

Reserved on : 01.10.2024
Pronounced on : 10.01.2025



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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.9924 OF 2024 (GM-RES)

BETWEEN:

- 1 . MS. AMRUTHA M.,
AGED ABOUT 22 YEARS
D/O MANJEGOWDA
SRIARUVAMMA, NO. 265
1ST MAIN ROAD, 6TH CROSS
HRUSHIKESH NAGAR
HOSAKERAHALLI
BENGALURU – 560 085.
- 2 . MR. MANJEGOWDA
AGED ABOUT 55 YEARS
S/O AMASHEGOWDA
SRIARUVAMMA, NO. 265
1ST MAIN ROAD, 6TH CROSS
HRUSHIKESH NAGAR
HOSAKERAHALLI
BENGALURU – 560 085.
- 3 . MS. ANKITHA H.,
AGED ABOUT 19 YEARS
D/O HARISH K.,
3RD CROSS, SRIGANDHA NAGAR

HEGGANAHALLI
BENGALURU NORTH
BENGALURU – 560 091.

- 4 . MR. HARISH K.,
AGED ABOUT 46 YEARS
S/O KUTHAN P.,
3RD CROSS, SRIGANDHA NAGAR
HEGGANAHALLI
BENGALURU NORTH
BENGALURU – 560 091.
- 5 . KARNATAKA STATE BUILDING AND
OTHER WORKERS FEDERATION
TRADE UNION REGISTERED UNDER
THE INDIAN TRADE UNIONS ACT, 1926
40/5, 2ND 'B' MAIN ROAD
16TH CROSS, SR NAGAR
BENGALURU – 560 027
THROUGH ITS AUTHORIZED
REPRESENTATIVE
MR. MAHANTHESHA K.,

... PETITIONERS

(BY SRI ADITYA CHATTERJEE, A/W
SMT.AKSHITA GOYAL, ADVOCATES)

AND:

- 1 . STATE OF KARNATAKA
COMMISSIONER OF LABOUR
OFFICE OF THE COMMISSIONER OF LABOUR
KARMIKA BHAVAN,
BANNERGHATTA ROAD,
BENGALURU – 560 029.

THROUGH ITS PRINCIPAL SECRETARY.

2 . KARNATAKA BUILDING AND
OTHER CONSTRUCTION WORKERS
WELFARE BOARD
WELFARE BOARD CONSTITUTED UNDER
BUILDING AND OTHER CONSTRUCTION
WORKERS ACT, 1996
KALYANA SURAKSHA BHAVAN,
BANNERGHATTA ROAD,
ITI COMPOUND, DAIRY CIRCLE,
BENGALURU,
KARNATAKA – 560 029
THROUGH ITS PRINCIPAL SECRETARY.

3 . THE MINISTRY OF LABOUR
STATE OF KARNATAKA
KARMIKA BHAVAN,
DAIRY CIRCLE,
BANNERGHATTA ROAD,
BENGALURU – 560 029.

THROUGH ITS PRINCIPAL SECRETARY.

... RESPONDENTS

(BY SMT.PRATHIMA HONNAPURA, AAG FOR R-1 AND R-3;
SRI M.R.C.RAVI, SR.ADVOCATE A/W
SRI PRASHANTH B.R., ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA PRAYING TO a) QUASH THE IMPUGNED
NOTIFICATION DATED 30 OCTOBER 2023, NUMBERED KA 459 LT
2023, PRODUCED AS ANNEXURE-A AND CONSEQUENTLY
ALLOWING THE APPLICATION OF THE 2021 NOTIFICATION, DATED
13 AUGUST 2021, NUMBERED LD 207 LET 2021 (PRODUCED AS
ANNEXURE-B) TO THE EXTENT THAT EQUIVALENT COURSES ARE
ALLOCATED EQUIVALENT EDUCATIONAL ASSISTANCE AMOUNTS
AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01.10.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

Petitioners 1 to 5 are before this Court calling in question the Notification dated 30-10-2023 and consequently to allow the application dated 13-08-2021 of 2021 Notification to few of the petitioners and have also sought several other incidental prayers.

2. Before embarking upon consideration of the issue on its merits, I deem it appropriate to notice the protagonists in the petition. The 1st petitioner is the daughter of the 2nd petitioner who is a registered construction worker and the 3rd petitioner is the daughter of the 4th petitioner, again a registered construction worker. The 5th petitioner is the Karnataka State Building and other Workers Federation (hereinafter referred to as 'the Federation' for short)

3. Facts adumbrated are as follows:

The 1st petitioner is a student of Master of Business Administration enrolled in Apoorva Institute of Management Studies and currently is in her 3rd semester. The 3rd petitioner is a student in Law enrolled in Visveswarapura College of Law and is in her third semester of law. Both the aforesaid petitioners are the children of registered construction workers. The children of construction workers were, in terms of the notification of the year 2021, entitled to certain amount of educational assistance at the rate of ₹35,000/- per semester. This notification comes to be amended and the impugned notification comes to be issued on 30-10-2023 reducing the amount of assistance for educational purposes to 10,000/- contrary to what was earlier prevailing at ₹30,000/- and ₹35,000/- as the case would be, be it for graduation or post-graduation. Petitioners 1 and 3, daughters of petitioners 2 and 4 applied for grant of educational assistance as was prevailing earlier. This comes to be turned down on the strength of the impugned notification dated 30-10-2023. It is this action, on the strength of

the aforesaid notification of the State, that has driven the petitioners to this Court in the subject petition.

4. The respondents are, the State through the office of the Commissioner of Labour, the 1st respondent; the Karnataka Building and Other Construction Workers Welfare Board (hereinafter referred to as 'the Board' for short), the 2nd respondent and the Ministry of Labour, State of Karnataka, the 3rd respondent.

5. Heard Sri Aditya Chatterjee, learned counsel appearing for the petitioners, Smt. Prathima Honnapura, learned Additional Advocate General appearing for respondents 1 and 3 and Sri M.R.C. Ravi, learned senior counsel appearing for respondent No.2.

6. The learned counsel appearing for the petitioners would vehemently contend that the action of the respondents is in violation of scheme of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (hereinafter referred to as 'the Act' for short). The impugned notification cannot have retrospective application after the children

got into education and legitimate expectation is shattered in the case at hand is his submission. The defence of the Board as projected by the learned senior counsel, as non-availability of fund, is erroneous and contrary to the record. He would contend that the Board is over-spending on administrative expenditure, and under-spending on welfare scheme. He would further contend that deposit of welfare funds that come into the coffers of the Board is ₹6700/- crores and the Board has invested it in fixed deposits in violation of orders of the Apex Court. He would seek to place reliance upon several judgments of the Apex Court and that of this Court which would all bear consideration *qua* their relevance in the course of the order.

7. Per contra, the learned counsel appearing for the Board would vehemently refute the submissions to contend that administrative expenses of the Board is not what is more, but investments to all kinds of assistance to the children of registered construction workers or construction workers themselves. The money no doubt used for funding MGNREGA scheme and establishment of Indira Canteen as well. But, these are immediately

stopped. Now what is being done as usage of funds is only on the welfare of construction workers who have registered with the Board. He would submit that the amount that was claimed by these petitioners – petitioners 1 and 3 – are paid pursuant to the interim order granted by this Court and therefore, the petition be disposed of, as grievances of the petitioners have been redressed.

8. The learned counsel appearing for the petitioners would join the issue to contend that the petition does not become infructuous merely because petitioners' children were being given the amount of ₹35,000/-. The challenge to the impugned notification still remains, as the notification grossly reduces the amount payable to registered construction workers and their children, all in an action blatantly contrary to law .

9. I have given my anxious consideration to the submissions made by the respective learned counsel, and have perused the material on record. In furtherance whereof, the issue that falls for consideration is the tenability of the impugned notification. To

consider the issue, it becomes germane to notice the genesis of statutory regulation of welfare of construction workers.

(i) The genesis of statutory recognition of construction workers:

10. The afore-narrated facts are not in dispute. The Government of India notified, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 on 19-08-1996. The other Act enacted in the same year is Building and Other Construction Workers Welfare Cess Act ('the Cess Act' for short). The Act was promulgated to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto. Certain provisions of the Act are germane to be noticed. Section 2(b) of the Act defines beneficiary to be a building worker registered under Section 12. Section 2(c) defines the Board. Both the provisions read as follows:

"2. Definitions.—(1) In this Act, unless the context otherwise requires,—

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- (b) **“beneficiary” means a building worker registered under Section 12;**
- (c) **“Board” means a Building and Other Construction Workers' Welfare Board constituted under sub-section (1) of Section 18;”**

(Emphasis Supplied)

The Board would be, the Building and Other Construction Workers' Welfare Board constituted under sub-section (1) of Section 18, which is the 2nd respondent in the case at hand. A building worker is defined under Section 2(e) of the Act. It reads as follows:

- “(e) “building worker” means a person who is employed to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any building or other construction work but does not include any such person—**
- (i) who is employed mainly in a managerial or administrative capacity; or**
- (ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;”**

(Emphasis Supplied)

Section 12 deals with registration of building workers as beneficiaries. It reads as follows:

"12. Registration of building workers as beneficiaries.—(1) 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.

(2) An application for registration shall be made in such form, as may be prescribed, to the officer authorised by the Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together with such fee not exceeding fifty rupees as may be prescribed.

(4) If the officer authorised by the Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Act and the rules made thereunder, he shall register the name of the building worker as a beneficiary under this Act:

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

(5) Any person aggrieved by the decision under sub-section (4) 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 building worker was prevented by sufficient cause from filing the appeal in time.

(6) The Secretary of the Board shall cause to maintain such registers as may be prescribed."

Section 13 statutorily mandates issuance of identity cards to those registered building workers. Section 18 deals with constitution of the State Welfare Board which reads as follows:

"18. Constitution of State Welfare Boards.—(1) Every State Government shall, with effect from such date as it may, by notification, appoint, constitute a Board to be known as the ... (name of the State) Building and other Construction Workers' Welfare Board to exercise the powers conferred on, and perform the functions assigned to it, under this Act.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Board shall consist of a chairperson, a person to be nominated by the Central Government and such number of other members, not exceeding fifteen, as may be appointed to it by the State Government:

Provided that the Board shall include an equal number of members representing the State Government, the employers and the building workers and that at least one member of the Board shall be a woman.

(4) The terms and conditions of appointment and the salaries and other allowances payable to the chairperson and the other members of the Board, and the manner of filling of casual vacancies of the members of the Board, shall be such as may be prescribed."

(Emphasis Supplied)

11. The other enactment is the Cess Act, that was enacted to provide for levy and collection of cess on the cost of construction incurred by the employers with a view to augmenting resources of the Building and other Construction Workers Welfare Boards constituted under the Act.

12. Certain provisions of the Cess Act are germane to be noticed. Section 3 of the Cess Act reads as follows:

"3. Levy and collection of cess.—(1) There shall be levied and collected a cess for the purposes of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, at such rate not exceeding two per cent but not less than one per cent of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify.

(2) The cess levied under sub-section (1) shall be collected from every employer in such manner and at such time, including deduction at source in relation to a building or other construction work of a Government or of a public sector undertaking or advance collection through a local authority where an approval of such building or other construction work by such local authority is required, as may be prescribed.

(3) The proceeds of the cess collected under sub-section (2) shall be paid by the local authority or the State Government collecting the cess to the Board after deducting the cost of collection of such cess not exceeding one per cent. of the amount collected.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the cess leviable under this Act including payment of such cess in advance may, subject to final assessment to be made, be collected at a uniform rate or rates as may be prescribed on the basis of the quantum of the building or other construction work involved.”

Section 3 empowers Government of India to fix rate of cess to be collected by the Central or State Governments as the case would be. Cess is fixed at 1% of the cost of construction incurred by an employer under the Notification dated 12-10-1996.

13. The State of Karnataka promulgates in the Building and Other Construction Workers (Regulation of Employment and Conditions of Service), Karnataka Rules, 2006 ('the Rules' for short) in exercise of powers conferred under sub-sections (1) and (2) of Section 62 of the Act. The Rules that are germane to be noticed are Rules 20, 21A, 33, 37 and 45 and they read as follows:

“20. Form of application for registration of construction workers as beneficiaries under Section 12.- (1) Every building worker shall apply in **Form-V** for registration under sub-section (2) of Section 12 of the Act, as a beneficiary.

(2) The application for registration, as beneficiary, shall be accompanied with the following:

- (a) Registration fee of ₹25/-;
- (b) Proof of age:
Explanation: Proof of age means school record, birth certificate, driving licence, pass port or certificate from a doctor not below the rank of Assistant Surgeon in Government Hospitals/ESI Hospitals/ Hospitals of Local Bodies i.e., Corporation, City Municipal Corporation, Town Municipal Corporation and Zilla Panchayats;
- (c) Certificate from the present employer or a Trade union registered under the Trade Unions Act, 1926, or an official of Labour Department in the concerned jurisdiction not below the rank of Labour Inspector;
- (d) 3 passport size photographs.

