

~~21 NOV 1986~~

Bill No. 126 of 1986

THE CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT
AND CONDITIONS OF SERVICE) BILL, 1986

By

SRI INDRAJIT GUPTA, M.P.

A

BILL

*to provide for the regulation of employment of construction workers,
their conditions of service and for matters connected therewith.*

BE it enacted by Parliament in the Thirty-seventh Year of the
Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Construction Workers (Regulation
of Employment and Conditions of Service) Act, 1986.

(2) It extends to the whole of India.

(3) Section 3 to 5, clauses (1) and (2) of section 6, and sections 8
and 9 shall come into force at once in all the States and the remaining
provisions of this Act shall come into force in a State on such date, not
being later than six months from the date of assent of this Act, as the

Short
title,
extent,
and
commence-
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appropriate Government may, by notification in the Official Gazette, appoint.

Declara-
tion as
to expe-
diency
of regu-
lation.

2. It is hereby declared that it is expedient in the public interest that the construction work as an industry, employing, as it does, a very large number of workers, both men and women, and whose conditions of work and living need amelioration and to whom regularity of employment must be assured, should be regulated by law, so that the Directive Principles of the Constitution, more particularly the relevant provisions in articles 39, 41, 42, 43 and 43A of the Constitution, are given effect to by a law made by Parliament.

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Definitions.

3. In this Act, unless the context otherwise requires,—

(a) 'adolescent' means a person who has completed his fifteenth year of age but has not completed his eighteenth year;

(b) 'adult' means a person who has completed his eighteenth year of age;

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(c) 'Board' means a Construction Labour Board established under section 8;

(d) 'child' means a person who has not completed his fifteenth year of age;

(e) 'construction work' means—

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(i) the construction, alteration, repair, maintenance or demolition of a building, which includes the work of masonry, carpentry, painting, electric work, plumbing and fittings or any such other work which goes into making of the aforesaid construction or the preparation for and the laying of the foundation of an intended building including boundary walls, or construction of wells and includes the construction of furnace, chimney, well or any ancillary structure;

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(ii) the construction of any railway line or siding otherwise than upon an existing railway, the construction, structural alteration or repair, maintenance and laying of foundation or demolition of any dock, harbour, canal, dams, embankments including river-valley projects, tanks and water course, inland navigation, road, tunnel, bridge, viaduct, water works, reservoir, pipelines, aqueduct, sewer, sewage works, river works, oil fields, sea defence works, gas works and any steel or reinforced concrete structure other than a building, or any other civil or constructional engineering work of a nature similar to any of the foregoing works or construction operations connected with the installation of machinery in any of the aforesaid construction activities; and

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(iii) any other ancillary construction operation such as stone breaking, brick-kiln and construction work for the purpose of erection or installation of machinery, wherever such installations takes place in a factory establishment or any engineering construction or in a mine;

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(f) 'construction worker' means a person engaged in construction work but does not include any person who is employed in a managerial or administrative capacity;

(g) 'employer' means any person who utilises construction labour for the purpose of construction work and includes any agent or contractor, by whatever name called, who undertakes the construction work on behalf of the employer;

(h) 'establishment' means any establishment or industry engaged in any construction work as defined in clause (c)

4. The provisions of this Act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force or in any contract or instrument drawing effect by virtue of any law other than this Act or any other decree or order of any court, tribunal or authority.

Overriding effect of the Act.

5. For the purposes of this Act, 'may' means 'shall', wherever it refers to some obligation to be discharged or power to be exercised.

Interpretation.

CHAPTER II

DRAWING UP OF SCHEMES AND CONSTITUTION OF BOARDS

6. (1) The Central Government may, in consultation with the State Governments and subject to the condition of previous publication, and after consulting the Central Construction Labour Board, frame a scheme to be called the Construction Workers (Regulation of Employment and Conditions of Service) Scheme, 1986 for ensuring greater regularity of employment, for regulating the employment of construction workers and for prescribing conditions of service for the construction workers in the State.

Scheme for ensuring regular employment to workers.

