

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:

MR. JUSTICE MUHAMMAD KARIM KHAN AGHA
MR. JUSTICE NISAR AHMED BHANBHRO

C.P. No. D-4926 of 2024

(M/S Saif Enterprises v/s Province of Sindh and others)

&

C.P. No. D-5540 of 2024

(M/S Saif Enterprises v/s Province of Sindh and others)

Petitioner : Through Mr. Mujtaba Sohail Raja, Advocate for
Petitioners in both Petitions

Respondents : Through Mr. Ali Safdar Debar, AAG. along with
Mr Qamar Zaman Shah Assistant Director Legal
SPPRA

Date of hearing : 05.03.2025

Date of Announcement: 13 .03.2025

ORDER

Nisar Ahmed Bhanbhro, J. This common order will decide the fate of captioned petitions as both involve a common question of challenge to Notice Inviting Tenders issued by Auqaf, Religious Affairs, Zakat & Usher Department (**Procuring Agency**) Government of Sindh. The Petitioner through the instant Petitions seeks reversal of procurement process initiated by **Procuring Agency** through Notice Inviting Tenders dated 16.08.2024 by publication in various newspapers for procurement of Goods/ Services and Arrangements (Event Management) for promotion of Religious Activities.

CPD 4926 of year 2024

2. The Facts in brief as contained in memo of Petition in **CPD 4926 of 2024** are that Petitioner is a renowned Government Contractor having successfully completed a number of projects across Province of Sindh. In response to Notice dated 16.08.2024 inviting tenders for procurement of Goods, Services, Arrangements and Event Management, Petitioner submitted sealed bids to **Procuring Agency** containing single envelope two stages. The **Procuring Agency** opened bids on 18.09.2024 in presence of Contractors for Technical Evaluation and Financial Evaluation, wherein Petitioner and three other Companies were found eligible. The Bid Evaluation Reports were placed on official websites of **Procuring Agency** and Sindh Public Procurement Regulatory Authority (**SPPRA**) on 20.09.2024 awarding contracts to Petitioner and three other Competitor Companies. The Petitioner alleged certain anomalies in the procurement process, demanded papers of Technical Evaluation Reports of other companies, which were refused by **Procuring Agency**, giving a cause to Petitioner to prefer a complaint under Rule 31 of SPPRA Rules 2010 before Complaint Redressal Committee (CRC) of **SPPRA**. The meeting of CRC was convened on 23.09.2024 to decide the fate of the complaint. Complainant was heard by CRC, his complaint was rejected being meritless vide order dated 23.09.2024. The Petitioner preferred appeal before Review Committee of **SPPRA** on 26.09.2024, during pendency of appeal Petitioner filed CPD 4926 of 2024 seeking indulgence of this Court to declare the actions of Respondents with regard to Notice Inviting Tender dated 16.08.2024 and decision of Complaint Redressal Committee dated 23.09.2024 as illegal, arbitrary and not sustainable thus liable to be set aside with directions to conduct entire process afresh.

3. The Respondent No 1 (**Procuring Agency**) filed comments in CPD 4926 of 2024, denied allegations of Petitioner regarding illegalities in procurement

process, asserting that the procurement process was conducted in accordance with SPPRA Rules in a fair and transparent manner, wherein Ninety per cent of the award was made in favour of Petitioner while remaining Ten per cent to other Competitor companies. That the **Procuring Agency** has not committed any illegality, favortism, nepotism in awarding contracts. That the Petitioner intends to seek 100 per cent award by applying blackmailing tactics. The Petition is premature and not maintainable as Petitioner had filed appeal before Review Committee constituted under Rule 32 of **SPPRA** Rules 2010 and the same is yet to be decided. The Petition be dismissed as works are put into halt due to pendency of petitions. The Respondent No 2 has also taken a similar stance, that no any irregularity has surfaced in the procurement process, petition being meritless is liable to be dismissed.

4. At the very outset Mr. Mujataba Sohail Raja Learned Counsel for the Petitioner was put on notice to satisfy this Court as to the maintainability of CPD 4926 of 2024 as at the time of filing of petition his appeal under Rule 32 of SPPRA Rules 2010 was pending before Review Committee and on account of the subsequent events as his appeal was decided by the Review Committee vide orders dated 23.10.2024. Learned Counsel contended that he brought constitution petition against the Order dated 23.09.2024 passed by Complaint Redressal Committee, since matter involved the utilization of Public Funds, misuse of authority by the Procurement Committee and actions in excess of powers therefore this Court can make judicial review of the procurement process at any stage.