(3) The building worker shall also file a nomination in **Form-VI**. The nomination shall stand revised in the name of the spouse on his acquiring a family or on the happening of any legal change in the status of the family and any change of nomination shall intimate to the Board in **Form-VII**.

(4) The Secretary or other officer authorised by him in this behalf shall issue to every beneficiary an identity card with a photo of the beneficiary affixed in **Form-VIII**.

(5) The Secretary of the Board shall maintain a register of beneficiaries containing the names and addresses of the construction workers registered in **Form-IX**. The Board may maintain such other records and registers as it considers necessary.

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21-A. Contribution of building worker: (1) Every construction worker whose name has been registered as a beneficiary under sub-rule (1) of Rule 20 shall contribute a monthly subscription of ₹10/- per month, which shall be remitted half yearly to the Board.

(2) If a beneficiary commits defaults in the payment of contribution, continuously for a period of one year, he shall

cease to be the beneficiary of the fund. However, with the permission of the Secretary or an officer authorised by him in this behalf, the membership may be resumed on repayment of arrears of contribution with a fine of ₹2/- per month, subject to the condition that such resumption shall not be allowed more than twice.

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33. Maintenance of Audit and Accounts.- The accounts of the Board shall be prepared and maintained by the Accounts Officer of the Board and shall be audited by the Auditors appointed by the Board once a year. The Secretary of the Board shall be responsible for the disposal of the audit note.

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37. Expenditure from the Fund.- All expenses for the administration of the Fund, fees and allowance of the Directors of the Board, salaries, leave salaries, joining time pay, travelling allowance, compensatory allowance, charge allowances, pension contribution and other benefits of personal expenses for the legitimate needs of the Board and the stationery expenses shall be met from the administrative account of the Fund.

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45. Assistance for the education of the son or daughter of a registered construction worker.- (1) The Secretary or any other officer authorised in this behalf by the Board, may, on an application from a registered construction worker, sanction, -

- (a) If the son or daughter of the applicant had passed S.S.L.C. examination or its equivalent, a sum of ₹750/- (Rupees seven hundred and fifty only) to the applicant.
- (b) If the son or daughter of the applicant had passed the PUC examination or its equivalent, a sum of ₹1,000/- (Rupees one thousand only) to the applicant.
- (c) If the son or daughter of the applicant who is studying in ITI/Diploma a sum of ₹2,000/-;

- (d) If the son or daughter of the applicant who is studying in general Degree course as sum of ₹1,500/-;**
- (e) If the son or daughter of the applicant who is studying in professional course a sum of ₹5,000/-.**

(2) The amount shall be sanctioned only if the following conditions are fulfilled, namely:-

- (a) A minimum of one year shall have lapsed from the date of registration of the applicant to the date of his application;
- (b) Only two children of a registered construction worker shall be given this assistance and
- (c) The registered construction worker shall have no dues payable to the Board."

(Emphasis supplied)

Rule 20 mandates that every building worker shall apply in a particular form for registration as a beneficiary under the Act. Rule 21A directs that every construction worker whose name has been registered as a beneficiary shall contribute ₹10/- per month which shall be remitted half yearly to the Board. Rule 33 directs that accounts of the Board shall be prepared and maintained by the Accounts Officer of the Board and shall be audited by the statutory auditors appointed by the Board once a year. Rule 37 directs that

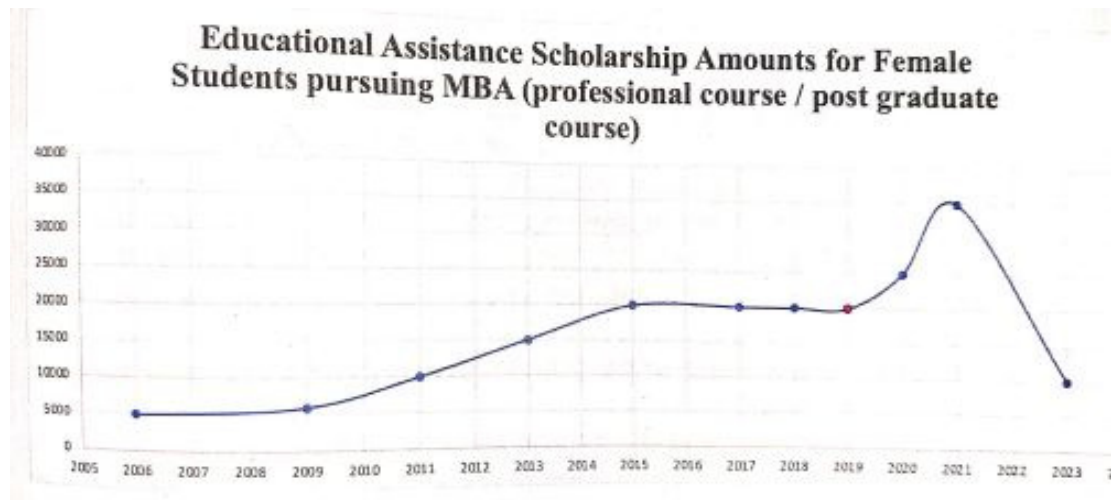
all expenses for administration of the fund shall be met from the administrative account of the fund, which is capped at 5% of the total fund in terms of Section 24(3) of the Act. Rule 45 which mandates assistance for education of a son or daughter of a registered construction worker is imperative. The educational assistance would commence only on passing of SSLC examination or its equivalent by the son or daughter. Rule 45 mandates educational assistance. The afore-quoted are the statutory framework that, regulates lives of construction of building workers and their Welfare.

(ii) The petitioners and their grievance:

14. The 1st petitioner is the daughter of the 2nd petitioner who belongs to a below poverty line category and holds a BPL card and an identity card as being a daughter of construction worker. She is enrolled in the year 2023 into a Master of Business Administration programme. The 3rd petitioner is again a BPL card holder and is enrolled as a student of Law. They seek educational assistance under the Act and the Rules. From 2006 through 2022 the State

Government, has notified varied educational assistance from time to time. Petitioners 1 and 3 and the like and variance to the benefit of students is tabulated, as follows:

"PETITIONER NO. 1 – MBA STUDENT



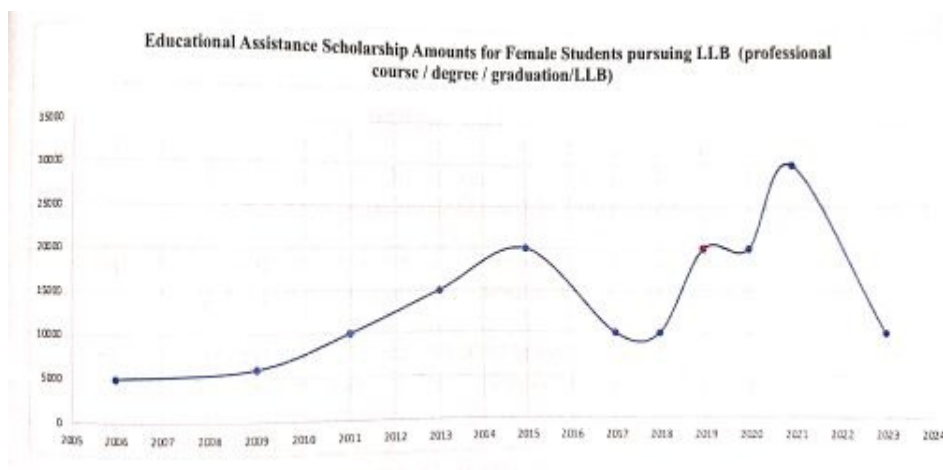
Corresponding Table:

Year	Amount
2006	5000
2009	6000
2011	10000
2013	15000
2015	20000
2017	20000
2018	20000
2019*	20000
2020	25000
2021	35000
2023	10000

The afore-drawn graph and the table is indicative of the fact that in the year 2017, the amount for education was at Rs.20,000/- for an entry and thereafter Rs.10,000/- every year for a maximum of 2 years; in 2019, the amount was equivalent to annual fee of government institutes/colleges, which perhaps was capped at Rs.20,000/-; in 2020, the amount was kept intact at Rs.20,000/- for boys, but was increased for girls at Rs.25,000/- for every year of education; in 2021, the amount was capped at Rs.35,000/- maximum for a 2 years discipline. The educational assistance, therefore to an MBA student, has been on the increase from 2017 to 2021 or till the impugned notification.

PETITIONER NO.3 – LLB STUDENT

The educational assistance to an LLB student can be graphically portrayed as follows:



“Corresponding Table:

Year	Amount (INR)
2006	5000
2009	6000
2011	10000
2013	15000
2015	20000
2017	10000
2018	10000
2019*	20000
2020	20000
2021	30000
2023	10000

The educational assistance graphically drawn or tabulated would depict the following:

1) In 2005, educational assistance has been computed as provided for the category 'Professional course'.

2) In 2009, educational assistance has been computed as provided for the category 'Professional course or PG course'.

- 3) In 2011, educational assistance has been computed as provided for the category 'Professional course or PG course'.
- 4) In 2013, educational assistance has been computed as provided for the category 'Professional course or PG course'.
- 5) In 2015, educational assistance has been computed as provided for the category 'Professional course or PG course'.
- 6) In 2017, educational assistance has been computed as provided for the category 'any degree course'.
- 7) In 2018, educational assistance has been computed as provided for the category 'any degree course'.
- 8) In 2019*, educational assistance has been computed as provided for the category 'Annual fee of govt. institutes/colleges.
- 9) In 2020, educational assistance has been computed as provided for the category 'Graduation'.
- 10) In 2021, educational assistance has been computed as provided for the category 'LLB/LLM'.
- 11) In 2023, educational assistance has been computed as provided for 'LLB/LLM'"

What is discernible from afore-quoted graphical depiction is that from 2006 onwards there has been increase in educational assistance to these categories of students. I have referred to these two categories, as an illustration, while there are many. Up to 2021

the graph has been on the increase, and after 2021, it drastically falls down, and goes 12 years back and brings the figure what was prevailing in the year 2011. The notification issued in terms of the Rules depicting benefits to students of the year 2021, reads as follows:

"GOVERNMENT OF KARNATAKA

No.LD 207 LET 2021 Karnataka Government Secretariat,
Vikas Soudha,
Bengaluru, dated 13-08-2021.

NOTIFICATION

In exercise of the powers conferred by Section 62 of the Building and Others Constructions Worker's (Regulation of Employment and Conditions of Service) Act, 1996 (Central Act No.27 of 1996) read with sub-rule (1) of rule 45 of the Building and Others Constructions Worker's (Regulation of Employment and Conditions of Service) Karnataka Rules, 2006 the Government of Karnataka, hereby notifies the amount of educational assistance to the registered construction workers as under:

Sl. No	Name of the Educational course or Standard or Grade	Annual Educational Assistance (in Rs.)
Pre-matric Courses		
1.	KG/Pre School/Nursery (Age 3 to 5)	5,000
2.	1 st – 4 th Std.	5,000
3.	5 th – 8 th Std.	8,000
4.	9 th & 10 th Std.	12,000
Post-matric/HSC		
5.	1 st PUC & 2 nd PUC	15,000

6.	Polytechnic/Diploma/ITI	20,000
7.	B.Sc Nursing/GNM/ANM/ Paramedical Courses	40,000
8.	D.ed	25,000
	B.ed	35,000
9.	Graduation (any discipline)	25,000
10	LLB/LLM	30,000
11	Any Post Graduation	₹35,000/- for maximum of 2 years subject
Technical/Medical through NEET or KCET		
12	BE/ B.Tech or equivalent U.G courses.	₹50,000/- subject to the maximum number of the years course.
13	M.Tech /ME (or equivalent Post Graduation courses)	₹60,000/- subject to the maximum number of years of course.
14	Medical (MBBS/BAMS/BDS/BHMS or equivalent course of Medical Studies)	₹60,000/- (subject to the maximum of number of the years course)
	MD	₹75,000/- (subject to the maximum of number of the years course)
15	Ph.D/M.Phil (Any subject)	₹25,000/- for maximum of 3 years for Ph.D and 1 year for M.Phil (Those candidates who have been selected for Junior Research Fellowship (JRF) of UGC or who are in the employment of the State/ Central Government or working in aided Colleges in the

		posts covered under the grant-in-aid schemes of UGC Colleges are not eligible for this assistance).
16	IIT/IIIT/IIM/NIT/IISER/AIIMS/NLU and listed courses of Government of India	Actual Tuition fee paid.

