

THE HIGH COURT OF SINDH, KARACHI

Suit No. 08 of 2023

[Syed Tahir Imam Rizvi versus Province of Sindh & Others]

Plaintiff : Syed Tahir Imam Rizvi through
M/s. Khawaja Shams-ul-Islam,
Shahzad Mehmood and Imtiaz Ali
Shah, Advocates

Defendants 1 to 25 : Province of Sindh & Others
through Mr. Asad Iftikhar,
Assistant Advocate General, Sindh
along with Mr. Farrukh Aziz,
Assistant Director (Legal) SPPRA

Defendants 4-A & 5-A : M/s. Sarmad Hani and Zarar
Qadir Shoro, Advocates along with
Mr. Zain-ul-Abideen Ansari,
Projector Director PMIU, Sindh
Basic Education Program.

Date of hearing : 09-03-2023

Date of decision : 17-03-2023

ORDER

AMJAD ALI SAHITO J. - By means of this application [CMA No. 95 of 2023] under Order XXXIX Rule 1&2 CPC read with Section 151 CPC and Section 55 of the Specific Relief Act, the Plaintiff prayed that the Impugned Letter dated 29.12.2022 issued by the Defendant No.4/4-A, whereby the Plaintiff has been "**Black Listed**" so also the Impugned Letter regarding rejection of the Plaintiff's technical bid issued by the Defendant No.5/5-A on the ground that the both letters are illegal, uncalled for, void ab-initio having no legal effect and are in violation of Articles 3, 4, 9, 10-A, 14, 18, 24 and 25 of the Constitution of the Pakistan, 1973 as well as Sindh Public Procurement Act, 2009, Rules, 2010 and Regulations 2013 may be suspended as also the Plaintiff prayed that the Defendants may be directed to allow the Plaintiff to participate in all Tenders as mentioned in paragraph No.23 and 24 of the plaint, including Tenders dated 18.09.2022, dated 06.10.2022

and 07.10.2022. The Plaintiff further prayed that he may be allowed to participate in all the tenders relating to Education Department, Government of Sindh

2. Learned counsel for the Plaintiff submits that the Plaintiff is a sole proprietor of “Faiz Scientific Company” established in the year 1952. The Company was registered with all the relevant authorities and successively business of manufacturing as well as importing of School furniture all over the Sindh; that for doing business, the only requirement in terms of Sindh Sales Tax on Services Act, 2011 so also Sales Tax Act, 1990 is that the person should be registered and there is no restriction of any particular category; that the Plaintiff performed thousands of contracts and the Plaintiff is one of the finest supplier and importer of the School and Colleges furniture, fixture as well as computer supply; that the business of the Plaintiff is not limited to Karachi, but the Plaintiff performed the work in all over the Sindh; that as regards the furniture and electronic equipment provided by the Plaintiff, there is/was no complaint whatsoever, in any nature by any of the concerned authorities including the Defendants.

3. Learned counsel for the Plaintiff further submits that on 18.09.2022, the Defendant No.5 invited tenders through different newspapers; that on 07.10.2022, he deposited fee for two Lots amounting to Rs.6,000/-; that the Plaintiff participated in the tender issued by the Defendant No.5 in Kamber Shahdadkot having Lot No.7 and Lot No.7A; that the technical bid submission and opening date and time was fixed at Karachi on 07.10.2022 at 11:30 a.m. and 12:00 pm. respectively; that on 28.10.2022, the Defendant No.5/5-A informed the Plaintiff that “*all responsive bids are evaluated by the procurement committee, and your bid was found non-qualified technically as per eligibility criteria required*”; that on the same day, the Defendant No.5/5-A issued another letter dated 28.10.2022, whereby the Plaintiff and some other

bidders informed about responsive/non-responsive bids against the tender No. Lot-7 and Lot-7A; that on 03.11.2022, the Plaintiff approached the Defendants 2, 4/4-A, 5/5-A & 7 and requested to approach Complaint Redressal Committee **(CRC)** in provision of Sindh Public Procurement Rules, 2010 **(SPPRA)** Rule 31; that on 04.11.2022, the Plaintiff again requested the Defendants 4 and 5 to kindly not initiate award contract to any bidder till the decision of CRC against the disqualification of the Plaintiff; that on the same day i.e. 04.11.2022, the Plaintiff received a letter from Defendant No.5, stating therein that the CRP for PMIU-SCEP is scheduled on 09.11.2022 at 02:30 p.m. thereafter the meeting was rescheduled to 11.11.2022, due to Iqbal Day.

