ADMINISTRATIVE LAW VIS-À-VIS GOVERNMENT CONTRACTUAL LIABILITY: A LEGAL AND JUDICIAL PREVUE

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INTRODUCTION

According to Durga Das Basu[1]the administrative law is branch of "public law". It deals with the relation of individuals with the state and other public bodies and the Administrative law is distinguished from "private law" which deals with the rights and liabilities of private individuals in relation to one another. It has very close relation to the constitutional law as was observed by Keith that "It is logically impossible to distinguish administrative from constitutional law and all attempts to do so are artificial".[2] Thus, today, the Administrative law is separate branch of law, and a separate subject for study, even though at points it may overlap with the scope of constitutional law.

To grasp the scope of administrative law must come to grip with two concepts that are Separation of powers and Rule of law[3].the separation of powers seek to control and check the exercise of governmental powers and rule of law Dicey said: "It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government.

Though administrative law is as old as administration itself since there can't exist separately in India the early signs and existence of Administrative law could be found in the treaties written during the reign of Muaryas, Guptas , Mughals as well as East India company (modern administrative law). Administrative law signifies the right and liabilities of private individuals in their dealings with public official and also established the procedure by which those rights and liabilities can be enforced by private individuals. It provides the accountability and responsibility of those administrative functions.

The administrative law determines the organizations, powers and duties of administrative authorities. The emphasis of administrative law is on the procedure of formal

[1] Durga Das Basu,(5th edition), *Administrative law*,1998
[2] Ibid.p.1
[3] C.K.Takwani, *"Scope of Administrative Law"5th* edition,2012

adjudication based on the principle of natural justice and for rule making. The concept of administrative law is founded on the following principles:

1. Power is conferred on the administration by law.

2. No power is absolute or uncontrolled howsoever broad the nature of the same might be.

3. There should be reasonable restriction on exercise of such powers depending on the situations.[4]

Dicey in 19th century defines it as:

Firstly, portion of a nation's legal system which determines the legal statues and liabilities of all State officials. Secondly, defines the right and liabilities of private individuals in their dealings with public officials. Thirdly, specifies the procedure by which those rights and liabilities are enforced.[5]

The goal of administrative law is to redress this inequality to ensure that, so far as possible, the individual and the state are placed on a plane of equality before the bar of justice. In reality there is no antithesis between a strong government and controlling the exercise of administrative powers. Administrative powers are exercised by thousands of officials and affect millions of people Administrative efficiency cannot be the end-all of administrative powers. There is also the questions of protecting individual's rights against bad administration will lead to good administration[6]

CONCEPT OF LIABILITY

Liability is responsibility for an act or omission .whoever commits a wrong is set to be liable for it. According to Salmond "liability or responsibility is the bond of necessity that exist between the wrong doer and the remedy of the wronged "while reporting to Austin "liability consists in those things which a wrongdoer must do or suffer" It is the ultimatum of law and as its source in the supreme will of the state. Liability arises from a breach of duty which may be in the form of an act or a omission. He prefers to call liability as" Imputability".

Liability can be classified in two ways-

1. It can be civil or criminal

2. It can be remedial or penal.

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[4] Public Administration, India , *available at* :http://www.publicadministrationtheone.blogspot

[5] D.D Basu , *Administrative law*, ,(5th edition),1998

[6] Government of India, (Ministry of Personnel, Public Grievances and Pension) ,*available at*:http:// www.persmin.nic.in

Civil liability consists in enforcement of the right of the plaintiff against the defendant in civil proceeding whereas in the case of criminal liability the purpose of the law is to punish the wrong doer. The main difference between civil and criminal liability is that a crime is a wrong against the society but a civil wrong is a wrong against a private individual. The remedy of a crime is punishment whereas remedy for civil wrong is damages. Distinction between remedial and penal liability is made on the basis of legal consequence of the action against the wrong[7] . According to Sir John Salmond, the law of contract is almost wholly comprised within the law of obligation. Basically, a contract which is one of the sources of obligation creates right in personam between the parties as well as the obligation e.g. the obligation to perform the contract or in the case of breach of contract, the obligation to pay damages will be arise.[8]

THE MEANING OF CONTRACT

Put simply, a contract is a binding agreement which governs the relationship between two or more people or companies, setting out what they must and must not do. Pretty much all of the commercial relationships and transactions we enter are regulated by a contract – whether it's buying a house or car, or buying the groceries. Even the relationship between an employer and employee is governed by a form of contract.

