

**FIFTEENTH KERALA LEGISLATIVE ASSEMBLY**

**COMMITTEE  
ON  
PUBLIC ACCOUNTS  
(2023-26)**

**SIXTY SIXTH REPORT**

(Presented on 24<sup>th</sup> October, 2024)



**SECRETARIAT OF THE KERALA LEGISLATURE  
THIRUVANANTHAPURAM**

2024

**FIFTEENTH KERALA LEGISLATIVE ASSEMBLY**

**COMMITTEE  
ON  
PUBLIC ACCOUNTS  
(2023-26)**

**SIXTY SIXTH REPORT**

on

Paragraphs relating to Labour and Skills Department contained in the  
Report of the Comptroller and Auditor General of India for the year ended  
31<sup>st</sup> March 2017 (General and Social Sector).



## CONTENTS

	Page
Composition of the Committee	V
Introduction	VII
Report	
Appendices :	
I.    Summary of main Conclusions/ Recommendations	
II    Notes furnished by Government	
III   Appendices from AG's Report	

**COMMITTEE ON PUBLIC ACCOUNTS (2023-26)**  
**COMPOSITION**

**Chairperson :**

Shri Sunny Joseph

**Members :**

Shri Manjalamkuzhi Ali

Shri M. V. Govindan Master.

DR K.T. Jaleel

Shri C.H. Kunhambu

Shri Mathew T. Thomas

Shri M. Rajagopalan

Shri P.S. Supal

Shri. Thomas K. Thomas

Shri K.N. Unnikrishnan

Shri M.Vincent

**Legislature Secretariat**

Dr N. Krishna Kumar, Secretary

Shri Selvarajan P. S, Joint Secretary

Shri Jomy K. Joseph, Deputy Secretary

Smt. Beena O. M, Under Secretary

## INTRODUCTION

I, the Chairperson, Committee on Public Accounts, having been authorised by the Committee to present this Report, on their behalf present the ~~66<sup>th</sup>~~ Report on paragraphs relating to Labour and Skills Department contained in the Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March 2017 (General and Social Sector).

The Report of the Comptroller and Auditor General of India for the year ended 31<sup>st</sup> March 2017 was laid on the Table of the House on 18<sup>th</sup> June 2018.

The Committee considered and finalised this Report at the meeting held on 04<sup>th</sup> September, 2024.

The Committee place on records our appreciation of the assistance rendered to us by the Accountant General in the examination of the Audit Report.

Thiruvananthapuram,  
8<sup>th</sup>....October, 2024.

**SUNNY JOSEPH**  
**CHAIRPERSON,**  
**COMMITTEE ON PUBLIC ACCOUNTS.**

## **REPORT**

### **LABOUR AND SKILLS DEPARTMENT**

#### **6.1 Role of Factories and Boilers Department in the safety of factory workers**

##### **6.1.1 Introduction**

The Department of Factories and Boilers (Department) was formed in 1961 by bifurcating the Labour Department so as to focus more on the health, safety and welfare of factory workers in the State and to facilitate the pace of industrialisation. While the Secretary to Government, Labour and Skills Department is having the administrative control over the Department, the Director of Factories and Boilers (Director) is the Head of the Department. The main functions of the Department are to administer/ implement various provisions of the Factories Act, 1948, the Indian Boilers Act, 1923 and other enactments for ensuring the safety, health and welfare of factory workers and the safety of the people living in the neighbourhood. The departmental functions are regulatory as well as service oriented. The Director is assisted by an Enforcement wing consisting of Joint Director of Factories and Boilers (HQ) and three Regional Joint Directors. There are 22 factory divisions, each headed by an Inspector of Factories and Boilers in respect of hazardous factories and 25 Additional Inspectors of Factories in charge of non-hazardous factories.

##### **6.1.2 Objective, Scope and Methodology of Audit**

The audit was conducted from April 2017 to August 2017 covering the period 2012-13 to 2016-17 to assess the enforcement by the Department, of the provisions relating to the safety of factory workers as stipulated in the Factories Act, 1948 and other relevant enactments.

Prior to the commencement of Audit, an Entry Conference was

conducted on 20 April 2017 with the Joint Secretary, Labour and Skills Department, Additional Labour Commissioner and Director of Factories and Boilers to discuss the scope and methodology of audit. Audit scrutinised the records in the Department, Offices of the Director/Joint Director of Factories and Boilers and the Inspectors of Factories and Boilers (Factory Divisions)<sup>1</sup>, Employees' State Insurance (ESI) regional offices and the offices of the Kerala State Pollution Control Board. Audit coverage included all the three Regional Offices at Kollam, Ernakulam and Kozhikode and two divisions under each of the Regional Offices. The Divisions under the Regional Offices were selected by stratified random sampling through IDEA<sup>2</sup> software. Fifteen factories in each division were also selected for test-check through random sampling. An Exit Conference was conducted on 26 October 2017 with the Joint Secretary, Labour and Skills Department and Director of Factories and Boilers, where the major audit findings were discussed. Reply of the Government was considered while finalising the paragraph.

## **Audit findings**

### **6.1.3 Registration and Renewal**

#### **6.1.3.1 Factories operating without obtaining registration under the Act.**

Section 2 (m) of the Factories Act, 1948, defines a 'factory' as any premises including the precincts wherein 10 or more workers are/were working on any day of the preceding 12 months and where a manufacturing process is carried out with the aid of power. In cases where the manufacturing process was carried out without the aid of power, the Act provided for reckoning any premises as factory where 20 or more workers were engaged in the manufacturing process. Government of Kerala (GOK), in exercise of powers conferred under Section 85 (1) of

<sup>1</sup> Thiruvananthapuram, Kundara, Kozhikode (North), Ottappalam, Kochi and Palakkad.

<sup>2</sup> Interactive Data Extraction and Analysis.

the Act, enlarged (August 2008) the scope of definition of 'factory' to include factories engaged in hazardous manufacturing process employing three or more persons<sup>3</sup> whether using power or not. Also, factories engaged in non-hazardous manufacturing process employing three or more persons<sup>4</sup> but less than 10 when power was used and less than 20 when power was not used were to be reckoned as 'factories' for the purpose of the Act. Thus, 96 manufacturing processes, both 'hazardous' and non-hazardous' were brought under the definition of 'factories' for the purpose of implementation of the Act.

Rule 5 (3) of Kerala Factories Rules, 1957, stipulates that no manufacturing process shall be carried out in any factory without a licence granted by the Chief Inspector or the Deputy Chief Inspector of the Regional Office concerned. Rule 4 under Kerala Factory Rules, 1957, stipulated that the occupier of every factory shall submit to Chief Inspector or Deputy Chief Inspector an application for registration and grant of licence.

In the test-checked divisions, Audit observed that though 185 factories were identified by the Department during 2012-17, these were not registered<sup>5</sup> (March 2017). Audit conducted joint field visits with the Inspectors of Factories and Boilers of the test-checked six factory divisions and detected an additional six unregistered factories (two in Kozhikode, two in Kundara, one in Ottappalam and one in Thiruvananthapuram) in four divisions. The existence of more such unregistered factories cannot be ruled out.

Records available with the Labour Department revealed that only 22,545 factories were registered with the Labour Department (as of February 2017) under

3 Except for manufacturing of asbestos or its ancillary products wherein employing any number of persons not exceeding nine persons where power is used or persons not exceeding 19 workers when power is not used would be considered as factories.

4 In the case of certain non-hazardous manufacturing processes like manufacture of watches, jewellery, umbrellas, packed drinking water, etc., the minimum number of persons required to be engaged for reckoning the Unit as 'factory' was enhanced to five or more persons against three, in respect of other units

5 Of the above 185 unregistered factories, prosecution cases were filed against 38 factories. The remaining 147 applications are pending with the department for want of required documents.



the provisions of the Factories Act. Audit obtained information from the Director of Industries and Commerce which confirmed to Audit (August 2017) that out of 1,19,924 Micro, Small and Medium Enterprises (MSMEs) operating in the State, there were 79,010 Manufacturing Units with three or more employees as on 18 September 2015. Audit observed that these MSMEs could qualify as 'Factories' either under Section 2 (m) of the Factories Act or under the enlarged definition of 'factory' as ordered by GOK. The registered factories were bound to comply with all the norms specified in the Act and Rules including provisions relating to safety of the workers. Non-registration would lead to non-compliance on the part of the occupier and non-monitoring by the Department.

GOK replied (October 2017) that the figures as furnished to Audit by the Director of Industries and Commerce were not correct and that as per Section 85 of the Factories Act, only 96 manufacturing processes were brought under the purview of the Act. These 79,010 units were stated to be outside the purview of the Act since they do not come under the said 96 processes.

Audit filtered the data on the basis of the manufacturing processes specified under Section 85 of the Factories Act and it was noticed that there would be 70,153 factories liable for registration under the Act. Thus, the Labour Department failed to ensure registration of at least 47,608 factories<sup>6</sup> under the Act.

The audit observation was also discussed in detail during the Exit Conference held on 26 October 2017 wherein it was agreed that the database containing the details of 70,153 factories would be examined by the Factories and Boilers Department for verification at the field level. Audit observed that despite it having submitted (October 2017) soft copy of data relating to the MSME Units to the Director of Factories and Boilers with request to intimate the result of verification, the same is yet to be furnished.

---

6 70,153 - 22,545 = 47,608.

Thus, failure of the Department to identify and ensure registration of factories under the Factories Act resulted in their inability to enforce the safety provisions contained in the Act in respect of at least 47,608 factories, thereby putting the lives of workers working in these factories as well as those staying in the neighbourhood at risk. Further, the State has foregone registration charges of at least ₹1.43 crore<sup>7</sup> due to its failure to register these factories.

**[Audit paragraphs 6.1 to 6.1.3.1 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[ Notes received from the Government on the above audit paragraph are included as Appendix-II]***

**Excerpts from Committee's discussion with departmental officials.**

1) While considering the audit para, the Committee sought an explanation regarding the audit finding that a large number of factories were not registered as per the Kerala Factory Rules, 1957. The Secretary, Labour and Skills Department explained that Accountant General had conducted audit, based on the details furnished by the Industries Department which estimated that 47,608 factories were not registered. Accordingly, the figures of M.S.M.E. (Micro, Small and Medium Enterprises) and units of registered enterprises were examined in detail. The Accountant General found that the failure to conduct inspections in 47608 factories as stipulated in the Act had resulted in loss to the exchequer to the tune of ₹ 1,43,00,000. Secretary further added that the department had conducted a detailed examination later in that regard and the Factories and Boilers Department could not be forced to carryout inspection as those establishments were registered as Micro Small and Medium Enterprises.

2) The Director, Factories and Boilers Department added that the enterprises engaged in manufacturing, service and agriculture sectors were registered as M.S.M.Es. The factories that were engaged in power consuming manufacturing process with 10 or

---

<sup>7</sup> ₹300 (minimum fee for registration) x 47,608 = ₹ 1.43 crore.



more workers and non-power consuming factories employed with 20 or more workers had come under the purview of the Factories Act.

3) To the Committee's query regarding enlargement of the definition of 'Factory' in Section 85 of the Factories Act, the Director, Factories & Boilers Department replied that the government had notified the enterprises engaged in 96 manufacturing processes and having less than 10 workers to be reckoned as factories under Section 85 of the Act. Accordingly, if there were more than three workers, engaged in hazardous manufacturing process, it also came under the purview of the Factories Act. But the Accountant General had pointed out that as per the database, 40000 factories were registered and they had furnished a CD containing the names and addresses of 72853 factories. He added that as per the list of units provided by the Accountant General, those factories were inspected by the officials of the Factories and Boilers Department in a time bound manner and found that 10974, ie., 15% factories, had been registered, and after inspection, 61779 more got registered, out of which 41.5% i.e. 30228 units were not covered under the Factories Act as that were identified as service sector related and small shops etc. Similarly 28084 units (38.55%) had been found closed. Only 2.15% of the factories covered by the Factories Act had been registered and another 2.75% were yet to be registered. The registration process would be completed within three months. He concluded that the figures given were not correct.

4) When the Committee pointed out the variation in the figures given by the Labour Department and the Industries Department, the Director, Factories and Boilers Department replied that the data as on 30-09-2022 was furnished before the Committee.

5) Then the Committee enquired whether the figures given by the department could be acceptable, the Senior Deputy Accountant General replied that they could be accepted if it had been verified.

6) The Committee then pointed out the discrepancy in the list of factories prepared under the Factories Act. The Director, Factories & Boilers Department made it

clear that only 2.75% of the factories in the list are yet to be registered. The Committee also sought clarification regarding 30228 factories identified as out of purview. To this, he conveyed that all factories were considered in the preparation of list and the less number of workers may be the reason for excluding those factories. He also added that AG conducted audit on the basis of the MSME data base prepared by the Industries Department as a unit could be registered voluntarily as MSME even if it is a service and that would also be another reason for the discrepancy noted. Committee pointed out that out of 119924 MSMEs, AG had considered 79010 MSMEs. This data was again filtered and Audit considered 70153 factories only.

7) Then the Committee wanted to know how many factories were registered as of 30.09.2022. The Director, Factories and Boilers Department replied that 24565 factories were registered.

8) The Committee observed that though the AG's observation was related to 2017 the reply dealt with the position of 2022. Then the Secretary, Labour and Skills Department, assured that a detailed report would be submitted before the Committee after assigning individual responsibility to officials to conduct a inspection of Factories regarding that.

9) Considering the Audit Para the Committee remarked that the registration of factories been done on time, heavy loss sustained to the Government could have been avoided and the Committee wanted to know whether any lapse occurred on the part of the department concerned, to enforce the law in that regard.

10) To the Committee's query regarding the penal provision for non-registration, the Director, Factories and Boilers Department replied affirmatively. The Senior Deputy Accountant General added that the main issue was the non enforcement of the penal provisions for the non-registration. In response, the Director, Factories and Boilers Department indicated that legal actions were resorted to, if factories were detected as

unregistered during the inspection.

11) When the Committee enquired about the number of cases in which prosecution procedures were initiated, the Director, Factories and Boilers Department responded that the details would be provided to the Committee.

12) The Senior Deputy Accountant General pointed out that in 2017, out of 70153 factories to be registered, only 22545 were registered and 47608 factories remained unregistered and the details of which were not available.

13) When the Committee enquired how many factories had to be registered, the Director, Factories and Boilers Department replied that 2003 factories were to be registered. The Committee pointed out that the report of C&AG stated that 47608 factories were not registered in 2017. Then, the Senior Audit Officer informed that the exit meeting was held in order to furnish reply regarding the audit queries and also for giving clarification but the Department had failed to give a convincing reply even if repeated chances were given to them and it was the reason for incorporating those observations in the audit report.

14) The Director, Factories & Boilers Department informed that the database furnished by C&AG contained only names and addresses of the units and it did not include the information such as the number of workers, type of manufacturing process etc and hence they were unable to conduct physical verification and collect details. The Committee noticed that there was a revenue loss of ₹ 1.43 crore to the state exchequer.

15) To the Committee's query regarding the custodian of the list of factories coming under the purview of the Factories Act, the Secretary, Labour Department informed that the list was maintained by the Factories & Boilers Department and also informed that the audit objection was not based on that. She added that the Factories and Boilers Department was regarded as a separate entity though it was under the Labour & Skills department and the Factories & Boilers department was



maintaining its own website & record keeping system. The Committee observed that the figures of Industries Department and Factories and Boilers Department were not tallying. The Secretary, Labour and Skills Department clarified that they had examined the matter in detail and found that different types of registration procedure were maintained while dealing with M.S.M.Es. as per the Factories Act.

16) The Committee further enquired how the reply could be given if they had not inspected according to the database provided by C&AG. The Director, Factories and Boilers Department replied that the list furnished by the Accountant General had been given to all the officers and those officials had checked the area under their jurisdiction. The final result was prepared after reviewing its present status. The Secretary, Labour and Skills Department further added that the final outcome had been reviewed by the Chief Secretary also. The result was attained after a detailed examination and ensuring that proper evaluation had been done by the officials in their jurisdiction properly.

17) The Committee directed the department to furnish a detailed report of the factories registered under the Labour Department including the details such as the number of factories, name of establishment and number of workers to which the Director, Factories and Boilers Department agreed. Audit prepare report on the basis of the details furnished at the time of audit and reply should be made available for the figures included in the Audit Report. The Director Factories and Boilers replied that some factories took registration for tax exemption and they may wind up the unit subsequently. Some may be small units set up at home itself.

18) The Secretary, Labour and Skills Department replied that registrations were currently being made through an online platform and were available in the public domain. Registration related fieldwork was being reviewed at monthly conferences and a systematic approach had been adopted in that regard.

19) The Committee directed the Department to submit a detailed report on

the action taken by the department to register all the factories coming under the purview of the Factories Act.

### **Conclusion/Recommendation**

20) The Committee views that the inefficiency and inadequacies of the Department in conducting timely inspections as per the stipulations in the Act are the main reasons for the higher number of unregistered cases. Hence, the Committee recommends to conduct inspection in all factories on a periodical basis and to strictly impose penal provisions against the unregistered factories.

21) The Committee directs the Department to furnish a detailed report of the factories registered under the Labour Department including the details such as the number of factories, name of establishment and number of workers.

22) The Committee directs the Department to submit a detailed report on the action taken by the Department to register all the factories mentioned in the Audit Report which come under the purview of the Factories Act.

#### **6.1.3.2 Non-renewal of factory licences**

Rule 7 of Kerala Factories Rules, 1957, stipulated that the occupier of every factory shall submit to the Chief Inspector/Deputy Chief Inspector an application for renewal of licence, not less than two months before the date of expiry of the licence by submitting prescribed documents and remitting the prescribed fee. A scrutiny of the Demand, Collection and Balance (DCB) register revealed that 878 out of 22,545 registered factories were yet to renew their licences (March 2017), resulting in non-collection of revenue<sup>8</sup> amounting to ₹ 98.41 lakh. Analysis of

---

<sup>8</sup> Fees for renewal of licence, additional 25 per cent fees, additional 50 per cent fees and back arrear fees and back arrear additional 50 per cent fees.

pendency details revealed instances of non-renewal from as early as 2001.

GOK cited (October 2017) shortage of transportation facilities and manpower in the enforcement wing, non-functioning of majority of defaulting factories and disputes regarding ownership, partition, lease, legal-heirship etc., pending before various courts as reasons for non-renewal of licences. In its reply, the Department stated (December 2017) that 369 of these factories were not working and 67 factories did not renew their licences due to pending court cases. Audit observed that as per Rule 12 D of Kerala Factories Rules, 1957, if a factory was lying idle for a period exceeding one calendar year, the Chief Inspector may, after satisfying himself of the bonafides, suspend the licence for one or more licensing periods. Audit also observed that the Director was lax in initiating penal action under Section 92 of the Factories Act against the remaining 442 unlicensed factories, which failed to renew their licences, punishable with imprisonment for a term which may extend to two years or with fine of up to ₹ one lakh or with both.

Audit feels that the Government should provide transport facilities and adequate manpower to the Factories and Boilers Department, enabling it to perform its statutory duty of registration of factories for ensuring safety of workers. Government should review all cases of non-registration of factories and take appropriate action as per provisions of the Act and Rules.

#### **6.1.3.3 Factories carrying out additional manufacturing process without registration/licence**

Rule 6 (2) of the Kerala Factories Rules, 1957, stipulated that licences granted under Rule 5 were to be amended in the event of change with regard to power utilised or the number of persons employed or changes in the name of the factory. Audit noticed during joint inspection along with departmental officers that 14 factories were carrying out additional manufacturing processes other than those for which licences were issued. The Department did not identify such activities

and ensure safety measures to be undertaken for the additional manufacturing process. In the test-checked divisions, 14 out of 90 factories were found to be engaging up to 10 additional workers than permitted in their licences. Licences of such factories were not amended in line with the stipulations contained in Rule 6 (2). The safety of workers in these factories was thus compromised.

GOK stated (October 2017) that the additional manufacturing process in a factory could be included in the licence while submitting the application for power amendment by factory management. The reply was not correct as GOK placed the onus on the factory management to get the licence amended in the event of additional manufacturing process. GOK, however, confirmed that it was the duty of Inspectors to take appropriate action if it was found during inspections that the factories were engaging more number of workers than permitted, as per licence.

Audit observed that GOK was bound to comply with Section 92 of the Factories Act, which required such contraventions of the Act to be punishable with imprisonment for a term, which may extend to two years or with fine of up to ₹one lakh or with both.

**[Audit paragraphs 6.1.3.2 and 6.1.3.3 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[ Notes received from the Government on the above audit paragrap are included as Appendix-II]***

**Excerpts from Committee's discussion with departmental officials.**

23) The Committee wanted to know the action taken against the factories which operated in contravention to the provisions of the Factories Act. The Director, Factories and Boilers Department replied that when the violations were found during inspection, sufficient instructions were given through inspection order and prosecution procedures were also initiated against them. In accordance with the provisions of Factories Act, it was the legal responsibility of the factory owners to



inform the department in the event of carrying out additional manufacturing process otherwise, 100% fine will also be levied against them.

24) The Committee wanted to know the number of cases penalised against the irregularities which were detected during the inspection of factories and action taken against 14 factories appeared in audit para where unauthorised manufacturing process were performed. The Director, Factories and Boilers Department replied that a detailed reply would be submitted on the matter.

### **Conclusion/Recommendation**

25) The Committee urges the Department to submit a detailed report regarding the number of cases of imposition of penalties against the irregularities detected during the inspection of factories and action taken against 14 factories appeared in the audit para where unauthorised manufacturing process were performed.

#### **6.1.3.4 Factories operating without addressing Environmental issues.**

As per Rule 5 (1) of the Kerala Factories Rules, 1957, a licence for a factory may be granted on an application made in the prescribed Form No. 2 after ensuring that the applicant obtained approval of the plans of site and building and disposal of effluents by the concerned authorities including the Kerala State Pollution Control Board (KSPCB). While Rule 7 (1) provided for licences to be renewed by competent authority, Rule 7 (2) specified that every application for the renewal of licence shall also be in the prescribed Form No. 2. Thus the licensing authority under the Factories Act was bound to obtain assurance that the applicant for registration and renewal of licence had obtained consent of KSPCB before renewing the licence.

Section 12 of the Factories Act, 1948, provides that arrangements should be made in every factory for treatment of wastes and effluents and for its effective disposal. As per Sections 25 and 26 of Water (Prevention and Control of



Pollution) Act, 1974 and Rules framed thereunder, every factory should obtain Consent to Operate (CTO) from KSPCB before commencement of operations and the same was to be renewed on expiry of CTO.

Details collected (July 2017) by Audit from the district offices of KSPCB at Thiruvananthapuram, Kollam and Ernakulam, revealed that 449 factories were operating without obtaining CTO as mandated. Joint inspection by Audit along with department authorities revealed that five<sup>9</sup> out of 90 factories were operating without obtaining CTO from KSPCB. The KSPCB also withheld consent (as of July 2017) to 168 factories in Kollam district and three factories in Thiruvananthapuram district either for want of renewal application or non compliance with previous consent conditions.

Grant of licence by the Factories and Boilers Department was subject to the factory obtaining requisite clearances from KSPCB, Fire and Rescue Department, etc. Laxity of the Department in renewing licences without ensuring compliance to the safety provisions contained in the Factories Act was significant when seen against the fact that of the 28 test-checked factories where the manufacturing process was classified as hazardous, the department renewed licences of 20 factories without ensuring valid CTO for the factories from KPSCB.

Government stated (October 2017) that since Rule 7 (1) did not require No Objection Certificate (NOC)/Consent from KSPCB for renewal of licence, renewing authority was not empowered to ensure or ask for NOC/Consent from KSPCB for renewing the licence. It was also stated that as part of Ease of doing Business, Government decided to avoid the NOC/Consent from KSPCB since it was the duty of these departments to ensure that their statutes were being complied with by the management.

9 M/s. Vijayamohini Mills, Thirumala and M/s. Titanium Products Ltd., Kochuveli in Thiruvananthapuram division and M/s. Variety Pharmaceuticals, Kulappully, M/s. Vijaya Locks, Kulappully and M/s. Lakshmi PVC Products, Kulappully in Ottappalam division.

The decision of GOK to avoid NOC/Consent from KSPCB as part of Ease of doing Business was not acceptable since it was to comply with the provisions of extant Rules. Rule 7 (2) stipulated submission of Application for renewal of licence in Form No.2, and as Form No.2 required the applicant factories to furnish details of KSPCB/environmental clearances, etc., the Department was bound to ensure the same before renewal of licence.

**[Audit paragraph 6.1.3.4 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[ Notes received from the Government on the above audit paragraph are included as Appendix-II]***

**Excerpts from Committee's discussion with departmental officials.**

26) When the Committee enquired about the details regarding the audit paragraph, the Director, Factories and Boilers Department answered that the audit paragraph stated that the department did not ensure Pollution Control Board's NOC while issuing licences to factories. He added that as per Rule 3 of Kerala Factory Rules, specifies the NOC of the Pollution Control Board is necessary only at the approval stage of the building plan, and that the NOC is not necessary for the registration or renewal of factory licences. Based on C&AG's remarks, the Government's opinion was sought in that regard, and as per the direction of the Government, the inclusion of NOC number was made mandatory in the application for registration/renewal of factories.

27) The Senior Deputy Accountant General brought to the notice of the Committee that factories which did not require license from Pollution Control Board(PCB) at the initial stage later added additional operations which required NOC from PCB. He added that the department should be more vigilant in rectifying such irregularities at the time of renewal. The Director, Factories & Boilers Department informed the Committee that the Pollution Control Board issued certificates on pollution control, effluent treatment plant and on the basis of the security of the said records, factories were given Consent to

Establish and Consent to Operate, and added that the Labour Department would only ensure that the NOC was received from the pollution Control Board at the time of renewal.

### **Conclusion/Recommendation**

#### **28) No comments**

##### **6.1.3.5 Installation of additional equipment in the factories without consent**

Rule 3 (1) and 3 (8) (b) of the Kerala Factories Rules, 1957, states that previous permission shall be obtained for the installation of additional machinery or a permanent fixture. Audit noticed during joint inspection alongwith the Inspector of Factories and Boilers that three<sup>10</sup> of the test-checked 90 factories installed new machinery without the consent of the Department. In two of the three cases, new machinery was installed which warranted increase in power consumption and required both amendment of licence and payment of additional fees. In the case of M/s. Variety Pharmaceuticals Pvt. Ltd., Audit noticed that three new machineries were installed. The Department later clarified (December 2017) that one of the newly installed machineries was in replacement of an existing machinery. The fact, however, remains that two additional machineries were installed at M/s. Variety Pharmaceuticals Pvt. Ltd., without the consent of the Department.

GOK replied (October 2017) that most of the Inspectors verified approved plans during routine inspections, identifying such installations and filing prosecution cases. The reply was not acceptable since joint inspection by Audit identified factories, which installed new machinery and the Department failed to detect the same.