(Emphasis supplied)

Conditions:

- i. The students should have passed previous academic year and should have enrolled for the current academic year.
- ii. Further, the scholarship may be disbursed through DBT Mode on State Scholarship Portal (SSP) designed by the Centre for e-Governance, Government of Karnataka.
- iii. The actual processing fee for successful applications will be reimbursed in case of Sl.No.16.
- iv. Students pursuing the above courses in any discipline/ Branches or studies equivalent to the above courses are also eligible for the scholarship applicable to their respective course.
- v. Registered construction workers whose membership is valid at the time of submitting the application for educational assistance and whose children have enrolled for the above courses are eligible for scholarship.
- vi. Students appearing for the various examinations through the National Institute of Open Schooling shall be reimbursed the actual examination fees of the specific course.

- vii. This Notification will come into effect from the academic year 2021-22."

Two disciplines in the aforesaid notification, form the fulcrum of the subject /is. They are **LLB** which the 3rd petitioner is pursuing and **MBA** which the 1st petitioner is pursuing. They were entitled to educational assistance at ₹30,000/- and ₹35,000/- respectively. On the fond hope of getting educational assistance, they get enrolled to these courses in the afore-mentioned institutions and during February and March, 2023, they apply for educational assistance to the Board. The Board, as is known for its wont, of callousness does not process them, till the impugned notification comes about on 30-10-2023, which is for close to 7 months. It is here the right of these poor children is taken for granted. Then emerges the impugned notification. The impugned Notification reads as follows:

ಸಂಖ್ಯೆ:ಕಾಇ 459 ಎಲ್ ಇಟಿ 2023

ಕರ್ನಾಟಕ ಸರ್ಕಾರದ ಸಚಿವಾಲಯ:

ವಿಕಾಸಸೌಧ,ಬೆಂಗಳೂರು,

ದಿನಾಂಕ:30.10.2023

ಅಧಿಸೂಚನೆ

ಕಟ್ಟಡ ಮತ್ತು ಇತರೆ ನಿರ್ಮಾಣ ಕಾರ್ಮಿಕರ (ಉದ್ಯೋಗದ ಕ್ರಮೀಕರಣ ಮತ್ತು ಸೇವಾ ಷರತ್ತುಗಳು) ಕಾಯ್ದೆ 1996 (ಕೇಂದ್ರ ಕಾಯ್ದೆ 1996ರ ಸಂಖ್ಯೆ 27)ರ ಕಲಂ 62ರಡಿ ಪ್ರದತ್ತವಾದ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಿ, ಕರ್ನಾಟಕ ಸರ್ಕಾರವು ಕಟ್ಟಡ ಮತ್ತು ಇತರೆ ನಿರ್ಮಾಣ ಕಾರ್ಮಿಕರ (ಉದ್ಯೋಗದ ಕ್ರಮೀಕರಣ ಮತ್ತು ಸೇವಾ ಷರತ್ತುಗಳು) ಕರ್ನಾಟಕ ನಿಯಮಗಳು 2006ರ ನಿಯಮ 45 (1) ರಡಿ ನೋಂದಾಯಿತ ಕಟ್ಟಡ ಕಾರ್ಮಿಕರ

ಮಕ್ಕಳಿಗೆ ಶೈಕ್ಷಣಿಕ ಸಹಾಯಧನ ಮೊತ್ತಗಳನ್ನು ಶೈಕ್ಷಣಿಕ ವರ್ಷ 2022-23ರಿಂದ ಅನ್ವಯವಾಗುವಂತೆ ಈ ಕೆಳಕಂಡಂತೆ ಪರಿಷ್ಕರಿಸಿ ಆದೇಶಿಸಿದೆ.

ಕ್ರ. ಸಂ.	ವಿದ್ಯಾಭ್ಯಾಸದ ವಿವರ (ತರಗತಿ ಅಥವಾ ಕೊಠಡಿ ಅಥವಾ ಗ್ರೇಡ್)	ವಾರ್ಷಿಕ ಶೈಕ್ಷಣಿಕ ಸಹಾಯಧನದ ಮೊತ್ತ (ರೂ. ಗಳಲ್ಲಿ)
1	1ನೇ ತರಗತಿಯಿಂದ-5ನೇ ತರಗತಿಯವರೆಗೆ	1,100
2	6ನೇತರಗತಿಯಿಂದ-7ನೇತರಗತಿಯವರೆಗೆ	1,250
3	8ನೇ ತರಗತಿ	1,350
4	9ನೇ ತರಗತಿಯಿಂದ-10ನೇ ತರಗತಿಯವರೆಗೆ	3,000
5	ಪ್ರಥಮ ಪಿಯುಸಿ ಮತ್ತು ದ್ವಿತೀಯ ಪಿ.ಯು.ಸಿ	4,600
6	ಪದವಿ	6,000
7	ಬಿಇ/ಬಿಟೆಕ್ ಅಥವಾ ಸಂಬಂಧಪಟ್ಟ ಯೂಚಿ ಕೋರ್ಸ್	10,000
8	ಸ್ನಾತಕೋತ್ತರ ಪದವಿ	10,000
9	ಪಾಲಿಟೆಕ್ನಿಕ್ / ಡಿಪ್ಲೊಮಾ/ಐಟಿಐ	4,600
10	ಬಿಎಸ್ಸಿ ನಸಿರಂಗ್/ಜಿಎನ್‌ಎಮ್/ ಎಎನ್‌ಎಮ್/ಪಾರಮೆಡಿಕಲ್ ಕೋರ್ಸ್/ ಎಕ್ಸಲರಿ ನಸಿರಂಗ್ ಅಂಡ್ ಮಿಡ್‌ವೈಪ್	10,000
11	ಬಿ.ಎಡ್	6,000
12	ವೈದ್ಯಕೀಯ (ಎಮ್‌ಬಿಬಿಎಸ್ /ಬಿಎಮ್ ಎಸ್ / ಬಿಡಿಎಸ್/ಬಿಹೆಚ್ ಎಮ್ ಎಸ್ ಕೋರ್ಸ್ ಅಥವಾ ಇದಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟ ಸಮಾನಾಂತರ ಸ್ನಾತಕೋತ್ತರ ಕೋರ್ಸ್	11,000
13	ಎಲ್ ಎಲ್ ಬಿ/ ಎಲ್ ಎಲ್ ಎಮ್	10,000
14	ಎಮ್.ಟೆಕ್/ಎಮ್‌ಇ(ಇದಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟ ಸಮಾನಾಂತರ ಸ್ನಾತಕೋತ್ತರ ಕೋರ್ಸ್)	11,000
15	ಎಮ್ ಡಿ ಮೆಡಿಕಲ್	12,000
16	ಡಿ.ಎಡ್	4,600
17	ಪಿಹೆಚ್‌ಡಿ/ಎಮ್.ಫಿಲ್/(ಯಾವುದೇ ವಿಷಯ)	11,000
18	ಐಐಟಿ/ಐಐಐಟಿ/ಐಐಎಮ್/ಎನ್‌ಟಿ/ಐಐಎಸಿಆರ್/ಐಐಐಎಮ್ ಎಸ್/ಎನ್ ಎಲ್ ಯೂ ಮತ್ತು ಭಾರತ ಸರ್ಕಾರದ ಮಾನ್ಯತೆ ಪಡೆದ ಕೋಸಗಳು	11,000

ಷರತ್ತುಗಳು:

- ಈ ಮೇಲಿನ ಸಹಾಯಧನದ ಮೊತ್ತವು ಶೈಕ್ಷಣಿಕ ವರ್ಷ 2022-23 ಸಾಲಿನಿಂದ ಅನ್ವಯವಾಗುತ್ತದೆ.
- ಶೈಕ್ಷಣಿಕ ಸಹಾಯಧನ ಕೋರಿ ಅರ್ಜಿ ಸಲ್ಲಿಸುವ ವಿದ್ಯಾರ್ಥಿಗಳು ಹಿಂದಿನ ಶೈಕ್ಷಣಿಕ ವರ್ಷದಲ್ಲಿ ಉತ್ತೀರ್ಣರಾಗಿರಬೇಕು ಮತ್ತು ಪ್ರಸಕ್ತ ಶೈಕ್ಷಣಿಕ ವರ್ಷದಲ್ಲಿ ಶೈಕ್ಷಣಿಕ ದಾಖಲಾತಿಯನ್ನು ಪಡೆದಿರಬೇಕು.

3. ಶೈಕ್ಷಣಿಕ ಸಹಾಯಧನಕ್ಕಾಗಿ ಅರ್ಜಿ ಸಲ್ಲಿಸುವ ಸಮಯದಲ್ಲಿ ನೋಂದಾಯಿತ ಕಟ್ಟಡ ಕಾರ್ಮಿಕರ ನೋಂದಣಿ/ಸದಸ್ಯತ್ವವು ಚಾಲ್ತಿಯಲ್ಲಿರಬೇಕು.

4. ಶೈಕ್ಷಣಿಕ ಸಹಾಯಧನ ಕೋರಿ ಅರ್ಜಿ ಸಲ್ಲಿಸಬೇಕಾದಲ್ಲಿ ಹಿಂದಿನ ವರ್ಷದ ಮೇ 31ರ ಪೂರ್ವದಲ್ಲಿ ನೋಂದಣಿಯಾದ ಕಟ್ಟಡ ಮತ್ತು ಇತರೆ ನಿರ್ಮಾಣ ಕಾರ್ಮಿಕರು ನೋಂದಾಯಿತ ನಂತರದ ಶೈಕ್ಷಣಿಕ ವರ್ಷಕ್ಕೆ ಸಹಾಯಧನ ಪಡೆಯಲು ಅರ್ಹರಿರುತ್ತಾರೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯಪಾಲರ ಆದೇಶಾನುಸಾರ
ಮತ್ತು ಅವರ ಹೆಸರಿನಲ್ಲಿ

ಸಹಿ/-

30.10.2023

(ಸುಮ. ಎಸ್)

ಸರ್ಕಾರದ ಅಧೀನ ಕಾರ್ಯದರ್ಶಿ,
ಕಾರ್ಮಿಕ ಇಲಾಖೆ."

(Emphasis added)

The change in the impugned notification is drastic, as the amount of assistance to a child of construction worker who is pursuing graduation or post-graduation is brought down to ₹10,000/- from ₹30,000/- and 35,000/- which was prevailing earlier. **Educational assistance to the poor children should only increase and not decrease to such abysmal levels.** No reasons are forthcoming in the Notification as to why the notification puts the clock back to a 2011 scale. **The lives of children of construction workers should be made good in a progressive manner and not in a**

regressive manner, as is done in the case at hand. This brings the petitioners to the doors of this Court.

15. This Court, considering the plea and plight of the petitioners passed an order on 23-04-2024. The said order is germane to be noticed. It reads as follows:

“ORDER

The petitioners are 4 in number. The 1st petitioner is the daughter of the 2nd petitioner. The 3rd petitioner is the daughter of the 4th petitioner. They are before this Court calling in question a notification dated 30.10.2023, by which, the entitlement of the benefits qua the quantum is reduced by the State from Rs.30,000/-, Rs.35,000/- respectively to Rs.10,000/- and Rs.11,000/- respectively and have sought an interim prayer to direct the disbursement of Rs.35,000/- and Rs.30,000/- to be paid to the daughters, petitioners 1 and 3, children of the construction workers for the purpose of payment of fees to pursue MBA and LLB.

The learned counsel for the petitioners submits that petitioners 1 and 3 are wanting to pursue post graduate courses, one the LLB and the other MBA. They are entitled to certain benefits under a notification dated 13.08.2021. They have submitted their applications at the relevant point in time. The 2nd respondent Karnataka Building and Other Construction Workers Welfare Board ('the Board' for short) has not acceded to the said request.

The learned counsel representing the 2nd respondent/Board Sri.Prashanth.B.N. would submit that the petitioners are not entitled to claim Rs.35,000/- or Rs.30,000/-, as the case would be, in terms of the notification dated 30.10.2023. Therefore, the Board is

prepared to pay Rs.10,000/- and Rs.11,000/- respectively and not the claim of the petitioners.

In reply, learned counsel for the petitioners would submit that the daughters had submitted their respective applications, when the earlier notification was in force. That is kept pending and the subsequent notification is applied to the petitioners. He would further contend that close to Rs.8,200/- crores collected as Welfare Cess is lying with the Board and are not wanting to part with the afore requested amount.

I have given my anxious consideration to the submissions made by the respective learned counsel for the parties.

The Board is created for the welfare of the building construction workers. The welfare is met with the welfare cess collected and other funds received by the Board i. The daughters of poor constructions workers, have by their own, come to the stage of pursuing their post graduate studies, the 1st petitioner - LLB and the 3rd petitioner - MBA. These children of the construction workers are entitled to certain benefits. Such benefits flew from a notification dated 13.08.2021. The notification is issued for educational assistance to recognized construction workers. The fathers of the petitioners 1 and 3 are recognized construction workers, this fact is not in dispute. Therefore, their children would become entitled to certain amount, in terms of the said notification. The amounts they are entitled to are for pursuing LLB/LLM it is Rs.30,000/-, any other post-graduation it is Rs.35,000/- for a maximum of 2 years per subject.

