

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:
Yousuf Ali Sayeed and
Adnan Iqbal Chaudhry, JJ

C. P. No. D-2494 of 2025

Muhammad Nazar Gondal-----Petitioner

Versus

Government of Sindh & others-----Respondents

C. P. No. D-2495 of 2025

M/s. Habibullah Stones (Pvt.) Ltd-----Petitioner

Versus

Government of Sindh & others-----Respondents

Azain Nadeem, Advocate for the Petitioner.
Agha Shahzaib, Assistant Advocate General Sindh.

Date of hearing : 29.09.2026

JUDGMENT

YOUSUF ALI SAYEED, J. - Through these Petitions under Article 199 of the Constitution, the Petitioners seek that the Mines and Mineral Development Department, Government of Sindh (the "**Department**") be directed to issue mining permits in their favour on the strength of an open auction conducted on 23.06.2023, and also impugn a subsequent advertisement dated 17.10.2023 whereby the Department invited fresh applications for the grant of mining permits in respect of, *inter alia*, the very same areas.

2. As the Petitions arise from the same auction, raise similar grounds/prayers and are directed against the same Respondents, they were heard in tandem and are being decided through this common Judgment.
3. While the Petitioner in C.P. No. D-2494 of 2025 is said to be engaged in the business of mining and quarrying in his own name, and the Petitioner in C.P. No. D-2495 of 2025 is a private limited company said to be engaged in the same line of business, both Petitioners have furnished one and the same address in the titles of their respective Petitions. That being said, their case turns on participation in an open auction for the grant of mining permits conducted on 23.06.2023 in response to an advertisement published on 30.05.2023, with the Petitioners applying to participate after paying an application fee of Rs.10,000/- for each area, which in C.P. No. D-2494 of 2025 was two areas of 50 acres each near Kalu Nadi, District Thatta, for reti/bajri, and in C.P. No. D-2495 of 2025, two areas of 200 acres each near the Northern Bypass, District Karachi West, for clay, and one area of 50 acres near Nai Baran, District Thatta, for reti/bajri.
4. The Petitioners have essentially founded their case on the letters issued by the Director General, Mines and Mineral Development (the "**DG**") in respect of each of the areas in identical terms, all of which are dated 04.08.2023. claiming that the same declared them to be the successful bidders. The specimen of one such letter, as addressed to the Petitioner in C.P. No. D-2495 of 2025 in respect of one of the areas of 200 acres near the Northern Bypass, reads, in its relevant part, as follows:

"Please refer to your application dated 30.05.2023, for participation in bidding process for the grant of Mining Permit for clay over an area of 200.0 acres near Northern By Pass District Karachi West.

2. It is to inform that you have succeeded to get the same on the reserved price in the open auction took place in this office on 23-06-2023, as no other application was received on the same area. But, before processing the case further towards grant of Mining Permit, following requirements / formalities are yet to be completed on your part:-

1. Application Fee for Mining Permit of Rs. 100,000/-
2. 10% of reserved price which comes to Rs. 150,000/-
3. Application Form along with requisite documents as mentioned in Rule-80 of the Sindh Mines & Minerals Governance Rules-2023.

You are, therefore, advised to furnish aforementioned requirements in order to get the case processed further for the grant / issuance of Mining permit within seven (07) days of issuance of this letter."

5. It is the case of the Petitioners that they complied with the aforementioned letters by depositing the sums demanded through challans dated 08.08.2023, being Rs.100,000/- per area towards the application fee for the mining permit together with 10% of the reserved price, which came to Rs.25,000/- for each area of 50 acres and Rs.150,000/- for each area of 200 acres, and by submitting applications on Form A under the Sindh Mines and Minerals Governance Rules, 2023 (the "**M&M Rules**") on 09.08.2023. Notably, the Form A so submitted in respect of the area referred to above was itself captioned as a "*Request for the grant of mining permit*" and called upon the DG, as the Licensing Authority, to issue "*the notification cum work order*". Be that as it may,

despite reminders dated 16.08.2023 and 26.10.2023, no mining permits were issued, and the Department instead published an advertisement on 17.10.2023 inviting applications for the grant of mining permits through open auction in respect of 38 areas across the province, including the areas in question, with the auction initially scheduled for 08.11.2023 and then postponed to 17.11.2023.

6. Treating the matter as one of public procurement, the Petitioners lodged complaints on 27.10.2023 under Rule 31(3) of the Sindh Public Procurement Rules, 2010 (the "**SPP Rules**") and, upon the same remaining undecided, preferred appeals on 07.11.2023 before the Review Committee of the Sindh Public Procurement Regulatory Authority ("**SPPRA**") under Rule 32 thereof. As those appeals were also not taken up, the Petitioners approached this Court through C.P. Nos. D-5723 and D-5724 of 2023, which came to be disposed of by consent through an Order dated 19.03.2025, reading as follows:

"Learned Counsel for the Petitioners submit that it may be just and proper for the matter pending before the review committee to be decided vide speaking order, after providing an opportunity of a hearing to the respective appellants and pending aforesaid, no action be taken in respect of auction under consideration.

