

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

CP No. D- 943 of 2021

BEFORE :

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

Date of hearing
& decision:

09.11.2021

Petitioner:

S & Sons Contractors through Mr. Wazir Hussain
Chandio, Advocate.

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

ORDER

ADNAN-UL-KARIM MEMON, J:- Through this petition, the petitioner has prayed as under:-

- a. This Honourable Court may be pleased to declare the process of NIT bearing No. TCG-55/741 dated 14.4.2021 to illegal and unlawful.
- b. This Honourable Court may be pleased to direct the respondents to re-advertise the NIT of same work and follow the SPPRA Rules.
- c. That this Honourable Court may be pleased to direct the respondent No.1 to initiate disciplinary action against the respondent No.5 for violation of SPPRA Rules;

2. Brief facts of the case are that petitioner is a company registered with Pakistan Engineering Council for undertaking various engineering works throughout Pakistan and also pay Tax; that respondent No.5 published Notice in the newspaper on 14.4.2021 inviting sealed tenders for six different kinds of works, therefore, the petitioner on 3.5.2021 visited his office to participate in tender process but he was informed that the process has been postponed due to transfer of XEN; that subsequently, the petitioner came to know that the works will be awarded to those who will grease the palms of respondents which according to him is against SPPRA Rules, hence he has filed the instant petition.

3. Upon notice XEN Rohri Division Kandiaro submitted parawise comments wherein it is stated that the petitioner failed to provide at

least three work completion certificates of similar nature and that simply submission of challans does not make the petitioner eligible to be awarded the contract and further the petitioner failed to submit all the record as per terms and conditions mentioned in the NIT within due date and time; that as per SPPRA Rules the lower bidders have been awarded the contract.

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.

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*