for this Court to take up the issues raised as matters relating to social justice and human rights.

Positive directions issued by the Court

22. Bearing in mind the welfare and beneficial intent behind the BOCW Act and the Cess Act and for their effective and meaningful implementation, this Court has issued a series of directions since May 2008. This Court was

compelled do so since even twelve years after the enactment of the BOCW Act, the basic statutory mandates had not been carried out by the State Governments and UTAs. It is not necessary to advert to all the directions, even though each one of them is significant. A few of them, referred to infra, are enough to indicate the progression of the case. Later, we will also refer to various affidavits filed by the Union of India to indicate its helplessness in effectively implementing the BOCW Act and the Cess Act despite several statutory directions issued by it.

23. When the case was taken up for consideration by this Court on 12th May, 2008 it was informed by the petitioner that even after a decade of the enactment of the BOCW Act, the minimum and basic requirements of its provisions had not been implemented or considered by almost every State Government and UTA. It was submitted that Section 4 of the BOCW Act requires a Committee to be constituted called the State Building and Other Construction Workers Advisory Committee. The purpose of this State Advisory Committee is to advise the State Government on matters relating to the administration of the BOCW Act. It was submitted that perhaps no State Government had yet constituted the State Advisory Committee under Section 4 of the BOCW Act which reads:

“4. State Advisory Committee.—(1) The State Government shall constitute a committee to be called the State Building and Other Construction Workers’ Advisory Committee (hereinafter referred to as the State Advisory Committee) to advise the State Government on such matters arising out of the administration of this Act as may be referred to it.

(2) The State Advisory Committee shall consist of—

(a) a Chairperson to be appointed by the State Government;

(b) two members of the State Legislature to be elected from the State Legislature—members;

(c) a member to be nominated by the Central Government;

(d) the Chief Inspector—member, *ex officio*;

(e) such number of other members, not exceeding eleven, but not less than seven, as the State Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the State Government, ought to be represented on the State Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (e) of sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of State Advisory Committee shall be such as may be prescribed:

Provided that the number of members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.”

24. Similarly, it was submitted that State Governments had not framed statutory rules in terms of Section 62 of the BOCW Act. The significance of the Rules is that they are required to provide, *inter alia*, registration of an

establishment, registration of a beneficiary (construction worker), the benefits that a beneficiary is entitled to under Section 14 of the BOCW Act and so on. Consequently, in the absence of any statutory rules having been framed by any State Government, it would be well-nigh impossible for a construction worker to obtain the benefits due to him or her under the provisions of the BOCW Act.

25. For the purposes of framing statutory Rules, Section 5 of the BOCW Act postulates the State Government constituting one or more Expert Committee consisting of persons specially qualified in building or other construction work for advising the State Government in drafting the rules.

26. Based on the submissions made, the Court called for factual information from the State Governments to be provided within eight weeks.

27. When the case was taken up for consideration on 5th December, 2008 it transpired that only some States had provided the required information, but more significantly, it came to notice that cess was being collected by the State Governments under the Cess Act but the benefits of that collection were not being passed on to the construction workers.

28. Accordingly, on 13th January, 2009 the Court turned its attention to yet another very important and significant aspect of the BOCW Act, that is, the appointment of registering officers, registration of establishments and the

registration of building workers who are the real beneficiaries of the provisions of the BOCW Act. Section 6 of the BOCW Act requires the appropriate government to appoint gazetted officers as registering officers for the purposes of the BOCW Act. What is more important is Section 7 of the BOCW Act, which requires the registration of establishments. The necessity of such registration is that it facilitates the implementation of other laws that could be beneficial to construction workers, such as the provisions of the Maternity Benefits Act, 1961 and the provisions of the Minimum Wages Act, 1948. In the absence of the registration of establishments involved in construction activities, it would be extremely difficult for the authorities under the BOCW Act to implement the provisions of labour laws.

29. What is equally important is the registration of building workers who are the real beneficiaries of the provisions of the BOCW Act. This is provided for in Section 11 and Section 12 of the BOCW Act. It does not require much imagination to appreciate that unless a construction worker is registered under the provisions of the BOCW Act and is employed by a registered establishment, that construction worker will not be entitled to any benefits that may accrue under the provisions of the BOCW Act or any other law that can benefit a construction worker. This is really the crux of the implementation issue arising in the present case and unfortunately, little

attention was paid to it by any State Government or any UTA. All that we have been told is that there are more than 4.5 crore building and construction workers in the country and earlier about 2.15 crore had been registered and as of now about 2.8 crore have been registered. How these figures have been arrived at is anybody's guess. In any event, the registration of building and construction workers is well below the required number and is also a guesstimate.

30. Yet another significant aspect of the implementation of the BOCW Act that was neglected and brought to the notice of this Court related to the constitution of the State Building and Other Construction Workers' Welfare Board under the provisions of Section 18 of the BOCW Act. The Welfare Board is not an administrative body, but is a body corporate, having perpetual succession and a common seal and which may sue and be sued. The Welfare Board has a range of functions to perform and these are detailed in Section 22 of the BOCW Act. These functions include providing assistance to a beneficiary in case of an accident, providing pension to beneficiaries, sanctioning loans, providing financial assistance for the education of children of beneficiaries and so on. In other words, a large amount of benefits that a construction worker is entitled to come within the purview of the functions of the Welfare Board. Section 22 of the BOCW Act

reads as follows:

“22. Functions of the Boards.—(1) The Board may—

(a) provide immediate assistance to a beneficiary in case of accident;

(b) make payment of pension to the beneficiaries who have completed the age of sixty years;

(c) sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;

(d) pay such amount in connection with premia for Group Insurance Scheme of the beneficiaries as it may deem fit;

(e) give such financial assistance for the education of children of the beneficiaries as may be prescribed;

(f) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed;

(g) make payment of maternity benefit to the female beneficiaries; and

(h) make provision and improvement of such other welfare measures and facilities as may be prescribed.

