

IN THE HON'BLE DELHI HIGH COURT AT NEW DELHI

(Extraordinary Civil Writ Jurisdiction)

Writ Petition (Civil) No. _____ of 2020

(IN THE MATTER OF A PUBLIC INTEREST LITIGATION)

In the matter of

Sunil Kumar Aledia

... Petitioner(s)

Versus

Govt. of NCT of Delhi & Ors.

... Respondents

**WRIT PETITION (PUBLIC INTEREST LITIGATION) UNDER
ARTICLE 226 OF CONSTITUTION OF INDIA SEEKING WRIT OF
MANDAMUS OR ANY OTHER APPROPRIATE WRIT SEEKING
DIRECTIONS TO PROVIDE RELIEF TO CONSTRUCTION
WORKERS IN NEW DELHI AND FOR OTHER DIRECTIONS**

TO,

THE HON'BLE CHIEF JUSTICE AND

THE OTHER COMPANION JUDGES OF

THE HON'BLE HIGH COURT OF DELHI

HUMBLE PETITION OF

THE PETITIONER ABOVE

NAMED.

MOST RESPECTFULLY SHOWETH: -

1. The instant petition is a writ petition filed under Article 226 of the Constitution of India seeking issuance of writ of mandamus or any other appropriate writs, orders or directions of this Hon'ble Court to the Respondents, provide emergency registration of construction

workers in the NCT of Delhi by the Delhi Building and Other Construction Workers Welfare Board (as envisaged under the BOCW Act and BOCW Welfare Cess Act) so that eligible persons can avail the mandated benefits during the COVID-19 lockdown and beyond. so as to ensure that reliefs envisaged for them during the Covid19 pandemic is available for them. The Petitioner has no personal interest in the present PIL, and this PIL is aimed in its entirety at the interest of the poor persons in Delhi residing in labour camps, construction sites, shelter homes, slums and the streets and the society at large. The Petitioner has no ulterior motive, and files this PIL to achieve public welfare as it is envisaged, by Parliament, under the BOCW Act and BOCW Welfare Cess Act.

2. That the source of knowledge of the facts of the present case is various news articles and stories broken by major media houses, admissions and press releases of Central and State government(s), and the regular visits of the Petitioner to multiple camps, shelters etc. in his capacity as a dedicated social activist and worker. The facts uncovered by the Petitioner are mentioned in the present petition, and arise inter alia out of his interactions with multiple officials and workers at various camps, sites and other places.
3. That the present petition is in general interest of the poor, destitute and homeless workers who are stranded at different places in the city of Delhi, without any source(s) of income or adequate means of subsistence for themselves and their families (including children). The present petition is in the interest of poor workers who cannot (for

many reasons) approach this Hon'ble Court themselves. The present public interest litigation has thus been moved by the petitioner herein.

4. That Respondents No. 1 to 6 are relevant parties in view of the relief(s) sought in the present petition.
5. That the Petitioner Shri Sunil Kumar Aledia is an Indian Citizen, social worker and activist, and a sympathiser of the rights and concerns of Delhi's citizens – particularly Delhi's poor and homeless. He has been tirelessly working for the poor and homeless of Delhi. He is the go-to person that is approached by everyone whenever there is any issue concerning Delhi's homeless. He is presently involved in the distribution of food and other relief materials to Delhi's homeless. In this endeavour, he is assisted by many other who are well aware of his dedication to the cause of the homeless.
6. The Petitioner is an activist and has no source of income as such. However, if any cost is nevertheless imposed on the petitioner by this Hon'ble court, the petitioner is capable of depositing the same to this Hon'ble court.
7. The petitioner herein has filed multiple meaningful Public Interest Petition before this this Hon'ble court, and has also regularly assisted the Hon'ble court in the matter in WP (Civil) 29 of 2010. The details of the petitions having been filed by the petitioner before this Hon'ble Court are in the table below;

S. no	Details of the Petition	Present Status

	Vs. GOVT. OF NCT OF DELHI AND ORS. W.P(C) no. 2978/20 [PENDING]	LDOH: 20/4/20
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8. That the present PIL is confined to issue(s) of larger public interest, and the Petitioner has no personal interests herein.

FACTS OF THE PRESENT CASE

9. That the present petition raises issues concerning the poorest of the poor i.e the construction and other workers in city of Delhi amid the Extraordinary Situation of the Covid-19 and beyond.
10. That on 20.03.2020, the Hon'ble High Court of Delhi notified vide notification no. 321/Estt/E-I/DHC that the administrative and General Supervision Committee has resolved, in order to combat the impending threat of Coronavirus, that the functioning of this Court shall further continued to stand restricted till 03.04.2020. All pending matters before the Hon'ble Delhi High Court (including the Courts of Registrars and Joint Registrars) on 30.03.2020, would be adjourned to 27.04.2020.
11. That on the same day i.e. 20.03.2020, Prime Minister Shri Narendra Modi, in a televised address to the nation, announced a 'Janata Curfew' from 7 am to 9 pm Sunday, 22 March, to stop the spread of

Pandemic COVID 19 and address the extraordinary situation created by it.

12. That on 22.03.2020, in an unprecedented move, Prime Minister Shri Narendra Modi announced a national lockdown for the next 21 days all across the country i.e. till 15.04.2020.

13. That on 25.03.2020, in view of the nationwide lockdown to contain the further spread of COVID-19, functioning of Hon'ble Delhi High Court and its subordinate Courts was ordered to remain suspended till 15.04.2020, and the order to this effect was passed by the Hon'ble Delhi High Court.

14. That subsequently the lockdown was further extended till 03.05.2020, and the current situation with respect to the pandemic and economic activities remains highly uncertain.

15. That in this period the whole country (including Delhi) saw the huge impact made by the situation on poor workers and/or labourers as nearly all their sources of income came to a standstill. Looking at the gravity of the situation and the aforesaid impact on the workers and the poor, the Central Government took multiple measures to provide immediate relief to the labourers and/or workers. Two such relief measures came in the form of advisories/directions to different State Governments to ensure that all public and private establishments continued to pay wages to workers during the lockdown period, and

that funds be transferred directly in the bank accounts of construction workers - through DBT or Direct Benefit Transfer mode - from the Cess fund which is administered by the Labour Welfare Boards formed under the Cess Act. True copy of the circular dated 20.03.2020 issued by the Ministry of Labour and Employment, and press release dated 24.03.20 issued by the Ministry of Labour and Employment are annexed herewith as **ANNEXURE P1 and P2**.

