

# **The Contract Labour (Regulation and Abolition) Act, 1970<sup>1</sup>**

**(NO. 37 OF 1970 As amended upto Maharashtra Act XIII of 2006)**

[5th September 1970]

*An Act to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith.*

Be it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:-

## **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 date<sup>2</sup> 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.

*Explanation.*- For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature-

- (i) if it was performed for more than one hundred and twenty days in the preceding twelve months, or
- (ii) if it is of a seasonal character and is performed for more than sixty days in a year.

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1 Received the assent of the President on 5.9.1970 and published in the Gazette of India, Ext., Pt. II, S. 1, dated 7-9-1970.

2 Brought into force on 10-2-1971.

<sup>1</sup>[(c) Notwithstanding anything contained in clause (b) or any other provisions of this Act, the work performed or carried out in the area of Special Economic Zone (declared as such by the Government of India), which is of ancillary nature such as canteen, gardening, cleaning, security, courier services, transport of raw material and finished products, or loading and unloading of goods within the premises of a factory or establishment and the work in the factories and establishments which are declared 100 per cent export units by Government, required to achieve the objective of a principal establishment in the said area, shall be deemed to be of temporary and intermittent nature irrespective of the period of performance of the work by the workers in such ancillary establishments.]

#### COMMENT

If more workers other than the maximum number permitted under the licence were to be employed by the management through the Contractor, the additional force shall not be deemed to be Contract Labour. Only such number of workmen employed as per the certificate would be deemed to be Contract Labour.

*Workmen of Best and Crompton Industries v. Best and Crompton Engineering Ltd. Madras 1985 II LLN 169 (Mad.H.C.).*

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#### 2. Definitions.- (1) In this Act, unless the context otherwise requires,-

<sup>2</sup>[(a) "appropriate Government" means,-

- (i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947, (14 of 1947) is the Central Government, the Central Government;
- (ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;]

#### COMMENTS

Notification dated 9.12.1976 by Central Government prohibiting employment of Contract Labour for sweeping, cleaning - Whether Respondent No.2 Air India bound by the same, if Central Government became appropriate Government by virtue of amendment of S. 2(9) of the Act on 28.1.1986 - So long as the notification is in force, contract labour cannot be employed in respect of sweeping, cleaning and it is immaterial that the Central Government became the appropriate Government at a later date. *United Labour Union & Ors. v. Union of India & Ors.* 1990 I CLR 363 (Bom.H.C.).

**S.2(1)(a)** - Appropriate Government - Central Government was and is appropriate Government in respect of Shipping Corporation of India and it continues to be so for the purposes of Contract Labour (Regulation & Abolition) Act, 1970 as well as Industrial Disputes Act, 1947.

*Nassim Ahmed Jamir Ahmed & Ors. v. Shipping Corpn. of India Ltd. & Ors.* 1996 I CLR 74 (Bom.H.C.).

**S.2(1)(a)** - Appropriate Government in respect of International Airports Authority of India for the purpose of Section 2(1)(a) of the Contract Labour Act is the Central Government. *Indian Airports Employees' Union v. International Airports Authority of India & Ors.* 1996 I CLR 347 (Bom.H.C.).

**S.2(1)(a)** – Industry carried on under the authority of Central Government – Meaning of – Held: It implied an industry which is carried on by virtue of, pursuant to, conferment of,

<sup>1</sup> Ins. by Maharashtra Act No.XIII of 2006 dated 2.5.2006.

<sup>2</sup> Subs. by Act 14 of 1986, S. 2, for Cl. (a) (w.r.e.f.) 28.1.1986.

grant of, or delegation of power or permission by Central Government to a Central Government Company or other Government Company/undertaking.

*Steel Authority of India Ltd. & Ors. etc. etc. v. National Union Water Front Workers & Ors. etc. etc.* 2001 III CLR 349 (S.C.)

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- (b) a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer;

#### COMMENT

Contract Labour cannot be absorbed as Badli on regular basis □without they being sponsored by Employment Exchange.

The definition of 'principal employer' in S. 2(g) denotes the existence of a middle man viz., the contractor. Therefore there is no direct 'master and servant' relationship between the appellant company and the respondents contract labour. They are not regular employees of the appellant company. Public undertakings have chosen to make recruitment from out of the candidates sponsored by Employment Exchange. Therefore respondents labourers employed through a contractor □cannot be absorbed without going to the Employment Exchange.

