



IN NEW LABOUR CODE

OUTSOURCING

WILL SAVE YOU FROM THE HASSLES OF CONTRACT LABOUR

'Principal to principal' arrangement will accelerate the pace of industrial growth, it will increase the quantum of employees and will also be more economical

by Advocate H.L. Kumar

Let me begin this article with a personal note. I have been dealing with cases and problems of the employment law and offering their solutions to industries, employers and organisations for more than six decades. Therefore, what has been described in this article is mostly tested on the anvil of my personal experience, which can be vouchsafed by the industry and HR Managers. It hardly needs to be underlined that all those who are managing enterprises and people at work are aware about the advantages of outsourcing. It is pertinent to state that a company has been marketing in Delhi the consumer items like refrigerators, air conditioners, washing machines being manufactured in Maharashtra. The company has provided cars with drivers to the senior officers / executives not only for their transportation from home to office and back home but also to attend their sundry works. The cars with drivers remained stationed in the office at the beck and call of the Executives for any travelling in the market or other offices for official works.

As the senior officers must be knowing that during office hours, they discharge their official duties with the supporting staff. Most of them work well beyond office hours till late evening and drivers remain standby, many times from three to five hours beyond their office hours. As per common practice the car drivers have been keeping a logbook and getting the signatures of the officers for commencement and conclusion of their duty hours. At the end of the month along with their monthly salary they have been claiming overtime and, in some cases, it jumps to be three to four times of their salary. The auditors point out that

the colossal amounts are being spent on overtime payments. However, after discussions it was decided to discard the arrangement of providing cars with drivers but instead plan for the car rentals. A few drivers having earned enough and also owning cars as taxis readily agreed. For additional requirement, the cars with drivers were taken on monthly basis. There was no expenditure of overtime and car rentals establishments after obtaining the order also outsourced individuals who remained available to the officers up to 12 hours at least with no overtime. The company thus saves lakhs of rupees per month.

What is all the more noteworthy is that the companies or the organisations do not have to incur expenses on the wear and tear of the vehicles. Even the expenses on fuel, repairing and maintenance are borne out by the person or the firm, which is providing services. Apart from it, it is also seen that one big outsourcing company further outsources it to other smaller units as it happens in the cases of big projects. For instance, if a developer is engaged in building hundreds or thousands of houses for a township, it divides the responsibilities among many sub-contractors. Recently, an owner of the marriage or the banquet hall told a story that he is in contact with a few florists/decorators, caterers, and security providers to manage the arrangements in a more cohesive manner. So, the days of going alone have gone and the days of conglomerates and congregations' are having a field day.

Since the labour laws have been very rigid and hostile for the employers to such an extent that howsoever, a 'workman' has been guilty of

even grave and serious misconduct, the employer could not dispense with his services without holding a complicated enquiry. Hardly has there been any establishment that has not devised a means engaging contract labour because it is not only more efficient, economical but also contract workers do not have job security as is enjoyed by the regular workers.

The new Labour Codes have already been enacted and are likely to be implemented shortly. The scope of the contract labour system will be permissible only in none core activities. Furthermore, in view of the amended definition of 'employer' under section 2(u) of Occupational Safety, Health and Service Conditions Code 2020 which states "a person who employs, *whether directly or through any person.....*" which means that even for the workers of the contractor, the principal employer and not the contractor will be the employer. Also, section 53 of this Code states that the principal employer will be liable for providing welfare facilities to the contract labour who are employed in such establishment.

Wake up Call

In view of the above, it is clear that the tough days are not very far, and hence remedial steps should be taken by the employers from now onwards. The safest and more effective mode will be the outsourcing of certain activities to other small establishments, where the relationship will continue to be on a 'principal to principal' basis. By this arrangement, there will be no relationship of employer and employee between the workers of the outsourced establishment and the outsourcing establishment.

Contract labour vis-à-vis outsourcing

Neither the term "Contract Labour" nor the term "outsourcing" has been defined under Contract Labour (Regulation & Abolition) Act. The intention of ultimate net result of both the terms appear to be same. The term "outsourcing" has been coined very intelligently to create confusion between the two.

