

## **Engaging Contract Labour: The prerequisites and the pitfalls**

*By Neeraj Dubey*

### ***Introduction***

Companies engage contract labour to keep the head count low and for the scalability and flexibility it provides in management of workforce. Though employment of contract labour in India has attracted debates, it has become a significant and growing form of employment, engaged in different occupations including skilled, semi skilled and unskilled jobs across sectors. While engaging contract labours, companies need to exercise caution and need to understand the laws that govern their relationship with the contract labours. In this article we would discuss the fundamentals of engaging contract labour and the pitfalls that can be avoided to have a congenial environment in the company.

### ***Contract Labour: Definition & engagement***

“Contract labour” can be distinguished from “direct labour” in terms of employment relationship with the principal establishment and the method of wage payment. A workman is deemed to be a contract labour when he/she is hired in connection with the work or “contract for service” of an establishment by or through a contractor. They are indirect employees; persons who are hired, supervised and remunerated by a contractor who, in turn is compensated by the establishment. In either form, contract labour is neither borne on pay roll or muster roll or wages paid directly to the labour. (*Report of the National Commission on Labour, 1969*)

The Contract Labour (Regulation & Abolition) Act, 1970 (Act) permits companies and establishments in the manufacturing and services sectors to engage contract labour through contractors. Such an engagement can be only for work that do not form part of the core operations, which is guided by the memorandum of association of the company. Prior to the enactment of the Act, in the case of *Standard Vacuum Refinery Company v. Their Workmen (1960)*, the Supreme Court of India had observed that contract labour should not be employed where: (i) The work is perennial and must go on from day to day; (ii) The work is incidental to and necessary for the work of the factory; (iii) The work is sufficient to employ considerable number of whole time workmen; and (iv) The work is being done in most concerns through regular workmen.

The Act allows the government to prohibit employers from employing contract labour in its core process after examining whether (i) the work performed by contract labour is permanent in nature; (ii) the process or operation is incidental or necessary for the employer; (iii) such process or work is ordinarily performed by regular employees of other similar

employers; and (iv) sufficient number of whole-time employees can be deployed to perform the work. Therefore, contract labours are generally engaged for support services like housekeeping, gardening, security, catering, maintenance, transport, etc.

### ***Salient Features of the Act***

**Intent & coverage:** The Act provides for regulation of the employment of contract labour and its abolition under certain circumstances. It covers every establishment in which 20 or more workmen are employed on any day of the preceding 12 months as contract labour and every contractor who employs or who employed on any day of the preceding 12 months, 20 or more contract employee. It does not apply to establishments where the work is of intermittent and casual nature unless work performed is more than 120 days and 60 days in a year respectively. (*Section 1*)

**Advisory Boards:** The Act provides for setting up of Central and State Advisory Contract Labour Boards by the central and state governments to advise the respective governments on matters arising out of the administration of the Act. (*Section 3 & 4*)

**Registration & licenses:** 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 conditions relating to hours of work, fixation of wages and other essential amenities in respect of contract as prescribed in the rules. (*Section 7 & 12*)

**Facilities to contract labours:** 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. (*Section 16, 17, 18, 19 and 20*)

**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 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 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 Rules. (*Section 21*)

**Offences:** For contravention of the provisions of the Act or any rules made there under, the punishment is imprisonment for a maximum term up to 3 months and a fine up to a maximum of Rs. 1000. In case of a company, the company as well as every person in-charge of and responsible to the company for the conduct of its business at the time of the commission of the offence shall be deemed guilty. (*Section 23, 24 & 25*)

**Registers & displays:** Principal employer and contractor have the responsibility to maintain registers and records of contract labours, work performed by them, wages, and other particulars as specified in the Rules. Notices are also to be exhibited within the premises regarding hours of work, nature of duty and other information as prescribed under the Rules. (*Section 29*)

**Abolition of contract labour:** After consultation with the Central Board or State Board, government can prohibit, by notification in the official gazette, employment of contract labour in any establishment in any process, operation or other work. The guidelines for deciding upon the abolition of contract labour in any process, operation or other work in any establishment are – (i) Conditions of work and benefits provided to the contract labour; (ii) Whether the work is of a perennial nature; (iii) Whether the work is incidental or necessary for the work of an establishment; (iv) Whether the work is sufficient to employ a considerable number of whole-time workmen; (v) Whether the work is being done ordinarily through regular workman in that establishment or a similar establishment.

