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ALL INDIA CENTRAL COUNCIL OF TRADE UNIONS

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14.12.2020

To,

1. The Chief Minister, Karnataka
Vidhana Soudha, Bengaluru
2. The Labour Minister, Karnataka
Vidhana Soudha, Bengaluru
3. The Additional Chief Secretary (Labour)
Government of Karnataka, Bengaluru
4. The Commissioner of Labour,
Department of Labour, Karnataka

Dear Sir,

Sub.: Submission of Report in regard to labour violations by Wistron, Narasapura Industrial Estate and suggesting measures to be taken to protect industrial peace

AICCTU visited Narasapura Industrial estate (Kolar district) to meet with the workers in light of the incidents of 12.12.2020 when thousands of workers protested at Wistron factory raising several demands, and which ended in properties of the factory being destroyed and police action against the workers.

Please find enclosed a report with suggestions on steps to be taken to safeguard the rights of workers and to protect industrial peace

Yours Sincerely

P.P. Appanna



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Backs against the wall

AICCTU visited Narasapura Industrial estate (Kolar district) to meet with the workers in light of the incidents of 12.12.2020 when thousands of workers protested at Wistron factory raising several demands, and which ended in properties of the factory being destroyed and police action against the workers.

The factory site has been cordoned off by a large contingent of police and is inaccessible to the public and the police refuses to allow anyone near the factory. In fact, the small roadside shops and eateries at the cross-road leading to the factory were shut in our presence by the police who drove away anyone coming towards the factory. However, the general public in the vicinity of the factory were very forthcoming about the said incident. We were able to visit several villages and meet with workers employed at Wistron. The workers were understandably in fear to speak, while even the general public around the factory, though vocal, expressed their fear in speaking due to the police presence in the area.

1. Wistron, a multinational corporation from Taiwan, has its establishment at Narasapura Industrial Estate where iPhones are assembled for Apple Inc. Operational post lockdown, it employs¹ 1343 regular/permanent and 8490 contract workers, supposedly sourced from six contractors. The workers are engineering graduates, ITI diploma holders and PUC/10th standard pass.
2. Contract workers consist of three broad categories (a) migrant workers from other States including Tamil Nadu, Andhra Pradesh, Bihar, etc., (b) migrant workers from other districts of Karnataka, and, (c) workers from various villages in the taluks around Narasapura. It is said that there are also workers who come from Hoskote and Bengaluru to work at the factory.
3. Migrant contract workers from other districts and States live in rented houses in Narasapura town and nearby villages while the other contract workers live with their families in scores of villages in various taluks including Narasapura, Bangarapete, Mulbagal, etc. The one common feature of the contract workers is that they are all young men and women.

¹ <https://www.deccanherald.com/business/business-news/worker-rampage-cost-wistron-rs-437-crore-927125.html>



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4. At the time when they applied for jobs, these contract workers were interviewed by officials of Wistron. Having passed the interviews the contract workers are allocated to one of the six so-called contractors, who issue an "Appointment Order" stating that they are being appointed by the said contractor and would be "*required in various clients' locations*", though the only place they work in is Wistron. There is no instance of any worker having worked at Wistron being transferred to any other so-called client location. All the workers are interviewed by the Wistron officials and work under the instructions and control of these officials. The contractor plays no part other than issuing the "Appointment Order" and effecting payments of wages. In fact their appointment letters clearly state that all the job instructions would be given by the factory supervisors. Clearly these contractors are mere name-lenders and the contract system is an unfair labour practice engaged in by Wistron to deny the workers their rights as regular/permanent workers.
5. The workforce is extremely young. It is said that all job applications by persons above 26 years are summarily rejected by the Wistron officials.
6. The workers, especially those from the nearby villages are from extremely poor backgrounds and a large number of them belong to the Dalit community. They have taken employment at Wistron on account of colleges being closed and their families facing economic crisis, and are working with the sole purpose of alleviating the financial condition of their families. At the time of their appointment, they were informed that they would receive wages of Rs. 22,000/- per month including overtime wages. This is the sole reason that these youth have accepted work at Wistron factory.
7. The Wistron establishment only operates 2 shifts – 6.00 a.m. to 6.00 p.m. (day shift) and 6.00 p.m. to 6.00 a.m. (night shift). The work is of assembling iPhones and each set of workers is allocated one part of the assembly line. Cab service is offered to the workers from certain pick-up points, where the workers from various villages congregate. For reaching the factory for the first shift, workers get up at about 4.00 a.m. and, after work, reach their homes at 8.00 p.m.
8. The conditions of work are rather horrific. Each worker is compelled to do 12-hour shifts every day/night and has no say on which shift they can opt for. Women are made to work the night shift as well. For every four days of work, the workers are provided 2 days off. There is no avenue for redressal of grievances of the workers. The irregular, erratic and reduced payment of



