Contract Labor (Regulation & Abolition) Act, 1970 – Role of the Trade Unions & Challenges

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Contract labor refers to labor assigned to perform tasks by an employer without any formal and direct employer-employee relationship. The relationship is mediated by individuals or agencies termed as contractors who employ workers and hire them out. Contract labor is a phenomenon visualized, originally, as a help to the growth of services of seasonal and temporary nature. The Contract Labor (Regulation & Abolition) Act, 1970, is a legislation to regulate the employment of contract labor in certain establishments and to provide for its abolition in certain circumstances. This article focuses on the role of the trade unions and their challenges while dealing with the provisions of the Contract Labor (Regulation & Abolition) Act, 1970.

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Introduction

It is a well known dictum that the labor laws especially the laws relating to industrial relations in the country are rigid to carry on their business and to have flexible labor in meeting the situations of a competitive global market. Opposed to the traditional industrial culture of open competition or laissez faire, the present structure of industrial law is an outcome of long-term agitation and struggle of the working class for participation on equal footing with the employers in industries for its growth and profits. Two socially vital factors must inform the understanding and application of industrial jurisprudence. First is the constitutional mandate of Part IV, obligating the state to make "provision for securing just and humane conditions of work". Security of employment is the first requisite of a worker's life. The second, equally axiomatic consideration is that a worker who willfully or anti-socially holds up the wheels of production or undermines the success of the business is a high risk and deserves, in the industrial interest, to be removed without tears (Michael & other vs. M/s Johnson Pumps and Another.) Up to certain stage of the post-independent history

the legislation and judicial interpretation have woven the legal fabric based on these patterns.

Law is a form of order, and good law must necessarily mean good order. The roots of jurisprudence lie in the soil of society's urges and it blooms with nourishment from the humanity it serves. Labor flexibility as visualized by the reform process emphasizes capacity of labor to transform and adapt to new and emerging technologies introduced as part of structural reforms, and to face challenges of a highly competitive structure—domestic as well as external through improving productivity and quality of output. Labor employed on contract has been one of the most common forms of non-regular employment. Contract labor refers to labor assigned to perform tasks by an employer without any formal and direct employer-employee relationship. The relationship is mediated by individuals or agencies termed as contractors who employ workers and hire them out. Contract labor is an age old phenomenon visualized, originally, as a help to the growth of services of seasonal and temporary nature (Ramanujam & Sodhi, 2004). Employment of contract labor expanded and diversified substantially during the last one and a half decade with the initiation of the reform process and culminated in to new heights presently. Today contract workmen are employed in every sphere of industrial activity irrespective of the nature of work.

The Contract Labor (Regulation & Abolition) Act, 1970 (herein after referred to as the Act) is a legislation to regulate the employment of contract labor in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. The Act applies at the first instance to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labor and to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen. Under this Act a workman shall be deemed to be employed as "contract labor" 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.[1] It is difficult to comprehend as to why the law chooses to use the words 'with or without the knowledge of the principal employer'.[2] "Workman" means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include some persons[3]

[1] See Section 2 (1) (b) of the Act.

[2] A perusal of the Rule 73 of the Contract Labor (R&A) Central Rules, 1971 indicates a contract as to the phrase '… or without the knowledge of the principal employer'.

[3] who is an out-worker, that is to say, a person to whom any article and 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

Section 2 (1) (i) of the Act excludes the following persons as workmen:

i. who is employed mainly in a managerial or administrative capacity; or

ii. 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 undoubtedly the contract labor are referred to as the workmen under the Act and explicitly perform all types of work to that of the regular employees of the principal employer in the establishment. The Act, though speaks about a module of concept of regulation of employment, is however, silent about the definition of 'trade union' in the Act.[4]

The next principal question that stands for clarity in the context is whether the Trade Unions Act, 1926 enables the contract labor to form a trade union and register it? The Amendment Act, 2001 to Section 4 of this Act perhaps changed the very concept of trade unionism as perceived originally by the law itself.[5] It may be pointed out here that Indian trade unions, from the very beginning, have been considered not only as wage-welfare organizations of labor, but also as instruments of social and economic change. On the whole the present text of the Trade Unions Act, 1926 encourages the establishment or industry wise trade unions as opposed to general trade unions of workers. It is quite clear from the combined reading of both legislations, and the relevant provisions there under the contract labor employed in any establishment can form a trade union and register it.[6]

The fundamental purpose of this research is to pave the way for the trade unions working for the welfare of the contract labor to have proper understanding of the legislation in promoting the interests of the contract labor employed under genuine contract labor system. In terms of judicial verdicts the usage of the phrase 'genuine contract' is referred to the situations wherein the principal employer carrying the system of employment

other premises, not being premises under the control and management of the principal employer.

