

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP D 5556 of 2024
CP D 5906 of 2024

Date	Order with signature of Judge(s)
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1. For orders on CMA No.28114/2024.
2. For orders on office objection.
3. For hearing of main case.

19.12.2024

Syed Masood Ahmed Shah Bukhari, advocate for the petitioner in CP D 5556 of 2024.

Malik Altaf Hussain, advocate for the petitioner in CP D 59096 of 2024.

Mr. Sarmad Hani, advocate alongwith Mr. Zarar Qadir Shoro, advocate for the applicant interveners.

Mr. Kafil Ahmed Abbasi, Additional Advocate General Sindh.

Mr. Abdul Jabbar Shahani – Director PD&R, SE&LD, Syed Imdad Ali Shah – Special Secretary (Law) SE&LD and Mr. Javed Ali Khawaja Deputy Secretary (Law) SE&LD.

A notice inviting tender, dated 06.10.2024, was issued to resurrect schools all over the province that had been decimated by the catastrophic floods of 2022. The petitioners, *admittedly* not having participated in the said tender process, filed these petitions challenging the NIT and obtained *ad interim* orders rendering the entire process of reconstruction at naught.

The petitioners' learned counsel were asked to identify any infirmity in the terms and conditions of the NIT and they responded that there was none. Notwithstanding the same, it was the petitioners' case that packaging of the projects thereunder has been done unlawfully and the NIT offends rules 12, 15, 21(b) and 44 of the SPPRA Rules. Mr. Sarmad Hani insisted that the petitioners are devoid of any *locus standi*, as they never participated in the tender process; the entire case of the petitioners is rested on unsubstantiated conjectures / surmises; and even otherwise disputed questions of facts are not amenable for adjudication in writ jurisdiction.

Admittedly the petitioners never participated in the tender process. The exercise of powers, per Article 199 of the Constitution, was required to be undertaken upon application of an aggrieved person¹. The petitioners' counsel has been unable to qualify the petitioners within the definition of an aggrieved person².

The petitioners have articulated no cavil to the terms and conditions of the NIT, clearly stated therein. Notwithstanding the same, interpretation of tables, constituent of packages proposed, is made *prima facie* inconsistent with the plain meaning thereof in an effort to defeat the NIT. Irrespective of the veracity thereof, counsel was also confronted with the question of how the determination sought could be undertaken without delving in to the realm of disputed factual controversies requiring inquiry

¹ Barring certain exceptions, i.e. writ of quo warranto, however, no case was made out to qualify the present petition within an exception recognized by law; 2019 SCMR 1952.

² *Raja Muhammad Nadeem vs. The State* reported as PLD 2020 Supreme Court 282; SECP vs. *East West Insurance Company* reported as 2019 SCMR 532.

and / or evidence³. Learned counsel remained unable to assist on the said count.

The rules, infraction whereof was suggested, were asked to be read out in Court and counsel requested to demonstrate any patent actionable infraction thereof. Once again no case could be set forth.

In summation, no case has been set forth before us to merit the invocation of the discretionary⁴ writ jurisdiction of this Court; therefore, these petitions, along with pending applications, are hereby dismissed. The office is instructed to place a copy hereof in the connected file.

Judge

Judge

Khuhro/PA

³ 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415.

⁴Per Ijaz Ul Ahsan J. in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.