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Public-Private Partnership Model as a Potential Attribute to Engineering and Society

Engineering

KEYWORDS :

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ABSTRACT

A policy lays down the basic attributes of goal-setting, chalks out the structure for achieving idealized objectives and hence, executes economic performance. Indian scenario of policy-making, since the mid-1970s, has been a purblind exercise. All through this time, it was never prioritized and it didn't gain the desired mileage in the economy strengthening travail.

There have been few initiations towards the Public-Private Partnership (PPP). Few bodies have been formed by the central and state governments to create policies and measures that are incentive-compatible and have economic and market logic, and draw little administrative energies. Various policy measures in sectors such as infrastructure, tourism, ports, roads, IT and power have also been announced, concisely stating the government's agenda in incentivizing private-sector investments in various planned and envisaged sectoral development initiatives.

INTRODUCTION

As a first step, any organization following PPP prospect considers following aspects-

- power, including power generation (captive generation, non-conventional and renewable energy projects), transmission, distribution, and power trading services;
- integrated transport and logistics, covering roads, bridges (flyovers), railway systems, ports, airports, oil and gas pipelines, and warehousing infrastructure;
- urban and municipal infrastructure comprising water supply and sewerage systems, solid waste and garbage disposal facilities;
- industrial infrastructure including industrial parks (IT, biotech, floriculture, etc.), Special Economic/Free Trade Zones, Export Promotion Zones, industrial estates, and industrial townships; and other infrastructure such as township development and infrastructure related to tourism and agriculture.

The private sector is expected to play a key role in providing VFM (Value for Money) by ensuring the following key benefits:

- savings in costs due to innovative designs, timely project implementation, and higher efficiencies in operations;
- enhanced quality of services to users due to better managerial practices;
- reduction in and gradual elimination of pricing constraints;
- enabling public funds to be earmarked for socially- justifiable projects; and
- financial innovation and development of cost-effective solutions.

In the present scenario of the Indian economy, PPP can be a potential model because the government is not liable for any capital investment, private firms undertaking the work are also beneficiary of it and the common people of the country gain various benefits from it just by paying a miniscule amount of money, that stands worth for the serenity they clinch from it.

TEXT:

PUBLIC- PRIVATE PARTNERSHIP (PPP)

Public–private partnership (PPP) describes a government service or private business venture which is funded and operated through a partnership of government and one or more private sector companies. These schemes are sometimes referred to as PPP, P3 or P3

PPP involves a contract between a public sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project. In some types of PPP, the cost of using the service is borne exclusively by the users of the service and not by the taxpayer. In other types (notably the private finance initiative), capital investment is made by the private sector on the weakness of a contract with government to provide agreed services and the cost of providing the service is borne wholly or in part by the government. Government contributions to a PPP may also be in kind (notably the transfer of existing assets). In projects that are aimed at creating public goods like in the infrastructure sector, the government may provide a capital subsidy in the form of a one-time grant, so as to make it more attractive to the private investors. In some other cases, the government may support the project by providing revenue subsidies, including tax breaks or by removing guaranteed annual revenues for a fixed time period.

PPP is required in development of infrastructure, related to various sectors like education, tourism, hospitality, real estate etc. Infrastructure in each of these sectors require huge investments hence government require large flow of money from both private as well as public sector. The real estate sector cluster, broadly defined, consists of a group of industrial and services sectors of the economy, such as construction (housing , as well as commercial and industrial buildings, and infrastructure projects such as dams, roads, and bridges), brokerage services, real estate finance services (mortgage banking, real estate investment), real estate operations, property management, architecture and design. Attached to this sector are many industries which supply the raw material to this sector like cement, power, furniture, appliances, wooden industry etc, hence the boom in real estate sector brings prosperity, financial strength and good health to the nation.

Typically, a public sector consortium forms a special company called a special purpose vehicle (SPV) to develop, build, maintain and operate the asset for the contracted period (Moszoro et al ,2008). In cases where the government has invested in the project, it is typically (but not always) allotted an equity share in the SPV (PFI,2011). The consortium is usually made up of a building contractor, a maintenance company and bank lender(s). It is the SPV that signs the contract with the government and subcontractors to build the facility and then maintain it. In the infrastructure sector, complex arrangements and contracts that guarantee and secure the cash flows make PPP projects prime candidates for project financing.

ORIGIN OF PPP

Pressure to change the standard model of public procurement arose initially from concerns about the level of public debt, which grew rapidly during the macroeconomic dislocation of the 1970s and 1980s, government has now sought to encourage

private investment in infrastructure.

