

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Labour Employment Training & Factories (Lab.II) Department – The Contract Labour (Regulation & Abolition) Act, 1970 – All the activities performed by Contract Labour in 33/11 KV Sub-Stations of A.P Eastern Power Distribution Company Ltd., Visakhapatnam and A.P Southern Power Distribution Company Ltd., Tirupathi, comes under Core Activities under clause (c) of sub-section (2) of section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 – Orders – Issued.

LABOUR, EMPLOYMENT, TRAINING AND FACTORIES (LAB.II) DEPARTMENT

G.O.Ms.No. 5

Dated.24.01.2011

Read the following

1. G.O.Ms.No.89, LET&F (Lab.I) Department, dated.16.12.2006.
2. From Sri. T.Seshachalam, President, A.P. Contract Labour Union, East Godavari & West Godavari Districts, Eluru, dated.23.02.2008, 09.05.2008 & 05.02.2009.
3. G.O.Ms.No.46, LET&F (Lab.IV) Department, dt.20.06.2008.
4. From the Designated Authority & Addl.COL, Hyderabad, Lr.No.S2/6795/2008, dated.13.08.2009.
5. The orders of Hon'ble High Court of Andhra Pradesh in W.P.No.2360 of 2009, dated.17.02.2009.
6. From the COL, A.P. Hyderabad, Lr.No.S2/6795/2008, dated.23.12.2009 & 26.04.2010.
7. From the Chairman & Managing Director, APSPDCL, Tirupathi Lr.No.CMD/SPDCL/HRD/Camp/Hyderabad/27, dated.09.07.10.
8. From the Addl.COL and Designated Authority under the Act, A.P, Hyderabad, Lr.No.S2/6795/2008, dated.06.11.2010.

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ORDER:-

Government vide G.O. 1st read above, have appointed the Commissioner of Labour, Andhra Pradesh as a "Designated Authority" to advise the Government on the question whether any activity of an Establishment / Industrial unit is a Core Activity or otherwise. Government vide reference 3rd read above, have appointed Additional Commissioner of Labour (Commissioner for Workmen's Compensation) as Designated Authority under sub-section (2) of Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970.

2. In the reference 2nd read above, the President, A.P. Contract Labour Union, East & West Godavari Districts has put forth certain grievances of Contract Labour working in the establishments of Electricity Distribution Companies. He has requested among other things to implement all labour laws connected to Contract Labour in force for payment of duty wages and to continue the labour working therein such as operators at the 33/11 KV Sub-stations of the electricity board etc. It has also been prayed for whether events mentioned as at in the representation dated.09.05.2008 comes under Core Activity with in the meaning of amended section 2 of the Contract Labour (Regulation & Abolition) Act, 1970 (Act 37 of 1970) and also amended provisions of section 10 of the Act 1970.

3. The Additional Commissioner of Labour & Designated Authority under the Contract Labour (Regulation & Abolition) Act, 1970 in his letter 4th read above has stated that, all the activities performed by the contract labour in the sub-stations of the respondents – establishments are essential and necessary to the main core activity of the power distribution. The duties of the contract labour do not come under the exclusion clause of the definition of "Core activity of an establishment". Shift operators are essential to man the sub-stations of the power distribution companies. In fact, 43 sub-stations in West Godavari District which he has visited for field study are departmentally manned.

4. The Chairman & Managing Director, APSPDCL, Tirupathi, in his letter 7th read above has stated that the main activity of the Distribution Companies is Distribution of Power to consumers which is service oriented, while maintenance of transformers, service lines and manning of sub-stations comprising of maintenance assistance of sub-station, MRT assistance, Telecom assistance, Watch & Ward duties, SWG & SOR works, House keeping works, security works, maintenance gangs and CBD gangs are considered as the ancillary activities to the principal activity of Discoms. His views are as follows:-

In this connection, it is pertinent to refer to the amendment to Section 2 of the Contract Labour (Regulation and Abolition) (Andhra Pradesh) (Amendment) Act, 2003 (Andhra Pradesh Act, 10 of 2003). The following clause was inserted in Section 2 (1)(d) namely:-

(dd) "Core activity of an establishment" 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:-

- (1) Sanitation works, including Sweeping, Cleaning, Dusting and Collection and disposal of all kinds of waste.
- (2) Watch and ward services including security service.
- (3) Canteen and Catering Services.
- (4) Loading and Un-loading operations.
- (5) Running of Hospitals, Educational & Training Institutions, Guest Houses, Clubs and the like where they are in the nature of support services of an Establishment.
- (6) Courier Services which are in nature of support services of an Establishment.
- (7) Civil and other constructional works, including maintenance.
- (8) Gardening and maintenance of Lawns etc.
- (9) House keeping and laundry services etc., where they are in nature support services of an Establishment.
- (10) Transport services including Ambulance Services.
- (11) Any activity of intermittent in nature even if that constitutes a core-activity of an Establishment and
- (12) Any other activity which is incidental to the "core activity".

