

**IN THE HIGH COURT OF SINDH, BENCH AT
HYDERABAD**

Present

Mr. Justice Abdul Mobeen Lakho

Mr. Justice Arbab Ali Hakro

C.P. No.D-1169 of 2025

[M/s. Shah Latif CNC Stationv.....Federation of Pakistan & others]

Dates of Hearing : 23.09.2025 and 09.10.2025

Petitioner through : M/s. Farooq H. Naek, Ayatullah Khowaja, Taimor Ali Mangrio, Syed Qaim A. Shah & Syed Raza Mamnoon, Advocates.

Respondents through : M/s. Asim Iqbal, Muhammad Iqbal Chandio, Farmanullah and Samil Malik Khan, Advocates for the Respondent No.2 (OGDCL)

M/s. Danish Nayyar, Dua Nayyar, Advocates for Respondent No.3.

M/s. Shoukat Ali Junejo and Ali Akbar Junejo, Advocates for Respondent No.4.

Mr. Ghulam Abbas Sangi, Assistant Attorney General & Mr. Agha Mir Mustafa Khan Durrani, Advocate.

ORDER

Abdul Mobeen Lakho, J., This petition has been brought to seek out declaration that Letter of Intent issued to Respondent No.3 and award of contract/agreement dated 08.08.2024 in favour of Respondent No.4 for bid of low-pressure Gas of 1.4 MMSCFD at Pasakhi Gas Field, Tando Jam, Hyderabad is illegal. The Petitioner has sought further declaration that Evaluation report dated 31.05.2024 is also illegal.

2. The facts introduced on record by the Petitioner with regard to present *lis* are that the Petitioner through a competitive process entered into an Agreement dated 11.11.2015 for buying of Flare Gas

from Respondent No.2 for a tenure of 3 years from Pasakhi Gas Field, Tando Jam Hyderabad for a quantity of 0.30 MMSCFD¹. Petitioner averred that the contract for the said tender was extended with the passage of time and lastly the same was extended through Addendum dated 11.07.2023 for a period of five years to a quantity of 1.4 MMSCFD. Per Petitioner, it invested millions of rupees at the site as well as submitted Bank Guarantee to Rs.73,950,856/- but to the utter shock and dismay, the Respondent No.2 rendered an advertisement dated 06.07.2023 calling invitation of bids for Low Pressure Gas of 1.4 MMSCFD from the same Gas field knowing that the subject tender is under contractual obligation with the Petitioner and being dissatisfied, the Petitioner preferred a Civil Suit 1025/2023 (“Suit”). It is also claimed that in sequel to the fresh Tender proceedings, the Respondent No.2 issued Evaluation Report on 31.05.2024 and Letter of Intent was signed between Respondent No.2 & 4 who never participated in the tender proceedings, hence this petition.

3. Mr. Farooq H. Naek, learned Senior Advocate entered his appearance on behalf of Petitioner vociferously argued and challenged an illegal and surreptitious acts of the Respondent No.2 arguing that the Tender was awarded pursuant to an advertisement dated 06.07.2023 to the Respondent No.4 who never participated in the Tender proceedings, therefore, the entire exercise including Evaluation Report dated 31.05.2024, Agreement between the Respondent No.2 and 4 and Letter of Intent ought not to be sustained in the eyes of Law. Further the Respondent No.4 does not comply with the criteria set forth by the Respondent No.2 and it is a fresh company with less experience. He strenuously contended that

¹ Million Metric Cubic Feet per Day. (“MMSCFD”)

