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**TO ALL MEMBERS OF TRIPARTITE
WORKING GROUP ON CONSTRUCTION INDUSTRY**

RESPONSE OF TAMIL MANILA KATTIDA THOZHILALAR SANGAM to
the draft report of First Subgroup on Construction
Labour Boards enclosed with the Director General's
report dated 6.6.1986.

The Tripartite Committee's initiative rests
on the basic premise that the Government, the employers,
have realised that the existing legislations do not
provide protection for the construction workers, and
also admits the need for such a protection.

The convening of the Tripartite Committee by
the Central Government is to assist the Government to
formulate its policy on the above aspect in respect
of construction workers.

There cannot be any difference of opinion
that the eventual formulation of this policy should
advance the directive principles of State policy to
secure social justice for construction workers and to
obtain for them Porify in wages that would secure
their basic needs.

In fact the trend in law today as laid down
by the Supreme Court is to read the directive
principles of State policy into Art. 14 of the

Constitution of India and that the State action would be declared unreasonable unless these actions advance the directive principles.

Randhir Sing's case is an example where 39(a) (d) has been read with Art. 14.

The Government though the major employer in the construction industry and spending a major portion of its annual budget in the industry, has a constitutional dimension to fulfil and has to rise above being a mere employer.

The workers representatives have made a very pointed suggestion as to what should be the policy and structure with regard to the objectives. The workers representatives have emphasised that the policy should be to remove the discrimination that the construction workers have suffered for ages and to bring them on par with regard to wages and rights, with workers of other comparable industries such as Cement, Steel, Textiles etc. It would be pertinent in this context to deal with the objection raised by the builders to the assertion of the workers, that at present most construction workers earn less than that fixed as minimum. In the capital of our Country after the Supreme Court has decided the Asiad case, one is surprised that the builders could assert that minimum wages are being paid.

Many of the members of the Builders Association have participated in the Asiad project and they should well be familiar with the verdict of the Supreme Court.

When a policy is being formulated for the Construction Workers it is good for all parties to be aware that in the background of decided cases such as Asiad and the Salal Hydro-Electric Project cases, the Government and the employers should redeem themselves to ameliorate the lot of the construction workers in the spirit of these judgments.

The structure that has been suggested on behalf of the workers is to remove the discrimination by formation of Tripartite Board for construction workers and to route all wages, Superannuation benefits, bonus and minimum job guarantee, social securities such as gratuity, pension and welfare fund through the Board and make it obligatory for the workers and employers to register themselves with the Board and to regulate employment through the Board.

The merits of the Board have been dealt with elaborately in the discussions and the note circulated by Ms. Geetha and also supported by the notes of R.K. Subramaniam of Gandhi Labour Institute and Shri Vaid of National Institute of Construction Management Research, in certain respects.

The greatest advantage of the formation of Tripartite Boards is to remove that particular aspect of fluctuation in the industry which has made it impossible for any benefits to flow from the employer

to the workers. ~~By introducing the Board in the relationship between the employer and the construction worker the discontinuity brought in by frequent change of employers, sites, and migration are taken care of and a stability introduced.~~

The present injustice of employer after employer utilising the labourers' best period of productivity with none of them being responsible for meeting his superannuation needs and health care, is removed.

So the workers representatives have been talking of a Board not as a mild suggestion but as an assertion of a basic right of construction workers.

The Government has a duty to provide the stability and form an elaborate system of regulating the industry through Boards in as much as it is the Government that is the principal employer virtually to the extent of 90% of the industry and even the members of the Builders Association are contractors on a large scale. Calling a spade a spade, the present Tripartite Committee is really a meeting of minds of the Principal employer the contractors and the workers.

The formation of the Tripartite Board for Construction workers would secure the following directive principles of State policy.

(a) Article 38

State to secure a social order for the promotion of welfare of the people:-

- (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
- (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

(b) Article 39

Certain principles of policy to be followed by the State -- The State shall, in particular, direct its policy towards securing-

- (a) that the citizens, men and women equally, have the right to an adequate means to livelihood;
- (d) that there is 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.

(c) Article 42

Provision for just and humane conditions of work and maternity relief -- The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 43

Living wage, etc., for workers -- 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 and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

This should be sufficient to persuade the Government to accept the workers suggestion.

However certain specific criticisms advanced by the builders and the Government representatives should be met.