During the subsistence of the said notification dated 13.08.2021, the daughters of petitioners 2 and 4 submit an application seeking the said amount. It is again not in dispute that the amount is sought by producing the requisite catalogue of fees that had been demanded, in terms of the communication on 05.01.2024 to the CEO and Secretary of the Board. Identical application is preferred by the other daughter-petitioner No.3. These applications of both these petitioners are kept in cold storage for about 10 months.

After 10 months comes a new notification – the impugned notification. It is dated 30.10.2023. What happens in the new notification is reduction of the fees payable to the children of construction workers. Insofar as the present petition is concerned, what the daughters would get is, Rs.11,000/- and Rs.10,000/- as against Rs.35,000/- and Rs.30,000/-. Therefore, there is reduction to 1/3rd in the new notification. The new notification is sought to be applied to these petitioners. In the considered view of this Court it cannot be applied. The reason is plain and simple. In terms of the subsisting earlier notification dated 13.08.2021, both the daughters had submitted their applications, those applications are treated in a cavalier manner and placed in the bin, but was yet to become a thrash. In the interregnum emerges the new notification.

It is not the folly of the daughters-petitioners 1 and 3. They had a right under the notification dated 13.08.2021. The right is eroded by sheer callousness on the part of the 2nd respondent/Board by not passing any order on the said notification and bringing them under the ambit of the new notification. The callousness of the officers manning the Board cannot place the rights of these poor construction workers in limbo.

The Board refuses to recognize the lamenting of the daughters who have risen up to the stage of post graduation. They are not ready to part with any amount beyond what is in the notification dated 30.10.2023. The said notification, is on the face of it, inapplicable to the case of the petitioners, as it cannot take away the rights of the petitioners retrospectively, by making it retroactive.

Learned counsel for the petitioners submits that close to Rs.8,200/- crores has come into the coffers of the Board, while that would be a matter to be considered at the final stage, I deem it appropriate to grant an interim order, directing the 2nd respondent/Board to disburse the aforesaid amount of Rs.35,000/- and Rs.30,000/- as applied for, by petitioners 1 and 3, so that they would pay the fees or the fees already paid would be reimbursed to the poor families of construction workers.

....

ORDER

- (i) The petitioners 1 and 3 are declared entitled to Rs.35,000/- and Rs.30,000/- respectively.**
- (ii) The said amount shall be released to the petitioners 1 and 3 within 4 weeks from the date of receipt of the copy of this order.**
- (iii) The petitioners 1 and 3 are entitled to cost of litigation at Rs.25,000/- each to be paid by the Board to the said petitioners within 4 weeks from the date of receipt of the copy of this order.**
- (iv) In the event the Board would not pay the amount directed hereinabove, the petitioners 1 and 3 would become entitled to costs at Rs.500/- each for every day's delay till the payment reaches the doors of petitioners 1 and 3.**
Heard in part.

List the matter on 07.06.2024 for further hearing.

Objections, if any, by any, by then."

(Emphasis supplied)

Petitioners 1 and 3 were declared entitled to ₹35,000/- and ₹30,000/- respectively. It was directed to be released forthwith. The Board did not release educational assistance. The Board projected lack of funds. The petitioners then submitted that cess

collected till date was **₹6,700/- crores** and the Board is not willing to part with **₹65,000/-** to both the students, and the deposit was said to be with Canara Bank, an interest earning deposit. Therefore, this Court passed the following order on 07-06-2024. It reads as follows:

“Learned counsel for the petitioners submits that the amount that was directed to be paid to the poor children who have studied upto the level of MBA and LLB as fees is not paid.

Learned counsel for the respondents submits that they are not in a position to pay and they have filed a review petition.

Therefore, the learned counsel for the petitioners submits cess of about Rs.6,700/- crores is received and is kept in deposit in the Canara Bank.

The respondent – Board shall place on record as to how Rs.6,700/- crores is spent upon the welfare of the building construction workers for whose purpose the fund is created and the amount is put into the fund.

An affidavit of the Competent Officer shall be filed by the next date of hearing.

List this matter on 14.06.2024, for further hearing at 2:30 p.m.”

(Emphasis added)

Affidavits are filed before this Court, in furtherance of what was directed. The affidavit contained the amount of cess in the coffers

of the Board and its deposit into respective Banks. Paragraph-11 of the affidavit filed by the Board is as follows:

"11. The details of the Fixed Deposits of the Board is furnished in the below Table:

Sl. No.	Bank Name	Bank Address	Amount (Rs. in Crores)	Deposit Date	Maturity Date
1	SBI BANK	Dr. Ambedkar Veedi	600.00	30-06-32023	30-06-2024
2	CANARA BANK	Welfare Board	1,600.00	10-07-2023	10-07-2024
3	SBI BANK	Wilson Garden	750.00	15-07-2023	15-07-2024
4	UNION BANK OF INDIA	Jalabhavan Branch	1000.00	16-08-2023	16-08-2024
5	UNION BANK OF INDIA	Jalabhavan Branch	600.00	29-08-2023	29-08-2024
6	UNION BANK OF INDIA	Jalabhavan Branch	400.00	30-08-2023	30-08-2024
7	CANARA BANK	Welfare Board	350.00	06-09-2023	06-09-2024
8	SBI BANK	Whitefield	300.00	15-09-2023	15-09-2024
9	SBI BANK	ITPL	300.00	15-09-2023	15-09-2024
10	BANK OF BARODA	K.G.Road	300.00	01-12-2023	01-12-2024
11	BANK OF BARODA	Indira Nagar	500.00	08-12-2023	08-12-2024
	TOTAL AMOUNT		6,700.00"		

Therefore, a huge amount of **₹6,700/- crores** is in deposit as tabulated. The expenditure projected is as follows:

" "

15. I state that, the details of the expenditure of the Board from inception to 30.04.2024 for various schemes is furnished in the table below:-

Sl. No.	Scheme Details	Total		Ration to the total expenditure in Percentage
		No. of Beneficiaries	Amount in crores	

1	Education Assistance	1635115	1,236.00	17.74
2	Funeral Expense	38929	160.13	2.30
3	Major Ailments Assistance	17487	70.57	1.01
4	Accidental Death	9369	94.90	1.36
5	Unregistered Death Assistance	79	2.17	0.03
6	Maternity Assistance	14683	41.63	0.60
7	Medical Expenses	2916	4.11	0.06
8	Skill Academy	-	1.97	0.03
9	Pension	9975	65.78	0.94
10	Disability Ex-gratia	77	2.01	0.03
11	Disability Pension	398	4.71	0.07
12	Family Pension	100	0.12	0.00
13	Marriage Assistance	205243	934.12	13.40
14	Anil Bhagya	4055	73.53	1.06
15	Shrama Samarthya	419727	264.70	3.80
16	BMTC Bus pass	361048	234.10	3.36
17	Karmika Bandhu	0	1.12	0.02
18	Software expenses	0	16.03	0.23
19	MGNREGA	0	6.65	0.10
20	Seva Sindhu	0	65.64	0.94
21	KSRTC	200000	85.20	1.22
22	Housing	27256	522.75	7.50
23	Creaches	7382	17.77	0.25
24	Thayi magu sahaya hasta	4252	2.55	0.04
25	Immunity Kit	950000	253.94	3.64
26	IAS/KAS	737	7.86	0.11
27	Preventive Health Care	1885960	589.30	8.46
28	Mobile medical Unit	350489	30.75	0.44
29	Transit Accommodation	-	117.44	1.69
30	Nutrition Kit	200000	44.28	0.64
31	Covid-19 Relief Fund	3610372	1,725.73	24.76
32	SSLC Merit Benefit	2187	2.19	0.03
33	Tab (6 th std to 10 th std)	16400	34.90	0.50
34	2 nd PUC Distribution of Lap Top	7000	49.93	0.72
35	IEC	-	72.57	1.04
36	School Kit	161833	131.52	1.89
Total		10143069	6,968.67	100.00"

(Emphasis added)

The expenditure projected by the Board has several heads which do not touch upon the welfare of the construction workers to whom the amount in deposit or its interest has to be necessarily spent. few

illustration are at Sl.Nos.19, 25 and 26, as they do not fall within the list of benefits or the schemes for the welfare of the construction workers or their families.

16. What is projected by the Board appears to be contrary to what is observed by the Comptroller and Auditor General of India which audits funds of the Board. The audit ends in a report for the financial year 2013 and 2019 or later. Certain shocking revelations are found in the report. The statute mandates administrative expenditure or any other expenditure to be less than 5% or 5% to the maximum. Therefore, the cap is 5%. How much has been spent on necessary and unnecessary expenditure is found in the report. As an illustration the 2019 report insofar as expenditure is concerned reads as follows:

"3.1.5 Deficiencies in collection and utilisation of cess

3.1.5.1 Cess lying in Public Account

The cess levied by State departments was accounted for under the Head of Account (HoA) '8449-00-120-0-18-660' in *Khajane-2* from November 2017. In order to receive payment from *Khajane-2* system, it was necessary for the Board to furnish its mark details and be registered as a recipient.

Scrutiny showed that receipts amounting to `37.94 crore and `187.43 crore were credited to this HoA during 2017-18 and 2018-19 respectively, but no expenditure had been booked (August 2019) as the Board was not registered as a recipient. **This resulted in loss of revenue to the Board aggregating `225.37 crore and the amount continued to main as undischarged liability in the Public Account.**

The Government state (November 2019) that action had been initiated to ensure transfer of `225.37 crore to the Board's account Regarding registration of the Board as a recipient in *Khajane-2* system, the Secretary to Government, Department of Labour, assured (January 2020) that suitable action would be taken.

3.1.5.2 Non-realisation of cess

Non-realisation of cess due to non-receipt of fresh cheques was pointed in Paragraph 3.3.5.4 of Report No.3 of the year 2014. Scrutiny showed that as of March 2019, the Board returned 8,510 defective cheques/demand drafts for `17.08 crore (tappal returns<sup>44</sup> - 6,171 instruments valuing `9.75 crore and bank returns⁴⁵ - 2,339 instruments worth `7.33 crore). No reminders were issued till October 2018 and reminders issued in October-November 2018 and January-March 2019 accounted for only six *per cent* cases (`1.10 crore out of `17.08 crore). As a result, the Board was yet to receive fresh cheques/drafts in respect of all these cases, resulting in non-realisation of cess to the extent of `17.08 crore (August 2019).

Illustration

Bengaluru Development Authority (BDA) had issued two cheques amounting to ₹2,08,70,536 (₹1,25,66,766 and ₹83,03,770 vide cheque numbers 695480 and 695481 dated 27.02.2018) towards cess payable to the Board. These cheques were received by the Board on 26.05.2018 with a time validity of only one day. As the cheques could not be presented to the banks within the permissible time, they became time barred. The cheques were returned (May 2018) to BDA for issue of fresh cheques. No fresh cheques for the above mentioned amounts have been received till date (September 2019). The Board did not reflect this amount as receivable resulting in understatement of receivables.

3.1.5.3 Non-remittance of construction workers' welfare cess

Section 3 of the Cess Act, 1996, stipulated that the cess collecting authorities should transfer to the Board the proceeds of cess collected within 30 days of its collection.

There continued to be no mechanism at the Board to ensure that the cess collected by the government departments, public sector undertakings, *etc.*, was promptly remitted to the Board's account despite being pointed out during previous audit (*Paragraph 3.3.5.3*). Information obtained from three ULBs (CC, Kalaburagi, CMC, Bidar and CMC, Chikkamagaluru) showed that cess proceeds aggregating ₹10.01 crore was not remitted to the Board (March 2019). Out of this, ₹54.42 lakh pertaining to building plans sanctioned by CMC, Bidar was outstanding since the year 2015-16. In the absence of a proper mechanism, the possibility of loss of revenue to Board and diversion of welfare funds by cess collecting authorities could not be ruled out.

Illustration

CMC, Chikkamagaluru, was responsible to collect one *per cent* of the estimated cost while according plan approvals and transfer the cess proceeds to the Board. Till November 2016, the CMC collected the cess amount from the applicants in the form of demand drafts (DDs) and forwarded the DDs to the Board. During December 2016, the CMC opened a bank account in IDBI Bank, Chikkamagaluru, and it instructed the applicants to remit the cess amount in this bank account instead of submitting the DDs. The CMC then transferred the collected cess amount to the Board by drawing DDs on this account.