*The Chairman and Managing Director, Singareni Collieries □v. Kotu Posham* 1989 II CLR 414 (A.P.H.C.).

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- (c) "contractor", in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor;
- (d) "controlled industry" means any industry the control of which by the Union has been declared by any Central Act to be expedient in the public interest;
- (e) "establishment" means-
- (i) any office or department of the Government or a local authority; or
  - (ii) any place where any industry, trade, business, manufacture or occupation is carried on;
- (f) "prescribed" means prescribed by rules made under this Act;
- (g) "principal employer" means,-
- (i) in relation to any office or department of the Government or a local authority, the head of that office or department or such other officer as the Government or the local authority, as the case may be, may specify in this behalf,
  - (ii) in a factory, the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948,(63 of 1948) the person so named,
  - (iii) in a mine, the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named,
  - (iv) in any other establishment, any person responsible for the supervision and control of the establishment.

*Explanation.*- For the purpose of sub-clause(iii) of this clause, the expressions "mine", "owner" and "agent" shall have the meanings respectively assigned to them in clause(j), clause(i) and clause(c) of Sub-section(1) of Section 2 of the Mines Act, 1952 (35 of 1952);

- (h) "wages" shall have the meaning assigned to it in clause (vi) of Section 2 of the Payment of Wages Act, 1936 (4 of 1936);
- (i) "workman" means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or un-skilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person-
  - (A) who is employed mainly in a managerial or administrative capacity; or
  - (B) Who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature; or
  - (C) who is an out-worker, that is to say, a person to whom any articles or materials are given out by or on behalf of the principal employer to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of the principal employer and the process is to be carried out either in the home of the out-worker or in some other premises, not being premises under the control and management of the principal employer.

(2) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir shall, in relation to that State, be construed as a reference to the corresponding law, if any, in force in that State.

#### COMMENTS

Whether the employees of a canteen run by a contractor registered under the Contract Labour Act, and maintained by the Company for the benefit of its employees under S. 46 of the Factories Act, 1948 are "workmen" under the I.D. Act? And whether the appropriate Government can refer adjudication of the dispute relating bonus and wages of the employees of the canteen? Held: Maintenance of canteen in the factory premises is incidental to the main industrial operation of the petitioner company. Therefore, those employed in the canteen would fall within the definition of "employees". If an owner of an industry executed any work in the course of running an industry through a contractor, the owner of such industry would be the employer of the workmen employed by such contractor. This is clear from the extended meaning of the term "employer" as defined in S. 2(l)(iv) of the U.P. Act. From the definition of "employer" and "workman" it is clear that the owner of an industry would be an employer within the meaning of the 1947 Act even in respect of the workmen employed by the contractor to do the work of an industry. Reference of the dispute by the appropriate Government is not without jurisdiction. It cannot be accepted that in view of Rule 25(v) the appropriate Government's power to refer a dispute for adjudication is taken away by implication. *Indian Explosives Ltd.* 1981 I LLJ 423.

*Applicability.*- Act applies to Labourers employed in dockyard not owned by employer to repair ships. See 1977 (51) FJR 199.

*Contractor.*- Who are: Required to take licence under S.12-A person becomes a contractor under the Act, when he undertakes to collect and manufacture quarry products to

be supplied to railways. The work evidently done by him by engaging workmen to carry out his contract works under the railway establishment. The workmen employed are deemed as "Contract Labour" under S.2(2h). The supply of quarry products would undoubtedly produce a given result for the establishment. The petitioner fulfils all the requirements of a "contractor" under S.2(2c) and is obliged to take a licence under S.12(I). *H.C. Bothra v. Union of India* 1976 (32) FLR 282.

**Establishment: Ship whether.** - A ship in a port, for the time being stationary and occupies a definite place. While under repairs, it is a work site and comes within the ambit of the definition of establishment. *Lionel Edwards Ltd. v. Labour Enforcement Officer*, 1979 (38) FLR 121.

