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## CONTRACT LABOUR IN INDIA

### INTRODUCTION

10.1 The system of employing contract labour is prevalent in most industries in different occupations including skilled and semi skilled jobs. It is also prevalent in agricultural and allied operations and to some extent in the services sector. A workman is deemed to be employed as Contract Labour when he is hired in connection with the work of an establishment by or through a contractor. Contract workmen are indirect employees; persons who are hired, supervised and remunerated by a contractor who, in turn, is compensated by the establishment. Contract labour has to be employed for work which is specific and for definite duration. Inferior labour status, casual nature of employment, lack of job security and poor economic conditions are the major characteristics of contract labour. While economic factors like cost effectiveness may justify system of contract labour, considerations of social justice call for its abolition or regulation.

10.2 The condition of contract labour in India was studied by various Commissions, Committees, and also Labour Bureau, Ministry of Labour, before independence and after independence. All these have found their condition to be appalling and exploitative in nature. The Supreme Court of India in the case of Standard Vacuum Refinery Company Vs. their workmen (1960-II-ILJ page 233) observed that contract labour should not be employed where: —

- (a) The work is perennial and must go on from day to day;
- (b) The work is incidental to and necessary for the work of the factory;
- (c) The work is sufficient to employ considerable number of whole time workmen; and

- (d) The work is being done in most concerns through regular workmen.

### THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970

10.3 The concern for providing legislative protection to this category of workers, whose conditions have been found to be abysmal, resulted in the enactment of the Contract Labour (Regulation and Abolition) Act, 1970.

### OBJECTS AND PURPOSES OF THE ACT

10.4 The Contract Labour (Regulation and Abolition) Act, 1970 was brought on the Statute Book to regulate the employment of Contract Labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.

### APPLICATION

10.5 The Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules, 1971 came into force on 10.2.71. The constitutional validity of the Act and the Central rules were challenged before the Supreme Court in Gammon India Ltd. Vs. Union of India 1974-I-LLJ-480. The Supreme Court upheld the constitutional validity of the Act & Rules and held that there is no unreasonableness in the measure. The Act & Rules were enforced w.e.f. 21.03.1974.

10.6 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.

### **APPROPRIATE GOVERNMENT**

10.7 The jurisdiction of the Central and State Government has been laid down by the definition of the 'Appropriate Government' in Section 2(1)(a) of the Act, as amended in 1986. The Appropriate Government, in respect of an establishment under the Contract Labour (Regulation and Abolition) Act, 1970 is the same as that in the Industrial Disputes Act, 1947.

10.8 As per the interpretation given by the Supreme Court, through its judgement dated 30.08.2000, in Steel Authority of India Limited and Ors Vs. National Union Water Front Workers & Ors., the 'appropriate government' in relation to an establishment would be the Central Government if (i) the concerned Central Government company/ undertaking or any undertaking is included by name in clause (a) of Section 2 of the Industrial Disputes Act, or (ii) any industry carried on by or under the authority of Central Government or by a railway company, or (iii) any such controlled industry as may be specified in this behalf by the Central Government, otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate government.

### **THE CENTRAL AND STATE ADVISORY BOARDS**

10.9 The Central Government and State Governments are required to set up Central and State Advisory Contract Labour Boards to advise the respective Governments on matters arising out of the administration of the Act as are referred to them. The Boards are authorised to constitute Committees as deemed proper.

10.10 The Central Advisory Board—a tripartite Body was last re-constituted on 30<sup>th</sup> October, 1996. On expiry of the term of appointment of the Chairman, he has been reappointed on 16<sup>th</sup> November 1999 for a period of three years. The term of non-official members of the Board was three years but they will continue to hold

office till their successors are appointed. The appointment of employer and employee members of the Board is under process. Fifty meetings of the Central Advisory Contract Labour Board (CACLB) have so far been held. The last meeting was held on 22<sup>nd</sup> November 2001.

