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**JUDGMENT SHEET**  
**LAHORE HIGH COURT, LAHORE**

JUDICIAL DEPARTMENT

**W. P. No. 28679 / 2023**

M/s Computer Tips & another      **Versus**      Province of Punjab & 03 others

**W. P. No. 33077 / 2023**

M/s Kingly Solutions (Pvt) Limited      **Versus**      Province of Punjab & 02 others

**JUDGMENT**

<b>Date of Hearing:</b>	26.09.2023
<b>Petitioners By:</b>	Mr. Hussain Tahir Zaid, Advocate Mr. Umer Abdullah, Advocate Mr. Zarak Zaman Khan, Advocate Mr. Ahmed Abdullah, Advocate
<b>Respondents By:</b>	Mr. Sikandar Nisar Saroya, Assistant Advocate General Mr. Muhammad Imran, Law Officer for School Education Department Mr. Muneer Ahmad, Administration & Accounts Officer, PMIU, PESRP

**ABID HUSSAIN CHATTHA, J:** This common Judgment shall decide both the titled Petitions involving similar set of facts and identical questions of law with respect to public procurement.

**2.** For ease of reference, in W. P. No. 28679 / 2023 Petitioners No. 1 and 2, who are joint venture partners, shall hereinafter be collectively referred to as the “**Petitioner No. 1**”. The Petitioner in W. P. No. 33077 / 2023 shall hereinafter be referred to as the “**Petitioner No. 2**”. Petitioner No. 1 and Petitioner No. 2, where the context so permits, shall hereinafter be collectively referred to as the “**Petitioners**”.

**3.** The facts of the titled Petitions are that the Program Monitoring & Implementation Unit, Punjab Education Sector Reform Program (the “**PMIU**”) constituted and functioning under the School Education Department of the Government of the Punjab published two

separate advertisements dated 01.11.2021 and 01.12.2021 for procurement of 3,250 and 12,500 PC Tablets, respectively through a Single Stage, Two Envelope bidding procedure in terms of the Punjab Procurement Regulatory Authority Act, 2009 (the “**Act**”) and the Punjab Procurement Rules, 2014 (the “**Rules**”) and in accordance with the World Bank’s Procurement Regulations for IPF Borrowers Fourth Edition November 2020. Petitioner No. 1 participated in the procurement process and submitted technical and financial proposals. The bids of Petitioner No. 1 were accepted by PMIU after due process of law being the technically qualified lowest bidder. Accordingly, contract dated 27.12.2021 for Rs. 159,210,675/- (the “**First Contract**”) and contract dated 07.01.2022 for Rs. 612,348,750/ (the “**Second Contract**”) were duly awarded. Petitioner No. 1 duly performed the First Contract, raised an invoice of the contract price on 08.02.2022 and received complete consideration vide cross cheque dated 24.02.2022. As such, the procurement against the First Contract was successfully concluded. Likewise, Petitioner No. 1 duly performed the Second Contract and raised invoice of the contract price on 04.04.2022. However, the payment was not made in terms of Clause 16 of General Clauses and Special Conditions of the Second Contract read with Rule 62 of the Rules within 30 days from the date of completion of the Second Contract which prompted Petitioner No. 1 to issue reminder letters dated 16.05.2022 and 21.06.2022. At this juncture, PMIU instead of making payment started pressurizing and intimidating Petitioner No. 1 for rebate of 15% not only against the Second Contract but also at the same rate against the First Contract although payment against the latter had already been received. It is alleged that Petitioner No. 1 was coerced to accept the unlawful demand of rebates with the threat that payment against the Second Contract would not be timely processed and the funds would be left to lapse on 30.06.2022 causing inordinate delay in payment. It is the case of Petitioner No. 1 that supplied PC Tablets had been procured from the foreign manufacturer ‘Lenovo’ for onward supply to PMIU in Dollar terms. The Dollar and Rupee parity was drastically changing to the detriment of Petitioner No. 1 which is depicted from the fact that Pakistani

