

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

Background:

The construction workers account for a sizeable majority of workers in the informal economy called the unorganized sector. According to the survey conducted by **NSSO** in 1999-2000 about 1.76 crore workers are employed in the construction activities. Although the State Govt. does not have any statistical data of the exact strength of these workers yet it is approximately estimated at one lakh in the State employed in various construction activities such as Hydro Power Projects, Dams, construction of Bridges and Roads etc. These workers are one of the most numerous and vulnerable segments of the unorganized sector in India. The building and other construction works are characterized by their inherent risk to the life and limb of the workers. The work is also characterized by its casual nature, temporary relationship between employer and employee, uncertain working hours, lack of basic amenities and inadequacy of welfare facilities. Although the provisions of various Labour Laws i.e., Minimum Wages Act 1948, Contract Labour (Regulation & Abolition) Act 1970 and Inter-State Migrant Workmen (Regulation of Employment & Conditions of Services) Act 1979 etc., are applicable to the building and other construction workers, a need was felt for a comprehensive Central Legislation for this category of workers. Towards the above goal the following two enactments have come on the Statute Book w.e.f. 19 August, 1996, initially brought in as ordinances on 3.11.1995.

- 1. The Building & Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; and**
- 2. The Building & Other Construction Workers' Welfare Cess Act, 1996.**

Salient Features of the Act

The above law aims to provide for regulation of employment & conditions of service of the building and other construction workers as also their safety, health and welfare measures in every establishment, which employs or employed during the preceding year ten or more workers. The exception made is only in respect of residential houses for own purpose constructed with a cost not exceeding **Rs. 10 lakh** and such other activities to which the provisions of Factories Act, 1948 and Mines Act, 1952 apply. Some of the other main provisions of the Main Act are given below:

- 1.** Provision for an **Advisory Committee** at the Central and the State levels with the function to advise the Governments concerned on such matters arising out of the administration of the Act as may be referred to it. The State Govt. has taken up the constitution of Advisory Committee, which is under process. **The State Advisory Committee** shall consist of a chairperson, two MLAs, one member nominated by the Central Govt., Chief

Inspector of Inspections, not more than 11 but not less than 7 members representing the employers, workers, association of architects, engineers, accident insurance institutions and other interests.

2. Provision for **registration of each establishment** within a period of **60** days from the commencement of work to ensure that there are no malpractices and to discourage non-compliance of law by circumventing. The State Govt has appointed all the Assistant/Deputy Labour Commissioners in Uttaranchal to exercise the powers of the Registering Officer and the Additional Labour Commissioner and Labour Commissioner Uttaranchal to function as Appellate Officer under the Act vide Govt Notification No 687/VIII/1063-Labour/2005 dated 15 April 2005 and NotificationNo690/VIII/1063-Labour/2005 dated 15 April 2005 respectively.

3. Provision for **registration of building workers between the age group of 18 to 60 as beneficiaries** under this Act, who will be given **photo identity cards** by the State Welfare Board i.e. The Uttaranchal Building and Other Construction Workers' Welfare Board

4. Provision for **constitution of a Building and Other Construction Workers' Welfare Board** by every State Government to exercise the powers conferred on, and performs the functions assigned to, under the Act. Accordingly the State Govt has constituted a State Welfare Board called by the name of The Uttaranchal Building and Other Construction Workers' Welfare Board under the chairmanship of the Minister of Labour and Employment vides notification no 2178/VIII/84-Labour/05 dated 31 October 2005.

5. Provision for constitution of a **Fund** called the Building and other Construction Workers Welfare Fund and monthly contribution to the Fund by the workers registered by the Board as beneficiary.

6. Provision for **immediate assistance in case of accidents**, old age pension, family pension, loans for construction of house, premium for group insurance, financial assistance for education, marriage, to meet medical expenses, maternity benefits etc.

7. Provision for fixing hours of work, welfare measures and other conditions of service of building workers, payment of wages and compensation in case of death and disablement.

8. Provision for **health and safety measures** for the construction workers in conformity with **ILO convention No.167** concerning safety and health in construction revising the **Safety Provisions (Building) Convention, 1937**. For this purpose comprehensive State Rules i.e. The Uttaranchal Building and

other Construction Workers (Regulation of Service and Conditions of Service) Rules, 2005 have been framed by the State Govt and notified by the Government notification No.963/VIII/680-Labour/2002 dated 25June, 2005

9. Provision for **constitution of safety committees** in every establishment employing 500 or more workers with equal representation from workers and employers in addition to appointment of safety officers qualified in the field and provision for notice of certain accidents to be sent by the employer to the concerned authorities and nearest relatives of the workman.

10. Provision for penalty for failure to give notice of the commencement of the building or other construction work and provision for penalties of fine and imprisonment for other violations and contraventions of the Act.

