



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-678/2019-20/2142

Karachi, dated the 13 March, 2020

To,

- The Medical Superintendent,
Sir C.J. Institute of Pscyhiatry,
Hyderabad.
- M/s Jannat Drug Agency,
Shop No. 6, Baba Fareed Centre,
Near Samdani Plaza Eid Gah Chari, Chotki Ghitti,
Hyderabad.

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY.

The undersigned is directed to refer to the subject cited above and to enclose herewith a copy of the Authority's Review Committee decision (*M/s Jannat Drug Agency v. Sir C.J. Institute of Psychiatry Hyderabad*) held on 26th February, 2020, for your information/compliance, please.

ASSISTANT DIRECTOR (LEGAL-II)
13/03/2020

A copy along with enclosures/ decision is forwarded for information to:

1. The Secretary to Govt. of Sindh, Health Department, Karachi.
2. The Director General Health Services Sindh, Hyderabad.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
4. The Assistant Director (I.T), SPPRA *[with an advice to post the Authority's Review Committee decision on website in terms of Rule-32(11) of SPP Rules, 2010, and delist the appellant from blacklisted firms].*
5. The Staff Officer to the Chairman/ Members Review Committee.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD(L-II)/SPPRA/CMS-678/2019-20

Karachi, dated the March, 2019

**BEFORE REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY
AUTHORITY UNDER RULE-32 OF SPP RULES 2010.**

(APPEAL)

M/s Jannat Drug Agency
Versus
Sir C.J. Institute of Psychiatry Hyderabad

FACTS AND BACKGROUND

The appellant, M/s Jannat Drug Agency, submitted an appeal, along with review appeal fee¹, to the Authority in terms of Rule-35(4) of SPP Rules, 2010², requesting therein for quashing an order issued by the Medical Superintendent, Sir C.J. Institute of Psychiatry, Hyderabad '*the procuring agency*' (vide letter No.LP/HYD/25 dated 02nd January, 2020) for blacklisting the appellant for three (3) years³.

2. Brief facts giving rise to the instant appeal are that the Director General, Health Services Sindh, Hyderabad, constituted an enquiry committee (vide order No.DGHSS/G-II(Govt)/24860-64 dated 03.07.2017), under the chairmanship of Dr. Hemraj Rathi, Director Health Services, Mirpurkhas Division, to conduct an enquiry on a complaint lodged by Mr. Hussain Bux Khoso, President Pakistan Paramedical Staff Association Unit, against Dr. Rehana Pathan, the then Medical Superintendent of the procuring agency, for misappropriation of funds. In compliance, the enquiry committee visited the procuring agency's office on 18.07.2017 and then furnished a report whereby it was recommended to take certain actions including, but not limited to, **blacklisting of contractor/ supplier of food items due to supply or expired/ sub-standard items**. In turn, the Director General Health Services Sindh, Hyderabad (vide letter No.DGHSS/G-II/(Hyderabad)/33367/70 dated 23.08.2017) forwarded the report to the procuring agency with direction to take **immediate action** on the recommendation of enquiry committee and thereof furnish progress report to his office. Meanwhile, the procuring agency issued a letter (vide No.LP/HYD/1810 dated 21.07.2017) to the appellant as reproduced verbatim hereunder⁴:

'You have won some diet items through tender 2017-18. You are bound to supply won items of standard quality. You have supplied the following items of substandard, expiry date and not according to the specification. 1. Haldi (expired); 2. Red Chili (expired); 3. Dhaniya (expired); 4. Garam Masala (expired); and 5. Oil/ Ghee (substandard quality and not Dalda). You are required to clarify your above position within 02 days; else your contract will be cancelled.'

