

**WHETHER 1% CESS IS LEGIBLE ?***By*

—**Dr. Y. PADMAJA RANI**, Asst. Professor of Law  
Kakatiya University, Warangal, A.P.

AND

—**G. SAILAJA**, B.A., L.L.M.  
Kakatiya University, Warangal, A.P.

The Buildings and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 Act No.27 of 1996 (19th August, 1996) was enacted by Parliament in the Forty Seventh Year of the Republic of India. It is an Act to regulate the employment and condition of service of buildings and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto.

***Need for the Act :—***

According to the Sample Survey conducted by NSSO in 1999-2000, about 1.76 crore workers are employed in the construction activities. Even though many Acts existed for organized and unorganised sectors yet need was felt for a special Act for building workers as there are 8.5 millions of workers working in this construction sector in India at present. Reason for this is that the migrating workers feel that it is an entry point into the work which provide at least food for them without keeping any capital in this business where as they need to put some minimum amount as a capital for any of the smallest business. They are in a vulnerable situation that they even not in a position to think about their shelter, security or other benefits. Hence, construction industry is generally considered as a natural entry point for a rural migrant to the city.

Basic amenities and welfare facilities provided to these workers are inadequate for the construction of building workers. Risk to life and limb is also inherent. In the absence of adequate statutory provisions to

get the requisite information regarding the number and nature of accidents was quite difficult and due to this to fix responsibility or to take corrective measures was not an easy job. Although the provisions of certain Central Acts were applicable to the building and other construction workers yet a need was felt for a comprehensive Central Legislation for regulating the employment and conditions of service of building other construction workers and to provide for their safety, health and welfare measure and for other matters connected therewith or incidental thereto.

Construction workers are the largest group of service providers in A.P. As a result workers have turned to construction as an alternative source of income generation. The issues like – Their socio-economic status and how do they manage to earn their daily livelihood ? What are the problems faced by these construction workers and what are their demands ? How to bring them into the mainstream of the construction sector and provide them with recognition from the authorities ? These are some of the issues which need to be addressed immediately as increasing numbers of workers have taken up construction work as a means of immediate employment, which provides cash earnings at the end of the day.

The construction industry is one of the largest and oldest industry for generating employment in India, next to the agriculture sector. To study the difficulties faced by the construction workers and to eradicate the same, an Expert Committee was formed in 1985. It was mandated to consider relevant

sector specific issues and give its recommendations.

It was ten years later in 1996, The Government of India formulated a Bill for construction workers on 1st August 1996 and Parliament finally passed the Bill, which became the 'The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

### ***Concerns of Construction Workers***

At several meetings and a State level workshop, construction workers articulated the following concerns :

- They had no job security. Coupled with this, their occupational risk factor was extremely high due to innumerable accidents resulting in temporary or permanent disabilities. They were doubly affected due to lack of insurance coverage along with loss of wages for the entire period of disability recuperation;
- Their wages were low and they were exploited by the contractors. They were not issued with any identity cards;
- The majority of the construction workers were not organized; and
- The local construction labour suffered from chronic unemployment due to the availability of large numbers of migrant workers that were willing to work at lower wages.

To rectify this problem India draws attention for being the second-fastest growing economy in the world, and the Government tried to rectify this problem by enacting the Act. But it has many questions/loopholes unanswered.

To get rid of these problems a Special Act came into existence after a lot of exercise has been done on the same Act.

The following benefits will accrue to the construction workers if this Act is implemented :

- Identity cards shall be issued to the workers;
- Immediate compensation to the workers, in case of on-site accidents;
- Medical aid to the family of the workers;
- Life insurance coverage for construction workers;
- Maternity benefits to the women workers;
- Monetary help for educating their children;
- Housing loans to the workers;
- Provident fund to the workers; and
- Formation of a tripartite Board to consider their welfare.

Under this Act, the owner of a building for the benefit of workers has to pay 1% of Cess on the cost of construction. The employer has to register under Building and other Construction workers (Regulation of Employment and Conditions of Service) Act, 1996, if the cost of construction exceeds Rs.10 lakhs and who appoints ten persons for that work in a prescribed manner.

Every building worker who has completed eighteen years of age, but has not completed sixty years of age, and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Act. Section 16.

Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard.

Any person aggrieved by the decision may within thirty days from the date of such decision, prefer an appeal to the Secretary of the Board or any other officer specified by the Board in this behalf and the decision of the Secretary or such other officer on such appeal shall be final.

