

RMM LAW COLLEGE SAHARSA

ADMINISTRATIVE LAW

IIIrd Part

Paper -VII

TOPIC- Suits Against government

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Liability of State In Contract And In Torts

Article 298 provides that the executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition holding and disposal property and the making of contracts for any purpose. Article 299 (1) lays down the manner of formulation of such contract. Article 299 provides that all contracts in the exercise of the executive power of the union or of a 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 that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorize. Article 299 (2) makes it clear that neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution or for the purposes of any enactment relating to the execution of any such contract or assurance on behalf of any of them be personally liable in respect thereof. Subject to the provisions of Article 299 (1), the other provisions of the general law of contract apply even to the Government contract.

A contract with the Government of the Union or State will be valid and binding only if the following conditions are followed: -

- 1) The contract with the Government will not be binding if it is not expressed to be made in the name of the President or the Governor, as the case may be.
- 2) The contract must be executed on behalf of the President or the Governor of the State as the case may be. The word executed indicates that a contract with the Government will be valid only when it is in writing.

3) A person duly authorized by the President or the Governor of the State, as the case may be, must execute the contract.

The above provisions of Article 299 are mandatory and the contract made in contravention thereof is void and unenforceable.

The Supreme Court has made it clear that in the case grant of Government contract the Court should not interfere unless substantial public interest is involved or grant is mala fide when a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the Court must be satisfied that there is some element of public interest involved in entertaining such a petition.

Effect of A Valid Contract With Government

However, as Article 299 (2) provides neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution or for the purposes of any enactment relating to the Government of India. As soon as a contract is executed with the Government in accordance with Article 299, the whole law of contract as contained in the Indian Contract Act comes into operations. Thus the applications of the private law of contract in the area of public contracts may result in the cases of injustice.

A contract of service with the Governments not covered by Article 299 of the Constitution. After a person is taken in a service under the Government, his rights and obligations are governed by the statutory rules framed by the Government and not by the contract of the parties.

Service contracts with the Government do not come within the scope of Article 299. They are subject to “pleasure”. They are not contracts in usual sense of the term as they can be determined at will despite an express condition to the contrary.

In India the remedy for the breach of a contract with Government is simply a suit for damages. The writ of mandamus could not be issued for the enforcement of contractual obligations. But the Supreme Court in its pronouncement in Gujarat State Financial Corporation v. Lotus Hotels, has taken a new stand and held that the writ of mandamus can be issued against the

Government or its instrumentality for the enforcement of contractual obligations. The Court ruled that it is too late to contend today the Government can commit breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages and cannot compel specific performance of the contract through mandamus.

The doctrine of judicial review has extended to the contracts entered into by the State of its instrumentality with any person. Before the case of **Ramana Dayaram Shetty v. International Airport Authority**. The attitude of the Court was in favor of the view that the Government has freedom to deal with any one it chooses and if one person is chosen rather than another, the aggrieved party cannot claim the protection of article 14 because the choice of the person to fulfill a particular contract must be left to the Government, However, there has been significant change in the Court's attitude after the case of Ramana Dayaram Shetty. The attitude for the Court appears to be in favor of the view that the Government does not enjoy absolute discretion to enter into contract with any one it likes. They are bound to act reasonably fairly and in non-discriminatory manner. In the case of **Kasturi Lal v. State of J&K**, 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. Every government cannot act arbitrarily without reason and if it does, its action would be liable to be invalidated." Non- arbitrariness, fairness in action and due consideration of legitimate expectation of affected party are essential requisites for a valid state action. In a recent case **Tata Cellular v. Union of India**, the Supreme 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. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. 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.