It has been argued that models involving an enhanced role for the private sector, with a single private-sector organization taking responsibility for most aspects of service provisions for a given project, could yield an improved allocation of risk, while maintaining public accountability for essential aspects of service provision.

The Government of India defines a P3 as "a partnership between a public sector entity (sponsoring authority) and a private sector entity (a legal entity in which 51% or more of equity is with the private partner/s) for the creation and/or management of infrastructure for public purpose for a specified period of time (concession period) on commercial terms and in which the private partner has been procured through a transparent and open procurement system."(Bardhan et al ,2004).

PPP IN OTHER COUNTRIES

Initially, most public–private partnerships were negotiated individually, as one-off deals, and much of this activity began in the early 1990s.

In Britain the Conservative government of John Major introduced the Private Finance Initiative (PFI),(Govt of India,2007) the first systematic programme aimed at encouraging Public–Private Partnerships in 1992.

In Australia a number of Australian state governments have adopted systematic programmes based on the PFI. The first, and the model for most others, is Partnerships Victoria.

In Canada the federal conservative government under Stephen Harper solidified its commitment to P3s with the creation of a crown corporation, P3 Canada Inc, in 2009. The Canadian vanguards for P3s have been provincial organizations, supported by the Canadian Council for Public-Private Partnerships established in 1993 (a member-sponsored organization with representatives from both the public and the private sectors). As proponents of the concept of public-private partnerships (PPP's), the Council conducts research, publishes findings, facilitates forums for discussion and sponsors an Annual Conference on topics related to PPP's, both domestic and international. Each year the Council celebrates successful public-private partnerships through the National Awards Program held concurrently with the annual conference in November.

PUBLIC- PRIVATE PARTNERSHIP IN REAL ESTATE SECTOR

Real estate as a whole, and housing in particular, is the single largest asset class and wealth holding of individuals and households globally. The development of the housing sector is an integral part of economic development. In addition to its size in the economy, its importance also arises from the positive externalities and spillover effects, and their impact on the social and political climate. In most countries, and particularly in developing countries, housing is a very large proportion of a household's expenditure and takes up a substantial part of lifetime income(Zheng et al ,2008).

GERMANY

In Germany the provision of public infrastructure - such as public real estate, road or highways, or water and waste water projects - is usually done by tendering the necessary construction and major repair works to private contractors whereas the design as well as the maintenance and other facility management and operation services are either implemented by the responsible administration or sourced out to specialized private or public entities. Since 2000 so called - Funktionsbauverträge have been developed in the road & highways sector integrating design, construction and maintenance as a first step to full life cycle PPPs.

Traditionally, financing was taken over by the public sector in the form of classical budget financing. Nevertheless, different models of private pre-financing were introduced, such as the so called 'Mogendorfer Model'. The private contractor together with banks had to organize the financing of the construction phase, which was then 'forfeited' and paid back in 10 to 15 yearly installments by the public principal. In addition, models like 'Leasing' (design, build, lease and transfer), 'Mietkauf' (design, build, rent, transfer) and 'Miete' (design, build, rent), which all included the financing, were introduced – particularly in the public real estate sector. But soon it was realized that the large number of such projects increased the public debts hence, the deal-flow has significantly been reduced.

The most advanced PPP-market in Germany – even if still underdeveloped compared to the UK market - is the public real estate sector. Within this sector more than 25 projects with an investment value of about €551 million were realized during the last few years. A part of them are already in operation. In addition, a much larger number of projects are currently in preparation. (Alfen et al, 2011)

UNITED STATES

In US it was thought that PPPs in the real estate sector can play a positive, albeit very limited role. Since the Base Realignment and Closure (BRAC) program's inception, the Pentagon has faced the difficult task of deciding what to do with property formerly occupied by military installations. Corporation study found that real estate PPPs will be crucial in the Army's efforts to reduce excess real property holdings and property upkeep costs. BRAC PPPs are one example of where government can trim its real estate holdings and management responsibilities. Numerous others exist across the country, ranging from private developer LCOR's lease of the U.S.Patent and Trademark Office Headquarters Campus to the redevelopment of the James A. Farley Post Office in New York City. However, while these are welcome instances of government reducing its real estate footprint, most real property PPPs in the United States involve government asserting power that it had not exercised in the past—generally under the guise of "economic development." Since the U.S. Supreme Court's 2005 Kelo v. New London decision, significant public attention has come to focus on government intervention in property development.(Scribner M,2011) City planners are confident that such projects would create jobs and bring in new tax revenue.