16. That in accordance with the advisory from the Central Government, the Delhi Government said it released the assistance amounts to 32,358 registered workers. The Delhi Government also stated that “[T]he money is being transferred directly to the account of these labourers. A total amount of Rs 16.18 crore has been given to registered construction workers of Delhi. The government will soon give the assistance amount to nearly 9,000 workers as well to those whose applications are pending. A total amount of Rs 4.5 crore will be disbursed.” (extracted from Annexure P4)

It should be noted that the disbursement of Rs. 4.5 crores is a drop in the bucket of the approximately Rs. 2000 crore available in the fund, and comparable to the amount spent yearly on administrative expenses.

17. That an article dated 26.03.2020 by moneycontrol.com showed how *a letter [was] written by Subhash Bhatnagar, National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) to the Chief Minister of Delhi Shri Arvind Kejriwal requesting for a*

*transfer of one-month minimum wage into the bank accounts of construction workers registered with the Delhi Building and Other Construction Workers Welfare Board (BOCW). This letter was in response to the March 22 order notifying a lockdown in the NCT (National Capital Territory) of Delhi until March 31. The letter added, “[T]here are over 10 lakh construction workers in Delhi. Of which, 5.4 lakh are registered with the Delhi BOCW. Because labour officials of the Delhi BOCW suddenly stopped carrying out their responsibilities from May 2018 onwards, most construction workers do not have a ‘live’ registration. Even the digital upgradation of membership, which was started on November 16, 2018, has been very slow. In 16 months, it has been able to update only 50,000-60,000 construction workers as ‘live registrations’ of the over five lakh registered beneficiaries.” True copy of the article (dated 26.03.2020) published by MoneyControl is annexed herewith as **ANNEXURE P3**.*

18. That article (dated 17.04.2020) published by The Indian Express stated that *“living at construction sites or in their own accommodation but now with no access to essentials because of no income. As per data shared by the government in the Delhi Assembly in 2018, the board was formed in Delhi in 2002 and has since amassed over Rs 2,000 crore as cess collected under the Building and Other Construction Workers Welfare Cess Act, 1996. Under the law, a registered worker can get assistance of up to Rs 10,000 on being hospitalised for five or more days. A building worker aged above 60 is entitled to pension of Rs 3,000 a month. The disability pension is also*

Rs 3,000 a month. Workers are also entitled to get educational and maternity assistance and loans for purchase of work-related tools.”

19. That an article published by the Indian Express on 17.04.20 reported the following: *“Records available with The Indian Express show that between 2015 and 2020, the number of registered workers came down from over 3 lakh to less than 40,000....However, in many cases, construction labourers are not registered with the Delhi Building and Other Construction Workers Welfare Board, which handles the corpus. Plus, the labour department had made the registration process more extensive last year, under which every applicant is expected to fill up a 12-page form.....Officially, 37,127 construction labourers are registered with the board currently, while 9,149 applications are under process — a far cry from the lakhs working in the capital. Past records indicate thousands of workers disappeared from the registered list since 2015. In 2015, the board had 3.17 lakh-registered workers; the number fell to 62,663 in 2017-18; and [fell] further over the next three years.....The Act stipulates that 1% of any public or private construction project costing over Rs 10 lakh has to be set aside as cess. Under [a verification drive], registered workers were asked by Labour Department to submit forms. They were told an online database will be created. On submitting, every worker was given a receiving slip. Last year, the application form was changed. A simple four-page form became 12 pages long. Many registered workers vanished from the list, leaving about 37,000,” an official said..... “The previous form was only four pages and much easier for*

workers. Even then, many would find themselves out of the safety net for showing up for renewal a day or two late, but the system is in mess now,” said Rajesh Kumar, general secretary of the Indian Federation of Trade Unions.”

20. That a True copy of the article (dated 17.04.2020) published by The Indian Express is annexed herewith as **ANNEXURE P-4**.

21. That another article published by the Indian Express (dated 20.04.2020) reported the following: *“Sitting on a corpus of over Rs 2,000 crore, the Delhi Building and Other Construction Workers’ Welfare Board’s annual expenditure for the welfare of workers has barely crossed Rs 70 crore. In 2017-18 (till January 31), Rs 73 crore was spent from the fund, of which Rs 3.48 crore was expended as administrative expenditure under heads such as salary, stationary, conveyance etc. The rest, around Rs 70 crore, went to fund the welfare schemes under the board, including educational assistance, death benefit, funeral benefit, marriage benefit, pension benefit and maternity benefit. However, it was a substantial jump from 2016-17, when Rs 19.41 crore was spent. In 2017-18, the maximum amount, Rs 62 crore, under the welfare head went as educational assistance. For death benefit and maternity benefit, Rs 2.52 crore and Rs 2.13 crore were spent respectively. Till date, 1,783 persons availed the maternity benefit under the scheme, data shows....Moreover, only Rs 20,000 was sanctioned to workers to buy equipment.....A sum of Rs 84 lakh*

was spent in the year 2017-18 to provide pension to the beneficiaries. Only Rs 9,860 was spent as medical assistance.”

22. That a True copy of the article (dated 20.04.2020) published by The Indian Express is annexed herewith as **ANNEXURE P5**.

23. That an article published by The Wire (dated 12.09.2018) reported the following: *“A large number of construction workers staged a dharna outside the 5 Shamnath Marg office of the Delhi Labour Secretary and Commissioner today to seek immediate registration, renewal and processing of claims of construction workers under Delhi Building & Other Construction Workers Welfare Board (DBOCWWB) by the labour department officers.....despite there being a Central act and State rules, the construction workers of Delhi were deprived of their rights and social security benefits. He said the registration, renewal and processing of claim applications by the Labour Department had been stopped in May 2018 without any valid reason.....One of the major reasons why the union has been demanding fair implementation of the BOCW Act, 1996, she said was it would curb the corrupt practices taking place at district labour offices.....Union(Delhi Nirman Mazdoor Sangathan) vice-president Anil said the construction workers were frustrated as no solution to their problem appeared in sight. “The identity cards of construction workers whose annual contributions were due since April 2018 have lapsed. They have lost their life membership with Board. They are not entitled for any benefits or claims after lapse of*

their identity cards-cum-pass books,” he said, adding that the stand-off has adversely impacted over 70,000 workers between May and July itself.

