

## ***CHAPTER II***

### ***Institutional Arrangements for Implementation of the BOCW Act***



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#### **2.1 Introduction**

Section 62 of the BOCW Act, 1996 empowers the State Government to make rules for carrying out the provisions of the BOCW Act, 1996. Further, Section 40 of the BOCW Act, 1996 empowers the State Government to make rules for ensuring safety, health and protection of BOC workers in the course of their employment. Section 14 of the Cess Act, 1996 empowers the Central Government to make rules for carrying out the provisions of the Act.

Audit observed that the Government of Maharashtra notified the Maharashtra Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2007 (MBOCW Rules) in February 2007 *i.e.* after a lapse of more than ten years from the enactment of the BOCW Act, 1996. Similarly, for ensuring the enforcement of the Cess Act and Cess Rules, Government of Maharashtra notified (April 2008) appointment of Cess Collecting and Cess Assessing Authorities in April 2008, after a lapse of more than ten years from the enactment of the Cess Rules, 1998 by GoI.

#### **2.2 Compliance to the provisions of the Acts/Rules**

The BOCW Act, 1996 and the MBOCW Rules, 2007 provide for constitution of Committees, Welfare fund and human resources for effective implementation of the BOCW Act, 1996. Audit observations on the compliance of the provisions of the Act/Rules related to institutional arrangement are discussed in the succeeding paragraphs.

##### **2.2.1 Constitution of the Board**

Section 18 (1) read with 18(3) of the BOCW Act, stipulated that the State Government shall by notification, constitute a Board consisting of a chairperson and not more than 15 members with equal number of members representing the State Government, the employers and the building workers. Further, as per Rule 35 of the MBOCW Rules, the term of office of the Chairperson and the members of the Board was three years commencing from the date on which their appointments were notified in the Official Gazette.

Audit observed that the Board was last reconstituted in June 2018. However, after the end of three years *i.e.*, 30 June 2021, representatives of employers and building workers were not appointed in the Board. The Government representatives<sup>6</sup> who are the ex-officio members continued to be members of the Board and conducted only one meeting in December 2022, after the term of representatives of employers and building workers ended in June 2021.

In reply, the Government stated (July 2024) that a proposal recommending the names of persons interested to be representatives of employers and building

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<sup>6</sup> Principal Secretary of the Department, Deputy Secretary of the Department and Commissioner of Labour.

workers forwarded (between July 2021 and February 2023) by the Board was under consideration of the Government.

### **2.2.2 Constitution of State Advisory Committee**

Section 4 of the BOCW Act stipulated the constitution of the State Building and Other Construction Workers' Advisory Committee (SAC) by the State Government consisting of a Chairperson, two members of the State Legislature, a member from the Government of India, the Labour Commissioner of the State as Chief Inspector, minimum seven and maximum eleven members nominated by the State Government representing employers, building workers, *etc.*, to advise the State Government on matters arising out of the administration of BOCW Act. Further, as per Rule 10(6) of the MBOCW Rules, the SAC shall be reconstituted after every three years.

Audit observed that SAC was not constituted by the State Government after June 2015. Audit also observed that the Honourable Bombay High Court<sup>7</sup> had directed (November 2016) the State Government to constitute SAC within four weeks. The Supreme Court in Writ Petition No. 318 of 2006, directed (March 2018) the State Government to constitute an SAC. The Board had requested the State Government to constitute SAC seven times between July 2015 and April 2018. However, the State Government did not constitute the SAC for more than eight years thereby depriving the Board of suitable guidance on matters arising out of administration of the BOCW Act.

In reply, the Government stated (July 2024) that the Board's proposal for the constitution of the State Advisory Committee was under consideration of the Government.

## **2.3 Human Resources**

Availability of adequate human resources is essential for registration of Establishments, registration of building workers as beneficiaries, monitoring and implementation of welfare schemes, inspection of Establishments, effectively regulating the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters.

Audit noticed that there was shortage of staff as discussed in the succeeding paragraphs.

### **2.3.1 Shortage of staff against sanctioned strength**

The Department sanctioned (October 2012) 56 posts for the Board at the headquarters and at the district level. The posts sanctioned and the persons in position as of March 2022 are shown in **Table 2.1**.

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<sup>7</sup> Public Interest Litigation No. 34 of 2015 in the case of Nirvana Bandhkam Kamgar Sangathan versus State of Maharashtra and others, the Honourable Bombay High Court had directed the State Government in its order dated 22 November 2016 that the State Advisory Committee be formed within four weeks.

