

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD (JUDICIAL DEPARTMENT)

Review Petition No. 5 of 2024

Azhar Ali

Vs.

Pakistan Institute of Medical Sciences and Others

Petitioner by : M/s Ali Nawaz Kharal and Ch. Ali Abbas,
Advocates.

Respondents by : Raja Zameer ud Din Ahmad, AAG.
Mr.Naseem Ahmed Shah, Advocate.
(For the Respondent No. 3)
Dr. Ayesha Ali, Chief Pharmacist, PIMS.
Mr.Naeem Ashraf, Incharge (Legal), PIMS.
Mr. Qumer Mahmood Chaudhry, Dy. Director
(Legal), Ministry of National Health Services,
Regulations & Coordination (NHSR&C).

Date of Hearing : 10.9.2024.

SAMAN RAFAT IMTIAZ, J.-

1. The Petitioner [Azhar Ali] has filed the instant Review Petition seeking review of the Order dated 26.2.2024 (“**Impugned Order**”) passed by this Court whereby Writ Petition No. 637/2024 filed by the Petitioner was dismissed in *limine*.
2. The brief facts of the matter are that on 2.12.2023 the Respondent No. 1 [Pakistan Institute of Medical Sciences Hospital, Islamabad] through Tender Notice No. 06/2023-2024/PIMS invited bids for the “Annual Tender of daily local purchase of Drugs/Medicines, Surgical Disposable Items, as per Hospital Policy for SSP-PIMS for FY 2023-2024 (interim period) & 2023-2025”. The bidding process was to be conducted according to the Public Procurement Rules, 2004 (“**PPRA Rules**”). In order to take part in the bidding process the bidders were required to submit bids in conformity with the Standard Bidding Documents as per clause (4) of Rule 23 of the PPRA Rules, wherein all bidders were required to fill in a Technical Offer/Check List along with requisite documents. Pursuant to the requirement at Serial No. 3 of Section B of the Technical Offer/Check List all

bidders were required to submit a performance certificate from the Hospital Administration indicating that they have minimum 1 year of experience pertaining to the supply of LP Medicines/Disposable Items to Government/Autonomous Institutions. The Petitioner alleged that the Respondent No. 3 [Shehryar Shaukat proprietor of M/s Khalil Pharmacy, Islamabad] obtained Drug Sales License (DSL) Pharmacy License No. DHO-ISB-621 on 6.1.2023 whereas the date for the opening of Technical Bids for the Tender Notice was 19.12.2023. As such, the total period since the date of issuance of the Respondent No. 3's License constituted experience less than the minimum requirement of 1 year Yet the Respondent No. 3 was declared technically qualified.

3. The Petitioner and other aggrieved parties filed Grievance Redressal Complaints under Rule 48(1) of the PPRA Rules, *inter-alia*, contending that the Respondent No. 3 is not eligible. The Grievance Redressal Committee (“GRC”) after hearing on 15.2.2024 rejected the Redressal Complaints of the Petitioner vide the Decision dated 15.2.2024 (“**Impugned Decision**”).

4. Being aggrieved of the Impugned Decision the Petitioner filed Writ Petition No. 637/2024 which was dismissed in *limine* vide the Impugned Order with the following observations:-

“6. Perusal of the Impugned Decision shows that ‘M/s Khalil Pharmacy’ got its license in the year 2015 and renewed it from time to time as per requirement under the law and that the latest renewal of license was issued by the Respondent No.1 on 06-01-2023. On the other hand the learned counsel for the Petitioner submitted that the license issued in the year 2015 was to ‘Pakistan Pharmacy’ and not to ‘M/s Khalil Pharmacy’. However, it is an admitted position that both ‘Pakistan Pharmacy’ and ‘M/s Khalil Pharmacy’ are sole proprietorships of Respondent No.3 i.e. Shehryar Shaukat s/o Shoukat Ali. It is well settled that a sole proprietorship is not an independent juristic/legal entity separate and apart from its proprietor, therefore, the license issued in the year 2015 whether in the name of ‘M/s Khalil Pharmacy’ or ‘Pakistan Pharmacy’ was in fact issued to Respondent No.3 which makes it clear and apparent that he has the requisite 1 year experience.”

