

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP No. D- 1393 of 2021

BEFORE :

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Adnan Iqbal Chaudhry

Petitioner: Asif Raza and others (Present in person)
Mr. Rafiq Ahmed Dahri, Asstt: A.G.

Date of hearing & decision: 09.11.2021

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioners have prayed as under:-

- a. That this Honourable Court may be pleased to direct to respondent No.4 to cancel the tender and issue fresh tender.
- b. That this Honourable Court may be pleased to direct the respondent Nos. 1 to 3 who take departmental inquiry against the respondent No.4 because who issued work to his own choice person and ignore the petitioners and kept under false hopes.

2. Brief facts of the case are that petitioners are professional government contractors and registered with Pakistan Engineering Council for undertaking various engineering works throughout Pakistan and also pay Tax; that respondent No.4 on 26.7.2021 invited tenders for different kinds of works through SPPRA Website and the date for opening the tenders was fixed as 16.8.2021 at noon, therefore, the petitioners applied for different works and visited the office of respondent No.4 where they were informed that the contract will be awarded to those contractors who will be paid 20% cash deposit of the total cost of contract which is against SPPRA Rules, hence they have filed the instant petition.

3. Upon notice XEN Highway Division Matiari submitted parawise comments wherein it is stated that the petitioners had not participated in the bidding process and further after completing all formalities the work was awarded to the appropriate contractors; that the petitioners to blackmail the department have filed the instant petition.

4. Arguments of the learned counsel for the parties have been heard and the available record perused.

5. In our opinion, the petitioner, by giving the highest bid has not acquired any legal right to file a constitution petition. for the simple reason that a mere right to bid does not give a right to a person to oppose the bidding process under the relevant law. Even a person who was a successful bidder at the auction cannot claim to be a person aggrieved by the order of cancellation of the auction if any.

7. The terms of inviting tenders cannot be open to judicial scrutiny because the invitation to tender is in the realm of the concerned authority. Generally speaking, the decision to accept the tender or award the contract is reached by the process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts. The Government must have freedom of contract. In other words, fair play in the joining is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must be free from arbitrariness not affected by bias or actuated by malafides.

8. Prima-facie there is a mechanism provided under the SPPRA Rules 2010 for Redressal of Grievances and any bidder being aggrieved by any act or decision of the procuring agency after the issuance of notice inviting tender may lodge a written complaint, and, the same, if filed must be decided within seven days under SPPRA Rules 2010.

9. In this view of the matter, this Court concludes that the decision-making process adopted by the Government could be looked into by the Redressal of Grievances Committee under SPPRA Rules 2010. Since we are not sitting in appeal over the decision taken by the Redressal of Grievances Committee, thus the order awarding the tender to the third part at this stage cannot be interfered with in the constitutional jurisdiction of this Court. This constitution petition is found to be devoid of any merit and the same is dismissed with no order as to costs.

JUDGE

JUDGE