

A large crowd of people is gathered on a sandy riverbank. In the background, a long bridge spans across the water. The scene is overlaid with a blue tint. The text 'Chapter 7' is centered in an orange rounded rectangle.

Chapter 7

OTHER SIGNIFICANT ISSUES

Other Significant Issues

7.1 Labour and labour welfare

The Labour Department (LD), is responsible for implementing various labour legislations for providing not only monetary benefits like minimum wages, overtime, bonus etc. to the labourers but also to ensure their welfare, health and safety during the course of employment.

During MKM, thousands of labourers were engaged in (i) creation of infrastructure-both permanent & temporary and (ii) delivery of services. About ten thousand labourers were engaged at a given point of time in MKM area alone. Keeping in view the engagement of large number of labourers during MKM by different departments, adherence to and enforcement of labour laws was necessary. Scrutiny of the records of Deputy Labour Commissioner, Allahabad (DLC) and the departments, however, revealed following shortcomings towards welfare of labourers engaged in MKM by different departments.

7.1.1 Inadequate registration of employment of labour

In contravention of the provision¹ of Building and Other Construction Workers Act, 1996 (BOCW), only 15 labour establishments, related to MKM works, were registered during 2012-13. For MKM (during April 2012 to March 2013), in Allahabad alone, approximately 565 labour contracts for works and services by different departments were executed. Besides, notice/information for commencement of work was not given by any of the employer to DLC during 2012-13 which was mandatory under section 46 of BOCW Act.

The Government did not furnish any reply (March 2014).

7.1.2 Provision and deduction of Cess

For regulating the conditions of service and deriving the benefits of welfare schemes for the building and other construction workers of unorganised sector, GoI passed Acts and Rules² which were also adopted by the State Government. The Act provides for deduction of cess at the rate of one *per cent* of the total cost of work from the bills for payment and the deducted amount is to be paid to UP Building and other Construction Workers' Welfare Board (Board), constituted for welfare of construction workers. Bidding documents also contained a condition that the rates quoted by the contractor shall be deemed to be inclusive of the sales and other levies, duties, royalties, cess, toll

¹ Section 7 of BOCW Act.

² The Building and Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, The Building and Construction Workers' Cess Act, 1996, The Building and Construction Workers' Cess Rules, 1998 and The Building and Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2009.

taxes of Central and the State Governments, local bodies and authorities that the contractor will have to pay for the performance of the contract.

Scrutiny of the records of five PWD divisions³ revealed that four⁴ divisions were not deducting cess like other statutory deductions. Instead, the divisions first added one *per cent* of the cost of executed work and then deducted the cess. As a result, cess of ₹ 1.85 crore was paid by the State Government, and not the contractors, which led to undue aid to contractors.

The Government did not furnish reply (March 2014). However, EE, CD-3 stated (August 2013) that in all estimates, one per cent cess was added after calculating the cost of work. Therefore, one per cent was not included in rates of works and accordingly deduction of cess was made after adding one per cent. Reply of the divisions was not acceptable because as per bidding documents, rates quoted by contractors were to be inclusive of cess.

Three out of five PWD divisions and one Flood division were deducting cess from the bills of the contractors as per the conditions of the contract. The State Government also released ₹ 1.97 crore for payment of cess to these three divisions on their demand. Moreover, the divisions deducted the cess from the bills of the contractors. Thus, ₹ 1.97 crore received from the Government should have been surrendered and remitted to the Government Accounts.

No reply was furnished by the Government (March 2014).

Further, scrutiny of the records of Allahabad Nagar Nigam revealed that cess was not deducted from the bills of the contractors and ₹ 38.99 lakh (one *per cent* of the cost of executed work) was paid directly to the Board from the fund received for MKM works. This resulted in undue aid of ₹ 38.99 lakh to the contractors.

In reply, the Government stated (November 2013) that cess was not included in the estimates. Later, lump-sum amount for cess was provided by the Government which was made available to the Board. Reply was not acceptable because cess was to be deducted from the bills of the contractors. Therefore, the practices followed were in violation of the provisions in the Act.

7.1.3 Facilities not ensured for labourers

We observed that:

- (i) Section 28 of BOCW Act provides for engagement of labourers for fixed number of hours and also provides a day's rest for labourers during continuous engagement for seven days. On the contrary, the MA deployed 88 labourers for leveling works in day and night shifts. Further, due to non-provision of a day's rest on continuous service of seven or more than seven days, 55 out of aforesaid 88 labourers were entitled for overtime⁵ (₹ 0.62 lakh) in lieu of working on the rest days, but overtime was not paid;

³ PD, CD-1, CD-2, CD-3 and CD-4, PWD, Allahabad.

