

**ORDER SHEET
IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR**

C.P.No. D- 136 of 2020

(M/S Aneel Contractors v. Pakistan Railways & others)

Date of hearing	Order with signature of Judge.
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For Hearing (Priority)

- 1.For orders on office objections.
- 2.For hearing of CMA 688/2020
- 3.For hearing of main case.

02-05-2023

Mr. Mukesh Kumar G. Karara, Advocate for the petitioner.
Mr. Ghulam Abbas Awan, Advocate for the respondent No.5.
Mr. Muhammad Aslam Jatoi, Assistant Attorney General.

The petitioner's firm being Government contractor entered into a contract with respondents-Pakistan Railways for "Realignment of curve No.18 from KMS 563/0-1 to 563/11-12 between Mirpur Mathelo-Daharki stations for removal of permanent speed restriction of 70 KMPH and raising of speed upto 12/140 KMPH on Rohri-Khanpur Section" under contract reduced into writing on 11.01.2019. Subsequently, the Pakistan Railways served notice upon the petitioner including final notice dated 21.02.2019 calling explanation from the petitioner's firm for not starting subject work within seven days. However, later on the respondent No.3 (Divisional Engineer-III, Pakistan Railways, Sukkur) vide letter dated 15.03.2019 extended the date of starting contract work upto 25.04.2019. Subsequently, vide order dated 26.08.2019, respondent No.5 terminated the contract work by blacklisting the petitioner's firm and cancelling its registration with the Pakistan Railways and also forfeited performance money/guarantee of the subject work.

2. The petitioner has impugned said letter dated 26.08.2019 on the ground, *inter alia*, that the same is in violation of Rule 19 of the Public Procurement Rules 2004 (the **Rules**) and clause 12.1 of the contract agreement. Rule, 19 of the Rules, requires the procuring agency to specify a mechanism and manner to permanently or temporarily bar,

from participating in their respective procurement proceedings, suppliers and contractors who either consistently fail to provide satisfactory performances or are found to be indulging in corrupt or fraudulent practices after being given an opportunity of being heard. While, clause 12.1 of the contract agreement also provides service of notice upon the contractor stating default.

3. In response, respondent No5 has filed parawise comments to the petition, which have been adopted by the respondents No.1 to 4 & 6. However, it does not reflect if after extending time of starting requisite work, any notice was given to the contractor/petitioner's firm, so also, an opportunity of being heard, as required under the Rules, was given to it.

4. We, therefore, set aside impugned Letter dated 26.08.2019 with directions to the respondent No.5 to decide the case of the petitioner's firm for blacklisting and cancelling its registration with the Pakistan Railways and forfeiting performance money afresh after serving requisite notice upon it and giving an opportunity of being heard in accordance with rules, regulations and law.

5. The petition stands **disposed of** along with listed application in the above terms.

JUDGE

JUDGE

Ahmad