4. Learned counsel further argued that on 14.11.2022, the Defendant No.5 through a letter along with minutes of meeting of CRC informed that Plaintiff that Procurement Committee, briefed the CRC that the complainant did not submit mandatory information as required for the responsive bid; moreover in technical evaluation the complainant obtained 49.4 marks out of 100, whereas 80 marks are required for qualification so also directed the Procuring Agency to revisit the marks obtained by the Plaintiff and notified if there is any change; that the alleged decision of the CRC has not been complied with by the Defendants 4 and 5.

5. Learned counsel further contended that on 03.10.2022, the Defendant No.5 invited tender through different newspapers in respect of three districts of Sindh for procurement of Goods and Services (Furniture and Fixtures) for US-AID-SBEP Schools and opening date and time was fixed at Karachi on 28.10.2022 at 11:30, the same was extended through a corrigendum dated 20.10.2022; that the Plaintiff deposited the required fee total amounting to Rs.21,000/- for seven lots; that the Defendant No.5 and 5-A issued instructions to bidders to submit five copies in hard and two

copy in soft as required by Clause 1.5 and 1.6 undertaking for no black listing/debarred in any government and Non-Government Organization during last five years and to submit undertaking for litigation history for no any contract under litigation or arbitration in any Government/ Non-government organization during last five years; that on 21.10.2022, the Plaintiff vide a letter informed the Defendant No.5/5-A regarding violations of SPPRA Rules; however, the Defendant has not responded; that the on 26.10.2022, the Plaintiff again wrote a letter to the Defendant No.5 regarding massive errors in bidding documents, but no reply was tendered by the Defendant No.5.

6. Learned counsel further argued that on 28.10.2022 the plaintiff submitted the documents pertains to the bid which include (02) affidavits for each Lot one for Black Listing History and one for Litigation History, in which the Plaintiff stated that *“We have not been involved in any litigation in any work order in the Government Department”*; that on 31.11.2022, the Defendant No.5/5-A issued a letter to the Plaintiff so also two others, wherein it was stated that *“ You have violated of IFB Clasue-12.4 of Data Sheet/Bidding Documents, which mentions (Each Bidder can participate in Maximum Two Lots and further the Procuring Agency provides an opportunity to you for confirmation as regards which two lots will be considered for valuation, please confirmation in written is mandated in 7 days, failure to which shall lead to rejection of your bids”*; that the Plaintiff on 10.11.2022 submitted his reply to the Defendant No.5/5-A stating therein that if the Plaintiff participates in two Lots may be he is unable to get the lowest bid, due to the reason Plaintiff participate in all Lots.

7. Learned counsel for the plaintiff further added that on 29.12.2022 (the Impugned Order), the Defendant No.4 by exercising his power illegally under Rule-35 of the Sindh Public Procurement Rules, 2010 (**“the Rules”**), declared the Plaintiff’s

company as **“Black Listed”** for the period of one year in School Education and Literacy Department on account of so called violation of Rules 20, 21, 21-A, 23 and 30 of the Rules; that the Plaintiff was black listed just to accommodate the blue-eyed companies; that the Plaintiff has been black listed without following the proper procedure as laid down in the Sindh Public Procurement Act, 2009, Sindh Public Procurement Rules, 2010 and Regulations for Procurement Works, 2013 as well as in contravention of Articles 3, 4, 9, 10-A, 14, 18, 24 and 25 of the Constitution of Pakistan, 1973; that the Impugned Order was passed without being heard, neither show cause notice was issued nor the matter was investigated in accordance with the laws, the same is issued in violation of Article 10-A of the Constitution of Pakistan, 1973; that the impugned order was issued in violation of Rule 31 and 44 of the Rules, 2010; that the Plaintiff being aggrieved with the Impugned Order approached the Defendant No.3 for filing an appeal/review before the CRC in terms of Rule 31 of Rules, 2010; however, the Defendant No.3 has refused to receive the appeal; that on 03.11.2022, the Plaintiff also approached the Defendant No.7 to form review committee against not fixing meeting of CRC; however, till date, the Defendant No.7 failed to form a review committee, therefore, the conduct of the Defendants 2 to 5 and 7 are malafide, illegal and unconstitutional and against the law; that the Defendants 4/4-A and 5/5-A failed to issue a show cause notice to the Plaintiff and even has not given any opportunity of hearing prior to blacklisting, which is contrary to the Article 10-A of the Constitution as it is a fundamental right to every citizen. Learned counsel pointed out that the Plaintiff has filed (10) cases against the Defendants 2 to 5 and others since they violated the provisions of Sindh Public Procurement Act and Rules. The cases were filed to restrain the Defendants from committing corruption and bribery and none of the litigation was regarding work order; hence he prayed that the Impugned Letter dated 29.12.2022 issued by the Defendant No.4/4-A,

