

11. An emergent need to enact a law titled "Euthanasia (Regulation and Control)" which must give some guidelines for managing death issues — The law may provide as follows :—

- (i) Any person who is above (75 years) of age may be entitled to seek permission to die; subject to the following conditions :—
 - (a) That he/she must be suffering from incurable disease and recovery of such patients is absolutely not possible. This should be supported by medical opinion;
 - (b) That he/she must be suffering from pain-mental or physical which is unbearable that 'living is worst than death';
 - (c) That he/she is absolutely without any dependence or maintenance for support;
 - (d) That in the opinion of the Medical Board duly constituted under the Act, that the case is a fit case for permitting to die;
 - (e) That the entire case with all medical records should be considered by the Medical Department, and placed before the cabinet for approval;

- (f) When the State Cabinet accords approval, a Government Order should be passed that the person be permitted to die, a painless death only after the expiry of (6) months of the Government Order being passed;
- (g) That a public notice shall be published in the leading newspapers including the Gazette, of the Government Order issued within two days of issuing of the Government Order;
- (h) If any person, either relative or otherwise or a public institution comes forward to take care of the person concerned, the Government Order shall be cancelled and the person be handed over to such person/or institution after execution of a bond assuring to take care of the person in question without any claim for financial assistance; and
- (i) The person be allowed to die only as a case of 'last resort' when no other remedy is available.

12. In conclusion, the State Government must show concern to save the life of the individual and permission to die being given as a 'last resort'.

CONTRACT LEGISLATION AND MATERIALS MANAGEMENT

By

—Dr. MUKUND SARDA,
Principal and Dean
New Law College,
Bharatiya Vidya Peet University,
Pune

1. In every organization, materials management occupies a very important place and the staff dealing with this subject must

acquire a thorough knowledge of all aspects relating to materials management. Material management deals with procurement, whi

includes purchases, expediting orders for supplies by the parties agreeing to supply under a contract, inspections, shipping, transport and all other related matters.

2. In the first place, the organization must avoid purchases, which can be made by itself economically. Quality standards/specifications, the time and place of supply shall be the essence of contract in matters of purchase of materials, equipments and other items needed for the organization. Non-supply of goods within the time and date agreed to will result in stoppage of work, entailing delay in the execution of works to be done by the department. It is absolutely necessary to take greater care of the use of goods to avoid wastages and ensure adequate stock of goods and materials, at any point of time. This will result in avoidance of emergency purchases often at high rates, resulting in financial loss to the organization and imposing extra burden financially. In other words, the Department of Purchases and Store-keeping in the organization shall be efficient to support the organizational needs and operations.

3. In the matters of purchasers, the initial step should be taken in the form of an 'invitation to an offer'. It means to invite offers from reputed dealers, including foreign dealers. The selection criteria, should be besides the reputation of dealers, the political situation prevailing in the State, availability of credit and other facilities like shipping, transport and other relevant issues connected therewith. The materials management department must periodically update the data with the latest information on all aspects of purchasing.

4. All the essential facts such as description of materials to be specifically detailed, quality, supply schedule, place of delivery, last date of delivery as well as validity period of the contract, shall form the conspicuous part of the invitation to an offer. It is advisable to provide a schedule containing all the requirements, so that the party willing to

make an offer gets a clearer and definite picture of the contractual obligations. This will avert any possible differences between the parties later. Insistence of a free supply of sample shall be made, so that the supplies made shall be conformable to the sample. The crucial issue of 'price' should not be left out as it is equally an important aspect of purchasing. However, 'price' alone shall not be the basis of a purchasing decision and what is required is high/best quality goods at competitive prices.

5. After all the offers are received within the time and date specified, they shall be compared with reference to the following material facts :—

- (i) Seller's standing;
- (ii) Specification as to duration;
- (iii) Past performance record;
- (iv) The period of delivery, which is often regarded as the essence of the contract;
- (v) The terms and conditions of payment and the mode of payment;
- (vi) Price and the basis of its fixation;
- (vii) Warranties to be assured by the suppliers;
- (viii) Escalation — terms relating to it *i.e.*, rise in price at the time of actual supply and how it is to be dealt with under the contract;
- (ix) Packaging and freight charges;
- (x) Currency in which payment to be made, subject to foreign exchange regulations, if required;
- (xi) Material to be insured in order to cover the risk of loss, destruction etc. and the premiums to be paid; and
- (xii) Lastly, after-sales services and other services like installation and commissioning of machineries and equipments.

6. Shortlisting of all offers may be done, keeping in view all the relevant facts. These offers may be scrutinised and some of them may be called for 'negotiation'. In cases where there is only one source of supply, the necessity for comparison of offers will not arise, as there are no competitors.

