

Executive Summary

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, Railway Protection Force, 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'. Principal legislations for protection of contract labour and to provide better working conditions and benefits to them include Contract Labour (Regulation and Abolition) Act (CLRA), 1970, Minimum Wages Act (MWA), 1948, Employees' Provident Fund and Miscellaneous Provisions Act (EPF and MPA), 1952 and Employees' State Insurance Act (ESIA), 1948.

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. Contract labour is the 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. 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.

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.

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.

Audit covered a period of three years from 2014-15 to 2016-17. In addition to examination of contracts and their related records, a feedback was obtained from 928 contract labour in 266 contracts through a structured questionnaire during joint inspection along with the officials of railway in case of ongoing contracts. The information collected included details such as, 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.

Important Audit Findings

Compliance to the provisions of CLRA, 1970 and CLRR, 1971

As per the provisions of the CLRA, 1970 and CLRR, 1971, the Principal Employers has to get itself registered with the Organisation of Chief Labour Commissioner (CLC) and submit returns as prescribed within a time frame to CLC. The contractors are also required to be registered with the CLC and submit returns within the prescribed time frame. They are also required to renew license before the expiry of the same. They are required to provide basic amenities to the contract labour such as rest rooms, drinking water, urinal, first aid box, etc. The payments are required to be made to the contract labour following prescribed guidelines and the same should be made through bank/cheque. Records as prescribed under the Act are required to be maintained by the Principal Employer as well as contractor and the same are to be preserved for the period specified.

Audit reviewed 463 contracts over nine zonal formations and noticed that

- In 140 contracts, Railway Administration was registered with the Organisation of Chief Labour Commissioner. **Para 2.1**
- Only in 17 contracts, Principal Employer (Railways) had submitted returns to the CLC regarding dates of commencement and completion of the contracts

within the prescribed period. In respect of 278 contracts, records were not made available to Audit. **Para 2.1.1**

- Railways as Principal Employer submitted Annual Returns to the Organisation of Chief Labour Commissioner in 12 contracts only. **Para 2.1.2**
- In 172 contracts, licences were not obtained by the contractors from the CLC and in 207 contracts, records were not made available to Audit. In 34 contracts, the contractors obtained requisite license before commencement of work and in 50 contracts, licenses were obtained after commencement of works after a delay of up to 750 days. Of these 84 contracts,
 - Only in 37 contracts, the licenses were found displayed prominently by the contractors at the respective work sites.
 - In 14 contracts the deployments of contract labour was more than the numbers specified in the license obtained from Labour department. The excess ranged up to 200 contract labour in these contracts.
 - In 14 contracts, licenses were not renewed by the contractors after expiry of its validity.

Para 2.2, 2.2.1, 2.2.2, 2.2.3

- In only one contract, the contractor submitted prescribed returns to the Labour Commissioners' office. In 285 contracts, the contractors had not submitted any returns to the Labour Commissioners' office. In the balance contracts, information was not made available to Audit.

Para 2.2.4

- As regards amenities to be provided to the Workers by the contractors, while amenities such as drinking water, urinals etc. were provided to the contract labour, records were not made available to Audit in a number of cases. Audit could not derive assurance regarding provision of rest rooms in 15 *per cent* contracts and provision of drinking water and urinals in 21 *per cent* contracts. Similarly, assurance about availability of first aid box with medicines and other related components could be derived by Audit in only 37 *per cent* of the contracts reviewed.

Para 2.3.1, 2.3.2 and 2.3.3

- In all 463 contracts, notices regarding payment of wages were not sent by the contractors to the Principal Employers/nominee of the Principal Employer. No directions had been issued by Railways to the Principal Employers or their nominees for ensuring payments to contract labour and recovering the same from the contractors in case of non-payment/short payment. Railway

Administration had not nominated any authorised representative to be present at the time of disbursement of wages in all 463 contracts. Despite Railway Board's instructions to ensure payment of wages to the contract labours through Bank/Cheque, the same was ensured only in respect of 82 contracts. In 212 contracts, information regarding means of payment was not made available to Audit.

