IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Constitution Petition No.D-651 of 2026

Before;
Mr. Justice Riazat Ali Sahar;
Mr. Justice Ali Haider 'Ada'.

Petitioners:

1. Ali Gohar son of Khair Muhammad Jagirani,
2. Janib Ali son of Pandhi Khan Lashari,
3. Riaz Hussain son of Nabi Bux Langah,

through Mr. Mazhar Ali Bhutto, Advocate.

versus

Respondents:
Province of Sindh and others, ***through*** Mr. Liaquat Ali Shar, Additional Advocate General Sindh alongwith Barkat Ali Khowaja, Chief Engineer (Dev), PHED, Sukkur and Rashid Ali Rind, Executive Engineer (Dev) PHED, Larkana.

Date of Hearing	:	03.09.2026.
Date of Decision	:	03.09.2026.
Date of Reasons	:	08.09.2026.

JUDGMENT

Ali Haider 'Ada', J.- Through this petition, the petitioners, being Government contractors, have called in question the Notice Inviting Tender **(NIT)** issued by the Public Health Engineering Division, Larkana, in respect of the scheme titled *"Up-gradation of Drainage System of Larkana City."*

2. Learned counsel for the petitioners submitted that the primary objection to the impugned NIT is that the entire scheme has been floated as a single work, whereas, according to the petitioners, for its proper execution and up-gradation, the scheme ought to have been divided into different portions or separate work schemes. He contended that such division would facilitate proper execution of the work and provide an opportunity to different contractors to undertake the respective components, instead of awarding the entire work under a single contract to one contractor. He further submitted

that the manner in which the NIT has been issued is contrary to the principles embodied in the Sindh Public Procurement Rules, 2010. He, therefore, prayed that the impugned NIT be set aside and the respondents be directed to invite a fresh NIT by appropriately dividing the work into separate components.

3. Conversely, learned Additional Advocate General Sindh, appeared and on behalf of respondents No.2 and 4, namely, the Chief Engineer, Public Health Engineering Department, Sukkur, and the Executive Engineer (DEV), Public Health Engineering Division-I, Larkana, filed comments and controverted the assertions made in the petition. He submitted that the contention raised by the petitioners is misconceived, as the scheme comprises various interrelated components which are required to be executed as an integrated project under a single management. According to him, the scheme has been conceived for the overall improvement and up-gradation of the drainage system of Larkana city, and its execution through a single agency would ensure proper coordination and effective management of the various components of the project. He further submitted that experience has shown that when such works are divided into separate contracts, proper coordination and management are often lacking. In particular, drainage lines are laid a cross roads, whereafter the road authorities are required to excavate the roads for carrying out their respective works, resulting in disruption, duplication of effort and improper execution of the overall scheme. It was, therefore, considered appropriate to undertake the entire scheme through a single contract so as to ensure its coordinated and effective execution. He maintained that the impugned NIT has been issued strictly within the framework of the Sindh Public Procurement Rules, 2010, and that the nature and scope of the work also contemplate the engagement of an engineering consultant, as specifically provided in the NIT placed before this Court. Learned Additional Advocate General further submitted that the petitioners have no legal impediment to

participating in the tender process and, if otherwise qualified, their bids shall be considered in accordance with the Sindh Public Procurement Rules, 2010. He contended that the petitioners have approached this Court merely with the object of disrupting the Government scheme and creating unnecessary hindrance in its execution, despite having no vested right to insist upon the division of the scheme into separate contracts. He, therefore, prayed that the petition, being devoid of merit and intended only to cause harassment to the official functionaries, be dismissed.

4. Heard learned counsel for the parties and perused the record.

5. At the outset, it would be apposite to advert to the statutory definition of the expression **"Notice Inviting Tender"** as contained in **Rule 2(z) of the Sindh Public Procurement Rules, 2010**, which reads as under:

> *(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;*

6. The foregoing provision makes it evident that an NIT is essentially a statutory instrument whereby a procuring agency publicly invites prospective bidders to participate in a procurement process. However, the issuance of an NIT cannot be considered in isolation; rather, it constitutes a part of the broader statutory and administrative framework governing the planning, approval, financing, procurement and execution of public works. In this regard, it would be appropriate to refer to **Sections 2(l) and 2(m)** of the **Sindh Public Procurement Act, 2009,** wherein the expressions **"Public**

Fund" and **"Public Procurement"**, respectively, have been defined as under:

> *(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;* As per Para No.11.