(2) In particular, the Scheme may provide—

(a) for the application of the scheme to such classes of construction workers and employers as may be specified therein;

(b) for defining the obligation of employers and construction workers, subject to the fulfilment of which the scheme may apply to them and the circumstances in which the scheme shall cease to apply to any construction worker of employer;

(c) for regulating the recruitment and entry into the scheme of construction workers, (and the registration of construction workers and employers) including the maintenance of registers, the removal, either temporarily or permanently of names from the registers and the imposition of fees for registration;

(d) for regulating the employment of dock workers, whether registered or not, and the terms and conditions of such employment, including rates of remuneration, hours of work and conditions as to holidays and pay in respect thereof;

(e) for ensuring that, in respect of period during which employment, or full employment, is not available to construction workers,

to whom the scheme applies and who are available for work, such workers shall, subject to the conditions of the Scheme, receive a minimum pay;

(f) for prohibiting, restricting or otherwise controlling the employment of construction workers to whom the scheme does not apply and the employment of construction workers by employers to whom the Scheme does not apply;

(g) for creating such fund or funds as may be necessary or expedient for the purposes of the Scheme and for the administration of such fund or funds;

(h) for the training and welfare of construction workers, in so far as satisfactory provision therefor does not exist;

(i) for the welfare of the officers and other staff of the Board;

(j) for health and safety measures in places where construction workers are employed in so far as satisfactory provisions therefor do not exist;

(k) for the manner in which, and the persons by whom, the cost of operating the Scheme is to be defrayed;

(l) for constituting the authority to be responsible for the administration of the Scheme;

(m) for such other incidental and supplementary matters as may be necessary or expedient for the purposes of the Scheme;

(n) for setting up authorities at state levels to be responsible for the administration of the Scheme at the State levels;

(o) for constituting adjudicating and appellate bodies to deal with disputes that may arise between the construction workers and the employers or between the construction workers and the Board.

(3) Any contravention of any provision of the Scheme shall be punishable with imprisonment for a term not exceeding three months in respect of first contravention or six months in respect of any subsequent contravention, or with fine upto rupees five thousand in respect of first contravention or rupees ten thousand in respect of any subsequent contravention, or with both.

Variation of Scheme. 7. (1) The State Government may in consultation with the State Construction Labour Board, established under section 8, and by notification in the Official Gazette and subject to the condition of previous publication and with the prior approval of the Central Government, which shall be accorded after consulting the Central Construction Labour Board, amend, alter or vary the Scheme made by it for the purpose of more effective implementation of the Scheme having regard to any special condition prevailing in the State and for conferring additional benefits to the construction workers.

(2) Pending the final publication of the Scheme by the State Government, the provisions of the Scheme framed by the Central Government shall be applicable in that State.

8. (1) The Central Government shall, by notification in the Official Gazette, establish a Construction Labour Board for each State by such name as may be specified in the notification.

State
Construc-
tion
Labour
Boards.

(2) Every Board shall be a body corporate as defined in section 5A of the Dock Workers (Regulation of Employment) Act, 1948.

(3) Every Board shall consist of a President to be appointed from amongst its members by rotation annually and such members shall be appointed by the Central Government in consultation with the State Government:

10 Provided that every Board shall include such number of members representing both the State Government and the employers of construction workers as not to be in excess of the number of members representing the construction workers.

15 (4) The Central Government shall appoint Construction Labour Boards on the same lines as provided under sub-sections (1) to (3), for each of the Union territories of Delhi, Chandigarh, Pondicherry and Goa, Daman and Diu and for such other Union territories as the Central Government may decide.

20 9. (1) The Central Government shall, by notification in the official Gazette, establish a Central Construction Labour Board consisting of a President to be appointed from any of its members by rotation annually and such member or members shall be appointed by it.

Central
Construc-
tion
Labour
Board.

(2) The board shall have such number of members representing construction workers as is equal to or in excess of the total number of 25 members representing both the Government and the employers.

(3) The representatives of workers shall include at least one representative from each of the State Governments and of the Union territories where a Construction Labour Board has been set up.

30 10. (1) Every State Government shall, after consulting the State Construction Labour Board, by notification in the Official Gazette and subject to the condition of prior approval of the Central Government, set up tripartite bodies, consisting of representatives of the State Government, employers and construction workers at the district level and below on the same pattern as the State Construction Labour Board.

Tripartite
bodies.

35 (2) The representatives of workers shall be elected on the basis of secret ballot, in the manner to be prescribed.

40 11. (1) The Construction Labour Boards set up in a State and/or a Union territory shall be responsible for administering the scheme and shall exercise such powers and perform such functions as may be conferred on them by the Scheme.

Functions
of the
Board.

(2) The tripartite bodies set up under sub-section (1) of section 10 shall be responsible for administering the Scheme in their respective areas.