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wages is an issue that was raised repeatedly and yet remains unaddressed. While the workers were promised monthly wages of Rs. 22,000/-, they have received substantially less wages despite having worked overtime on all days without any leave. Wages for the month of November are yet to be paid to the workers despite their numerous requests to do so. One issue that the workers have raised is the fudging of their attendance leading to them getting lesser wages. The other obvious aspect is the non-payment of due overtime wages as mandated under law and that the salaries being credited to their accounts is reducing every month. There is no Union in the factory, either of the regular employees or the contract workers. Despite being unorganised, workers have aired their grievances with the Company officials on numerous occasions, but to no avail. Apparently the Kolar Deputy Commissioner was also approached earlier, resulting in the Deputy Commissioner writing to Wistron about the compulsory 12-hour working shifts, however, none of the workers have a copy of the said communication.

9. On 12.12.2020, workers yet again sought for their wages from the HR and other Wistron officials but were turned away. This appears to have happened between the night and day shifts. Clearly things got out of hand and some persons began damaging the Company's property. From the videos that are in the public domain it can be seen that persons have broken glass windows and overturned vehicles and damaged them. The police then came to the spot and dispersed the workers. Some of the workers have said that there were some outsiders who came into the factory and resorted to breaking things. From the videos it can be seen that most persons are bystanders while some are indulging in damaging the company's properties.
10. One particularly disturbing video being circulated, is of workers being made to lie down on the ground on their stomachs and being beaten by the police. The video snippet of the video is placed below, and the same needs to be taken cognizance of, verified and acted upon.



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11. It is being reported that about 150 workers have been arrested, however, no details are available about them. Given that large sections of the workforce are migrant workers and from poor families locally, it is imperative that there is strict compliance with the law in regard to informing the family. Those arrested have the right to presumption of innocence and need to be treated as such. There is also an atmosphere of fear prevailing and workers are living in the anxiety that the police will come banging on their doors irrespective of whether they participated or not in the December 12th incident. Many workers have switched off their phones and most do not communicate with each other for anything.



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12. The response of the State Government has been one of outright condemnation of the destruction of property and little sympathy for the plight of the workers. The events of 12th December 2020 are an act of desperation on the part of the workers, who are exploited and unorganised, with no avenue of grievance redressal. Wages are unpaid and are reduced arbitrarily, while the workers are compelled to work compulsory 12 hour shifts. This pressure cooker situation was brought upon by the State government and Labour department remaining non-existent in dealing with the workers' plight, absentee contractors and non-responsive Wistron management culminating in the violence. The question really to be asked is how such brutal exploitation of workers in sweatshop-like conditions was allowed by the manufacturers of the world's most expensive mobile phones? Also, how is it that the State government and Labour Department can claim ignorance of this exploitation, when this is common knowledge in the industrial area?
13. Incidentally, as per newsreports², Apple Inc is probing whether its contract manufacturer Wistron violated its supplier guidelines at the iPhone manufacturing facility. These guidelines mandate third-party staffing agencies to pay workers and provide them other benefits as per rules and on time. It is reported that Apple will examine whether there was any disparity in wages agreed upon and paid to the staff as also whether overtime by the workers was accounted for and they were paid according to norms.
14. Workers are getting messages from the employer directing them not to report for duty until further communication. While on one hand they are anxious about the police action, on the other, they are worried that they will lose their jobs and due wages.
15. Under these circumstances there is much that is required to be done by the State Government, the Labour Department and police, which we briefly summarise below.
 - a. Non-payment and delayed payment of wages: The workers were not paid wages on time. Section 5 of the Payment of Wages Act, 1936 mandates that the wages of every worker employed shall be paid before the expiry of the 10th of every month in case of industrial establishment with over

² https://economictimes.indiatimes.com/industry/cons-products/electronics/apple-probing-if-wistron-flouted-its-supplier-rules/articleshow/79713233.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst



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1000 workers. However, as is seen workers were not paid on time and wages are due to them. This is in violation of Section of the Payment of Wages Act, 1936 and it is necessary that action in this regard be taken.