7. The procedural framework governing the execution of public works may further be examined 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 of particular relevance 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.

8. 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.*

9. 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.

10. Now, if the provisions of **Clause 2.9 of the Regulations for Procurement Work, 2013** are perused, wherein the procurement plan has been elaborated, it becomes evident that the procuring agency shall have to devise a mechanism for planning and detailing all proposed procurements, determining the requirements of the procuring agency within the available resources, and preparing a comprehensive plan for specific procurement. For ready reference, **Clause 2.9** is reproduced hereunder:

2.9 Procurement Plan (Rule 11).

(1) Procurement planning: Procuring Agency shall devise a mechanism for planning in detail for all proposed procurements, determining the requirement of the procuring agency within its available resources, and prepare comprehensive Procurement Plan (annual or a longer term rolling plan), detailing the procurement methods applicable for specific procurements. The Procurement Plan shall be separately prepared for development projects/ programme and of revenue budget. The annual Procurement Plan should be formulated at the same time as the annual budget forecast, since the annual activities of individual procurement units depend on

the funds that are made available for procurement. They should be finalized in July, as soon as the anticipated final budget figures for the new financial year have been notified. However, they can be revised/modified during the course of a financial year, whenever a change is anticipated in budget by provision or release.
The procuring agency shall ensure that funds are used for the purpose for which they are allocated and should used them economically and efficiently without exogenous considerations.
All procurement requirements be documented and approved by Head of department/Project Director or Officer to whom powers are delegated prior to commencement of procurement proceedings. Following points may be taken in account while preparing Procurement Plan for development schemes and non development expenditure budgets as the case may be:

(a) procurement plan be prepared for approved/ unapproved schemes keeping in view the allocated funds for the financial year;

(b) if time for completion of scheme is more than one year, rolling plan is to be prepared keeping in view the flow of funds;

(c) in case funds are re-appropriated (addition or deduction), the required plan be updated/ adjusted accordingly;

(d) funds on "Maintenance & Repair" are released either on case to case based or en-block. Accordingly;

(i) the funds shall be used for the job/ work for which the funds are released and the plan shall envisage the items to be executed from the allocated funds;

(ii) block funds be distributed as per requirements/plan;

(e) it is pertinent to note that that the rolling plan is not required for .Maintenance & Repair.

(2) -----------------
(3) -----------------

11. Furthermore, the NIT was floated and, being public functionaries, the respondents are under an obligation to follow the procedure as enshrined under **Rule 17**, **Sindh Public Procurement Rules, 2010,** regarding the matter of notification and advertisement. The pre-qualification of suppliers and contractors, as prescribed

under **Rule 27** of the Sindh Public Procurement Rules, 2010, is also one of the main ingredients for the purpose of pre-qualification for bidding for a specific contract, and such process is already prescribed under **Rule 28** of the Sindh Public Procurement Rules, 2010. **Rule 46** also prescribes the procedure for open competitive bidding, wherein the one-envelope procedure is mentioned. For ready reference, the same is reproduced as under:

> ***46. Procedures of open competitive bidding****. - Save as otherwise provided in these rules, the following procedures shall be permissible for open competitive bidding:*
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> ***(1) Single Stage****. - One Envelope Procedure -*
>
> *(a) Notice Inviting Tenders and bidding documents of this method shall contain the following eligibility criteria:*
>
> *(i) relevant experience;*
>
> *(ii) turn-over of at least last three years;*
>
> **[(iii) registration with Federal Board of Revenue (FBR), for Income Tax, Sales Tax in case of procurement of goods, registration with the Sindh Revenue Board in case of procurement of Works and Services and registration with Pakistan Engineering Council where applicable;]*
>
> *(iv) any other factor deemed to be relevant by the procuring agency subject to provision of Rule 44.*
>
> *(b) each bid shall comprise one single envelope containing the financial proposal and required information mentioned at clause (a) above;*
>
> *(c) all bids received shall be opened and evaluated in the manner prescribed in the Notice Inviting Tenders or bidding document.*
>
> ***(2) Single stage****. - Two envelope procedure -*
>
> *(a) bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;*
>
> *(b) envelopes shall be marked as "FINANCIAL PROPOSAL" and "TECHNICAL PROPOSAL" in bold and legible letters to avoid confusion;*
>
> *(c) initially, only the envelope marked "TECHNICAL PROPOSAL" shall be opened;*
>
> *(d) envelope marked as "FINANCIAL PROPOSAL" shall be retained in the custody of the procuring agency without being opened;*

(e) procuring agency shall evaluate the technical proposal in a manner prescribed in advance, with-out reference to the price and reject any proposal which does not conform to the specified requirements;

(f) no amendments in the technical proposal shall be permitted during the technical evaluation;

(g) financial proposals of technically qualified bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance;

(h) financial proposal of bids found technically non-responsive shall be returned un-opened to the respective bidders; and

(i) [Not printed in original Notification]

(j) bid found to be the lowest evaluated or best evaluated bid shall be accepted.

