

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constitution Petition No.D-577 of 2025

Before:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

Petitioner: Zaheer Abbass Shahani

Through Mr. Ghayoor Abbas M. Shahani, Advocate.

Respondent: Province of Sindh and others

Through Mr. Liaqat Ali Shar,

Additional Advocate General, Sindh

Date of hearing: 24-09-2025

Date of Decision: 24-09-2025

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ORDER

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NISAR AHMED BHANBHRO J.- Through the instant constitution petition, the petitioner has claimed following relief:

- a. *That this Hon'ble Court may graciously be pleased to accept this constitution petition for notices and further be pleased to issue direction to respondents to conduct bidding process, vide tender dated 16.05.2025 before committee members and open bids fairly & transparent in accordance with SPPRA Rules 2010.*
- b. *That this Hon'ble Court may be pleased to direct the respondents not to hoist bidding process in violation of SPPRA Rule 45 (2010).*
- c. *That this Hon'ble Court may be pleased to direct the respondents not to award/allocate work order in absence of bidding process and violation of bidding process under SPPRA Rules.*
- d. *That this Hon'ble Court may be pleased to declare the act of respondents in violation of SPPRA Rules 2010, as bidding process was not fair and transparent and not opened before contractors and members of committee, if hoisted on website secretly that may be declared in violation of Rule 45 of SPPRA Rules 2010.*
- e. *That this Hon'ble Court may be pleased to appoint commissioner of this Hon'ble Court to visit place of bidding vide order dated 16.05.2025, &*

further respondents may be directed to submit detail report regarding bids who participated on 16.05.2025 with the below rates of contract.

2. Mr. Ghayoor Abass Shahani, learned counsel for the petitioner contended that petitioner was an approved Government Contractor. He argued that pursuant to Notice Inviting Tenders (NIT) published in newspapers dated 21.04.2005, issued by the Executive Engineer Provincial Highways Division Larkano (Procuring Agency) inviting sealed tenders from qualified contractors, he applied for issuance of tender documents. He contended that petitioner submitted bids on prescribed tender form for award of contract against 04 works mentioned at serial No.3, 5, 15 and 16 of NIT. He next argued that on 16-05-2025, Petitioner appeared before Procurement Committee, signed attendance sheet, however, the bids were not opened in his presence, which was violation of the rules. He argued that the respondents demanded 22% from petitioner as bribe for award of contract. He argued that through letter dated 10.05.2025 petitioner had already intimated Superintendent Engineer Highways Larkano who is the Chairman of Complaint Redressal Committee (CRC) regarding the foul plays in the award of contracts but no heed was paid. He argued that procurement process was done in gross violation of law and procurement rules thus was not sustainable. He contended that the petitioner was lowest bidder thus was entitled for the award of contract, but he was ignored and contracts were awarded to contractors offering higher bids. He contended that procurement process was done in violation of rules thus be declared as mis-procurement with directions to initiate the process afresh. He placed reliance upon judgment of Honorable Apex Court in the SUO MOTU Case No.13/2009 (**PLD 2011 Supreme Court 619**), Asaf Fasihuddin Khan Vardag V. Government of Pakistan and others (**2014 SCMR 676**), Messrs Pakistan Gas Port Ltd. V. Messrs Sui Southern Gas Co. Ltd. and 02 others (**PLD 2016 Sindh 207**), Muhammad Ayub and brothers through partner V. Capital Development Authority Islamabad and 5 others (**PLD 2011 Lahore 16**), Messrs Popular International (PVT.) Ltd. through authorized officer and another V. Province of Sindh through Secretary, Ministry of Health, Government of Sindh, Karachi and 4 others (**PLD 2016 Sindh 19**), Messrs Toyota Garden Motors (Pvt.) Ltd. through Chief Executive Officer, Lahore V. Government of Punjab through Home Secretary, Punjab, Lahore and 2 others (**PLD 2012 Lahore 503**), Attaullah Khan Malik V. Federation of Government of Pakistan through President of Pakistan and 3 others (**2010 PLD Lahore 605**), Habibullah Energy Limited through General Manager V. Water and Power Development Authority through Chairman

WAPDA, Lahore and 5 others (2008 YLR 2612). He prayed for allowing of this petition.