Para 2.4

- In respect of 313 contracts, no records/registers were maintained by the Principal Employer (Railways) as required under the Acts and Rules. In respect of 120 contracts, records//registers as required for compliance of above Acts and Rules were not made available to Audit. Contractors maintained Attendance Registers in respect of 164 contracts, Wage Registers in respect of 122 contracts and Wages slips only in 18 contracts. Records were also not preserved as per the stipulated time periods in a large number of completed contracts.

Para 2.5

Compliance to the provisions of MWA, 1948 and MWR, 1950

Minimum wages to contract labour are required to be paid by the contractors as per the provisions of MWA, 1948. Railway Board also circulates the rates notified by the Ministry of Labour and Employment to all field units from time to time.

Audit reviewed 463 contracts over nine zonal formations and noticed that

- Minimum wages were paid in compliance to the provision of MWA, 1948 in respect of 105 contracts only. Payment of minimum wages to contract labour was not ensured in respect of 129 contracts. Audit assessed a sum of ₹ 9.23 crore as short payment to 3310 contract labour over the contract period towards payment of minimum wages. Records were not made available in respect of 229 contracts.
- Para 2.6.1**
- In 120 contracts, wages for rest days were paid by the contractors and in 62 contracts, wages were not paid by the contractors as per the laid down provisions. ₹ 5.41 crore of short payment of minimum wages to 2745 contract labour was assessed by Audit for contract period. Relevant records were not made available to audit in 239 contracts.
- Para 2.6.2**
- In respect of 49 contracts, contractors neither provided any rest to the workers nor paid rest day wages due and payable at double rate of the minimum wages, as required under the rule. In 268 contracts, records were not made available to audit.
- Para 2.6.3**
- In 49 contracts, the contractors did not provide any rest day to the workers even after continuous working beyond 10 days. In 215 contracts, records were not made available to audit. In 30 contracts, the contractors did not pay any amount to the contract labour deployed between 9 and 12 hours a day. Audit

assessed an amount of ₹ 1.74 crore short paid to 830 contract labour during the contract period. **Para 2.6.4**

- During the period of audit, no evidence could be found in the records of railway administration to show that inspections were carried out by the officials of the Labour Commissioner to check the compliance of the provisions of CLRA, 1970 and MWA, 1948. Under the new Inspection Policy of the Ministry of Labour and Employment, CLC would inspect a unit only if they are registered with the CLC and they are selected for inspection as per their laid down criteria or any complaint/grievance has been received regarding them. The registration of Principal Employer as well as the contractor is thus of paramount importance in order to ensure their monitoring by the Organisation of Labour Commissioner. **Para 2.7**

Compliance to the provisions of EPF & MPA, 1952 and EPFS, 1952

The Act and the Rules formulated therein are aimed to provide the employees in specified establishments, benefits of provident fund, pension and deposit link and incentives. The responsibility to ensure compliance to the provisions of EPF & MPA, 1952 and EPFS, 1952 rests with EPF Organisation. The employee contributes 12 *per cent* of the wages towards Employee Provident Fund contribution. The employer also contributes 12 *per cent*, which includes 3.67 *per cent* to EPF and 8.33 *per cent* towards Employees' Pension Scheme. Under the Act, the Principal Employer is required to ensure that the contractors are registered with EPFO, the contract labour employed by him have been allotted PF Account number and that the contribution towards PF is deducted from the contract labour and the same along with contribution from the employers is deposited with EPFO.

Audit reviewed 463 contracts over nine zonal formations and noticed that

- Railway Administration had verified the registration of contractor with the EPFO before award of the contracts only in 20 contracts. In 431 contracts, records were not made available. **Para 3.1.1**
- Only in 46 contracts, PF Registration was found to be taken by the contractors. In 321 contracts, information was not found on record. **Para 3.1.2**
- In only 61 contracts, PF Account Numbers of contract labour were available. In 258 contracts, relevant records were not made available to Audit. **Para 3.1.3**
- In 125 contracts, the EPF deductions from 3678 employees were found not deducted/ short deducted by ₹ 2.07 crore. In 306 contracts, the records were not made available to audit. In 128 contracts, the employers' contribution of ₹ 2.54 crore was found not deducted/ short deducted in respect of 3731

employees. In 306 contracts, the records were not made available to audit.