Provided that the above activities by themselves are not the "core activities" of such establishment.

As per Section 10 of the amended Contract Labour Act 2003, the principal employer may engage contract labour or a contract to any core activity, if,

- a) The normal functioning of the establishment is such that the activity is ordinarily done through contractors,
- b) The activities are such that they do not require full time workers for the major portion of the working hours in a day.
- c) Any sudden increase of volume of work in the core-activity which needs to be accomplished in a specified time.

The work of maintenance of sub-stations is being undertaken by the Distribution Companies through contractors, which is permissible as per the amended provision clause (a) of Section 10 of the Act. In other words, there is no prohibition of engagement of contract labour or availing the services of the contract for manning sub-stations. The contract labour (unskilled, semi-skilled, skilled, highly skilled in each of these categories) is apparently employed in O&M of sub-stations which includes maintenance assistance of sub-station, MRT assistance, Telecom assistance, Watch & Ward duties,

SWG & SOR WORKS, House-keeping works, security works, maintenance gangs and CBD gangs. Further stated that "non-core activity" means any activity other than that carried on as a part of distribution and retail supply business. Thus, the work performed by the said contract labour in the above mentioned services is of ancillary nature required to achieve the objective of the main activity in the said area and shall be deemed to be of temporary/seasonal and intermittent nature irrespective of the period of performance of the work by the workers in such ancillary establishments. Whether a particular work is contemplated as core activity or non-core activity needs to be examined from the meaning ascribed to the said words under the Contract Labour Act, but not in the literal sense. Therefore, dehorn to the fact whether the work done by the contract labour is the same or similar work as that is being done by the workmen directly employed by the principal employer of any establishment, undoubtedly, all the aforesaid activities are supportive and allied services incidental and necessary to the core activities to the organization. Certain jobs though required to be done under the aegis of the organization, could be more conveniently and efficiently done on a job contract basis by contractors. Therefore, the said contract labour is outsourced for the non-core activities, ensuring payment of wages as laid down under the law in force, as also other basic amenities and social security benefits.

5. On the above views of the CMD, APSPDCL, Tirupathi, the Additional Commissioner of Labour & Designated Authority under the Contract Labour (Regulation & Abolition) Act, 1970 in his letter 8th read above has reported as follows:-

1. Activity which runs 365 days in a year without any break even Night and Day (i.e., 24 hours in a day) distribution / supply of electricity through 33/11 KV Sub-station being carried out by the departmental employees of TRANSCO (APEPDCL) sub-stations existing prior to the year 1994-95.
2. Sub-stations taken up after 1994-95 are being manned through Contract Labour though the nature of work is same in both the categories of sub-stations where the wage and service conditions are different despite activity falls under Core Activity and also eligible for the payment of wages and other allowances equal to the departmental employees under Rule 25 (v) (a) of the A.P. Contract Labour (Regulation and Abolition) Rules, 1971.
3. The terms and conditions between the contractors and APEPDCL, (TRANSCO) that "the Tenderer has to obtain necessary license and competency certificate from the Electrical Inspectorate to handle the lines, equipment by the worker employed by him. The contractor shall employ technically qualified persons with a minimum of ITI (Electrician / Wireman) qualification.
4. At the end of the every month, the contractor shall give the following reports for which the formats will be given from time to time by APEPDCL:-
 - i) Maximum / minimum voltage during the months with date and time on 33 KV/11KV.
 - ii) Maximum / Minimum load in each feeder during the month with date and time on 33 KV/11 KV
 - iii) Unbalanced load noticed on 11 KV Feeders, if any;
 - iv) Break downs on 11 KV Feeders during the months;
 - v) Momentary trippings in the month;
 - vi) Any other reports in vogue."
5. With regard to the Scope of work, responsibility of the contractor for payment of compensations / damages etc., in the case the accidents caused to the persons on the duty and also to the persons affected due to mal operation by the operator in the substation.
6. The Contractor shall ensure that the Operation & Maintenance work at all time shall be carried out under the supervision of "A" Grade License holder as

required under the conditions stipulated by Electrical Inspectorate.

