



An Overview on Contract Labour System in India

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Abstract:

The Act is applicable to any establishment that has employed 20 or more workers as contract labour in any one of the days in the preceding twelve months, and to any contractor who has employed 20 or more workers on any day within the preceding twelve months. According to the Act, the company is the principal employer of workers even though they are employed through a contractor. This paper covers Provisions of the Act & the present status, Summary on Legal Framework , Contract Labour Act and other labour-related laws, State level changes and emerging Issues and conclusions. It is concluded that the Contract workers should, in fact, be paid a premium to compensate them for uncertainty of work tenure. Instead, permanent workers today are paid artificially high wages that are out of sync with the market. Job security is very essential issue of the contract labour who have been working years together towards success of organizational goals

Key words: Legal Framework, Constitutional validity, Job security, Facilities

1. Introduction

In the competitive era, employment pattern in public and private sector is shifting from managed market (managed by government) to competitive market (private) over the world. Contract Labour is a significant and growing form of employment. It is prevalent in almost all industries, in agriculture and allied operations and in service sector. It generally refers to workers engaged through an intermediary and is based on a triangular relationship between the user enterprises, the contractor (including the sub contractor) and the workers. These workers are millions in number and generally belong to the unorganized sector. They have very little bargaining power, have little or no social security and are often engaged in hazardous occupations endangering their health and safety. They are often denied minimum wages and have little or no

security of employment. On the other hand, reasons like sporadic nature of work, difficulty in ensuring closer supervision by the employer or cost effectiveness, flexibility in manpower deployment, concentration in core competencies etc., justify the system of contract labour.

Recognizing the need for protecting the interest of contract labour, 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. 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 was



challenged before the Supreme Court in Gammon India Limited 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.

2. Provisions of the Act & the present status

The Act applies to every establishment/contractor in which 20 or more workmen are employed or were employed on any day in 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 Central and State Advisory Boards

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.

Registration

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 license granted is subject to conditions relating to hours of work, fixation of wages and other essential amenities in respect of contract as prescribed in the rules.

Facilities for Contract Labour

The Act has laid down certain amenities to be provided by the contractor to the contract labour for establishment of Canteens and rest rooms; arrangements for sufficient supply of wholesome drinking water, latrines and urinals, washing facilities and first aid facilities have been made obligatory. In case of failure on the part of the contractor to provide these facilities, the Principal Employer is liable to provide the same.

Payment of Wages

The contractor is required to pay wages and a duty is cast on him to ensure disbursement of wages in the presence of the authorized representative of the Principal Employer. In case of failure on the part of the 3 contractor to pay wages either in part or in full, the Principal Employer is liable to pay the same. The contract labour that 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

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



Other Provisions

The Act makes provisions for the appointment of Inspecting staff, for maintenance of registers and records and making of Rules for carrying out the purpose of the Act. In the central sphere, officers of the Central Industrial Relation Machinery (CIRM) have been appointed as Inspectors.

Prohibition

Apart from the regulatory measures provided under the Act for the benefit of 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. The Central Government on the recommendations of the Central Advisory Contract Labour Board has prohibited employment of contract labour in various operations/category of jobs in various establishments.

Exemption

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

Enforcement

In the Central sphere, the Central Industrial Relations Machinery (CIRM) has been entrusted with the

responsibility of enforcing the provisions of the Act and the rules made there under, through Inspectors, Licensing Officers, Registering Officers and Appellate Authorities appointed under the Act.

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. In order to ensure compliance with the labour laws from time to time, instructions/directions have been issued to the field officers of CIRM and State Government for proper implementation of the Act.

Complaints alleging violation of Contract Labour Act are investigated and remedial action taken in accordance with the provisions of the law by launching prosecutions if considered necessary. References are received for regularization of the contract labour or abolition of the contract labour system on the ground of perennial nature of work/ ordinarily done through regular workmen etc

3. Summary on Legal Framework

The Contract Labour (Regulation and Abolition) Act was enacted in 1970 with the purpose *to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters concerned therewith.* Every establishment to which this Act is applicable is required to be registered with the State-appointed Registrar under Section 7 of the Act.

According to the Act, the company is the principal employer of workers even



though they are employed through a contractor. The Act entrusts the state government to prohibit contract labour in any process, operation, or any other work in any establishment as it sees fit. Moreover, the Act “prohibits the employment of contract labour in any operation or other work incidental to or necessary for” the industry, trade, business, manufacture or occupation that is carried on in the establishment. It also “prohibits the employment of contract labour in any work of perennial nature”, that is, if the work is of sufficient duration with regard to the nature of the industry, trade, business, manufacture or occupation that is carried on in the establishment. The employment of contract labour “in any work in an establishment is prohibited if the same work is done through regular workers in the same establishment or in similar establishments.” Moreover, the employment of contract labour is “prohibited if it is sufficient to employ a considerable number of full time workers”, meaning if regular workers could be employed in the capacity where contract workers are employed, it is prohibited to employ contract workers.

The Act further provides for the regulation of working conditions of contract labour wherever it is not prohibited to employ contract labour. This includes provision of canteen facilities to contract workers, first aid facilities, supply of sufficient wholesome drinking water, and sufficient number of latrines and urinals and washing facilities. The principal employer is required to provide these facilities to workers in case the contractor fails to provide the same.

The Act also requires that the principal employer nominates a representative to be present during the disbursement of wages by the contractor, and it shall be the duty of the representative to certify the amounts paid as wages by the contractor to workers. Moreover, the Act holds the principal employer responsible for paying any amount due to workers on account of nonpayment, short payment, or late payment by the contractor. Over the last few decades, employers and their associations have raised a huge outcry to dilute provisions of the Contract Labour Act. However, judgements by various courts, have repeatedly affirmed the liabilities that are the responsibility of the principal employer¹.

