

## Chapter VI: Inspections

This chapter includes issues related to inspections of worksites for enforcing the provisions of the Act<sup>0</sup> and Rules 2009.

### Brief snapshot of the chapter:

- The GoUP appointed (November 2009) Labour Commissioner of UP as Chief Inspector after a lapse of ten years since implementation of the Act.
- The GoUP had made contradictory provisions in Rules 2009 regarding timeline of submission of work commencement notice. Besides, in cases of non-submission of required notice, no penalty was imposed against the non-complaint employers in selected districts.
- Format developed by the Chief Inspector for issuing inspection note, was deficient in checking the status of wage payment compliance with Minimum Wages Act, availability of drinking water facility at worksite, registration of workers with the Board *etc.*
- In selected districts, only 0.31 to 11.76 *per cent* establishments against total registered establishments during 2017-22, were inspected by the Inspectors for enforcing provisions of the Act and Rules 2009.
- 33 *per cent* posts of various inspecting authorities were vacant as of March 2023.
- There was a lack of any system for monitoring compliance of inspection observations, and inspections were conducted during 2017-22 without planning.

The main objectives of the Act are to regulate wages, working conditions, safety, health, and welfare measures of the workers. To achieve these objectives, provisions of the Act and Rules 2009 has laid down process for inspection of building or other construction works. The provisions of Section 43 of the Act (read with Section 44) empower Inspectors to inspect any construction site, to check safety measures and workers facilities. Besides, Section 7 of the Labour Cess Act also empowers Inspectors for conducting inspections of establishments.

Further, Section 46 of the Act requires submission of notice for commencement of works by employers. This information is vital for conducting construction sites inspections for enforcement of various<sup>59</sup> provisions of the Act. Besides, Section 48 of the Act provides for imprisonment or imposition of penalty or both for non-compliant employers in this regard. Moreover, provisions of Section 50 of the Act empower the Chief Inspector to impose penalty for non-compliance of other provisions of the Act and Rules. However, audit observed following shortcomings in implementation of provisions prescribed for inspections:

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<sup>59</sup> Such as Chapter-III (registration of establishment), Chapter-IV (registration of workers), Chapter-VI (hours of work, welfare measures and other conditions of service of building workers), Chapter-VII (safety and health measures) and Chapter-IX (special provisions).

## **6.1 Appointment of the Chief Inspector and other Inspectors**

For exercising the powers conferred under both Acts and enforcing the provisions effectively, the State Governments were required to appoint a Chief Inspector and other Inspectors with their area of jurisdiction as per the Section 42(2) and (3) of the Act. The other Inspectors are required to exercise powers and perform functions in general control and supervision of the Chief Inspector.

In compliance with the provisions of the Acts, the GoUP appointed (September 1999) all LEOs, ALC, DLC and Additional Labour Commissioners of the labour department and the Director and all Deputy/Assistant Directors of the Factories division as other Inspectors under their area of jurisdiction. Despite appointing other Inspectors, the GoUP took further ten years to appoint (November 2009) the Labour Commissioner of UP as Chief Inspector and another five years to decide (November 2014) area of jurisdiction of LEOs within the districts.

Audit also observed that the Chief Inspector assigned (October 2010) Inspectors of the Director (Factories) to enforce provisions mainly related with safety and health of workers, as discussed earlier in the **Chapter-V**. Besides, they were also given responsibility of other provisions of the Act such as responsibilities of various stakeholders, hours of work, wages, welfare measures *etc.* Further, Inspectors of Labour department were made responsible for enforcing the provisions relating to responsibilities of various stakeholders, registration of establishments and beneficiaries, hours of work, wages, welfare measures and other conditions of service of building workers, special provisions *etc.* However, overlapping jurisdiction between both divisions of the labour department and lack of coordination among them affected enforcement of provisions of the Act and Rules 2009 as discussed earlier in **paragraph no 5.7**.

Thus, delay in making required arrangements for inspections and overlapping<sup>60</sup> distribution of responsibilities, attributed towards ineffective enforcement of provisions of the Act and Rules 2009.

In reply, the State Government stated (March 2024) that the distribution of work and coordination within both divisions of labour department are proper, and that the instructions have been issued by the Chief Inspector to field offices for effective implementation of provisions of the Act.

