

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**Suit No.1231 of 2023**

Plaintiff : Civil Hospital Pharmacy through  
Muhammad Ali Lakhani and  
Mujtaba Sohail Raja, Advocates.

Defendant No.1 : Jinnah Postgraduate Medical  
Centre, through Muhammad  
Irfan Siddiqui, Advocate.

Defendant No.2 : Taj Medicos, through  
Muhammad Ishaque Ali, and  
Shehroz Sattar, Advocates.

Defendant No.3. : Sindh Public Procurement  
Regulatory Authority, through  
Syed Qamar Zaman Shah,  
Assistant Director (Legal) and  
Irshad Ahmed Shaikh, Assistant  
Advocate General, Sindh.

Date of hearing : 18.03.2024

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Plaintiff, Mst. Jameela Bibi, claims to be a supplier/retailer of medical and pharmaceutical goods operating as the sole proprietor of a concern under the name and style of M/s. Civil Hospital Pharmacy, and to have participated in such capacity in the proceedings ensuing in respect of Tender No.1-1/2023-24 floated by the Defendant No.1 under the statutory regime of the Sindh Public Procurement Authority (“**SPPRA**”) for the procurement and supply of medicines and surgical and disposable items, with it being said that the proceedings suffer from mis-procurement by virtue of her wrongful disqualification on the ground of certain income tax returns not being found to be in order, and it being alleged that such disqualification has been contrived in order to knock her out of the race so as to by-pass the greater discount offered in the matter and thus pave the way for the contract to be awarded to the Defendant No.2.

2. Represented through her son, Sohail Ahmed, the Plaintiff has sought that such disqualification be declared illegal and that the tender proceedings culminating in favor of Defendant No. 2 be declared an act of mis-procurement with the operation of the Minutes of Meeting of the Procurement Committee dated 16.06.2023 and Award dated 27.07.2023 be declared unlawful and set aside, as well as a mandatory injunction for an award to be made in his favor or, in the alternative, for fresh tender proceedings to be undertaken. It has also been prayed that the Defendant No.1 be restrained from obstructing the Plaintiff's supply as per a Letter dated 26.06.2023 and/or payments to be made thereagainst. In that backdrop, vide CMA No.10841/23, being an application under Order 39, Rules 1 & 2 CPC, the Plaintiff has elicited interim relief along the same lines as the final relief sought by seeking suspension of the Minutes and Award, and that the Defendant No.1 be restrained in the aforementioned manner with reference to the Letter dated 26.06.2023. Conversely, CMA No. 13156/23 has been filed by the Defendant No.2, seeking rejection of the Plaintiff on the ground that no cause of action has accrued to the Plaintiff.
  
3. Proceeding on that Application, learned counsel for the Plaintiff submitted that the Plaintiff's bid offered the greatest discount and was otherwise responsive in all respects with reference to the terms of tender. He argued that the same thus ought to have been accepted and the Plaintiff awarded the relevant contract instead of the Defendant No.2. He argued that the disqualification of the Plaintiff was unwarranted, while pointing out that the Plaintiff had successfully participated in the tender process for such procurement for the preceding year and been awarded the contract. He invited attention to the cited Letter dated 26.06.2023 addressed to M/s. Civil Pharmacy by the Executive Director of the Defendant No.1, extending the tenure of procurement for the financial year 2022-23 by a period of 90 days in view of the procurement process for the subsequent year remaining underway.

4. Opposing the Application, learned counsel for the Defendants Nos. 1 and 2 denied that the Plaintiff, Mst. Jameela Bibi had participated in the tender process, and invited attention to the various documents submitted in the matter to point out that Sohail Ahmed had in fact participated in his own right while showing himself to be the proprietor of Civil Hospital Pharmacy. Learned counsel for the Defendant No.1 invited attention to the tax returns sought to be relied upon and filed with the Plaintiff, and pointed out that those however were not of Sohail Ahmed, but incongruously pertained to Jamila Bibi, and also went on to point out that she was not also registered for tax purposes as a retailer, which was one of the requirements of the tender, but was instead registered as an importer/exporter/distributor.
  
5. He argued that the distinction between a retailer and a distributor was material from the standpoint of the tax deduction to be made from payments by the Defendant No.1, and invited attention to a Letter dated 03.08.2023 to contend that a loss of revenue of Rs.4,221,000/- had thus been suffered by the Government in the preceding year. He submitted that the requirement of a retailer chemist was also critical from the standpoint of ensuring the availability of essential and lifesaving drugs around the clock, as requirements that could not be met through the current central drugs/surgical contract list were fulfilled through the provision of goods by the approved retailer chemist as per the requirements submitted by different hospital units on daily basis as per the indents duly signed by the surgeons/consultants according to the patients medication chart, to be dispensed and delivered to the patients as per their profile medication order. Furthermore, they and representative of SSPRA pointed out that Rules 31 and 32 of the SPPRA Rules provided a grievance redressal mechanism, which had not been followed in the matter.

6. Having examined the matter, it merits consideration that it is not one where the most advantageous of the eligible bids was arbitrarily rejected in favour of another less advantageous one, but is one where the rejection stems from the Plaintiff's disqualification, which cannot be simply brushed aside at this stage as being without cause, especially in view of the discrepancies pointed out, not least of which is the discrepancy between the identity of the persons shown as the proprietor of M/s. Civil Hospital Pharmacy for purpose of participation in the tender as opposed to the identity of the person who has come forward as the Plaintiff in advancing this Suit. Needless to say, it is axiomatic that there can only be one person at the helm of a sole proprietorship. Furthermore, if the bids of disqualified participants can be counted, then it falls to be considered that the bid of Sohail Ahmed was not the one offering the greatest discount.
  
7. It is also to be considered that the interim relief sought with reference to the Letter dated 26.06.2023 amounts to a mandatory injunction, which cannot be countenanced under the given circumstances, especially as reliance on that Letter is misplaced in as much as it merely reflects a stopgap arrangement for a period of 90-days, which has since lapsed. Moreover, the tender and contract issued on the basis thereof is only for a period of one year, of which only a few months remain. The relief elicited is thus not of a lasting nature and is confined to performance envisaged over that one-year period, with no amount by way of damages having otherwise been claimed. The impugned disqualification is also confined to the particular procurement process and the Plaintiff and/or Sohail Ahmed remain at liberty to ensure that their credentials are in order so as to enable participation in the forthcoming tender process. That being said, no case for interim relief stands made out, with it in fact being apparent that the Suit has been brought by a person who had not participated in the tender, hence cannot espouse any cause of action in that regard.

8. In view of the foregoing CMA 13156/23 stands allowed, with the Plaint being rejected accordingly, and CMA No.10841/23 consequently being dismissed as having become infructuous.

JUDGE