In terms of law, ,a contract is an agreement which is enforceable by law, as defined in section 2(h) of Indian Contract Act ,1872.it is an agreement consists of a reciprocal promises between the two parties .in case of contract each party is legally bound by the promise made by him.[9] Though the basis structure of the contract, offer, acceptance and consideration, would be of equally applicable to Governmental contracts but in order to safeguard public interest certain compliance with the constitutional requirement is mandatory. Article 299 lays down the broad constitutional framework for Government contracts in India[10]. . The principle of ratification of contract is not equally applicable to Government contract. But it is argued that the principle of quantum merit will be applicable to such Government contract if the pre requisites of the doctrine are satisfied[11]. Thus though Government contract is ruled by Constitutional and ordinary contract laws, the Government all throughout the world as well as in India have developed forms of contract which have been drafted by skilled lawmen

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[7] Avtar Singh , *Introduction to Jurisprudence*(2nd edition) ,2006.
[8] Salomod on Jurisprudence ,Universal Law Publishing pvt.Ltd,Delhi,2002.
[9] R.K Bangia, *Indian Contract Act,* 14th edition, Allahbad Law Agency
[10] Navajyoti Samanta "Legal Safeguards on Government Contracts", University of Juridical Sciences, July 27,2009
[11] *State of Bihar v. Majid* ,AIR 1954 SC 786

conferring power on to the Government not normally reserved for the common parties to a private contract. Further in the field of Government contract the obligatory force of the contract is much weaker than in the case of private contract, hence the doctrine of Executive necessity has no parallel in private contract. Thus as we find from the discussion Government contract is not just any other ordinary contract. Though called a contract and governed by Contract act, it is thus quite different from private contract. A private contract is just to provide supplies or services but Government contract may provide for livelihood and is instrument for implementation of Governmental policies[12].

In the modern era of a welfare state, government's economic activities are expanding and the government is increasingly assuming the role of the dispenser of a large number of benefits. Today a large number of individuals and business organisations enjoy largess in the form of government contracts, licenses, quotas, mineral rights, jobs, etc. The origin as well as current position of government contract in other countries likes the UK, US etc. and then subsequently moves on to the Indian perspective. It analyses the position of government contracts in India, their statutory as well as judicial recognition and the liabilities on the State owing to the said recognition. Furthermore, the various common law principles that govern the contractual liability of the State and make it a necessity in the modern times, the role of the executive and the legislative organs of the government and concludes that there is a necessity to develop some norms to regulate and protect individual interest in such wealth and thus structure and discipline the government discretion to confer such benefits[13].

In modern state, whatever is the form of government, the individual is affected in his everyday life and in the exercise of his civil rights by acts of the State and its officials in various spheres and in different ways. Some of these acts are done by the State as the sovereign while others are done by the State in trading and other capacities in the same manner as a private individual does[14].

The subject of government contracts has assumed great importance in the modern times. In the modern era of a welfare state, government's economic activities are expanding and the government is increasingly assuming the role of the dispenser of a large number of benefits. Today a large number of individuals and business organizations enjoy largess in the

[12] *Ram Lal v.State of Punjab* ,AIR 1966 Pun 43
[13] Veena Gopalkrishnan , *Government Contract* ,October8,2007 ,ILS law college, *available at* :http:// www.legalserviceindia.com/article/l42-Government-Contract
[14] *Government Contract*, Indian Information Institute, *available at* :http:// www.law.cornell.edu/wex/government_contracts

form of government contracts, licenses, quotas, mineral rights, jobs, etc. This raises the possibility of exercise of power by a government to dispense largess in an arbitrary manner. Therefore, there is a necessity to develop some norms to regulate and protect individual interest in such wealth and thus structure and discipline the government discretion to confer such benefits. A contract is an agreement enforceable by law, which offers personal rights, and imposes personal obligations, which the law protects and enforces against the parties to the agreement. The general law of contract is based on the conception, which the parties have, by an agreement, created legal rights and obligations, which are purely personal in their nature and are only enforceable by action against the party in default. Section 2(h) of the Indian Contract Act, 1872 defines a contract as "An agreement enforceable by law". The word "agreement" has been defined in Section 2(e) of the Act as "every promise and every set of promises, forming consideration for each other." A contract to which The Central Government or a State Government is a party is called a "Government Contract".

