

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Before:

Justice Nadeem Akhtar
Justice Khadim Hussain Tunio

**C.P. No. D-1467 of 2021
Misc. Application No. 7473 of 2022**

Petitioner: Perma Nand through Mr. Shahnawaz Brohi,
Advocate.

Respondents: Province of Sindh and others through Mr.
Rafique Ahmed Dahri, Assistant Advocate
General, Sindh.

Date of hearing: 15.02.2023

Date of decision: 15.02.2023

ORDER

KHADIM HUSSAIN TUNIO, J- The petitioner, who is a government contractor, had sought to avail a tender through respondent No. 5, Tender Clerk Highways Division Matiari, but on the day of the opening when tender was to be submitted, respondent No. 5 was not present in his office and being aggrieved, the petitioner made a representation before the respondent No. 2 Managing Director, SPPR Authority at Karachi. The petitioner has now filed the instant petition seeking the following reliefs:

- (a) To declare the act of Respondent No. 2 to 5 as illegal, unlawful and against SPPRA Rules.
- (b) To direct the respondent No. 2 to cancel the subject NIT as it has clearly become a case of mis-procurement in the light of Rules No. 31 and 32 of SPPRA Rules 2010 r/w S. 2 of the SPPRA Act 2010 and to direct the respondent No. 1 to take disciplinary action against respondent No. 4 and 5.
- (c) To direct the respondent No. 3 to decide the complaint of the petitioner and furnish the decision before this Court within the subject time as mentioned in the Rules and Regulations.
- (d) To restrain the respondent No.4 from awarding the work order from subject NIT till final disposal

of this petition.

- (e) Any other relief that this Court may deem fit, just and proper.

2. Learned counsel for the petitioner has primarily contended that the petitioner is a reputable Government contractor and possesses a valid license issued by Pakistan Engineering Council (PEC); that the petitioner had submitted all the documents for Work No. 3 of the SPPRA notice, but when he approached the office of respondent No. 4 and 5, he found that no procurement committee was present at the opening day and upon inquiry from the respondent No. 5, he revealed that they were under influence and the work had already been assigned to contractors of their own choice to the highest bidder, which violates the SPPRA Rules 2010; that the petitioner was disallowed to participate in the bidding despite being a licensed contractor registered with the PEC.

3. Learned Assistant Advocate General has contended that the grievance of the petitioner has already been addressed by the review committee vide order of the review committee dated 23.12.2021, as such the petition has become infructuous.

4. We have heard the learned counsel for the respective parties and perused the record available before us.

5. It is a matter of record that the Review Committee of the Sindh Public Procurement Regulatory Authority sat down on 23.12.2021 and decided that the Procuring Agency had failed to open the bid of the bidder/petitioner which was received at the office and had violated SPP Rule 41 and 4 and that the bids had not been opened publically and even signed the contract knowing that the appeals of the bidder/petitioner were pending, therefore it was decided by the Review Committee that:-

“1. Declares the procurement of all works of the NIT as mis-procurement.

2. Decides to refer the matter to the Competent Authority i.e. Secretary (Works & Services Department) Karachi for initiation of disciplinary action against the officials of the procuring agency responsible for mis-procurement.

3. The Department shall recover any loss or damage incurred by it on account of its corrupt business practices and pay compensation to Government of Sindh (GoS) in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by Contractor as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form, from (GoS) due to mis-procurement under integrity pact.”

6. As far as the contempt application filed by the petitioner against the respondents is concerned, this Court vide order dated 06.10.2021 had observed that:-

“But observing that procurements are still being made, let learned AAG to explain to this Court as to how procurements without acquiring exemption of SPPRA rules can be made as admittedly convening of required committee in the matter is not available. Let this element be clarified and as such for the petitioner in this matter any procurement acquired shall be subject to final decision of this Court in the matter.”

It is observed that the above order had in no way restrained the petitioner from doing anything, rather only an explanation was called from the learned AAG. The procurements concerned have already been nullified and declared mis-procurement by the Review Committee of the SPPRA.

7. For what has been discussed above, captioned petition and miscellaneous application for contempt have become infructuous and same are disposed of accordingly with no order as to costs.

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