

Chapter 2: Framing and Implementation of Act & Rules

The main objective of the BOCW Act, 1996, is to regulate wages, working conditions, safety, health and welfare measures of the construction workers. The Act applies to every establishment which employs 10 or more building and other construction workers in any day of a year. The Act provides for establishment of Building and Other Construction Workers' Welfare Board (BOCWWB) and Building and Other Construction Workers' Welfare Fund (BOCWWF). The Cess Act, 1996 provides that cess at the rate not exceeding two *per cent* and not less than one *per cent* is to be collected from each employer. The cess so collected forms the Fund, governed by the Board.

2.1 Delay in framing of State Rules

Sections 40 and 62 of BOCW Act, 1996 provide that the appropriate Government¹ may, by notification, make rules regarding the measures to be taken for safety and health of construction 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. However, the State Government framed (December 2008) the Goa Building and Other Construction workers (Regulation of Employment and Condition of Service) Rules, 2008 (GBOCW Rules) after a delay of 12 years from the enactment of BOCW Act. Further, the State Government notified levy and collection of labour cess with effect from 01 January 2009 but the BOCW Welfare Fund was constituted only in 2011.

While the GBOCW Rules, 2008 were consistent with the BOCW Act, 1996, delay of 12 years in framing of State rules resulted in lack of regulation for ensuring health and safety of construction workers, apart from non-implementation of schemes for their welfare, during this period.

The Government replied (April 2024) that the Board required additional time to formulate schemes in accordance with the Rules and it will be ensured that no delay occurs in future amendments to these Rules.

2.2 Deficiency in provision for fee structure for registration of establishment in the BOCW Rules

Fee structure for registration of establishments is governed by Rule 27 of the 'The Goa Building and Other Construction Workers Rules, 2008', on the basis of number of workers employed by them as given in the **Table 2.1**.

¹ Central Government for Central Government establishments and Central PSUs, for rest other establishments- State Government

Table 2.1: Fee Structure for Registration of Establishment

Sl. No.	No. of Workers	Fee (in ₹)
1	Up to 50	500
2	51 to 100	1000
3	101 to 200	2000
4	201 to 300	3000
5	301 to 400	4000
6	401 to 500	5000
7	501 and above	Not Specified

(Source: GBOCW Rules, 2008)

The Central BOCW Rules, 1998 prescribes fee structure for registration of establishments employing more than 500 workers, however, there was no such fee structure prescribed by GBOCW Rules, 2008.

Audit observed that no establishment employing more than 500 workers was found registered with the Department. Only one establishment employing exactly 500 workers was found registered (March 2020). However, audit is of the view that there should be provision for registration fee for establishments more than 500 employees in line with central BOCW rules as well as keeping in view the future requirements.

The Government acknowledged (April 2024) the audit observation and assured that necessary amendments to the rule will be carried out to incorporate fee structure for registration of establishments employing more than 500 workers.

2.3 Delay in constitution of the State Advisory Committee (SAC) and shortfalls of meetings

As per Section 4 of the BOCW Act, 1996, the State Government has to constitute a State Advisory Committee (SAC) to advise the State Government on matters arising out of the administration of the Act. The SAC shall comprise 16 members including the Chairperson and Member-Secretary, be re-constituted every three years and meet at least once in six months as per Rule 20 of the State Rules. However, the SAC was constituted in July 2008 after a delay of 12 years from the enactment of BOCW Act in 1996 and was re-constituted only in January 2016 after eight years. The SAC conducted only two meetings since its constitution in 2008, whereas it should have conducted at least 29² meetings till the year 2022 as mandated under the Act. No meeting was conducted during the audit period, *i.e.*, 2017-22. This was in violation of

² One meeting in 2008 and two meetings each from the year 2009 to 2022.

repeated directions of the Hon'ble Supreme Court of India, the latest such judgement/direction having been issued in March 2018³.

Non-reconstitution of the SAC and non-convening of meetings was in contravention of the provisions of the Act and Rules, which impacted the Government's capacity to resolve the issues arising out of administration of the Act and to promote the welfare of construction workers.