(2) The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment.

(3) The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so, however, that the amount payable as grants-in-aid to any local authority or employer shall not exceed—

(a) the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified by it in this behalf, or

(b) such amount as may be prescribed,

whichever is less:

Provided that no grants-in-aid shall be payable in respect of any such welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf.”

31. One of the more important functions of the Welfare Board is to constitute a fund called the Building and Other Construction Workers' Welfare Fund. This is provided for in Section 24 of the BOCW Act. As the name suggests, the Welfare Fund is intended to utilize the funds received by it, not for the benefit of the Welfare Board, but for the benefit of the construction workers. As far as the expenses of the Welfare Board are concerned, Section 24(3) of the BOCW Act provides that it shall not exceed 5% of its total expenses during a financial year meaning thereby that at least 95% of the fund is to be utilized for the benefit of construction workers. Therefore, there are certain financial limitations placed on the Welfare Board with regard to the utilization of the Welfare Fund, which is constituted for the benefit of the construction workers. What has been brought to our notice is that huge amounts are available with the Welfare Boards, but have not been utilized for the benefit of the building and

construction workers. This is not only a tragedy, but a travesty of justice, but we will advert to this a little later.

32. Realizing the significance and the importance of the provisions regarding the appointment of registering officers, registration of establishments and construction workers and setting up of the Welfare Boards (none of which had apparently been complied with) the Court gave the following direction on 13th January, 2009:

“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 [BOCW] 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.”

33. Thereafter, on 18th January, 2010 the Court passed a set of directions so that the provisions of the BOCW Act could be effectively implemented.⁸

The directions passed by this Court are as follows:

1. Welfare Boards have to be constituted by each State with adequate full time staff within three months.
2. Welfare Boards will have to meet at least once in two months or as specified in the rules, to discharge their statutory functions.
3. Awareness should be built up, about the registration of building workers and about the benefits available under the Act. There should be effective use of media, AIR and Doordarshan, for awareness

⁸National Campaign Committee for Central Legislation on Construction Labour v. Union of India, (2011) 4 SCC 653

programmes regarding the Act, the benefits available there under and procedures for availing the benefits.

4. Each State Government shall appoint Registering Officers and set up centres in each district to receive and register the applications and issue receipts for the applications.

5. Registered trade unions, Legal Service Authorities and NGOs are to be encouraged to assist the workers to submit applications for registration and for seeking benefits.

6. All contracts with Governments shall require registration of workers under the Act and extension of benefits to such workers under the Act.

7. Steps to be taken to collect the cess under the Cess Act continuously.

8. The benefits under the Act have to be extended to the registered workers within a stipulated time frame, preferably within six months.

9. The Member Secretary of the Welfare Boards and the Labour Secretary shall be responsible for due implementation of the provisions of the Act. The Labour Ministry of each State shall carry out special drives to implement the provisions of the Act.

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

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

34. Notwithstanding these specific and some general directions, the State Governments and UTAs apparently failed to take adequate steps to push ahead the implementation of the BOCW Act. What is equally tragic is that on 25th April, 2011 when the case was taken up for consideration, the

learned Additional Solicitor General appearing on behalf of the Union of India stated before this Court that though directions had been issued by the Central Government from time to time under the provisions of the BOCW Act, implementation of the directions had not taken place at the ground level for the reason that such directions were not enforceable with penal consequences! Therefore, the Central Government had decided to take steps to amend the BOCW Act and if necessary to enact statutory Rules in that regard. For this purpose, the learned Additional Solicitor General sought three months time for the Union of India to take necessary steps.

35. Not only did the Union of India not take any effective steps to amend the BOCW Act but even the State Governments and UTAs continued the unashamed and unabashed flouting of the directions issued by this Court as well as by the Central Government. In a sense, it seems to have been decided by the powers that be that the BOCW Act ought not to be implemented faithfully. Faced with this situation, this Court had no option but to initiate proceedings for contempt of Court. An opportunity was given to all concerned to file a reply. Some State Governments filed a reply, while others did not.

36. At this stage, it may be mentioned that it was noticed by this Court that the amounts collected by the State Governments and the UTAs under

the provisions of the Cess Act had not been subjected to any audit by the Comptroller and Auditor General (CAG). It was also noticed that large funds were lying with the Welfare Boards, but had not been disbursed. The possibility of these amounts being diverted for other heads of expenditure could not be ruled out by this Court.

37. Therefore, taking all factors into consideration the following general directions were issued by the Court on 7th February, 2012⁹ :

“(a) All the State Welfare Boards shall be subjected to audit by the CAG within two months from today. All the States, Union Territories and the State Boards to initiate the process and ensure its completion under the provisions of Section 27 of the Act.

(b) Every Welfare Board shall, without fail, hold its meetings at least once in two months and submit its Minutes, as well as the action taken and progress reports in regard to the framing and implementation of the schemes and disbursement of funds to the eligible applicants, to the Secretary (Labour) of that Government quarterly.

(c) The funds available with the Welfare Boards which have not been disbursed or are not likely to be disbursed within a short period should be properly invested with the nationalized banks only. Funds available with the Welfare Boards shall not be utilized by the State for any other head of expenditure of the State Government, etc.

(d) Union of India has filed an affidavit. It is stated in the affidavit that they have taken various steps, including steps for amendment of the Act and the Rules framed thereunder. Union of India is directed to expedite this process. We also direct the Union of India to discharge its various statutory functions under the Act with particular reference to Sections 24 to 27. It shall also issue appropriate directions under Section 60 of the Act to all the State Governments to fully implement the provisions of the Act as well as the Cess Act.”

