

SMALL FACTORIES (REGULATION OF EMPLOYMENT AND OTHER CONDITIONS OF SERVICE), BILL 2014 - IMPACT ON SMALL FACTORIES

GS.Anandhan ¹, Dr.Kanniga Prashanth ²

¹Associate Professor, Department of Management Studies, RMK.Engineering College, (India)

²Professor, Department of Management Studies, RMK.Engineering College, (India)

ABSTRACT

India's central government is considering introducing a unified law that will govern employment in small factories, nullifying more than 14 cumbersome labour laws, as it hopes to encourage small manufacturing units. The Labour Ministry has proposed the Small Factories (Regulation of Employment and Conditions of Services) Bill to govern wages and conditions of work in small and medium enterprises (SMEs). The Bill envisages rules for wages, overtime hours, social security and appointment of factory inspectors in units employing fewer than 40 workers. The NDA government's has sprung a surprise by rolling out a new bill to revamp the employment regulations and conditions of services in small scale manufacturing which accounts for more than a third of the manufacturing sector. This paper focuses on proposed clause of the new bill, its impact and suggestions to be incorporated over the bill.

Keywords: Constitutional Framework, Labour Laws, Manufacturing Process, Registering Officers, Small Factory

I. INTRODUCTION

Prime Minister Narendra Modi rightly said at New York's Madison Square Garden on September 28, 2014 that we need Jan Andolan for Vikas Yatra in the same way that Mahatma Gandhi pursued the freedom movement. He said that the government alone can't deliver and every Indian must participate in this journey. Mr Modi rightly diagnosed that the current legal frame work has taken away the freedom of entrepreneurs. They are unable to perform economic activities in a free manner. He described these legal hurdles as "kanoon ka jangal" which must be cleaned, enabling development. Laws must be amended to ease business.

The Government of India in its Economic Survey admitted that if entire laws are implemented in a strict sense then the entire production activity will stop or else we will convert everybody into law violators. If successive

governments have realized this, why don't we simplify laws? Why don't we trust our entrepreneurs? They are the real drivers of growth. The recent trend of imposing heavy penalties has destroyed the investment climate. In such an atmosphere, how can we implement "Make in India"? How can we arrest the outflow of foreign exchange?

The worst victim of such regulatory activism is small and medium-class entrepreneurs. Their contribution to the economy is enormous but they are suffering a lot due to heavy debt burden and ongoing loss and seeking life saving drugs. Laws must be dynamic and not static. It must change as per the economic need of the nation. It must reflect legislature intention in the preamble and deliver developmental outcome.

In this regard, The Labour ministry has drafted the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014 and asked for comments from stakeholders.

II LABOUR LAWS IN INDIA

India's Labour Policy is mainly based on Labour Laws. The labour laws of independent India derive their origin, inspiration and strength partly from the views expressed by important nationalist leaders during the days of national freedom struggle, partly from the debates of the Constituent Assembly and partly from the provisions of the Constitution and the International Conventions and Recommendations. Our labour laws have also been significantly influenced by the deliberations of the various Sessions of the Indian Labour Conference and the International Labour Conference. Labour legislations have also been shaped and influenced by the recommendations of the various National Committees and Commissions such as First National Commission on Labour (1969) under the Chairmanship of Justice Gajendragadkar, National Commission on Rural Labour (1991), Second National Commission on Labour (2002) under the Chairmanship of Shri Ravindra Varma and the National Commission for Enterprises in the Unorganised Sector (NCEUS) (2009) under the Chairman of Dr. Arjun Sengupta.

Apart from demanding strengthening of regulations, Anil Gupta, president, IIA, also said that labour laws governing Small factories needed to be simplified. "Simplification of labour laws is being talked about for decades, but nothing concrete has been done till today," he said. Gupta added that the sector needed to draw more Next Gen entrepreneurs apart from seeking effective and time-bound assistance from the Centre (2013).

