

Date: 31 August 1987.

To _____
Member of the Tripartite
Working Group on Building and
Construction Industry.

Subject: Some ~~th~~ thoughts for your consideration before
the next meeting.

Dear _____

By now you must have received letter no. 11011/5/85 dated 17th June, 1987 from the Deputy Secretary to all members of the Tripartite Working Group. In this letter the ^{Deputy} Secretary has very innocently accepted the suggestion of the Executive Secretary-Builders Association of India ^(BAI) to accept the so called Bi-partite Bombay report as the final report of the drafting committee. It is surprising that he has failed to see the ~~a~~bsence of the Director General (Labour Welfare) and other members and invitees from the said "Bi-partite Bombay Meeting".

The meeting of the Tripartite Working Group ^(TWG) called on 7th August was cancelled, but is likely to be held soon. It is imperative that we members should be clear on the issues pending discussion in the next meeting since various circulars/reports during the last few months have tended to confuse these issues. I am sure that the following note will bring some clarity on the existing situation.

1. BAI's attempt to override the Tripartite Working Group:

The above mentioned letter dated 1st June, 1987 issued by the Executive Secretary of the BAI says "the enclosed draft report shall substitute the earlier one considered by the group on 21st May, 1987". This is neither in accordance with the earlier proceedings of the Tripartite Working Group, nor were the five signatories to the so-called bi-partite meeting authorised in any manner to re-draft the report to be discussed by the ^{TWG} ~~tripartite working group~~. So this can only be taken as an attempt to override the TWG and to create further confusion.

The five signatories to the so-called bi-partite meeting had no right to assume the role of the drafting committee. The trade union representatives on the TWG had also not authorised Shri KA Khan and Shri Sharma to sign any bipartite agreement on their behalf with the BAI. Therefore, the so-called Bombay Bi-partite Committee Report can only be taken as the opinion of BAI, Shri Khan and Shri Sharma. The main thrust of this report is to suggest that "the industry should be exempted from the (Provident Fund) scheme" and pending enactment of new comprehensive legislation "suitable notification may be issued by the Ministry of Labour...so that ... the industry is denotified with regard to the application of ^{Provident Fund} ~~the~~ Act and Gratuity Act."

I am sure that the trade union representatives and the government representatives will be alert to the fact that the TWG can under no circumstances become a party to recommend the exemption of even the few units who derive just perfunctory benefits from the applicability of existing laws of social security.

I further request the members of the TWG to notify their protest to the secretary of TWG against this 'self acquired' subversive role of BAI to override the TWG and create confusion.

2. Has the Tripartite Working Group failed?

The introduction of the draft report prepared by the drafting committee baldly states on page 2: "Snap studies conducted by the few labour departments in the States show that the (current statutory) provisions were not effectively implemented though the reasons for the same were not brought out". It further states that the existing social security schemes were not workable but what was workable did not come out at the meeting.

do not underline

These two sentences, and the entire draft report gives an impression that the Tripartite Working Group has totally failed in (1) its attempt to identify the difficulties in the implementation of the existing social security legislations in the Building and Construction industry and (2) in working out social security measures suitable to the industry. However, this impression is absolutely false. If one goes through the ¹ (see below) difficulties in the implementation of the existing social security legislations due to the peculiarities of the building and construction industry come out very clearly. The social security measures suitable to the peculiarities of the industry also come out very clearly in ^{the} proceedings of the TWG and its three sub-groups.

In a nut-shell, the TWG has successfully identified that the fundamental difficulty in the implementation of the existing social security legislations is the absence of a constant employer-employee relationship which is the most contrasting peculiarity of the building and construction industry. Therefore it could be recommended that the only method by which social security measures suitable to the building ^{and} construction industry can be worked out would be substituting this absence of a constant employer-employee relationship by a Tripartite Board, for the construction industry. This was inevitable, because one of the crucial assumptions underlying existing social security legislations/measures is the existence of a stable employer-employee relationship.

^{These} ~~Three~~ two aspects which come out very clearly in the proceedings of TWG and its three sub-groups have been totally ignored in the draft report prepared by the drafting committee, thereby creating the impression that the TWG has totally failed in the task entrusted to it. Since this is contrary to the facts, one can only conclude that in fact it is ² comprehensive report on the basis of the proceedings of the TWG and its three sub-groups, and not the T.W.G.

¹ proceedings of the TWG and its three sub-groups, ^{the}

² the drafting committee which has failed in its task of presenting a

3. Has the drafting committee really done its task?

The main task of the drafting committee was to prepare a comprehensive report on the basis of the past proceedings of the TWG and its three sub-groups so that the draft report is adopted by the main group for re-amendments. But the drafting committee has presented only a one sided picture and the proceedings of the main group and the reports/papers of the three sub-groups have been totally neglected. Therefore, instead of reducing the burden of the main group, the drafting committee has only increased it.

In the light of this fact, if justice is to be done to the interests which each member of the TWG represents, alertness is required to ensure ^{avoidance} ~~avoidance~~ of any hasty completion of the meeting ^{on the} ~~on the~~ basis of such a seriously ^{flawed} ~~flawed~~ report. Failure to do so will only result in the emergence of ^a ~~a~~ totally distorted and lopsided version.