24. That a True copy of the article (dated 12.09.2018) published by The Wire is annexed herewith as **ANNEXURE P-6.**

25. That another report highlighting the issue of non-registration of workers throughout the country and its repercussions was published as an article (dated 16.04.20) by The Huffington Post, and the same is annexed herewith as **ANNEXURE P7.**

26. That in June 2017 a study was conducted (by the Centre for Policy Research, a highly reputed think-tank) into the lack of effective implementation of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 and the Building and Other Construction Workers Welfare Cess Act 1996.

27. That the above-mentioned study found that even after many years of the existence of these Acts, the intended beneficial and welfare effects of these Acts had not manifested/materialized and were far from fruition. It said major correctional steps were required to ensure and implement the social and welfare benefits envisaged under these Acts.

28. That the above-mentioned study highlighted how the lack of registration of eligible beneficiaries was a major road block in the proper and effective implementation of these Acts. It stated:

“Available data regarding implementation of the Acts by States presents a picture of overall tardiness and delay with wide variations. States need to ramp up worker registration; data suggests that lowering entry barriers for migrants improves registration and consequently, access to welfare benefits.”

29. That the above-mentioned study also drew a direct correlation between the lack of utilisation of funds and the inadequate number of registrations as an explanation for the situation in Delhi where crores of rupees of funds lie (and continue to lie) unutilised. The study stated: *“There are also significant correlations between the expenditure pattern of the states and the level of registration of workers, where states that have registered a higher number of workers have also spent higher amounts of cess funds.”*

30. That the above-mentioned study found how *“Delhi barely spent 12% of its collected cess in 2015, but spent more than Rs 5000 per worker as it collects a lot of money owing to robust construction activity in public and private sector.”* In so doing, it highlighted how in spite of robust collections (towards the welfare fund) in Delhi, Delhi continues to lag in effectively allocating these funds simply due to the extremely low number of registrations of eligible beneficiaries.

31. That the above-mentioned study stated further: *“The Act has the potential to enhance the social security of a large workforce that face multiple vulnerabilities. However, the best of intentions are often*

bereft of action. The legislative framework for the welfare of construction workers has been no exception. The quantitative analysis in this brief presents a dismal picture of the state of implementation: from tardy action on the creation of State-level legislations and institutional mechanisms to inadequate registration of workers and poor utilisation of cess funds”

32. That the above-mentioned study stated further: *“A review of amendments proposed to the Act in 2013 by a Parliamentary Standing Committee underlines the urgent need for States to streamline processes and resolve administrative hiccups with the objective of maximum inclusion in the implementation of worker welfare mechanisms.”*

33. That the above-mentioned study further stated: *“States that register robust per capita spends on the back of low registrations need to focus on bolstering registration of workers, while those that have been successful in registering workers in significant numbers will have to worry about sustaining the welfare benefits they already offer over time. “* The Petitioner submits that Delhi clearly falls in the former category, and urgently needs to increase registrations of eligible workers and/or labourers as beneficiaries under the Acts.

34. That the above-mentioned study made clear recommendations for how to increase registrations (as beneficiaries) of workers and/or labourers. It stated: *“Registration success is better explained by the*

streamlining of processes and lowering of entry barriers through minimal registration requirements (e.g. Tamil Nadu)..... States would do well to encourage self- registration, streamline and localize verification processes, and engage civil society organisations to sustain registration drives on construction worksites, labour chowks and in settlements where construction workers live.” The Petitioner submits that it is evident from this study how Delhi needs to reduce its entry barriers (by, for instance, having an accessible and worker friendly application process), and that it must collaborate with multiple stakeholders and actors (like NGOs, State Authorities and other organisations providing Legal Aid and/or other services, Trade Unions etc.) to ensure that all eligible workers are educated, motivated, and facilitated towards get themselves registered as beneficiaries under the Acts.

35. That a true copy of the study published by the Centre for Policy Research (in June 2017) is annexed herewith as **ANNEXURE P-8**.

36. That the application form provided by the Delhi government is now 12-pages long, wherein the applicants are expected to share, inter alia, the following details (evidently as a pre-requisite for registration): personal details including Aadhaar numbers; details and Aadhaar numbers of their family members; present and permanent address proof; address of last workplace where the applicant worked over 90 days; name and contact details of contractor; details of registered union of which the applicant is a member; colour photos of self and

family members; details of bank account and an addition form for nominees. Further, as per the underlying rules, the membership lapses on non payment of twenty rupees per mensem due, but which may be resumed on repayment of arrears. However, the current practice is re registration every year, without keeping registration with resumption for non payment of fees with a minimal fees, as mandated by Rule 267 of the Rules. A true copy of the forms as available on the website of the Delhi Govt. is annexed herewith as **ANNEXURE P-9 and P-10.**

37. That Parliament passed in 1996 the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act (hereinafter 'BOCW Act') with the purpose and object "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."

38. That Parliament also simultaneously enacted the Cess Act which enables the State Governments and the UTAs to collect a cess from every employer (as defined in the BOCW Act) to be utilised for the benefit and welfare of registered construction workers and/or labourers. The Cess Act was enacted with the purpose and object "*to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers' Welfare*

Boards constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.”

39. The BOCW Act provides, inter alia, for the constitution of Central and State Advisory Committee(s) to advise the appropriate Government on matters concerning the administration of the BOCW Act (Sections 3 and 4); the constitution of Expert Committee(s) for advising the appropriate Government to frame Rules under the BOCW Act (Section 5); appointment of registering officers and registration of establishments employing building and construction workers by making an application to the registering officer (Sections 6 and 7); registration of building and construction workers as beneficiaries under the BOCW Act and issuance of identity cards to them (Sections 12 and 13); constitution of the State Welfare Boards with identified functions including providing necessary benefits and assistance to beneficiaries (Sections 18 and 22); creation of a Welfare Fund for the benefit of building and construction workers (Section 24); and prescribing hours of work and other welfare measures relating, inter alia, to the safety, health and broader working conditions of service of building and construction workers and/or labourers (Chapters VI and VII of the BOCW Act).

40. That the Delhi Govt. framed the Delhi BOCW Rules (under sec. 62 of BOCW Act), after much deliberation by an Expert Committee, finally in January 2002.

41. That section 15 of the BOCW Act places the employer under an obligation to maintain a register of beneficiaries. It is reproduced below;

“15. Register of beneficiaries:-Every employer shall maintain a register in such form as may be prescribed showing the details of employment of beneficiaries employed in the building or other construction work undertaken by him and the same may be inspected without any prior notice by the Secretary of the Board or any other officer duly authorised by the Board in this behalf.” This includes not only direct employees, but also employees of sub contractors. As per s. 2(i) of the Act, “employer” means the owner, and includes the contractor if a contractor is used.

