

RMM LAW COLLEGE SAHARSA

ADMINISTRATIVE LAW

IIIrd Part

Paper -VII

TOPIC- Suits Against government

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Ratification

The present position is that the contract made in contravention of the provisions of Article 299 (1) shall be void and therefore cannot be ratified.

The Supreme Court has made it clear that the provisions of Article 299 (1) are mandatory and therefore the contract made in contravention thereof is void and therefore cannot be ratified and cannot be enforced even by invoking the doctrine of Estoppel. In such condition the question of estoppel does not arise. The part to such contract cannot be estoppel from questioning the validity of the contract because there cannot be estoppel against the mandatory requirement of Article 299.

The Government cannot exercise its power arbitrarily or capriciously or in an unprincipled manner. In this case Justice Bhagwati has said “ Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest: Government cannot act arbitrarily and without reason and if it does, its action due consideration of legitimate expectation of affected party are Court has held that the right to refuse the lowest or any other tender is always available to the Government but the principles laid down in article 14 of the Constitution have to be kept in view while accepting or refusing a tender. The right to choose cannot be considered to be an arbitrary power. Of Course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.”

In the case of **Shrilekha Vidyarathi v. State of U.P** (1991 S.C .C 212) the Supreme Court has made it clear that the State has to act justly, fairly and reasonably even in contractual field. In

the case of contractual actions of the State the public element is always present so as to attract article 14. State acts for public good and in public interest and its public character does not change merely because the statutory or contractual rights are also available to the other party. The court has held that the state action is public in nature and therefore it is open to the judicial review even if it pertains to the contractual field. Thus the contractual action of the state may be questioned as arbitrary in proceedings under Article 32 or 226 of the Constitution. It is to be noted that the provisions of Sections 73, 74 and 75 of the Indian Contract Act dealing with the determination of the quantum of damages in the case of breach of contract also applies in the case of Government contract.

Quasi-Contractual Liability

According to section 70 where a person lawfully does anything for another person or delivers anything to him such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore, the thing so done or delivered. If the requirements of Section 70 of the Indian Contract act are fulfilled, even the Government will be liable to pay compensation for the work actually done or services rendered by the State.

Section 70 is not based on any subsisting contract between the parties but is based on quasi-contract or restitution. Section 70 enables a person who actually supplies goods or renders some services not intending to do gratuitously, to claim compensation from the person who enjoys the benefit of the supply made or services rendered. It is a liability, which arise on equitable grounds even though express agreement or contract may not be proved.

Section 65 of the Indian Contract Act, 1872
If the agreement with the Government is void as the requirement of Article 299 (1) have not been complied, the party receiving the advantage under such agreement is bound to restore it or to make compensation for it to the person from whom he has received it. Thus if a contractor enters into agreement with the Government for the construction of go down and received payment therefore and the agreement is found to be void as the requirements of Article 299 (1) have not been complied with, the Government can recover the amount advanced to the contractor under Section 65 of the Indian Contract act. Section 65 provides that when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it to make compensation for it to the person from whom he received it.

Suit Against State In Torts

Before discussing tortious liability, it will be desirable to know the meaning of 'tort'. A tort is a civil wrong arising out of breach of a civil duty or breach of non-contractual obligation. The word 'tort' has been defined in Chambers Dictionary in the following words:-
"Tort is any wrong or injury not arising out of contract for which there is remedy by compensation or damages."

Thus, tort is a civil wrong, which arises either out of breach of no contractual obligation or out of a breach of civil duty. In other words, tort is a civil wrong the only remedy for which is damages. The essential requirement for the arising of the tort is the breach of duty towards people in general. Although tort is a civil wrong, yet it would be wrong to think that all civil wrongs are torts. A civil wrong which arises out of the breach of contract cannot be put in the category of tort as it is different from a civil wrong arising out of the breach of duty towards public in general.

Liability For Torts

In India immunity of the Government for the tortious acts of its servants, based on the remnants of old feudalistic notion that the king cannot be sued in his own courts without his consent ever existed. The doctrine of sovereign immunity, a common law rule, which existed in England, also found place in the United States before 1946. Mr. Justice Holmes in 1907 declared for a unanimous Supreme Court:
"A sovereign is exempt from suit not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends."

Today, hardly, anyone agrees that the stated ground for exempting the sovereign from suit is either logical or practical.

Vicarious Liability of the State

When the responsibility of the act of one person falls on another person, it is called vicarious liability. Such type of liabilities is very common. For example, when the servant of a person harms another person through his act, we held the servant as well as his master liable for the act done by the servant.

Here what we mean is essentially the vicarious liability of the State for the torts committed by its servants in the exercise of their duty. The State would of course not be liable if the acts done were necessary for protection life or property. Acts such as judicial or quasi-judicial decisions done in good faith would not invite any liability. There are specific statutory provisions which the administrative authorities from liability. Such protection, however, would not extent malicious act. The burden of proving that an act was malicious would lie on the person who assails the administrative action. The principles of law of torts would apply in the determination of what is a tort and all the defences available to the respondent in a suit for tort would be available to the public servant also. If after all this, a public servant is proved to have been guilty of a tort like negligence, should the State, as his employer is liable?

In India Article 300 declares that the Government of India or a of a State may be sued for the tortious acts of its servants in the same manner as the Dominion of India and the corresponding provinces could have been sued or have been sued before the commencement of the present Constitution. This rule is, however, subject to any such law made by the Parliament or the State Legislature.