3. Conversely, Mr. Liaqat Ali Shar, learned Additional Advocate General, contended that the petition was not maintainable as the petitioner has directly approached this court without availing the remedy of filing complaint before the Complaint Redressal Committee (CRC) and Appeal before the Review Committee (RC) as provided under Rule 31 and 32 of SPPRA Rules 2010. He contended that the procurement was single package two envelope process containing technical and financial proposal. He contended that the technical proposals were evaluated on 16-05-2025, wherein petitioner's firm was found disqualified to participate in the bidding process, such information was conveyed to Petitioner through letter dated 23-05-2025. He contended that under the 2nd stage of financial proposals the committee scrutinized the financial bids submitted by the qualified firms and the company / firm offering lowest financial bid against each work was awarded contract. He contended that the petition was not maintainable as petitioner has not arrayed as a party to successful bidders. He argued that the procurement process to the extent of award of contract was finalized on 03.06.2025, thus petition was misconceived. He prayed that the petition be dismissed with heavy costs.

4. Heard arguments. Perused material made available before us by the parties on record.

5. Meticulous perusal of record revealed that petitioner submitted two envelopes bid in prescribed tender form containing "Technical Proposal" and "Financial Proposal". The envelope containing "Technical Proposal" was opened on 16.05.2025. In the intervening period from obtaining tender form to opening of technical bid, Petitioner moved an application dated 10.05.2025, 15.05.2025 and 09.06.2025 available at page No.235, 243 and 245 of memo of petition to Superintendent Engineer Highways Larkanao, airing concerns regarding the mala fide intentions, favoritism and deviation from SPPRA Rules 2010 by procurement agency, requested for fair and transparent procurement process and complained that bid evaluation report was not made available at website, the procurement process was illegal thus liable to be scrapped.

6. It is pertinent to notice that petitioner participated in the technical bid evaluation process held on 16.05.2025. Procurement Agency found Petitioner

disqualified at technical stage. Such information was conveyed to Petitioner firm vide letter dated 23-05-2025 citing reasons of technical disqualification under Rule 30 of SPPRA Rules 2010. Petitioner did not challenge disqualification order before appropriate forum provided under Rule 30, which reads as under:

30. Disqualification of Suppliers, Contractors and Consultants

- (1) The procuring agency shall disqualify a supplier, consultant or contractor, whether already pre-qualified or not, if it finds at any time, that the information submitted by him concerning his qualification and professional, technical, financial, legal or managerial competence as supplier, consultant or contractor, was false and materially inaccurate or incomplete; or*
- (2) At any stage has indulged in corrupt and fraudulent practices, as defined in these rules;*
- (3) A supplier, contractor or consultant being aggrieved by the decision of the procuring agency regarding disqualification may seek relief through the mechanism of grievance redressal, as provided under Rule 31.*

7. The legislature in order to place check on performance of Procuring Agency enacted Sindh Public Procurement Act 2009 (**SPPA**) and framed Sindh Public Procurement Rules 2010 (**SPPR**). Under the provisions of SPPA and SPPR the forums have been provided to address the grievances relating to the procurement process. Since procurement was purely a technical work, the Complaint Redressal Committee (CRC) and Review Committee (RC) are established with services of experts from relevant fields. The SPPR lay down a complete scheme for public procurement. Rules envisage that while procuring goods, works or services, procuring agencies shall ensure that procurement process is done in a fair and transparent manner, the procurement brings value for money to the agency and the procurement process is efficient and economical. SPPR envisaged the method and manner of the procurement, in case of violation of settled parameters, the procurement can be declared null and void followed by disciplinary and criminal action against delinquent officers.

