

THE BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION
OF EMPLOYMENT AND CONDITION OF SERVICE) ACT, 1996

(27 of 1996)

[19th August, 1996]

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 measured and for other matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-seven Year of the Republic of India as follows:-

CHAPTER- I
PRELIMINARY

1. Short title, extent, commencement and application- (1) This Act may be called the Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996.
2. It extends to the whole of India.
3. It shall be deemed to have come into force on the 1st day of March, 1996.
4. It 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.

Explanation – For the purpose of this sub-section, the building workers employed in different relays in a day either by the employer or the contractor shall be taken into account in computing the number of building workers employed in the establishment.

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

(a) “Appropriate Government” means-

(i) in relation to an establishment (which employs building workers either directly or through a contractor) in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947) is the Central Government, the Central Government;

(ii) in relation to any such establishment, being a public sector undertaking, as the Central Government may by notification specify which employs building workers either directly or through a contractor, the Central Government;

Explanation- For the purpose of sub-clause (ii) “public sector undertaking” means any corporation establishment by or under any Central, State or Provincial Act or a Government Company as defined in section 617 of the Companies Act, 1956 (1 of 1956), which is owned, controlled or managed by the Central Government;

(iii) in relation to any other establishment which employs building workers either directly or through a contractor, the Government of the State in which that other establishment is situate;

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;

- d. “building or other construction work” means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works(including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water),oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948 (63 of 1948), or the Mines Act, 1952 (35 of 1952), apply;
- 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-
 - a. who is employed mainly in a managerial or administrative capacity; or
 - b. who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem of exercises, either by the nature of the duties attached to the officer or by reason of the powers vested in him, functions mainly of a managerial nature;
- f. “Chief Inspector” means the Chief Inspector of Inspection of Building and Construction appointed under sub-section (2) of section 42;
- 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;
- h. “Director-General” means the Director-General of Inspection appointed under sub-section (1) of section 42;
- 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 of 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;
- j. “establishment” means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment

belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs;

- k. "Fund" means the Building and Other Construction Workers' Welfare Fund of a Board constituted under sub-section (1) of section 24;
- l. "notification" means a notification published in the Official Gazette;
- m. "prescribed" means prescribed by rules made under this Act by the Central Government or, as the case may be, the State Government;
- n. "wages" shall have the same meaning as assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936).

(2) Any reference in this Act to any law which is not in force in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER-II THE ADVISORY COMMITTEES AND EXPERT COMMITTEES

3. Central Advisory Committee- (1) The Central Government shall, as soon as may be, constitute a Committee to be called the Central Building and Other Construction Workers' Advisory Committee (hereinafter referred to as the Central Advisory Committee) to advise the Central Government on such matters arising out of the administration of this Act as may be referred to it.

- (2) The Central Advisory Committee shall consist of—
- (a) a Chairperson to be appointed by the Central Government;
 - (b) three Members of Parliament of whom two shall be elected by the House of the people and one by the Council of State-members;
 - (c) the Director-General- member, ex officio;
 - (d) such number of other members, not exceeding thirteen but not less than nine, as the Central Government may nominate to represent the employees, building workers, associations of architects, engineers accident insurance institution and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Advisor committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (d) of sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Central Advisor Committee shall be such as may be prescribed:

Provided that the members nominated to present the building workers shall not be less than the number of members nominated to represent the employees.

(4) It is hereby declared that the office of member of the Central Advisor Committee shall not disqualify its holder for being chosen as, or for being a Member of either House of Parliament.

COMMENTS

The Central Government has been empowered to constitute the Central Building and Other Construction Workers' Advisor Committee. The Committee shall consist of a Chairperson, three Members of Parliament, the Director General of Inspection, not more than thirteen but not less than nine persons nominated by Government to represent the employees, building workers, association of architects, engineers, accident insurance institution and other interests.

4. State Advisory Committee.- (1) The State Government shall constitute a committee to be called the State Building and Other Construction Workers' Advisor Committee (hereinafter referred to as the State Advisory Committee) to advise the State Government on such matters arising out of the administration of this Act as may be referred to it.

- (2) The State Advisory Committee shall consist of –
- (a) a Chairperson to be appointed by the State Government;
 - (b) two members of the State Legislature to be elected from the State Legislature-members;
 - (c) a member to be nominated by the Central Government;
 - (d) the Chief Inspector –member, ex officio;
 - (e) such number of other members, not exceeding eleven, but not less than seven, as the State Government may nominate to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests which, in the opinion of the State Government, ought to be represented on the State Advisory Committee.

(3) The number of persons to be appointed as members from each of the categories specified in clause (e) of sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of State Advisory Committee shall be such as may be prescribed:

Provided that the number of members nominated to represent the building workers shall not be less than the number of members nominated to represent the employers.

COMMENTS

The State Government has been empowered to constitute the State Building and Other Construction Workers' Advisory Committee for the State. The committee shall consist of a Chairperson, two members of the State Legislature, a member to be nominated by the Central Government, the Chief Inspector of Inspection, not more than eleven but not less seven persons nominated by the State Government to represent the employers, building workers, associations of architects, engineers, accident insurance institutions and any other interests.

5. Expert Committees- (1) The appropriate Government may constitute one or more expert committees consisting of persons specially qualified in building or other construction work for advising that Government for making rules under this Act.

(2) The member of the expert committee shall be paid such fees and allowances for attending the meetings of the committee as may be prescribed:

Provided that no fee or allowances shall be payable to a member who is an officer of Government or of any body corporate established by or under any law for the time being in force.

CHAPTER-III REGISTRATION OF ESTABLISHMENTS

6. Appointment of registering officers- The appropriate Government may, by order notified in the Official Gazette-
- (a) appoint such persons, being Gazetted Officers of Government, as it thinks fit, to be the registering officers for the purposes of this Act; and
 - (b) define the limits within which a registering officer shall exercise the powers conferred on him by or under this Act.
7. Registration of establishments-(1) Every employer shall-
- (a) in relation to an establishment to which this Act applies on its commencement, within a period of sixty days from such commencement; and
 - (b) in relation to any other establishment to which this Act may be applicable at any time after such commencement, within a period of sixty days from the date on which this Act becomes applicable to such establishment,

make an application to the registering officer for the registration of such establishment:

Provided that the registering officer may entertain any application after the expiry of the periods aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

- (2) Every application under sub-section (1) shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.
- (3) After the receipt of an application under sub-section (1), the registering officer shall register the establishment and issue a certificate of registration to the employer thereof in such form and within such time and subject to such conditions as may be prescribed.
- (4) Where, after the registration of an establishment under this section, any change occurs in the ownership or management or other prescribed particulars in respect of such establishment, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.

COMMENTS

Every employer of an establishment to which this Act applies and to which this Act may be applicable at any time is required to make an application in the prescribed form with prescribed fee for the registration of his establishment within a period of sixty days of the commencement of the Act or within sixty days from the date on which this Act becomes applicable to the establishment.

(8) Revocation of registration in certain cases- if the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the supervision of any material fact or that the provisions of this Act are not being complied with in relation to any work carried on by such establishment, or that for any other

reason the registration has become useless or ineffective and, therefore, requires to be revoked, he may, after giving an opportunity to the employer of the establishment to be heard, revoke the registration.

COMMENTS

If the registration of any establishment has been obtained by misrepresentation or by suppression of any material fact or if the provision of the Act are not being complied with in relation to any work carried on by such establishment, the registration may be revoked by the registering officer by giving an opportunity to the employer of the establishment to be heard.

9. Appeal-(1) Any person aggrieved by an order made under section 8 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to the appellate officer who shall be a person nominated in this behalf by the appropriate Government:

Provided that the appellate may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the appellant was prevented by sufficient cause from filling the appeal in time.

(2) On receipt of an appeal under sub-section (1), the appellate officer shall, after giving the appellant an opportunity of being heard, confirm, modify or reverse the order of revocation as expeditiously as possible.

COMMENTS

If any employer of an establishment is aggrieved by an order of the registering officer he can prefer an appeal to the appellate officer within thirty days from the date on which the order is communicated to him Appeal can be made even after the expiry of thirty days if the appellant satisfies the appellate officer that he was prevented by sufficient cause from filing the appeal in time.