"Contract Labour" is a term which is applied to manpower engaged by somebody else to

produce a given result to principal employer where this manpower has no direct relationship of employer-employee with the principal employer. This includes the simple supply of manpower to principal employer by contractor where contractor is not involved in specified activity.

Outsource – concept of

"Outsourcing" conveys more or less same meaning but it is much more useful and advantageous to the outsourcing establishment. When an employer engages somebody else to deliver a specified result where employer is not involved with the manpower engagement or supervision or control activity over such manpower. Outsourcing is the business practice of hiring a party outside a company to perform services or create goods that were traditionally performed in-house by the company's own employees and staff. For example, Apple outsources the majority of its production to Foxconn which assembles many of its products such as the iPhone. The Delhi High Court in the case of *Regional Provident Fund Commissioner vs. EPF Appellate Tribunal & Ors.*, 2007 LLR 350 has stated that outsourcing is one of the modes of doing business and most of the automobile companies and engineering companies get different components manufactured from different sources, hence they cannot be clubbed together since they are independent business entities despite the fact that they are dependent upon the automobile companies or the engineering companies. Outsourcing is a practice usually undertaken by companies as a cost-cutting measure to concentrate and the outsourcing establishment to concentrate on marketing of its products with a popular brand. If any activity which is outsourced to someone and carried outside the premises of the-principal employer, such manpower engaged will not be termed as "workman" under Contract Labour Act.

This device and methodology will accelerate the pace of growth, which can be noticed from the fact that Ola and Uber have outsourced the car rental although they don't own even a single car. The same is the case of the YOYO, which

provides budgeted hotel facilities. Radisson Hotel has the highest number of hotels all over the world, but it does not own any hotel. Another simple example is that the car manufacturing companies are outsourcing various components to small manufacturers, which is cost-effective and requires no supervision over workers and suppliers. When the assembly line the tyres are to be fitted in newly manufactured vehicles the suppliers of tyres have to send their employees for fixation of tyres. The car manufacturers mainly assemble various parts which are manufactured by outsourced vendors. For instance, Maruti has over 300 vendors who manufacture different parts like doors, dickey, roof, seats, alternate fuel systems, air filtration systems, canisters, brake hoses & fuel hoses, combined braking system (CBS), noise suppressor cap, PDC parts, alloy wheels, seat belts etc. etc. It is the obligation of the vendors to provide such installation/fittings of the parts as supplied of the assembly line by its own employees. Many prestigious shoe manufactures are getting the products from vendors. Outsourcing of producing readymade garments in India has also very common. Embroidery work is carried on by muslim ladies who work in their own houses and they are engaged by vendors. The outsourcing can be for running of a canteen in the establishment or factory, supply of lunch, tea/coffee to the staff at particular time, loading/unloading in manufacturing activities, engaging couriers/transport for workers, supply of products of the establishment in the market for consumers through Swiggy, Zomato etc. photocopies/call centre, printing and packing, advertising, housekeeping, renovating/construction and maintenance, head hunters for recruitments, removal of garbage/scraps, car rental (which have proved cheaper than owing of cars for officers), brake down of machinery etc. etc. Therefore, the time is ripe to take the innovative steps by the employers otherwise the survival of the establishments will become highly difficult.

In fact, outsourcing has become such a polarizing issue that it is absolutely difficult to talk about it in a rational manner. There are a large number of people who consider it as an instrument

for evil. But outsourcing, like any instrument, can be used for good or evil. It affects different people in different ways. All of us have been affected by outsourcing in different ways. And the best way to approach outsourcing is to look at it objectively, weigh the benefits against the costs of outsourcing before making any judgment on it.

