



**GOVERNMENT OF THE PUNJAB
PUNJAB PROCUREMENT REGULATORY AUTHORITY
SERVICES AND GENERAL ADMINISTRATION
DEPARTMENT**

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304-T, 3rd Floor Al-Falah Building, The Mall Lahore.
Dated Lahore, the 27th May, 2021

ORDER

No. L&M(PPRA)1-45(G)2020/BL/246 M/s. Malik Saif & Company (SMC Private) Limited, through Saif Ullah son of Ghulam Muhammad, CEO Chak # 290, R.B., Chak Zakhira P/O Kishan Garh, Tehsil Sangla Hills, District Nankana Sahab (hereinafter called "firm/representer") in terms of Rule 21 (4) of Punjab Procurement Rules 2014 amended to date (PPR-14) has filed a representation against the order of blacklisting passed by Medical Superintendent DHQ Hospital Vehari (hereinafter called "procuring agency/respondent"); vide order bearing No. 8014/DHQ dated 09.09.2020 (hereinafter called "impugned order") whereby the representer has been blacklisted for a period of three (03) years.

Brief facts giving rise to the instant representation are that the procuring agency awarded the contract for auction of parking stand (2019-20) to representer/firm and directed to deposit monthly installments for the month of June 2020 amounting to Rs. 3,00,000/-. The firm was also directed to deposit PST & Income Tax for the months of May & June 2020 but the firm failed to deposit the due installments alongwith other required documents. The procuring agency issued reminder notices dated 26.06.2020 and 04.07.2020 which was followed by a warning notice with the intimation that in case of failure to respond within 3 days the representer/firm will be blacklisted but the representer/firm failed to comply with the

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requirement of procuring agency. Resultantly, the procuring agency under rule 21 of PPR-14 blacklisted the firm for a period of three (03) years and bid security amounting to Rs. 1,50,000/- forfeited.

3. Both the parties in order to provide an opportunity of personal hearing on 11.03.2021 and 30.03.2021 were issued notices through the subpoena dated 02.03.2021 and 18.03.2021 with the direction to attend the office of the Managing Director PPRA to decide the matter as per law. Mr. Zaheer Abbas (Advocate) appeared on behalf of M/s. Malik Saif & Company (SMC-Private) and stated that neither any show cause notice was issued nor opportunity of personal hearing notice was afforded to the representer/firm. It was argued by the representer/firm that the procuring agency awarded the contract for parking stand through public auction and therefore Punjab Procurement Regulatory Authority Act-2009 (PPRA Act-2009) and Punjab Procurement Rules-2014 (PPR-14) could not be applied to the public auction because the PPRA Act-2009 and PPR-14 deals with procurement and auctioning of parking stands etc. is out of the purview of PPRA Act-2009 and PPR-14. Hence, impugned order issued by the procuring agency illegal and is liable to be set aside straight away.

4. Mr. Ramiz-ur-Rehman Anwar appeared on behalf of the procuring agency and endorsed the contents of the impugned order and argued that contract for parking stand services was awarded to the representer/firm for a period of two months i.e. w.e.f. 01-05.2020 to 30.06.2020 but the representer/firm paid only one installment without paying government taxes. He further stated that representer/firm failed to deposit monthly installment for the month of June, 2020 alongwith PST & Income Tax for the month of May & June, 2020. The

representer/firm was intimated time and again vide letter dated 26.06.2020 and 04.07.2020 but the representer failed to do so therefore, representer has rightly been blacklisted and instant representation is liable to be dismissed while responding to the argument raised by the representer/firm regarding applicability of PPRA Act-2009 and PPR-14 to the auction process, the representative of the procuring agency remained unable to provide any cogent legal argument.

5. Parties heard, available record on the file and reply of the procuring agency on the representation made by the representer perused as a result of which following facts have been made out:-

i) The contract for parking stand services was awarded through open public auction.

ii) Punjab Procurement Rules-2014 have been framed under PPRA Act-2009 and deals with procurement of works, goods, services and consultancy services out of the provincial consolidated funds and therefore, PPRA Law/Rules are not applicable to the instant transaction which is not procurement transaction rather pertains to an auction process and the procuring agency should have applied the relevant law/rules relating to the auction of collection rights. To strengthen this argument, it may also be added that the current matter do not fall within the meaning of public procurement as defined section 2(n) of PPRA Act-2009 which envisages that:-

Section 2(n) "Public procurement" means acquisition of goods, services or rendering of works financed wholly or partly out of the Public unless excluded by the Government;

6. Hence, the impugned order shall be considered to be passed on the basis of wrong application of law and same is liable to be set aside being **ab-initio void of law**. Being appellate forum this office has specifically focused, while taking the cognizance of the impugned order, above said legal proposition only in order to ensure that such kind of practice may be avoided in future. To answer the proposition that if an order has been passed on the basis of wrong application of law, whether the appellate forum have authority to undo/set aside order under the same law, **2017 CLC 1512 Islamabad** may referred whereby it was held that:-

"Appeal was continuation of original suit and Appellate court had power to thrash out and evaluate the entire evidence and scrutinize the available record. appellate court had power to uphold, modify or reverse the decree or order appealed against."

7. In the wake of above in exercise of the powers conferred under Section 17A of the PPRA Act-2009 and Rule-21(4) read with para 7 of the schedule for blacklisting appended to PPR-14 hereby set aside the impugned order passed on the basis of **iniuriam applicationem legis domini** by the Medical Superintendent DHQ Hospital Vehari for its being ab-initio void of law.

8. Any party aggrieved from this order may file a representation before chairman PPRA/Chief Secretary Punjab within thirty days under rule 21 (5) of PPR-

14.

**BY THE ORDER OF
MANAGING DIRECTOR PPRA**

CC:

1. The Secretary, Govt. of the Punjab Primary & Secondary Healthcare Department.
2. The Medical Superintendent DHQ Hospital Vehari.

- 3. M/s. Malik Saif & Company (SMC Private) Limited, through Saif Ullah son of Ghulam Muhammad, CEO Chak # 290, R.B., Chak Zakhira P/O Kishan Garh, Tehsil Sangla Hills, District Nankana Sahab.
- 4. PA to MD PPRA.
- 5. Office copy.

→ Ghulam Muhammad
 Saif Ullah
 Saif Ullah

Ghulam Saif Ullah
 SENIOR LAW OFFICER
 PPRA S&GAD. 28/5/21
 Jc.