Builders: Though the Builders have accepted that the existing welfare legislation does not touch construction workers, they are insisting that the eventual policy should be one that should be without teeth to bite and if there is future legislation there should be an assurance from their point of view, that it should be one more paper tiger, and their objection to registration of workers seems to be to achieve this purpose.

They have objected to the registration of workers with the Board. There is no way in which superannuation benefits, social security benefits can be passed on to the workers without him being even registered. So what the builders really say is, give the work superannuation benefit but see to it that the method is one that would not reach him. There cannot be any concession in this aspect from the workers, and from the workers point of view any concession to the employer by the Government on this vital point would amount to abdicating its responsibility towards the workers and would be running counter to the constitutional Mandate. The Government should over-rule the Builder's objections in this aspect.

The second objection of the Builders is that the recruitment of the workers should not be done

through the Board. The reasons stated there for are,

(a) The Construction projects are of temporary duration and the quantum of work varies from area to area, time to time; (b) needs of employment of various categories differ vastly.

With regard to the reasons stated in (a), these are precisely the reasons why the workers are asking for a Board. In any particular town, City, District State one can fairly assess the quantum of construction work that is going to be accomplished during a specific period. The Government can plan its work on the basis of its budgetary allocation, project-wise in a district or a State, and requisition the deployment of labour depending upon the phase of work. For example the Madras Rapid Transport System is a Government Project. The Government is accomplishing the project through contractors. The Government knows that this is the phase of project they wish to accomplish in a given period and gives on tender specific aspects of the project to contractors.

A specific quantum of funds is made available for the project and supervised by the Government officials. At the initial point of time earth work is to be accomplished and later erection of columns etc. All these are very predictable events in the project and the Government as the principal employer, because of its own presence in the Tripartite Board, would be able to coordinate its labour requirements much

more effectively than the present adhoc method which leads to bonded labour and exploitation and is to the advantage of the contractor representatives who pay a pittance for the labour but quote sky-high for the tenders. In fact the orientation of the objections of the builders are essentially apartment builders objections which is a very negligible quantum in the construction work and the same is also equally predictable.

The Construction of a project of a building at a far removed site involving calling of workers from several district can well be regulated by the State Tripartite Board. In fact the formation of the Board would facilitate better planning, coordination and cut down delay in the completion of the project to the Government's advantage and there can hardly be any grievance on this count.

The builders are objecting to the collection of cess as a pre-condition to the plan being approved and want collection of cess phase-wise. The phase-wise collection may not be warranted when a figure as low as 2% is being suggested as welfare cess, and in the case of large projects where the principal employer is the Government who has to pay the cess, the Government can always make provisions of such cess in the budgetary allocations made for the projects. The precision called for in the supply of labour of various phases of construction even for a multistoreyed building as set out in the note by Sh. R.M. Choksi can be met through the Board.

Government: The Government's major consideration have been as to what should be the mode of recruitment labourers by the Boards and as to whether the method of recruitment by the Mathadi Board is not violative of Article 14 of the Constitution of India. This is not a major controversy and the workers organisations would always support any just norms for recruitment.

With regard to the minimum employment guarantee, this would be of minimum occurrence when the schemes of the Boards at various levels are going to be framed which will take into account the average rate of employment of construction worker per day at various levels.

From the note circulated, we do not see any serious objection to the formation of Tripartite Board. The greatest anxiety of the Government seem to be "whether a system which creates a monopoly of employment without working out a fair equitable system a recruitment is in great danger of being struck down as unconstitutional."

We are of the view that in the first place we are not creating any monopoly of employment and the norms suggested by us in the Draft Bill and the Scheme are just and fair. Even the recruitment policy of Mathadi Labour Board, whatever opinion people may have, is not unconstitutional. The creation of the Board is to regulate the employment of existing construction workers and only those construction workers can be

registered in the Boards who can prove that they have been a construction worker for atleast one year before the registering authority. Trade Union membership or Certificate from an employer should suffice for the purpose. New extracts would have to be on the reserve pool and take their chance depending on the availability of work and can be registered as and when a vacancy arises. The registration to the persons listed in the Reserve pool can be given on the first-come basis.

The Draft Bill and the Scheme has been formulated with the assistance of a panel of experts headed by Mr. Justice V.R. Krishna Iyer, Retd. Judge, Supreme Court of India.

We are sure that what has been stated above, alongwith the views placed in the various discussions in the Tripartite Committees, not only evenly meets and answers all objections, misgivings and doubts raised on the subject but indicates the first step to be taken in the positive direction or not merely alleviating the position of the material builders of the nation but also regulating productively the vast construction industry.