- b. Failure to pay minimum wages and overtime wages: All workers are required to be paid minimum wages as per the Minimum Wages Act, 1948. Further, Section 59 of the Factories Act provides for extra wages for overtime and mandates that where a worker works in a factory for more than nine hours in any day or for more than forty- eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. However, as can be seen workers were compelled to work beyond nine hours, but were not paid wages at overtime rate. In fact, workers were compelled to work overtime hours, which is impermissible under the Factories Act. The Supreme Court in *People's Union For Democratic vs Union Of India & Others [AIR 1982SC 1473]*, has held that: "Where a person provides labour or services to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Article 23 is remedied." There is a clear positive obligation on the State to ensure that no workers are compelled to work under conditions of forced labour. Section 9 of the Factories Act, 1948 which prescribes the powers of the inspectors requires the inspectors to inspect any factory within his jurisdiction. Similarly Section 14 of the Payment of Wages Act and Section 19 of the Minimum Wages Act, 1948 prescribes the powers of the inspectors. This power carries with it a duty to inspect such establishments and ensure the compliance with the various provisions of the law. However, no inspections appear to have been carried out.
- c. Compulsory 12-hour work shift: The workers are required to work for a period of 12 hours compulsorily and without any option every day. Performance of overtime work cannot be made compulsory, as per Section 51 of the Factories Act, 1948 and the same can only be done with the consent of the worker. However, workers have been compelled to work for 12 hours every day.



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- d. Failure to display details: The law mandates that the information in regard to wages must be displayed. Rule 23 of the Karnataka Minimum Wages Rules, 1958 and Rules 7 and 9 of the Karnataka Payment of Wages Rules, 1963 mandate that the following shall be displayed in English and in Kannada in conspicuous places at the establishment and the work-site:

- the rates of wages payable to different classes of workers employed therein
- hours of work
- wage periods
- dates of payment of wages for two months in advance
- names and addresses of the Inspectors having jurisdiction

This would make the workers aware about the details of the inspector to whom they could complain. However, neither were such details put up, nor did the State take steps to inspect the said factory, thus leaving the workers completely in the lurch. Display of necessary information pertaining to statutory labour rights of workers is also mandated under the Industrial Employment (Standing Orders) Act, 1946 and corresponding Rules.

- e. No institutional mechanisms to address grievances: Section 3 of the Industrial Disputes Act, 1947 mandates that in the case of any industrial establishment with more than 100 workers, a Works Committee consisting of representatives of employers and workmen engaged in the establishment is to be constituted. The Works Committee is to promote measures for securing and preserving amity and good relations between the employer and workmen. Further, Section 9C mandates that every industrial establishment employing 20 or more workmen shall have one or more Grievance Redressal Committee, consisting of equal number of members from the employer and the workmen, for the resolution of disputes arising out of individual grievances. However, the industrial establishment appears to have neither of these structures in place

- f. Women working in night shift: We were informed that women were required to work in night shifts of 12 hours from 6pm to 6am. The notification dated 20.11.2019 which provides for women working in night shift, permits the same only on the compliance of the following conditions, none of which were met:

- Transportation facility from residence accompanied by security guards in vehicles with CCTV cameras.
- Healthy and hygienic working conditions.