Funding

The Building & Other Construction Workers' Welfare Cess Act, 1996 is complementary to the Building & Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 which has been enacted with a view to provide for levy and collection of Cess on the cost of construction incurred by the employers for augmenting resources for various welfare measures and schemes to be operated by the Building and other construction Workers' Welfare Board constituted by the State Government under the Building & Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

The major source of the Funds shall be collection of Cess at rates not exceeding 2% of the cost of construction incurred by an employer. The collection of funds and administration of the Welfare Boards is the responsibility of the concerned State Government. But the Cess rates to be levied on the employers are prescribed by the Central Govt as per the Building & Other Construction Workers' Welfare Cess Act, 1996 and Central Rules 1998 and it has the sole jurisdiction in this matter. Accordingly the Central Govt vide its order No SO-2899 dated 26.9.96 has fixed the rate of Cess at 1% of the total construction cost which does not include the cost of the land and any compensation payable under Workmen's' Compensation Act 1923.

Authorities under the Building & Other Construction Workers' Welfare Cess Act, 1996.

The State Govt. has appointed all the Deputy Collectors in Uttaranchal to carryout the duties of the Assessing Officer while the Additional District Magistrates & the District Magistrates have been conferred with the powers of the Appellate Officers in the matters arising out of the assessment orders of the Assessing Officers in their respective jurisdiction vide Govt. Notification Nos 2278/VIII/680-Shram/2005TC-II dated 23 November 2005 and 2279/VIII/680-Shram/2005TC-II dated 23 November 2005. Similarly all the Tehsildar in Uttaranchal

have been appointed to function as the Cess Collectors for the purposes of the Cess Act vide Govt. Notification No 2277/VIII/680-Labour /2005TC-II dated 23 November 2005 .

Information to be furnished by the employer:

Every employer within 30 days of commencement of his work and payment of Cess shall furnish to the Assessing Officer Information in **Form No I** prescribed under Central Cess Rules, 1998

Time and manner of collection of Cess;

The Cess shall be paid by an employer within 30 days of completion of the construction project or within 30 days of the date on which assessment of Cess payable is finalized, whichever is earlier, to the Cess Collector. Failure to pay any amount of Cess within specified time entails payment of interest on the amount to be paid at the rate of 2% for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

Deduction of Cess at Source;

Where the levy of Cess pertains to building & construction work of a Govt. or of a public sector undertaking, such Govt, or public sector undertaking shall deduct the Cess payable at notified rate from the bills paid for such works.

Collection Expenses;

Such Govt. Office or Public Sector Undertaking may deduct from the Cess Collected or claim from the Board, actual collection expenses not exceeding 1% of the total amount collected. The amount collected, as Cess shall be transferred to the Board within 30 days of its collection.

Local authorities to collect Cess at the time of granting approval for construction work:

Where the approval of a construction work by a local authority is required every application for such approval shall be accompanied by a crossed bank draft in favour of The Uttaranchal Building and Other Construction Workers' Welfare Board payable at the station at which the Board is located for an amount of Cess payable at notified rates on the estimated cost of construction.

Advance payment of Cess:

An employer may pay in advance an amount of Cess calculated on the basis of the estimated cost of construction along with notice of commencement of work under Section 46 of the Main Act & Information in Form I prescribed under Central Cess Rules by a crossed bank draft in favour of the Board. Cess paid in advance shall be adjusted in the final assessment made by the Assessing Officer.

Penalty In Default of Payment of Cess

Failure to pay the payable amount of cess within specified date shall be deemed to be in arrears and the prescribed authority can impose penalty not exceeding the amount of cess. But before imposing any penalty the employer shall be given reasonable opportunity of being

heard. Any amount due under the Act is to be recovered as an arrear of land revenue.

Enforcement:

The responsibility for enforcement of the provisions of the Building and Other Construction workers Act, in establishments where the central government is appropriate government, lies with the office of Chief Labour Commissioner (Central) who is the head of the Central Industrial Relations Machinery (CIRM). Similarly where the appropriate government is the State Government, the responsibility for enforcement of the relevant provisions lies with them. The appropriate government would have inspectorates at appropriate level with given jurisdiction, with DG of Inspection at the Central level and Chief Inspector at the state level heading such inspectorates. The functionaries will have powers under S. 175 and 176 of IPC and S. 94 of Cr. P.C.

In pursuance of the said statutory obligations the State Govt. of Uttaranchal has appointed the Labour Commissioner to carryout the duties of the Chief Inspector and similarly all the Labour Enforcement Officers, the Assistant Labour Commissioners, Deputy Labour Commissioner and the Additional Labour Commissioner as the Inspector appointed under the Act vide Notification Nos 688/VIII/1063-Labour/2005 dated 15 April 2005 and 689/VIII/1063-Shram/2005 dated 15April 2005 respectively.