

**NATIONAL BUREAU OF SOIL SURVEY AND LAND USE PLANNING
AMRAVATI ROAD, NAGPUR-440033**

F.No. 21-63/13-Adm/5792/9

Date: 25.06.2013

ENDORSEMENT

Copy of the letter no. F.No. 41(17)/1998-Law dated 10th June 2013 received from The Legal Advisor, ICAR, New Delhi is hereby forwarded for information and further necessary action.


25/6/13

Asstt. Administrative Officer

Encl.: As above.





INDIAN COUNCIL OF AGRICULTURAL RESEARCH
भारतीय कृषि अनुसंधान परिषद
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कृषि भवन, डॉ० राजेन्द्र प्रसाद रोड, नई दिल्ली-110001

F.No. 41(17)/1998-Law

10th June, 2013

To

As per list of the institutes

Sub: Observance of provisions of the Contract Labour (Regulation and Abolition) Act, 1970-regarding

Sir,

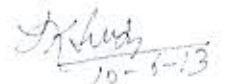
It has come to notice that provisions of the Contract Labour (Regulation and Abolition) are not being strictly adhered to by the institutes. As a result legal complications do occur when workers engaged by institutes through contractors approach court for redressal of their grievances. An extract of relevant provisions of the Act are enclosed for strict compliance.

It is therefore advised that if the institute is engaging contract workers through contractor and has not get itself registered as a principal employer under Section 7, same be done at the earliest by moving an appropriate application before concerned registering authority. Similarly, if contractor does not possess license under section 13 to execute the work entrusted to him, he be asked to get license within 2 weeks and in future work be given to only those contractors who possess valid license.

In addition, you are advised to immediately appoint an officer who will witness payment by contractor to contract workman and certify the same on month to month basis.

All relevant record relating to compliance of provisions of the 'Act' be kept in safe custody.

Yours faithfully,


10-6-13

(S.K. Singh)
Legal Advisor

Encl: As above.

22/07/13

22/6

circumstances and for regulation of the employment of contract labour in certain establishments.

Case Law: A Division Bench of the Andhra Pradesh High Court in *Burmah Shell Oil Distributing Co. of India Ltd. v. Industrial Tribunal* (1975 Lab. L.C. 165 (AP)) observed that the legislature in the Act has prescribed a particular method to regulate or abolish contract labour and laid down a procedure to be followed.

Case Law: The observations of the Supreme Court as made in judgment in *Shanker Mukherjee & others v. Union of India & others* (1990 II LLJ 445; AIR 1990 SC 532) in respect of the workers employed through contractors are reproduced as below:-

"It is surprising that more than forty years after the independence the practice of employing labour through contractors by big companies including public sector companies is still being accepted as a normal feature of labour employment. There is no security of service to the workmen and their wages are far below than that of the regular workmen of the company. This Court in *Standard-Vacuum Refining Co. of India Ltd. v. its workmen* (1960-III L.J. 238) has disapproved the system of contract labour holding it to be archaic, primitive and of a painful nature'. The system, which is nothing but an improved version of bonded labour, is sought to be abolished by the Act.

Case Law: *Dena Nath & others Appellants v. National Combustion & others Respondents* (111 1992 SC 457). From the provisions of the Act it is clear that the Act serves two-fold purposes:

- (i) regulation of the conditions of service of the workers employed by the Contractor who is engaged by a principal employer; and
- (ii) also provide for the appropriate Govt. of abolishing contract labour altogether in certain notified processes, operation or other work in any establishment.

CHAPTER I PRELIMINARY

1. *Short title, extent, commencement and application.* - (1) This Act may be called the Contract Labour (Regulation and Abolition) Act, 1970.

(2) It extends to the whole of India.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

(4) It applies—

- (a) to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour;
- (b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen:

Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.

(5) (a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed.

- (b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board and its decision shall be final.

¹ From the 10th Feb 1971 (Vide Notification No. GSR 190 dated the 1st Feb. 1971.)

Comments on Sec. 6 - Appointment of Registering Officers:

The section empowers the appropriate Government to appoint Gazetted Govt. Officers as Registering Officers defining their respective jurisdictions and notify the same in Govt. Gazette. The latest notifications as issued by the Central Govt. and A.P. State Govt. are given in the Annexure.

7. Registration of certain establishments.- (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment:

Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

Comments on Sec. 7 - Registration of certain establishments:

The Central Govt. had vide its Notification No. S 16011-671-EW-4(1) Dd. 17.8.71 fixed 20th September 1971 as the date before which every principal Employer of an establishment shall apply to the Registering Officer for registration of his establishment whereas the Govt. of Andhra Pradesh vide G.O. Ms. No. 1622 Home (Labour V) dt. Nov. 7, had fixed 1.1.72 as the date before which every

CHAPTER IV

LICENSING OF CONTRACTORS

11. Appointment of licensing officers.— The appropriate Government may, by an order notified in the Official Gazette,—

- (a) appoint such persons, being Gazetted Officers of Government, as it thinks fit to be Licensing Officers for the purposes of this Chapter; and
- (b) define the limits, within which a licensing officer shall exercise the powers conferred on licensing officers by or under this Act.

Comments on Sec.11 - Appointment of licensing officers

Section 11 empowers the appropriate Govt. to appoint persons being gazetted officers as Licensing Officers. The Central Govt. and State Govt. of A.P. have appointed all the Assistant Labour Commissioners as Licensing Officers under the Act in their respective jurisdictions. The notifications on the above are at Annexure.