Para 3.1.4

- No evidence could be found in the records of railway administration to show that inspections were carried out by the officials of the EPFO to check the compliance to laid down rules and provisions towards fulfilment of statutory obligations under the above mentioned Acts and Rules. Under the new Inspection Policy of the Ministry of Labour and Employment, EPFO would inspect a unit only if they are registered with them and they are selected for inspection as per their laid down criteria or any complaint/grievance has been received regarding them. Thus, by assuring themselves of the applicability of the Act and Rules on the contractors and ensuring his registration with the EPFO would be the basic necessary requirement which the Principal Employer (Railways) has to ensure, in order to follow the provisions of the Act and Rules.

Para 3.3

Compliance of ESIA, 1948 and ESI(G)R, 1950

The ESIA, 1948 was enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The Act and the rules are applicable on the establishments where 10 (20 in some States/Union territories) or more persons are employed on any day of the preceding 12 months. The employers (contractors) are required to apply and obtain an employer code from ESIC, get ESI Account Number allotted to the Contract labour and ensure that the contribution towards ESI is deducted from the contract labour and the same along with contribution from the employers is deposited with ESIC. The Principal Employer is liable to pay contribution in respect of all his employees including contract labour engaged through a contractor and is responsible to deduct the ESI dues from the bills of the contractor, if short/non-deduction/contribution noticed.

Audit reviewed 463 contracts over nine zonal formations and noticed that

- In 116 contracts, contractors were not registered with concerned Regional offices of ESIC, and had not been allotted Employer's code numbers. Records were not made available for 235 contracts. **Para 4.1.1**
- In 148 contracts, ESI Account numbers were not obtained and in 266 contracts, relevant records were not made available to audit. **Para 4.1.2**
- In 92 contracts, ESI deduction by ₹ 0.24 crore from 1888 contract labour was not deducted/ short deducted. In 302 contracts, relevant records were not made available to audit. In 98 contracts, the employers' contribution was found not deducted/ short deducted by ₹ 0.78 crore in respect of 2278

employees. In 335 contracts, the records were not made available to audit.

Para 4.2

- Railway administration had not taken any action towards recovery of the amount from the contractor's bills and to deposit the same to the ESIC. No internal control system exists for identification and follow up action in such cases of non-deduction/short deduction in any contract. **Para 4.3**

- No evidence could be found in the records of railway administration to show that inspections were carried out by the officials of the ESIC to check the compliance to laid down rules and provisions towards fulfilment of statutory obligations under the above mentioned Acts and Rules. Under the new Inspection Policy of the Ministry of Labour and Employment, ESIC would inspect a unit only if they are registered with them and they are selected for inspection as per their laid down criteria or any complaint/grievance has been received regarding them. Thus, by assuring themselves of the applicability of the Act and Rules on the contractors and ensuring his registration with the ESIC would be the basic necessary requirement which the Principal Employer (Railways) has to ensure, in order to follow the provisions of the Act and Rules. This is more so as under the provisions of this Act, the Principal Employer is liable to pay contribution in respect of all his employees including contract labour engaged through a contractor.

Para 4.5

Impact of non-compliance of statutory provisions

- Out of 463 contracts in selected Railway formations valuing ₹ 873.40 crore, in case of 151 contracts valuing ₹ 224.30 crore, requisite records were not made available to audit. Of the balance 312 contracts valuing ₹ 649.10 crore involving 8998 contract labour, in 210 contracts valuing ₹ 408.20 crore, there was an adverse impact of ₹ 26.14 crore on 6366 contract labour. This worked out to 4.02 *per cent* of the value of 312 contracts. During 2016-17, Indian Railways made contractual payments of approximately ₹ 35098 crore. Based on the results of audit in 312 contracts and the adverse impact on contract labour at 4.02 *per cent* of total contractual payments, the estimated adverse impact on contractual payments in Indian Railways would thus be 4.02 *per cent* of ₹ 35098 crore, i.e. ₹ 1410.94 crore.

Para 5.2

- 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 PEs as well as the contractors, which should facilitate better compliance by Indian Railways.

Para 6.2

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.**