⁹ National Campaign Committee for Central Legislation on Construction Labour v. Union of India, (2012) 3 SCC 336

38. Quite clearly, this Court was more concerned with the implementation of the BOCW Act and the Cess Act and not with coercing the governmental functionaries to perform their duties and responsibilities. Accordingly, with appropriate directions having been issued, this Court did not feel the necessity of proceeding further with the contempt proceedings, which were then disposed of.

39. More than a year later, this Court again took up the matter on 12th December, 2014 with the expectation that some positive steps had been taken in the meanwhile. However, the hopes were belied and so a direction was given to the Secretary in the Ministry of Labour and Employment of the Government of India to convene a meeting of all the Secretaries in the corresponding Ministries of the State Governments and UTAs on or before 16th January, 2015 and to discuss with them the modalities for effective implementation of the BOCW Act and the Cess Act and arrive at a consensus since these statutes involved the living conditions of construction workers and collection of huge amounts for their benefit.¹⁰

40. Pursuant to the directions given on 12th December, 2014 a meeting was held as proposed and the Union of India filed an affidavit in this regard.

¹⁰National Campaign Committee for Central Legislation on Construction Labour v. Union of India, (2015) 17 SCC

In the order dated 13th February, 2015 it was noticed that the affidavit disclosed certain shocking figures relating to the collection and utilization of the cess. By way of illustration, the figures relating to the States of Maharashtra and Rajasthan were noted. The tabular statement prepared and incorporated in the order dated 13th February, 2015 is given below:

Year	Cess collected in crores	Expenditure incurred in crores for 17 schemes
2011-12	Rs.425.97	No figure supplied
2012-13	Rs.777.69	Rs.3.99
2013-14	Rs.788.60	Rs.53.34

(State of Maharashtra)

Year	Cess collected in crores	Expenditure incurred in crores for various schemes
2011-12	Rs.154.01	No figure supplied
2012-13	Rs.173.83	Rs.11.95
2013-14	Rs.251.95	Rs.25.93

(State of Rajasthan)

41. It was noted that the unfortunate situation reflected in the above two tabular statements, that is, non-utilization of the large amounts collected, was repeated in State after State. It was further noted that: (i) There was no clear indication whether the CAG had audited the receipts and expenditure;

(ii) There were a multiplicity of schemes in operation, apparently for the benefit of construction workers. However, it was not clear whether the schemes were being monitored by one authority or by a different authority for each scheme. The learned Additional Solicitor General was requested to inform the status in this regard; (iii) Given the existing situation, the Union of India was expected to take necessary steps and to issue appropriate directions under Section 60 of the BOCW Act.¹¹

42. When the matter was next taken up on 31st July, 2015 the learned *Amicus Curiae* highlighted the shocking state of affairs that we had noticed on 13th February, 2015. He pointed out the tragic state of affairs, not only with reference to Rajasthan, but also with reference to Haryana, Uttar Pradesh and the National Capital Territory of Delhi. It was also brought to notice that the total amounts collected under the provisions of the Cess Act was between about Rs.25,000 and Rs.30,000 crores. Based on the submissions made by the learned *Amicus* we required Haryana, Rajasthan, Uttar Pradesh and Delhi to file affidavits with regard to the collection and utilization of the amounts under the Cess Act and proposals for utilization of the amounts.¹²

¹¹National Campaign Committee for Central Legislation on Construction Labour v. Union of India, (2015) 17 SCC 169

¹²National Campaign Committee for Central Legislation on Construction Labour v. Union of India, (2015) 17 SCC 171

43. Unfortunately, the affidavits filed did not take the matter of utilization of funds any further, in the sense that the State Governments and UTAs had no clue on how to spend the cess that had been collected; on the contrary, it appeared that the cess collected was being used for purposes other than for the benefit of construction workers, such as for advertisements etc. Faced with this situation, we had no option but to request the Secretary in the Ministry of Labour and Employment of the Government of India to be present in Court along with a possible action plan concerning the utilization of the collected cess.

44. When the Secretary in the Ministry of Labour and Employment appeared in Court on 11th September, 2015 he informed us of certain positive steps contemplated by the Government of India. We noted three such steps: (i) Introducing a Universal Access Number to be provided to every construction worker so that if he or she migrates from one State to another, the benefit of registration does not get lost, nor does that construction worker need to get registered in the other State; (ii) Registration of construction workers - we were informed that though there were more than 4 crores construction workers, only about 1.5 crores had been registered with the concerned authorities. It was expected that the remaining construction workers would be registered before the end of the financial year

that is by 31st March, 2016; (iii) Ensuring that benefits of Government schemes are passed on to construction workers, such as scholarships, skill development programs etc.¹³

45. It is worth mentioning that the introduction of a Universal Access Number is not something new or novel, inasmuch as Section 13 of the BOCW Act requires every beneficiary of the statute to be provided with an identity card with a photograph duly affixed thereon. Similarly, Section 15 of the BOCW Act obliges every employer to maintain a register showing the details of employment of beneficiaries in a building or other construction work. Obviously, the register would contain the identity of the beneficiary based only on the identity card issued under Section 13 of the BOCW Act. The provisions of Section 13 and Section 15 of the BOCW Act read as follows:

“13. Identity cards.—(1) The Board shall give to every beneficiary an identity card with his photograph duly affixed thereon and with enough space for entering the details of the building or other construction work done by him.

(2) Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.

(3) A beneficiary who has been issued an identity card under this Act shall produce the same whenever demanded by any officer

¹³National Campaign Committee for Central Legislation on Construction Labour v. Union of India, (2015) 17 SCC 173

of Government or the Board, any inspector or any other authority for inspection.

