IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constitution Petition No. D-155 of 2022
(Waseem Ahmed Vs. P.O Sindh and others)

Before:-
Mr. Justice Zulfiqar Ali Sangi,
Mr. Justice Ali Haider 'Ada'.

Petitioner:	Waseem Ahmed Khichi, *Through* Mr. Safdar Ali Ghouri, Advocate.
Respondents:	Province of Sindh and others, *through* Mr. Liaquat Ali Shar, Additional Advocate General assisted by Mr. Mohsin Ali Khan, Assistant Advocate General, along with Ali Nawaz Rahupoto, Superintending Engineer, Provincial Highways Circle, Larkana and Khadim Hussain Kalwar, Executive Engineer, Provincial Highways Division, Larkana.
Date of Hearing:	19.08.2026.
Date of Decision:	27.08.2026.

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JUDGEMENT

Ali Haider 'Ada' 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 four Notices Inviting Tenders ("NITs") floated by the Executive Engineer, Provincial Highways Division, Larkana (respondent No.5), principally on the ground that no funds had allegedly been allocated for the schemes in question. It has been contended that the impugned NITs did not disclose any allocation of funds, that the requisite sanctioned estimates had neither been prepared nor approved, and that the mandatory procurement plan was not available. According to the petitioner, such omissions constituted a violation of Rule 11 of the Sindh Public Procurement Rules, 2010 ("SPP Rules"), rendering the impugned NITs unlawful, without lawful authority and liable to be set aside.

2. The petitioner has projected himself as a *pro bono publico* litigant; therefore, his challenge is required to be examined from the standpoint of genuine public interest rather than any private,

personal or vested interest. However, mere invocation of the expression "public interest" does not, by itself, confer an unrestricted right to invoke the extraordinary constitutional jurisdiction of this Court. The petitioner is still required to demonstrate a bona fide cause of public concern and establish that the impugned action suffers from illegality, arbitrariness, mala fide or violation of a statutory or constitutional requirement.

3. On notice, comments were submitted by the Executive Engineer, Provincial Highways Division, wherein the allegations contained in the petition were controverted as frivolous, misconceived and without factual or legal basis. The procurement plan pertaining to the schemes was also placed on record. The Additional Secretary, Finance Department, in his comments, stated that the Finance Department releases funds only in respect of duly approved development schemes and in accordance with the applicable release policy. Significantly, the said comments do not support the petitioner's assertion that the schemes forming the subject matter of the impugned NITs were unapproved or that no funds could lawfully be utilized therefor.

4. The Assistant Executive Engineer, Provincial Highways Sub-Division (respondent No.9), further submitted that approximately 60% to 70% of the works covered by the impugned NITs had already been completed and that the schemes had substantially progressed after observance of the relevant legal and procedural requirements. A progress report was also placed on record in support of such assertion. Similarly, the Superintending Engineer, Highway Circle, Larkana, submitted that substantial portions of the works had already been completed and that the petitioner had approached this Court after an inordinate lapse of time, approximately three years, when the tender process had already substantially progressed. It was, therefore, contended that the petition had become infructuous and no effective relief could now be granted.

5. Learned counsel for the petitioner, while reiterating the original grounds, submitted that the impugned NITs had not been issued in accordance with the statutory procurement mechanism. According to learned counsel, preparation and availability of a procurement plan was a mandatory precondition under Rule 11 of

the SPP Rules and the same had allegedly not been complied with. It was further argued that the NITs did not specifically disclose allocation of funds for the respective schemes and, consequently, the procurement process was legally defective from its inception. However, when confronted with the respondents' assertion that approximately 60% to 70% of the works had already been completed, learned counsel fairly conceded that, in view of the subsequent developments, the petition had become infructuous, although he nevertheless requested that the matter be examined on merits.

