

## ORDER SHEET

**IN THE HIGH COURT OF SINDH, HYDERABAD CIRCUIT.**

C.P.No.D-255 OF 2013.

---

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
-------------	--------------------------------------

---

PRESENT.

Mr. Justice Aqeel Ahmed Abbasi.

Mr. Justice Habib-ur-Rahman Shaikh.

FOR KATCHA PESHI

Date of Hearing: 25.4.2013.Date of order: 25.4.2013.

Mr. Rafiq Kalwar, Advocate for the Petitioner.

Mr. Mamoon Choudhry, Advocate for Respondents.

Mr. Allah Bachayo Soomro, Addl. A.G. Sindh.

**ORDER**

**AQEEL AHMED ABBASI, J.**- Through instant petition the petitioner has impugned the "Notice Inviting Tender" dated 15.1.2013 bearing No.T.M.A./KPO/29/2013 and Addendum/corrigendum thereof dated 4.2.2013 bearing No.TMA/KPO/55/2013 issued by the Administrator Taluka Municipal Administrator Khipro District Sanghar, whereby bids for 236 development works and services in Taluka Khipro, District Sanghar have been invited and has sought declaration to the effect that said NIT is illegal, arbitrary as the same has been issued in violation of provisions of the Public Procurement Laws and Constitution.

2. Briefly the facts as stated in the petition are that Petitioner is residing in Taluka Khipro, District Sanghar, who was elected as U.C. Nazim Kamil Hingoro, Taluka Khipro, District Sanghar for two consecutive terms

during the period 2001 to 2004 and 2004 to 2008 hence interested to ensure that procurement of the development works and services in Taluka Khipro shall be undertaken strictly in accordance with the provisions of Sindh Public Procurement Rules, 2010. It has been stated that as the matter pertains to public interest, therefore, the Petitioner is an aggrieved party whereas the NIT issued by Respondent No.4 as referred to hereinabove, for the development works and services in Taluka Khipro has been issued in violation of the Public Procurement Rules as the same has not been advertised in three widely circulated Newspapers. It has been stated that the aforesaid NIT has been issued for political consideration, whereas the directives issued by the Chief Election Commissioner have also been ignored. Petitioner has prayed that the impugned NIT may be declared as illegal and the Respondents may be restrained from acting upon such NIT.

3. Learned counsel for the Petitioner has argued that the impugned NIT has been issued by Respondent No.4 in violation of Rule 17(2) of the Sindh Public Procurement Rules 2010, which provides that the advertisement shall appear in at least three widely circulated Newspaper, whereas in the instant case, according to learned counsel for the Petitioner, such advertisement has only been published in daily Sobh and daily Sindh Express dated 31.1.2013, which according to learned counsel are Local Sindhi Newspapers having limited circulation. Per learned counsel while issuing such NITs the directives issued by the worthy Chief Election Commissioner vide Notification No.F.8(12)/2012-Cord dated 6.2.2013 have also been ignored whereby diversion of funds already allocated to various development projects in the country was banned.

Learned counsel has also referred to letter dated 7.1.2012 issued by Assistant Director (M&E) Govt. of Sindh Local Government Department, addressed to District Transition Officer (Defunct) Taluka Municipal Administrations, District Sanghar whereby permission for execution of development schemes for the year 2011-2012 was granted, however, subject to approval of the scheme by Sindh Peoples Development Committee District Sanghar and availability of funds in the account of the T.M.A. It has been submitted that while advertising the aforesaid NITs the Respondent did not have the requisite funds hence per learned counsel, such exercise was also in violation of the permission accorded to the Respondent by the Sindh Local Government Department. It has been further contended that through award of such contract the ruling party will gain political mileage, whereas the development scheme is being used as a tool of pre poll rigging. While concluding his argument, the learned counsel has submitted that the purpose of enacting Sindh Public Procurement Act 2009 and the Rules 2010 is to ensure transparency while awarding public contracts and adherence by the public authorities to the provisions of the Act and the Rules made in this regard, hence prayed that the impugned NITs may be declared as illegal as the entire exercise is based on malafides and has been undertaken on political considerations to benefit the dear once of the ruling party. In support of his contention the learned counsel for the Petitioner has placed reliance on the following case law (i) Abdul Ghafoor Khan v. Federation of Pakistan & others (SBLR 2013 189), (ii) Alleged Corruption In Rental Power Plants etc. (2012 SCMR 773), (iii) Adam Sugar Mills Limited v. Federation of Pakistan through Secretary Ministry of Commerce and 2 others (2012 CLD 1734), (iv) Messrs Toyota Garden Motors (Pvt) Ltd through Chief Executive Officer, Lahore v.