through an Addendum dated 11.07.2023, the period of already awarded Tender of the project was extended for further five years, therefore, advertising the subject Tender inviting bids on the part of the Respondent No.2 is nullity in the eyes of Law as well as against the prescriptions of Article 18 of the Constitution, 1973. The main thrust of Mr. Naek is that Respondent No.2 committed various violations of Public Procurement Rules, 2004 (“Rules”) more particularly Rules, 29, 30, 35 and 48. He next contended that when Respondent No.4 to whom the contract was awarded, never participated in the tender proceedings, then it is not possible for the Respondent No.2 to evaluate tender documents² submitted by the Respondent No.4, therefore, the entire process of the subject tender is based on an illegality and against the Rules, thus, ought to be set aside. His next stance is that primarily Tender was advertised for about 1.4 MMSCFD of Flare Gas but the Respondent No.2 surreptitiously increased the quantity from 1.4 to 2.9 MMSCFD which act of the Respondent No.2 is also against the statutory prescriptions³. He further contended that the Respondent No.3 & Respondent No.4 are separate entities have nothing to do with each other. He referred to Page 33 which is a Bid Evaluation Report prepared by Respondent No.2 wherein Respondent No.3 has been mentioned at Sr.1 while Respondent No.4 hasn’t been mentioned in the said Evaluation Report and chronologically, he referred to Pages 137, 143 and 155 and demonstrated that the Respondent No.4 is separate entity and has no concerned with the Respondent No.3, whereas, the Tender was awarded to it (Respondent No.4) who

² Per prescriptions of Rule 30 of Public Procurement Rules, 2004.

³ Per prescriptions of Rule 2(h) of Public Procurement Rules, 2004.

neither participated in the tender proceedings nor mentioned in the Evaluation Report issued by the Respondent No.2, therefore, the entire exercise of subject Tender is nullity in the eyes of Law more particularly when the contract of the subject Tender is in field between the Petitioner and Respondent No.2. While concluding his submissions, Mr. Naek also introduced on record that an Appeal under the provisions of Rule 48 of Rules is pending before the Grievance Redressal Committee of Respondent No.2 (“GRC”) which hasn’t been decided *hitherto*, therefore, the Petitioner is at the doorstep of this Court being an aggrieved person. So as to strengthen his submissions, learned counsel relied upon the following judicial precedents:-

- BIO Labs Pvt. Ltd. v. Province of Punjab⁴
- Adam Sugar Mills Pvt. Ltd v. Federation of Pakistan⁵
- Suo Moto Case No. 13/2009⁶
- Muhammad Amin Muhammad Bashir Ltd. v. Government of Pakistan⁷
- Abu Bakar Siddiq v. Collector of Customs, Lahore⁸
- Dr. Abdul Nabi, Professor, v. Executive Officer, Cantonment Board Quetta⁹

4. Mr. Asim Iqbal, learned counsel set forth the case of Respondent No.2 arguing that instant petition isn’t maintainable on various counts more particularly that the Petitioner has already availed two remedies available to it under the Statutes such as Suit as well as an Appeal before the GRC, therefore, instant writ is liable to be dismissed at nascent. Learned counsel premised his case on the argument that no illegality has been committed by the Respondent

⁴ PLD 2020 Lah 565

⁵ 2012 CLD 1734

⁶ PLD 2011 S.C. 619

⁷ 2015 SCMR 630

⁸ 2006 SCMR 705

⁹ 2023 SCMR 1267

No.2 and on the eve of signing of Addendum Agreement between the Petitioner and Respondent No.2 with a condition that Gas supply “Shall” be continued until re-auction and Gas can be allocated to the new buyer under the Gas Supply Pressure Agreement, therefore, no illegality ever committed by the Respondent No.2 while advertising the subject Tender and its award thereof. Learned counsel concluded that the Petitioner participated in the Tender proceedings but failed to qualify the same and Tender was awarded to Respondent following the all codal as well as legal formalities which are available on record, therefore, it can safely be held that the Advertisement, Evaluation Report, Letter of Intent and Awarded of Contract is in accordance with Law.

5. Learned counsel appearing for the private Respondents premised their case on the argument that instant petition is not maintainable as well as hit by the principle of laches, therefore, is liable to be dismissed at the outset. Learned counsel further contended that the contract was awarded to the Respondent after all the codal formalities were fulfilled including the experience criteria and being the highest bidder while adopting the provisions of PPRA Ordinance, 2002 and Rules framed thereunder. He further contended that the Respondent No.2 per prescriptions of Rule 30 of Rules evaluated the bidding documents and rendered the Evaluation Report which is mandatory in nature declaring the successful as well as recommended to be awarded the Tender for the subject Gas, therefore, the claim of the Petitioner set forth in the prayer clauses is not maintainable more particularly the disputed questions

regarding contractual obligations are not amenable in writ jurisdiction, hence instant petition is liable to be dismissed.