On 31.03.2018, the Municipal Commissioner, CMC, Chikkamagaluru, accorded approval for remitting ₹19,03,096 to the Board for which a cheque (No. 146585) dated 31.03.2018, IDBI Bank, was drawn in favour of 'Yourself DD' to remit the amount through DD. Entries were passed in

The Government stated (November 2019) that the matter would be pursued to ensure remittance of unremitted cess amount.

Audit also observed that though there was a provision for levy of penalty for non-payment of cess by the employer, there was no penalty for those cess collecting authorities which did not deposit the cess proceeds within 30 days.

During the exit conference, the Secretary to Government, Department of Labour, stated (January 2020) that action would be initiated to amend the rules by incorporating penalty clause for non-remittance of cess within the prescribed time limit.

3.1.5.4 Discrepancies in sanction of benefits

Scrutiny of records in 10 test-checked field offices showed that the sanctioning authorities disbursed inadmissible assistance of ₹20.24 lakh in 29 out of 390 test-checked cases. The reasons attributable were disbursement of assistance for 3rd child, disbursement without ensuring renewal of registration, assistance disbursed to ineligible beneficiaries, etc. In 4 out of 72 test-checked cases, the sanctioning authorities paid ₹2.18 lakh in excess of the eligibility. In another 9 out of 63 test-checked cases, assistance less than the admissible amount was disbursed, resulting in short payment of ₹7.94 lakh. The details are given in **Appendix 3.6**. Improper sanction of benefits was pointed out *vide Paragraph 3.3.6.3* of the previous report.

The Government stated (November 2019) that discrepancies in sanction of benefits would be verified and necessary action would be taken.

3.1.5.6 Avoidable liability towards income tax

Mention was made in *Paragraph 4.9* of the Report of the C&AG on General and Social Sector for the year ended March 2015 (Report No.1 of the year 2016) regarding avoidable payment of ₹42.83 crore towards income tax (TDS) as the Board had not made use of the enabling provisions available in the IT Act, 1961, for availing tax exemption. The Government replied (October 2015) that action had been initiated to obtain tax exemption certificates from the authorities of Income Tax Department (ITD).

Scrutiny showed that the Board had applied to the Commissioner of Income Tax for grant of exemption under Section 10 (46) of the IT Act, 1961, in August 2018 ie., after a gap of three years from being pointed out by Audit and the application was yet to be approved (November 2019). Further, the Income Tax Returns (ITRs) of the Board for the Financial Years (FYs) 2014-15 to 2016-17 were selected (September 2017 and August 2018) for scrutiny assessment by ITD. As the Board had no exemption, the Assessing Officer concluded (December 2017 and December 2018) the assessments for FYs 2014-15 and 2015-16 by treating cess receipts and interest on FDs and savings bank account as income of the Board and levied tax of ₹413.09 crore for FY 2014-15 and ₹402.93 crore for FY 2015-16. The ITD also issued (March 2019) notices under Section 148 (income escaping assessment) of IT Act, 1961, for FYs 2011-12, 2012-13 and 2013-14 as the Board had filed these ITRs exhibiting income as Nil. The assessments for other FYs were due for completion by 31.12.2019.

Audit also observed that there were delays ranging from 3 to 18 months in filing ITRs for FYs 2011-12 to 2016-17 and Form 10⁴⁶ were either not filed or filed

belatedly. These omissions along with failure of the Board in obtaining exemption under IT Act, 1961, resulted in avoidable tax liability aggregating ₹2,358.94 crore including penal interest of ₹755.07 crore (detailed in Appendix 3.7). Out of this, the ITD had already collected (February 2018) ₹413.09 crore by attaching the Board's bank account.

During the exit conference (January 2020), the Secretary to Government, Department of Labour, accepted that the Board had failed to present its case professionally and clarified that all possible action had now been taken to get the exemption and the final order was awaited. The Secretary, however, expressed concerns about obtaining the exemption with retrospective effect.

The fact remains that at the end of March 2019, the Board had to bear an additional liability of ₹2,358.94 crore including penal interest of ₹755.07 crore towards income tax, which could have been averted had the Board followed the provisions available in the IT Act, 1961, for availing tax exemption. The much bigger area of concern is that if the Board has to pay the entire liability amount (without getting any exemption) towards income tax, it has to be borne from the receipts of the Board, which are meant for implementation of the welfare schemes of the construction workers. This would entail an expenditure of 43 *per cent* of the Welfare fund including penalty and only 57 *per cent* of the Fund would be available for the benefit of the beneficiaries.

3.1.5.7 Inadmissible expenditure

Sections 22 and 24 of the Act, 1996, mandated that at least 95 *per cent* of the funds should be utilised for the benefit of construction workers. Pursuant to directions of the Hon'ble Supreme Court of India (August 2015), the GoI reiterated (June 2016) that welfare funds should not be used for any purpose other than for welfare of construction workers and their family exclusively. In case of any violation, immediate

corrective steps were to be taken and the funds so spent were to be recouped in welfare funds with immediate effect. The GoI further clarified (July 2017) that states could take proactive steps to facilitate transit accommodation, labour shed-cum-night shelter, mobile toilets and mobile crèches to construction workers in the areas of their concentration prior to their finding work.

Audit observed that in contravention to the provisions cited, the Board incurred an expenditure of ₹67.98 crore on inadmissible items which was yet to be recouped to welfare funds (November 2019). The details are as follows:

- **Expenditure on acquiring land** - The Board acquired 128.64 acre of land at a cost of ₹65.80 crore (including incidental expenses *viz.*, registration fee and stamp duty) from different government organisations such as KIADB and eight others on lease/sale basis during the period 2013-16 to establish National Construction Academy, transit accommodation, residential schools, skill centres and *Karmika Kalyana Bhavanas*. This expenditure was met out of the welfare fund in 2013.

Scrutiny showed that after the receipt of GoI's directives (July 2017), the Board resolved (March and May 2018) to utilise 33 acre (worth ₹14.76 crore) out of 128.64 acre of land for admissible purposes⁴⁷ and sought reimbursement of amount from KIADB/other agencies on return of the remaining acquired land (95.64 acre of land costing ₹51.04 crore). There was no further progress and amount of ₹51.04 crore was yet to be recouped (November 2019).

- **Advertisement and publicity expenses** - The Hon'ble Supreme Court highlighted (August 2015) that expenditure incurred on advertisements with the cess amount collected was inappropriate and directed that the amount spent be returned to the accounts of construction

workers. The Board incurred an expenditure of ₹3.93 crore towards advertisement and publicity during the period from 2013-14 to 2015-16 which was not admissible and needed to be recouped.

- Construction of *Kalyana Suraksha Bhavan* - Consequent to State Government's in-principle approval (December 2009) to construct *Kalyana Suraksha Bhavan* at ITI Compound, Bannerghatta Road, Bengaluru, the Board passed (January 2010) a resolution to meet the cost of this building jointly with the Department of Factories and Boilers, Labour Department. **The Board met the total cost of construction of ₹14.76 crore out of welfare funds and received (March 2014) only ₹3 crore from the Department of Factories and Boilers against its share of ₹7.38 crore. The Board further released (August 2018) ₹1.25 crore (estimated cost was ₹1.79 crore) to Karnataka Rural Infrastructure Development Limited (KRIDL) for interior work of fourth floor. The interior work was yet to be completed. As the construction of such building was not allowed out of welfare funds, expenditure of ₹13.01 crore⁴⁸ incurred by the Board was inadmissible.**

The Government stated (November 2019) that it would review the matter.

3.1.5.8 Unfruitful expenditure on development of software

The Board had incurred an expenditure of ₹1.21 crore on developing a software (*Karmika-I*), which was rolled out in February 2016. The software provided for online registration, online data retrieval, elimination of data duplication, cess module for tracking cess collection, etc. However, it was not fully functional⁴⁹ as the SLIs/LIs had not been provided with computers. Subsequently, the Board invited (July 2017) tenders for developing a comprehensive software (*Karmika-II*) with an estimated cost of ₹54.36 lakh and awarded (January 2018) the work to M/s Vansh Infotech and paid ₹44.72 lakh for the period from February 2018 to January 2019. The scope of the work included providing only the

manpower and carrying out the work as per requirement of the Board but the Board did not have any IT staff/expert to finalise requirements and validate specifications. The Board did not fix any timeline/milestones though it entrusted several functional requirements to the agency. The work also included, among other things, monitoring and programming of renewals, processing claims, etc., which necessitated that the old manual data of registration (prior to February 2016) should be digitised. The Board had entrusted the work of digitising the manual data to KEONICS in November 2017. However, there was no progress. Hence, awarding the work of developing new software to M/s Vansh Infotech without digitisation of old manual data was not justifiable.

As a result, the software launched in February 2019 was not fully operational. The Board terminated (April 2019) the contract as the agency failed to attend to the bugs/issues and started (June 2019) using *Seva Sindhu* (e-governance portal of GoK) for registering eligible beneficiaries. Thus, the Board failed to achieve its intended objective of having a comprehensive software for providing better services to construction workers and monitor cess collection despite incurring an expenditure of ₹1.66 crore.

The Government stated (November 2019) that the agency was unable to handle and complete the task within the stipulated time. It further stated that the Board claimed back (September 2019) the amount of ₹44.72 lakh along with penalty (as per Clause 5 of the agreement) from the agency as the new software was not working properly and its optimal use was not possible. The reply was not fully acceptable as the Clause 5 of the agreement contained penalty clause only for delay in deployment of manpower and hence recovery of ₹44.72 lakh was not assured.

3.1.5.9 Absence of monitoring on investments

The Board had been investing surplus amounts in fixed deposits (FDs) after calling for the quotations from the banks. The Investment Register/FD Register was maintained in softcopy (excel) without any mechanism for verification by

the officers of the Board. The balances reflected in the investment Registers were not verified/reconciled with the physical Fixed Deposit Receipts and bank confirmation statements to ensure its correctness. Out of total fixed deposits amounting to ₹4,803.63 crore as at the end of March 2017, bank confirmations were available for only ₹1,810.46 crore. Audit, therefore, could not ascertain the correctness of the balance fixed deposits amounting to ₹2,993.17 crore in the absence of the confirmation of balances from the relevant banks. The investment as at the end of March 2019 was ₹6,337.28 crore (as per unaudited accounts). Scrutiny of investments in FDs valuing more than ₹10 crore showed that:

- Details of pre-closure, maturity, reinvestment were not being updated in the register.
- There were five cases where the bank without prior permission of the Board divided the amount to be deposited into smaller denomination for investing in FDs (**Appendix 3.8 (a)**) and there were also 13 cases where credit details on maturity were not traceable from the records (**Appendix 3.8 (b)**).
- Board had invested ₹100 crore for the period from 22.03.2017 to 22.02.2018 for a duration of 11 months. The said FD attracted rate of interest of 5.1 *per cent* per annum. However, the bank documents showed that no interest was credited on closure of the FD. In addition, an amount of ₹1,27,500 was deducted from the principal amount towards TDS, which was incorrect as no interest was paid.
- In 12 test-checked cases involving ₹625 crore (43 FDs), the Board invested ₹430 crore (32 FDs) at rates lower than the available rates which resulted in loss of interest of ₹2.46 crore (**Appendix 3.9**). As these are only illustrative cases, the Board should look into this aspect in all other cases also to preclude any further likelihood of loss of revenue.

During the exit conference (January 2020), the Secretary to Government, Department of Labour, agreed to the possibility of fund mismanagement and assured to get it enquired.

The observations discussed in paragraphs 3.1.4 and 3.1.5 indicate lack of commitment on the part of the Government/Board to take forward the issue of workers' welfare besides reflecting on the absence of strong and effective institutional mechanism.

It is recommended that a robust internal control mechanism within the Board should be put in place to ensure that cess is realised effectively from all sources, the cess is used for the purpose for which it is meant, there is no inadmissible expenditure and avoidable expenditure towards income tax liability is addressed.

3.1.6 Institutional mechanism

3.1.6.1 Ineffective institutional mechanism

The institutional mechanism was either absent or not effective as below:

- The Secretary of the Board had submitted (August 2011, February 2012, December 2013, December 2015, February 2016, May 2018) proposals to the Government for constituting a State Advisory Committee but the State Government constituted the Committee in November 2019 i.e. after a delay of more than 12 years from establishing the Board. This inordinate delay deprived the Board of suitable guidance on such matters arising out of the administration of the Act, 1996.
- The Board had not constituted the Internal Audit Wing and no Internal Audit was carried out in spite of being pointed out in previous financial audits.

- The State Government had not conducted the social audit on the implementation of the Act, 1996 despite the directions of Hon'ble Supreme Court of India.

The Government stated (November 2019) that corrective measures were being undertaken in this regard.

