

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Present

Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J

CP No.D-3425 of 2019

1. For hearing of CMA No.15383/2019 (stay)
2. For hearing of main case

21.09.2021

Petitioner M/s All Pakistan Security Agencies Association through Mr. Malik Tahir Iqbal, Advocate.
Respondents No.1 and 2 through Mr. Khaleeq Ahmed, DAG
Respondent No.3 Sindh Public Procurement Regulatory Authority, through Mr. Abdul Jalil Zubedi, AAG
Respondent No.4, National Bank of Pakistan through M/s Chaudhry Azhar Ellahi and Aamir Lateef, Advocates.

AHMED ALI M. SHAIKH, CJ.- By invoking the Extra-Ordinary Constitutional Jurisdiction of this Court under Article 199, the petitioner seeks following relief(s):

- a) To direct the respondent No.1 to 3 to initiate strict inquiry in the matter and submit their respective inquiry reports before this Honorable Court in stipulated time.
- b) To pass an appropriate strict order on consideration of the above said inquiry reports submitted by the respondent No.1 to 3 declare that the bidding process of the respondent No.4 in the matter is null and void.
- c) To direct the respondent No.4 for issuance of bidding documents in accordance with the applicable laws, rules, instructions of Public Procurement Rules 2004 and policy of the Federal Government as well as Provincial Government.
- d) To grant status quo against the respondent No.4 by granting permanent injunction therein restraining the respondent No.4, its employees, workers, representatives, agents, or anybody else working on behalf of the respondent No.4 to stop proceeding of bidding process in any manner whatsoever in nature till the final disposal of this constitution petition.
- e) Any other relief/relieves this Honorable Court may deem fit and proper in the matter."

2. Briefly stated facts as pleaded in the memo of petition are that petitioner M/s All Pakistan Security Agency Association, registered under the Companies Ordinance, 1984, through its Chairman filed this petition

against allegedly illegal tendering process carried out by the Respondent No.4 for provision of Security Guards Service. Per petitioner all the Provincial Governments have notified minimum working hours for labor as 08 hours a day. However, the Respondent No.4 mentioned that its requirement for Security Guards was of 12 hours a day, hence mentioned as such in the proposed tender notice. The petitioner wrote letters to the Respondent No.2, who vide letter dated 02.04.2019 observed that all the procuring agencies are under obligation to follow the Public Procurement Rules, 2004 (the "**Procurement Rules**") alongwith the applicable laws, rules, instructions and policy of the Federal Government on the subject. It is further averred that per Section 34 of the Factories Act, 1934 (the "**Act of 1934**") and Section 8 of the West Pakistan Shops and Establishment Ordinance, 1969, (the "**Ordinance of 1969**") the normal daily working hours are 8-9 hours, which should not be more than 48 hours per week.

3. After notice the Respondents filed their comments. Respondent No.4 in their comments maintained that the Act of 1934 is not applicable to them and against the violation of labour laws, if any, alternate and efficacious remedy is available to the petitioner and the petition is not maintainable. Respondent No.4 further stated in the comments that its establishments are vulnerable, at risk, sensitive, containing important and valuable properties, etc, it cannot be left guard-less at any time and change of security has to take place in presence of the representative of the Bank, the duty roster of the security guards has to be such that it meets all these requirements, therefore, 12 hours duty is needed. However, for the extra hours the guards are adequately compensated. It is also stated that the Respondent No.4 shall not be the employer of the security guards, which are to be deployed by the successful security agency and the latter to follow the Ordinance of 1969.

4. Learned counsel for the petitioner contended that when the petitioner came to know as to the illegality in the tender notice, it addressed letters to the Respondents No.2, 4 and the Director, Transparency International pinpointing the violation of Procurement Rules and Labour Laws. In response the Respondent No.2 vide letter dated 21.04.2019 observed that:-

"2. After review of the documents provided by the complainant and NBP this Authority is of the view that all the procuring agencies are under obligation to follow the Public Procurement Rules, 2004 alongwith the applicable laws, rules,

instructions and policy of the Federal Government on the relevant subject in carrying out the procurement activities.

3. In future, the procuring agency is required to make the evaluation criteria with more clarity and conformity with the applicable laws, rules, instructions and policy of the Federal Government including Labour Laws. Please ensure that efforts should be made to formulate an appropriate evaluating criteria for sake of maintaining transparency, accountability, ensuring quality procurement, value for money and equal opportunity which are the main objectives of procurement laws.”

5. Learned counsel submitted that under the labour laws a labourer cannot be compelled to work beyond 8 hours a day whereas the Respondent No.4 had given in writing a bid for 12 hours daily duty of a Security Guard. He further submitted that this served to violate Section 34 of the Act of 1934 and Section 8 of the Ordinance of 1969, and the procurement procedure of the Respondent No.4 was thus in violation of Rule 38 of the Procurement Rules, committing mis-procurement in terms of Rule 50 of said Rules.

6. Conversely, the learned DAG and Counsel for the Respondent No.4 submitted that the Respondent No.4 has nothing to do with the employment of any security guard. In fact, the Security Agencies used to provide services of security personnel. Moreover, the Act of 1934 is not applicable in the instant case while provisions of the Ordinance of 1969, are exemptible and shall be applicable on the security agency, which employed the security guards. When learned counsel for the petitioner was confronted with the above, he frankly conceded that in fact the security guards are employees of the members of petitioner association and the Respondent No.4 has nothing to do with the terms and conditions of their service. In fact it is the petitioner who paid them in lieu of the duty hours. After having considered the contentions raised by the learned counsel for the petitioner and the status of the security guards who are employees of the petitioner association having no direct relationship with the Respondent No.4, we do not find any merit in the petition in hand which is accordingly dismissed alongwith pending application.

Chief Justice

Judge