Reply is not acceptable as there were certain overlapping responsibilities between both divisions of labour department and also lack of coordination (as discussed earlier in **Chapter-V**). This is also affirmed by the fact that the Chief Inspector/Labour Commissioner of GoUP directed (9 January 2024) both divisions to work together to address the issues highlighted in audit.

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<sup>60</sup> Since responsibility of enforcement of provisions related with Chapter-II (responsibilities of various stakeholders) and VI (hours of work, wages and welfare measures) of the Rules 2009, were assigned to both divisions.

## 6.2 Contradictory provisions by the GoUP

The submission of a notice to the Inspectors by employers for the commencement of work is a crucial aspect in facilitating inspections. According to Section 46 of the Act, employers are obligated to provide such notice at least 30 days prior to commencing work. The GoUP addressed this requirement in Rule 45 of the Rules 2009. This rule stipulates that employers must send a written notice in Form-4 to the Inspector, informing them of the actual commencement date, the expected completion date, and other relevant details, as mandated by Section 46 of the Act.

However, it is worth noting that Rule 27(3) of the Rules 2009 contradicts this by specifying that employers should submit a written notice to the Inspector fifteen days prior to both the commencement and completion of any building or other construction work using Form-4. Thus, the provisions of both Rules are contradictory and needs to be relooked by the GoUP.

In reply, the State Government stated (March 2024) that a proposal for amending Rule 27(3) and Rule 45 of Rules 2009 to align them with Section 46 of the Act, is under consideration.

## 6.3 Penalty not imposed on employers for failure to submit notice of commencement of work

As per Section 48 of the Act, if any employer fails to provide notice of work commencement within the stipulated time to the Inspector, the concerned employer may attract imposition of penalty or imprisonment or both.

However, audit noted that in none of the selected districts, employers of registered establishments submitted notice of work commencement to concerned Inspectors. Despite this, LEOs pursued cases of Section 46 violations for penalties only when they conducted inspections. Since the *percentage* of inspected establishments by the Inspectors during the period 2017-22 was minimal compared to the total number of registered establishments, as illustrated in **Table 6.1** of **Para 6.5**, a significant majority of Section 46 violations did not result in any penalties being imposed.

In reply, the State Government stated (March 2024) that 338 cases were filed under Section 48 of the Act for violation of provisions of Section 46 in the concerned districts during 2017-22, and a cess portal has been developed (November 2023), to facilitate submission of notice of work commencement.

The reply of the Government confirmed that only a few cases of Section 46 violations were pursued for imposition of penalties, as there were 28,721 registered establishments in selected districts during 2017-22 and practice among the employers to provide required notice lacked completely.

## 6.4 Deficiency in format for issuing Inspection Note

The GoUP directed (February 2014) LEOs to issue inspection notes with details of Form-4 after inspecting building or other construction worksites. In response, the Chief Inspector created (April 2014) a format for inspection

note for inspections conducted by LEOs to enforce the provisions of the Act and Rules 2009. Further instructions for adopting the prescribed format were given by the Chief Inspector in February 2017 and again in September 2020. However, audit observed that the format of inspection note was deficient in many ways:

- The format of inspection note did not inquire about wage payment compliance with the Minimum Wages Act, 1948 (MWA), even though this was one of the most critical conditions of the certificate of establishment registration. The provisions outlined in Form 2 of the Rules 2009 stipulated that employers must ensure that the wages paid to workers are not less than the rates prescribed under the MWA. However, due to absence of any related queries in the format, the inspection notes not only failed to provide information on employers' compliance with the MWA but also rendered inspections ineffective in enforcing the MWA.
- Section 32 of the Act mandates that employers must establish effective arrangements to provide an ample supply of drinking water at work sites. However, the format did not include any inquiries related to this requirement. Consequently, just like the issue of wage payments, the availability of drinking water was also not commented upon during inspections.
- The Chief Inspector assigned (October 2010) responsibility of enforcement of provisions related with registration of beneficiaries, along with other provisions of the Act, to the Inspectors of the labour Department. However, due to not incorporating any query in format regarding status of registration of workers deployed by the employer, enforcement of one of the most important provisions of the Act, was also not covered in the inspection note by the Inspectors.

Thus, due to deficiency of the format of inspection note, inspections failed to enforce many important provisions of the Act and the Rules 2009.