5. Mr Ali Safdar Depar, Learned Assistant Advocate General, contended that the Petition was not maintainable, as the Petitioner challenged an order dated 23.09.2024 of CRC which was already sub judice before a Competent Forum created under the statute to adjudicate the tender related matters. He argued that

during the pendency of this Petition, Review Committee decided the appeal, for which he brought a fresh petition on the same facts and grounds. The Petitioner is not entitled to any relief, petition warrants dismissal with special costs.

6. We are not convinced with the arguments of Learned Counsel for the Petitioner that this Court can make judicial review of the proceedings conducted by Respondents at any stage, for the reason that SPPRA Act 2009 and Rules of 2010 prescribe a fora for adjudication of procurement related issues. Rule 31 and 32 of the SPPRA Rules 2010 lay down a mechanism for filing of Complaint before Complaint Redressal Committee and an appeal before Review Committee for resolution of disputes in tender related matters. The Petitioner before filing CPD 4926 /2024 filed a complaint dated 18.09.2024 before Complaint Redressal Committee alleging that the conduct of nominee of Chairman of Procurement Committee viz. Mr Mohammed Kashif Siddiqi was in violation of Rule 41 of SPPRA Rules 2010 as he did not render a satisfactory reply with regard to the tender documents of qualified and disqualified companies, his act was against transparency and fairness in the tendering which prejudiced Petitioner, thus entire tendering process be set at naught. Complaint Redressal Committee in its meeting dated 23.09.2024 (available at page No 257 of memo of the Petition) decided the complaint of Petitioner, giving a clear decision against each grievance agitated by him, for the ease of reference relevant Para 6 of the decision is reproduced hereunder:

“After detailed discussion and deliberation on the complaints, the Complaint Redressal Committee (CRC) has taken the following decision.

- i. The CRC ask the Secretary P.C to show the work order on which M/S Saif Enterprises made objection, which was again checked by CRC and found correct. Therefore the objection raised by M/S Saif*

Enterprises for cancellation of BER is not considerable hence rejected.

- ii. *The CRC reject the complaint made by M/S FB & Sons on plea that the decision of the Procurement Committee against the disqualification is correct. AS in the SECP Certificate produced by the bidder it was clearly mentioned that they can use the name of previous firm ie M/S SWSKB & CO only for the period of 90 days from the issuance of that Certificate which is 06.10.2023.”*

7. The Petitioner filed appeal under Rule 32 of the SPPRA Rules 2010 on 26.09.2024 before Review Committee (available at page No 263 of the Memo of Petition) and instead of waiting for the result of appeal he adopted parallel proceedings by filing petition before this Court on 04.10.2024, which practice on the part of Petitioner cannot be appreciated at all. Petitioner by virtue of filing petition attempted to circumvent the proceedings pending before Statutory Authority. The equitable writ jurisdiction is available when remedy provided under statutory provisions is exhausted and no other forum exists to challenge orders passed by the Statutory Authority. Parallel Challenge to an order by way of appeal before a statutory forum under the relevant provisions of law and filing of Constitution Petition under article 199 of the Constitution against the same cause are strictly impermissible. This practice of filing parallel proceedings has been depreciated by Honorable Apex Court long ago in the case of **Messers Steel Brothers and Company Limited Versus Central Board of Revenue Islamabad** reported in **1968 SCMR 174**, dealing with the issue of Parallel Proceedings Honorable Court observed as under:

“We are not convinced that the matter in dispute here will not be adequately determined in the reference pending in the High Court. The Principle of Law, once settled would apply to all the assessment years

and it is conceded by Mr Mohammed Fazul Rehman that in respect of the years mentioned in the reference the same question of law is being agitated as would apply to other years. The Income Tax Appellate Tribunal has apparently given a decision in favor of the Petitioner in respect of the apportionment of the Managing Agency income, according to the Petitioner and other points. The decision is being challenged in the reference on behalf of the Department in the High Court. On some other points going against the Petitioner in proceeding before Tribunal, the Petitioner has been successful in obtaining a reference to the High Court. It would be circumventing the provisions of the Income Tax Act if parallel proceedings are started, under article 98 of the Constitution to deal with the same question. We see no ground for grant of Special Leave to appeal in the Circumstances of this case and dismiss the Petition.

8. In our view, Petitioner filed instant petition to circumvent the due process of law. This is a grave example of abuse of process of law. Since Petitioner brought a frivolous litigation which stands proved by his subsequent actions of bringing a fresh petition against the same issue, meaning thereby that instant petition was pre mature and unnecessarily filed. The Petitioner wasted courts time and taxpayers' money. Time wasted on deliberations over this petition could have been saved and utilized on some genuine litigation. It is high time to deal such litigations with iron hands. We therefore find it appropriate to dismiss CPD 4926 of 2024 by imposing a Cost of Rs 25,000 to be deposited in the Hospital Account of this Court within a period of 30 days of date of this order, if Petitioner fails to deposit the fine his CNIC shall be blocked.

