

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

C.P No.D-804 of 2026

[M/s Fuijian Lugang (Group) Co. Ltd.; M/s CH. A. Latif & Sons (PVT.) Ltd v. Province of
Sindh & Others]

Before:

**JUSTICE ADNAN IQBAL CHAUDHRY
JUSTICE RIAZAT ALI SAHAR**

Petitioners:

M/s Fuijian Lugang (Group) Co. Ltd.;
M/s Ch. A. Latif & sons (Pvt.) Ltd.
Through Barrister Zamir Hussain
Ghumro, Advocate.

Respondents:

Mr. Shahzeb Akhtar Khan assisted by
Mr. Shaaf Lashari, Advocate for
Respondent No. 3 & 4.

Mr. Rafique Ahmed Dahri, A.A.G. Sindh.

Jamal Mangan PD SWAT Khurram Aziz
Secretary SIDA.

Date of Hearing:

28.04.2026

Date of Judgment:

12.05.2026

JUDGMENT

RIAZAT ALI SAHAR, J: - Through the instant Constitutional Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner has called in question the legality, propriety, and constitutional validity of the impugned orders dated 16.02.2026 and 09.04.2026, whereby the technical bid submitted by the Petitioner in respect of the project titled “*Improvement and Rehabilitation of Akram Wah Canal*” was declared non-responsive and the subsequent complaint preferred by the Petitioner was dismissed. The grievance of the Petitioner primarily revolves around the allegation that the Respondents acted in an arbitrary, discriminatory and non-transparent manner, in violation of the Sindh Public Procurement Rules, 2010, principles of natural justice and fair competition, thereby unlawfully excluding the Petitioner from the bidding process. Thus, seeking following reliefs:-

“i. Declare the impugned orders dated 16.02.2026 and 09.04.2026 are illegal, unlawful, unconstitutional, non-est, void ab-initio, arbitrary and in violation of principles of natural justice, fairness and equity;

ii. Direct Respondent No.5 to ensure compliance of Sindh Public Procurement Rules, 2010 in the subject procurement and to take action against the Respondents for violations thereof;

iii. Direct the Respondents to consider the Petitioner's bid, including its financial bid, in accordance with the tender documents and evaluate it fairly and transparently;

iv. Suspend the operation of the impugned orders dated 16.02.2026 and 09.04.2026 and restrain the Respondents, their agents, attorneys, officers or anyone acting for and on behalf from opening the financial bid and/or awarding the contract for "Improvement and Rehabilitation of Akram Wah Canal" project;

v. Grant any other relief(s), which this Honorable Court may deem fit and appropriate under the law and circumstances of this case; and

vi. Grant cost of the petition."

2. Mr. Zamir Hussain Ghumro, learned counsel appearing on behalf of the Petitioner, at the very outset fairly conceded that the procurement in question was being undertaken under an **international competitive bidding process** financed by the **World Bank** and governed by the applicable Procurement Regulations for **IPF** Borrowers, as incorporated in the bidding documents. He further candidly acknowledged that the bidding documents prescribed specific mandatory requirements relating to bid validity, bid security, and submission formalities, which every bidder was obligated to comply with strictly. Learned counsel also conceded that certain discrepancies had inadvertently crept into the Petitioner's bid documents, including the mention of a shorter bid validity period and the reference to Lot-2 in the power of attorney; however, he vehemently contended that such deficiencies were merely technical, non-substantive, and curable in nature, which neither affected the financial substance of the bid nor caused any prejudice to the procuring agency or competing bidders. He maintained that the Respondents, instead of adopting a fair, transparent, and facilitative approach consistent with the principles embodied in the **Sindh Public Procurement Rules, 2010**, acted in an unduly rigid and mechanical manner by outrightly disqualifying the Petitioner without affording an opportunity for clarification or rectification, as such, the matter comes within purview of rules 31 and 32 of the Sindh Public Procurement Rules, 2010. Learned counsel thus submitted that the impugned action suffers from arbitrariness, disproportionate exercise of discretion, and procedural

impropriety, warranting interference by this Court in exercise of its constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