PRE CONSTITUITONAL VIEW IN INDIA

Even prior to the commencement of the Constitution of India, the liability of the government for breach of contract was recognised. It was essentially for the commercial activities that the East India Company was established. The factor that east India company also exercised sovereign functions “did not constitute them sovereign”[15]and did not extend to the doctrine of sovereign immunity from being sued in its own courts to the company .this point was made clearly as 1785 when the court held in Moodalay v. Mortan that East India company was subject to the jurisdiction of the municipal courts in all maters and proceedings undertaken by them as a private trading company. Expounding the doctrine of liability of East India Company in contract, the court observed:

“it has been said that East India company have a sovereign power, be it so; but they may contract in a civil capacity; it cannot be denied that in a civil capacity they may be sued; in such a case now before the court, they entered into a private contract ;if they break their contract they are liable to answer for it[16].Such liability of the government had been given statutory recognition as well .Thus, provision were made in the government of India act of 1833,1858,1915 and 1935.

[15] *Bank of Bengal* v.*East India company* 1831
[16] *State of Rajasthan* v. *Vidhyavati* AIR 1962

POST CONSTITUTIONAL VIEW IN INDIA

The words 'had not this Constitution been enacted' in Article 300(1) indicate that the basis of suitability of the state in India is historical. In order to appreciate the significance of these words, we must trace the history of the Indian Administration from the time of the East India Company, when the Court was of the view that even though the East India Company has sovereign powers, if it contracts in civil capacity and if it breaks its contract it would be held answerable[17]. A-3OO of the constitution states that- The law in India with respect to the liability of the State for the tortuous acts of its servants has become entangled with the nature and character of the role of the East India Company prior to 1858. It is therefore necessary to trace the course of development of the law on this subject, as contained in article 300 of the Constitution.

Clause (1) of Article 300 of the Constitution provides first, that the Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State; secondly, that the Government of India or the Government of a State may sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or be sued, “if this Constitution had not been enacted”, and thirdly, that the second mentioned rule shall be subject to any provisions which may be made by an Act of Parliament or of the Legislature of such State, enacted by virtue of powers conferred by the Constitution[18]
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Even though more than 50 years have elapsed since the commencement of the Constitution, no law has so far been made by Parliament as contemplated by article 300, notwithstanding the fact that the legal position emerging from the article has given rise to a good amount of confusion. Even the judgments of the Supreme Court have not been uniform and have not helped to remove the confusion on the subject, as would be evident from what is stated hereinafter.

A contract entered into by or with the Central or State Government has to fulfil certain formalities as prescribed by Article 299 of the Indian Constitution. In the case of State of Bihar v. Majeed[19], the Hon'ble Supreme Court held that : "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

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[17] *Moodlay* v.*East India Company*,1785
[18] J.N.Pandey, *Constitution of India,*51 edition,2013
[19]*State of Bihar* v.*Majeed* AIR 1954

apart. In addition to the requirements of the 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 Central or State Government is same as that of any individual under the ordinary law of contract.".As regards the interpretation of contract, there is no distinction between the contracts to which one of the parties is the Government and between the two private parties[20]

Though there is hardly any distinction between a contract between private parties and Government contract so far as enforceability and interpretation are concerned, yet, some special privileges are accorded to the Government in the shape of special treatment under statutes of limitation[21]. Section 112 of the Limitation Act, 1963 contains provision for longer period of limitation of suits on or behalf of the State. The longer limitation period was based on the common law maxim null tempus occurit regi i.e. no time affects the Crown[22]. Some privileges are also accorded to Government in respect of its ability to impose liabilities with preliminary recourse to the courts. This probably is because of doctrines of executive necessity and public interest.

The executive power of the Union of India and the States to carry on any trade or business, acquire, hold and dispose property and make contracts is affirmed by Article 298 of the Constitution of India. If the formal requirements required by article 299 are complied with, the contract can be enforced against the Union or the States. The issue in Administrative Law mainly arises where the Departmental Authorities and public officials, owing to their inertia or ignorance, enter into informal contracts which do not comply with the requirements of Article 299(1).