15. Register of beneficiaries.—Every employer shall maintain a register in such form as may be prescribed showing the details of employment of beneficiaries employed in the building or other construction work undertaken by him and the same may be inspected without any prior notice by the Secretary of the Board or any other officer duly authorised by the Board in this behalf.”

46. The matter was once again taken up for consideration on 16th October, 2015 when learned counsel for the parties were heard and the affidavit filed by the Secretary in the Ministry of Labour and Employment was considered.¹⁴ During the course of discussions, it came out that there were five key areas on which the Central Government needed to concentrate for the time being. These five key areas were identified as follows:

- “(i) To ensure maximum coverage of the building and other construction workers;
- (ii) To ensure distribution of benefits and implementation of the Schemes that are in existence for the benefit of the building and other construction workers;
- (iii) To lay greater emphasis on education and provide educational facilities to the children of the building and other construction workers;
- (iv) To provide health benefits and insurance of the building and other construction workers and their families;
- (v) To activate the State Advisory Boards which, as per the affidavit, have not even met in the last several years.”

¹⁴National Campaign Committee for Central Legislation on Construction Labour v. Union of India, (2015) 17 SCC 174

47. Thereafter, it appears that in spite of directions given by this Court and the Government of India, hardly any progress was made to benefit the construction workers. Consequently, this Court was compelled to take the assistance of a senior officer from the office of the CAG to determine the amount collected as cess for the benefit of construction workers and ascertain where the amount was actually being spent.

48. The affidavits filed by the office of the CAG indicated that the amount collected as cess for the benefit of construction workers was in the region of about Rs.27,000 crores and about Rs.29,000 crores. The affidavits also indicated that some State Governments had not even bothered to transfer the amount to the State Welfare Board. Overall, the affidavits gave a clear picture of a shocking state of affairs inasmuch as some Welfare Boards had expenditure out of the collected cess for payment of entry tax/value added tax, purchase of washing machines for construction workers and purchase of laptops for construction workers. This Court found that rather astonishing since it appeared that there was no rationale in providing washing machines and laptops to construction workers who were by and large poor and uneducated as well as migrant labour. Be that as it may, it also came to notice that huge amounts were being spent for administrative purposes

thereby exceeding the 5% limit provided for in Section 24(3) of the BOCW Act. As far as the beneficiaries were concerned, hardly 10% of the collected amount of cess was utilized for their benefit, even including the expenditure on washing machines and laptops.

49. On 10th November, 2017 when the case was again taken up for consideration, the Secretary in the Ministry of Labour and Employment informed us that there had been an increase in the number of registered construction workers in the country from about 2.15 crores to about 2.8 crores. We were also informed that the collection of cess in the country had increased and had exceeded Rs.37,000 crores as on 30th June, 2017. The overall expenditure had also increased from about Rs.5371 crores to about Rs.9491 crores again as on 30th June, 2017. We were also informed that schemes had been prepared for the benefit of construction workers and a national online portal was under construction which could be used by NGOs, perhaps to monitor the implementation of the statutes that we are concerned with. In other words, the impression sought to be given to us was that the Government of India was now getting its act together, collecting data and applying its resources for the benefit of construction workers,

Affidavits filed by the Union of India

50. The Union of India through the Ministry of Labour and Employment

has filed about a dozen affidavits from time to time. It is not necessary to detail the contents of each affidavit, except with respect to a few salient issues directly concerning the interests of construction workers which are mentioned below.

(a) Directions issued by the Union of India under Section 60 of the BOCW

Act: The Union of India has issued various directions to the State Governments and the UTAs with regard to implementation of the BOCW Act and the Cess Act. These directions were issued under Section 60 of the BOCW Act on:

- (i) 27th September, 2010
- (ii) 12th July, 2013 (statutory order)
- (iii) 27th February, 2014
- (iv) 4th March, 2014
- (v) 16th October, 2014
- (vi) 9th September, 2015
- (vii) 23rd September, 2015
- (viii) 8th October, 2015 and
- (ix) 7th June, 2016

51. It is stated by the Union of India in an affidavit of 11th September, 2015 that directions issued in the past have not yielded the desired outcome

which is reflected in the accumulation of huge amounts of cess with the Welfare Boards resulting in inadequate provisions for safety, health and other conditions of service of construction workers. This complaint is reiterated in a later paragraph of the affidavit. However, we may note that subsequently, in an affidavit dated 26th February, 2016 the Union of India indicated in a tabular form, the status of compliance with some directions issued; nevertheless, non-compliance remained the rule while compliance the exception. The crux of the matter is to ensure the passing on of the benefits to the unorganized sector of construction workers, but this has not been achieved by any State Government or UTA.

(b) Schemes framed by State Governments and UTAs: While full details of schemes for the benefit of construction workers are not available on record, we are surprised to find from the affidavit filed by the Union of India on 13th February, 2015 the number of schemes framed by the State Governments. For example, it is stated that in Haryana, there are 22 schemes; in Himachal Pradesh, there are 17 schemes; in Jharkhand, there are various schemes; in Maharashtra, there are 17 schemes; in Meghalaya, there are 14 schemes; in the NCT of Delhi, there are 18 schemes and in Rajasthan and Tamil Nadu, there are various schemes. It is quite clear, therefore, that the State Governments and UTAs are only interested in announcing one

scheme after another without giving any thought to the formulation of these schemes, monitoring their efficacy and supervising their implementation. The implementation of these schemes appears to be only on paper.

