

Sunil Kumar Aledia vs Govt. Of Nct Of Delhi & Ors on 15 December, 2020

Author: Vipin Sanghi

Bench: Vipin Sanghi, Rajnish Bhatnagar

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2991/2020 and CM Nos. 11919/2020 & 25409/

SUNIL KUMAR ALEDIA

Through:

Mr. Shiven Varma &
Mishra, Advocates.

versus

GOVT. OF NCT OF DELHI & ORS.

Through: Mr. Sanjoy Ghose & Ms. Urv

Mohan, Advocates for resp

No.1 to 3/ GNCTD.

Mr. Sumer Kumar Sethi & M

Sharma, Advocates with Mr

Jeet Arora, Secretary for

No.4/ DSLSA.

Mr. Parvinder Chauhan, Ad

respondentNo.5/ DUSIB.

Mr. Rohan Anand, Advocate

respondent No.6/ UOI.

Ms. Shyel Trehan & Mr. Ch

Jain, Advocates for Inter

applicant in C.M. No. 111

Mr. Chinmoy Pradip Sharma

Mr.Kush Sharma and Mr. Va

Sharma Advocate for inter

applicant in C.M. No. 170

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

% 15.12.2020

1. Mr. Ghose has filed a status report on behalf of respondent No. 3/ Board which enlists some of the recent actions/ decisions taken by the Board in pursuance to the orders passed by this Court from time to time. The said status report has been read out in extenso. Mr. Ghose has advanced his submissions based thereon.

2. It is pointed out that in compliance of our direction that the Board should have its own website and server - since the presently used server of the Government of National Capital Territory of Delhi, i.e. the e-district portal has a lot of other traffic and is posing problems in the matter of online registration and renewal of registration, the Board has taken a decision to have its own server and develop its own website, for which purpose, it has been communicating with the National Informatics Centre (NIC). In this regard, reference is made to the communication dated 28.10.2020 received from the NIC - intimating that they have added more Virtual Machines (VMs) to the existing VMs. This addition will increase the efficiency of the e-district portal and more speedy work through the e-district portal would be possible, which would benefit the construction workers in applying for registration/ renewal of registration. The Board has, thereafter, sent a communication on 13.11.2020 to the NIC, insisting on complying with the orders passed by this Court.

3. We are of the view that with a view to push the implementation of this direction, it will be appropriate to have the NIC before us for this limited purpose. We, accordingly, direct issuance of Court notice to the National Informatics Centre (NIC), A-Block, CGO Complex, New Delhi - 110003, returnable on 02.02.2021. Along with the Court order, the communications referred to in the status report, should also accompany. Mr. Ghose shall place on record the said communications latest by tomorrow.

4. The other aspect about which there has been a little progress - as pointed out from the status report, is with regard to the difficulty being faced by the construction workers to access the e-district portal where the construction worker has changed his registered mobile phone number. Due to the said change, the construction worker is not able to generate the One- Time Password (OTP) which is required to log-in into the e-district portal. For that purpose, we were informed that the Sub-Divisional Magistrates (SDMs) concerned have been authorized to register the change of mobile phone numbers. The difficulty being faced by the workers was, and continues to be that the SDMs are too busy with other duties, and are not being able to deal with such requests. The status report discloses that the Secretary of the Board has requested the Deputy Commissioner (HQ), Revenue Department to sensitize all the SDMs to comply with our directions. Telephonic communications have also been addressed for that purpose. Mr. Ghose himself points out that the SDMs are over worked since they have to act as statutory authorities under dozens of legislations.

5. We direct the Revenue Secretary to find a solution to the said problem without any delay. If the SDMs are not in a position to take up the said responsibility on account of the work load presently being handled by them, the Revenue Secretary should authorize some other competent officer for the said purpose who would be able to devote the time. A solution to this problem has to be found, and we will not countenance any further laxity on this score, since sufficient time has already been given to implement our decision. Let a decision in this regard be placed before us positively before the next date of hearing, failing which the Revenue Secretary shall remain present during the next hearing.