Government contracts have been accorded Constitutional recognition. The Constitution, under Article 298, clearly lays down that the executive power of the Union and of each state extends to "the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose". The Constitution therefore, provides that a government may sue or be sued by its own name. A similar provision is found in the Code of Civil Procedure 1908 under Section 79. [23]

[20] *Ramlal* v. *State of Punjab*,AIR1966
[21] *Navratanlal* v. *State of Rajasthan*, AIR 1961
[22] *AndhraPradesh* v.*Challa Ramkrsihna Reddy*,AIR 2000
[23] Swati Rao ,*Contractual liability of the state in India*; *An analysis* ,published by Satyam Khandelwal,6 Sept.,2011

ARTICLE 298 OF INDIAN CONSTITUTION

The distinctive features of the government contracts have been laid down in the constitution itself providing for the contractual liability of the union of the India and the states.[24]Article 298 expressly lays down that the executive power of the union and of each state shall extend to the carrying on of any trade or business and the acquisition, holding and disposal of the property and the making of the contracts for any purpose. There is nothing in Article 298 to show that the trade or business carried on by a State must be restricted to the areas within its territorial limits. On the contrary, the article envisages the carrying on of the trade and business by a State without any territorial limitations. The only restrictions on the executive power of the State in this respect are contained in clause *(b)* of the proviso to that Article. According to that clause, the executive power of the State shall, insofar as such trade or business is not one with respect to which the State legislature may make laws, be subject to legislation by Parliament.

A government contract to be a valid under Article 299 is in writing The requirement is necessary to be satisfied as the word ‘‘expressed” to be made or ‘‘executed” in this article clearly states that there must be a formal written contract executed by duly authorised person. Consequently ,an oral contract is not binding o the government[25].this does not however ,mean that there should be a formal agreement between the government and the other contracting party for the purpose .It is, realised that insistence on too rigid observance of this condition stipulated in Article 299(1) may not always be a practicable proposition.

In Union of India V. Ralliaram,1963, the facts of the were that the chief director of purchases, government of India, invited tenders .The respondent tender was accepted by a letter of acceptance signed by the director .the question before the supreme court was whether a valid contract could emerge through correspondence. The Supreme court held that the government contract was not required to be in a particular form and therefore, a valid contract may result from the correspondence between the parties.[26]

Another requirement is that such contract must be executed on the behalf of the government by a person authorised for that purpose by the president or the governor as the case may be .if contract is signed by an officer not authorised by the president or the governor, it would be binding and it cannot be enforced against it. In Chaturbhuj Vithaldas v. Moreshwar

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[24] Articles 294,298,299 and 300

[25] *Karamshi* v.*State of Bombay*, AIR 1964 SC 1714

[26] Narendra Kumar ,*Administrative Law,*1st edition,2011

Prasharan,1954, SC held that "it would be our opinion , be disastrous to hold that the hundreds of government officers who have daily to enter into a variety of contracts, often of a petty nature, and sometimes n an emergency ,cannot orally or through correspondence petty contact must be effected by a ponderous legal document and it was also held that the ratification of an unauthorised contract that through a contract is an unauthorised one but if it is beneficial to public at large or for public interest so it would be secured by the virtue of ratification of an unauthorised contract ,it would be a valid, legal and constitutional one.[27] The expression "executed" does not by itself contemplate execution of a formal contract by the executing parties. A tender for the purchase of goods in pursuance of a tender notice, notification or statement inviting tenders issued by or on behalf of the President or the Governor, as the case may be, and acceptance in writing which is expressed to be made in the name of the President or Governor and is executed on his behalf by a person authorized in that behalf would fulfil the requirements of Article 299(1).

If these requirements are fulfilled, a valid contract may result from the correspondence.[28] But it has been held that so long as all the requirements of Section 175(3) of the Government of India Act, 1935 (i.e., Article 299 of the Constitution) were fulfilled and were clear from the correspondence, Section 175(3) did not necessarily require the execution of any formal document. In Beharilal v. Bhumi Devi, the Supreme Court held that though the contract was not executed strictly in comformity with Article 299(1) but was in conformity with the rules approved by the Rajpramukh. Therefore, it was not void because in substance it was on behalf of the Governor. In Union of India v.N.K. P .Ltd,in this case the sc held that no binding contract came into effect because that contract was entered into an officer who was not authorised for the purpose. In State of Bihar v.Kram Chand Thaper and Bros. Ltd[29] in this case it was held by sc that Executive Engineer was "Specially authorised by the governor to execute the agreement for reference to arbitration''.

