

CHAPTER III

COLLECTION AND REMITTANCE OF LABOUR CESS

The Labour Department failed to accrue interest of ₹11.39 crore due to delays in cess payments across 1,319 cases, with delay extending up to four years. Additionally, cess amounting to ₹1.56 crore, collected by various authorities, was incorrectly credited to the Restructuring and Internal Audit Board (RIAB). Of this, ₹84.87 lakh remains to be transferred back to the Board.

Among the 2,82,998 buildings assessed for cess collection by the Labour Department in the State, payments were realised for only 1,26,446 buildings (44.68 *per cent*). This resulted in a shortfall of cess collection amounting to ₹542.17 crore (53.83 *per cent*). In selected districts, the Board exceeded the one *per cent* limit by paying ₹1.66 crore as staff salaries and postage expenses to the Labour Department.

In five test-checked PH Divisions of the Kerala Water Authority, cheques/ DDs for cess totalling ₹48.52 lakh were not deposited into the Board's account.

Section 3 of BOCW(RECS) Act stipulates that there shall be levied and collected a cess at such rate not exceeding two *per cent*, but not less than one *per cent* of the cost of construction incurred by an employer, as the Central Government may specify from time to time. The cess levied shall be paid by an employer, within 30 days of completion of the construction project or within 30 days of the date on which assessment of cess payable is finalised, whichever is earlier. Further, the assessment orders issued by DLOs required the assessee to remit cess as DD/ Cheque in favour of the Board within 20 days from the receipt of Assessment Notice.

The proceeds of 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. Government Departments/ Organisations deduct cess from work bills and remit the amount to the Board.

3.1. Non-realisation of interest for delayed remittance of cess

According to Section 8 of the Cess Act, the employers are liable to pay interest on the cess amount at the rate of two *per cent* per month in case of delay in payment of cess. On analysis of LCAS data for the period from 2018-19 to 2022-23, it was seen that the Labour Department did not realise interest for delay in payment of cess¹³ in 1,319 cases. The extent of delay that occurred in payment of cess for which interest was to be collected ranged from less than one month to over four years, as shown in **Table 3.1**.

¹³ Delay was calculated from 20 days of the issue of the assessment notice, as the date of completion of construction project was not readily available.

Table 3.1: Delay in payment of cess and amount of interest to be collected

Delay	No. of cases of assessment	Interest to be collected* (₹ in crore)
Between 1 and 30 days	346	4.34
Between 31 days and 90 days	291	1.27
Between 91 days and 365 days	381	3.62
Between 1 year and 2 years	172	0.57
Between 2 years and 4 years	127	1.59
More than 4 years	2	0.0035
Total	1,319	11.39

* Position as of October 2023

(Source: Data extracted from LCAS and remittance details at the Board)

It was further observed that while issuing notice for remittance of cess, penal provision as per Section 8 of the Act was not mentioned. Failure to collect interest on belated payment of cess led to loss of ₹11.39 crore to the Board.

The Labour Department stated (October 2022) that the parties approached the Government seeking permission to remit the cess in instalments. Also, during the course of Adalats¹⁴, Government decided to give exemptions for remitting cess, which included full waiver of interest for residential buildings and 50 per cent reduction for commercial buildings. The reply is not tenable, as for allowing exemptions, the amendment in Act and Rules are required to be done either in the Parliament or in the State Legislature. Government orders for exemption of cess without legislative exercise is, therefore, not in order. The Government did not furnish any reply till September 2024.

3.2. Miscredited cess amount pending realisation

According to Rule 4(3) of the Cess Rules, Government or Public Sector Undertakings shall deduct or cause to be deducted, the cess from construction works payable at the notified rates from the bills paid for such works. Rule 5 stipulates that the proceeds of the cess so collected shall be transferred by such Government, Public Sector Undertakings etc., to the Board. During the Audit of Restructuring and Internal Audit Board (RIAB)¹⁵, it was seen that cess amounting to ₹1.56 crore for the period 2016-17 to 2021-22 was wrongly transfer credited by various cess collecting authorities into the Special TSB account of RIAB instead of the designated account of the Board. The Secretary of the Board requested (May 2022) the Secretary, Labour Department and Additional Chief Secretary, Finance Department to direct RIAB to credit back ₹1.56 crore along with interest to the account of the Board. Since no adequate mechanism to monitor/ verify the details of remittance of cess exists, other short collections, if any, cannot be ruled out.

¹⁴ The period of Adalat extended up to 31 December 2022

¹⁵ A Public Sector Undertaking under the Industries Department

The Government replied (December 2022) that ₹71.18 lakh was credited to the account of the Board. However, the remaining ₹84.87 lakh was still pending transfer from RIAB's account, along with interest.

3.3. Payment of charges in excess of permissible limit

Cess collecting authorities like State Government Departments/ Autonomous bodies/ Local Self Governments remit the cess amount to the Board after deducting one *per cent* of the amount as administrative expenses in accordance with Section 3 of the Cess Act. During the audit period, the Labour Department claimed reimbursement of salary paid to the staff of the Board deputed on working arrangement to the District Labour offices, as well as postage expenses. Audit observed that the amount thus claimed was over and above the permissible one *per cent* limit already deducted from the cess amount. During the audit period 2018-23, in the selected districts, the Board paid ₹1.66 crore¹⁶ as salary to the staff and postage expenses to the Labour Department in excess of the one *per cent* limit, which was irregular.

The Labour Commissioner replied (June 2024) that when cess Adalat started in the State on 01 November 2021, there arose need for more postage stamps and other office expenses in connection with printing notices, paper for printing etc. The reply is not acceptable as any amount incurred in excess of admissible limit is a violation of provisions in the Act, which is irregular.

