

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No. D – 4362 of 2017

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI.
JUSTICE MRS. ASHRAF JEHAN.

Omer Razzaq Enterprises (Pvt.) Limited

Vs.

Government of Pakistan & others

Petitioner: through Mr. Yousuf Moulvi, advocate

Respondents: through Mr. Asim Mansoor Khan,
Deputy Attorney General

&

Mr. Muhammad Yousuf Rahpoto,
Assistant Advocate General Sindh.

a/w.

Abdul Ghaffar Baloch, Joint Director,
National Savings.

Date of Hearing: 25.04.2018.

Date of Order: 25.04.2018.

ORDER

1. Through instant petition, petitioner, being a private limited company carrying on the business of security agency, and claims to have been approved by Ministry of Interior, Government of Pakistan as well as the Home Department, Government of Sindh, for providing the services of armed security guards, has impugned the letter No.F.99/DNS(K)/B&A-2016 dated 13.06.2017 issued by the Regional Directorate of National Savings Karachi/respondent No.3,

whereby, bid submitted by the petitioner has been rejected for being non-compliant of Terms of Reference [ToR] mentioned in the RFP, whereas, following relief has been sought:-

- (A) *Declare that the impugned Letter dated 13.06.2017 and all subsequent acts of evaluation reports and also the award of contract if made so as ultra virus and void;*
- (B) *Declare that the evaluation criteria set in the RFP may 2017 are illegal and unlawful, ultra vires and in breach of Rule 29 of PPRA Rules;*
- (C) *Declare that the procurement process dated 16.06.2017 for the contract of hiring of well reputed company/firm for provisioning of Private Armed Security Guards for Zone South National Savings Centre (NSCs)/offices of National Savings as without lawful authorities and ultra virus of PPRA Rules;*
- (D) *In the alternative direct the Respondent No.3 to amend the Evaluation Criteria and bring it in accordance to Rule 29 of PPRA Rules and re-evaluate the bids for technical pre-qualification;*
- (E) *Restrain the Respondent No.3 and their servants, employees, officers and all persons claiming through or under them from not to finalize the pre-qualification technical bids submitted on 06.06.2017 by any other company for hiring of registered private security guards company in terms of the request for proposal (RFP) dated May 2017 of the respondent No.3, and further restrain the respondent No.3 not to open the financial bids, and not to act upon the financial bids and or awarding the contract for hiring of registered private security guards in terms of Request for Proposal (RFP) dated May 2017 (annexure B with the memo of petition) to any person/company till the final decision of this petition;*
- (F) *To grant any further, additional and necessary relief(s) which, may be deem fit and proper by the Hon'ble Court in the circumstances of the case.*

2. Notice of instant petition was issued to the respondents and DAG, pursuant to which, comments have been filed on behalf of respondents, wherein, the allegations as contained in the petition have been seriously disputed and objections as to maintainability of instant petition, has also been raised.

3. Learned counsel for the petitioner has contended that petitioner is a private Pakistani Security Agency registered with the

approval of Ministry of Interior, Government of Pakistan and the Home Department, Government of Sindh, for providing services of armed security guards. Per learned counsel, respondent No.3 invited proposal/bids from Pakistani security agencies for providing services of private armed security guards and pursuant to said tender documents issued by respondents, the petitioner had applied for the said bid and submitted the same alongwith requisite information and after complying with all codal formalities for pre-qualification purposes. However, according to learned counsel for petitioner, the bid of the petitioner has been rejected by respondent No.3 vide impugned letter dated 13.06.2017 on the ground of non-compliance of ToR mentioned in the bid documents. It has been contended by learned counsel for petitioner that respondents have not given any legal justification for rejection of petitioner's pre-qualification documents, whereas, no proper opportunity has been given to the petitioner by respondents, while rejecting the bid of the petitioner. It has been further contended by the learned counsel for the petitioner that since the impugned letter does not contain any reason, therefore, the same is liable to be set-aside. While concluding his arguments, it has been prayed by learned counsel that this Hon'ble Court may issue directions to the respondents to accept the bid documents of the petitioner, who may be allowed to participate in the bidding process.

4. Conversely, learned counsel for respondents has vehemently disputed the allegations as contained in the Memo of Petition and have also controverted the submissions made by the learned counsel for the petitioner, for being contrary to the fact and law. It has been contended by the learned counsel for the respondents that instant petition is misconceived and not

maintainable as the petitioner instead of availing the remedy available under the PPRA Rules, 2004 by filing a complaint before the Redressal Committee, has directly approached this Court under Article 199 of the Constitution without any factual or legal justification, therefore, instant petition is liable to be dismissed in limine. It has been further contended by the learned counsel for the respondents that the bids were called for armed security personnel to be deployed at various branches of National Savings Centers, which is an attached department of Finance Division, Ministry of Finance, Government of Pakistan, who offers Retail Government Securities i.e. National Savings Schemes to general public, through its 376 branches called National Savings Centers [NSCs]. It has been contended by the learned counsel for respondents that keeping in view the sensitive task and handling of huge amount of cash at National Savings Centers, strict parameters have been defined by the Procuring Agency in the bid documents, so that only reputable and eligible security companies, who meet the requisite criteria and fulfill all codal formalities, could participate in such tender process. Per learned counsel, tender was advertised in the daily Newspapers alongwith detailed Request for Proposal [RFP] on 20.05.2017, whereas, it was mentioned in the Tender Notice that bidding would in in terms of Rule 26(b) of Pakistan Procurement Regulatory Authority Rules, 2004 [PPRA Rules, 2004] i.e. "Single Stage Two Envelope". The last date for submission of bids was fixed on 06.06.2017, whereas, following five (5) security companies/firms participated in the bidding process:-