6. Mr. Ghose has also disclosed in the status report - the Sahayak/ Facilitator Scheme, which has been implemented for the purpose of facilitating registration/ renewal of registration. Ms. Trehan submits that since the status report was received only last evening, an endeavour was made to

test-out the said scheme. She states that it appears that the said scheme is a positive development and should be helpful to the construction workers for obtaining registration/ renewal of registration. However, one aspect pointed out by Ms. Trehan is that the Sahayaks are requiring submission of more documents than what are required for the purpose of obtainment of registration/ renewal of registration. She, therefore, submits that the Board should issue specific written and clear instructions to the Sahayaks with regard to the requirement of documents for the purpose of registration/ renewal of registration, so that there is consistency and the process is not hampered due to lack of availability of those documents with the construction workers, which are not mandatorily required for registration/ renewal of registration. We agree with this submission of Ms. Trehan. The Board should promptly issue clear instructions to the Sahayaks about the requirement of documents for the purpose of registration/ renewal of registration and ensure compliance of all such instructions. The next status report should report compliance.

7. Mr. Verma has submitted that the Sahayaks charge Rs. 50/- as service fee to render their service. He submits that the admission fee under the Rules to seek registration with the Board is only Rs. 25/- and, therefore, the Board should not be charging the said service fee. The said charge should be charged to the Board itself.

8. We find some merit in this submission of Mr. Verma. Though the amount may not appear to be large, considering the fact that we are dealing with construction workers, who have faced and continue to face financial distress due to the pandemic, the Board may consider either not charging the said fee to the construction workers, or alternatively, the said fee - or a part of it, may be deducted from the payment that may be released to the construction workers in future, post the registration/ renewal of registration, as and when. The Board shall respond in this regard in its further status report to be filed before the next date of hearing.

9. Mr. Ghose has taken us through the form for registration. The said form has been perused and we are of the view that the requirement of provision of the Aadhar Card numbers and photographs of family members

- which is presently mandatory, should be made optional, since under the scheme of the Acts and the Rules, they are not prescribed to be mandatory. No doubt, availability of such details would make it easier for the Board to disburse the funds and benefits under its schemes to the family members, particularly, in the eventuality of unfortunate demise of the construction worker, but the said details could be provided by the construction worker at a subsequent stage as well. It is very likely that a construction worker - who may have migrated to Delhi from his hometown in another State, may not have the Aadhar Card details and photographs of his family members. Therefore, the said information should not be made mandatory for the purpose of grant of registration, much less renewal of registration. The Board is directed to make the requisite changes in the form for registration within two weeks and report compliance in its next report.

10. We also find that the applicant is required to give an affidavit to the effect that the information given by him in the form is true and correct, and a declaration that he understands the consequences of furnishing wrong information. There can be no quarrel that the said affirmation

and declaration should be called for from the applicants, to ensure that there is no fake registration obtained by a person who is not eligible for it. However, in our view, the said affirmation and declaration can be printed on the form itself, and the applicant could be required to check the relevant box to indicate his affirmation/ declaration, rather than to require him to upload a separate affidavit containing his affirmation and declaration. That would make the process of uploading the form easier and less time consuming. The Board should look into this aspect and make relevant change to its online form for registration within two weeks and report compliance.

11. Mr. Verma has pointed out an instance of a site of an ongoing construction work of SDMC school in his vicinity, where he found that the workers are unaware of their rights under the Act and the Rules, and their right to receive benefits thereunder. They do not have registrations under the Act. This is despite the fact that the Labour Department of the GNCTD has issued a notification dated 23.04.2018 in exercise of powers under Section 6 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, whereby the Lieutenant Governor appointed the officers of the Government Departments/ Bodies mentioned in Column (2) of the Schedule to the said notification - who are Gazetted Officers of the government, "to be the registering officers who shall exercise the powers conferred on registering officers by, or under the said Act, having jurisdiction as specified in column (4) of the Schedule". The submission of Mr. Verma is that even the Government Departments are not fulfilling their obligation to register the construction workers working at government construction sites.

12. We can take notice of the fact that even in private construction sites, the position is the same. In fact, it could be worse.