7. The responsibility of the persons in the Sub-stations engaged by the Contractor as follows:-

He has to give a report on Break downs and Momentary interruptions occurred on all 11 KV feeders in the month on 2nd of every succeeding month duly furnishing cause analysis of each and every interruption.

8. Apart from the above, the Contractor shall perform the checks / special maintenance works during the contract period in Transformers, 33 KV Breakers, Switch Yard, Batteries, Earth pits, A.B. Switches and H.G. Fuse Sets, Insulators, Capacitor Banks, General Visual Checks / Maintenance and any other minor works allotted by the concerned maintenance Engineer of APEPDCL, Submission of technical reports monthly in the proforma such as interruptions, Maximum / Minimum loads voltage etc., shall report to the concerned AAE / AE and ADE on important occurrences of Breakdowns and Defects observed. The above works are to be done by contractor including submission of monthly report to the concerned AE/O, Control Room, Maintenance of Substation including daily maintenance.
9. The activity of distribution of power does not fall into any of the exemption categories of work as mentioned under excluded categories as per Section 2(dd) of the Contract Labour (Regulation & Abolition) Act, 1970 and read with Rule 20 of the A.P. Contract Labour (Regulations & Abolition) Rules, 1971.
10. The work distribution of electricity through substation 33/11 KV manned by the Contract Labour is not a additional one or run only on load period but it is run throughout the year and it cannot be the normal function ordinarily done through contractors.
11. The respondent company version that some substations are on remote control system through technology by SCADA but without indicating the number of stations of places, whether run by the contract labour or departmental employees has no basis.
12. It is also admitted that sub-stations established prior to 1994-95 run exclusively by the departmental employees and substations established after 1994-95 run by the contract labour. This indicates that the entire work carried out by the contract labour in substations established after 1994-95 also falls under Core Activity.

6. The Additional Commissioner of Labour & Designated authority under the Contract Labour (Regulation & Abolition) Act, 1970 opined that all the activities performed by the contract labour in substations of the respondents established after 1994-95 are essential and necessary to the main Core Activity of the power distribution and all the establishments falls under the definition of Core Activity of an Establishment. On par with the operators who manned the substations of the power distributions company other than substations established prior to 1994-95, which are departmentally manned.

7. The Government after careful examination of the reports furnished by the Additional Commissioner of Labour & Designated Authority under the Contract Labour (Regulation and Abolition) Act, 1970 and the Chairman and Managing Director, A.P Southern Power Distribution Company Ltd., and in-terms clause (c) of sub-section (2) of Section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 hereby order that all the activities performed by the "Contract Labour" in 33/11 KV sub-stations of Andhra Pradesh Eastern Power Distribution Company Limited & Andhra Pradesh Southern Power Distribution Company Limited established after 1994-95 are essential and necessary to the main "Core Activity" of the power distribution and all the establishments falls under definition of "Core Activity of an Establishment".

8. The Additional Commissioner of Labour and Designated authority under the Contract Labour (Regulation & Abolition) Act, 1970 shall take action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

D.SREENIVASULU
SECRETARY TO GOVERNMENT

To

The Additional Commissioner of Labour & Designated Authority, O/o the Commissioner of Labour, A.P, Hyderabad.

The Commissioner of Labour, A.P., Hyderabad.

The Energy Department, Secretariat, A.P. Hyderabad.

The Chairman & Managing Director, APSPDCL, Tirupathi, Chittoor District.

Copy to:

The Superintending Engineer, Operation Electrical, APSPDCL, PWD Grounds, Bandar Road, Vijayawada, Krishna District.

The Superintending Engineer, Operation Electrical, APEPDCL, Old.power House Compound Godavari river board, Rajamundry, East Godavari District.

The Superintending Engineer, Operation Electrical, APEPDCL, Eastern street Eluru, West Godavari District.

The Superintending Engineer, Operation Electrical, APEPDCL, Daba gardens, Visakhapatnam.

Sri T.Seshachalam, District President, A.P. Contract Labour Union (Regd.No.B.1996), Door.No.22B-3-2/2, Gadivari Street, Powerpet, Eluru, West Godavari District. (By Registered post)

The Law (B) Department.

The PS to Secretary, LET&F Department.

The OSD to M(LET&ITIs) Department.

The PA to Joint Secretary, LET&F Department.

// FORWARDED :: BY ORDER //

SECTION OFFICER