whereby the Plaintiff has been “Black Listed” so also the Impugned Letter regarding rejection of the Plaintiff’s technical bid issued by the Defendant No.5/5-A may be suspended. Learned counsel has relief on the cases reported as *2021 CLC 472, 2011 CLC 294, PLD 2021 Sindh 108, PLD 2006 Supreme Court 418, 2007 MLD 2019, PLD 2017 Islamabad 115.*

8. On the other hand, Mr. Sarmad Hani, Advocate for the Defendants 4-A and 5-A submits that the NITs are part of the Sindh Basic Education Program **(SBEP)**, USAID funded program which is being implemented by the Government of Sindh’s School Education Department; that the Procuring Agency acting in good faith and considered the Plaintiff’s plea and were willing to give him an opportunity of hearing; however, the Plaintiff declined that offer; that the Plaintiff during course of his submission admitted that he has declined to avail the remedy so provided under the law; that the 1st NIT for procurement of furniture and fixture for SBEP Schools (FY 2022-23) was published in nationwide newspaper based on Single Stage-Two Envelope Procedure of Open Competitive Bidding under Rule 46(2) of the Rules, 2010 for district Qamaber Shahdadkot consisted of two Lots i.e. Lot No. 7 & 7-A; that the Plaintiff has participated in both the Lots; that on 07.10.2022, the Plaintiff accepted the terms and conditions of the bidding documents; that upon opening of 1st NIT, Plaintiff’s firm was found Non-Responsive in both the Lots; that on 28.10.2022, the Plaintiff was informed that his bid was found technically non-qualified, further requested to collect his sealed financial Bid; that on 03.11.2022, the Plaintiff filed a complaint before the CRC under Rule 31 of the Rules 2010; that on 14.11.2022, meeting of the CRC was held and recommended/directed to Procuring Agency for revisit the marks obtained by M/s. Scientific Company as notified if there is any change; that the meeting of procurement committee was held on 17.11.2022, wherein the committee in the reevaluation, found out that the Plaintiff did not provide

mandatory documents/evidence as initially required for (Responsiveness Bid) for the technical evaluation which itself is ground for disqualification however, the chair directed the marking of further evaluation which led to the fact that the complainant firm lacked mandatory passing marks as well.

9. Learned counsel for the Defendants 4-A and 5-A further submits that the Procuring Agency through a letter dated 17.11.2022 informed the SPPRA regarding decision of the CRC; that on 17.11.2022, the contract was awarded to the qualified bidders i.e. M/s. Al-Nets Cyber Solution for Lot-7 and M/s. DNAZ Entrepreneur for Lot-7-A, the same was also appeared at SPPRA Website; that the Plaintiff was never challenged the decision of the CRC before the Review committee Under Rule 32 of the Rules, 2010, therefore, the decision of CRC attained finality and the Plaintiff has no right to seek declaration in respect of Lots 7 and 7-A; that the tender has already been awarded to the qualified bidders and payments have already been made to the contractors, therefore, the Plaintiff has no right to seek any claim.

10. Learned counsel further contended that as regards the 2nd NIT, which was published in nationwide newspapers on 03.10.2022 and the same was extended, the NIT is in respect of three District i.e. Karachi, Kashmir & Jacobabad, which consists of 7 Lots (10 to 16) ; that on 25.10.2022, the Plaintiff accepted the terms and condition of the bidding documents; that on 28.10.2022, the Plaintiff submitted its technical bids; however, the Plaintiff had to raise objections prior to submission of bids, the Plaintiff had never raised any objection; that the Plaintiff had applied in 7 Lots in violation of bidding documents i.e. Clause 12.4; that on 31.10.2022, the Defendant No.5-A sought clarification from the Plaintiff and other bidders that they have violated IFB clause 12.4 by applying for seven lots and despite violation the Procuring Agency provided the bidders an opportunity to confirm any two

Lots; that the other participants expressed their two choices and the Plaintiff replied dubiously regarding clarification of his bids; that the Procurement Officer clarified the clause and held that there is not discrimination in the said clause, however, no clarification was sought Under Rule 23 of the Rules, 2010 till the last date of submission of bidding documents; that two affidavits were filed by the Plaintiff under Mandatory Information in clause 1.5 and 1.6; that on the scrutiny of the documents and on investigation, it was revealed that the Plaintiff had misrepresented regarding his litigation history, the Plaintiff stated that his firm was not involved in any litigation; however, he concealed the litigation history from the Procuring Agency; therefore, the Plaintiff was rightly blacklisted for filing a fraudulent “**Undertaking**” in respect of litigation history; that the bid validity was 90 days which has expired and the Procurement Specialists has issued a notice dated 27.01.2023 whereby the bid period has not been extended and the bid stands expired by efflux of time.