42. That the Delhi BOCW Rules place an additional obligation upon every employer to submit (to the Labour department of Delhi Govt.) the particulars of their workers and/or labourers who are entitled to be registered as beneficiaries under the BOCW Act. Rule 268 of Delhi BOCW Rules 2002 is reproduced below;

"268. Duty of the employer to file returns. - (1) Every employer shall, within fifteen days from the commencement of these Rules send to the Secretary a consolidated return containing the particulars of the building workers entitled to be registered showing their basic wages, allowances and the amount being spent for the free supply of food, if any.(2) Every employer shall, before the fifteenth day of every month send to the Secretary or any other officer authorised by him in this

behalf a return in Form No.XXX showing the details of the workers entitled to be registered as well as those who left the service during the preceding month. (3) Every employer shall furnish to the Secretary or any other Officer authorised by him in this behalf, in Form No.XXXI particulars regarding the branches, Directors, Managers, Occupiers, Partners, person/persons who has/ have the ultimate control over the affairs of his establishment." The Petitioner submits that notwithstanding section 12 of BOCW Act, this rule when read with the the object and purposes of BOCW Act and Cess Act, reflects the purpose and intention that the responsibility to facilitate registration of workers and/or labourers also falls upon employers and the State Government. The Petitioner submits that the Department of Labour (Delhi) ought to accordingly ensure, together with employers, the facilitation of workers' registration as beneficiaries under the Acts.

43. That Rule 269 is reproduced below;

“Maintenance and production of Records and Registers - (1) Every employer shall maintain a Register showing the particulars of the building workers and a Register of contribution in such form as may be directed by the Secretary or other officer authorised by him. (2) Every employer shall whenever the Secretary or any other officer authorised by him requires in person or by notice in writing to produce the records in respect of the building worker, shall deliver such records to the officer concerned in time and if the records are not returned he shall issue a receipt for the records so retained by him.”

The Petitioner submits that notwithstanding section 12 of BOCW Act, this rule too indicates that the responsibility for registration of workers and/or labourers as beneficiaries under the Acts also falls upon the employer and relevant government officials, and that the employer and relevant govt. officials cannot shirk their responsibilities in this regard.

44. That the Government of NCT of Delhi and its Labour Department has on its website a list of 14 services, and one of the services mentioned therein pertains to Registration of Construction Workers under Building and other Construction Workers (RE & CS) Act 1996. A true copy of the list of services of the Labour Department (Delhi) is annexed herewith as **ANNEXURE P-11**.

45. That the Hon'ble Delhi High Court, in *Builders Association of India v. Union of India* 139 (2007) DLT 578, held the following;

- a) (at para 5.8): *“The scheme of the BOCW Act indicates that the central focus of this statute is the building and construction worker and the welfare of such worker. Clearly the BOCW Act belongs to the genre of labour welfare legislation relatable to Articles 39(e), 42 and 43 of the Constitution of India.”*
- b) (at para 5.9): *“The BOCW Act 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 worker. The provisions concerning registration of workers,*

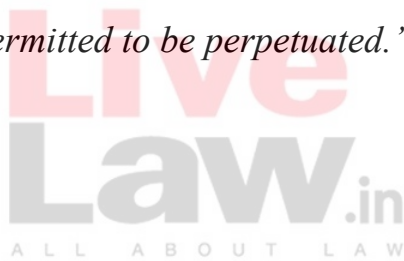
providing them with identity cards, constitution of Welfare Boards and registration of beneficiaries under the Fund, providing for augmentation of the Fund and specifying the purposes for which the Fund will be used, providing for the safety and health of the worker, making the contravention of the provisions of the statute punishable and entailing penalties for the violator all go to emphasise the primary purpose of the BOCW Act, which is the welfare of the building and construction worker. These aspects of the BOCW Act are sought to be supplemented in considerable measure by the making of the Central Rules in 1998."

- c) (at para 7) *"The overall scheme of the BOCW Act, the Cess Act and the rules made there under is, therefore, both comprehensive and exhaustive. While the statutes sketch out the broad framework, the Rules spell out the details. The BOCW Act and the Cess Act break new ground in that the liability to pay cess falls not only on the owner of a building or establishment, but under Section 2(i)(iii) of the BOCW Act "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." This extending of the liability net to the contractor is a conscious step taken by Parliament to account for the fact that the government may be faced with a situation where it is unable to collect cess under the Cess Act from the owner of the building at a stage subsequent to*

the completion of the construction. The Cess Act and the Cess Rules ensure that the cess is collected at source from the bills of the contractors to whom payments are made by the owner. The law acknowledges the fact that, in effect, the burden of the cess is passed on by the owner to the contractor.”

- d) (at para 34.2) *“The component of cess is built into the cost of construction for which the contractor is reimbursed. It is very similar to the deduction of tax at source where the burden of tax is passed on to the person who is required to pay for the services. In such circumstance, the employer would become the person who will collect the tax. In this case the cess is collected and passed on to the Government.”*
- e) (at para 40) *“It is a matter of concern that although the BOCW Act and the Cess Act have been on the statute book since 1996 they were not notified for application in the NCT of Delhi till 2002. The reasons for this are not available despite the Court asking the learned Counsel for the Government of the NCT of Delhi to explain the inexcusable delay on the part of the Government in enforcing these labour welfare legislation. What adds to this concern is the apparent loss of revenue to the government given the fact that in the past decade Delhi has witnessed the execution of a large number of construction contracts involving hundreds of crores. The corresponding loss of revenue to the Government on account of its failure to notify the BOCW*

Act and the Cess Act in Delhi till 2002 must be in no small measure. The beneficiary of such inaction by the Government has been, without doubt, the construction industry. The loser has been the building and construction worker for whose welfare the cess is supposed to have been collected. In effect the State has subsidized the cost of construction by not collecting cess which it was entitled to and this has been to the detriment of the workers. This failure on behalf of the State is questionable and should not be permitted to be perpetuated.”



