



Report on the BWI/ICEM Joint Mission to ACC (HOLCIM), Plant Jamul Town, Durg District, Chhattisgarh State, INDIA, 16th June 2011

Mission members

Mr. N. Nanjappan

General Secretary

Indian National Cement Workers Federation (INCWF)

Mr. R.C. Khuntia

Member of Parliament;

Vice-President INTUC & President

Indian National Building, Construction, Forest & Wood Workers Federation (INBCWF)

Rajeev Sharma

BWI Regional Policy Officer, Asia Pacific

Mr. Ravindra G. Ghosalkar,

General Secretary

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Mr. Ashutosh Bhattacharya

National Coordinator

ICEM India Asia MNCs and Social Dialogue Project

Purpose of the mission

The Joint Mission comprising of BWI and ICEM representatives visited on 16 June 2011 the ACC (HOLCIM), Jamul Unit in Durg District of Chhattisgarh State to provide solidarity to the contract workers and obtain data and information on the current developments at the work-site pertaining to the struggle of the contract workers.

The PCSS has highlighted discrimination in benefits and service-conditions and non-implementation of the Chhattisgarh High Court order on regularization of contract workers. The delegation met with representatives with the CCKS, PCSS, and the plant management. They also met with contract workers and members of the surrounding community.



Situation in the cement sector in India

In India, for the past ten years the trend in the cement industry is increased outsourcing and contracting out of work resulting in greater percentage of contract workers in comparison to permanent workers. According to Indian labour laws, specifically, the Contract Labour (Regulation and Abolition) Act there should be no discrimination against contract workers in terms of wages, working conditions, etc. However, in many cases outsourced and contract workers who may perform the same type of work as permanent workers, are often paid less, have no benefits, and experience continued discrimination and prejudice.

India is a major player in the cement industry - currently the second largest producer in the world after China and Holcim has a major presence (through its major holdings in ACC and Ambuja). The contract workers working at the ACC/Holcim Jamul Cement Plant exemplifies this trend.

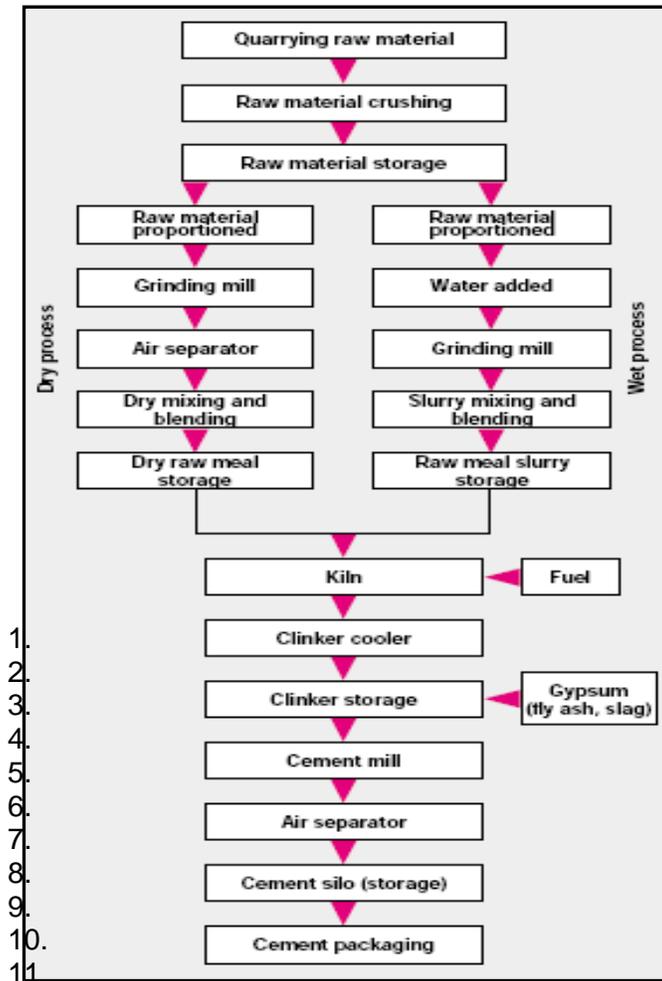
Although Indian trade unions recognize the significance of organizing contract workers, it is clearly challenging. Given their experience at the ACC Cement Plant and also at the Ambuja Plant, the overall demand of the PCSS is abolishment of contract work and adherence of the Cement Wage Board recommendations in the case of contract workers.

