



award of the contract, the petitioner also submitted the bank guarantee. The financial bid was opened but the respondent No.4, who had not participated in the bidding process filed a complaint to the Complaint Redressal Committee (CRC) under Rule 31 of the Sindh Public Procurement Rules, 2010 (SPP Rules, 2010) but it was rejected by the respondent No.3 vide order dated 14.05.2018 precisely on the ground that the respondent No.4 was not a bidder thereafter the respondent No.4 filed an appeal to the Review Committee under Rule 32 of the SPP Rules, 2010. He further pointed out page 189 which is a letter of Complaint Redressal Committee communicated to respondent No.4 whereby the complaint of the respondent No.4 was not found maintainable on the ground that they were not bidder for the contract. At page 207 the order dated 31.08.2018 passed by Review Committee of Sindh Public Procurement Regulatory Authority under Rule 32 of SPP Rules, 2010 is available whereby the Review Committee unanimously decided that the procuring agency shall terminate the instant procurement proceedings in terms of Rule 32 (7) (f) of SPP Rules, 2010 and to re-invite the tender for the sake of transparency and in the best interest of public. The learned counsel for the petitioner further argued that in the order of Review Committee they have not actually considered the definition of 'bidder' as provided in Clause (f) of Rule 2 of SPP Rules, 2010 which means that a person or entity (i) submitting a bid; or (ii) who intends to submit a bid and is able to substantially prove such intention. He further argued that mere receiving a form from the procuring agency does not make a person bidder and it is not a proof of his intention nor this can substantially prove that he intended to participate in the tender proceedings. He further submits that a technical bid was accepted by the procuring agency, therefore, under Article 10A of the Constitution of Islamic Republic of Pakistan, some right of audience should have been afforded to the petitioner also but behind the back of the petitioner and without providing opportunity of hearing the entire appeal was decided by the Sindh Public Procurement Regulatory Authority and he was communicated decision by the Sindh Public

Procurement Regulatory Authority only when they refused awarding of contract to the petitioner on the premise that the entire bidding proceedings have been scrapped by the procuring agency under the directions of the Sindh Public Procurement Regulatory Authority.

2. The learned counsel for the Sindh Revenue Board submits that they have completely followed all rules and regulations of SPP Rules, 2010 and he also supported the order of the Complaint Redressal Committee whereby they held that the petitioner was not bidder, therefore, his complaint was not liable to be heard.

3. The learned counsel for the respondent No.4 argued that the respondent No.4 did not apply in the tender proceedings for the reason that there were some technical defects and the entire bidding document was designed to favour the petitioner.

4. The learned Addl. A.G. Sindh though supported the order of the Review Committee but at the same time he further added that before passing any such order at least some opportunity of hearing should have been provided to the petitioner which is also the mandate under Article 10A of the Constitution, however, he further submits that at present the petitioner has withdrawn the bidding security on which the learned counsel for the petitioner pointed out the order dated 26.06.2019 whereby the court directed the respondents to release the bank guarantee to the petitioner subject to final outcome of the instant petition. The learned counsel further argued that this was without prejudice to this case and the security was released in pursuance of the court order passed by the learned Division Bench of this court. The learned counsel for the petitioner further pointed out Rule 32 of the SPP Rules, 2010 and submits that the petitioner as a bidder has not filed any complaint but the complaint was filed by the respondent No.4 and the condition for not withdrawing the bidding security is only provided for a bidder and not for a person who had not filed any complaint.

5. After arguing at some length, all learned counsel forwarded a reasonable proposal to us that the order dated 31.08.2018 passed by the Review Committee of the Sindh Public Procurement Regulatory Authority may be set aside with directions to them to decide the matter afresh after providing ample opportunity of hearing to the petitioner and they will also consider the definition of 'bidder' properly in accordance with law keeping in view the entire circumstances of the present case. Order accordingly. The Review Committee shall decide the matter afresh within fifteen (15) days' time after issuing notices to the petitioner and respondent No.4 as well as the procuring agency. Pending application is also disposed of.

Judge

Judge

*Asif*