10. Effect of non-registration.- No employer of an establishment to which this Act applies, shall,-

(a) in the case of an establishment required to be registered under section-7, but which has not been registered under that section;

(b) in the case of an establishment the registration in respect of which has been revoked under section 8 and no appeal has been preferred against such order of revocation under section 9 within the period prescribed for the preferring of such appeal or where an appeal has been so preferred, such appeal has been dismissed, employ building workers in the establishment after the expiry of the period referred to in clause (a) or clause (b) of sub-section (1) of section-7, or after the revocation of registration under section 8 or after the expiry of the period for preferring an appeal under section 9 or after the dismissal of the appeal, as the case may be.

COMMENTS

No employer of an establishment which is required to be registered but has not been registered or registration of such an establishment has been revoked and no appeal has been preferred or where an appeal has been preferred but it has been dismissed can employ building workers in the establishment.

REGISTRATION OF BUILDING WORKERS AS BENEFICIARIES

11. Beneficiaries of the Fund. - Subject to the provisions of this Act, every building worker registered as a beneficiary under this Act shall be entitled to the benefits provided by the Board from its Fund under this Act.

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 authorized 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 of 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.

COMMENTS

Every building worker who is between the age of eighteen and sixty and who has been engaged in any building or other construction work for not less than ninety days during the last 12 months is eligible for registration as a beneficiary of the Building and Other Construction Workers' Welfare Fund. Application for registration is to be made in the prescribed form and is to be accompanied with prescribed documents and a fee of not more than fifty rupees.

13. Identity cards.- (1) The Board shall give to every beneficiary an identity card with his photograph duly affixed thereon and with enough space for entering the details of the building or other construction work done by him.

(2) Every employer shall enter in the identity card the details of the building or other construction work done by the beneficiary and authenticate the same and return it to the beneficiary.

(3) A beneficiary who has been issued an identity card under this Act shall produce the same whenever demanded by any officer of Government or the Board, any inspector or any other authority for inspection.

14. Cessation as a beneficiary.- (1) A building worker who has been registered as a beneficiary under this Act shall cease to be as such when he attains the age of sixty

years of then he is not engaged in building or other construction work for not less than ninety days in a year:

Provided that in computing the period of ninety days under this sub-section, there shall be excluded any period of absence from the building or other construction work due to any personal injury caused to the building worker by accident arising out of and in the course of his employment.

(2) Notwithstanding anything contained in sub-section (1), if a person had been a beneficiary for at least three years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be prescribed.

Explanation.- For computing the period of three years as a beneficiary with a Board under this sub-section, there shall be added any period for which a person had been a beneficiary with any other Board immediately before his registration.

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.

16. Contribution of building workers.- (1) A building worker who has been registered as a beneficiary under this Act shall, until he attains the age of sixty years, contribute to the Fund at such rate per mensem, as may be specified by the State Government, by notification in the Official Gazette and different rates of contribution may be specified for different classes of building workers:

Provided that the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

(2) A beneficiary may authorise his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board.

COMMENTS

A registered beneficiary, until he attains the age of sixty years, has to contribute to the Fund at the rates specified by the State Government. If any beneficiary is unable to pay his contribution due to any financial hardship, the Building and Other Construction Workers' Welfare Board can waive the payment of contribution for a period not exceeding three months at a time.

17. Effect of non-payment of contribution.- When a beneficiary has not paid his contribution under sub-section (1) of section 16 for a continuous period of not less than one year, he shall cease to be a beneficiary:

Provided that if the Secretary of the Board is satisfied that the non-payment of contribution was for a reasonable ground and that the building worker is willing to deposit the arrears, he may allow the building worker to deposit the contribution in arrears and on such deposit being made, the registration of building worker shall stand restored.

COMMENTS

If any beneficiary fails to pay his contribution for a continuous period of not less than one year, he ceases to be a beneficiary of the Fund. But if the failure to pay the contribution be a beneficiary of the Fund. But if the failure to pay the contribution was for a reasonable ground and the building worker is willing to deposit the arrears, his registration may be restored.

**BUILDING AND OTHER CONSTRUCTION WORKERS'
WELFARE BOARDS**

18. Construction of State Welfare Boards.- (1) Every 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 term 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.

19. Secretary and other officers of Boards-(1) The Board shall appoint a Secretary and such other officers and employees as it consider necessary for the efficient discharge of its functions under this Act.

(2) The Secretary of the Board shall be its chief Executive officers.

(3) The term and conditions of appointment and the salary and allowances payable to the Secretary and the other officers and employees of the Board shall be such as may be prescribed.

20. Meeting of Board.-(1) The Board shall meet at such time and place and observes such rules of procedure in regard to the transaction of business at its meeting (including the quorum at such meeting) as may be prescribed.

(2) The chairperson or, if for any reason he is unable to attend a meeting of the Board, any member nominated by the chairperson in this behalf and in the absence of such nomination, any other member elected by the members present from among themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of votes of the members present and voting and in the event of equality of votes, the chairperson, or in his absence, the person presiding, shall have a second or a casting votes.

21. Vacancies, etc, not to invalidate proceeding of the Boards- No. act or proceeding of a Board shall be invalid merely by reason of –

(a) any vacancy in, or any defect in the constitution of, the Board, or

(b) any defect in the appointment of a person acting as a member of the Board, or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

22. Functions of the Boards-(1) The Board may-

(a) provide immediate assistance to a beneficiary in case of accident;

(b) make payment of person to the beneficiary who have completed the age of sixty years.

- (c) sanction loans and advance to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed;
 - (d) pay such amount in connection with premia for Group Insurance Scheme of the beneficiary as it may deem fit;
 - (e) give such financial assistance for the education of children of the beneficiary;
 - (f) Meet such medical expenses for treatment of major ailments of a beneficiary or such dependent as may be prescribed;
 - (g) Make payment of maternity benefit to the female beneficiary and
 - (h) Make provision and improvement of such other welfare measures and facilities as may be prescribed.
- (2) The Board may grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment.
- (3) The Board may pay annually grants-in-aid to a local authority or to an employer who provides to the satisfaction of the Board welfare measures and facilities of the standard specified by the Board for the benefit of the building workers and the members of their family, so however, that the amount payable as grant-in-aid to any local authority or employer shall not exceed-

- (a) the amount spent in providing welfare measures and facilities as determined by the State Government or any person specified in this behalf, or
- (b) such amount as may be prescribed, whichever is less:

Provided that no grant-in-aid shall be payable in respect of any welfare measures and facilities where the amount spent thereon determined as aforesaid is less than the amount prescribed in this behalf.

23. Grant and loan by the Central Government.- The Central Government may, after due appropriation made by law in this behalf, make to a Board grants and loan of such sums of money as the Government may consider necessary.

24. Building and Other Construction Workers ' Welfare Fund and its application – (1) There shall be constitution by a Board a fund to be called the Building and Other Construction Workers Welfare Fund and there shall be credited thereto-

- (a) any grant and loan made to the Board by the Central Government under section 23;
- (b) all contributions made by the beneficiaries;
- (c) all sums received by the Board from such other sources as may be decided by the Central Government.

(2) The Fund shall be applied for meeting-

- (a) expenses of the Board in the discharge of its function under section 22; and
- (b) salaries, allowances and other remuneration of the members, officers and other employees for the Board.
- (c) expenses on objects and for purposes authority by this Act.

(3) No. Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its member officers, and other remuneration to its members, officers, and other employees and for meeting the other administrative expenses exceeding five per cent of its total expenses during that financial year.

25. Budget.- The Board shall prepare, in such form and at such time each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the State Government and the Central Government.

26. Annual report.- The Board shall prepare, in such form and at such time each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the State Government and the Central Government.

27. Accounts and audit.- (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(2) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the auditing of the accounts of the Board under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the auditing of the Government accounts and in particular shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the officers of the Board under this Act.

(3) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(4) The Board shall furnish to the State Government before such date as may be prescribed its audited copy of accounts together with the auditor's report.

(5) The State Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the State Legislature.

