

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.1505 of 2017

Saifco Group through its Chief Executive and another  
**Versus**

Privatisation Commission of Pakistan and others

**Date of Hearing:** 29.05.2017  
**Petitioners by:** Barrister Gohar Ali Khan, Advocate  
**Respondent No.1 by:** Barrister Khurram Hashmi, Advocate,  
Mr. Abdul Haseeb Khan Senior Legal  
Consultant Privatisation Commission.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioners, Saifco Group and Haji Saif-ur-Rehman, seek a direction to respondent No.1 (Privatisation Commission of Pakistan) to receive the Statement of Qualification ("SOQ") from the petitioners and consider them for prequalification for participation in the privatisation process of SME Bank Ltd (respondent No.3).

2. The petitioners' case is that in response to an invitation for submission of Expression of Interests ("EOIs") regarding privatisation of 93.88% shares of respondent No.3, the petitioners, on 06.04.2017, submitted their EOIs and applied to respondent No.1 (Privatisation Commission of Pakistan) for the provision of Request of Submission of Qualification ("RSOQs") regarding the said privatisation. On 07.04.2017, respondent No.1 provided the RSOQs to the petitioners. Furthermore, the petitioners were required to submit the Statement of Qualification ("SOQs") on the same very day, i.e. 07.04.2017, which was the deadline fixed for the submission of SOQs. The petitioners feel that since respondent No.1 had extended the deadline for submitting the EOIs and SOQs from 17.03.2017 to 07.04.2017, the petitioner should have been permitted to submit the SOQs beyond the said extended deadline.

3. The facts essential for the disposal of this petition are that on 14.02.2017, an advertisement was published by respondent No.1 inviting EOIs from investors having an

interest in acquiring up to 93.88% share capital of SME Bank Ltd. (respondent No.3), along with the control of its management. In the said advertisement, the Government of Pakistan, acting through respondent No.1, held out an assurance that the State Bank of Pakistan will issue a new banking license of a specialized nature to the investors with a minimum capital requirement of Rs.6 Billion, out of which Rs.2 Billion would be required to be injected upfront while Rs.1 Billion would have to be injected every year over the next four years.

4. The interested parties were required to submit their EOIs along with non-refundable processing fee. On the receipt of the EOIs from the interested parties, respondent No.1 was to provide RSOQs, which contained details of the qualification criteria etc. The last date for the receipt of the SOQs was 17.03.2017. The interested parties were encouraged by respondent No.1 to submit their EOIs 'as early as possible' in order to maximize the time available to them for the preparation and submission of the SOQs. The SOQs submitted by the interested parties were to be evaluated by respondent No.1 for the prequalification of the bidders. The details of the transaction, information memorandum, instructions to bidders and the draft of bidding documents were to be provided by respondent No.1 only to the prequalified parties.

5. The Preliminary Information Memorandum/Transaction Teaser issued by the financial advisers of respondent No.1 with respect to the privatisation of the said 93.88% share capital of respondent No.3 *inter-alia* provided that the EOIs and the RSOQs could be issued to the interested parties in the period between the 2<sup>nd</sup> week of February to the 2<sup>nd</sup> week of March, 2017; and that the receipt and the evaluation of the SOQs were to take place in the 2<sup>nd</sup> and 3<sup>rd</sup> week of March, 2017. As per the said Information Memorandum, the announcement of the prequalified bidders and the issuance of the bidding documents were to take place in the 4<sup>th</sup> week of March, 2017.

6. Thirteen parties, excluding the petitioner, are said to have been issued EOIs and RSOQs by 07.04.2017. Out of these, eight parties applied to respondent No.1 for an extension in the deadline for the submission of the SOQs. Consequently, on 16.03.2017, respondent No.1, through an advertisement published in the newspapers extended the deadline for the submission of the EOIs and SOQs from 17.03.2017 to 07.04.2017. Only five parties are said to have submitted their SOQs by 07.04.2017.