---

10 1) M/s. Southern Gas Ltd., KINFRA Park, Thumba, 2) M/s. Hycount Plastics and Chemicals, Kilikollur, and 3) M/s. Variety Pharmaceuticals Pvt. Ltd., Kulappully.



[Audit paragraph 6.1.3.5 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]

*[Notes received from the Government on the above audit paragraph are included as Appendix-II]*

*Excerpts from Committee's discussion with departmental officials.*

29) When the Committee enquired about the details regarding the audit observation, the Director, Factories and Boilers Department replied that authorisation of the department should be required before installing/initiating any additional manufacturing equipment process in the factories. If such additional activities were found, sufficient instructions are being issued through inspection order and 100% additional fee is charged against the factories and prosecution procedures are also pursued in cases where fines are not collected.

### **Conclusion/Recommendation**

#### **30) No comments**

#### **6.1.4 Ineffective enforcement of safety norms**

The provisions in the Factories Act, 1948, prescribed installation/availability of different equipment/articles for health, safety, etc., of the workers. The Director issued (June 2015) instructions that the Factory Inspectors were to inspect each factory under their jurisdiction at least once in a year to ensure availability and functioning of the prescribed safety equipment/articles. Audit noticed that during 2012-13 to 2015-16, 1,445 accidents had occurred in which 114 workers lost their lives. Records of factories under the jurisdiction of six test-checked factory divisions and joint physical inspections of 90 factories conducted by Inspectors of Factories and Boilers in the presence of Audit, revealed deviations from safety standards stipulated in the Act in 81 out of the 90 factories, as shown in Table 6.1.

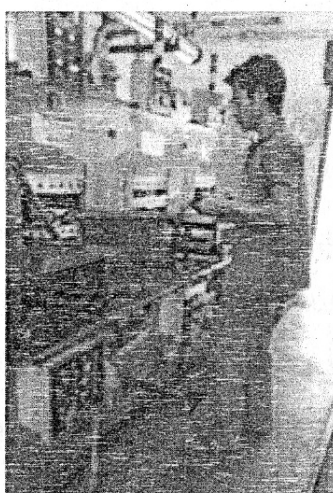
**Table 6.1: Deviations from safety standards at test-checked factories**

Division	Non-usage of PPE	Non-conduct of safety training	Non-display of safety policy	Non-provision of first-aid box	Non-provision of Fire extinguishers and allied items	Non-provision of rubber mat	Non-maintenance of muster roll
Thiruvananthapuram	9	1	4	4	9	1	1
Kundara	7	-	2	3	12	1	3
Kozhikode(N)	8	4	1	3	10	4	5
Ottappalam	6	2	-	1	5	3	-
Kochi	10	6	-	4	7	8	2
Palakkad	6	-	-	-	9	4	-
Total	46	13	7	15	52	21	11

(Source: Joint physical inspection reports)



Picture 6.1: Poorly maintained fire extinguishers in Brilliant Ice Plant, West Hill, Kozhikode (18 May 2017)



Picture 6.2: Non-usage of PPE while working on rubber moulding machine - Lido Rubber Products, West Hill, Kozhikode (30 May 2017)

Audit found during joint inspection that in 24 of the test-checked 90 factories, firefighting equipment like fire buckets or extinguishers were not provided. While fire extinguisher in 18 factories were not found refilled after their expiry dates, the fire buckets in 10 factories were poorly maintained i.e., the buckets were either not filled with water/sand or the sand had turned hard

due to non-replacement. Audit also

found during joint inspection that in 26 of the test-checked 90 factories, which were functioning as metal crusher units, saw mills, ice plants, soap manufacturing units, spinning and weaving mills, etc., personal protective equipment (PPE) like face masks,

hand gloves, safety shoes and goggles were not provided to the workers. Moreover, workers in 20 other factories were not using the PPE despite these being provided to them. Other significant irregularities noticed during joint verification of test-checked factories are given below.

**[Audit paragraph 6.1.4 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

31) When the Committee enquired about the details regarding the audit paragraph, the Director, Factories and Boilers Department replied that according to the Factory Act and Kerala Factory Rule, it was the responsibility of the factory owner to provide personal protective equipment for safety of the workers. He also added that on the basis of complaint received from the factory workers and on the basis of inspection carried out in factories necessary instructions were being given to the factory owners to implement safety measures. In addition, prosecution procedures had also been initiated in some cases. He added that migrant workers were reluctant to use personal protective equipment, hence the department conducted special training programmes for migrant workers to create safety awareness.

32) The Secretary, Labour & Skills Department informed that a moving campaign under the banner 'Suraksharatham' was carried out exhibiting Information Education Communication (IEC) materials and display panels and various training programmes had been implemented in all districts.

33) Then the Committee directed the Department to submit the list of cases in which prosecution procedures were initiated and followed up by the department.

### **Conclusion/Recommendation**

**34) The Committee notices that in some cases prosecution procedures are being initiated against violation of factory Rules with regard to the safety**



measures. Hence, the Committee directs the Department to submit the list of cases in which prosecution procedures are being initiated and followed up by the Department.

#### **6.1.4.1 Defective observation of Inspectors of Factories and Boilers**

Audit observed during joint inspection that in two<sup>11</sup> of the test-checked six ice manufacturing plants, the outlet of the safety valve of compressed ammonia tank was not connected to a drum containing water which was accepted as a violation of prescribed safety standards by the Inspectors of Factories and Boilers. However, during the Exit Conference (October 2017), the Director clarified that the suggestion of the Inspectors to the factory owners to immerse the safety valve in water tank was erroneous since it could lead to reverse flow of water and cause explosion. Audit observed that insistence of the Inspectors for compliance to such defective orders could result in explosions in factories. The Director admitted during the Exit Conference (October 2017) that it was a mistake on the part of the Inspectors and corrective orders would be issued immediately.

**[Audit paragraph 6.1.4.1 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

35) When the Committee enquired about the details regarding the audit paragraph, the Director, Factories and Boilers Department pointed out the observation made by the C.&A.G that an inspector had suggested to connect the outlet of the safety valve of the ammonia tank in the ice making plant to a drum containing water to prevent the release of ammonia gas and that was directed to be followed in other factories also. He added that no such instructions were given by the department to inspectors, and the department

11 M/s. Mary Ice Plant, Chirayinkeezhu and M/s. United Ice Plant, Kozhikode.

could only suggest that the management should take necessary precautions to prevent the release of ammonia gas and warning had been given to the particular inspector on the issue.

### Conclusion/Recommendation

#### 36) No Comments

##### 6.1.4.2 Non-fencing of machines with dynamic parts

Rule 54 of the Kerala Factories Rules, 1957, specifies that parts of machinery in motion and within reach are to be securely fenced or protected. Out of the test-checked 90 factories, it was found that 36 factories did not fence the machines and conveyer belts in violation of the norms. Failure to adhere to safety regulations led to fatal accidents in certain instances as shown below.



*Picture 6.3: Non-fencing/guarding of moving parts of nail cutting machine – Kerala Wires and Nails, Payyoli, Kozhikode (21 May 2017)*

- An accident occurred in M/s. Parathode Granites Pvt. Ltd, Mukkam, Kozhikode on 24 December 2012 leading to the death of a worker who got trapped in conveyer belt.
- An accident was reported by M/s. Sree Hari Blue Metal, Ozhalapathy, Palakkad on 24 June 2017 in which a worker died by falling into the unguarded drive of Screw Classifier.

##### 6.1.4.3 Non-fencing or absence of covering for tanks

Section 33 of the Factories Act, 1948, specifies that in every factory, every fixed vessel, sump, tank, pit or opening in the ground or in a floor, if it is a source of danger, shall be either securely covered or fenced. Out of the test-checked 90 factories, it was found during joint physical inspection that slurry tanks or drains were not fenced or covered in seven factories, thus posing risk of fall and injury. Audit also came across a recorded instance of violation of safety provisions at M/s. Karthika Granites, Vayyanam,



Kundara where death (May 2016) of a worker occurred by falling into the sand wash concrete tank, which was left open.

**[Audit paragraphs 6.1.4.2 and 6.1.4.3 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraphs are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

37) When the Committee enquired about the details regarding the audit paragraph, the Director, Factories and Boilers Department replied that guidelines on the matter had been issued to factory managements and if violations were found during inspection strict actions would be taken against them.

### ***Conclusion/Recommendation***

**38) No comments.**

#### **6.1.4.4 Non-provision of sufficient equipment to Inspectors**

Factories Act and Rules specify minimum level of light intensity, sound pressure level and amount of combustible gases in air to which a factory worker could be exposed. This is applicable to factories where manufacturing process involves high noise levels or produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition. It was found that against the requirement of at least 22 each of lux meters, decibel meters and explosimeters only 15 lux meters, 15 decibel meters and five explosimeters were available at the Regional Offices. Out of these, five lux meters, five decibel meters and three explosimeters were not functioning. Out of the test-checked six factory divisions, three divisions<sup>12</sup> did not have equipment to measure the level of light intensity, sound pressure level and amount of combustible gases. Hence, the Inspectors were not in a position to identify the hazardous level of light intensity, sound pressure level, etc., during their inspections.

---

<sup>12</sup> Thiruvananthapuram, Kundara and Kochi.

Government replied (October 2017) that these equipment were supplied to inspectors of Regional Safety Cells and Industrial Hygiene Lab (IHL) at Kollam. It was also stated that the local Inspectors could make use of services of the Inspectors of Regional Safety Cell and IHL in suspected cases, where the level of hazard was above the admissible level. The reply was not acceptable as these hand held machines could be carried by the local inspectors themselves during inspections and the Inspectors need not depend on the services of Inspectors of Regional Safety Cell or IHL for detection of violations. Audit recommends that the Department may make available adequate number of lux meters, decibel meters and explosimeters and issue strict instructions to local Inspectors to make use of these equipment during inspections

**[Audit paragraph 6.1.4.4 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

39) When the Committee enquired about the tools used for inspections like lux meters, the Director, Factories and Boilers Department informed that lux meters were used to measure light intensity. He added that according to the Accountant General, the enforcement officers of the department were to be provided with such equipment, but it was not convenient to carry as most of the devices were not portable. Samples were collected from work places and tested in labs. In order to identify the amount of crystalline silica in crusher dust samples are to be tested using special instrument. These tests are also performed in industrial hygiene labs. To the Committee's query regarding the portable labs, the Director, Factories and Boilers Department responded that the test findings of those labs were not reliable and that the court may not accept them.

40) The Committee pointed out that if portable test devices were used, the result could be obtained in a very short period of time and special tests would be carried out in

laboratories, in the event of a legal case. The Director, Factories and Boilers Department informed that officials in the three zonal safety cells had been provided with portable devices, and if those devices were given to enforcement officers, it would be difficult for them to carry them.

41) The Committee observed that the department, in its report, stated that the divisional inspectors with mechanical engineering degrees did not have the technical knowledge to use most of the equipment and enquired whether they need technical knowledge or wouldn't it be enough to provide them with training. The Director, Factories and Boilers Department clarified that only chemical engineers could measure the quantity of chemicals and perform all the calculations.

### **Conclusion/Recommendation**

#### **42) No Comments.**

### **6.1.5 Monitoring and Inspection**

#### **6.1.5.1 Inadequate training on safety to the workers**

As per Section 111A of Factories Act, 1948, every worker shall have the right to get trained within the factory wherever possible, or to get sponsored by the occupier for getting trained at a Training Centre or Institute duly approved by the Director of Factories and Boilers, where training is imparted for workers' health and safety at work. Audit observed that only one training centre at Thiruvananthapuram was approved by the Department for this purpose. Audit noticed that the Department had imparted training on safety to only 2,713 out of 6,98,263 workers covering 256 factories during 2012-13 to 2016-17 (0.40 percent).

Ensuring compliance to safety norms by factory workers required adequate training to be imparted to them. During Exit Conference, the Director stated (October 2017) that in many cases, workers were themselves violating safety norms and there was a need to bring about attitudinal change through training. Audit observed that inadequate training to workers would lead to lack of awareness of safety measures to be adopted by



them during work.

[Audit paragraphs 6.1.5 and 6.1.5.1 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]

*[Notes received from the Government on the above audit paragraph are included as Appendix-II]*

*Excerpts from Committee's discussion with departmental officials.*

43) When the Committee enquired about the details regarding the audit paragraph, the Secretary, Labour & Skills Department replied that at present the department is providing more training programmes to the workers.

44) The Director, Factories and Boilers Department added to the discussion that since the department did not have a training division, the officers themselves train the employees in addition to their regular duties. Training programmes were conducted by the department through the Regional training centers and using mobile training vehicle 'Suraksharatham' an AC bus having 30 seats. The training had been imparted to over 20,000 workers including casual, contract, piece-rate and migrant workers under the Suraksharatham project at their own workplaces such as shipyard, refinery etc. during the past five years and the training was being given continuously.

### **Conclusion/Recommendation**

#### **45) No Comments**

#### **6.1.5.2 Shortfall in conduct of Medical Surveys and identification of Occupational Health diseases**

Administrative sanction was accorded to the Department to conduct 'Industrial Hygiene cum Health survey' for the years 2015-16 and 2016-17 to initiate measures for prevention of occupational diseases, protection of health of workers, compilation of statistics of occupational diseases, etc. Accordingly, seven medical camps each were conducted for workers in Cashew and Stone Crusher Industries during the above two years for detection of occupational diseases.

The survey for the year 2015-16 detected four cases of Silicosis<sup>13</sup> in the State among workers in the Stone Crusher Industry<sup>14</sup> with more number of such cases not being ruled out. Recommendations were also made in the survey report on conducting work environment monitoring to be done in factories employing such persons, etc. Audit noticed that the Sub Regional Office, Kozhikode of ESI Corporation also identified (April 2017) seven cases of occupational diseases including three cases of Byssinosis<sup>15</sup>, one case of Sensory Neural Hearing Loss, etc.

The Sub- Regional Office, Kollam also identified an instance of Byssinosis. Since the List of Notifiable diseases under the Schedule III of the Act contains a list of 29 hazardous diseases and in view of identification of the prevalence of imperative for the Department to conduct more such surveys followed by adequate medical treatment of workers for preservation of health of the workers.

**[Audit paragraph 6.1.5.2 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-III]***

***Excerpts from Committee's discussion with departmental officials.***

46) When the Committee enquired about the details regarding the audit paragraph, the Director, Factories and Boilers Department conveyed that 29 occupational health diseases had been notified in accordance with the Factories Act. However, the report submitted to the Government stated that no occupational health diseases had been identified in the State. In order to identify the occupational health condition of factory workers, a survey was initially conducted among employees of the crusher factory. He also informed that the present strength of the medical team was not sufficient to carry out the surveys. He added that by setting up camps across the State, an occupational disease termed as silicosis was identified among the employees of the crusher factories.

13 An occupational lung disease caused by inhalation of silica dust.

14 M/s. Meta Rocks Pvt. Ltd., Cheriyaconni, Thiruvananthapuram.

15 M/s. Meta Rocks Pvt. Ltd., Cheriyaconni, Thiruvananthapuram.

The Survey in crusher, coir, cashew, sea food industries, textile factories and in packing centers had been completed. At present survey of steels & welding units is in progress and survey reports would be sent to Government as soon as it was completed. Engineering control & administrative control measures were taken when workers in crusher factories were affected by silicosis and checked the work site with the help of lab to find out the origin and its solution. Engineering control measures were the systems inbuilt in the machine to extract the dust from the source and the other was to protect workers by providing masks. A rule was framed by incorporating those two measures under the heading “ Factories Involving Handling silica” and the Kerala Factory Rules had been amended accordingly and action would be taken to implement it.

### **Conclusion/Recommendation**

**47) No comments.**

#### **6.1.5.3 Unfruitful expenditure of ₹4.15 crore on Occupational Health and Research Centre**

Section 41B of the Factories Act stipulated that the occupier of every factory involving a hazardous process shall identify health hazards and the measures to overcome such hazards. Since occupiers were not giving importance to monitoring of the health status of workers and recognising the need to provide individual units with proper occupational health care, the Director of Factories and Boilers submitted (July 2012) a proposal to Government of Kerala (GOK) for establishing Occupational Health and Research Centres (OHRC) at Kollam, Ernakulam and Kozhikode. The OHRCs were proposed to be established to provide pre-employment and periodical medical examination for all workers employed in dangerous operations, investigate cases of suspected occupational diseases, provide health education to management and workers, health training to workers and other staff, conduct occupational health survey, etc.

It was noticed during audit that GOK accorded (March 2014) Administrative Sanction for construction of a building for setting up an OHRC at Kollam at a cost of

₹2.69 crore. The work of construction of OHRC building was entrusted to KESNIK<sup>16</sup> and the construction was completed (July 2014) at a cost of ₹2.45 crore. GOK also issued administrative sanction (August 2014) for the purchase of equipment for the OHRC against which procurement of Office/medical equipment costing ₹1.70 crore was made. Audit observed that the failure of GOK to provide requisite manpower by way of sanction and recruitment of 12 staff members including Medical Officer, Male Nurse, Occupational Health Technician, Field Assistant, Lab Technician, Driver etc., as proposed by the Director (July 2012), resulted in non-commissioning of OHRC leading to blocking up of ₹4.15 crore and inability to render envisaged services.

Government while accepting (October 2017) the audit observation, informed Audit (March 2018) that a proposal for creation of posts for the OHRC at Kollam was since received from the Director of Factories and Boilers and the proposal was under examination.

**[Audit paragraph 6.1.5.3 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

48) When the Committee enquired about the details regarding the audit paragraph, the Director, Factories and Boilers Department, replied that necessary equipments had been installed in the Occupational Health and Research Centre. However, some of the equipments could not be operated for want of sufficient employees and the proposals for post creation had not been sanctioned. He added that, a discussion was held with HLL Life Care Limited and they acknowledged to provide their staff for the operation of the equipment and their assistance could be accepted after getting approval from the Government.

16 Kerala State Nirmithi Kendra.



49) The Committee opined that it was a matter of policy whether to allow the equipment to be operated with the help of employees of Hind Lab, and the non-operation of the equipment after installation was not a proper course of action. The Committee recommended that necessary action should be taken to operate the said equipment at the earliest.

### **Conclusion/Recommendation**

50) The Committee views that even though ₹4.15 crore is expended for Occupational Health and Research Centre (OHRC) at Kollam, it failed to render the envisaged services for want of the required man power. Hence, the Committee recommends that appropriate measures should be taken by the Department to operate all the equipment purchased for the OHRC at the earliest.

#### **6.1.5.4 Shortfall in conduct of Inspections**

The powers assigned to the Inspector under the Act include authority to enter any place which is used or which, he has reason to believe, is used as a factory. The Inspectors, thus, play a significant role in the identification of factories and detection of violations of the provisions of the Act. A work study report of the Personnel and Administrative Reforms Department (P&ARD) fixed (February 1993) the norm for inspection as 150 factories per year for each Inspector and the same was accepted by GOK in February 1993. In January 2017, GOK stated that since online licensing system was successfully implemented in the department and the nature of work changed since then, the report of the P&ARD had lost relevance. GOK further directed the department to forward a fresh proposal giving details such as schemes proposed to be undertaken, working pattern of the department, sanctioned posts with their nature of work, etc. Submission of the fresh proposal is pending.

Audit observed that against the norm of 150 factories per year per



Inspector, the Department would need at least 150 Inspectors to inspect the already registered 22,545 factories. However, if the 47,608 factories registered with the Directorate of Industries and Commerce were also reckoned, the requirement of Inspectors would then be 468. Thus, against the total requirement of 468 Inspectors, the Department was functioning with only 47 Inspectors.

As per Circular issued by the Factories and Boilers Department (June 2015), every factory had to be inspected by the Department of Factories and Boilers at least once in a year. Data obtained from the Department revealed that out of 22,218<sup>17</sup> factories in the State during the years 2013-14 to 2015-16, the percentage of factories inspected ranged between 59 and 65 per cent. In the test- checked factory divisions, of the 5,884<sup>18</sup> factories registered with the Factories Department, the percentage of factories inspected during 2013-14 to 2015-16 was 61 per cent. Government replied (October 2017) that the proposal for inducting more number of inspectors was not accepted due to financial constraints.

Audit recommends that service of available inspectors be utilised optimally, by providing adequate vehicles for increased mobility and effective inspection. Fresh proposals may be forwarded to GOK by the Department, after working out minimum additional manpower required in the interest of efficient functioning of the Department.

**[Audit paragraphs 6.1.5.4 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

51) While considering the audit para, the Committee wanted to know about the present strength of the Inspectors. The Director, Factories & Boilers Department

<sup>17</sup> Average number of factories during the years 2013-14 to 2015-16 as per database of the Department.

<sup>18</sup> Average number of factories registered with the Department.

informed that the posts created in 1984 were still existing and there were 47 officials, including 22 factory inspectors and 25 additional inspectors. As the number of factories were on the rise over the period a factory could be inspected only at the interval of three to four years due to the paucity of inspectors. According to the Labour Inspection Convention report of International Labour Organization (ILO), the proportion should be maintained between the labour inspectors and the number of workers. The study report of P&ARD also advised a single inspector for at least 250 factories and consequently there was a need for about 600 inspectors.

52) The Committee noticed that the shortage of officers in the Labour Department caused delays in enforcing the laws strictly and urged the department to create sufficient posts of Factory Inspectors to strengthen the enforcement wing of the Labour Department.

### **Conclusion/Recommendation**

**53) The Committee notices that the shortage of officials in the Labour Department caused delay in enforcing the laws strictly and urges the Department to create sufficient posts of Factory Inspectors to strengthen the enforcement wing of the Labour Department.**

#### **6.1.5.5 Non-submission of annual and half yearly returns**

Half-yearly returns in Form No. 22 specified in the Factories Act have to be submitted by the occupiers before 31 July of the current year and annual return in Form No. 21 before 31 January of the next year to the concerned Divisional Inspector of Factories and Boilers/Additional Inspector of Factories and Boilers. These forms indicate, besides other points, details on average number of workers employed daily, medical information on workers medically examined, number of workers employed in hazardous conditions, etc.

Audit noticed that on an average, 66.98 per cent and 67.30 per cent of factories did not file half-yearly and annual returns respectively as shown in Table 6.2.

**Table 6.2: Details of half-yearly/annual returns filed by factory owners/occupiers/managers**

Year	Number of Factories	Number of annual returns received	Percentage of short fall	Number of Half yearly returns received	Percentage of short fall
2012	19511	7546	61.3	7830	59.9
2013	20578	7788	62.2	7908	61.6
2014	21580	7714	64.3	8132	62.3
2015	22104	6213	71.9	5656	74.4
2016	22230	5204	76.6	5246	76.4

*(Source: Figures obtained from Department of Factories and Boilers)*

The Government replied (October 2017) that most of the factories coming under Section 85 category of the Factories Act were exempted from submitting returns in accordance with the Labour Laws (Exemption from furnishing returns and maintaining registers by certain establishments) Amendment Act, 2014.

The reply of the Government was not correct as Audit noticed that though the 'small and very small establishments' were exempted from submitting returns as per Section 4 (1) of the above Act, they were required to file, in lieu of such returns, annual returns in Form I. The Department failed to monitor these returns and follow-up the cases of defaulters. Such contravention of the provisions of the Act would constitute an offence punishable with imprisonment for a term, which may extend upto two years or with fine upto ₹one lakh or with both, as per Section 92 of the Factories Act. In the circumstances, the Department would not be in a position to ensure the well-being and safety of factory workers.

**[Audit paragraph 6.1.5.5 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

54) When the Committee wanted to know the details regarding the audit para, the Director, Factories and Boilers Department replied that even though there existed a system to submit Annual returns through online, many people did not file it properly. In certain cases action had been taken against those who did not file returns. There was also a mechanism to submit returns through the central government's Shram Suvidha portal.

55) The Director, Factories and Boilers Department informed that Factories coming under Section 85 of the Factories Act were exempted from submitting returns in accordance with the Labour Laws (Exemption from furnishing returns and maintaining registers by certain establishments) Amendment Act, 2014 and out of 24000 factories, 18000 were falling under Section 85.

56) The Secretary, Labour and Skills Department supplemented that the department is vested with only enforcement powers that are provisioned in the Act and Rules. Many organizations were registering to avail the benefits. Now as part of Ease of doing business and Business reforms action plan Central Government and NITI Aayog had brought restrictions on such matters.

57) The Committee emphasized that there should be a strong mechanism to ensure the safety of the workers. The Secretary, Labour and Skills Department replied that since the labour courts had come into existence, the State had created Rules and held discussions regarding the same. When new code and corresponding rules are framed by repealing 29 labour laws, the occupational safety code would also be included in them.

**Conclusion/Recommendation**

**58) No comments**

**6.1.6 Conclusion**

The Department of Factories and Boilers which was responsible for enforcing the



provisions of Factories Act did not have effective mechanism to ensure compliance of factories to the safety standards stipulated under the Act. The number of factories registered with the Department under the Act was very low. The data on number of factories as per the Department was hugely understated. Inspection of factories was inadequate. Audit noticed shortfall in posts of Inspectors, which adversely affected enforcement measures of various provisions under the Act. Training on safety at work was imparted only to 0.40 per cent of the total workers. The implementation of the provisions of the Factories Act with reference to the safety of workers was, thus, not satisfactory.

**[Audit paragraph 6.1.6 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

59) While going through the details, the Director, Factories and Boilers Department informed that the new Labour Code insisted on only random inspections.

60) When the Committee enquired what action would be taken on detection of violations, the Director, Factories and Boilers Department conveyed that in case of complaints or accidents, necessary inspections would be conducted only with the permission of the Director. The Secretary, Labour and Skills Department added that presently a common inspection system was prevailing and therefore, it was not possible to conduct even a surprise check. The Director, Factories and Boilers Department pointed out that even if factories were found to be unregistered, they could not be inspected. Presently, inspection can be performed only through K-CIS (Kerala Centralized Inspection System).

61) The Committee directed the department that a detailed report based on the audit period should be made available to the Committee.

## Conclusions/Recommendations

62) The Committee directs the Department to make available a detailed report on the action taken against the factories that were reported to have violated the safety standards as stipulated in the Act during the Audit Period.

### 6.2 Implementation of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

#### 6.2.1 Introduction

Government of India (GOI) enacted the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (Act) in June 1979 to regulate the employment of Inter-State Migrant Workmen (ISMW) and to provide for their conditions of service and other matters connected therewith. The Act defined an ISMW as any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment<sup>19</sup> in another State, whether with or without the knowledge of the principal employer<sup>20</sup> in relation to such establishment. The provisions of this Act applied to every establishment in which five or more ISMW whether or not in addition to other workmen, are employed or were employed on any day of the preceding 12 months. Contractors who employ/employed five or more ISMW, whether or not in addition to other workmen, on any day of the preceding twelve months were also brought under the ambit of the Act.

