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A DIWALI GIFT FOR LOCALS – ANDHRA PRADESH NOTIFIES RULES FOR EMPLOYMENT OF LOCAL CANDIDATES IN INDUSTRIES / FACTORIES

24 October 2019

On 14 October 2019, the Government of Andhra Pradesh (Government) notified and brought into effect the Andhra Pradesh Employment of Local Candidates in the Industries / Factories Rules, 2019 ([Rules](#)) framed under the Andhra Pradesh Employment of Local Candidates in the Industries / Factories Act, 2019 ([Local Candidates Act](#)).

Important Provisions and Compliances

In a sweeping decision, the Government has made it mandatory for existing and upcoming factories, industries, joint ventures and public-private partnership projects to reserve 75% of employment for local candidates. Some of the important provisions including compliance requirements under the Local Candidates Act read with the Rules are set out below:

- **Applicability:** The Local Candidates Act applies to every factory (as defined under the Factories Act, 1948), industry (as defined under the Industries (Development and Regulation) Act, 1951), joint venture (commercial enterprise undertaken jointly by two or more parties which otherwise retain their distinct identities) and project taken up under public-private partnership model (collectively called Covered Entity / Covered Entities) located in the state of Andhra Pradesh.
- **Employer's obligations:** Every Covered Entity is required to engage local candidates which should be at least 75% of the employment in the concerned organisation. Further, first preference is required to be given to candidates belonging to the village / town / city in which the Covered Entity is situated. The term 'local candidate' has been defined to mean a candidate domiciled in Andhra Pradesh for more than 10 years, either himself / herself or through his / her family members.

In case of a new Covered Entity, every employer / occupier / owner / authorised person shall, while applying for statutory permissions and clearances, inform the manpower and skill requirements to the nodal agency. The nodal agency would comprise of the District Collector (Chairman), General Manager of the District Industry Centre (Member) and District Employment Officer (Member). Upon receipt of the information, the nodal agency shall assess the availability of skilled manpower in the desired number. Where there is a shortfall vis-à-vis the requirement, a training and skill upgradation plan shall be prepared by the nodal agency in consultation with the employer / occupier / owner / authorised person. The entity will have a 3-year window to train and engage local candidates in 'active collaboration' with the Government (i.e. technical collaboration through initiatives such as establishment of skill development centres).

In case of an existing Covered Entity, the employer / occupier / owner / authorised person would be required to furnish details of its existing manpower, number of local candidates employed, shortfall in the manpower along with a proposed action plan to ensure compliance with the Local Candidates Act to the nodal agency within 30 days from the date of commencement of the Rules. It is unclear if the nodal agency would be required to prepare a training and skill upgradation plan for such Covered Entity

in the manner specified above. The existing Covered Entity would be required to comply with the 75% local employment criterion within three years of the commencement of the Rules.

As regards continuing employer obligations, the Local Candidates Act and the Rules provide that every Covered Entity shall furnish a quarterly report (within 30 days from the end of each quarter, the first quarter commencing from January each year) in Form LER 1 and any other information required in relation to appointment of local candidates to the nodal agency. Further, every Covered Entity must maintain a record of the local status of each local candidate engaged by it in the form of (a) local status record register, (b) pay bill register, (c) attendance register / muster roll and (d) returns / reports.

- **Exemptions:** The Covered Entities have been given an option to apply for exemption from the provisions of the Local Candidates Act and the Rules. However, during the period of exemption (which will ordinarily be one year), suitable local candidates are required to be identified and trained by the Covered Entity.
- **Penalties:** The penalty for non-compliance of the provisions shall be fine which may extend to INR 25,000 in case of first offence and INR 50,000 in case of any subsequent offence. Additionally, the Government has the power to cancel the licenses / clearances of any Covered Entity which is found to not have been meeting the minimum 75% local employment criterion for six consecutive months.

Comment

The Local Candidates Act read with the Rules is the first-of-its-kind legislation providing for reservation of local candidates in industries / factories, irrespective of whether these are government-owned. Without going into the vires of the statute from a constitutional law perspective, it is submitted that the statute comes with several ambiguities and areas of concern.

It is unclear if the Local Candidates Act is intended to apply to shops and establishments. This is because the term 'employer' has been defined under the Local Candidates Act to mean a person covered under Section 2(9) of the Andhra Pradesh Shops and Establishments Act, 1988. Further, a transition from nil to at least 75% reservation in case of existing Covered Entities will create several practical challenges including treatment of the non-local workforce which even a 3-year window may not be able to address.

As regards the requirement of reservation, it would have been prudent to limit the same to the shop floor level of workers who are relatively easier to identify and engage as compared to employees at the higher rungs of the establishment (such as managerial employees) who come with specialised knowledge and experience. The costs associated with finding a suitable replacement coupled with costs that may be incurred on engaging and training locals may make compliance with the new law onerous. Further, it remains to be seen how an 'active collaboration' between the Covered Entity and the Government will work in practice and to what extent the Government would share the costs with the Covered Entities to ensure effective implementation of the Local Candidates Act.

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