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- Women workers shall be engaged in a batch of not less than 10 women. The total number of women workers in night shift shall not be less than 2/3 of the total strength.
 - During night shift, not less than 1/3 of the supervisor shift in charge or other supervisory staff shall be women.
 - The employer shall appoint not less than two female wardens per night shift who shall work as Special Welfare Assistants. Sufficient women security shall be provided both at the entry and exit.
 - Boarding and Lodging, if any made, the same shall be kept exclusively for women.
 - Proper lighting and CCTV coverage to be ensured not just inside the factory but also surrounding the factory. CCTV footage shall be maintained for a period of at least 45 days.
 - In the event that more than 100 women workers have been engaged in a shift, a separate vehicle shall be kept ready in case of emergency situations such as an injury, incidental act of sexual harassment etc.
 - If a women is rotated from a day shift to night shift, or vice-versa, that women should at least be given 12-hours of the rest between the switch.
 - Appropriate medical facilities
 - Sufficient number of rest rooms to be provided. Separate canteen facility to be provided for women workers
- g. Workers not organized: It is a matter of grave concern that an establishment employing more than 10,000 workers does not have a workers Union. In order to ensure strict compliance with laws and the balance between employers and workers, it is absolutely essential that a strong trade union system is present. The right to organize and collectivize is protected under Article 19(1)(c) of the Constitution and in order to ensure that it is given complete meaning, it is necessary that the Labour Department take necessary steps to inform workers of their right to organize and collective bargaining. In protecting the fundamental rights of workers guaranteed under Article 19(1)(c) and 21, there is a positive obligation on the State to remove all obstacles in the enjoyment of these fundamental rights.
- h. Inquire into failure of Labour Department: Section 9 of the Factories Act, 1948 which prescribes the powers of the inspectors requires the inspectors to inspect any factory within his jurisdiction. Similarly Section



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14 of the Payment of Wages Act and Section 19 of the Minimum Wages Act, 1948 prescribes the powers of the inspectors. This power carries with it a duty to inspect such establishments and ensure the compliance with the various provisions of the law. However, no inspections appear to have been carried out. There is a positive obligation and duty on the Labour Department to ensure that such inspections take place regularly which has been given a complete go-by. This must be immediately enquired into and necessary action must be taken.

- i. Action to be taken against the company: It is apparent that Wistron has engaged in unfair labour practices by introducing a sham contract system solely with the intention of exploiting the guised contract workers. Notwithstanding this, it has failed to perform its statutory duties under section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 and specifically section 21(4) in regard to non-payment of wages by the contractor. These are just a glimpse of the violation of rights of the workers and the Labour Department ought to inquire into the various labour law violations and take necessary action in regard to the same.
- j. Regarding cases registered against the workers and their arrest: About 150 workers are said to have been arrested, and more arrests of workers are likely. It is necessary to note that incidents of 12th December 2020 have occurred in the context of an extremely exploitative sweat-shop like working conditions in gross violation of labour laws including the most basic right to earned wages of workers who are already poor. Under these circumstances, when workers have been pushed into an extremely vulnerable situation already, the State Government must understand that the filing of criminal cases and arrests of workers is only going to further deteriorate their situation and would serve no other purpose. As such the State Government must consider dropping of all charges against the workers.

Even otherwise, in regard to those arrested it is necessary that the State Government release the list of all arrested persons and ensure that their families are informed.

- Article 22 of the Constitution mandates that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.



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- Section 50(2) of the Code of Criminal Procedure (CrPC) makes it obligatory for the police making arrest to inform about the arrest to a person nominated by the arrested person. An entry of the fact of passing of information shall be made in a book kept in the police station in such form as may be prescribed in this behalf by the State Government. Under
- Section 41B(b) of CrPC every police officer while making an arrest shall prepare a memorandum of arrest which shall be — (i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made; (ii) countersigned by the person arrested; and (c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.
- Other mandatory stipulations under sections 41, 41-A, 41-D, 50- A, 57 and 60-A of the CrPC have to be strictly adhered to.

In conclusion we recall the prophetic words of Dr. B. R. Ambedkar in the 7th Labour Conference held on 26 November 1945, where in his presidential address he lamented the reluctance to enact labour legislations and the need to strengthen the unions, as follows:

"How can the workers be asked to agree to reduce standards of living in an economy in which the profits are to go to private individuals? ... We must do our best and do it immediately to mitigate it and to prevent it from lowering labour standards. I believe three things are necessary to ease the situation. Firstly, to reduce hours of employment so as to provide employment for many. Secondly, to provide machinery for fixing wages. The absence of such machinery combined with employment is bound to cause labour standards to slump, which ought to be prevented. Thirdly, to provide the employers and workers with a resolve to collective bargaining and learn to work together in the solution of other common problems. Nothing in my judgment can bring this about more effectively than sound and responsible Trade Unions."

These steps are extremely necessary to ensure the protection of the fundamental rights of workers as well as ensuring industrial peace.