

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Constitution Petition No. D-376 of 2026

Date	Order with signature of Judge
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Before:
Mr. Justice Muhammad Hasan (Akber);
Mr. Justice Abdul Hamid Bhurgri.

Petitioner : M/S Abdul Haq Banglani, through its proprietor Abdul Haq Banglani, through M/S Asif Ali Abdul Razak Soomro and Safdar Ali Ghouri, Advocates.

Respondents : P.O Sindh and others, through Mr. Mohsin Ali Pathan, Assistant Advocate General Sindh a/w Gul Bahar Mazari, XEN, Kashmore Division, Anwar Ali Soomro, XEN Kandhkot Division, Ghari Hassan and Dinesh Kumar Solanki, S.E Desert Pat Feeder Circle.

Respondent No.7 : M/S New M.Zaman Enterprises, through M/S Qurban Ali Malano and Muhammad Uzair Shaikh, Advocates for respondent No.7.

Date of Hearing : 12.05.2026.
Date of Order : 12.05.2026.

ORDER

MUHAMMAD HASAN (AKBER) J.: Through this petition, the petitioner has challenged his disqualification from the bid process pursuant to NIT No.TC/G-55(b)/1352 dated 09.03.2026 and the subsequent recommendation/ award made in favour of respondent No.7 by the procuring agency. He has primarily sought the setting aside of the decisions of the Procuring Agency, the Order dated 23.04.2026 passed by the Review Committee [RC]; and the Order dated 10.04.2026 [impugned Orders] by the Complaint Redressal Committee [CRC] under the Sindh Public Procurement Regulatory Authority Act, 2010 [SPPRA], with prayers for cancellation of the entire tender process and issuance of a fresh NIT.

2. Gist of the arguments agitated by M/s. Asif Ali Abdul Razzak Soomro and Safdar Ali Ghouri learned counsels for Petitioners are that the procurement process was initiated by Respondents 2 and 3 for “Rehabilitation of X-Regulator Mile-63 of Desert Canal, including Road Bridges. Rehabilitation of X-Regulator Mile-7, Mile-19 & Mile-36 of Desert Canal”; that the petitioner fulfilled all requisite conditions of the tender but was illegally declared technically non-responsive; that the petitioner was not afforded proper opportunity of hearing by CRC, as notice of hearing was received by the petitioner shortly before the scheduled time of hearing; that the entire procurement process was

sham and non-transparent as the bidding process was manipulated; that the petitioner was wrongly deprived of being considered as the “Most Advantageous Bidder”; and that respondent No.7 was unlawfully accommodated in the procurement process; and lastly, prayers were sought for setting aside of the impugned Order by CRC and the Review Committee.

3. Conversely, M/s. Qurban Ali Malano and Muhammad Uzair Shaikh, learned advocates for Respondent No.7, the successful Contractor as well as Mr. Mohsin Ali Pathan learned Assistant Advocate General, Sindh along with officials, vehemently opposed the petition by contending that the procurement process was followed strictly in accordance with law; that submission of original bid security/CDR before closure of bid submission was a mandatory requirement under the tender conditions and SPPRA Rules, which was not fulfilled by the petitioner; therefore, his bid was rightly declared technically non-responsive. They further contended that disputed factual controversies are involved in the matter, which cannot conveniently be adjudicated upon in the writ jurisdiction of this Court.

4. We have heard the learned counsels for the parties, learned Assistant Advocate General and the officers present in Court and have gone through the material available on record.