CHAPTER-VI HOURS OF WORK, WELFARE MEASURES AND OTHER CONDITIONS OF SERVICE OF BUILDING WORKERS

28. Fixing hours for normal working day, etc.- (1) The appropriate Government may, by rules,-

(a) fix the number of hours of work which shall constitute a normal working day for a building worker, inclusive of one or more specified intervals;

(b) provide for a day of rest in every period of seven days which shall be allowed to all building workers and for the payment of remuneration in respect of such days of rest;

(c) provide for payment of work on a day of rest at a rate not less than the overtime rate specified in section 29.

(2) The provisions of sub-section (1) shall, in relation to the following classes of building workers, apply only to such extent, and subject to such conditions, as may be prescribed, namely.-

(a) persons engaged on urgent work, or in any emergency which could not have been foreseen or prevented;

(b) persons engaged in a work in the nature of preparatory or complementary work which must necessarily be carried on outside the normal hours of work laid down in the rules;

(c) persons engaged in any work which for technical reasons has to be completed before the day is over;

(d) Persons engaged in a work which could not be carried on except at times dependant on the on the irregular action of natural forces.

COMMENTS

Government has been empowered to fix the number of hours of work for a building workers, to provide for a day of rest in every period of 7 days and for the payment of remuneration in respect of such days of rest, to provide for payment of work on a day of rest at a rate not less than the over time rate.

29. Wages for overtime work.- (1) Where any building worker is required to work on day in excess of the number of hours constitution a normal working day, he shall be entitled to wages at the rate of twice his ordinary rate of wages.

(2) For the purposes of this section, “ordinary rates of wages” means the basic wages plus such allowances as the worker is for the time being entitled to but does not include any bonus.

COMMENTS

If any building workers is required to work on any day in excess of the number of hours constituting a normal working day, he is entitled to wages at the rate of twice his ordinary rate of wages.

30. Maintenance of registers and records.- (1) Every employer shall maintain such registers and records giving such particulars of building workers employed by him, the work performed by them, the number of hours of work which shall constitute a normal working day for them, a day of rest in every period of seven days which shall be allowed to them, the wages paid to them, the receipts given by them and such other particulars in such form as may be prescribed.

(2) Every employer shall keep exhibited, in such manner as may be prescribed, in the place where such workers may be employed, notices in the prescribed form containing the prescribed particulars.

(3) The appropriate Government may, by rules, provide for the issue of wage books or wage slips to building workers employed in an establishment and prescribe the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent.

31. Prohibition of employment of certain persons in certain building or other construction work.- No person about whom the employer knows or has reason to believe that he is a deaf or he has a defective vision or he has a tendency to giddiness shall be required or allowed to work in any such operation of building or other construction work which is likely to involve a risk of any accident either to the building worker himself or to any other person.

COMMENTS

Any person who is deaf or who has defective vision or who has a tendency to giddiness is not required or allowed to work in any such operation of building or other construction work which is likely to involve risk of any accidents.

32. Drinking water.- (1) The employer shall make in every place where building or other construction work is in progress, effective arrangements to provide and maintain at suitable points conveniently situated for all persons employed therein, a sufficient supply of wholesome drinking water.

(2) All such points shall be legibly marked “Drinking Water” in a language understood by a majority of the persons employed in such place and no such point shall be situated within six metres of any washing place, urinal or latrine.

33. Latrines and urinals.- In every place where building or other construction work is carried on, the employer shall provide sufficient latrine and urinal accommodation of such types as may be prescribed and they shall be so conveniently situated as may be accessible to the building workers at all times while they are in such place:

Provided that it shall not be necessary to provide separate urinals in any place where less than fifty persons are employed or where the latrines are connected to a water-borne sewage system.

34. Accommodation.- (1) The employer shall provide, free of charges and within the work site or as near to it as may be possible, temporary living accommodation to all building workers employed by him for such period as the building or other construction work is in progress.

(2) The temporary accommodation provided under sub-section (1) shall have separate cooking place, bathing, washing and lavatory facilities.

(3) As soon as may be, after the building or other construction work is over, the employer shall, at his own cost, cause removal or demolition of the temporary structures erected by him for the purpose of providing living accommodation, cooking place or other facilities to the building workers as required under sub-section (1) and restore the ground in good level and clean condition.

(4) In case an employer is given any land by a Municipal Board or any other local authority for the purpose of providing temporary accommodation for the building workers under this section, he shall, as soon as may be after the construction work is over, return the possession of such land in the same condition in which he received the same.

35. Crèches.- (1) In every place wherein, more than fifty female building workers are ordinarily employed, there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such female workers.

(2) Such rooms shall-

- (a) provide adequate accommodation;
- (b) be adequately lighted and ventilated;
- (c) be maintained in a clean and sanitary condition;
- (d) be under the charge of women trained in the care of children and infants.

36. First-aid.- Every employer shall provide in all the places where building or other construction work is carried on such first-aid facilities as may be prescribed.

37. Canteens, etc.- The appropriate Government may, by rules, require the employer-

- (a) to provide and maintain in every place wherein not less than two hundred and fifty building workers are ordinarily employed, a canteen for the use of the workers;
- (b) to provide such other welfare measures for the benefit of building workers as may be prescribed.

CHAPTER-VII SAFETY AND HEALTH MEASURES

38. Safety Committee and safety officers.- (1) In every establishment wherein five hundred or more building workers are ordinarily employed, the employer shall constitute a Safety Committee consisting of such number of representatives of the employer and the building workers as may be prescribed by the State Government:

Provided that the number of persons representing the workers, shall, in no case, be less than the persons representing the employer.

(2) In every establishment referred to in sub-section (1), the employer shall also appoint a safety officer who shall possess such qualifications and perform such duties as may be prescribed.

39. Notice of certain accidents.- (1) Where in any establishment an accident occurs which causes death or which causes any bodily injury by reason of which the person injured is prevented from working for a period of forty-eight hours or more immediately following the accident, or which is of such a nature as may be prescribed, the employer shall give notice thereof to such authority, in such form and within such time as may be prescribed.

(2) On receipt of a notice under sub-section (1) the authority referred to in that sub-section may make such investigation or inquiry as it considers necessary.

(3) Whether a notice given under sub-section (1) relates to an accident causing death of five or more persons, the authority shall make an inquiry into such accident within one month of the receipt of the notice.

40. Power of appropriate Government to make rules for the safety and health of building workers.- (1) The appropriate Government may, by notification, make rules regarding the measures to be taken for the safety and health of building workers in the course of their employment and the equipment and appliances necessary to be provided to them for ensuring their safety, health and protection, during such employment.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the safe means of access to, and the safety of, any working place, including the provision of suitable and sufficient scaffolding at various stages when work cannot be safely done from the ground or from any part of a building or from a ladder or such other means of support;
- (b) the precautions to be taken in connection with the demolition of the whole or any substantial part of a building or other structure under the supervision of a competent person and the avoidance of danger from collapse of any building or other structure while removing any part of the framed building or other structure by shoring or otherwise;
- (c) the handling or use of explosive under the control of competent persons so that there is no exposure to the risk of injury from explosion or from flying material;
- (d) the erection, installation, use and maintenance of transporting equipment, such as locomotives, trucks, wagons and other vehicles and trailers and appointment of competent persons to drive or operate such equipment;
- (e) the erection, installation, use and maintenance of hoists, lifting appliances and lifting gear including periodical testing and examination and heat treatment, where necessary, precautions to be taken while raising or lowering loads, restrictions on carriage of persons and appointment of competent persons on hoists or other lifting appliances;
- (f) the adequate and suitable lighting of every workplace and approach thereto, of every place where raising or lowering operations with the use of hoists, lifting appliances or lifting gears

