

ISSN: 2582 - 2942



LEX FORTI

LEGAL JOURNAL

VOL- I ISSUE- VI

AUGUST 2020

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of LexForti Legal Journal. The Editorial Team of LexForti Legal Journal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of LexForti. Though all efforts are made to ensure the accuracy and correctness of the information published, LexForti shall not be responsible for any errors caused due to oversight otherwise.



ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR IN CHIEF

ROHIT PRADHAN

ADVOCATE PRIME DISPUTE

PHONE - +91-8757182705

EMAIL - LEX.FORTII@GMAIL.COM

EDITOR IN CHIEF

MS.SRIDHRUTI CHITRAPU

MEMBER || CHARTED INSTITUTE
OF ARBITRATORS

PHONE - +91-8500832102

EDITOR

NAGESHWAR RAO

PROFESSOR (BANKING LAW) EXP. 8+ YEARS; 11+ YEARS WORK EXP. AT ICAI; 28+ YEARS WORK EXPERIENCE IN BANKING SECTOR; CONTENT WRITER FOR BUSINESS TIMES AND ECONOMIC TIMES; EDITED 50+ BOOKS ON MANAGEMENT, ECONOMICS AND BANKING;

EDITOR

DR. RAJANIKANTH M

ASSISTANT PROFESSOR (SYMBIOSIS INTERNATIONAL UNIVERSITY) - MARKETING MANAGEMENT

ISSN: 2582 - 2942

EDITORIAL BOARD

EDITOR

NILIMA PANDA

B.SC LLB., LLM (NLSIU) (SPECIALIZATION BUSINESS LAW)

EDITOR

DR. PRIYANKA R. MOHOD

LLB., LLM (SPECIALIZATION CONSTITUTIONAL AND
ADMINISTRATIVE LAW)., NET (TWICE) AND SET (MAH.)

EDITOR

MS.NANDITA REDDY

ADVOCATE PRIME DISPUTE

EDITOR

MS.SRISHTI SNEHA

STUDENT EDITOR



ABOUT US

LexForti is a free open access peer-reviewed journal, which gives insight upon broad and dynamic legal issues. The very objective of the LexForti is to provide open and free access to knowledge to everyone. LexForti is highly committed to helping law students to get their research articles published and an avenue to the aspiring students, teachers and scholars to make a contribution in the legal sphere. LexForti revolves around the firmament of legal issues; consisting of corporate law, family law, contract law, taxation, alternative dispute resolution, IP Laws, Criminal Laws and various other Civil issues.



**Public Procurement: An Imperative Approach for Socio-Economic
Development of the Nation**

Kshitij Chauhan

INTRODUCTION

The economy of the country indicates everything about that particular country such as standard of living, industrial growth, Happiness Index of the people, Gross Domestic Product (GDP), Gross National Product (GNP), Human Development Index (HDI) and many more. Therefore, we can say that a good economy has a good impact on the society as it leads to increase in income, reduces poverty, it helps in providing better education to the future generation, improves government's financial status, it also leads to infrastructural development and also results in increased life expectancy rate.

Therefore, it is the primary objective of the government to formulate such policies which shall lead to economic growth and will further lead to social welfare. If we put all these points together we can see the impact of the economic development on society. There have been situations in the past where economic policies led to the implementation of certain social reforms. Most of the Revolutionary Protests that took place in the past in certain countries, the economic conditions of that nation has been one of the primary reasons for the initiation of such a revolt. If we take the example of India itself the initiation of the revolt to get freedom from the British Empire took place not only because of the inequality Indians used to face but, poverty and poor living conditions were also the primary reasons for our nation to initiate the revolutionary movement for freedom. Even in the year 1991 when the economy of India was unstable, then Finance Minister Doctor Manmohan Singh introduced economic reforms in India which are popularly known as the LPG (Liberalisation, Privatization & Globalization) reforms which had a huge impact on the Indian Society and introduced new economic opportunities for not only the citizens of India but also for the various Global Investors which brought in a huge chunk of Foreign Direct Investment in India.

As of today during the COVID-19 Pandemic, there has been a revolutionary economic change that took place in our nation, when the Honourable Finance Minister Mrs. Nirmala Sitharaman announced the 20 Lakh Cores package in order to revive the economy.

One of such schemes, in order to maintain the social balance in the economy, is the Public Procurement Policy of the government. Where the government issues contract to private contractors for the accomplishment of a particular project such as developing an expressway, building a government office, renovation of a government office, building electrical infrastructure for power generation, development of residential societies for housing purposes and there are other developmental projects for which government issues tender and the parties interested in the tender make their respective bids.

There are also some technicalities and pre-requisites that are needed to be followed by the parties to receive the tender from the government authorities and other organizations which are involved in the process.

