

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

**Suit No. 2118 of 2023**

Plaintiff : Ameet Kumar Essarani, through  
Khalid Javed, Advocate.

Defendant No.1 : Pakistan Civil Aviation Authority &  
others, through Khalid Mehmood  
Siddiqui, Advocate.

Date of hearing : 02.04.2024.

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Plaintiff, in his capacity as the proprietor of a concern under the name and style of M/s. A.P. International, participated in the two-envelope procurement process initiated by the Civil Aviation Authority for the award of a contract for the collection of car parking fees at Islamabad International Airport for a period of one year in terms of a Tender Notice, specifying the date and time for submission of bids notified as 11:00 hours on 14.12.2023 and that of opening of the tender as 11:30 hours on the same day.

2. The case of the Plaintiff is that he submitted his Technical Offer and Financial Offer in response to that Tender Notice in accordance with the prescribed terms and conditions, but despite the same being responsive in all respects and also the higher of the two bids received, no reply was forthcoming on the part of the procuring agency, which instead resorted to publication of a fresh Tender Notice on 20.12.2023, once again inviting tenders on the subject by 05.01.2024, albeit that several earlier attempts at tendering had proven fruitless in as much as no participation had been forthcoming.

3. The Plaintiff claims that a legal right stood created in his favour as on 14.12.2023 for award of the relevant contract, with it being asserted that the denial of that right by the procuring agency as well as the further steps taken towards initiating the procurement process afresh are mala fide and illegal. As such, through the plaint originally presented on 26.12.2023 it was prayed that it be declared that the Plaintiff was entitled to the award of a contract pursuant to the offer made in response to the Tender Notice inviting bids by 14.12.2023, and that the fresh Tender Notice inviting bids for 05.01.2024 be suspended and set aside with the defendants being restrained from awarding any contract in pursuance thereof to any third party. A prayer for damages in the sum of Rs.100 million was also advanced.
  
4. As it transpired, one of defences taken through the Written Statement filed in the matter was that the Plaintiff's plea was mala fide, as he had suppressed the fact that he had been disqualified from a technical standpoint. A copy of the assessment of the Plaintiff's bid undertaken on 14.12.2023 as per the Technical Evaluation Criteria, purporting to bear his signature of the same date, was filed with the Written Statement, along with a letter dated 02.01.2024 regarding the disqualification and advising him to collect his sealed financial bid. The Plaintiff then filed an application to amend his pleadings so as to impugn that letter while raising the plea that it had been backdated, whereas it had in fact been delivered at his office on 09.01.2024, as well as to impugn the further auction that had been put off to 15.01.2024 and 16.01.2024 pursuant to a corrigendum published on 05.01.2024.

5. Following the grant of that application, an amended Plaintiff was then filed accordingly, and of the two interlocutory applications eliciting interim relief that are pending in that backdrop, CMA 21126/23 stands directed against the Tender Notice inviting bids for 05.01.2024 while seeking its suspension so as to restrain the award of any contract to a party other than the Plaintiff, whereas CMA No.561/24 elicits the suspension of the letter dated 02.01.2024 as well as further auction proceedings subject to the corrigendum. Vide an Order dated 26.12.2023, the defendants were initially restrained from finalizing any proceedings ensuing on 05.01.2024, with another Order then being made on 15.01.2024 staying the auction proceedings envisaged as per the corrigendum.
  
6. Proceeding on those Applications, learned counsel for the Plaintiff submitted that the Plaintiff had met the relevant criteria and also offered the highest bid. He argued that a legal right had thus been created in favour of the Plaintiff for the award of a contract, and its denial by the Defendants was illegal and mala fide. He submitted that the documents showing Plaintiff to have been disqualified from a technical standpoint were a fabrication and denied that the signature appearing on the aforementioned assessment of the Technical Evaluation Criteria was that of the Plaintiff. He argued that such disqualification had been contrived by persons with vested interests in order to knock-out the Plaintiff so as to pave the way for a contract to be awarded to a favoured third party for personal gain. He submitted that all the subsequent tender notice were illegal, mala fide and unjustified, hence liable to be set aside, with the Defendants being restrained from taking further steps in pursuance thereof pending final determination of the Suit.

7. On the other hand, learned counsel for the Defendants argued that the procurement process had been carried out in a fair and transparent manner, with the disqualification of the Plaintiff having ensued for proper cause due to the absence of various mandatory documents, as noted in the Technical Evaluation Criteria Form. It was pointed out that the relevant terms and conditions clearly stated that "in case of non-provision of any one of the mandatory documents at the time of submission of Bid, the Bidder shall stand automatically disqualified". It was submitted that the Plaintiff had been informed of his disqualification on the spot, when the evaluation form had been signed by the Procurement Committee of CAA as well as the Plaintiff himself without any sign or indication of protest, and no denial of that signature had been made in the amended Written Statement while impugning the letter dated 02.01.2024. He submitted that as there was only one participant left in the field, it was deemed expedient to move towards a fresh tender, and also emphasised that as the plaintiff had not been blacklisted from future participation he could have cured the identified deficiencies so as participate in the fresh round of tendering, but had opted not to do so while taking shelter under the umbrella of this Suit and the restraining order operating in the matter. It was also pointed out that nothing had been placed on record to indicate that the Plaintiff had even otherwise made the higher bid. It was also submitted that the argument of mala fide and favouritism was misconceived, and was belied by the fact that the Plaintiff was admittedly even now an existing licensee of the PCAA at Karachi Airport in a different capacity. Lastly, it was submitted that if the Plaintiff had any grievance, he had a remedy under Rule 48 of the Public Procurement Rules, but had failed to pursue the same, and had instead resorted to the Suit.

8. While no caselaw was cited in the matter, in the given backdrop one may look to the judgment of a learned Division Bench of this Court in the case reported as *Guinault SA PA Orleans Sologne vs. Federation of Pakistan & Others* 2021 YLR 692, which, as it transpires, was also a case pertaining to public procurement, that too under analogous circumstances and involving similar pleas to the matter at hand. There, the petitioner had elicited the cancellation of a tender and sought that it be declared the lowest evaluated bidder in respect of an earlier tender which had since been cancelled. After examining various precedents on the subject of auctions/bids and the status of a bidder, including certain as then unreported judgments of this Court as well as the judgments of the Supreme Court reported as *Muhammad Khalil vs. Faisal M.B. Corporation & Others* 2019 SCMR 321, *Babu Parvez Qureshi vs. Settlement Commissioner Multan & Bahawalpur Divisions & Others* 1997 SCMR 337, and *Munshi Muhammad & Another vs. Faizanul Haq & Another* 1971 SCMR 533, and a judgment of the Balochistan High Court reported as *Mandokhail Brothers Commercial Trading & Government Contractor vs. Chairman Civil Aviation & Others* 2017 CLC 221, it was observed that (a) a bid is only an offer and the mere submission of a bid, even if it was the highest or the lowest, as the case may, does not create any vested right in favour of a bidder; and (b) that no rights accrued in favour of a bidder till such time as the bid was accepted and a contract was concluded. The learned Division Bench thus dismissed the petition while concluding that merely "...by virtue of being a participant in the tender process, no vested rights accrued in favour of the petitioner entitling it to award of the procurement contract."

9. In view of the foregoing, CMA Nos. 21126/23 and 561/24 are found to be misconceived, and stand dismissed accordingly.

MUBASHIR

JUDGE