Provided that the Secretary or any other officer specified by the Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the affected person was prevented by sufficient cause from filing the appeal in time.

There are Boards for every State to supervise and implement the Act. Prescribed measures shall be taken against the defaulter employer in case of any amount of Cess payable by any employer under Section 3 is not paid within the date specified in the order of assessment made under Section 5, it shall be deemed to be in arrears and the authority prescribed in this behalf may, after making such inquiry as it deems fit, impose on such employer a penalty not exceeding the amount of Cess default either in case of worker or non-registration of the building.

In case of default by the company the Board has right to punish it. If aggrieved by such an act, the company has right to file a complaint against the Board and there is prescribed Appellate Authority too.

There is the question of collecting Cess not exceeding one per cent. What is the rationale for it ? Why is it not 1.5 per cent or more or less ? There might be many other factors- big contractors, small contractors and so on or it may have some differentials ? It is one of the questions which need clarification.

It is better to impose Cess by taking into account all the other aspects like purpose of the construction. For *e.g.* whether it is for

residence or for doing business or public welfare *etc.*

ii. Imposing equivalent Cess on buildings used for different purposes (for residence and the buildings used for business or for sale) doesn't seem to be correct. The owners of building for commercial purposes will definitely get profit on selling or by doing business, so it may not be a burden to him to pay the Cess. Whereas the buildings used for residential purpose will not get any monetary benefit out of it. Hence imposing same amount on two different aspects is not a preferred idea. Imposing less % of Cess on the buildings used for residence than the buildings used for business is a better way in satisfying the common people.

The construction industry is divided into three major segments :

- \* General Construction contractors build residential, industrial, commercial, and other buildings.
- \* Heavy civil engineering construction contractors build sewers, roads, highways, bridges, tunnels, and other projects.
- \* Specially trade contractors are engaged in specialized activities such as carpentry, painting, plumbing and electrical work.

Cess should be imposed differently keeping in view the nature of work, considering the risk and difficulty in performing the work. The construction cost includes the Value Added Tax paid on the cost of material, Service Tax paid on the labour component, as per the Cess Act it doesn't exclude in the cost of construction. So we can say that the computation of cost of construction is completely arbitrary and irrational. Thus the actual levy far exceeds the 1% as notified by the Central Government on the real and actual cost of construction. To remove the ambiguity, the computation of cost of

construction needs to be elaborately discussed and mentioned while imposing the Cess of 1% on the cost of construction.

*Builders Association of India and others etc. etc. v. Union of India (UOI) and others etc. etc.*, 139 (2007) DLT 578

## JUDGMENT

**Bench :** *M. Mudgal S. Muralidhar, J.*

1. The challenge in these writ petitions, and the connected appeals against interim orders, is to the constitutional validity of :

- (a) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 ('BOCW Act').
- (b) The Building and Other Construction Workers' Welfare Cess Act, 1996 ('Cess Act').
- (c) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Central Rules, 1998 ('Central Rules').
- (d) The Building and Other Construction Workers' Welfare Cess Rules, 1998 ('Cess Rules').
- (e) The Delhi Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Rules, 2002 ('Delhi Rules')

2. The challenge to the statutes is by contractors who have entered into construction contracts. They are either in the process of executing the contract or have competed it. The contracts are with various Government departments agencies or Public Sector Undertakings (PSUs) for works to be executed in the National Capital Territory of Delhi. Beginning 2006, an amount constituting 1% of each of their bills, from 2002 onwards, has been sought to be levied towards Cess

payable under the Cess Act. While a demand towards Cess has been raised for past payments, the current charges are being collected by deducting the 1% amount from the current bills at source. The contractors challenge the constitutional validity of the Cess Act principally on the ground of lack of legislative competence in Parliament to enact it. The BOCW Act is challenged for vagueness. The Central Rules, the Cess Rules and the Delhi Cess Rules are assailed on the ground that they are arbitrary and unconstitutional. Against the order dated 23.5.2006 of the learned Single Judge of this Court vacating interim orders of stay of the demand of Cess, several appeals have been filed and these are also being disposed of by this judgment.

In big projects, the cost for services of Specialists Consultants, such as Architects, Design consultants, Light Consultants, Project Management Consultants are not taken into consideration while computing the cost of construction as they did not work in the place of construction as per the law. But in actual terms the cost has to be borne by the owner of the construction, whether these costs to be taken into consideration or not is not clear in the Act.