**"Work of the establishment".** - Meaning of expression. - The expression "work of the establishment" means the work site where the construction work of the establishment is carried on by the petitioners by contractor labour. The expression "employed in or in connection with the work of the establishment" does not mean that the operation assigned to the workmen must be a part or incidental to the work performed by the principal employer.

The contractor is employed to produce the given result for the benefit of the principal employer in the fulfilment of the undertaking given to him by the contractor. Therefore, the employment of the contract labour namely, the workmen by the contractors is in connection with the work of the establishment. The petitioners are contractors within the meaning of the Act. The work which the petitioners undertakes is the work of the establishment. *Gammon India Ltd. v. Union of India* 1974 (28) FLR 406 (S.C.).

## CHAPTER II

### THE ADVISORY BOARDS

**3. Central Advisory Board.**-(1) The Central Government shall, as soon as may be, constitute a board to be called the Central Advisory Contract Labour Board (hereinafter referred to as the Central Board) to advise the Central Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

(2) The Central Board shall consist of-

- (a) a chairman to be appointed by the Central Government;
- (b) the Chief Labour Commissioner (Central), ex-officio;
- (c) such number of members, not exceeding seventeen but not less than eleven, as the Central Government may nominate to represent that Government, the Railways, the coal industry, the mining industry, the contractors, the workmen and any other interests which, in the opinion of the Central Government, ought to be represented on the Central Board.

(3) The number of persons to be appointed as members from each of the categories specified in sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of the Central Board shall be such as may be prescribed:

Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

**4. State Advisory Board.**-(1) The State Government may constitute a Board to be called the State Advisory Contract Labour Board (hereinafter referred to as

the State Board) to advise the State Government on such matters arising out of the administration of this Act as may be referred to it and to carry out other functions assigned to it under this Act.

(2) The State Board shall consist of-

- (a) a Chairman to be appointed by the State Government;
- (b) the Labour Commissioner, *ex-officio*, or in his absence any other officer nominated by the State Government in that behalf;
- (c) such number of members, not exceeding eleven but not less than nine, as the State Government may nominate to represent that Government, the industry, the contractors, the workmen and any other interests which, in the opinion of the State Government, ought to be represented on the State Board.

(3) The number of persons to be appointed as members from each of the categories specified in sub-section(2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the State Board shall be such as may be prescribed:

Provided that the number of members nominated to represent the workmen shall not be less than the number of members nominated to represent the principal employers and the contractors.

**5. Power to constitute committees.**-(1) The Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit.

(2) The committee constituted under sub-section(1) shall meet at such time and places and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

(3) The members of a committee shall be paid such fees and allowances for attending its meetings as may be prescribed:

Provided that no fees shall be payable to a member who is an officer of Government or of any corporation established by any law for the time being in force.

### CHAPTER III

#### REGISTRATION OF ESTABLISHMENTS EMPLOYING CONTRACT LABOUR

**6. Appointment of registering 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 registering officers for the purposes of this Chapter; and
- (b) define the limits, within which a registering officer shall exercise the powers conferred on him by or under this Act.

**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

Effect of non-registration - Where workmen are employed by principal employer through contractor but two conditions of obtaining registration under S. 7 by principal employer and of holding licence by contractor under S. 12 are not complied with, workmen can claim to be direct employees of principal employer - Therefore in relation to periods for which F.C.I. did not possess Certificate of Registration and contractors through whom workmen were engaged also did not possess licence, workmen could claim to be direct employees of F.C.I.

*Food Corporation of India Workers' Union v. Food Corporation of India & Ors.* 1990 I CLR 829 (Guj.H.C.).

Breach of these provisions - Abolition of Contract Labour - Effect - The necessary implication would be that the workmen remain workmen of the principal employer. *United Labour Union & Ors. v. Union of India & Ors.* 1990 I C.L.R. 363 (Bom.H.C.).

Respondent No. 2 company appointed respondent No 4 to run canteen - Contract registered under S. 7 but not under S. 12 - Whether employees of contractor became direct employees of respondent no. 2 company - There is no provisions in the Act of 1970 whereby it can be construed even by a remote possible way that the failure on the part of the contractor to register his contract under S. 12 of the Act of 1970, the employees employed by the contractor would become the direct employees of Respondent No. 2 company.

*General Labour Union (Red Flag) Bombay v. K.M. Desai & Ors.* 1990 I CLR 22 (Bom.H.C.).