11. Learned counsel further draws attention of the Court towards Clause 1.6 of the Mandatory Information required under the Bidding Documents for technical evaluation; that the firm shall submit undertaking for providing no litigation during five years.

12. Learned counsel further submitted that the undertaking was submitted on 28.10.2022 by the Plaintiff in 2nd NIT, wherein the Plaintiff stated that the firm is/was not involved any litigation; Learned counsel further added that it is a clear case of “**fraudulent practice**” and the Plaintiff’s application may be dismissed on this score alone; that the Plaintiff has not availed statutory remedy provided under Rule 35(4) of the Rules, 2010; that the Plaintiff also was never availed remedy of clarification and modification of bidding documents which was available with the Plaintiff under Rule 23 of the Rules, 2010. Therefore, the injunction application may be dismissed.

Learned counsel has placed reliance on the cases reported as *2007 MLD 2019*, *PLD 2017 Islamabad 115*, *2015 CLC 1589*, *2021 CLC 1931*, *PLD 2018 Sindh 303* and *2020 CLC 323*.

13. Mr. Asad Iftikhar, learned Assistant Advocate General, who is appearing on behalf of all Official Defendants has adopted the arguments advanced by learned counsel for the Defendants No. 4-A and 5-A. He further submits that he intends to argue on some points. Learned A.A.G. submits that the Plaintiff on his own undertaking states that he has not been involved in any litigation; however, the fact of the matter is that the Plaintiff is a habitual litigant. Learned A.A.G. draws attention of the Courts towards pages No. 251, 293, 331, 367, 409, 443, 475 and submits that the Plaintiff in his plaint also admitted that he has filed more than 10 cases against the Defendants 2 to 5. He further argued that Rule 35(1)(b) of the Rules 2010 clearly provides that involvement in corrupt and fraudulent practices while obtaining or attempting to obtain a procurement contract, shall result in blacklisting of supplier, contractors, or consultants, individually or collectively as part of consortium. He submits that the undertaking submitted by the Plaintiff is false which constitutes a fraudulent practices; hence the Impugned Order is passed in accordance with the Rules; that the Plaintiff has a statutory remedy to appeal before the review committee, but the Plaintiff has failed to do so. Therefore, he prayed that the instant injunction application may be dismissed.

14. I have heard the learned counsel for their parties and have perused the material available on record.

15. As regards the objection raised by learned counsel for the Plaintiff that the Defendants No.4-A and 5-A are the Government Officials, therefore, they cannot hire private counsel as learned Assistant Advocate General is representing to all Official Defendants. In support of his contention he has relied upon on the case reported as *PLD 2017 Supreme Court*

121, wherein the Honorable Apex Court observed “that the Federal government and the Provincial governments had a host of law officers who were paid out of the public exchequer; that if a government contends that none amongst its law officers were capable of handling cases then the question would arise why had incompetent persons been appointed; that in such a scenario the public suffered twice, firstly, they had to pay for incompetent law officers, and secondly, they had to pay again for the services of competent counsel the government engaged; that the public exchequer could not be squandered in such manner, and the State must protect its belongings and assets and those of citizens from waste of malversation; that the constitution, the Rules of Business, the Attorney General for Pakistan (Terms and Conditions) Rules, 2011, the Central Law Officers, Ordinance, 1970 and the Additional Attorney-General, Deputy Attorney General and Standing Counsel Rules, 2011 did not specifically permit the Federal Government to engage a private counsel, therefore such practice must stop. The Honorable Supreme Court further observed that there may however be cases which involved complicated questions the Constitution or some extremely technical law which the Attorney General or the Advocate General, and their law officers did not have the requisite ability to attend to, in such a case the concerned constitutional office holder should certify that he and the law officers did not have the requisite expertise in the field and that the engagement of a private counsel who was competent and experienced was required; that the engagement of private counsel could only be sanctioned for compelling reasons and in the public interest”. Learned counsel for the Defendants 4-A and 5-A and learned Assistant Advocate General, Sindh submit that the Defendant No.4-A and 5-A are sued directly by their names, therefore, they are at liberty to hire some private counsel and the case law cited by learned counsel does not apply here. The submissions of learned counsel for the Defendants 4-A and 5-A appear to be correct as the title of the Plaint reflects that the Defendants No.