10.11 The existing Central Advisory Contract Labour Board has held three meetings during the year under report and considered various issues relating to abolition of contract labour system in certain establishments. The working of the Act was also reviewed in these meetings. As a consequence, the Central Government on the recommendation of the Board, have prohibited employment of contract labour in various operations/ category of jobs in various establishments. The position of notifications issued by the Central Government during the period under report is given in **Box 10.1**.

### **REGISTRATION OF ESTABLISHMENT AND LICENSING OF CONTRACTORS**

10.12 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.

### **WELFARE AND HEALTH OF CONTRACT LABOUR**

10.13 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.

### **PAYMENT OF WAGES**

10.14 The contractor is required to pay wages and a duty is cast on him to ensure disbursement of wages in the presence of the authorised representative of the Principal

Employer. In case of failure on the part of the contractor to pay wages either in part or in full, the Principal Employer is liable to pay the same. 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.

## PENAL PROVISIONS

10.15 For contravention of the provisions of the Act or any rules made thereunder, the punishment is imprisonment for a maximum term upto 3 months and a fine upto a maximum of Rs.1000/-.

## OTHER PROVISIONS

10.16 The Act makes provision for the appointment of Inspecting staff, for maintenance of registers and records and for making Rules for carrying out the purpose of the Act. In the central sphere, officers of the CIRM have been appointed as Inspectors.

## PROHIBITION

10.17 Apart from the regulatory measures provided under the Act for the benefit of the contract labour, the 'appropriate government' under section 10(1) of the Act is authorised, after consultation with the Central Board or State Board, as the case may be, to prohibit, by notification in the official gazette, employment of contract labour in any establishment in any process, operation or other work.

Sub-section (2) of Section 10 lays down sufficient guidelines for deciding upon the abolition of contract labour in any process, operation or other work in any establishment. The guidelines are mandatory in nature and are:- Conditions of work and benefits provided to the contract labour.

- Whether the work is of Perennial nature.
- Whether the work is incidental or necessary for the work of an establishment.
- Whether the work is sufficient to employ a considerable number of whole-time workmen.
- Whether the work is being done ordinarily through regular workman in that establishment or a similar establishment.

10.18 The Central Government on the recommendations of the Central Advisory Contract Labour Board, have prohibited employment of contract labour in various operations/ category of jobs in various establishments. So far 48 notifications have been issued since inception of the Act.

## EXEMPTION

10.19 The 'appropriate government' is empowered to grant exemption to any establishment or class of establishments or any class of contractors from applicability of the provisions of the Act or the rules made thereunder on such conditions and restrictions as may be prescribed. Nine notifications granting exemption to establishments in exercise of this power in the Central sphere have been issued.

## ENFORCEMENT

10.20 In the Central sphere, the Central Industrial Relations Machinery (CIRM) have been entrusted with the responsibility of enforcing the provisions of the Act and the rules made thereunder, through Inspectors, Licensing Officers, Registering Officers and Appellate Authorities appointed under the Act.

10.21 Regular inspections are being conducted by the Field Officers of the CIRM and prosecutions are launched against the establishments, whenever violations of the Act/Rules/notifications prohibiting employment of contract labour are detected. From time to time, instructions/directions have been issued to the field officers of CIRM and State Government for proper implementation of the Act.

10.23 A statement indicating the number of inspections carried out, prosecutions launched, licences issued, establishments registered, etc. under the Act in the Central Sphere by the Industrial Relations Machinery is at **Table-10.2.**

10.24 A number of representations/petitions have been received by the Deputy Chief Labour Commissioner (Central) under Rule 25(2)(V)(a)&(b) from the contract worker or their unions claiming that the contract workers are performing the same or similar work as performed by the workmen employed by the principal employer. Out of 83 cases received till 2000 orders have been passed in 33 cases and 50 cases are under investigation. **Table-10.3.**

10.25 The Labour Bureau of the Ministry launched a survey on contract labour and the implementation of the Act in respect of Cement Industry including related mines, FCI Depots and N.T.P.C. Units in March, 2000. The report was brought out in July, 2001 and by and large compliance with the provisions of the Act has been found.