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**8. Revocation of registration in certain cases.-** If the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact, or that for any other reason the registration has become useless or ineffective and, therefore requires to be revoked, the registering officer may, after giving an opportunity to the principal employer of the establishment to be heard and with the previous approval of the appropriate Government, revoke the registration.

**9. Effect of non-registration.-** No principal employer of an establishment, to which this Act applies, shall-

- (a) in the case of an establishment required to be registered under Section 7, but which has not been registered within the time fixed for the purpose under that section,
- (b) in the case of an establishment the registration in respect of which has been revoked under Section 8,

employ contract labour in the establishment after the expiry of the period referred to in clause(a) or after the revocation of registration referred to in clause (b) as the case may be.

**10. Prohibition of employment of contract labour.-** (1) Notwithstanding anything contained in this Act, [but, subject to the provisions of Clause (c) of sub-section (5) of Section 1] the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section(1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as -

- (a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
- (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation that is carried on in that establishment;
- (c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;
- (d) whether it is sufficient to employ considerable number of whole-time workmen.

*Explanation.-* If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final.

#### COMMENTS

**S.10(1)(2)** – Industrial Disputes Act, 1947 – Ss.2, 10 – Denial of employment to workmen – In Reference the Tribunal held denial of employment to workmen to be illegal and directed reinstatement as per law then settled – Learned Single Judge rejected the writ petitions filed by Management – Letters Patent Appeals were also dismissed – Hence these appeals – Held that (i) the Tribunal and the High Court did not consider factual position in the background of legal position – In view of subsequent judgment in *Steel Authority's* case, matter needs to be examined by the High Court; (ii) No definite finding by the Tribunal or High Court on the point of camouflage; (iii) High Court did not consider in proper perspective the effect of omitting names of claimants being represented by the Union; (iv) No consideration about purported settlement – Matter remanded to Single Judge to decide it afresh in the light of observations made herein.

*Employers in relation to the Management of Sudandih Colliery of Bharat Coking Coal Ltd. v. Their Workmen represented by Rashtriya Colliery Mazdoor Sangh* 2006 I CLR 538 (S.C.)

Constitution of India - Art. 14 - Notification dated 9.2.1980 □prohibition the employment of contract labour in "cleaning and stacking □and other allied jobs except loading and unloading of bricks from □wagons and trucks" - The affected workmen challenged the notification □- There is no justification for excluding the job of loading and unloading of bricks from wagons and trucks from the purview of the notification dated 9.2.1980 and therefore the words "except loading and unloading of bricks from wagons and trucks" in para 9 of the said notification □are struck down being discriminatory and as such violative of Art. 14 of the Constitution. *Sankar Mukherjee & Ors. v. Union of India & Ors.* 1990 I CLR 31 (S.C.).



Scope of Section 10 : Power to prohibit contract labour.- Under Section 10 of the jurisdiction to decide matters connected with prohibition of contract labour is now vested in appropriate Government, by following the procedure and in accordance with the Act. The Industrial Tribunal has no jurisdiction to abolish contract labour in particular industry by making an award to his effect. *Vegoils Pvt. Ltd. v. Workmen* AIR 1972 SC 1942, 1972 (24) FLR 4 = 1971 (40) FJR 101 = 1971 (II) LLJ 567.

S.10 - Direct absorption of contract labour - There is no provision in the Act for direct absorption of contract Labour by the principal employer. *Fakir Lohar & Ors. v. Food Corpn. of India & Ors.* 1996 I CLR 853 (Cal.H.C.)

S.10 - Function of appropriate Government under S.10 - Submission is that it is a legislative function and is not subject to judicial review - After considering the authorities on the point, it is held that the submission is devoid of any merits. *Indian Airports Employees Union v. Air India & Ors.* 1996 I CLR 1046 (Bom.H.C.)

S.10 - Submission is that only a contract labourer can maintain a writ petition for the reliefs claimed - Rejecting the submission it is observed that there is nothing to indicate that the Union representing the workman of the contractors, in its representative character cannot espouse their cause and ask for abolition of the contract labour system. *Indian Airports Employees Union v. Air India & Ors.* 1996 I CLR 1046 (Bom.H.C.)