Rupee from 176 / Dollar on the date of execution of the Second Contract had depreciated to Rs. 213 / Dollar on 21.06.2022 and Petitioner No 1 who had to make timely outstanding payments to the foreign manufacturer reached at the brink of default. Under these circumstances, Petitioner No. 1 was forced to issue a revised invoice granting rebates of 15% against the agreed contract prices of the First Contract and the Second Contract evidenced from letter dated 24.06.2022, whereafter, Petitioner No. 1 was made payment through cross cheque on 27.06.2022 with respect to the Second Contract. Petitioner No. 1 promptly recorded objections regarding the forcible deduction of rebates reserving right to initiate appropriate legal proceedings on the same date i.e. 27.06.2022 by expressly mentioning that as per the terms of the First Contract and the Second Contract, the agreed contract prices could not be varied. To enforce the claim, Petitioner No. 1 filed W. P. No. 49661 / 2022 before this Court seeking payment of forcibly deducted rebates which was disposed of vide order dated 27.10.2022 with a direction to Secretary, Schools Education Department to decide the same through a speaking order in accordance with law. Non-compliance of the direction of this Court led to the institution of Criminal Original No. 4668 / 2023, whereafter, the impugned Order dated 12.01.2023 was passed declaring therein that the amount of rebates cannot be paid as the same were 'voluntarily' surrendered by Petitioner No. 1.

4. Similarly, two separate procurements of 4467 and 3400 Early Childhood Education (ECE) kits (having 84 items in each kit) were finalized by PMIU in favor of Petitioner No. 2 being technically qualified lowest bidder after following due process of law. Accordingly, contract dated 19.11.2021 was duly executed for the procurement of 4467 ECE kits against the contract price of Rs. 265,563,150/- (the "**Third Contract**") and contract dated 29.11.2021 was duly executed for the procurement of 3400 ECE kits against the contract price of Rs. 203,272,400/- (the "**Fourth Contract**"). Petitioner No. 2 duly performed the Third Contract and the Fourth Contract and raised invoices for payments which were not paid within the stipulated period of 30 days. The fact of non-payment was reinforced through a number of reminders. At this juncture, Petitioner No.

2 was coerced to grant 20% rebate under the threat that the payments shall not be timely processed leaving the funds to lapse at the end of the financial year and Petitioner No. 2 would have to suffer for months for receiving due payments. Accordingly, Petitioner No. 2 in view of depreciating value of rupee and in order to make timely payments to its foreign supplier, was forced to give rebate of 20%, whereafter, substantial payments were released except partial amount of Rs. 32,638,050/- against invoice No. 2979 dated 28.11.2022. Petitioner No. 2 raised its grievance through W. P. Nos. 47967 and 47973 / 2022 before this Court seeking payment of forced rebate which were disposed of vide orders dated 27.10.2022 with a direction to Secretary, Schools Education Department to decide the same through a speaking order in accordance with law. Non-compliance of the said direction of this Court led to the institution of Criminal Original No. 6018 / 2023, whereafter, the impugned Order dated 12.01.2023 was passed declaring therein that the amounts of rebate cannot be released having been voluntarily surrendered by Petitioner No. 2.

5. Learned counsel for the Petitioners submitted that the Petitioners have approached this Court for enforcement of their constitutional and statutory rights conferred under the Act and the Rules. The impugned Orders speak volumes regarding the decision-making process prevalent in Governmental Departments in general and PMIU in particular and as such, are not sustainable being in breach of the Rules, express terms and conditions of duly performed and concluded contracts, unreasonable, arbitrary, capricious and having been passed in colorable exercise of authority. The procurements were undertaken within the ambit of procurement policies and guidelines of the World Bank. Three inquiries regarding all procurement processes in PMIU were undertaken but no incriminating evidence was discovered against the Petitioners who were made to surrender forced rebate once the products were supplied and the contracts were fully performed. PMIU exerted its dominant position to extract rebates by withholding payments. As such, PMIU is obligated to release the entire contract price of all subject contracts to the Petitioners.

6. Learned Law Officer relying upon report and para-wise comments filed by the Respondents objected to the maintainability of these Petitions by submitting that contracts involving factual controversies cannot be adjudicated upon in the constitutional jurisdiction by this Court. He further stated that the Petitioners had voluntarily surrendered the rebates for welfare of the students and therefore, are estopped from challenging the same. He further apprised that due to some reports on electronic and print media regarding exaggerated prices of procured items by PMIU, an Inquiry Committee was constituted on 16.05.2022 to scrutinize various procurements including that of the Petitioners. The said Committee submitted detailed findings and while highlighting irregularities expressed its concern that in procurement processes, some products may have been procured at inflated rates. Thereafter, the matter was referred to Anti-Corruption Establishment which referred the matter back to the Department with the recommendation to conduct an internal scrutiny through another Scrutiny Committee. The finding and observations given in the Scrutiny Committee in its report dated 14.12.2022 are reproduced as under:-

