

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Constitution Petition No.D-375 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 Ecobuild Construction Company, through its proprietor Allah Bux Jamali, through M/s. Asif Ali Abdul Razak Soomro and Safdar Ali Ghouri, Advocates.
Respondents No.1 to 6:	Province of Sindh and others, through Mr. Mohsin Ali Pathan, Assistant Advocate General Sindh a/w Gul Bahar Mazari, XEN Kashmore Division Kashmore, Anwar Ali Soomro, XEN Kandhkot Division, Garhi Hassan and Dinesh Kumar, Superintending Engineer, Desert Pat Feeder Circle.
Respondent No.7:	M/s. Shah Hussain Construction Company, through M/s. Qurban Ali Malano and Muhammad Uzair Shaikh, Advocates for respondent No.7.
Date of Hearings :	11.05.2025, 12.05.2025, 13.05.2026.
Date of Announcement :	___.06.2026.

ORDER

MUHAMMAD HASAN (AKBER) J.: Through this petition, the petitioner has assailed 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 Order dated 23.04.2026 passed by the Review Committee [**RC**]; the Order dated 09.04.2026 [**impugned Orders**] by the Complaint Redressal Committee [**CRC**]; and the decisions of the Procuring Agency dated 30.03.2026, 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. We have heard the learned counsels for the parties, learned Assistant Advocate General and the officers present in Court and have gone through the record. To avoid repetition, the respective contention of the parties will be discussed at the relevant portions in this Order, for brevity's sake.

3. Gist of the arguments agitated by M/s. Asif Ali Abdul Razzak Soomro and Safdar Ali Ghouri learned advocates for Petitioners that 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.” Various contractors submitted their bids, including the petitioner, as per the eligibility criteria. The Technical Proposals were evaluated on 30.03.2026, wherein various objections were raised with respect to the Petitioner’s eligibility, against which he preferred a Complaint dated 04.04.2026 before CRC, hearing whereof was fixed on 09.04.2026 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 an Appeal dated 13.04.2026, wherein the Petitioner was duly heard by the Review Committee. Through its decision dated 23.04.2026, the Review Committee also unanimously rejected the Petitioner’s appeal, which has been assailed in this petition. It was further argued that the petitioner fulfilled all requisite conditions of the tender through EPADS but was illegally ousted without application of mind; 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; that the old name of the petitioner company and its documents ought to have been considered by CRC and Review Committee, and lastly, prayers were sought for setting aside of the impugned Order by CRC and the Review Committee.

4. Conversely, the petition was vehemently opposed by the Mr. Mohsin Ali Pathan learned Assistant Advocate General, Sindh, along with officials and M/s. Qurban Ali Malano and Muhammad Uzair Shaikh, learned Advocates for Respondent No.7/ successful bidder. It was contended that the procurement process was followed strictly in accordance with law; that the grounds being raised herein were not raised before the Review Committee; that that the requisite documents of the petitioner company were not submitted but instead reliance was placed on documents of company with another name, hence the petitioner’s bid was rightly rejected. They further contended that disputed factual controversies are involved in the matter, which cannot be adjudicated upon in the writ jurisdiction of this Court.

5. As regards the first plea of the petitioner that he was not heard by CRC since notice of hearing was not served in time, we have gone through the memo of Appeal dated 13.04.2026 filed by the petitioner before the Review Committee, but could not find a single word, pleading, or allegation therein, in this regard. Besides, the petitioner’s counsel admits that subsequently, a complete opportunity of hearing was afforded to the petitioner before the Review Committee, which also upheld the decision of the CRC. A factual plea which was never raised before the forum of first instance or the appellate forum, could not be allowed to be agitated for the first time at the stage of arguments in a writ petition under Article 199 of the Constitution and reference in this regard can be made to **‘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*. The petitioner is therefore bound by his conduct and pleadings and is *estopped* from raising a plea which was never raised before the Review Committee, 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 the 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, as held in *‘Karsaz Pvt. Ltd. vs. Federation of Pakistan and others*’ (2025 CLC 1281).