- are in progress and of all openings dangerous to building workers employed;
- (g) the precautions to be taken to prevent inhalation of dust, fumes, gases or vapours during any grinding, cleaning, spraying or manipulation of any material and steps to be taken to secure and maintain adequate ventilation of every working place or confined space;
 - (h) the measures to be taken during stacking or unstacking, stowing or unstowing of materials or goods or handling in connection therewith;
 - (i) the safeguarding of machinery including the fencing of every fly-transmission of other machinery, unless it is in such a position or of such construction as to be safe to every worker working on any of the operations and as if it were securely fenced;
 - (j) the safe handling and use of plant, including tools and equipment operated by compressed air;
 - (k) the precaution to be taken in case of fire;
 - (l) the limits of weight to be lifted or moved by workers;
 - (m) the safe transport of workers to or from any workplace by water and provision of means for rescue from drowning;
 - (n) the steps to be taken to prevent danger to workers from live electric wires or apparatus including electrical machinery and tools and from overhead wires;
 - (o) the keeping of safety nets, safety sheets and safety belts where the special nature or the circumstances of work render them necessary for the safety of the workers;
 - (p) the standards to be complied with regard to scaffolding, ladders and stairs, lifting appliances, ropes, chains and accessories, earth moving equipment and floating operational equipments;
 - (q) the precautions to be taken with regard to pile driving, concrete work, work with hot asphalt, tar or other similar things, insulation work, demolitions operations, excavation, underground construction and handling materials;
 - (r) the safety policy, that is to say, a policy relating to steps to be taken to ensure the safety and health of the building workers, the administrative arrangements therefor and the matters connected therewith, to be framed by the employers and contractors for the operations to be carried on in a building or other construction work;
 - (s) the information to be furnished to the Bureau of Indian Standards established under the Bureau of Indian Standards Act, 1986 (63 of 1986), regarding the use of any article or process covered under that Act in a building or other construction work;
 - (t) the provision and maintenance of medical facilities for building workers;
 - (u) any other matter concerning the safety and health of workers working in any of the operations being carried on in a building or other construction work.

41. Framing of model rules for safety measures.- The Central Government may, after considering the recommendation of the expert committee constituted under section-5 , frame ,model rules in respect of all or any of the matters specified in

section-40 and where any such model rules have been framed in respect of any such matter, the appropriate Government shall, while making any rules in respect of that matter under section-40 , so far as is practicable, conform to such model rules.

CHAPTER- VIII INSPECTING STAFF

42. Appointment of Director –General, Chief Inspector and Inspectors.- (1) The Central Government may, by notification, appoint a Gazetted Officer of the Government to be the Director-General of Inspection who shall be responsible for laying down the standards of inspection and shall also exercise the powers of an Inspector throughout India in relation to all the establishments for which the Central Government is the appropriate Government.

(2) The State Government may, by notification, appoint a Gazetted Officer of that Government to be the Chief Inspector of Inspection of Building and Construction who shall be responsible for effectively carrying out the provisions of this Act in the State and shall also exercise the powers of an Inspector under this Act throughout the State in relation to establishments for which the State Government is the appropriate Government.

(3) The appropriate Government may, by notification, appoint such number of its officers as it thinks fit to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

(4) Every Inspector appointed under this section shall be subject to the control of the Director-General or the Chief Inspector , as the case may be , and shall exercise his powers and perform his functions under this Act subject to general control and supervision of the Director-General or the Chief Inspector.

(5) The Director-General, the Chief Inspector and every Inspector shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

43. Power of Inspectors.- (1) Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,-

- (a) enter, at all reasonable hours, with such assistants (if any) being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where building or other construction work is carried on, for the purpose of examining any register or record or notice required to be kept or exhibited by or under this Act, and require the production thereof for inspection;
- (b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe is a building worker employed therein;
- (c) require any person giving out building or other construction work to any building worker, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and whom the building or other construction work is given out or received, and with respect to the payments to be made for the building or other construction work;
- (d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the employer; and

(e) exercise such other powers as may be prescribed.

(2) For the purposes of this section, the Director- General or the Chief Inspector, as the case may be , may employ experts or agencies having such qualifications and experience and on such terms and conditions as may be prescribed.

(3) Any person required to produce any document or to give any information required by an Inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of section-175 and section- 176 of the Indian Penal Code (45 of 1860).

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be , apply to such search or seizure under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section-94 of the said Code.

CHAPTER-IX SPECIAL PROVISIONS

44. Responsibility of employers.- An employer shall be responsible for providing constant and adequate supervision of any building or other construction work in his establishment as to ensure compliance with the provisions of this Act relating to safety and for taking all practical steps necessary to prevent accidents.

COMMENTS

It is the responsibility of the employer to provide constant and adequate supervision of any building or other construction work as to ensure compliance with the provisions of the Act relating to safety and for taking all steps necessary to prevent accidents.

45. Responsibility for payment of wages and compensation.- (1) An employer shall be responsible for payment of wages to each building worker employed by him and such wages shall be paid on or before such date as may be prescribed.

(2) In case the contractor fails to make payment of compensation in respect of a building worker employed by him, where he is liable to make such payment when due, or makes short payment thereof, then, in the case of death or disablement of the building worker, the employer shall be liable to make payment of that compensation in full or the unpaid balance due in accordance with the provisions of the Workmen's Compensation Act, 1923 (8 of 1923), and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

COMMENTS

An employer is responsible for payment of wages to each building worker employed by him and wages shall be paid on or before the prescribed date. In case the contractor fails to make payment of compensation or in respect of a building worker employed by him, where he is liable to make payment, makes short payment, then in the case of death or disablement of the building worker, the employer is liable to make payment of that compensation in full or the unpaid balance due and is entitled to recover the amount so paid from the contractor.

46. Notice of commencement of building of other construction work.- (1) An employer shall, at least thirty days before the commencement of any building or other construction work, send or cause to be sent to the Inspector having jurisdiction in the area where the proposed building or other construction work is to be executed, a written notice containing-

(a) the name and situated of the place where the building or other construction work is proposed to be carried on;

(b) the name and address of the person who is undertaking the building or other construction work;

(c) the address to which communications relating to the building or other construction work may be sent;

(d) the nature of the work involved and the facilities, including or plant and machinery 'provided ;

(e) the arrangements for the storage of explosives, if any to be used in the building or other construction work;

(f) the number of workers likely to be employed during the various stages of building or other construction work;

(g) the name and designation of the person who will be in overall charge of the building or other construction work;

(h) the approximate duration of the work;

(i) such other matters as may be prescribed.

(2) Where any change occurs in any of the particulars furnished under sub-section

(1) the employer shall intimate the change to the Inspector within two days of such change.

(3) Nothing contained in sub-section (1) shall apply in case of such class of building or other construction work as the appropriate government may by notification specify to be emergent works.

CHAPTER -X PENALITES AND PROCEDURE

47. Penalty for contravention of provisions regarding safety measures. – (1) Whoever contravenes the provisions of any rules made under section 40 shall be punishable with imprisonment for a term which may extend both to three months or with fine which may extend to two thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continue after conviction for the first such contravention.

2. If any person who has been convicted of any offence punishable under sub-section (1) is again guilty offence involving a contravention or failure of compliance of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months or with fine which shall not be less than five hundred rupees but which may extend to two thousand rupees or with both:

Provided that for the purpose of this sub-section, no cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted:

Provided further that the authority imposing the penalty, if it is satisfied that there are exceptional circumstances warranting such a course may, after recording its reasons in writing, impose a fine of less than five hundred rupees.

Contravention of any rules made for the safety and health of building and other construction workers is punishable with imprisonment upto three months, or with fine upto two thousand rupees or with both. Continuing contravention is punishable with additional fine upto one hundred rupees for every day after convention for the first contravention. If any person, who has been convicted of any offence cited above and is again guilty of an offence involving a contravention of failure of compliance of the same provision he shall be punishable on a subsequent conviction with imprisonment upto six months, or with fine of not less than five hundred rupees but which may be upto two thousand rupees or with both.

48. Penalty for failure to give notice of the commencement of the building or other construction work.- Where an employer fails to give notice of the commencement of the building or other construction work under section-46, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

COMMENTS

Failure to give notice of commencement of the building or other construction work is punishable with imprisonment upto three months, or with fine upto two thousand rupees, or with both.

