



134. Do you believe that companies registered under the Factories Act, but not yet started manufacturing operations, should be exempt from the provisions of the Building and Other Construction Workers' Welfare Cess Act, 1996?

Based on the provided information and relevant legal provisions, companies registered under the Factories Act but not yet started manufacturing operations should **not** be exempt from the provisions of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 (BOCW Act) and the associated cess under the Building and Other Construction Workers' Welfare Cess Act, 1996. Here's why:

Understanding the Acts Involved:

- BOCW Act:** The primary objective of this Act is to safeguard the rights and welfare of building and construction workers engaged in construction activities, including safety, health, and working conditions. Section 1(4) of the BOCW Act applies to any establishment that employs 10 or more workers in any construction activity. This includes tasks such as construction, repairs, or alterations. Section 1(d) of the Act explicitly defines "building or other construction work" and excludes works to which the Factories Act or Mines Act applies **only when** they are under those Acts' specific provisions.
- Factories Act, 1948:** The Factories Act governs manufacturing activities and applies only once manufacturing processes have started or workers are engaged in activities related to production (Section 2(m)). Until a manufacturing process begins, construction activities on-site cannot be considered under the purview of the Factories Act. In such cases, construction-related tasks fall within the ambit of the BOCW Act.
- Building and Other Construction Workers' Welfare Cess Act, 1996:** This Act imposes a cess on employers for construction activities. The cess is used to fund welfare measures for construction workers and applies to any employer who undertakes building or construction work as defined in the BOCW Act. Since construction is a pre-manufacturing activity, it is liable under this Act.

Key Considerations:

- Nature of Construction Work:** If a company is building or constructing its factory premises but has not started manufacturing, the construction activity is

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Shekhar Ganagaluru, MSW, LLB, Dip. T&D

HR & IR Specialist | Published Author | Storyteller | Mentor | Trainer | Community Outreach Coordinator | Workplace Safety & Motivation Strategist
begreatseries@gmail.com or follow on LinkedIn | Mobile: 96327 11228

still covered under the BOCW Act. This includes building the infrastructure necessary for future manufacturing activities.

2. **Exemption under the Factories Act:** Exemption from the BOCW Act only applies if the company is actively engaged in a "manufacturing process" as defined by the Factories Act. Since the company has not yet started manufacturing, the construction work does not qualify as a manufacturing process, making the provisions of the Factories Act inapplicable at this stage.

Conclusion:

Until the manufacturing process begins, the company is carrying out construction work, which falls under the scope of the BOCW Act. Thus, the company is required to comply with the provisions of the BOCW Act and pay the associated cess under the Building and Other Construction Workers' Welfare Cess Act, 1996. Once manufacturing starts, the company may be exempt from the BOCW Act's provisions. However, for now, the cess is applicable.

Case Law: Lanco Anpara Power Ltd vs State Of Uttar Pradesh & Ors (18 October, 2016) | Supreme Court of India

1. Parties Involved:

- **Appellant:** Lanco Anpara Power Limited (a company engaged in the construction of a coal-based thermal power project).
- **Respondents:** The State of Uttar Pradesh, District Collector of Sonbhadra, and other relevant authorities in Uttar Pradesh responsible for enforcing the **Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996** (BOCW Act) and the **Building and Other Construction Workers Welfare Cess Act, 1996** (Welfare Cess Act).

2. Issues of the Case:

- The central issue was whether the provisions of the BOCW Act and Welfare Cess Act apply to Lanco Anpara Power Limited, despite the company being registered under the **Factories Act, 1948**.
- Whether the company was liable to pay a cess under the Welfare Cess Act for construction workers engaged in the civil works of its thermal power project, which was still under construction.
- The appellant argued that since they were registered under the Factories Act and had not started manufacturing operations, the provisions of the BOCW Act and the cess were not applicable to them.

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Shekhar Ganagaluru, MSW, LLB, Dip. T&D

HR & IR Specialist | Published Author | Storyteller | Mentor | Trainer | Community Outreach Coordinator | Workplace Safety & Motivation Strategist
begreatseries@gmail.com or [Follow on LinkedIn](#) | Mobile: 96327 11228

3.Appellant's Arguments:

- **Exemption under the Factories Act:** The appellant contended that as they were registered under the Factories Act, they were not subject to the BOCW Act due to the exclusionary clause in Section 2(d) of the BOCW Act. The Act excludes "any building or other construction work to which the provisions of the Factories Act, 1948 apply."
- **Manufacturing not started:** Since the factory was still under construction and no manufacturing activities had commenced, they argued that they were exempt from the applicability of the BOCW Act and the cess provisions.
- **Scope of cess:** The appellant also contested that the calculation of cess based on the total project cost, instead of just the construction cost, was incorrect.

4.Respondent's Arguments:

- **Applicability of BOCW Act:** The respondents argued that the BOCW Act was enacted to protect construction workers engaged in building and other construction works, which applied to the appellant's construction activities. Mere registration under the Factories Act did not exempt the appellant from the BOCW Act until the factory became operational.
- **No factory yet:** The factory was under construction, and no manufacturing process had started. Thus, the provisions of the Factories Act were not applicable, and the construction workers were not protected under it.
- **Beneficial purpose of BOCW Act:** The respondents emphasized that the BOCW Act is a welfare legislation aimed at providing benefits to unorganized sector workers, including those involved in construction, and should be interpreted liberally.

5.Findings of the Court:

- **Interpretation of Exclusion Clause:** The Supreme Court found that the exclusionary clause in Section 2(d) of the BOCW Act does not exempt the construction activities of the appellant from the BOCW Act. The Factories Act applies only after the manufacturing process has started, not during the construction phase.
- **Applicability of BOCW Act:** The Court held that during the construction phase, the provisions of the BOCW Act are applicable to the appellant's project. Since no manufacturing activities were taking place, the project was not considered a "factory" under the Factories Act.

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Shekhar Ganagaluru, MSW, LLB, Dip. T&D

HR & IR Specialist | Published Author | Storyteller | Mentor | Trainer | Community Outreach Coordinator | Workplace Safety & Motivation Strategist
begreatseries@gmail.com or [Follow on LinkedIn](#)

- **Purpose of the BOCW Act:** The Court highlighted that the BOCW Act is a piece of social welfare legislation meant to protect construction workers, and adopting a narrow interpretation that exempts the appellant would defeat its purpose.
- **Liability to Pay Cess:** The Court upheld the liability of the appellant to pay the cess under the Welfare Cess Act. However, it allowed the appellant to challenge the calculation of the cess before the appropriate adjudicating authorities.

6. Conclusion:

The Supreme Court dismissed the appeals, holding that the appellant's construction activities were subject to the provisions of the BOCW Act and the Welfare Cess Act. The construction workers engaged by the appellant were entitled to the benefits of these Acts, and the appellant was liable to pay the cess. The Court emphasized the need to interpret social welfare legislation purposively to achieve its intended objectives.

7. Legal Principles Established:

- **The BOCW Act applies to construction activities, even when the entity involved is registered under the Factories Act, as long as no manufacturing process has started.**
- **Welfare legislations like the BOCW Act must be interpreted broadly to protect vulnerable workers.**

The exclusionary clause in Section 2(d) of the BOCW Act is limited to actual factory operations and does not cover construction work related to future factory operations.

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