Earlier this year, the Indian National Cement Workers Federation (INCWF), an affiliate of both BWI and ICEM requested both Global Unions to intervene and dialogue with the Holcim to ensure labour standards and address many of the workers concerns at the plants in India. The INCWF's appeal highlighted increasing use of contract labour.

Nature of Work in the Cement Plant

The process of cement production is varied and requires several levels. The ACC Jamul plant is engaged in the Semi-Dry process

The following is a detailed outline of the production process as well as the number of workers involved in each process. The delegation consulted the unions Chhattisgarh Cement Karmachari Sangh (CCKS) and Pragatisheel Cement Shramik Sangh (PCSS), which represents the contract workers and provided figures of around 1000 contract workers. The management did not provide any employment figures.



1. Limestone extraction/mining at the quarries is done from two mines located at a distance of 2 and 22 kilometers away from the plant respectively. From here, the limestone is transported on a daily basis through dumpers to the plant. 40 contract workers deployed in this operation with about 15 permanent workers.
2. Next, it comes to the crusher department of the plant where it is reduced to smaller size (1 inch, quarter of an inch etc.) There are about 10 permanent and 20 contract workers in this operation.
3. This raw meal then comes to the Kilns (Jamul Plant has 3 units of the same). In addition to the 30-35 permanent workers, 60-70 contract workers are employed in this stage.
4. From the kilns, it goes to the Cement Mill. About 60-65 permanent workers are employed. Jamul plant has 8 cement mills, In addition to the permanent workers there are about 150 contract workers employed in this stage.
5. Thereafter, this is stored in Silos and the packing department takes over. The work in the packing department is totally outsourced with about 122 contract workers

involved in packing and loading in the wagons. There are about 8 packing units in the Jamul plant each requiring about 10-20 workers (based on the demand to dispatch cement).

6. In addition, about 50 contract workers are involved in Electrical department along with 30 permanent workers, 30 contract workers in slag warming, 12 each in Housekeeping and Maintenance work, 150 contract workers in Civil department along with 3 permanent workers, 50 contract workers in Power Plant long with 30-35 permanent workers, 25 contract workers in the Coal mill along with 10 permanent workers and 50 contract workers along with the same number of permanent workers in the Plant Workshop.

The management states that contract workers only provide support structure to the permanent workers who are involved in key operations and supervisory roles. The PCSS states that permanent workers are involved as supervisors and in highly skilled jobs such as fitters and machine technicians and all the other daily work is done by the contract workers.

The cement plant operates throughout the year without any stoppages with the exception of maintenance work or possible mechanical breakdowns of any of the plants. During rainy season, the production is continuous; however, the overall production may slow down due to demand decreases at this time period.

About the industrial dispute & the court case

The case was filed by Pragatisheel Cement Shramik Sangh (PCSS) in the year 2000, the details are as follows:

First Party

Secretary

Pragatisheel Cement Shramik Sangh

M.I.G. 1/55 Aamadi Nagar, Hudco

Bhilai, District Durg (C.G.)

Mrs. Sudha Bhardwaj, Advocate

Second Party

General Manager

Associated Cement Companies, Jamul

District Durg (C.G.)

Mr. H.N. Vyas, Advocate

Regarding the Court case, when the industrial dispute was raised by the PCSS in 1990, the case involved regularization of 573 contract workers. In 2000, the dispute between PCSS and ACC Jamul was taken up by the State Industrial Court. The workers alleged that they were actually employees of ACC, but had been shown as contract workers to deny them the benefits of permanent employment. By the time reference was made to the Industrial Court in 2000, the number of workers out of 573 had decreased to 350. In 2006, the Industrial Court held that “all the workers under reference are the company's employees and the company has entered into fake and sham contracts to make it believe it is the contractor's employees” and directed the company to regularise the workers.

In the same year Holcim, owner of ACC through a writ petition appealed against the State Industrial Tribunal order in the High Court and requested a stay on the award. While granting the stay, the High Court directed the company to pay, during the pendency of the appeal, “full wages last drawn” to workers whose re-instatement was being stayed. The High Court direction came under Section 65(3) of the Chhattisgarh Industrial Relations Act analogous to Section 17B of the Industrial Disputes Act, which allows those workers who have already proven their case in one court of law to avail of full wages last drawn while their employer appeals the reinstatement order, and this payment is unaffected by the final outcome of the case.

Holcim defied the Industrial Court’s ruling by paying only between two-to-five days salary per month – at US\$2 per day – as this is the number of days the contract workers were on the job at the time of the Industrial Court filing because Holcim was trying to get these workers to resign. The PCSS filed a writ petition to the division bench and then in the Supreme Court in 2010 for the decision on payment of wages for 26 days and not 3-4 days. The litigation is still on and the Supreme Court ordered that the decision be taken on the case and afterwards number of days for payment of wages can be decided upon.