Government of Kerala (GOK) framed the Kerala Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Rules, 1983 (Rules), which came into force in the State on 02 May 1984. The Labour Commissioner was responsible for the implementation of the provisions of the Act and Rules in the State.

<sup>19</sup> Establishment - Any office or department of the Government or a local authority or any place where any industry, trade, business, manufacture or occupation is carried on.

<sup>20</sup> Principal employer means in relation to any office or department of the Government or a local authority, the head of that office, department or authority or such other officer as may be specified; in relation to a mine, the owner or agent of the mine or Manager; and in relation to any other establishment, any person who is responsible for the supervision and control of the establishment.

Government of Kerala notified 14 District Labour Officers (Enforcement) and one District Labour Officer (HQ) as the Registering and Licensing Officers for the State. While the Regional Joint Labour Commissioners (RJLC) at Kollam, Ernakulam and Kozhikode were designated as the Appellate Officers under the Act, 122 Officers including Labour Commissioner, Additional Labour Commissioners, District Labour Officers (DLOs) and Assistant Labour Officers (ALOs) were designated as Inspectors under the Act.

### **6.2.2 Objectives, Scope and Methodology of Audit**

Audit was conducted from April 2017 to July 2017 covering the period 2012-13 to 2016-17 to assess the compliance of the Department to the provisions relating to ISMW as stipulated in the Act and the Rules. The audit coverage included all three Regional Offices at Kollam, Ernakulam and Kozhikode and two District Labour Offices under each Regional Office. The District Labour Offices were selected by Stratified Simple Random Sampling using Idea Software. Two Assistant Labour Offices were selected under each selected DLO based on high concentration of ISMW in these regions. Audit assessed whether all establishments and contractors to whom the Act applies in the selected districts of Thiruvananthapuram, Kollam, Ernakulam, Kottayam, Kozhikode and Kannur were registered and issued with licences respectively and whether the amenities mandated by the Act to ISMW were provided to the workers. Audit also examined whether records maintained by the principal employer/ contractor in selected cases were in compliance to the provisions of the Act and whether penal provisions were enforced in the event of contravention of any of the provisions in the Act. Audit methodology included scrutiny of records at the Government Secretariat, Office of the Labour Commissioner, Offices of three Regional Joint Labour Commissioners and Offices of selected DLOs and ALOs. Entry Conference was held on 20 April 2017 with the Joint Secretary, Labour and Skills Department, Additional Labour Commissioner and officials of Labour Department wherein the objectives and

methodology of audit were discussed. Exit Conference was held with the Joint Secretary, Labour and Skills Department and the Labour Commissioner in charge on 26 October 2017, in which the audit findings were discussed.

## **Audit findings**

### **6.2.3 Registration of establishments and licensing of contractors**

#### **6.2.3.1 Laxity of the Department in identification and registration of Inter- State Migrant Workmen under the Act**

Section 4 of the Act laid down the conditions for the registration of establishments under the Act. It required every principal employer of an establishment to which this Act applied to make an application to the Registering Officer along with payment of prescribed fee for the registration of the establishment under the Act. Section 1 (4) (a) of the Act stipulated that the Act applied to every establishment in which five or more ISMW are employed or were employed on any day of the preceding twelve months. Section 1 (4) (b) also provided for the provisions of the Act to apply to every contractor<sup>21</sup> who employs or employed five or more ISMW on any day of the preceding twelve months. Section 6 also provided that no principal employer of an establishment to which this Act applies shall employ ISMW in the establishment unless a certificate of registration in respect of such establishment issued under this Act was in force.

As per information furnished by the Department (February 2018) there were 783 principal employers registered in the 14 districts of the State who had engaged 45,378 ISMW as of February 2018. However, the total number of ISMW registered with the Department as per the provisions of the Act was only 1.82 per cent of the 25 lakh migrant labourers assessed (February 2013) in the State by the Gulati Institute of Finance and Taxation (GIFT).

Audit observed that the Department was not proactive in identifying ISMW and

21 Contractor in relation to an establishment means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, by the employment of workmen or to supply workmen to the establishment, and includes a sub- contractor, Khatedar, sardar, agent or any other person who recruits or employs workmen.



registering principal employers and contractors under the Act so as to ensure that the benefits envisaged under the Act were derived by such workers as discussed in the succeeding paragraphs. In the six test-checked districts, the Department stated that there were at least 97,695 (September 2017) establishments<sup>22</sup> which engaged ISMW and which could have been brought under the purview of the Act. A joint inspection conducted by Audit with the ALO Perumbavoor who was the designated Inspector under the Act, identified eight plywood factories employing ISMW in Kunnathunadu Taluk in Perumbavoor, Ernakulam district, which were not registered under the Act. Audit observed that on the date of joint inspection (13 June 2017), 21 to 75 ISMW (including 16 women) were engaged by each of these factories (Appendix III(1)). In three of these eight factories, the total number of workmen physically present at the time of inspection was 100, while only 46 employees were recorded in the Muster roll. A joint inspection (19 July 2017) of construction site of Dharmashala Auditorium and Convention Centre, Kannur revealed that though there were three joint principal employers, one contractor and 18 ISMW at the site, neither the principal employers applied for registration nor the contractor had applied for licence to employ ISMW. Audit noticed that despite the establishment not maintaining records and flouting provisions of the ISMW Act/Rules, no action was taken against the violators by the Registering Authority (DLO) Kannur in this regard.

In the Exit Conference (October 2017), the Labour Commissioner admitted that the total number of ISMW in the State projected by the Labour Department was presumptive and the figures projected by GIFT too could not be considered up to date. He informed that the Department was capturing biometric details of ISMW and expressed hope that an authentic figure on the quantum of ISMW in the State would be arrived at by December 2017 itself. It was also stated that the Department did not possess any authentic category-wise figures on the quantum of principal employers and

22 Factories, chappal manufacturing units, shops and establishments, steel industries, etc.

ISMW in the State with respect to Government Departments, factories, shops and commercial establishments, construction sites, etc.

The Additional Labour Commissioner and DLOs of six test-checked districts stated (June 2017) that since the migrant workers were directly employed by the employer and not through a contractor, the registration/licence under the Act would not be attracted in these cases. The reply was not acceptable in view of the fact that the Supreme Court of India had observed in *Bandhua Mukthi Morcha v/s the Union of India and Others*<sup>23</sup> 1983 that whether the ISMW who were employed were ISMW or not would have to be investigated and determined in order to make the provisions of the Inter-State Migrant Workmen Act and Rules meaningful for such workmen who were recruited from other States. The Labour Commissioner assured in the Exit Conference (October 2017) that the applicability of the Supreme Court judgment in respect of ISMW employed in the State would be examined. The reply of the Labour Commissioner was not acceptable as Government was bound to initiate required action in the light of the Supreme Court judgement.

Moreover, Sections 20 (2) (a) and 20 (2) (b) provide for Inspectors under the Department to enter any premises suspected of employing ISMW, to examine any person found in any such premise for the purpose of determining whether such person is an ISMW for ensuring compliance with provisions of the Act. Audit observed that even though the inspectors conducted inspections of 5,95,177 establishments under 28 other Labour Acts during 2012-17, the compliance to provisions of ISMW Act was examined by the inspectors of the Department only in 5,561 establishments. The DLO (Enforcement) who was the Registering Officer appointed under Section 3 of the Act, also did not evolve a mechanism to ensure that all establishments engaging ISMW were registered under the Act. The Inspection wing in the Department was required to be strengthened by enhancing the number of inspectors.

---

23 On the employment of Inter-State Migrant Workers in the Stone quarries/crusher units in the State of Haryana.

[Audit paragraphs 6.2 to 6.2.3.1 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]

*[Notes received from the Government on the above audit paragraph are included as Appendix-II]*

*Excerpts from Committee's discussion with departmental officials.*

63) The Additional Labour Commissioner, Kerala State Labour Commissionerate informed the Committee that Inter-State Migrant Workmen Act, 1979, governed the registration of migrant workers. However, it was not possible to register an entire workforce, since vast majority of workers came to the State voluntarily and were not employed under the contractors. There were 101 Assistant Labour Officers and 116 Inspectors under the ISMW Act in the State. It consists of the Labour Commissioner, Additional Labour Commissioner (Enforcement), District Labour Officers (Enforcement) and Assistant Labour Officers. The provisions of the Act could be applied only in establishments where five or more workers were employed and hence registration of all migrant workers would not be brought into the purview of the Act.

64) To the Committee's query regarding the number of migrant workers, the Director, Factories and Boilers Department responded that 2490 institutions were registered under the ISMW Act. According to the Act, the principal employer should register the said establishments with the concerned district labour office and the contractor under him with more than five workers was required to book the license which should be renewed every year. Out of 2490 firms registered, 1680 contractors had taken licences. He added that the department had been implementing an insurance scheme called 'Awas' for the migrant workers of the State. Under the scheme, a worker would be eligible for medical assistance up to ₹ 30000/- in a financial year and if deceased, the legal heirs of the deceased would get financial assistance to the tune of

rupees two lakh. He supplemented that 516320 workers had been registered under that scheme.

65) The Secretary, Labour & Skills Department added to the discussion that the Aadhaar-enabled registration system for migrant workers was launched on 31.07.2022. Through the scheme, duplication could be avoided. The details were being collected from all the labour camps in their own language by giving them booklets in different languages in every detail under the supervision of DLT and all the activities in this connection were being reviewed by the Government. Committee further added that in most of the districts, major Projects are being implemented and numerous workers from other States were engaged in those works. There were objections regarding denial of treatment and basic facilities to them. Committee enquired whether their number had been taken into account. Secretary, Labour and skills Department replied that e-registration system was established for them. They were also directed to register the e-SHRAM portal. Pension and Insurance Schemes were also managed through that portal. The above scheme was also clubbed with 'Awas' scheme. A campaign was conducted at Vizhinjam port and Smart identity cards were issued to them through Aadhaar enabled registration system. Attempts were being made to implement this system throughout Kerala.

66) When the Committee enquired about the department's efforts to ensure the welfare of the migrant workers, the Secretary, Labour and Skills Department stated that anti-drug campaign had been held in Kannur and Thiruvananthapuram. She went on to say that due to lack of work force and basic facilities, they were unable to implement the welfare measures.

67) To the Committee's query regarding the construction of flats for Migrant Workers, the Secretary, Labour and Skills Department stated that flats in Kinaloor and Kanchikot had been completed, work in Menamkulam was nearing completion and construction of a studio apartment in Kalamassery had begun.

68) In response to the Committee's query, the Secretary, Labour and Skills



Department stated that workers were using the flats in the completed areas, and a cleaning and maintenance system had been created with the assistance of Kudumbashree. She went on to say that the department's budgetary provision and manpower constraints prevented it from carrying out welfare and development programmes for migrant workers and that there should be an intervention from the Committee in that regard.

69) The Committee recommended that sufficient posts should be created to strengthen the enforcement wing of the Labour Department.

### **Conclusion/Recommendation**

**70) The Committee understands that lack of sufficient man power in the Labour Department causes delay in carrying out inspections and implementation of various welfare measures for migrant workers. Hence, the Committee recommends that the Department should take initiative to strengthen the enforcement wing of the Labour Department.**

#### **6.2.3.2 Employment of Inter-State Migrant Workmen by contractor without licence under the Act.**

Section 8 (1) of the Act stipulated that no contractor, to whom the Act applies, shall recruit any person in a State for the purpose of employing him in any establishment, situated in another State without licence issued under the Act. In Kerala, the DLO (Enforcement) is the authority designated under the Act to monitor the compliance of this provision of the Act. Inspectors under Section 20 of the Act can take penal action under Sections 25 and 26 of the Act for violation of the provisions of the Act. Section 25 specified penal provisions for contravention of provisions regarding employment of ISMW. Section 26 covered other offences for which no penalty was elsewhere provided.

Violation of the said provisions was noticed in two selected districts as detailed below.

Records verified at DLO Kannur revealed that in four out of eight registered

establishments, contractors did not apply and obtain licence during 2016-17. At DLO Kollam, the contractor engaged under the registered principal employer 'Asset Grandios, Kollam', did not take licence for employing additional 20 ISMW. Though the principal employer obtained an amended registration certificate for engaging 25 ISMW instead of the earlier five employees, the contractor who was supplying the workers did not amend his licence to reflect the increased number of workers and did not remit the additional security deposit of ₹40,000 at the rate of ₹2,000 per workman. Audit observed that contractors were required to remit ₹2,000 per workman engaged by them as security deposit for obtaining licence under the Act. Since GIFT study sponsored by GOK had identified 25 lakh ISMW as of 2012-13, Audit reckoned that the State had foregone at least ₹320.92 crore<sup>24</sup> by way of security deposit. The DLO (Enforcement) who was the Licensing Authority under Section 7 of the Act failed to initiate necessary steps for prosecuting the violators under Section 25 of the Act.

Additional Labour Commissioner stated (October 2017) that the licensing/registering authorities including DLOs of Kannur and Kollam were directed to submit a report with regard to updating/amendment of requisite registration/licence and to initiate legal steps against violation of provisions.

**[Audit paragraphs 6.2.3.2 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

71) The Committee noticed that the Labour Commissioner had said in the exit conference that the department was capturing biometric details of ISMW and that the number of inter-state migrant workers would be quantified by December 2017 and the Committee enquired about the present status of the matter. The

<sup>24</sup> As per GIFT report, 66 per cent of 25 lakh migrants (16.5 lakh) are employed under contractors. (16.5 lakh - 45,378) x ₹2,000 = ₹320.92 crore.

Director, Factories and Boilers Department answered that it was in progress.

72) The Senior Deputy Accountant General informed that the Migrant workers were very suspicious of the biometric system since many of them were criminals and if biometric information had been collected it would be possible to know if they had committed any crime, and added that the Government should find ways to address those issues.

73) Then the Secretary, Labour and Skills Department added that those were social issues, which could not be addressed by a single department alone. She further added that Central Government had launched e-SHRAM portal for unscheduled workers. The aforesaid portal was launched on the basis of a suo moto case taken by the Supreme Court when migrant workers went back to the villages from Delhi and other places during the Covid period, and suffered a lot of hardships. The target given to Kerala was 98.8 lakh and now 60 lakh people had been registered in it. A major portion of it was migrant labourers. This registration was also Aadhaar enabled, which could detect duplication.

74) The Committee enquired whether the Government evolved any mechanism to ensure that all establishments engaging ISMW were getting registered. The Additional Labour Commissioner, Kerala State Labour Commissionerate replied that since there were a lot of limitations in implementing the laws, all the establishments could not be registered completely.

75) Then the Committee made a brief description about the inter state migrant workers who were working under different establishments like hotels and shops, plantation field and construction sites.

76) When the Committee enquired about the details regarding the renewal of license, the Secretary, Labour and Skills Department replied that Penalty had been imposed under Rule 14(3) for the delay in renewal of license. She added that security

deposit would be withheld and show cause notice would be issued at the time of inspection and an automated registration system of Labour Commissioner had been introduced for renewal of license etc.

77) The Senior Deputy Accountant General enquired whether the registration with Building and Other Construction Workers Welfare Board had been counter checked with that of the migrant workers. The Additional Labour Commissioner, Kerala State Labour Commissionerate replied that the Migrant Workers Welfare Scheme 2010 had been introduced for migrant workers and it was implemented by the Building and Other Construction Workers Welfare Fund Board and 55000 workers were registered in it. After that, the number of registered users had increased to 155000 through a new computer application called 'Guest App'. A worker could be registered after paying a fee of ₹ 30/- and had to renew it every year. They were provided with retirement benefits and educational benefits for their children through the scheme. In addition, two lakh rupees was to be paid to the family of the migrant labour in case of his death. In case of the death of a migrant worker who was registered under both Awas scheme and migrant worker welfare scheme, the family of the deceased would get ₹ 4 lakh as compensation.

78) The Committee noticed that hotels and industrial establishments required a licence from local self government institution and enquired whether it was possible to understand how many establishments were operating with valid registration by comparing the data from the Labour Department with that of the Local Self Government Institution. The Secretary, Labour and Skills Department replied that the Labour Officers and Welfare Officers of Shops and Commercial Establishments were instructed to complete the registration on the basis of L.S.G.I data and the Local Self Government Department provided the data district wise to the district labour officer and split up to ALO and also to conduct random checking.

79) The Additional Labour Commissioner, Kerala State Labour Commissionerate



added that there was a wide variation in the number of establishments registered with the Labour Office and Local Self Government Institutions. The establishments were registered with the Labour Office only if notices had been issued to them in person by the Inspectors but the registration with LSGIs were mandatory for starting an establishment.

80) The Committee further enquired whether it could be stipulated that the registration with the Local Self Government Institutions would be renewed only after registering the establishments with the Labour Department. The Additional Labour Commissioner, Kerala State Labour Commissionerate replied that the Act would have to be amended to make it possible.

### **Conclusion/Recommendation**

#### **81) No Comments**

#### **6.2.3.3 Contractors not holding requisite licences**

As per Sections 8 (a) (ii) and 8 (b) (ii) of the Act, contractors recruiting an ISMW in one State for employment in another State and contractors employing persons from another State as workmen for the execution of any work in any State should hold valid licences issued by the appropriate authorities of both the home and host States of the ISMW.

In the six districts test-checked, there were 736 contractors holding licences under the Act and employing 35,250 ISMW during 2012-13 to 2016-17 as shown in Table 6.3.

Table 6.3: Details of ISMW engaged through contractors

Name of District	Total number of contractors	Total number of ISMW engaged through contractors
Thiruvananthapuram	215	12090
Kollam	40	813
Kozhikode	97	2821
Kottayam	93	1754
Ernakulam	268	16920
Kannur	23	852
Total	736	35250

(Source: Office of the Labour Commissioner)

As per Rule 21 (1), every contractor shall furnish to the specified authorities the particulars regarding recruitment and employment of migrant workmen in Form X. Also as per Rule 24, every contractor shall furnish returns regarding migrant workmen who have ceased to be employed, in Form XI to the specified authorities concerned, either personally or by registered post so as to reach them not later than 15 days from the date the migrant workman ceased to be employed.

Audit observed that the Department issued licences to the contractors without ensuring whether the contractors possessed valid licence issued by a competent authority of the home State to recruit from that State for employment in Kerala. Submission of returns in Forms X and XI were not ensured in any of the six test-checked districts.

DLOs of all test-checked districts stated that while issuing the licence, it was not being verified whether contractors were holding licences obtained from the State where recruitment was made. DLOs, Kollam and Ernakulam stated that since the ISMW employed in the State were not recruited from their home States through contractors and came to the State on their own, the contractors employing them were not required to ensure licence from recruiting State, as envisaged by the Act.

The reply was not factually correct, as under Section 20 (2) (b), the Inspectors were to investigate and determine whether persons working in any premises were ISMW or not, which was not being complied with. This indicated that due attention was not given to the implementation of the provisions of ISMW Act/Rules.

The Labour Commissioner confirmed the fact of non-issuance of licence from home State in the Exit Conference (October 2017). He further stated that it was not proper to circumvent the provisions of the Act and issue licences without ensuring holding of licence from home State. Failure of the DLOs (Enforcement) to verify such licences issued from the home State resulted in inability of the Department to ensure that the benefits of displacement cum outward journey allowance, wages from date of

recruitment, etc.<sup>25</sup>, which the ISMW were entitled to, were received by them.

**[Audit paragraph 6.2.3.3 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

82) The Committee enquired whether the department ensured the possession of valid licence of the home State for the Contractors, while issuing licence to them. The Additional Labour Commissioner, Kerala State Labour Commissionerate replied that as per the Act, contractors from other State should obtain licence from the licensing authorities of the native State and it was not practical to ensure that stipulation.

### **Conclusion/Recommendation**

**83) No comments.**

#### **6.2.3.4 Delayed renewal of licence by the contractors**

As per Rule 14 (1) of the Kerala Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Rules (Rules), every Contractor may apply to the Licensing Officer for renewal of the licence and every licence renewed shall remain in force for a further period of 12 months from the date of order of renewal. As per Rule 14 (2), the application shall be submitted not less than 30 days before the date on which the licence expires. DLO (Enforcement) is the licensing authority under the Act.

Licences were being renewed to the contractors in delayed cases, on payment of a fee 25 per cent in excess of the fee ordinarily payable for the licence as per Proviso to Rule 14 (3) of the Rules. However, there was no system in place to ensure that all active contractors holding licences under the Act were renewing licences on expiry of validity period.

In Kozhikode, delay in renewal of licence ranged from one to two months while

---

<sup>25</sup> Sections 14 and 15 of the Act.

in Kannur, delay ranged from one to seven months. No data on period of delay in renewal was available with DLOs of Ernakulam, Kollam, Kottayam and Thiruvananthapuram. The DLO, Ernakulam stated (September 2017) that since there was no fixed date for renewal of licence, it was difficult to obtain renewal date in individual cases and that software update was essential for the same. The DLO Kollam stated (September 2017) that they were issuing notices to such contractors who were not renewing the licence after the due date, while the DLOs Thiruvananthapuram and Kottayam stated (September 2017) that the Department did not have any details on the renewal dates of licence, either in registers or in Labour Commissioner Automation System (LCAS). Audit observed that there was no monitoring mechanism in place to ensure timely renewal of licence. No monthly or quarterly returns/reports were prescribed.

The Labour Commissioner stated in the Exit Conference (October 2017) that reasons for not taking action against the contractors for delayed renewal of licences would be obtained from the respective DLOs.

**[Audit paragraph 6.2.3.4 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

84) When the Committee enquired whether any mechanism was adopted by the Department to monitor the renewal of licence by the contractors. The Additional Labour Commissioner, Kerala State Labour Commissionerate replied that if the licences registered with the Labour Department were not renewed even after issuing the notices, the said contractors were asked to renew the license directly and in delayed cases a penalty of 25% of the ordinary fees was being levied.

### **Conclusion/Recommendation**

**85) No comments**



#### **6.2.4 Implementation of welfare provisions and amenities**

Sections 13 to 18 of the Act stipulated the obligations of contractors in respect of the wages to be paid and welfare and other facilities to be provided to ISMW by the contractor.

In the six districts test-checked, there were 736 contractors holding licence and 420 principal employers registered under the Act employing 35,250 ISMW. Violations of some of these provisions, noticed in the course of audit are brought out below.

##### **6.2.4.1 Displacement allowance not paid**

As per Section 14 (1) of Act and Rule 50 of the Rules, a displacement allowance should be paid by the contractor to every ISMW at the time of recruitment, which would be equal to 50 per cent of the monthly wages payable to him or ₹75 whichever was higher. Each contractor was required to maintain a sheet for payment of displacement-cum-outward journey allowances in Form XV.

The DLOs (Enforcement) in the six districts test-checked admitted that Displacement allowance was not paid in any of the districts either by the contractor under Section 14 (1) or by the principal employer under Section 18, which dealt with the liability of the principal employer when the contractor failed to fulfil his obligations under Section 14(1). Joint inspection also revealed that contractors were not maintaining Form XV as required by the Act (Appendix III(2)).

Thus, it was clear that the Department was not performing its duty as prescribed in the Act, as the records checked during joint inspection did not reveal sufficient details in the matter.

##### **6.2.4.2 Journey allowance not paid**

As per Section 15, a journey allowance of a sum not less than the fare from the place of residence of the ISMW in his State to the place of work in the other State shall be payable by the contractor to the ISMW, both for the outward and return journeys and such ISMW shall be entitled to payment of wages during the period of such journeys as

if they were on duty. Also, as per Rule 50 of the Rules, every contractor shall maintain a register for return journey allowance in Form XVI.

In the six districts test-checked, there were 736 contractors holding licences under the Act and employing 35,250 ISMW during 2012-17. Audit observed that Journey allowance was not paid in any of the selected districts. Form XVI was not being maintained by the contractors in any of the six districts. No penalty was imposed by the Department under Sections 25 and 26 of the Act for contravention of Sections 15 and 18 (1) of the Act.

Government replied (October 2017) to paragraphs 6.2.4.1 and 6.2.4.2 that the ISMW Act will apply only if recruitment was made in the home State. Since majority of ISMW were recruited only after reaching the destination State, the provisions of the Act could not be made applicable in such cases. The above justification was not acceptable as the Labour Department failed to ensure that provision under section 20 (2) (b) of the Act requiring Inspectors to inspect premises and determine whether workers employed in such premises were ISMW or not, was complied with.

The Labour Commissioner admitted in the Exit Conference (October 2017) that the Department was not in a position to ensure payment of displacement allowance and journey allowance to ISMW, as licences from both home State and employing State as required under the Act were not being ensured. Audit observed that mere acceptance of inability to ensure payment of Displacement and Journey Allowances was inadequate justification for failure to discharge its duties of correctly identifying ISMW and ensuring payment of benefits to them.

No penalty was imposed by the Department under Section 25 of the Act for contravention of Sections 14 (1) and 18 (1) of the Act.

The Department may ensure that contractors maintained the required details regarding displacement/journey allowances in the prescribed forms so that payment of allowances entitled to the ISMW by the contractors, could be enforced and monitored

effectively.

#### **6.2.4.3 Provision of medical facilities not ensured**

As per Section 16 (e) of the Act and Rule 36 (1) of the Rules, medical facilities for outdoor treatment to ISMW were to be provided free of cost without fail as prescribed. As per Rule 36 (2), the contractor had to ensure that suitable arrangements existed to provide medical facilities for in-patient treatment.

As per Rule 36 (3) every contractor shall provide and maintain so as to be readily accessible during all working hours, first-aid boxes at the rate of not less than one box for 150 ISMW or part thereof. As per sub-section (4), the first-aid box was to be distinctly marked with a Red Cross on a white background and contain equipment<sup>26</sup> specified as per Rules.

On a joint inspection of Lulu International Mall Project site, Thiruvananthapuram, the first-aid kit was found in an unmarked box dumped on the ground. In Dharmashala Auditorium and Convention Centre, Kannur, Audit found that only three sterilised dressings were available, which were stacked between the roof tiles. No other prescribed equipment/medicines as per Rules were maintained.

Audit collected data on diseases prevalent among ISMW in the State. It was seen that the Directorate of Health Services, Thiruvananthapuram recorded 2,336 cases of malaria, 931 cases of filariasis, 5,202 cases of fever and 1,562 cases of Acute Diarrheal Diseases during 2012-17 among ISMW in the 14 districts. Kerala State AIDS Control Society's (KSACS) Migrant Targeted Intervention Projects under National AIDS Control Programme (NACP) recorded a total of 151 HIV positive cases and 6,352 cases of Sexually Transmitted Infections (STI) during the period 2012-17 among migrant workers.

Scrutiny of inspection files in six test-checked districts and replies to audit enquiries revealed that no records on medical facilities provided under the Act were

<sup>26</sup> Sterilized cotton and dressings, iodine solution, potassium permanganate crystals, adhesive plaster, scissors, burn ointment, snake-bite lancet, aspirin, antiseptic solution bottle.

being maintained by the establishments. Government replied (October 2017) that the inspectors were gathering details regarding medical facilities provided by employers and that no complaints had been received from workers in this regard. The reply was not acceptable because Government did not provide any records for scrutiny. In the absence of such records, Audit was not in a position to ascertain whether outdoor treatment was provided free of cost and medical facilities extended to in-patient ISMW.