6. Conversely, learned Additional Advocate General appearing for the respondents contended that the petition was filed in March 2022, whereas the impugned NITs had been issued during the year 2021 and the tender process had substantially been completed even before institution of the present proceedings. It was argued that the petitioner had neither participated in the tender process nor submitted any bid or expression of interest and, therefore, had no legally enforceable interest or locus standi to assail the procurement process. It was further submitted that the allegations regarding non-availability of funds and procurement plan were factually incorrect, as the procurement plan had been placed on record and the concerned authorities had acted in accordance with the prescribed procedure. On these grounds, dismissal of the petition was sought.

7. We have heard learned counsel for the parties and examined the available record.

8. At the outset, it would be advantageous to refer to the statutory definition of **"Notice Inviting Tender"** contained in Rule 2(z) of the Sindh Public Procurement Rules, 2010, which reads as follows:

> *(z) "**Notice Inviting Tender**" means the notice issued by a Procuring Agency through publication in the news-papers or through electronic means of the purpose of inviting bids, or applications for pre-qualifications, or expression of interest, which may include Tender Notices, Invitation for Bids, Notice for Pre-qualifications or Request for Expression of Interest;*

9. The above provision makes it clear that an NIT is essentially an instrument through which a procuring agency publicly invites prospective bidders to participate in a procurement process. The issuance of an NIT, however, cannot be viewed in isolation; rather, it forms part of a broader statutory and administrative framework governing planning, approval, financing, procurement and execution of public works. In this context, reference may appropriately be made to Sections 2(l) and 2(m) of the Sindh Public Procurement Act, 2009, defining "Public Fund" and "Public Procurement", respectively:

> *(l) "**Public Fund**" means the Provincial Consolidated Fudn and the Public Account of the Province and includes funds of enterprises which are owned or controlled by Government;*
>
> *(m) "**Public procurement**' means acquisition of goods, services or construction of any works financed wholly or partly out of the Public Fund, including projects of public-private partnership, unless excluded otherwise by Government;*

10. These provisions demonstrate that public procurement is regulated through a structured statutory mechanism intended to ensure transparency, competition, economy, accountability and proper utilization of public funds. The mere absence of a detailed reference to the source or allocation of funds in the text of an NIT, however, cannot by itself establish that no funds were available or that the underlying scheme had not been duly approved. Such a conclusion must necessarily be founded upon cogent material demonstrating violation of the prescribed procedure.

11. The procedural framework governing execution of public works may also be appreciated with reference to the **Bombay Public Works Department Manual, Volume-I, Chapter XVIII,** insofar as the same continues to govern the relevant departmental procedure. In this regard, **Paragraph 515** of the said Manual is relevant and, for ready reference, is reproduced herein below:

TENDERS

> *515. As a rule, no tender for the execution of works of any description should be received unless accompanied by the deposit of cash as earnest money, to the extent which has been notified as*

necessary by the Executive Engineer or other officer.

Contractors when submitting tenders should be called upon to produce evidence of their financial status from the Collector of the District or from the Durbar within whose jurisdiction they reside. Certificates from the Durbars should be accepted only if countersigned by the Political Agent concerned.

Large firms of contractors in Bombay and in the mofussil which regularly undertake contracts valued at several lakhs of rupees and which are considered to be of good standing, may be exempted by the Superintending Engineer concerned from the requirement regarding the production of the usual certificate of solvency when submitting tenders. When, however, the Superintending Engineer has reason to suspect that such a firm (hitherto generally understood to be of good standing) has shown signs of becoming unsound, it should be called upon to produce a banker's certificate of financial stability before a tender offered by the firm is considered.

Similarly in the case of those contractors who are on the approved list, the solvency certificate may not be insisted upon unless the Executive Engineer has reasons to doubt the soundness of their financial condition.