In the case of Karamshi v. State of Bombay[30]the plaintiff entered into an agreement with the government for the supply of canal water to his cane farm. No formal contract was entered into the name of the governor the agreement was reached between the government and the party by two letters written by the Superintending Engineer .after sometime, the supply of

[27] M.P Jain and S N Jain *Principle of Administrative Law* ,5th edition
[28] *State of Madhya Pradesh* v *Firm Gopi Chand Sarju Prasad* ,AIR 1972 MP 43
[29] AIR 1962 SC 110
[30] AIR 1964 SC 1714

the water was stopped by the government in the circumstances, the Supreme Court held that the agreement was void and could not be reached.

- **EFFECT OF NON –COMPLIANCE**

Generally, the court have taken the position that the provision so A-299 are mandatory and not directly and they must be complied with K.P.Chuadhary v.State of M.P[31] , the SC held that "If contract between the government and the other person is not fully compliance with the Article 299, it would be no contract at all. They are not inserted merely for the sake of form, but to protect the general public. Their functions are to protect the government from being saddled with liability or unauthorised contracts. If in fact, a contracts is unauthorised or in excess or authority ,the government must be safeguard from being saddled with liability to avoid public funds being wasted"[32].Therefore, if any of the condition aforesaid is not complied with, the contract is not in accordance with law and the same is not enforceable by or against the government .[33]

- **RATIFICATION OF AN INVALID CONTRACT**

Formerly, the view taken by the supreme court was that in case of non-compliance with the provision of article 299 (1), a suit could not be file against the government as the contract was not enforceable., but the government could accept the liability by ratifying it in Chaturbhuj Vithaldas v.Moreshwar Parasharan[34], adopting a attitude SC held that contracts are not void simply because the union government could not have been sued on them by reason of A-299(1).Thus, SC rule that there should be nothing to prevent the ratification of contract by the government especially if that was for the benefit of the government. Reiterating the same view in Mandal case [35] , the SC said that the contract not confirming with A-299(1) was not void in the technical sense that it could not be ratified.

- **ENFORECEMENT OF LIABILITY OF GOVERNMENT**

The question than arises that if the government contract is void for its non-compliance with the provisions of A-299 (1) and it amount be ratified either, can in these circumstances the party claim the benefit of S-70 of the Indian Contract Act,1872.

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[31] AIR 1967 SC 203
[32] *Chaturbhuj Vithaldas* v.*Moreshwar Parasharan* ,AIR 1954 SC 236
[33] *Bhikaji Jaipuria* v.*Union of India* ,AIR 1962 SC 113
[34] AIR 1954 SC 236
[35] *State of W.B* v.*B.K.Mandal* ,AIR ,1962 SC 110

In New Marine Coal Co. v. Union of India [36],coal supplied by the company was consumed by the government. the SC held that the government. must make compensation for the coal so supplied ,even though the contract does not comply with the requirements of A-299(1) of the constitution. In State of W.B v. B.K.Mandal[37]some construction works were executed by the respondent at the request of government. officer .the building constructed by the contractor was accepted and used by the government .but no payment was made to the contractor. It was contended that as the requirement of A-299 1 has not been complied with, the contract was not enforceable. The SC ruled that the government. was liable to pay to the contractor under S-70 of Indian Contract Act,1872 for the done by him and benefit derived under invalid contract. The State Government enjoying benefit of non- gratuitous work and If bound to pay compensation so there is Absence of valid contract, if exonerates liability under S 70 of Indian Contract Act, 1872.

Government of India Act, 1935 Under S 175(3) of the Government of India Act all contracts made in the exercise of the executive authority of a province shall be expressed to be made by the Governor of the province and shall be executed on behalf of the Governor by such persons and in such manner as he may director authorise. The respondent, a firm of building contractors doing construction works for the Provincial Government did certain additional construction on the request of its officers. Its bills for these latter works were not paid and it sued the Government basing its claim on contract and in the alternative on s. 70 of the Contract Act. The defence of the Provincial Government, inter alia, was that there was no valid and binding contract and s. 70 had no application. The trial Judge found that although there was no valid contract under s.175 (3) of the Government of India Act, 1935, the claim was justified under s.70 of the Contract and decreed the suit. The Court of appeal affirmed that decree. The State appealed by special leave. Held (Per curiam), that the courts below were right in holding that s.70 of the Contract Act applied to the case and the appeal must fail. Gajendragadkar, Wanchoo and Ayyangar, JJ.-Whether a mandatory provision in a statute is merely directory or obligatory should be decided on a careful examination of the scope of the statute and the object of the particular provision. In enacting S 175(3) of the Government of India Act, 1935, the intention of the parliament was that the state should not be burdened with liability based on unauthorised contracts. The provision made was in public interest and so the word 'shall' used therein must be held to make it obligatory and not directory.