- i. *M/s. Metro Guards (Pvt.) Limited*
- ii. *M/s. Askari Guards (Pvt.) Limited*
- iii. *M/s. the Muhafiz Securities*
- iv. *M/s Omer Razzaq Enterprises (Pvt.) Limited (OREL)*
- v. *M/s. Fast Securities (Pvt.) Limited.*

Per learned counsel, on examination of Technical Bids of the above companies/firms, following two firms were **disqualified** in the initial scrutiny due to reason mentioned against each:-

<i>S. No.</i>	<i>Name of Company /Firms</i>	<i>Reason of Rejection</i>
01.	M/s. Omer Razzaq Enterprises (Pvt.) Limited (OREL)	Does not qualify with the minimum requirements of Ex-Servicemen ration (i.e. 60:40) as mentioned in RFP clause 2.1.10 and also not fulfilled the clause 6.9.5 of Published RFP.
02.	M/s. The Muhafiz Securities (Pvt.) Limited	-do-

5. It has been argued by the learned counsel for respondents that above disqualification was duly communicated to the petitioner as well the other company vide the impugned letter, while assigning a reason, whereafter, the petitioner, feeling aggrieved by said disqualification, filed a representation on 15.06.2017 in terms of Rule 48 of PPRA Rules, 2004, which has been forwarded to Grievance Redressal Committee of Central Directorate of National Savings Islamabad vide letter No.F.99/DNS(K)B&A-2016 dated 16.06.2017, whereas, per learned counsel, the Grievance Redressal Committee of the Procuring Agency has to decide such complaint within fifteen (15) days' after hearing the parties. However, the petitioner instead of pursuing his complaint before the Grievance Redressal Committee and without waiting for disposal of such complaint, has filed instant petition on 21.06.2017 even before waiting for expiry of the fifteen days' period or the decision by Grievance Redressal Committee in accordance with law, therefore, the same is liable to be dismissed in limine.

6. While confronted with hereinabove factual and legal position as argued by the learned counsel for the respondents, as well as

the objection relating to maintainability of instant petition in view of availability of alternate remedy in law, learned counsel for the petitioner could not submit any reasonable explanation, and has argued that since the impugned letter does not contain any reason, therefore, instead of availing the alternate remedy in the instant case, petitioner has filed instant petition directly under Article 199 of the Constitution.

7. We have heard the learned counsel for the parties, perused the record with their assistance, which clearly reflects that the bid of the petitioner has been rejected by the procuring agency, while assigning a valid reason i.e. being Non-Compliant of ToRs, whereas, petitioner has already been confronted with such reason in the impugned letter of rejection of bid, which has been served upon the petitioner, who has admittedly filed a complaint before the Grievance Redressal Committee in terms of Rule 48 of the PPRA Rules, 2004 on 15.06.2017, which is the proper legal course available to an aggrieved bidder in terms of PPRA Rules, 2004. However, instead of pursuing the alternate legal remedy provided un the law and rules, petitioner has chosen to abandon the lawful forum without assigning any reason, and has filed instant petition, by agitating disputed facts, which otherwise, cannot be examined by this Court, while exercising its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Moreover, in case of any adverse order, if passed on the complaint by the Grievance Redressal Committee, further remedy is available to an aggrieved party, whereas, an appeal also lie before this Court in terms of sub-rule (5) of Rule 48 of the PPRA Rules, 2004. Learned counsel for the petitioner has not been able to justify as to why the alternate remedy available under the PPRA

Rules, 2004, after having been availed by the petitioner, has not been persuaded, nor could point out any jurisdictional defect in the impugned letter dated 13.06.2017, whereby, the procuring agency has dismissed the bid of the petitioner, while assigning valid reasons.

8. In view of hereinabove facts and circumstances of the case, we are not inclined to interfere in the proceedings pending before the Grievance Redressal Committee, nor we do intend to dilates upon the merits of the case, as it may adversely affect the case of either party before the relevant forum.

9. Accordingly, instant constitution petition, being devoid of any merits and not maintainable was dismissed alongwith listed applications vide our short order dated 25.04.2018, and above are the reasons of such short order. However, petitioner would be at liberty to continue to pursue the alternate remedy provided under the law, whereas, respondents may decide the same after providing complete opportunity of being heard to both the parties, without being influenced by dismissal of instant petition in the above terms.

JUDGE

JUDGE

A.S.