25th DR. RAMANATHAM MEMORIAL MEETING, 2010

Unorganised Workers and the Commonwealth Games (CWG) Project: PUDR's experience

I. Introduction

In 2007 Peoples Union for Democratic Rights had brought out a report on the exploitation of construction workers at Jawaharlal Nehru University (JNU). Soon after, as construction work started at a massive scale all over the city for the Commonwealth Games (CWG) to be held in October this year, a need to highlight the plight of the construction workers was strongly felt. We were pretty sure that the violation of rights of these construction workers would be as rampant as in case of those of the Asiad '82 or for that matter, workers engaged in construction in all other projects ever since.

Construction workers are at a more disadvantageous position than even casual labour working in industrial units or engaged as security or sanitation staff, because of the time bound nature of their work. Majority of these workers are from other states and migrate to the city for work due to extremely distressing economic conditions back home. They work at different sites for varying durations depending on the availability of work and many of them stay in the city for fairly short durations. Hence time becomes precious for any intervention aimed at the protection of their rights.

Secondly, the shifting nature of their work makes it impossible for them to organise themselves and struggle for their rights.

Thirdly, workers recruited through the *thekedars, sardars* or *jamdars* (either introduced to them through social networks or not known to them) are in no state to bargain with them because of the workers' total dependence and insecure economic condition. Even though employment of labour by an unlicensed contractor is prohibited, our experience with the CWG shows that the lowest level *thekedars* mostly do not have licenses to recruit workers as is required under the law. This together with total disregard of the principal employer to labour laws and their implementation leads to a situation of no check on the exploitation of construction workers.

II. Chronology and outcome of PUDR's engagement with the issue of rights of workers in the CWG

PUDR started its investigation regarding the working and living conditions at the CWG construction sites in early 2008. We tried to get permission from the site engineer to the Central Labour Commissioner to visit the sites but were denied. We managed to carry out our investigation at the CWG village sites' labour

camps from December 2008 and in April 2009 we released our report highlighting widespread violations of labour laws. The violations included denial of minimum wages, overtime and weekly offs; irregular payment of wages; not giving proof of employment i.e. identity cards and wage slips to the workers; not registering the workers with the welfare board; not maintaining muster rolls and registers; neglecting provision of safety equipment, its regular repair, maintenance and inspection as required under the law; not giving the safety equipments free of cost; not giving displacement or travel allowance to migrant workers; not paying equal wages to women workers; not providing adequate, safe and hygienic residential and living conditions and basic amenities; no proper medical facilities in accordance with law. All these are violations as per the *Building and other Construction Workers (Regulation of Employment and Condition of Services) Act* (1996) (hereafter BCWA), *Minimum Wages Act* (1948), *Interstate Migrant Workmen (Regulation of Employment and Condition of Services) Act* (1979), and *the Contract Workers (Prohibition and Regulation) Act* (1970), Equal Remuneration Act. The report was sent to all concerned authorities that is the Central and State Labour Departments, the principal employers DDA, MCD, NDMC, PWD and CPWD. However none of these government agencies took any steps to stop the violations or to bring the perpetrators to book.

In order to seek judicial redressal PUDR decided to file a Public Interest Litigation (PIL). The next few months were spent finding a lawyer, because most of the lawyers on the basis of their experiences with PILs were apprehensive that such a petition will not be admitted in the first place. Finally a PIL was filed in January, 2010 in the Delhi High Court together with Common Cause and Nirmaan Mazdoor Panchayat Sangam. The matter came up before the then Chief Justice A.P. Shah, who in February this year constituted a four member Monitoring Committee (MC) comprising of the Secretary (Labour), Govt. of National Capital Territory of Delhi (GNCTD), Mr. R. D. Srivastav; Commissioner (Labour), NCT of Delhi, Mr. A. K. Singh; Former Indian Ambassador to the United Nations, Ms. Arundhati Ghose; and Special Rapporteur, National Human Rights Commission, Dr. Lakshmidhar Mishra, to assess the ground realities. The Court instructed the Committee to take appropriate steps to redress the grievances of the construction workers in Delhi and to implement the provisions of the Construction Workers Act (BCWA).

Even though the Court's decision to appoint a committee to look into the allegations was a positive one there were serious lacunae in the composition of the committee. Two of its members were from the Labour Department of NCT of Delhi, and the one co-opted member was from the Labour Department (Central Government) – all of whom were technically part of the respondents in the case. The Committee was set up keeping the workers' interests in mind. However, it was not in the interests of the two Labour Departments that violation of workers'

rights and non-implementation of labour laws come to light. Needless to say, this contradiction had an adverse effect on the functioning of the Committee. The Labour Department, which is supposed to protect the rights of the workers was seen openly trying to shield the illegalities of the contractor companies at the cost of workers' interests. Other government agencies like DDA, NDMC, MCD, DMRC and CPWD also joined hands in furthering this common objective since they were trying to cover up their own deeds of commission and omission as principal employers.

