HOW TO DETERMINE IF AN **ACTIVITY** IS **CORE OR NOT** FOR THE PURPOSE OF ENGAGEMENT OF **CONTRACT LABOUR**

A blanket prohibition has been imposed by section 57 of the Occupational Safety, Health and Working Conditions Code,2020 ("OSH Code", hereinafter) on the engagement of contract labour in the core activities of the establishment of the principal employer. The Code, under section 2(1)(p) defines a "core activity" as any activity for which the establishment is set up. This would further include any activity which is essential or necessary to any activity for which the establishment of the principal employer is set up. The definition of core activity is very wide and sweeping in its ambit.

However, even if certain activities are essential or necessary to the establishment of the principal employer, they would not be considered as core activities.

These activities include:

(i) sanitation works, including sweeping, cleaning, dusting and collection and disposal of all kinds of waste;

(ii) watch and ward services including security services;

(iii) canteen and catering services;

(iv) loading and unloading operations;

(v) running of hospitals, educational and training Institutions, guest houses, clubs and the like where they are in the nature of support services of an establishment;

(vi) courier services which are in nature of support services of an establishment;

(vii) civil and other constructional works, including maintenance;

(viii) gardening and maintenance of lawns and other like activities;

(ix) housekeeping and laundry services, and other like activities, where these are in nature of support services of an establishment;

(x) transport services including, ambulance services;

(xi) any activity of intermittent nature even if that constitutes a core activity of an establishment.

Further, the proviso to section 57(1) of the Code lays down three exceptions wherein the principal employer would be under liberty to engage contract labour for core activities. These exceptions are: (a) the normal functioning of the establishment is such that the activity is ordinarily done through contractor; or (b) the activities are such that they do not require full time workers for the major portion of the working hours in a day or for longer periods, as the case may be; (c) any sudden increase of volume of work in the core activity which needs to be accomplished in a specified time.

Also, the definition of "contract labour" has been modified by the Codes to such extent that the workers who fulfil the following criteria would not come under its ambit. The criteria are as follows: i) The worker (other than part time employee) is regularly employed by the contractor for any activity of his establishment. ii) His employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis). iii) The worker gets periodical increment in the pay,

social security coverage and other welfare benefits.

In the State of Andhra Pradesh, the Contract Labour (Regulation and Abolition) Act, 1970 ("CLRA Act") was amended to such an extent that the principal employer was prohibited from engaging contract labour in core activity, except for certain categories and under certain circumstances which are similar to the once provided under the OSH Code.

Objective Criteria For Determining the Nature of an Activity

To reiterate, as per the OSH Code, a "core activity" is an activity for which the establishment is set up. This would further include any activity which is essential or necessary to any activity for which the establishment of the principal employer is set up. The terms "essential" and "necessary" are largely self-explanatory. When domestic law provides no guidance, it would be appropriate to have a look at foreign jurisprudence.

The US Supreme Court in Steiner v. Mitchell [1], has held that an activity would be regarded as "essential" or "necessary" when it is so closely related to the functioning of the establishment that it is indispensable to its performance and its "principal activities", must be included in the concept of principal activity.

The US Supreme Court has regarded the term "principal activity" as integral part of the functioning of an establishment. This would obviously be akin to "core activity". The following illustrations were provided by the US Supreme Court:

(i) In connection with the operation of a machine, an employee will frequently, at the commencement of his workday, oil, grease, or clean his machine, or install a new cutting tool. Such activities are an integral part of the principal activity, and are included within such term.

(ii) In the case of a garment worker in a textile mill, who is required to report 30 minutes before other employees report to commence their principal activities, and who, during such 30 minutes, distributes clothing or parts of clothing at the workbenches of other employees and gets machines in readiness for operation by other employees, such activities are among the principal activities of such employee.

Similarly, in IBP, Inc. v. Alvarez [2], it held that any activity that is "integral and indispensable" to a "principal activity" is itself a "principal activity". Such observations would be relevant in respect of the Indian law as well, owing to the manner in which the term "core activity" has been worded.

Insofar as the activities excluded from the ambit of core activities are concerned, they are self-explanatory and do not require any further elucidation. Insofar as the exceptions are concerned, it is the first exception that would assume significance and the latter two are largely confined to very specific situations viz. activities which do not require full time workers and situations wherein contract labour is required when the volume of work increases.

The Nature of Exceptions

The term "the normal functioning of the establishment is such that the activity is ordinarily done through contractor" ought to be given literal meaning. To fall under the ambit of this clause, it will have to be shown by the management that its day-to-day functioning is contingent upon the "core activity" and is being performed "ordinarily" through contractors.

The word "ordinarily" does not promote a cast-iron rule, it is flexible [See, Jasbhai Motibhai Desai v. Roshan Kumar [3]. It excludes something which is extraordinary or special [See, Eicher Tractors Ltd., Haryana v. Commissioner of Customs, Mumbai [4]. The word "ordinarily" would

convey the idea of something which is done "normally" [See, Krishan Gopal v. Prakashchandra [5] and "generally" subject to special provision [See, Mohan Baitha v. State of Bihar [6].

As a bottom line, if a management is able to show that an activity was being carried out by the workers of the contractor for a very long time and regularly, then it can continue to engage them as contract labour.

Certain indirect assistance can be lent if section 10 of the CLRA Act were to be taken into consideration. Clause (a) of sub-section (2) uses the phraseology of "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. In Barat Fritz Werner Ltd. v. State of Karnataka [7], the Supreme Court found that the work performed in a canteen in a factory would be necessary for running the same. Similarly, the case of Catering Cleaners of S. Rly. v. Union of India [8], the Supreme Court observed that the work of cleaning catering establishments and pantry cars is necessary and incidental to the industry or business of a Railway. Similar observations were also made by the Supreme Court in Standard-Vacuum Refining Company of India Ltd. v. Workmen and Another [9]. However, these judgments would not be very relevant since the activities of cleaning, catering and canteen related services have been excluded from the ambit of the term "core activity".

Clause (c) of sub-section (2) would also be relevant insofar as it uses the term "whether it is done ordinarily through regular workmen in that establishment…..". Correspondingly, clause (b) also deals with the facet of whether the Work is of a Perennial nature. The Delhi High Court in Central Warehousing Corporation v. Govt. of India [10], has interpreted the term "perennial" to refer to the availability of work throughout an extended time frame. If a worker is engaged continuously in performing a job regularly for years together, the work is clearly perennial in nature. [See, Power Grid Corp of India Ltd. v. 17 Workers, Khammam [11]. Performing work for a sufficiently long duration, like three decades, will also qualify as perennial work. [See, Deba Kanta Das v Oil and Natural Gas Corp. Ltd., Uttaranchal [12].

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1. 350 U.S. 247 (1956).

2. 546 U.S. 21 (2005)

3. (1976) 1 SCC 671 (SC).

4. (2001) 1 SCC 315 (SC).

5. (1974) 1 SCC 128 (SC).

6. (2001) 4 SCC 350 (SC).

7. 2001 (89) FLR 1 (SC).

8. (1987) 1 SCC 700 (SC).

9. 1960 (2) LLJ 233 (SC).

10. W.P.(C) 4114/2008 dated 24.04.2025 (Del. HC).

11. 2014 LLR (SN) 330 : 2014 (14) FLR 93 (AP HC).

12. 2015 Lab IC 1166 (Gau HC).