8. Under Rule 31 of SPPR Complaint Redressal Committee (CRC) has been constituted to look into the anomalies and complaints of malpractices during procurement process, which comprises of odd number of persons, with

appropriate powers and authorizations, to address the complaints of bidders that may occur during the procurement proceedings. CRC is headed by head of the procuring agency or an official of the procuring agency, at least one rank senior to the head of the procurement committee and shall include District Accounts Officer, or a representative of the Accountant General, Sindh; an independent professional from the relevant field concerning the procurement process in question, to be nominated by the head of procuring agency. Any bidder being aggrieved by any act or decision of the procuring agency after the issuance of notice inviting tender may lodge a written complaint to CRC and if the CRC was satisfied it may prohibit the procurement committee from acting or deciding in a manner, inconsistent with SPPR. CRC may annul in whole or in part, any unauthorized act or decision of the procurement committee; and may recommend to the Head of Department that the case be declared a mis procurement if material violation of Act, Rules, Regulations, orders, or any other law relating to public procurement, was established. CRC was required to announce its decision within seven days. If the CRC fails to arrive at the decision within seven days, the complaint shall stand transferred to the Review Committee which shall dispose of the complaint in accordance with the procedure laid down in rule 32. The Procuring Agency is bound to award the contract after the decision of CRC.

9. Under Rule 31 of SPPR CRC is conferred unfettered powers to decide the fate of procurement which included the declaration of mis procurement. Filing of Complaint with CRC halts the further proceedings for seven days until its decision on complaint. A bidder if not satisfied with decision of the procuring agency's complaints' redressal committee has two options to avail, first to lodge an appeal to the Chief Secretary through the Authority, who shall refer the matter to a review panel as per Rule 32 or second to file an appeal before RC under Rule 32. The RC shall comprise of the Managing Director; Director General Audit Sindh or his nominee not below the rank of BS-19; two private members represented on the SPPRA Board, an independent professional having expertise of relevant field concerning the procurement. RC was empowered to point out the infirmities and breach of rules and regulations by the procuring agency; annul in whole or in part of a non-compliant act or decision of a procuring agency, other than any act or decision bringing the procurement contract into force. If it is found that the procuring agency is in breach of its obligations under the Act, Rules or Regulations, RC can order the payment of compensation by the officer(s) responsible for mis-procurement for cost incurred by the bidder on preparation of

bid; or direct that the procurement proceedings may be terminated, in case the procurement contract has not been signed, and declare the case to be one of mis-procurement if material violation of Act, Rules, Regulations, orders, instructions or any other law relating to public procurement, has been established. The RC is mandated to hear the parties and bound to announce its decision within ten working days of submission of appeal and its decision shall be final and binding upon the procuring agency. After the decision has been announced, the appeal and the decision thereof shall be hoisted by the Authority on its website.

10. Perusal of the above provisions, revealed that the CRC, Review Panel (RP) and RC were conferred unabridged powers to decide the complaints regarding the procurement and point out the infirmities and breach of rules and regulations by the procuring agencies; suggest annulment in whole or in part of a non-compliant act or decision of a procuring agency. CRC, RP and RC were provided a cumulative period of seventeen days to decide the fate of complaint or appeal as the case may be. If as a result of the recommendation of the above forums, the authority declares the case to be of mis procurement, on account of any material violation of provisions of the Act, Rules, Regulations, orders, instructions or any other law relating to public procurement, in addition to declare the mis procurement, the Authority or the Review Committee shall refer the case to the Competent Authority for initiation of disciplinary proceedings against the officials of the procuring agency responsible for mis procurement and may also refer the matter to the Sindh Enquiries and Anti-Corruption Establishment for initiating action against such officials as envisaged under Rule 32 - A of the SPPR.

11. The underlying scope of the legislation on the procurement related issues is to ensure transparent, fair and impartial Procurement Process. Transparency in the 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. Given the Crucial task of overseeing development works, maintaining self-accountability, discipline, integrity and effective check on executing agencies are essential for Sindh Public Procurement Regulatory Authority.

