

Statement on the Matter of NLU Delhi's Safai Karamcharis & Implementation of the Hon'ble Labour Minister's Order

The matter of reinstatement of *Safai Karamcharis* and cancellation of contract is not just between the contractor and the workers. The University, being a principal employer, has clear obligations under the law. The University Administration has been a part of the meetings with the Labour Ministry and has actively participated in the process, even in the absence of the contractor. Moreover, the Written Order is addressed to the University Registrar, NLU and not the contractor. The University cannot shrug responsibility on the matter at this stage.

Illegality in the existing contract

1. The Tender process for the present contract with Rajendra Management Group (hereinafter "RMG") was invalid for want of a manpower assessment which is mandatory as per Delhi Govt. Office Order F-4/20/08/AR/921-1080/C dated 16.01.2009 (hereinafter 'Delhi Govt. Order'). The University Administration's arguments that they initially hired more *Karamcharis* than required does not stand for several reasons. Firstly, the strength of the students has drastically increased since 2008. Secondly, the *Karamcharis* having first-hand knowledge on the issue had intimated the University Administration a number of times that more workers are required in the University. The shortage of *Karamcharis* was recognised by the University itself (even without assessment) in its Notice for Expression of Interest (hereinafter "EoI") had stated a requirement of 71 workers.

2. The University Administration is requested to kindly clarify their stance on whether the workforce requirement was assessed at any point of time. Under the 2009 Order, the onus of conducting the requirement assessment **lies on the University and not the Contractor**. Further, it needs to ensure that the *manpower assessment has been done after applying the norms fixed by SIU and arrive at the minimum number of Safai Karamcharis which need to be deployed for the purpose by the contractor* after actual measurements are taken by a Responsible Officer of PWD and along with measurement they are to be categorized under different nomenclatures as defined under the SIU norms.

We had filed an **RTI dated 02.01.2020** [PFA] regarding the same. The University's response to the same discloses that only measurements of Buildings and Open Space were calculated. The number of workers to be deployed was not assessed as per the Delhi Govt. Office Order.

3. The number of workers engaged through RMG has been unclear since the beginning. The Notice for Expression of Interest mentioned the requirement of the housekeeping staff as **71**. RMG deployed **30** workers, (later, increased to **39**) as opposed to **71**. All tender documents including the contract are silent on the number of workers deployed. It is also important to mention that the RMG's Financial bid (Rs. 7.9 Lakh) does not support the minimum wages of the required workforce i.e. 71. Thus, RMG's bid should have been rejected at the pre-qualification stage, especially since there were qualified financial bids.

4. Out of the fluctuating number of workers deployed by RMG, initially only 10 workers from the old workforce were retained. After pressure from the students and old workers, this number kept on increasing and now the University Administration has agreed to retain 36 workers (out of the 55) from the old workforce. The University Administration is requested to disclose whether it used any objective criteria to determine the number of old workers to be retained. It is also requested to clarify the basis of selection from among the workers, the powers under which such retention was made possible and reasons why the same power cannot be exercised,

with respect to all the workers considering the fact that the University's EoI itself states the requirement of workers as 71.

5. As per paragraph 2 of the Delhi Govt. Order which relies on the SIU norms, a reduction of more than 20% in the workforce amounts to exploitative act and any tender suggesting such reduction should be disqualified. The number of workers employed under the previous contract was 55. A reduction from 55 to 39 saves beyond 20% of the workforce.

In light of the contention of the University that the Delhi Govt. Order is not binding on it, it is important to note that the University has directed its officials on record “*keep the [SIU] norms in mind while finalizing the tender*”. [PFA]

6. In light of the above-stated illegalities, serious doubts are raised as to why the bid of RMG was even considered while awarding the contract for housekeeping services. Therefore, the contract cannot be said to have been “duly” awarded to RMG, as claimed by the University in Point 10.

Relationship between the University and the workers

7. The University states that they ‘*hire services and not workers*’. It is important to point out that it is the University that exercises control and supervision over the workers, through its officers - the Assistant Registrar and the Wardens, and not the contractor. The workers have always approached the Assistant Registrar for sanctioning leaves. The job profile of the Assistant Registrar itself explicitly entrusts him with responsibility of the housekeeping staff. The Contractor or the Field Officers never came into the picture. In fact, they have hardly ever come to the college to deal with such matters in the past 12 years. Furthermore, the Wardens of the University were involved in assigning the floors of the University buildings to all the workers.