[4] The principal labor legislations namely, the Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947 which speak about the concept of regulation of employment do define a 'trade union' in the definition clause.

[5] Section 4 of the TU Act, 1926 provides that any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of the Act with respect to registration, apply for registration of the Trade Union under the Act. (Provided further that no Trade Union of Workmen shall be registered unless at least ten per cent, or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration. Provided further that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.)

[6] The Labor Department, Government of Karnataka, despite the objections raised by the principal employer, have registered the contract labor trade unions under the Trade Unions Act, 1926.

of contract labor validly within the framework of the Contract Labor (Regulation & Abolition) Act, 1970. Carrying the system of contract labor validly within the framework of the legislation in the sense means, the principal employer has duly employed the contract labor by clearly complying with all the provisions of the Act as well as the Rules framed there under in respect of such employment.[7] The terms like a system of camouflage or sham contract or a system of smokescreen or a system of subterfuge as referred to by the judiciary cover the situations wherein the system of employment of contract labor is being carried on by the principal employer by clearly defeating the provisions of the Act as well as the Rules framed there under.

The statement of Objects and Reasons of the Act provides that the 'system of employment of contract labor lends itself to various abuses. The question of its abolition has been under the consideration of the Government for a long time. In the second Five-Year Plan, the Planning Commission made certain recommendations, namely, undertaking of studies to ascertain the extent of the problem of contract labor, progressive abolition of system and improvement of service conditions of contract labor where the abolition was not possible. The matter was discussed at various meetings of Tripartite Committees at which the state governments were also represented and the general consensus of opinion was that the system should be abolished wherever possible or practicable and that in cases where the system could not be abolished altogether, the working conditions of contract labor should be regulated so as to ensure payment of wages and provisions of essential amenities. However, a clear reading of the law and the rules made there under go beyond this assumption from the point of view of labor.

The Act aims at the abolition of contract labor in respect of such categories as may be notified by the appropriate government in the light of certain criteria that have been laid down there under, and at regulating the service conditions of contract labor where abolition is not possible. In this regard, the Act provides ample freedom to the principal employer to employ the labor on contract basis through an intermediary namely, the contractor in respect of any process, work or operations of the establishment and leaves the matter subsequently for the appropriate government to abolish the system based on certain criteria as laid down under the Act. Before abolishing the system in any establishment, the appropriate government shall have due regard to the conditions of work and benefits provided for the contract labor in that establishment and other relevant factors.

[7] A perusal of the provisions of the Act as well as the Rules framed there under would clearly require the employer to provide the detailed particulars of the contract labor system such as nature of work in which contract labor is employed or is to be employed, nature of work carried on in the establishment, the maximum number of contract labor to be employed on any day, probable duration of employment of contract labor, estimated date of commencement of each contract work under each contractor and estimated date of termination of employment of contract labor under each contractor etc.

Compliance Concept under the Contract Labor (Regulation and Abolition) Act, 1970.

The Act imposes on employer certain privileges, liabilities, duties and obligations. The liabilities, duties and obligations imposed there under precisely confer certain privileges and benefits for the contract labor employed by the principal employer through the intermediary namely, contractor. The concept of liabilities, duties and obligations imposed by the legislation is of vicarious in the strict sense of the legislation. By implication the principal employer under the legislation entrusts these liabilities and obligations to the contractor under the terms of a formal contract which purely fall outside the realm of the legislation. The entire cost of meeting these liabilities and obligations has to be borne by the principal employer. But apparently for the purpose of legislation these liabilities and obligations prima facie have to be discharged by the contractor who supplies the workmen to the establishment.