3. Subsequently, the procuring agency constituted an internal enquiry committee (vide office order No.LP/HYD/3776 dated 16.12.2019) under the chairmanship of Dr. Ghulam Shabir Shaikh, Chief Medical Officer of the procuring agency, to probe into the matter (*non-submission of clarification by the appellant*), which concluded the report (vide letter No.LP/HYD/24 dated 02.01.2020) with

¹ Authority's Office Order No. Dir(A&F)/SPPRA/18-19/0325 dated 26.07.2019 [<https://ppms.pprasindh.gov.pk/PPMS/>]

² Rule-35(4) provides that [blacklisting of suppliers, contractors and consultants] 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

³ <http://www.pprasindh.gov.pk/blacklist/34BLSirCJINaPsyHydJannatDrug170120.PDF>

⁴ See page # 3 to 7 (<http://www.pprasindh.gov.pk/blacklist/34BLSirCJINaPsyHydJannatDrug170120.PDF>)

recommendation as reproduced verbatim herewith⁵ 'as the matter of fact a high level enquiry committee constituted by Director General Health Services Sindh discovered expired masala jat and substandard oil/ ghee supplied by M/s Jannat Drug Agency and same enquiry committee in its report recommended blacklisting of the supplier (M/ Jannat Drug Agency). This is important and critical matter that expired masala jat and substandard dietary items are dangerous to the physical health and wellbeing of any human being let alone the inpatients and even can be life threatening and thus an offence under the law and liable for accountable action which was given but not implemented. The liability of implementation is still in pending with the office of Medical Superintendent who is the competent office to implement it as per SPPRA rules and in this case the same matter was asserted by a high level enquiry committee constituted by a superior office and was headed by a grade 20 officer. Therefore this is recommended that the pending implementation of the recommendation of enquiry committee may be accomplished or as deem fit otherwise. [Any other relevant recommendation] the seeking of guidance by the then Medical Superintendent is beyond the scope of enquiry committee and may be dealt accordingly.' On the given recommendation, the procuring agency blacklisted⁶ the appellant for three (03) years (supra) against which the appellant submitted an appeal to this Authority, which in turn referred the matter to the Review Committee for deciding the matter as provided under sub-rules (5) to (11) of Rule-32 in terms of Rule-35(4) of SPP Rules, 2010⁷.

4. In order to decide the matter as per law per se both parties were afforded with the opportunity to appear, along with relevant record/ documents, before the Authority's Review Committee for hearing in its meeting scheduled on 12.02.2019 at 10.00 a.m. and notices, in this regard, were issued to the parties concerned (vide this Authority's letter dated 24.01.2020) for ensuring their appearance⁸. In compliance, Muhammad Ashraf Shaikh, Proprietor, M/s Jannat Drug Agency 'the appellant' appeared before the Review Committee; whereas, the representative of the procuring agency did not attend the meeting⁹, due to which the Committee decided to provide an opportunity to the procuring agency to appear in next meeting, scheduled on 19.02.2020 & then on 26.02.2020, for defending the position/ case and notices in this connection were again issued to the parties concerned (vide this Authority's letters dated 14 & 20.02.2020). In compliance, Dr. Aijaz Qadir Patoli, Medical Superintendent, Sir C.J. Institute of Psychiatry Hyderabad 'representative of the procuring agency' and Muhammad Ashraf Shaikh 'the appellant' appeared before the Committee.

REVIEW COMMITTEE PROCEEDINGS

5. Dr. Aijaz Qadir Patoli, Medical Superintendent, Sir C.J. Institute of Psychiatry, Hyderabad 'representative of the procuring agency' fully endorsed the contents of impugned order. It was submitted that the appellant lodged a petition before the Honorable High Court of Sindh, Circuit Court Hyderabad,

⁵ See page # 8 to 11 (<http://www.pprasindh.gov.pk/blacklist/34BLSirCJINaPsyHydJannatDrug170120.PDF>)

⁶ Rule-2(i) defines blacklisting as barring or debaring a bidder, contractor, consultant or supplier from participating in any future procurement proceedings by the procuring agency

⁷ Ibid

⁸ Rule-32(10) provides that the Review Committee shall hear the parties and announce its decision within ten working days of submission of appeal. However, in case of delay, reasons thereof shall be recorded in writing