On 21 March 2011, the High Court did rule that the paper arrangements between irregular workers and Holcim are “sham and bogus” and directed management to regularize those workers who could establish membership of the union. However, the ruling neglected to recognise the rights of about 200 who were coerced into accepting voluntary resignations. Although the PCSS was not happy about the court ruling, they did not want to go through another round of litigations and thus, they decided to dialogue with the company. Unfortunately, the company expressed unwillingness to initiate any dialogue. The court hearing was scheduled for 27th June 2011 but it has now been postponed to the 16th August 2011. In this period, the PCSS is now going to file another appeal on areas that were not covered in the March court ruling, specifically the differences in the number of workers to be regularised, not recognising the forced Voluntary Retirement Scheme (VRS), and appealing against the claim that the PCSS cannot represent all the contract workers but only those workers who have been provided membership slips.

Impact of Court Case on other workers: The ongoing court case is a very important test case in the struggle for regularization of contract workers. The PCSS has been extremely active in this cause and they have filed petitions to labour commissioners and other authorities.

Meeting with the Contract Workers & PCSS

The Pragatisheel Cement Shramik Sangh (PCSS) is a registered trade union since 1990 and has more than 500 members at the ACC unit. The union leadership includes President, Bansilal Sahu; General Secretary, Kalyan Singh Patel; Rajkumar Sahu, Vice President; Secretary, Lakhan Sahu; Treasurer, Vishnu Yadav and three members. All union officials are workers at the plant except three union office bearers who have been involved in the struggle from the beginning. The PCSS expressed criticism of what they perceived to be the high-handedness of the management and disregard for any dialogue with the PCSS.

According to the PCSS, the work force at the ACC/Holcim plants consists of 1,200 contract workers and 300 permanent workers. Of the 300 permanent workers, most are in supervisory role and about 100 are involved at the ground level in main operations. The union confirmed that the rest of the work is done by the 1,200 contract workers which increase during major maintenance and cleaning. The PCSS states that about 800 to 900 workers of the 1,200 contract workers are deployed daily on contractual basis.



During a meeting with the contract workers, they outlined the nature of their work, which largely falls under the purview of core work; hence they demanded to be treated the same as permanent workers. They also questioned how the plant management would be able to meet production targets without their sizeable contribution to the core work. (Similar observation was made in another visit undertaken by Advocates Madhumita Dutta from Corporate Accountability Desk – The Other Media and Krishnendu (Tublu) Mukherjee on 10th May 2011 – Annexure-3). The Award of Board of Arbitrators (RP Nevatia and G Ramanujam) way back in 1983 applicable to all cement units including the ACC and their actions now are in violation of their commitment and the Award.

The workers reported getting minimum wages as stipulated by law. The daily wages mentioned ranged from 159 INR (3 CHF) for unskilled work; 163 INR (3.05 CHF) for semi-skilled work; 188 INR (3.5 CHF) for skilled-work.

Meeting at ACC/Holcim Cement Plant

Meeting with the Management

The Mission met the Plant Director, G. P. Tiwari who highlighted the work done by them for the workers. The ACC got the Best Employer Award in Year 2010. The Plant has been in existence for more than 45 years and the management claims they are using excess manpower than actually required due to their consideration for the workers' interests. About the nature of the work performed by the contract workers, it was non-core work like horticulture, civil, housekeeping, etc. Except for the packing unit, contract workers act as helpers in all other processes and stages. Only during times of maintenance and breakdown, the number of contract workers deployed increases. The company maintains a database of contract workers and accordingly takes their services. The management stated that there is no defined definition of core and non-core activities – these are just terms utilised to differentiate that the main work is done by the permanent workers and support is provided by the contract workers.



The management stated that the contract workers were paid above the daily minimum wages stipulated by the law--191 INR for skilled-work; 179 INR for semi-skilled work; and 171 INR for un-skilled work. They also stated that ESI and PF benefits are also being extended to contract workers. We were also told that the labour inspections undertaken at the Plant had not recorded any irregularities.

It should be pointed out that the plant union had told the delegation that monthly salaries of permanent workers varied from 15,000 INR to 17,000 INR. Based on the wages as indicated by the management, then we can assess that the monthly wages of contract workers ranges from

4,500 INR to 5,000 INR. Although the contract workers are calculated on a daily basis, they are paid monthly.