7. Even though the initial advertisement inviting EOIs was published on 14.02.2017, and the advertisement extending the deadline for the submission of the EOIs and SOQs to 07.04.2017 was published on 16.03.2017, as late as 06.04.2017 (i.e. one day before the deadline for the submission of the SOQs), the petitioners came on the scene and submitted their EOIs with an application for the issuance of the RSOQs. The very next day i.e. 07.04.2017, respondent No.1 provided the RSOQs to the petitioners. Furthermore, respondent No.1, vide letter dated 07.04.2017 requested the petitioners to prepare and submit the SOQs on the same very day. Annexed at page-43 of this petition is an undated letter from the petitioners to respondent No.1 seeking an extension in time up to 17.04.2017 for the submission of the SOQs. This letter appears to have been received by respondent No.1 on 10.04.2017. As respondent No.1 did not accede to the petitioners' request for an extension in time for the submission of the SOQs, the petitioners, on 21.04.2017 filed the instant writ petition.

8. Learned counsel for the petitioners submitted that petitioner No.1 was a firm owned by Saifco Construction which was a registered partnership; that respondent No.3 was included in the privatisation list in 2007; that an attempt to privatize respondent No.3 in the year 2008 was not successful; that on 14.02.2017, respondent No.1 invited EOIs for the acquisition of 93.88% share capital of respondent No.3; that the last date for the submission of the SOQs was 17.03.2017; that the information memorandum issued on behalf of

respondent No.1 regarding the privatisation of respondent No.3, set timelines for the submission of EOs and SOQs which were different from the dates set-out in the said advertisement; that vide advertisement dated 16.03.2017, the deadline for the submission of the EOs and SOQs was extended to 07.04.2017; that with the extension in the deadline for the submission of the EOs, respondent No.1 should also have proportionately extended the deadline for the submission of the SOQs; that the petitioners submitted EOs to respondent No.1 on 06.04.2017; that the petitioners were provided the RSOQs on 07.04.2017; that the petitioners were required to submit the SOQs on the same day i.e. 07.04.2017; that it was not possible for the petitioners to prepare and submit the SOQs on the same very day on which the RSOQs were issued to the petitioners; that vide letter dated 10.04.2017, the petitioners requested respondent No.1 to extend the deadline for the submission of the SOQs, but to no avail; that respondent No.1 should have made every efforts to enlarge the bidding arena so as to make the bids for the privatisation of respondent No.3 more competitive; and that there was no impediment before respondent No.1 to have extended the deadline beyond 07.04.2017 so that the petitioners could have submitted their SOQs.

9. Learned counsel for the petitioners also submitted that respondent No.1 could not have extended the deadline for the submission of the SOQs from 17.03.2017 to 07.04.2017, so as to favour some of the entities who wanted to participate in the bidding process; that respondent No.1 had admitted that there was a discrepancy in the dates given in the advertisement, and the preliminary information memorandum; that it was respondent No.1's statutory obligation to ensure widest possible participation in the privatisation process; that Rule 3(1)(d) of the Privatisation (Modes and Procedure) Rules, 2001, requires the issuance of a suitable information memorandum regarding the privatisation of a State owned entity; that respondent No.3 was the first bank to be privatized by

respondent No.1 after the privatisation of Habib Bank Limited in 2003; and that if this Court was not inclined to direct respondent No.1 to accept the SOQs from the petitioners, the entire bidding process should be annulled due to non-transparency, and a direction should be issued to respondent No.1 to start the privatisation process of respondent No.3 afresh. Learned counsel for the petitioners prayed for a direction to respondent No.1 to accept the SOQs prepared by the petitioners. In the alternative, it was prayed that respondent No.1 be directed initiate the privatisation process of respondent No.3 afresh.

10. On the other hand, learned counsel for respondent No.1 raised preliminary objections to the maintainability of the writ petition by submitting that the petitioners were not 'aggrieved persons' in terms of Article 199 of the Constitution; and that the petitioners had the alternative remedy available under the law. Furthermore, it was submitted that the petitioners had ample time (i.e. since 14.02.2017 when the invitation of EOIs was published by respondent No.1) for submitting their EOIs and SOQs; that through an advertisement published on 16.03.2017, the deadline for the submission of EOIs and SOQs was extended to 07.04.2017; that the petitioners applied for the RSOQs on 06.04.2017 (one day before the deadline for the submission of SOQs); that since the petitioners had applied for the issuance of RSOQs before the deadline for the submission of SOQs, respondent No.1 on 07.04.2017 provided RSOQs to the petitioners with the requirement that they should prepare and submit the SOQs by 07.04.2017; that three days after the deadline for the submission of the SOQs, the petitioners applied for an extension in the deadline for the submission of the SOQs; that the RSOQs issued by respondent No.1 to all the applicants expressly set-out the deadline for the submission of the SOQs; that the deadline mentioned in the RSOQs was extended by respondent No.1 to 07.04.2017 on the request of several entities who had been issued the RSOQs; and that the petitioners could not be granted undue advantage by

accepting their SOQs beyond the stipulated deadline. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

11. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 7 above, and need not be recapitulated.

