

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
C. P. No.D-751 of 2022

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection.
2. For hearing of Main Case.

03.08.2022.

PRESENT:

**Mr. Justice Adnan-ul-Karim Memon,
Mr. Justice Abdul Mobeen Lakho,**

Mr. Ashfaque Hussain Abro, advocate for the petitioner, along with the petitioner.

Mr. Abdul Hamid Bhurgri, Addl. A.G. Sindh, along with Abdul Sattar Shah, XEN Highway Division, Shikarpur.

ORDER

ADNAN-UL-KARIM MEMON, J.- Petitioner Sarfraz Ahmed Mahar has filed this petition seeking the following relief(s):-

- a) *declare the act of respondents by awarding the contract work in violation of provisions of SPPRA 2010 is contrary to law, ab initio, illegal, null and void and having no sanctity in the eye of law and liable to be canceled/withdrawn/rescind;*
- b) *direct respondent No.1 to cancel the NIT dated 25.02.2022, issue a separate NIT and issue a fresh tender to the interested contractors and offer a bid as per law;*
- c) *further be pleased to direct respondent No.1 to return the security deposit amounting rupees more than 22 million deposited in favour of respondent No.1 against the subject bids/contracts;*

2. At the outset, we asked the learned counsel to satisfy the maintainability of the instant petition, in terms of the earlier decision made by this court vide orders dated 29.6.2022 in his petition bearing No.D-555/2022, and CPD No.529/2022, whereby direction was issued to the grievance redressal committee/competent authority to decide his appeal, which has been decided vide order dated 4.7.2022, (page-57) and the same findings have not been assailed before this court. Besides the successful bidder has not been made a party in the present proceedings as such no conclusive findings could be given in the present matter.

3. Mr. Ashfaque Hussain Abro learned counsel for the petitioner has replied to the query and submitted that the respondent No.1/XEN Highway Division, Shikarpur issued NIT dated 25.2.2022 in respect of certain development works, wherein the petitioner being a qualified contractor of the prescribed criteria applied for two works, after

complying all the codal and legal formalities; that a procurement committee vide notification dated 21.3.2022, which was subsequently canceled and substituted by the other committee was constituted vide notification dated 29.03.2022; which too was canceled and again another procurement committee was constituted vide notification dated 31.03.2022; however, the respondent No.1 instead of holding the bidding under the supervision of procurement committee constituted vide notification dated 31.03.2022 and without conducting fair bidding has awarded the contract works of the subject NIT to the contractors of his choice under some extraneous political influence. Learned counsel referred to Rule 31 (7) of SPRA, 2010, and argued that when the matter was sub-judice before the competent authority under review, it was incumbent upon the respondents to have avoided awarding the contract to the alleged successful bidder in terms of the aforesaid rule. However, that has not been done so, as such the aforesaid action has triggered the cause to approach this court. He lastly prayed that this matter may be heard and decided on merits. On the point of non-joinder of the necessary party, he has submitted that since the very action of the respondents is illegal, null, and void as such it is not necessary to make the successful bidder a party in the proceedings. We are not satisfied with the assertion of the learned counsel for the petitioner on the aforesaid analogy for the simple reason that if we conclude that the proceedings conducted by the respondents are against the SPRA rules then it is necessary to hear the successful bidder who has not been made the party. It is well settled that no order could be passed behind the back of the party.

4. Respondent No.1/Executive Engineer, Highway Division, Shikarpur has appeared and denied the allegations of the petitioner on the premise that he did not participate in the bidding process since its beginning and thus is not entitled to be heard; besides, the bidding process has already been completed and the contract has been awarded to the successful bidder who has started working thus this petition is not maintainable under the law.

5. We have heard the arguments advanced by the respective learned counsel. The question before this Court is whether the tendering process culminating in the award of the Contract was under the law, however, before entering into the said deliberation it is considered paramount to determine the question of maintainability of the present petition.

6. At this juncture, it is pertinent to record that there was no cavil to the fact that the tender process culminating in the award of Contractor the qualified bidder as public procurement, under the law for the time being in force, it was argued by the learned AAG that the tender process and the consequential award of the Contract were in due consonance with the public procurement laws and petitioner has failed to participate by submitting the bid documents; even he has not deposited the bid amount with the respondent-department in time to claim the indulgence of this court.

7. During arguments, we have been informed that technical evaluation was evaluated by the procurement committee constituted to follow the notification dated 29.3.2022 however, the financial evaluation was evaluated by the newly constituted committee vide notification dated 31.3.2022. That all the bidding documents were prepared in presence of the procurement committee following time to the notification issued by the competent authority; that the bid evaluation report was uploaded on the SPRA website duly signed by the procurement committee after scrutiny of the bidding documents of qualified bidders and the petitioner failed to participate in the process of procurement. The aforesaid stance has been refuted by the learned counsel for the petitioner on the analogy that all the provision of SPRA rules 2010 has been violated. He further submitted that the petitioner preferred a review appeal before the Chairman SPRA and the same was disposed of without hearing him.

8. Primary the petitioner has to avail and exhaust the remedy as required under the law, therefore, this petition at this juncture is held to be not maintainable for the reasons discussed supra.

9. In this backdrop, the detailing of the relevant provisions of the Sindh public procurement laws, delineating the tendering process and the consequential award of the Contract to the bidder, who is not a party to the present proceedings, in such circumstances of the case, we are of the view that no case for indulgence is made out and therefore the instant petition is dismissed. However, it is for the petitioner to avail his remedy as provided under the law.

JUDGE

JUDGE

S.Ashfaq/ps