**[Audit paragraphs 6.2.4 to 6.2.4.3 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

86) The Committee enquired whether the availability of medical facilities were ensured in the work places regularly by Government. The Additional Labour Commissioner, Kerala State Labour Commissionerate replied affirmatively. He added that if individuals registered under the Awas Scheme die accidentally or if they don't get required medical treatment, then financial assistance and medical facilities are also provided by the Government. The Secretary, Labour and Skills Department added that a maximum of ₹20,000/-is being provided for inpatient treatment in Hospitals.

### **Conclusion/Recommendation**

**87) No comments**

#### **6.2.4.4 Canteen facilities not provided**

As per Rule 40 (1), canteen shall be provided by contractor in every establishment where work was likely to continue for six months and where there were more than 100 ISMW. As per Rule 40 (2), if the contractor failed to provide canteen as per Rules, the same shall be provided by the principal employer, within 60 days of the expiry of the time allowed to the contractor.

Audit noticed during joint inspection that in Feroke, Kozhikode district, three



footwear manufacturing units employing 105-240 ISMW did not provide canteen facility to the workers. In Thiruvananthapuram district, inspections conducted in three out of 12 construction sites employing 100 to 500 ISMW revealed that food was provided under hygienic conditions only in one site. In Ernakulam district, of the 44 establishments engaging 100 to 2,500 ISMW, canteen facility was offered only in certain cases, the exact number of which was not available.

No action was taken by the DLOs/ALOs who were the inspecting officers under Section 20 of the Act, for violation of provisions contained in Rule 40 (1) and (2) by the principal employers/ contractors.

**[Audit paragraph 6.2.4.4 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

*[Notes received from the Government on the above audit paragraph are included as Appendix-II]*

*Excerpts from Committee's discussion with departmental officials.*

88) While considering the audit para, the Additional Secretary, Labour and Skills Department informed that presently canteen facilities were seen to have been ensured during inspection.

### **Conclusion/Recommendation**

#### **89) No comments**

#### **6.2.4.5 Issue of pass book to Inter-State Migrant Workmen - non-compliance of provisions**

As per Section 12 (1) (b), it shall be the duty of every contractor to issue to the ISMW, a pass book affixed with a passport size photograph of the workman. The Act specified that the pass book should indicate in Hindi and English and where the language of the workman was not Hindi or English, in the language of the workman, all particulars including benefits specified under the Act. Section 12 (2) required the contractor to maintain the pass book up-to-date and cause it to be retained with the

ISMW concerned.

Audit conducted joint inspection with the officials of the Labour department in the establishments at Thiruvananthapuram, Ernakulam, Kozhikode and Kannur and noted that pass books as required under the Act were not being issued. Replies furnished by DLOs of six test-checked districts confirmed that none of the 35,250 ISMW engaged by the principal employers were issued with Pass Books indicating that Government/Department failed in complying with the provisions of the Act. In the absence of maintenance of pass books, an assurance on benefits provided to ISMW could not be obtained in audit.

The Department needs to ensure that Pass books containing details of all benefits due to ISMW, are maintained and kept up-to-date by the contractors.

**[Audit paragraph 6.1.2.4.5 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-III]***

***Excerpts from Committee's discussion with departmental officials.***

90) The Secretary, Labour and Skills Department informed the Committee that the department ensured that the contractors were maintaining a passbook regarding all the benefits eligible to the workers, and Contractors were instructed to maintain the same at the time of registration itself.

### **Conclusion/Recommendation**

#### **91) No Comments**

#### **6.2.5 Quality of Inspections conducted**

As per Section 21 of the Act, ISMW were entitled to benefits of provisions contained in Workmen's Compensation Act, 1923, Payment of Wages Act, 1936, Employees State Insurance Act, 1948, Employees Provident Fund and Miscellaneous Provisions Act, 1952, Industrial Disputes Act and Maternity Benefit Act, 1961.

Audit noticed that the Inspectors did not check whether benefits of all the above Acts were extended to the ISMW employed in the establishments, as stipulated in the ISMW Act. While the Inspectors in Kollam and Kottayam did not exercise checks on provision of benefits stipulated by any of the Acts, the inspectors in Kozhikode conducted checks under the Payment of Wages Act only.

Government replied (October 2017) that the present staff strength of inspectors was too low to handle the huge influx of migrant workers and that measures to revamp the enforcement machinery of the Department to ensure safe and conducive work atmosphere and other welfare amenities to the migrant workers would be adopted. Reply of the Government that staff strength was inadequate was not acceptable, as it was incumbent on the Government to implement various provisions of the Act by exploring various ways and means to address the shortfall and enhance capacity building of the Inspectors.

#### **6.2.5.1 Shortfall in inspections conducted under ISMW Act**

As per Circular issued by Labour Commissioner (May 2015), a minimum of 50 establishments were to be subject to inspection per month to oversee the compliance of all 29 Labour Acts including ISMW Act. Scrutiny of records of inspections for the period 2012-17, revealed that inspections were not carried out regularly to verify compliance to provisions of the Act and Rules.

A comparative study of inspections conducted under the ISMW Act and other Acts in the Labour Department revealed meagre inspections under the ISMW Act. Scrutiny of records at the office of the Labour Commissioner revealed that departmental officers conducted inspections of 5,95,177 establishments under 28 other Labour Acts during 2012-17. In the absence of any specific norms on the number of inspections to be conducted under each Act, Audit worked out an average of 21,256 156 inspections per Act, under 28 other Labour Acts. Against this, the total number of inspections carried out under ISMW Act during 2012-17 was 5,561 only. It was also seen that the number of

Inspections conducted annually under ISMW Act showed a declining trend during 2014-17.

Government (October 2017) cited heavy work load due to multiplicity of Acts and Rules to be enforced by the department, shortage of staff and vehicles as reasons for shortfall in inspections. Non-compliance of provisions of Act/Rules citing shortage of staff/vehicles was not acceptable, as Government was required to provide requisite infrastructure to facilitate timely conduct of inspections.

**[Audit paragraphs 6.2.5 and 6.2.5.1 contained in the Report of C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

*[Notes received from the Government on the above audit paragraph are included as Appendix-II]*

*Excerpts from Committee's discussion with departmental officials.*

92) When the Committee wanted to know about the reason for the Shortfall in inspections conducted under ISMW Act, The Additional Labour Commissioner, Kerala State Labour Commissionerate replied that such observation was made by C&AG in 2017 and currently there existed only Centralised Inspection System.

### **Conclusion/Recommendation**

#### **93) No Comments**

#### **6.2.5.2 Non- Maintenance of records and registers**

As per Section 23 (1), every principal employer and every contractor shall maintain such registers and records giving such particulars of ISMW who were employed, the nature of work performed by such workmen, the rates of wages paid to the workmen and such other particulars in such form as may be prescribed. Registers were also to be maintained under Rules 47 to 51.

Audit noticed that as per provisions contained in the Rules, units registered under the Act had to maintain 14 records/registers in stipulated forms. Joint inspection conducted by Audit along with DLOs/ALOs in 20 establishments revealed that no registers/returns were maintained in 18 establishments. Seven registers/returns were seen



maintained in two establishments in Ernakulam. The details of registers and records to be maintained, persons responsible for the maintenance of records and the form in which registers were to be maintained in six test-checked districts are detailed in Appendix III(3). The DLOs who were the Inspecting Authorities failed to ensure compliance of provisions envisaged in the Act and Rules.

**[Audit paragraph 6.2.5.2 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

94) While considering the audit para, the Director, Factories and Boilers Department informed that Inspectors were seen to have verified the maintenance of records and registers during inspections. In addition, notices were issued for producing the records and registers. Actions including prosecution proceedings were also being initiated against those who failed to submit the documents.

95) When the Committee enquired whether the department had enough staff, the Additional Labour Commissioner, Kerala State Labour Commissionerate conveyed that the Department did not possess enough staff and the department was currently running with only 1057 employees and the last departmental reorganization had been done in 1980.

96) The Committee commented that steps should be taken to appoint the necessary staff for the effective functioning of the department. The Additional Secretary, Labour and Skills Department informed that the shortage of staff had been communicated to the Finance Department but they replied that it could be resolved as soon as the financial condition of the State improved.

### Conclusion/Recommendation

#### 97) No Comments

##### 6.2.5.3 Notices of conditions of work and abstract of Act and Rules not displayed

As per Section 23 (2) of the Act and Rules 53 and 54 of the Rules, every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the ISMW are employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed and also display abstract of Act and Rules. Joint inspection of 20 sites/factories with the departmental officers in Thiruvananthapuram, Ernakulam, Kannur and Kozhikode revealed that such notices were not being displayed in any of the sites. DLO was to initiate penal action under Sections 25 and 26 of the Act against the contractor and employer for non-compliance of provisions stipulated in the Act. Audit observed that no such action was initiated in this regard.

**[Audit paragraph 6.2.5.3 contained in the Report of C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

98) While considering the audit para the Committee enquired what action was taken against the contractors and employees for non-compliance of the provisions in the Act. The Additional Labour Commissioner, Kerala State Labour Commissionerate replied that during 2017, 270 investigations were conducted and 11 prosecutions were filed and they had been disposed of after levying ₹1000/- as fine, in each case.

### Conclusion/Recommendation

#### 99) No comments

#### **6.2.5.4 Penal provisions not imposed**

Sections 24 to 27 of the Act stipulated the penal provisions for contravention of the provisions of the Act.

Audit noticed laxity on the part of the DLOs/ALOs in enforcing penal provisions for violation of the provisions of the Act. There were very few convictions and prosecutions under the Act.

Section 29 of the Act stipulated that no Court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the inspector or authorised person concerned. Examination of 67 inspection files in the test-checked districts revealed that in 14 cases, the inspecting officers closed the files citing reasons such as expiry of time limit, migrant workmen leaving establishment following inspection, etc. It was observed that the offenses became time barred since the inspecting officers were lax in pursuing the cases and did not file cases in Court within three months from the date on which the commission of the offence came to their knowledge, as required by Section 29 of the Act.

Government replied (October 2017) that the present pattern of inspectors and staff of Labour Department was fixed without considering the large flow of migrant workers into the State and that the enforcement machinery of the Department would be revamped. The laxity of the inspectors in diligently pursuing cases and ensuring prosecution of offenders is a matter of concern and needed to be addressed, so as to ensure proper implementation of the Act.

#### **6.2.6 Conclusion**

Audit observed that the Department was lax in identifying ISMW and ensuring that the benefits under the Act were derived by these workers. The DLO (Enforcement) who was the Registering Officer appointed under Section 3 of the Act failed to evolve a mechanism to ensure that all establishments engaging ISMW were registered under the

Act. The Department issued licences to the contractors without ensuring whether the contractors possessed valid licences issued by a competent authority of the home State, to recruit from that State for employment in Kerala. Audit observed laxity on the part of Inspectors in diligently pursuing cases and ensuring prosecution of offenders under the Act. The implementation of the Inter-State Migrant Workmen Act in the State was, thus, not effective.

**[Audit paragraphs 6.2.5.4 and 6.2.6 contained in the Report of the C & AG of India for the year ended 31<sup>st</sup> March 2017(General and social Sector)]**

***[Notes received from the Government on the above audit paragraph are included as Appendix-II]***

***Excerpts from Committee's discussion with departmental officials.***

100) While considering the audit para, the Secretary, Labour and Skills Department informed that a penalty had been imposed under Rule 14 (3) if any violation of the provisions of the Act was noticed. The Committee enquired how the dead bodies of migrant workers were repatriated to their native places. The Additional Labour Commissioner, Kerala State Labour Commissionerate detailed that revolving funds had been allocated to each district under the Migrant Labour Welfare Scheme. Four lakh rupees had been allotted to the district labour officers of Ernakulam, Kozhikode and Thiruvananthapuram and Two lakh Rupees each to other districts. In case of the death of a migrant worker, the Assistant Labour Officer or District Labour Officer of the respective districts were authorised to grant a maximum of ₹50,000 for the repatriation of the dead body by air ambulance/road. Since 2018, fund for 176 such cases had been sanctioned.

101) Then the Committee commented that both the departments did not have enough inspectors to carry out inspections. The activities in the Labour Department and corresponding responsibilities had increased and so the number of employees should be increased accordingly. If it was difficult to appoint



employees permanently, other alternatives should be explored.

102) The Secretary, Labour & Skills Department informed that, a committee consisting of members from P&ARD and Finance Department under the chairmanship of the Chief Secretary had been constituted as a part of scientific governance in all departments. She added that if additional posts were needed in any department steps should be taken for redeployment. Committee commented that while renewing the licence of a factory, LSGI's should ensure that the factory has been registered under Labour and skills Department in the preceding year.

103) The Committee concluded that there should be no compromise in the welfare of the workers, when laws beneficial to businesses were implemented.

#### **Conclusion/Recommendation**

104) No comments.

Thiruvananthapuram  
gh October 2024.

SUNNY JOSEPH,  
Chairperson,  
Committee on Public Accounts.

**APPENDIX II**  
**Notes Furnished By Government**

**LABOUR AND SKILLS (B) DEPARTMENT**

**Action Taken Report on Para 6.1 in the report of the Comptroller and Auditor General for the year ended 31<sup>st</sup> March 2017-Role of Factories and Boilers Department in the safety of factory workers**

Para	Audit Findings	Action Taken
<p><b>6.1.3</b> <b>6.1.3.1</b></p>	<p><b>Registration and Renewal</b></p> <p>Factories operating without obtaining registration under the Act. Section 2 (m) of the Factories Act, 1948, defines a 'factory' as any premises including the precincts wherein 10 or more workers are/were working on any day of the preceding 12 months and where a manufacturing process is carried out with the aid of power. In cases where the manufacturing process was carried out without the aid of power, the Act provided for reckoning any premises as a factory where 20 or more workers were engaged in the manufacturing process. Government of Kerala (GOK), in exercise of powers conferred under Section 85 (1) of the Act, enlarged (August 2008) the scope of definition of 'factory' to include factories engaged in hazardous manufacturing process employing three or more persons whether using power or not. Also, factories engaged in nonhazardous manufacturing process employing three or more persons but less than 10 when power was used and less than 20 when power was not used were to be reckoned as 'factories' for the purpose of the Act. Thus, 96 manufacturing processes, both 'hazardous' and 'non-hazardous' were brought under the definition of 'factories' for the purpose of implementation of the Act.</p>	<p>As on December 2018, 23,778 factories in the State are registered under the Factories Act, 1948 and Kerala Factory Rules, 1957. Eventhough the department has 22 Inspectors and 25 Additional Inspectors to inspect these 23778 factories, the current scenario is that each inspector has to inspect more than 500 factories in a year. Two or three taluks in a district falls under the jurisdiction of each division of Factories and Boilers. The Inspectors have not allotted official vehicles for inspection. They use the public transport system in the State to inspect the registered factories and to locate new factories under the Act. As per Section 85 of the Factories Act, only 96 manufacturing processes have been brought under the Act. All non hazardous factories having three or more workers and all hazardous factories come under the factory laws. When such factories are registered with the Industries Department, there is a question as to whether the application come within the purview of the Factories Act, but most of the factories are registering with the Industries Department answer "Not" applicable. More over, if those factories comes under the purview of the Factories Act, the factory owner will be responsible for running the factory</p>

Rule 5 (3) of Kerala Factories Rules, 1957, stipulates that no manufacturing process shall be carried out in any factory without a licence granted by the Chief Inspector or the Deputy Chief Inspector of the Regional Office concerned. Rule 4 under Kerala Factory Rules, 1957, stipulated that the occupier of every factory shall submit to Chief Inspector or Deputy Chief Inspector an application for registration and grant of licence.

In the test-checked divisions, Audit observed that though 185 factories were identified by the Department during 2012-17, these were not registered (March 2017). Audit conducted joint field visits with the Inspectors of Factories and Boilers of the test-checked six factory divisions and detected an additional six unregistered factories (two in Kozhikode, two in Kundara, one in Ottappalam and one in Thiruvananthapuram) in four divisions. The existence of more such unregistered factories cannot be ruled out.

Records available with the Labour Department revealed that only 22,545 factories were registered with the Labour Department (as of February 2017) under the provisions of the Factories Act. Audit obtained information from the Director of Industries and Commerce which confirmed to Audit (August 2017) that out of 1,19,924 Micro, Small and Medium Enterprises (MSMEs) operating in the State, there were 79,010 Manufacturing Units with three or more employees as on 18 September 2015. Audit observed that these MSMEs could qualify as 'Factories' either under Section 2 (m) of the Factories Act or under the enlarged definition of 'factory' as ordered by GOK. The registered factories were bound to comply with all the norms specified in the Act and Rules including provisions relating to safety of the workers. Non-

without factory licence. Such factories are usually brought under the Factories Act during the time of Inspection by the Factory Inspector or during the Squad inspection team. Instructions are being given to those factories through media to register and also special Adhalats are being organised by the department for it.

The findings of the inspection of micro, small and medium enterprises operating in the state are as follows;

- 1) It has been found that most of the factories according to the database become idle as soon as they start functioning. If a database had been prepared based on the factories presently working in the state, the list would not have included inactive factories.
- 2) Most of the factories are involved in agriculture and service sectors which do not have manufacturing process
- 3) As the number of workers is not mentioned in the list provided by the Industries Department, the inspection has found that many factories have less than three workers. Those factories do not come under the purview of Factories Act, 1948.
- 4) According to the Annual Survey Report (2014-15) of Department of Economics and Statistics, Government of Kerala, only 7295 factories are coming in manufacturing sector.
- 5) while examining the number of membership in various industrial organizations (including Kerala small scale Industries Association), it is understood that only about 15000 factories have taken membership.

registration would lead to non-compliance on the part of the occupier and non-monitoring by the Department.

GOK replied (October 2017) that the figures as furnished to Audit by the Director of Industries and Commerce were not correct and that as per Section 85 of the Factories Act, only 96 manufacturing processes were brought under the purview of the Act. These 79,010 units were stated to be outside the purview of the Act since they do not come under the said 96 processes.

Audit filtered the data on the basis of the manufacturing processes specified under Section 85 of the Factories Act and it was noticed that there would be 70,153 factories liable for registration under the Act. Thus, the Labour Department failed to ensure registration of at least 47,608 factories under the Act.

The audit observation was also discussed in detail during the Exit Conference held on 26 October 2017 wherein it was agreed that the database containing the details of 70,153 factories would be examined by the Factories and Boilers Department for verification at the field level. Audit observed that despite it having submitted (October 2017) soft copy of data relating to the MSME Units to the Director of Factories and Boilers with request to intimate the result of verification, the same is yet to be furnished.

Thus, failure of the Department to identify and ensure registration of factories under the Factories Act resulted in their inability to enforce the safety provisions contained in the Act in respect of at least 47,608 factories, thereby putting the lives of workers working in these factories as well as those staying in the neighbourhood at risk. Further, the State has foregone registration charges of at least ₹ 1.43 crore due to its failure to register these factories.

6) While checking the Accident Statistics of previous years, the risk of accidents was very low in the factories coming under MSME units .

The existing inspectors in the department are taking steps to locate the factories in the database using the facilities available to them. To ensure its efficiency, all factory inspectors are given a liability clause based on the minimum fee amount to be collected from the factories under their jurisdiction. They were also warned that it would become their liability if the factories under their jurisdiction were not inspected. Steps are being taken to locate factories as per the database containing information of micro, small and medium enterprises operating in the State within the existing limits and bring them under the purview of the Act.

During inspection, it was seen that out of the list of factories provided by the Industries Department to the Accountant General, only 15-20% of factories were seen unregistered under the Factories Act. As per the list of MSME factories provided to the Accountant General by the Office of the Director of Commerce, 23115 factories were inspected till 31.03.2019. Out of these, only about 20% of factories were found to fall under the Factories Act. Most of the remaining factories were not covered under the Factories Act and or were shut down for various reasons after registration from the Industries Department. Out of those 23115 factories inspected, 2679 factories have taken registration steps. About 80% of the factories inspected were not coming under the purview of Factories Act and or those were shut down. The Accountant General's conclusion is



that the State has to get ₹ 1.43 crore mentioned in the audit monitoring as registration charge.

From the facts mentioned above, no such loss can be seen. However, in view of the seriousness of the matter, steps will be taken to maintain due vigilance at the departmental level.

### 6.1.3.2 Non-renewal of factory licences

Rule 7 of Kerala Factories Rules, 1957, stipulated that the occupier of every factory shall submit to the Chief Inspector/Deputy Chief Inspector an application for renewal of licence, not less than two months before the date of expiry of the licence by submitting prescribed documents and remitting the prescribed fee. A scrutiny of the Demand, Collection and Balance (DCB) register revealed that 878 out of 22,545 registered factories were yet to renew their licences (March 2017), resulting in non-collection of revenue 137 amounting to ₹ 98.41 lakh. Analysis of pendency details revealed instances of non-renewal from as early as 2001.

GOK cited (October 2017) shortage of transportation facilities and manpower in the enforcement wing, non-functioning of majority of defaulting factories and disputes regarding ownership, partition, lease, legal-heirship etc., pending before various courts as reasons for non-renewal of licences. In its reply, the Department stated (December 2017) that 369 of these factories were not working and 67 factories did not renew their licences due to pending court cases. Audit observed that as per Rule 12 D of Kerala Factories Rules, 1957, if a factory was lying idle for a period exceeding one calendar year, the Chief Inspector may, after satisfying himself

Very few factories remain to renew their licenses for the year 2017. Most of them are closed and licenses have been revoked. Some of the factories were not renewed due to the non completion of transfer process due to delay in producing documents required for transfer of licenses (like Legal heir Certificate) and some others due to pending cases in courts. Therefore, the claim that ₹ 98.41 lakh was not collected is not correct. The license renewal process for next year begins in October each year. By December 31, 97.5% of factories have completed the renewal process and are renewing their licenses. The remaining 2.5% of factories are inactive or have not renewed their licenses due to transfer of licenses and pending cases in the courts. Letters and show cause notices are issued to such factories and the factories which have not provided a satisfactory reply are inspected and necessary action is taken. Factories that do not apply for renewal by 31<sup>st</sup> October is charged an additional fee of 25% and factories that do not apply for renewal by 31<sup>st</sup> December is charged an additional fee of 50%.

Factories operating without renewing their licenses are inspected and prosecuted by the inspectors. Legal notices

	<p>of the bonafides, suspend the licence for one or more licensing periods. Audit also observed that the Director was lax in initiating penal action under Section 92 of the Factories Act against the remaining 442 unlicensed factories, which failed to renew their licences, punishable with imprisonment for a term which may extend to two years or with fine of upto Rs.one lakh or with both.</p> <p>Audit feels that the Government should provide transport facilities and adequate manpower to the Factories and Boilers Department, enabling it to perform its statutory duty of registration of factories for ensuring safety of workers. Government should review all cases of non-registration of factories and take appropriate action as per provisions of the Act and Rules.</p>	<p>were issued by the Inspectors/Additional Factory Inspectors to non-functioning factories without legal renewal and recommend renewal, suspension or cancellation if they wish to operate in the future. Accordingly, the Director / Joint Director will cancel the registration of factories under Section 2M / Section 85 respectively. In case of such applications, timely cancellation and cancellation information is updated in the on-line system of the department. In case of violation of factory law in the factories, the concerned inspectors / additional inspectors take prosecution steps and file petition before the Hon.Court. Punishment for this is taken by the concerned court. It has also been noted that due to the major crisis in the Cashew Industry, the owners have failed to renew their factory licenses.</p> <p>Divisional Factory Inspectors of Factories &amp; Boilers are given a travel allowance of ₹ 2260 / - for factory inspection. In the current financial situation of the government, the current system can only be continued. As the financial situation improves, allotment of vehicles to Factories &amp; Boilers inspectors and providing more employees will be considered. Steps have been taken to inspect the factories in a timely manner using the available resources.</p>
6.1.3.3	<p><b>Factories carrying out additional manufacturing process without registration/licence</b></p> <p>Rule 6 (2) of the Kerala Factories Rules,1957, stipulated that licences granted under Rule 5 were to be amended in the event of change with regard to power utilised or the number of persons employed or changes in the name of the factory. Audit</p>	<p>It is the legal responsibility of the factory owners to inform the factory Inspector/ Additional Factory Inspector concerned in case of any change in the name of the factory or change in manufacturing process or change in power or</p>

	<p>noticed during joint inspection along with departmental officers that 14 factories were carrying out additional manufacturing processes other than those for which licences were issued. The Department did not identify such activities and ensure safety measures to be undertaken for the additional manufacturing process. In the test-checked divisions, 14 out of 90 factories were found to be engaging upto 10 additional workers than permitted in their licences. Licences of such factories were not amended in line with the stipulations contained in Rule 6 (2). The safety of workers in these factories was thus compromised.</p> <p>GOK stated (October 2017) that the additional manufacturing process in a factory could be included in the licence while submitting the application for power amendment by factory management. The reply was not correct as GOK placed the onus on the factory management to get the licence amended in the event of additional manufacturing process. GOK, however, confirmed that it was the duty of Inspectors to take appropriate action if it was found during inspections that the factories were engaging more number of workers than permitted, as per licence.</p> <p>Audit observed that GOK was bound to comply with Section 92 of the Factories Act, which required such contraventions of the Act to be punishable with imprisonment for a term, which may extend to two years or with fine of up to ₹ one lakh or with both.</p>	<p>change in number of employees to make necessary amendments in the permit and license. But the factory owners do not inform such changes in time. Those violations are found and rectified only when such irregularities are found during inspection and sufficient instruction are given through inspection order and in such cases 100% additional fee is also charged. Any change in the name of the factory or change in manufacturing process or change in power or change in number of employees are not detected timely since the inspectors are not able to visit the factories in their jurisdiction atleast once in an year. At present, an inspector has to inspect over 500 factories a year. Factories are inspected using the existing public transport facilities in the state. Therefore, inspectors can inspect only about 55% of the factories within their jurisdiction within a year. At present all the factory Inspectors and Additional Factory Inspectors have been given instruction in this regard and they are fulfilling their responsibilities accordingly.</p>
<p><b>6.1.3.4</b></p>	<p><b>Factories operating without addressing Environmental issues</b></p> <p>As per Rule 5 (1) of the Kerala Factories Rules, 1957, a licence for a factory may be granted on an application made in</p>	<p>The registration of factories and the renewal of licenses are affected based on the documents insisted in paragraph 8</p>

the prescribed Form No. 2 after ensuring that the applicant obtained approval of the plans of site and building and disposal of effluents by the concerned authorities including the Kerala State Pollution Control Board (KSPCB). While Rule 7 (1) provided for licences to be renewed by competent authority, Rule 7 (2) specified that every application for the renewal of licence shall also be in the prescribed Form No. 2. Thus, the licensing authority under the Factories Act was bound to obtain assurance that the applicant for registration and renewal of licence had obtained consent of KSPCB before renewing the licence.