There are several examples of the one-sided picture presented by the drafting committee and neglect of the ~~proceedings~~ ^{proceedings} of the subgroup reports etc. ~~Giveng~~ ^{Giveng} below are a few:

(i) Para 2.0 to 3.1 of the report on the scope and features of the Building & Construction (B&C) industry has been straightaway lifted from the ~~last~~ ^{first} three paragraphs of the notes on B&C prepared and submitted by the BAI. Therefore, contrary to the reality, the ~~draft~~ ^{draft} report has concluded that "the construction work is treated as casual and hence employment relations are contractual".

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To work out feasible social security measures it is necessary to understand the peculiar features of this industry seriously. A one-sided view of the peculiar features of this industry is bound to make the recommendations of the Tripartite Working Group lopsided. Therefore, it is necessary that the entire main group should now examine the peculiar features of the B&C industry to work out feasible social security measures.

The introduction of Part 4 on Employees

(ii) ~~Provident~~ ^{Provident} Fund and Family Pension Schemes is directly lifted from page 3, column 1 & 2 of the paper on "Labour and the Building and Construction Industry" presented by Shri P.J.Ovid at the XII All India Builders Convention held at Bangalore between 23rd and 25th January, 1987.

The entire section (from para 4.1.1 to para 4.1.3 and 4.2) ^{only} the stand of BAI. It is absolutely clear that it has totally neglected the report of the second sub-group which was to examine how the existing social security laws can ^{be} improved upon for higher effectiveness.

In the report of the second sub-group the recommendation in para 3 is absolutely clear viz. "It was unanimously agreed that the casual labour which is not having any kind of benefits from any social security laws i.e. ESIC, EPF Act and Payment of Gratuity Act should be given benefits thereunder" (circulated vide letter No. R 11011/S/85-RW dated 11th July, 1986).

Further, the draft report prepared by the drafting committee says in para 4.13. "contractors have frequently reported that workers do not want any deduction of their Provident Fund contributions from their wages". There is absolutely no reference to any other opinion on this point.

However, para 2 of the note regarding report of the first sub-group prepared by the late Shri J.N. Bhardwaj (an **INTUC** representative) states that (workers) sometimes cause resistance to the deductions in case of EPF Act and that this is due to their bitter experience about the bad working and half-hearted implementation of this ACT.

This vital observation of Shri J.N. Bhardwaj as to the real reasons for such occasional resistance by the workers when contrasted with what appears in the draft report illustrates clearly the serious flaws that characterise the entire draft report.

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^{chapter} (iii)/III of the draft report prepared by the drafting committee purportedly deals with the question of a "Tripartite Construction Labour Board". It glaringly omits to mention the fact that both the employers and the trade unions are unanimous on the need and necessity for such a Tripartite construction labour ^{boards} unions. The report instead indulges in a hotch-potch exercise of merely perfunctorily stating the views of the employers and the trade unions in this regard, thereby projecting a very incomplete picture on this vital aspect.

This chapter is concluded with the administrative and legal difficulties explained by a government representative despite those having been clarified in a subsequent meeting. Please see the comments of TS Sankaran para VII. Surprisingly enough, the provisions of health and safety, welfare, creches, housing facilities etc, are also declared beyond the terms of reference of the working group by this lone government representative. Now it is for the main group to examine whether its sub-group or it has really gone beyond its terms of reference as made out by the drafting committee.

(iv) Chapter IV, para 1.1.4.c states that there was no unanimity on this point. Contrary to this, para 4 on the recommendations of the report of the third sub-group clearly

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states that "the following are agreed to by both the workers' and employers' representatives. (i) There should be a central legislation providing for a scheme and an agency to implement the scheme broadly based on the framework of the Dock workers and Mathadi workers model but avoiding its implementable provisions in the context of construction labour...."

Since the report has failed in this task of comprehensively reflecting on various other aspects, it has led to the ironical and paradoxical situation where the secretary of TWG has himself been compelled to feel the need of giving his comments separately.

4. What is to be done by the TWG?

In view of the above short-comings of the drafting committee it is essential that each and every member should once again examine the three sub-group reports so that a comprehensive report can be presented, highlighting the unanimity of views on different aspects which emerged in the course of the ~~discussions~~ ^{discussions}. This requires a clear understanding of the peculiarities of the B&C industry which contrast with other industries. This understanding alone can guide us in balancing and crystallising the respective merits of the three alternate but parallel approaches considered by the three sub-groups.

Recently, in response to a private member's Bill on the construction industry, the government had assured that it is awaiting the report of this Tripartite Working Group. This assurance, coupled with the pending petition on the Bill before the Petition Committee of the ~~Lok~~ ^{Lok} Sabha, makes it incumbent on us to present our comprehensive views through a proper report instead of allowing things to be decided on the basis of the seriously flawed, tepid and half-hearted report, as presented by the drafting committee.

~~With regards,~~

With regards,

Sincerely yours,

Geeta