12. During scrutiny of bids, Petitioner firm was found disqualified at Technical Proposal Stage on 16.05.2025. Petitioner did not challenge the Technical Evaluation Report before CRC under Rule 31. Admittedly the petitioner had got an adequate and appropriate forum in the shape of CRC and RC which he failed to avail. The statutory forums constituted under the procurement Act and Rules are best suited to look into the matters related to the procurement. The procurement process involves the technical issues thus statute has recognized and provided adequate forums in the shape of CRC, RP and RC. The record reflected that Petitioner firm was found disqualified during scrutiny of technical proposal on 16.05.2025, despite of information he did not challenge such disqualification before CRC, thus it attained finality. The challenge to decision of procurement committee could have halted the further procurement process but he chose to remain mum. Per schedule the financial bids in the 2nd envelope were opened on 29-05-2025, the lowest bidders were recommended for award of contracts. On 02-06-2025 bid evaluation reports were placed on SPPRA website, as required under Rule 45 of the SPPR. The claim of the Petitioner that he was lowest bidder in terms of the bid offered by him and entitled for award of contract was not tenable as Financial Bid was connected with the qualification in Technical Bid. Once Petitioner failed to qualify in Technical Bid, he was debarred to enter into second stage of financial bid process. Even if the stance of the Petitioner for his lowest bid is taken as gospel truth and is believed to be true, the Petitioner was not entitled for award of contract for want of technical deficiency.

13. More importantly Petitioner did not challenge the award before relevant forum but he attempted to seek technical knockout of the successful bidders awarded contracts on 02.06.2025. Petitioner despite of knowledge of award of contracts to other firms, filed instant petition without arraying them as party in the present proceedings. In absence of the parties in whose favor a right had accrued, any order passed by this Court would be violative of article 10 – A of the Constitution so also would militate the principles of natural justice under the doctrine of audi alteram partem. It is the fallacy of thought by the Petitioner that this Court was sitting as a forum of appeal and was obliged to entertain a writ on the threshold of alleged malpractices or anomalies or alleged violation of any rules. The writ jurisdiction of this Court was available under the doctrine of exception that the remedy provided under the statute was not adequate to address the grievance of party or the violations on the part of executive authority were of so grave in nature that offended the fundamental rights of an individual

warranting interference by this Court. In presence of an appropriate forum propriety demanded that the remedy before said forum must be exhausted before approaching this Court.

14. Strength in this regard is sought from the dicta laid down by Honorable Supreme Court in the case of Muhammad Safeer and others Versus Muhammad Azam and others reported as P L D 2024 Supreme Court 838, wherein it is held that:

4. We have noted that the High Court, without adverting to the grounds expressly taken by the petitioners in their petition, concluded that the remedy by way of review provided under section 8 of the Act of 1957 was adequate and efficacious for the purposes of entertaining the petition under Article 199 of the Constitution. It is settled law that the rule that the High Court will not ordinarily entertain a petition under Article 199 when an adequate remedy is available and such remedy only regulates the exercise of constitutional jurisdiction and does not affect its existence. When the law provides an adequate remedy, constitutional jurisdiction under Article 199 will ordinarily only be exercised in exceptional circumstances. The exceptional circumstances which may justify exercising jurisdiction when an adequate remedy is available or when the order or action assailed before the High Court is palpably without jurisdiction, manifestly mala fide, void or coram non judice. The tendency to bypass a statutory remedy is ordinarily discouraged so that the legislative intent is not defeated. The High Court, while exercising its discretion, must take into consideration the facts and circumstances in each case in order to determine whether the remedy provided under the statute is illusory or not. These principles have been consistently highlighted by this Court.

