October 2021

This edition of the JSA Employment Monthly broadly focuses on and discusses the following aspects under the Contract Labour (Regulation and Abolition) Act, 1970 ("**CLRA**"):

- Re-visiting the statute applicability
- Preview of interesting judicial precedents
- CLRA vis-à-vis The Occupational Safety, Health and Working Conditions Code, 2020
- Insights and industry views

The Contract Labour (Regulation and Abolition) Act, 1970

Who does it apply to?

- Every establishment in which 20 or more workmen are employed, or were employed, on any day of the preceding 12 months, as contract labour; and
- Every contractor, who employs or who employed on any day of the preceding 12 months, 20 or more workmen (collectively, the "**Central Thresholds**").

Who does it not apply to?

- Does not apply to establishments in which only work of intermittent or of casual nature is performed.
- For undertaking any work through, or engaging the services of, contract labourers, a contractor is required to obtain a contractor license and a principal employer is required to obtain a principal employer registration, under the CLRA (subject to applicable thresholds).

What do the States say?

While the above prescribed thresholds largely apply to most States in India, some States have prescribed State-specific applicability thresholds. For the purposes of this newsletter, we have focused on the applicability of the CLRA in the following States:

Tamil Nadu - Same as Central Thresholds.

Delhi - Same as Central Thresholds.

Gurgaon - Effective from October 17, 2017, in Haryana, the CLRA applies to:

a) every establishment in which 50 or more workmen are employed, or were employed, on any day of the preceding 12 months, as contract labour; and

b) every contractor, who employs or who employed on any day of the preceding 12 months, 50 or more workmen.

Gujarat - Pursuant to the Contract Labour (Regulation and Abolition) (Gujarat Amendment) Act, 2020, the CLRA in Gujarat applies to:

a) every establishment in which 50 or more workmen, art employed or were employed on any day of the preceding 12 months as contract labour; and

b) every contractor who employs or who employed on any day of the preceding 12 months, 50 or more workmen.

Karnataka - Same as Central Thresholds.

Interestingly, the Industrial Disputes and Certain Other Laws (Karnataka Amendment) Bill, 2020, which sought to increase the applicability threshold of the CLRA from 20 workmen to 50 workmen, was not passed by the Legislative Council in its session last year in September 2020, and was scheduled to be re-promulgated as an ordinance, once again. However, as on date, there seems to be no progress made in this regard.

Maharashtra - Applies to an establishment employing (or employed) 50 or more workmen as contract labour, on any day of the preceding 12 months. The CLRA also applies to a contractor who employs or employed 50 or more workmen on any day of the preceding 12 months.

Telangana - Applies to every establishment employing 5 or more contract workers.

The laws of Telangana and Andhra Pradesh mandate that employment of contract labour is prohibited in any 'core activity' which means "any activity for which the establishment is set up and includes any activity which is essential or necessary to the core activity" but does not include sanitation works, canteen and catering services, running of hospitals, house-keeping etc, provided the activities by themselves are not the 'core activities' of such establishment. However, principal employers may still engage contract labour in any core activity, subject to certain conditions.

Food for thought from Indian Courts!

On sham arrangement and regularisation claims.

Regularisation claims from contract labourers typically allege that their arrangement with the principal employer is sham and bogus, since they are under the direct supervision and control of the principal employer. On whether there actually exists direct supervision and control, Indian courts take into account various factors such as (indicative and not exhaustive) whether the principal employer is involved in (a) hiring or firing; (b) conducting appraisals and determining bonus or incentives; (c) taking disciplinary action; (d) sanctioning leave, etc. Existence of any one of the above factors may not lead to a successful sham arrangement claim, but viewed holistically, the probability of such claims being upheld does increase.

On principal employer liability for contractor's non-compliance.

A principal employer is generally not held responsible for the failure of a contractor to obtain a licence under the CLRA. Default by a contractor in procuring the relevant license under the CLRA would only result in statutorily prescribed penalties being levied on the contractor for its non-compliance. In *Steel Authority Of India Ltd. vs Steel Authority Of India Ltd*[1], it was held that "*There is absolutely no warrant to deem a direct relationship of employer-employee between the principal employer and the contract labour only because the contractor fails to obtain a licence.*"

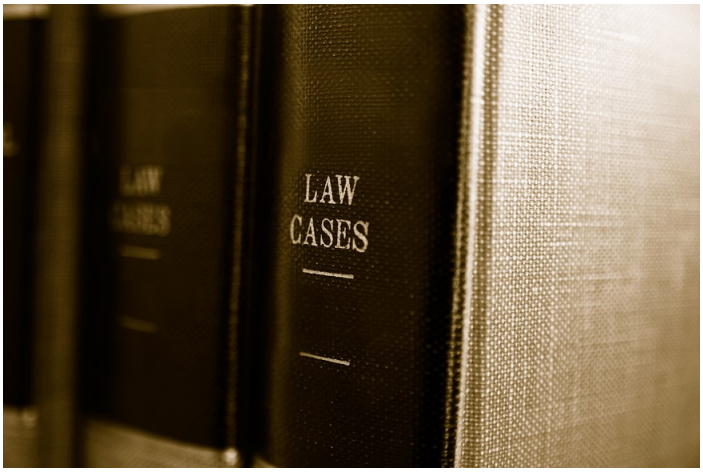
On automatic absorption of contract labourers by principal employer.

