

Chapter 7

Conclusion and Recommendations

7.1 Conclusion

As the Principal Employer, Railway Administrations were to discharge certain obligations for ensuring compliance of statutory provisions contained in the CLRA, 1970, MWA, 1948, EPF & MPA, 1952 and ESIA, 1948. Audit noticed instances of inadequate compliance as well as non-compliance to such statutory provisions, which led to short payment/non-payment of minimum wages, non-payment of weekly rest, non-deduction/contribution of EPF and ES. I.

The provisions regarding registration of the Principal Employer with the Labour Commissioner, intimation of commencement of work and submission of annual returns to the concerned Labour Commissioner by the Indian Railways as Principal Employer, was not followed. The contractors had also not obtained licenses from the organisation of Labour Commissioner for the engagement of contract labour in the contracts in a large number of cases. Prescribed facilities (rest room, drinking water, urinals, first aid box etc.) were also not being provided to all contract labour in selected contracts, which was in violation of prescribed provisions, denying the rights of contract labour. Payments to contract labour in the contracts test checked in Audit were not made through banks in all the cases. Railways did not furnish requisite records/information in respect of a significant number of selected cases. In this scenario, there is a likelihood that records are not being maintained, which indicates that railways are not fully conscious about their obligations in respect of provisions to be followed in relation to contract labour.

Deficiencies in maintenance of requisite and prescribed records was seen in a large number of cases. Audit noticed compliance to maintenance of critical documents of Wage Register and Overtime Register in 121 (26 *per cent*) contracts and four (one *per cent*) contracts respectively. The issue of wages slips was seen in only 18 (four *per cent*) contracts. In many cases, records were not being preserved for the time prescribed, which restricted the access to various monitoring agencies including Labour Commissioner. With the introduction of new Inspection Policy by various monitoring agencies viz. Chief Labour Commissioner, EPFO and ESIC, a unit may not be inspected unless it is a part of the database they maintain, wherein the Principal Employer/Employer has been given a unique identification number or if a complaint has been received in respect of that unit. Thus, failure of a Principal Employer/Employer to get itself registered with these organisations restricts the monitoring and check by the concerned authorities. It is also not possible for any independent organisation to access records and derive assurance regarding compliance of laws for contract labour by the contractors.

In the estimates, where the labour component was assessed, Railways did not prepare them keeping in view the statutory requirements under the CLRA, 1970, MWA, 1948, EPF & MPA, 1952 and ESIA, 1948. There were instances where the contractors also did not ensure payment of minimum wages to contract labour and did not pay contribution/deduct employee's contribution of EPF and/or ESI as required. Though it is the responsibility of the Principal Employers to deduct the ESI dues from the bills of the contractor, if short/non-deduction/contribution is noticed and make payment to the contract labour, the same was not found to be done in the cases reviewed by Audit. The amount was also not recovered from the contractors in these cases. Audit observed that there were no specific instructions issued by the Railways to their Principal Employers to follow the above provision strictly.

Thus, the risk of exploitation of contract labour as a result of short payment/non-payment of minimum wages and other statutory labour benefits was very high. Audit assessed such non-payments/short payments of ₹ 26.14 crore in 312 contracts reviewed.

During Exit Conference, Railway Board stated (January 2018) that they agreed with audit observations on the subject. They stated that the responsibility to ensure adherence to statutory provisions lies with the contractors as well as the Principal Employer (i.e. the Railways) and they have issued orders and instructions on the subject to all Zonal Railway Offices. They emphasised that the role of Railway Board is mainly to issue instructions to the Zonal Railways and follow up. They agreed that the role of the organisations such as Labour Commissioner, EPF and ESIC is very important and crucial to exercise an oversight on adherence to statutory provisions by contractors and Principal Employers. Ministry of Railways further stated that all Audit recommendations are acceptable to them and they would take action to issue instructions to all Zonal Railways on those lines.

Audit also reviewed the systems and controls in place in a non-railway organisation, Delhi Metro Rail Corporation Limited and observed that by preparation of proper estimates, award of contract only to eligible contractors, comprehensive terms and conditions of contracts, ensuring checks while making payment and monitoring the compliances through dedicated Labour Welfare Teams, a system can be put in place for monitoring and compliance to statutory provisions. Significant changes have also been introduced by the Government of India to facilitate easy compliance of statutory provision by the Principal Employers as well as the contractors, which should facilitate better compliance by Indian Railways.