49. Penalty for obstructions.- (1) Whoever obstructs an Inspector in the discharge of his duties under this Act or refuse or willfully neglects to afford the Inspector any reasonable facility for making inspection, examination, enquiry or investigation authorised by or under this Act in relation to an establishment shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever willfully refuses to produce on the demand of an Inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does any thing which he has reason to believe is likely to prevent any person from appearing before, or being examined by, an Inspector acting in pursuance of his duties under this Act shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

COMMENTS

If any body (i) obstructs an Inspector in the discharge of his duties or refuses or willfully neglects to afford any reasonable facility to the Inspector for making any inspection, examination or inquiry or investigation, (ii) refuses to produce on the demand of an Inspector any register or other document or prevents or attempts to prevent any person from appearing before, or being examined by an Inspector, is to be punished with imprisonment upto three months, or with fine upto one thousand rupees, or with both.

50. Penalty for other offences.- (1) Whoever contravenes any other provision of this Act or any rules made thereunder or who fails to comply with any provision of this Act or any rules made thereunder shall, where no express penalty is elsewhere provided for such contravention or failure, be punishable with fine which may extend to one thousand rupees for every such contravention or failure, as the case may be, and in the case of a continuing contravention or failure, as the case may be, with an additional fine which may extend to one hundred rupees for every day during which such

contravention or failure continues after the conviction for the first such contravention of failure.

- (2) A penalty under sub-section (1) may be imposed-
 - (a) by the Director-General where the contravention or failure relates to a matter to which the appropriate Government is the Central Government; and
 - (b) by the Chief Inspector where the contravention or failure relates to a matter to which the appropriate Government is the State Government.
- (3) No penalty shall be imposed unless the person concerned is given a notice in writing-
 - (a) informing him of the grounds on which it is proposed to impose a penalty; and
 - (b) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the imposition of penalty mentioned therein, and , if he so desires, of being heard in the matter.

(4) Without prejudice to any other provision contained in this Act, the Director-General and the Chief Inspector shall have all the power of a civil court under the Code of Civil procedure, 1908 (5 of 1908), while exercising any powers under this section, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.

(5) Nothing contained in this section shall be construed to prevent the person concerned from being prosecuted under any other provision of this Act or any other law for any offence made punishable by this Act or by that other law, as the case may be, or for being liable under this Act or any such law to any other the case may be, or for being liable under this Act or any such law to any other or higher penalty or punishment than is provided for such offence by this section:

Provided that no person shall be punished twice for the same offence.

Contravention or failure to comply with any provision of the Act or any rules made thereunder is, where no express penalty is provided for such contravention or failure, punishable with fine upto one thousand rupees for every such contravention or failure Continuing contravention or failure is punishable with additional fine upto one hundred rupees for every day during which such contravention or failure continues after the conviction for the first contravention or failure.

51. Appeal. - (1) Any person aggrieved by the imposition of any penalty under section 50 may prefer an appeal-

- (a) where the penalty has been imposed by the Director-General, to the Central Government;
- (b) where the penalty has been imposed by the Chief Inspector, to the State Government,

within a period of three months from the date of communication to such person of the imposition of such penalty:

Provided that the Central Government of the State Government, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring an appeal within the aforesaid period of three months, allow such appeal to be preferred within a further period of three months.

(2) The appellate authority may, after giving the appellant an opportunity of being heard, if he so desires, and after making such further inquiry, if any, as it may consider necessary pass such order as it thinks fit confirming ,modifying or reversing the order appealed against or may send back the case with such discussion as it may think for a fresh decision.

COMMENTS

If any person is aggrieved by the imposition of any penalty under section 50 he can prefer an appeal to the Central Government where the penalty is imposed by the Director General, to the State Government where the penalty is imposed by the Chief Inspector within a period of three months from the date of communication to such person of the imposition of the penalty. If the appellant has been prevented by sufficient cause from preferring an appeal within three months the Government may allow such appeal to be preferred within a further period of three months.

52. Recovery of penalty. – Where any penalty imposed on any person under section 50 is not paid,-

- (i) the Director-General or, as the case may be, the Chief Inspector may deduct the amount so payable from any money owing to such person which may be under his control; or
- (ii) the Director-General or, as the case may be, the Chief Inspector may recover the amount so payable by detaining or selling the goods belonging to such person which are under his control; or

(iii) if the amount cannot be recovered from such person in the manner provided in clause (i) or clause (ii) the the Director-General or, as the case may be, the Chief Inspector may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business and the said Collector, on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue.

53. Offences by companies.- (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company , as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge of that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished according.

Explanation.- For the purpose of this section,-

- i. "company" means any body corporate and includes a firm or other association of individuals; and
- ii. "director", in relation to a firm, means a partner in the firm.

54. Cognizance of offences.- (1) No court shall take cognizance of any offence punishable under this Act except on a complaint-

- (a) made by, or with the previous sanction in writing of, the Director-General or the Chief Inspector; or
- (b) made by an office-bearer of a voluntary organization registered under the Societies Registration Act, 1926 (16 of 1926).
- (c) Made by an office –bearer of any concerned trade union registered under the Trade Unions Act,1926 (16 of 1926)

(2) No court inferior to that of a Metropolitan magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

55. Limitation of prosecutions.- No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the Director-General, the Chief Inspector, an office- bearer of a voluntary organization or ,as the case may be, an office- bearer of any concerned trade union.

CHAPTER-XI MISCELLANEOUS

56. Delegation of powers.- A Board may, by general or special order, delegate to the Chairperson or any other member of to the Secretary or any other officer or employee of the Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Act as it may deem necessary.

57. Returns.- Every Board shall furnish from time to time to the Central Government and to the State Government such returns as they may require.

58. Application of Act 8 of 1923 to building workers.- The provisions of the Workmen's Compensation Act, 1923, shall so far as may be, apply to building workers as if the employment to which this Act applies had been included in the Second Schedule to that Act.

59. Protection of action taken in good faith -(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

(2) No Prosecution or other legal proceeding shall lie against the Government, any Board or Committees constituted under this Act or any Board or any other person authorised by the Government or any Board or Committee, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made or issued thereunder.

60 Power of Central Government to give directions- The Central Government may give directions to the Government of any State or to a Board as to the carrying into execution in that State of any of the provision of this Act.

61 Power to remove difficulties -(1) If any difficulties arise in giving effect to the provisions of this Act, the Central Government may by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as may be after it is made, be laid before each House of Parliament.

62 Power to make rules-(1) The appropriate Government may, after consultation with the expert committee, by notification, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:-

- (a) the number of persons to be appointed as members representing various interests on the Central Advisory Committee and the State Advisory Committees, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies under sub-section (3) of section 4;
- (b) the fees and allowances that may be paid to the members of the expert committee for attending its meetings under sub-section (2) of section 5;
- (c) the form of application for the registration of an establishment, the levy of fees thereof and the particulars it may contain under sub-section (2) of section 7;
- (d) the form of certificate of registration, the time within which and the conditions subject to which such certificate may be issued under sub-section (3) of section 7;
- (e) the form which the change in ownership or management or other particulars shall be intimated to the registering officer under sub-section (4) of section 7;
- (f) the form in which an application for registration as a beneficiary shall be made under sub-section(2) section 12;

- (g) the document and the fee which shall accompany the application under sub-section (3) of section 12;
- (h) the registers which the Secretary of the Board shall cause to be maintained under the sub-section 12;
- (i) the benefits which may be given under sub-section (2) of section 14;
- (j) the form in which register of beneficiaries shall be maintained under section 15;
- (k) the term and conditions of appointment, the salaries and other allowances payable to, and the manner of filling casual vacancies of, the Chairperson and other member of the Board under sub-section (4) of section 18;
- (l) the term and condition of service and the salaries and allowances payable to the Secretary and the other officers and employees of the Board under sub-section (3) of section 19;
- (m) the time and place of the meeting of the Board and the rules of procedure to be followed at such meeting under sub-section (1) of section 20 including quorum necessary for the transaction of business;
- (n) the amount payable as house building loans or advances, the terms and condition of such payment under clause (c), educational assistance under clause (e) medical expenses payable and the persons who shall be the dependent of the beneficiaries under clause (f), and the other welfare measures for which provision may be made under clause (h) of sub-section (1) of section 22;
- (o) the limits of grants-in-aid payable to the local authorities and employers under clause (b) of sub-section (3) of section 22;
- (p) the form in which and the time within which the budget of the Board shall be prepared and forwarded to Government under section 25;
- (q) the form in which and the time within which the annual report of the Board shall be submitted to the State Government and the Central Government under section 26;
- (r) the form of annual statement of accounts under sub-section (1), and the date before which the audited copy of the accounts together with the auditor's report shall be furnished under sub-section (4) of section 27;
- (s) the matters required to be provided under sub-section (1) of section 28 and the extent up to which, and the conditions subject to which, the provisions of that sub-section shall apply to the building workers under sub-section (2) of that section;
- (t) the registers and records that shall be maintained by the employer and the form in which such registers and records shall be maintained and the particulars to be included therein under sub-section (1) of section 30;
- (u) the form and manner in which a notice shall be exhibited and the particulars it may contain under sub-section (2) of section 30;
- (v) the issue of wage books or wage slips to building workers and the manner in which entries are to be made and authenticated in wage books or wage slips under sub-section (3) of section 30;