(c) **Other benefits:** The affidavits of the Union of India advert to some statutory benefits. For example, it is stated that a large number of construction workers would be entitled to the benefit of the Mahatma Gandhi National Rural Employment Guarantee Scheme, since most of the works undertaken through the scheme, barring a few relating to forestry, horticulture, etc. fall within the meaning of 'building or other construction work' as defined in Section 2(1)(d) of the BOCW Act. Similarly, every establishment, falling within the purview of Section 1(4) of the BOCW Act, employing more than 20 workers would be covered by the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Finally, any establishment covered by the provisions of Section 1(5) of the Employees' State Insurance Act, 1948, and employing 10 or more workers is obliged to provide health benefits and other benefits under the said Act to the workers. It is submitted on affidavit by the Union of India that: if any establishment employs 20 or more building construction workers, it not only falls within the purview of the BOCW Act, but also falls within the purview of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952

(in covered areas); any establishment, employing 10 or more building construction workers may fall within the purview of the Employees' State Insurance Act, 1948 (in covered areas), and within the purview of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and also within the purview of the BOCW Act.

52. In other words, a large number of benefits are available to building and construction workers but an effort is needed to ensure that all the concerned authorities sit together for the benefit of these building and construction workers, on whose account thousands of crores of rupees are being collected under the Cess Act.

53. It is disclosed by the Union of India in its affidavit dated 9th October, 2015 that not a single State Advisory Committee, anywhere in the country held a single meeting during the previous 12 months. This is a clear indication that there is a total lack of concern and apathy on the part of the powers that be in doing anything substantial for the benefit of construction workers. This is indeed an extremely sorry state of affairs that puts a Shakespearean tragedy to shame. The members of the State Advisory Committee must appreciate that they have a huge responsibility, which they must discharge or give up their position, and make way for somebody else to take over the responsibility.

(d) **Sobering features:** Two sobering features come out of the affidavits filed by the Union of India. They are: (i) There is a move to provide a Universal Access Number with portability to construction workers. However, this would require some legislative changes and a huge campaign and effort by the Union of India, the State Governments and Union Territory Administrations. It is not clear whether any one of them has the will or desire to ensure that through the provision of a Universal Access Number, the construction workers will be given the benefits that they are legitimately entitled to; (ii) The second sobering feature is disclosed in the affidavit of 26th February, 2016 where the Union of India has provided a tabular statement showing that several States have complied with some directions issued by the Union of India under Section 60 of the BOCW Act. Although this is heartening, full compliance of the provisions of the various statutes enacted for the benefit of construction workers is still far away.

(e) A positive development that has taken place is the announcement by NALSA of the Legal Services to the Workers in the Unorganised Sector Scheme, 2015. The efficacy of this Scheme and its implementation has not yet been evaluated, but given the track record of NALSA, we are fairly confident that it is taking necessary steps in the right direction.

(f) **Monitoring Committee:** On 10th November, 2017 it was stated before us by

the Secretary in the Ministry of Labour & Employment that a Monitoring Committee had been set up sometime in 2015 (actually vide order dated 9th September, 2015) for effective implementation of the BOCW Act. The Monitoring Committee consists of the Labour Secretary of each State/Union Territory and the first meeting of the Monitoring Committee was held in November 2015. Thereafter, seven meetings have been held by the Monitoring Committee.

54. Much earlier, through an affidavit dated 15th January, 2016 it was stated by the Secretary in the Ministry of Labour & Employment that the Monitoring Committee was actually set up by an order dated 9th September, 2015 with the Secretary in the Ministry of Labour & Employment, as the Chairman, the Additional Secretary as the Vice Chairman and the Joint Secretary and Director General (Labour Welfare) as the Member Secretary. A representative of the Chief Labour Commissioner (Central) was a Member and the Director/DS, DG (LW) was the Member Convenor. In view of the ambiguity, the composition of the Monitoring Committee is not quite clear nor is it clear whether the composition of the Monitoring Committee has been expanded or reworked.

55. Be that as it may, the Terms and Reference of the Monitoring Committee are as follows:

- “(a) The Committee will hold a meeting once in three months and interact with the State/UTs governments through video conferencing or in person.
- (b) The Committee will furnish its Report of every meeting to Secretary (L & E) for information and suggesting further measures to be taken to improve utilization of Cess funds.
- (c) Suggest issue of directions from time to time under Section 60 of BOCW Act, 1996, if felt necessary.”

56. The last meeting of the Monitoring Committee (8th meeting) was held on 12th December, 2017. This meeting was held subsequent to the order dated 10th November, 2017 passed by this Court and on the basis of the statement made by the Secretary in the Ministry of Labour & Employment that she would call a meeting of the Monitoring Committee consisting of the Labour Secretaries of all the States and Union Territories within one month.

57. It is important to note that the Monitoring Committee is ordered to meet once in every three months and we hope that this order issued by the Government of India would be honoured and respected. In any event it is significant that at least now the Union of India has woken up to its statutory responsibilities and duties.

Collection and utilization of the cess

58. Statistical information regarding the collection and utilization of cess suggests nothing but a complete mess. The figures on our record are

available from three sources:

1. The 28th Report of the Standing Committee on Labour (2016-17) of the 16th Lok Sabha prepared in August 2017.

2. Affidavit of the CAG dated 6th October, 2017. However, this information is incomplete and the actual figures would be higher than reflected in the affidavit. It must be stated here that it is surprising that even the CAG does not have accurate figures from the State Governments and the UTAs.

