

IN THE HIGH COURT OF SINDH AT KARACHI
C.P.No.D-1922 of 2021

M/s.Contract Plus.....v.....Province of Sindh & others

Date

Order with Signature of Judge

Before:-

MR. JUSTICE AQEEL AHMED ABBASI

MR. JUSTICE ABDUL MOBEEN LAKHO

1.For hearing of Misc.No.8224/2021

2.For hearing of main case.

14.12.2023.

M/s.Malik Naeem Iqbal, and M.Saleem Khaskheli, Advocates for the Petitioner.

Mr.Yousuf Makda and Mr.Munawar-uz-Zaman Juna, Advocates holding brief for Mr.Khalid Jawed, Advocate for the Respondent No.3.

Mr.Saulat Rizvi, A.A.G.

Mr.Altaf Hussain Memon, Deputy Secretary (Admn), Works and Services Department, Government of Sindh and Mr.Waleed Ali Bhatti, XEN, Costal Highway, Hyderabad, Government of Sindh are present.

ORDER

After hearing learned counsel for the parties at some length and keeping in view the subsequent development, learned counsel for the petitioner submits that the petitioner will be satisfied and will not press instant petition, provided that official respondents may be directed to start the process of awarding fresh contract for Collection of Toll Tax at Saussi Toll Plaza at Karachi-Thatta Dual Carriageway, after completion of all codal formalities under SPPRA Rules, as according to learned counsel for the petitioner, the contract awarded to respondent No.3 has admittedly expired on 30.06.2021, and the matter is unnecessarily lingering on.

2. Learned A.A.G. and officials of Works and Services Department, Government of Sindh present in Court, while confronted with hereinabove factual position, do not dispute such position, however, submit that in view of

stay order passed in Suit No.1124/2021, such exercise of fresh award could not be undertaken. Learned counsel holding brief for Mr.Khalid Jawed, Advocate for Respondent No.3 requests for adjournment on the ground that the latter has left the Court due to some personal exigency, however, could not deny above factual position. In order to verify the nature of the Suit and the stay granted by the learned Single Judge and also to examine the pleadings and relief sought therein, file of Suit No.1124/2021 was summoned on the request of learned counsel for the petitioner, perusal of which reflected that the plaintiff in the said Suit is respondent No.3, who has sought protection against the adverse action by the officials of the respondents in respect of the contract, which was awarded for Collection of Toll Tax at Saussi Toll Plaza, however, the said agreement has admittedly expired on 30.6.2021, whereas, in the Suit on 07.05.2021, notices were issued to other-side and interim relief was granted to the plaintiff in the Suit to the following effect:-

“07.05.2021

1. Urgency application is granted.
2. Learned counsel contends that the plaintiff is a contractor, who was awarded contract for “Collection of Toll Tax of Sassui Toll Plaza at Karachi-Thatta Dual Carriageway” (KTDC) from 1st August, 2020 to 31st January, 2021 extendable till the handing over to KTDC vide Letter No. TC/G-55/CHD/104 dated 26th August,2020, whereafter a Contact Agreement was executed by the parties; however, possession of said Toll Plaza was handed over to the plaintiff on 1st September, 2021; hence, the contact period ended on 28th February, 2021. He further contends t that since the handing over to KTDC could not be made by the defendants; as such, the period of the contract was extended for four months w.e.f. 1st March, 2021 to 30th June, 2021 on the same terms and conditions and the plaintiff was accordingly allowed to continue Toll Collection upto said period, who is regularly making the payments as per agreed terms. He further contends that due to Covid-19 various restrictions/ban were imposed by the Government of Sindh on movement of the Inter-Provincial/ Inter-City Passenger Transport and for a considerable time lockdown was also imposed on various parts of the province and even in business centers two days off in each week was declared due to which number of vehicles entering the said Tool Plaza has considerably been reduced, while the recent complete lockdown has resulted in zero entry of the buses, so also two off days per week has caused serious loss to the plaintiff; as such he is entitled for adjustment in the monthly installment by decreasing the quantum of monthly installment equivalent to the amount of eight days per

month and the total exemption from payment of installment for the period for which a complete restriction/ban is imposed. He further contends that the defendants instead of realizing such serious situation are insisting the plaintiff to make payment for full amount of monthly installment for the month of May 2021 onward; as such, there is categorical threat of cancellation of contract in case the full amount of installment is not paid by the plaintiff. He further contends that earlier in a similar situation further time has been given to the respective contractors without making any payment by them for the purpose of adjustment of their losses; therefore, the plaintiff is also entitled to continue his contract till the handing over to KTDC so also reduction of contract price proportionally and recovery of excess amount paid to the defendants as well as damages tentatively assessed at Rs.2,00,00,000/= because of the mala-fide action of the defendants and causing mental torture and agony to the plaintiff. He further contends that for almost identical relief a Suit No. 1031/2021 is pending adjudication in this Court, wherein interim order has been assessed by this Court; therefore, he seeks same relief in favour of the plaintiff.

Let notice be issued to the defendants for 01.06.2021, meanwhile, the defendants are restrained from taking any coercive action against the plaintiff, till the next date of hearing. The plaintiff is; however, directed to deposit the monthly installments by excluding 5% amount of off days of the months with the Nazir of this Court, with an undertaking that in case he does not succeed in the case, he would deposit remaining 5% amount within seven days of the order of this Court.

3. It further appears that vide order dated 17.11.2021 the plaintiff was directed to deposit pay order before the Nazir of this Court, which appears to have been deposited by the plaintiff. From perusal of the pleadings and the order passed by learned Single Judge in the aforesaid Suit, there seems no chance for extension of period of the contract, which has admittedly expired on 30.06.2021, whereas, the relief or the interim order in the above Suit was to the extent of the period of contract and cannot be stretched further. It has also been informed that in the aforesaid Suit, application for conditional withdrawal of the suit was filed by the plaintiff, however, the same has been dismissed vide order dated 04.12.2023.

4. Keeping in view above facts and circumstances of the case, and without commenting on the merits of the above Suit, we are disposing of instant petition with the directions to the Respondents to initiate process of re-tendering of contract in accordance with law and as per SPPRA Rules, within a reasonable period of time, however, not more than four (4) weeks

from the date of receipt of copy of this Order, provided there is no legal impediment, or any further order, if passed by the learned Single Judge in the aforesaid Suit to the contrary, and compliance report may be furnished to this Court through MIT-II of this Court within one month thereafter.

5. At this juncture, learned counsel for the petitioner has prayed that respondents may be directed to allow the petitioner to participate in the bidding process. The petitioner may be considered for bid provided that he fulfills all the requisite eligibility criteria and the requisite codal formalities in accordance with law.

6. Instant petition is disposed of in the above terms along with pending application.

Acting Chief Justice

Judge

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