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The purpose of compliance as required under various labor legislations is not a mere theoretical postulation but expects from an employer the strict adherence to the values set forth by the law. The compliance requirement as envisaged under labor legislations fundamentally consists of two major categories. The first one deals with the compliance requirement by the employer within the four corners of the establishment or industry. This is basically aimed to promote the interests of both the employer and the labor. This type of compliance is mandatory under various labor legislations in India. The same can be called as substantive compliance. The second type of compliance is known as procedural compliance, which may not be mandatory in case of all labor legislations in the country. Under 'procedural compliance' the employer is required to furnish the returns to the 'authority' as required by the law. The aspect of 'procedural compliance' is mandatory only in respect of some welfare labor legislations. But the valid point to be understood in the context is the basis for 'procedural compliance' is 'substantive compliance'. This aspect needs clarity for all practical purposes. Basically the labor legislations in the country can broadly be classified into two major categories, namely (i) regulatory laws and (ii) welfare legislations. The laws namely the Industrial Disputes Act, 1947, the Industrial Employment (Standing Orders) Act, 1946, the Trade Unions Act, 1926, are regulatory laws. The Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Factories Act, 1948, the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the Employees State Insurance Act, 1948, the Payment of Bonus Act, 1965, the Workmen's Compensation Act, 1923, the Equal Remuneration Act, 1976, the Payment of Gratuity Act, 1971, the Contract Labor (Regulation & Abolition) Act, 1970, the Maternity Benefit Act, 1961, the Inter

State Migrant Workers Act, 1979, the Karnataka Shops and Establishments Act, 1961, etc., are broadly welfare legislations.

The substantive compliance under the provisions refers to the strict adherence by the employer to the values consisting liabilities, duties and obligations as set forth by the legislation, which has to be authenticated by the active intervention of the state machinery namely, the inspectorate the failure of which will be met with penal consequences. It amounts to compliance in strict spirit with the provisions in substance namely, material compliance in a factual manner. This is always coupled with twin fold obligation namely, (i) materially complying with the provisions and (ii) entering or recording the same in a register maintained as a documentary proof for the purpose of such compliance. The procedural compliance refers to the situations of reflection of the substantive compliance through the paper document which may have to be filed with the enforcement authority or in some situations to be maintained in the establishment in the manner specified. The violation would also be met with the penal consequences of same quantum. Hence, the compliance requirement of industrial law both in letter and in substance, which aims at promoting social justice, interests of both of employers, employees and in a democratic society, the people, who are the ultimate beneficiaries of the industrial activities, plays a paramount purpose in industrial relations. This aspect needs to be well understood by the present regime of trade union movement in the country.

Regulation of the Contract Labor System – Key Issues

The Act, by and large, concentrates on matters relating to regulation of the system rather than its abolition[8]. Regulation of the contract labor system involves three vital aspects, namely: (i) Registration of the establishment; (ii) Licensing of contractors and (iii) Compliance of substantive as well as procedural requirements both by the principal employer and the contractor as required under the law. In all these three aspects the role of the regulatory authority i.e. the appropriate government is paramount from the point of view of implementation of the legislation[9] and equally the role of the unions in ensuring proper conditions of service to the contract labor within the framework of the legislation, since it is axiomatic to expect from every principal employer to view the interests of the contract labor progressively in a welfare perspective. Also the labor employed on contract basis would be totally ignorant of their privileges under the Act for various reasons. A clear reading of the law as well as the rules made there under reveal a plethora of compliances both on the part of the principal employer and the labor

[8] Sections 6, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18,19,20,21, 22, 23, 24, 28, 29 and 35 (partly) of the Act deal with matters relating to regulation of the contract labor system.

[9] The concept of State's active intervention in the field of enforcement of labor legislations is withering away gradually in the present context of the political economy for various reasons such as poor infrastructure facilities, inadequate manpower, apathy of the higher bureaucracy etc.

contractor towards the welfare of the contract labor, which need proper exploration and clarity from the point of view of the welfare of the contract labor.