3. Information provided in Court by the Secretary, Ministry of Labour and Employment on 10th November, 2017.

59. The collection and utilization mess can be appreciated from the tabular statement below:

Cess collected as per the report of the Standing Committee as on 31.03.2017 (Provisional) (in crores of rupees)	Amount spent as per the report of the Standing Committee as on 31.03.2017 (Provisional) (in crores of rupees)	Cess collected as per the affidavit of the CAG dated 06.10.2017 (in crores of rupees)	Amount transferred to the Welfare Board as per the affidavit of the CAG dated 6.10.2017 (in crores of rupees)	Cess collected as per the statement of the Secretary, Ministry of Labour and Employment as on 30.6.2017 (in crores of rupees)	Amount spent as per the statement of the Secretary, Ministry of Labour and Employment as on 30.6.2017 (in crores of rupees)
32632.96	7516.52	37060.90	37255.45 (not necessarily utilized) ¹⁵	37482	9491

¹⁵ There is an obvious discrepancy

60. The detailed figures as on 31st March, 2017 relating to each State and UTA are given in **Annexure I** to this judgment. It may be mentioned here that the National Legal Services Authority (NALSA) has stated in an affidavit filed on 14th December, 2016 that its estimate is that the amount of cess that ought to have been collected is in the region of about Rs. 70,000 crores!

61. Perhaps only the Standing Committee has the accurate figures but, as mentioned above, it is quite shocking that even the CAG does not have all the figures and whatever figures are available, may not be reliable. It must be appreciated that the CAG is a constitutional authority under Article 148 of the Constitution charged with the duty and adequately empowered by Article 149 of the Constitution in relation to the accounts of the Union and the States. If this constitutional body does not have the required and accurate information, there is undoubtedly a financial mess in this area and this chaos has been existing since 1996. The only victims of this extremely unfortunate state of affairs and official apathy are construction workers who suffer from multiple vulnerabilities.

62. What makes the situation even worse is that many of the construction workers are believed to be women and at least some of them have small children to look after. That even they are victims of official apathy truly

reflects a very sad state of affairs, and the loss already caused to them and other construction workers cannot be remedied. The reason for this is that it is not known which construction worker is entitled to get how much in terms of money or what benefit and under which scheme. Some of these construction workers from the 1990s and even later, may perhaps have unfortunately passed away or might be untraceable or old enough to deserve a pension. The question therefore is: What should be done with the thousands of crores that have been collected for the benefit of construction workers but cannot be utilized for their benefit? Can the State Governments and the UTAs or the Welfare Boards unjustly benefit and fill their coffers at the expense of unknown and helpless construction workers, some of whom are women and some having small children? These are questions for which we have not been provided any answers at all - it is entirely for the Government of India and Parliament to decide how to legally appropriate these thousands of crores of rupees and then utilize the amounts for the benefit of construction workers, at least for the future, assuming nothing can be done for the past. It is a mammoth task for which the powers that be must brace themselves, if they are serious in assisting people with multiple vulnerabilities.

Discussion and directions

63. There can be no doubt that the BOCW Act and its sister legislation, the Cess Act are social justice legislations. They were enacted keeping in mind the Directive Principles of State Policy, particularly Article 39 of the Constitution which requires the State to direct its policy to secure the health and strength of workers and Article 42 of the Constitution concerning just and humane conditions of work. In addition, Article 21 of the Constitution cannot be forgotten. A life of dignity is a fundamental right given to all persons and that includes construction workers. It is in this background that the two welfare and beneficent legislations must be understood and appreciated.

64. The Statement of Objects and Reasons for the BOCW Act refers to 8.5 million construction workers (85 lakhs) in 1995-1996. They were the vulnerable section of society who needed the support of the State for their safety, health and welfare. They have been consistently let down by the State and even directions given by this Court and by the Ministry of Labour and Employment has not brought about any substantive change. Governance is not about mouthing platitudes, or framing good looking schemes, but about action and it is quite clear to us that insofar as the rights of construction workers are concerned, that vulnerable section of society has been badly let

down by the governance structure. To make matters worse for them, the number of construction workers has increased 5-fold over the last 20 years, as estimated by the Ministry of Labour and Employment. The task before the State - to effectively implement the laws enacted by Parliament for the benefit and welfare of a vulnerable section of society is enormous, and as the progression in the case shows, the State might well be unable to live up to the expectations of Parliament unless there is a strong will to bring about a positive change. State apathy in a situation such as this virtually amounts to exploitation of the construction workers, and if the State turns exploitative, there is little hope for vulnerable sections of society.

65. In this background and on the available facts and figures, submissions were made by learned counsel for the parties.

66. Learned counsel for the petitioner's principal submissions were to the effect that the BOCW Act should be faithfully implemented and the amounts collected for the benefit of construction workers should be utilized for their benefit and not for any other purpose, including purchase of items like washing machines and laptops which obviously cannot be used by construction workers. On the other hand, the submissions of the learned Additional Solicitor General appearing on behalf of the Union of India were to the effect that all efforts are being made to ensure that there is full and

effective compliance with the provisions of the BOCW Act and that the Monitoring Committee is supervising these efforts so that all necessary entitlements and benefits are passed on to the construction workers.

67. It will be seen from the figures on record that the quantum of cess collected in one quarter from 31st March, 2017 till 30th June, 2017 is in the region of about Rs. 5000 crores. (The difference between the figure given by the Secretary in the Ministry of Labour and Employment and the Standing Committee). This is a huge amount and would work out to about Rs. 20,000 crores annual collection. The figures presented to us by the CAG or even the Standing Committee do not reflect such a huge collection. Obviously, there is something terribly rotten with the collection and accounting mechanism and it is quite clear that the exercise of registration, both of the establishments and of the construction workers is not being carried out satisfactorily. This is an area that has to be very seriously looked into by all the State Governments and the UTAs as well as by the Ministry of Labour and Employment. Unless there is effective and full compliance of the provisions regarding collection of cess, several establishments will remain outside the net and thousands of beneficiaries will be denied what is constitutionally and statutorily due to them.

68. Our first direction, therefore, is to the Ministry of Labour and

Employment, the State Governments and the UTAs to put in place and strengthen the registration machinery, both for the registration of establishments as well as registration of construction workers. This should be done within a specified time-frame to be decided by them, but at the earliest.