Government of Punjab through Home Secretary Punjab, Lahore and 2 others (PLD 2012 Lahore 503) and (v) Messrs Malik Mushtaq Goods Transport Co. Lahore v. Federation of Pakistan through Secretary Railways, Islamabad and 9 others (PLD 2010 Lahore 289).

4. Conversely the learned counsel for the respondent has vehemently opposed the maintainability of the instant petition and submitted that besides containing false, frivolous and vague allegations based on malafides the petitioner is not an aggrieved party in terms of Article 199 of the Constitution of Pakistan. It has been further contended that the Petitioner is otherwise not an aggrieved or relevant party in the instant proceedings as he has neither participated in the tender process nor any of his fundamental or contractual right has been violated or affected. Per learned counsel filing of instant petition is based on malafides whereas the same has been filed on political grounds at the instigation of a rival Political Party, as Petitioner has admittedly remained U.C. Nazim of Kamil Hingoro Taluka Khipro, who does not want that any development work may be undertaken in the locality by any one else. Per learned counsel, the very allegation of political consideration at the hands of Respondents is false and frivolous to the very knowledge of the Petitioner as the area in which the development work is to be undertaken is not the constituency of the ruling party, rather it is the constituency of another Political Party i.e. Functional League to which the Petitioner himself belongs. It has been further contended that allegation with regard to violation of the directives of the Chief Election Commissioner is also false and frivolous as in the very Notification dated 6.2.2013 relied upon by the learned counsel for the Petitioner, it has been clarified that development projects already in

progress may continue without interruption where no diversion of fund is required. Moreover, per learned counsel, the development scheme was prepared and the impugned NIT was issued prior to the aforesaid Notification by the Election Commission of Pakistan. It has been further contended that the impugned NIT has been issued after having complied with all codal formalities and by following the relevant Rules, particularly Rule 17 of Sindh Public Procurement Rules 2010, whereas advertisement has, not only been made available on the website, but the same has also been published in about six widely circulated Newspapers in Urdu, Sindhi and English languages, including daily Sobh, daily Sindh Express, daily Wisdom, daily Hilal-e-Pakistan and Daily Jang. Per learned counsel, such advertisements were published pursuant to express directives of the information department whereas all the Newspapers are widely circulated in the locality hence the very allegation of the Petitioner in this regard is false and based on malafide as the petitioner has deliberately withheld such information in order to justify his malafide act of filing instant frivolous petition. As regards availability of the funds with the T.M.A, learned counsel for the Respondent has referred to para-14 of the counter affidavit filed by Respondent No.4 alongwith its Annexures, and submits that in view of the entire detail of the amount lying with the respondent No.4 in various Bank Accounts, it is clear that for the purposes of proposed development schemes as mentioned in the impugned NIT, there is availability of required funds to the tune of approximately 17 carore at the disposal of the Respondent No.4, whereas per learned counsel, the development schemes in the impugned NIT would incur cost of Rs.13 carore 10 lac only. Per learned counsel such ground of the Petitioner on the face of it is not only false and frivolous but also based on malafides.

Learned counsel has further argued that from the perusal of the contents of the Memo of petition and the counter affidavit filed by the Respondents alongwith Annexures, it has come on record that the Petitioner has not approached this Court with clean hands as certain facts were either deliberately withheld and concealed by the Petitioner whereas allegations with regard to ban by the Election Commission of Pakistan, non availability of funds, and political consideration have proved to be false and frivolous. It has been contended that instant petition has been filed malafidely with an object to frustrate the work in the development schemes which are meant for the benefit of public at-large in Taluka Khipro, District Sanghar, to take political benefit out of non-performance of such development work by the Respondent. It has been further contended by the learned counsel that Petitioner has no locus standi to file instant petition who has abused the process of law and has obtained restraining orders by this Court without notice by misrepresentation of facts, which has deprived the inhabitants of Taluka Khipro, District Sanghar of the benefits which could have been provided to them if the development work could have been started in their constituency. It has been contended that the case law relied upon by the counsel for the petitioner is not attracted to the facts of the instant case hence no reliance can be placed on such case law. It has been prayed that the petition having no merits is liable to be dismissed with heavy costs.