4-A and 5-A are sued directly by their names. Therefore, there is no room available with the Plaintiff to object that the Defendants No. 4-A and 5-A represented through private counsel. Therefore, the objection raised by learned counsel for the Plaintiff is overruled.

16. The grievance of the Plaintiff is that the Defendant No.4/4-A issued the Impugned Order dated 29.12.2022, whereby the Plaintiff was blacklisted for a period of one year in School Education and Literacy Department on the ground that the Plaintiff has violated the Rules 20, 21, 21-A, 23, 29 and 30 of the Rules, 2010 so also the Plaintiff prayed that the Impugned Letter dated 28.10.2022, whereby the technical bid of the Plaintiff was rejected by the Defendant No. 5/5-A may also be suspended as both decisions are illegal, uncalled for, void ab-initio having no legal effect and have been passed by the Defendant Nos. 4/4-A and 5/5-A in violation of Articles 3, 4, 9, 10-A, 14, 18, 24 and 25 of the Constitution of the Pakistan, 1973 as well as Sindh Public Procurement Act, 2009, Rules, 2010 and Regulations 2013.

17. On the other hand, the case of the Defendants is that the Impugned Order has been issued in accordance with the Rule 35 of the Rules, 2010 and the Plaintiff has not availed his appropriate remedy available under Rule 35(4) of the Rules, 2010 against the Impugned Order. As regards the Impugned Letter dated 28.10.2022, whereby the technical bid of the Plaintiff was rejected was passed after completing all codal formalities in accordance with the Rules, 2010. It is appropriate to reproduce the contents of Impugned Order dated 29.12.2022 & Impugned Letter dated 28.10.2022:-

Impugned Order dated 29.12.2022

Order: Consequent upon the scrutiny of M/s. Faiz Scientific Company which applied for the NIT No. INF-KRY-3647/22 and INF-KRY 3853/2022 dated 15th September and 3rd October, 2022 respectively for furniture purchase, in Sindh Basic Education (SBEP) School Education & Literacy

Department (SE&LD). It was observed that the firm has provided false affidavit and misguided the Procuring Agency (PA) as regards the mandatory clause of litigation disclosure required under Pas terms and conditions.

The "PA" found out that the vendor has misrepresented facts and presented fraudulently duly signed and stamped affidavits (that too six in number) which affirmed that the firm is not involved in any litigation (Affidavit attached). However, through scrutiny of the documents it was revealed that vendor is involved in multiple litigation i.e., Eleven (11) in Sindh High Court (list annexed A). Eight (08) and multiple other complains of different Pas in SPPRA (list annexed B).

Upon inquiry it was found that M/s. Faiz Scientific Company holds the reputation of hindering the procurement process of several Pas using applications as a primary tool and eventually challenging the process in SPPRA and higher forums to black mail and use pressure tactics in order to obtain favorable results from the Pas which results into a long list of litigations.

Evidently, the huge number of litigations the firm has indulged in has invariably resulted in delays in the procurement process, laps of public funds, stagnation in overall development and specifically in the case of SE&LD depriving the students from timely provision of either delays or compromises on educational activity which is an outcome of the grant assisted amount. The Honorable Court Sindh in CP No. D-1937 of 2020 as has been informed by the SELD about the supply of furniture as well. (CP attached C).

Needless to say, that no serious or level playing vendor has or would ever heap up such a significant number of litigations. Even the scrutiny of document revealed that most of the undertakings regarding the black listing affidavits contain obscure and ambiguous language (please refer to the black list affidavit mentioning "not being involved in a litigation in any work,"/executing agency in supply of furniture". (attached D). It remains a fact well known to everyone that litigations are not incurred during the issuance of work orders, such language was deliberately used to misguide the PA.

PMIU – SBEP PA has limited the number of applications for bids up to two lots only in case of furniture supply. This is an extension of a principled policy that by engaging multiple vendors the agency shall have good number of competitors, fair play, timely delivery and in case of failure of any one bidder, the rest of the bidders can perform unhindered and the overall process is not compromised which can be, very likely, in case of a single bidder. M/s. FSC agreed and signed Bidding Documents Form (FORM Attached E) which incorporated the acceptance of GCC clause 12.4 of Data Sheet/Bidding Document.