6. Learned Assistant Attorney General adopted the submissions of counsel for the Respondent No.2/OGDCL and prayed for dismissal of instant petition on the grounds of maintainability as well as having alternate and efficacious remedy available to the Petitioner.

7. While exercising the right of rebuttal, Mr. Naek, Sr. Counsel, introduced on record that the writ is maintainable on the ground that the Petitioner is an aggrieved person as defined per Article 199, of the Constitution as vested rights of the Petitioner are involved in the subject Tender, therefore, Petitioner can maintain the present petition as the forum of GRC own by the Respondent No.2 hence on the ground of bias and favoritism, no fruitful result can be availed, therefore, an extraordinary, jurisdiction per Article 199 of the Constitution was availed by the Petitioner.

8. We have heard the respective legal counsel and have also considered the law, regulations and available record. As narrated in the facts that Respondent No.2 had published an advertisement on 06.07.2023 clearly stipulating all the requirements and terms and conditions for prequalification. The PPRA Rules, 2004 envisages that while engaging in pre-qualification, a procuring agency may tailor the evaluation criteria while taking into consideration relevant experience and past performance; capabilities with respect to personnel, equipment, and plant; financial position; and appropriate managerial capability, along with any other factor that the procuring agency may deem relevant that is not inconsistent with the Rules.

The issue revolves around the Evaluation Report¹⁰ of Evaluation Committee of the Respondent No.2 and that the Committee having examined the Bidders technically recommended the Respondent M/s. SEICO Pvt. Ltd for the award of Tender. Perusal of the record further reflects that Petitioner having dissatisfied with the Award of Tender, initially opted for statutory remedy by approaching the GRC by filing a complaint under Rule 48 of Rules, 2004, prior to filing the instant petition.

9. The Rules, 2004 provides a complete mechanism for redressal of grievance of an aggrieved person. Rule 48 of the Rules, 2004 provides that the procuring agency shall constitute a committee comprising of odd number of persons, with proper powers and authorizations, to address complaints of bidders that may occur prior to the entry into force of the procurement contract. Sub-Rule (2) further provides that any bidder feeling aggrieved by any act of the procuring agency after submission of bid may lodge a complaint concerning his grievances. It has been further provided that if the bidder is not satisfied with the decision of the committee, the bidder may file an appeal within thirty (30) days of the decision of GRC under Rule 48(7) of Rules, 2004 before PPRA. For purpose of clarity Rule 48 of PPR, 2004 is reproduced as under:-

“48. Redressal of grievances by the procuring agency:-

(1) The procuring agency shall constitute a committee comprising of odd number of persons, with necessary powers and authorizations, to address the complaints of bidders that may occur prior to the entry into force of the procurement contract.

(2) Any party may file its written complaint against the eligibility parameters, evaluation criteria or any other terms and conditions prescribed in the bidding documents if found contrary to the provisions of the procurement regulatory framework, and the same shall be addressed by the grievance redressal committee (GRC) well before the proposal submission deadline.

¹⁰ Available at page 33, Annexure A/2

(3) Any bidder feeling aggrieved by any act of the procuring agency after the submission of his bid may lodge a written complaint concerning his grievances within seven days of announcement of the technical evaluation report and five days after issuance of final evaluation report.

(4) In case, the complaint is filed against the technical evaluation report, the GRC shall suspend the procurement proceedings.

(5) In case, the complaint is filed after the issuance of the final evaluation report, the complainant cannot raise any objection on technical evaluation of the report:

Provided that the complainant may raise the objection on any part of the final evaluation report in case where single stage single envelope bidding procedure is adopted.]

(6) The GRC shall investigate and decide upon the complaint within ten days of its receipt.

(7) Any bidder or party not satisfied with the decision of the GRC, may file an appeal before the Authority within thirty days of communication of the decision subject to depositing the prescribed fee and in accordance with the procedure issued by the Authority. The decision of the Authority shall be considered as final.”