Existence of a Formal Contract

A perusal of the legislation and the rules made there under demonstrates by implication the existence of a formal contract between the principal employer and the labor contractor as a condition precedent before the principal employer can make an application for registration of the establishment, although the law does not make a reference to it expressly in the provisions.[10] Section 7 of the Act *inter alia* requires every principal employer to make an application to the registering officer in the prescribed manner for the registration of the establishment. Form I (6) of the Central Rules requires the principal employer to furnish the following particulars:

i. Names and addresses of contractors.

ii. Nature of work in which contract labor is employed or is to be employed.

iii. Maximum number of contract labor to be employed on any day through each contractor.

iv. Estimated date of commencement of each contract work under each contractor.

v. Estimated date of termination of employment of contract labor under each contractor.

The requirement of furnishing above particulars to the registering officer by the principal employer clearly indicates the existence of an agreement to the effect between the principal employer and the contractor as a condition precedent before applying for registration. The fundamental aspects of such formal agreement must reflect (i) the undertaking by the principal employer that he shall be bound by all the provisions of the Act and the rules made there under in so far as they are applicable to him in respect of the employment of such contract labor; (ii) the undertaking by the labor contractor that he shall comply with the provisions of the Act and the rules made there under in so far as they are applicable to him in respect of the employment of labor in the establishment, and (iii) terms relating to the monetary aspect by clearly keeping in view the provisions of the Act as well as the rules made there under. As far as the contract labor is concerned, contractor is the principal employer for them for all the purposes under the labor legislations. All major social welfare and social security legislations such as the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Employees' State Insurance Act, 1948, the Employees' Provident Fund (Miscellaneous Provisions) Act, 1952, the Payment of Gratuity Act, 1973 etc. are applicable to the contract labor in the establishment of the contractor. Hence, it is fundamental for the trade unions working with contract labor to have an access to the formal agreement as entered into between the

[10] Sections 20 (2) and 21 (4) of the Act speak vaguely about such contract between the principal employer and the labor contractor.

principal employer and the contractor. Such formal agreement obviously should reflect the entire information pertaining to the cost of wages, amount to be incurred towards the statutory contributions etc. for the whole period of such contract. The fundamental question which needs clarity is how many trade unions working with the contract labor have access to it and ultimately how they used it as a tool for effective bargaining process for the betterment of the working conditions of the contract labor?

Other Key Issues

i. The Registering Officer under the Act shall maintain a register as required under Rule 18 (3) showing the particulars of the (i) the type of business, trade, industry, manufacture or occupation which is carried on in the establishment; (ii) total number of workmen directly employed by the employer; (iii) nature of work in which contract labor is employed; (iv) maximum number of contract labor to be employed on any day and (v) probable duration of employment of contract labor.

ii. The Contractor in his application for license is required under Rule 21 (1) to furnish the particulars namely, (i) type of business, trade, industry, manufacture, occupation, which is carried on in the establishment; (ii) nature of work in which contract labor is employed or is to be employed in the establishment; (iii) duration of the proposed contract work and (iv) maximum number of contract labor proposed to be employed in the establishment on any date.

iii. The application for license made by the contractor shall be accompanied by a certificate to the effect that the principal employer shall be bound by all the provisions of the Act and the Rules made there under in so far as they are applicable in respect of the employment of contract labor by the contractor in the establishment.[11]

iv. Every license to the Contractor issued by Licensing Officer shall contain the terms and conditions under which it is issued, namely, (i) the total number of workmen to be employed in the establishment as contract labor; (ii) the rates of wages payable under the Minimum Wages Act, 1948 or under the agreement, settlement as the case may be; (iii) in cases where the contract labor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the contract labor shall be the same as applicable to the workmen directly employed by the principal employer on the same or similar kind of work; and (iv) in other cases the wage rates, holidays, hours of work and conditions of service of the contract labor shall be such as may be specified by the Deputy Labor Commissioner.[12]

v. The Contractor under Rule 74 shall maintain the register containing the

[11] See Rule 21 (2) of the Contract Labor (Regulation and Abolition) Central Rules, 1971.