46. That the Hon'ble Delhi High Court in ***M/s. Dewan Chand Builders & Contractors v/s Union of India & Others*** (Civil Appeal No. 1830 of 2008 with Civil Appeal No. 1831 of 2008 and Civil Appeal No. 1832 OF 2008) observed the following:

- a) *“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.”*

- b) *“It is manifest from the overarching schemes of the BOCW Act, the Cess Act and the Rules made thereunder that their sole object is to regulate the employment and conditions of service of building and other construction workers, traditionally exploited sections in the society and to provide for their safety, health and other welfare measures. The BOCW Act and the Cess Act break new ground in that, the liability to pay Cess falls not only on the owner of a building or establishment, but under Section 2(i)(iii) of the BOCW Act "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." The extension of the liability on to the contractor is with a view to ensure that, if for any reason it is not possible to collect Cess from the owner of the building at a stage subsequent to the completion of the construction, it can be recovered from the contractor. The Cess Act and the Cess Rules ensure that the Cess is collected at source from the bills of the contractors to whom payments are made by the owner. In short, the burden of Cess is passed on from the owner to the contractor.”*
- c) *“There is no doubt in our mind that the Statement of Objects and Reasons of the Cess Act, clearly spells out the essential purpose the enactment seeks to achieve i.e. to augment the Welfare Fund under the BOCW Act.”*

47. That the Hon'ble Supreme Court vide order dated 18.01.2010 in *National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) v. Union of India* (WP Civil No. 318 of 2006) directed the States (in Para 4) to implement without delay the following measures:

“4. After hearing the learned counsel, we are of the view that the following measures require to be implemented by the States without further delay:

- 1. The Welfare Boards have to be constituted by each State with adequate full-time staff within three months.*
- 2. The Welfare Boards will have to meet at least once in two months or as specified in the rules, to discharge their statutory functions.*
- 3. Awareness should be built up, about the registration of building workers and about the benefits available under the Act. There should be effective use of media, AIR and Doordarshan, for awareness programmes regarding the Act, the benefits available thereunder and procedures for availing the benefits.*
- 4. Each State Government shall appoint registering officers and set up centres in each district to receive and register the applications and issue receipts for the applications.*
- 5. Registered trade unions, legal services authorities and NGOs are to be encouraged to assist the workers to submit applications for registration and for seeking benefits.*
- 6. All contracts with the Governments shall require registration of workers under the Act and extension of benefits to such workers under the Act.*

7. Steps to be taken to collect the cess under the Cess Act continuously.

8. The benefits under the Act have to be extended to the registered workers within a stipulated time-frame, preferably within six months.

9. The Member-Secretary of the Welfare Boards and the Labour Secretary shall be responsible for due implementation of the provisions of the Act. The Labour Ministry of each State shall carry out special drives to implement the provisions of the Act.

10. The CAG should audit the entire implementation of the Act and use of the funds.

11. All the Boards shall submit a comprehensive report as required under the Act and the Rules to the respective Government.”

48. That the need for awareness was also stressed by the Parliamentary Standing Committee on Labour (2013-14) in its 44th Report dated 15th March 2014. The Committee’s recommendation number 3.2 (on page 21 of the report) is reproduced below;

“The Committee are of the view that considering the boom in construction industry the number of workers must have increased manifold. They are also unhappy to find that the State Governments are sluggish in the matter of registration/issuance of Identity Cards even to the identified workers. The Committee attribute this to lack of awareness regarding the registration or the benefits of such registration amongst the workers. The Committee strongly recommend that the pace of work of registration of

workers needs acceleration and also wide publicity should be given wherever the Government/Executive officers of Panchayat/Labour officers find the construction work is in progress and it should also be made mandatory for contractor/principal employer to display banners highlighting the benefits of such registration at the construction site in Hindi and the regional languages of the area.”

49. That the Hon'ble Supreme Court vide order dated 31.07.2015 observed the following;

“32. The learned counsel for the NCT of Delhi has shown us some charts which do not explain anything at all, but are only a jumble of figures. But, we do find from these charts that there has been an enormous spurt in the expenditure in the years 2009-2010 (Rs 25.5 crores) and 2012-2013 (Rs 9.67 crores). In all the other years, the amount disbursed has been less than rupees one crore except in the year 2014-2015 when about Rs 1.8 crores have been disbursed. Other than that, we are not able to get any other assistance from the charts handed over to us in the Court today by the learned counsel for the NCT of Delhi. Considering the fact that such a huge amount of money is being collected and is not being utilised for the purpose for which it is collected, some drastic steps may have to be taken so that the amounts that are running into thousands of

crores can be utilised for the benefit of the workers under the Act.

We expect some proactive assistance and a positive response from the Ministry of Labour since we are told by the learned Amicus Curiae that the total amount involved is in the region of Rs 25,000 to Rs 30,000 crores all over the country.”

This extract is reproduced from an order of the Hon’ble Supreme Court in ***National Campaign Committee for Central Legislation on Construction Labour v. Union of India*** (2015) 17 SCC 160.

50. That the Hon’ble Supreme Court vide order dated 04.09.2015 observed the following;

“40. We have already indicated in our earlier order dated 21-8-2015 that given the attitude of the State Governments/Union Territories and the Central Government, it may perhaps be more appropriate not to collect this money since it is not being utilised for the benefit of the persons for whom it is collected, but for other purposes. We had hoped that this observation will have some salutary effect on the officers of the State Governments/Union Territories and the Central Government, but obviously it has had absolutely no effect on the officers concerned.”

This extract is reproduced from ***National Campaign Committee for Central Legislation on Construction Labour v. Union of India*** (2015) 17 SCC 160.

51. That the Hon’ble Supreme Court vide order dated 11.09.2015 observed the following;

“44. It is also stated that there are more than four crores construction workers, but only about 1.5 crores of them have registered themselves with the authorities concerned. He says that it is expected that registration of the construction workers will be completed before the end of this financial year.”

This extract is reproduced from ***National Campaign Committee for Central Legislation on Construction Labour v. Union of India*** (2015) 17 SCC 160.

52. That the Hon'ble Supreme Court vide order dated 16.10.2015 observed the following;

“49. Needless to say, we expect the State Governments and the Union Territories to assist the Central Government in the implementation of the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 and the Building and Other Construction Workers' Welfare Cess Act, 1996.”

This extract is reproduced from ***National Campaign Committee for Central Legislation on Construction Labour v. Union of India*** (2015) 17 SCC 160.

