

ITEM NO.1501
(For judgment)

COURT NO.4

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 318/2006

NATIONAL CAMPAIGN COMMITTEE FOR CENTRAL LEGISLATION
ON CONSTRUCTION LABOUR (NCC CL) Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

WITH

CONMT.PET.(C) No. 52/2013 In W.P.(C) No. 318/2006 (PIL-W)

Date : 19-03-2018 These matters were called on for pronouncement
of judgment today.

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Hon'ble Mr. Justice Deepak Gupta pronounced the reportable judgment on behalf of Hon'ble Mr. Justice Madan B. Lokur of the Bench comprising Hon'ble Mr. Justice Madan B. Lokur and Hon'ble Mr. Justice Deepak Gupta.

The Court came to the following conclusion in terms of the

signed reportable judgment:

"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.

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.

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.

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.

The Contempt Petition stands disposed of."

(R. NATARAJAN)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed reportable judgment is placed on the file)