10. The GRC constituted pursuant to Rule 48 of PPR, 2004, is an adequate alternate forum, where a bidder can raise his grievance with respect to any matter regarding the tender bidding process after the submission of the bid. In the case at hand, the Petitioner having the alternate remedy of appeal under Rule 48(7) of PPR, 2004 and while pendency of complaint by before a statutory hierarchy i.e. GRC of Respondent No.2/OGDCL, has invoked the constitutional jurisdiction of this Court. The scope of judicial review in matters of public procurement has been expounded in a number of cases by Superior Courts, and it is well settled that Courts do not sit in appeal over the decisions of executive authorities or instrumentalities. A Constitutional Court is essentially concerned with only the lawfulness of a decision and not its soundness. As such, while allegations of illegality, irrationality and procedural impropriety would constitute grounds for a Court to assume jurisdiction, it would only be the decision making process that would come under inquiry and that does

not ordinarily mean that the aggrieved person can bypass the adjudicatory process prescribed under the laws. It ought to be demonstrated for purpose of resort to the writ jurisdiction. Reliance is placed on *Badar Expo Solutions through Managing Director v. Federation of Pakistan through Chief Executive Trade and Development Authority of Pakistan and 12 others (PLD 2022 Sindh 33)*. An observation in this regard was made by the Supreme Court of India in the case reported as *Jagdish Mandal v. State of Orissa (2007) 14 SCC 517*, as follows:-

"Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/ procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.

ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226."

11. It is a well-settled principle of law that the terms and conditions stipulated in an invitation to tender are not ordinarily amenable to judicial scrutiny. The Courts have consistently refrained from interfering with such terms, recognizing the domain of contractual freedom exercised by the procuring agency. However, judicial intervention may be warranted where the impugned conditions are found to be manifestly arbitrary, discriminatory, unreasonable or vitiated by mala fides. In this regard, reference may be made to the following precedents; in the case of ***Techno Time Construction Company v. Punjab Highway Department (2014 MLD 874)***, wherein it was held that the High Court cannot interfere with the terms and conditions as prescribed in Tender/Contract documents unless it was established that the same were contrary to public interest; in the case of ***TEZ Gas (Private) Limited v. Oil and Gas Development Authority (PLD 2017 Lahore 111)***, it was held that the terms of the invitation to tender cannot be opened to judicial scrutiny because the invitation to tender is in the realm of a contract, and the decision to accept the tender or award the contract is reached through a process of negotiation and deliberations through several tiers. Moreover, such decisions are made qualitatively by experts and the government is free to settle the terms of the contract with the parties. In such cases, if the terms and conditions of the contract are not suited to a party, they need not to participate in the tender process or accept the contract. However, if they choose to participate, they are bound by the terms offered to them. Moreover, the Honourable Supreme Court in ***Suo Motu Case No.13 of 2009, PLD 2011 SC 619*** held that in such

matters the exercise of judicial oversight is intended to prevent arbitrariness or favouritism, with public interest as the paramount consideration. It was further observed that the basic test in such regard is to see whether there was any infirmity in the decision making process and interference in such a process is warranted where it appears to be predicated upon arbitrariness, illegality, irrationality, procedural impropriety and/or actuated by mala fides.

12. It is well settled principle of law that once the aggrieved person chooses or elect forum amongst the available remedies under any law he cannot resort to other available remedy midway. The petitioner approaching GRC against the Impugned Award of Contract issued by OGDCL/Respondent No2 had elected a statutory remedy available under Rule 48 of Rules, 2004 cannot therefore be allowed to avail remedy under constitutional jurisdiction of this Court. Honourable Supreme Court in number of cases have settled down this proposition; particularly in ***Chief Executive Officer Npgcl, Genco-III, Tps Muzafargarrah v. Khalid Umar Tariq Imran and others (2024 SCMR 518)*** held that:-

“11. It is a well-settled proposition of law that when an aggrieved person intends to commence any legal action to enforce any right and or invoke a remedy to set right a wrong or to vindicate an injury, he has to elect and or choose from amongst the actions or remedies available under the law. The choice to initiate and pursue one out of the available concurrent or coexistent actions or remedy from a forum of competent jurisdiction vest with the aggrieved person. Once the choice is exercised and the election is made then the aggrieved person is prohibited from launching another proceeding to seek relief or remedy contrary to what could be claimed and or achieved by adopting other proceeding/ action and or remedy, which in legal parlance is recognized as doctrine of election , which doctrine is culled by the courts of law from the well-recognized principles of waiver and or abandonment of a known right, claim, privilege or relief as contained in Order II, rule (2), C.P.C., principles of estoppel as embodied in Article 114 of the Qanun-e-Shahadat Order 1984 and principles of res judicata as articulated in section 11, C.P.C. and its explanations.”