REAL ESTATE SECTOR: AN INDIAN SCENARIO

The NATIONAL URBAN HOUSING AND HABITAT POLICY, 2007 (NUHHP,2007) has been formulated by the Government of India, keeping in view the changing social-economic parameters of the urban areas and growing requirement of shelter and related infrastructure. The policy seeks to promote various types of Public-Private Partnership (PPP) for realizing the goal of 'Affordable Housing for All' with special emphasis on the urban poor.

COMMITTEE ON NATIONAL COMPETITION POLICY OF INDIA

The Ministry of Corporate Affairs, Government of India constituted a committee for framing the National Competition Policy and related matters, with the aim of laying down an overarching policy frame-work for infusing competition principles in various statutes, regulations and policies of the government and promoting competitive market structure in the economy. The objective of the NCP is to 'promote economic democracy, achievement of highest levels of economic growth, entrepreneurship, employment, higher standards of living, and protect economic rights for just, equitable, inclusive and sustainable economic and social development.

In order to develop a strategy for competition advocacy with the Government and private sector, the Committee seeks to have specific inputs and undertake evidence-based advocacy by reviewing distortive provisions in policies, laws, regulations, practices etc. in various sectors of the economy, including Real Estate.

AGENDA FOR COMPETITION POLICY ADVOCACY

It is not difficult to comprehend that a slowdown in the construction industry has led to a slowdown in the country's growth due to the various sectors that real estate touches upon,

from cement to steel to employment. The approach to public policy, in a sector where the State has failed to deliver, needs change, as private developers are the only hope.