12. Furthermore, the execution of any work scheme is subject to the grant of administrative approval and technical sanction, as contemplated under **Paragraphs 505 and 506** of the said Manual. These requirements constitute essential procedural prerequisites before a work can lawfully proceed. For ready reference, paragraphs 505 and 506 are reproduced herein below:

ADMINISTRATIVE APPROVAL AND TECHNICAL SANCTION

***505**. For every work proposed to be carried out, except petty works and repairs the cost of which is not likely to exceed Rs. 1.000, and annual repairs for which a lump sum provision has been sanctioned by the Superintending Engineer, a properly detailed estimate must be prepared for the sanction of competent authority; this sanction is only be accorded by Government in the Public Works Department, or where power has been delegated to them, by officers of that Department.*

Sanction accorded to the construction of a work by any other department of Government is to be regarded merely, as an "administrative approval" of the work, as defined in the following rule, and the fact that such approval has been accorded, in no way dispenses with the necessary for a further technical sanction, which must be obtained before the construction of the work is commenced.

Note 1.-In the case of petty works and repairs, the preparation of detailed plans and estimates may usually be dispensed with. The necessary requisition should be made in Public Works Account Code Form No. 32 --Bombay Standar Public Works Department Form No. 416--and the work carried out in accordance with the procedure prescribed by paragraph 123 of the Public Works Department Manual.

Note 2. Detailed plans and estimates should, however, be prepared in respect of original works of electric installations in Government buildings irrespective of their cost.

***506**. For every work (excluding repairs and petty works) initiated by, or connected with, the requirements of another department, it is necessary to obtain the concurrence of the department concerned to the proposal of proposals before technical sanction to the work is accorded in the Public Works Department. The formal acceptance by the department concerned is termed "administrative approval" of the work and is, in specified works at a stated sum to meet the administrative needs of the department requiring the work. Such approval should not, however, be accorded until the professional authorities have intimated that the proposal are structurally sound and that the preliminary estimate in followed in the case of works required to meet the administrative needs of the Public Works Department, both the administrative approval and the technical sanction being accorded, in such cases, in the Public Works Department.*

13. In addition, the preparation of an estimate is intended to determine and provide for the expenditure likely to be incurred on the proposed work, as well as to reflect the complete estimated cost of the project. This requirement is also contemplated under **Paragraph 511** of the said Manual. For ready reference, the relevant provision is reproduced herein below:

PREPARATION OF ESTIMATES

> *511. Ordinarily a detailed working estimate will provide for the work expenditure, but the complete estimates for a project should include indirect as well as direct charges.*

14. Now, coming to the point of the bills and the vouchers regarding the accounts of the work, in which **Paragraph 544** clearly provides the mechanism with conditions of the first and final bills and described in prescribed forms. For ready reference, the same is read as under:

> *544. The authorized forms of bills and vouchers are the following:-*
>
> *(a) First and Final Bill, Form No. 24.*
> *(b) Running Account Bill A, Form No. 25.*
> *(c) Running Account Bill B, Form No. 26.*
> *(d) Running Account Bill C, Form No. 27.*
> *(e) Hand Receipt, From No.28.*

15. Thus, there can be no cavil with the proposition that execution of a public development work must be preceded by compliance with the applicable requirements relating to administrative approval, technical sanction, estimation, availability of funds and procurement planning. These safeguards exist precisely to prevent unauthorized expenditure and to secure transparency and financial discipline in public works. However, the question before us is not whether such requirements exist; rather, it is whether the petitioner has established that the respondents, in the present case, acted in breach of those requirements. On careful examination of the record, we find that the petitioner has not placed any substantive material demonstrating that the schemes were without approval, that the requisite procurement plan was non-existent, that technical sanction had not been granted, or that public funds were unavailable for execution of the works. On the contrary, the procurement plan has been placed on record by the concerned department, while the Finance Department has stated that funds are released for approved development schemes in accordance with the applicable policy.

16. It is equally significant that the challenge was brought after considerable lapse of time. The impugned NITs were issued in

2021, whereas the present petition was instituted in March 2022, and by the time the matter came up for effective consideration, the respondents had placed material before the Court showing substantial completion of the works. The petitioner himself, when confronted with this position, conceded that the petition had become infructuous. The extraordinary constitutional jurisdiction of this Court cannot ordinarily be invoked to unsettle a procurement process which has substantially progressed or works which have already been executed, particularly in the absence of proof of fraud, mala fide, jurisdictional defect or patent violation of a mandatory statutory provision. Courts exercising constitutional jurisdiction must be mindful that interference at an advanced stage of a public project may itself cause prejudice to the public interest by disrupting ongoing development works and occasioning avoidable financial consequences to the public exchequer.

