



### **'Contract Employment' – Significance of 'Supervision and Control Test'**

The system of employing contract labour is prevalent in most industries in different occupations including skilled & semi-skilled jobs. It is also prevalent in agriculture and allied operations & to some extent, in the service sector.

A workman is deemed to be employed as Contract Labour when he is hired in connection with the work of an establishment by or through a contractor. Contract workmen are indirect employees: persons who are hired, supervised and remunerated by a contractor who, in turn, is compensated by the establishment.

Contract Labour has to be employed for work which is specific & for definite duration. Inferior labour status, casual nature of employment, lack of job security, & poor economic conditions are the major characteristics of contract labour.

While economic factor like cost effectiveness may justify the system of contract labour, considerations of social justice requires its abolition or regulations.

The supreme court of India in the case of **Standard Vacuum Refinery Company vs. their Workmen (1960-II-ILJ page 233)** observed that contract labour should be employed where-

- (i) The work is perennial & must go on from day to day.

---

Copyright © 2019 KSR & Co. Company Secretaries LLP. All rights reserved. You are receiving this email because you opted in via our website.

Mailing Address: KSR & Co Company secretaries LLP, 101, Indus Chambers, Govt. Arts College Road, Coimbatore 641018.



## INTERNAL AUDIT OF FUNCTIONS & ACTIVITIES

THURSDAY, 13 JUNE 2019

- (ii) The work is incidental & necessary for the work of the factory.
- (iii) The work is sufficient to employ considerable number of whole-time workmen.
- (iv) The work is being done in most concerns through regular workmen.

Thus, the system of employment of contract labour lends itself to various abuses. The question of its abolition has been under the consideration of the appropriate Government for long time.

The matter was discussed at various meetings of tripartite committees & general consensus was that the system should be abolished whenever possible or practicable & that in case where this system could not be abolished altogether, the working condition of the contract labour should be regulated to ensure payment of wages & provision of essential amenities.

As a result of the recommendation of the above tripartite committees, the Contract Labour (Regulation & Abolition) Act, 1970 ["CLRA Act"] was enacted.

The CLRA Act under its various provisions amply establishes that 'primary' responsibility of the employment of contract labours lies with the contractor who is being engaged by the principal employer through an agreement. All the statutory requirements such as payment of wages, provision of amenities, welfare, safety, maintenance of registers, returns & rewards etc., are to be managed primarily by the contract agency. In the event of default, defect, deviation or deficiency by the contractor then the secondary responsibility falls on the Principal employer in whose factory / establishment the contract manpower is deployed. Thus, the CLRA Act upholds the cause of social justice for the contract work force, by ensuring their rights, entitlements & guaranteed privileges are mandatorily taken care, either by the contractor or by the principal employer.

The above aspect is very clearly decided in the following case law of supreme court: - **Bharat Heavy Electricals Ltd. ["BHEL"] Vs Mahendra Prasad Jakhmola & Others,**

In its decision dated 20<sup>th</sup> February 2019, in BHEL Vs Mahendra Prasad Jakhmola & Ors., Supreme Court of India had considered the question whether workmen employed by BHEL are workers of BHEL or contract labour.

The Labour Court had held that the workmen are direct workers of BHEL since BHEL had issued gate passes to them that are normally issued to workers of BHEL. Supreme Court observed that it is clear from the evidence tendered that gate passes were issued only at the request of the contractor for the sake of safety and also from the administrative point of view and only then any person could enter the precincts of the factory. CISF took care of the safety in their organisation. Supreme Court observed that this evidence was missed out by the Labour Court when it arrived at a conclusion that a direct relationship ought to be inferred from this fact alone.



## INTERNAL AUDIT OF FUNCTIONS & ACTIVITIES

THURSDAY, 13 JUNE 2019

Quoting its decision in **Balwant Rai Saluja and Another v. Air India Limited and Others’ [2014(9) SCC 407]**, where it was held that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

- (i) who appoints the workers;
- (ii) who pays the salary/remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service; and
- (vi) the extent of control and supervision i.e. whether there exists complete control and supervision.

Supreme Court held that the workmen have themselves admitted that there is no appointment letter, provident fund number or wage slip from BHEL insofar as they are concerned. Apart from this, it is also clear from the evidence led on behalf of BHEL, that no wages were ever been paid to them by BHEL as they were in the service of the contractor.

Applying the “Supervision and Control” test, the Supreme Court held that the ultimate supervision and control lies with the contractor as it is the Contractor who decides where the employee will work and how long he will work and subject to what conditions. Supreme Court held that the primary control is with the contractor and the supervision and control by the Principal Employer is secondary in nature, as Principal Employer could exercise control over the workers only after the workers are assigned by the Contractor to the Principal Employer to do work at the establishment of the Principal Employer.

Thus, every organization that engages contract labour must take care of these finer aspects. It is important to have proper written contracts clearly establishing that the “Supervision and Control” in such cases rests with the Contractor engaged for supply of man power.

\*\*\*\*\*

CENTRAL OFFICE	BRANCH OFFICE	BRANCH OFFICE
Indus Chamber No.101, Govt Arts College Road, Coimbatore – 641018. Tel No: - (0422)2302868, 4952868 Email: <a href="mailto:info@ksrandco.in">info@ksrandco.in</a> Linked in: <a href="mailto:gene@ksrandco.in">gene@ksrandco.in</a>	Flat No.1, 26/27, Venkatesham Flat, Gopal Street, T-Nagar, Chennai – 600 017. Tel No: - (044)24337620, Email: <a href="mailto:chennai@ksrandco.in">chennai@ksrandco.in</a>	S-311, 3 <sup>rd</sup> Floor, South Block, Manipal Centre, No.47, Dickenson Road. Bangalore – 560042, Tel No: - (080)25323232 Email: <a href="mailto:bangalore@ksrandco.in">bangalore@ksrandco.in</a>

Copyright © 2019 KSR & Co. Company Secretaries LLP. All rights reserved. You are receiving this email because you opted in via our website.

Mailing Address: KSR & Co Company secretaries LLP, 101, Indus Chambers, Govt. Arts College Road, Coimbatore 641018.