(3) **The Central Construction Labour Board shall be a coordinating and advisory body without executive functions and the entire expenditure on the running of the Central Board shall be borne by the Central Government.**

(4) **No decision of the Boards, which is prejudicial to the interests of construction workers generally, shall be implemented except with the concurrence of the representatives of the workers on the concerned Board.**

STATEMENT OF OBJECTS AND REASONS

The construction industry employs, next only to agriculture, the largest number of workers in our country. This industry covers a variety of workers and operations ranging from construction of dams, power houses and bridges, harbours, roads, railway tracks and runways to factories and offices, schools, hospitals, hotels and ordinary residential buildings. These activities cover the entire length and breadth of our country. Most of these operations are seasonal and at times involves fluctuations in the employment pattern.

The nature of the construction industry being so different from other occupations, the normal patterns of relationship between the employers and employees are not relevant. Frequent changes take place in the employers as far as the workmen are concerned and in the workmen as far as the employers are concerned. In this industry the product of the industry remains stationary while the employers and the employees move out after completion of the work to different locations and may be, to different activities. Because of its seasonal nature and the uncertainty of continued availability of work both for the employers and the workmen, it has become necessary to regulate the industry.

The exact or even the approximate number of persons employed in this industry is not known. In the words of the National Commission on Labour the last census (1961) estimated that over two million workers were employed in major sectors of construction and maintenance. According to the estimates of the Planning Commission the construction industry was expected to have added about 2.3 millions work opportunities during the Third Five Year Plan. Of the 24.46 crore economically active population reported in the 1981 census, 35.65 lakhs were in construction of which 10 per cent were women. Another estimate, based on the assumption that every one lakh rupee worth of construction generates 3100 mandays of unskilled labour and 1300 mandays of technical/managerial personnel, puts the economically active population engaged in construction in 1982-83 at 1.133 crores. Thus the estimates of employment vary widely. The Pocket Book of Labour Statistics 1984 published by the Labour Bureau, Simla estimates employment in construction at the end of March, 1982 at 1.112 millions in the public sector and 71 thousand in the private sector. Considering that a very large portion of the construction activity takes place in the private sector in the rural areas and in non-project activities, as also house buildings in the urban areas also, the figures of the Labour Bureau in respect of the private sector could be off the mark. It may be noticed that a large portion of the total outlay on plan and non-plan activities of Governments and also private investment is spent on construction activities. An estimate of employment in the industry for the country as a whole at about 1.5 crores will appear reasonable. 10 per cent of this

would constitute women workers. It is no doubt true that a very high percentage of the work force in the construction industry would be of the unskilled type who do the work of helpers or are engaged in other unskilled activities and may seek other avocations, particularly in agriculture, during the slack season.

It is also necessary to recognise that when we refer to the construction industry, we also include in it persons engaged in quarrying, stone breaking and stone-crushing and those engaged in the brick-kiln industry. Despite their large numbers, the work force is highly unorganised. The results of verification of membership of Central Trade Union Organisations as on 31-12-1980 undertaken by the Chief Labour Commissioner (Central) show that the verified membership of workers in the building, Civil Engineering and public works industry as also in the brick-kiln industry adds up to a total of less than one lakh. Even this may be made up predominately of workers in the organised sector of the industry largely under Government Departments or in public sector corporations engaged in construction activities.

It is no doubt true that a number of labour laws can be said to apply to the workers in the construction industry, such as the Minimum Wages Act, 1948, the Contract Labour (Regulation and Abolition) Act, 1970, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, the Equal Remuneration Act, 1976, etc. and in certain exceptional cases, the Employees Provident Fund Act, the Employees State Insurance Act, the Payment of Gratuity Act and the like. Despite this in actual practice the workmen in this industry are totally neglected and helpless. The nature of the industry, the shifting employer-employee relationship, the seasonal and discontinuous nature of employment, the general apathy of the labour administration, and above all, their total lack of organisation have resulted in the bulk of the workmen in the industry not merely being denied their rights and benefits under these statutes but also even the minimum wages prescribed under law. The judgments of the Supreme Court in the *Asiad Case* and the *Bandhana Mukthi Morcha case* are a standing endorsement and indictment of the conditions of these workmen, even in the capital city of Delhi.