5. Mr. Safdar Ali Ghouri Advocate for the petitioner, argued with respect to the bidding process that the bids were invited by the Respondent as per NIT for “Rehabilitation of X-Regulator Mile-63 of Desert Canal, including Road Bridges. Rehabilitation of X-Regulator Mile-7, Mile-19 & Mile-36 of Desert Canal.” The bids were submitted by various contractors, including the petitioner, in accordance with the eligibility criteria. The Technical Proposals and Financial Proposals were to be evaluated on 31.03.2026. It is alleged that the practitioner was declared Technically Non-Responsive by the Evaluation Team, against which the petitioner preferred a Complaint dated 07.04.2026 before CRC, hearing whereof was fixed on 7.04.2026 under Rule 31 SPP Rules 2010, the petitioner alleges that he did not receive the notice in time and therefore he was not heard, which resulted in an adverse decision by CRC dated 10.04.2026. Such Order of CRC was challenged by the petitioner before the Review Committee under Rule 32(7) SPP Rules 2010 through Appeal dated 13.04.2026, hearing whereof was conducted in which the Petitioner was heard by the Review Committee. The Committee also unanimously rejected the Petitioner’s appeal, which has been challenged in this writ petition.

6. The petitioner claims that he was ousted on multiple grounds, including the main ground that the original Bid Security/ pay order was not submitted by the petitioner to the procuring agency. The petitioner claims that the Security Bid/ pay order was prepared before the Evaluation process, and in this regard, a photocopy of the pay order has also been annexed with the petition. Per learned counsel for the petitioner, (a) the requirement of the original Security Bid was not mandatory, (b) the officials did not ask the petitioner for the original Security Bid (pay order), and (c) the original pay order was not received

by the officials, while the original is with the petitioner and can be submitted anytime as and when required. In Ground C of the petition, the petitioner has himself stated that, “the decision of the review committee is based upon only one finding.....the requirement is compulsory under EPADS. Therefore, the **petitioner’s assumption** was found to be invalid.” In ground D of the petition, it is claimed that “**the procuring agency..... did not bother to communicate the petitioner on the spot and receive original receipt.....**”

7. Mr. Muhammad Uzair Shaikh, learned counsel for private Respondents and Mr. Mohsin Ali Pathan learned AAG unanimously but vehemently denied petitioner’s such pleas by claiming that under the relevant provisions and requirements, submission of the original Security Bid/ Pay Order is mandatory, which was not complied with by the petitioner and the petitioner neither participated in the bidding process, nor offered the original Security Bid hence the question of refusal by officials did not occur at all, hence his bid was rightly declared as non-Responsive.

8. Firstly, Rule 37(2) of the SPP Rules 2010 provides:

“37. Bid Security

(1) ...

(2) **the Bid Security shall be called in the form of deposit at call or pay order** or demand draft or a bank guarantee issued by a Scheduled Bank in Pakistan or from a foreign Bank duly counter guaranteed by a Scheduled Bank in Pakistan in favour of the procuring agency valid for a period of 28 days beyond the bid validity date.

(3) **the procuring agency shall get the Bid Security verified** in the following form and manner, from the issuing agency:

(a) **all bid securities** of contracts with estimated cost up to Rs.50.00 million **shall be verified by the issuing agency;**

(b) **all bid securities** of contracts with estimated cost above Rs.50.00 million **shall be verified by the Head Office of the issuing agency.**

4. In case of cancellation of bidding process in terms of rule 25, the Bid Security shall be returned to the bidders, not later than 15 days from the date of cancellation notice.

5. Bid Security shall be forfeited in following circumstances if –

(a)

(b)

(c)

(d) ...

(e)

[emphasis added]

9. Secondly, the ‘Notice Inviting Tender’ [NIT] Clause 4, required that:

“4. Bid Security: The Bidder shall submit the required Bid Security prior (in original) to the deadline for Bid submission and before the opening of Bids. Failure to furnish the Bid Security in the prescribed form and amount within the stipulated time shall render the Bid non-responsive, and such Bid shall not be considered for further evaluation.”

[emphasis added]

10. Thirdly, the Remarks recorded upon Evaluation of Technical Proposals on 31.03.2026 were:

“During the verification of CDR was not found in original. Therefore, in compliance with rule 37, submission of security/deposit is mandatory. As the bidder failed to fulfil this requirement, the bid is declared technically non-responsive.”