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[36] AIR 1964 SC152

[37] AIR 1962 SC 770

JUDICIAL REVIEW OF THE REVIEW

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[38]. The attitude of the Court was in favour of the view that the Government has freedom to deal with anyone 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 fulfil 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 favour of the view that the Government does not enjoy absolute discretion to enter into contract with anyone it likes. They are bound to act reasonably fairly and in non-discriminatory manner.

ARTICLE 14, 19(1) (g) and GOVERNMENT CONTRACT

Although union or the state is competent to enter into contracts for carrying or any business, yet they are not as free as a private individual. A private person can enter into a contract with any person for carrying on business as he likes. But a government cannot do so because it exercises public power. In exercise of such power, government. is bound to respect rights and interests of certain persons which an ordinary person can ignore .A democratic government. cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal[39] .

In Eurasian Equipments[40], the SC invoked A-14 to impose on the government. The requirement of giving to the person who was being blacklisted by it for entering into contract with it .relying on proposition in Joseph Vilagandan v. Executive Engineer[41] ,where the executive engineer sought to blacklist a government. contractor for failing to execute a contract, the SC held that blacklisting had the effect of preventing the person concerned from the privilege and advantage of entering into lawful relationship with the government. for the purpose of gain and therefore ,it is necessary that there must be hearing before passing the order to that effect.[42].this principle was followed by Bombay High Court in State Bank of India v.

[38] AIR 1979 SC 1628

[39] *Punnen Thomes* v *State of kerela* ,AIR 1969

[40] *Eurasian Equipement and Co.Ltd* v. *State of W.B* ,AIR 1975 SC 266

[41] AIR 1978 SC 930

[42] J.J.R. Upadhaya, *Administartive Law,*8th edition,2013

Kalpaka Transport Company[43], in this case the court held that blacklisting of any one for entering into a contract did attract A-14 .Therefore, while blacklisting a transport company and refusing to enter into any contractual relationship with it, the bank must act accordingly to their principle of natural justice.

In Sterling Computers Ltd. V.M .and N. Publications Ltd[44],the SC has held that the state action in commercial or contractual transactions with the private parties must be in consonance with A -14 .Hence, if decision making process of public authority is influenced by extraneous or irreverent consideration that would vitiate the decision even if it without bias.[45]

Article 14 prevents arbitrary discretion being vested in the executive. Equality is antithetic to arbitrariness. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. Right to equality affords protection not only against discretionary laws passed by legislature but also prevents arbitrary discretion being vested in the executive. Often executive or administrative officer or Government is given wide discretionary power. In a number of cases, the Statute has been challenged on the ground that it conferred on an administrative authority wide discretionary powers of selecting persons or objects discriminately and therefore, it violated Article 14. The Court in determining the question of validity of such statute will examine whether the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of selection or classification. The Court will not tolerate the delegation of uncontrolled power in the hands of the Executive to such an extent as to enable it to discriminate.

In State of West Bengal v. Anwar Ali,[46]. It was held that in so far as the Act empowered the Government to have cases or class of offences tried by special courts, it violated Article 14 of the Constitution. The court further held the Act invalid as it laid down “no yardstick or measure for the grouping either of persons or of cases or of offences” so as to distinguish them from others outside the purview of the Act. Moreover, the necessity of “speedier trial” was held to be too vague, uncertain and indefinite criterion to form the basis of a valid and reasonable classification.

Article 19 guarantees certain freedoms to the citizens of India, but they are not absolute. Reasonable restrictions can be imposed on these freedoms under the authority of law. They cannot be contended merely on executive action. The reasonableness of the restrictions is open

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[43] AIR 1979 BOM 250
[44] AIR 1993 SCC445
[45] J.J.R Upadhaya, *Administartive Law,*8th edition,2013
[46] AIR 1952 SC 75

to judicial review. These freedoms can also be afflicted by administrative discretion. Such cases can be examined below. A number of cases have come up involving the question of validity of law conferring discretion on the Executive to restrict the right under Article 19(1)(b) and (e). The State has conferred powers on the Executive to extern a person from a particular area in the interest of peace and safety in a number of statutes.