## IMPORTANT JUDGEMENTS OF THE SUPREME COURT.

10.26 Three judgements delivered by the Supreme Court in the cases of Gujarat State Electricity Board Vs Union of India, Air India Statutory Corporation Ltd. & Ors Vs United Labour Union & Others, and Steel Authority of India Ltd. & Others Vs National Union of Waterfront Workers and others on 09.05.1995, 06.12.1996 and 30.08.2001 respectively, are landmark judgements.

10.27 In Gujarat State Electricity Board case, inter-alia, the Supreme Court recommended that the Central Government should amend the Act by incorporating a suitable provision to refer to industrial adjudicator the question of the direct employment of the workers of the ex-contractor in the principal establishments, when the appropriate Government abolishes the contract labour.

10.28 In Air India Statutory Corporation case, the Supreme Court held that though there exists no express provision in the Act for absorption of employees in establishments where contract labour system is abolished by publication of the notification under section 10 (1) of the Act, the principal Employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and employee stood snapped and direct relationship stood restored between principal employer and contract labour as its employees.

10.29 The Supreme Court in the case of Steel Authority of India Ltd. Vs National Union of Waterfront Workers & Others and others have held that neither Section 10 of the Act nor any other provision in the Act whether expressly or by necessary implication provides for automatic absorption of contract labour on issuing a Notification by the appropriate Government under sub section (1) of Section 10 prohibiting employment of contract labour in any process or operation or other work in any establishment. Consequently the Principal Employer cannot be required to order

absorption of the contract labour working in the concerned establishment. The judgement in Air India's case was over-ruled prospectively.

## STREAMLINING CONTRACT LABOUR LAW

10.30 In the wake of economic liberalisation as well as the judgements of the courts, proposals have been received from social partners to bring about amendments in the Contract Labour Act.

### Views of Employers' Associations

- Since 1970 when the Contract Labour (Regulation and Abolition) Act was enacted the economy has undergone a sea-change, from an era of protectionism to liberalisation, from restricted domestic competition to international competitiveness.
- The system of contract labour offers tremendous opportunities for employment and allows the employers flexibility to choose what is best for them. This helps improve productivity and service competitiveness.
- The Act should be made applicable only to the main and core activities of the establishment in so far as abolition of contract labour system is concerned.
- Supportive or allied activities of an establishment like maintenance, house keeping should be out sourced and the Act should only provide for regulating the working conditions and wages.
- The Principal Employer should, however, have to ensure payment of wages to contract labour as laid down under the law in force as also other basic amenities and social security benefits.
- Work requiring specialised skills unavailable within the establishment.
- If the contract labour system, which is cost effective, is not allowed to continue, industries may go in for technological restructuring with less number of workers leading to reduction in employment.

### Views of the Trade Unions

- The Trade Unions are totally opposed to the idea of contracting of services and in jobs

which are perennial in nature for following reasons:-

- Reduction of regular employment;
  - The contract labour generally belong to weaker sections of the society and will be deprived of the benefits that accrue to regular employees.
  - Efficiency will decrease as establishment will be deprived of experienced staff.
  - Coordination of activities of large number of contractors/sub-contractors will prove to be more time consuming and costly than in house activity.
  - What is required is not privatisation but in house improvements and restructuring.
- Out sourcing will only lead to a type of employment founded on discrimination and exploitation of contract labour in regard to wages paid, working conditions, etc.
  - The Second National Labour Commission has been entrusted with the task of rationalisation of labour laws and hence its report should be awaited.

10.31 The Government, at the moment, has undertaken a thorough review of the Act, keeping in view the aforesaid views of the employers' association and that of the trade unions. The changes to be made in the law are still being worked out.