11. On a plain reading of Clause 4 of the NIT, especially the words ***“the Bid Security shall be called”***, coupled with the restrictive language and punitive action in case of its non-compliance i.e. ***“Failure to submit....within the stipulated time shall render the Bid non-responsive, and such Bid shall not be considered for further evaluation”*** makes it clear that the NIT mandatorily required submission of Bid Security in original, failing which, the bid will not to be considered and will automatically render the bid as non-responsive. Moreover, the procedures and actions as suggested in sub-Rules (2), (3), (4) and (5) of Rule 37 can only be implemented if the Bid Security is physically submitted in original. Hence, a combined reading of both Rule 37 SPP Rules, with Clause 4 of the NIT, strengthens the argument that submission of original Bid Security (pay order in the present case) was a mandatory requirement, without which, neither such Bid Security could be verified [as mandatorily required under rule 37(3)(a) and (b) *ibid*], nor could it possibly be returned to the bidder [under rule 37(4) *supra*], nor could it be forfeited [as mandated under Rule 37(5)]. On the contrary, non-submission of original Bid Security practically renders the entire object and purpose of sub-Rules (2)(3)(4) & (5) of Rule 37, and Clause 4 of the NIT, as completely redundant. Courts in Pakistan have consistently declared the procurement enactments and rules as mandatory, having a binding effect, as held in ***‘Habibullah Energy Ltd. V. WAPDA through Chairman’ (PLD 2014 SC 47); ‘Khawaja Muhammad Asif v. Federation of Pakistan’ (PLD 2014 SC 206)***. The petitioner’s line of argument on this legal issue is therefore rejected.

12. Turning to the factual aspect of the matter, it is common ground from both sides that the original pay order has not been submitted. The petitioner claims that the original Bid Security instrument (pay order) was offered but was not received by the officials, a fact strenuously denied by the official Respondents, who state that the same was neither offered at all nor submitted in original, since the petitioner or his representatives did not even attend the bidding process. In this regard, the official Respondents also relied upon the **‘Attendance Sheet’** dated 31.03.2026 at the time of opening of the Technical Proposals, perusal whereof reveals that although signatures of 34 other persons/ bidders/ contractors/ were affixed thereon, no signature of the petitioner or his representative was available thereon. Mr. Uzair Shaikh Advocate also drew attention in this regard to Rule 41(4) of the SPP Rules 2010, which requires that: **“41.(4) All bids shall be opened publicly in the presence of all the bidders, or their representatives, who may choose to be present in person, at the time and place announced in the invitation to bid”**, whereas Rule 41(6) require **“All bidders in attendance shall sign an attendance sheet.”** Upon perusal of the Attendance Sheet, the signature of the petitioner or his representative is conspicuously missing from the Attendance Sheet, which lends support to the version of the official Respondents that neither the petitioner personally attended the proceedings nor offered or submitted the original Bid Security. When inquired, no

plausible explanation could be extended by the Petitioner's side, which further supports the official version.

13. To further verify this fact out of abundant caution, we have also perused the Petitioner's complaint to the Chairman CRC dated 07.04.2026, but not a single word or pleading could be found therein regarding such the factual claim of any offer to submit, nor about the refusal to accept original Bid Security/ pay order. On the contrary, a completely different stance was taken by the petitioner in the complaint before CRC, in the following words:

“The procurement committee has also shown in his report that our firm has not produced original CDR which is also illegal as well as unjustified as the original CDR can only be produced with the financial proposals. When the financial proposals cannot be opened before technical evaluation, how our firm can attach original CDR with the technical proposals which requires clarification by the procurement committee.”