[12] See Rule 25 (3) of the Contract Labor (Regulation and Abolition) Central Rules, 1971.

particulars of the nature of work on contract, period of contract and maximum number of workmen employed by him in the establishment.

vi. The Contractor under Rule 75 shall maintain a register of contract labor showing the particulars namely: (i) names of the workmen; (ii) Age and sex; (iii) Father's/husband's name; (iv) nature of their employment and designation; (v) permanent home address; (vi) date of commencement of employment; and (vii) the signature or thumb impression of the of workmen.

vii. The Contractor under Rule 76 shall issue an employment card to the workmen containing the particulars of their names, nature of the employment, wage rate and the tenure of employment.

viii. The Contractor under Rule 78 (1) (a) (i) shall maintain a muster roll cum wage rates register of the workmen containing the particulars namely, name and father's name of the workmen, sex and the dates of attendance, nature of work, rates of wages and the signature of the workmen.

ix. Further the Contractor under Rule 78 shall issue a wage slip to the workmen.

The Role of the Unions

Of late no industrial establishment, the corporate sector, state instrumentality and the State itself is an exception to the fact of employment of labor through the intermediary namely, the contractor. Today the incidence of employment of labor on contract basis is common in the entire social and economic activities involved in the country. Often the Labor Department, which is an enforcement agency under the Act remain a mere spectator in the incidence of the gross violations of the Act in cases of high profile corporate houses, State instrumentalities and the State services. The biggest culprits in the process are the instrumentalities of the State and the State carrying non-industrial establishment activities such as research, education, administration of popular welfare schemes and social forestry etc. In majority of cases one can find glaring violations both by the employer and the labor contractor in complying with key aspects of the legislation. In the process the worst affected are the contract labor who remain in the stagnant scale of wages, absence of social security protection and other welfare amenities. Of late the issue of abolition of the contract labor system under the Act has remained a mere fiction. Hence, regulation of the system assumes greater importance from the point of view of contract labor with equal emphasis on their claim for regularization of their service conditions as the regular employees of the principal employer, which would be a secondary consideration in the circumstances.

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A consideration of the decision of the apex Court in (*Gujarat Electricity*

Board v Hind Mazdoor Sabha) would clarify this aspect comprehensively. On the basis of the provisions of Section 10[13]of the Act, it was held that the authority to abolish the contract labor is vested exclusively in the appropriate government which has to take its decision in the matter in accordance with the provisions of Section 10 of the Act. However, it has to be remembered that the authority to abolish the contract labor under Section 10 of the Act comes into play only where there exists a genuine contract. In other words, if there is no genuine contract and the so-called contract is a sham or a camouflage to hide the reality, the said provisions are inapplicable. When, in such circumstances, the workmen concerned can raise an industrial dispute for relief that they should be deemed to be the employees of the principal employer. The court or the industrial adjudicator will have jurisdiction to entertain the dispute and grant the necessary relief. However, the situation is obviously different when the labor contract is genuine and there is no relationship of employer-employee between the principal employer and the workmen of the contractor either before or after the contract labor is abolished by the appropriate government under Section 10 of the Act. This hurdle in raising the dispute will however, disappear if it is raised by the direct workmen of the principal employer who have (i) a community interest with the contract labor, and (ii) a substantial interest in the subject-matter of the dispute. As has been pointed out earlier, if the contract is not genuine, the workmen of the contractor themselves can raise such dispute, since the raising such dispute the workmen concerned would be proceeding on the basis that they are in fact the workmen of the principal employer and not of the contractor. Hence, the dispute would squarely fall within the definition of industrial dispute under Sec.2 (k) of the Industrial Dis-

If the contract is not genuine, the workmen of the contractor themselves can raise such dispute.

[13] Section 10 of the Act provides that:

1) Notwithstanding anything contained in this Act, 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 labor 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 labor 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 it is to say, it is of sufficient duration having regard the nature of industry, trade, business, manufacture or occupation 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.

putes Act being a dispute between the employer and the employees. In that case, the dispute would not be for abolition of the contract labor, but for securing the appropriate service conditions from the principal employer on the footing that workmen concerned were always the employees of the principal employer and they were denied their dues. In such a dispute, the workmen are required to establish that the so called labor contract was sham and was only a camouflage to deny their legitimate claims.