Section 12 of the Factories Act, 1948, provides that arrangements should be made in every factory for treatment of wastes and effluents and for its effective disposal. As per Sections 25 and 26 of Water (Prevention and Control of Pollution) Act, 1974 and Rules framed thereunder, every factory should obtain Consent to Operate (CTO) from KSPCB before commencement of operations and the same was to be renewed on expiry of CTO.

Details collected (July 2017) by Audit from the district offices of KSPCB at Thiruvananthapuram, Kollam and Ernakulam, revealed that 449 factories were operating without obtaining CTO as mandated. Joint inspection by Audit along with department authorities revealed that five 138 out of 90 factories were operating without obtaining CTO from KSPCB. The KSPCB also withheld consent (as of July 2017) to 168 factories in Kollam district and three factories in Thiruvananthapuram district either for want of renewal application or noncompliance with previous consent conditions.

Grant of licence by the Factories and Boilers Department

of Forum 2 of the Kerala Factories Rule, 1957. As per the Kerala Factories Rule, only legally applicable documents are required for registration and renewal of license. The State Factory Rule has been prepared by each State Government by making necessary amendments to the Model Rule prepared by the Director General under the Ministry of Labour. All the states in India follow the same rule. The Director of Factories & Boilers has sought the advice of the Director General in this regard. The Government has directed the Director of Factories & Boilers to ensure the renewed number and date in the Consent Letter of Pollution Control Board is incorporated on the prescribed column in Form No.(2), for registration and renewal of the factory. The Director has informed that the same has been implemented in the Department.



	<p>was subject to the factory obtaining requisite clearances from KSPCB, Fire and Rescue Department, etc. Laxity of the Department in renewing licences without ensuring compliance to the safety provisions contained in the Factories Act was significant when seen against the fact that of the 28 test-checked factories where the manufacturing process was classified as hazardous, the department renewed licences of 20 factories without ensuring valid CTO for the factories from KSPCB.</p> <p>Government stated (October 2017) that since Rule 7 (1) did not require No Objection Certificate (NOC)/Consent from KSPCB for renewal of licence, renewing authority was not empowered to ensure or ask for NOC/Consent from KSPCB for renewing the licence. It was also stated that as part of Ease of doing Business, Government decided to avoid the NOC/Consent from KSPCB since it was the duty of these departments to ensure that their statutes were being complied with by the management.</p> <p>The decision of GOK to avoid NOC/Consent from KSPCB as part of Ease of doing Business was not acceptable since it was to comply with the provisions of extant Rules. Rule 7 (2) stipulated submission of Application for renewal of licence in Form No. 2, and as Form No. 2 required the applicant factories to furnish details of KSPCB/environmental clearances, etc., the Department was bound to ensure the same before renewal of licence</p>	
<b>6.1.3.5</b>	<p><b>Installation of additional equipment in the factories without consent</b></p> <p>Rule 3 (1) and 3 (8) (b) of the Kerala Factories Rules, 1957, states that previous permission shall be obtained for the</p>	<p>It is the legal responsibility of the factory owners to inform in time, the matter of installation of additional</p>

<p>installation of additional machinery or a permanent fixture. Audit noticed during joint inspection alongwith the Inspector of Factories and Boilers that three 139 of the test-checked 90 factories installed new machinery without the consent of the Department. In two of the three cases, new machinery was installed which warranted increase in power consumption and required both amendment of licence and payment of additional fees. In the case of M/s. Variety Pharmaceuticals Pvt. Ltd., Audit noticed that three new machineries were installed. The Department later clarified (December 2017) that one of the newly installed machineries was in replacement of an existing machinery. The fact, however, remains that two additional machineries were installed at M/s. Variety Pharmaceuticals Pvt. Ltd., without the consent of the Department.</p> <p>GOK replied (October 2017) that most of the Inspectors verified approved plans during routine inspections, identifying such installations and filing prosecution cases. The reply was not acceptable since joint inspection by Audit identified factories, which installed new machinery and the Department failed to detect the same.</p>	<p>machinery in the factory and or to increase power consumpton, before the officers concerned and thereby make necessary modification in the permit or license . But the factory owners do not inform the concerned office about such changes in time. Such changes are detected during the inspection by the factory Inspector and necessary amendments are made to the license. When such irregularities are found during inspection, sufficient instructions are given through inspection order and an additional fee of 100% of licence fee is also charged. It has been reported by the Audit team that the concerned Inspectors have levied fines and made necessary modifications in the permits and licenses of all factories concerned. In addition , all Factory Inspector/Additional Factory Inspectors have been strictly directed to take prosecution steps if any violation of the factory rules is detected during the time of factory inspection.</p>
<p><b>6.1.4 Ineffective enforcement of safety norms</b></p> <p>The provisions in the Factories Act, 1948, prescribed installation/availability of different equipment/articles for health, safety, etc., of the workers. The Director issued (June 2015) instructions that the Factory Inspectors were to inspect each factory under their jurisdiction at least once in a year to ensure availability and functioning of the prescribed safety equipment/articles. Audit noticed that during 2012-13 to 2015-16, 1,445 accidents had occurred in which 114 workers lost their lives. Records of factories under the jurisdiction of</p>	<p>It is the responsibility of the factory owner and manager to provide the equipment / materials required by law for the safety of the workers. Inspectors / Additional Factory Inspectors provide necessary instructions to the factory management during the factory inspection within the existing limits to ensure the health, welfare and safety of the workers. It was also reported that from all the factories detected by the audit team the concerned inspectors had levied fines and made necessary modifications in the permits and licenses. In</p>

	<p>six test-checked factory divisions and joint physical inspections of 90 factories conducted by Inspectors of Factories and Boilers in the presence of Audit, revealed deviations from safety standards stipulated in the Act in 81 out of the 90 factories.</p> <p>Audit found during joint inspection that in 24 of the test-checked 90 factories, firefighting equipment like fire buckets or extinguishers were not provided. While fire extinguisher in 18 factories were not found refilled after their expiry dates, the fire buckets in 10 factories were poorly maintained i.e., the buckets were either not filled with water/sand or the sand had turned hard due to non-replacement. Audit also found during joint inspection that in 26 of the test-checked 90 factories, which were functioning as metal crusher units, saw mills, ice plants, soap manufacturing units, spinning and weaving mills, etc., personal protective equipment (PPE) like face masks, hand gloves, safety shoes and goggles were not provided to the workers. Moreover, workers in 20 other factories were not using the PPE despite these being provided to them. Other significant irregularities noticed during joint verification of test-checked factories are given below.</p>	<p>addition, all officers have been directed to take prosecution action if any violations of factory rules are found during the inspection by the Factory Inspector / Additional Factory Inspectors. Such instructions are given to the factory management by inspection order and they are checked and ensured that they are complied with. The Department conducts regular training programs for factory management, workers and trade union representatives to create safety awareness among the workers. But a huge portion of workers in factories in the state are migrant workers. The changing locations and areas in which they work are to some extent an impediment to the use of available training. However, the department is organizing and providing necessary training programs to ensure safety in the workplace using the facilities available.</p>
<p><b>6.1.4.1</b></p>	<p><b>Defective observation of Inspectors of Factories and Boilers</b></p> <p>Audit observed during joint inspection that in two140 of the test-checked six ice manufacturing plants, the outlet of the safety valve of compressed ammonia tank was not connected to a drum containing water which was accepted as a violation of prescribed safety standards by the Inspectors of Factories and Boilers. However, during the Exit Conference (October 2017), the Director clarified that the suggestion of the</p>	<p>The recommendation to "connect the safety valve outlet of a compressed ammonia tank to a drum containing water" in ice making plants is not included in the Factory Act, Regulation or Guidelines issued by the Department as a safety standard. However, the Director informed that on the basis of the above observation, all the Inspectors / Additional Inspectors have been given clear instructions in this regard.</p>

	<p>Inspectors to the factory owners to immerse the safety valve in water tank was erroneous since it could lead to reverse flow of water and cause explosion.</p> <p>Audit observed that insistence of the Inspectors for compliance to such defective orders could result in explosions in factories. The Director admitted during the Exit Conference (October 2017) that it was a mistake on the part of the Inspectors and corrective orders would be issued immediately.</p>	
<b>6.1.4.2</b>	<p><b>Non-fencing of machines with dynamic parts</b></p> <p>Rule 54 of the Kerala Factories Rules, 1957, specifies that parts of machinery in motion and within reach are to be securely fenced or protected. Out of the test-checked 90 factories, it was found that 36 factories did not fence the machines and conveyer belts in violation of the norms. Failure to adhere to safety regulations led to fatal accidents in certain instances.</p>	<p>According to the Factory Act and the Kerala Factory Rules, it is the sole responsibility of the factory owner and manager to secure or protect the moving and accessible parts of the machinery with a fence. During the factory inspection, the officers give the factory management necessary instructions to ensure the health, well-being and safety of the workers. The Inspector / Additional Inspectors recommend that the rotating and out-of-reach machinery parts found during the inspection be covered with a safety fence. But reducing or eliminating such safety equipment by the workers themselves as part of making the job easier often leads to accidents. Factories and Boilers Dept. have issued strict instructions to the factory management to comply with the safety precautions. Violators are subject to strict action, including prosecution.</p>
<b>6.1.4.3</b>	<p><b>Non-fencing or absence of covering for tanks</b></p> <p>Section 33 of the Factories Act, 1948, specifies that in every factory, every fixed vessel, sump, tank, pit or opening in the ground or in a floor, if it is a source of danger, shall be either securely covered or fenced. Out of the test-checked 90 factories, it was found during joint physical inspection that</p>	<p>The factory owner and factory manager are solely responsible for ensuring that the storage tanks, tanks and pits located near or outside the factory are covered with slabs or secured with safety fences to avoid any hazards. However, the Factory Inspector / Additional Factory Inspectors provide</p>



	<p>slurry tanks or drains were not fenced or covered in seven factories, thus posing risk of fall and injury. Audit also came across a recorded instance of violation of safety provisions at M/s. Karthika Granites, Vayyanam, Kundara where death (May 2016) of a worker occurred by falling into the sand wash concrete tank, which was left open.</p>	<p>the necessary legal instructions to the factory owners. The department has noticed that the workers are negligent in opening such tanks or tanks for cleaning etc. and then securing and covering them. The Factory Inspector / Additional Factory Inspectors take action, including prosecution, in the event of an accident in which the factory owner and manager do not fulfill their legal obligations.</p>
<p><b>6.1.4.4</b></p>	<p><b>Non-provision of sufficient equipment to Inspectors</b></p> <p>Factories Act and Rules specify minimum level of light intensity, sound pressure level and amount of combustible gases in air to which a factory worker could be exposed. This is applicable to factories where manufacturing process involves high noise levels or produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition. It was found that against the requirement of at least 22 each of lux meters, decibel meters and explosimeters only 15 lux meters, 15 decibel meters and five explosimeters were available at the Regional Offices. Out of these, five lux meters, five decibel meters and three explosimeters were not functioning. Out of the test-checked six factory divisions, three divisions 141 did not have equipment to measure the level of light intensity, sound pressure level and amount of combustible gases. Hence, the Inspectors were not in a position to identify the hazardous level of light intensity, sound pressure level, etc., during their inspections.</p> <p>Government replied (October 2017) that these equipment were supplied to inspectors of Regional Safety Cells and Industrial Hygiene Lab (IHL) at Kollam. It was also stated that the local Inspectors could make use of services of the</p>	<p>As mentioned in the report, the divisional Inspectors with Mechanical Engineering degrees do not have the technical knowledge to use most of the equipment, such as the officers like Chemical Engineer, Medical Officer, Industrial Hygienist and Chemist, in the Safety Cell and Industrial Hygiene laboratory. The training is provided to the officers in the Safety Cell and Industrial Hygiene Lab, including Chemical Engineer, Industrial Hygienist and Chemist. Samples such as dust, chemicals, fumes, and vibrations, which are collected from workplaces, processed in labs, and certified legally by chemical inspectors and industrial hygienists. At present the newly established Industrial Hygiene Laboratory is equipped with various equipments including Lux Meter, Sound Level Meter and Explosive Meter. Chemical Engineers, Industrial Hygienists and Chemists with technical knowledge were Appointed and also provided vehicle facilities. So it is informed that there has been no negligence on the part of the department in this regard.</p>

	<p>Inspectors of Regional Safety Cell and IHL in suspected cases, where the level of hazard was above the admissible level. The reply was not acceptable as these handheld machines could be carried by the local inspectors themselves during inspections and the Inspectors need not depend on the services of Inspectors of Regional Safety Cell or IHL for detection of violations. Audit recommends that the Department may make available adequate number of lux meters, decibel meters and explosimeters and issue strict instructions to local Inspectors to make use of these equipment during inspections.</p>	
<p><b>6.1.5.</b> <b>6.1.5.1</b></p>	<p><b>Monitoring and Inspection</b> <b>Inadequate training on safety to the workers</b></p> <p>As per Section 111A of Factories Act, 1948, every worker shall have the right to get trained within the factory wherever possible, or to get sponsored by the occupier for getting trained at a Training Centre or Institute duly approved by the Director of Factories and Boilers, where training is imparted for workers' health and safety at work. Audit observed that only one training centre at Thiruvananthapuram was approved by the Department for this purpose. Audit noticed that the Department had imparted training on safety to only 2,713 out of 6,98,263 workers covering 256 factories during 2012-13 to 2016-17 (0.40 percent).</p> <p>Ensuring compliance to safety norms by factory workers required adequate training to be imparted to them. During Exit Conference, the Director stated (October 2017) that in many cases, workers were themselves violating safety norms and there was a need to bring about attitudinal change through training. Audit observed that inadequate training to workers would lead to lack of awareness of safety measures to be</p>	<p>The department provides training programs to ensure the health, well-being and safety of the workers. In the year 2018, maximum awareness training programs have been conducted to factory workers, trade union representatives and supervisors through Regional Training centers and using the department's mobile training vehicle "Suraksharatham" by using the plan funds allocated in the budget. In the year 2018, 117 training programs have been organized in various districts of the State for the safety of the workers in various sectors and 3510 workers have been trained through these training programs. In addition, under the supervision of the Regional Joint Directors, 30 training programs were conducted at their three training centers, industrial estates and various factories, providing training to 1,050 workers.</p>

	adopted by them during work.	
6.1.5.2	<p><b>Shortfall in conduct of Medical Surveys and identification of Occupational Health diseases</b></p> <p>Administrative sanction was accorded to the Department to conduct 'Industrial Hygiene cum Health survey' for the years 2015-16 and 2016-17 to initiate measures for prevention of occupational diseases, protection of health of workers, compilation of statistics of occupational diseases, etc. Accordingly, seven medical camps each were conducted for workers in Cashew and Stone Crusher Industries during the above two years for detection of occupational diseases.</p> <p>The survey for the year 2015-16 detected four cases of Silicosis<sup>142</sup> in the State among workers in the Stone Crusher Industry<sup>143</sup> with more number of such cases not being ruled out. Recommendations were also made in the survey report on conducting work environment monitoring to be done in factories employing such persons, etc.</p> <p>Audit noticed that the Sub Regional Office, Kozhikode of ESI Corporation also identified (April 2017) seven cases of occupational diseases including three cases of Byssinosis<sup>144</sup>, one case of Sensory Neural Hearing Loss, etc. The Sub-Regional Office, Kollam also identified an instance of Byssinosis.</p> <p>Since the List of Notifiable diseases under the Schedule III of the Act contains a list of 29 hazardous diseases and in view of identification of the prevalence of such diseases among the employees of factories, Audit feels that it was imperative for the Department to conduct more such surveys followed by adequate medical treatment of workers for preservation of health of the workers.</p>	<p>The Department hopes that with the commissioning of the Occupational Health and Research Center at Kollam, a large percentage of the workers in the factories operating in the State will benefit from it. During the year 2018-19, the department had organized more than ten medical camps in various Districts of Kerala in the areas of cashew, coir, fish processing and packing. The camps were organized with the assistance of the Medical Officers of the Department and the Specialized Medical Officers of the Insurance Medical Services Department. As the Occupational Health and Research Center becomes more operational, it will be possible to prevent occupational diseases as mentioned in the third Schedule to the Factory Act and to prevent occupational diseases in the Industrial Sector Kerala, to protect the health of the workers and to carry out the necessary tests for early detection of occupational diseases. In order to get rid of such diseases to the workers, the recommendations made by the Industrial Hygiene Surveillance in workplaces can be implemented by amending the rules to save the future generation from occupational diseases.</p>

### 6.1.5.3 Unfruitful expenditure of ₹ 4.15 crore on Occupational Health and Research Centre

Section 41B of the Factories Act stipulated that the occupier of every factory involving a hazardous process shall identify health hazards and the measures to overcome such hazards. Since occupiers were not giving importance to monitoring of the health status of workers and recognising the need to provide individual units with proper occupational health care, the Director of Factories and Boilers submitted (July 2012) a proposal to Government of Kerala (GOK) for establishing Occupational Health and Research Centres (OHRC) at Kollam, Ernakulam and Kozhikode. The OHRCs were proposed to be established to provide pre-employment and periodical medical examination for all workers employed in dangerous operations, investigate cases of suspected occupational diseases, provide health education to management and workers, health training to workers and other staff, conduct occupational health survey, etc.

It was noticed during audit that GOK accorded (March 2014) Administrative Sanction for construction of a building for setting up an OHRC at Kollam at a cost of ₹ 2.69 crore. The work of construction of OHRC building was entrusted to KESNIK145 and the construction was completed (July 2014) at a cost of ₹ 2.45 crore. GOK also issued administrative sanction (August 2014) for the purchase of equipment for the OHRC against which procurement of Office/medical equipment costing ₹ 1.70 crore was made. Audit observed that the failure of GOK to provide requisite manpower by way of sanction and recruitment of 12 staff members including Medical Officer, Male Nurse, Occupational Health Technician,

The Occupational Health and Research Center aims to provide medical check-ups before and after work for all workers, working in hazardous conditions and environments, to provide a detailed examination of workers suspected of having occupational diseases, to provide health education to management and workers, provide health care to workers and other employees, and conduct occupational health surveys. The construction of the Occupational Health and Research Center at Kollam is fully operational. 7 posts including Joint Director (Medical) in Thiruvananthapuram Office, has been shifted to Occupational Health Research Center, Kollam as per Government Order No.659/2019/LBRD Dated 10.06.2019. In addition, the Department of Finance had recommended that the research / studies conducted by the Occupational Health Research Center be examined for feasibility (by payment) by any of the existing health institutions in Kerala. A meeting on this subject is being held on 19/7/2018 under the chairmanship of the Hon'ble Minister and steps are being taken to activate the Kollam OHRC Lab in association with the ESI Hospital. Currently a medical officer with a postgraduate degree in Radio Diagnosis has been appointed on contract basis to coordinate the day to day operations of the this institution. Steps have been taken to register and operate the ultrasound machine at the center. By shifting 7 posts including Joint Director (Medical) in Thiruvananthapuram office to Kollam Occupational Health Research Center and appointing a post graduate medical officer in Radio Diagnosis to operate the OHRC, this lab has been able to provide the services envisaged to the workers and thereby effectively mobilize the ₹ 4.15 crore



	<p>Field Assistant, Lab Technician, Driver etc., as proposed by the Director (July 2012), resulted in non-commissioning of OHRC leading to blocking up of ₹ 4.15 crore and inability to render envisaged services.</p> <p>Government while accepting (October 2017) the audit observation, informed Audit (March 2018) that a proposal for creation of posts for the OHRC at Kollam was since received from the Director of Factories and Boilers and the proposal was under examination.</p>	<p>spent on OHRC.</p>
<p><b>6.1.5.4</b></p>	<p><b>Shortfall in conduct of Inspections</b></p> <p>The powers assigned to the Inspector under the Act include authority to enter any place which is used or which, he has reason to believe, is used as a factory. The Inspectors, thus, play a significant role in the identification of factories and detection of violations of the provisions of the Act. A work study report of the Personnel and Administrative Reforms Department (P&amp;ARD) fixed (February 1993) the norm for inspection as 150 factories per year for each Inspector and the same was accepted by GOK in February 1993. In January 2017, GOK stated that since online licensing system was successfully implemented in the department and the nature of work changed since then, the report of the P&amp;ARD had lost relevance. GOK further directed the department to forward a fresh proposal giving details such as schemes proposed to be undertaken, working pattern of the department, sanctioned posts with their nature of work, etc. Submission of the fresh proposal is pending.</p> <p>Audit observed that against the norm of 150 factories per year per Inspector, the Department would need at least 150 Inspectors to inspect the already registered 22,545 factories.</p>	<p>As on December 2018, a total of 23,778 factories in the state have been registered under the department as per factory rules and regulations. The department has 22 Inspectors and 25 Additional Inspectors to inspect these factories. Each inspector has to inspect more than 500 factories a year. No vehicles were allowed for these 47 inspectors. Inspectors inspect factories under their jurisdiction depending on the state's public transport system. Two or three taluks or four taluks in some divisions come under the jurisdiction of an inspector. The shortage of inspectors in the department can be remedied and the number of departmental offices in the State can be increased only when the financial position of the government improves.</p>

	<p>However, if the 47,608 factories registered with the Directorate of Industries and Commerce were also reckoned, the requirement of Inspectors would then be 468. Thus, against the total requirement of 468 Inspectors, the Department was functioning with only 47 Inspectors.</p> <p>As per Circular issued by the Factories and Boilers Department (June 2015), every factory had to be inspected by the Department of Factories and Boilers at least once in a year. Data obtained from the Department revealed that out of 22,218,146 factories in the State during the years 2013-14 to 2015-16, the percentage of factories inspected ranged between 59 and 65 per cent. In the testchecked factory divisions, of the 5,884,147 factories registered with the Factories Department, the percentage of factories inspected during 2013-14 to 2015-16 was 61 per cent. Government replied (October 2017) that the proposal for inducting more number of inspectors was not accepted due to financial constraints.</p> <p>Audit recommends that service of available inspectors be utilised optimally, by providing adequate vehicles for increased mobility and effective inspection. Fresh proposals may be forwarded to GOK by the Department, after working out minimum additional manpower required in the interest of efficient functioning of the Department.</p>	
6.1.5.5	<p><b>Non-submission of annual and half yearly returns</b></p> <p>Half-yearly returns in Form No. 22 specified in the Factories Act have to be submitted by the occupiers before 31 July of the current year and annual return in Form No. 21 before 31 January of the next year to the concerned Divisional Inspector of Factories and Boilers/Additional Inspector of Factories and Boilers. These forms indicate, besides other</p>	<p>The Factories which are registered under Section 2 (m) of the Factories Act, the Factory Owners can submit their annual returns online in Form No. 21. and Factories registered under Section 85 of the Act are required to submit the annual returns to in the relevant Divisional Inspector /Additional Inspector's Offices in Form No.1 of the Labor Law Act.</p>

	<p>points, details on average number of workers employed daily, medical information on workers medically examined, number of workers employed in hazardous conditions, etc.</p> <p>Audit noticed that on an average, 66.98 per cent and 67.30 per cent of factories did not file half-yearly and annual returns.</p> <p>The Government replied (October 2017) that most of the factories coming under Section 85 category of the Factories Act were exempted from submitting returns in accordance with the Labour Laws (Exemption from furnishing returns and maintaining registers by certain establishments) Amendment Act, 2014.</p> <p>The reply of the Government was not correct as Audit noticed that though the 'small and very small establishments' were exempted from submitting returns as per Section 4 (1) of the above Act, they were required to file, in lieu of such returns, annual returns in Form I. The Department failed to monitor these returns and follow-up the cases of defaulters. Such contravention of the provisions of the Act would constitute an offence punishable with imprisonment for a term, which may extend upto two years or with fine upto ₹ one lakh or with both, as per Section 92 of the Factories Act. In the circumstances, the Department would not be in a position to ensure the well-being and safety of factory workers.</p>	<p>Maximum returns will be collected by instructing all Divisional Inspectors to take strict legal action (after giving one more opportunity to submit returns in Form No.1) under the Factory Act against factory owners who fall short of this.</p>
6.1.6	<p><b>Conclusion</b></p> <p>The Department of Factories and Boilers which was responsible for enforcing the provisions of Factories Act did not have effective mechanism to ensure compliance of factories to the safety standards stipulated under the Act. The number of factories registered with the Department under the Act was very low. The data on number of factories as per the</p>	<p>The Department of Factories &amp; Boilers was formed to ensure the health, well-being and safety of the workers. Due to the shortage of Departmental offices and Inspectors in the State and the shortage of vehicles, it is not possible to fully ensure the health and safety of the workers working in the factories operating in the State by enforcing the factory rules</p>

	<p>Department was hugely understated. Inspection of factories was inadequate. Audit noticed shortfall in posts of Inspectors, which adversely affected enforcement measures of various provisions under the Act. Training on safety at work was imparted only to 0.40 per cent of the total workers. The implementation of the provisions of the Factories Act with reference to the safety of workers was, thus, not satisfactory.</p>	<p>and regulations. But the available resources are utilized to the maximum. It is hoped that this shortfall will be compensated in the future. The Director has directed all the Regional Joint Directors and Inspectors to analyze the deficiencies of the Department identified during the audit and pay special attention during the factory inspection and give strict instructions to the factory management to rectify the defects from time to time.</p>
--	---	--

  
D. LAL  
Additional Secretary  
Labour & Skills Department  
Government Secretariat, Tvp  
Ph: 0471 2518244



85

## LABOUR AND SKILLS (B) DEPARTMENT

### Action Taken Report on Para 6.1 in the report of the Comptroller and Auditor General for the year ended 31<sup>st</sup> March 2017-Role of Factories and Boilers Department in the safety of factory workers

Para	Audit Findings	Action Taken
6.1.3 6.1.3.1	<p><b>Registration and Renewal</b></p> <p>Factories operating without obtaining registration under the Act. Section 2 (m) of the Factories Act, 1948, defines a 'factory' as any premises including the precincts wherein 10 or more workers are/were working on any day of the preceding 12 months and where a manufacturing process is carried out with the aid of power. In cases where the manufacturing process was carried out without the aid of power, the Act provided for reckoning any premises as a factory where 20 or more workers were engaged in the manufacturing process. Government of Kerala (GOK), in exercise of powers conferred under Section 85 (1) of the Act, enlarged (August 2008) the scope of definition of 'factory' to include factories engaged in hazardous manufacturing process employing three or more persons whether using power or not. Also, factories engaged in nonhazardous manufacturing process employing three or more persons but less than 10 when power was used and less than 20 when power was not used were to be reckoned as 'factories' for the purpose of the Act. Thus, 96 manufacturing processes, both 'hazardous' and 'non-hazardous' were brought under the definition of 'factories' for the purpose of implementation of</p>	<p>The Office of the Director of Industry and Commerce given a List of 72853 MSME Factories to the Accountant General, out of which, 24001 factories were in Kollam region, 26025 in Ernakulam region and 22827 in Kozhikode region respectively. This Department verified the list and inspected the above factories. Out of the 72853 Numbers of factories in the list, a total of 3567 Factories were found covered under the purview of Factories Act as on 2022, among them registration of 2125 factories has been completed, excluding those which have been stopped operation while the registration process was in progress.</p> <p>In the above list, majority of the factories were found not covered under the Factories Act and were closed after obtaining registration and getting the benefits from the Industries Department. On inspection, it was found that about 80% of the factories were not covered under the Factories Act and the factories were working in the service sector or in the agricultural sector. During the inspection, the units which had been closed for more than one year were reported as non-operating factories. Whether these factories were in existence in 2017 were not specifically recorded in the inspection.</p>

the Act.

