

GOVERNMENT CONTRACT

The Government Contract has been assumed great importance in the modern times. As we all know that at present the state is the source of wealth and the state is in the nature of the welfare state. Governments economic activities are expanding as the government is increasingly assuming the role of the dispenser of the large number of benefits. In the current scenario large number of individuals and business organizations are enjoying government contract such as license, quota, mineral rights etc. This raises the possibility of exercise of power by the government to dispense largest in an arbitrary manner.

It is axiomatic that government or any of its agency ought not to be allowed to act arbitrary and confer benefits on whomsoever they want therefore., there is necessity to develop some norms to regulate and protect individual interest in such wealth. Thus structure and discipline the government discretion to confer such benefits. Therefore, to prevent arbitrary acts by the government and its agency, the constitutional obligation under the our constitution. Because the government contract is being talked about here, it is necessary to first know what is the contract?

Sec.2(h) Contract means "**an agreement enforceable by law**".

Thus a contract is an agreement enforceable by law which offers personal rights and imposes personal obligations, which the law protects and enforce against the parties to the contract. (right in personam)

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Contract to which the Central Government or State Government as case may be is a party is called a "Government Contract" the Indian Contract Act does not prescribe any form for entering into contract. A contract may be oral or in writing it may be express or implied from of circumstances of the case and the conduct of the parties.

The contractual liability of the State under the contract is the same as that of an individual person under the general contract. The present constitution has not brought any change in the legal status related to this matter and the state liability is exactly the same like the East India Company before 1858,.

The Hon'able Supreme Court has made the following observation in the famous case of **State of Bihar vs Majeed**

"It may be noted that like other contracts, a Government contract is also governed by the Indian Contract Act, yet it is distinct a thing apart. In addition to the requirements of Indian Contract Act, such as offer acceptance and consideration, a Government Contract has to comply with the provisions of article 299. Thus subject to the formalities prescribed by article 299 the contractual liability of the Centre and Sate government is same as that of any individual under the law of the ordinary contract. "

constitutional provisions

Under Article 298 of the Indian Constitution, the power of the Union and the State government to carry on any trade or business has been provided. For the formation of a Government contract the requirements under Article 299 have to be fulfilled and if they have fulfilled a contract can be enforced against the Government.

Art.299 (1) All contracts made in the exercise of executive power of the Union or State shall be expressed to be made by the President or by the Governor of the State as the case may be, and all such contracts and all assurances of property made in the exercise of the power shall be executed on behalf of the President or the Governor by such person and in such manner as he may direct or authorize.

(2) Neither the Governor nor President shall be personally liable in respect of any contract or assurance made or executed for the purpose of any enactment related to Government of India here to be force in force, nor shall any such contract or assurance on behalf of any of them be personally liable in respect thereof.

Article 299 requires the following three conditions

the contract must be expressed to be made by the President or the Governor as the case may be,

these contracts made in the exercise of the executive power are to be executed on behalf of the President /Governor as the case may be and

the execution must be by such person and in such manner as the President or the Governor of the case as the case may be, may direct or authorize.

The following procedure is mandatory to be followed .

(1) Government Contract express as to be made by the president or the Governor.

(2) they shall be executed by competent person and in the prescribed manner.

(3) in any case, the President or Governor is not personally liable on the contract.

(4) if the above requirements are not complied with:

(A) Government is not bound by the contract because article 299 is mandatory.

(B) The officer executing the contract would be personally bound.

(C) The government however if it enjoys the benefit of performance by the other party to the contract would be bound to give recompense sentence on the principle of quantum merit.

(D) Beside this, the doctrine of Promissory Estoppel may be apply on the facts.

An important question arises that if a contract is to be heard due to non-compliance with Article 299, what are the benefits derived under that contract? Whether or not the government will have the responsibility to return them. In this context, it will be necessary to review the facts of the case of the State of West Bengal vs B.K. Mondal.

In this case, Section 175 (3) of the Government of India Act, 1935 was challenged and the provisions of which were similar to Article 299 of the present Constitution, the respondent constructed a building for the use of the Civil Service Department but the Government did not pay and its obligations was denied on the ground that the contract was not in compliance with Section 175 (3) of the Government of India Act.

The Hon'ble Supreme Court has now determined that the government is not subject to the obligation under the contract to pay for the work done by the contract. But under Section 70 of the Contract Act, in which the Government's status is like a citizen, therefore, there is no reason why it should not be under obligation.

Thus in order to protect the innocent parties the court have held that if government desires any benefit under the agreement not fulfilling the requisites of the article 299(1),the government may be held liable to compensate the Other contracting party under section 70 of the Indian Contract Act on the basis of Quasi controlled liabilities to the extent of benefit received.

In the case of **State of West Bengal vs B.K. Mondal**,the Honorable Supreme Court has given some conditions necessary for the application of section 70.

- (1) a person should lawfully do something for another person or deliver something to him.
- (2)in doing said thing or delivering the said thing he must not intend to act gratuitously
- (3)the other person for whom something is done or whom something is delivered must enjoy the benefit thereof.

Following are the important decisions given by the supreme court or other courts supporting the above preparation.

- 1-State of West Bengal vs B.K. Mondal, AIR 1962 SC
- 2-M.P.Sugar Mills vs State of U.P.,AIR 1979
- 3-Union of India vs Rallia Ram,AIR 1963
- 4- Bhiakraj Jaipuriya vs Union of India,A I R 1962
- 5-Union of India vs Anglo (Indian)Afghan agencies, AIR 1968.(Promissory Estoppel)
- 6-Chaturbhuj vs Moreshwar, AIR 1967.

Finally, this important question should also be considered whether a judicial Review over to government contract can be exercised or not..

Although the government is not bound to contract with the person, but once the government enter into the contract with the person, it will also have to comply with the due process otherwise it will be subject to judicial review.

The tool of judicial review is exercised to keep the unfair practices which may be exercised by the Government or the officers who act on their behalf, in check and therefore it plays an important role in ensuring that the paramount interest of the contracting party is protected.

Judicial review can be exercise under the following circumstances.

- 1-If the Government has entered into a contract any arbitrariness (violative to Art.14,)and
- 2-all the procedure have not been duly followed in the contract
- 3-the activities of the government are prejudicial to the party
- 4- principles of natural justice have not been followed or the principles it have been disregarded.

If any of the circumstances mentioned above, the court may exercise the power of Judicial review. It is worth mentioning here the above mentioned grounds is not exhaustive and other grounds can also be added for judicial review.As the Hon'ble **Supreme Court has observed in Tata Cellular vs Union of India Case that"The Government should be given the freedom to enter into a contract but this freedom should be subject to the test of reasonableness and should also be free from any arbitrariness.."**

Thus judicial review is a powerful tool in checking for arbitrary action of government and this power cannot be used at any time because it would amount to infringing on the rights of the executive. So in other words judicial review should not be exercised under all circumstances unless due process has been followed by the government or by the executive or has an arbitrary attitude.

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