As regards the other contention that the decision of the govt. under Sec.10 as to whether the of contract labor should be abolished or not, is final and cannot be challenged in any court or before the industrial adjudicator, the court observed that the decision of the govt. is final and of course subject to the judicial review on usual grounds. However, as stated earlier, the exclusive jurisdiction of the appropriate govt. under section 10 arises only when the labor contract is genuine and the question whether the contract is genuine or not can be examined and adjudicated upon by the court or the industrial adjudicator as the case may be. It is no doubt true that neither Sec.10 nor any other provisions thereof in the Act provides for determination of the status of the workmen of the erstwhile contractor once the appropriate govt. abolishes the contract labor. In fact, on the abolition of the contract, the workmen are in a worse condition since they can neither be employed by the contractor nor is there any obligation cast on the principal employer to engage them in his establishment. We find this is a vital lacuna in the Act. The legislature probably did not consider it advisable to make a provision for automatic absorption of the erstwhile contract labor in the principal establishment on the abolition of the contract labor, fearing that such provision would amount to forcing the contract labor on the principal employer.[14]

The Court finally made the following conclusions on the issues raised, namely:

(i) In view of the provisions of Sec. 10 of the Act, it is only the appropriate. govt. which has the authority to abolish genuine labor contract in accordance with the provisions of the said Section. No court including the industrial adjudicator has the jurisdiction to do so.

(ii) If the contract is sham or not genuine the workmen of the so called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and claiming the appropriate service conditions. When such disputes are raised, it is not a dispute for abolition of the labor contract and hence the provisions of Sec.10 of the Act will not bar either the raising or the adjudication of the dispute. When such a dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes

[14]However, the apex Court in Steel Authority of India Ltd and Others vs National Union Waterfront Workers (2001) 7 SCC 1 went a step further in this context.

to the conclusion that the contract is sham, then he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine he may refer the workmen to the appropriate govt. for abolition of the contract labor under Sec.10 of the Act and keep the dispute pending. However, he can do so only if the dispute is espoused by the direct workmen of the principal employer. If the regular workmen of the principal employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Sec.2(k) of the Industrial Disputes Act. He will not be competent to give relief to the workmen of the erstwhile contractor even if the labor contract is abolished by the appropriate government under Sec 10 of the Act.

(iii) If the labor contract is genuine a composite industrial dispute can still be raised for abolition of the contract labor and for their absorption. However the dispute will have to be raised by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have to first direct the workmen to approach the appropriate government for abolition of the contract labor system under Sec.10 and keep the reference pending. If pursuant to such reference, the contract labor system is abolished by the appropriate government the industrial adjudicator

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will have to give an opportunity to the parties to place the necessary evidence before him to decide whether the workmen of the contractor should be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labor is not abolished, the industrial adjudicator has to reject the reference.

(iv) Even after the contract labor system is abolished, the direct employees of the principal employer can raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can direct the workmen to be absorbed and on what terms.

Final Word for Unions

The unions working with the issues of the contract labor need to at the first instance summarize the whole system of contract labor that is being carried on in an organization. A clear ascertainment of the total number of the contract labor employed and the respective departments in which they are employed, the number of contractors involved, its duration, the details of the registration of the establishment and licensing of the contractors is called for. An ascertainment of these facts certainly would provide as to the nature of the very contract labor system

that is being carried on in the organization. In case if the system is genuine, the unions need to enforce its regulation strictly within the scope of the legislation by having a clear perusal of various compliances envisaged there under on the part of the employer as well as on the contractor.

If the system is sham or a camouflage, the unions must employ a strategy to collect necessary documents, relevant facts and records to raise a substantial industrial dispute for regularization of the service of conditions of the contract labor as regular employees of the principal employer. In such a case the following are the conditions precedent, namely:

i. The formation and registration of a trade union of the contract labor.

ii. Serving a demand in writing before the employer of the establishment seeking for regularization of the service conditions of the contract labor by clearly listing the names of such labor, their nature of work, qualifications and the years of service.

iii. If no positive response is heard from the employer, raising an industrial dispute by serving a demand notice for regularization of the services of such labor on the employer and simultaneously serving the copy addressed to the conciliation officer of the area with a request to initiate appropriate conciliation proceedings.

iv. At no point of time the unions must resort to strike or violence of any sort but to make efforts for the initiation of conciliation proceedings.

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