In reply, the State Government stated (March 2024) that format of inspection note is being revised for incorporating the provision related with observance of MWA, availability of drinking water and registration of beneficiaries.

## **6.5 Status of Inspections**

The GoUP directed (February 2014) to conduct inspection of all such construction works, wherein required notice of work commencement were not submitted by the employer. However, audit observed that in selected districts, despite non-submission of required notice by the employer of all registered establishments, only a few establishments were inspected by the inspectors of labour department during the period 2017-22. The details of establishments inspected during the period 2017-22 *vis-à-vis* total registered establishments in the selected districts have been given in **Table 6.1** below:

**Table 6.1: Details of inspections against the registered establishments in selected districts during 2017-22**

Name of district	No. of registered establishment during 2017-22	No. of registered establishments, who provided notice of work commencement	Number of establishments inspected during 2017-22	Percentage of inspected establishments
Agra	2131	00	112	5.26
G B Nagar	18177	00	56	0.31
Lucknow	3951	00	259	6.56
Moradabad	1369	00	25	1.83
Prayagraj	2464	00	19	0.77
Varanasi	629	00	74	11.76

(Source: Information provided by the ALC/DLC of the selected districts)

As evident from the above, the number of inspected establishments during 2017-22 was significantly low compared to the total number of registered establishments. As the employers of these registered establishments failed to submit notices regarding work commencement, it was necessary for Inspectors to conduct inspections of all registered establishments as per the directives issued by the GoUP.

The constraints in carrying out Inspection may include following:

- The GoUP did not create a separate cadre of Inspectors for enforcing the provisions of the Act and Rules 2009 and responsibility in this regard was assigned to the officials of the labour department. However, the LEOs of the labour department were already overburdened with implementing and enforcing 18 Central Labour Acts and four State Labour Act as of July 2017.
- Overall, 33 *per cent* posts of various other inspecting authorities were vacant as of March 2023 as detailed in the **Appendix-XI**. Besides, vacancy against the sanctioned posts of LEOs, mainly responsible for enforcing the provisions among the other inspectors, was up to 39 *per cent*, leading to shortfalls in inspections.
- Inspectors other than the LEOs had rarely conducted any inspections during the period of the year 2017-22 in the selected districts.

Thus, due to insufficient inspections, provisions of the Act and Rules 2009 related with registration of establishment and beneficiaries, hours of work, welfare measures and other conditions of service of workers *etc.* could not be enforced effectively.

In reply, the State Government stated (March 2024) that no targets for inspections were fixed during 2017-22 keeping in view ease of doing business, however, since December 2022 each LEOs has been assigned to conduct five inspections per month. The State Government acknowledged that vacant posts in the cadres of LEO/DLC/ALC affected inspections during 2017-22 and assured that action is being taken on priority basis for filling vacancies. The State Government further intimated that the directions have been issued (January 2024) for ALC/DLC to conduct at least 25 inspections per month, and that the restructuring of cadres of labour

department is also under progress to accommodate increased responsibility and scope of work.

## **6.6 Follow up of Inspection Notes**

The Chief Inspector granted (February 2017 and September 2020) a 15-days period to employers to address and rectify issues raised in inspection note issued by LEOs. However, if issues were not resolved within the stipulated timeframe, the matter was to be escalated to the Chief Inspector. Upon receiving such cases, the Chief Inspector had the authority to issue a show cause notice to the employer. If the employer failed to respond to the notice, the Chief Inspector could act in accordance with the provisions outlined in Section 50 of the Act for imposing penalty. Alternatively, the Chief Inspector could empower the relevant LEO to initiate legal proceedings against the employer in a court of law, if the notice also went unanswered by the employer.

However, audit observed that in selected districts, no registers were maintained for recording the subsequent follow-up actions on observations of inspection notes. Furthermore, there was no established system in place for re-inspections or periodic inspections of the work sites to ensure compliance of inspection note observation. Due to lack of record-keeping and follow-up mechanisms, the number of observations raised during inspections, observations that had been addressed by employers, outstanding objections, and details of actions taken by the Chief Inspector against employers, could not be ascertained in audit.