### ***Compliances under the Act***

The Act requires both the principal employer and the contractor to implement their respective statutory obligations. In a factory, the owner or occupier or manager is considered a principal employer; but in an establishment or a company, the person who is in control and supervision of establishment or company will be the principal employer. Principal employer is the one who employs contract labour through a contractor. Contractor undertakes to perform a job for the principal employer through contract labour other than mere supply of goods or articles of manufacture or supplies contract labour for any work of the principal employer & includes a sub-contractor.

The Act mandates that the principal employer should be registered and the contractor have a valid license prior to engaging contract labours. In *Workmen of Best & Crompton Industries Ltd. v. Best & Crompton Industries Ltd.*, the Madras High Court has held that the principal employer must engage contract labour through a contractor who has a valid license, because an invalid license of a contractor would imply direct employment of contract labour by the principal employer. Further, such a license of the contractor is job specific, non-transferable for any other job and indicative of the maximum number of contract labours to be engaged.

The Act puts onus on the contractor for providing all statutory benefits to contract labour with the rider that in case the contractor fails to do so, the obligation would fall on the principal employer. This position was clarified by the Supreme Court in *People's Union for Democratic Rights v. Union of India*, wherein it was held that if the contractor fails to fulfil its duties under the Act then the principal employer shall be under an obligation to provide all amenities and benefits prescribed under the law to contract labour deployed at its establishment. Therefore, it becomes necessary for the principal employer to witness disbursement of wages to the contract labour by the contractor, collect all the necessary documents that establishes that the statutory benefits are being made available to the contract labours by the contractor. Though registers like muster roll, wage register, etc., are largely to be maintained by the contractor, principal employer is also required to keep copies of such records and also additionally display the details regarding the nature of duties of work, work hours, etc.

### ***Precautions while engaging contract labour***

Prior to engaging a contractor labour, it is crucial for the principal employer to register it with the authorities. Secondly, it should verify the licenses of the contractors. Thereafter, the principal employers must execute contract with the contractors with the terms of engagement. No contract labour should be made to work on the core areas of the company. The contractor should not be an employee of the principal employer. Principal employer should not exercise direct control (*including matters of payments, discipline and removal/termination*) and supervision (*principal employer has a right to assess the abilities and skills of the workers employed by the contractor to ensure the quality of service provided under the contract, without actually managing or directing such contract labour*) over the contract labours and that should be done by the contractors.

In *Haldia Refinery Canteen Employees Union & Others v. Indian Oil Corporation Limited*, the Supreme Court laid down certain guidelines for engaging contract labour: (i) Principal employer must not interfere with the contractor for engaging contract labour and contractor must have free hand; (ii) Wages should be disbursed by the contractor, principal employer must only witness; (iii) Contractor is liable to pay all statutory benefits such as provident fund contributions, leave salary, medical benefits, and observe statutory working hours for its employees and maintain records thereof; (iv) Contractor is responsible for proper maintenance of registers, records and accounts for compliance with statutory provisions/obligations; (v) Principal employer should avoid managing the contract labour; (vi) Contractor is liable to defend/indemnify the principal employer from any liability or penalty which may be imposed by authorities for any violation by the contractor of such laws, regulations and also against all claims, suits or proceedings.

## *Conclusion*

Essentially, the principal employer needs to be diligent and exercise precautions while engaging contract labours. In case the compliances specifically in relation to the mandatorily benefits payments are not done by the contractors, the onus of making payments falls on principal employer. Contract labours are engaged to make the processes simpler with the intention to manage the workforce in an easier way. However, lack of due diligence can land companies into troubles. Though engaging contract labours should always be done by way of executing a contract with the contractor, exercising due diligence would be of great significance as contractual safeguards may not offer sufficient protection to principal employers.

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