12. As mentioned above, respondent No.1 had, through an advertisement published in the newspapers on 14.02.2017, invited EOIs for the acquisition of 93.88% share capital of respondent No.3. The petitioners had filed a copy of the said advertisement along with the writ petition. Therefore, the petitioners were in the knowledge of the said advertisement right from the date when it was published. Ever since 14.02.2017 the petitioners could have submitted their EOIs to respondent No.1, and applied for the issuance of RSOQs. The petitioners have also filed a copy of the advertisement dated 16.03.2017 issued by respondent No.1, whereby the deadline for the submission of EOIs and SOQs was extended to 07.04.2017. The RSOQs issued by respondent No.1 clearly stipulates the deadline by which the SOQs were required to be submitted. The petitioners waited until the eleventh hour and submitted their EOIs to respondent No.1 on 06.04.2017, with the request for the issuance of the RSOQs. Since, the deadline for the submission of the EOIs and the SOQs was 07.04.2017, respondent No.1 provided the RSOQs to the petitioners on 07.04.2017 with the request to submit the SOQs by the same very day i.e. 07.04.2017. Admittedly, the petitioners did not submit the SOQs by the deadline of 07.04.2017. Vide an undated letter, the petitioners requested respondent No.1 to grant them an extension for submitting the SOQs. This letter appears to have been received by respondent No.1 on 10.04.2017 (i.e. three days after the expiry of the deadline for the submission of the SOQs).

13. Since the advertisements were published by respondent No.1 on 14.02.2017 and 16.03.2017, the petitioners had sufficient time to submit their EOIs and apply for the issuance of the RSOQs. The petitioners were negligent and insincere in applying for the RSOQs with an inordinate delay, and not submitting their SOQs within the stipulated time though they were well aware that there was a time schedule attached to the advertisements inviting EOIs. Therefore, their contention that the time was too short for submission of the SOQs is without any merit.

14. There is no provision in the tender documents/RSOQs authorizing respondent No.1 to extend the deadline for the submission of the SOQs after the lapse of such a deadline. The deadlines fixed in advertisements inviting EOIs must be complied with scrupulously in order to avoid discrimination, arbitrariness and favouritism. Relaxation in such deadlines by State or its agencies in favour of a particular bidder is not permissible unless expressly provided for in the tender conditions or the applicable rules. Strict adherence to instructions to bidders is most essential. Mr. Justice Frankfurter in Vitarelli Vs. Seaton (1959) 359 US 535, observed that an executive agency must be rigorously held to the standards by which it professes its action to be judged. The earlier extension of the deadline from 17.03.2017 to 07.04.2017 was well before the last date of the submission of the EOIs and SOQs. Such an extension cannot give the petitioners the right to seek another extension in the deadline for the submission of the SOQs, more so when the deadline for the submission of the SOQs had already lapsed. The earlier extension was in conformity with Rule 27 of the Public Procurement Rules, 2004, which reads as follows:-

*“27. Extension of time for submission of bids.- Where a procuring agency has already prescribed a deadline for the submission of bids and due to any reason the procuring agency finds it necessary to extend such deadline, it shall do so only after recording its reasons in writing and in an equal opportunity manner. Advertisement of such extension in time shall be done in a manner similar to the original advertisement.”*

15. As mentioned above, vide advertisement dated 16.03.2017, the deadline for the submission of the EOIs and SOQs was extended from 17.03.2017 to 07.04.2017. The advertisement dated 16.03.2017 was in a similar manner to the original advertisement dated 14.02.2017. Since the said extension was made well ahead of the last date for the submission of EOIs and SOQs, all the potential bidders were treated equally. By the date when the said advertisement dated 16.03.2017 was published, the petitioners had not even submitted their EOIs. Therefore, the petitioners cannot claim to be adversely affected by the said extension. The reason put forth by respondent No.1 for the extension in the said deadline was requests in this regard made by several parties. Such an extension cannot be made the basis for an extension in the deadline for the submission of SOQs, after the deadline had already lapsed. An extension in the deadline for the submission of SOQs (after the lapse of such a deadline) would be in contravention of Rule 27 of the Public Procurement Rules, 2004.