The Building and other Construction Worker' Act 1996 and rules thereunder, inasmuch as they are wholly discriminatory and violative of :

- (i) Equality protected in Articles 14 since the impugned enactments, which are purportedly class legislations for the building and construction works, do not pass the tests of class legislations under Article 14 of the Constitution of India.
- (ii) Besides the provisions of the impugned statutes being vague and ambiguous and lacking intelligible differentia for enacting class legislations for building and other construction industry

The provisions contained in Sections 44 and 45 of the main Act are again dependent upon the prescriptions to be made in the Rules and the same are couched in a unambiguous language, from which the unenforcibility thereof is amply evident. In other words, the provisions of the main Act are vague and indefinite. Section 62 of the main Act provides for the rule making power. Section 62(zg) reads “any other matter which is required to be, or may be prescribed”. Thus, it is clear that the fundamental provisions of the main Act have not laid down any guidelines law, but subjected it to its subordinate legislation in the form of Rules to be made by the appropriate Government, which is unsustainable in law.

The apex Court, in the case of *State of Rajasthan and others v. Basant Nahata*, AIR 2005 SC 3401, while striking down Section 22(A) of the Registration Act, 1908, as amended by the Rajasthan State Legislature, has held that the subordinate legislation cannot control the provisions of the parent Act. Thus, the main Act is liable to be struck down on the ground that is a vague law and also on the ground that it has delegated the essential legislative function to the subordinate Legislature of the main Act

(Prof. *Rita Verma* in the chair) said that the total amount of capital expenditure defrayed for construction work in our country would annually gross upto something very close to half-a-lakh crores of rupees. This is a very high figure and it assumes very great significance in the context of the current Bill. Even if 50 per cent of this amount can be coughed up within the net of the Cess Bill, the annual collection at one per cent, would be of the order of Rs.250 crores to Rs.300 crores. She says that she is sure that this would go a long way in mitigating the hardships of the long suffering teeming millions engaged in this industry.

Now let us observe the income and expenditure of the different States. The

amount of Cess in Arunachal Pradesh remitted into the Welfare Fund Account was Rs.103.5 crores. Out of this Rs.11.82 lakhs spent.

In Gujarat Inspection Authorities filed 768 cases under the Act and 118 criminal cases in Judicial Magistrate Courts. A sum of Rs.103 crores collected as Cess. No amount has been spent.

In Haryana Rs.65 crores collected as Cess and a sum of Rs.30 lakhs spent. Around 25000 workers registered.

Madhya Pradesh : Cess of Rs.195 crores collected and sum of Rs.12.85 crores spent.

Tamilnadu : Rs.243.16 crores collected as Cess and Rs.60.81 crores spent on welfare scheme. Around 1.87 lakh workers registered.

West Bengal : Sum of Rs.32.73 crores collected as Cess and amount of Rs.21 lakhs spent

As per the news on Thursday, June 18, 2009 by IANS by *Shweta Srinivasan* and *Nayan Sakhuja* New Delhi, June 18 (IANS) The Delhi Government's coffers are rich with the Rs.2,000 crores it has collected as Cess fund from the construction industry but yet it has allegedly failed to provide the promised social security to labourers. Labour unions and activists claim that not a rupee has been spent despite existing laws.

Since the Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996, and the Building and Other Construction Workers Welfare Cess Act, 1996 came into force, the Government has collected Rs.2,0000 billion for the welfare of labourers in the capital, said *Subash Bhatnagar*, Secretary of Nirman Panchayat Mazdoor Sangam (NMPS), a national workers' union syndicate.

“Despite the collection of Cess, promises of housing schemes, proper identity cards



and social security lie unfulfilled,” *Bhatnagar* told IANS.

*Bhatnagar* is also coordinator for the National Campaign Committee for Central Legislation on Construction Labour (NCC-CL). Along with various NGOs working for worker’s welfare, the campaign wants to push for the release of the funds and its proper use.

Legal experts like Justice *V.R. Krishna Iyer*, the campaign’s Chairperson, and Supreme Court Senior Advocate *R. Venkataramani* as well as social activists like *Mina Swaminathan* (M.S. Swaminathan Research Foundation), *Mridula Bajaj* (Mobile Creches) and *Devika Singh* of CWG-CWC (Commonwealth Games-Citizens for Workers, Women and Children) are among the 30 people who have written an open letter released in support of the campaign.