- (w) the types of latrines and urinals required to be provided under section 33;
- (x) the first-aid facilities which are to be provided under section 36;
- (y) the canteen facilities which are to be provided under clause (a) of section 37;
- (z) the welfare measures which are to be provided under clause(b) of section 37;
- (za) the number of representatives of the employer and the building workers under sub-section (1) of section 38 and the qualifications of safety officers and the duties to be performed by them under sub-section (2) of that section;
- (zb) the form of notice of accident, other matters to be provided in this behalf and the time within which such notice shall be given under sub-section (1) of section 39;
- (zc) the rules to be made for the safety and health of building workers under section 40;
- (zd) the powers that may be exercised by an Inspector under clause (e) of sub-section (1) of section 43 and the qualifications and experience which the experts or agencies employed under sub-section (2) of that section shall possess and the terms and condition on which such experts or agencies may be employed;
- (ze) the date on or before which wages shall be paid to a building worker under section 45;
- (zf) the matters which are required to be prescribed under clause (i) of sub-section (1) of section 46;
- (zg) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or, where such Legislature consists of one House, before that House.

63. Saving of certain laws.- Nothing contained in this Act shall affect the operation of any corresponding law in a State providing welfare schemes which are more beneficial to the building and other construction workers than those provided for them by or under this Act.

64. Repeal and saving.- (1) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Third Ordinance, 1996 (Ord.25 of 1996), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT, 1996

INTRODUCTION

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 which were to be constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Ordinance, 1995, an Ordinance, namely the Building and Other Construction Workers Cess Ordinance, 1995 (Ord.15 of 1995), was promulgated by the President on 3rd November, 1995. In order to replace this Ordinance by an Act of Parliament, a Bill was introduced in the Lok Sabha. Since the Bill could not be taken up for consideration and passing in the Winter Session, 1995 and the Budget Session, 1996 of Lok Sabha, the Building and Other Construction Workers' Welfare Cess Ordinance, 1996 and the Building and Other Construction Workers' Welfare Cess Second Ordinance, 1996 respectively were promulgated on 5th January, 1996 and 27th March, 1996 with a view to give continued effect to the legislative protection. On the dissolution of the Tenth Lok Sabha, the Building and Other Construction Workers' Welfare Cess Bill, 1995 stood lapsed. On 20th June, 1996 another Ordinance namely the Building and Other Construction Workers' Welfare Cess Third Ordinance was promulgated by the President. To replace this Ordinance by an Act of Parliament the Building and Other Construction Workers' Welfare Cess Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

The Bill is complementary to the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill, 1996 proposed to be introduced and considered simultaneously. With view to provide of the levy and collection of a cess on the cost for 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 (Ordinance 14 of 1995), an Ordinance, namely, the Building and Other Construction Workers' Welfare Cess Ordinance, 1995 (Ordinance 15 of 1995), was promulgated by the President on the 3rd November, 1995. The intention was to make over, after due appropriation by Parliament by law, the proceeds of the cess, to the State Building and Other Construction Workers' Welfare Boards and the cost of collection not exceeding one percent of the cess collected to the State Governments to whom it is proposed to delegate the authority to collect the cess. A Bill, namely, the Building and Other Construction Workers' Welfare Cess Bill, 1995 was introduced in Lok Sabha on the 1st December, 1995 to replace the said Ordinance by an Act of Parliament. Since the said Bill could not be taken up for consideration and passing in the Winter Session, 1995 and the Budget Session 1996 of Lok Sabha, the Building and Other Construction Workers' Welfare Cess Ordinance, 1996 and the Building and Other Construction Workers' Welfare Cess Second Ordinance, 1996 respectively were promulgated on the 5th January, 1996 and the 27th March, 1996 with a view to give continued effect to the legislative protection. On the dissolution of the Tenth Lok Sabha, the Building and Other Construction Workers' Welfare Cess Bill, 1995 stood lapsed. By virtue of Article 123 (2)

(a) of the Construction the Building and Other Construction Workers Welfare Cess Second Ordinance, 1996 promulgated on the 27th March, 1996 Would have also ceased to operate with effect from the 4th July,1996. In view of the urgency felt and as the Parliament was not in session, the President was pleased to promulgate the Building and Other Construction Workers' Welfare Cess Third Ordinance, 1996 on 20th June 1996 in order to give continued effect to the legislative protection envisaged in the early Ordinance.

2. The Bill seek to replace the Building and Other Construction Workers' Welfare Cess Ordinance, 1996 (Ordinance 26 of 1996).

ACT 28 OF 1996

The Building and Other Construction Workers Welfare Cess Bill having been passed by both House of Parliament received the assent of President on 19th August, 1996. It came on the Statute Book as THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT, 1996 (28 of 1996).

THE BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS ACT,1996 (28 OF 1996)

An act provided 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.

Be it enacted by Parliament in the Forty-seventh Year of Republic of India as follows:-

1. Short title, extend and commencement.-(1) This Act may be called the Building and Other Construction Workers' Welfare Cess Act, 1996.

(2) It extends to the whole of India.

(3) It shall be deemed to have come into force on the 3rd day of November, 1995.

2. Definitions. – In this Act, unless the context otherwise requires,-

(a) “Board” means a Building and Other Construction Workers Welfare Board constituted by a State Government under sub-section (1) of section 18 of the Building and Other Construction Workers' (Regulation of Employment and Condition of Service) Act,1996;

(b) “Fund” means the Building and Other Construction Workers' Welfare Fund constituted by a Board;

(c) “Prescribed” means prescribed by rules made under this Act;

(d) word and expression used here but not defined and defined in the Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act 1996 shall have the meaning respectively assigned to them in that Act.

3. Levy and collection of cess.- (1) There shall be levied and collected a cess for the purpose of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996, at such rate not exceeding two percent , but not less than one percent 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 Building and 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 basis of the quantum of the building or other construction work involved.

COMMENTS

For the purpose of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (27 of 1996), a cess at the rate of one percent of the cost of Construction incurred by the employer is to be levied and collected vide S.O. 2899, dated 26th September, 1996.

4. Furnishing of returns- (1) Every employer shall furnish such return to such officer or authority, in such manner and at such time as may be prescribed,

(2) If any person carrying on the Building and other construction work, liable to pay the cess under section 3, fails to furnish any return under sub-section (1) the officer or the authority shall give a notice requiring such persons to furnish such return before such date as may be specified in the notice.

COMMENTS

Every employer who is carrying on the building or other construction work is to furnish a return to an officer or authority prescribed by the Government. If any employer fails to furnish such return the officer or the authority shall give notice requiring such employer to furnish such **return** before the specified date.

5. Assessment of cess.- (1) The officer or authority to whom or to which the return has been furnished under section 4 shall, after making or causing to be made such inquiry as he or it thinks fit and after satisfying himself or itself that the particulars stated in the return are correct, by order, assess the amount of cess payable by the employer.

(2) If the return has not been furnished to the officer or authority under sub-section (2) of section 4, he or it shall, after making or causing to be made such inquiry as he or it thinks fit, by order, assess the amount of cess payable by the employer.

(3) An order of assessment made under sub-section (1) or sub-section (2) shall specify the date within which the cess shall be paid by the employer.