D 5540 of 2024

9. The facts contained in Constitution Petition No D 5540 of 2024 are that the Petitioner being dissatisfied with the Order dated 23.09.2024 filed an appeal under Rule 32 of the SPPRA Rules 2010 before the Review Committee seeking the reversal of procurement process of tender involved in CPD 4926 of 2024. The Appeal of the Petitioner was dismissed vide Order dated 23.10.2024 (**the Impugned Order**) giving Petitioner a fresh cause to file instant Constitution Petition before this Court to seek declaration to set aside **the Impugned Order** and declare the process of procurement as null and void, calling for a fresh tender. Both the Petitions were clubbed together to avoid multiplicity of proceedings and conflicting decisions as issued involved was basically the same.

10. The Respondent No 1 (**Procuring Agency**) and Respondent No 2 (**SPPRA**) filed Separate replies. The Respondent No 2 vehemently objected the averments of Petitioner, asserting that Petitioner was provided sufficient opportunity to provide proof in support of grievances agitated before Review Committee but he failed to substantiate the allegations of anomalies in the procurement process, therefore, his appeal was dismissed. Respondent No 1 in its reply has reiterated the same stance taken in CPD 4926 of 2024. They have prayed for dismissal of Petition.

11. CPD 5540 of 2024 challenges the decision rendered by the Review Committee dismissing the appeal of Petitioner vide orders dated 23.10.2024. It is contended by Learned Counsel for the Petitioner that the **Procuring Agency** committed gross violations, illegalities and irregularities in the bidding process. He submitted that in all Five Companies participated in the bidding process by submitting Single Envelope Two Stage Proposals. He asserted that excepting

Petitioner rest of the companies did not qualify to compete in the bidding process. The Procurement Committee with mala fide intentions and ulterior motives accepted the Technical Proposals of M/S Xpert, M/S Global Universe Trader and M/S Choice Enterprises. Per Petitioner those companies were disqualified as they did not full fill the required conditions. The fundamental rights of Petitioner as to trade and business were violated by not providing him details of Technical Proposal of rival competitors. That complaint before Complaint Redressal Committee was not properly heard and decided. The appeal was heard by a biased and highly prejudiced Review Committee as Mr Faizan Mir one of the Members of Review Committee was associated with M/S Xpert as such became the judge of his own cause. The nominee of Accountant General did not attend meeting of the Review Committee rendering the decision in appeal as void. The Review Committee failed to attend to his grievances properly, therefore, impugned order dated 23.10.2024 is liable to be set aside and entire procurement process is nullity. He prayed for allowing the Petition with costs.

He placed reliance upon the case of **OTSUKA PAKISTAN LIMITED versus Province of Sindh and others** reported in **2020 MLD 185** and unreported judgment of Learned Division Bench of this Court in the case of **Cosmos Enterprises and others Versus Province of Sindh and others**.

12. Conversely Mr Ali Safdar Debar Learned Additional Advocate General vehemently opposed this Petition. He contended that Petitioner failed to point out any illegality or violation of laws in procurement process warranting declaration of mis procurement. He contended that the Complaint Redressal Committee and the Review Committee are the appropriate forums to embark upon and adjudicate the technical issues involved in the tendering process. He contended that objection of Petitioner upon nomination of Mr Faizan Mir as one of the Members of Review Committee is without substance as he was nominated by M/S High Rise

Enterprises on the request of Authority and he has no nexus with M/S Xpert. He asserted that Procurement Committee awarded Ninety percent of the Contracts to Petitioner and Ten Per cent to remaining three companies, as bids offered by the Petitioner were favorable to the **Procuring Agency** being lowest. He contended that Petitioner has failed to point out any irregularity in the procurement process but he intends to deprive other companies from earning livelihood, for throttling the due process of law he has filed this frivolous petition. He prayed for dismissal of Petition by imposing heavy Costs.

13. We have heard Learned Counsel for Petitioner, Learned Assistant Advocate General Sindh and perused material on record.

14. We have examined the material on record, it transpires that the Procuring Agency has awarded Ninety per cent of the Contracts to Petitioner, reason behind the same being that the bids offered by all the companies were compared and bids of the Petitioner for most of the items were found lowest, thus, being favourable to the **Procuring Agency** were accepted. This aspect is highlighted in the Bid Evaluation Report submitted by the Petitioner along with memo of Petition. The Petitioner groping in the dark has made attempts in vain to oust the other Companies each of whom share almost three per cent of the award in the Contract. Learned Counsel for the Petitioner failed to point out any irregularity that warranted cancellation of the minimal Ten per cent Award in favor of other three companies. More importantly Petitioner did not challenge the award before any forum but he sought the technical knockout of the other companies so that the remaining award could be offered to Petitioner for execution, such an intention on the part of Petitioner cannot be left unnoticed as he wanted to usurp the rights of other companies without arraying them as party in any of the proceedings including this Petition and any order passed by this Court or forums below would

