

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1545 of 2020

M/s. S.S.S. Corporation
Vs.
Province of Sindh and others

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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1. For hearing of CMA No.18181/2021.
2. For hearing of CMA No.18182/2021
3. For hearing of CMA No.10713/2020.
4. For hearing of CMA No.10833/2021.
5. For hearing of CMA No.11427/2020.
6. For hearing of CMA No.13549/2020.
7. For hearing of CMA No.13550/2020.
8. For hearing of CMA No.14250/2020.

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Date of hearing: **02.03.2022**

Date of Announcement: **04.03.2022**

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Mr. Faizan Hussain Memon, Advocate for the plaintiff.

Mr. Zia-ul-Haq Makhdoom, Advocate for defendants No.1 to 3.

Mr. Malik Altaf Hussain, Advocate for applicants/interveners.

Mr. Sunil Talreja, A.A.G.

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ORDER

Muhammad Shafi Siddiqui, J.- I have heard learned counsel for the parties and perused the material available on record. The plaintiff has filed this suit for the following relief(s):-

- i. *Declare that the disqualification of the Plaintiff vide Letter dated 16.09.2020, Letter dated 01.10.2020 and upholding of disqualification by CRC vide order dated 12.10.2020 is without reasons, mala fide, motivated, illegal, arbitrary, discriminatory and in violation of good governance and law, and set aside the same forthwith;*

In the alternative

- ii. *Declare and hold that the Defendants, their genets, officers, sub-ordinates, representatives cannot open the financial bid without deciding Plaintiff's review appeal under section 32 of the SPPR, 2010;*

- iii. *Direct the Defendants to provide bidding documents of all bidders in respect of the subject tender;*
- iv. *Direct the Defendant No.2 to decide Plaintiff's review appeal against its disqualification in accordance with law;*
- v. *Restrain the Defendants, their agents, officers, subordinates, representatives from opening the financial bid without deciding Plaintiff's review appeal;*
- vi. *Grant any other relief(s), which this Honorable Court may deem fit and appropriate under the law and circumstances of the case; and*
- vii. *Grant cost of the suit.*

2. Previously the plaintiff also filed a suit bearing No.1243/2020 which was disposed of vide order dated 30.09.2020 in the following terms:-

Today, learned counsel for the parties file a joint statement on behalf of the plaintiff and defendant No.3 along with a copy of office order dated 15.05.2020 passed by Shoaib Tughlaq, Dy. Managing Director (HRD&A) KW&SB wherein it is stated that the plaintiff and defendant No.3 are agreed that without prejudice to the rights and legal stands of the parties, as the tender process of the Public Authority has been put to halt causing huge loss to the public exchequer, this suit may be disposed of with the directions to Superintendent Engineer District South-B/Convener Procurement Committee (HS/TO) KW&SB to give reasons for non-qualification of plaintiff's technical bid on or before 05th October, 2020. The plaintiff may file Complaint, if he wishes to, to CRC on or before 08th October, 2020. In case the Complaint is filed then the CRC shall decide the same within a period of seven days as provided under Rule 31 of Sindh Public Procurement Rules, 2010. It is further agreed between the parties that in case any Complaint is filed by the Plaintiff to CRC against the non-qualification of technical bid then the financial bid, in respect of Sherpao Hydrant shall be opened after order passed by CRC. The defendant No.3 shall be at liberty to open financial bids in respect of other hydrants. Statement is taken on record.

Learned counsel for the plaintiff does not press this suit against defendants No.1, 2 & 5.

In view of above, the instant suit stands disposed of along with pending application(s).

3. Relief that concerns with letter dated 16.09.2020 was also the subject matter of earlier suit and hence could not claim in this suit,

since was entertained, considered and adjudicated earlier. Thus prayer (i) partially could not be entertained as it was available at the time of earlier lis which was disposed of on 30.09.2020 and suit No.1243/2020 was filed on 21.09.2020. I am more concern with CRC's decision dated 12.10.2020.

4. Pursuant to the exercise as required in the terms of above order, the decision was rendered by CRC on 12.10.2020 and allegedly communicated to the plaintiff on 14.10.2020. In consequence of such decision with reasons therein, the plaintiff preferred a review under Rule 32 of Sindh Public Procurement Rules, 2010. While that appeal to the addressee in terms of Rule 32 was filed on 15.10.2020, this suit was immediately filed on 16.10.2020 challenging the disqualification of the plaintiff vide letter dated 01.10.2020, which was upheld by complaints redressal committee (CRC) on 12.10.2020. The plaintiff vide letter dated 16.09.2020 was considered as technically disqualified as per the qualification criteria specified in the bidding document. While his appeal before the addressee of the appeal is pending claiming statutory remedy, this suit was filed seeking aforesaid relief(s) along with an alternative that the financial bid may not be opened without deciding the plaintiff's appeal in terms of Rule 32 of Sindh Public Procurement Rules, 2010.

5. As far as the application for the rejection of the plaint is concerned, I am fortified with two decisions of this Court; one reported as PLD 2019 Sindh 400 [*M/s Al-noor through Partner v. Province of Sindh through Chief Secretary Sindh and 8 others*] and other as PLD 2016 Sindh 479 [*Messrs GETZ Pharma (PVT.) Limited through Authorized Person v. Province of Sindh through Chief Secretary, Government of Sindh and 7 others*], hence on the strength

of appeal alone and in the absence of ouster clause, on the basis of an application under Order VII Rule 11 CPC a plaint cannot be rejected. However, facts of the case have different application on the injunction application. The plaintiff has already surrendered to the jurisdiction under Sindh Public Procurement Rules, 2010 which provides that if the bidder is not satisfied with the decision of procuring agency's complaint redressal committee, they may lodge an appeal to the review committee provided that he has not withdrawn the bid security, if any, deposited. The structure of the review committee is also identified in the relevant Rules.

6. Before filing this suit the plaintiff have since surrendered themselves to the jurisdiction under the Sindh Public Procurement Rules, 2010, therefore, it may be in all fairness that the plaintiff may appear before the addressee where they claimed their review appeal is pending and seek its disposal in accordance with law after notice to respondents. It is expected that the appeal, as preferred, be heard and decided in 15 days' time and till such period the appeal is decided, the interim order shall continue to operate. It however, may not take more than 15 days to be taken to its logical end.

7. Application under Order VII Rule 11 CPC dismissed, whereas, injunction applications bearing CMA Nos.10713/2020, 10833/2020 and 13549/2020 are disposed off as above.

JUDGE

Karachi
Dated: -04.03.2022

Ayaz Gul