*“Regarding the rates of items, the Committee is of the view that the comparison with prevailing market rates cannot be drawn at this stage after a lapse of more than one year, especially owing to the fact that most of the procured items are imported and the foreign exchange rates have considerably risen during the period. However, the procurement has been made through competitive bidding process as per relevant Rules / Regulations and all the contracts were awarded to the lowest evaluated bidders after recommendation of the concerned Procurement Committees and approval of the Competent Authority by fulfilling all codal formalities. Therefore, the observations of higher rates is not pertinent to be made at this stage.”*

In this context, the Petitioners voluntarily offered rebates which were accepted by the Schools Education Department. Hence, the Petitioners surrendered part of their respective contract prices voluntarily and as such, are not entitled to receive them.

7. Arguments heard. Record perused.

8. The Act has been promulgated to provide for establishment of the Procurement Regulatory Authority to regulate procurement of goods, services and works in the public sector and for matters connected thereto. The Punjab Procurement Regulatory Authority (the “**Authority**”) has been set up by the Government of the Punjab in terms of Section 3 of the Act for carrying out its objective and purposes. The Authority under Section 5 of the Act is empowered to take measures and exercise powers as may be necessary for improving governance, management, transparency, accountability and quality of public procurement. As such, the Authority has been conferred with vast powers to monitor and implement the laws, rules, regulations, policies and procedures in respect of or relating to public procurement. The Government of the Punjab by following the command of Section 26 of the Act has framed the Rules which exhaustively deal with all aspects of procurements including procurement planning; advertisement; prequalification, qualification, disqualification and blacklisting of contractors; methods of procurement; acceptance of bids; and award of contracts. Rule 4 of the Rules enshrines the principles of procurements and stipulates that a procuring agency, while making any procurement, shall ensure that the procurement is made in a fair and transparent manner, object of procurement brings value for money to the procuring agency and the procurement process is efficient and economical. Admittedly, the subject matter procurements were undertaken in accordance with the provisions of the Act and the Rules after following due process of law in terms of procurement planning, advertisement, prequalification processes and evaluation of bids as per the bidding documents, whereafter, the bids of the Petitioners were accepted being the technically qualified lowest bidders and they were awarded procurement contracts. The Petitioners duly performed and executed the contracts by supplying the requisite number of products in agreed quality and specifications within the stipulated time frame. The procurement was undertaken from the funds of the procuring agency provided by the World Bank and the latter as donor also kept its oversight in the procurement process in terms of its applicable guidelines and policies pertaining to

procurements including its anti-corruption guidelines. Three inquiries regarding the overall procurement processes in PMIU were carried out during the relevant period which did not point out any specific act of corrupt practices on the part of the Petitioners. No specific act was alleged which may amount to mis-procurement. There is no adverse finding of the Authority on record. The Respondents did not have any grievance with respect to the quality of the products supplied by the Petitioners and issued overall delivery certificates enabling the Petitioners to submit their final bills. There were also no unsettled claims as all the contracts had been fully performed with respect to the quantity and quality of the products. The aforesaid facts are admitted by the Respondents. As such, after successful conclusion of the executed contracts, the Petitioners were entitled for payments regarding each completed contract in terms of Rule 62 of the Rules which is reproduced as under:-

*“A procuring agency shall make prompt payments to the contractor against the invoice or running bill on satisfactory performance within the time given in the conditions of the contract which shall not exceed thirty days.”*

The applicable express general conditions and special conditions of the contracts also obligated PMIU to make payment within 30 days from the delivery of products with respect to fully performed contracts.

**9.** Therefore, the only point of determination before this Court is non-payment of the complete contract price to the Petitioners regarding their fully performed contracts. The only defense of the Respondents is that the Petitioners had voluntarily given rebates of 15% to 20% while receiving their payments, whereas, the Petitioners claimed that they were coerced, blackmailed, pressurized and threatened with unspecified delay in payments and as such, the rebates were extracted from them by unlawful means.