5. Learned A.A.G. has also opposed the maintainability of the instant petition and submitted that the instant petition has been filed with malafide intention with an aim to thwart the legal process of development work in District Sanghar. It has been contended that the Petitioner has no

locus standi to file instant petition as neither he is an aggrieved person in terms of Article 199 of the Constitution, nor he is a relevant party for the purposes of the development scheme and issuance of NIT. It has been contended that neither the Petitioner has participated in the bidding process nor any illegality has been committed by the Respondent in this regard. Learned A.A.G. has argued that the Petitioner, by filing instant frivolous petition, has made an attempt to deprive the public at large from getting the fruits of the development work in the area where the Petitioner himself had served as U.C. Nazim for two consecutive terms whereas, his sole objective is that he may gain some political mileage by non-performance of any development work in the area by the Respondents which default could be attributed to the ruling party. It has been further contended that admittedly, the area in which aforesaid development schemes have been introduced is not the constituency of the ruling party which otherwise is no more in power in view of Care Taker Government and the work was to be undertaken by the official Respondents at local level/Municipality level in the normal course of business, which has no political consideration nor has any nexus with the political party. Per learned A.A.G. the impugned NIT has been issued after complying with all the codal formalities and by following the relevant Rules, whereas the impugned NIT was advertised in more than three widely circulated News papers in Urdu, English and Sindhi language as per requirement of Rule 17(2) of Sindh Public Procurement Rules 2010. It has been argued that complete transparency has been maintained by the Respondents whereas the petitioner has not been able to point out any illegality or error in the entire process, except to malign the Respondents on false and vague allegations. Learned A.A.G. has argued that instant

petition besides being false, frivolous and baseless, has been filed with malafide intention, which may be dismissed in limine by imposing costs upon the Petitioner.

6. We have heard the learned counsel for the respective parties and perused the record. Through instant petition the petitioner has sought declaration to the effect that Notice Inviting Tender (NIT) dated 15.1.2013 issued by the Respondent No.4 i.e. Administrator Taluka Municipal Administration Khipro, District Sanghar, whereby bids for 236 development works and services in Taluka Khipro, District Sahgnar, which according to petitioner has been invited and issued in violation of Public Procurement Laws and Constitution, may be declared as illegal and without lawful Authority. The first ground raised by the counsel for the petitioner in the instant petition is that the Respondents have got the impugned NIT published in only two News Papers i.e. Sobh and Sindh Express instead of getting the same published in atleast three widely circulated News Papers in Urdu, English and Sindhi languages as provided under Rule 17 (2) of the Sindh Public Procurement Rules, 2010. However, in view of the counter affidavit filed on behalf of Respondent No.4 and after perusal of the documents annexed therewith it has come on record that in addition to advertising the impugned NIT at the Website, the said NIT was also Published in six (6) Newspapers in English, Urdu and Sindhi languages, including daily Sobh, daily Sindh Express, daily Wisdom, daily Hilal-e-Pakistan, daily Pakistan and daily Jang, which according to the Respondents are widely circulated News Papers of the locality. Such fact could not be disputed by the learned counsel for the Petitioner. Accordingly the first objection of the Petitioner appears to be factually



incorrect.

7. The second ground raised by the counsel for the Petitioner to justify filing instant petition relates to alleged violation of directives issued by the Election Commission of Pakistan vide Notification No.F-8(12)/2012 Cord dated 6.2.2013 whereby a ban was imposed on diversion of funds. However, from careful perusal of the Notification No.F.8(12)/2012-Cord dated 6.2.2013 issued by Election Commission of Pakistan, it is noted that an embargo was imposed only to the extent of diversion of such funds which were already allocated to various development projects in the country, whereas development projects already in progress were allowed to be continued without interruption where no diversion of funds is required. Moreover, from perusal of counter affidavit and Annexures filed on behalf of Respondent No.4 it has been noted that neither any diversion of funds has been made nor the same is required for the proposed development schemes for which impugned NIT has been issued, as the entire detail with regard to availability of funds required for such development work has been given in the counter affidavit filed by the Respondent No.4. Accordingly, this objection of the Petitioner also appears to be factually incorrect.