In addition there have been a number of judicial pronouncements on labour laws which have helped to arrive at a better interpretation of these laws and at times given a new direction to their implementation.

III CONSTITUTIONAL FRAMEWORK ON INDIAN LABOUR LAWS

The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Chapter-III (Articles 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy.

Under the Constitution of India, Labour is a subject in the concurrent list where both the Central and State Governments are competent to enact legislations. As a result, a large number of labour laws have been enacted

catering to different aspects of labour namely, occupational health, safety, employment, training of apprentices, fixation, review and revision of minimum wages, mode of payment of wages, payment of compensation to workmen who suffer injuries as a result of accidents or causing death or disablement, bonded labour, contract labour, women labour and child labour, resolution and adjudication of industrial disputes, provision of social security such as provident fund, employees' state insurance, gratuity, provision for payment of bonus, regulating the working conditions of certain specific categories of workmen such as plantation labour, beedi workers etc. This is how we have 44 labour legislations.

IV SMALL FACTORIES (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICES) BILL, 2014

There has been a massive demand from SME Sector to ease up the business opportunities in India. They welcome the initiative taken by the Ministry of Labor & Employment by presenting the Draft Bill on Small Factories Bill, 2014 (Regulation of Employment and Conditions of Services) to regulate SME sector. The Small Factories Bill, 2014 (Regulation of Employment and Conditions of Services) comprises XIV Chapters and 55 Sections. The objective of the Bill is to make things easier for small manufacturers but at the same time ensure welfare of the workers employed by them.

If closely analyzing the Bill, some provisions in the bill lack clarity and are inadequate. Name of the Bill itself creates tight spot as it creates a perception in our mind at a first instance as it is only for Small Factories not for Small Enterprise. This bill will not work out for problems faced by small factories entrepreneurs but increase the burden and official procedure for small factory entrepreneurs. Some proposed clause, their impact and suggestions of the bill are studied herein to explode debate amongst various stakeholders.

4.1 Small Factory clause 2(f)

Clause:

“Any premises wherein a **manufacturing process** is carried on and which employs less than forty **workers**.”

Impact:

- The maximum limit of forty workers is very less
- Even the micro factories employing workers in single digit from 0 to 9 will be covered and have to seek registration and other statutory compliance. Presently they are not required to register either under ESIC or PF. It may likely to impact their survival.

Suggestion:

- The maximum limit shall be raised to 100
- Minimum number of workers shall also be provided.

4.2 Manufacturing Process clause 2(e)

Clause: “Any process for –

(i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal; or,

(ii) Pumping oil, water, sewage or any other substance, except that petrol pumps will not be covered unless a workshop is a part of the petrol pump; or

(iii) Generating, transforming or transmitting power; or

(iv) Composing and processing for printing, printing by letterpress, lithography, offset, photogravure screen printing, flexography or other similar process or binding; or

(v) Constructing, reconstructing, repairing, refitting, finishing, or breaking up ships or vessels; or any other process which the appropriate government may declare by notification in the Official Gazette.”

Impact:

This definition will have very restricted impact. Now Indian economy has matured. While defining Manufacturing process, many vibrant sectors which contribute maximum to the GDP is left out such as hospitals, nursing homes; educational institutions, IT& ITES segment, Hotels and Restaurants

Suggestion:

The definition should be deleted and name of the Draft Bill shall be amended.

4.3 Worker clause 2(j)

Clause:

“A person who is wholly or partly employed whether directly or through any agent or contractor for wages or reward in connection with the work of any small factory to which this act applies but excludes a person performing administrative, supervisory or managerial functions.”

Impact:

The open definition will result into different interpretations and litigation. Contract workers hired through registered contractor shall not be counted for the purpose.

Suggestion:

Definition shall clarify types and classes of workers to be included. It will also help in taking care of seasonal hiring of workers to take care of seasonal demands.