The Management was not in a position to state the reason of the ACC moving out of the Cement Manufacturers Association (CMA) but they mentioned that they have given workers better deal vide settlement 8th June 2011 than was outlined and agreed in the National Wage Agreement on 11th February earlier this year.

About the Court case, the ACC filed for early case hearing in 2010. The management further mentioned that they are committed to honouring the Court Order; however, they have sought clarity on the list of workers and proof of burden.

The Plant management complained of non-cooperative and indecent behaviour by a section of contract workers and their disdain for the OHS Gate Meetings organized from time to time. The management further stated that around 50 per cent of the contract workers are not associated with the PCSS and are “working in peace.” The management also mentioned that for transparency they have offered to make direct bank payments to the contract workers but this was not accepted and they stated that the contract workers did not go for the periodic medical examinations organised by the Plant management.

The Management claims that they tried to initiate dialogue with both the leaders of the contract workers and the PCSS but despite their efforts the PCSS has avoided negotiations.

On April, 20, 2011 there was an agreement with the Sub-Divisional Magistrate’s Office between the PCSS and Management that “peace shall be maintained” and also list of workers shall be provided. We were also told that of late, the plant production has increased due to increased employee engagement with a renewed focus on improving plant productivity.

The Management assured that they shall abide by the law and shall honour the Court directions and they are also open to dialogue for the cause of the workers. The meetings at the Plant also included Mr. R. K. Thakur, chief Manager (HR), ACC (Holcim).

Meeting with the Community

There was also a meeting with the Community organized at the Plant who voiced their opinion against the campaign to damage the reputation of the Plant which was contrary to the reality that exists. The delegation got to know that the president of the City Council had issued newspaper statements that owing to the agitation of the contract workers, the ACC will close down in 2012 which is far from the truth. Actually the delegation had no time to talk to the real community in the workers bastis and the villages around the plant. Next occasion, the mission should find out what the community thinks. It was also mentioned that the Superintendent of Police had asked for police verification of labour and none of the contract workers cooperated.

Meeting with the Plant Union – CCKS

The meeting with the Chattisgarh Cement Karmachari Sangh (CCKS) included key-officials - Mr. Om Prakash Banchhor, President and Mr. Solanki, General Secretary. The CCKS expressed willingness to take up the cause of contract workers. The General Secretary of the INCWF Mr. Nanjappan suggested inclusion of contract workers in the organizing strategy of the union.

Findings

1. ACC (HOLCIM) Plant Jamul Town employs a high number of contract workers.
2. Permanent workers and contract workers are treated differently for the same work at the same workplace, e.g. wages and benefits.
3. There is no evidence that the company guarantees the equal rights of contract workers and fully respects international labour standards and conventions, e.g. discrimination.
4. Non-implementation of the Chhattisgarh High Court order on regularization of contract workers.

Conclusions

The BWI & ICEM shall continue to support the cause of the workers especially the contract workers in the cement industry in India

The BWI & ICEM shall submit a complaint on abusive practices of contract labour at Holcim India to the OECD.

The BWI & ICEM shall also continuously follow the Court hearing now rescheduled for 16th August to ensure implementation.

The mission urges Holcim to institute dialogue with all concerned trade unions in India in order to achieve a mutually acceptable solution to this situation.

The mission seeks to finalise a date in near future for a dialogue between the leaders of the concerned global unions and Holcim thus, in order to develop cooperation and further improve communication.

We demand and stand for equal treatment for all contract workers in the same way as for permanently employed in the Cement Industry in India.

Annexure - 1

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ANNEXURE - P/3

STATE INDUSTRIAL COURT, CHHATTISGARH, RAIPUR

Ref. No.6/M.P.I.R.ACT/I/2000

BETWEEN

Secretary,
Pragatishel Cement Shramik
Sangh, M.I.G. 1/55, Aamadi-
Nagar, Hudco, Bhilai, Distt.
Durg (C.G.)

... First Party

AND

General Manager,
Associated Cement Companies,
Jamul, Distt. Durg, C.G.

... Second Party

Present :- Hon'ble Shri D.S.Jain, President.

Appearance-- First Party by Smt.Sudha Bhardwaj,
Advocate.

Second Party by Shri H.N.Vyas,
Advocate.

AWARD :-

1. This reference has been made by State Govt. of M.P. u/s 51 of Madhya Pradesh Industrial Relation Act 1960, for adjudication of Industrial Dispute existing between Pragatishel Cement Shramik Sangh- First Party; and Associated Cement Co.Jamul Distt. Durg- Second Party. It may be mentioned here that, originally reference was made vide M.P.State Govt. orders dt. 12.6.2000, however subsequently on 20.6.2001, State Govt. of Chhattisgarh (After Reorganization of States) made an amendment in the original reference deleting the words contractor."