Rule 5 (3) of Kerala Factories Rules, 1957, stipulates that no manufacturing process shall be carried out in any factory without a licence granted by the Chief Inspector or the Deputy Chief Inspector of the Regional Office concerned. Rule 4 under Kerala Factory Rules, 1957, stipulated that the occupier of every factory shall submit to Chief Inspector or Deputy Chief Inspector an application for registration and grant of licence.

In the test-checked divisions, Audit observed that though 185 factories were identified by the Department during 2012-17, these were not registered (March 2017). Audit conducted joint field visits with the Inspectors of Factories and Boilers of the test-checked six factory divisions and detected an additional six unregistered factories (two in Kozhikode, two in Kundara, one in Ottappalam and one in Thiruvananthapuram) in four divisions. The existence of more such unregistered factories cannot be ruled out.

Records available with the Labour Department revealed that only 22,545 factories were registered with the Labour Department (as of February 2017) under the provisions of the Factories Act. Audit obtained information from the Director of Industries and Commerce which confirmed to Audit (August 2017) that out of 1,19,924 Micro, Small and Medium Enterprises (MSMEs) operating in the State, there were 79,010 Manufacturing Units with three or more employees as on 18 September 2015. Audit observed that these MSMEs could qualify as 'Factories' either under

Apart from the 4.9% of factories found covered under the Factories Act, 2.92% of factories were currently registered, except those factories have stopped operations.

Factories employing more than 10 workers with the aid of power for manufacturing a process and more than 20 workers with the aid of power for manufacturing process are registered Under Section 2(m) of the Factories Act. But only 96 manufacturing processes are notified under the section 85 of the Factories Act, 1948. Notified factories employing three or more workers but less than 9 workers and carrying out hazardous and non-hazardous manufacturing processes are covered under the Factories Act. Those factories which do not fall under the above conditions were reported to the Hon'ble Public Accounts Committee as not coming under the Act. Under the current law, the department cannot take prosecution or other legal actions against these factories, which are not covered under the Act or which are non-operational. The department can take registration steps or prosecution steps if it is convinced that the above factories are working.

The Inspectors and Additional Inspectors of this department are inspecting registered Factories to check whether the rules are being followed for ensuring workers' health, welfare and safety and also inspecting boilers, Issuing certificates, investigating complaints, appearing and conducting cases in various courts and doing disaster management related activities. In addition to their regular

Section 2 (m) of the Factories Act or under the enlarged definition of 'factory' as ordered by GOK. The registered factories were bound to comply with all the norms specified in the Act and Rules including provisions relating to safety of the workers. Non-registration would lead to non-compliance on the part of the occupier and non-monitoring by the Department.

GOK replied (October 2017) that the figures as furnished to Audit by the Director of Industries and Commerce were not correct and that as per Section 85 of the Factories Act, only 96 manufacturing processes were brought under the purview of the Act. These 79,010 units were stated to be outside the purview of the Act since they do not come under the said 96 processes.

Audit filtered the data on the basis of the manufacturing processes specified under Section 85 of the Factories Act and it was noticed that there would be 70,153 factories liable for registration under the Act. Thus, the Labour Department failed to ensure registration of at least 47,608 factories under the Act.

The audit observation was also discussed in detail during the Exit Conference held on 26 October 2017 wherein it was agreed that the database containing the details of 70,153 factories would be examined by the Factories and Boilers Department for verification at the field level. Audit observed that despite it having submitted (October 2017) soft copy of data relating to the MSME Units to the Director of Factories and Boilers with request to intimate the result of verification,

duties they have inspected the factories list given by the Accountant General. No official vehicles are allotted for the Inspectors yet. While Carrying out Inspection in dangerous conditions and conducting disaster relief operations there is no exemption in the monthly or quarterly ceiling in the Traveling Allowance of inspection. In such circumstances also, these officers discharged their duties at their own expenses without fail. As the state becomes industrial friendly, many new factories have started operation In the state, but this department have not enough strength of Inspectors /Additional Inspectors to perform normal duties. The Staff pattern of 1984 is still followed in the department. In such situation, a new list of factories for inspection were received from the Accountant General. Despite their lack of facilities and benefits, the Inspectors and Additional Inspectors inspected factories in the list given by the Accountant General as per the instructions of this department and successfully completed the inspection of the list of factories. The Inspectors issued notice to the Owner /Manager of Factories coming under Factories Act and gave direction to take steps to get online registration. The received applications were verified and subject to the conditions in the Factories Act, factories registration process were done.

During the period from 2015 to 2022, 2210 number of registered factories in the department have been amended their power/number of workers. Through this process a sum of 25,30,929/- (Rupees Twenty Five Lakh Thirty Thousand

the same is yet to be furnished.

Thus, failure of the Department to identify and ensure registration of factories under the Factories Act resulted in their inability to enforce the safety provisions contained in the Act in respect of at least 47,608 factories, thereby putting the lives of workers working in these factories as well as those staying in the neighbourhood at risk. Further, the State has foregone registration charges of at least Rs.1.43 crore due to its failure to register these factories.

Nine Hundred Twenty Nine only) collected as fee and 1,75,90,548/- (Rupees One Crore Seventy Five Lakhs Ninety Thousand Five Hundred Forty Eight only) charged as additional fee. A detailed table showing fee collected is enclosed herewith as soft copy in CD. From 2015 to 2022, prosecution actions have been taken against - 41 unregistered factories In the three regions of the department namely Kollam (6), Ernakulam (15) and Kozhikode (20) respectively.

It is informed that the conclusion that Rs.1.43 crore is due to the State as registration charges mentioned in audit observation has been said without understanding the above facts.

#### A.G. Summary of Inspection

Region	Total number of factories	Registered Factories	Number of factories inspected	Factories not coming under the Act	Those found not working during inspection	Number of inspected factories registered
Kollam	24001	2566	21435	10076	10714	645
Ernakulam	26025	5338	20687	11479	8313	895
Kozhikode	22857	3070	19757	8673	10499	585
<b>Total</b>	<b>72853</b>	<b>10974</b>	<b>61879</b>	<b>30228</b>	<b>29526</b>	<b>2125 (2.92%)</b>

#### 6.1.3.2. Non-renewal of factory licences

Rule 7 of Kerala Factories Rules, 1957, stipulated that the occupier of every factory shall submit to the Chief Inspector/Deputy Chief Inspector an application for renewal

Very few factories remain to renew their licenses for the year 2017. Most of them are closed and licenses have been revoked. Some of the factories were not renewed

<p>of licence, not less than two months before the date of expiry of the licence by submitting prescribed documents and remitting the prescribed fee. A scrutiny of the Demand, Collection and Balance (DCB) register revealed that 878 out of 22,545 registered factories were yet to renew their licences (March 2017), resulting in non-collection of revenue amounting to `98.41 lakh. Analysis of pendency details revealed instances of non-renewal from as early as 2001.</p> <p>GOK cited (October 2017) shortage of transportation facilities and manpower in the enforcement wing, non-functioning of majority of defaulting factories and disputes regarding ownership, partition, lease, legal-heirship etc., pending before various courts as reasons for non-renewal of licences. In its reply, the Department stated (December 2017) that 369 of these factories were not working and 67 factories did not renew their licences due to pending court cases. Audit observed that as per Rule 12 D of Kerala Factories Rules, 1957, if a factory was lying idle for a period exceeding one calendar year, the Chief Inspector may, after satisfying himself of the bonafides, suspend the licence for one or more licensing periods. Audit also observed that the Director was lax in initiating penal action under Section 92 of the Factories Act against the remaining 442 unlicensed factories, which failed to renew their licences, punishable with imprisonment for a term which may extend to two years or with fine of upto Rs.one lakh or with both.</p> <p>Audit feels that the Government should provide transport facilities and adequate manpower to the Factories and Boilers</p>	<p>due to the non completion of transfer process due to delay in producing documents required for transfer of licenses (like Legal heir Certificate) and some others due to pending cases in courts. The license renewal process for next year begins in October each year. By December 31, 97.5% of factories have completed the renewal process and are renewing their licenses. The remaining 2.5% of factories are inactive or have not renewed their licenses due to transfer of licenses and pending cases in the courts. Letters and show cause notices are issued to such factories and the factories which have not provided a satisfactory reply are inspected and necessary action is taken. Factories that do not apply for renewal by 31<sup>st</sup> October is charged an additional fee of 25% and factories that do not apply for renewal by 31<sup>st</sup> December is charged an additional fee of 50%.</p> <p>Factories operating without renewing their licenses are inspected and prosecuted by the inspectors. Legal notices were issued by the Inspectors/Additional Factory Inspectors to non-functioning factories without legal renewal and recommend renewal, suspension or cancellation if they wish to operate in the future. Accordingly, the Director / Joint Director will cancel the registration of factories under Section 2M / Section 85 respectively. In case of such applications, timely cancellation and cancellation information is updated in the on-line system of the department. In case of violation</p>
---	---



<p>Department, enabling it to perform its statutory duty of registration of factories for ensuring safety of workers. Government should review all cases of non-registration of factories and take appropriate action as per provisions of the Act and Rules.</p>	<p>of factory law in the factories, the concerned inspectors / additional inspectors take prosecution steps and file petition before the Hon.Court. Punishment for this is taken by the concerned court. It has also been noted that due to the major crisis in the Cashew Industry, the owners have failed to renew their factory licenses.</p> <p>The Inspectors of Factories &amp; Boilers are given a travel allowance of Rs. 2260 / - for factory inspection. In the current financial situation of the government, the current system can only be continued. As the financial situation improves, allotment of vehicles to Factories &amp; Boilers inspectors and providing more employees will be considered. Steps have been taken to inspect the factories in a timely manner using the available resources.</p>
<p><b>6.1.3.3 Factories carrying out additional manufacturing process without registration/licence</b></p> <p>Rule 6 (2) of the Kerala Factories Rules, 1957, stipulated that licences granted under Rule 5 were to be amended in the event of change with regard to power utilised or the number of persons employed or changes in the name of the factory. Audit noticed during joint inspection along with departmental officers that 14 factories were carrying out additional manufacturing processes other than those for which licences were issued. The Department did not identify such activities and ensure safety measures to be undertaken for the additional manufacturing process. In the test-checked divisions, 14 out of 90 factories were found to be engaging</p>	<p>It is the legal responsibility of the factory owners to inform the factory Inspector/ Additional Factory Inspector concerned in case of any change in the name of the factory or change in manufacturing process or change in power or change in number of employees to make necessary amendments in the permit and license. But the factory owners do not inform such changes in time. Those violations are found and rectified only when such irregularities are found during inspection and sufficient instruction are given through inspection order and in such cases 100% additional fee is also charged. Any change in the name of the factory or change in manufacturing</p>

	<p>upto 10 additional workers than permitted in their licences. Licences of such factories were not amended in line with the stipulations contained in Rule 6 (2). The safety of workers in these factories was thus compromised.</p> <p>GOK stated (October 2017) that the additional manufacturing process in a factory could be included in the licence while submitting the application for power amendment by factory management. The reply was not correct as GOK placed the onus on the factory management to get the licence amended in the event of additional manufacturing process. GOK, however, confirmed that it was the duty of Inspectors to take appropriate action if it was found during inspections that the factories were engaging more number of workers than permitted, as per licence. Audit observed that GOK was bound to comply with Section 92 of the Factories Act, which required such contraventions of the Act to be punishable with imprisonment for a term, which may extend to two years or with fine of up to one lakh or with both.</p>	<p>process or change in power or change in number of employees are not detected timely since the inspectors are not able to visit the factories in their jurisdiction atleast once in an year. At present, an inspector has to inspect over 500 factories a year. Factories are inspected using the existing public transport facilities in the state. Therefore, inspectors can inspect only about 55% of the factories within their jurisdiction within a year. At present all the factory Inspectors and Additional Factory Inspectors have been given instruction in this regard and they are fulfilling their responsibilities accordingly.</p>
<p><b>6.1.3.4</b></p>	<p><b>Factories operating without addressing Environmental issues</b></p> <p>As per Rule 5 (1) of the Kerala Factories Rules, 1957, a licence for a factory may be granted on an application made in the prescribed Form No. 2 after ensuring that the applicant obtained approval of the plans of site and building and disposal of effluents by the concerned authorities including the Kerala State Pollution Control Board (KSPCB). While</p>	<p>The registration of factories and the renewal of licenses are affected based on the documents insisted in paragraph 8 of Form 2 of the Kerala Factories Rule, 1957 . As per the Kerala Factories Rule, only legally applicable documents are required for registration and renewal of license. The State Factory Rule has been prepared by each State Government by making necessary amendments to the Model Rule prepared by the Director</p>

Rule 7 (1) provided for licences to be renewed by competent authority, Rule 7 (2) specified that every application for the renewal of licence shall also be in the prescribed Form No. 2. Thus, the licensing authority under the Factories Act was bound to obtain assurance that the applicant for registration and renewal of licence had obtained consent of KSPCB before renewing the licence.

Section 12 of the Factories Act, 1948, provides that arrangements should be made in every factory for treatment of wastes and effluents and for its effective disposal. As per Sections 25 and 26 of Water (Prevention and Control of Pollution) Act, 1974 and Rules framed thereunder, every factory should obtain Consent to Operate (CTO) from KSPCB before commencement of operations and the same was to be renewed on expiry of CTO.

Details collected (July 2017) by Audit from the district offices of KSPCB at Thiruvananthapuram, Kollam and Ernakulam, revealed that 449 factories were operating without obtaining CTO as mandated. Joint inspection by Audit along with department authorities revealed that five 138 out of 90 factories were operating without obtaining CTO from KSPCB. The KSPCB also withheld consent (as of July 2017) to 168 factories in Kollam district and three factories in Thiruvananthapuram district either for want of renewal application or noncompliance with previous consent conditions.

Grant of licence by the Factories and Boilers Department was subject to the factory obtaining requisite clearances from

General under the Ministry of Labour. All the states in India follow the same rule. The Director of Factories & Boilers has sought the advice of the Director General in this regard. The Government has directed the Director of Factories & Boilers to ensure the renewed number and date in the Consent Letter of Pollution Control Board is incorporated on the prescribed column in Form No.(2), for registration and renewal of the factory. The Director has informed that the same has been implemented in the Department.

	<p>KSPCB, Fire and Rescue Department, etc. Laxity of the Department in renewing licences without ensuring compliance to the safety provisions contained in the Factories Act was significant when seen against the fact that of the 28 test-checked factories where the manufacturing process was classified as hazardous, the department renewed licences of 20 factories without ensuring valid CTO for the factories from KSPCB.</p> <p>Government stated (October 2017) that since Rule 7 (1) did not require No Objection Certificate (NOC)/Consent from KSPCB for renewal of licence, renewing authority was not empowered to ensure or ask for NOC/Consent from KSPCB for renewing the licence. It was also stated that as part of Ease of doing Business, Government decided to avoid the NOC/Consent from KSPCB since it was the duty of these departments to ensure that their statutes were being complied with by the management.</p> <p>The decision of GOK to avoid NOC/Consent from KSPCB as part of Ease of doing Business was not acceptable since it was to comply with the provisions of extant Rules. Rule 7 (2) stipulated submission of Application for renewal of licence in Form No. 2, and as Form No. 2 required the applicant factories to furnish details of KSPCB/environmental clearances, etc., the Department was bound to ensure the same before renewal of licence</p>	
6.1.3.5	<b>Installation of additional equipment in the factories without consent</b>	It is the legal responsibility of the factory owners to

Rule 3 (1) and 3 (8) (b) of the Kerala Factories Rules, 1957, states that previous permission shall be obtained for the installation of additional machinery or a permanent fixture. Audit noticed during joint inspection alongwith the Inspector of Factories and Boilers that three139 of the test-checked 90 factories installed new machinery without the consent of the Department. In two of the three cases, new machinery was installed which warranted increase in power consumption and required both amendment of licence and payment of additional fees. In the case of M/s. Variety Pharmaceuticals Pvt. Ltd., Audit noticed that three new machineries were installed. The Department later clarified (December 2017) that one of the newly installed machineries was in replacement of an existing machinery. The fact, however, remains that two additional machineries were installed at M/s. Variety Pharmaceuticals Pvt. Ltd., without the consent of the Department.

GOK replied (October 2017) that most of the Inspectors verified approved plans during routine inspections, identifying such installations and filing prosecution cases. The reply was not acceptable since joint inspection by Audit identified factories, which installed new machinery and the Department failed to detect the same.

inform in time, the matter of installation of additional machinery in the factory and or to increase power consumpition, before the officers concerned and thereby make necessary modification in the permit or license . But the factory owners do not inform the concerned office about such changes in time. Such changes are detected during the inspection by the factory Inspector and necessary amendments are made to the license. When such irregularities are found during inspection, sufficient instructions are given through inspection order and an additional fee of 100% of licence fee is also charged. It has been reported by the Audit team that the concerned Inspectors have levied fines and made necessary modifications in the permits and licenses of all factories concerned. In addition , all Factory Inspector / Additional Factory Inspectors have been strictly directed to take prosecution steps if any violation of the factory rules is detected during the time of factory inspection. During the period 2015 to 2022, 2210 factories have been amended in power/number of workers. 90 factories have done amendment and an amount of 1,12,745/- has been collected as additional fee and the same has been credited to Government.

#### **Amendment information**

Total Number of factories inspected	Number of Factories found to have been amended	Factories found to have a used more power/higher number of workers	Amount changed in excess as amendment fee
61879	2210	90	RS.1,12,745/-



<p><b>6.1.4</b></p>	<p><b>Ineffective enforcement of safety norms</b></p> <p>The provisions in the Factories Act, 1948, prescribed installation/availability of different equipment/articles for health, safety, etc., of the workers. The Director issued (June 2015) instructions that the Factory Inspectors were to inspect each factory under their jurisdiction at least once in a year to ensure availability and functioning of the prescribed safety equipment/articles. Audit noticed that during 2012-13 to 2015-16, 1,445 accidents had occurred in which 114 workers lost their lives. Records of factories under the jurisdiction of six test-checked factory divisions and joint physical inspections of 90 factories conducted by Inspectors of Factories and Boilers in the presence of Audit, revealed deviations from safety standards stipulated in the Act in 81 out of the 90 factories.</p> <p>Audit found during joint inspection that in 24 of the test-checked 90 factories, firefighting equipment like fire buckets or extinguishers were not provided. While fire extinguisher in 18 factories were not found refilled after their expiry dates, the fire buckets in 10 factories were poorly maintained i.e., the buckets were either not filled with water/sand or the sand had turned hard due to non-replacement. Audit also found during joint inspection that in 26 of the test-checked 90 factories, which were functioning as metal crusher units, saw mills, ice plants, soap manufacturing units, spinning and weaving mills, etc.,</p>	<p>It is the responsibility of the factory owner and manager to provide the equipment / materials required by law for the safety of the workers. Inspectors / Additional Factory Inspectors provide necessary instructions to the factory management during the factory inspection within the existing limits to ensure the health, welfare and safety of the workers. It was also reported that from all the factories detected by the audit team the concerned inspectors had levied fines and made necessary modifications in the permits and licenses. In addition, all officers have been directed to take prosecution action if any violations of factory rules are found during the inspection by the Factory Inspector / Additional Factory Inspectors. Such instructions are given to the factory management by inspection order and they are checked and ensured that they are complied with. The Department conducts regular training programs for factory management, workers and trade union representatives to create safety awareness among the workers. But a huge portion of workers in factories in the state are migrant workers. The changing locations and areas in which they work are to some extent an impediment to the use of available training. However, the department is organizing and providing necessary training programs to ensure safety in the workplace using the facilities available. Also,</p>

	personal protective equipment (PPE) like face masks, hand gloves, safety shoes and goggles were not provided to the workers. Moreover, workers in 20 other factories were not using the PPE despite these being provided to them. Other significant irregularities noticed during joint verification of test-checked factories are given below.	training programs are being organized through a mobile training vehicle called Suraksharatham. Inspectors/Additional Factory Inspectors informed that many of the violations reported by the audit team are without checking factory rules and regulations.
<b>6.1.4.1</b>	<p><b>Defective observation of Inspectors of Factories and Boilers</b></p> <p>Audit observed during joint inspection that in two 140 of the test-checked six ice manufacturing plants, the outlet of the safety valve of compressed ammonia tank was not connected to a drum containing water which was accepted as a violation of prescribed safety standards by the Inspectors of Factories and Boilers. However, during the Exit Conference (October 2017), the Director clarified that the suggestion of the Inspectors to the factory owners to immerse the safety valve in water tank was erroneous since it could lead to reverse flow of water and cause explosion.</p> <p>Audit observed that insistence of the Inspectors for compliance to such defective orders could result in explosions in factories. The Director admitted during the Exit Conference (October 2017) that it was a mistake on the part of the Inspectors and corrective orders would be issued immediately.</p>	<p>The recommendation to "connect the safety valve outlet of a compressed ammonia tank to a drum containing water" in ice making plants is not included in the Factory Act, Regulation or Guidelines issued by the Department as a safety standard. However, the Director informed that on the basis of the above observation, all the Inspectors / Additional Inspectors have been given clear instructions in this regard. Also a warning has been given to the inspector responsible for the defective observation.</p>
<b>6.1.4.2</b>	<p><b>Non-fencing of machines with dynamic parts</b></p> <p>Rule 54 of the Kerala Factories Rules, 1957, specifies that</p>	According to the Factory Act and the Kerala Factory

	<p>parts of machinery in motion and within reach are to be securely fenced or protected. Out of the test-checked 90 factories, it was found that 36 factories did not fence the machines and conveyer belts in violation of the norms. Failure to adhere to safety regulations led to fatal accidents in certain instances.</p>	<p>Rules, it is the sole responsibility of the factory owner and manager to secure or protect the moving and accessible parts of the machinery with a fence. During the factory inspection, the officers give the factory management necessary instructions to ensure the health, well-being and safety of the workers. The Inspector / Additional Inspectors recommend that the rotating and out-of-reach machinery parts found during the inspection be covered with a safety fence. But reducing or eliminating such safety equipment by the workers themselves as part of making the job easier often leads to accidents. Factories and Boilers Dept. have issued strict instructions to the factory management to comply with the safety precautions. Violators are subject to strict action, including prosecution.</p>
6.1.4.3	<p><b>Non-fencing or absence of covering for tanks</b></p> <p>Section 33 of the Factories Act, 1948, specifies that in every factory, every fixed vessel, sump, tank, pit or opening in the ground or in a floor, if it is a source of danger, shall be either securely covered or fenced. Out of the test-checked 90 factories, it was found during joint physical inspection that slurry tanks or drains were not fenced or covered in seven factories, thus posing risk of fall and injury. Audit also came across a recorded instance of violation of safety provisions at M/s. Karthika Granites, Vayyanam, Kundara where death (May 2016) of a worker occurred by falling into the sand wash concrete tank, which was left open.</p>	<p>The factory owner and factory manager are solely responsible for ensuring that the storage tanks, tanks and pits located near or outside the factory are covered with slabs or secured with safety fences to avoid any hazards. However, the Factory Inspector / Additional Factory Inspectors provide the necessary legal instructions to the factory owners. The department has noticed that the workers are negligent in opening such tanks or tanks for cleaning etc. and then securing and covering them. The Factory Inspector / Additional Factory Inspectors take action, including prosecution, in the event of an accident</p>

		in which the factory owner and manager do not fulfill their legal obligations.
<b>6.1.4.4 Non-provision of sufficient equipment to Inspectors</b>	<p>Factories Act and Rules specify minimum level of light intensity, sound pressure level and amount of combustible gases in air to which a factory worker could be exposed. This is applicable to factories where manufacturing process involves high noise levels or produces dust, gas, fume or vapour of such character and to such extent as to be likely to explode on ignition. It was found that against the requirement of at least 22 each of lux meters, decibel meters and explosimeters only 15 lux meters, 15 decibel meters and five explosimeters were available at the Regional Offices. Out of these, five lux meters, five decibel meters and three explosimeters were not functioning. Out of the test-checked six factory divisions, three divisions<sup>141</sup> did not have equipment to measure the level of light intensity, sound pressure level and amount of combustible gases. Hence, the Inspectors were not in a position to identify the hazardous level of light intensity, sound pressure level, etc., during their inspections.</p> <p>Government replied (October 2017) that these equipment were supplied to inspectors of Regional Safety Cells and Industrial Hygiene Lab (IHL) at Kollam. It was also stated that the local Inspectors could make use of services of the Inspectors of Regional Safety Cell and IHL in suspected cases, where the level of hazard was above the admissible</p>	<p>As mentioned in the report, the divisional Inspectors with Mechanical Engineering degrees do not have the technical knowledge to use most of the equipment, such as the officers like Chemical Engineer, Medical Officer, Industrial Hygienist and Chemist, in the Safety Cell and Industrial Hygiene laboratory. The training is provided to the officers in the Safety Cell and Industrial Hygiene Lab, including Chemical Engineer, Industrial Hygienist and Chemist. Samples such as dust, chemicals, fumes, and vibrations, which are collected from workplaces, processed in labs, and certified legally by chemical inspectors and industrial hygienists. At present the newly established Industrial Hygiene Laboratory is equipped with various equipments including Lux Meter, Sound Level Meter and Explosive Meter. Chemical Engineers, Industrial Hygienists and Chemists with technical knowledge were Appointed and also provided vehicle facilities. So it is informed that there has been no negligence on the part of the department in this regard.</p>

	<p>level. The reply was not acceptable as these handheld machines could be carried by the local inspectors themselves during inspections and the Inspectors need not depend on the services of Inspectors of Regional Safety Cell or IHL for detection of violations. Audit recommends that the Department may make available adequate number of lux meters, decibel meters and explosimeters and issue strict instructions to local Inspectors to make use of these equipment during inspections.</p>	
<p><b>6.1.5</b> <b>6.1.5.1</b></p>	<p><b>Monitoring and Inspection</b> <b>Inadequate training on safety to the workers</b></p> <p>As per Section 111A of Factories Act, 1948, every worker shall have the right to get trained within the factory wherever possible, or to get sponsored by the occupier for getting trained at a Training Centre or Institute duly approved by the Director of Factories and Boilers, where training is imparted for workers' health and safety at work. Audit observed that only one training centre at Thiruvananthapuram was approved by the Department for this purpose. Audit noticed that the Department had imparted training on safety to only 2,713 out of 6,98,263 workers covering 256 factories during 2012-13 to 2016-17 (0.40 percent).</p> <p>Ensuring compliance to safety norms by factory workers required adequate training to be imparted to them. During Exit Conference, the Director stated (October 2017) that in many cases, workers were themselves violating safety norms and there was a need to bring about attitudinal change</p>	<p>The Department mainly deals with enforcement of law, hence separate Training division is not formed in the department. As mentioned in the previous paragraphs, limited training facilities and limited personnel are used to conduct training after enforcement duties to ensure the health, welfare and safety of workers. Necessary training programs are provided by the department through selected officers who are capable to do training sessions. Maximum awareness training programs are being imparted to various categories of factory workers, trade union representatives and supervisors through regional training centers and by using department's mobile training vehicle "Suraksha Ratham". Training programs are also organized in industrial estates and various factories under the supervision of Regional Joint Directors. In order to sensitize the future generation on the issue of safety with the goal 'Zero Accident' in mind,</p>



through training. Audit observed that inadequate training to workers would lead to lack of awareness of safety measures to be adopted by them during work.

and various free training programs are being conducted for students using "Suraksha Ratham" at various institutions. The department organizes all these training programs and conducts classes for workers and other employees with the help of inspectors. It is further informed that such training programs are organized in addition to their regular office duties such as factory/boiler, inspection, court duty and district level meetings etc...