16. The last date for the submission of the SOQs was explicitly mentioned in the advertisements mentioned above and in the RSOQs. This Court cannot rewrite the conditions in the advertisements and the RSOQs so as to suit to the convenience of the petitioners, enabling them to submit the SOQs beyond the stipulated deadline. Since the petitioners applied for the RSOQs with an inordinate delay, hence they have only themselves to blame for the unsavory situation that they now find themselves in. Consequently, I do not find any illegality, irrationality, procedural impropriety or unreasonableness in respondent No.1's decision not to extend the deadline for the submission of the SOQs at the petitioners' behest. At this stage, it would be apposite to make reference to the following case law on the subject:-

- (i) In the case of Aliya Hamayun Vs. Nadeem-ul-Haq (2014 CLC 958), the Court auctioneer had fixed 28.12.2013



(11:00 am to 11:30 am) for the auction of a certain property. At 12:08 pm on the said date, the appellant appeared before the Court auctioneer and offered to match the highest bid submitted by another bidder during the auction. It was held by the Hon'ble High Court of Sindh that since the time during which the auction was to take place had been fixed earlier, the appellant should have been cautious and present during auction. Therefore, it was held that the bid offered during the auction was correctly accepted and that the appellant's bid made subsequent to the auction, could not be entertained.

- (ii) In the case of Shafco International Vs. Chairman Pakistan Telecommunication Corporation, Karachi (1995 MLD 146), the petitioner had sought permission to be allowed to purchase tender documents and to participate in the tendering process even though the closing date for receiving tenders had lapsed. The petitioner's application was turned down by the Hon'ble Sindh High Court, Sindh. The third paragraph of the said report is reproduced herein below:-

*“Mr. Mohammad Farogh Nasim submitted on behalf of the respondents that the petitioner cannot now be permitted to participate in the tender for the reasons, firstly, that the petition has not yet been admitted and no such application can be entertained or considered at this stage, and, secondly, these tenders were invited on 31.08.1994, nearly two months ago, and the last date for closing of the tenders was fixed on 29.09.1994 and the petitioners were free to participate in the tender but they chose not to do so, and as such closing date of tender having expired, if they were to permit any one including the petitioners to participate in the tenders, the respondents would be violating the terms of the advertisement, as well as the rules governing the subject. We find the contention of Mr. Farogh Nasim to be substantial. The petitioners could well have participated in the fresh tenders, but if they chose not to do so, they have to blame themselves. Admittedly, it would be encouraging the violation of the terms and conditions of the advertisement and of the rules bearing on the subject.”*

(Emphasis added)

- (iii) In the case of Azam & Co. Solicitors Vs. Legal Services Commission ([2010] EWCA Civ. 1194), the England and Wales Court of Appeal (Civil Division) has *inter alia* held

that a deadline is a necessary part of a tendering process, and that where a deadline was plainly stated in readily accessible documents, the entity inviting the bids needed to be cautious of their duty to treat the bidders equally and to avoid suggestions of favouritism towards a particular party. It was also held that a bidder who is granted an extension in time, notwithstanding the terms of the tender, adversely affects the position of other bidders.

- (iv) In the case of Sorath Builders Vs. Shreejikrupa Buildcon Limited (2009) 11 SCC 9, the respondent had submitted its bidding documents three days after the deadline fixed for the submission of the said documents. Since the organization inviting the bids did not consider the respondent's bid due to its submission beyond the stipulated time, the respondent filed a writ petition before the High Court. The writ petition was allowed and the decision to award the contract to another bidder, who had submitted his bid within time, was set aside. The Supreme Court of India set aside the judgment of the High Court. In paragraph 15 of the said report, it is held as follows:-