⁹ The Medical Superintendent, Sir C.J. Institute of Psychiatry Hyderabad/ The procuring agency's representative (vide letter dated 11.02.2020) requested the Authority to reschedule hearing due to his casual leave on 12.02.2020 on account of elder brother's radiotherapy at NIMRA Hospital Jamshoro. Resultantly, the Committee rescheduled the meeting on 19.02.2020; however, the procuring agency's representative (vide letter dated 17.02.2020) again requested the Authority to reschedule the meeting due to a summon issued by Honorable High Court of Sindh, Circuit Court Hyderabad, to appear in-person on 19.02.2020

to obstruct the bidding process carried out for procurement of dietary and other items (2019-20)¹⁰ whereby the procuring agency disqualified the appellant for submission of insufficient bid security. It was further submitted that the appellant, rather than approaching the complaints redressal committee, directly approached the Honorable High Court under Article 199 of the Constitution and the instant matter under consideration by the Review Committee is also part of the petition. Subsequently while examining the appellant's previous record, a letter was revealed through which the then Medical Superintendent sought clarification from the appellant for supply of expired masala jat and substandard oil/ ghee; albeit, the response from the appellant side was not found as per available record. Per contra, it was further revealed that an enquiry committee, constituted by the Director General Health, recommended for blacklisting the appellant; however, such recommendation was not implemented by the then Medical Superintendent and referred back to the administrative department for seeking guidance in the matter. Resultantly, the procuring agency constituted an internal enquiry committee to probe into the pending matter which concluded to implement the recommendation, made by earlier committee, for blacklisting the appellant.

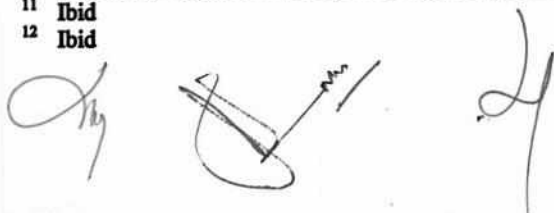
6. The procuring agency's representative further contended that a general question from the ministerial staff, while opening the bids publicly on 05.09.2019¹¹, was raised by him to know/ ascertain the pending matter/ issue, if any, of bidder(s) with the procuring agency whereof the above information was not disclosed. However, when the appellant lodged petition then such information surfaced and thereof an internal enquiry committee was constituted. On the recommendation of enquiry committee, the appellant was blacklisted to supply diet items for three (3) years in terms of Rule-35 of SPP Rules, 2010¹².

- Syed Adil Gilani (Member of Review Committee) asked the procuring agency's representative about the **contract price and shelf life of masala jat (haldi, dhaniya, red chili and garam masala) required (as per terms and conditions) and supplied by the appellant;**
 - ◆ The procuring agency's representative was unaware about the contract price and shelf life (required/ supplied) of masala jat and diverted the matter towards the enquiry committee.
- The Chair of the Committee asked the procuring agency's representative to confirm any **show cause notice or personal hearing served to the appellant before its blacklisting;**
 - ◆ The procuring agency's representative stated that he constituted facts findings committee which proposed to implement the recommendations made earlier by high level committee for blacklisting the appellant as forwarded by the Director General Health Services Sindh vide letter dated 23.08.2017. The then Medical Superintendent issued a letter for seeking clarification that was not submitted by the appellant (supra).
- Subsequently, Engineer Munir Ahmed Shaikh (Member of Review Committee) pointed out as to **how the enquiry committee per se ascertained the goods quality (as sub-standard) rather than referring the samples to the Pakistan Quality Control Board or any other third party organization (independent forum) mandated for checking the quality of goods/ food items in particular;**
 - ◆ The procuring agency's representative stated that the goods quality as sub-standard was declared by the enquiry committee.