In Dr. Ram Manohar v. State of Delhi[47],., where the D.M. was empowered under East Punjab Safety Act, 1949, to make an order of experiment from an area in case he was satisfied that such an order was necessary to prevent a person from acting in any way prejudicial to public peace and order, the Supreme Court upheld the law conferring such discretion on the execution on the grounds, inter alia, that the law in the instant case was of temporary nature and it gave a right to the external to receive the grounds of his externment from the Executive.

R.D. Shetty v. International Airport Authority[48]: It is heartening to see the law catching up with the vagaries of the State's dealings in the exercise of its discretion. In this case the issue was the awarding of a contract for running a second-class hotelier's and it was clearly stipulated that the acceptance of the tender would rest with the Airport Director who would not bind himself to accept any tender and reserved to himself the right to reject all or any of the tenders received without assigning any reason. The highest of all. A writ petition was filed by a person who was himself neither a tenderer nor an hotelier was filed by a person who was himself neither a tenderer nor a hotelier. His grievance was that he was in the same position as the successful tenderer because if an essential condition could be ignored in the tenderer's case why not in the petitioner's? The Supreme Court accepted the plea of locus stand in challenging the administrative action.

Justice P.N. Bhagwati, who delivered the judgment of the Court, held:

1) Exercise of discretion is an inseparable part of sound administration and, therefore, the State which is itself a creature of the Constitution, cannot shed its limitation at any time in any sphere of State activity.

2) It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them.

3) It is indeed unthinkable that in a democracy governed by the rule of law the executive government or any of its officers should possess arbitrary powers over the interests of an

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[47] AIR 1950 SC 211
[48]AIR 1979 3SCC 459

individual. Every action of the executive government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement.

4) The government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licenses only in favour of those having gray hair or belonging to a particular political party or professing a particular religious faith. The government is still the government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual.

In the meanwhile, the Supreme Court in Suraj Mall Mehto v. A.V. Visvanath Shastri[49] followed by Muthiah v. Commissioner of Income Tax [50] held section 5(1) of the act inconsistent with Art. 14 of the constitution. On this the petitioner stopped paying further instalment and challenged the settlement between him and the investigation commission. The petitioner contented that when section 5(1) of the investigation act had been held unconstitutional, the settlement under section 8A could not be enforced, for the foundation of the proceedings under section 8 was reference under section 5(1) and the foundation having crumbled down, the superstructure must fall with it. On the other hand, the respondent raised the plea of waiver and argued that even section if section 5(1) was invalid, the petitioner, by voluntarily entering into a settlement, must be taken to have waived his fundamental right guaranteed under Article 14. The Supreme Court however, upheld the contention of the petitioner and held that the fundamental could not be waived.

The majority of the court expounded the following views:

1. It is not open to a citizen to waive his fundamental rights conferred by Part 3 of the constitution. The Supreme Court is the bulwark of the fundamental rights which have been for the first time enacted in the constitution and it would be a sacrilege to whittle down these rights.
2. Whatever be the position in America, no distinction can be drawn here, as has been attempted in the United States of America, between the fundamental rights which may be said to have been enacted for the benefit of the individual and those enacted in public interest or on grounds of public policy[51].

[49] AIR 1954 SC 545
[50] AIR 1956 SC 269
[51] *Yusuf Ali Abdulla* v. *M.S. Kasbekar*

In Basheshar Nath v/s Income Tax commissioner[52], held that in this case the petitioner whose matter had been referred to the Investigation commissioner u/s 5(1) of the Taxation of Income Act 1947 was found to have concealed a settlement u/s 8 A to pay Rs 3 Lakhs in monthly instalments, by way of arrears of tax and penalty. In the meanwhile the SC in another case held that section 5(1) is ultra virus the constitution, as it was inconsistence with Art 14. So the appellant cannot his waive off his FR. It means "a person from denying or asserting anything to the contrary of that which has, in contemplation of law, been established as the truth, either by the acts of judicial or legislative officers, or by his own deed, acts, or representations, either express or implied.