Several judicial precedents suggest that a non-compliance on the part of a contractor and/ or a principal employer to procure the relevant license and/ or the registration, as the case may be, under the CLRA does not result in an automatic assumption of employer-employee relationship between the principal employer and the contract labour.

[1] ILR 1991 KAR 3679, 1992

In *The Tamil Manila Tozhilalar Sangam vs. Madras Refineries Ltd And Ors.*[2], the Madras High Court observed that, "*it does not state that in the absence of the contractor holding a valid licence, he becomes a workman of the establishment. It does not in any manner confer upon him any right to claim regularisation in the event of any of the contravention of the provisions of the Contract Labour Act, either by contractor or by the establishment or by both of them*".

Did you know?



In the case of *Basanta Kumar Mohanty vs. State of Orissa*[3] (**Basanta Mohanty Case**), the Odisha High Court held that "a permanent employee who during his employment can be placed at different establishments at the choice of the contractor cannot be called to be a contract labour because he is not hired in or in connection with the work of any particular establishment. The logic behind this conclusion is that where employment of a person is unrelated with any specific work of any establishment, he is not a contract labour, because his employment has no nexus with any particular work of any establishment..."

The decision of the Odisha High Court is arguably ahead of its time – interestingly, the ratio of the Basanta Mohanty Case is seen in fruition through the changes introduced through the new Occupational Safety, Health and Working Conditions Code, 2020 (**OSHW**), which categorically excludes a "worker (other than part time employee) who is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis) while exclusion of an employee" from the definition of a "contract labour".

Clients matter, clients corner

We have hand-picked a few of the recent and most interesting queries we have brainstormed on, thanks to our clients!

- *Would provisions of CLRA apply to a 'consultant' engaged in place of an employee?* Based on a strict interpretation, while it may be argued that the provisions of the CLRA may not apply in cases where 'consultants' (as opposed to employees) are deployed, this may not be a recommended approach, primarily on account of potential risks of de-facto employment claims being raised by such consultants, on grounds that works/ services performed by the consultants are similar to that of the regular employees.
- *Would a contractor be required to procure a license, if contract labourers are deployed on a rolling basis?* Where multiple workmen are deployed on a rolling-basis, generally, the view is that the requirement to obtain a contractor license would trigger in the first instance where the minimum thresholds under the CLRA are met (i.e., when 20 or 50 workmen or more, as applicable) are first deployed.
- *Is contractor license or principal employer registration required where workmen are deployed to different units/ establishments of one customer within the same city or in multiple cities?* The requirements under the CLRA are establishment specific. In this regard, once the applicable thresholds are met vis-à-vis a particular establishment, the applicable liabilities would be triggered.

What's next?

The new OSHW is expected to be enforced shortly. The OSHW, *inter alia*, (a) increases the threshold for applicability from 20 to 50 contract labourers, (b) seeks to include 'inter-state migrant workers' and workers in

[2] W.A. No. 175 of 1989 DD 12-4-1989
[3] (1992) IILLJ 190 Ori

a supervisory capacity who receive wages up to INR 18,000 as contract workers, (c) specifically excludes any person regularly employed by the contractor for any activity in its establishment (with additional conditionalities specified under the OSHW) from being considered a 'contract labour', (d) a single license with 5-year validity (de-linked from principal employers) can be obtained by contractors who satisfy prescribed criteria; also a single pan-India license can be obtained by contractors supplying 'contract labour' to private establishments; (e) single registration for principal employers to whom the OSHW is applicable – no separate registration for contract labour engagement is required, (f) principal employers will now be solely responsible for providing welfare facilities for contract labour and for maintenance of health, safety, and working conditions for them at their premises.

Simplification in licensing requirements for both contractors and principal employers is anticipated. Principal employers will also have to ensure provision of welfare facilities to the contract labour and re-examine their arrangements / contracts with the contractors in this regard.

Interestingly, the Ministry of Labour and Employment, Government of India has issued draft rules in relation to the OSHW as on November 19, 2020. Once notified, these rules would apply to establishments where the 'appropriate government' would be the Central Government. Further, some states such as Haryana has issued draft rules under the OSHW on September 16, 2021 for comments from the public. Other state governments are also expected to issue the relevant draft rules under the OSHW Code by the end of this year. We will discuss this in our subsequent newsletters.

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