53. That the Hon'ble Supreme Court, delivering its final judgment in ***National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) v. Union of India*** (WP Civil No. 318 of 2006), (2018) 5 SCC 607 held the following:

- a) *“8. Clearly, the BOCW Act is a welfare legislation intended and enacted for the benefit of the unorganized sector of building and construction workers. It has a strong flavour of social justice and is a serious attempt by Parliament to ensure that building and construction workers are not exploited because of their poverty and their children do not suffer their fate in terms of education, healthy living and whatever it takes to live a life of dignity. It is in this background and context that the BOCW Act was enacted by Parliament.”*
- b) *“28. What is equally important is the registration of building workers who are the real beneficiaries of the provisions of the BOCW Act. This is provided for in Section 11 and Section 12 of the BOCW Act. **It does not require much imagination to appreciate that unless a construction worker is registered under the provisions of the BOCW Act and is employed by a registered establishment, that construction worker will not be entitled to any benefits that may accrue under the provisions of the BOCW Act or any other law that can benefit a construction worker. This is really the crux of the implementation issue arising in the present case and unfortunately, little attention was paid to it by any State Government or any UTA.** All that we have been told is that there are more than 4.5 crore building and construction workers in the country and earlier about 2.15 crore had been registered and as of now about 2.8 crore*

have been registered. How these figures have been arrived at is anybody's guess. In any event, the registration of building and construction workers is well below the required number and is also a guesstimate.”

- c) *“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.”*
- d) *“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 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.”

e) “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.”

f) 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.

- g) *“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.”

- h) *“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.”*

54. That the Hon'ble Supreme Court in ***Bandhua Mukti Morcha v. Union of India*** (1984) 3 SCC 161 observed the following at para 10;

“10. ... It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullin case [Francis Coralie Mullin v. State (UT of Delhi), (1981) 1 SCC 608, 1981 SCC (Cri) 212] to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the directive principles of State policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational

*facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State — neither the Central Government nor any State Government — has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the directive principles of State policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity **but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21.... The Central Government is therefore bound to ensure observance of various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the directive principles of State policy.***

55. That the Petitioner, in pursuit of his duties as a social activist, has come across multiple shelter homes, labour camps, constructions sites etc. wherein the workers and/or labourers staying there are entitled to

membership and registration as beneficiaries under the BOCW Act. However, these workers, albeit eligible as beneficiaries under the BOCW Act, are all unregistered, and have absolutely no knowledge or awareness about the benefits and/or processes of registration as beneficiaries under the BOCW Act.

56. That on 19.04.2020 the Petitioner along with another social activist Vandana Singh visited the Sarvodaya Vidyalaya, Jor Bagh (Delhi) which has been under construction for the past year. Government of Delhi has given the contract for construction of the school to Roshan Real estate, Malviya Nagar. The Petitioner found that there are 51 construction workers (including 6 women workers) who live and work at the construction site. They are paid wages based on type of work between Rs.360 to 500 per day. None of the workers have been provided with any ID cards by the employer or by the Delhi Government. On interaction with the workers, the Petitioner was informed that they have been out of work since the lockdown came into effect. They have not been paid wages since the lockdown began. Since the lockdown began, the work was halted and so were their wages. Delhi Government and the Central Government had issued an advisory that all the workers will be treated as being on leave with pay.

57. It is pertinent to note here that despite the severe hardships faced by the workers and/or labourers, the advisories are not being complied even where (as at Jor Bagh) the principal employer is the Delhi

Government itself. Further, none of the said workers were registered under the Building and other Construction Workers (RE & CS) Act 1996. Thus, they have not been given the benefit of the Direct Benefit Transfer initiated as a financial aid package for Covid 19 pandemic. It is unfortunate that this is the prevailing situation, and workers across Delhi (whether employed by the public or private entities) are neither duly registered as beneficiaries under the BOCW Act, nor are they being paid wages so as to enable them to survive during the imposed lockdown. A true copy of the article published by The Hindustan Times (published on 20.04.2020) that lays out the facts and circumstances of the construction workers of Sarvodya Vidyalaya, Jor Bagh (Delhi) is annexed herewith as **ANNEXURE P-12**

58. That there are lakhs of such unregistered workers across the state of Delhi. Lists of such workers - from labour colonies and government shelter homes at Sarai Kale Khan, , and the construction sites like the one at Jor bagh - are annexed herewith as **ANNEXURE P-13 (colly)**

That therefore the present petition is filed before this Hon'ble Court on the following grounds, taken separately and as a whole;

GROUNDS

59. That in light of the above-mentioned facts and circumstances, the present petition is being filed on the basis of the following grounds, taken separately and as a whole:

A. Because the violation of rights to equality and right to life enshrined in Articles 14, 19, and 21 of the Constitution of India in non registration and other violation of other provisions of the Act have been amplified during the Coronavirus pandemic, and the ensuing conditions in the National Capital Region, have hit hardest the intended beneficiaries of welfare and beneficial statutes like the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996, and The Building and Other Construction Workers' Welfare Cess Act 1996 – i.e. the construction workers and other labour that works (or worked, before the pandemic) in Delhi. . Construction workers are entirely dependent on the relief as per the Act and rules therein, but the majority are denied the same due to authority and employer non registration.

B. Because the individual and collective failure(s) of the Respondents to register eligible workers as beneficiaries under the beneficial and welfare statutes mentioned above is against the will of Parliament, the object and purpose of these beneficial statutes, the specific and clear directions by the Hon'ble Supreme Court of

India and Fundamental and other rights of the Constitution of India.

- C. Because the aforesaid individual and collective failure(s) of the Respondents constitutes a cause of action (or causes of action) for issuance of appropriate writs under Article 226 of the Constitution.
- D. Because year after year a new obstacle or issue arises; whether it is corruption/lack of will of officials, or entry barriers for workers in the form of cumbersome application form and procedure, or constant changes in systems and processes, or a lack of initiative to spread awareness, or poor implementation, or a combination of some or all of these factors. These factors prevent the registration of eligible workers and/or labourers, and this further exacerbates their suffering during these trying times.
- E. Because most daily wage labourers work under small contractors and therefore it is critical and imperative for the State government and the respondents to intervene to educate them and create awareness about the registration process and its benefits along with arranging methods to facilitate their registrations.
- F. Because the registration of eligible workers as beneficiaries is the only way to ensure effective utilisation of the funds collected by the Delhi BOCW Welfare Board, and the correct and proper

implementation (in accordance with their aims, objects and purposes) of the Acts.

G. Because not only has proper implementation of the Acts (including the critical aspect of registration of workers as beneficiaries) been long overdue, it is also an immediate and critical imperative in light of, inter alia, the Covid-19 lockdown, the associated and prevailing health and economic problems, the Central Government's advisory to utilise Welfare Cess funds, and the repeated directions by the Supreme Court of India ordering the registration of eligible workers as beneficiaries under the Acts.