In the letter, they have appealed to President Smt. *Pratibha Patil* for immediate action and release of funds meant for labour welfare.

“The Delhi Cess Board is not ready to pay up. Although Delhi is where the laws were first enforced, the implementation is shoddy. These laws have been there for over 10 years still neither the Central Government nor the State Government have implemented it properly,” said *Bhatnagar*.

Former bureaucrat *Kamal Jaiswal*, Director of Common Cause – a civil society group, said : “We already have a history of the Asian Games that were held in 1982 where the plight of the construction workers was terrible. Now this is becoming more poignant for the upcoming Commonwealth Games.”

“The Government should sit up and take interest in the needs of these thousands of workers. Many schemes of the Government for the welfare of the construction workers and their families exist but money has not been granted by the Board,” he added.

Activists pointed out that the Cess funds maybe put to use for the proposed housing scheme for labourers – but how useful would that be ?

*Ishwar Sharma*, a construction worker in north Delhi’s Rohini area, said : “We need identity cards. The Government should take care of us and our families. We need social security, not those houses they are planning far away from the city. We need help so that we don’t have to rely on our indifferent contractors.”

The capital will see an estimated investment of Rs.275 billion on city infrastructure, urban planning and sports facilities for the Commonwealth Games. The CWG-CWC says that a mere 0.35 per cent of construction costs to take care of these workers and ensure them their rights.

Schemes for medical care, identity card renewals and education for workers children introduced in other States – like Madhya Pradesh that has approximately 700,000-800,00 workers – have been successful.

“Governments in Kerala, Tamil Nadu and Pondicherry have been working well and have excellent arrangements for the workers who can take advantage of the facilities given. Then why is Delhi lagging behind ?” *Bhatnagar* questioned.

*Mohan*, a 40-year old construction worker, said the Delhi Government’s “feeble attempts” at providing scholarships to labourers’ children have been useless.

“Leave alone facilities for us – even the children have not benefited from their schemes. No scholarship has been provided to any child till now. When other States have the same schemes as us – then why is that all facilities are made available there but not to us ?”

### Conclusion :

It is not an easy job to distribute the collected Cess among the workers without

differentiating their nature of work at the first instance. There must be different wings for the three different segments of works and appointment of Special Officers or expert is very much needed. 1% Cess should not be the criteria.

The scheme for the welfare of the workers as structured under the Bill is replete with, infirmities, flaws, deficiencies, lacunae and omissions which can be made as a good Act if sufficient care is taken about different segments of work by dividing them depending on the nature of the work, and hazards involved into it. The distribution of collected Cess amount should be made among the workers depending on the nature of the work in different fields.

*Jainendra Sharma*, who has been a construction labourer for 35 years, told that “Schemes like NREGA (National Rural Employment Guarantee Act) are advertised and people are aware of them – Similarly rights for construction workers should also be advertised. Only one per cent of the construction workers in Delhi know about the entitlements. Government must take action to bring this Act among the people. It should conduct camps and make workers, owners and contractors know about the Act. It should initiate awareness about this Act by conducting legal awareness camps in rural areas too. It should arrange hoarding at some important places like industries, factories, hospitals, dispensaries *etc.*, with the information of various benefits available including obtaining the accident benefits *etc.*”

---

## CONCEPT OF COPY RIGHT LAW - INTERNATIONAL CONVENTIONS – CRIMINAL PROCEEDINGS FOR INFRINGEMENT OF COPYRIGHTS

*By*

—Dr. NEELAM JANARADHANA REDDY, M.A., L.L.M., Ph.D.  
Principal, Sri Vijayanagara College of Law,  
Anantapur, AP

### 1. Introduction :

Generally the word “Property” is known to the public at large in the form of ‘tangible property’ and in the legal language it is known as movable and immovable property. Earlier to the 17th century public knows only the tangible property. During the 17th century the idea was developed to identify the intellectual property of a person which is in the nature of intangible property such as patents, industrial designs, copyright and trade marks. In the last few years the law of intellectual property has gained importance in India and other countries in the world. With the changing needs of the

society the importance of the subject has further enhanced and it has been considered as one of the most important subject in the field of law.

The intellectual property can be divided into two main sectors namely:

1. Industrial Property.
2. Copyright Law

Industrial property means it is a kind of intellectual property and that relates to creations of the human mind *i.e.*, (i) Inventions (ii) Industrial Designs (iii) Trade Marks (iv) Service Marks (v) Commercial names