6. The next important aspect of the matter is that during the course of arguments on 12.05.2026, the Respondents claimed that the contract was already awarded to Respondent No.7, before even the filing of this petition, that the Work Order dated 20.04.2026 was issued even fourteen days before the filing of this petition, and work on Site had already commenced. The petitioner’s side, although admitting that the contract and work Order had been awarded before filing of the petition, they however, disputed that work on the site had commenced. We have perused the memo of petition to find if any such disclosure of the award of contract and issuance of work Order were made in the petition, but couldn’t find any such disclosure. We also looked at the proceedings conducted on the first day i.e. 04.05.2026, when the interim relief was granted to the petitioner in the following terms:

“Learned counsel for the petitioner has argued that against the Technical Evaluation by the procuring agency dated 30.03.2026 a complaint to CRC was preferred; however, the notice of such hearing was served at Hyderabad only half an hour before the time of hearing, as is evident from TCS report at page 57th of Court file; whereas the hearing was conducted in Sukkar and therefore, the decision dated 09.4.2026 was passed by the CRC without hearing or allowing an opportunity to the petitioner and the rights and contentions of the petitioner are yet to be determined.

Be that as it may, issue notice to the Respondent and learned Add. A.G. for 11.05.2026, when the Respondents No.4 and 5 shall also attend the Court along with the relevant record. Till the next date, Status Quo be maintained.”

7. It appears that neither in the memo of petition nor on 04.05.2026 was this material fact disclosed by the petitioner that the contract had already been awarded, the work Order had already been issued, and work on the Site had already commenced. Relief under Article 199 of the Constitution, being discretionary in nature, requires fair and complete disclosure of material facts. The petitioner ought to have disclosed such material facts to this Court since a party approaching the Court for urgent relief shall come with full disclosures. The principles of *laches* and *delay* in approaching the Court for seeking urgent relief may also be attracted.

8. The Respondents also disclosed during arguments that work on the Site has commenced which has been denied by the petitioner side and simultaneously, it was

specifically proposed and Undertaken by the Petitioner present in Court through his advocates, that if an independent Inspection is conducted, and it is found that work on the site has started, the petition would remain without any cause, would be infructuous and be withdrawn. The said proposal was accepted by the Respondent side and the officials present. Hence, based upon such proposal and Undertaking by the petitioner and by consent of all the parties, the learned Additional Registrar of this Court was appointed as Commissioner for an Urgent and Immediate inspection of the Site, along with all the concerned parties and for submission of the Report in Court on the very next day. The following Order was passed on 12.05.2026:

*“Learned counsels for the petitioner have argued the matter in detail, and during course of arguments, the learned counsel for the petitioner agitated that although Work Order has been issued; however, no work has started on site and in this regard he also objected to the Measurement Book (MB) submitted by the Respondent No.7 along with his counter affidavit. Such contention is vehemently denied by the counsel for Respondent No.7, as being factually incorrect. After agitating all points, under the instructions of authorized attorney of the petitioner who is present in Court, **states that the petitioner would be satisfied and the entire petition can be disposed of only on one point, if the learned Additional Registrar of this Court is directed to conduct on the spot inspection of the site within 24 hours, and if the work has started on the site, the petitioner would not press this petition.** Learned counsel for the Respondent No.7 who is the main contesting party, and official Respondents present along with learned Assistant A.G. have no objection to such proposal.*

*Accordingly, the Additional Registrar of this Court is appointed as Commissioner to inspect the site i.e. **“REHABILITATION OF X-REGULATOR MILE-63 OF DESERT CANAL INCLUDING ROAD BRIDGES. REHABILITATION OF X-REGULATOR MILE-7, MILE-19 AND MILE-36 OF DESERT CANAL”** (available at page-31 Annexure-B) of the Court File as provided in the NIT dated 09.03.2026 and submit report as to **“whether work has started on the site in terms of Work Order 20.04.2026?”** as at (page 83 of the court file). The Assistant Registrar shall also accompany the Additional Registrar along with official Respondent and the contesting parties. **The Report in this regard shall be submitted by tomorrow before 12:30 (Noon).** The fee of Additional Registrar is fixed at Rs.100,000/- including transportation which shall be paid by the petitioner directly to the Commissioner. Adjourned to 13.05.2026 at 12:30 pm. Till then, interim order passed earlier to continue.”*