**Table 2.1: Person in position as of 31 March 2022 vis-à-vis the sanctioned post**

Sr. No.	Designation	Sanctioned		Persons in position	
		Board level	District Office	Board level	District Office
1	Assistant Labour Commissioner <sup>8</sup>	1	-	1 (additional charge)	-
2	Government Labour Officer <sup>9</sup> (GLO)	1	19	1 (on deputation)	0
3	Superintendent	1	-	0	-
4	Accounts and Finance Officer (Group B)	1	-	1*	-
5	Accountant	1	-	1	-
6	Senior clerk	2	-	2 (additional charge)	-
7	Stenographer (Marathi/ English)	1	-	0	-
8	Clerk/ Typist	4	19	0	0
9	Other Group D staff (3 designations)	6	-	0	-
<b>Total</b>		<b>18</b>	<b>38</b>	<b>6</b>	<b>0</b>

Source: Government Resolution of October 2012 and information furnished by Board

\* On deputation from the cadre of Maharashtra Finance and Account Services

(i) As seen from **Table 2.1**, out of 56 (18 +38) sanctioned posts only six were filled. Of these six, five posts were filled by deputation and by giving additional charge to departmental officials. Thus, the shortage of staff against the sanction was 89 *per cent*. Further, though the posts were sanctioned in October 2012, the Recruitment Rules in respect of three designations<sup>10</sup> (four posts) were not approved (July 2024) by the Government. The Public Accounts Committee also recommended in August 2017 to fill the additional posts urgently, however, Audit noticed that recruitment to the vacant posts and approval to the Recruitment Rules in respect of said four posts were still pending (July 2024).

In addition to above, 15 contractual staff (such as Clerk/ Typist/ Data Entry Operator, Junior Accountant, Stenographer and other Group D staff) were deployed at Board level while at district level, 223<sup>11</sup> contractual staff were deployed in 43 Workers Facilitation Centre (WFC) as of March 2022, through an agency appointed for supply of contractual staff.

## **(ii) Proposal of the Board to increase staff strength**

Workers facilitation centres were established at district level to look after the registration of workers, their renewals and implementation of schemes. The Board had sent revised proposal for 602 posts in December 2022 to strengthen the administrative mechanism as maximum posts in Labour Department were vacant and officials of Labour Department were also engaged in the implementation and monitoring of various other labour Acts. However, no action was taken by the Government on the proposal approved by the Board (July 2024).

<sup>8</sup> Re-designated as District Executive Officer (at Board level) in October 2018.

<sup>9</sup> Re-designated as Deputy District Executive Officer (at Board level) in October 2018.

<sup>10</sup> Accounts and Finance Officer, Accountant and Senior clerk.

<sup>11</sup> Clerk/ typist/Data Entry Operator: 158; Junior Accountant: 45; Peon: 17; Senior Driver: 2; Superintendent: 1.

In the exit conference (July 2024), the Principal Secretary stated that the shortage of manpower was a major issue and therefore a revised staffing pattern of the Board has been approved in a recent Board meeting (July 2024).

Audit also observed that there was shortage of staff not only in the Board but also in the Labour Department whose officials were entrusted work relating to the implementation of the BOCW Act besides their regular duties of implementation and monitoring of various other labour Acts. It was noticed that 26 posts of Assistant Commissioner of Labour (32 *per cent*) and 89 posts of Government Labour Officer (61 *per cent*) were vacant as of March 2022.

As regards shortage of staff in Labour Department, the Principal Secretary stated that the newly appointed Assistant Labour Commissioners and Government Labour Officers are undergoing training and on their posting to regular duties, the issue of shortage would be resolved to a considerable extent. Information regarding the staff recruited as per the revised staffing pattern of the Board was called for from the Board (November 2024), but was awaited.

### **2.3.2 Payment to contractual staff**

The Board sanctioned<sup>12</sup> (July 2014) the deployment of 100 contractual staff<sup>13</sup> (Data Entry operators:50; Clerks: 50) for the district offices, regional offices and Board's office in Mumbai on contractual basis through an agency empanelled by the Department *viz.* Brisk India Private Limited (BIPL) as the 56 posts sanctioned in October 2012 were not filled. The State Government granted Administrative Approval in August 2014 for the deployment of contractual staff. An agreement for a period of three years was executed (August 2014) by the Board with BIPL and the work order was issued in August 2014.

