

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Omar Sial

High Court Appeal No. 76 of 2024**Sindh Text Book Board & another** **Appellants**through M/s. Muhammad Ali Lakhani and Syed
Ali Ahmed Zaidi, Advocates

vs.

Federation of Pakistan & others **Respondents**

through Mr. Ahmed Masood, Advocate

Date of hearing : 26th February, 2024Date of judgment : 26th February, 2024**JUDGMENT**

OMAR SIAL, J.; The Sindh Textbook Board, a statutory body established under the Sindh Textbook Board Ordinance, 1970, has filed this appeal against a judgment/order dated 21.02.2024 passed by a learned Single Judge of this Court in Suit No. 142 of 2024. The Board is aggrieved by the observations and directions made in the second paragraph of the impugned judgment. In this paragraph, the learned judge directed the Board to include within the bid documents the amount of funds available to the Board to satisfy the contract of procuring books. This direction was made under Rule 49 of the Sindh Public Procurement Rules, 2010.

2. We have heard both the learned counsels and have perused the material shown to us by the counsels. Our observations and findings are as follows.

3. The Board's opponents in this litigation are three individuals engaged in the business of publishing school textbooks and who have, for some time, been suppliers of books to the Board against various tenders opened in the past. The publishers say that when they fill out the bidding document, they are asked to make quotes based on the aggregate quantity of books required. Books needed are divided into nine 'packages', and one bidder is entitled to get two packages at the most. In essence, the grievance of the publishers is that though the Board requires them to make bids based on the total number of books needed, subsequently, the Board expects them to charge the same rates for a substantially lower volume of books. The publishers allege this is with the malafide intention of blessing their blue-eyed publishers, leading to insider trading. According to them, the blue-eyed publishers know in advance the Board's financial ability and capability to honour its commitments and thus tinker with their quotes while making the offers to their advantage and the detriment of those bidders who are not a part of the favourites club.

4. We have been informed by both counsels that the impugned judgment/order directing the disclosure to be made under Rule 49 of SPPRA was made on 21.02.2024. However, bids were opened on 23.02.2024, and the bidding documents had not been amended to include the direction to disclose the quantum of funds available to the Board. The matter of contempt is not before us. The arguments of counsel have been based on whether the learned Single Judge's observation regarding Rule 49 was correct. To facilitate reference, rule 49 is reproduced below.

'Award of Contract - The bidder with the lowest evaluated cost, but not necessarily the lowest submitted price, shall be awarded the procurement contract within the original or extended bid validity period.'

5. It is clear from a bare reading of the Rule that it does not envisage that disclosures of the sort ordered be made. The Rule provides that it is not necessarily the lowest bid that may be accepted but that the Board can consider the 'most advantageous bid' while awarding the contract. The term 'most advantageous bid' has been defined in Rule 2(x) as (i) a bid or

proposal for goods, works or services that, after meeting the eligibility or qualification criteria, is found substantially responsive to the terms and conditions as set out in the bidding or request for proposals document; and (ii) evaluated as the highest ranked bid or proposal on the basis of cost or quality or qualification or any combination thereof, as specified in the bidding documents or request for proposal documents which shall conform with the selection techniques to be issued by the Authority. Learned counsel for the publishers has argued that though Rule 49 does not explicitly include the requirement of including financial disclosure, the scheme of the Ordinance and Rules has to be seen. Therefore, the direction given by the learned Single Judge would add to transparency and provide an equal playing field to all bidders. While we understand the publishers' concern, learned counsel could not explain how their apprehension would be addressed even if the Board disclosed its financial position. Undoubtedly, the Board, if it even had and disclosed the funds, could resort to the same practice the publishers are apprehensive of. Therefore, we cannot agree with the learned counsel that the Board, including its budgetary figures in the bidding documents, would be helpful. Be that as it may, we believe that the argument made by the learned counsel for the publishers is presumptuous. No evidence supporting the allegation made on the Board has been substantiated through proof. As a matter of fact, the litigating publishers did not even take part in the bidding process held on 23.02.2024. Notably, the learned Single Judge did not order that the bidding process be reinitiated. He ordered that a financial disclosure be made. The parties have not denied that the Board put up the requisite financial details on its website in pursuance of the order of the learned Single Judge before the bidding process. Without prejudice to the stance of either party in any contempt proceedings initiated, in the circumstances of the case, there could be an argument that by uploading the requisite financial details on its website, compliance with the impugned judgment/order was made. No argument has been raised by the publisher's learned counsel claiming that any Rule or provision of the Ordinance has been violated. The bidding documents and the process were in accordance with the procedures laid down in law. Had a situation arisen in which any

successful bidders were faced with the injustice complained of, i.e. a subsequent reduction of the volume of books procured at a price based on a bid for a higher volume, then perhaps this Court could have looked into the matter further. This, however, is not the case. What is sought from us are directions over and above what Rule 49 requires. In essence, it is reading in a further requirement in Rule 49 to address a presumed grievance.

6. The learned counsel for the publishers has cited a case titled **Alleged Corruption in Rental Power Plants [2012 SCMR 773]**. The facts of this case were very different to the case at hand. This case pertained to rental power projects, and the Court observed that no reserve price had been fixed in the bidding process. Without a reserve price, projects could be sold at a price solely at the whims and fancies of the government. The next case cited was **Anthony Roy through legal heirs vs The Prime Minister of the Islamic Republic of Pakistan [2020 SCMR 1053]**. In this case, Anthony Roy was a Pakistan Railways employee and was accused of procuring bitumen tape, the quantity of which he had not disclosed in the bidding process. Apart from the case being a service matter, the observation relied upon by learned counsel is that the Court showed its disapproval at the fact that bitumen tape was procured without the quantity being disclosed. The third case cited was **Assetlink Asia Private Limited vs Federation of Pakistan [2020 CLC 410]**. In this case, the allegation was that a successful bidder was taken out of the race because the procuring agency changed its evaluation criteria after the successful bidder had been announced. This, too, is not the situation in the present case.

7. The entire procurement process entails a lot of cost, time and effort. It is also important to note that the books being procured are for the children of this Province. Delays in procuring textbooks could no doubt adversely impact the children of public schools. In light of the advanced arguments, we are not inclined to cancel the process that has already taken place. We are nonetheless mindful of what appears to be a logical complaint made by the publishers, i.e. quantities of books procured subsequently by the Board are not in line with the number of books upon

which their respective bids are made. We, therefore, deem it appropriate to direct the Board to ensure that the entire quantity of books which the Board wants to procure and the number of which it has given in the bidding document shall be procured from the same publisher in each category without any reduction in quantity and at the successful bid amount. Ensuring compliance with this direction will provide the level playing field the publishers seek.

8. The parties will sort out the matter of contempt before the learned Single Judge if they so desire. The appeal stands disposed of in the above terms.

JUDGE

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