Termination of licence - Effect on Contract Labour.- A licensed contractor was running a refreshment room on a railway station at Kottayam. He had employed contract labourers. His licence was expired and he had to surrender premises. Contract Labourers filed writ petition that the railway should absorb them.

Held: Petition cannot be accepted. Even if notification was issued under S. 10, yet the Contract Labourers had no remedy. Besides in this case Contract Labourers were employed not by railway but by licensee. The ratio of the decision in the case of *Catering Cleaners of Southern Railway*, 1987 I LLN 480 is not applicable. Any absorption of Contract Labourers would violate Arts. 14 and 16 of the Constitution. *Karunakar (P) v. Chief Commercial Superintendent, Southern Railway* 1989 I LLN 898 (Ker.H.C.).

Writ petition to restrain employment of Contract Labour.- The High Court cannot assume the mantle of the authorities prescribed under S.10 of the Act and embark upon an enquiry as to whether the provisions of S.10 thereof are satisfied in the instant case and issue thereafter a writ in the nature of mandamus prohibiting the employment of contract labour. High Court cannot issue a writ abolishing the Contract Labour System, because it is a matter which is in the exclusive jurisdiction of the Government under S.10 of the Act subject to judicial review. *Workmen of Nilgiris Co-op. Marketing Society Ltd. v. State of Tamil Nadu* 1989 II LLN 43 (Mad.H.C.).

The challenge is to the direction given by the single Judge to the Appellate directing it "to continue the petitioners whom so ever the independent contract work is allotted to "till action by the Government under S.10 for abolition of Contract Labour. The point is whether High Court can give such a direction.

Held: Neither the Act nor the Rules provide that upon the abolition of contract labour, the said labour should be directly absorbed by the principal employer. Nor there is any provision that pending decision of action under S.10, the workers should be continued to be engaged, at the instance of the principal employer, by any contractor engaged by such principal employer. In the absence of such provisions, it is not permissible for the High Court acting under Art. 226 to direct the principal employer to impose a condition on successive contractors engaged by it to employ the writ petitioners till final order is passed under S.10 by the State Government. *A.P. Dairy Development Co-op. Federation, Hyderabad v. K. Ramulu & Ors.* 1989 I CLR 407 (A.P.H.C.).

Validity of notification issued under S.10. On 15.12.1979 Central Government issued notification prohibiting the employment of Contract Labour in the works for over burden, removal and drilling and blasting in all the Limestone, Dolomite and Manganese Mines in the Country. The validity of this notification is challenged.

Held: The prior consultation with the Advisory Board under sub-section (1) and the relevant factors that should be taken into consideration under sub-section (2) of S. 10 before issuing notification are the in-built safeguards provided in that section itself to prevent the appropriate Government from misusing or abusing its power or exercising its power arbitrarily. In this case there is no evidence that aforesaid factors were considered or that there was prior consultation with the advisory board. The notification is therefore liable to be quashed on that score. *Zenith Industrial Services v. Union of India* 1989 II CLR 402 (Ori.H.C.).

Sec.10(c) - Notification dt. 8.9.1994 - Constitution of India, 1950, Arts. 226, 227 - Petitioners- Appellants, working through the contractor - Respondent No. 2, claimed that they have been performing the work of a permanent nature since many years and are entitled to be regularized and for permanency benefits and in view of the above mentioned Notification, contract labour is prohibited in the categories in which they are working - Writ petition dismissed by Learned Single Judge - In this Writ Appeal, held that (i) Here the disputed question is whether appellants are Boiler-Operators or Plant Assistants Class II - disputed question of facts cannot be gone into in the writ petitions and can be decided only in an industrial dispute before industrial adjudication; (ii) it would not be desirable for this Court sitting as a Court of Appeal over the decision in a writ petition under Art.226/227, to pass any order against Respondent No. 2, which is not amenable to writ jurisdiction; (iii) this is not a fit case to pass any order continuing interim relief against 2nd respondent.

*V.K. Mansuri & Ors. v. O.N.G.C. Ltd. & Ors.* 2002 I CLR 863 (Guj.H.C.)