During the exit conference, the Secretary (Labour) acknowledged (March 2024) the facts and directed the Commissioner (Labour & Employment) and Member Secretary, GBOCW Board (CLE) to take necessary steps to conduct the meetings as prescribed under the Act.

The Government further replied (April 2024) that the SAC was constituted on (January 2016) for a period of three years. Since the SAC was not re-constituted after that, meetings could not be held.

The reply is not tenable as no meeting was held during the entire term of the SAC constituted in 2016 and the SAC was not re-constituted after 2019, which was in contravention of BOCW Act/GBOCW Rules.

2.4 Delay in constitution/re-constitution of the Board

As per Section 18 of the Act and Rule 271(4) of GBOCW, the State Government shall constitute a Board to perform the functions such as implementation of welfare schemes for building and other construction workers, registration of beneficiaries, fund management, *etc.* assigned to it under the Act. As per Sub-rule (2) of Rule 256 of State Rules, the term of office of the Chairperson and members of the Board other than the official members shall be three years from the date of their appointment and in no case the members shall continue in office beyond a period of four years.

During scrutiny it was observed that three members of building workers representatives were re-appointed by the Board in the subsequent re-reconstituted Boards and they continued in the office for more than four years.

The Board replied (July 2024) that they will adhere to the Rule while re-constituting the Board and assured that no member will continue in office beyond the period of four years from the date of their appointment.

Further, it was observed that the State Government constituted the Board in December 2004, after a delay of eight years from enactment of the Act.

³ Against a Writ Petition No. 318 of 2006

However, even thereafter, re-constitution of the Board was delayed as given in **Table 2.2**.

Table 2.2: Delay in re-constitution of Board

Sl. No.	Occasions of Board's re-constitution	Scheduled date of re-constitution	Actual date of re-constitution	Delay in re-constitution (in months)
1	1 st re-constitution	15/12/2008	01/07/2008	No delay
2	2 nd re-constitution	01/07/2012	12/06/2013	11
3	3 rd re-constitution	12/06/2017	08/09/2017	02
4	4 th re-constitution	08/09/2021	19/08/2022	11

(Source: Government notifications regarding constitution of the Board)

As seen above, the re-constitution of the Board was delayed on three occasions, violating the extant provisions of Rules.

The State Government replied (April 2024) that henceforth re-constitution of the Board shall be done as per Rule provisions.

2.5 Substantial shortfall in conducting meetings of the Board

As per Rule 258 of GBOCW Rules, 2008, the Board shall ordinarily meet once in two months. However, scrutiny of records of Board meetings indicated that as against 30 meetings mandated during 2017-22, the Board conducted only eight meetings (27 *per cent*) and during 2020-2021, no meetings were conducted at all. The details of Board's meetings conducted is shown in **Table 2.3**.

Table 2.3: Details of Board's meetings conducted during the period 2017-22

Year	Number of Board's meetings required	Number of Board's meetings conducted	Shortfall of Board's meetings
2017-18	6	2	4
2018-19	6	2	4
2019-20	6	1	5
2020-21	6	Nil	6
2021-22	6	3	3
Total	30	8	22

(Source: Information furnished by the Board)

Further, it was also observed that only two Board meetings were conducted in 2022-23, which were also four short in numbers than prescribed under the Act.

The State Government acknowledged (April 2024) the audit observation and stated that meetings would be convened as mandated under the Rules henceforth.

Conclusion:

The Government notified the State BOCW Rules and commencement of cess collection with a substantial delay of about 12 years. Fee structure for registration of establishments employing more than 500 workers was not prescribed in the Rule. The State Advisory Committee (SAC) to advise the Government on the implementation of the Act, was also constituted with a delay of 12 years. Substantial shortfall in conducting Board meetings impacted the functioning of the Board.

Recommendation 1: The State Rules may be amended to include fee structure for registration of establishments with more than 500 workers, in line with Central BOCW Rules, 1998.

Recommendation 2: The State Government may re-constitute the State Advisory Committee and the Board in a timely manner and ensure their functioning as per the Act/Rules.