15. When confronted as to the availability of the adequate forum to agitate the grievance, Learned counsel for the petitioner attempted to twist the matter and stressed that the petition may be treated as 'public interest litigation' as issue of public exchequer was involved and procuring agency was doing corruption in the name of development. It is noticed that on realizing that petitioner was unlikely to succeed in view of his disqualification to participate in the process to second stage of Financial Bid, Petitioner brought lis before this Court. In the pleadings surprisingly he has not challenged the disqualification of firm at technical stage and tried to persuade the court to examine the matter as one of public importance and to undo the procurement process, as whatever he asserted was a gospel truth. It was urged that the entire process be repeated afresh. When questioned, how a petition filed by a contractor pursuing his personal interests can be treated as Public Interest Litigation, Learned Counsel failed to respond. This aspect of the

personal fiduciary interest of the petitioner brought instant lis outside the scope and parameters of public interest litigation. It is settled principle by now that the constitutional jurisdiction of this Court is exercised sparingly and with care and caution so as to safeguard and promote public interest and not to entertain and promote speculative, hypothetical or malicious attacks that block or suspend the performance of functions of executive authority.

16. In the case of Premier Battery Industries Private Limited Versus Karachi Water and Sewerage Board and others reported as 2018 S C M R 365 Honorable Supreme Court of Pakistan, held that:

14. We are in no manner of doubt that the petitioner has a personal interest in the present litigation. It is motivated purely by its own economic interest and thus it wants reversal of the entire process so that it or somebody it represents, can avail another opportunity of joining the process leading towards bidding of the project after having missed the deadline. The present litigation is therefore not public interest but rather personal interest litigation. We are therefore not inclined to examine the case from the stand point of public interest litigation.

15. We are also not convinced, either about the bona fides of the petitioner or its locus standi to file the constitutional petition before the High Court. Further, the learned counsel has not been able to convince us that in the facts and circumstances discussed above, the provisions of the SPP Act, 2009 or the Rules framed thereunder have been violated. We have also been assured by the learned counsel for the Respondents that the prequalification process would be transparently conducted, the RFP documents would be issued only to pre-qualified parties and the project would be awarded after a process of competitive bidding in a transparent manner and strictly in compliance with the SPP Act, 2009 and the Rules, 2010. We are therefore not persuaded to interfere in the findings recorded by the High Court in its impugned order.

17. The writ jurisdiction of this court is a forum adequate in nature which can be invoked under the extraordinary circumstances wherein the aggrieved party had no alternate forum to agitate its grievance. It was incumbent upon the petitioner to avail the remedy of complaint and appeal under Rule 31 and 32 of SPPR and then to file writ, so that this court could have been benefited with the technical expertise of the committees and could have been in a position to form an opinion that the procurement process in fact was marred by the illegalities and irregularities which resulted into mis-procurement. Courts of law play a balancing and critical role by exercising powers of judicial review to ensure that the discretionary powers exercised by the authority were commensurate with the

provisions of law. 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 parameters 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. The strength in this regard can be sought from the dicta laid down by Honorable Apex Court in the case of Syed Masood Ali Versus Mst. Feroza Begum and another reported as P L D 2025 Supreme Court 339, it was held that:

30. It is a well-settled principle of law that where an alternative and efficacious remedy is available under the ordinary legal framework, constitutional jurisdiction cannot be invoked to bypass the statutory mechanisms in place. Constitutional jurisdiction is not intended to substitute the ordinary remedies provided under the law.

31. Dissatisfaction with a judicial decision alone cannot serve as a valid basis for invoking this Court's extraordinary jurisdiction. The independence of the judiciary is a cornerstone of the legal system, ensuring that judicial officers are safeguarded by law for decisions made in the exercise of their judicial functions. Furthermore, the issue of whether a decision in the said suit may or may not have been rendered during the pendency of a similar matter before the Supreme Court is a legal question that can be adequately addressed by the appellate court. Therefore, directly raising allegations against the learned presiding Judge of the trial court is entirely unwarranted. Allowing constitutional petitions of this nature would undermine the autonomy of the judiciary and erode public confidence in the judicial process.