**S.10(1)** - Constitution of India - Art. 226 - Consequent upon the notification dated 8-9-1994 under S.10 of the Act, the contract labour in the posts of boiler operators, attendants, helpers and peons was prohibited, these appellants, by writ petition, claimed that they be treated as employees of respondent ONGC - Single Judge held in their favour but division bench held that there are some disputed questions of fact which cannot be gone into in writ petition and the same require investigation by Industrial Tribunal - In this appeal, Supreme Court held that the decision in the case of *Steel Authority's case* 2001 III CLR 349, would be applicable on all fours and the directions of the High Court be complied with having regard to the decision in *Steel Authority's case*.

*Nitinkumar Nathalal Joshi & Ors. v. Oil & Natural Gas Corporation Ltd. & Ors.* 2002 I CLR 1113 (S.C.)

**S.10(1)** - Absorption of contract labour as regular employees - Petitioners pray for directing the respondents to abolish contract labour system and to absorb them as regular employees of respondent no. 1 and alternatively direct respondent no.2 State of Maharashtra to prohibit contract labour in the establishment of respondent no. 1 company or to make reference under S.10 of I.D. Act in respect of demand of workmen - Petitioners have given representation to State Government on 27- 8-2001 and rushed with petition on 29-8-2001 - Respondent No.1 is not a Government company but is a private enterprise - Held: Petition is disposed of with a direction to the State of Maharashtra to consider representation dated 27-8-2001 and to pass appropriate order setting the machinery in motion under S. 10(1) of the Act and if petitioners raise industrial dispute, a proper order may be passed thereon. *Sudhir Kondiram Jadhav & Ors. v. Bajaj Auto Ltd. Akurdi & Ors.* 2002 I CLR 97 (Bom.H.C.).

**S.10(1)** - Contract labour working through independent contractor engaged by 3rd respondent-Management, seeking regularisation, were denied the same due to a direction from State Govt. not to absorb them as casual workers - In this writ petition, seeking issue of Notification by State Government for prohibiting employment of contract labour, High Court held that it is for the State Govt. to take decision in consultation with Advisory Board and where the Advisory Board, after taking into account condition of particular industry in question, has recommended that issue of notification is not warranted and the State Govt. has accepted the recommendation, the Court cannot interfere in the matter and substitute its views in place of the views of the Advisory Board.

*Contract Workers of Karnataka Vidyuth Karkane Ltd., Bangalore & Ors. v. State of Karnataka* 2002 I CLR 368 (Karn.H.C.).

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## 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.

**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.

**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.

**14. Revocation, suspension and amendment of licences.-** (1) If the licensing officer is satisfied, either on a reference made to him in this behalf or otherwise, that-

- (a) a licence granted under section 12 has been obtained by misrepresentation or suppression of any material fact, or
- (b) the holder of a licence has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules made thereunder,

then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the licensing officer may, after giving the holder of the licence an opportunity of showing cause, revoke or suspend the licence or

forfeit the sum, if any, or any portion thereof deposited as security for the due performance of the conditions subject to which the licence has been granted.

(2) Subject to any rules that may be made in this behalf, the licensing officer may vary or amend a licence granted under Section 12.

**15. Appeal.-**(1) Any person aggrieved by an order made under Section 7, Section 8, Section 12 or Section 14 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to an appellate officer who shall be a person nominated in this behalf by the appropriate Government:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) On receipt of an appeal under sub-section(1), the appellate officer shall, after giving the appellant an opportunity of being heard disposed of the appeal as expeditiously as possible.

## CHAPTER V

### WELFARE AND HEALTH OF CONTRACT LABOUR

**16. Canteens.-** (1) The appropriate Government may make rules requiring that in every establishment-

- (a) to which this Act applies,
- (b) wherein work requiring employment of contract labour is likely to continue for such period as may be prescribed, and
- (c) wherein contract labour numbering one hundred or more is ordinarily employed by a contractor,

one or more canteens shall be provided and maintained by the contractor for the use of such contract labour.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for-

- (a) the date by which the canteens shall be provided;
- (b) the number of canteens that shall be provided, and the standards in respect of construction, accommodation, furniture and other equipment of the canteens; and
- (c) the foodstuffs which may be served therein and the charges which may be made therefor.