H. Because in order to ensure proper utilisation of the crores of funds already collected, it is imperative and exigent to use this time to ensure registration of lakhs of workers and put money in their pockets in lieu of loss of livelihood caused due to the Covid-19 pandemic. This will not only implement the aforementioned advisory of the Central Government, but also ensure that the intent and overarching purpose of these welfare and beneficial legislations is given greater strength and impetus. It will also help in reviving the economy in these pressing times as there will be influx of disposable income (or cash) into the hands of workers, which in turn would increase the purchasing power of lakhs of individuals and directly boost the economy of the state as well as the nation.

- I. Because the Constitution of India envisages social and economic justice, envisions a welfare state, and invokes the concept of 'Distributive Justice' which implies the removal of economic inequalities by rectifying injustices resulting from dealings or transactions between non-equals in society.
- J. Because in the interest of justice the huge amounts of funds already collected ought to be utilised and the only way to do so is through the registration of all (or the maximum possible number) of construction workers as soon as practical.
- K. Because our society will progress if the standard of living of the poorest is uplifted, and for far too long this nation has neglected (the presence of beneficial and welfare legislations like the BOCW Act and Cess Act notwithstanding) our workers and labourers that form a key pillar of the Indian economy.
- L. Because justice (and Parliamentary will) requires that the states perform well on multiple fronts — including the establishment of appropriate regulatory and implementation institutions, registration of workers, and cess collection and utilisation .
- M. Because given the importance of the construction sector in creating mass employment, the welfare regime under the Acts is a golden opportunity to increase the productivity of this vital sector through improvements to the working and living conditions for workers.

The data shows that states need to streamline processes and act with a sense of urgency to deliver these benefits, and that they are likely to see positive economic results if they do so successfully and sincerely. This will ensure that construction workers, especially migrants, are not left out of the economic growth story, and that they play (and continue to play) an integral role in creating economic growth for India.

N. Because the process of registration of workers as beneficiaries is cumbersome and inaccessible, and to that extent it puts the Indian State under a corresponding duty to ensure facilitation and implementation of registration of eligible workers as beneficiaries.

O. Because the scheme of the Acts (and the associated Rules) places an implicit obligation on both employer and Labour Department to ensure registration of workers. It is therefore imperative that the state government ensures implementation of the beneficial and welfare intent of the Acts, and towards that end takes appropriate action(s) against non-compliant employers and/or public officials.

P. Because the attitude and ignorance of the State government towards the implementation of the BOCW Act is appalling in a country that functions according to the Rule of Law.

Q. Because the non-implementation of the scheme of the Acts violates the provisions of Articles 15(3), Article 39(e) and (f), and also Articles 45 and 47 of the Constitution of India, which impose a primary responsibility on the State to ensure that all the needs of workers are met and that their basic rights are fully protected.

R. Because the non-implementation of the scheme of the Acts violates Article 21 of the Constitution of India, which guarantees Indian citizens the right to live with dignity.

S. Because the BOCW Act and the Cess Act are based on an international convention, namely, the Safety and Health in Construction Convention (No. 167) adopted by the International Labour Organization in 1988 and its accompanying recommendation (No. 175) which provide for a foundation of law on which safe and healthy working conditions are built. This therefore clearly puts an even greater obligation on the State to fulfill its commitments and intentions.

T. Because as held in *Bandhua Mukti Morcha vs Union Of India & Others* 1984 AIR 802, 1984 SCR (2) 67 the State can certainly be obligated to ensure observance of such legislations, and State inaction in ensuring the implementation of such legislations would amount to a denial of the right to live with human dignity as enshrined in Article 21 of the Constitution. Further, Article 256 mandates that the executive power of every State shall be exercised

in a manner that ensures compliance with the laws made by the Indian Parliament and any existing laws which apply in that state. The Indian State is under a constitutional obligation to see that there is no violation of the fundamental right(s) of any citizen, particularly when he/she belongs to a weaker section of society and is consequently unable (as here) to wage a legal battle against strong, powerful, indifferent and exploitative forces.

U. Because it is settled law that a welfare legislation, especially one involving labour, should be literally construed in favour of the weak. This can be seen in the decisions of the Hon'ble Supreme Court in *Workmen of Binny Ltd. v. Management of Binny Ltd.* (1985) 4 SCC 325, AIR 1986 SC 509 (3-member Bench); *KCP Employees Assn. v. Management* 1978- II MLJ 11, 1978 Lab IC 518 (SC); *G B Pant University v. State of Uttar Pradesh* 2000 AIR SCW 2870, AIR 2000 SC 2695; *M C Chamaraju v. Hind Nippon Rural Industrial P Ltd.* (Appeal Civil 3889 of 2007); *Oriental Insurance Co. v. Mohd. Nasir* 2009 LLR 817 (SC); *Maharashtra State Cooperative Bank Ltd. v. APFC* (2009) 10 SCC 123 (another 3-member Bench); and *Lanco Anpara Power v. State of UP* (2016) 10 SCC 329.

V. Because It is settled law that a welfare and/or beneficial legislation should be liberally construed so as to promote its objects. This is seen in the decisions of the Hon'ble Supreme Court in *Cochin Shipping Co. v. ESIC* AIR 1993 SC 252, (1992) 4 SCC 245; *Delhi*

Gymkhana Club Ltd. v. ESIC (2015) 1 SCC 142; Royal Western India Turf Club v. ESIC (2016) 4 SCC 521.

W. Because lakhs of workers are currently out there without any source(s) of income, their savings already exhausted, and they are consequently in dire need of financial assistance from the State government.

X. Because the Central Government has advised state governments (including the Delhi Govt.) to utilise the funds in the Delhi Building and Other Construction Workers Welfare Board for the relief of workers across Delhi, and only approx. Rs. 20 crores has been released (due to the extremely low number of registered beneficiaries) out of an available corpus of over Rs.2000 crores.

Y. Because welfare and beneficial legislations providing social security constitute mere lip-service to constitutional ideals if these legislations fail to be effective even during a crisis and/or emergency, like the present situation caused by the Covid-19 pandemic and lockdown.

Z. Because the number of registered workers has continuously dropped over the years due to the lack of proper implementation of the aforesaid welfare and beneficial statutes and rules by the state government of Delhi.

