<u>IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA</u>

Constitution Petition No. D-672 of 2026

<u>Before;</u>
Mr. Justice Riazat Ali Sahar;
Mr. Justice Ali Haider 'Ada'.

Petitioners:
Afsar Ali and others, ***through*** Mr. Ghayoor Abbas M. Shahani, Advocate.

versus

Respondents:
Province of Sindh and others.

Date of Hearing : 09.09.2026.
Date of Decision : 09.09.2026.

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<u>JUDGMENT</u>

<u>Ali Haider 'Ada', J.-</u> 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 main grievance of the petitioners against the impugned NIT is that the entire scheme has been floated as a single work, whereas, according to the petitioners, the nature and scope of the proposed work require that the scheme be divided into different portions or separate work schemes for its proper execution and effective up-gradation. He contended that the manner in which the scheme has been structured and the NIT has been floated is contrary to the scheme and spirit of the Sindh Public Procurement Rules, 2010, particularly Rules 12 and 13 thereof. He maintained that the division of the scheme into separate and appropriate components would not only facilitate its efficient execution but would also provide a fair opportunity to

different contractors to participate in the procurement process. He, therefore, contended that the impugned NIT, having allegedly been issued in disregard of the requirements of Rules 12 and 13 of the Sindh Public Procurement Rules, 2010, is not sustainable in law. He accordingly prayed that the impugned NIT be set aside

3. Heard learned counsel for the petitioners and perused the record.

4. At the outset, it would be appropriate 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;*

5. The aforesaid definition makes it clear that an NIT is not merely an administrative notice or an invitation issued at the discretion of the procuring agency; rather, it is an integral part of the statutory procurement process through which the procuring agency communicates its procurement requirements to prospective bidders and invites them to participate in a competitive bidding process. The NIT, therefore, serves as the initial public disclosure of the proposed procurement and enables eligible bidders to ascertain the nature, scope and requirements of the work before deciding whether to participate in the tender process.

6. It is also important to distinguish between the **right to participate in a procurement process** and the **manner in which the procuring agency structures a particular work scheme**. A prospective bidder may legitimately insist upon compliance with the applicable procurement law and equal treatment in the bidding

process; however, such bidder does not, merely by virtue of being a contractor, acquire an enforceable right to dictate whether a particular Government scheme should be executed as one integrated work or divided into separate contracts. That determination ordinarily rests with the competent authority, subject to the condition that it must be made within the framework of law, relevant procurement rules and the governing policy, and must not be arbitrary, mala fide or designed to exclude legitimate competition.

7. In order to appreciate the statutory framework within which the impugned NIT has been issued, it is therefore necessary to examine the broader concept of public procurement and the utilization of public resources. In this regard, reference may appropriately be made 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 Fund 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;*

8. 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. The said Manual prescribes the procedure to be followed by the department in relation to the planning and execution of public works. In this regard, **Paragraph 515** is relevant as it provides the prescribed procedure concerning the execution of such works. Compliance with the said procedure is therefore relevant for determining whether the work scheme has been properly processed

before its execution through the procurement process. For ready reference, Paragraph 515 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.*

9. 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 to ensure that the proposed work has been duly approved and technically examined before its execution. 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.*

10. 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. The preparation of such estimate is therefore relevant to ascertain the financial requirement of the proposed work before its execution. 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.*

11. 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 is required to devise a mechanism for planning and detailing all proposed procurements, determining its requirements within the available resources, and preparing a comprehensive plan for each specific procurement. Such planning is intended to ensure that the procurement is properly assessed and structured before the procurement process is initiated. 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) -----------------

12. Furthermore, upon issuance of the NIT, the respondents, being public functionaries, are required to act strictly in accordance with the procedure prescribed by **Rule 17 of the Sindh Public Procurement Rules, 2010**, particularly with regard to its notification and advertisement. The Rules further contemplate the pre-qualification of suppliers and contractors under **Rule 27**, while **Rule 28** lays down the procedure to be followed for such pre-qualification in respect of a particular contract. Likewise, **Rule 46** governs the process of open competitive bidding and provides for the one-envelope procedure. These provisions collectively regulate the manner in which a procurement process is to be initiated and conducted by the procuring agency. For ready reference, the relevant provisions are 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:*

***(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.*

13. 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. The competent authority, being entrusted with the planning and execution of public works, is required to determine the nature, scope, components and mode of execution of a particular scheme, subject to the requirements of law and the applicable procurement rules. Once the competent authority has followed the prescribed procedure, this Court would not ordinarily interfere merely because the petitioners consider that the work ought to have been divided into separate contracts or components. Such matters may involve technical and administrative considerations, particularly where a scheme comprises civil, electrical and mechanical components requiring coordination and unified supervision. The Court, in exercise of its constitutional jurisdiction, cannot substitute its own assessment for that of the competent authority merely because another method of execution may appear more appropriate or preferable. Guidance in this regard may be drawn from **Messrs. Saif Enterprises (through authorized representative) v. P.O. Sindh and 2 others, 2025 CLC 1825**, as well

as **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**. 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 reiterated that Courts ordinarily do not interfere with policy decisions of the Executive unless such decisions are demonstrated 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**, wherein it has consistently been recognized that policy-making and administrative decision-making fall primarily within the domain of the Executive, particularly where such decisions involve technical or specialized considerations.

14. The above principle is further reinforced by the constitutional doctrine of trichotomy of powers. The Constitution of the Islamic Republic of Pakistan envisages distinct functions for the three organs of the State: the Legislature is entrusted with the function of making laws, the Executive with their implementation and administration, and the Judiciary with the interpretation and enforcement of law. While exercising judicial review, the Court is therefore required to ensure that the Executive acts within the limits prescribed by law, but it cannot assume the functions of the Executive or substitute its own policy choice for that of the competent authority. In this regard, reliance may be placed upon **Executive District Officer (Revenue), District Khushab at Jauharabad and others v. Ijaz Hussain and another, 2012 PLC**

(C.S.) 917 [Supreme Court of Pakistan], wherein the Hon'ble Supreme Court has 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)*".

15. 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 no ground has been made out warranting interference by this Court in exercise of its Constitutional jurisdiction. **It is also pertinent to note that a Constitution Petition of a similar nature, bearing No. D-651 of 2026, filed by a government contractor operating in the same area or district, has already been dismissed by this Court.** Accordingly, the instant petition, being devoid of merit and misconceived, is hereby dismissed in *limine.*

JUDGE

JUDGE