3.1.6.2 Inadequate human resources

Audit observed that though the Board was constituted in January 2007, it was not provided with necessary staff as detailed below:

- There was inordinate delay in framing C&R Rules as the State Government was yet to finalise/notify the Rules (November 2019). This was also pointed out in the earlier report of the C&AG (*Paragraph 3.3.3*). Further, there was no consistency and objective criteria for having assessed the overall need of staff strength as the requirement of personnel for Head office/Field offices varied from 1,668 (December 2016) to 262 (June 2017) to 623 (May 2019).
- Though the State Government sanctioned (December 2017) 35 posts to be filled up on deputation, 23 of these remained vacant (March 2019). Majority of the work at Board was being managed with contractual staff who even handled cheques/demand drafts and accountability could not be fixed on them.
- During the period from 2014-15 to 2018-19, the post of Secretary as regular charge was held for 10 months. For the remaining 50 months, seven incumbents held this post as additional charge.
- In accordance with the Government's instructions, the officers/officials of Labour Department were entrusted duties of registering establishments and cess assessment (LOs), registering beneficiaries and cess collection (SLIs/LIs) and sanctioning social security benefits (except pension and disability pension) to ALCs and LOs. These

officers/officials of the Labour Department were to perform duties for the Board in addition to their regular charge of administering and enforcing provisions of other 23 central/state acts. Audit noticed that against the sanctioned 324 posts in these three cadres (ALC, LO and SLI/LI), 116 posts (36 per cent) were vacant as of May 2019.

Shortage of staff and vacancies in the posts of ALC, LO and SLI/LI hampered the registration of establishments and workers and also led to delays in sanctioning the claims.

The Government stated (November 2019) that approval to C&R Rules was under consideration and the Board would take action to recruit officers/employees once the C&R Rules were approved.

It is recommended that the State Government finalise the C&R Rules of the Board immediately so that appropriate/qualified persons are appointed to ensure accountability and prevent handling of finances by the outsourced employees.

3.1.6.3 Shortfall in registration of establishments

The Board had registered 6,227 establishments in the State as of December 2018. Audit observed that the Board neither devised any mechanism to identify the prospective employers nor complied with the GoI's directives (May 2018) such as, forwarding copies of work orders to relevant authorities, developing a mechanism for regular monitoring of construction activities and use of GIS technology/mapping, etc., for ensuring registration of establishments (detailed in **Appendix 3.10**). Though the Board received cess proceeds in form of cheques/DDs or through RTGS/NEFT from employers/cess collecting authorities, it did not co-relate this data with that available with the respective LOs to ensure registration of these establishments and workers employed therein and failed to maintain a comprehensive database of construction works undertaken in the State. As a result, there was a shortfall in registration of establishments to the extent of 99 *per cent* in the test-checked districts as detailed in **Appendix 3.11**.

Further, LOs though empowered, had not conducted inspection of premises of the establishment in any of the six test-checked districts during the period from 2014-15 to 2018-19 and hence failed to identify unregistered employers.

During the exit conference (January 2020), the Secretary to Government, Department of Labour, attributed shortage of staff as a major constraint and stated that all possible action would be taken to increase the registration of establishments.”

(Emphasis added)

The CAG has red flags throughout the report against the State Government. By the end of March, 2019 the liability towards income tax had increased to ₹2358/- crores with penal interest at ₹755/- crores; all for one solitary reason of not availing exemption as available under the Act by placing documents before the Income Tax authorities. Land is acquired from welfare cess fund notwithstanding the funds available with other organizations of the State.

17. After all the aforesaid report, one of the construction workers applies under the Right to Information Act about the resolutions of the Board *qua* expenditure. One particular resolution is as follows:

“ಕಾರ್ಯಸೂಚಿ-22 (V)

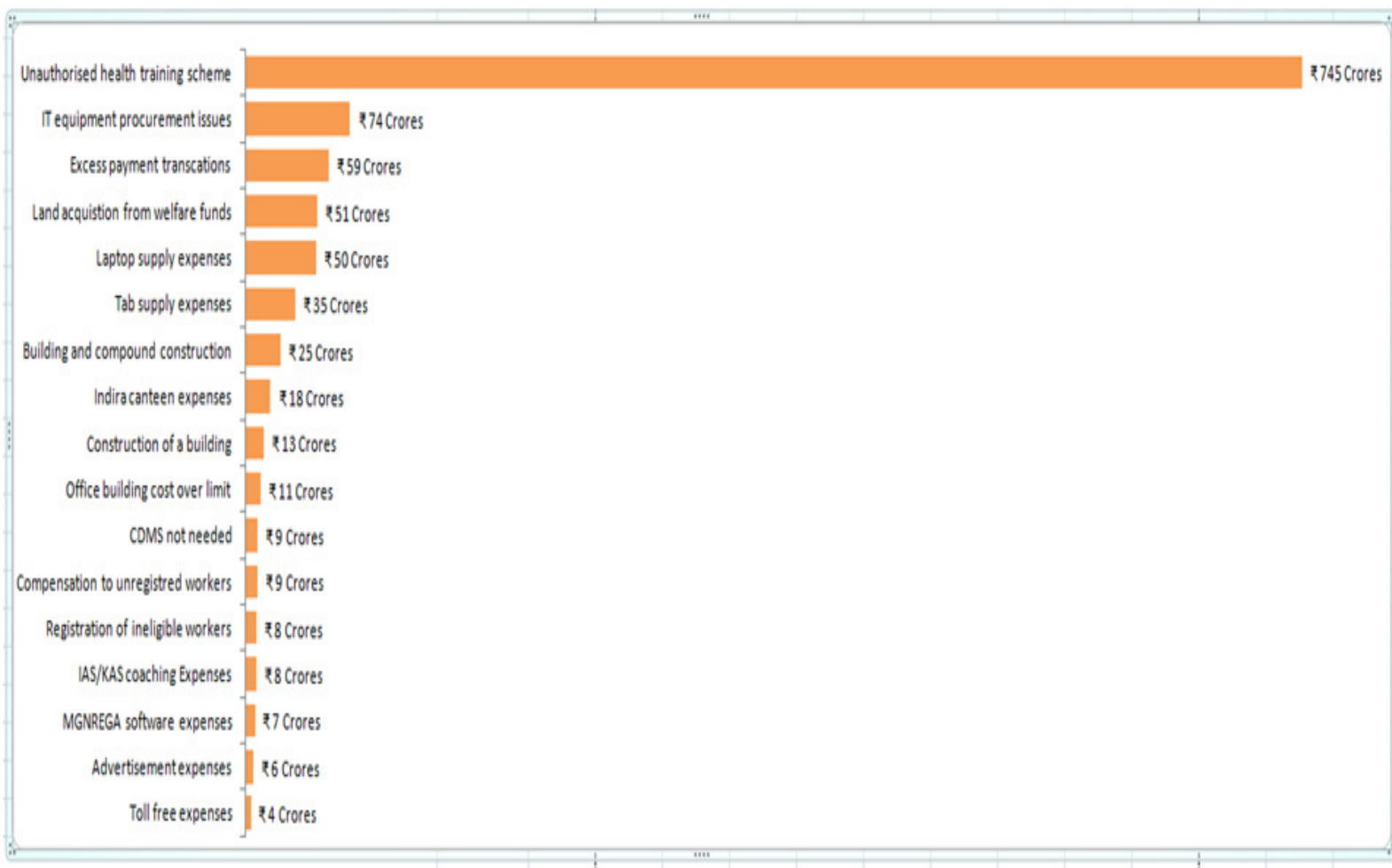
ಮಂಡಳಿಯ ಅಧ್ಯಕ್ಷರ ಉಪಯೋಗಕ್ಕಾಗಿ ಇನ್ನೋವಾ ಕ್ರಿಸ್ತಾ ವಾಹನವನ್ನು ಖರೀದಿಸಿರುವ ಬಗ್ಗೆ ಘಟನೋತ್ತರ ಅನುಮೋದನೆ ಪಡೆಯುವ ಕುರಿತು.

ದಿನಾಂಕ: 12.02.2020 ರಂದು ಮಾನ್ಯ ಕಾರ್ಮಿಕರ ಸಚಿವರ ಕಛೇರಿಯಿಂದ ಮಂಡಳಿಯ ಅಧ್ಯಕ್ಷರ ಉಪಯೋಗಕ್ಕಾಗಿ ಒಂದು ಹೊಸ ಇನ್ನೋವಾ ಕ್ರಿಸ್ತಾ ವಾಹನವನ್ನು ಒದಗಿಸುವಂತೆ ಸೂಚಿಸಿರುತ್ತಾರೆ. ಅದರಂತೆ ದಿನಾಂಕ: 18.02.2020 ರಂದು ಮೆ: ನಂದಿ ಟಯೋಟಾ ಮೋಟಾರ್ಸ್ ವರ್ಲ್ಡ್ ಪ್ರೈ.ಲಿ., ಬೆಂಗಳೂರು ಇವರಿಂದ ಹೊಸದಾಗಿ ವಾಹನವನ್ನು ಖರೀದಿಸಿ ಮಾನ್ಯ ಅಧ್ಯಕ್ಷರಿಗೆ ಒದಗಿಸಲಾಗಿರುತ್ತದೆ. ಸದರಿ ವಾಹನ ಖರೀದಿಯ ಒಟ್ಟು ಮೊತ್ತ ರೂ.29,29,477/- ಗಳಾಗಿರುತ್ತದೆ ಎಂದು ಸಭೆಗೆ ಮಂಡಳಿಯ ಕಾರ್ಯದರ್ಶಿರವರು ತಿಳಿಸಿದರು.

ಮಂಡಳಿಯ ನಿರ್ಣಯ: ಮಂಡಳಿ ಅಧ್ಯಕ್ಷರ ಉಪಯೋಗಕ್ಕಾಗಿ ಹೊಸ ಇನ್ನೋವಾ ಕ್ರಿಸ್ತಾ ವಾಹನವನ್ನು ಖರೀದಿಸಿರುವುದಕ್ಕೆ ಸಭೆಯು ಸರ್ವಾನುಮತದಿಂದ ಘಟನೋತ್ತರ ಅನುಮೋದನೆ ನೀಡಿತು.”

This is only a tip of the iceberg. The graph of inadmissible and wasteful expenditure as produced by the learned counsel for the petitioners is necessary to be quoted and it depicts as follows:

**“Inadmissible & Wasteful expenses can fund
all beneficiaries for education for a year**



The afore-quoted gives a clear picture as to how the funds that have to be used for the welfare of construction workers are treated or have been wasted elsewhere. Glaring wasteful expenditure is spending ₹7/- crores on MGNREGA software; spending ₹18/- crores on Indira canteen expenses and several other wasteful expenditures and on unauthorised holding training scheme the expenditure that

is shown is ₹745/- crores. These are facts and figures, that very stubborn, as they cannot be changed.

18. Yet another glaring circumstance, as observed hereinabove, is the tax liability. The total number of beneficiaries under the Act is 9,61,930 registered construction workers. The tax liability that could be avoided was ₹3548/- crores. Who is responsible? It is the callousness of officers of the Board who have not applied for tax exemption to the Income Tax Department has resulted in tax liability. It was not 10, 20 or 100 crores but it was ₹3548/- crores. The investment is noticed hereinabove. ₹6700/- crores is in fixed deposit. The interest that it generates can take care of entire education expenses of the children of registered construction workers. What is happening to the interest is necessary to be accounted and facts placed before the CAG by the Board. Therefore, the non-availability of funds to be the reason for bringing in the amendment to the notification is absolute **gibberish.**

19. It now becomes apposite to notice certain orders passed by the Apex Court from time to time. The Apex Court in the case of ***NATIONAL CAMPAIGN COMMITTEE FOR CENTRAL LEGISLATION ON CONSTRUCTION LABOUR v. UNION OF INDIA***¹ while considering entire spectrum of the Act and the Rules and earlier directions issued from time to time has passed a comprehensive order. The discussion, direction and general directions of the Apex Court read as follows:

"....

Discussion and directions

70. There can be no doubt that the BOCW Act and its sister legislation, the Cess Act are social justice legislations. They were enacted keeping in mind the directive principles of State policy, particularly Article 39 of the Constitution which requires the State to direct its policy to secure the health and strength of workers and Article 42 of the Constitution concerning just and humane conditions of work. In addition, Article 21 of the Constitution cannot be forgotten. A life of dignity is a fundamental right given to all persons and that includes construction workers. It is in this background that the two welfare and beneficent legislations must be understood and appreciated.