Contract Labour Act and other labour-related laws

Over and above the Contract Labour Act itself, various other labour-related laws also regulate the wage situation, provision of social security, and other labour rights provisions that pertain to contract labour. The main laws are as

¹ To cite an example, The Allahabad High Court had judged that “A principal employer has to ensure that contractor’s workers are paid minimum wages’: General Manager, Aligarh Dugdh Utpadak Sahakari Sangh Ltd (Parag Dairy) SASni, HATHRAS v. Prescribed Authority, Minimum Wages and Dy Labour Commissioner, Aligarh, 2009 LLR 316(Allahabad High Court)

“If the contractor fails to pay wages to his employees engaged by him, the principal employer will be liable to pay the same” Cominco Benani Zinc Ltd v. Pappachan, 1989 LLR 123 (Kerala)



follows: in terms of the Employee State Insurance Act of 1948, contract workers are entitled to the same provisions and benefits as regular employees. This is evident from the definition in the Act of an employee as "any person employed for wages in or in connection with the work of a factory or establishment to which the ESI act applies and who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment."

Provident Fund is an important contributory social security provision available to working people in India. Under the provisions of the Employees' Provident Fund & Miscellaneous Provisions Act of 1952, any company which employs 20 or more workers is mandatorily required to control all workers under the EPF and deduct a contribution of 12% of the wage towards PF. Along with this deducted 12%, the employer is required to contribute another 12% on his behalf to the workers' provident fund. This Fund is kept with the Government and on which the PF member earns interest. Similarly, under the Employees' Provident Fund & Miscellaneous Provisions Act of 1952, contract workers are entitled to the same rights as regular workers regarding provident fund and pension. This is evident from the definition in the Act of an employee as: "any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment and who gets his wages directly or indirectly from the employer, and includes any

person employed by or through a contractor in or in connection with the work of the establishment."

Again, the Payment of Bonus Act of 1965 provides that contract workers in the garment industry are entitled to an annual bonus of 8.33% of the total wage they earned in the previous year, and contract workers should be eligible for that since their employment as factory workers is not among that which is excluded under section 32 of the Act. Other major central legislations providing for decent working conditions and wage and social security provisions applicable to contract workers are the Payment of Wages Act 1936, the Minimum Wages Act 1948, The Payment Gratuity Act 1972, and the Equal Remuneration Act 1976.

The issue of contract labour has been a focus of labour discussions in India for a few decades now, ever since the Contract Labour Act came into effect in 1970. It was one of the points of contention at the November 2011 meeting of the Parliamentary Committee that advises Parliament in matters related to labour. At that meeting a representative, from the Council of Indian Employers stated that Western models for improving the conditions of contract labour could not be transmitted to India; rather, there should be focus on the direct impact of the practice in generating employment.

4. State level changes

Some of the State Governments, in tune with the changing times, have proposed measures to liberalise the Act to spur the growth of industry, as for example, grant of exemption to Special Economic Zones and Export Oriented Units from the applicability of the Act to boost exports. The Government of Andhra Pradesh have amended the Contract Labour Act



with a view to prohibiting employment of contract labour in the core activities of an establishment and to allow engagement of contract labour in non-core activities of an establishment such as watch and ward, sanitation, cleaning works, etc. The Government of Goa has introduced a bill in the legislature to abolish contract labour in core activities of an establishment.

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5. Emerging Issues and conclusions

There is mixed response regarding the act. The Punjab government will soon be taking a decision to abolish contract labour system and will adopt a direct payment system in food grain handling work in various food handling agencies in the state including Punjab State Warehousing Corporation, Punjab State Food and Civil Supplies Department, Markfed, Punjab Agro and PUNSUP. This was announced by chief minister Amarinder Singh while addressing FCI workers and All India Food and Allied

workers Union at new grain market on Sunday *(August 27, 2002 | PTI).

Reform labour laws to bridge the gap between permanent and contract workers

The government's plan to amend the Contract Labour (Regulation & Abolition) Act, 1970, to ensure a better deal for contract workers has met with opposition, including from some ministries that fear higher costs. This is a one-sided view (ET Bureau Aug 23, 2012, 06.36AM IST). It is need to redeem the appalling conditions that mostly attend on contract workers. However, piecemeal reform to bring wages and working conditions of contract workers on par with regular employees will not work. The need is to overhaul labour laws that shower protection and privilege on permanent workers to create an expensive labour aristocracy that cannot be held to account. Unless this changes, there is no way to bridge the gap between contract and permanent workers.

In a globalised economy, trade unions must recognise the changing character of production and the need for labour flexibility, with regard to tenure and skills. Lack of such flexibility has led to increased outsourcing to the unorganised sector where no law works. Employers, including government-owned enterprises, hire contract labour that are not paid fair wages or given the statutory benefits they are entitled to. The status quo is unacceptable. Contract workers should, in fact, be paid a premium to compensate them for uncertainty of work tenure. Instead, permanent workers today are paid artificially high wages that are out of sync with the market. Unionized labour and collective bargaining are welcome, provided they



conform to laws that respect the dynamics of contemporary production. India's labour laws do not. It makes no sense to seek to reform just contract work laws while the laws governing permanent workers remain as out of sync with the reality as they do now. Job security is very essential issue of the contract labour who has been working years together towards success of organizational goals.

References

The Contract Labour (Regulation and Abolition) Act, 1970

labour.gov.in/upload/uploadfiles/files/footergallerywww.bsnleucha.com/Amend%20the%20Labour%20Laws%20Abso
rb%2

Dibyendu Maiti(2014), Reform and Productivity Growth in India: Issues and Trends in the Labour Markets,books.google.co.in/books?isbn=1134708211

ET Bureau Aug 23, 2012, 06.36AM IST