As per clause 12.4 of GCC any single bidder or Joint Venture (JV) can only apply for two lots despite the acceptance of the terms and conditions, M/s. FSC applied in all lots.

PMIU as per rule 43 of SPPR in Clarification of Bid gave opportunity to M/s. FSC to mention which 02 lots will the firm like to OPT for (letter enclosed F). Upon receipt of such a letter M/s. FSC instead of giving reply to already agreed upon terms and condition asked PMIU via letter dated 10th November, 2022 to allow M/s. Faiz Scientific the special privilege to participate in all tenders.

As per SPPRA Rules, the “Procuring Agency” is empowered to decide the best in the public interest for the cause on which it operates and has the right to decide the terms and conditions as deemed appropriate. In case of any disagreement, all eligible vendors have the right to communicate their grievance to the PA when they purchased or download the bid documents. However, the same cannot be done after the opening of bids. In case of any grievance regarding the bar limiting the maximum applications up to two, M/s. FSC must have communicated the same to the PA before the opening of bids, or the firm could also have approached SPPRA for the same. However, writing to PA after several days from the day of opening of bids indicates that the firm M/s. FSC only wants to add one more litigation in its list as the firm is a habitual litigious.

Therefore, the PMIU – SBEP in the capacity of a “PROCURING AGENCY” finds M/s. FSC as a firm which misleads organization by presenting fraudulent and false statements on stamp paper and violates the terms of agreement after giving a formal consent, duly signed and stamped in black and white (copy attached G).

Hence, THE “PROCURING AGENCY” under powers conferred upon it under rule 35 of the SPPRA hereby declares M/s. FAIZ SCIENTIFIC COMPANY as Black Listed for the period of one year in School Education and Literacy Department considering the violation of

Rule 20, 21, 21-A, 23, 29 and 30 of SPP rules 2010. (Amended)

This order is subject to review provided solid facts and grounds are presented before the “PA”.

The Right to appeal is admissible as prescribed under Rule 36 of SPPRA 2010 (Amended).

Impugned Letter dated 28.10.2022

*M/s. Faiz Scientific Company,
Karachi.*

*Subject: REQUEST FOR COLLECT SEALED FINANCIAL
BIDS*

*Reference: SBEP/PD/PO/7199/22 Dated 18.09.2022 LOT 7
& 7-A*

This is for your kind information that all responsive bids are evaluated by the procurement committee, and your bid was

found non-qualified technically as per eligibility criteria required.

2. Therefore, it is requested to collect your sealed financial Bids during office hours from PMIU office situated at Bungalow No. D-66, Block-2, Near Bilawal House Chowrangi, Clifton, Karachi.

18. As regards the 1st NIT, Per learned counsel for the Plaintiff, the Defendant No.5/5-A have not complied with the direction of CRC which was held on 14.11.2022 regarding grievances against NIT Tender Lot No. 7 & 7A for the procurement of Furniture & Fixture, wherein it was held that Procurement Committee, briefed the CRC that the complainant did not submit mandatory information as required for a responsive bid; moreover, in technical evaluation the complainant obtained 49.4 marks out of 100, whereas 80 marks are required for qualification and was directed the Procuring Agency for revisit the marks obtained by M/s. Faiz Scientific Company and notified if there is any change. It is pertinent to mention here that vide letter 16.11.2022, the Plaintiff was accordingly informed regarding Meeting of Procurement Committee for revised evaluation of M/s. Faiz Scientific Company on directives of CRC and the Plaintiff was requested to attend the meeting. The Meeting of Procurement Committee was held on 17.11.2022, the relevant paragraphs of the Minutes of the Meeting is as under:

“1. A Meeting of Procurement Committee was held on 17th November, 2022 (Attendance Sheet is Attached).

2. The Evaluation Committee, reviewed and reexamine the Technical Evaluation Report under directions of CRCs decision considering (TER) / BID Evaluation Report (BER) against all the eligibility criteria for the Single Stage – Two Envelope procedure and compared the Profile / Technical Bid of Complainant M/s. Faiz Scientific Company as submitted for the Tender / Lot No. 7 and 7A.

3. The committee in reevaluation found out that the M/s. Faiz Scientific Company did not provide mandatory documents/evidence as required for (Responsiveness Bid) for the technical evaluation which itself is ground for disqualification however, the chair directed the marking of further evaluation which led to the fact that the complainant

firm lacked mandatory passing marks as well. (The signed Copy of Checklist is attached for ready reference as endorse by the bidder's / complainant representative in the presence of Procurement Committee members for the missing of mandatory Documents.)