be violative of article 10 – A of the Constitution and principles of natural justice under the doctrine of **audi alterm partem**. In the instant case, Petitioner asserts that procurement process is marred by violations of mandatory provisions of SPPRA Act 2009 and Rule of 2010 therein. His contention that **Procuring Agency** has accepted the technical proposal of three other companies in violation of laws, does not find support from record, on a query by this Court, he failed to point out any deficiency in the Technical Proposal of said companies and relevant provisions of law and rules which according to him were violated during procurement process. The Contention of Learned Counsel for Petitioner that his request for supply of requisite information about Competitor Companies and supply of Technical Proposals was turned down in violation of Rule 45 of SPPRA Rules 2010, rendering process as nullity because his fundamental rights of access to information were violated. In our view non supply of documents relating to Technical Proposals would not render the procurement process nullity which otherwise are carried in accordance with law. The Petitioner has not placed on record any application submitted by him to **Procuring Agency** for supply of documents relating to Technical Evaluation of other companies, thus his objection seems to be an after thought effort to pressurize **Procuring Agency** for obtaining desired results. Needless to mention that access to information is a guaranteed fundamental right of individuals, subject to law a citizen cannot be denied access to public documents.

15. The contention of the Petitioner that grievances agitated by him before CRC and Review Committee were not properly addressed loses force. For the reasons that perusal of Memo of Complaint and Appeal preferred by the Petitioner are carefully examined by us and we find that they do not contain any allegation of substantial nature calling for interference. The allegations contained in complaint and appeal are vague, bald in nature and without any substantial material thus

rightly discarded by the CRC and the Review Committee. The Petitioner was granted ample opportunity to prove allegations of malpractices, corruption and favoritism in the procurement process but he failed to do so. The contention of Learned Counsel for the Petitioner that one of the Members of Review Committee Mr Faizan Mir was associated with rival Competitor M/S Xpert does not find support from record. The Respondent No 2 in its reply has submitted a document wherein the Sindh Public Procurement Authority has sought nomination of Mr Faizan Mir through M/S High Rise Enterprises. Counsel for the Petitioner was confronted with the profile of M/S Xpert submitted by the Respondent No 1 along with memo of Reply wherein the said company has been shown under the sole proprietorship of one Farhanullah, Khan it establishes that Mr Faizan Mir was not part and parcel of M/S Xpert rendering the allegations of bias and favoritism baseless. The Contention of Learned Counsel for that Petitioner that nominee of Accountant General Sindh did not attend the meeting of the Review Committee, thus the impugned Order did not sustain and was liable to be set aside has no force as sub Rule 3A of Rule 32 of SPPRA 2010 fixed quorum of 50 per cent of its Total Members to decide any appeal, therefore, absence of one of the members of the Review Committee will not affect the fate of decision which otherwise is found within the bounds of law. We find no justification to interfere with well-reasoned orders passed by fora below, and are not convinced by the assertions of Petitioner to disturb the procurement process.

16. Transparent, fair and impartial Procurement Process is vital aspect in the Development Sector, as it brings value for money to Procuring Agency. If Procurement Process lacks any of the factors mentioned herein above, there should be no hesitation to declare the procurement process as mis procurement by directing the Procuring Agency to revise the entire process and invite tenders a fresh. The legislature in order to place check on performance of Procuring Agency

enacted Sindh Public Procurement Act 2009 and framed rules of 2010 thereunder. Under the provisions of the said Act forums have been provided to address the issues relating to the procurement process which being a technical work can best be dealt with by the said forum having services of experts of related fields.

17. Given the Crucial task of overseeing development works, maintaining self-accountability, discipline, integrity and effective check on executing agencies are essential. Courts of law play a balancing and critical role in ensuring that the discretionary powers exercised by the authority are balanced and commensurate with the objectives sought to be achieved. Judicial review places a check against the exercise of powers in arbitrariness and beyond the bounds of law. In the present case we find that the forums below have acted within the para metres prescribed by the law, no actions in excess of authority or arbitrariness are unearthed or even pin pointed by the Petitioner in the procurement process, thus we find no justification to bulldoze the same.

18. With utmost respect and reverence Judgments relied upon by Learned Counsel for Petitioner are distinguishable from the facts and circumstances of the case in hand.

19. For what has been discussed hereinabove, we do not find any merits in the instant petition warranting interreference by this Court. Consequently, the Constitution Petition No D 5540 of 2024 is dismissed too with pending applications if any.

Judge

Head of Const. Benches