19. Petitioner asserts that procurement process is marred by violations of mandatory provisions of SPPRA Act 2009 and Rule of 2010 therein. Petitioner's contention that Procuring Agency has accepted the technical proposal of other companies in violation of laws, does not find support from record, on a query by this Court, Learned Counsel for the Petitioner failed to point out any deficiency in the Technical Proposal of said companies. He also failed to quote relevant provisions of law and rules which according to him were violated during procurement process. Learned Counsel for the Petitioner time and again quoted Transparency International reports, per counsel reports indicated malpractices in the procurement process, but such report were neither the part of petition nor made available afterwards for our perusal. The complaints dated 10.05.2025, 15.05.2025 and 09.06.2025 were carefully examined. The allegations contained in

the complaints were vague, bald in nature and without any substance. The Petitioner was granted ample opportunity to bring on record any material to substantiate allegations of malpractices, corruption and favortism in the procurement process but he failed. The petitioner has raised factual controversy in the instant petition which cannot be addressed by this court under writ jurisdiction.

20. Case laws relied upon by Learned Counsel for the Petitioners with utmost respect are found distinguishable from the facts and circumstances of the case in hand. In the suo-motu case No.13/2009 (**PLD 2011 SC 619**), the Hon'ble Supreme Court took suo-motu notice of the development schemes initiated by the Capital Development Authority as the same were found in violation of section 12 and 13 and the said case pertains to the development of 54 Acres of land by MPCHS Society. The issue of procurement was not involved in the said case. In the case of Asaf Wasihuddin Khan Vardag V. Government of Pakistan and others (**2014 SCMR 676**), Hon'ble Supreme Court took judicial review of the actions of the Government bodies for award of the contract to see whether there was an infirmity in the decision-making process or not. The matter pertained to the alleged corruption in the construction of Benazeer Bhutto International Airport Islamabad. In the case of Messrs Pakistan Gas Port Ltd. V. Messrs Sui Southern Gas Co. Ltd. and 02 others (**PLD 2016 Sindh 207**), wherein the controversy initiated by the appellants with regard to their disqualification by way of filing suit and in the appeal learned Division Bench of this court observed that the earlier disqualification of the petitioners would not come in their way in the fresh bidding process. In the case of Muhammad Ayoob and brothers through partner V. The Capital Development Authority Islamabad and 05 others (**PLD 2011 Lahore 16**), the matter pertains to the replacement of insurance guarantee by the call deposit. In the case of Messrs Popular International (Pvt.) Ltd. through authorized officer and another V. Province of Sindh through Secretary, Ministry of Health, Government of Sindh, Karachi and 04 others (**PLD 2016 Sindh 19**), the learned single bench of this court was seized with the procurement issues in its original jurisdiction which involved the issue of the technical qualification of the procurement agency. In the case Messrs Toyota Garden Motors (Pvt.) Ltd. through Chief Executive Officer, Lahore V. Government of Punjab through Home Secretary, Punjab, Lahore and 02 others (**PLD 2012 of 503**), wherein it was held that the judicial review of the procurement process can be taken to the extent of a decision whether the contract was awarded in accordance with the procurement

rules or not. In the case of Attaullah Khan Malik V. Federation of Government of Pakistan through President of Pakistan and 3 others **(2010 PLD Lahore 605)**, it was held that in the public interest litigation the question of locus standi would not arise and in the case of Habibullah Energy Limited through General Manager V. Water and power Development Authority through Chairman WAPDA, Lahore and 05 others **(2008 YLR 2612)**, it was held that the disputed question of fact cannot be addressed under the writ jurisdiction of this court. The review of the case laws relied upon by the learned counsel for the petitioner with utmost respect reveals that the same were not against the procurement process but against the other undisputed facts.

21. For what has been discussed hereinabove, we do not find any merits in the instant petition warranting interference by this Court under its extra ordinary writ jurisdiction conferred under article 199 of the Constitution of Islamic Republic of Pakistan of 1973. Consequently, the petition fails being not maintainable and without merits and is accordingly dismissed with no order as to the costs along with pending applications if any.

JUDGE

JUDGE

Altaf Asghar

Larkana

Approved for reporting