8. The University Administration has an obligation towards these workers owing to the peculiar state of affairs. The administration kept on renewing the housekeeping contract for **12 years**, with nearly the same set of workers, ‘*without formal contract agreement with the (erstwhile) contractor*’ and ‘*without advertised tender enquiry process*’. Without formal contract agreement, as stated in the CAG report, how could the University engage the workers’ services for the past 12 years? Even after the term of the old contractors ended, the workers were engaged by the University directly, for 3 days (28.12.19 to 30.12.19). If we accept the stance of the University administration that they ‘*hire services, not workers*’ then how could the workers continue to work at the University in absence of the contractor for the said time period under the control and supervision of the University administration?

On alternate employment

9. The offer of alternate employment is a mere façade. It does not address the concerns of the workers and, therefore, the same was unanimously rejected by the workers. **Being portrayed as a humanitarian move by the Administration, it is a mere ruse to conceal the illegality of the present tender.** The workers feared victimization and exploitation at the hands of the new contractor if they were to accept such an offer by the new contractor. Since the duration of contract and job security at the alternate sites has not been specified at all, it is plausible that the contract might be for a short duration rendering them unemployed again in a few months. Therefore, despite the 'magnanimous' move by the University administration in persuading RMG to retain the workers, these serious apprehensions of the Karamcharis about working with a new and unknown contractor, which was introduced to them at a moment's notice, cannot

be simply disregarded. Moreover, it is difficult to comprehend the feasibility of the offer since the contract itself is illegal. The claims of any offer of alternate employment are a distraction from the illegality of the new contract and the University's liability for the same.

10. As stated by the University in Point No. 5, **the old workers have nowhere claimed permanent absorption from the University administration in the university till now.** Stating this over and again by the University is a distortion of the demands of the workers. Moreover, the Written Order dated 17.06.2020 is limited to the cancellation of the new contract with RMG and reinstatement of the old workers under the direct payroll of the University until the retendering process is over. The direction to keep the workers on the direct payroll of the University is only for the interim period. Therefore, the judgment *Bharat Heavy Electricals Ltd. vs. Mahendra Prasad Jakhmola & Ors.* dated 20.02.2019, in the University's Press Note deals with a clearly distinguishable set of facts pertaining to the regularization under a different law i.e. U.P Industrial Disputes Act 1947. It is irrelevant to the present issue as the *Karamcharis* are only seeking retention.

The fear of a purported 'alarming increase' (as stated in the Point No. 6 of the University's Press) in the workforce is baseless in the face of the requirement of a proper assessment of workforce as per the SIU norms. The University must first comply with the norms and arrive at a sound assessment.

On the Present Order, Powers of the VC, Powers of the Labour Ministry and Institutional Autonomy

11. The University is very well aware that the workers battled poverty, unemployment and lockdown for 6 long months and survival will only become difficult as time passes. Therefore, in order to break the spirit of the workers, the University administration had resorted to the delay tactics to deflect the burden towards the Finance Committee/Executive Council/Governing Council citing policy questions involved in it. It is important to note that there is no policy question involved in the present written order. As per University practice, decisions on direct employment with the university as well as employment through contractors have been taken by the University Administration and have only later been sought to be approved and ratified by the Finance Committee, Executive Council or the Governing Council.

12. It was at the instance of the University that the students approached the Labour Ministry. In case the University felt there were policy questions involved, the University had 6 months to consult and approach the EC/GC. The University denied resolution of the issue from their end, citing lack of requisite funds or power to cancel the contract and retain the workers under a fresh contract. The students were assured that once there is a Written Order from the Delhi Government, the University would happily implement the same immediately. Relying on the same, the students and workers ran from pillar to post to ensure to obtain a favourable government Order. Invoking EC/GC only after a very hard-won Order has been obtained, is simply an attempt to delay relief to the workers.

13. Further, law and practice indicate the Vice Chancellor's power to implement the present Order as it stands. In pursuance of the provisions drawn from Section 14 of NLUD Act 2007 (Delhi Act No 1 2008 as amended by Act 7 of 2009), the Executive Council designated the Vice-Chancellor as a 'competent authority' under the NLUD Purchase Regulations, to deal with outsourcing of services and contract management. Exercising the same power, the University Administration unilaterally decided to retain 6, and later 23 *Karamcharis* out of the

55. This is a clear exercise of power without prior authorisation of the Governing and Executive Councils. Thus, both law and practice are clear that the Vice-Chancellor has the power to cancel the contract and reinstate the workers in the University.