¹⁰ Detailed description/ nature of referred procurement is available on the PPMS website at ID # T01157-19-0002 [<https://ppms.pprasinhd.gov.pk/PPMS/public/portal/notice-inviting-tender>]

¹¹ Ibid

¹² Ibid



7. Muhammad Ashraf Shaikh, Proprietor, M/s Jannat Drug Agency 'the appellant' while overwhelmingly countering the allegations leveled by the procuring agency referred that the instant matter under consideration is not filed or under hearing by the Honorable Court. It was submitted by the appellant that the Director General Health Services Sindh forwarded the enquiry report to the procuring agency, without referring the appellant's name, on 23.08.2017 with directions to take *immediate action*; however, the procuring agency implemented the recommendation of the enquiry committee in 2020, when the appellant lodged a petition for his technical disqualification under the bidding process for supply of dietary and other items during the current financial year. The procuring agency, as per enquiry report, had to take action against another contractor and Dietician – still working with the procuring agency – but if failed to do so. It was contended by the appellant that the food items in question were supplied to the procuring agency in 2014 that got expired in 2017, which shows the procuring agency's negligence for non-utilization of items within the shelf life. The appellant supplied food items with standard quality and required shelf life that were checked/ inspected/ accepted and then the payments were released by the procuring agency.

REVIEW COMMITTEE'S OBSERVATIONS/ FINDINGS

8. After hearing the parties at length and close scrutiny of the supported record/ documents, the Review Committee observed that:

- The appellant's case/ petition¹³ (including subsequently presented rejoinder), lodged before the Honorable High Court of Sindh Circuit Court Hyderabad, pertains to his technical disqualification under bidding process initiated by the procuring agency for procurement of diet and other items; whereas, the appellant's instant case/ appeal, submitted to the Authority in terms of Rule-35(4) of SPP Rules, 2010, pertains to quashing the impugned blacklisting order issued by the procuring agency on 02.01.2020¹⁴. The referred rule spells out that any party being aggrieved by the decision (blacklisting of suppliers, contractors and consultants) of the procuring agency may lodge 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 of SPP Rules, 2010¹⁵. Accordingly, the petitioner's case was allowed on jurisdictional grounds¹⁶;
- The procurement rules govern the procuring agency to blacklist supplier(s) for commission of an offence(s) and/ or omission to act as spelled out under Rule-35(1) read with Rule-2(1)(q) of SPP Rules, 2010^{17, 18}. For such action, the procuring agency is required to conduct an investigation,

¹³ Muhammad Ashraf v. Province of Sindh & Others (C.P. No. 2477 of 2019)

¹⁴ Ibid

¹⁵ <http://www.pprasindh.gov.pk/SPPACT15MARCH2019.pdf>

¹⁶ M/s Pharmawise Laboratories Pvt. Ltd. Lahore Through Chief Executive Officer v. Government of the Province of Punjab through Secretary, Health C.S., Lahore and two others [PLJ 2016 Lahore 442]

¹⁷ Rule-35(1) provides that the [following] shall result in blacklisting of suppliers, contractors, or consultants, individually or collectively as part of consortium: (a) conviction of 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 procurement contract; (c) final decision by a 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.

¹⁸ Corrupt and fraudulent practices means either one or any combination of the practices [given below]: i. Coercive practice means any impair to harm, directly or indirectly, any party or the property of the party to influence the actions of a party to achieve a wrongful gain or to cause a wrongful loss to another party; ii. Collusive practice means any arrangement between two or more parties to the procurement process or contract execution, designed to achieve with or without the knowledge of the procuring agency to establish prices at artificial, noncompetitive levels for any wrongful gain; 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 practice means any act or omission, including misrepresentation, that knowingly or



through serving a fair chance(s) to the other party, to determine/ ascertain the sufficient cause for blacklisting in terms of Rule-35(2) of SPP Rules, 2010¹⁹. However in the instant case, it has been found that the procuring agency failed to observe the natural/ fair justice principle (*audi alteram partem*) as required under the law by taking arbitrary decision (*nemo iudex in re sua*) while blacklisting the appellant without serving any notice and/ or chance of hearing. Reliance in this connection may be placed on the decision (on a similar ratio decidendi) held by Honorable High Court of Sindh, Karachi, whereby a blacklisting order issued by the Health Department in favor of M/s Shirazi Trading Company Pvt. Ltd. was set aside²⁰ (also refer M/s Din Muhammad v. Government of Punjab & Others 2019 LHC 2019; and M/s M.K. International, Local Agent of M/s Interman Trading Fze v. Sui Southern Gas Company through M.D. & Others 2016 CLC 1);

