



LABOUR AND INDUSTRIAL CASES

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A Happy And Prosperous



NEW YEAR



The Company and its Staff extends to all its
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JOURNAL SECTION

GLOBALIZATION AND LABOUR SCENARIO

Justice Bhawani Singh, Former Chief Justice, Lokayukta, Himachal Pradesh

After independence, there has been rapid industrialization in the country. Therefore, need was felt to rationalize the existing labour laws and extend the labour welfare measures beyond organized sector. Accordingly, the First National Labour Commission was set up in December 1966 under the Chairmanship of Shri Justice P.B. Gajendragadkar. The recommendations of this Commission covered matters of recruitment agencies and practices, employment service, administration, training and workers' education, working conditions, labour welfare, housing, social security, wages and earnings, wage policy, bonus to workers and employers and industrial relations machinery. The recommendations were to be implemented through amendments to existing labour laws and fresh legislations. By now, there are around 154 labour laws meant to ensure welfare of workers, in the organized sector constituting around three crore workers out of the total work force of about 40 crores.

The advent of the new economic policies

of globalization and liberalization have ushered in new industrial scenario paving the way for revising labour laws. The employers have been vehemently pressing for labour reforms on the plea that these are essential for growth of the Indian Industry, making it globally competitive and for attracting Foreign Direct Investment (FDI). They say that slow growth is the result of existing laws, which aim at job creation, therefore, globalization promotes competition, quality to consumers and work culture. Therefore, amendments to labour laws making them flexible would benefit the country and workers. The Trade Unions oppose employers' demand saying that accepting employers' demand would mean, throwing workers out of safety nets. They want, among other things, strengthening of social security for the workers, extension of social security benefits to workers in the unorganized sector and participation of workers in the management. Reforms, they say, should be on these lines, otherwise, employer would get opportunity to

certainly, the industry could strive for only so much. It was not totally unforeseeable to prophesize of a time that the industry would come to a crumbling halt, rusted with distrust and exploitation. There was an urgent need for the Government to make its presence felt by regulating the industrial transactions and to give a voice to the voiceless. It had to step in and empower the workmen and the employers with certain rights and at the same time shield them from exploitation. Something needed to be done so that neither of these parties could hold the other hostage; for dependence onto the other is in the obvious nature of the industry. This is where we find relevance

of the social legislation in the IESOA, 1946.

The IESOA heralded a new era in employer-employee relationships. It envisioned statutorily regulated terms of employment, strikingly revolutionary in comparison to the arbitrary and one sided terms that were commonplace. The researcher's attempt has been to elucidate on the provisions of the Act and the Court's interpretation in that regard. It has attempted to present a critique of the same at every step. Therefore, the contention put forth in this research paper has been that while the Act was a laudable social-legislation, it was nearly inadequate and lacking in bite until the 1956 amendment and still has a long way to go.

CONTRACT LAW AND CONSTRUCTION INDUSTRY

By : Dr. Mukund Sarada, Principal & Dean, New Law College, Bharatiya Vidya Peet University, Pune

1. All construction works take birth in a contract. An agreement enforceable by law is a contract¹. Thus, a contract requires, an agreement which is enforceable by law. An agreement consists of two essential requisites:—

- (1) A proposal or offer from one party; and
- (2) Its acceptance by the other.

2. Mere agreement is not contract unless it fulfils the following conditions:—

- (1) The parties to the agreement must possess contractual capacity;
- (2) The agreement must be supported by consideration;
- (3) The parties must enter into the agreement of their free consent; and
- (4) The object of the agreement must be lawful

3. All agreements will not become contract, unless they give rise to legal obligations.

4. Proposal has two essential requirements, namely willingness of the party to make a proposal and signifying it to the other. In other words, the proposal/offer must be communicated. Thus, in an agreement of the parties, a stipulation to settle their business matters mutually and not to have recourse to legal proceedings (or jurisdiction of courts being barred)

1. See for details Sec. 2 (R) of the Indian Contract Act, 1872.

was held not to be a contract, as the intention to create legal obligations was excluded.²

5. An offer may be specific or general. In all contracts of Govt. or public work, it will be of general offer, while a specific offer is made to a specific individual.³

6. An offer differs from an invitation to an offer, which are really offer for negotiation, such as tender notices, catalogues, announcement to hold an auction and others. When the person makes an offer in terms of the tender notice and if accepted by the other party, it ripens into a contract, which is evidenced by the contract document. When public authorities enter into innumerable contracts such as LIC or Railway, they usually make recourse to "Standard form of contract" where all the terms and conditions are in fine print. These contracts often exclude or restrict the parties from liabilities.

In such contract, when reasonable notice is given of terms and conditions, the party cannot plead that he was unable to read or being illiterate not bound by them. He must get it understood with the help of others. In the present day, World Bank funded contract documents are being used (The International

2. *Rose Frank Co. v. R. Crompton*, (1923) 2 KB P.261.

3. See for details *Carlill v. Carbolic Smoke Ball Co.* (1893) 1 QB 256.

Civil Engineering Contract forms)^{3A} - FIDIC. Professional bodies like the NICMAR have also formulated a contract document. It has the benefit of uniform interpretation.

7. A contract document is one which embodies the terms and conditions of contract. All the acts and deeds are regulated as per the terms and conditions of the contract.