3. Conversely, Mr. Shahzeb Akhtar Khan, learned counsel appearing on behalf of Respondents No. 3 and 4, vehemently opposed the instant petition and contended that the same is wholly misconceived, legally untenable, and not maintainable under Article 199 of the Constitution, as the Petitioner admittedly submitted a materially non-responsive bid suffering from multiple independent defects, each of which was sufficient in law to entail outright rejection. Learned counsel submitted that the procurement process in question was being conducted under an international financing arrangement governed by the World Bank Procurement Regulations for IPF Borrowers, which, by virtue of Rule 5 of the Sindh Public Procurement Rules, 2010, override local procurement rules to the extent of inconsistency. In support thereof, learned counsel placed reliance upon the judgment of the august Supreme Court of Pakistan rendered in **Messrs Power Construction Corporation of China Ltd. vs. WAPDA (PLD 2017 SC 83)**, wherein it was categorically held that procurement conditionalities imposed by international financial institutions carry the force of law and are fully enforceable within the domestic legal framework. Learned counsel further argued that the Petitioner deliberately attempted to mislead the Court by relying upon the original bid validity date while suppressing the subsequent Addendum No. 1 dated 09.09.2025, whereby the bid validity period stood extended till 29.03.2026, consequently requiring the bid security to remain valid till 26.04.2026 by including 28 days as per ITB clause 18.2 & 19.3 (page 39 of Court file). He submitted that the bid security furnished by the Petitioner, in the form of **cashier's cheques**, admittedly expired on 29.03.2026, as independently verified by the issuing bank itself, thereby rendering the bid substantially **non-responsive** under the Instructions to Bidders. Learned counsel maintained that under the governing procurement framework, the procuring agency had no discretion to waive or condone such a material deviation. It was further contended that the Petitioner had itself restricted the bid validity period to 90 days in the Letter of Technical Bid, despite the bidding documents unequivocally prescribing a validity period of

180 days, which constituted a unilateral alteration of a fundamental bidding condition and materially affected the procurement process. Learned counsel submitted that such a deviation could neither be treated as a minor irregularity nor cured subsequently through clarification, as the same would amount to permitting modification of the substance of the bid after submission, **contrary to both the World Bank Regulations and the Sindh Public Procurement Rules, 2010**. Learned counsel also addressed the defect relating to the power of attorney and submitted that the authorization furnished by one JV partner expressly pertained to “Lot-2,” whereas the bid had been submitted for “Lot-1,” and the accompanying sub-delegation contained ambiguous handwritten alterations, thereby creating a serious defect in the chain of authority required to bind the **joint venture** legally. He contended that the issue was not a mere typographical error, as alleged by the Petitioner, but went to the very root of the enforceability and validity of the bid itself. Learned counsel thus argued that a bid lacking lawful authorization could not constitute a valid offer in the eyes of law and was rightly rejected by the procuring agency. Lastly, learned counsel submitted that the complaint filed by the Petitioner was duly examined and decided strictly in accordance with the applicable procurement framework, whereafter the matter was also placed before the World Bank through the STEP system and the complaint resolution was expressly cleared by the Bank itself on 09.04.2026. He therefore contended that the Respondents acted fairly, transparently, and strictly within the confines of law, without any *mala fide*, discrimination, or arbitrariness, and prayed that the instant Constitutional Petition, being devoid of merit and substance, be dismissed with costs.

4. Heard learned counsel for the parties and perused the record with their able assistance. The moot point requiring determination in the instant petition is **whether** the procuring agency lawfully declared the Petitioner’s bid as non-responsive on account of the alleged defects relating to bid validity, bid security, and power of attorney, or **whether** such deficiencies were merely technical and curable in nature, thereby rendering the impugned actions arbitrary, discriminatory, and violative of the applicable procurement framework and principles of fair competition.

5. At the very outset, it must be observed that the procurement in question admittedly emanates from an internationally financed project undertaken under **the World Bank funded Sindh Water & Agriculture Transformation Project (SWAT)**, governed by the World Bank Procurement Regulations for IPF Borrowers. The said factual position stands expressly admitted by the Petitioner itself. Once such position is conceded, the legal effect of Rule 5 of the Sindh Public Procurement Rules, 2010 becomes immediately operative and determinative of the controversy involved in the instant proceedings. Rule 5 of the Sindh Public Procurement Rules, 2010 unequivocally provides that where the provisions of the local procurement rules are inconsistent with any obligation or commitment arising out of an agreement with an international financial institution, the provisions of such international agreement shall prevail to the extent of inconsistency.

6. The scope and legal effect of such overriding clause is no longer **res integra**. The august Supreme Court of Pakistan in **Messrs Power Construction Corporation of China Ltd. vs. WAPDA reported as PLD 2017 Supreme Court 83** authoritatively held that procurement conditionalities imposed by international financial institutions are fully enforceable in domestic law and derive statutory recognition through procurement rules analogous to Rule 5. The Honourable Supreme Court further observed that developing countries often obtain financing for major infrastructure projects subject to conditional procurement frameworks, and such conditions cannot be diluted or defeated through recourse to inconsistent local procedures. **The ratio decidendi of the said judgment squarely governs the present matter. Consequently, the attempt of the Petitioner to selectively invoke certain provisions including Rules 31 and 32 of the Sindh Public Procurement Rules, 2010, while simultaneously ignoring the mandatory procurement conditions incorporated through the World Bank Regulations, is legally misconceived and internally contradictory.**

For relevancy Rule 5 of SPPRA Rules, 2010 is reproduced as under:

“5. Conflict with International and Inter-Governmental Agreements - In the event that these rules are inconsistent with, or in conflict with, any obligation or commitment of Government arising out of an international treaty or an agreement with a foreign country or countries, or any international financial institution, the provisions of

such international treaty or agreement shall override the provisions of these Rules to the extent of that inconsistency or conflict as the case may be.”