7.2 Recommendations

- 1. The Principal Employers in Indian Railways have certain obligations towards contract labour in terms of provisions of the CLRA, 1970; EPF & MPA, 1952 and ESIA, 1948. IR vide Railway Board's letter no. E/LL/70AT/CNR/1-3 dated***

15.10.1971 specified the category of Principal Employer as Divisional officers in Divisions, Senior Mechanical Engineer, Deputy Chief Mechanical Engineer or Works Manager in respect of Workshops, Controller of Stores in respect of Stores depot, Executive Engineer in respect of Construction and Heads of Departments in respect of contracts directly controlled by the Headquarters in respect of contracts. They should fulfill the requirement of the Acts and the Rules governing contract labour as representative of Indian Railways under their administrative control.

2. *The following controls may be established for compliance to statutory provisions relating to contract labour:*
 - a. *Preparation of estimates for labour component may be done duly taking into account the minimum wages fixed by Central/State Government from time to time plus additional amount of contribution required to be made by the contractors towards Employees' Provident Fund (EPF), Employee State Insurance Corporation (ESIC) and any other related cost.*
 - b. *A comprehensive list of conditions towards ensuring compliance to statutory provisions relating to labour laws may be included in the tender documents/General Conditions of Contracts/Special Conditions of Contract, including penalties for non-compliance. The tender documents should include terms and conditions relating to timely payments of wages due, amenities for labour, safety of labour, etc.*
 - c. *Contracts may be awarded to contractors/agencies who have been registered with the Labour Department, EPFO and ESIC etc.*
 - d. *Principal Employers for the various Departments of the organisation may be identified and nominated. A comprehensive list of responsibilities for Principal Employers may be issued as a checklist for the Principal Employers.*
 - e. *A mechanism may be put in place for effective monitoring by Principal Employers such as forming a dedicated cell/team, which will be entrusted with the overall responsibility for enforcement of Labour laws compliances in the organisation. These teams should be given powers to inspect work sites and records for checking compliance and also give a go-ahead before payments are made to the contractors. Detailed checklists for such inspections should also be issued.*
 - f. *A mandatory list of documents may be prescribed for submission by the contractor, without which the contractors' bills should not be processed. A comprehensive checklist may also be prescribed for checking of compliances before passing of contractors' bills.*
3. *For the contracts which are already in progress, Railway Administrations of all Zonal Railways may consider directing the Principal Employers in various contracts to examine the number of contract labour under their jurisdiction in*

preceding 12 months for all the contractors, determine if they are required to register themselves with the prescribed authorities under the Acts and get themselves registered with the prescribed authorities, where required.

- 4. In works, where the applicability of the CLRA, 1970 on the contractor is established, the contractor may be directed to apply for license from the Labour Commissioner. If he fails to do so, Labour Commissioner may be informed, so as to take necessary punitive action against the contractor.*
- 5. Joint Procedure Orders should be issued by Zonal Railways, clearly indicating obligations of Principal Employers, functions of the designated nominee of Principal Employer, functions of paying authorities and the functions relating to filing of relevant returns with the prescribed authorities.*
- 6. In all ongoing contracts, the short payments, short deduction and short contribution may be identified, verified and amounts short-paid/not paid may be paid to the concerned contract labour by the Railway administration as per the provisions of Acts. The amounts so paid should be recovered from the contractors, where applicable.*
- 7. Railways may encourage the contractors to follow provisions of the EPF & MPA, 1952 and EPFS, 1952 and effectively avail of the incentives under the newly introduced Pradhanmantri Rojgar Protsahan Yojana to promote recruitment of unemployed persons and bring into books the informal employees.*
- 8. Railways may consider putting in place an effective control mechanism through Internal Audit and/or inter-disciplinary teams to monitor compliance of statutory requirements. Measures may also be taken for creating awareness amongst various levels of railway officers on the issue.*



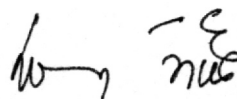
(Nand Kishore)

New Delhi

Dated: 30 July 2018

Deputy Comptroller and Auditor General

Countersigned



(Rajiv Mehrishi)

New Delhi

Dated: 30 July 2018

Comptroller and Auditor General of India