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Dear Subhash,

Thank you for sending me a copy of the paper circulated for the workshop on construction labour, being held at Durgapur on the 17th and 18th of this month.

I have separately written to Shri P. K. Das that I am unable to attend the workshop.

I have quickly gone through the papers sent by you and my comments are as follows:

a) The covering letter states that provisions relating to Safety and Health will be handed over to you at Durgapur. However, I find that that pages 4, 5, 6 & 7 of the draft paper do contain detailed items numbering 19 in all on which the appropriate government may publish rules. I wonder whether anything more still remains to be circulated.

On the subject of Safety and Health, I think it is not proper to leave the Rule making power exclusively with the appropriate government. The basic Rules will have to be notified by the Central Government (after consultation with the State Governments, Employers and Workers Organisations, bodies like Safety Councils and experts); the State Governments may however be empowered to notify supplementary rules to suit local situations. The question whether the State Government must get the concurrence of the Central Government before notifying such supplementary Rules is a ticklish one but I think it is desirable to provide for prior consultation with the Central Government in the matter.

b) A quick perusal of the paper shows that it is the draft of a proposed law entitled "Regulations of Employment and Conditions of service of construction workers" Act, 1995.

Given the large number of draft legislation already proposed on the subject including the draft of the Law and the Scheme as prepared by the National Campaign Committee which was also endorsed by the Petitions Committee of Parliament, one is not sure whether yet another draft is needed. I think we ought to urge at the workshop that the attempt must be to get the NCC-CL draft endorsed. It is significant to point out that National Trade Union Centres like CITU, AITUC, BMS, HMS, etc have already pledged their support to the NCC-CL draft.

It is also relevant to point out that the provisions contained in the paper are not materially different from the corresponding provisions in the NCC-CL draft, though there are large omissions, perhaps for the reason that the paper ought to be short.

Be that as it may, the following comments are offered on the provisions contained in the paper. I am not offering any comments or minor matters, style, sequence of provisions etc.

c) Clause 3 about commencement is confusing. This being a Central law being applicable to the whole of India according to clause 2. there can be no question of assent by the governor of a State. The date of commencement will have to be decided by the Central Government, who may, in respect of a State, consult the State government concerned before deciding on the date to be notified ; however, no State should be enabled to keep on deferring the commencement ; likewise the Central Government also should not be so enabled. For this purpose, we may stipulate that all the provisions of the law will have to come into force within a period not exceeding, say, 2 years after the President has given his assent to the Bill as passed by both the Houses of Parliament.

- d) The definition of "construction workers" does not include workers engaged, say, in brick kilns. Canals and Water-Ways may also be included in the list in sub para (ii) of para (b) defining the term "Construction Workers."
- e) 'Employer' has been defined to cover a person (natural or legal) who employs "20 or more persons for any construction work on any day..." One is not sure whether this minimum employment limit is rather high and is likely to exclude a very large number of construction activities and consequently construction workers. Apart from the cases where work relating to one's own residence is excluded (see the last clause in the definition of the term 'establishment') there are likely to be many cases of construction work, in fact the vast majority, where less than 20 persons are employed. Also, fixing a minimum employment limit of 20, perhaps on the pattern of the Contract Labour (Regulation and Abolition) Act, will be an invitation to avoid the provisions of the Act by keeping employment limit below 20. After all, experience in the implementation of the Contract Labour Act bears witness to this tendency.
- f) The last para at P. 9 of the paper seems incomplete,
- g) Provisions contained in page 10 and the succeeding page of the paper, relating to the Constitution of the Tripartite Board and those in page 1 to 22 relating to Schemes call for some comments.

As for representation of women workers on the Board (clause 7 at P. 11), it is better to provide for a minimum representation of at least one woman worker member on each Board. In the context of a Board, it is not clear why there must be a hierarchy of officials appointed by the appropriate government. It should be possible to enable the Board and its lower formations at the regional/district etc. levels to oversee the implementation of the provisions on a tripartite basis. Therefore, excepting for

technically qualified, experienced officials to advise on and regulate matters relating to Safety and Health, a large officials hieraachy appears unnecessary; & what is more, it may be stultifying the functioning of the Boards and their units.

Clause 17 at P-12 of the paper makes the employer responsible for payment of wages. One would have thought that the Board itself will discharge this function, after collecting in advance the wages and levy from the employer.

Likewise, provisions in clause 18 relating to Workmen's Compensation Act, 1923 may also be the function of the Board instead of individual employees.

Given the provisions in the paper regarding Registration of Employers etc. at P-15, the need for the Board and its units supplanting the employer in matters of wage payments etc. is obvious.

Provision for paymegt of gratuity has not been made in the paper. This may be included. The rate of gratuity as also of P.F., ESI contribution and of pension shown as incorporated in the scheme should be notified and not left to be decided by the Board. Perhaps, the proposed period of 900 days of continuous service for eligibility to pension may be a little too short ; I think atleast a minimum service of 10 years or equivalent number of days may be appropriate.

h) There is no provision in the draft law for minimum guarantee of employment to all registered workers. This is necessary, particularly in a tripartite arrangement where, presumably, booking will be on a rotational basis, category wise, thus making employment available on an equitable basis.

i) While Central Board and State level Boards will function rather autonomously within the frame work of the Central law, and this is desirable, it would be advantageous to evolve a method for co-ordination and for sharing of experiences. Can one think of a National Level Co-ordinating Tripartite Body which will perform this function? With Central and State Boards having responsibilities within a specific geographical area, there should not be any major difference in the provision of the schemes drawn up for construction ; this is particularly so when employers and workers may engage themselves in construction work in the Central sphere at a particular point of time and in the State sphere a little later. For e.g., construction work relating to railways such as permanent construction / maintenance may be followed by road construction for the State Government department. It is not feasible or even desirable to think of separate sets of employers and workers for the two spheres. This leads to the question whether at all it is desirable to have a 'Central sphere' in this activity? Can 'all' construction activities be regulated by only State level Boards/Schemes? Can the Central government be entrusted with only getting the law enacted and setting up a National Construction Labour Advisory Committee for purposes of co-ordination? The implications of this on other laws such as Minimum Wages Act, Contract Labour Act and Inter-state Migrant Workers Act, where construction is an important aspect of administration, should be looked at. There is for example no need to have two different rates of minimum wages in the constructions industry in an area, one notified by the Central Government and another by the State Government concerned. These are important issues, likely to raise strident voices ; but, yet, one can take advantage of the workshop to initiate a debate on this question.

Excepting for the issue raised in the last point, I think we may urge for the adoption of the NCC-CL Draft and discourage the adoption of yet another draft law, which may become divisionary and unwittingly strengthen the hands of the government in going ahead with whatever they want to do in a half-hearted and truncated fashion.

With regards,

Shri Subhash Bhatnagar,
Coordinator, NCC-CL.

Yours sincerely,
(T. S. SANKARAN)