(3) Two Stage Bidding Procedure -

(a) First Stage:

(i) bidders are invited to submit, according to the required specifications, a technical proposal without price, which shall be subject to technical as well as commercial clarifications and adjustments;

(ii) technical proposal shall be evaluated in accordance with the specified evaluation criteria and may be discussed with all the bidders together regarding any technical features that may require technical as well as commercial clarifications and adjustments;

(iii) after such discussions, all the bidders shall be permitted to revise their respective technical proposals to meet the requirements of the procuring agency;

(iv) procuring agency may revise, delete, modify or add any aspect of the technical requirements or evaluation criteria, or it may add new requirements or criteria not inconsistent with these rules:

Provided that such revisions, deletions, modifications or additions are communicated to all the bidders equally at the time of invitation to submit final bids, and that sufficient time is allowed to the bidders to prepare their revised bids;

*Provided further that such allowance of time shall not be less than fifteen days in the case of National Competitive Bidding and *[forty-five days) in the case of International Competitive Bidding;*

(v) The bidders not willing to conform their respective bids to the procuring agency's technical requirements may be allowed to withdraw from the bidding without imposition of any penalty.

(b) Second Stage -

(i) bidders shall be allowed to amend their technical proposals in order to ensure conformance to the same technical standards;

(ii) bidders submit the revised technical proposals along with financial proposals;

(iii) the financial proposals of only those bidders whose original or revised technical proposals are found to be conforming to the agreed technical standards and requirements, shall be opened at a time, date and venue announced and communicated to the bidders in advance;

(iv) the revised technical proposals and the financial proposals shall be evaluated in the manner prescribed above. The bid found to be the lowest evaluated bid shall be accepted:

Provided that in setting the date for the submission of the revised technical proposal and financial proposal a procuring agency shall allow sufficient time to the bidders to incorporate the agreed upon changes in the technical proposal and prepare their financial proposals accordingly.

(4) Two Stage. *- Two Envelope Bidding Procedure -*

(a) First Stage -

(i) bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;

(ii) envelopes shall be marked as "FINANCIAL PROPOSAL" and "TECHNICAL PROPOSAL in bold and legible letters to avoid confusion;

(iii) initially, only the envelope marked "TECHNI. CAL PROPOSAL" shall be opened;

(iv) envelope marked as "FINANCIAL PROPOS. AL" shall be retained in the custody of the procuring agency without being opened;

(v) technical proposal shall be discussed with all the bidders or their representatives present together with reference to the procuring agency's technical requirements;

(vi) the bidders willing to meet the requirements of the procuring agency shall be allowed to revise their technical proposals following these discussions;
(vii) bidders not willing to conform their technical proposal to the revised requirements of the procuring agency shall be allowed to withdraw their respective bids without forfeiture of their bid security.

(b) Second Stage -
(i) bidders who are willing to conform to the revised technical specifications and whose bids have not already been rejected shall submit a revised technical proposal and supplementary financial proposal, according to the revised technical requirement;

(ii) revised technical proposal along with the original financial proposal and supplementary financial proposal shall be opened at a date, time and venue announced in advance by the procuring agency:

Provided that in setting the date for the submission of the revised technical proposal and supplementary financial proposal a procuring agency shall allow sufficient time to the bidders to incorporate the agreed upon changes in the technical proposal and to pre-pare the required supplementary financial proposal; and

(iii) procuring agency shall evaluate the whole proposal in accordance with the evaluation criteria and the bid found to be the lowest evaluated bid shall be accepted.

12. Keeping in view the foregoing legal framework, the manner in which a work scheme is to be formulated and floated, in accordance with the prescribed policy and applicable law, essentially falls within the domain of the Executive. Once the competent authority has followed the procedure prescribed under the relevant law and rules, this Court would not ordinarily interfere merely because the petitioners consider that the work should have been divided into separate contracts or components. Such a course may adversely affect the integrated execution of the scheme, particularly where the

work comprises civil, electrical and mechanical components requiring coordination and unified supervision. The scope of judicial review in such matters is, therefore, limited, and this Court cannot substitute its own view for that of the competent authority merely because another method of execution may appear preferable.