*“15. Following the aforesaid legal principles laid down by this Court, we are of the considered opinion that the respondent no. 1 was negligent and was not sincere in submitting his pre qualification documents within the time schedule laid down despite the fact that he had information that there is a time schedule attached to the notice inviting tenders. Despite being aware of the said stipulation he did not submit the required documents within the stipulated date. Pre-qualification documents were received by the respondent no. 2 - University only after time schedule was over. The terms and conditions of the tender as held by the Supreme Court are required to be adhered to strictly, and therefore, the respondent no. 2 - University was justified in not opening the tender submitted by respondent no. 1 on 01.12.2008, which was late by three days. According to us no grievance could also be made by the respondent no. 1 as lapse was due to his own fault.”*

- (v) In the case of Nokia India (Pvt.) Ltd. Vs. Mahanagar Telephone Nigam Ltd. (AIR 2003 Delhi 474), the bidding

documents had provided that bids received after the time prescribed for the submissions of the bids would be rejected. Since the petitioner submitted its bid with a delay of a few minutes, it was not entertained. The excuse for the delay put forth by the petitioner was that the lifts in the building where the bids were to be submitted were not functioning. The petitioner's writ petition was dismissed by the Delhi High Court holding that there were no abnormal or exceptional circumstances for permitting the petitioner's bid to be accepted beyond the stipulated deadline.

- (vi) In the case of K.V. Joseph & Sons Vs. Surya Constructions (AIR 2005 Kerala 159), the respondent had fixed 04.05.2004 (03:00 pm) as the last date for the submission of tender documents. The tender notification stipulated that the tender documents should be submitted through registered post. The writ petitioner had sent the tender documents through registered post on 05.05.2004. Since the tender documents were not received by 03:00 pm on 04.05.2004, by registered post, the same were not considered. The prequalification committee of the respondent had rejected the petitioner's prequalification documents since they had been sent late. The writ petitioner had prayed for the issuance of a writ of *mandamus* directing the respondents to consider the petitioner's tender documents. The Single Bench of the Kerala High Court allowed the writ petition, but the Division Bench of the said Court allowed the appeal and dismissed the writ petition.
- (vii) In the case of Siemens Ltd. Vs. Mumbai Railway Vikas Corporation Ltd.,<sup>1</sup> (Writ Petition No.2449/2010), the petitioner had filed a writ petition before the High Court of Judicature at Bombay praying for a direction to the respondent (the entity inviting bids) to extend the deadline for the submission of the bids to a date beyond the stipulated deadline so as to enable the petitioner to

submit a bid. The writ petition was dismissed vide judgment dated 07.12.2010, wherein it was held that the competitive process of bidding had not suffered as a result of the petitioner's exclusion.

- (viii) In the case of Aisha Siddique Vs. Senior Terminal Manager<sup>2</sup> (2003 (2) AWC 1642), the time and date for the submission of tender documents was fixed in the tender notice. The writ petitioner had submitted her bid with a delay of ten minutes. It was asserted that the said delay was caused by a traffic jam. The Allahabad High Court dismissed the writ petition with the observation that time was of the essence in such matters, and to hold otherwise would make the legal position totally chaotic. Furthermore, it was held as follows:-

*"3. ... If we extend it by 10 minutes, then why not for 10 hours or 10 days? Where will the line be drawn. Hence, the only correct view can be that one has to be strict in such matters. Since the petitioner did not reach in time to submit her tender it cannot be accepted."*

- (ix) In the case of Vijayashanti Instruments Corporation Vs. Directorate of Women Development and Child Welfare<sup>3</sup> (1998 (1) ALD 515), respondent No.2 in the said case had submitted a bid beyond the deadline fixed in the tendered documents. The entity inviting the bids had entertained and accepted the bid submitted by respondent No.2. The other bidders who had submitted their bids within the stipulated deadline filed a writ petition before the High Court of Andhra Pradesh challenging the entertainment of respondent No.2's delayed bid. The writ petition was allowed and the decision to entertain and accept respondent No.2's bid was quashed. In the judgment dated 29.08.1997, it was held, *inter alia*, as follows:-

*"9. ...This reminds of an episode that there is no defense for anybody for being late even where the watch has stopped. It is for the interested persons to submit the bid and to make all possible attempts to reach the spot of tender receipt place before the stipulated time, if not well in advance. The punctuality is the back-bone of the policies in the business and contractual obligations. A person having no responsibility for punctuality cannot seek the aid of*