9. In compliance to the above consent Order, the learned Additional Registrar of this Court visited the Site and conducted an Inspection in the presence of all contesting parties and official respondents and submitted his Inspection Report early the next morning. The Inspection Report, supported by photographs, reflects that work on the Site has started, and based thereon, coupled with the petitioner’s undertaking, the petition merits disposal. The superior Courts of Pakistan on several occasions have refused to intervene when the contract had already been awarded and partially performed. In *‘M/s. Nasar Enterprises through attorney v. Government of Balochistan through Secretary Services and General Administration Department, Government of Balochistan and 2 others’* (2025 MLD 1616), where the procurement process was complete, the Work Order was issued, and the work was partially performed, the same was treated as a past and closed transaction and

interference in writ jurisdiction was declined. Further reliance in this regard can also be placed on '*Shahid Waqqas Traders through Abdul Waheed v. Pakistan Agricultural Storage And Services Corporation Ltd. and others (PASSCO)*' (2003 CLC 568) and '*National Institution Facilitation Technologies (Pvt.) Limited through duly Authorized Officer v. The Federal Board of Revenue through Chairman and 7 others*' (PLD 2020 Islamabad 378). Again, in '*Executive Engineer, Highway Division, Abbottabad and another v. Habib-Ur-Rahman*' (1996 CLC 279), the Court refused to interfere and restrain the Department from performing its public duties of completion of the remaining construction of the road, on the ground that the partially done work on the road would be wasted and the Department would incur huge losses. In the case of '*Dr. Nisar Hussain V. Settlement Commissioner, Lahore Division, Lahore and Others*' (1980 SCMR 991), the invocation of writ jurisdiction was refused in a matter where the duty had already been performed. For further reference, '*Ahmad Khan v. Province of Punjab and others*' (1993 MLD 1467) can also be seen. In '*Messrs Ittehad Cargo Service and 2 others v. Messrs Syed Tasneem Hussain Naqvi and others*' (PLD 2001 SC 116) the Honourable Supreme Court refused to interfere where Administrative decision neither lacked transparency nor was tainted with *mala fides* nor was unfair, unjust or unreasonable nor based on bias or favouritism and discretion vested in the Authority had been properly structured by reference to objective standards which were not exercised arbitrarily. The Honourable Supreme Court has further held that the presumption of regularity is attached to official acts, and such acts cannot be annulled or rebutted on mere vague allegations. Reliance is placed on '*Muhammad Din v. The Deputy Settlement Commissioner and others*' (2022 SCMR 1481), '*Kausar Ghaffar v. Government of Punjab*' (PLD 1974 SC 151) and (2013 SCMR 99).

10. Considering the above legal and factual aspects, we are of the view that the allegations of delay in service for the hearing before CRC. was never raised before the Review Committee but was coined for the first time in the petition; nevertheless, due opportunity of hearing was afforded to the petitioner before the Review Committee; that the factum of award of the contract and issuance of work order before even filing of this petition, lacks disclosure in the petition, which fact surfaced on the first day of hearing of this petition through Respondents, to which the petitioner side contested that work on the site has not commenced; that based upon specific proposal and undertaking from the petitioner side and by consent of all present, the Order for Inspection dated 12.05.2026 was passed; that record confirms that the contract was awarded to the Respondent No.7 before filing of this petition; the record further conforms that work order dated 20.04.2026 was also issued top Respondent about two weeks before filing of the petition; that based upon petitioner's proposal and Undertaking, urgent Inspection was conducted by the Additional Registrar of this Court; that the Inspection reflects that the work has commenced on the Site, which makes it a past and closed transaction; that material facts were not disclosed by the petitioner in the petition; and, that presumption of regularity and correctness being attached to official acts, the same cannot be interfered in routine. The settled principles in

matters concerning procurement, tenders and contractual transactions are that writ 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, rules or lack of transparency in the procurement process, which are not found in the present case. 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, and several decisions of the superior Courts of Pakistan in this regard have already been recorded at paragraph 10 *supra*.

11. 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, we 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 encouraged by their respective seniors.

JUDGE

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