The audit also noted that, based on authorization from the Chief Inspector, LEOs in the selected districts initiated legal cases against employers in the courts. However, no registers were maintained concerning the prosecution or the imposition of penalties against employers by the court. As a result, the audit was unable to determine the status of compliance with the observations through the court proceedings. This highlights a lack of monitoring of the follow-up actions related to issues raised through inspection notes, and the timely enforcement of punitive measures, thereby diminishing the deterrence value of the established mechanism.

Thus, in absence of any system for monitoring of the compliance of observation of the inspection note, follow-up of observations could not be ensured.

In reply, the State Government stated (March 2024) that required records in respect of inspections and subsequent follow-up action has been maintained in selected districts.

Reply is not acceptable as in Agra district, process for maintaining register for the period 2017-20 was not completed (January 2024), while no separate register for recording details of inspections and follow-up action was maintained in Prayagraj district. Besides, in remaining districts, documents submitted with Government reply in support of maintenance of register,



lacked information on subsequent follow-up action taken on observations of inspection notes.

### **6.7 Planning for inspections**

The GoUP directed (July 2017) to conduct inspections through joint teams, comprising at least two inspecting authorities, including the ALC, LEO, and Assistant Director (Factories). This directive aimed to enhance transparency in the inspection process. The Labour Commissioner of the GoUP directed (November 2019) that prior permission of Deputy/Additional Labour Commissioner would be required for conducting inspections, except in special circumstances where approval may be obtained after inspection.

However, audit observed that the LEOs of the selected districts did not take prior permission and only submitted inspection notes to the ALC or DLC for approval after conducting inspections, resulting in non-documentation of team formation prior to inspections in any of the selected districts except Agra<sup>61</sup>. Further, there was no risk-based criteria for the selection of construction sites by the Inspectors. As a result, there were no documented records regarding the basis for selecting worksites or planning inspections, which further highlighted absence of a structured selection process or planning for inspections.

Thus, due to lack of planning prior to conducting inspections, transparency could not be ensured in execution of inspections.

In reply, the State Government stated (March 2024) that due to manpower deficiencies, joint inspections were not conducted during 2017-22, and that a risk-based Standard Operating Procedure (SOP) for inspections is under development. Besides, it was also stated by the Government that directions are being issued for conducting planned and transparent inspections in view of audit observations.

### **6.8 Maintenance of records by the employers not ensured**

Sections 28 to 30 of the Act empowers the State Government to establish work hours, overtime wages, and the issuance of wage books or slips to workers. Furthermore, Section 30(1) of the Act mandates employers to maintain records and registers, as prescribed by the State Government, to ensure compliance with Sections 28 to 30. Accordingly, the GoUP introduced Rule 47 of the Rules 2009, requiring employers to maintain a Register of workers in Form-6.

Moreover, as specified in Rules 48(A) to 53 of the Rules 2009, various records and registers like the Register of muster roll, Register of wages, Register of deductions or damages or loss, Wage book and Service Certificate, Register of overtime, Register of returns, and others are also required to be maintained by the employer or contractor. These records ensure compliance with work hours, wage payments, worker employment, welfare measures, and other service conditions for building workers.

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<sup>61</sup> Joint teams were constituted by the DLC from the month of January 2020 for conducting inspections.

However, audit revealed that the units involved in construction works in the selected districts did not develop any system to ensure maintenance of necessary records and registers by the employers or contractors either through departmental inspections of worksites or provisioning of related clauses in agreements. This resulted in a lack of assurance regarding the registration of engaged workers as beneficiaries and compliance with other service conditions outlined in the Rules 2009.

In reply, the State Government stated (March 2024) that generally employers remain absent during inspections, hindering the production of records to LEOs and impacting the quality of inspections. The reply is not satisfactory as presence of concerned employers needs to be ensured.

**To sum up:**

The GoUP/Board failed to develop any system for submission of work commencement notice for inspections. The standardised inspection note format was deficient in prescribing observations for many provisions of the Act and Rules. Number of establishments inspected by the authorities was meagre compared to registered establishments and 33 *per cent* posts of various inspecting authorities was vacant.

***Recommendation 15:*** *The State Government should issue directions for timely submission of notice of commencement and completion of work in Form-4 and have proper system and procedure for taking action against the defaulting employers.*

***Recommendation 16:*** *The State Government should adopt a transparent system for planning and conducting inspections and introduce a system for monitoring follow-up of observations raised during inspections.*