ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI C.P.No.D-1566 of 2019

Date

Order with signature of Judge

Present

Mr. Justice Muhammad Ali Mazhar Mr. Justice Agha Faisal

M/S J.F. Brothers Construction Company......Petitioner

VERSUS

Province of Sindh & others......Respondents

Mr. Badaruddin Khoso, Advocate for the Petitioner.

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Muhammad Ali Mazhar, J: Through this constitution petition the petitioner has prayed for the directions against the respondent No.3 to cancel the tender proceedings dated 01.02.2019. They have also prayed for the directions against the respondent No.3 to cancel the eligibility criteria and also prayed that the tender proceedings may be conducted afresh. The petitioner is engaged in the construction business through its proprietor Ghous Bux Soomro. He approached to respondent No.3 for participating in tender proceedings but he was disqualified on the ground that the petitioner does not fulfill the eligibility criteria Nos.iv, v, vii and viii. The Executive Engineer Thatta invited tenders on the composite schedule of rates from interested persons for 18 works. In condition No.iv, the bidder was required to submit the list of similar assignments with equivalent cost or above for minimum three works completed over the past (three years) duly supported with completion certificate; condition No.v was to show at least three works in hand of similar nature of equivalent cost of tender; condition No.vii was to place annual turnover of equivalent amount for the last three years; whereas condition No.viii was with regard to financial statement and income tax returns for the last three

years. The date of issuing bidding documents was triggered from 25.02.2019 and last date of submission was 25.02.2019. The petitioner has approached this court on 06.03.2019. The learned counsel argued that the petitioner is new contractor and he was not assigned any work of similar nature, therefore, it was impossible for him to meet the eligibility criteria for submitting the list of similar assignments with equivalent cost or above or minimum three works completed over the past three years duly supported with completion certificate. The petitioner himself admitted that he could not fulfill the eligibility criteria in accordance with the tender documents. The learned counsel did not argue that the terms and conditions mentioned in the tender documents are in violation of SPPRA Rules, 2010.

- 2. To fix certain criteria for awarding the tender or contract by the tenderer does not infringe or contravene the fundamental rights of any person guaranteed under Article 18 of the Constitution of Islamic Republic of Pakistan. It is quite usual in various tender proceedings that for the satisfaction, a condition is imposed in the tender documents for the participant to disclose previous experiences to evaluate that he is capable to meet the requirements in case work order is issued which cannot be construed illegal or in violation of any fundamental right.
- 3. We dismissed this petition in limine through our short order dated 07.03.2019. Above are the reasons.

Judge

Judge

Karachi. Dated 11.03.2019.

Asif