In the constitution the provision related to contractual liability og the government are provided under Art 298,299(1),299(2) and 300.A 298 empowers the government. To make any contract for any purpose. Art. 299 (1) speaks about the formalities of government contract Art. 299 (2)provides immunities provides immunities to president and the governor from personnel liability on government contract Art. 300 provides the law and procedure which against the government either union or sate . The judicial view towards Art. 299 (1) was that the requirement condition under Art. 299 (1) are mandatory because it was enacted to protect of public interests and to avoid unnecessarily burden from unauthorised contract .Hence the contract which not confirming with Art. 299 (1) is void and unable to enforce against the government [53] on the other hand mandatory of Art. 299 becomes inconvenience in practise for the government and may be inequitable to the private individual also. Therefore the court has adopted the flexible view to Art. 299 (1).

Where there was no specific conferment of authority but the court considered the facts and held that the authority need to be given in formal manner .Even a contract shall be made in written one but it need not to be in formal form .The court held that a valid contract may be result from the correspondence between the parties.[54] Generally, the government, shall be liable only in a valid contracts and a contract does not comply with the requirements of Art. 299 (1) is void and not binding the government but the court always in the view to protect the innocent person.

Basically it prevents a party to a contract from acting in a certain way because they promised not to act in that way and the other party to the contract relied on that promise and

[52] AIR 1959 SC 149
[53] *K.P Chaudhary v. State of Madhaya Pradesh*, AIR 1967 SCC203
[54] *Union of India v. Rallia Ram* AIR 1963 SC 1685

acted upon it. Hughes v. Metropolitan Railway Co.(1877), as per Lord Cairns: "It is the first principle upon which all Courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results – certain penalties or legal forfeiture – afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties". These principles were applied in Central London Property Trust Ltd. v. High Trees House Ltd. (1947) by Denning J. (as he then was) to found the modern doctrine . Denning J. was attempting to arrive at a fair solution to the problem of part payment of debt, and, in doing so, to circumvent precedent created by Foakes v. Beer(1884).

Another important aspect under constitution is the writ petition of the construction ,the instrument of public law is not available in the private contract i e the writ petition is also available for the government contract by the judiciaries under Art. 32 and Art. 226 of the SC and the HC . So in the modern society the Government as a contractual party has a dual role to perform; as contracting party and as an executive authority in furtherance of its policies. In conditions where its policies and ideologies clash with previous contractual obligations the Government fades the defence of executive necessity to rescind or refute the contract. It throws important issue of how far can governments be made liable for losses suffered in these circumstances. It is further argued that unbridled power to Governments to ignore promissory estoppels would lead to chaos. In USA the Government acts in its sovereign capacity and its acts are public and general in their application they cannot be said to be directed against the other contracting party alone and therefore Government is not responsible for consequences flowing from the impact of such an action on the contract.

Though the constitution of India makes all the pivotal provisions to make the individual free without any chaos related to liability as well as contract from government with the help of the provisions under constitution i.e. A 298 ,299 A and A 300.

Conclusion :

Generally the government contracts are governed by the ordinary law of contract. But it subject to some exception and these exception become in the view of special responsibility of the government. because while the government. acting as a contracting party ,it carries a dual capacity ,the first capacity is like any other private individual ,that MEANS THE

government must be subjected to the rights and liabilities which arise from the contract. At the same time the government. Is an institution to which the interest of the community to be entrusted .therefore, the government. Has to possess some privileged and immunity which are necessary for the government to perform its duties efficiently towards the general public there is a public law matter involves with it .and the safeguard under private law are not useful.

The exercise of discretion must not be arbitrary, fanciful and influenced by extraneous considerations. In matters of discretion the choice must be dictated by public interest and must not be unprincipled or unreasoned. It has been firmly established that the discretionary powers given to the governmental or quasi-government authorities must be hedged by policy, standards, procedural safeguards or guidelines, failing which the exercise of discretion and its delegation may be quashed by the courts. This principle has been reiterated in many cases. Thus within the area of administrative discretion the courts have tried to fly high the flag of Rule of Law which aims at the progressive diminution of arbitrariness in the exercise of public power.

Hence, whenever there is a matter of public interest involved,the matter of government. Contract is fall within the scope of an administrative law which is the law which governs the relationship between the individual and the government .the administrative law also recognised ‘the special characteristics of Government in the capacity of contracting party .on the other hand , must fulfil the need of the government, which has to protect and promote the public interest.