INDIAN AGENCIES FOR PUBLIC PROCUREMENT

As per the provisions of Article 12¹ of the Indian Constitution which defines the term state and as per rule number 133 of the General Financial Rules are being used to define and classify the organizations which grant such permissions for government works. Some of these agencies that fall under the definition of State and are meant for implementation of Public Procurement Policy are:-

- Ministries/Departments of Central and State Governments.
- Public Sector Undertakings/Organisations.
- Entities in which majority shareholder is the government itself or some other public entity.
- Entities receiving significant financial aid/support from the government or are under the direct control of government authority.

The most prominent model that is being used by the government in order to implement this policy is the Public-Private Partnership Model (PPP) and during the outbreak of pandemic, this model is being preferred the most as the government does not have many funds to carry on the entire process by itself because a significant chunk of the government budget is being used in the health sector in order to prevent the spread of the virus. PPP model started picking up pace in the year 2019 when the NDA government came into power for the second time and the revival of the economy was one of the top agendas of the government.

According to the Annual Report of the World Bank in the year 2018, the total amount of investments in the PPP Projects was estimated to be around 11.7 Billion Dollars², which is a significant amount of investment. This investment was mainly done in the infrastructure sector such as highways, airports, the renewable energy sector mainly in the solar energy sectors. If we open the Pandora's Box completely, India received Foreign Direct Investment from countries like Canada, Australia, and the Asian Sub Continent such as Japan and Singapore.

According to the Recommendations of the Niti Aayog earlier known as the Planning Commission also stated, to reduce the number of NPAs the government must promote PPP Models and should

¹ Constitution of India

² <https://www.financialexpress.com/budget/budget-2019-indias-infra-woes-have-one-silver-bullet-private-partnership-crucial/1628524/> (Last Access: 10:00 PM 25/07/2020)

unleash the true spirit of business viability that is an investment in Start-Ups, Joint Ventures and we should adopt the Mercantilism Theory of international trade which states that exports should be higher than the quantum of our imports the similar theory of international trade is being used in countries like China, Japan, USA and other developed nations of the world.

Public Procurement in Start-Ups ³

In India, Start-Ups are being promoted under the Atal Innovation Scheme incorporated by Niti Aayog where the culture of innovation and entrepreneurship is being endeavored. The main role of the Atal Innovation Scheme is to provide ground support to the start-ups in order to help them to increase their scope and become more scalable. The sustainability of these start-ups is the main objective of Niti Aayog as once these start-ups are well established they will be capable to generate employment opportunities for other people as well such as Paytm, Oyo, Ola, Urban Company, Swiggy, Zomato, and there are an ample number of start-ups which turned out to be a huge success and provided employment to other people as well.

Benefits of Public Procurement for Start-Ups

In India, public policies for procurement can be useful for start-ups as they provide immense opportunities and also provide ground support which has not been seen in the private sector to a large extent. Start-Ups provide indirect support to the Government projects as the way/method which is being used by the start-ups is more agile and flexible as compared to corporate organizations. Since Start-Ups are new they provide lower bids as compared to the existing vendors and more inclined to provide innovative services and products.

Government-E-Market Place (GEM): A Runway for Start-Ups

The above stated term that is GEM is an online platform where government assigns tenders to the corporate vendors. The businesses that are registered as MSME or under Department for Promotion of Industry and Internal Trade (DPIIT) can register themselves on this platform. The government has provided an exclusive gateway for start-ups to explore the dynamic world of government buyers where start-ups can sell their innovative goods and services directly to the government authorities through which start-ups can build their goodwill in the market.

³ https://www.startupindia.gov.in/content/sih/en/public_procurement.html (Last Access: 10:30 PM 25/07/2020)

Start-Ups need to follow certain steps to register themselves on the GEM Portal by submitting the documents mentioned below-:

- DPIIT Recognition Number
- Mobile number used for Recognition
- PAN Number
- Aadhar Number

The start-ups that are being recognized by DPIIT also get the facility of GEM dashboard on the GEM runway where they can advertise about their products and services in order to avail this facility the executives of the start-ups need to fill a form in which they have to describe their products and services and they also have to mention that which group of people/companies are their target audience, that is who are the intended buyers.

Legal Framework Public Procurement Policy ⁴

There is no specific law with regard to public policy but there are some regulatory bodies which implement the public policies of the government as it is being discussed above that there are organizations like Niti Aayog, DPIIT, there are other Ministries and Government departments that are also involved in the implementation of the Public Procurement Policies. Article 299 of the Constitution of India lays down the basic criteria for the Public Procurement Policies. According to the above-mentioned article, the Government of India is a party to the contract that is being offered through the Public Procurement Policies and the government has assigned its executives/subordinate ministries to execute the contract on its behalf.