6. Power to exempt.- Notwithstanding anything contained in this Act, the Central Government may, by notification in the Official Gazette, exempt any employer of class of employers in a State from the payment of cess payable under this Act where such cess is already levied and payable under any corresponding law in force in that State.

7. Power of entry.- Any officer or authority of the State Government specially empowered in this behalf by that Government may-

(a) with such assistance, if any, as he or it may think fit, enter at any reasonable time any place where he or it considers it necessary to enter for

- carrying out the purposes of this Act including verification of the correctness of any particulars furnished by any employer under section 4;
- (b) do within such place anything necessary for the proper discharge of his or its duties under this Act; and
 - (c) exercise such other powers as may be prescribed.

8. Interest payable on delay in payment of cess.- If any employer fails to pay any amount of cess payable under section 3 within the time specified in the order of assessment, such employer shall be liable to pay interest on the amount to be paid at the rate of two percent for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

COMMENTS

Failure to pay any amount of cess within the specified time entails payment of interest on the amount to be paid at the rate of two percent. For every month or a part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.

9. Penalty for non-payment of cess within the specified time.- If any amount of cess payable by any employer under section 3 is not paid within the date specified in the order of assessment made under section 5, it shall be deemed to be in arrears and the authority prescribed in this behalf may, after making such inquiry as it deems fit, impose on such employer a penalty not exceeding the amount of cess:

Provided that, before imposing any such penalty, such employer shall be given a reasonable opportunity of being heard and if after such hearing the said authority of being heard and if after such hearing the said authority is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this section.

COMMENTS

Failure to pay the payable amount of cess within the specified date shall be deemed to be in arrears and the prescribed authority can impose a penalty not exceeding the amount of cess. But before imposing any penalty the employer shall be given a reasonable opportunity of being heard.

10. Recovery of amount due under the Act.- Any amount due under this Act (including any interest or penalty) from an employer may be recovered in the same manner as an arrear of land revenue.

COMMENTS

Any amount due under the Act is to be recovered as an arrear of land revenue.

11. Appeals.- (1) Any employer aggrieved by any order of assessment made under section 5 or by an order imposing penalty made under section 9 may, within such time as may be prescribed, appeal to such appellate authority in such form and in such manner as may be prescribed.

(2) Every appeal preferred under sub-section (1) shall be accompanied by such fees as may be prescribed.

(3) After the receipt of any appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

(4) Every order passed in appeal under this section shall be final and shall not be called in question in any court of law.

12. Penalty.- (1) Whoever, being under an obligation to furnish a return under this Act, furnishes any return knowingly, or having reason to believe, the same to be false shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever, being liable to pay cess under this Act, willfully or intentionally avades or attempts to evade the payment of such cess shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(3) No court shall take cognizance of an offence punishable under this section save on a complaint made by or under the authority of the Central Government.

13. Offence by companies.- (1) Where an offence under the Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purpose of this section,-

(a) “company means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

14. Power to make rules.- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the manner in which and the time within which the cess shall be collected under sub-section (2) of section 3;

(b) the rate or rates of advance cess leviable under sub-section (4) of section 3;

(c) the particulars of the returns to be furnished, the officer or authority to whom or to which such return shall be furnished and the manner and time of furnishing such returns under sub-section (1) of section 4;

(d) the powers which may be exercised by the officer or authority under section 7;

(e) the authority which may impose penalty under section 9;

(f) the authority to which an appeal may be filed under sub-section(1) of section 11 and the time within which and the form and manner in which such appeal may be filed;

(g) the fees which shall accompany an appeal under sub-section (2) of section 11; and

(h) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form of be of no effect, as the case may, so, however, that any such

modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

15. Repeal and saving.- (1) The Building and Other Construction Workers' Welfare Cess Third Ordinance, 1996 (Ord. 26 of 1996), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

BUILDING AND OTHER CONSTRUCTION WORKERS' WELFARE CESS RULES, 1998

In exercise of the powers conferred by sub-section (1) of section 14 of the Building and Other Construction Workers' Cess Act, 1996 (Act 28 of 1996), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement.- (1) These rules may be called the Building and Other Construction Workers' Cess Rules, 1998.

2. They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.- In these rules, unless the context otherwise requires,-

- (a) "Act" means the Building and Other Construction Workers' Welfare Cess Act, 1996 (Act 28 of 1996);
- (b) "Main Act" means the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (Act 27 of 1996);
- (c) "Form" means the form annexed to these rules;
- (d) all other words and expressions used in these rules but not defined and defined in the Act or in the main Act shall have the meanings respectively assigned to them in those Acts;
- (e) "specified" means specified by a State Government by an order published in the Official Gazette;
- (f) "Cess Collector" means an officer appointed by the State Government for collection of cess under the Act;
- (g) "Assessing Officer" means a gazetted officer of a State Government or an officer of a local authority holding an equivalent post to a gazetted officer of the State Government appointed by such State Government for assessment of Cess under the Act;
- (h) "Appellate Authority" means an officer, senior in rank to the Assessing Officer, appointed by the State Government for the purposes of section 11 of the Act.

3. Levy of cess.- For the purpose of levy of cess under sub-section (1) of section 3 of the Act, cost of construction shall include all expenditure incurred by an employer in connection with the building or other construction work but shall not include-

-- cost of land;

-- any compensation paid or payable to a worker or his kin under the Workmen's Compensation Act, 1923.

1.-----Vide G.S.R. 149 (E), dated 26th March, 1998, published in the Gazette of India, Extra., Pt. II, Sec.3 (i), dated 26th March, 1998.

4. Time and manner of collection.- (1) The cess levied under sub-section (1) of section 3 of the Act shall be paid by an employer, within thirty days of completion of the construction project or within thirty days of the date on which assessment of cess payable is finalized, whichever is earlier, to the cess collector.

(2) Notwithstanding the provisions of sub-rule (1), where the duration of the project or construction work exceeds one year, cess shall be paid within thirty days of completion of one year from the date of commencement of work and every year thereafter at the notified rates on the cost of construction incurred during the relevant period.

(3) Notwithstanding the provisions of sub-rule (1) and sub-rule (2), where the levy of cess pertains to building and other construction work of a Government or of a Public Sector Undertaking, such Government or the Public Sector Undertaking shall deduct or cause to be deducted the cess payable at the notified rates from the bills paid for such works.

(4) Notwithstanding the provisions of sub-rule (1) and sub-rule (2), where the approval of a construction work by a local authority is required, every application for such approval shall be accompanied by a crossed demand draft in favour of the Board and payable at the station at which the Board is located for an amount of cess payable at the notified rates on the estimated cost of construction:

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of commencement and further payments of cess due shall be made as per the provisions of sub-rule (2).

(5) An employer may pay in advance an amount of cess calculated on the basis of the estimated cost of construction along with the notice of commencement of work under section 46 of the Main Act by a crossed demand draft in favour of the Board and payable at the station at which the Board is located:

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of such commencement and further payments of cess due shall be made as per the provisions of sub-rule (2).

(6) Advance cess paid under sub-rules (3), (4) and (5), shall be adjusted in the final assessment made by the Assessing Officer.

5. Transfer of the proceeds of the cess to the Board.- (1) The proceeds of the cess collected under rule-4 shall be transferred by such Government office, Public Sector Undertakings, local authority, or cess collector, to the Board alongwith the form of challan prescribed (and in the head of account of the Board) under the accounting procedures of the State, by whatever name they are known.

(2) Such government office of Public Sector Undertaking may deduct from the cess collected, or claim from the Board, as the case may be, actual collection expenses not exceeding one per cent of the total amount collected.

(3) The amount collected shall be transferred to the Board within thirty days of its collection.

6. Information to be furnished by the employer.—(1) Every employer, within thirty days of commencement of his work of payment of cess, as the case may be, furnish to the Assessing Officer, information in Form-I.

(2) Any change or modification in the information furnished under sub-rule (1) shall be communicated to the Assessing Officer immediately but not later than thirty days from the date of affecting the modification or change.