17. It is also pertinent that the Sindh Public Procurement Act, 2009 and the Sindh Public Procurement Rules, 2010 provide a comprehensive statutory framework governing public procurement, including mechanisms for raising and adjudicating procurement-related grievances. Constitutional jurisdiction is not intended to substitute the statutory procurement mechanism in every case, particularly where the aggrieved person has not demonstrated violation of a fundamental right, jurisdictional defect or manifest illegality. The Court must, therefore, exercise restraint where the competent authorities have acted within the framework of law. In this regard, the principle enunciated in ***Saif Enterprises v. Province of Sindh and others, reported as 2025 CLC 1826***, is relevant. The Court, while considering interference in procurement matters, has emphasized the need for judicial restraint where no material illegality, arbitrariness or mala fide is established and the competent procurement authorities have acted within the statutory framework.

18. Another important aspect is the petitioner's locus standi. The record indicates that the petitioner neither participated in the procurement process nor submitted any bid, expression of interest or other document demonstrating a legally protected interest in the impugned tenders. While a stranger may, in appropriate circumstances, invoke constitutional jurisdiction where a clear case of public wrong or illegality affecting the public at large is

demonstrated, such jurisdiction cannot be converted into a roving or generalized power to challenge every governmental procurement action. In ***Premier Battery Industries (Pvt.) Ltd. v. Karachi Water and Sewerage Board, reported as 2019 CLC 583***, it has been recognized that where the public notice contains the necessary particulars concerning the project, eligibility of participants and relevant dates, and no violation of the applicable procurement framework is established, interference by the Constitutional Court is not warranted merely at the instance of a person who did not participate in the procurement process. The same principle assumes greater significance where proceedings are styled as pro bono publico. Public interest litigation is a constitutional remedy intended to secure public rights and prevent public wrongs; it is not a device for reopening concluded or substantially completed administrative processes in the absence of a demonstrable public injury. The petitioner invoking such jurisdiction must satisfy the Court regarding the bona fides of the proceedings and must establish that the litigation is genuinely directed towards advancement of public interest rather than an indirect means of pursuing a private or collateral objective. The Supreme Court has reiterated these principles in ***Premier Battery Industries (Pvt.) Ltd. v. Karachi Water and Sewerage Board and others, reported as 2018 SCMR 365.***

19. Tested on the above principles, the petitioner's case does not withstand scrutiny. No material has been brought on record to establish that the impugned NITs were issued without the requisite procurement plan, administrative approval, technical sanction or availability of funds. The petitioner's principal allegations, therefore, remain unsupported assertions. More importantly, the works have substantially progressed and, according to the material placed before the Court, approximately 60% to 70% thereof had already been completed. The counsel for the petitioner has himself conceded that, in view of such subsequent development, the petition has become infructuous. The Court cannot grant an academic declaration in relation to a process which has substantially run its course, particularly where no continuing legal injury has been demonstrated and no effective relief can now be fashioned without causing possible prejudice to public works already undertaken. The constitutional jurisdiction is discretionary

and equitable in nature and is not exercised merely for determining abstract questions where the lis has ceased to retain any practical consequence.

20. We are, therefore, of the considered view that the petitioner has failed to establish any violation of the Sindh Public Procurement Act, 2009, the Sindh Public Procurement Rules, 2010, or any other applicable legal provision. No case of mala fide, arbitrariness, lack of jurisdiction or patent illegality has been made out. The challenge is also rendered academic and infructuous by reason of substantial completion of the works. For the foregoing reasons, the instant Constitutional Petition is found to be devoid of merit, misconceived and, in any event, infructuous. The petitioner has failed to make out any case warranting interference by this Court in exercise of its constitutional jurisdiction under Article 199 of the Constitution. Accordingly, the instant Constitutional Petition is dismissed.

JUDGE

JUDGE