3.4. Short collection of cess

The District Labour Officer shall ensure that the Assessing Officer collects the details of buildings constructed under his jurisdiction from the Local Self Government Institutions and takes further necessary action for collection of cess¹⁷. As per the information furnished by the Labour Department, details of buildings assessed, cess collected and cess pending collection were as shown in Table 3.2.

Table 3.2: Details of buildings assessed for cess by Labour Department, cess collected and balance pending collection for the period 2018-23

Year	Buildings assessed		Cess collected		Cess pending collection	
	Number	Amount (₹ in crore)	Number	Amount (₹ in crore)	Number	Amount (₹ in crore)
2018-19	54,857	194.92	23,008	89.20	31,849	105.72
2019-20	70,181	285.66	6,722	95.99	63,459	189.67
2020-21	11,965	87.30	8,531	31.77	3,434	55.53
2021-22	35,098	167.68	27,655	99.41	7,443	68.28
2022-23	110,897	271.62	60,530	148.65	50,367	122.97
Total	282,998	1007.18	126,446	465.02	156,552	542.17

(Source: Data furnished by the Labour Department)

¹⁶ ₹1.35 crore as salary and ₹0.31 crore as postage expenses

¹⁷ Circular No. 06/2020 dated 12 October 2020 issued by the Labour Commissioner

From the above, it can be seen that out of 2,82,998 buildings assessed for collection of cess by the Labour Department in the State, amount was realised only in respect of 1,26,446 buildings (44.68 *per cent*) and this led to short collection of cess to the tune of ₹542.17 crore (53.83 *per cent*).

Further, the private constructions did not duly register and file proper returns to the Labour Department leading to a very low cess base and fewer collections. Hence steps were to be taken urgently to collect the details of building constructions from LSGIs to create a comprehensive database of new constructions and to enable cess collection through LSGIs.

Government stated (July 2024) that it has been decided to shift the onus of collecting cess from the Labour Department to LSGIs from January 2024. Audit observed that despite instructions to this effect having been issued in October 2020 itself by the Labour Commissioner, the DLOs continued to collect basic data from Taluk Offices, resulting in several constructions escaping assessment and resultant shortfall in cess collection.

Recommendation 4: The Government should direct the LSGIs to develop a robust mechanism for ensuring that cess assessments are correctly made and initiate efforts for prompt collection of cess.

3.5. Non-crediting of Cheques/ DDs drawn for the purpose of Building and Other Construction Workers' Welfare Cess

In respect of Government works, cess is being collected from the work bills at the rate of one *per cent* of the gross amount of the bill. The amount so deducted is either converted as cheques/ DDs and forwarded to the Board for realisation or transferred to the account of the Board maintained in the treasury.

Audit checked the details of deduction of cess from work bills of six offices each of LSGIs, Kerala Water Authority (KWA) and Public Works Department (PWD) from the three selected districts. The test-checked LSGIs and PWD offices were found to remit cess deducted from the work bills at the treasuries, when the payments were made. In the offices of KWA, cess was deducted from the work bills and Cheques/ DDs drawn and sent to the Board. These Cheques/ DDs were remitted by the Board to the bank account created for the purpose.

While comparing the Cheques/ DDs drawn in six KWA offices with amount credited to the bank account of the Board, Audit noticed that the following amounts pertaining to five offices deducted during the audit period were not credited to the bank account as detailed in **Table 3.3**.

Table 3.3: Details of Cheques/ DDs drawn by selected KWA offices but not credited to the bank account of the Board

Sl. No.	Name of office	Total No. of Cheques/ DDs drawn by KWA	Total amount (₹ in lakh)	No. of cheques/ DDs not credited to bank account of the Board	Amount not credited to bank account of the Board (₹ in lakh)
1.	Project Division, Perumbavoor	56	20.87	1	3.81
2.	PH Division, Kozhikode	33	96.52	1	0.35
3.	PH Division, Edappal	136	50.52	14	27.58
4.	Project Division, Ernakulam	123	69.62	2	0.23
5.	PH Division, Malappuram	214	76.18	75	46.70
Total		562	313.71	93	78.67

(Source: Details obtained from Board and KWA offices)

In the absence of KWA intimating the Board about the quantum of cess being deducted or Board seeking such information from KWA, there was no check to ensure that the entire amount deducted by KWA was credited to the accounts of the Board¹⁸. This was indicative of the inadequacy of internal control mechanism in the Board leading to possible leakage of revenue.

The GoK replied (December 2022) that out of 104 Cheques/ DDs (₹80.19 lakh), 19 Cheques/ DDs (₹31.67 lakh) were located and found to be credited to the account of the Board. Further, it was stated that a comprehensive software was being developed, on the completion of which the difficulties faced in this regard would be resolved. The reply of the Board however failed to explain the status of the remaining Cheques/ DDs amounting to ₹48.52 lakh.

Government also admitted (August 2024) that non-availability of software to facilitate cess collection had led to inability to assess the correct position of credited amount of the Cheques/ DDs and that development of software which was on the anvil would prevent such hassles.

Recommendation 5 : The Government should direct the Board to strengthen its internal control mechanism to check leakage of revenue and also to ensure that cess due from all possible sources is realised.

3.6. Conclusion

Interest amounting to ₹11.39 crore could not be availed due to delay in cess payments in 1,319 cases. Instances also occurred wherein cess amount was miscredited to other accounts, which had to be transferred back to Board. Among the 2,82,998 buildings assessed for cess collection by the Labour Department in the State, payments were realised for only 1,26,446 buildings, which led to short collection of cess. By expending higher amounts in staff salary, postage, etc., the Board exceeded the prescribed limit.

¹⁸ The Board operates four bank accounts for crediting Cheques/ DDs (as of October 2022)