14. The Labour Ministry is well within their powers to pass the present Order dated 17.06.2020 on the issue of sanitation services, making this a 'legal and reasonable process'. It is wholly consistent with principles of natural justice, due process and has been reached through the University's active representations before the Ministry. The University cannot, in the face of an unfavourable outcome, distance itself from this fairly reached outcome. Further, NLU Delhi, established under the NLU Act 2007 (a State Law) is a state-funded University. Moreover, various secretaries of the Delhi Govt constitute University's decision-making bodies such as Governing and Executive Councils. The University has received grants of Rs 12 Cr. and Rs 9.5 Cr. from the Govt. of NCT of Delhi during the financial years 2017-18 & 2018-19 respectively.

15. As per the University Administration, the present Order takes away the autonomy of the institution. We humbly disagree. Under the University Grants Commission (Conferment of Autonomous Status upon Colleges and Measures for Maintenance of Standards in Autonomous Colleges) Regulations, 2018, Rule 3 confers autonomy on the University in academic and curricular matters. The present matter has no bearing on any of the issues listed therein. Autonomy as described in the Education Commission Report, 1966, and as incorporated in the UGC Revised Guidelines, (1987) is:

"the freedom for the college to:

- determine its own course of study and syllabi;*
- prescribe rules of admission subject, of course, to the reservation policy of the state government; and*
- evolve methods of evaluation and to conduct examinations."*

State of Punjab And Anr. vs Sardari Lal And Ors, as cited by the University, deals with the issue of autonomy with respect to permanent employees and a university's power to grant 'increment and allowance to its employees'. The present matter is evidently unrelated and distinguishable. Autonomy and accountability are two sides of the same coin. Thus, autonomy of the University is not compromised by the implementation of the present Order dated 17.06.2020. Pitting (out of context) concerns about institutional autonomy against the lives and liberty of these workers is deeply upsetting.

Human beings, not commodity

16. The over-emphasis on treating the University's relationship with the workers as a mere service wrongly tries to dehumanize the issue. The University Administration's impugned actions have not just severed fictional ties with the contractor, they have had real life consequences for these workers. Many of these workers have been at the college for the past 12 years. All these workers' contributions in building this institution, are just as valuable, if not more, as the contributions of moot winners, academicians or civil service exam toppers of this college. Their efforts have been instrumental in not just taking this college to the dearly acclaimed 2nd position in the NIRF Rankings for the past 3 years but also in Swatch Campus Rankings where the college obtained 3rd rank across India. The latter drew praise from the Vice-Chancellor himself who 'gave credit to the housekeeping staff' along with the cash prize. It

was unfortunate that just weeks after this recognition, the workers were suddenly removed without notice.

17. Besides the plethora of legal issues, we have mentioned above, the struggle is, importantly, a judgment on the legitimacy of NLUD 'family'. It is not illegitimate on part of the workers, owing to their longstanding association, to expect to be a part of NLUD family. Their efforts have contributed significantly in bringing the institution to where it stands today. All of us who are part of NLUD Workers-Students Solidarity genuinely believe that these workers are part of the NLUD family. We suddenly don't throw out our family members and ask them to go to alternate accommodation.

Some questions to the administration

18. It is crucial to raise certain questions: 'How were these workers' services availed by the University for the past 12 years without any formal contract (as per CAG report)?'. 'Why is the Administration not implementing a Government Order?'. Despite an overwhelming majority of the student body, alumni and elected students' committees urging them to do the same, 'Why is the illegal contract not being cancelled?'. More importantly, 'Why was the bid of RMG even accepted despite disqualifications?' The University Administration clearly mentioned that the requirement is for 71 workers then 'Why did the University administration accept a financial bid that cannot even support minimum wages of the required workers despite there being other qualified bids?'

Please find all the above mentioned attachments [here](#).

- ***NLUD Workers-Students Solidarity***

LIST OF ATTACHMENTS:

1. Notice for Expression of Interest for housekeeping services.
2. Office Order F-4/20/08/AR/921-1080/C dated 16.01.2009 mandating manpower assessment.
3. RTI dated 02.01.2020
4. University's direction to its official to follow the SIU norms.
5. CAG Report No. S.S-II/1-1573/2017-18/312 dated 01.03.2019.
6. University Grants Commission (Conferment of Autonomous Status upon Colleges and Measures for Maintenance of Standards in Autonomous Colleges) Regulations, 2018