19. It is admitted position on record that on 17.11.2022, the Meeting of Procurement Committee was held, wherein it was decided as supra so also it was held that the Plaintiff's company also lacked mandatory passing marks. Subsequently, the Procuring Agency through a letter dated 17.11.2022 informed the SPPRA regarding decision of the CRC and awarded the contract to qualified bidders; however, the decision of Procuring Committee held on 17.11.2022 was never challenged by the Plaintiff before the Review Committee under Rule 32 of the Rules, 2010, which provides that “ *A bidder not satisfied with decision of the procuring agency's complaints redressal committee may lodge an appeal to the Review committee within ten days of announcement of the decision; provided that he has not withdrawn the bid security, if any, deposited by him*”. Hence, the decision of the Procurement Committee dated 17.11.2022 has attained finality. It is also admitted position on record that the tender has already been awarded to the qualified bidders and payments have already been made to the contractors, therefore, the Plaintiff has not made out a prima facie case.

20. Regards the 2nd NIT, per learned counsel for the Plaintiff, the Defendant No.5 and 5-A issued instructions to bidders to submit five copies in hard and two copy in soft as required by Clause 1.5 and 1.6 undertaking for no blacklisting/debarred in any government and Non-Government Organization during last five years and to submit undertaking for litigation history for no any contract under litigation or arbitration in any Government/ Non-government organization during last five years, per the Plaintiff, on 21.10.2022 and 26.10.2022, the Plaintiff was informed the Defendant No.5/5-A regarding violations of SPPRA Rules and massive errors in bidding

documents, but no reply was tendered by the Defendant No.5. Subsequently, on 28.10.2022 submitted his documents regarding instructions issued by the Defendant No.5/5-A, which include (02) affidavits for each Lot one for Black Listing History and one for Litigation History. It is appropriate to reproduce the undertaking submitted by the Plaintiff regarding litigation history: -

“M/s Faiz Scientific Company hereby undertakes that:

“We have not been involved in any litigation in any work order in the Government Department”

We hereby confirm that we are doing our business with good reputation.”

*GENERAL MANAGER
FAIZ SCIENTIFIC COMPANY*

21. It is also admitted position on record that on 31.11.2022, the Defendant No.5/5-A issued a letter to the Plaintiff so also other bidder, wherein it was stated that “ *You have violated of IFB Clause-12.4 of Data Sheet/Bidding Documents, which mentions (Each Bidder can participate in Maximum Two Lots and further the Procuring Agency provides an opportunity to you for confirmation as regards which two lots will be considered for valuation, please confirmation in written is mandated in 7 days, failure to which shall lead to rejection of your bids.*” Per the Plaintiff, the Plaintiff replied to the Defendant No.5/5-A stating that if the Plaintiff participates in two Lots may be he is unable to get the lowest bid, due to the reason, the Plaintiff participate in all Lots. It is averred by the Defendants that the Plaintiff submitted its technical bids, though under Rule 23 of the Rules, 2010, the Plaintiff had to raise objections prior to submission of bids, the Plaintiff had never raised any objection. Further the Plaintiff had applied in 7 Lots in violation of bidding documents i.e. Clause 12.4. It is admitted position on record the Plaintiff filed two affidavits in compliance of Mandatory Information in Clause 1.5. supra.

22. Blacklisting or debarment is the procedure where companies/bidders and individuals are excluded from participating or tendering projects. This happens if, after an investigation, a bidder/company or individual is found to have been involved in corrupt and fraudulent practice while obtaining or attempting to obtain a procurement contract. Seeking information from the bidders regarding history is important. The public functionaries are duty bound to function in an honest, transparent and reasonable manner. The information of such nature is to ensure transparency in awarding the work of public importance. Even otherwise these conditions are uniform and set by the Sindh Public Procurement Authority.

23. During examination of the documents and on investigation, it was discovered that the Plaintiff had misrepresented regarding his litigation history, in the undertaking filed by the Plaintiff, he has stated that his firm was not involved in any litigation **“We have not been involved in any litigation in any work order in the Government Department”**; Whereas clause 1.6 INSTRUCTIONS TO BIDDERS provides that the firm shall submit the history in details, if any litigation/arbitration during five years. It is appropriate to reproduce Clause 1.6 instruction to the bidders.