7. The Purchase Committee of the organization shall take a judicious decision keeping in view all the relevant facts vital to take the decision. Vigilance and care is needed to place the orders within the validity period of contract. The organization must also get the order of confirmation at the earliest from the dealer with whom the order is placed.

8. There should be consistent efforts by the organization to follow-up the supplies. Delay in supplies poses serious consequences such as financial loss, hold-up of the work and interruptions in the organizational functions. It is therefore, imperative that preventive action should be taken in time. If the seller defaults in making the supplies, the organization must be able to take immediate steps for the cancellation of orders and to make necessary alternate arrangements without delay to procure the materials. Legal action should be initiated for the breach of contract to claim damages resulting to the organization on account of steep rise in prices from the alternate sources.

9. In order to ensure that the material supplied conforms to the stipulated descriptions and specifications, necessary inspection should be carried out regarding quality and other tests. However, the seller will be bound by the warranty clauses as provided in the contract document. The organization should invariably conduct the final check, test and measurement tests, without delay and there shall be no default on its part in conducting the tests.

10. Instructions regarding packing and dispatching should be scrupulously followed. Necessary terms should be provided in the

contract document regarding works contract tax, delivery challan such as carriers receipt in the nature of Railway receipt, lorry receipt, air-way bill and bill of lading depending on the nature of transport.

11. It must be ensured that the sellers insure the goods to cover the risks. Additionally, it would be in the interest of the organisation to take steps to ensure the materials against all possible risks. The seller should be asked to replace all the materials lost or damaged in transit without waiting for formalities to be complied with for insurance, by providing a clause to this effect in the contract document.

12. In the contract document, it should be made obligatory for the seller to inform the arrival and taking delivery of goods by the organization. Delayed arrival or non-arrival of goods within the stipulated time, steps to be taken to make compensation claim against the carrier without delay. Instead of pre-paid freight charges, "To pay freight" may be provided in the contract, as in such cases the carrier will take more care of the goods and to fulfil the terms and conditions of the contract.

13. Objections regarding the monetary value of the claim, may not be allowed to be raised, by providing a clause in the contract that, "replacement value includes purchase price, packing charges, taxes, insurance premiums, freight inclusive of escalation cost.

14. All likely litigation should be avoided as litigation will expose the organization to considerable costs and expenses. Resort can be had to the provisions of the Indian Arbitration and Conciliation Act, 1996 for resolving the disputes between the parties, as this would help the parties to settle their disputes expeditiously at a cheap cost.

15. Printed offer forms may be used and sent along with the 'invitation to the offer', so that all the matters on which organization

as part of the obligations arising out of the contract, may be totally ensured.

16. Right to Information Act 2005 requires all organizations, particularly Public sector and Government organisations should keep all records updated and must be able to supply even to third parties, if requisitioned.

17. The best safeguard in materials management is acting honestly, with integrity

and with utmost transparency, so that the purchasing decision may not be questioned on the ground of irregularity or impropriety. This can easily be done by strictly adhering to the procedures for material procurement, storage and supply to various departments of the organization. This may ultimately lead to high performance in the area of materials management and attain excellent results in this vital, functional and management area of the organizational activity.

ENGLISH IS DEAD - LONG LIVE ENGLISH

By

-V. VENKATESWARA RAO, Advocate
Member Editorial Board
ANDHRA LEGAL DECISIONS
Hyderabad

District Munsif Court

Time : After lunch

District Munsif : I will hear the arguments in the case of S.P.C.L.E.L. as it is a very old case and as evidence was closed long back.

Plaintiff's

Counsel : May it please your honour. I appear for the plaintiff S.P.C.L.E.L. namely Society for the Prevention of Cruelty to Lovers of the English Language represented by its centenarian president who is a retired professor of English. He filed the suit against some practising advocates alleging that on one of his visits to the local Courts in connection with his personal case he found to his dismay that the defendants mercilessly maimed, mangled and mutilated the English language which reveals that they had scant respect for grammar and syntax and that any high school boy would be sent out of the class room for such bloomers. He also alleges that their mouthing of English was execrable and it was mortifying to endure

the audio visual linguistic mayhem. As a result of it he suffered great mental agony and anguish as an ardent lover of English and as an old student of Late Raghupati Venkata Ratnam Naidu garu who was redoubtable scholar in English and renowned English teacher with a legendary reputation. He further alleges that due to incompetence and mechanical intelligence and mistaken for coruscating brilliance and meagre of really outstanding merit are being elbowed out by mediocres who occupy the centre of the stage and hog the limelight. Men have lost their judgment and cannot tell eminence from prominence. In support of his contention he filed the latest edition of J.V. Ramanayya's English Grammar and usage and certified copies of some plaints and written statements. I do not want to waste your Honour's valuable time by reading the documents and depositions. I humbly pray that the Honourable Court may be pleased to decree the suit for an injunction restraining the defendants from indulging in violence to the English Language in any manner whatsoever.