8. In the case of Govt., there are special rules relating to competency to enter into a contract. In the case of Union Govt., it must be expressed in the name of the President of India and executed on behalf of President in such manner that President may direct. In the case of State Government it must be in the name of the Governor and executed on behalf of the Government in the manner as the Governor may direct.⁴

9. The initial steps taken before entering into a contract can be stated as follows:—

(1) Publication of tender notice by the authorities;

(2) The person, who wishes to respond to the notice, purchases the tender document and prepares the tender document. After preparation submits the same within the date and time stipulated in the manner prescribed; and

(3) The submitted tender bids are opened and acceptance letter is sent, which results in the conclusion of the agreement / contract.

10. The tender notice states the nature of work, value put in the tender, the time of completion of work, earnest money to be deposited including the cost of tender forms and its availability, and the date of time of the submission of tender. The party submitting the tender must agree to abide by the tender notice. The tender purchase document must contain the details like, number of bids per bidder, cost of bid document, details of purchase of tender document and also the qualifications to be possessed by the bidder.

11. The bidding document must consist of

3A. FIDIC (Federal International Des International Consulate)

4. See for details 299 of the Indian Constitution and appendix 4 of AP Financial Code Vol. II
The document is written on a stamp paper, registered/ not registered as the case may be.

instructions to bidder, forms of bid and qualification information, conditions, content, data of the contract, specifications, drawings, bill of quantities and forms of securities, bid price, mode and currency of payment and validity of the bid, and cases of unsuccessful bids being returned including cases of forfeiting of the deposits. The bidders may give alternate proposals and also the format and signing of bid.

The contractor's acceptance and non-acceptance of adjudicator proposed by the owner as well as acceptance of rules and regulations.

12. The qualification information may relate to place of business and Registration, value of work done for the last (5) years including the quantity of work. Existing commitments and on-going works including the work for which bids have been submitted, Plant & Machinery, Qualifications, experience and sufficient evidence of access to financial sources.

13. The bids have to be submitted to the person concerned, together with envelopes placed within the deadline prescribed. A person is entitled to withdraw the bid before acceptance.

14. The bid opening process is confidential. The party receiving the bid is entitled to accept or reject the bids, after duly examining the bids duly evaluating them and comparing with other bids. In the matter of acceptance relating to public work, high quality work at competitive rates should be the criterion.

15. The acceptance of the bid is communicated by the notification of award, requiring the party to sign the agreement within the time limit. Performance security, besides submission within time limit in the prescribed form, together with advance payment and security have to be given.

16. A contract usually consists of—

a) Letter of acceptance;

b) Contractors bid and contract data;

c) Notice to proceed with the work;

d) Conditions of contract, specifications and drawings;

e) Other documents listed in the contract data, and

f) Obligations of the contractor, obligations

of the engineer and of the employer.

17. For Breaches of Contract, liquidated damages can be awarded as stated in the Contract document (for whole of Work-Milestone) as per the contract law, the total amount of damages shall not exceed the amount stated in contract document.)⁵

18. For fundamental breach of contract, the contract can be terminated. Compensation can be recovered for the value of work done, advance payment and other recovering including taxes - percentage of work not completed will be taken into account. In the event of termination by employer, value of work done, reasonable cost of removal of equipment and personnel including cost of protecting and securing the work, advance payments and recovering as well taxes are to be taken into account.

19. Risk management arises for employer as well as the contractor. They have to take appropriate policies in accordance with law of insurance.

20. The disputes arising out of or in relation to contract will be decided as per contract document, prominently by the departmental authority entrusted with power to decide or alternatively by adjudication. Finally, the matter may go even to court at the instance of aggrieved party. The adjudication will be conducted in accordance with the provisions of the Arbitration Act and procedure as made applicable in the contract document.

21. The agreement should not be contrary to law, moral or public policy.

22. Contract law defines the following types of contract:—

- (i) Valid
- (ii) Void
- (iii) Voidable
- (iv) Unenforceable
- (v) Quasi-contract

However, in construction contract, the following types are in vogue:—

- (i) Piece Rate work

5. For details see Sec. 73 to 75 of the Indian Contract Act.

- (ii) Item Rate contract
- (iii) Lump-sum contract
- (iv) Cost-plus contract
- (v) Turnkey contract

a) Piece-Rate Work:

Under this, the owner provides all the site facilities, equipment, services and tools. The payment is based on pieces or units done. This type is prevalent in independent jobs.

b) Item Rate contract:

The payment will be for the actual quantity of work completed and measured periodically. This makes the parties quite safe.

(c) Lump-sum contract:

A fully described and specified work to be completed in all respects and a fix sum is offered. The price will be distributed over a few main items of work on a percentage basis. In some cases, where there is no quantity ceiling and no pre-determination of the quantity to be executed, it will be disadvantages to the contractor.

d) Cost plus contract:

This system provides for reimbursement of the actual cost plus and fixed percentage of the cost towards contractors over-head and profits. In this system, parties will have complete satisfaction in respect of payment, as no dispute occurs.

e) Turnkey contract:

It is a lump-sum contract for a complete project or a plant including engineering, procurement including all requirements of the work. The lump-sum amount shall be decided reasonably, fixing values for major works, which will be done before the contract is awarded.

23. In conclusion, it may be stated that the parties should be aware of all the requisites of a valid contract and sign the contract after fully realizing their rights and liabilities. Undue haste in signing without proper reading of various clauses of the contract, will expose the parties to unbearable risks and losses. Abbreviations in the contract documents should be avoided, as their significance may not be fully known to the parties.