#### Training details.

Year	Training conducted under the leadership of Regional Offices	Training conducted through Suraksharatham	Total number of training	Number of participants
2021-22	23	15	38	1349
2020-21	Training has not been done in the situation of covid	15	15	470
2019-20	38	133	171	6737
2018-19	58	125	183	6561
2017-18	44	85	129	4443
2016-17	8	61	69	2220
2015-16	9	26	35	1925
<b>Total</b>	<b>180</b>	<b>460</b>	<b>640</b>	<b>23705</b>

<p><b>6.1.5.2 Shortfall in conduct of Medical Surveys and identification of Occupational Health diseases</b></p>	<p>Administrative sanction was accorded to the Department to conduct 'Industrial Hygiene cum Health survey' for the years 2015-16 and 2016-17 to initiate measures for prevention of occupational diseases, protection of health of workers, compilation of statistics of occupational diseases, etc. Accordingly, seven medical camps each were conducted for workers in Cashew and Stone Crusher Industries during the above two years for detection of occupational diseases. The survey for the year 2015-16 detected four cases of Silicosis<sup>142</sup> in the State among workers in the Stone Crusher Industry<sup>143</sup> with more number of such cases not being ruled out. Recommendations were also made in the survey report on conducting work environment monitoring to be done in factories employing such persons, etc.</p> <p>Audit noticed that the Sub Regional Office, Kozhikode of ESI Corporation also identified (April 2017) seven cases of occupational diseases including three cases of Byssinosis<sup>144</sup>, one case of Sensory Neural Hearing Loss, etc. The Sub-Regional Office, Kollam also identified an instance of Byssinosis.</p> <p>Since the List of Notifiable diseases under the Schedule III of the Act contains a list of 29 hazardous diseases and in view of identification of the prevalence of such diseases among the employees of factories, Audit feels that it was imperative for the Department to conduct more such surveys</p>	<p>The Department hopes that with the commissioning of the Occupational Health and Research Center at Kollam, a large percentage of the workers in the factories operating in the State will benefit from it. During the year 2018-19, the department had organized more than ten medical camps in various Districts of Kerala in the areas of cashew, coir, fish processing and packing. The camps were organized with the assistance of the Medical Officers of the Department and the Specialized Medical Officers of the Insurance Medical Services Department. As the Occupational Health and Research Center becomes more operational, it will be possible to prevent occupational diseases as mentioned in the third Schedule to the Factory Act and to prevent occupational diseases in the Industrial Sector Kerala, to protect the health of the workers and to carry out the necessary tests for early detection of occupational diseases. In order to get rid of such diseases to the workers, the recommendations made by the Industrial Hygiene Surveillance in workplaces can be implemented by amending the rules to save the future generation from occupational diseases. From 2015 to 2022 Occupational Health survey conducted in 34 factories.</p> <p><b>Survey Details</b></p>
--	---	--

	followed by adequate medical treatment of workers for preservation of health of the workers.	Year	Number of factories were survey conducted	The number of workers Participated In survey	Sector in which survey was conducted
		2021-22	3	900	Chemical/Packing
		2020-21	Training has not been done in the situation of covid	0	-
		2019-20	6	836	Steel/Textile/Plywood Industries/Head Load Workers
		2018-19	10	1507	Steel/Textile/Plywood/ High Noise Level Industries/Head Load Workers/Road Tarring Workers
		2017-18	4	470	Fish Processing/Coir/Steel Industries
		2016-17	7	958	Cashew Industries
		2015-16	7	651	Cashew/stone crusher Industries
		<b>Total</b>	<b>34</b>	<b>4422</b>	-
<b>6.1.5.3</b>	<b>Unfruitful expenditure of 4.15 crore on Occupational Health and Research Centre</b> Section 41B of the Factories Act stipulated that the occupier of every factory involving a hazardous process shall identify health hazards and the measures to overcome such	The Occupational Health and Research Center aims to provide medical check-ups before and after work for all workers, working in hazardous conditions and environments, to provide a detailed examination of			

hazards. Since occupiers were not giving importance to monitoring of the health status of workers and recognising the need to provide individual units with proper occupational health care, the Director of Factories and Boilers submitted (July 2012) a proposal to Government of Kerala (GOK) for establishing Occupational Health and Research Centres (OHRC) at Kollam, Ernakulam and Kozhikode. The OHRCs were proposed to be established to provide pre-employment and periodical medical examination for all workers employed in dangerous operations, investigate cases of suspected occupational diseases, provide health education to management and workers, health training to workers and other staff, conduct occupational health survey, etc.

It was noticed during audit that GOK accorded (March 2014) Administrative Sanction for construction of a building for setting up an OHRC at Kollam at a cost of Rs 2.69 crore. The work of construction of OHRC building was entrusted to KESNIK145 and the construction was completed (July 2014) at a cost of Rs 2.45 crore. GOK also issued administrative sanction (August 2014) for the purchase of equipment for the OHRC against which procurement of Office/medical equipment costing Rs.1.70 crore was made. Audit observed that the failure of GOK to provide requisite manpower by way of sanction and recruitment of 12 staff members including Medical Officer, Male Nurse, Occupational Health Technician, Field Assistant, Lab Technician, Driver etc., as proposed by the Director (July 2012), resulted in non-commissioning of OHRC leading to blocking up of Rs. 4.15

workers suspected of having occupational diseases, to provide health education to management and workers, provide health care to workers and other employees, and conduct occupational health surveys. The construction of the Occupational Health and Research Center at Kollam is fully operational. 7 posts including Joint Director (Medical) in Thiruvananthapuram Office, has been shifted to Occupational Health Research Center, Kollam as per Government Order No.659/2019/LBRD Dated 10.06.2019. In addition, the Department of Finance had recommended that the research / studies conducted by the Occupational Health Research Center be examined for feasibility (by payment) by any of the existing health institutions in Kerala. A medical officer with a postgraduate degree in Radio Diagnosis has been appointed on contract basis to coordinate the day to day operations of the this institution till 2022. Ultra sound machine has been registered in 2019. By shifting 7 posts including Joint Director (Medical) in Thiruvananthapuram office to Kollam Occupational Health Research Center and appointing a post graduate medical officer in Radio Diagnosis to operate the OHRC, this lab has been able to provide the services envisaged to the workers and thereby effectively mobilize the ₹ 4.15 crore spent on OHRC.

	<p>crore and inability to render envisaged services.</p> <p>Government while accepting (October 2017) the audit observation, informed Audit (March 2018) that a proposal for creation of posts for the OHRC at Kollam was since received from the Director of Factories and Boilers and the proposal was under examination.</p>	
<b>6.1.5.4</b>	<p><b>Shortfall in conduct of Inspections</b></p> <p>The powers assigned to the Inspector under the Act include authority to enter any place which is used or which, he has reason to believe, is used as a factory. The Inspectors, thus, play a significant role in the identification of factories and detection of violations of the provisions of the Act. A work study report of the Personnel and Administrative Reforms Department (P&amp;ARD) fixed (February 1993) the norm for inspection as 150 factories per year for each Inspector and the same was accepted by GOK in February 1993. In January 2017, GOK stated that since online licensing system was successfully implemented in the department and the nature of work changed since then, the report of the P&amp;ARD had lost relevance. GOK further directed the department to forward a fresh proposal giving details such as schemes proposed to be undertaken, working pattern of the department, sanctioned posts with their nature of work, etc. Submission of the fresh proposal is pending.</p> <p>Audit observed that against the norm of 150 factories per year per Inspector, the Department would need at least 150 Inspectors to inspect the already registered 22,545</p>	<p>As on December 2018, a total of 23,778 factories in the state have been registered under the department as per factory rules and regulations. The department has 22 Inspectors and 25 Additional Inspectors to inspect these factories. Each inspector has to inspect more than 500 factories a year. No vehicles were allowed for these 47 inspectors. Inspectors inspect factories under their jurisdiction depending on the state's public transport system. Two or three taluks or four taluks in some divisions come under the jurisdiction of an inspector. The shortage of inspectors in the department can be remedied and the number of departmental offices in the State can be increased only when the financial position of the government improves.</p>



	<p>factories. However, if the 47,608 factories registered with the Directorate of Industries and Commerce were also reckoned, the requirement of Inspectors would then be 468. Thus, against the total requirement of 468 Inspectors, the Department was functioning with only 47 Inspectors.</p> <p>As per Circular issued by the Factories and Boilers Department (June 2015), every factory had to be inspected by the Department of Factories and Boilers at least once in a year. Data obtained from the Department revealed that out of 22,218146 factories in the State during the years 2013-14 to 2015-16, the percentage of factories inspected ranged between 59 and 65 per cent. In the testchecked factory divisions, of the 5,884147 factories registered with the Factories Department, the percentage of factories inspected during 2013-14 to 2015-16 was 61 per cent. Government replied (October 2017) that the proposal for inducting more number of inspectors was not accepted due to financial constraints.</p> <p>Audit recommends that service of available inspectors be utilised optimally, by providing adequate vehicles for increased mobility and effective inspection. Fresh proposals may be forwarded to GOK by the Department, after working out minimum additional manpower required in the interest of efficient functioning of the Department.</p>	
6.1.5.5	<p><b>Non-submission of annual and half yearly returns</b></p> <p>Half-yearly returns in Form No. 22 specified in the Factories Act have to be submitted by the occupiers before 31</p>	<p>The Factories which are registered under Section 2 (m) of the Factories Act, the Factory Owners can submit</p>

July of the current year and annual return in Form No. 21 before 31 January of the next year to the concerned Divisional Inspector of Factories and Boilers/Additional Inspector of Factories and Boilers. These forms indicate, besides other points, details on average number of workers employed daily, medical information on workers medically examined, number of workers employed in hazardous conditions, etc.

Audit noticed that on an average, 66.98 per cent and 67.30 per cent of factories did not file half-yearly and annual returns.


The Government replied (October 2017) that most of the factories coming under Section 85 category of the Factories Act were exempted from submitting returns in accordance with the Labour Laws (Exemption from furnishing returns and maintaining registers by certain establishments) Amendment Act, 2014.

The reply of the Government was not correct as Audit noticed that though the 'small and very small establishments' were exempted from submitting returns as per Section 4 (1) of the above Act, they were required to file, in lieu of such returns, annual returns in Form I. The Department failed to monitor these returns and follow-up the cases of defaulters. Such contravention of the provisions of the Act would constitute an offence punishable with imprisonment for a term, which may extend upto two years or with fine upto one lakh or with both, as per Section 92 of the Factories Act. In the circumstances, the Department would not be in a position

their annual returns online in Form No. 21. and Factories registered under Section 85 of the Act are required to submit the annual returns to in the relevant Divisional Inspector /Additional Inspector's Offices in Form No. 1 of the Labor Law Act. Maximum returns will be collected by instructing all Divisional Inspectors to take strict legal action (including one more opportunity to submit returns in Form No.1) under the Factory Act against factory owners who fall short of this.

107

	to ensure the well-being and safety of factory workers.	
<b>6.1.6</b>	<b>Conclusion</b> <p>The Department of Factories and Boilers which was responsible for enforcing the provisions of Factories Act did not have effective mechanism to ensure compliance of factories to the safety standards stipulated under the Act. The number of factories registered with the Department under the Act was very low. The data on number of factories as per the Department was hugely understated. Inspection of factories was inadequate. Audit noticed shortfall in posts of Inspectors, which adversely affected enforcement measures of various provisions under the Act. Training on safety at work was imparted only to 0.40 per cent of the total workers. The implementation of the provisions of the Factories Act with reference to the safety of workers was, thus, not satisfactory.</p>	<p>The Department of Factories &amp; Boilers was formed to ensure the health, well-being and safety of the workers. Due to the shortage of Departmental offices and Inspectors in the State and the shortage of vehicles, it is not possible to fully ensure the health and safety of the workers working in the factories operating in the State by enforcing the factory rules and regulations. But the available resources are utilized to the maximum. It is hoped that this shortfall will be compensated in the future. The Director has directed all the Regional Joint Directors and Inspectors to analyze the deficiencies of the Department identified during the audit and pay special attention during the factory inspection and give strict instructions to the factory management to rectify the defects from time to time.</p>

  
**SHRIJA C.G**  
 Joint Secretary to Govt.  
 Labour & Skills Department  
 Govt. Secretariat, Tvm-686001  
 Ph: 0471-2518348

**LABOUR & SKILLS (E) DEPARTMENT****PUBLIC ACCOUNTS COMMITTEE (2016-19) REMEDIAL MEASURES TAKEN STATEMENT ON  
C&AG REPORT FOR THE YEAR ENDED ON MARCH 2017**

Para	Recommendations	Action Taken
6.2.3	<b>Registration of Establishment and Licensing Contractors</b>	
6.2.3.1	<p><b>Laxity of the Department in identification and registration of Inter-State Migrant Workmen under the Act</b></p> <p>Section 4 of the Act laid down the conditions for the registration of establishments under the Act. It required every principal employer of an establishment to which this Act applied to make an application to the Registering Officer along with payment of prescribed fee for the registration of the establishment under the Act. Section 1 (4) (a) of the Act stipulated that the Act applied to every establishment in which five or more ISMW are employed or were employed on any day of the preceding twelve months. Section 1 (4) (b) also provided for the provisions of the Act to apply to every contractor who employs or employed five or more ISMW on any day of the preceding twelve months. Section 6 also provided that no principal employer of an establishment to which this Act applies shall employ ISMW in the establishment unless a certificate of registration in respect of such establishment issued under this Act was in force.</p> <p>As per information furnished by the Department (February 2018) there were 783 principal employers registered in the 14 districts of the State who had engaged 45,378 ISMW as of February 2018. However, the total number of ISMW registered with the Department as per the provisions of the Act was only 1.82 per cent of the 25 lakh migrant labourers assessed (February</p>	<p>As per Section 2(E) of Interstate Migrant Workmen Act, 1979, any person who is recruited by or through a Contractor in one State under an agreement or other arrangement for employment in an establishment in another State comes under the definition of "Interstate Migrant Workmen". This indicates that the presence of a contractor is essential for coming under the purview of this Act. Vast majority of ISM workers in Kerala are coming directly or through friends or relatives without such agreement or contract.</p> <p>In the Whole Kerala, 1632 establishment were registered under ISM Workers Act and granted License for 1031. In the special circumstances of Kerala, ISM workers are being engaged in small establishment and agricultural farms. None of these comes under the purview of the Act. It is seen that Inter State Migrant Workers are working in the unorganised sector for a short period. Apart from this the study report of Gulathi Institute of Finance &amp; Taxation, that around 25 lakhs of Inter State Migrant Workers are present in Kerala, should be re-examined. As per the 'Aawas' scheme intended for giving treatment facilities and identity</p>

2013) in the State by the Gulati Institute of Finance and Taxation (GIFT).

Audit observed that the Department was not proactive in identifying ISMW and registering principal employers and contractors under the Act so as to ensure that the benefits envisaged under the Act were derived by such workers as discussed in the succeeding paragraphs. In the six test-checked districts, the Department stated that there were at least 97,695 (September 2017) establishments, which engaged ISMW and which could have been brought under the purview of the Act. A joint inspection conducted by Audit with the ALO Perumbavoor who was the designated Inspector under the Act, identified eight plywood factories employing ISMW in Kunnathunadu Taluk in Perumbavoor, Ernakulam district, which were not registered under the Act. Audit observed that on the date of joint inspection (13 June 2017), 21 to 75 ISMW (including 16 women) were engaged by each of these factories (Appendix 6.1). In three of these eight factories, the total number of workmen physically present at the time of inspection was 100, while only 46 employees were recorded in the Muster roll. A joint inspection (19 July 2017) of construction site of Dharmashala Auditorium and Convention Centre, Kannur revealed that though there were three joint principal employers, one contractor and 18 ISMW at the site, neither the principal employers applied for registration nor the contractor had applied for licence to employ ISMW. Audit noticed that despite the establishment not maintaining records and flouting provisions of the ISMW Act/Rules, no action was taken against the violators by the Registering Authority (DLO) Kannur in this regard.

In the Exit Conference (October 2017), the Labour Commissioner admitted that the total number of ISMW in the State projected by the Labour Department was presumptive and

card to Inter State Migrant Workers they are being registered in this scheme. The scheme started on 01.11.2017 and as on 31.06.2019, 3,87,352 workers were registered. A large percentage of Inter State Migrant workers were forced to return to their native place due to flood occurred in Kerala.

The shortage in the number of officers in the Labour Department causes delay in enforcing the Laws strictly, pursuing further action and continuous inspection. The perspective of the Government is to create more posts to strengthen the enforcement wing of Labour Department. But it is not possible for a large scale post creation, since that will affect financial deficit of the State. Within the available system, strict inspections are being carried out and during the inspection, Minimum Wages, Registers, Records, working situation, safety, welfare measures etc. are inspected and prosecution proceedings were initiated against those who committed lapses.



the figures projected by GIFT too could not be considered upto date. He informed that the Department was capturing biometric details of ISMW and expressed hope that an authentic figure on the quantum of ISMW in the State would be arrived at by December 2017 itself. It was also stated that the Department did not possess any authentic category-wise figures on the quantum of principal employers and ISMW in the State with respect to Government Departments, factories, shops and commercial establishments, construction sites, etc.

The Additional Labour Commissioner and DLOs of six test-checked districts stated (June 2017) that since the migrant workers were directly employed by the employer and not through a contractor, the registration/licence under the Act would not be attracted in these cases. The reply was not acceptable in view of the fact that the Supreme Court of India had observed in *Bandhua Mukthi Morcha v/s the Union of India and Others 1983* that whether the ISMW who were employed were ISMW or not would have to be investigated and determined in order to make the provisions of the Inter-State Migrant Workmen Act and Rules meaningful for such workmen who were recruited from other States. The Labour Commissioner assured in the Exit Conference (October 2017) that the applicability of the Supreme Court judgment in respect of ISMW employed in the State would be examined. The reply of the Labour Commissioner was not acceptable as Government was bound to initiate required action in the light of the Supreme Court judgment.

Moreover, Sections 20 (2) (a) and 20 (2) (b) provide for Inspectors under the Department to enter any premises suspected of employing ISMW, to examine any person found in any such premise for the purpose of determining whether such person is an

	<p>ISMW for ensuring compliance with provisions of the Act. Audit observed that even though the inspectors conducted inspections of 5,95,177 establishments under 28 other Labour Acts during 2012-17, the compliance to provisions of ISMW Act was examined by the inspectors of the Department only in 5,561 establishments. The DLO (Enforcement) who was the Registering Officer appointed under Section 3 of the Act, also did not evolve a mechanism to ensure that all establishments engaging ISMW were registered under the Act. The Inspection wing in the Department was required to be strengthened by enhancing the number of inspectors.</p>	
6.2.3.2	<p><b>Employment of Inter-State Migrant Workmen by contractor without licence under the Act.</b></p> <p>Section 8 (1) of the Act stipulated that no contractor, to whom the Act applies, shall recruit any person in a State for the purpose of employing him in any establishment, situated in another State without licence issued under the Act. In Kerala, the DLO (Enforcement) is the authority designated under the Act to monitor the compliance of this provision of the Act. Inspectors under Section 20 of the Act can take penal action under Sections 25 and 26 of the Act for violation of the provisions of the Act. Section 25 specified penal provisions for contravention of provisions regarding employment of ISMW. Section 26 covered other offences for which no penalty was elsewhere provided.</p> <p>Violation of the said provisions was noticed in two selected districts as detailed below.</p> <p>Records verified at DLO Kannur revealed that in four out of eight registered establishments, contractors did not apply and obtain licence during 2016-17. At DLO Kollam, the contractor engaged under the registered principal employer 'Asset Grandios, Kollam', did not take licence for employing additional</p>	<p>Section 8(1) of Inter State Migrant Workers Act, envisages that no contractor shall recruit any person in a state for the purpose of employing him in any establishment, situated in another state without a valid license. Section 25 of the said Act describes the contravention of provision regarding employment of Inter State Migrant Workers. Regular inspection are being carried out by the Inspector under Labour Department in all establishment including those engaging Inter State Migrant Workers. As per Inter State Migrant Workers Act in 2017, 270 inspections and 11 prosecutions were executed and 151 inspection and 3 prosecutions were taken in 2018. In the Organised employment sector, Inspections are being conducted by the Inspectors of Labour Department to check whether Registration License etc are strictly taken. In October, 2017, there were 1276 registration, and in 2018, 1632 establishments were registered. Since Registration of establishment, Renewal, Renewal of</p>

	<p>20 ISMW. Though the principal employer obtained an amended registration certificate for engaging 25 ISMW instead of the earlier five employees, the contractor who was supplying the workers did not amend his licence to reflect the increased number of workers and did not remit the additional security deposit of ₹40,000 at the rate of ₹2,000 per workman. Audit observed that contractors were required to remit ₹2,000 per workman engaged by them as security deposit for obtaining licence under the Act. Since GIFT study sponsored by GOK had identified 25 lakh ISMW as of 2012-13, Audit reckoned that the State had foregone at least ₹320.92 crore by way of security deposit.</p> <p>The DLO (Enforcement) who was the Licensing Authority under Section 7 of the Act failed to initiate necessary steps for prosecuting the violators under Section 25 of the Act.</p> <p>Additional Labour Commissioner stated (October 2017) that the licensing/registering authorities including DLOs of Kannur and Kollam were directed to submit a report with regard to updating/amendment of requisite registration/licence and to initiate legal steps against violation of provisions.</p>	<p>Contractors, License etc. are made online through Labour Commissionerate Automation system, at present there is no delay for renewal. In cases of delay, penalty is imposed as per Rule 14 (3). Apart from this, if security deposit is not remitted in accordance with the number of workers, necessary direction were given during inspection and made the required amount to remit. The validity of number of Inter State Migrant Workers as per the study report of Gulathi Institute of Finance &amp; Taxation studies is under doubt. Hence the finding of the Audit report to the effect that ₹ 302.92 crore has been lapsed in proportion to the 25 lakh workers is not true.</p>
6.2.3.3	<p><b>Contractors not holding requisite licences</b></p> <p>As per Sections 8 (a) (ii) and 8 (b) (ii) of the Act, contractors recruiting an ISMW in one State for employment in another State and contractors employing persons from another State as workmen for the execution of any work in any State should hold valid licences issued by the appropriate authorities of both the home and host States of the ISMW.</p> <p>In the six districts test-checked, there were 736 contractors holding licences under the Act and employing 35,250 ISMW</p>	<p>As per Section 8A(ii) and 8 B (ii), the contractor who recruit any person in a State for the purpose of employing him in another state and the contractor who employ workers in any state from another state shall obtain License as per rule from the Licensing authorities from the native state of the workers as well as the state where recruitment is made. The Inspectors under Labour Department conduct inspections in all workplace including establishments whether Inter State Migrant</p>

during 2012-13 to 2016-17 as shown in Table 6.3.

Table 6.3: Details of ISMW engaged through contractors

Name of District	Total Number of Contractors	Total number of ISMW engaged through Contractors
Thiruvananthapuram	215	12090
Kollam	40	813
Kozhikkode	97	2821
Kottayam	93	1754
Ernakulam	268	16920
Kannur	23	852
<b>Total</b>	<b>736</b>	<b>35250</b>

(Source: Office of the Labour Commissioner)

As per Rule 21 (1), every contractor shall furnish to the specified authorities the particulars regarding recruitment and employment of migrant workmen in Form X. Also as per Rule 24, every contractor shall furnish returns regarding migrant workmen who have ceased to be employed, in Form XI to the specified authorities concerned, either personally or by registered post so as to reach them not later than 15 days from the date the migrant workman ceased to be employed.

Audit observed that the Department issued licences to the contractors without ensuring whether the contractors possessed valid licence issued by a competent authority of the home State to recruit from that State for employment in Kerala. Submission

Workers were engaged. As per Inter State Migrant Workers Act 270 inspection and 11 prosecution and 151 Inspection and 3 prosecution were executed during 2018. In October, 2017, there were 1276 registration and in 2018, 1632 establishment were registered. Since Registration of establishment, Renewal, Renewal of Contractors, License etc. are made online through Labour Commissionerate Automation system, at present there is no delay for renewal. In cases of delay, penalty is imposed as per Rule 14 (3). Apart from this, if security deposit is not remitted in accordance to the number of workers necessary direction were given during inspection and made the required amount to remit.

