



# “GOVERNMENT CONTRACT”

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# Government Contract

- ▶ Contract: Indian Contract Act, 1872
- ▶ Sec 2(h): An agreement enforceable by law.
- ▶ Section 11: Competency of Parties
- ▶ Age of Majority
- ▶ Soundness of Mind
- ▶ Not disqualified by law
- ▶ Person
- ▶ Natural
- ▶ Legal
- ▶ Companies
- ▶ Government

# Constitutional Provision

- ▶ Welfare state
- ▶ Article 298
- ▶ Empowers the union and state government to enter in to contract.
- ▶ Article 299
- ▶ Essentials
- ▶ In Exercise of executive power of union and state shall be:
- ▶ Expressed to be made by President
- ▶ On behalf of President in such manner as may be directed or authorised
- ▶ No Personal liability

# Interpretation

- ▶ ***K.P. Chaudhary v. State of M.P. AIR 1967 SC 203***
- ▶ The court held that if the contract between the Government and another person is not in full compliance with Article 299(1) it would be no contract at all and could not be enforced either by government or other person as a contract.
- ▶ *Mulaam Chand v. State of M.P.*
- ▶ Shift in Supreme Court's View
- ▶ Objectives of Article 299

# Contd..

- ▶ ***UOI v. Rallia Ram AIR 1963 SC 1685***
- ▶ Supreme Court held that the constitutional provision (Art. 299) did not in terms stipulate that only a formal document executed on behalf of Government of India with the other contracting party was effective. In the absence of any direction by the President prescribing the manner in which contract may be entered in to, it may be done in any manner.
- ▶ ***Bhikaji Jaipuria v. UOI AIR 1962 SC 113***
- ▶ Supreme Court held that no binding or concluded contract came in to effect because the only person authorised to enter in to contract for sale of rails was director of stores and secretary was not authorised to enter in to contract on behalf of the President of India.

# Contd.

- ▶ Service Agreement
- ▶ Ranjit Kumar v. State of W.B.
- ▶ Article 310
- ▶ Statutory Contract
- ▶ HAL
- ▶ ***State of Haryana v. Lal Chand AIR 1984 SC 1326***
- ▶ Supreme Court held that grant of exclusive privilege of licensing of liquor Under Punjab Excise Act gave a rise to a contract of statutory nature distinguished from one executed under Article 299 (1) and therefore compliance with Article 299(1) is not required in such case.

# Liability of Government

- ▶ Article 299(2)
- ▶ No Personal Liability
- ▶ State of U.P. v. Murarilal
- ▶ Contract not complying 299 is void. But in order to protect the innocent parties court has held that where the state has derived a benefit under an agreement not fulfilling the requisite of Article 299(1) the Government may be held liable for compensation under section 70.
- ▶ ***Quasi Contractual Liability of Government***
- ▶ ***State of West Bengal v. B.K. Mandal & Sons AIR 1962 SC 729***

# Award of Government Contract

- ▶ **AWARD OF GOVERNMENT CONTRACT**
- ▶ ***C.K. Achutan v. State of Kerala AIR 1959 SC 490***
- ▶ Supreme Court held that when one person is chosen rather than another the aggrieved party cannot claim the protection of Article 14 because the choice of a person to fulfil a particular contract must be left to Government and also that a contract which is held from Government stands on no different footing from a contract of a private party.
- ▶ ***R. D. Shetty v. International Airport Authority AIR 1979 SC 1628***
- ▶ Supreme Court held that it must therefore follow a necessary corollary from the principle of equality enshrined in Article 14 that though the state is entitled to refuse to enter in to relationship with anyone yet if it does so, it cannot arbitrarily choose any person it likes for entering in to such relationship and discriminate between persons similarly circumstanced but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.



# Contd..

- ▶ ***Tata Cellular v. UOI AIR 1996 SC 11***
- ▶ Supreme Court held that it cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by the Government bodies in order to prevent arbitrariness or favouritism. However it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is guardian of the finances of the state. It is also expected to protect the financial interest of the state. The right to refuse the lowest or any other tender is always available to the Government. But the principles laid down in the Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. A contract may be avoided on three grounds i.e. (i) illegality; (ii) irrationality (Wednesbury Principle) (iii) procedural impropriety.

# Contd.

- ▶ **E-AUCTION**
- ▶ ***Ashoka Smokeless Coal Industries (P) Ltd. & Ors. Vs. Union of India & Ors.***(2007) 2 SCC 640 allowed the writ petitions and held that the e- auction Scheme was violative of Article 14 of the Constitution of India and, therefore, *ultra vires* to the Constitution. The entire e-auction Scheme was accordingly quashed.
- ▶ ***Centre for Public Interest Litigation v. UOI*** (2012) 3 SCC 1
- ▶ **2G Case** is an authoritative precedent in respect of the principle or proposition of law that all natural resources are to be disposed of by way of public auction. Paragraphs 85 and 89, while referring to the concept of ‘public trust doctrine’, lay emphasis on the doctrine of equality, which has been segregated into two parts - one is the substantive part and the other is the regulatory part. In the regulatory facet, paragraph 85 states that the procedure adopted for distribution should be just and non-arbitrary and must be guided by constitutional principles including the doctrine of equality and larger public good. Similarly, in paragraph 89 stress has been laid on transparency and fair opportunity of competition. It is further reiterated that the burden of the State is to ensure that a non-discriminatory method is adopted for distribution and alienation which would necessarily result in the protection of national and public interest.
- ▶ CVC Guide lines [http://cvc.nic.in/proc\\_works.htm](http://cvc.nic.in/proc_works.htm)



# THANK YOU

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