

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-3915 of 2015

Order with signature of Judge

1. For hearing of CMA No.17313 of 2019
2. For hearing of main case

14.12.2018.

Mr. Sufyan Zaman, Advocate for the petitioner.
M/s Asim Iqbal and Farmanullah Khan, Advocates
for Respondent No.2.
Mr. Kafeel Ahmed Abbasi, DAG.

Mohammad Ali Mazhar J.- Case of the petitioner is that the petitioner is a private contractor engaged in providing furniture items and goods. The present petition in fact relates to the tenders invited by respondent No.2 for furniture and accessories. In paragraph 6 of the petition, three purchase orders of different dates alongwith the notified delivery dates as well as supplier code are mentioned. Since supply of furniture could not be made due to certain reasons, on 22nd April, 2013, letter was issued to the petitioner with reference to the supply of standardized office furniture against this purchase order with the allegation that the petitioner had declined to fulfill contractual obligations, hence in terms of Rule 19 of Public Procurement Rules, 2004 (***PPR, 2004***) the petitioners' firm was blacklisted and the bid bond furnished by the petitioner was forfeited.

2. We have noted that in the petition as well as in the counter affidavit various allegations and counter allegations have been leveled vise versa that the petitioner failed to fulfill his commitment and contractual obligations whereas the petitioner claims that due to some delay in the inspection the supplies could not be made in terms of purchase order. It is well settled proposition of law that disputed questions of facts and controversy cannot be resolved in the constitutional jurisdiction. However, arguments of the learned counsel for

the petitioner that order of blacklisting was passed or notified without providing ample opportunity of hearing to the petitioner in terms of Rule 19 of the PPR, 2004 can be taken into consideration. For ease of reference Rule 19 of the PPR, 2004 is reproduced as under:-

“19. Blacklisting of suppliers and contractors.-

The procuring agencies shall specify a mechanism and manner to permanently or temporarily bar, from participating in their respective procurement proceedings, suppliers and contractors who either consistently fail to provide satisfactory performances or are found to be indulging in corrupt or fraudulent practices. Such barring action shall be duly publicized and communicated to the Authority:

Provided that any supplier or contractor who is to be blacklisted shall be accorded adequate opportunity of being heard.”

3. Though the procuring agency may specify the mechanism to permanently or temporarily bar from participating in their respective procurement proceedings, suppliers and contractors who failed to provide satisfactory performance but in the same rule the proviso is also attached under which any supplier or contractor who is to be blacklisted shall be accorded adequate opportunity of hearing. The learned counsel for the petitioner argued that no such opportunity was given by respondent No.2. We have provided ample opportunity to the counsel for respondent No.2 to show any document which may prove that before taking such action a show-cause notice was issued to the petitioner and before taking the decision of blacklisting opportunity of hearing was provided but nothing has been shown to us to demonstrate that this action was taken within the four corners of Rule 19 of the PPR, 2004 wherein it was the mandatory to provide an opportunity of hearing to the person who is to be blacklisted. For this limited purpose we feel that some directions may be

issued to respondent No.2 to comply with Rule 19 of the PPR, 2004.

4. As a result of our discussion, this petition is disposed of with the directions to respondent No.2 to provide opportunity of hearing and pass appropriate order in accordance with Rule 19 of the PPR, 2004.

J U D G E

J U D G E

*Farooq PS/**