**17. Rest-rooms.-** (1) In every place wherein contract labour is required to halt at night in connection with the work of an establishment-

- (a) to which this Act applies, and
- (b) in which work requiring employment of contract labour is likely to continue for such period as may be prescribed, there shall be provided and maintained by the contractor for the use of the contract labour such number of rest-rooms or such other suitable alternative accommodation within such time as may be prescribed.

(2) The rest-rooms or the alternative accommodation to be provided under sub-section(1) shall be sufficiently lighted and ventilated and shall be maintained in a clean and comfortable condition.

**18. Other facilities.-** It shall be the duty of every contractor employing contract labour in connection with the work of an establishment to which this Act applies, to provide and maintain-

- (a) a sufficient supply of wholesome drinking water for the contract labour at convenient places;
- (b) a sufficient number of latrines and urinals of the prescribed types so situated as to be convenient and accessible to the contract labour in the establishment; and
- (c) washing facilities.

**19. First-aid facilities.-** There shall be provided and maintained by the contractor so as to be readily accessible during all working hours a first-aid box equipped with the prescribed contents at every place where contract labour is employed by him.

**20. Liability of principal employer in certain cases.-** (1) If any amenity required to be provided under Section 16, Section 17, Section 18 or Section 19 for the benefit of the contract labour employed in an establishment is not provided by the contractor within the time prescribed therefor, such amenity shall be provided by the principal employer within such time as may be prescribed.

(2) All expenses incurred by the principal employer in providing the amenity may be recovered by the principal employer from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

**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 the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

#### **COMMENT**

Bonus, Gratuity and Wages - claim for - By contractor's workmen ☐ against principal employer.

When the management entrusts the responsibility of running ☐ the canteen with a contractor, the workmen employed and paid by such ☐ a contractor cannot be treated as workmen of the management. There ☐ is no employer-employee relation between them.

The principal employer's liability to pay wages is recognized ☐ under S. 21(4) of the Contract Labour (Regulation and Abolition) Act, ☐ 1970, as well. if the contractor fails to pay wages, the petitioner ☐ (Principal Employer) will be bound to pay the same.

The wages due to the workmen does not include Bonus or Gratuity. While defining the term wages, the Industrial Disputes Act and Payment of Wages Act specifically excludes bonus and gratuity from its purview. The petitioner is therefore liable to pay arrears of wages and nothing more. *Cominco Binani Zinc Ltd. v. Pappachan* 1989 1 CLR 151 (Ker.H.C.).

## CHAPTER VI

### PENALTIES AND PROCEDURE

**22. Obstructions.-** (1) Whoever obstructs an inspector in the discharge of his duties under this Act or refuses or wilfully neglects to afford the inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorised by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever wilfully refuses to produce on the demand of an inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with a fine which may extend to five hundred rupees, or with both.

**23. Contravention of provisions regarding employment of contract labour.-** Whoever contravenes any provision of this Act or of any rules 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.

**24. Other Offences.-** If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he 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.

**25. Offences by companies.-** (1) If the person committing an offence under this Act is 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 to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section(1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager,

managing agent or any other officer of the company, such director, manager, managing agent or such other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.-* For the purpose of this section -

- (a) "company" means any body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm, means a partner in the firm.

**26. Cognizance of offences.-** No Court shall take cognisance of any offence under this Act except on a complaint made by, or with the previous sanction in writing of the inspector and no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

**27. Limitation of Prosecutions.-** No Court shall take cognisance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of offence came to the knowledge of an inspector:

Provided that where the offence consists of disobeying a written order made by an inspector, complaint thereof may be made within six months of the date on which the offence is alleged to have been committed.

## CHAPTER VII MISCELLANEOUS

**28. Inspecting Staff.-**(1) The appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be inspectors for the purposes of this Act, and define the local limits within which they shall exercise their powers under this Act.

- (2) Subject to any rules made in this behalf, an inspector may, within the local limits for which he is appointed -

- (a) enter, at all reasonable hours, with such assistance (if any), being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place where contract labour is employed, for the purpose of examining any register or record or notices required to be kept or exhibited by or under this Act or rules made thereunder, and require the production thereof for inspection;
- (b) examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a workman employed therein;
- (c) require any person giving out work and any workman, to give any information, which is in his power to give with respect to the names and addresses of the persons to, for and from whom the work is given out or received, and with respect to the payments to be made for the work;
- (d) seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offence under this Act which he has reason to believe has been committed by the principal employer or contractor; and
- (e) exercise such other powers as may be prescribed.