⁴ Construction Division -1, Construction Division -2 (except only one road-W/S of G T Road from km 198 to 202), Construction Division-3 and Construction Division-4.

⁵ Wages for overtime would be double the normal wages.

- (ii) Despite revision⁶ in the wages, AD paid ₹ 156 per day instead of ₹ 198 from 29 to 31 December 2012 (three days) to 5,187 labourers. They were thus, paid at the lower rate for three consecutive days (29 to 31 December 2012), depriving them of their dues of ₹ 6.54 lakh;
- (iii) According to section 35 of BOCW Act, crèche facility was to be provided where more than 50 female workers are employed. There was no crèche established in the *Mela* area though 1,824⁷ female workers were engaged in sanitation work alone by AD; and
- (iv) Scrutiny of records and evidences collected in joint physical verification revealed that sanitation labourers were provided land for erecting tents/*pandals* in very unhygienic and dirty locations. The *choldaries*, required for the stay of labourers, were erected near public toilets, contaminated water storage tanks, drains (*Nalas*) etc. Some *Chholdaries* were erected under the high tension wires endangering the health and life of labourers and their families.



Chholdaries erected beside *Mansaita Nala*, Sector-12 dated 31.1.13.



Poor condition of *Chholdaries*, Arail west, sector-13 dated 02.02.13.

The Gang (each gang includes 12 members, one *meth*⁸ & one *methain*⁹ and eight male & two female workers) members were living in pitiable conditions as the *choldaries* provided to them were of very poor quality, very small in size (6'X6') and some of them were damaged.

No reply was furnished by the State Government (March 2014). However, LD, while accepting the fact stated (July 2013) that it did not have any target to inspect the work sites. It added that works sites were inspected by the Labour Enforcement Officers. The reply was not correct as most of the envisaged facilities were absent at the work sites as verified by audit, jointly with the departmental representatives.



Chholdaries erected under high tension wire, Sector-6, Nagvasuki North dated 02.02.13.

⁶ GO no. 4974/9-1-2012-98 Mela/2012 dated 29-12-2012.

⁷ 7,296 workers (608 gangs) were engaged in sanitation work of which 1,824 female workers (three in each gang) were engaged.

⁸ *Meth*- Head of Gang.

⁹ *Methain*- looks after the belongings of gang members.

7.1.4 Improper adherence to Child Labour Act

As a large number of labourers were engaged during MKM by different departments, action for enforcement of Child Labour Act was to be intensified by LD. Two committees headed by DLC were constituted by the order of the District Magistrate on 16 January 2013 to restrict engagement of child labour during MKM. No details of inspection, actions etc. were made available, though called for in audit. It appears from the order that inspection by the committee was to be held only on one day (19 January 2013 at 11 AM). The order was silent as to what would be its duties and responsibilities of the committees.



Doubtful age appears to be below 18 years
(Nagvasuki North Sector-6 dated 31-1-13)



Doubtful age appears to be below 18 years
(sector-13, Arail dated 31-1-13)

7.2 Services rendered to differently abled persons

In an event like MKM which attracts people of all hues from all over the country and globe, sufficient arrangements for differently abled people are essential. Different legal and codal frameworks¹⁰ in this regard also make it mandatory for the organizers to make arrangements for the differently abled persons. Scrutiny of the records revealed that no arrangements were planned or made for catering to the needs of differently abled persons during MKM by any department/organization as confirmed by MA (June 2013).

No Government's reply was received (March 2014).

7.3 Gender sensitivity issues

Scrutiny of the records revealed that arrangements for providing women specific facilities, safety and security were largely absent. Some of the important aspects relating to the arrangements for women pilgrims/visitors such as special training to police personnel for safety and security of women, establishment of *Mahila* Police station, dedicated *ghat* only for women, dedicated helpline with a lady operator for redressal of women's grievances and deployment of guides (having knowledge of different languages) etc. were found missing during MKM. MA confirmed (June 2013) the facts.

¹⁰ The Persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation Act), 1995, for providing equal opportunities and rights to differently abled persons; (ii) National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999 *inter-alia* provides creation of enabling environment for as much independent living as possible; (iii) The Mental Health Act, 1987 for providing treatment and care of mentally ill persons ; and (iv) Employees State Insurance Act, 1948 for providing benefits to employees in case of sickness, maternity and employment injuries.

The Government did not furnish any reply (March 2014).

7.4 Recommendations

- *A well conceived plan and sufficient arrangements should be in place to ensure adherence to labour laws in deployment of labourers for works of Mela and monitored through intensive inspections; and*
- *Arrangements for women and differently abled persons should be planned, executed and operated in deference to the extant laws and international commitments.*