BOX 10.1

**NOTIFICATIONS ISSUED UNDER SECTION-10 OF THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970 (DURING THE YEAR 2001-2002 w.e.f. 01.03.2001)**

<b>Sl. No.</b>	<b>Notification No. &amp; Date</b>	<b>Establishment/ Industry in respect of whom notification is issued</b>	<b>Works/ Jobs prohibited</b>
1.	1. No. S-16014/330/99-LW dated 1 <sup>st</sup> March, 2001. No.S.O. 189 (E)	Hindustan Petroleum Corporation, Liquefied Gas Plant, White Field Road, Mahadevpura Post, Bangalore-560022.	Stacking of cylinders, removing of excess or under filled cylinders, transfer of defective cylinders and any other related work in cylinder handling in the process of bottling of liquefied petroleum gas
2.	44. U-23013/11/2000-LW dated 4.7.2001	Hospitals of the Employees' State Insurance Corporation at Kandivali, Merol, Thane and Ulahasnagar in the State of Maharashtra.	Electrical maintenance jobs of Wiremen, Khalasi, Air Condition Operator and Pump Operator.
3.	45. U23013/5/2000-LW dated 4.7.2001	Airport Authority of India, Air Cargo Complex (Export and Import) at International Airport Division at International Airports, Calcutta and Chennai	Computer operations.
4.	46. U-23013/8/99-LW dated 4.7.2001	Paradip Port Trust, Paradip Orissa	Muck cleaning; and spillage removal .
5.	47. U-23013/25/99-LW dated 12.11.2001	Godowns and depots of the Food Corporation of India (1) West Hill, Calicut, Kerala. (2) Mavelikkara, Kerala (3) Chalakudy, Kerala	Handling of foodgrains, including their loading/unloading from any means of transport, storing and stacking of the same in the godown
6.	No. S-16014/254/99-LW dated 12.11.01	Sree Chitra Thirunal Institute for Medical Sciences and Technology, Thiruvananthapuram.	Operation of air condition plant and allied installations namely air handling units, compressors, pipelines, connected electrical accessories, cooling towers, pumps, package units, solar units, chillers.

<b>Table-10.2</b>						
<b>ENFORCEMENT OF CONTRACT LABOUR (R &amp; A) Act, 1970</b>						
<b>ENFORCEMENT OF CONTRACT LABOUR (REGULATION &amp; ABOLITION) ACT, 1970</b>						
Sl. No.	Item	Year				
		1996	1997	1998	1999	2000
1.	No. of Registration Certificates issued to principal employers.	375	425	639	670	658
2.	No. of Licences issued to contractors*.	3613	4660	5471	6632	7734
3.	No. of Inspections conducted.	4653	3956	4263	5281	5479
4.	No. of Irregularities detected.	72541	70709	65509	85936	83414
5.	No. of prosecutions launched.	3705	3330	3147	3805	3857
6.	No. of convictions.	2770	2240	2060	2019	2126
7.	No. of contract labourers covered by licences@.	489776	588678	664216	762425	773849
8.	No. of Licences revoked/ cancelled.	757	1371	1669	1099	3562
9.	No. of registration certificates revoked.	23	Nil	Nil	Nil	2

\* Total no. of licensed contractors at the end of the year 2000: 24208.

@ Total no. of contract labourers covered by the license issued to the contractors at the end of year 2000: 773849.

<b>Table-10.3</b>		
<b>No. of cases received/disposed of during the last five years under Rule 25(2) (v) (a) and (b) of the Contract Labour (Regulation and Abolition) Central Rules, 1971 relating to payment of wages.</b>		
Year	No. of cases received during the last four years under Rule 25(2) (v) (a) and (b)	Order issued
1996	04	01
1997	06	04
1998	15	03
1999	35	05
2000	23	20

\*\* Rule 25 (2) (v) (a) of the Contract Labour (Regulation and Abolition) Central Rules, 1971 has been amended vide notification No. GSR 41(E) dated 21<sup>st</sup> January, 1999 delegating powers to the Deputy Labour Commissioners (Central) instead of the Chief Labour Commissioner (Central).