



upon issuance of Impugned Notification dated 19.12.2023, the Plaintiffs realized that it was done to secure both the said persons as part of the Procurement Committee/Defendant No. 6 in order to, inter alia, rig the auction to be held via the impugned Advertisement; that significant changes were made in the bidding document, revised via the impugned Bid Document in order to exclude certain class of persons from participating in the same; that on account of changes in the technical aspects of the bid, the cost per unit has been increased. Hence the plaintiffs have filed the instant suit for Declaration, Cancellation and Injunction. Along with the suit, the listed application under Order XXXIX Rule 1 and 2 CPC read with Section 151 CPC has been filed wherein it is prayed by the plaintiffs to suspend the impugned Notification dated 19.12.2023, impugned bid document and impugned Advertisement dated 23.12.2023.

3. Notices were issued to the other side. Defendants caused their appearance through their respective counsel.

4. Learned counsel for the plaintiffs, inter alia contended that Notice Inviting Tender (NIT) was issued through Advertisement dated 29.11.2021 for auction scheduled to be held on 12.12.2023, which was malafidely scrapped via Cancellation dated: 12.12.2023. Actually Election Commission of Pakistan rejected the Government's proposal to transfer the sitting Chairman of the Board vide Letter dated 05.12.2023. On the very same day, the Secretary of the Board i.e. the controlling authority with respect to finances of the Board and the tendering process was transferred and one Hafeezullah Abdul Rehman was brought back to the Board in violation of ECP guidelines. It is further contended that a significant change has been brought in bid documents i.e. the paper size of 22x32 has been added to the impugned Bid Document, whereas the paper weight too has been increased to 68 g/m<sup>2</sup>; that in the Revised Schedule of Requirements (forming part of the Impugned Bid Document) almost 51% of the tender has been advertised with requirement of 22x32, whereas the Original Schedule of Requirements (forming part of the Impugned Bid Document) advertised 80-90% of the bid on the size of 20x30; that said difference makes the entire procurement more expensive and set to result in the same shortage as presently being witnessed; that this is because the budget for the procurement remains at

Rs.2.53 Billion, on the basis of which the province will again fall short of 10 Million books again; that it was done in order to extend favour to the persons controlling the six entities. Thus, via the above changes, 50% of the tender has been pre-booked for the said persons; that since the Impugned NIT has already been acted upon and bids as per the Original Bid Document have been submitted and given the time constraint (start of session on 15 April 2024) and requirement of books it will be impractical and inadvisable to re-advertise the tender; that last year's tender, which was done on the size of 22x32 at 68 g/m<sup>2</sup>, had resulted in the present shortage for which the caretaker CM had to sanction additional funds. Lastly, it is submitted that listed application may be allowed as prayed.

5. Learned counsel appearing for the defendants as well as learned AAG contended that a notice was published inviting bids from various publishers to partake in a procurement process; that purpose of the procurement process was to engage publishers to print, bind and supply textbooks through an internationally competitive bidding process as contemplated by law; that owing to grave allegations of mismanagement, maladministration, and misappropriation, the then Chairman was suspended and temporary charge was assigned to one Akhtar Hussain Bughti; that the Sindh Public Procurement Regulatory Authority took exception to the tender invitation published by suspended Chairman and identified irregularities in the process; that the authority had instructed cancellation of the bids and had directed for issuance of a fresh advertisement inviting bids at an enhanced scale of quality; that plaintiffs decided to obstruct essential process by initiating proceedings against Defendant No 5 and filed C.P.No.D-5937/2023 and obtained interim order. However, said proceedings have been dismissed by this Court on 26.12.2023; that plaintiffs also filed Suit No.2112/2023 challenging therein the Notification of Mr. Bughti as Chairman and obtained interim relief against him as such his appointment has been suspended; that plaintiffs cannot question the procuring agencies desire to seek the highest standard of excellence, as such, it is prayed that listed application may be dismissed with costs.

6. Heard and perused the record.

7. With regard to cancellation of bid, it would be pertinent to mention here that under sub-rule 1 of rule 25, of the Sindh Public Procurement Rules, 2010 provides that: *A procuring agency may cancel the bidding process at any time prior to the acceptance of a bid or proposal*". Sub-rule (2) stipulates that: *"The procuring agency shall incur no liability towards the bidders, solely by virtue of its invoking sub-rule (1)"*. Sub-rule (3) provides that: *"Intimation of the cancellation of bidding process shall be given promptly to all bidders and bid security shall be returned along with such intimation"*. Sub-rule (4) provides that: *"The procuring agency shall, upon request by any of the bidders, communicate to such bidder, grounds for the cancellation of bidding process, but is not required to justify such grounds"*, as such, the plaintiffs cannot question such power conferred to the competent authority i.e. Sindh Public Procurement Regulatory Authority established under Section 3 of Sindh Public Procurement Act and under the relevant Rules. Rule 33, of the Rules, 2010 provides that following actions of the procuring agency shall not be subject to the appeal or review:-

*"(1) Selection method adopted by the procurement committee.*

*(2) Decision by the procuring agency under Rule 25 to cancel the bidding process"*

8. With regard to the significant change in the bidding document, it is pertinent to mention that change in the specification of paper would provide durability to the textbooks for reuse the same again. Generally speaking, a higher quality paper tends to be heavier in terms of the gsm [grams per square meter] which makes it feel more substantial to the touch. This additional weight also increases the papers durability and reduces the chances of damage when handling. Normal quality papers will more often than not be lighter and thinner which makes them extremely prone to getting bend marks, damage, tearing, and curling. It is matter of record that by virtue of the impugned Notification and advertisement, the Defendant No.5 has improved and revised the quality of the paper including paper weight, paper thickness, brightness, burst factor, opacity etc. in revised bid. It is the duty of the concerned Authority to regulate the procurement process in order to satisfy the larger interest of the public. Besides that education department has taken plea to the extent that they are going to introduce policy of book bank, so better book will last longer. On the contrary there is need to more improve the quality of paper, like Oxford

and Cambridge based private schools as huge funding is involved in this purpose. Govt. schools, funded by Govt., ultimately face the consequences and how the Plaintiff will suffer irreparable loss. Non availability of the funds is not issue of the contractor that is sole responsibility of Govt. and not of any individual. The Plaintiff has remained beneficiary since year by getting contract of 63 and 68 (gsm) paper page books; therefore, the Plaintiff cannot be allowed to blow hot and cold in same breath.

9. In such circumstances, this Court cannot interfere in the decision of the Authority, which does not appear to be suffering from any illegality, nor appear to be in violation of the Sindh Public Procurement of Rules, 2010. Accordingly, the injunction application being misconceived is hereby dismissed.

Sajid

**J U D G E**