

IN THE HIGH COURT OF SINDH AT KARACHI

HCA 473 of 2024

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

[The United Insurance of Company of Pakistan Limited v. Province of Sindh and others]

Date of hearing : 04.02.2025
Date of decision : 04.02.2025
Appellant : Through Mr. Ahmed Ali Hussain, Advocate
Respondent Nos1 to 3. : Through Syed Hassan Shah, Assistant Advocate General, Sindh

JUDGMENT

Muhammad Osman Ali Hadi, J: The Appellant is an Insurance Provider, being aggrieved with the order dated 04.11.2024 (“**the Impugned Order**”) passed by the learned Single Judge in Suit No.1155/2024 whereby the learned Single Judge disposed of an injunction application against the Appellant (CMA No. 15148/2024) against which the Appellant has filed the instant Appeal under Rule 1 Order XLIII of the Civil Procedure Code, 1908.

2. That pursuant to a successful tender bid, the Appellant had entered into an agreement dated 28.04.2023 with Respondent No.2 whereby the Appellant was to provide insurance coverage in line with compensation payable in case of death and / or injury to passengers travelling inter-provincial routes, in a stage carriage contract. Consequent to entering the said agreement, the Appellant states they furnished a Bank Guarantee for the amount of Rs. 30,000,000/- given to Respondent No. 2. Shortly after, the Appellant alleges they received cancellation letter dated 13.05.2024 sent by Respondent No. 2 unilaterally cancelling the said agreement. In the cancellation letter, Respondent No. 2 stated their reason for cancelling the said Agreement was because it was contradictory to the law and therefore void, and was cancelled by Respondent No. 2 with immediate effect.

3. That soon after the cancellation letter, the Appellant submits that Respondent No.2 issued Public Notices dated 12.10.2024 & 14.10.2024 for a Fresh Request for Expression of Interest on the same Project and on the same terms and conditions under which the Plaintiff had already previously

contracted with the said Respondent No.2. The Plaintiff being aggrieved filed Suit No.1155/2024 before the Hon'ble High Court of Sindh at Karachi *inter alia* against such cancellation, during the pendency of which the Appellant (Plaintiff in the said Suit) initially obtained injunctive orders which were subsequently recalled / vacated through the Impugned Order, and hence the instant Appeal.

4. The premise of the Appellant's argument was that his contract / agreement was unilaterally revoked by Respondent No. 2 without any due process provided, nor was the Appellant given an opportunity to address any grievance the Respondent may have had, since the Appellant was not made aware the agreement was going to be revoked by the Respondents. Counsel for the Appellant further states that the same cancellation was done purely for *mala fide* purposes, and that he has approached the Trial Court for redressal of his grievance. He further urges the *mala fide* is apparent in that the Respondents cancelled their agreement but soon after issued a fresh request inviting parties to submit their interests in the matter under the same terms and conditions previously agreed with the Appellant.

5. The said Respondents (through their Counsel) countered the allegations put forth against them by initially taking the stance the Appellant was blacklisted at the time the agreement was entered which was unknown to them, and hence they claimed they had to terminate the agreement. They relied upon Rule 4 Sindh Public Procurement Rules, 2010 ("**2010 SPP Rules**"), and section 20 of the Contract Act, 1872. When they were confronted by the cancellation letter dated 13th May, 2024 which did not mention anything about blacklisting, the Respondents changed their stance and at such point urged they cancelled the agreement because the Appellant was failing to fulfil its conditions. At this juncture they relied upon section 49 Motor Vehicles Ordinance, 1965.

6. We have heard the learned counsel for the Parties. It is an admitted position by both Parties the Appellant successfully bid and was granted the agreement dated 28.04.2023 by Respondent No. 2. It is further an admitted position the said agreement was unilaterally terminated by the Respondent No. 2 vide cancellation letter dated 13.05.2024. Addressing the first submission put forth in which the Respondents claimed the Appellant was blacklisted at the time of being given the contract, a fact allegedly unknown

to the Respondent, and hence the Respondent No. 2 made an error in granting the agreement to them, does not appear to hold merit. The reasons for this, is that in order to initiate blacklisting proceedings an entire process has been established, *inter alia*, under Rule 35 of the 2010 SPP Rules, and it is the procuring agency itself (in this case Respondent No. 2) who initiates the process of blacklisting. So for them to grant the Appellant a contract and then subsequently claim they were unaware of the blacklisting appears to be contrary to the provisions contained in the Rules (upon which the Respondents themselves now rely). Furthermore, the Respondents have failed to provide any documentation showing blacklisting or related proceedings initiated against the Appellant. Rule 4 of the Sindh Public Procurement Rules, 2010, upon which the Respondents have relied merely states procurement to be conducted in a fair and transparent manner, which is a commonly known principle and does not offer the Respondents any legal assistance in the circumstances. The counsel for the Appellant further drew our attention to a Judgement in Writ Petition No.1669/2003 filed the Hon'ble Islamabad High Court which had set aside another blacklisting order against the Appellant, which *prima facie* shows the Appellant is not currently blacklisted.

The second main contention put forth by the Respondents was that the Appellant failed to fulfil their obligations under the agreement. This appears to be a secondary attempt to try and salvage their position, after being unable to satisfy the Court on the issue of blacklisting (*supra*). The Respondents in their cancellation letter have absurdly stated the agreement (which they entered into with the Appellant) was contradictory to law and void. This appears bizarre considering it is the Respondent No. 2's own agreement, and it would be contrary to the principles of law and justice for the Respondents to be allowed to issue a void contract and then rely on the illegality of the contract to absolve themselves from the obligations contained therein. If this argument were permitted, it would open a plethora of litigation for any person / agency who did not wish to continue with their obligations under a contract would simply have to claim their own issued agreement was illegal and unlawful. The Respondents in this regard have relied on section 20 Contract Act, 1872, which we do not find applicable in the circumstances. Sections 5 & 22 of the Contract Act, 1872 would be better applicable to the matter at hand, but even these provisions of law

would not help the plea of the Respondents, but to the contrary would aid the Appellant. We are of the opinion the Respondents being duty bound cannot divest themselves from their contractual obligations under the Agreement in this manner, as certain rights would have accrued to the Appellant upon entering the agreement. We have further failed to see the relevance of section 49 of the Motor Vehicles Ordinance, 1965, referred by counsel for the Respondent, as the matter at hand currently only pertains to interlocutory proceedings.

7. The Appellant ought to have been given a proper notice to explain any grievance the Respondents may have had, before they unilaterally cancelled the agreement. By not doing, the Respondents have violated established principles of natural justice being *audi alteram partem* (no one should be judged unheard) and *nemo judex in causa sua* (rule against bias), as well as legal rights of the Appellant protected under the Constitution (articles 4, 10-A & 25) and settled law. The Appellant (as any citizen) is entitled to a fair hearing and is protected against any bias which appears *prima facie* shown against them in the instant matter, as the Respondents did not provide any opportunity for a fair hearing or notice to the Appellant to explain / redress their grievance before cancellation of the agreement. Therefore, at this interim stage we allow the instant Appeal and the Impugned Order dated 04.11.2024 is set aside. The matter will return / resume in Suit No.1155/2024 where the learned Trial Judge will adjudicate the matter on its own merits.

This Appeal stands disposed accordingly.

JUDGE

JUDGE

Karachi.
Dated: .02.2025