Case Law: *Rohit Vasavada v. General Manager, IFFCO* AIR 1984 Guj. 102 "In order to engage oneself in the business of providing contract labour, one has to seek licence under the provisions of the Act. This is understandable because the system of contract labour establishes an intermediary between the principal employer and the workmen and the introduction of the intermediary should not result in the annihilation of the rights of the workmen. To meet this, stringent provisions are contemplated in the Act which, if properly administered, will adequately secure to the workmen their rights, otherwise the workmen will be without any remedy, regard being had to the temporary nature of the work that the contract labourers may be engaged in. Section 12 of the Act deals with licensing of contractors and Section 13 deals with grant of licences subject to the procedure prescribed".

12. Licensing of contractors.— (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor

to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.

(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.

Comments on Sec. 12 - Licensing of Contractors

As per Section 12 (1) of the Act, Central Govt. has fixed 30th January 1972 vide Notification No. S 16011/16/71 LWI/Dt. 13.12.71 from which date no contractor to whom the Act applies shall undertake or execute any work through Contract labour except under and in accordance with a licence issued by the licensing Officer. Similarly Govt. of A.P. vide its Notification No. G.O.Ms. No. 1623 Home (Labour V) 5th Nov. 1971 has fixed up 1st January, 1972 as the date from which no contractor shall undertake or execute any work through Contract Labour except under and in accordance with a licence issued in that behalf by the Licensing Officer.

Case Law: *Supreme Court in Gammon India Ltd. v. Union of India* - 1974 AIR SC 960: 1974 Lab I.C. 707: Held that there is no arbitrary power or excessive delegation of legislative authority in regard to grant of licence. The Act and the Rules provides ample guidelines as to the grant and terms and conditions of Licence. Fee prescribed for registration, licence and renewal of licence do not amount to a levy of tax and therefore not beyond the rules making powers of Govt.

Comments:- Fees remitted on account of registration certificate and licence are not refundable as these are administrative charges.

Case Law: *Supreme Court in Labourers working on Salal Hydro Project v. State of J & K*. AIR 1984 SC 177. 1983 Lab I.C. 502: 1983

Note: Cases referred

- A) 1985 ILLJ-492 Mad. H.C. *Workmen of Best & Crompton Industries Ltd. v. Management of Best & Crompton Engineering Ltd. Madras* (over ruled).
- B) 1990-60 Fac. L.R. 686 Bom. H.C. *United Labour Union v. Union of India* (over ruled)
- C) 1991-IPun L.R. 1 - *Gain Singh v. F.C.I. - D.B. Punjab & Haryana* (Approved).
- D) 1988 Lab. I.C. 1346-Ker. H.C. *P. Karunakaran v. The Chief Commercial Superintendent* (Approved)
- E) 1991 Delhi Lawyer 189-*New Delhi General Mazdoor Union v. Standing Conference of Public enterprises* (Scope) (Approved).

13. Grant of Licences.— (1) Every application for the grant of a licence under sub-section (1) of section 12 shall be made in the prescribed form and shall contain the particulars regarding the location of the establishment, the nature of process, operation or work for which contract labour is to be employed and such other particulars as may be prescribed.

(2) The licensing officer may make such investigation in respect of the application received under sub-section (1) and in making any such investigation the licensing officer shall follow such procedure as may be prescribed.

(3) A licence granted under this Chapter shall be valid for the period specified therein and may be renewed from time to time for such period and on payment of such fees and on such conditions as may be prescribed.

Comments on Section 13 - Grant of licences

Section 13 read with Rule 21 of the Central Rules/A.P. Rules as the case may be, prescribes the procedure for making the application for licence by a Contractor and the grant of licence by the Licensing Officer.

rooms facilities, for supply of drinking water, latrines, urinals, first aid facilities are amenities for the dignity of the human worker. The measure is in the interest of the public. It is for the legislature to determine what is needed as the appropriate conditions for employment of contract labour. It is difficult for the Court to impose its own standard of reasonableness. The legislature will be guided by the needs of the general public in determining the reasonableness of such requirements. There is a rational relation between the impugned Act and the object to be achieved and the provision is not excess of that object. There is no violation of the Article 14.

Case Law: Supreme Court in Prasad v. Union of India, (1973) 4 SCC 104 (1973) 11 P. 1473 (1973) 11 J. 454 and observed that under Section 20 of the Contract Labour (Regulation & Abolition) Act 1971, if any welfare facility is required to be provided under Section 16, 17, 18, or 19 for the benefit of contract labour employed in an establishment is not provided by the contractor, the liability to provide such amenity rests on the principal employer.

21. Responsibility for payment of wages.—

(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by

wilful. There is no vicarious responsibility under the section. Only the person actually guilty can be charged & tried under the Section.

23. Contravention of provisions regarding employment of contract labour.—Whoever contravenes any provision of this Act, or of any rule made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

Comments on Sec. 23 - Contravention of provisions regarding employment of contract labour

Section 23 of the Act makes any person contravening any provision of the Act or of any Rule made there under for prohibiting or restricting or regulating the employment of contract labour, or any condition of Licence granted under the Act, liable for prosecution

Section 23 starts with the words "whoever contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour". Therefore, it is evident that the prosecution has to allege as to who are those persons who have contravened the relevant section or rules made there under prohibiting, restricting or regulating employment of contract labour or contravened any condition of a licence granted under this Act.

Case Law: Section 23 of the Act, reads that contravention of any provision of the Act or Rules prohibiting, restricting or regulating the employment of contract labour is made punishable, necessarily it means that the said violation is done wilfully or intentionally. *S. B. Deshmukh v. State* 1986 Lab. I.C. 204 Bom. H.C.

Case Law: *J.P. Gupta & another v. Union of India & others* 1981 Lab. I.C. 641 (Pat). Under Section 10 the liability for contravention of the prohibition of employment of contract labour in the notification