The committee conducted field visits to various sites and submitted its report on 17th March. In spite of all the cover up operations the illegalities could not be concealed and the Committee's report categorically stated that the "*allegations made by the petitioners are well founded*." The Committee made detailed, both long term and short term, recommendations to check the violation of labour laws.

However, PUDR's follow up of the construction sites in the last two months shows that in spite of repeated court hearings and orders passed, nothing has changed for the workers. Let alone getting any pending dues, the workers are still being made to continue doing forced labour by paying them less than two-third of the minimum wages almost at every site, living conditions remained as abysmal as before, safety norms are being compromised even more with the pressure to meet deadlines and almost no action was taken by the labour department against a single contractor, or official of a construction company, or the principal employer government agencies, for illegalities committed by them.

III. Limitations of Judicial Intervention

There have been a few significant landmark judgments in cases related to unorganised workers.

- **Thus in 1982 in the Asiad case (PUDR vs Union of India ORS [1982] INSC 67)** the SC stated "…where a person is made to work for less than the minimum wages, it would be considered forced labour as required by Article 23." So the violation of the Minimum Wages Act, 1948 is a violation of the fundamental right against exploitation under Article 23 of the Constitution which makes a specific reference to bonded and forced labour. Violation of Equal Remuneration Act, 1946, that is, not giving equal wages to male and female workers for the same work, is a violation of right to equality under Article 14 of the Constitution. The SC stated that through the Contract Labour (Prohibition and Regulation) Act 1970 and Inter State Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979, the basic human dignity of the workers is ensured and therefore their violation amounts to the violation of right to life and liberty under Article 21 of the Constitution. The SC held the Central Government, Delhi administration and DDA responsible for these violations because as principal employers they are responsible for

ensuring that these rights are not violated. The court also said that the concerned authorities should develop machinery through which it can investigate violations of the labour laws. It further directed that in case violations occur, strict action should be taken against the contractors and the concerned officials.

- **In the Bandhua Mukti Morcha vs. Union of India (3SCC 161 (1984)) case** the SC again said …." Whenever it is shown that the labourer is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is, therefore, a bonded labour, unless and until…satisfactory material is provided for rebutting this presumption the court must proceed on the basis that the labourer is a bonded labourer".

Even when the highest court of the land passes orders of this kind there is no guarantee that they would translate into any real change at the ground level. In fact the CWG experience shows that even landmark judgments have continuously been flouted in the subsequent years.

IV. What makes for the non-enforcement of labour laws?

1. Working of mechanisms and agencies for implementation:

Labour occurs in the concurrent list of distribution of power. Which means both the Central and State governments are empowered to legislate in the field. There are 260 legislations in the field of labour. But our experience has clearly shown that the very nature of these laws and the mechanisms for their implementation suggests that their implementation is impossible in case of workers from the unorganised sector, especially construction workers.

These laws impose a number of obligations on the contractors employing the workers. These include payment of wages as per the law, maintaining muster rolls - records of the workers' employment and payment of wages. Again, the laws hold the principal employer also obligated for the implementation of the labour laws. However there is no mechanism for accountability. Public private partnership has made the term principal employer more ambiguous than what it has been earlier. For example in the Commonwealth Games village site the DDA and the main construction company Emaar – MGF are the joint principal employers. Our experience has shown that joint responsibility in such cases translates into nobody's responsibility. In case of smaller projects the principal employer does not even know that as principal employer it is his responsibility to ensure implementation of labour laws. In case of construction work through government agencies in various institutions the head of the institution often tries to get away by claiming that the agency executing the project is the principal employer. The Vice Chancellor of JNU, for instance, claimed CPWD is the

principal employer which was getting the work done through a construction company called Jialal Malhotra and Company. The chain of employing agencies makes it convenient for all of them to pass the buck and get away on being confronted, though such confrontations themselves are rare.

In spite of the SC judgment of 1982, none of the government agencies even in the Capital have developed a machinery to check the violation of labour laws. As a result, the Labour Department is the sole body available to enforce labour laws and to check their violation, through their inspectors. The department is marked by its utterly callous approach. Non-availability of sufficient staff is offered as a justification for not fulfilling its obligations. Our experience shows that it is the lack of will to take any measures in the direction of ensuring compliance of labour laws. Denial of the existence of any problem is the strategy that is followed. In case of work related to the CWG Village site, Central Labour Department maintained that there have been isolated instances of violations, which have been taken care of. This was when our investigation had shown that hardly any worker was being paid wages, other benefits and facilities as per the law.