[emphasis added]

14. We also went through the memo of Appeal dated 13.04.2026 filed by the petitioner before the Review Committee, yet again, not a single word, pleading, or allegation could be found therein *viz a viz* the factual allegation of offer to submit original Bid security/ pay order by the petitioner or refusal to accept the same by the officials. On the contrary, the above emphasised words confirm that the original Security Bid was neither submitted in original, nor offered by the petitioner, nor refused by the officials. Apart from the above, we also tried to find in the memo of Appeal before the Review Committee, the petitioner's second factual allegation of lack of timely service of notice of hearing before CRC. However, again, not a single word or pleading has been recorded in the memo of appeal about such a second allegation. Nevertheless, the petitioner's counsel admits that a complete opportunity of hearing was afforded to the petitioner before the Review Committee. The law is clear that a factual plea which was never raised before the forum of first instance/ CRC or the appellate forum, could not be allowed to be agitated for the first time at the stage of a Constitutional petition under Article 199 of the Constitution. The pleas raised by the petitioner, and based whereon interim Order dated 04.05.2026 was also passed by this Court, are substantially and materially distinct from those raised by the petitioner before CRC and Review Committee. Such conduct is not permissible under the settled principles of law, as held in '*Pakcom Limited v. Federation of Pakistan*' (PLD 2011 SC 44), '*Nasir Ahmad Shaikh v. Nahid A. Shaikh*' (1986 SCMR 1621), '*Akhtar Iqbal Puri v. Settlement Commissioner, Lahore*' (PLD 1977 Lah. 249) and '*Abdul Sattar v. Addl. District Judge, Rawalpindi*' (1984 SCMR 925). Also attracted to the situation are the principles of Waiver, estoppel and approbation. Waiver may be by a positive, conscious or intentional act of relinquishment of a known right by a party, or it may be inferred from the conduct of the party, as held in '*Jam Pari v. Muhammad Abdullah*' (1992 SCMR 786). The petitioner is therefore bound by his conduct and pleadings and is *estopped*, on the strength of principles settled by the Honourable Supreme Court in '*Combined Investment (Pvt) Ltd. v. Wali Bhai and*

others' (PLD 2016 Supreme Court 730). The doctrine of *approbate* and *reprobate* based upon maxim '*qui approbat non-reprobat*' (one who approbates cannot reprobate) is also attracted, which upholds the sanctity of procedural fairness by disallowing inconsistent positions by a party within the same proceedings. Reliance is also placed upon '*Karsaz Pvt. Ltd. vs. Federation of Pakistan and others*' (2025 CLC 1281).

15. Considering all the above legal and factual aspects, we have no hesitation in holding that submission of original Bid Security was a mandatory requirement under Clause 4 of the NIT and Rule 37 of the SPP Rules 2010, which were not complied with by the petitioner and therefore, the decisions by the CRC. and the Review Committee on this and other aspects, were completely justified and within parameters of applicable law, rules and requirements. It is also an admitted position that the contract has already been awarded, and work order has already been issued to Respondent No.7, and the officials present confirm that work on the Site has also started. The settled principle of law in matters concerning procurement, tenders and contractual transactions, is that Constitutional jurisdiction is to be exercised in a limited manner and judicial review is generally confined to examining jurisdictional defect, or violation of mandatory provisions of law or rules. This Court ordinarily refrains from substituting its own opinion for that of the procurement authorities or expert bodies constituted under the relevant procurement framework. No jurisdictional defect or patent illegality on the face of the record could therefore be pointed out against the impugned decisions.

16. Upshot of the above discussion is that no case for interference under the writ Jurisdiction of Article 199 of the Constitution is made out by the petitioner. Consequently, this petition, along with pending application(s), is dismissed with no order as to costs.

Before parting with this Judgment, I appreciate the valuable legal assistance extended by three young counsels **Mr. Mohsin Ali Pathan** learned AAG, **Mr. Safdar Ali Ghouri** for the Petitioner and **Mr. Muhammad Uzair Shaikh** for the Respondent, who were ably guided and encouraged by their respective seniors.

JUDGE

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