*justice. ... When other tenderers could reach the spot within the time stipulated, if the Respondent No.2 is given such a benefit, there will be open discrimination and denial of opportunity for others to have the same benefit. If this is permitted, one tenderer like Respondent No.2 will stand in a different position to have more opportunities to think or deliberate or to make use of any information it may either look or seep, under the peculiar circumstances. Moreover, a careful examination of all the stipulations of the bid document leaves no discretion for 1<sup>st</sup> respondent to condone any such delay.*

*10. The time stipulation cannot be a minor informality. Although this may be a case of submission of bid late by seven minutes there may be existence of seven hours or even days. The question would be whether the law can allow such waiver in regard to such a stipulation if such a discretion is left to the purchaser and, as rightly submitted by Mr. Mohan Reddy, there is always the possibility of misuse, abuse, mis-management and what not to lead to any dishonest consequences which may not be envisaged or entertained ultimately. Whether it is a minor informality or non-conformity or irregularity and whether such a thing constitute a material deviation or not or does not prejudice or affect the relative ranking of any bidder depends upon the facts and circumstances of each case. In the present case, it is difficult to think that violation of the time factor is either minor or no material deviation. Secondly, it is difficult to accept the contention of the learned Government Pleader that such a violation can be waived and does not prejudice or affect the relative ranking of any bidder. At any rate and clearly such a violation has given undue favour to the 2<sup>nd</sup> respondent because his bid has been accepted whereas the petitioner and Respondent No.3 are deprived of such an opportunity of getting their bids accepted on the failure of 2<sup>nd</sup> respondent to submit the tender within the stipulated time to think that there would be travesty of realities and justice."*

- (x) In the case of Shri Mahalaxmi Construction Corporation Vs. Chief Engineer, Yamuna Basin Jal Sansadhan Vibhag<sup>4</sup> (1993 (0) MPLJ 295), the last date for receiving tenders was extended from 18.08.1992 to 09.09.1992. The writ petitioners had not submitted their tenders within the stipulated period. In the writ petition, the petitioners had *inter alia* sought an extension for a period of fifteen days in the deadline for the submission of the tenders. The Madhya Pradesh High Court dismissed the writ petition with costs. In the said report, it was *inter alia* held as follows:-

*“17. The time, date and place was fixed for receiving the tenders; hence, it was the duty of the petitioners to file their bids within the time. ... The petitioners were having full knowledge of the last date, time and place fixed for receiving the tenders, and that it is why petitioner Mahalaxmi Construction Corporation through its representative submitted tender documents for Group II on 09.09.1992, but neither the petitioners in their individual capacity nor as joint venturers submitted tenders for Group I for the reason best known to them. As the petitioners have missed the bus, on fact situation it would now not be proper in the larger public interest to extend the time on the principle of legitimate expectation of petitioners, as it would be an undue indulgence detrimental to the public interest.”*

17. Considering the aforesaid dictums, the decision taken by respondent No.1 not to extend the deadline for the acceptance of the petitioners' SOQs cannot be faulted. An extension in such a deadline so as to enable the petitioners to submit their SOQs would amount to favouritism.

18. The petitioners did not submit the SOQs by the deadline (i.e. by 07.04.2017) even though the advertisement fixing the said deadline had been published on 16.03.2017. From the conduct, behavior and attitude of the petitioners, it can safely be said that they have been absolutely callous and negligent by not applying for RSOQs in time and not submitting their SOQs by 07.04.2017. Law courts never tolerate an indolent litigant since delay defeats equity - the Latin maxim *vigilantibus et non dormientibus jura subveniant* (the law assists those who are vigilant and not those who are indolent) applies on all fours to the case at hand. Persons who have missed the bus due to their indolence cannot be treated at par with those who are vigilant.

19. As per the information furnished by respondent No.1, only five bidders submitted their SOQs by 07.04.2017. It remains to be seen how many out of these five prequalify and how many submit their bids. If during the bidding process respondent No.1 does not receive competitive rates from those who are pre-qualified to participate in the bidding, it was always open for respondent No.1 to invite fresh bids giving opportunity to all the parties to submit fresh tenders.