7. Assessment.- (1) The Assessing Officer, on receipt of information in Form-I from an employer shall make a scrutiny of such information furnished and, if he is satisfied about the correctness of the particulars so furnished, he shall make an order of assessment within a period not exceeding six months from the date of receipt of such

information in Form-I , indicating the amount of cess payable by the employer and endorse a copy thereof to the employer, to the Board and to the cess collector and dispatch such order within five days of the date on which such order is made.

(2) The order shall inter-alia specify the amount of cess due, cess already paid by the employer or deducted at source and the balance amount payable and the date, consistent with the provision of rule-4 , by which the cess shall be paid to the cess collector.

(3) If on scrutiny of information furnished, the Assessing Officer is of the opinion that employer has under-calculated or miscalculated the cost of construction or has calculated less amount of cess payable, he shall issue notice to the employer for assessment of the cess.

(4) On receipt of such notice the employer shall furnish to the Assessing Officer a reply together with copies of documentary of other evidence in support of his claim, within fifteen days of the receipt of the notice:

Provided that the Assessing Officer may, in the course of assessment, afford an opportunity to the assessee to be heard in person, if he so requests to substantiate his claim.

(5) If the employer fails to furnish the reply within the period specified under sub-rule (4), or where an employer fails to furnish information in Form-I, the Assessing Officer shall proceed to make the assessment on the basis of available records, and other information incidental thereto.

(6) The Assessment Officer may, at anytime while the work is in progress, authorise such officer to make such enquiry at the work site of from documentary evidence or in any other manner as the may think fit for the purpose of estimating the cost of construction as accurately as possible.

8. Return of overpaid cess.- (1) Where the Assessing Officer has passed an order of assessment and the employer decides to withdraw from or foreclose the works or modifies the plan of construction thereby reducing the cost of construction undertaken or has been forced by other circumstances to call off the completion of the work undertaken, he may seek revision of the assessment order by making an information in Form-II to the Assessing Officer giving details of such reduction or stoppage of work.

(2) Revision of order of assessment shall be made by the Assessing Officer, in the same manner as the original order, within thirty days of receipt of such information in Form-II.

(3) Following the revision of assessment as per sub-rule (2), the Assessing Officer shall, wherever necessary, endorse a copy of the revised assessment to the Board or cess collector, as the case may be, for making the refund of excess cess as ordered in the revised assessment.

(4) The Board shall, within thirty days of receipt of the endorsement from the Assessing Officer under sub-rule (3), refund the amount specified in the order to the employer through a demand draft payable at the station where the establishment is located.

(5) Where there Appellate Authority has modified the order of assessment reducing the amount of Cess, reform shall be made within such time as ay be specified in that order.

9. Exemption.- (1) any employer or class of employers in a State seeking exemption under section 6 of the Act may make an application to the Director General of Labour Welfare, Ministry of Labour, Government of India, stating the details of works undertaken, name of the Act or corresponding law in force in that State under which he is liable to pay Cess for the welfare of the Construction Workers and amount of Cess

actually paid along with the date of such payment on prove thereof. A copy of such application shall be endorsed to each of the Assessing Officer and the Board concerned.

(2) On receipt of such application the Central Government may, if it feels necessary, seek a report from the State Government concerned.

(3) On Examining the ground fact and material of such application the Central Government may, by notification in the official Gazette issue an order exempting the employer or class of employers, as the case may be, from payment of cess payable under the act where such cess is already levied and payable under such corresponding law.

(4) Assessment proceedings shall be stopped by the Assessing Officer for a period of thirty days commencing from the date of the receipt of a copy of the application under sub-rule (1) to him, or till the order of the Central Government under sub-rule (3) is conveyed to an employer or class of employers who made the applications under sub-rule (1), whichever is earlier.

10. Powers of Assessing Officer and other Officer.- (1) An Assessing Officer, or an officer authorised under sub-rule (6) of rule-7, if empowered by the State Government u/S. 7 of the Act, may,-

- (a) enter any establishment where building and other construction work is going on ;
- (b) make an inventory of materials, machinery or other articles lying at the work place;
- (c) enquiry about the number of workers engaged in various activities;
- (d) require the production of any prescribed register or any other document relevant to the assessment of cost of construction or number of workers employed;
- (e) seize or take copies of any such records;
- (f) make general assessment of the stage of the construction work having been completed;
- (g) direct the employer or any other person in charge of the place that no material or machinery shall be removed or disturbed for so long as is necessary for the purpose of any examination;
- (h) take measurement, notes or photographs;
- (i) exercise such other powers considered absolutely necessary for reasonable assessment of cost of construction.

11. Date of payment.- Date of payment of cess shall be the date on which the amount is deposited with the cess collector under sub-rule(1) of rule 4, or the date of deduction at source under sub-rule (3) of rule 4, or the date on which the draft has been deposited with the local authority under sub-rule (4) of rule 4, as the case may be.

12. Penalty for non-payment.- (1) An Assessing Officer, if it appears to him that an employer has not paid the cess within the date as specified in the assessment order or has paid less cess, including the cess deducted at source or paid in advance, shall issue a notice to such employer that it shall be deemed to be in arrears and such Assessing Officer may, after such inquiry as it deems fit, impose on such employer, a penalty not exceeding such amount of cess:

Provided that before imposing any such penalty, such employer shall be given a reasonable opportunity of being heard and if after such hearing the Assessing Officer is satisfied that the default was for any good and sufficient reason no penalty shall be imposed on such employer.

13. Recovery of overdue amount.- For the purpose of recovery of sums due on account of unpaid cess, interest for overdue payment or, penalty under these rules, the assessing officer shall prepare a certificate signed by him, specifying the amount due and

send it to the collector of the district concerned who shall proceed to recover from the said employer the amount specified thereunder as if it were an arrear of land revenue.

14. Appeal.- (1) An employer aggrieved by an order of the assessment made under rule 7 or by an order imposing penalty made under rule 12 may appeal against such order, within three months of the receipt of such order, to the Appellate Authority.

(2) The appeal shall be accompanied with-

- (a) the order appealed against;
- (b) a certificate from the cess collector to the effect that the amount of cess or penalty or both, as the case may be, relating to such appeal has been deposited;
- (c) a fee equivalent to one per cent of the amount in dispute or penalty or both, as the case may be, under such appeal;
- (d) a statement of points in dispute;
- (e) documentary evidence relied upon.

(3) On receipt of the appeal the Appellate Authority may call from the Assessing Officer a statement on the basis of his assessment order appealed against, as such Appellate Authority may consider necessary for the disposal of such appeal.

(4) The Appellate Authority shall give the appellant an opportunity of being heard in the matter and dispose of the appeal as expeditiously as possible.

(5) On being satisfied on the quantum of cess the Appellate Authority shall confirm the order of the Assessing Officer or if in his opinion the assessment was wrong or on the higher side shall modify the order of assessment or if in his opinion the assessment is on the lower side or if the basis of assessment is wrong, it shall remand back the assessment order to the Assessing Officer alongwith his observations to rectify the wrong.

(6) An order remanded back under sub-rule (5) shall be disposed of by the Assessing Officer within one month in view of the observation made by the Appellate Authority.

(7) No appeal shall lie against the order of the Appellate Authority under this rule.

(8) If the Appellate Authority is of the opinion that the quantum of penalty imposed is on the higher side or not correctly made it shall suitably modify or set aside the order of the Assessing Officer, as the case may be.

(9) The appeal under this rule shall be disposed of by making a speaking order and a copy of such order shall be sent to each of the appellant, the Assessing Officer and the Board within five days of the date on which such order is made.

(10) An order in appeal reducing the amount of cess shall also ask the Board to refund the excess cess.

(11) An order in appeal reducing, enhancing or confirming the orders of penalty, as the case may be, shall also specify the date by which the amount of penalty should be paid / refunded.

15. Filing of complaints.- (1) The Assessing Officer, or any inspector under the main Act, or a Trade Union, having come to know of violation of an obligation to furnish return, furnishing of false information, intentionally or willfully evading or attempting to evade the payment of cess may make a complaint to the Board. The Board on receiving such complaint shall examine the complaint and if it so decide may refer such complaint to the Central Government for taking legal action against the offender.

(2) The Central Government on receiving such reference may make such inquiry as may be considered necessary and authorise an inspector of appropriate jurisdiction to file a complaint in the court of law.