

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

CP No. D- 1518 of 2021

BEFORE :

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

Date of hearing
& decision: 09.11.2021

Petitioner: Asif Raza and another (Present in person)

Mr. Rafiq Ahmed Dahri, Asstt: A.G.

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 according to SPPRA Rules and Regulation and start draping and opening process as per SPPRA Rules and award works to all the lower bidders.
- 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 9.6.2021 invited tenders for different kind of works through SPPRA Website and the date for opening the tenders was fixed as 9.7.2021 at 11:00 a.m, therefore, the petitioners applied for different works and petitioner No.2 sent his application through TCS and when they visited the office of respondent No.4 they asked that they have not received their application which they sent through TCS, and further the concerned clerk of respondent No.4 demanded full rate of work upon which the petitioners objected, hence they were asked to come on 27.7.2021 when the tenders were fixed to be opened and they were not even issued blank tenders, hence they have filed the instant petition.

3. Upon notice XEN Highway Division Jamshoro submitted parawise comments wherein it is stated that the time for opening the tenders was fixed at 12:00 noon and till that time the bids submitted by the petitioners were not received by them sent by them through courier; that since the petitioners bid was not received by them, therefore, they did not submit any demand draft not formally participated in the bidding process; that the petitioners in order 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, even a successful bidder at the auction cannot claim to be a person aggrieved by the order of cancellation of the auction if any but in the instant case the petitioners even failed to submit their bid.

6. 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.

7. 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.

8. 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

Karar_hussain/PS*