5. Feeling aggrieved the Petitioner has preferred the instant Review Petition. The learned counsel for the Petitioner submitted that the Impugned Order records that M/s Khalil Pharmacy is a sole proprietorship of the Respondent No.3 however, according to the latest documentation produced by the Petitioner including the NTN

Certificate M/s Khalil Pharmacy is in fact an association of persons and as such a distinct legal entity from M/s Pakistan Pharmacy, who has been issued a contract in view of the erroneous ground that it has been working under a License since 2015 whereas the License issued in the year 2015 was issued to M/s Khalil Pharmacy. He submitted that the latest documentation shows that M/s Pakistan Pharmacy and M/s Khalil Pharmacy are not the same legal entities. He further submits that according to Form-9 issued on 4.11.2015 M/s Khalil Pharmacy is a sole proprietor of the Respondent No.3, however, vide cancellation of Drug Sale License dated 03.02.2017 such License was cancelled and thereafter fresh License was issued to M/s Khalil Pharmacy on 29.11.2017, which is stated to be the sole proprietorship of one named Danish Javed and not the Respondent No.3. In view of the foregoing notice of the instant Review Petition was issued to the Respondents.

6. The Order dated 23.7.2024 passed by this Court in the instant Review Petition records that the Petitioner's case is that the License issued on 29.11.2017 has in fact been issued to Khalil Pharmacy, an association of persons, with NTN No. 8868810 who is admittedly not a party before this Court. Thus Khalil Pharmacy, an association of persons, was impleaded as Respondent No. 5.

7. The learned counsel for the Petitioner submitted that the Respondent No. 1 earlier rejected the application of the Respondent No.3 on the ground that it does not have the requisite experience. The said decision was challenged by the Respondent No. 3 through a Civil Suit for Declaration and Permanent Injunction along with Consequent Relief in which stay was not granted in favor of the Respondent No. 3. As a result the Respondent No. 3 filed an appeal before the learned District Judge, Islamabad (West). He specifically highlighted the reply filed by the Respondent No. 1 in such appeal whereby the decision taken by the Respondent No. 1 was that the Respondent No. 3 came into existence through License No. DHO-ISB-621 dated 6.1.2023 which cannot qualify as experience of two years by any stretch of imagination. The learned counsel for the Petitioner further submitted that contrary to its own earlier position the Respondent No. 1 awarded the Respondent No. 3 a contract by finding that the Respondent No. 3 has had a License since 2015. He further submitted that since the name Khalil Pharmacy has been used by various entities the Respondents have created confusion

as to which Khalil Pharmacy has been awarded the contract by Respondent No. 1 this time.

8. The learned counsel for the Respondent No. 3 submitted that reply filed by the Respondent No. 1 in the appeal referred to by the learned counsel for the Petitioner were only in respect of the stay application whereas the suit filed by the Respondent No. 3 challenging the Respondent No. 1's earlier decision is still pending. He submitted that the arguments submitted by the learned counsel for the Petitioner as well as the documents submitted by him make it crystal clear that the Respondent No. 3 has had the License issued to him as sole proprietor of Khalil Pharmacy in 2015.

9. I have heard the learned counsel for the parties and have also perused the record.

10. The documents submitted by the Petitioner himself along with the review petition show that the Respondent No. 3 as sole proprietor of Khalil Pharmacy was issued License No. DSL-381-ICT/2013 to sell drugs in a pharmacy on 4.11.2015. Although this License was cancelled on 3.2.2017 it is an admitted fact that the Respondent No. 3 did in fact have its DSL Pharmacy License for more than one year. The contract awarded by the Respondent No. 1 is also available on record which has been issued to the Respondent No. 3. The Respondent No. 1 has filed its comments in which it has been confirmed that contract has been awarded to the Respondent No. 3. Therefore, there is no confusion as to whether the contract has been awarded to the Respondent No. 3/Khalil Pharmacy the sole proprietorship of Sheheryar Shaukat notwithstanding that Khalil Pharmacy may also be a name used by other entities such as partnership firms and or associations of persons of which Sheheryar Shaukat may be a member.

11. It is also noted that the grounds in view of which notice was issued by this Court in respect of the instant Review Petition as recorded vide the Order dated 19.3.2024 reproduced herein above not only have no bearing on the matter but have in fact been abandoned by the Petitioner's counsel on subsequent dates as it is evident from the Petitioner's own documentation and submissions that the contract awarded by Respondent No. 1 is to M/s Khalil Pharmacy/Respondent No. 3 not to

M/s Pakistan Pharmacy. In fact on each date of hearing a new line of argument was adopted.

12. In view of the foregoing, the instant Review Petition is found meritless and is **dismissed** with cost of Rs. 25,000/- to be paid by the Petitioner to the Respondent No. 3 for embroiling him in unnecessary litigation to be paid within thirty days.

(SAMAN RAFAT IMTIAZ)
JUDGE

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