Learned AAG articulates no cavil to the aforesaid and states that review/representation shall be determined in the manner sought expeditiously, preferably within 15 days and the respondent shall take further steps in pursuance of the relevant auction post issuance of the orders in terms aforesaid.

It is jointly stated that the petitions may be disposed of in terms aforesaid. Order accordingly."

7. The Review Committee thereafter took up the appeal of the Petitioner in C.P. No. D-2495 of 2025 at a meeting convened on 07.05.2025 and dismissed the same as non-maintainable, holding that the SPP Rules apply to the acquisition of goods, works and services, whereas an auction of mines does not fall within the definition of "public procurement" under Section 2(m) of the Sindh Public Procurement Act, 2009. It is in this backdrop that the Petitioners have invoked the writ jurisdiction of this Court, seeking (i) a declaration that they are entitled to the mining permits as successful bidders; (ii) a direction to the Department to issue mining permits and work orders in terms of the letters dated 04.08.2023; (iii) a declaration that the advertisement dated 17.10.2023 is illegal, having been issued without cancellation of the earlier process; and (iv) restraint against the creation of any third-party interest in the areas.

8. Learned counsel for the Petitioners contended that vested rights had been created in favour of the Petitioners upon issuance of the letters dated 04.08.2023 and the Petitioners having complied therewith by submitting the requisite documents and depositing the sums demanded, and argued that the Department could not resile from that position. Reliance was placed with reference to the pleadings on Rules 25 and 26 of the SPP Rules, so as to contend that a bidding process could only be cancelled prior to the acceptance of a bid, and that tenders could only be re-issued after cancellation at such a nascent stage or upon the case being declared one of misprocurement, none of which had transpired, hence the advertisement dated 17.10.2023 was illegal and *mala fide*.

9. It was further urged that as the Review Committee under the SPP Rules had declined jurisdiction and the M&M Rules provided no appellate remedy, the Petitioners would be left remediless, contrary to the maxim *ubi jus ubi remedium*, unless this Court intervened in exercise of its writ jurisdiction.
10. Conversely, the learned Additional Advocate General, representing the Province, argued that no vested rights had accrued in favour of the Petitioners, and that the auction of 23.06.2023 had been scrapped as the Mines Committee envisaged under Section 5 of the Sindh Mines and Minerals Governance Act, 2021 (the "**Act**"), read with Rule 4 of the M&M Rules, had not been properly constituted at that point in time, and that the auction would accordingly take place afresh, with the Petitioners being at liberty to participate in that process. With reference to the para-wise comments, he pointed out that the Mines Committee came to be notified only on 10.11.2023. He also argued that the Petitioners were seeking to re-agitate a matter that already stood closed through the Order dated 19.03.2025, whereafter SPPRA had rightly held that it had no jurisdiction over the auction of mines.
11. We have heard the arguments advanced and examined the material placed on record in that context.

12. Turning firstly to the objection that the Petitions are barred by reason of the Order dated 19.03.2025, suffice it to say that the earlier Petitions were disposed of by consent, without any adjudication on the merits of the Petitioners' claim, merely so as to enable the Review Committee to decide the pending appeals through a speaking order. The grievance now agitated is the alleged denial of a right in the aftermath of the Review Committee having declined jurisdiction. As such, the Order dated 19.03.2025 does not operate as a bar, and the objection is misconceived.

13. Turning then to the merits of the claims advanced, it falls to be considered that the reliance placed by the Petitioners on Rules 25 and 26 of the SPP Rules is misconceived in view of their having acquiesced in the determination of the Review Committee that the SPP Rules do not govern the matter at hand. Even otherwise, "public procurement" is defined in Section 2(m) of the Sindh Public Procurement Act, 2009 as the "*acquisition of goods, services or construction of any works financed wholly or partly out of the public fund*". The grant of a mining permit involves no acquisition of anything by the Government. On the contrary, it is a concession whereby the State parts with the right to extract a public resource in return for consideration, and is thus the very antithesis of procurement. As such, whether the process was lawful is to be tested on the anvil of the Act and the M&M Rules.