69. Our second direction to the Ministry, the State Governments and UTAs in this regard is to establish and strengthen the machinery for the collection of cess. It is a matter of common knowledge that there is a tremendous amount of construction activity going on all over the country and there is no reason why establishments involved in the construction activity, both formal as well as non-formal, should not pay the cess, especially when they are utilizing the services of the construction workers. Similarly, there is no reason why the construction workers of these establishments should be denied their entitlements and benefits under the BOCW Act and other laws. As noted above, huge amounts are involved and we will not be surprised if the quarterly collection of Rs. 5000 crores is perhaps the minimum - the cess collected could be much, much more, if the registration machinery and the collection machinery are strengthened and work to their potential.

70. As we have seen above, State Governments and UTAs have framed a

large number of schemes allegedly for the benefit of construction workers. The multiplicity of schemes brings to mind the adage that too many cooks spoil the broth. Keeping a track of these schemes is by itself an enormous task, perhaps resulting in administrative issues and red tape. It would be worthwhile if a model scheme is framed by the Ministry of Labour and Employment, which appears to be best equipped to do so, taking the best practices (so to speak) of the existing schemes. This model scheme can then be made available to all concerned, that is, the State Governments, the UTAs and the Welfare Boards with the flexibility of making appropriate modifications wherever necessary.

71. Our third direction, therefore, is to the Ministry of Labour and Employment to frame one composite Model Scheme for the benefit of construction workers in consultation with all stakeholders including NGOs who are actually working at the grassroots level with construction workers. While there is an urgency in framing such a Model Scheme, we would caution the Ministry of Labour and Employment to make haste slowly and to prepare a Model Scheme that is comprehensive and can easily be implemented, is pragmatic and does not involve too much paperwork.

72. In preparing the Model Scheme, we expect the Ministry of Labour and Employment to include within it, *inter alia*, issues and concerns of

education, health, social security, old age and disability pension and other benefits that are necessary for living a life of dignity as postulated by the Constitution of India. We also expect the Model Scheme to be framed and publicized within a specified time-frame to be decided by the Ministry of Labour and Employment, preferably within six months, but in any event on or before 30th September, 2018.

73. The CAG in its affidavit of 2nd May, 2017 has stated that it carries out three kinds of audits: Financial Audit, Compliance Audit and Performance Audit. It is explained in the affidavit that:

“.....In Financial Audit, audit ensures whether the financial statements are properly prepared or complete in all respect and are presented with adequate disclosure. In compliance Audit, audit checks whether the provisions of the Constitution, applicable laws, rules and regulations and various orders and instructions are being complied with or not. In Performance Audit, audit checks as to what extent the activity, programme or organization operates economically, efficiently and effectively.”

74. Unfortunately, as the variance in the figures shows, there is an absence of an effective audit in at least one of the three categories of audits, if not in all three. It is not for us to give any direction to the CAG on how to perform its functions, being a constitutional authority, but we are of opinion that it is necessary for the CAG to take stock of issues and problems pertaining to the implementation of the BOCW Act and to ensure that effective and meaningful audits are carried out, keeping in mind the huge

amounts involved.

75. On the issue of audits, it would be worthwhile and relevant for the State Governments and the Welfare Boards in every State and UTA to conduct a social audit. The CAG has prepared detailed guidelines for conducting a social audit in respect of some other schemes (for example, the Report of the Working Group on Developing Social Audit Standards with reference to the Mahatma Gandhi National Rural Employment Guarantee Act, 2005) and these guidelines can be adapted *mutatis mutandis* for carrying out a social audit in respect of the implementation of the BOCW Act.

76. Our fourth direction is to the Ministry of Labour and Employment, the State Governments and the UTAs to conduct a social audit on the implementation of the BOCW Act so that in future there is better and more effective and meaningful implementation of the BOCW Act. If a mistake has occurred, and we have no doubt that hundreds of mistakes have occurred in the implementation of the BOCW Act, it is more appropriate to admit the mistake for a better future rather than to justify it or continue to repeat the mistake. This is more so in the case of the BOCW Act where crores of men, women and children are involved on a day-to-day basis and Parliament has thought it appropriate to legislate for their benefit. The sanctity of laws

enacted by Parliament must be acknowledged - laws are enacted for being adhered to and not for being flouted. The rule of law must be respected and along with it the human rights and dignity of building and construction workers must also be respected and acknowledged, to avoid a complete breakdown of the BOCW Act compounded by serious violations of Part III of the Constitution guaranteeing fundamental rights.

77. We are pained to record that the Union of India through the Ministry of Labour and Employment has acknowledged that directions issued under Section 60 of the BOCW Act are disregarded by the State Governments and the UTAs, in the sense that they are not acted upon or are acted upon whenever it is convenient to the State Government or the UTA. This is rather disturbing and it is not necessary for us to say anything more on the subject. We leave it to the Union of India to discuss and decide on the modalities and methodologies for ensuring that directions issued under laws enacted by Parliament are given due respect by the State Governments and the UTAs and directions issued thereunder for the implementation of the laws in letter and spirit are acted upon with due dispatch and promptitude.

General directions

78. Apart from the specific directions that we have been constrained to pass, it is necessary to pass some general directions so that the BOCW Act

is fully implemented with responsibility.

1. Every State Government and UTA shall constitute a State Advisory Committee, if not already constituted, and that State Advisory Committee shall meet regularly for conducting its business. It may be mentioned that Rule 20 of the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Central Rules, 1998 provides that the Central Advisory Committee shall meet at least once in six months. This could be used as a good guideline for meetings of the State Advisory Committee.
2. Every State Government and UTA shall constitute an Expert Committee and frame statutory Rules under Section 62 of the BOCW Act, if such statutory Rules have not already been framed. Setting up an Expert Committee and framing statutory rules should be in a time bound manner, with the exercise being completed preferably within six months and in any event by 30th September, 2018.
3. The State Governments and UTAs must appoint Registering Officers for registration of establishments and construction workers. This is a critical aspect of the implementation of the

BOCW Act as well as the Cess Act.