Not outsourcing but technology has reduced the jobs in some sectors

While outsourcing certainly keeps an employer relatively free from the troubles and hassles of labour laws and hassles of dealing with non cooperative trade union. Some say that it reduces the jobs but the fact is that not outsourcing but technology has, without doubt, reduced some of

Employers must gear up to accept and adopt the challenges to be confronted by the new Labour Codes. Remedial measures must be started by the employers without losing any further time.

the jobs obsolete. The plain honest truth is that outsourcing has become inevitable and it is no longer just about cost-saving; it is a strategic tool that may power the twenty-first century global economy. It is an ethical business practice and it's something that most businesses will do directly or indirectly in order to make more business and to stay in business. When outsourcing is talked about in business terms, it provides a quality workforce at an affordable price so they can continue to grow and be profitable. And like any tool, it can be used for good or evil and can have good and bad consequences. It is used to achieve certain goals and the political effects are often secondary and unintentional.

It is the goal of companies to stay profitable and that is why corporations outsourced most of their manufacturing. And if these companies were more ethical, they should have found ways to help the people who worked for them if they employed a lot of people before outsourcing.

Advantages for outsourcing

All those who are managing enterprises and people at work are aware about the advantages

and on the basis of practical experience of the writer of this article, it is pertinent to state and recollect that a company has been marketing in Delhi the consumer items like refrigerators, air conditioners, washing machines being manufactured in State of Maharashtra. The company has provided cars to the senior officers / executives not only for their coming to office or going back to their homes but the cars with drivers remained in the office for any travelling in the market or other offices for official work. As the senior officers must be knowing that during office hours they discharge their official duties with the supporting staff whereas most of them work beyond office hours till late evening and drivers remain standby i.e. many times 3 to 5 hours beyond their office hours. As per common practice the car drivers have been keeping log book and getting the signatures of the officers for commencement and conclusion of their duty hours. On the end of the months alongwith their monthly salary they have been claiming overtime and in some case it happen to be 3 to 4 times of the salary. The auditors pointed out the colossal amount being spent on overtime payments. After discussions it was decided to discard to provide cars with drivers instead arranging from car rentals. A few of drivers having earned enough also owning taxies and they also readily agreed. There was no expenditure of overtime and car rentals establishments after obtaining the order also outsourced individuals who will remain available to the officers upto 12 hours at least and no overtime. The company saves lakh of rupees per month. Hence the advantages are summarize as under :

1. Reduction of cost.
2. No need for control and supervision.
3. Access to higher quality services.
4. Ability to concentrate on the main activity.
5. Sharing responsibility.
6. Reduction of statutory expenditure like provident fund, ESI contributions and gratuity etc. etc.
7. No expenditure for supervising and controlling personnels.
8. No union activity
9. No interference with labour authorities.

Outsourcing is win-win proposition for both service providers and service takers

This arrangement has come with a whiff of fresh air and relief. It is a distinct and unique cooperation between the service providers and service takers with a win-win situation. The contractor is not involved in the creation of the main product or service. Outsourcing companies perform secondary tasks like call centres, courier services, housekeeping, advertising, office and warehouse cleaning, and website development etc. Most business owners delegate authority to outsourced specialists when it comes to bookkeeping, maintenance or even the recruitment. This helps enterprises to focus most of their resources on the main activity. Not only in India but more in other countries particularly USA, outsourcing is very common. For example, out of six major footwear manufacturers across the world, namely Nike, Adidas, Reebok, Fila, New Balance and Converse have stepped on to the outsourcing, which is yielding desired results to both service giver and taker.

It is unbelievable but true that Nike, the biggest among all footwear companies, has no manufacturing plants of its own but chooses to outsource the work to suppliers in the Philippines, Vietnam, China, Indonesia, and Taiwan. There are 500,000 people worldwide involved in the production of Nike footwear. The company's employees maintain stringent quality checks on these factories and Nike reaps considerable profit by saving costs in the process. Their sales revenues are to the tune of \$3.7 billion, while for Reebok it is \$1.2 billion.

Therefore, it is the right and high time to make decisions for outsourcing in order to survive in the aggressive competitive scenario in every trade or service-oriented establishment, which will give new impetus to the growth of industry and huge generation of employment. It will prop the workers to go for skill development and inspire them for self-sustaining enterprises.