13. However, this does not mean that the action of the competent authority is immune from judicial scrutiny. Where an NIT or the process undertaken pursuant thereto is ex facie ultra vires the governing law or rules, arbitrary, mala fide, or otherwise suffers from illegality, this Court is competent to interfere in exercise of its constitutional jurisdiction. The Courts, however, must exercise restraint where the competent authority has acted within the framework of the law and in accordance with the policy governing the procurement process. This principle finds support from the judgment in **Messrs. Saif Enterprises (through authorized representative) v. P.O. Sindh and 2 others, 2025 CLC 1825**. Guidance in this regard may further be drawn from **Premier Battery Industries (Pvt.) Ltd. v. Karachi Water and Sewerage Board, 2019 CLC 583**, and **Premier Battery Industries (Pvt.) Ltd. v. Karachi Water and Sewerage Board and others, 2018 SCMR 365**, wherein the Courts have recognized the limited scope of judicial interference in matters falling within the domain of the competent administrative authority.

14. The Hon'ble Supreme Court of Pakistan, in **Abdul Hameed and others v. Water and Power Development Authority through Chairman, Lahore and others, 2021 SCMR 1230**, has also held that Courts ordinarily do not interfere with policy decisions of the Executive unless such decisions are shown to be arbitrary, mala fide, contrary to law, or wholly unreasonable. The same principle has been reiterated in **Peshawar Electric Supply Company Ltd. (PESCO) and another v. SS Polypropylene (Pvt.) Ltd., Peshawar and others (PLD 2023 SC 316)**, **Messrs Sadiq Poultry (Pvt.) Ltd. v.**

Government of Khyber Pakhtunkhwa through Chief Secretary and others (PLD 2023 SC 236), and **Sikandar Ali and others v. Province of Sindh through Secretary Education and Literacy Department, Sindh Secretariat, Karachi and others (2023 PLC (C.S.) 566).**

15. The Constitution of Islamic Republic of Pakistan is based on the well-known principle of trichotomy of powers where legislature is vested with the function of law making, the executive with its enforcement and judiciary of interpreting the law. In this regard, reliance is placed upon the case of **EXECUTIVE DISTRICT OFFICER(REVENUE), DISTRICT KHUSHAB AT JAUHARABAD and others versus IJAZ HUSSAIN and another 2012 PLC(C.S.) 917 [Supreme Court of Pakistan]** as it was held that :-

> *12. The principle of trichotomy of powers is one of the foundational values of Constitution of Pakistan and over a passage of time, this Court in several judgments has reiterated its importance as a norm of constitutional law. In Dr. Mobashir Hassan v. Federation of Pakistan (PLD 2010 SC 265), the Court at page 347 held as follows:---*
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> > "*It is also to be borne in mind that Constitution envisages the trichotomy of powers amongst three organs of the State, namely the legislature, executive and the judiciary. The legislature is assigned the task of law making, the executive to execute such law and the judiciary to interpret the laws. None of the organs of the State can encroach upon the field of the others. [State v. Ziaur Rahman (PLD 1973 SC 49), Federation of Pakistan v. Saeed Ahmad Khan (PLD 1974 SC 151), Government of Balochistan v. Azizullah Memon (PLD 1993 SC 341), Mahmood Khan Achakzai v. Federation of Pakistan (PLD 1997 SC 426), Liaquat Hussain v. Federation of Pakistan (PLD 1999 SC 504), Syed Zafar Ali Shah v. General Pervez Musharraf (PLD 2000 SC 869), Nazar Abbas Jaffri v. Secy: Government of the Punjab (2006 SCMR 606), Sindh High Court Bar Association's case (PLD 2009 SC 879), Smt. Indra Nehru Ghandi v. Raj Narain (AIR 1975 SC 2299) and Minerva Mills Ltd. v. Union of India (AIR 1980 SC 1789)*".

16. Keeping in view the foregoing discussion, the statutory and regulatory framework, and the settled principles governing the scope of judicial appraisal in matters relating to procurement and

policy decisions, this Court is of the considered view that the petitioners have failed to point out any violation of the applicable law or procurement rules on the part of the respondents. Accordingly, this petition, being devoid of merit and misconceived, is hereby dismissed. These are the reasons for our short order dated 03.09.2026.

JUDGE

JUDGE