The Principles laid down by Article 14 are also being applied to the principles of Public Procurement Policies allowing everyone to make an offer/bid in the government auctions in order to receive the tender.

If we compare the legal framework of India with other nations then we can see a significant amount of difference between the legal systems such as-:

1. Public Procurement in Singapore-:

⁴ <https://blog.iplleaders.in/public-procurement-india-introduction/> (Last Access: 11:00 PM 25/07/2020)

The public procurement in Singapore is aligned to the principles laid down in the WTO Agreement for Government Procurement Policy, 1994 there is also three separate legislation in Singapore in order to implement this policy-:

- Government Procurement Application Order 2014
- Government Procurement Challenge Proceeding 2014
- Government Proceeding Regulations, 2014

Therefore, we can see that there is a specific legal system in Singapore in case any dispute arises then the parties can refer these legislations to resolve the dispute.

2. Public Procurement in Australia

In Australia, there is a specific Act that is being enacted for the implementation and better governance of Public Policies, namely Public Governance, Performance Act, 2013. The Finance Minister of the country passes on the Commonwealth Procurement Rules and the government has also enacted state and territorial legislation in order to support the system of public policies.

If we compare the legal status of public procurement in these two countries with India we come on a conclusion-:

- A. In India, there is no specific law on public policies.
- B. The legal provisions that are being used in case there is a dispute concerning any policy of the government are scattered in nature the courts use the provisions of Constitution and other Acts that apply to the matter.
- C. Therefore in India if a dispute arises with regard to public policies then the parties have to rely on the discretion of the court to decide whether the actions taken by the government authorities is within the ambit of law or there should be a legal sanction applied on the policy.

When a particular notice is being put up by the government authority to invite applications for tenders, there are some technicalities that are needed to be followed to get the contract, no matter how much high/low the bid is if the applicant is unable to meet the requirements of the tender

assigning committee then the tender shall not be awarded to that particular applicant. There have been cases in the past regarding the technicalities of the tender, two of such landmark judgments are as follows:-

CASE ANALYSIS

Case Number – 1

Renesco India Private Limited V. Eastern Coalfields Limited and Others⁵

Abstract of the Judgement -:

The appellant in this case challenged the tender assigning process of the respondent that is Eastern Coalfields, claim made by the appellant was that its technical bid was rejected without a valid reason. In this matter the High Court of Calcutta state that till the tender is not accepted the highest/lowest bid is not of any relevance and if the applicant to the tender makes a lower/higher bid does not entitles it to be awarded the tender. The court stated that it is ultimately the discretion of the organization and the tender assigning authority to decide to which applicant they want to assign the tender, but such decision shall be unbiased and should be reasonable. In this case, it was found that though the appellant's bid was the highest, however, the appellant was not technically well equipped for the job that was being assigned in the tender, hence the appellant's appeal was being dismissed. The court in order to prove its point also relied on some other landmark judgments: Rajasthan Housing Board v. G.S. Investments⁶, UP Avas Evam Vikash Parishad vs. Om Prakash Sharma⁷ where the court gave the same reasoning while passing on the judgment.

Case Number-2

Air India Limited V. Cochin International Airport Limited⁸

Abstract of the Judgement-:

In this case, the tender was meant for assigning the ground services to the Cochin Airport. The tender was being assigned to Air India, there was another airline which participated in the bid and that was Cambatta Aviation. Aggrieved from the decision of the tender assigning committee Cambatta filed a writ appeal in Kerala High Court where it stated that since Air India is a

⁵ 2018 SCC OnLine Cal 4733

⁶ (2007) 1 SCC 477

⁷ (2013) 5 SCC 182

⁸ 2000 (2) SCC 617

Government based aviation company hence the tender was being awarded to Air India, even after the fact that Cambatta was technically well equipped, High Court after going through the facts ordered that the tender shall be awarded to Cambatta, the case went to the Supreme Court where Air India filed an appeal to set aside the order of the High Court. When the Supreme Court went through the submissions of both the sides then it came to a conclusion that Air India is a national carrier and hence it can bring in more traffic to Cochin Airport as compared to Cambatta Aviation or any other aviation company hence, in the long run, it would be beneficial for the Cochin Airport and the Apex Court upheld the decision of the tender assigning committee to award the tender to Air India.

Hence, from the above-mentioned judgments, we can conclude that it is the decision of the tender assigning committee and the organization to which the applicant wants to assign the tender.

CONCLUSION

From the research paper, the conclusion can be drawn that public procurement is one of the most important policies to maintain the socio-economic balance in society and it also helps in the development of society. But there must be a properly enacted statute to govern these public policies.