8. Similarly the third ground raised by the counsel for the Petitioner in the instant petition relates to alleged non-compliance of the directives issued by Assistant Director (M & E) Local Government Department Govt. of Sindh vide letter dated 7.1.2012 whereby permission for execution of development schemes for the year 2011-12 by inviting tender notice was given to Respondent No.4 subject to approval of the scheme from Sindh Peoples Development Committee District Sanghar. This objection has duly

been responded by the Respondent No.4 in para-14 of his counter affidavit wherein the entire detail regarding availability of funds in the account of Respondent No.4 Taluka Municipal Administration Taluka Khipro, District Sanghar in different Bank Accounts in various Banks, including National Bank of Pakistan, Allied Bank of Pakistan, Sindh Bank Sanghar Branch, as well as the outstanding amount due from Finance Department, Government of Sindh, has been given, which shows that an amount of approximately Rs.17 carore is at the disposal of Respondent No.4 for the purposes of proposed development schemes in Taluka Khipro, District Sanghar, for which the impugned NIT has been issued, whereas the cost of the impugned NIT is 13 carore 10 lacs rupees only. It has also come on record that approval of the said scheme by Sindh Peoples Development Committee has already been accorded vide letter dated 10.1.2013 which has been duly enclosed as annexure 'C' alongwith counter affidavit filed by respondent No.4. No rebuttal in this regard has been filed by the Petitioner. Accordingly this objection of the Petitioner also appears to be factually incorrect.

9. Now we may take up the ground of alleged political consideration and malafide on the part of Respondent No.4 while issuing the impugned NIT. It has been alleged by the learned counsel for the petitioner that the development schemes of Taluka Khipro District Sanghar, have been proposed to gain political mileage and to be used as tool for pre poll rigging by the ruling party. However, perusal of the contents of the petition and the counter affidavit filed by the Respondent No.4 in this regard shows that admittedly, the Petitioner himself has remained as U.C. Nazim for two consecutive terms of Kamil Hingoro, Taluka Khipro, District

Sanghar, whereas his affiliation with rival political party, as suggested by the learned A.A.G. during the course of arguments, remained un rebutted. Learned counsel for the Petitioner did not controvert the fact that the said Taluka Khipro, District Sanghar is not the constituency of the ruling party on the contrary it is the constituency of the rival political party.

We may observe that the proposed development scheme and issuance of impugned NIT and Addendum/Corrigendum by the Respondent No.4 whereby bids for 236 civil works for construction of roads and services in Taluka Khipro, District Sanghar, have been invited, is the domain of respective Taluka Municipal Administration, whereas, record shows that codal formalities have duly been complied with by the Respondents while issuing the impugned NIT. Moreover, any development civil work in Taluka or District cannot be stopped at the whims or desire of an individual who otherwise, has failed to point out any illegality or malice on the part of Respondents.

10. In view of herein above, we are of the opinion that Petitioner has failed to establish his locus standi to file instant petition in terms of Article 199 of the Constitution as neither he is an aggrieved person nor he could establish good faith, on the contrary, appears to have approached this Court with unclean hands. All the grounds raised by the Petitioner have been found to be factually incorrect and stood falsified in view of the counter affidavit and the documents placed on record by the Respondent No.4, whereas no affidavit in rejoinder or rebuttal was filed by the Petitioner in this regard. No illegality or error on the part of Respondent No.4 while issuing impugned NIT dated 15.1.2013 and Addendum/Corrigendum thereof dated 4.2.2013 and inviting bids, has

been pointed out by the Petitioner. Case law relied upon by the learned counsel for the Petitioner, under the facts and circumstances of this case, is not relevant, hence of no assistance to the Petitioner.

11. Accordingly, we do not find any substance in the instant petition which was dismissed in limine vide our short order dated 25.4.2013 and these are reasons for such short order.

JUDGE

JUDGE