7. It is also settled law that in matters pertaining to public procurement, the scope of judicial review is extremely limited. Constitutional jurisdiction is not intended to substitute the wisdom of expert procurement bodies or to re-evaluate technical determinations unless patent *mala fide*, discrimination, arbitrariness, or violation of law is demonstrated. Courts ordinarily exercise judicial restraint in commercial and policy matters, particularly where international financing arrangements and technical procurement frameworks are involved. The Honourable Supreme Court in **PLD 2017 Supreme Court 83** reiterated that courts, in exercise of constitutional jurisdiction, ordinarily refrain from interfering in public policy and procurement decisions absent glaring illegality.

8. Examining the record in the light of the aforesaid settled principles, it becomes manifest that the Petitioner’s bid suffered from multiple independent and substantive defects, each of which, by itself, rendered the bid substantially non-responsive. The first and foremost defect pertains to the bid security. The bidding documents, read together with Addendum No.1 dated 09.09.2025, unequivocally prescribed that the bid validity period would remain operative till 29.03.2026 and the corresponding bid security was required to remain valid for twenty-eight days beyond such date, namely till 26.04.2026. The record reveals that the negotiable instrument furnished by the Petitioner was not a **Pay Order** as specifically required under the bidding documents, but rather a **Cashier’s Cheque**. The distinction is neither cosmetic nor inconsequential. In commercial banking practice and procurement jurisprudence, where tender conditions specifically prescribe a particular negotiable instrument, strict adherence thereto is mandatory. A bidder cannot unilaterally substitute one instrument for another and thereafter seek equitable indulgence from the Court. Public procurement rests upon strict uniformity and equal application of bidding conditions to all participants. Any deviation permitted in favour of one bidder inevitably compromises transparency and fair competition.

9. Furthermore, even assuming *arguendo* that such substitution could be overlooked, the Cashier's Cheque furnished by the Petitioner admittedly remained valid only till 29.03.2026 and not till 26.04.2026 as mandatorily required. Learned counsel for the Petitioner attempted to argue that the original bidding documents contemplated a shorter period and therefore the defect was merely technical; however, such submission is wholly untenable in view of Addendum No.1, which admittedly extended the bid validity period. A bidder participating in an international competitive procurement process is presumed to have knowledge of all addenda and amendments issued by the procuring agency. The Petitioner cannot selectively rely upon superseded timelines while simultaneously participating under amended bidding conditions. The date reflected upon the Cashier's Cheque thus patently failed to satisfy the mandatory requirement prescribed in the bidding documents.

10. The argument advanced on behalf of the Petitioner that the defect was curable through clarification also carries no force. Clarification mechanisms in procurement law are intended to explain ambiguities and not to permit substantive modification of bids after opening. A defect relating to the validity of bid security goes to the root of the bid itself because bid security constitutes a fundamental safeguard protecting the procuring agency against withdrawal or alteration of bids during the evaluation process. Once the bid security failed to comply with the prescribed validity period and prescribed mode, the procuring agency was left with no lawful discretion except to reject the bid as substantially non-responsive. Any subsequent relaxation would have amounted to extending preferential treatment to one bidder at the expense of other competitors who had complied strictly with the tender conditions.

11. The second defect pertains to the unilateral reduction of the bid validity period by the Petitioner itself. The record demonstrates that in its Letter of Technical Bid, the Petitioner expressly restricted the validity of its bid to ninety days, despite the bidding documents unequivocally prescribing a validity period of one hundred and eighty days. Such deviation cannot by any stretch of legal reasoning be treated as immaterial or clerical in nature. Bid validity is an essential component of the procurement process as it secures certainty and stability during evaluation and award. A

bidder restricting the validity period acquires an unfair commercial advantage and simultaneously deprives the procuring agency of the security contemplated under the bidding framework. Such deviation directly affects the competitive equilibrium amongst bidders and materially alters the procurement conditions. Consequently, the procuring agency rightly concluded that the **Petitioner's bid was substantially non-responsive.**

12. The third defect relates to the authorization and power of attorney furnished by the Petitioner joint venture. The record reveals that the authorization submitted by one JV partner expressly referred to "Lot-2," whereas the bid itself pertained to "Lot-1." Simultaneously, the accompanying sub-delegation contained ambiguous handwritten alterations, creating uncertainty regarding the authority of the signatory. In commercial and contractual jurisprudence, particularly in international procurement matters, the authority of the signatory is not a trivial technicality but the very foundation upon which the enforceability of the bid rests. A procuring agency cannot be compelled to speculate regarding the legal authority of a signatory or to assume intentions contrary to the documents actually submitted. A bid lacking clear lawful authorization cannot constitute a legally enforceable offer and therefore was rightly treated as non-responsive.