71. The Statement of Objects and Reasons for the BOCW Act refers to 8.5 million construction workers (85 lakhs) in 1995-1996. They were the vulnerable section of society who needed the support of the State for their safety, health and welfare. They have been consistently let down by

¹ (2018) 5 SCC 607

the State and even directions given by this Court and by the Ministry of Labour and Employment has not brought about any substantive change. Governance is not about mouthing platitudes, or framing good looking schemes, but about action and it is quite clear to us that insofar as the rights of construction workers are concerned, that vulnerable section of society has been badly let down by the governance structure. To make matters worse for them, the number of construction workers has increased 5-fold over the last 20 years, as estimated by the Ministry of Labour and Employment. The task before the State — to effectively implement the laws enacted by Parliament for the benefit and welfare of a vulnerable section of society is enormous, and as the progression in the case shows, the State might well be unable to live up to the expectations of Parliament unless there is a strong will to bring about a positive change. State apathy in a situation such as this virtually amounts to exploitation of the construction workers, and if the State turns exploitative, there is little hope for vulnerable sections of society.

72. In this background and on the available facts and figures, submissions were made by the learned counsel for the parties.

73. The learned counsel for the petitioner's principal submissions were to the effect that the BOCW Act should be faithfully implemented and the amounts collected for the benefit of construction workers should be utilised for their benefit and not for any other purpose, including purchase of items like washing machines and laptops which obviously cannot be used by construction workers. On the other hand, the submissions of the learned Additional Solicitor General appearing on behalf of the Union of India were to the effect that all efforts are being made to ensure that there is full and effective compliance with the provisions of the BOCW Act and that the Monitoring Committee is supervising these efforts so that all necessary entitlements and benefits are passed on to the construction workers.

74. It will be seen from the figures on record that the quantum of cess collected in one quarter from 31-3-2017 till 30-6-2017 is in the region of about Rs

5000 crores. (The difference between the figure given by the Secretary in the Ministry of Labour and Employment and the Standing Committee). This is a huge amount and would work out to about Rs 20,000 crores annual collection. The figures presented to us by the CAG or even the Standing Committee do not reflect such a huge collection. Obviously, there is something terribly rotten with the collection and accounting mechanism and it is quite clear that the exercise of registration, both of the establishments and of the construction workers is not being carried out satisfactorily. This is an area that has to be very seriously looked into by all the State Governments and the UTAs as well as by the Ministry of Labour and Employment. Unless there is effective and full compliance with the provisions regarding collection of cess, several establishments will remain outside the net and thousands of beneficiaries will be denied what is constitutionally and statutorily due to them.

75. Our first direction, therefore, is to the Ministry of Labour and Employment, the State Governments and the UTAs to put in place and strengthen the registration machinery, both for the registration of establishments as well as registration of construction workers. This should be done within a specified time-frame to be decided by them, but at the earliest.

76. Our second direction to the Ministry, the State Governments and UTAs in this regard is to establish and strengthen the machinery for the collection of cess. It is a matter of common knowledge that there is a tremendous amount of construction activity going on all over the country and there is no reason why establishments involved in the construction activity, both formal as well as non-formal, should not pay the cess, especially when they are utilising the services of the construction workers. Similarly, there is no reason why the construction workers of these establishments should be denied their entitlements and benefits under the BOCW Act and other laws. As noted above, huge amounts are involved and we will not be surprised if the quarterly collection of Rs 5000 crores is perhaps the minimum — the cess collected could be much,

much more, if the registration machinery and the collection machinery are strengthened and work to their potential.

77. As we have seen above, State Governments and UTAs have framed a large number of schemes allegedly for the benefit of construction workers. The multiplicity of schemes brings to mind the adage that too many cooks spoil the broth. Keeping a track of these schemes is by itself an enormous task, perhaps resulting in administrative issues and red tape. It would be worthwhile if a model scheme is framed by the Ministry of Labour and Employment, which appears to be best equipped to do so, taking the best practices (so to speak) of the existing schemes. This model scheme can then be made available to all concerned, that is, the State Governments, the UTAs and the Welfare Boards with the flexibility of making appropriate modifications wherever necessary.

78. Our third direction, therefore, is to the Ministry of Labour and Employment to frame one composite Model Scheme for the benefit of construction workers in consultation with all stakeholders including NGOs who are actually working at the grassroots level with construction workers. While there is an urgency in framing such a Model Scheme, we would caution the Ministry of Labour and Employment to make haste slowly and to prepare a Model Scheme that is comprehensive and can easily be implemented, is pragmatic and does not involve too much paperwork.

79. In preparing the Model Scheme, we expect the Ministry of Labour and Employment to include within it, inter alia, issues and concerns of education, health, social security, old age and disability pension and other benefits that are necessary for living a life of dignity as postulated by the Constitution of India. We also expect the Model Scheme to be framed and publicised within a specified time-frame to be decided by the Ministry of Labour and Employment, preferably within six months, but in any event on or before 30-9-2018.

80. The CAG in its affidavit of 2-5-2017 has stated that it carries out three kinds of audits: financial audit,

compliance audit and performance audit. It is explained in the affidavit that:

"... In financial audit, audit ensures whether the financial statements are properly prepared or complete in all respect and are presented with adequate disclosure. In compliance audit, audit checks whether the provisions of the Constitution, applicable laws, rules and regulations and various orders and instructions are being complied with or not. In performance audit, audit checks as to what extent the activity, programme or organisation operates economically, efficiently and effectively."

81. Unfortunately, as the variance in the figures shows, there is an absence of an effective audit in at least one of the three categories of audits, if not in all three. It is not for us to give any direction to the CAG on how to perform its functions, being a constitutional authority, but we are of the opinion that it is necessary for the CAG to take stock of issues and problems pertaining to the implementation of the BOCW Act and to ensure that effective and meaningful audits are carried out, keeping in mind the huge amounts involved.

82. On the issue of audits, it would be worthwhile and relevant for the State Governments and the Welfare Boards in every State and UTA to conduct a social audit. The CAG has prepared detailed guidelines for conducting a social audit in respect of some other schemes (for example, the Report of the Working Group on Developing Social Audit Standards with reference to the Mahatma Gandhi National Rural Employment Guarantee Act, 2005) and these guidelines can be adapted mutatis mutandis for carrying out a social audit in respect of the implementation of the BOCW Act.

83. Our fourth direction is to the Ministry of Labour and Employment, the State Governments and the UTAs to conduct a social audit on the implementation of the BOCW Act so that in future there is better and more effective and meaningful implementation of the BOCW Act. If a mistake has occurred, and we have no doubt that hundreds of mistakes have occurred in the implementation of the BOCW

Act, it is more appropriate to admit the mistake for a better future rather than to justify it or continue to repeat the mistake. This is more so in the case of the BOCW Act where crores of men, women and children are involved on a day-to-day basis and Parliament has thought it appropriate to legislate for their benefit. The sanctity of laws enacted by Parliament must be acknowledged — laws are enacted for being adhered to and not for being flouted. The rule of law must be respected and along with it the human rights and dignity of building and construction workers must also be respected and acknowledged, to avoid a complete breakdown of the BOCW Act compounded by serious violations of Part III of the Constitution guaranteeing fundamental rights.

84. We are pained to record that the Union of India through the Ministry of Labour and Employment has acknowledged that directions issued under Section 60 of the BOCW Act are disregarded by the State Governments and the UTAs, in the sense that they are not acted upon or are acted upon whenever it is convenient to the State Government or the UTA. This is rather disturbing and it is not necessary for us to say anything more on the subject. We leave it to the Union of India to discuss and decide on the modalities and methodologies for ensuring that directions issued under laws enacted by Parliament are given due respect by the State Governments and the UTAs and directions issued thereunder for the implementation of the laws in letter and spirit are acted upon with due dispatch and promptitude.

General directions

85. Apart from the specific directions that we have been constrained to pass, it is necessary to pass some general directions so that the BOCW Act is fully implemented with responsibility:

85.1. Every State Government and UTA shall constitute a State Advisory Committee, if not already constituted, and that State Advisory Committee shall meet regularly for conducting its business. It may be mentioned that Rule 20 of the Building and Other Construction Workers' (Regulation of Employment and

Conditions of Service) Central Rules, 1998 provides that the Central Advisory Committee shall meet at least once in six months. This could be used as a good guideline for meetings of the State Advisory Committee.

85.2. Every State Government and UTA shall constitute an Expert Committee and frame statutory rules under Section 62 of the BOCW Act, if such statutory rules have not already been framed. Setting up an Expert Committee and framing statutory rules should be in a time-bound manner, with the exercise being completed preferably within six months and in any event by 30-9-2018.

85.3. The State Governments and UTAs must appoint Registering Officers for registration of establishments and construction workers. This is a critical aspect of the implementation of the BOCW Act as well as the Cess Act.

85.4. Every State Government and UTA should establish a Welfare Board in terms of Section 18 of the BOCW Act. It must be appreciated that this is not a body that can be created by an executive order. The law requires that the Welfare Board shall be a body corporate having perpetual succession and a common seal. There are therefore legal formalities to be carried out for the constitution of a Welfare Board.

85.5. Every State Government and UTA should establish a Welfare Fund for the benefit of the construction workers, with appropriate rules for utilisation of the funds.

85.6. It is imperative that all construction workers should be given identity cards and should be registered in terms of Section 12 of the BOCW Act. The Ministry of Labour and Employment has proposed the issuance of a Universal Access Number for each construction worker. We make no comment or observation about the efficacy or otherwise of a Universal Access Number. It was submitted by the

learned counsel for the petitioner that smart cards should be issued to all construction workers. We keep this issue open and leave it to the Ministry of Labour and Employment to decide on an appropriate system of identification and registration, provided it is effective and meaningful.

85.7. The Ministry of Labour and Employment shall actively consider making available to the construction workers the benefits of the Maternity Benefit Act, 1961 and the Minimum Wages Act, 1948, the Employees' State Insurance Act, 1948, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, as well as (to the extent possible) the Mahatma Gandhi National Rural Employment Guarantee Act, 2005.

85.8. The Ministry of Labour and Employment should also consider whether projects of the Government of India in the Railways, Defence and other establishments are brought within the purview of the BOCW Act.

85.9. The Monitoring Committee which has had quite a few meetings so far should pro-actively ensure full compliance with the provisions of the BOCW Act, the Cess Act and the directions issued by this Court. It needs to meet far more frequently, and in any case once in three months, considering that thousands of crores of rupees are not being gainfully utilised, and in some instances, misutilised.

86. The Union of India must take a decision on the management of the cess already collected. It appears to us that the benefits and entitlements that have accrued to the construction workers (millions of whom have not been identified) cannot be passed on to them due to the passage of time, with the whereabouts of some of them not known. Accordingly, a decision will have to be taken by the Union of India on the gainful utilisation of the cess already collected so that the Welfare Boards are not unjustly enriched — the beneficiaries having unfortunately lost out.

87. It must be appreciated that construction workers do not assist only in building infrastructure, but they also assist in building the nation, in their own small way. Once that realisation dawns upon those required to implement the BOCW Act and the Cess Act, perhaps due respect will be shown to Article 21 of the Constitution and to parliamentary statutes."

(Emphasis supplied)

The Apex Court observes that the State must appreciate that construction workers do not assist only in building infrastructure but they also assist in building the nation in their own small way. Therefore, respect should be shown to Article 21 of the Constitution and to statutes and directions which directed implementation.

20. It becomes germane to notice, what the State Government has done pursuant to the direction issued by the Apex Court. This is released through a communication by Government of India of the expenditure they are incurring. It is germane to be noticed and reads as follows:

"....

It had come to the notice of the Ministry of Labour and Employment that some State Welfare Boards were issuing tenders or incurring expenditure on distribution of household items such as lanterns, blankets, umbrellas, tool-kits,

utensils, cycles and similar other articles instead of on tangible welfare measures such as life insurance, health insurance, disability cover, maternity benefits and old-age pensions for the workers. Since the procurement process adds layers to the entire process, with apprehension of leakages both at the procurement stage and at the distribution end, hence this decision was prompted.

Transfer of money in the form of cash has been completely stopped by the instant order and any monetary assistance has to be necessarily given through DBT. The order also puts a ban on the distribution of articles in kind. It mentions that no benefit can be provided in-kind except in extra-ordinary circumstances such as natural calamities, epidemics, fire, accidents caused due to occupational hazard or similar other crisis and only with the prior approval of the State Government. This is done with the intent that the welfare of the construction workers is not compromised during exceptional situations.

Section 22(1) of the Act comprehensively stipulates the functions of the State Welfare Boards. Sub-sections (a) to (g) mandate the State Welfare Boards to spend the Cess fund on payment of premium for pension, group insurance scheme, scholarships to workers' children, medical expenses, maternity benefits and loans for house construction. As an exception, sub-section (h) allows the boards to spend on such other welfare measures and facilities as may be prescribed. It was observed that some State Welfare Boards had taken recourse to this sub-section of the Act and resorted to arbitrary use of cess funds for construction of buildings and distribution of articles and utensils instead of using it for the welfare of construction workers.

