

## Chapter 1

### Introduction

Parliament has enacted multiple legislations to protect exploitation of contract labour. These provisions regulate the employment of contract labour in certain establishments and provide for its abolition in certain circumstances. The provisions aim to provide the basic rights, prevent exploitation and ensure better working conditions for the contract labour.

Indian Railways executes a wide range of works for creation, repair and maintenance of its various assets including stations, coaches, wagons, locomotives, tracks, etc. These works are executed through its own workers or through outsourcing them to external agencies. Various departments of Indian Railways viz. Mechanical, Commercial, Operating, Electrical, Civil Engineering, Signal & Telecommunication, Medical, etc. have the responsibility to execute these works. The external agencies work for the Railways and engage workmen for execution of these contracts. A large number of these workmen are classifiable under the term '*Contract Labour*'. The statutory provisions of the legislations for protection of contract labour cast obligations both on Indian Railways as 'Principal Employer' as well as the external agencies referred commonly as 'Contractors'. One of the principal legislations for protection of contract labour is Contract Labour (Regulation and Abolition) Act (CLRA), 1970.

All personnel engaged under contracts with contractors by the Indian Railways are necessarily covered by the provisions of the Acts and Rules (legislative provisions), but do not necessarily cast obligation of Principal Employer on Indian Railways. The basic concepts with respect to statutory provisions of contract labour based on provisions of legislations, rules and various judicial pronouncements are discussed in the following paragraphs.

#### 1.1 Basic concepts regarding statutory provisions in respect of contract labour

##### 1.1.1 What constitutes '*contract labour*'

Contract labour is a term which is applied to manpower engaged by somebody else to produce a given result to the Principal Employer, where this manpower has no direct relationship of employer-employee with the Principal Employer. This includes supply of manpower to Principal Employer by a contractor, where the contractor is not involved in the specified activity. Thus, contract labour system is not restricted to outsourcing only. '*Contract labour*' reflects manpower whereas '*outsourcing*' reflects the job or the activity.

When the jobs and services are outsourced and are carried out in some other premises not being premises under control and management of the Principal Employer, CLRA, 1970 will not apply. All other outsourced jobs and services, which

are carried out in the premises of the Principal Employer will be covered under CLRA, 1970.

### **1.1.2 Principal Employer should not have a say in the selection of contract labour**

Once the job/services/activities are allocated to a contractor under a proper agreement, Principal Employer should not have a say in selection of contract workmen. If the Principal Employer is selecting the contract labour, appointing them under the name of contractor, it is sufficient to establish the relationship wherein the Principal Employer will be the employer of the so called contract labour.

### **1.1.3 Liability of Principal Employer in the contracts of sub-contracting**

Liability of the Principal Employer, where the work has been sub-contracted by the contractor is same as in the contracts of contractor, because as per the provisions of the CLRA, 1970, sub-contractor is covered in the definition of the contractor. The Principal Employer does not change as a consequence of sub-contracting.

### **1.1.4 The essential ingredients of the contract labour are that**

- the employment may be by or through a contractor<sup>1</sup>.
- he must be a 'Workman'<sup>2</sup>.
- he must be employed, in or in connection with, the work of the establishment. It follows that any person who is in some manner or other connected with the work of the establishment would be a contract labour.
- he is hired where he is employed, in or in connection with, the work of the establishment.
- the employment may be with or without the knowledge of the Principal Employer.
- There is no mandatory requirement that only where the contractor obtains a license under the Act that workmen employed through the contractor will be contract labour. That workmen employed even by a contractor not holding a valid license would be contract labour.
- Provisions of CLRA, 1970 apply to establishments and to the contractors, wherein twenty or more workmen are employed or were employed by them even for one day during the preceding twelve months as contract labour.

## **1.2 Organisational Set up**

Railway Board is the apex body of the Indian Railways and reports to the Minister of Railways. Railway Board is headed by Chairman Railway Board and has

<sup>1</sup> Section 2 (1) (c) of the CLRA, 1970

<sup>2</sup> As defined in Section 2 (a) (i) of the CLRA, 1970

Members in-charge of Traction, Rolling Stock, Traffic, Staff and Engineering and a Financial Commissioner (Railways). The Board is responsible for laying down policies on all matters regarding operation and maintenance of train services, acquisition, construction and maintenance of assets and monitoring/ implementation of policies and instructions across Zonal Railways. The functional Directorates under each Member assist and aid in decision making and monitoring of railway operations. At the field level, there are 17 Zonal Railways. Department-wise hierarchy of officials in the Zonal Railways is given in **Appendix I**.