- AA. Because most if not all poor citizens have no means of purchasing essential items (including food) during this lockdown due to an absence of income and/or wages.
- BB. Because research by experts suggests that for the proper implementation of these statutes, increasing the number of registered beneficiaries is imperative, alongside other measures like reducing entry barriers and creating awareness amongst citizenry.
- CC. Because research by experts suggests that there is a direct correlation between proper utilisation of funds and increasing registrations of eligible workers as beneficiaries under the BOCW Act.
- DD. Because research by experts suggests that to increase the registrations of eligible workers as beneficiaries, States need to encourage self-registration, streamline and localize verification processes, and engage civil society organisations (and other relevant stakeholders) in executing and sustaining registration drives on construction worksites, labour chowks and in settlements where construction workers live.
- EE. Because it is virtually impossible for a poor and uneducated worker, and particularly so in view of the Covid-19 pandemic and lockdown, to facilitate his/her own registration as a beneficiary of the Welfare Board.

FF. Because this Hon'ble Court held in ***Builders Association of India v. Union of India*** 139 (2007) DLT 578 that the implementation of BOCW Act must ensure that the benefit of the legislation is made available to every building worker, and that violators of the Act should be punished in accordance with law.

GG. Because the Hon'ble Delhi High Court in ***M/s. Dewan Chand Builders & Contractors v/s Union of India & Others*** held that the state government must ensure that the benefits of the welfare legislation is made available to every building and other construction worker.



HH. Because the non registration is a violation of the directions of the Hon'ble Supreme Court vide order dated 18.01.2010 in ***National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) v. Union of India*** (WP Civil No. 318 of 2006) specifically directed the government to;

- a) build awareness amongst workers about the Act,
- b) encourage legal services authorities to assist workers in registration,
- c) carry out compulsory registration of workers in all government contracts,
- d) Affix responsibility for due implementation of the Act, including carrying out special drives to register workers.

HH. Because the Supreme Court is of the view that some drastic steps may have to be taken to that the thousands of crores can be utilised for benefit of the workers under the Act and it is the responsibility of the State government to assist in the implementation of the BOCW and Cess Acts.

II. Because there is no other alternative remedy available to the workers in the State of NCT of Delhi, other than the remedy of approaching this Hon'ble court.

P R A Y E R

In the above mentioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (A) Pass an order directing the respondent and concerned authorities provide relief to workers and/or labourers and all mandated benefits be provided to them(including DTB transfers), including those who were previously registered in the last two years but could not/have not renewed their membership under THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT 1996;
- (B) Pass an order directing the respondents and concerned authorities to ensure that all workers falling under the scope of the Act who are currently hosted at DUSIB shelter homes and emergency Shelter homes, Labour camps and construction sites are promptly registered under the THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF

EMPLOYMENT AND CONDITIONS OF SERVICE) ACT 1996 and all mandated benefits be provided to them(including DTB transfers);

- (C) Pass an order directing the the respondents and concered authorities to ensure that all construction companies and employers ensure compliance of the THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT 1996 and associated Rules, and accordingly get all workers and/or labourers working on their projects promptly registered and all mandated benefits be provided to them(including DTB transfers);
- (D) Pass an order directing the the respondents and concered authorities to ensure that all the construction workers whose names have been filed by construction companies and/or employers with the Labour Department are promptly registered as beneficiaries under THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT 1996, and that all mandated benefits be provided to them(including DTB transfers);
- (E) Pass an order directing the DSLSA to set up programs and camps to ensure that all eligible construction workers and/or labourers employed in the state of Delhi are registered as beneficiaries under THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF

SERVICE) ACT 1996, and that all mandated benefits are provided to them (including DTB transfers);;

- (F) Pass an order directing the respondent and concerned authorities to ensure that all construction workers and/or labourers that are employed (not just before the lockdown, but also during and after lockdown) on infrastructure and other projects under government and private companies are promptly registered as beneficiaries under THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT 1996 and that all mandated benefits are provided to them(including DTB transfers);
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- (G) Pass an order directing the respondent and concerned authorities to ensure payment of wages to workers for the lockdown period at all government projects as advised/directed by the Central Government;
- (H) Pass any such directions or order which would ensure that the registration process for workers is made easy, practical and accessible for the average worker and/or labourer who is poor, illiterate and uninformed of his rights;
- (I) Pass any such directions or order to ensure the object and purpose of the BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF

SERVICE) ACT 1996 and THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT 1996 is achieved and there is proper implementation of the statutory provisions and rules made thereunder;

- (J) Pass any such directions or order which this Hon'ble court deems fit and proper in the facts and circumstances outlined in the present petition.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS ARE DUTY BOUND SHALL EVER PRAY.

Filed by



SHIVEN VARMA
FOR CICERO CHAMBERS
ADVOCATE FOR THE PETITIONER
K-32, Jangpura Extension,
New Delhi 110014
shivenv18@gmail.com
shiven.varma@cicerochambers.com

+91 9810768282

DATED: 22.04.2020

PLACE: NEW DELHI

IN THE HON'BLE DELHI HIGH COURT AT NEW DELHI

(Extraordinary Civil Writ Jurisdiction)

Writ Petition (Civil) No. _____ of 2020

(IN THE MATTER OF A PUBLIC INTEREST LITIGATION)

In the matter of

Sunil Kumar Aledia

... Petitioner(s)

Versus

Govt. of NCT of Delhi & Ors.

... Respondents



1. That I am the Petitioner in the above captioned petition and I am authorised to institute and sign the present petition.
2. That I have filed the present petition as a Public Interest Litigation.
3. That I have gone through the Delhi High Court (Public Interest Litigation) Rules, 2010 and do hereby affirm that the present Public Interest Litigation is in conformity thereof.
4. I have no personal interest in the litigation and neither myself nor anybody is interested who would in any manner benefit from the relief sought in the present litigation save a member of General Public. The petition is not guided by self-gain or gain of any person, institution,

body and there is no motive other than of public interest in filing this petition.

5. I have done whatsoever inquiry/investigation which was in my power to do, to collect all data/material which was available and which was relevant for this Court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this Court to form an opinion whether to entertain this petition or not and/or whether to grant and relief or not.

6. That I have not moved any other similar petition before the Hon'ble Supreme Court of India or this Hon'ble Court or any other High Court.

7. That I have read and understood the contents of the petition from pages 12 to 24 of the **Synopsis** and paragraph 1 to 59 and pages 24 to 74 of the **Petition**, and the accompanying applications and I state that the same based on the legal advice given to me and the contents thereof are true to the best of my knowledge and belief and nothing material has been concealed thereof.

8. That I have read the contents of the present petition and accompanying application and the present affidavit and the same is true and correct to the best of my knowledge and belief.



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VERIFICATION

Verified at New Delhi, this the 22 day of April 2020 that the contents of this affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed there from.

DE P O N E N T