The order emphasizes that the social security coverage stipulated under Section 22(1) (a) to (g) will hold precedence over any other benefit being provided to the registered construction workers under Section 22(1) (h) of the Act. After meeting these priority expenses as mentioned in Section 22(1)(a) to (g) of the Act, any balance of the cess fund can be utilized by the Boards for giving additional

benefits as per the mandate given under Section 22(1)(h) of the Act. **To keep a vigilant eye on the nature of expenditure, the Ministry has asked the State Boards to furnish an Annual Return on the details of items on which the expenditure has been incurred under Section 22(1) (a) to (g) and Section 22(1)(h) separately."**

(Emphasis supplied)

The afore-quoted communication depicts the amount being spent by the State Welfare Boards on unfruitful expenses like umbrellas, utensils and transfer of money by cash.

21. If the action of the State is considered on the anvil of the right to life, as obtaining under Article 21 of the Constitution of India, it would unmistakably mean that, right to all benefits that the children of construction workers are entitled to get through the legislation. The legislation, be it the Act or the Rules, is aimed at educating the children of construction workers who are below poverty line *inter alia*. It is for the purpose of **social amelioration** such statutes promulgated are termed as '**bread and butter statutes**' or '**welfare legislations**' in the words of the Apex Court. Such statutes which aim at upliftment of the status of persons

below poverty line should be interpreted in such a way that leans towards **edification** of the lives of the poor. The canons of social legislation and its interpretation is completely different from the canons of interpretation of taxation laws or of the kind. To achieve the purpose of the enactment the Courts must lean towards upliftment of the poor is by now too well settled principle of law. Quoting judgments of the Apex Court on the issue would only bulk the subject judgment.

22. The 2nd and 4th petitioners and their children had legitimate expectation at the time when the children joined the course that they would be given financial assistance till completion of the course, as at the time of joining the course the amount that was fixed would have been enough for completion of education. It has been varied to the detriment of those children. Therefore, the State should not have varied the amount to the extent that it has taken back the benefit to a vintage of 10 years by putting the clock back to a benefit that prevailed in the year 2011. The state should never **stifle** or **smother** the rights of the poor. There is no reason

whatsoever found in any of the justification projected by the State to do so.

23. The projection by the respondent Board is that it has financial constraints. As observed hereinabove, the financial constraints projected is *preposterous*, to say the least, as crores of rupees are spent elsewhere. There is no accounting of the interest earned on deposits close to ₹7000 crores. When there is complete budgetary sanction for a benefit that was prevailing at the time when the applications were submitted by the petitioners, it could not have been kept in cold storage for close to 7 months; wait till the change in policy and put them under the bracket of changed policy and hit them hard. Financial difficulties cannot be projected to deprive citizens of their constitutional rights. The law does not permit the State to do so. The benefits once extended to them, as observed, create a legitimate expectation to the petitioners that they would get the benefit throughout their period of study. Such legitimate expectation of these petitioners is completely eroded.

24. Reference being made to the judgment of the Apex Court in the case of **NATIONAL BUILDINGS CONSTRUCTION CORPORATION v. S.RAGHUNATHAN**² becomes apposite. The Apex Court has held as follows:

“ ”

20. Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* [1985 AC 374 : (1984) 3 All ER 935 : (1984) 3 WLR 1174, HL] laid down that the doctrine of “legitimate expectation” can be invoked if the decision which is challenged in the court has some person aggrieved either (a) *by altering rights or obligations of that person which are enforceable by or against him in private law; or* (b) *by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn.*

(emphasis supplied)

21. The Indian scenario in the field of “legitimate expectation” is not different. In fact, this Court, in several of its decisions, has explained the doctrine in no uncertain terms.

22. In *Navjyoti Coop. Group Housing Society v. Union of India* [(1992) 4 SCC 477] the decision of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service* [1985 AC 374: (1984) 3 All ER 935: (1984) 3 WLR 1174, HL] was followed and that decision was summarised in the following words: (SCC p. 494, para 15)

² (1998) 7 SCC 66

"It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons."

23. This Court further observed as under: (SCC pp. 494-95, paras 15 and 16)

"The existence of 'legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representations in the matter.

* * *

It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in."

24. In *Food Corpn. of India v. Kamdhenu Cattle Feed Industries* [(1993) 1 SCC 71] it was held that in all State actions, the State has to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. It was further observed that there is no unfettered discretion in public law and a public authority possesses powers only to use them for public good. It was further observed as under: (SCC p. 76, para 8)

"8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but

failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. *Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant.* A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

(emphasis supplied)

25. In *Union of India v. Hindustan Development Corpn.* [(1993) 3 SCC 499] the meaning of the words "legitimate expectation" was again considered. Quoting from the case of *Attorney General for New South Wales v. Quin* [(1990) 64 Aust LJR 327] the following lines:

"To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law."

the Court observed as under: (SCC p. 549, para 35)

"If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is

arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim *based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles*. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. *It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case*. It follows that the concept of legitimate expectation is 'not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits', particularly when the element of speculation and uncertainty is inherent in that very concept."

26. This doctrine was reiterated in *M.P. Oil Extraction v. State of M.P.* [(1997) 7 SCC 592] in which it was also laid down that though the doctrine of "legitimate expectation" is essentially procedural in character and assures fair play in administrative action, it may, in a given situation, be enforced as a substantive right."

(Emphasis supplied)

The Apex Court considers various forms and hues of legitimate expectation. When it comes to depriving a person benefit of an advantage which he had been permitted in the past, such decision

should be fair and should pass muster of Article 14 of the Constitution of India. It cannot be arbitrary.

25. In yet another judgment, the Apex Court recognizes the welfare of construction workers and relates it to right to life under Article 21 of the Constitution of India. The Apex Court in the case of ***DEWAN CHAND BUILDERS AND CONTRACTORS v. UNION OF INDIA***³ has held as follows:

" "

3. The background in which the BOCW Act was enacted, is set out in the Statement of Objects and Reasons appended to the Bill preceding its enactment. To better appreciate the legislative intent, it would be instructive to refer to the following extract from the Statement of Objects and Reasons:

"(1) It is estimated that about 8.5 million workers in the country are engaged in building and other construction works. Building and other construction workers are one of the most numerous and vulnerable segments of the unorganised labour in India. The building and other construction works are characterised by their inherent risk to the life and limb of the workers. The work is also characterised by its casual nature, temporary relationship between employer and employee, uncertain working hours, lack of basic amenities and inadequacy of welfare facilities. In the absence of adequate statutory provisions, the requisite information regarding the number and nature

³ (2012) 1 SCC 101

of accidents is also not forthcoming. In the absence of such information, it is difficult to fix responsibility or to take any corrective action.

(2) Although the provisions of certain Central Acts are applicable to the building and other construction workers yet a need has been felt for a comprehensive Central Legislation for regulating their safety, health, welfare and other conditions of service."

4. A fairly long Preamble to the BOCW Act is again indicative of its purpose. It reads thus:

"An Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto."

5. Further, Section 1(4) of the BOCW Act makes it clear that it:

"**1. (4)** ... applies to every establishment which employs, or had employed on any day of the preceding twelve months, ten or more building workers in any building or other construction work."

6. Some of the definitions under Section 2 of the BOCW Act, relevant for these appeals are:

"**2. (1)(b) 'beneficiary'** means a building worker registered under Section 12;

(c) 'Board' means a Building and Other Construction Workers' Welfare Board constituted under sub-section (1) of Section 18;

(e) 'building worker' means a person who is employed to do any skilled, semi-skilled or unskilled,

manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any building or other construction work but does not include any such person—

- (i) who is employed mainly in a managerial or administrative capacity; or
- (ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature;

(g) 'contractor' means a person who undertakes to produce a given result for any establishment, other than a mere supply of goods or articles of manufacture, by the employment of building workers or who supplies building workers for any work of the establishment, and includes a sub-contractor;

(i) 'employer', in relation to an establishment, means the owner thereof, and includes—

- (i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;
- (ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the Chief Executive Officer of that authority or establishment;

- (iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor;

(k) 'Fund' means the Building and Other Construction Workers' Welfare Fund of a Board constituted under sub-section (1) of Section 24;"

7. The scheme of the BOCW Act is that it empowers the Central Government and the State Governments to constitute Welfare Boards to provide and monitor social security schemes and welfare measures for the benefit of the building and other construction workers. Section 7 requires every employer in relation to an establishment to which the BOCW Act applies to get such establishment registered. Section 10 makes this requirement mandatory and therefore, without such registration, the employer of an establishment, to which the BOCW Act applies, cannot employ building workers.

8. Chapter IV of the BOCW Act contains provisions stipulating the registration of building workers as beneficiaries and requires certain contributions to be made by such beneficiary at such rate per month as may be specified by the State Government. Where the worker is unable to pay his contribution due to any financial hardship, the Board can waive the payment of such contribution for a period not exceeding three months at a time.

9. Chapter V of the BOCW Act sets out the constitution and functions of the Building and Other Construction Workers' Welfare Boards. Section 24 sets out the provision for the constitution of the welfare fund and its application. Part III of Chapter VI of the BOCW Act contains provisions concerning the safety, health and welfare of the construction workers generally and with reference to specific kinds of activities.

10. It is thus clear from the scheme of the BOCW Act that its sole aim is the welfare of building and construction workers, directly relatable to their constitutionally recognised right to live with basic human dignity, enshrined in Article 21 of the Constitution of India. It envisages a network of authorities at the Central and State levels to ensure that the benefit of the legislation is made available to every building and construction worker, by constituting Welfare Boards and clothing them with sufficient powers to ensure enforcement of the primary purpose of the BOCW Act. The means of generating revenues for making effective the welfare provisions of the BOCW Act is through the Cess Act, which is questioned in these appeals as unconstitutional.

11. The Statement of Objects and Reasons to the BOCW Act explained that it had been considered

“necessary to levy a cess on the cost of construction incurred by the employers on the building and other construction works for ensuring sufficient funds for the Welfare Boards to undertake the social security schemes and welfare measures”.

Simultaneously with the enactment of the BOCW Act, Parliament enacted the Cess Act. The Statement of Objects and Reasons to the Cess Act noted that the intention was to

“provide for the levy and collection of a cess on the cost of construction incurred by the employers for augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted by the State Governments under the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Ordinance, 1995”.

(Emphasis supplied)

The Apex Court holds that, on a perusal of the scheme it was clear that legislation is enacted with the sole aim of welfare of construction workers directly relatable to their constitutionally recognized right to life, i.e., to live with basic human dignity as enshrined in Article 21 of the Constitution of India. Why the Apex Court directed strict implementation of the benefits under the Act is also found in the afore-quoted paragraphs.

26. In the light of what is held by the Apex Court in the judgments noticed hereinbefore, the action of the State, in treating the funds that belonged to the construction workers and their children as the property of the Board, for bartering away for wasteful expenditure **must be stopped**, and **stopped forthwith**, as it cannot be forgotten that reference in the preamble to the Constitution of India to the words "we the people" does not mean the miniscule elite, or a larger upper middle class only, but it would be largely inclusive of the people who are below poverty line like the construction workers. They also have a constitutional right to live with basic human dignity and also entitled to all the rights that flow from the statutes. The rights of construction workers cannot be

railroaded in the broad day light by the State, or the Authorities like the Board. The core issue in the *lis* revolves round education of two girl children of construction workers. Therefore, before I say omega, I wish to observe that the State must be remember that it should take all steps towards educating women, as it is said, ***educating a man, is educating an individual; educating a woman, is educating a generation.***

27. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) The Notification impugned dated 30-10-2023 stands quashed.
- (iii) It is declared that the notification dated 13-08-2021 would prevail.
- (iv) The quashment of the Notification *supra* will not come in the way of power of the State to bring in a notification, if need arises, varying the amount. But, while so doing, it shall bear in mind the

observations made in the course of the order. It can never be to the detriment of the welfare of construction workers and their families.

- (v) A *mandamus* issues to the State and the Board to disperse educational assistance to the applications received for financial years 2020-21, 2021-22 and 2022-23 till completion of education thereto.
- (vi) The Board shall consider the applications of similarly situated applicants, bearing in mind the observations made in the course of the order and not drive every person to knock at the doors of this Court seeking identical relief, as the State can bear the brunt of litigation, but not the poor citizen.
- (vii) The Comptroller and Auditor General of India shall take up, if not already taken up, and complete the audit of the funds of the Board within three months, if not earlier, and place the report before the Registry of this Court.
- (viii) Once the report is received by the Registry, it shall relist this matter without any delay.

- (ix) A copy of this order shall be communicated to the Chief Secretary, the State of Karnataka for compliance and report.
- (x) A copy of this order shall also be circulated by the Registry to the Additional Solicitor General of India for compliance, with the observations made in the course of the order and the task of getting the audit report from the office of the CAG.

Sd/-
(M. NAGAPRASANNA)
JUDGE

Bkp
CT:MJ