Another major contributing cause to this state of affairs is the total inapplicability of the normal type of labour laws to the situation obtaining in the construction industry. If the benefits of labour legislation have to reach this large mass of workers, it is then necessary that the law should take note of the unique features of the industry and should provide not merely for welfare of the workmen, but also for the regulation of employment itself in the industry. Such regulation could not be left to be taken care of by the employers or by the administrative hierarchy, but must be entrusted to an autonomous body statutorily set up and consisting of representatives of the workers, Government and the employers. Arrangements for regulating employment on the basis of compulsory registration of the employers and of the workmen, restriction on employment in the industry to only those workers who are registered under the law to be employed by employers who are also registered under the law, equitable sharing of the available employment

on the basis of rotational booking of workmen category-wise, vesting of responsibility for determining and disbursement of wages in the autonomous body, provision of all facilities including social security and a minimum guarantee of employment by the autonomous body are some of the features that must be incorporated in a law that must be centrally enacted and implemented through a statutory constituted body at the national level for purposes of co-ordination and similar bodies at the level of State Governments/Union territory administration for purposes of implementation.

For the purposes of the law, there is no need to bring in the concept of the principal employer, unlike in the Contract Labour (Regulation and Abolition) Act, 1970. The actual employer-employee relation subsists, howsoever temporarily, between the actual contractor who executes the work and the concerned workmen and it is the contractor who should be responsible as employer for fulfilling all the obligations cast on the employees. In the case of a private individual who undertakes a construction activity say building a house, directly not through a contractor, he will be treated as his own contractor and thus as employer under the law.

While there are a few laws purporting to relate, *inter alia*, to regulation of employment such as the Contract Labour (Regulation and Abolition) Act, 1970, the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, etc., the proposed law for the construction workers is patterned on the lines of the Dock Workers (Regulation of Employment) Act, 1948. In fact, the conditions obtaining among the dock workers before implementation of the above law were similar to the conditions that now obtain in the construction industry, the only difference being that the construction industry is spread over the length and breadth of the country unlike the dock industry which is confined to the ports.

Clauses (a), (d), (e) and (f) of article 39 enjoin upon the State to direct its policy towards securing (a) that the citizens, men and women equally, have a right to an adequate means livelihood; (d) that there should be equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41 directs the State to make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old-age, sickness and disablement, and in other cases of undeserved want.

Article 42 provides that the State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43 commends that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Article 43A provides that the State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

Having regard to the abovesaid obligations of the State, and the need to secure to citizens engaged in construction industry as construction workers, the rights which are latent in the abovesaid provisions, it has been felt that a central legislation for construction labour is a Constitutional imperative and hence this legislation.

The Bill seeks to achieve the above objectives.

NEW DELHI;

INDRAJIT GUPTA

October 15, 1986.

FINANCIAL MEMORANDUM

Clause 6(1) of the Bill provides for the framing of a Scheme to be called the Construction Workers (Regulation of Employment and Conditions of Service) Scheme, 1986 by the Central Government. Clause 6(2) (c) provides for the registration of Construction Workers and for imposition of fees for registration. Clause 6(2) (e) provides for payment of a minimum pay to construction workers during the period they remain unemployed. Clause 6(2) (g) provides for the creation of fund or funds for the purposes of the Scheme and for the administration of such funds. Clause 6(2) (h) provides for the training and welfare of the construction workers. Clause 6(2) (i) provides for the welfare of the officers and other staff of the Construction Labour Boards. Clause 6(2) (j) provides for health and safety measures for construction workers. Clause 6(2) (1) provides for constitution of an authority to administer the Scheme. Clause 6(2) (o) provides for the constitution of adjudicating and appellate bodies to deal with the disputes arising between construction workers and the employers or between the construction workers and the Board. Clause 8(1) provides for the establishment of Construction Labour Boards. Clause 9(1) provides for the establishment of a Central Construction Labour Board. Clause 10(1) provides for the constitution of tripartite bodies. Clause 11(3) provides that the expenditure on the running of the Central Construction Labour Board shall be borne by the Central Government. The expenditure on the Construction Labour Boards and tripartite bodies set up in the States shall be borne by the respective State Governments and the Central Government may also have to provide some assistance to the State Governments for carrying out the purposes of the Bill. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees one crore per annum.

It is also likely to involve a non-recurring expenditure of about rupees ten lakhs.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill provides for framing of a Scheme for construction workers. Clause 10 provides for the election of representatives of workers to the tripartite bodies. Clause 11(1) provides that the Construction Labour Boards shall be responsible for administering the Scheme and shall exercise such powers and perform such functions as may be conferred on them by the Scheme. The delegation of legislative power is of a normal character.