13. Apart from above, the Petitioner has also availed a remedy by filing Suit on the causes mentioned herein and the same was dismissed by the learned trial Court, appeal whereof is pending adjudication which fact was also admitted by the learned Senior Counsel.

14. In view of the foregoing discussion, we are of the considered view that the Petitioner has already invoked statutory and legal remedies available under the law. The record reflects that a complaint under Rule 48 of the Public Procurement Rules, 2004 is pending before the Grievance Redressal Committee (GRC) of the Respondent No.2/OGDCL, and simultaneously, civil litigation arising out of the same cause of action is sub judice before a competent Court of law. In such circumstances, the invocation of constitutional jurisdiction under Article 199 of the Constitution is misconceived, as efficacious alternate forums are available and already seized of the matter. The doctrine of election bars the Petitioner from pursuing parallel proceedings before different fora in respect of the same subject matter. The settled principles of the doctrine of election¹¹ denote that the election to commence and follow an available course, from concurrent avenues, vests with a suitor, however, once an option is exercised then the suitor is precluded from re-agitating the same *lis* in other realms of competent jurisdiction. The august court has illumined that providing an option to elect a remedial recourse does not frustrate or deny the right to choose any remedy, which best suits under the given circumstances. However, the doctrine of election has been evolved by courts to curb successive /

¹¹ *Trading Corporation of Pakistan vs. Dewan Sugar Mills Limited & Others reported as PLD 2018 Supreme Court 828*

multiple adjudication processes in respect of a singular impugned action. As long as a party does not avail of a remedy before a forum of competent jurisdiction all such remedies remain open to be invoked, however, once the election is made then the party may not be allowed to hop over and shop for one after another coexistent adjudication process. The Trading Corporation of Pakistan¹² judgment distilled the wisdom of a myriad of commonwealth authority¹³ and concluded that after exhausting a remedial course a suitor may not be allowed to venture upon another remedial avenue for the same malady, which though available was not invoked, as permitting the same would be an abuse of the process of law, which cannot be approved. That being said, under Sub-Rule (6) of Rule 48 of PPR, 2004 the Petitioner has a right to have his complaints adjudicated before the GRC of the Respondent No.2/OGDCL, and which is bound to decide the complaint within ten days. This has not been done and which should have been done and which wrong must be remedied.

15. For the foregoing reasons, this petition, stands disposed of with the directions that the complaint/appeal maintained by the Petitioner before the GRC of Respondent No.2/OGDCL should be decided strictly in accordance with law and within a period of ten days from the date of receiving this order, after providing due opportunity of hearing to all concerned and in the intervening period, no further steps shall be taken pursuant to the Agreement dated

¹² *Trading Corporation of Pakistan vs. Dewan Sugar Mills Limited & Others* reported as PLD 2018 Supreme Court 828.

¹³ *Fehmida Begum vs. Muhammad Khalid & Others* reported as 1992 SCMR 1908 - "Once he acts to invoke either of the remedies, he will, on the general principles to avoid a conflict of decisions, ultimately before the higher appellate forums, be deemed to have given up and forfeited his right to the other remedy"; *Behar State Co-operative Marketing Union Limited vs. Uma Shankar Sharan & Another* reported as [(1992) 4 Supreme Court Cases 196] - "Validity of plural remedies, if available under the law, cannot be doubted. If any standard book on the subject is examined, it will be found that the debate is directed to the application of the principle of election, where two or more remedies are available to a person. Even if the two remedies happen to be inconsistent, they continue for the person concerned to choose from, until he elects one of them, commencing an action accordingly".

20.01.2025 (Court File Pg. 157), executed between Respondent No. 2
and 4.

Hyderabad
Dated:_____

JUDGE

JUDGE