Clause 1.6

1.6	<p><i>Affidavit-II</i> <i>The Firm shall submit Undertaking for Litigation history for No any contract under litigation or arbitration in any Government / Non-government Organization during last five years.</i> <i>Undertaking on stamp paper of Rs.100/= (Properly signed Stamped and attested)</i> Note: provide history in details, if any litigation / Arbitration during the five years.</p>
-----	--

24. From perusal of record it appears that the plaintiff has misrepresented and presented duly executed affidavits six in number affirming that the firm/plaintiff is/was not involved in multiple litigations. However it is transpired that the

firm/plaintiff is/was involved in multiple litigations. He has filed 10 suits and 1 HCA before this court against the defendants No.2 to 5 including other complaints of different PAS in SPPRA. The procuring agency after investigation it, determines that bidder is involved in **“Corrupt and Fraudulent Practices”** as described in SPP Rule 2 (q), or underperforming the contract (s) then action against that bidder can be initiated as stated in the Rule. The plaintiff deliberately or recklessly mislead, or attempts to mislead the PAS by giving wrong information on oath. The **Fraudulent Practice** is defined under Rule 2(q) (iii) (iv) Rules 2010 which reads as under;-

- (q) **“Corrupt and Fraudulent Practices”** means either one or any combination of the practices given below;
 - (i)....
 - (ii)...
 - (iii) **“Corrupt Practice”** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the acts of another party for wrongful gain;
 - (iv) **“Fraudulent Practices”** means any act or omission, including a misrepresentation, that knowingly or recklessly misleads or attempts to misled a party to obtain a financial or other benefits or to avoid an obligation.”

25. In the undertaking submitted by the Plaintiff he has clearly stated that he was not involved in any litigation, hence, the Plaintiff has submitted fraudulent statement as is evident from the fact that in para-34 of the plaint, the Plaintiff admitted that he has filed 10 suits and one HCA before this Court against the Defendant Nos. 2 to 5 which fact was misstated in the undertaking; hence the Plaintiff was rightly blacklisted under Rule 35 of the Rules, 2010 which read as under:

35. Blacklisting of Suppliers, Contractors and Consultants: -

(1) the following shall result in blacklisting of suppliers, contractors, or consultants, individually or collectively as part of consortium:

- (a) conviction for fraud, corruption, criminal misappropriation, theft, forgery, bribery or any other criminal offence;
- (b) involvement in corrupt and fraudulent practices while obtaining or attempting to obtain a procurement contract;
- (c) final decision by the court or tribunal of competent jurisdiction that the contractor or supplier is guilty of tax evasion;
- (d) willful failure to perform in accordance with the terms of one or more than one contract;
- (e) failure to remedy underperforming contracts, as identified by the procuring agency, where underperforming is due to the fault of the contractor, supplier or consultant.

(2) Procuring Agency may, on its own motion, or information provided by any party, carry out an investigation to determine, whether there is sufficient cause for blacklisting a contractor, consultant, or supplier. If the procuring agency is satisfied that such a cause exists, it shall initiate the process of blacklisting in accordance with the procedure laid down in regulations to be issued by the Authority.

(3) As a result of scrutiny process, as mentioned above in sub-rule (2), the procuring agency may take on of the following decisions:

- (a) contractor or consultant or supplier may be blacklisted;
- (b) contractor or consultant or supplier may be debarred temporarily, specifying the time period;
- (c) contractor or consultant or supplier may be blacklisted if he fails to take the specified remedial action within a specified time period;

Provided that the procuring agency shall duly publicize and communicate its decision to the Authority, other Governmental departments, and also hoist on its own website.

*[(4) Any party being aggrieved by the decision of the procuring agency may submit an appeal to the Authority, which shall refer the matter to the Review Committee, which shall decide the matter as provided in sub-rules (5) to (11) of Rule 32.]”

26. The mere fact that a procuring agency cannot disqualify a party on the ground that such a party had litigated against the procuring agency does not mean that the procuring agency

cannot require bidders to furnish information in the form of an affidavit or otherwise as to its litigation history with the procuring agency. For all intents and purposes, the Plaintiff has not invoked the statutory jurisdiction to file an Appeal before the Review Committee under Rule 35(4) of the Rules, 2010 against the Impugned Order dated 29.12.2022, whereby the Plaintiff was blacklisted for one year; though counsel for the Defendants 4-A & 5-A has offered that he/plaintiff can raise his grievance before the competent forum in appeal. This offer however was not accepted by the plaintiff and his counsel. Therefore, the Plaintiff has failed to make out a prima facie case for injunction against the Defendants and the balance of convenience is not with the Plaintiff. The case law cited by learned counsel for the plaintiff is of no help. Therefore, the instant application for injunction is hereby **dismissed.**

JUDGE

Karachi
Dated:17-03-2023