	<p>of returns in Forms X and XI were not ensured in any of the six test-checked districts.</p> <p>DLOs of all test-checked districts stated that while issuing the licence, it was not being verified whether contractors were holding licences obtained from the State where recruitment was made. DLOs, Kollam and Ernakulam stated that since the ISMW employed in the State were not recruited from their home States through contractors and came to the State on their own, the contractors employing them were not required to ensure licence from recruiting State, as envisaged by the Act.</p> <p>The reply was not factually correct, as under Section 20 (2) (b), the Inspectors were to investigate and determine whether persons working in any premises were ISMW or not, which was not being complied with. This indicated that due attention was not given to the implementation of the provisions of ISMW Act/Rules.</p> <p>The Labour Commissioner confirmed the fact of non-issuance of licence from home State in the Exit Conference (October 2017). He further stated that it was not proper to circumvent the provisions of the Act and issue licences without ensuring holding of licence from home State. Failure of the DLOs (Enforcement) to verify such licences issued from the home State resulted in inability of the Department to ensure that the benefits of displacement cum outward journey allowance, wages from date of recruitment, etc., which the ISMW were entitled to, were received by them.</p>	
6.2.3.4	<p><b>Delayed renewal of licence by the contractors</b></p> <p>As per Rule 14 (1) of the Kerala Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Rules (Rules), every Contractor may apply to the Licensing Officer for</p>	<p>As per Rule 14(1) of Kerala Inter State Migrant Workmen (Regulation of Employment &amp; Conditions of Services) Rules, every contractor may apply the Licensing officer for renewal of the</p>



<p>renewal of the licence and every licence renewed shall remain in force for a further period of 12 months from the date of order of renewal. As per Rule 14 (2), the application shall be submitted not less than 30 days before the date on which the licence expires. DLO (Enforcement) is the licensing authority under the Act.</p> <p>Licences were being renewed to the contractors in delayed cases, on payment of a fee 25 per cent in excess of the fee ordinarily payable for the licence as per Proviso to Rule 14 (3) of the Rules. However, there was no system in place to ensure that all active contractors holding licences under the Act were renewing licences on expiry of validity period.</p> <p>In Kozhikode, delay in renewal of licence ranged from one to two months while in Kannur, delay ranged from one to seven months. No data on period of delay in renewal was available with DLOs of Ernakulam, Kollam, Kottayam and Thiruvananthapuram. The DLO, Ernakulam stated (September 2017) that since there was no fixed date for renewal of licence, it was difficult to obtain renewal date in individual cases and that software update was essential for the same. The DLO Kollam stated (September 2017) that they were issuing notices to such contractors who were not renewing the licence after the due date, while the DLOs Thiruvananthapuram and Kottayam stated (September 2017) that the Department did not have any details on the renewal dates of licence, either in registers or in Labour Commissioner Automation System (LCAS). Audit observed that there was no monitoring mechanism in place to ensure timely renewal of licence. No monthly or quarterly returns/reports were prescribed. The Labour Commissioner stated in the Exit Conference (October 2017) that reasons for not taking action against the contractors for delayed renewal of licences would be obtained from the respective DLOs.</p>	<p>License and every license renewed shall remain in force for a further period of 12 months from the date of order of removal. Rule 14 (2) specifies to submit application for renewal no less than thirty days before the date on which License expires. Under the Act, District Labour Officer (Enforcement) is the Licensing authority. As per the provision made in Rule 14 (3), if the application for renewal is not received within the specified time, a fee of 25% excess of the ordinary fees shall be paid.</p>
--	---

6.2.4	<p><b>Implementation of welfare provisions and amenities</b></p> <p>Sections 13 to 18 of the Act stipulated the obligations of contractors in respect of the wages to be paid and welfare and other facilities to be provided to ISMW by the contractor.</p> <p>In the six districts test-checked, there were 736 contractors holding licence and 420 principal employers registered under the Act employing 35,250 ISMW. Violations of some of these provisions, noticed in the course of audit are brought out below.</p>	<p>Inter State Migrant Workers Act is applicable for the recruitment made to another state from the native state. But majority of workers were engaged in work without such recruitment process. A vast majority of workers get joins after coming to Kerala through their friends and relatives. Therefore it is not practical to make available displacement allowance, journey allowance etc to these employees.</p>
6.2.4.1	<p><b>Displacement allowance not paid</b></p> <p>As per Section 14 (1) of Act and Rule 50 of the Rules, a displacement allowance should be paid by the contractor to every ISMW at the time of recruitment, which would be equal to 50 per cent of the monthly wages payable to him or ₹75 whichever was higher. Each contractor was required to maintain a sheet for payment of displacement-cum-outward journey allowances in Form XV.</p> <p>The DLOs (Enforcement) in the six districts test-checked admitted that Displacement allowance was not paid in any of the districts either by the contractor under Section 14 (1) or by the principal employer under Section 18, which dealt with the liability of the principal employer when the contractor failed to fulfil his obligations under Section 14(1). Joint inspection also revealed that contractors were not maintaining Form XV as required by the Act (Appendix 6.2).</p> <p>Thus, it was clear that the Department was not performing its duty as prescribed in the Act, as the records checked during joint inspection did not reveal sufficient details in the matter.</p>	<p>Inter State Migrant Workers Act is applicable for the recruitment made to another state from the native state. But majority of workers were engaged in works without such recruitment process. A vast majority of workers get joins after coming to Kerala through their friends and relatives. Therefore it is not practical to make available displacement allowance, journey allowance etc to these employees. Necessary instruction has been given to inspectors to verify whether details regarding displacement/T.A. Has been entered in the prescribed proforma.</p>
6.2.4.2	<p><b>Journey allowance not paid</b></p> <p>As per Section 15, a journey allowance of a sum not less than the fare from the place of residence of the ISMW in his State to</p>	<p>Inter State Migrant Workers Act is applicable for the recruitment made to another state from the native state. But majority of workers were engaged</p>

the place of work in the other State shall be payable by the contractor to the ISMW, both for the outward and return journeys and such ISMW shall be entitled to payment of wages during the period of such journeys as if they were on duty. Also, as per Rule 50 of the Rules, every contractor shall maintain a register for return journey allowance in Form XVI.

In the six districts test-checked, there were 736 contractors holding licences under the Act and employing 35,250 ISMW during 2012-17. Audit observed that Journey allowance was not paid in any of the selected districts. Form XVI was not being maintained by the contractors in any of the six districts. No penalty was imposed by the Department under Sections 25 and 26 of the Act for contravention, of Sections 15 and 18 (1) of the Act.

Government replied (October 2017) to paragraphs 6.2.4.1 and 6.2.4.2 that the ISMW Act will apply only if recruitment was made in the home State. Since majority of ISMW were recruited only after reaching the destination State, the provisions of the Act could not be made applicable in such cases. The above justification was not acceptable as the Labour Department failed to ensure that provision under section 20 (2) (b) of the Act requiring Inspectors to inspect premises and determine whether workers employed in such premises were ISMW or not, was complied with.

The Labour Commissioner admitted in the Exit Conference (October 2017) that the Department was not in a position to ensure payment of displacement allowance and journey allowance to ISMW, as licences from both home State and employing State as required under the Act were not being ensured. Audit observed that mere acceptance of inability to ensure payment of Displacement and Journey Allowances was

in works without such recruitment process. A vast majority of workers get job after coming to Kerala through their friends and relatives. Therefore it is not practical to make available displacement allowance, journey allowance etc to these employees.

	<p>inadequate justification for failure to discharge its duties of correctly identifying ISMW and ensuring payment of benefits to them.</p> <p>No penalty was imposed by the Department under Section 25 of the Act for contravention of Sections 14 (1) and 18 (1) of the Act.</p> <p>The Department may ensure that contractors maintained the required details regarding displacement/journey allowances in the prescribed forms so that payment of allowances entitled to the ISMW by the contractors, could be enforced and monitored effectively.</p>	
6.2.4.3	<p><b>Provision of medical facilities not ensured</b></p> <p>As per Section 16 (e) of the Act and Rule 36 (1) of the Rules, medical facilities for outdoor treatment to ISMW were to be provided free of cost without fail as prescribed. As per Rule 36 (2), the contractor had to ensure that suitable arrangements existed to provide medical facilities for in-patient treatment.</p> <p>As per Rule 36 (3) every contractor shall provide and maintain so as to be readily accessible during all working hours, first-aid boxes at the rate of not less than one box for 150 ISMW or part thereof. As per sub-section (4), the first-aid box was to be distinctly marked with a Red Cross on a white background and contain equipment specified as per Rules.</p> <p>On a joint inspection of Lulu International Mall Project site, Thiruvananthapuram, the first-aid kit was found in an unmarked box dumped on the ground. In Dharmashala Auditorium and Convention Centre, Kannur, Audit found that only three sterilised dressings were available, which were stacked between the roof tiles. No other prescribed equipment/medicines as per Rules were maintained.</p>	<p>The Act envisages to provide prescribed Medical facilities to the workmen, free of charge. The contractor shall ensure the medical facilities for their treatment. Inter State Migrant Workers Act is applicable for the recruitment made to another state from the native state. But majority of workers were engaged in work without such recruitment process. A vast majority of workers get job after coming to Kerala through their friends and relatives. Therefore it is not practical to make available displacement allowance, journey allowance etc to these employees. As per Kerala Inter State Migrant Workers Welfare Fund Scheme, a maximum of ₹ 20,000/- is provided for the inpatient treatment in Hospitals. Apart from this under 'Aawas Scheme' ₹ 15,000/- is provided for the medical treatment of Inter State Migrant Workers, Department Level action to make aware of the Kerala Inter State Migrant Welfare Scheme is being done while registering under Aawas</p>

	<p>Audit collected data on diseases prevalent among ISMW in the State. It was seen that the Directorate of Health Services, Thiruvananthapuram recorded 2,336 cases of malaria, 931 cases of filariasis, 5,202 cases of fever and 1,562 cases of Acute Diarrheal Diseases during 2012-17 among ISMW in the 14 districts. Kerala State AIDS Control Society's (KSACS) Migrant Targeted Intervention Projects under National AIDS Control Programme (NACP) recorded a total of 151 HIV positive cases and 6,352 cases of Sexually Transmitted Infections (STI) during the period 2012-17 among migrant workers.</p> <p>Scrutiny of inspection files in six test-checked districts and replies to audit enquiries revealed that no records on medical facilities provided under the Act were being maintained by the establishments. Government replied (October 2017) that the inspectors were gathering details regarding medical facilities provided by employers and that no complaints had been received from workers in this regard. The reply was not acceptable because Government did not provide any records for scrutiny. In the absence of such records, Audit was not in a position to ascertain whether outdoor treatment was provided free of cost and medical facilities extended to in-patient ISMW.</p>	<p>scheme. Further instructions has been given to the Inspector to ensure whether first aid box and other medical facilities are being provided, at the time of Inspection. During 2017-18, 150 medical camps and awareness camps were conducted throughout all the Districts.</p>
<p><b>6.2.4.4</b></p>	<p><b>Canteen facilities not provided</b></p> <p>As per Rule 40 (1), canteen shall be provided by contractor in every establishment where work was likely to continue for six months and where there were more than 100 ISMW. As per Rule 40 (2), if the contractor failed to provide canteen as per Rules, the same shall be provided by the principal employer, within 60 days of the expiry of the time allowed to the contractor. Audit noticed during joint inspection that in Feroke, Kozhikode district,</p>	<p>During the inspection conducted under Inter State Migrant Workers Act, provision for canteen facilities were ensured and instructions were given to take action against to the establishment who has not provided the same. Instructions were also given to provide canteen facilities in places where, it presently not exist.</p>



	<p>three footwear manufacturing units employing 105-240 ISMW did not provide canteen facility to the workers. In Thiruvananthapuram district, inspections conducted in three out of 12 construction sites employing 100 to 500 ISMW revealed that food was provided under hygienic conditions only in one site. In Ernakulam district, of the 44 establishments engaging 100 to 2,500 ISMW, canteen facility was offered only in certain cases, the exact number of which was not available.</p> <p>No action was taken by the DLOs/ALOs who were the inspecting officers under Section 20 of the Act, for violation of provisions contained in Rule 40 (1) and (2) by the principal employers/contractors.</p>	
6.2.4.5	<p><b>Issue of pass book to Inter-State Migrant Workmen – noncompliance of provisions</b></p> <p>As per Section 12 (1) (b), it shall be the duty of every contractor to issue to the ISMW, a pass book affixed with a passport size photograph of the workman.</p> <p>The Act specified that the pass book should indicate in Hindi and English and where the language of the workman was not Hindi or English, in the language of the workman, all particulars including benefits specified under the Act.</p> <p>Section 12 (2) required the contractor to maintain the pass book up-to-date and cause it to be retained with the ISMW concerned.</p> <p>Audit conducted joint inspection with the officials of the Labour department in the establishments at Thiruvananthapuram, Ernakulam, Kozhikode and Kannur and noted that pass books as required under the Act were not being issued.</p> <p>Replies furnished by DLOs of six test-checked districts confirmed that none of the 35,250 ISMW engaged by the principal employers were issued with Pass Books indicating that</p>	<p>Section 12(1) (B) of this Act, envisages that the Contractor shall issue to every Inter State Migrant Workers, a pass-book affixed with a passport size photograph of the workman and including all the details the benefits envisaged under law in Hindi and English languages and where the languages of the workmen is not Hindi or English, also in the language of the workmen. The contractor shall maintain the pass book up to date and cause it to be retained with the Inter State Migrant Workers concerned. During the Inspection, the Inspectors ensure that whether the contractors maintains the passbook regarding all the eligible benefits due to the Inter State Migrant Workers and give instructions to maintain the same if not.</p>

	<p>Government/Department failed in complying with the provisions of the Act. In the absence of maintenance of pass books, an assurance on benefits provided to ISMW could not be obtained in audit.</p> <p>The Department needs to ensure that Pass books containing details of all benefits due to ISMW, are maintained and kept up-to-date by the contractors.</p>	
6.2.5	<p><b>Quality of Inspections conducted</b></p> <p>As per Section 21 of the Act, ISMW were entitled to benefits of provisions contained in Workmen's Compensation Act, 1923, Payment of Wages Act, 1936, Employees State Insurance Act, 1948, Employees Provident Fund and Miscellaneous Provisions Act, 1952, Industrial Disputes Act and Maternity Benefit Act, 1961.</p> <p>Audit noticed that the Inspectors did not check whether benefits of all the above Acts were extended to the ISMW employed in the establishments, as stipulated in the ISMW Act. While the Inspectors in Kollam and Kottayam did not exercise checks on provision of benefits stipulated by any of the Acts, the inspectors in Kozhikode conducted checks under the Payment of Wages Act only.</p> <p>Government replied (October 2017) that the present staff strength of inspectors was too low to handle the huge influx of migrant workers and that measures to revamp the enforcement machinery of the Department to ensure safe and conducive work atmosphere and other welfare amenities to the migrant workers would be adopted. Reply of the Government that staff strength was inadequate was not acceptable, as it was incumbent on the Government to implement various provisions of the Act by</p>	<p>As per section 21, of Inter State Migrant Act, Inter State Migrant Workers are eligible for benefits provided under Workmen Compensation Act, 1923, Payment of Wages Act, 1936, Employees State Insurance Act, 1948, Employees Provident Fund and Miscellaneous Provisions Act, 1952, Industrial Dispute Act, Maternity Benefit Act, 1961. General Instructions were given to all the inspectors regarding the provisions to be followed while conducting inspection. All the establishments within and outside the purview of Inter State Migrant Workers Act are being inspected and stringent action is being taken to against all the Labour Law violations.</p>

	exploring various ways and means to address the shortfall and enhance capacity building of the Inspectors.	
6.2.5.1	<p><b>Shortfall in inspections conducted under ISMW Act</b></p> <p>As per Circular issued by Labour Commissioner (May 2015), a minimum of 50 establishments were to be subject to inspection per month to oversee the compliance of all 29 Labour Acts including ISMW Act. Scrutiny of records of inspections for the period 2012-17, revealed that inspections were not carried out regularly to verify compliance to provisions of the Act and Rules.</p> <p>A comparative study of inspections conducted under the ISMW Act and other Acts in the Labour Department revealed meagre inspections under the ISMW Act. Scrutiny of records at the office of the Labour Commissioner revealed that departmental officers conducted inspections of 5,95,177 establishments under 28 other Labour Acts during 2012-17. In the absence of any specific norms on the number of inspections to be conducted under each Act, Audit worked out an average of 21,256 inspections per Act, under 28 other Labour Acts. Against this, the total number of inspections carried out under ISMW Act during 2012- 17 was 5,561 only. It was also seen that the number of Inspections conducted annually under ISMW Act showed a declining trend during 2014-17. Government (October 2017) cited heavy work load due to multiplicity of Acts and Rules to be enforced by the department, shortage of staff and vehicles as reasons for shortfall in inspections. Non-compliance of provisions of Act/Rules citing shortage of staff/vehicles was not acceptable, as Government was required to provide requisite infrastructure to facilitate timely conduct of inspections.</p>	<p>General Instructions were given to all the inspectors regarding the provisions to be followed while conducting inspection. All the Inter State Migrant Workers Act are being inspected and stringent action is being taken to against all the labour Law violations. As per Inter State Migrant Workers Act in 2017, 270 inspections and 11 prosecutions were filed and 151 inspection and 3 prosecutions were taken in 2018. In the Organised employment sector, Inspections were conducted by the Inspectors of Labour Department to check whether Registration, License etc are taken or renewed promptly. In 2017, there was 1276 registration. In 2018, 1632 establishment were registered. Since Registration of establishment, Renewal, Renewal of Contractors, License etc. are made online through Labour Commissionerate Automation system, at present there is no delay for renewal.</p>
6.2.5.2	<p><b>Non- Maintenance of records and registers</b></p> <p>As per Section 23 (1), every principal employer and every</p>	<p>Section 21 (1) of the Act envisages that all the employees and contractor shall maintain register</p>


	<p>contractor shall maintain such registers and records giving such particulars of ISMW who were employed, the nature of work performed by such workmen, the rates of wages paid to the workmen and such other particulars in such form as may be prescribed. Registers were also to be maintained under Rules 47 to 51.</p> <p>Audit noticed that as per provisions contained in the Rules, units registered under the Act had to maintain 14 records/registers in stipulated forms. Joint inspection conducted by Audit along with DLOs/ALOs in 20 establishments revealed that no registers/returns were maintained in 18 establishments. Seven registers/returns were seen maintained in two establishments in Ernakulam. The details of registers and records to be maintained, persons responsible for the maintenance of records and the form in which registers were to be maintained in six test-checked districts are detailed in Appendix 6.3. The DLOs who were the Inspecting Authorities failed to ensure compliance of provisions envisaged in the Act and Rules.</p>	<p>and document regarding the details of the engaged Inter State Migrant Workers, the mode of Employment, wages given and other details. The Labour Officers are taking stringent action to ensure the maintenance of provision laid down under the Act and rules. The Inspectors had reported that the employees have complained that it becomes difficult to maintain registers since the workers are not working under a contractor permanently. Eventhough during inspections inspectors ensure that the Register are maintained. Instructions have been given to inspect that.</p>
6.2.5.3	<p><b>Notices of conditions of work and abstract of Act and Rules not displayed</b></p> <p>As per Section 23 (2) of the Act and Rules 53 and 54 of the Rules, every principal employer and every contractor shall keep exhibited in such manner as may be prescribed within the premises of the establishment where the ISMW are employed, notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information as may be prescribed and also display abstract of Act and Rules. Joint inspection of 20 sites/factories with the departmental officers in Thiruvananthapuram, Ernakulam, Kannur and Kozhikode revealed that such notices were not being displayed in any of the sites. DLO was to initiate penal action under Sections 25 and 26 of the Act against the contractor and employer for non-</p>	<p>As per section 23(2), of Inter State Migrant Workers Act and Rules 53, 54 every principal employer and every contractor shall exhibit notices in the prescribed form containing particulars about the hours of work, nature of duty and such other information within the premises of the establishment where the Inter State Migrant Workers are employed. The Labour Department officials during their inspection took action in cases where such notices are not exhibited. As per Inter State Migrant Workers Act in 2017, 270 inspections and 11 prosecutions were filed and 151 inspection and 3 prosecutions were taken in 2018. In October, 2017, there was 1276 registration. In</p>

	compliance of provisions stipulated in the Act. Audit observed that no such action was initiated in this regard.	2018, 1632 establishment were registered. In the organised employment sector, inspections were conducted by the inspectors of Labour Department to check whether Registration, License etc are taken or renewal promptly.
6.2.5.4	<p><b>Penal provisions not imposed</b></p> <p>Sections 24 to 27 of the Act stipulated the penal provisions for contravention of the provisions of the Act.</p> <p>Audit noticed laxity on the part of the DLOs/ALOs in enforcing penal provisions for violation of the provisions of the Act. There were very few convictions and prosecutions under the Act. Section 29 of the Act stipulated that no Court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within three months from the date on which the alleged commission of the offence came to the knowledge of the inspector or authorised person concerned. Examination of 67 inspection files in the test-checked districts revealed that in 14 cases, the inspecting officers closed the files citing reasons such as expiry of time limit, migrant workmen leaving establishment following inspection, etc. It was observed that the offences became time barred since the inspecting officers were lax in pursuing the cases and did not file cases in Court within three months from the date on which the commission of the offence came to their knowledge, as required by Section 29 of the Act.</p> <p>Government replied (October 2017) that the present pattern of inspectors and staff of Labour Department was fixed without considering the large flow of migrant workers into the State and that the enforcement machinery of the Department would be revamped. The laxity of the inspectors in diligently pursuing cases and ensuring prosecution of offenders is a matter of concern and needed to be addressed, so as to ensure proper</p>	<p>Section 24 to 27 of Inter State Migrant Workers Act envisages the punishments for the violation of Act provision. As per Inter State Migrant Workers Act in 2017, 270 inspections and 11 prosecutions were filed and 151 inspection and 3 prosecutions were taken in 2018. In the organised employment sector, inspections were conducted by the inspectors of Labour Department to check whether Registration, License etc are taken or renewal promptly. In October, 2017, there was 1276 registration. In 2018, 1632 establishment were registered. Since Registration of establishment, Renewal, Renewal of Contractors, License etc. are made online through Labour Commissionerate Automation system, at present there is no delay for renewal. In cases of delay, penalty is imposed as per Rule 14 (3). Apart from this, if security deposit is not remitted in accordance to the number of workers necessary direction were given during inspection and made the required amount to remit.</p>

	implementation of the Act.	
6.2.6	<p><b>Conclusion</b></p> <p>Audit observed that the Department was lax in identifying ISMW and ensuring that the benefits under the Act were derived by these workers. The DLO (Enforcement) who was the Registering Officer appointed under Section 3 of the Act failed to evolve a mechanism to ensure that all establishments engaging ISMW were registered under the Act. The Department issued licences to the contractors without ensuring whether the contractors possessed valid licences issued by a competent authority of the home State, to recruit from that State for employment in Kerala. Audit observed laxity on the part of Inspectors in diligently pursuing cases and ensuring prosecution of offenders under the Act.</p> <p>The implementation of the Inter-State Migrant Workmen Act in the State was, thus, not effective.</p>	<p>General Instructions were given to all the inspectors regarding the provisions to be followed while conducting inspection. All the establishments within or outside the purview of the Inter State Migrant Workers Act are being inspected and stringent action is being taken against all the Labour Law violations. In 2018, under Labour Labour Laws 37334 Registration and 214912 renewals were carried out. Further Enforcement wing of the Labour Department conducted 37953 Inspection and filed 3318 prosecutions and 386 claim petition. Under Contract Labour Regulation &amp; Abolition Act, 308 Registration, 251 Licenses and 514 renewals were issued. 265 Registration, 140 Licenses and 239 renewals were issued under Inter State Migrant Workers Act.</p> <p>A call centre is working in Labour Department with Toll free No.155214 and 180042555214. Inter State Migrant Workers can report their grievances to this number. Further Facilitation Centres have been set up in Thiruvananthapuram &amp; Ernakulam District. (Phone Thiruvananthapuram-0471-2330833, Ernakulam- 0484-2525100). Facilitators capable of dealing various languages are appointed here. Inter State Migrant Workers can contact facilitation centre for any matters related to their employment. Further during the flood period in Kerala, facilitation centre have benefited a lot to collect information and to provide facilities to the Inter State Migrant Workers. But</p>



		<p>the shortage in number of officers into Labour Department causes delay in the enforcement of Laws strictly and for the pursuance of further action and continued inspections. A proposal for the creation of Additional post for the strengthening of Enforcement Wing of Labour Department was submitted to the Government. (E5-1885/06 dated 4.4.18). In this regard File No.:LBRD-D3/3/118/2017/LBRD exist in Labour Department. Government have informed that the said proposal has been deferred. Even then with the existing system, stringent inspections are being conducted during inspection, minimum wages, Register, Records, working conditions, safety and other welfare measure were inspected and prosecution proceedings were initiated against those who commit lapses.</p>
--	--	--

  
**D. LAL**  
 Additional Secretary  
 Labour & Skills Department  
 Government Secretariat, Tvpmm  
 Ph: 0471 2518244

127

**APPENDIX III**  
**Appendices From Audit Report**

Appendices

*Appendix III (i)*

**Appendix 6.1**

**Number of ISMW in eight plywood factories in Perumbavoor,  
Ernakulam District as on date of inspection**

*(Reference: Paragraph 6.2.3.1; Page: 132)*

Sl. No.	Name of Factory	No. of ISMW employed as per records maintained by the units	No. of ISMW as on date of Joint Inspection
1.	Nova Plywoods, Kuttipadam	15 (as per Muster Roll)	40 (including 5 women)
2.	Firdouse Plywoods, Kuttipadam	11 (as per Muster Roll)	25
3.	Apollo Plywoods, Kuttipadam	20 (as per Muster Roll)	35
4.	Sumi Industries, Kunnathunad	19*	75 (including 11 women)
5.	Subaida Industries, Kunnathunad	19*	40
6.	New Star Plywoods, Kuttipadam	No records	65
7.	Kamaliya Plywoods, Kuttipadam	No records	50
8.	Royal Veneers, Allapra P.O.	No records	21

\*based on oral evidence collected during joint verification of sites along with ALO

**Appendix 6.2****Non-maintenance of Form XV in the construction sites/factories where Joint Inspection was conducted***(Reference: Paragraph 6.2.4.1; Page: 136)*

Sl. No.	Name of construction site/factory	Name of District
1.	Lulu International Mall Project	Thiruvananthapuram
2.	Tamara Constructions	Thiruvananthapuram
3.	Asset Hill Crest Thames	Thiruvananthapuram
4.	Malabar Grand Cedar Project, Kowdiar	Thiruvananthapuram
5.	Lulu Tech Park, Kakkanad	Ernakulam
6.	Trans Asia Cyber Park at Info Park, Phase II, Kakkanad	Ernakulam
7.	Nova Plywoods, Kuttipadam, Perumbavoor	Ernakulam
8.	Firdouse Plywoods, Kuttipadam, Perumbavoor	Ernakulam
9.	Apollo Plywoods, Kuttipadam, Perumbavoor	Ernakulam
10.	Sumi Industries, Kunnathunad, Perumbavoor	Ernakulam
11.	Subaida Industries, Kunnathunad, Perumbavoor	Ernakulam
12.	New Star Plywoods, Kuttipadam, Perumbavoor	Ernakulam
13.	Kamaliya Plywoods, Kuttipadam, Perumbavoor	Ernakulam
14.	Royal Veneers, Allapra P.O., Perumbavoor	Ernakulam
15.	Nexo Footwear Pvt. Ltd., Feroke	Kozhikode
16.	Fandalia Footwear Pvt. Ltd., Feroke	Kozhikode
17.	Stylo Easy Walk Pvt. Ltd., Feroke	Kozhikode
18.	M/s. Genesis Institute of Medical Science Pvt. Ltd., (GIMS)	Kannur
19.	Aster Mims	Kannur
20.	Dharmashala Auditorium and Convention Centre	Kannur