The Board sanctioned<sup>14</sup> (October 2015) the deployment of an additional 156 contractual staff (Data Entry operators:50; Clerks: 50; Junior Accountant:49; Stenographer: 4; Personal Assistant: 1 and Peon:2) for the district offices, Divisional office and Board's office in Mumbai from the same agency and work order was issued in December 2015. The deployment of additional staff was justified on the grounds that the staff can be utilised for registration of workers and conducting drives to create awareness about the various schemes of the Board. Thus, in all the Board granted sanction for deployment of 256 contractual staff. The Department granted (September 2017) an extension to the contract for further three months or till the selection of a new agency through tendering procedure whichever was later. Audit noticed that BIPL continued with the work for more than five years till the appointment of a new agency in July 2023.

Monthly bills were submitted by BIPL along with the muster roll of contractual staff deployed duly certified by the Assistant Commissioner of Labour in the districts. Test-check of the monthly bills for the period 2020-21 and 2021-22 revealed irregular payments amounting to ₹1.69 crore as detailed below:

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<sup>12</sup> Vide Board meeting held on 30 July 2014.

<sup>13</sup> At Board level: 6; Regional level: 10; Districts: 84.

<sup>14</sup> Vide Board meeting held on 01 October 2015.

- Only two peons were sanctioned for deployment at the Board level. However, Audit noticed that one peon each was deployed in 14 districts<sup>15</sup> and Konkan Divisional Office while at the Board level, four peons were deployed (two peons were deployed in excess) resulting in irregular payment of ₹ 44.03 lakh for the period 2020-21 and 2021-22.
- 188 clerks/DEOs were sanctioned for the WFCs/divisional offices and 12 clerks/DEOs at the Board level. Audit noticed that in nine districts<sup>16</sup>, there was deployment in excess of the sanction of clerks/DEOs, ranging from one to six resulting in irregular payment of ₹ 67.97 lakh<sup>17</sup>.
- 47 Junior Accountants were sanctioned for the WFCs/divisional offices and two Junior Accountants at the Board level. Audit noticed that there was excess deployment of Junior Accountants ranging from one to three resulting in irregular payment of ₹ 24.30 lakh in Nagpur district and at the Board level.
- In Kolhapur district and the Board, two drivers each were deployed though there was no sanction for deployment of drivers. This resulted in irregular payment of ₹ 25.28 lakh. In Nagpur district, one Superintendent was deployed though there was no sanction for the deployment of Superintendent resulting in irregular payment of ₹ 7.58 lakh.

The irregular payment indicated lack of internal control in the Board as the monthly bills received were not checked with the work order/Board's sanction to ascertain that the staff deployment was approved before releasing the payment.

In reply, the Government stated (July 2024) that all the posts had been filled as per the direction of the Board. In the exit conference (July 2024), the CEO of the Board stated that the Board has granted post-facto sanction to the deployment of staff. However, no document was produced to Audit in support of this claim.

### Conclusion

Audit observed that the representatives of the employers and workers were not appointed on the Board since June 2021. The State Advisory Committee was not constituted by the State Government after June 2015. Despite the shortage of staff (89 *per cent*) against the sanctioned posts, no effective action was taken to deploy manpower and strengthen the administrative mechanism which is crucial for registration of workers/establishments and implementation of schemes. Excess contractual staff deployed in districts against posts sanctioned by the Board resulted in irregular payment for the period 2020-21 and 2021-22.

<sup>15</sup> Ahilyanagar (previously known as Ahmednagar), Chhatrapati Sambhajinagar, Beed, Dhule, Hingoli, Jalna, Kolhapur, Latur, Mumbai Suburban, Mumbai City, Nanded, Nandurbar, Parbhani and Raigad.

<sup>16</sup> Nagpur, Mumbai Suburban, Jalna, Parbhani, Wardha, Yavatmal, Latur, Gondia and Kolhapur.

<sup>17</sup> Nagpur: ₹ 24.26 lakh; Mumbai Suburban: ₹ 4.88 lakh; Jalna: ₹ 5.33 lakh; Parbhani: ₹ 1.02 lakh; Wardha: ₹ 4.13 lakh; Yavatmal: ₹ 2.63 lakh; Latur: ₹ 15.58 lakh; Gondia: ₹ 7.35 lakh and Kolhapur: ₹ 2.79 lakh.

***Recommendation 1: The Government needs to appoint representatives of employers and workers in the Board in a time bound manner.***

***Recommendation 2: Government may take effective action to fill up the sanctioned posts on priority to ensure effective implementation of provisions of BOCW Act regarding registration of establishments and workers, conduct of inspections and ensuring welfare of workers.***