1. Real Estate is the lead sector where a competitive market structure with a fast-track mechanism for approvals & development bodes well for the overall economic development of the Country. It contributes approximately 8% annually to the country's GDP and is expected to contribute another 1% if the existing vacuum waiting to be harnessed for development is facilitated through greater clarity and alacrity in the approval process and by setting up of a Regulator.
2. The approval process. 5.4 NUHHP, 2007 states that "a single window approach would be developed by the Urban Local Bodies/para-statals for approval of Building Plans and securing Certificates in collaboration with the Council of Architects or their State/UT chapters".
3. Bihar provides to cut-down on time delays for building plan approvals by making an Amendment in the Bihar Regional Development Rule 1982; Listed Registered Architects are now empowered to sanction the building plan upto 500 sq. meter area, thus facilitating an easy and hassle free administration.
4. Bangalore Municipal Corporation has proposed the Online Building Plan Approval system (OBPAS). Under the system, one can submit online the plan for approval along with all necessary documents. The software is designed in such a way that it will verify whether the plan is as per the stipulated rules (bye-laws and zonal regulations) or not. Approval will also be sanctioned online within the stipulated time. Introducing such computerized systems not only reduces paper work and save time and efforts but also bring in transparency and efficiency .
5. One of the reasons for the prevailing prices, which make real estate beyond the reach of most, is the banking costs, which can be addressed in by a change in identity of the sector for lending by financial institutions by according it an infrastructure status. FDI in Affordable Housing should be permitted without any threshold, as the threshold prescribed leaves out most of Affordable Housing projects.
6. The NUHHP, 2007 states that "Stamp Duty reforms should be initiated to bring duty in all States/UTs at par". Lowering Cost through Rationalization of Stamp Duties which ranges from 32% to 5% is must, as high stamp duty has been a major deterrent to declare actual value in the sale deeds thus involving black money in transactions.
7. Reservation of Land/FAR for EWS/LIG housing should be part of the overall Affordable Housing policy; consequently all expenses on construction of units for EWS/LIG housing in private development should be eligible for deduction under section 35AD.
8. The new Land Acquisition and Rehabilitation and Resettlement Bill, 2011, has the objectives of balancing the interest of the land owner and the land acquirer, where State would intervene to assist private developers in acquiring land, only if 80% of the land has been acquired by them. However, the industry contends that the requirement of eighty percent consent will make the acquisition procedure never ending.
9. The Department of Land Reforms (LR), Ministry of Rural Development has modified the earlier Bill, 2010 and has come up with a revised Model Land Titling Bill, 2010 so that establishment, administration and management of a system of conclusive property titles through registration of immovable properties can be put in place.
10. The recent judgment of the Hon'ble Supreme Court of India in the matter of 'Suraj Lamp & Industries Pvt. Ltd. V State of Haryana & Another' held that the General Power of Attorney (GPA) method of immovable property sales is not a valid form of transfer of property. It stated that "a power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property". The judgment will help curb evasion of stamp duties, registration charges & capital gains tax, and use of black money in real estate transactions.
11. The Urban Local Bodies are important stakeholders in the entire setting of Real Estate development, and its empowerment and capacity building is as important as is of the other stakeholders. Dependence on them i.e. the time lag in getting approvals appear to limit the scope for competition, and is a breeding ground for extra legality in operation. Thus a system by which the Municipalities can be held accountable should be instituted.
12. As rental housing is a global alternative to the home seekers and the house providers alike" a review of existing legislations is important. The NUHHP, 2007 states that "A Model Rent Act will be prepared by the Government of India on the principle that rent of a housing unit should be fixed by mutual agreement between the landlord and the tenant for a stipulated lease period prior to which, the tenant will not be allowed to be evicted and after the expiry of the said lease period, the tenant will not be permitted to continue in the said housing unit."
13. The Ministry of Housing has prepared a draft Model Residential Tenancy Act to assist state in formulating State specific legislation on Rent, based on the principle enshrined in the NUHHP, 2007. Rental housing if free from rent control, will channelize a lot of investment into this sector.
14. To motivate new entrants and to guide further investments, the policies have to be overhauled to provide for a level playing field. High thresholds in terms of investment corpus, years of experience in the sector and minimum number of manpower as prescribed, inhibit competition in the sector. The policy should not be directed at protecting firms from competition but rather ensuring that consumers receive the maximal benefits from competition.
15. The draft Real Estate (Regulation & Development) Bill, 2011 mandates the promoter to declare 'the period of time within which he undertakes to complete the project or phase thereof and further that 'the amount received for the real estate project from the allottees would be deposited in a no-lien separately designated bank account and would be used only for that project. The Bill also provides for online declaration of all project details, including a list of documents specified. It also requires that the 'proforma of the agreements proposed to be signed by the allottees' should also be uploaded on the site of the Regulatory Authority. The Bill also defines that the rate of interest payable by the promoter or the allottee as the case may be in case of default, should be the same.
16. To provide a level playing field to the new players and the incumbent, and to attract foreign investment in the Real Estate sector, the Government needs to pro-actively set up the Real Estate Regulator by enacting the Real Estate (Regulation & Development) Bill, 2011. It will make the Real Estate market efficient and safer for buyers.
17. Imposition of Service tax and VAT on Real Estate makes the sector un-competitive due to astronomical cost addition and rising prices, which in turn has added to the burden of home buyers.
18. An added support has been received to the policy momentum in a judgment of the Hon'ble Supreme Court in a case relating to 'construction workers' upholding the validity of the 2% levy on cost of all construction provided under the Building and Other Construction Workers Welfare Cess Act, 1996, as an important 'social welfare measure', which could not be termed 'tax' thereby providing security to the 'construction workers'.
19. The study further recommends revision in the said statutes, rules, regulations, policies and their implementation procedures to seize anticompetitive practices. It will help in creating a more inductive environment for prospective entrants and investment which will bring in enormous competition in the sector.
20. The judgment of the Hon'ble Supreme Court of India in the cases of 'Suraj Lamp & Industries Pvt. Ltd.'; 'Atma Ram Chauhan and Others'; & 'Dewan Chand Builders & Contractors', and the order of the Competition Commission of India in the case of 'Belaire Owner's Association' versus DLF Limited has together set the tone for reforms and buttressed the need to infuse competition in the sector. It is now incum-

bent upon the Government to seize the moment to provide the needed momentum to the sector (Govt of India, 2012).

GOVERNMENT OF INDIA TO REVISE PPP MODEL

Battling charges of crony capitalism, the impression that public assets were sold for a song, big business being given preferential treatment and scathing audit report on many projects, the government is planning to revise its Public –Private Partnership (PPP) model to ensure revenue projections over 30 years period are robustly factored into contracts.The need to calculate revenue projections has been felt with PPP drawing fire for offering sweetheart deals to private partners at the expense of consumers and revenue to government exchequer.

The government will soon unveil a "well done" PPP scheme as the model put into practice from 2003 till now has evolved with experience. It is learnt that future PPP will have in-built mechanisms to make sure the revenue projections over a 30 years span are factored in so that the government does not lost out on its share of revenue. By doing this the scope for post-contract concessions or alterations will be reduced too.

CONCLUSIONS

The popularity of PPPs should not blind policy makers to the fact that these sectors suffer from problems that are markedly different. A responsible path forward would be to utilize PPPs in infrastructure development and management, while cutting bureaucratic impediments such as land-use regulations and business licensing to promote redevelopment. In essence, both require reducing political forces and expanding market forces. Only when policy makers realize their own limitations these sectors will be free to maximize wealth creation that could potentially bring about a new era of Indian prosperity.

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