Appointment of registering officers Clause 3 :

Clause:

“The appropriate Government may, by order to be notified in the Official Gazette –

- appoint such persons not below the rank of Deputy Chief Inspector of Factories or Deputy Director – Industrial Safety and Health, to be the registering officer for the purposes of this Act “

Impact:

Non – accessibility of officers at district level will create operational difficulty. The power shall be delegated within Act itself.

Suggestion:

Registering officer should be the person who has the rank of district level.

4.4 Inspector – Raj - Powers clause 5:**Clause:**

“Subject to any rules made in this behalf, an Inspector may, within the local limits for which he is appointed,-

(1) enter, at all reasonable hours, with such assistance (if any) being persons in the service of the Government or any local or other public authority as he thinks fit, any premises or place which is a small factory, for the purpose of conducting an inspection, examining any register or record or notices required to be kept or exhibited by or under this Act, and require the production thereof for inspection;

- Examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is an worker of the small factory and;
- Require any person to give any information, which is in his power to give with respect to the names and addresses of the persons;
- Seize or take copies of such register, record of wages or notices or portions thereof as he may consider relevant in respect of an offense under this Act which he has reason to believe has been committed by the employer; and
- Exercise such other powers as may be prescribed.

(2) Any person required to produce any document or to give any information required by an Inspector under sub-section (1) shall be deemed to be legally bound to do so within the meaning of section 175 and 176 of the Indian Penal Code (45 of 1860).

(3) The provisions of the Code of Criminal procedure, 1973 (2 of 1974), shall, so far as may be, apply to search or seizure under sub- section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said code. “

Impact:

More powers of Inspectors may lead to decrease the efficiency of units or Shutting down of Small Factories

Suggestion:

Powers of Inspectors should be decrease and interference should be under a limit not in every matter and inspect the element when someone request to inspector or complaint any matter.

4.5 Registration of Small Factory clause 6:

Clause:

Every employer can register their small factories Online and e-filing of compliance returns by employers through a single unified form -Unique LIN (Labour Identification Number) for every employer. If there is any changes occur, it can be change electronically and intimate the chief inspector within 30 days of such change. If you want to shut down, then it can also be done electronically and intimate the same to chief inspector within 15 days of close down. But this section does not clarify some things. It increases the trouble of owner of Small Factories. If change occurs regarding place of factory that means shifting of place from one state to another state results close down of existing factories and registration at another place means new LIN (Labour Identification Number).

Impacts:

- Owner of large factories divide their units in small factories and register them with separate LIN (Labour Identification Number) for each unit. Large business likely to take benefit of the cost of small and medium enterprises.
- LIN (Labour Identification Number) give the wrong impression about the Number, it represent the Labour Identity Number not the Factory Identity Number.

Suggestions:

- Criteria for registration should be prescribed so that small factories can take the benefit. A centralized system should be adopted by prescribed authority, so that any employer easily can change their data from any place without changing LIN (Labour Identification Number).
- Labour Identification Number represents sounds like unique number for labour not for Employer/ Owner. It should be either EIN (Enterprises Identification Number) or EIN (Employer Identification Number) or FIN (Factory Identification Number).

4.6 Payment of Wages clause 7**Clause:**

“Wages shall be paid to the workers by depositing them in the Bank account of the worker, electronically, Provided that payment of an amount of less than one thousand rupees may be made in cash.

In case the worker does not have an account in a Bank, it shall be the responsibility of the employer to get a zero balance account opened.”

Impact:

Increase the burden and cost on the employer.

Suggestion:

It is a great clause, increase the simplicity and transparency.

Responsibility to open the Bank account shall be on the worker not on the owner with mutual consent.

4.7 Powers of Authority clause 13:**Clause:**

“Every authority appointed under sub-section (1) of section 11 shall have all the powers of a civil court under the Code of Civil Procedure 1908 (5 of 1908) for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents and every such authority shall be deemed to be a civil court for all the purposes of section 195 and of Chapter XXVI of the Code of Criminal Procedure 1973 (2 of 1974).”

Impact:

This is a bad news for small factory owners. This clause increases the terror in the mind of owner of small factories on each and every tread.