4. Every State Government and UTA should establish a Welfare Board in terms of Section 18 of the BOCW Act. It must be appreciated that this is not a body that can be created by an executive order. The law requires that the Welfare Board shall be a body corporate having perpetual succession and a common seal. There are therefore legal formalities to be carried out for the constitution of a Welfare Board.
5. Every State Government and UTA should establish a Welfare Fund for the benefit of the construction workers, with appropriate rules for utilisation of the funds.
6. It is imperative that all construction workers should be given identity cards and should be registered in terms of Section 12 of the BOCW Act. The Ministry of Labour and Employment has proposed the issuance of a Universal Access Number for each construction worker. We make no comment or observation about the efficacy or otherwise of a Universal Access Number. It was submitted by learned counsel for the petitioner that smart cards should be issued to all construction workers. We keep this issue open and leave it to the Ministry of Labour and Employment to

decide on an appropriate system of identification and registration, provided it is effective and meaningful.

7. The Ministry of Labour and Employment shall actively consider making available to the construction workers the benefits of The Maternity Benefit Act, 1961 and The Minimum Wages Act, 1948, The Employees' State Insurance Act, 1948, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, as well as (to the extent possible) the Mahatma Gandhi National Rural Employment Guarantee Act, 2005.
8. The Ministry of Labour and Employment should also consider whether projects of the Government of India in the railways, defence and other establishments are brought within the purview of the BOCW Act.
9. The Monitoring Committee which has had quite a few meetings so far should pro-actively ensure full compliance of the provisions of the BOCW Act, the Cess Act and the directions issued by this Court. It needs to meet far more frequently, and in any case once in three months, considering that thousands of crores of rupees are not being gainfully utilized, and in some instances, misutilized.

79. The Union of India must take a decision on the management of the

cess already collected. It appears to us that the benefits and entitlements that have accrued to the construction workers (millions of whom have not been identified) cannot be passed on to them due to the passage of time, with the whereabouts of some of them not known. Accordingly, a decision will have to be taken by the Union of India on the gainful utilization of the cess already collected so that the Welfare Boards are not unjustly enriched – the beneficiaries having unfortunately lost out.

80. It must be appreciated that construction workers do not assist only in building infrastructure, but they also assist in building the nation, in their own small way. Once that realization dawns upon those required to implement the BOCW Act and the Cess Act, perhaps due respect will be shown to Article 21 of the Constitution and to Parliamentary statutes.

81. List the Writ Petition for directions on 1st May, 2018 only to ascertain whether timelines have been fixed by the concerned authorities for compliance of the directions.

82. The Contempt Petition stands disposed of.

.....J
(Madan B. Lokur)

New Delhi;
March 19, 2018

.....J
(Deepak Gupta)

ANNEXURE I

Sr. No.	Name of the States/UTs	Standing Committee Report		CAG Report	
		Amount of Cess collected (Rs. in Crore) as on 31.03.2017 [Provisional]	Amount spent (Rs. in Crore) as on 31.03.2017 [Provisional]	Amount of Cess collected (Rs. In Crore) from 1996 till 31.03.2017	Amount of Cess transferred (Rs. In Crore) to the Building and Other Construction Workers Welfare Board
1	Andhra Pradesh	1153.61	205.46	667.50	667.53
2	Arunachal Pradesh	65.36	51.60	98.31	20.00
3	Assam	512.24	12.57	530.46	611.82
4	Bihar	921.92	75.23	NA	972.93
5	Chhattisgarh	699.61	514.14	755.80	NA
6	Goa	85.68	0.83	94.78	95.78
7	Gujarat	1564.64	35.00	1524.36	863.04
8	Haryana	1847.05	172.07	1847.05	1847.05
9	Himachal Pradesh	335.39	44.49	353.25	360.62
10	Jammu & Kashmir	566.00	221.00	625.99	653.03
11	Jharkhand	291.28	143.46	330.95	NA
12	Karnataka	3861.00	240.00	4106.43	4106.03
13	Kerala	1474.73	1455.88	1483.81	439.47
14	Madhya Pradesh	1575.62	552.04	207.10	NA
15	Maharashtra	5074.16	255.50	5074.16	5074.16
16	Manipur	21.00	10.99	63.61	NA
17	Meghalaya	94.83	1.09	99.84	99.84
18	Mizoram	40.37	21.95	49.64	49.64
19	Nagaland	20.06	3.34	1.65	1.65
20	Odisha	1100.00	361.00	1118.35	1118.35
21	Punjab	921.55	391.61	973.78	973.78
22	Rajasthan	1600.00	620.00	1069.19	1266.52

23	Sikkim	64.67	20.68	76.00	76.00
24	Tamil Nadu	1706.00	600.00	1870.60	1870.60
25	Telangana	443.12	98.69	667.53	667.53
26	Tripura	129.28	12.36	140.18	140.18
27	Uttar Pradesh	2943.80	598.90	220.78	184.25
28	Uttarakhand	170.41	31.21	189.39	186.58
29	West Bengal	1149.12	531.42	NA	1713.18
30	Delhi	1930.00	174.71	1793.67	1846.68
31	A & N Islands	46.42	3.91	NA	NA
32	Chandigarh	96.09	3.72	NA	NA
33	Dadra & Nagar Haveli	3.08	0.00	NA	NA
34	Daman & Diu	37.17	0.54	NA	NA
35	Lakshwadeep	5.66	0.00	6.15	6.15
36	Punducherry	82.04	51.13	96.44	96.44
Total		32632.96	7516.52	26136.75	26008.83