2. Briefly put there existed an Industrial Dispute in respect of service conditions of the workers working with Second Party Co. It appears that at the time of original reference, appropriate Govt. was of the opinion that

Attested True Copy

(Signature)



Annexure – 2

Main Provisions of the Contract Labour (Regulation and Abolition) Act, 1970

- The Act applies to every establishment in which 20 or more workmen are employed or were employed on any day on the preceding 12 months as contract labour and to every contractor who employs or who employed on any day of the preceding 12 months 20 or more workmen.
- It does not apply to establishments where the work performed is of intermittent or seasonal nature. An establishment wherein work is of intermittent and seasonal nature will be covered by the Act if the work performed is more than 120 days and 60 days in a year respectively. The Act also applies to establishments of the Government and local authorities as well.
- The establishments covered under the Act are required to be registered as principal employers with the appropriate authorities. Every contractor is required to obtain a licence and not to undertake or execute any work through contract labour except under and in accordance with the licence issued in that behalf by the licensing officer. The licence granted is subject to such conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as laid down in the rules.
- The contract labour who performs same or similar kind of work as regular workmen, will be entitled to the same wages and service conditions as regular workmen as per the Contract Labour (Regulation and Abolition) Central Rules, 1971.
- The Act has laid down certain amenities to be provided by the contractor to the contract labour for establishment of Canteens and rest rooms; and arrangements for sufficient supply of wholesome drinking water, latrines and urinals, washing facilities and first aid facilities and have been made obligatory. In cases of failure on the part of the contractor to provide these facilities, the Principal Employer is liable to provide the same.

Annexure-3

Visit to the ACC-Holcim Plant in Jamul on 10th May 2011 by Advocates Madhumita Dutta from Corporate Accountability Desk – The Other Media and Krishnendu (Tublu) Mukherjee - key observations highlighted the discriminatory practices by the company against the contract workers. The observations made are as follows:

Contract workers engaged in core activity: Holcim-ACC factory located in Jamul has only 300 permanent workers out of a total workforce of 1200 workers, with majority of workers being on contract. With a high production rate of over a hundred thousand metric tonnes of cement a month, it would be impossible to meet the target with merely 300 permanent workers doing the core work. It was evident from our interactions with the contract workers that they are engaged in the bulk of the core production work in the factory.

Wage disparity: The Cement Wage Board Agreement of 1983, applicable to Holcim's group of companies, states that even in non-core activities, contract workers should be paid on par with employed workers. But as per the contract workers, they were paid around Rs 150-180 per (\$4USD) day. This is far below that paid to permanent workers. Many of the workers have been employed as contract workers in excess of 20 years at the Jamul plant and are being paid Rs 151/day (\$3.5 USD).

Work and Safety conditions: As per the contract workers, there has been increased production pressure since Holcim has taken over in 2006. Unskilled workers are engaged in jobs that as per law only certified skilled workers are permitted to perform. In certain machines, like cement back feeders, where 4 workers used work earlier, now only 1 worker is allowed to work. Increased work pressure has led to stressful work conditions leading to accidents. Accidents like burn injuries in the captive Thermal power plant occur daily as per the workers. Workers are under constant stress of looming accidents, especially in the thermal power plant due to extremely hazardous conditions of work where boiling hot water is circulated in pipes under high pressure in close proximity to the workers. There have been cases of workers sustaining severe burn injuries while opening high pressure valves etc. In most the cases, Factory Inspectorate is not informed about the accidents taking place daily at the plant. Only if there is a major accident and there is pressure from the Union, that the matters comes to the notice of factory inspectorate. In almost all cases, except major accidents, workers are never paid compensation. Since 2010, there have been number of fatal and non-fatal accidents in the plant, many of been have not been officially notified. While safety facilities have been provided to some extent to the permanent workers, the contract workers engaged in similar core activities are not provided with any safety equipment, including masks, gloves, boots etc. They are not even provided a uniform.

Medical facilities: As per the contract workers no medical check-ups have been conducted for the workers in the last 15-18 years. There is no medical facility available for the contract workers inside the factory, not even basic first aid. While the contract workers have Employees State Insurance (ESI) cards, but the ESI dispensary located in Bhilai has very rudimentary facilities despite being located in an industrial township with high possibilities of emergencies and accidents.