**10.** It is readily discernable from record that in report of the Committee constituted on 16.05.2022 to scrutinize the recruitment processes, although no specific act of corrupt practice was attributed to the Petitioners yet it was merely observed that the quoted prices of products seem at higher side and the supplier may reduce the costs incorporated in

the invoices voluntarily for the educational purposes which may be around 15% to 20% of total value. Thus, it is evident that the aforesaid observation became the basis to coerce the Petitioners to extend rebates to the Respondents and in order to extract the same, payments were withheld beyond thirty days in violation of expressed provisions of the contracts and the Rule cited above. Admittedly, the products were procured in Dollar terms from foreign suppliers by the Petitioners who had to make timely payments to them. The fact of fast depreciation in the value of Rupee against Dollar compounded agony of the Petitioners. The funds were going to be lapsed being at the end of financial year which was approaching fast. Hence, the threat of delayed payments was extended to the Petitioners as a weapon to extract the demanded rebates. This was done at the time when the Petitioners had completely performed their respective parts of the subject contracts and were helpless against the unlawful demands of Government functionaries. This is notwithstanding the fact that in the final inquiry report dated 14.12.2022, it was explicitly and manifestly declared that 'no incriminating element has been found in the entire process of this recruitment'. It was further observed that the procurement has been made through competitive bidding process as per the World Bank Regulations to the technically qualified lowest bidders.

**11.** Forced rebates are also evident from the fact that the Petitioners were coerced to submit revised invoices by voluntarily reducing the agreed contract prices on 24.06.2022, whereafter, the due payments minus the rebates were immediately released. This fact also corroborates with the assertion of the Petitioners that had they not done so, the funds would elapse on 30.06.2022 which would have put them on the brink of default. The act of imposition of rebates is also reinforced from the fact that the Petitioners immediately initiated legal recourse to recover their full contract prices. Threat of coercion was so real that Petitioner No. 1 just to get his payment released against the Second Contract was even made to extend rebate regarding the First Contract although he had received full payment against it and the same had become a past and closed transaction. Hence, it is established that there was no legal justification to force the



Petitioners to give rebates to the tune of 15% to 20% with respect to fully executed and duly performed contracts at the time of making payments to them. Not only this was an arbitrary, unreasonable and capricious act in colorable exercise of authority but surely offended Rule 62 of the Rules and express contractual stipulations. It was against the principle of transparency enshrined in Rule 4 of the Rules. Needless to emphasize that transparency in procurement process not only envisages that procurement shall be made through transparent, open and competitive processes at the lowest price but also equally safeguards and protects right of the technically qualified lowest bidder to receive timely payment against successfully performed contract. The mere fact that the payments were not made to the Petitioners within thirty days with respect to the Second Contract, the Third Contract and the Fourth Contract is sufficient to establish that the Petitioners were being pressurized, coerced and blackmailed to satisfy the unlawful demand of rebates of the Respondents. The rights of the Petitioners after successful performance of their respective contracts awarded after due process of law are fully protected in terms of Articles 4, 18, 24 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973 and Sections 16 and 23 of the Contract Act, 1872.

**12.** Before parting with this Judgment, it is also noted that the contention of learned Law Officer that this Petition is based on disputed facts is misconceived as facts of the case are admitted between the parties and the only question of forced or voluntary rebates is readily determinable from record in view of breach of specific statutory and contractual stipulations mandating timely payments which were withheld to extort rebates. Hence, the titled Petitions are maintainable due to lack of disputed facts and having been instituted for enforcement of statutory rules in view of law laid down in case titled, “Messrs Ramna Pipe and General Mills (Pvt.) Limited v. Messrs Sui Northern Gas Pipe Lines (Pvt.) and others” (**2004 SCMR 1274**), wherein, it was held that contracts carrying elements of public interest between the functionaries of the State have to be just, fair, transparent, reasonable and free of any taint of *mala fide* which are open

for judicial review and deviations, if of substance, can be corrected through appropriate orders under Article 199 of the Constitution.

**13.** In view of the above, the titled Petitions are **allowed** and the Respondents are directed to forthwith release the complete contract prices of the First Contract and the Second Contract to Petitioner No. 1 and of the Third Contract and the Fourth Contract to Petitioner No. 2 within a period of thirty days from the date of this Judgment. Office shall transmit a certified copy of this Judgment to the Authority who is directed to take appropriate steps to ensure transparency in public procurements.

**(ABID HUSSAIN CHATTHA)**

**Judge**

Approved for reporting.

**Judge**

Announced in open Court on **03.10.2023**.

**Judge**

\*Waqar\*