13. It is further pointed out by Mr. Verma that to be able to obtain the Completion Certificates for any building under construction in Delhi, it is necessary for the builder/ owner to deposit the 1% Cess collected under the Cess Act. Therefore, the builders/ owners deposit the said Cess - which is collected by the Municipal Corporation, and thereafter, transmitted to the Board. However, there is no corresponding step taken to register the construction workers, working on the construction site in respect whereof the cess is deposited, and for whose benefit the Cess is collected.

14. On this issue, Mr. Sharma has drawn our attention to Rule 4 of the Building & Other Construction Workers Welfare Cess Rules, 1998, which provides that the Cess levied under sub-Section (1) of Section 3 of the Building & Other Construction Workers Welfare Cess Act, 1996 shall be paid by an employer, within thirty days of completion of the construction project, or within thirty days of the date on which assessment of cess payable is finalised, whichever is earlier, to the Cess Collector. A Cess Collector means an officer appointed by the State Government for collection of Cess under the Act. We are informed by Mr. Ghose that all the Municipal Corporations, the New Delhi Municipal Council, and the Cantonment Board have been appointed as Cess Collectors by the State Governments for the purpose of collection of Cess under the aforesaid Act.

15. We may also take notice of Section 15 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, which obliges every employer to maintain a register in the prescribed form showing the details of employment of beneficiaries

employed in the building or other construction work undertaken by him. The said register may be inspected without any prior notice by the Secretary of the Board, or by any other officer duly authorised by the Board in that behalf.

16. We have already noticed in our order passed on 26.08.2020, the Forms XV and XVIII under the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 which the employers are obliged to fill and file.

17. It appears to us that the shortcoming lies in the fact that though the Cess is collected by the Cess Collector, i.e. the Municipal Corporations, the NDMC and the Cantonment Board and made over to the Board, the registration of the construction workers who work at the construction sites where the works are performed and in respect whereof the cess is deposited, does not take place. This appears to be on account of the fact that the Board has not created the infrastructure for the said purpose. We dare say that the Board would have hardly undertaken any inspection in terms of Section 15 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. The Board should disclose in their next status report, the number of inspections carried out by it in the NCT of Delhi in the last three years with particulars.

18. With a view to overcome the aforesaid shortcoming, we are of the view that a mechanism could be evolved where the owner/ builder would be required to file with the Board all the relevant returns in compliance with the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 and the Delhi Building And Other Construction Workers (Regulation Of Employment And Conditions Of Service) Rules, 2002, and submit proof of registration/ renewal of registration of the construction workers who may have worked at the construction site. Upon receipt of the returns and proof of registration/ renewal of registration, the Board shall scrutinize them and issue a certificate recording satisfaction which should form part of the application that the builder/ owner may move before the Municipal Corporation/ NDMC/ Cantonment Board for obtainment of Completion Certificate - without which the Completion Certificate may not be granted.

19. However, to implement any such mechanism, it would be necessary, firstly, for the Board to put its house in order, for which purpose the Board would need to create the requisite infrastructure, so that such applications for obtainment of its clearance certificate are processed with promptitude, and the owner/ builder is not put to harassment and delays in obtainment of Completion Certificates. Secondly, it would be necessary for the Municipal Corporations/ NDMC and the Cantonment Board to also make requisite changes in its procedures for grant of Completion Certificates. We direct the Board to deliberate on the aforesaid aspect, and their next status report should deal with the same.

20. In the light of the aforesaid, we consider it appropriate to issue notice to all the three Municipal Corporations, the NDMC, and the Cantonment Board. Let Court notice issue to them, including through their respective Standing Counsel, returnable on 02.02.2021.

21. Mr. Jain has pointed out that in respect of a large number of construction workers who were entitled to the pandemic ex-gratia payment, the transfers did not take effect on account of failed banking transactions. He states that the respondent Board has claimed that out of about 4000 such failed transactions, 1000 have been processed, but there is nothing stated in relation to the remaining about 3000 such transactions. Let the Board disclose the position in this regard in its next status report.

22. List on 02.02.2021.

VIPIN SANGHI, J RAJNISH BHATNAGAR, J DECEMBER 15, 2020 B.S. Rohella