



**LAW RELATING TO GOVERNMENT CONTRACTS (2nd ed. 1989).**

By M.A. Sujan. N.M. Tripathi Pvt. Ltd., Bombay. Pp. 1044. Price Rs. 380.

IT IS well-known, that in the last two decades, government has been a major partner in construction contracts and various other commercial transactions, either departmentally or through undertakings managed by or under the control of the government. As a consequence, quite a large number of questions arise in regard to such contracts, being questions either of an administrative nature or of a legal character. On the one hand, such questions increase the quantum of legal disputes and the complexity of such disputes between the government and the contractors. On the other hand, the fact that so many disputes arise, naturally impedes the smooth working of the contracts and this, in its turn, goes against the national interest. It is, therefore, desirable that those in the government as well as those outside the government should have a fairly clear concept of the legal implications of such contracts.

The large number of contractual disputes that goes before the courts or arbitrators points to a need for studies on the subject. In India, commercial law has not been explored or cultivated with the depth that it deserves. Books of the nature under review<sup>1</sup> should therefore, prove to be of some use to government officers, as well as to contractors.

The book is divided into two major parts. The first part contains a general discussion of the law of contracts, while the second part concentrates on the conditions of contracts as enforced by the Director General of Supplies and Disposals (DGS&D), Government of India. The reviewer finds the second part as particularly useful. By giving a lengthy treatment of the standard contracts of the DGS&D, the author has filled a gap which needed to be filled. As regards the first part of the book most of the topics which are discussed arise out of the first 75 sections of the Indian Contract Act 1872, which constitute the general law of contracts in India. The first part also contains a chapter titled "What is Government", a chapter dealing with government as litigant and a chapter on arbitration (chapters 1,17 and 18, respectively). There is also a chapter dealing with interest and another dealing with guarantee.

The discussion contained in the first part largely concentrates on the Contract Act. Probably, the author intended that the business man who purchases the book, should also have available a brief treatment of the general law of contract. However, the discussions<sup>2</sup> may not all be useful from the businessman's point of view. The chapter on government contracts is a useful

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1. M.A. Sujan, *Law Relating to Government Contracts* (2nd ed. 1989).

2. See, for e.g., *id.*, pp. 96-103 and 127-131.



one, but (as will be discussed in detail later), the treatment throughout the book suffers from defective style. Discussion of the general principles of the law of contracts (chapters 2-3) is fairly satisfactory, subject to the criticism regarding style which practically applies to most chapters of the book. In some portions, mistakes have to be corrected or some editorial work is required. For example, at page 235, there is a list of enactments expressly repealed by the Indian Contract Act. This list contains the Interest Act 1839, which was repealed by the Interest Act 1978. At page 236, the enactments dealing with particular contracts are mentioned, but there is an indication that an appendix contains a list. However, it is not clear which particular appendix is meant. Appendix I<sup>2a</sup> deals with the conditions of contract in the DGS&D. This appendix is followed by certain judgments of the Delhi High Court<sup>3</sup> and a bibliography.<sup>4</sup> Thereafter, there is no appendix contained in the book.

Chapter 7<sup>5</sup> deals with the formation of contracts. Here some treatment of contracts by telephone and telex would be useful. Chapter 8<sup>6</sup> deals with offer and acceptance but (probably by slip), the topics of insanity and drunkenness (pages 206 to 208) have also crept in here. Competence of parties to contract has some aspect of importance to governments. Often, the departments enter into contracts with—(i) firms, and (ii) companies, without knowing the main principles of the law of contracts that are of special relevance to firms and companies.

In the case of firms, the departmental officers are not very clear in their minds, as to what is the effect of dissolution or change in the composition of a firm. In the case of the companies, departmental officers often do not have a clear idea of the importance of examining the memorandum of association of the company. The practice in some departments is to insist on the company filing a copy of the memorandum of association, but the practice is not uniform. Moreover, the memorandum of association is not minutely checked. So long as the doctrine of *ultra vires* subsists, this is a very important precaution, which should be observed invariably. It would be helpful, if this point is dealt with in the book.

It is often found that the departmental officers do not have a clear idea as to the effect of death of a contractor on the subsistence of the contract. This topic also deserves to be considered at some length.

The book has a chapter on interest<sup>7</sup>; but the author has not considered at length the vexing question of interest to be awarded by arbitrators. Recent judicial decisions in India, rightly or wrongly, have taken a narrow

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2a. *Id.*, pp. 967-1008.

3. *Id.*, pp. 1009-1026.

4. *Id.*, p. 1027.

5. *Id.*, pp. 244-304.

6. *Id.*, pp. 250-304.

7. *Id.*, ch. 15, pp., 463-469.



view of the matter which requires comment.<sup>8</sup>

In fact, the law relating to interest, as to which the author has usefully quoted the enactment of 1978,<sup>9</sup> deserves to be considered more elaborately in such books. Section 34 of the amended Code of Civil Procedure has also been quoted at page 447. But here, the proviso in the book is printed as proviso to section 34(2), while it is really a proviso to section 34(1). There are several other points of practical importance regarding interest. The author observes<sup>10</sup> that the Indian law regarding interest is similar to English law. But this is not quite accurate, as there are a few important points of difference between the two countries. A look at the English statutory provision<sup>11</sup> will bear out this criticism. Incidentally, where section 3(1) of the Law Reform (Miscellaneous Provisions) Act 1934, (of English) is quoted<sup>12</sup> some words seem to be left out in the proviso. These pages contain matter from McGregor on *Damages*.<sup>12a</sup>

There is a chapter<sup>13</sup> relating to government as a litigant. It may be mentioned that this subject has been considered more than once by the Law Commission of India at considerable length.<sup>14</sup>

Although the book contains much useful material, the trouble arises because there are several defects of style which unfortunately lessen its utility. At several places headnotes from reported judgments are set out without any linking device or comments.<sup>15</sup> At other places, there are long excerpts from judgments of courts, which should have been digested. There is also a need for rearranging the discussion on some topics, for example, the discussion as to interest, the discussion relating to government as a litigant, and so on. With these improvements and rearrangements the book should prove to be more useful for practising lawyers.

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8. See, for e.g., *Executive Engineer v. Avadhuta Jena*, (1988) 1 S.C.C. 418.

9. *Supra* note 1 at 441-48.

10. *Id.* at 458-81.

11. See, *id.*, p 462.

12. *Id.* at 463.

12a. (14th ed.), pp. 447-452 and 471-477C.

13. Ch. 17, pp 492-650.

14. (i) *Twenty-seventh Report*—Code of Civil Procedure, 1908.

(ii) *Fifty-fourth Report*—Code of Civil Procedure, 1908.

(iii) *Fifty-sixth Report*—Notice of suit etc.

(iv) *Eighty-eighth Report*—Government Privilege in Evidence.

(v) *Eighty-ninth Report*—The Limitation Act, 1963.

(vi) *One Hundredth Report*—Litigation by and against the Government.

(vii) *One Hundred and Twenty Sixth Report*—Government and Public Sector Litigation.

15. For e.g., see, p. 190-195.

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