Respondent No.1 in deciding whether to recommend the acceptance of the highest and most responsive bid or to recommend the initiation of a bidding process afresh should not in any manner be influenced by the desire of the Federal Government to complete the privatisation process of respondent No.3 in order to meet fiscal targets set by the Federal Government. It is respondent No.1's obligation to foster and encourage effective participation by bidders in the bidding/privatisation process to promote healthy competition among the bidders; to provide for fair and equitable treatment to all the bidders; to eliminate favouritism and irregularities and to promote fairness, transparency and public confidence in the privatisation process.

20. The purpose of inviting bids or EOIs from the general public through an advertisement is to ensure maximum possible return or consideration for the State property proposed to be privatized. To achieve this end, normal and fair competition, with maximum possible participation ought to take place. If respondent No.1 in its wisdom forms a view that given the number of participants, the bids submitted may not be competitive, or that the bids received are not high enough (even though they may be above the reserved price), it can exercise the discretion to invite fresh bids so long as vested rights are not obliterated.

21. During the course of the arguments, the stance of the learned counsel for the petitioners was oscillating like a pendulum. He would at times remain within the parameters of his pleadings in the writ petition by seeking a direction to respondent No.1 to accept the petitioners' SOQs, but then he would adopt a kamikaze tactic by insisting that the entire privatisation process should be annulled in the public interest, and directions be issued for initiating the process afresh. Such a wavering stance by a petitioner is not permissible in the equitable/constitutional jurisdiction of this Court. In the writ petition, the petitioners had not prayed for the process to be annulled. Hence, the petitioners cannot be permitted to depart

from their pleadings. In the case of “Echo West International Private Limited Vs. Government of Punjab (PLD 2009 SC 406)”, the Hon'ble Supreme Court, in similar circumstances held as follows:-

*“15. Realizing that the appellant was unlikely to succeed in view of his participation in the bidding process to obtain relief for itself regarding the said two projects, the learned counsel for the appellant insisted that the matter be examined as one of public importance to undo the result of failure of public functionaries to perform their duties properly. It was thus, urged that the entire process be repeated and transparency ensured. The learned counsel, therefore, attempted to make it a case of public interest litigation. The litigation of such nature do not fall specifically under any provision of Article 199 of the Constitution. However, this concept has received judicial recognition enabling the Courts to enlarge the scope of the meaning of 'aggrieved' under Article 199 of the Constitution to include a public spirited person who brings to the notice of the Court a matter of public importance. The appellant has a personal interest in the present litigation as he is motivated purely by his own economic interests and wants the entire bidding process reversed so that he can avail another opportunity of bidding for the project. The present litigation is, therefore, not public interest but rather personal interest litigation. We will thus not examine the case from that stand point. We have already held that the appellant has locus standi, having personal interest in the litigation but at the same time have found that he has no cause for complaint. Furthermore, since we are not considering the present case as one of public interest litigation and having held that the appellant was not treated unfairly or discriminately, we need not comment upon the arguments advanced by both sides, on the application or otherwise, of the provisions of the Public Procurement Regulatory Attorney Ordinance No.22 of 2002, to the present case.”*

22. In view of the facts and circumstances of the case, especially the petitioners' conduct, I am of the considered opinion that the petitioners are not entitled to the grant of any equitable relief in exercise of the powers of this Court under Article 199 of the Constitution. The maxim 'Delay defeats Equity' as it aids the vigilant and not the indolent, is also a well-established norm which applies with equal force to exercise of extraordinary jurisdiction of the High Court under Article 199 of the Constitution.

23. In the above background, keeping in mind the modern trend, which points to judicial restraint in administrative action and the fact that respondent No.1's decision not to extend the



deadline for the submission of the SOQs has not been vitiated because of any illegality, irrationality, procedural impropriety, arbitrariness and *malafide*, I find this petition to be without any merit and accordingly the same stands dismissed.

<sup>1</sup> <https://indiankanoon.org/doc/852590/>

<sup>2</sup> <https://indiankanoon.org/doc/1607700/>

<sup>3</sup> <https://indiankanoon.org/doc/1222394/>

<sup>4</sup> <https://indiankanoon.org/doc/1149927/>

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2017**

**(JUDGE)**

**APPROVED FOR REPORTING**

Qamar Khan\*

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