13. The submission of learned counsel for the Petitioner that the aforesaid discrepancies were merely typographical or clerical errors is equally without substance. Procurement jurisprudence distinguishes between minor informalities and material deviations. A deviation becomes material where it affects the scope, validity, enforceability, competitiveness, or commercial substance of the bid. In the instant matter, the defects related cumulatively to bid security validity, prescribed financial instrument, bid validity period, and lawful authorization of the bidder itself. Such defects are substantive in character and strike at the root of the bidding process. They could neither be waived nor rectified post facto without undermining the integrity of the procurement framework.

14. Another important aspect of the matter pertains to the grievance redressal mechanism envisaged under the procurement framework. The Petitioner admittedly approached the procuring

agency through a complaint which was duly considered and decided. Thereafter, the matter was also placed before the World Bank through the **STEP mechanism** and the complaint resolution was expressly cleared by the Bank itself on 09.04.2026. The statutory framework governing grievance redressal under Rule 50 (1) of the Sindh Public Procurement Rules, 2010 reflects the legislative intent that procurement disputes should first be addressed through specialized institutional mechanisms before constitutional jurisdiction is invoked. Such grievance redressal provisions are not ornamental formalities but constitute an integral component of procurement regulation intended to ensure expeditious, technical, and specialized adjudication of procurement disputes.

15. The Petitioner, instead of fully availing and exhausting the statutory and contractual remedies available under the governing procurement framework, rushed to invoke constitutional jurisdiction. It is a settled principle of constitutional law that where an adequate and efficacious alternate remedy exists, constitutional jurisdiction ordinarily ought not to be exercised unless exceptional circumstances are demonstrated. No such exceptional circumstance is discernible from the record. More importantly, once the complaint resolution itself stood reviewed and cleared by the World Bank under the governing procurement regulations, the scope for judicial interference became even narrower, particularly in absence of demonstrable *mala fide* or patent illegality.

16. The allegation of *mala fide* and discrimination levelled by the Petitioner is also devoid of substance. The record reveals that the Petitioner was not singled out. Rather, another bidder was also independently declared non-responsive on separate grounds. The evaluation criteria were uniformly applied to all participants. Mere rejection of a bid does not ipso facto establish *mala fide*. Constitutional courts require clear, cogent, and unimpeachable material before attributing *mala fide* to public authorities. Bald assertions unsupported by evidence cannot displace the presumption of regularity attached to official acts.

17. It is equally significant that the procurement committee and procuring agency acted strictly within the confines of the bidding documents and applicable regulations. The Court cannot compel a procuring agency to ignore mandatory procurement

conditions merely because a bidder subsequently characterizes substantive deficiencies as technical errors. Any such indulgence would not only violate the principles of transparency and equal treatment but would also expose the procurement process itself to allegations of favoritism and arbitrariness from competing bidders who complied with the prescribed conditions in letter and spirit.

18. Viewed cumulatively, this Court finds that the impugned decisions dated 16.02.2026 and 09.04.2026 neither suffer from illegality nor arbitrariness. The Petitioner admittedly furnished a Cashier's Cheque instead of the prescribed Pay Order; the said instrument failed to satisfy the mandatory validity requirement; the Petitioner unilaterally curtailed the bid validity period contrary to the bidding documents; and the authorization documents suffered from material ambiguity affecting the legal enforceability of the bid itself. Each of these defects independently rendered the bid substantially non-responsive and collectively left no lawful option available to the procuring agency except rejection of the bid.

19. For what has been discussed above, we are of the considered view that the Petitioner has failed to make out any case warranting interference in constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The impugned actions were undertaken strictly in accordance with the governing procurement framework, World Bank Procurement Regulations and the Sindh Public Procurement Rules, 2010. No *mala fide*, discrimination, procedural impropriety, or jurisdictional defect has been established.

20. Consequently, the instant Constitutional Petition, being devoid of merit, is hereby **dismissed** along with all pending applications with no order as to costs.

JUDGE

JUDGE

Approved for reporting