Suggestion:

Powers of authority should be up to the Code of Civil Procedure 1908 (5 of 1908) and not the Code of Criminal Procedure 1973 (2 of 1974).

4.8 Hours of Work Clause 18 (1):**Clause:**

“No woman shall be required or allowed to work in any factory except between the hours of 6 A.M. and 7 P.M. Total number of overtime hours shall not exceed 96 hours in a quarter.”

Seasonal/ cyclical small factories get the loss because they recruit the more than 40 workers for a period of time and then again value comes down up to 40. Then what will be the situation for there, they become large when no. of workers increases to 40 and their LIN will be cancel or not and this procedure will go on and on.....

Impact:

Owner of seasonal/ cyclical small factories most affected with this. They could not hire the worker for overtime hours greater than 96 hours in a quarter while they need it because of seasonal factor.

Suggestion:

- The total number of overtime hours shall not exceed at least 96 hours in a month
- Separate provision should be inserted for seasonal/ cyclical Industries.

4.9 Leave and Holidays Clause 23 (1):**Clause:**

- 3 National Holidays
- 5 Other Holidays
- 52 Weekly Holidays
- 7 + 7 (casual + sick)
- 20 Days earned leave
- Gratuity – 15 days

- Bonus – 8.33 % – One month
- Social Security Contribution – 20% (PF and Health Insurance)

Impact :

Burden on Owner, Paid leave approx 6 Months, it means payment to workers for 18 months instead of 12 months, big loss to small factories owners.

Suggestion: Gratuity, Bonus and Social security Contribution should be erase. It reduces to 3 months from 6 months.

4.10 Maintenance of register and records Clause 43:**Clause:**

Every employer shall maintain the following registers and records. Such records made in soft or hard form. However at the time of inspection by an inspector a hard copy of such records will have to be submitted, duly signed by the employer, on demand by the Inspector:

- Register of workers
- Attendance register
- Weekly offs
- Hours of work
- Wages paid
- Deductions made
- Leave

Impact:

Maintenance of records both in soft and hard copy leads to more burden, high cost and time consuming process.

Suggestion:

Clause should be amend and make corrections. At the time of Inspection, hard copy of the records not to be mandatory because it cuts the cost and time.

4.11 Non – application of certain laws Clause 54:**Clause:**

“The following laws shall not apply to any small factory:

- The Factories Act, 1947
- The Industrial Disputes Act, 1947
- The Industrial Employment (standing orders) Act, 1946
- The Minimum Wages Act, 1948
- The Payment of Wages Act, 1936

- The Payment of Bonus Act, 1965
- The Employees State Insurance Act, 1948
- The Employees Provident Funds and Miscellaneous Provisions Act, 1952
- The Maternity Benefit Act, 1961
- The Employees Compensation Act, 1923
- The Inter-state Migrant Workman (Regulation of Employment and Conditions of service) Act, 1979
- (State) Shops and Establishments Act
- The Equal Remuneration Act, 1976
- The Child Labour (Prohibition and Regulation) Act, 1986”

Impact:

This clause has positive impact on small factories owners, no more compliance of all 14 acts.. "This is a welcome move as it has taken care of all important labour laws. The small and medium enterprises in the country do not have the bandwidth to comply with large number of cumbersome laws prevailing in the system.

Suggestion:

This clause should include the Payment of Gratuity Act, 1972.

V CONCLUSION

The objective of the Bill is to simplify the law for small manufacturers and ensures welfare of the workers employed by them. But in reality this Bill will increases the burden on the employer and creates tension for small factories owners and does not benefits them. However, if necessary modification is made it benefits the small factory owners and also ensure the workers employed in small factories are no longer deprived of their basic rights like minimum wages, bonus and maternity benefits besides social welfare schemes. At last, the suggestion is to say that Bill should be redrafted for the advantage of small factories owners who has the potential to take on global challenges and launch India on to fast track growth.

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