(3) Any person required to produce any document or thing or to give any information required by an inspector under sub-section (2) shall be deemed to be

legally bound to do so within the meaning of Section 175 and Section 176 of the Indian Penal Code, 1860 (45 of 1860).

(4) The provisions of the Code of Criminal Procedure, 1898(5 of 1898), shall, so far as may be, apply to any search or seizure under sub-section (2) as they apply to any search or seizure made under the authority of a warrant issued under Section 98 of the said Code<sup>1</sup>.

**29. Registers and other records to be maintained.**-(1) Every principal employer and every contractor shall maintain such registers and records giving such particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labour and such other particulars in such form as may be prescribed.

(2) Every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the contract labour is employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed.

**30. Effect of laws and agreements inconsistent with this Act.**-(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, or in any standing order applicable to the establishment whether made before or after the commencement of the Act:

Provided that where under any such agreement, contract of service or standing orders the contract labour employed in the establishment are entitled to benefits in respect of any matter which are more favourable to them than those to which they would be entitled under this Act, the contract labour shall continue to be entitled to the more favourable benefits in respect of that matter, notwithstanding that they receive benefits in respect of other matters under this Act.

(2) Nothing contained in this Act shall be construed as precluding any such contract labour from entering into an agreement with the principal employer or the contractor, as the case may be, for granting them rights or privileges in respect of any matter which are more favourable to them than those to which they would be entitled under this Act.

**31. Power to exempt in special cases.**- The appropriate Government may, in the case of an emergency, direct, by notification in the Official Gazette, that subject to such conditions and restrictions, if any, and for such period or periods, as may be specified in the notification, all or any of the provisions of this Act or the rules made thereunder shall not apply to any establishment or class of establishments or any class of contractors.

**32. Protection of action taken under this Act.**-(1) No suit, prosecution or other legal proceedings shall lie against any registering officer, licensing officer or any other Government servant or against any member of the Central Board or the State Board as the case may be, for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or

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<sup>1</sup> Corresponding to S.94 of the Code of Civil Procedure, 1973.



intended to be done in pursuance of this Act or any rules or order made thereunder.

**33. Power to give directions.-** The Central Government may give directions to the Government of any State as to the carrying into execution in the State of the provisions contained in this Act.

**34. Power to remove difficulties.-** If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty.

**35. Power to make rules.-** (1) The appropriate Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the number of persons to be appointed as members representing various interests on the Central Board and the State Board, the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling vacancies;
- (b) the times and places of the meetings of any committee constituted under this Act, the procedure to be followed at such meetings including the quorum necessary for the transaction of business, and the fees and allowances that may be paid to the members of a committee;
- (c) the manner in which establishment may be registered under Section 7, the levy of a fee therefor and the form of certificate of registration;
- (d) the form of application for the grant or renewal of a licence under Section 13 and the particulars it may contain;
- (e) the manner in which an investigation is to be made in respect of an application for the grant of a licence and the matters to be taken into account in granting or refusing a licence;
- (f) the form of a licence which may be granted or renewed under Section 12 and the conditions subject to which the licence may be granted or renewed, the fees to be levied for the grant or renewal of a licence and the deposit of any sum as security for the performance of such conditions;
- (g) the circumstances under which licences may be varied or amended under Section 14;
- (h) the form and manner in which appeals may be filed under Section 15 and the procedure to be followed by appellate officers in disposing of the appeals;
- (i) the time within which facilities required by this Act, to be provided and maintained may be so provided by the contractor and in case of default on the part of the contractor, by the principal employer;
- (j) the number and types of canteens, rest-rooms, latrines and urinals that should be provided and maintained;
- (k) the type of equipment that should be provided in the first-aid boxes;
- (l) the period within which wages payable to contract labour should be paid by the contractor under sub-section(1) of Section 21;

- (m) the form of registers and records to be maintained by principal employers and contractors;
- (n) the submission of returns, forms in which, and the authorities to which, such returns may be submitted;
- (o) the collection of any information or statistics in relation to contract labour and;
- (p) any other matter which has to be, or may be, prescribed under this Act.

(3) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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