CHAPTER VIII

CONTRACT WORKMEN AND THE HOUSE RENT ALLOWANCE ACT

The Government of Maharashtra passed an Act in 1983 and titled it as the Maharashtra Workmen's Minimum House Rent Act 1983. This act has been implemented with effect from 1st January 1991 and is applicable to the Establishments, Factories and Industries engaging 50 or more than 50 employees. The main provision of the act is that the employer will have to pay every workmen employed by him House Rent Allowance at the rate of 5% of the wages (Basic and Dearness Allowance) payable to him or Rs. 20/- whichever is higher.

The Employers in their great wisdom and in their desire to save every Rupee to prove that they are good Managers keeping the profitability of the organisation high have put to work the best legal brains available to find out how this act need not be implemented.
There is a provision in the act itself which stipulates that where House rent is already been paid at a higher level than that specified in the Act, this higher level of payment should continue. This is one of the ways out.

It requires no great intelligence to forecast that in all future settlements with the workmen or their representative Union an employer will make sure that a hefty chunk of money which he is going to pay any way will now be paid in the form of House rent so that the provisions of the act are complied with, and in fact the house rent far exceeds the 5% specified.

As far as the contractor's employees are concerned an entirely different set of circumstances obtains. By and large contractors employees are in receipt of minimum wages under the Minimum Wages Act. A plain reading of the House rent allowance act would
therefore seem to indicate that 5% of these minimum wages (presently Rs. 40.10) should be paid by way of House Rent. However, the legal eagles have opined that the Industrial Disputes Act is not applicable to the contractors and therefore the House Rent Allowance act is also not applicable to them.

This means that a method is being sought to deprive the workmen who are getting half or less than half the wages paid to the permanent workmen, of some additional money by way of House Rent Allowance. Once again the dichotomy between the permanent workmen on one hand and the workmen employed through contract becomes clear.

Another specious argument advanced in this regard is as follows:

House Rent Allowance is applicable to Establishments and Factories employing 50 or more than 50 workmen.
It is therefore felt that when a contractor does not employ 50 or more than 50 workmen, this act is not applicable to this establishment. This will give rise to an anomalous situation in a factory engaging contractors who have more than 50 employees as also contractors having less than 50 employees. Those with more than 50 employees will have to pay 5% of their wages as House rent allowance whereas those with less than 50 employees need not do so. The picture in an Industrial establishment will then look somewhat like this:

a. Permanent employees of the company will be highly paid (i.e. much ahead of minimum wages) and will enjoy all sorts of facilities including the fairly high House Rent Allowance.

b. The employees of the contractors employing more than 50 employees will receive 5% of minimum wages as House Rent Allowance (HRA).
c. The employees of contractors employing less than 50 will receive minimum wages and no House Rent Allowance.

It becomes obvious that the contractors either on their own or prompted by the principal employer will ensure that they do not have more than 50 employees and to this end if required will start doing business in the same company under another name as well, to make sure that the House Rent Allowance need not be paid.

Can it at all be argued that the Government is well intentioned even in its thoughts when the results of its legislation could be such as that described above? As has been stated before, and as it becomes clear from the various aspects of the study one of the reasons for employment of contract labour in any industry is that it costs much less than the
permanent labour. When the employer sees an opportunity to save 5% of minimum wages, can it reasonably be expected that he will not grab this opportunity with both hands. This will result in not only perpetuating a difference between permanent and contract employees but now creates an elite class within the ranks of contract employees themselves.

B. THE NOCIL CASE AND SOME OTHER INSTANCES

There are only a few instances in the knowledge of this student where the Government has taken some action under the wide powers it has under the terms of the Contract Labour (Regulation and Abolition) Act 1970.

They are the Nocil case, where Contract Labour was employed in four departments of the Nocil company. The case was referred to a the Committee to determine whether contract labour should be continued to be
employed in those departments or not, since they were engaged directly in the production process. After making enquiries the committee recommended that the contract labour should cease to be employed in three out of four departments.

Accordingly, the Government notified the abolition of contract labour in those three departments. The company went in Appeal to the High Court which made a judgment to the effect that the abolition of contract labour in one department was not justified whereas it was justified in the other two, and directed that it should be abolished immediately, in those departments. The company's appeal against this decision is still pending in the Supreme Court.

Another instance is of the abolition of Private Security Guards by the Government of Maharashtra, through the Maharashtra Private Security Guards
(Regulation of Employment & Welfare ) Act 1981 under which it has prohibited the employment of Private Security Guards as well as constituted a Board to regulate the employment of such guards for the cities of Greater Bombay and Thane. The Government has not extended the applicability of this act to the rest of the state probably in view of the problems faced in the running of the Board which now governs employment of Security guards and also in view of the plethora of cases regarding the matter which are yet to be decided.

In a third case, An application has been filed by the Maharashtra Rajya Sakhar Kamgar Mahasangh for abolition of Contract Labour in the Sugar Industry before the state Advisory Board. This has for one reason or another not been decided yet. Besides this there are a few other such applications pending before the State Advisory Board.
There has been a feeling that the courts may decide certain matters in favour of contract workmen. But mostly this does not appear to be so, as in the case of Dena Nath and others versus National Fertilizers and others decided recently by the Supreme Court. In this case the principal employer did not get registration under Section 7, nor did the contractor have a licence under section 12. It was held by the Court that the Act served two purposes a) the regulation of conditions of service of workers engaged by a contractor engaged by the principal employer and b) provides for the appropriate Government abolishing contract labour altogether in certain process operations or other works of the establishment. The act does however not provide that upon abolition of contract labour they would be absorbed by the principal employer.

From all the foregoing, it would indeed appear that the dice are loaded against the Contract Labour.