14. Section 10 of the Act provides that, for the purpose of development of mineral resources in the Province, mineral titles and mineral permits are to be granted or issued by the Licensing Authority, being the DG, on the advice of the Mines Committee. Section 5(1) of the Act, in turn, provides that "*There shall be a Mines Committee, which shall advise the Licensing Authority*" on, *inter alia*, the grant, renewal, refusal and cancellation of licenses, leases and permits, as well as on the invitation of competitive bids, whereas under Section 5(2) the composition of the Mines Committee is to be determined by the Government through notification in the Official Gazette. The Mines Committee is thus an integral cog in the statutory machinery, and the Licensing Authority is not empowered to grant a mining permit of its own volition, independently of the advice of that Committee.
15. The stance of the Department that the Mines Committee came to be notified only on 10.11.2023, well after the auction of 23.06.2023 and the issuance of the letters of 04.08.2023, has not been dislodged, and nothing has been placed on record by the Petitioners to the contrary. Section 5(4) of the Act, which saves the proceedings of the Mines Committee from invalidity on account of a vacancy or a defect in its constitution, can be of no avail in such a situation, for that provision presupposes the existence of a Committee, and cannot breathe life into a process undertaken when there was no Committee at all. It follows that, on the date of the auction and of the letters on which the Petitioners rely, the statutory apparatus through which a mining permit could lawfully be granted had not been put in place, and no permit could lawfully have been issued to the Petitioners on the strength thereof.

16. Even otherwise, the letters dated 04.08.2023 do not bear the construction that the Petitioners seek to place upon them. By their own terms, those letters merely informed the addressee that he had "*succeeded to get the same on the reserved price*" and expressly stated that certain requirements were yet to be completed "*before processing the case further towards grant of Mining Permit*", including the submission of an application in terms of Rule 80 of the M&M Rules. The letters were thus a precursor to the consideration of an application for the grant of a permit and were not themselves a grant.

17. Furthermore, the contention that a vested right had accrued in favour of the Petitioners overlooks the settled legal position that a bid made at auction is merely in the nature of an offer, which does not of itself give rise to any rights, and that a person declared to be the highest bidder at best acquires a legitimate expectation of the bid being accepted in preference to those of the other bidders, with an enforceable right arising only upon acceptance of the bid by the competent authority. For a reiteration of the law on the subject, one need look no further than the judgment of the Supreme Court in the case reported as *Muhammad Jawed v. First Women Bank Ltd. and others* 2020 SCMR 2134, which was followed by a Bench of this Court in C.P. No. D-3960 of 2021 (*Syed Asif Shah v. Ahmed Asif Siddiqui and others*). While those cases arose in different contexts, the principle applies with all the more force where, as here, the grant is regulated by statute and the authority competent to accept the bid could only act on the advice of a body that was yet to come into existence. Considering the facts underpinning the matter at hand, it is manifest that no right ever accrued in favour of the Petitioners.

18. There is also another aspect of the matter that cannot be overlooked. The letters dated 04.08.2023 reflect that in each case the area was secured "*on the reserved price ... as no other application was received on the same area*". In other words, there was no competition whatsoever. Minerals are a natural resource held by the Government in trust for the people, and the Supreme Court has repeatedly emphasised that public resources are to be disposed of transparently and through a competitive process so as to secure the best return for the public exchequer, as in *Suo Motu Case No. 13 of 2009* PLD 2011 SC 619 and *Maulana Abdul Haque Baloch and others v. Government of Balochistan and others* PLD 2013 SC 641. A Bench of this Court applied those principles in the context of mining concessions in this Province the case reported *Pakistan Mineral Development Corporation Ltd. v. Province of Sindh and 2 others* PLD 2020 Sindh 99, setting aside mining permits granted without competitive bidding. In that light, the decision of the Department to put the areas to a fresh auction under a properly constituted statutory framework, rather than act a single bid at the reserved price through a process conducted in the absence of the Mines Committee, can hardly be characterised as arbitrary.

19. As for the allegation of *mala fides*, the same is bereft of particulars and rests on nothing more than the Petitioners' own apprehension that the areas may be granted to someone else. A bald assertion of that nature does not suffice. Similarly, the maxim *ubi jus ubi remedium* presupposes the existence of a right, and in the absence of any right having accrued, the argument that the Petitioners have been left remediless does not take their case any further.

20. That being said, the Petitioners deposited the sums demanded through the letters dated 04.08.2023 as far back as August 2023, and the same have since remained with the Department, although no permit came to be issued. The Department, having itself conducted the auction in the absence of the Mines Committee and having called upon the Petitioners to make those deposits, cannot be permitted to retain the same to their detriment, and fairness demands that such sums be refunded.

21. For the foregoing reasons, while the Petitioners have failed to make out a case for the issuance of a writ and the Petitions stand dismissed, the amounts deposited by them pursuant to the letters dated 04.08.2023, comprising the application fee for the mining permit and 10% of the reserved price in respect of each area, shall be refunded within thirty (30) days. The Petitioners shall be at liberty to participate in any fresh auction in respect of the areas in question, and these proceedings shall not be held against them in that regard.

JUDGE

JUDGE

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