### 1.3 Audit Objectives

The present review was taken up with the objective to assess whether the Railway Administration and its contractors complied with the statutory laws and rules applicable for protection of rights of contract labour and that the Railway Administration has a mechanism in place to monitor the compliance of statutory laws and rules applicable for contract labours.

### 1.4 Audit Criteria

The engagement of contract labour is governed by provisions of several statutes and rules made thereunder. The provisions of these Acts and Rules have been used as the Audit Criteria for this study. These include

- The Contract Labour (Regulation & Abolition) Act (CLRA), 1970 and Contract Labour (Regulation & Abolition) Central Rules (CLRR), 1971
- Minimum Wages Act (MWA), 1948 and Minimum Wages Rules (MWR), 1950
- Employees' Provident Fund and Miscellaneous Provisions Act (EPF and MPA), 1952 and Employees' Provident Fund Scheme (EPFS), 1952
- Employees' State Insurance Act (ESIA), 1948 and Employees' State Insurance (General) Regulations [ESI(G)R], 1950

In addition, Railway Board's orders and instructions issued in this regard from time to time have also been used as Audit Criteria. Further, Clause 54 and 55 of the General Condition of Contracts of the Indian Railways have also been used as Audit Criteria.

### 1.5 Audit scope, methodology and sample

Audit covered a period of three years from 2014-15 to 2016-17. Audit examination included review of various contracts and their related records available at Zonal Railway Headquarters as well as field locations. A feedback was obtained through a structured questionnaire (**Appendix II**) from selected contract labour, which was taken during joint inspection in case of ongoing contracts, along with the officials of railway. Through the feedback form, Audit collected information about name of the contract labour, name and address of the contractor for whom they are working and since when, details of Employees Provident Fund (EPF) and

Employees' State Insurance (ESI) codes of the contractors, whether they are aware about their entitlements, whether they are getting paid in cash or through bank, amount being paid, hours for which they work, payments made for weekly rest days, bonus paid, outstanding dues, if any etc.

Audit was conducted over nine railway formations including six Zonal Railways, viz. Northern Railway (NR), North Central Railway (NCR), North Western Railway (NWR), Central Railway (CR), Eastern Railway (ER) and South Western Railway (SWR), two Production Units (Chittaranjan Locomotive Works at Chittaranjan and Diesel Locomotive Works at Varanasi) and Metro Railway, Kolkata. Two contracts per department were selected across various departments so as to test check the system being followed in different departments. These departments included Mechanical, Engineering, Operating, Commercial, Administration, Accounts, Personnel, Medical, Safety, security, S&T department etc. A total of 463<sup>3</sup> contracts out of 4430 contracts were reviewed in Audit in these selected nine railway formations. Of these 108 contracts had been completed as on 31 March 2017 and remaining contracts were in progress.

Joint inspections with Railway officials, at the workplace in respect of the selected ongoing contracts were conducted by the Audit Teams. Feedback from 928 contract labour in 266 contracts (10 *per cent* of labour engaged in individual works) were also included in the study.

The role of the Organisation of Chief Labour Commissioner, Employee Provident Fund Organisation and Employee State Insurance Corporation was also discussed in meetings with their officials by Audit. The New Inspections Schemes introduced by these organisation in 2014 were also discussed. Audit also reviewed the system and controls in place in a non-railway organisation viz. Delhi Metro Rail Corporation Limited (DMRC), as a case study for best practices which facilitate compliance to labour laws.

There was scope limitation due to non-production of records by the Principal Employers and contractors. 108 of the selected contracts were completed as on 31 March 2017 and most of these records were not preserved by the contractors and Principal Employers as required. Many of the records are required to be maintained by the contractors, copy of which should be available with the Principal Employers, if they verify the same from time to time. Non-maintenance/partial maintenance of documents by the contractors, indicates that provisions in relation to contract labour are not being followed properly. In such cases, audit could not get access to information and the same has been reflected in the report as records not provided to Audit. The instances where non-

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<sup>3</sup> CR – 105, ER – 75, NCR – 105, NR – 75, NWR – 34, SWR – 46, Metro/Kolkata – 11, DLW – 6 and CLW – 6, valuing ₹ 873 crore

compliance noticed were on the basis of partial information available on records or as informed by the Railways.

The audit findings were discussed in the Exit Conferences with the respective officials in all the selected railway formations. Audit findings and recommendations were discussed at the Railway Board level on 24 January 2018. The responses have been suitably incorporated in the Audit Report.

Audit findings in the report are based on observations of selected nine railway formations. Similar deficiencies may be prevalent in other railway formations and units as well. These are required to be addressed by Indian Railways, across all their units.

### **1.6 Acknowledgement**

Audit acknowledges the cooperation given by the railway administration during the conduct of the audit.