- The procuring agency was advised various times to furnish a copy of agreement mutually signed between both the parties (procuring agency and the appellant) to examine the subject matter of the contract against which the appellant was blacklisted; nevertheless, the procuring agency failed to do so. The procuring agency furnished a copy – letter of award dated 24.02.2016 – issued to the appellant for supply of diet items for the year 2015-16. Per contra, the appellant submitted copies of experience certificate and performance security released by the procuring agency that was subject to the successful completion/ closure of contract in terms of Rule-39 read with Rule-57 of SPP Rules, 2010^{21, 22};
- The procuring agency (officers/ officials responsible for accepting goods' delivery) owed a duty of care to ensure the goods supplied by the appellant were properly inspected/ verified up to the required benchmark/ specification before accepting the same. The procuring agency deemed to have accepted the delivery while retaining the goods without intimating the appellant within a reasonable time in terms of Section-42 of the Sale of Goods (Amended) Act, 1994²³;

recklessly misleads, or attempts to mislead a party to obtain a financial or other benefit or to avoid an obligation; v. Obstructive practice means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract or deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements before investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of inspection and audit rights provided for under the rules

¹⁹ 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 contract, 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

²⁰ M/s Shirazi Trading Company Pvt. Ltd. v. Province of Sindh (C.P. No.3275/2014)


²¹ Rule-39 provides that procuring agency shall, in all procurement of goods, works and services, carried out through open competitive bidding, require security in the form of pay order or demand draft or bank guarantee, an amount sufficient to protect the procuring agency in case of breach of contract by the contractor or supplier or consultant, provided that the amount shall not be more than 10% of contract price. The security provided in an appropriate form and amount, as provided in the bidding documents; validity of performance security shall extend at least ninety days beyond the date of completion of contract to cover the defects liability period or maintenance period subject to final acceptance by the procuring agency

²² Except for defect liability or maintenance by the supplier, consultant or contractor, as specified in the conditions of contract, performance of the contract shall be deemed close on the issue of overall delivery certificate, certificate of completion of deliverables, or taking over certificate which shall be issued within thirty days of final taking over of goods or receiving the deliverables or completion of works enabling the supplier or contractor to submit final bill and the procuring agency to carry out any inspection of goods, works or services related thereto, as provided in the contract agreement and auditors to do substantial audit. In case of defect liability or maintenance periods, defect liability certificate shall be issued within thirty days of the expiry of the said period enabling the supplier or contractor to submit final bill. Except for unsettled claims, which shall be resolved through arbitration, and shall be paid within the time given in the condition of contract

²³ Section 42 provides that the buyer is deemed to have accepted the goods when he intimates to the seller, that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them

Review Committee Decision

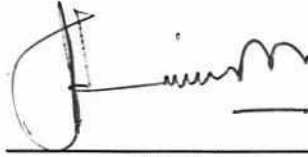
9. In view of the foregoing findings/ observations, as at para-8, and after due deliberation, the Review Committee unanimously decides to dispose of the appeal by quashing and setting aside the procuring agency's decision/ order to blacklist the appellant.



(Member)
Syed Adil Gilani
Private Member SPPRA Board
Representative Transparency International



(Member/ Independent Professional)
Engr. Munir Ahmed Shaikh
(Rtd.) Executive Engineer
Public Health Engineering Department
Government of Sindh



(Chairman)
Abdul Rahim Sheikh
Managing Director
Sindh Public Procurement Regulatory Authority