While the BCWA provides greater avenues for cognizance of violations by the Court of Metropolitan Magistrate or a Judicial Magistrates First Class, even these have serious limitations. For instance, for them to take cognizance there has to be a complaint filed by the Director General or Chief Inspector, by a voluntary organisation registered under the Societies Registration Act or by a concerned trade Union.

In any case, if by any chance the defaulters are brought to book, the penalties under various acts are so small that they cannot act as deterrents.

Whatever role the other agencies have, is also not taken seriously. For example, with regard to accidents and deaths due to accidents, the employers are supposed to inform the District Magistrate, who is then required to conduct an inquiry. It was reported in Rajya Sabha that there have been 45 deaths at the CWG sites. PUDR, however, failed to get information regarding these cases in spite of repeated attempts. If the due process of law was being followed then this information could have been readily made available.

Reform measures meant to provide a degree of economic security to construction workers too, while they exist, are marked by their non-observance. The BCWA created a Building and Other Construction Workers Welfare Fund, meant to be a beneficial legislation for protection of workers in unorganised sector by creating a social security net for them. A statutory requirement is stipulated by Building and Other Construction Workers Welfare Cess Act 1996 that a certain percentage of the construction cost has to be paid into this Fund by the employer prior to the commencement of the project. In Delhi, this has been fixed at 1%. The CAG reports of the last few years revealed violations of these provisions by the DDA,

in that it has either not collected the cess from several companies or the cess collected has been waived in a clear violation of the Act. There have been reports of under-utilization of funds. Also, out of an estimated number of 7-8 lakh construction workers, not more than 40,000 have been registered under the Act and still fewer have got any benefits at all. While the procedure for registration is said to be simple enough, there are clear indications that even these procedural requirements, together with lack of will on the part of the employers and the Welfare Board to register the workers, have proved to be obstructing rather than facilitating the registration of workers.

It is clear that there is no effective machinery to protect the rights of the unorganised workers or for the implementation of labour laws. Actually, the same state that has been promoting and intensifying the contractualisation of workforce, even in the areas of work of permanent nature, cannot be expected, depended upon and trusted to protect the interest of the unorganised labour.

2. ***Absence of organised struggle***

It is next to impossible for construction workers to organise themselves and protest against violation of their rights because of lack of awareness, their economic and social vulnerability and insecurity, temporary nature of their work and the policy of the contractors not to let the workers remain at a site for long durations. As a result, there have only been isolated instances of protests in the huge construction work related to CWG and the Metro projects. At an individual level, workers do have the option to file a criminal case against violations of their rights; but this can only be at the risk of losing financial and physical security and hence is hardly an option.

The role of the major trade unions in the entire period too has been disappointing to say the least. Not only did they never raise the issue of workers rights in the entire period on their own, they did not even make a single public criticism despite repeated exposures of the violations of workers' rights by PUDR, several other organisations and by the HC-appointed committee. These unions were quite conspicuous by their silence. It seems they consider non-implementation of labour laws as normal and acceptable.

3. ***Lack of information in civil society about working and living conditions of workers***

With the recent boom in construction work, most of the construction projects are being executed by mega national and multinational companies. This is carried out with the construction area enclosed behind high walls with heavy security arrangement at the entrance. Civil society organisations or even the media is prohibited and hence denied any information about what is happening inside the premises. As a result the information regarding working and living conditions of workers is kept hidden from public.

4. Role of Media

The experience of CWG makes it clear that workers and their rights are not of much concern for the media. Though the construction work at such massive scale was on for almost three years for CWG and for many more years for Metro and the violations of labour laws so very widespread, there was only isolated reporting of labour issues in case of some fatal accidents. The media was woken up to the fact of exploitation of workers in the capital only after the PIL got admitted in HC in January-February this year. Even then, it was only the newspapers and some relatively smaller news channels and magazines that covered the issue, the big news channels did not pay much heed to the workers' plight.

V. Conclusion

This leaves us with an incongruous situation. For the enforcement of laws protecting the interests of unorganised workers, intervention is required by either the labour department, trade unions or social organisations, or, the goodness of heart of the employer. Such interventions are few and far in between. As for the enlightened self-interest of the employer, the less said the better. Furthermore, access to work and living sites of the unorganised workers is severely restricted, if not actively discouraged. As a result, not much has changed for the better for unorganised workers. On the other hand the very nature of their employment and their social and economic vulnerability comes in the way of their unionisation. So what course of action is available for 92% of the workforce in India? Or is it that we wait for such times where shortage of labour forces a revision in their lives? In other words, can a change be brought about only through situation(s) external to the unorganised sector? And workers cannot become agents transforming their own lives? The few success stories do not make for spring. It is a known fact that unless workers get organised and bargain collectively, they stand no chance to transform their lives. It is this predicament which confounds us.

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