

# THE HIGH COURT OF SINDH, KARACHI

## Suit No. 1406 of 2024

[WSKB & Company v. Province of Sindh & others]

Plaintiff : WSKB & Company through Mr. Ghulam Asghar Pathan, Advocate.

Defendant No. 1 : Province of Sindh through Mr. Ziauddin Junejo, Assistant Advocate General, Sindh.

Defendant No. 2 : The Executive Engineer, Provincial Building Division Mr. Ashok Kumar,

Defendant No. 3 : Mr. Altaf Khawaja, Superintendent Engineer, Chairman Complaint Redressal Committee.

Defendant No. 4 : Sindh Public Procurement Regulatory Authority through Syed Zaman Shah, Assistant Director (Legal).

Defendant No. 5 : M/s. Joya Contractor through M/s. Zarar Qadir Shoro and Meezan Ali, Advocates.

Date of hearing : 30-01-2025

Date of decision : 30-01-2025

## **ORDER**

**Adnan Iqbal Chaudhry J.** - The suit was brought to challenge the decision of the Procurement Committee of the Executive Engineer, Provincial Buildings Division No.III, Works & Services Department, Province of Sindh [**Procuring Agency-Defendant No.2**] taken to award a contract to the Defendant No.5 for the '*Conversion of Old Annexe Building into 12 Courts Buildings High Court of Sindh Karachi (Civil and Electric Works)*' [**the Project**].

2. On CMA No. 18892/2024 moved by the Plaintiff, an interim order was passed on 23-12-2024 directing the Defendants to maintain *status quo*, thus putting the Project on hold. On 16-01-2025, the Court was informed that the Plaintiff's complaint against the decision of the

Procurement Committee was already pending before the Review Committee under the Sindh Public Procurement Rules, 2010 [**SPP Rules**] which was not decided due to the *status quo* order operating in the suit. A direction was then issued by the Court to the Review Committee to decide the Plaintiff's complaint within in a week. Today, two things have transpired. One, that the contract had in fact been executed by the Procuring Agency (Defendant No.2) in favor of the Defendant No.5 on 12.12.2024 *i.e.* before the suit. Two, the matter pending before the Review Committee was in fact the Plaintiff's appeal under Rule 32 of the SPP Rules which has been dismissed by decision dated 23.01.2023. As the suit presently stands, there is no prayer against those two acts.

3. Per learned counsel for the Plaintiff, he was not aware of the execution of the contract at the time he filed suit. He submits that in any case, since the Plaintiff had already filed a complaint under Rule 31(3), SPP Rules to the Complaint Redressal Committee [**CRC-Defendant No.3**], the Defendant No.2 was prohibited by Rule 31(6) from executing the contract until decision on such complaint. As regards the dismissal order passed by the Review Committee, he submits that the Plaintiff reserves the right to challenge the same as that is an event after the suit.

4. On hearing learned counsel and the parties present in Court and upon a perusal of the record, the facts in chronological order appear as follows.

5. Tenders for the Project were invited by the Defendant No.2 as Procuring Agency by publications dated 24-10-2024 and 25-10-2024 for submitting bids as per single stage-two envelope procedure prescribed in the SPP Rules. The Plaintiff, the Defendant No.5 and one other person submitted bids.

6. The Technical Proposals submitted by bidders were opened by the Procurement Committee on 08-11-2024 and the bidders were informed that the next meeting would be fixed after evaluating the

Technical Proposals. That meeting was held on 29.11.2024 where the Procurement Committee declared that the Technical Proposals by all three bidders fulfilled the eligibility criteria and fixed 04.12.2024 as the date for opening the Financial Proposals.

7. By letter dated 30.11.2024, the Plaintiff called upon the Procurement Committee to provide him with the Bid Evaluation Report of the Technical Proposals and till such time to defer the Financial Proposals. Per the Plaintiff he wanted satisfaction that the Technical Proposals of the other bidders were sound, but such report was not provided to him.

8. At the meeting of the Procurement Committee and the bidders held on 04-12-2024 when Financial Proposals were opened, the Defendant No.5 emerged as the bidder who had quoted the lowest price. The price quoted by the Plaintiff was second-lowest. The difference between the two was of Rs. 4,044,467-. Therefore, the Procurement Committee recommended that the contract be awarded to the Defendant No.5.

9. On 09.12.2024, the Procurement Committee uploaded the procurement proceedings on the web-site of Sindh Public Procurement Regulatory Authority [SPPRA] including the Bid Evaluation Report and the Technical Evaluation Report. The same day, on 09.12.2024, the Plaintiff presented a complaint under Rule 31 of the SPP Rules to the Complaint Redressal Committee [CRC - **Defendant No.3**] headed by the Superintending Engineer, Provincial Buildings Circle, Karachi.

10. It appears that the CRC could not convene to take up the Plaintiff's complaint. Per the Chairman of the CRC present in Court, he was on sick leave. It appears that on expiry of 7 days, the complaint was transferred to the Review Committee in line with Rule 31(5) of the SPP Rules.<sup>1</sup> On 17.12.2024, the Plaintiff filed an appeal

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<sup>1</sup> It has been held by this Bench in the case of *Insaf & Brothers versus Province of Sindh & others*, Suit No.971/2022, order dated 13.05.2024, that the time-line prescribed in Rule 31(5)

before the Review Committee under Rule 32 of the SPP Rules. However, before that, on 12.12.2024, the Defendant No.2 had proceeded to execute the contract in favor of the Defendant No.5. The Defendant No.2, who is present in Court, states that he had no notice of any complaint made by the Plaintiff to the CRC.

11. It is correct that Rule 31(6) of the SPP Rules stipulates that the Procuring Agency shall not award the contract until decision by the CRC, however in the facts of the case where the CRC could not convene to issue notice on the Plaintiff's complaint to the Defendant No.2, the execution of the contract by the latter does not appear to be *malafide*. It is to be noted that by the time the matter had come up before the Review Committee, the contract had already been executed and therefore the proviso Rule 31(7) of the SPP Rules does not come into play. It has then been held in *Khalil Khan v. Nazir* (PLD 1997 SC 304) and that even "a void order is not always to be struck down regardless of the consequences of such decision, but that a void order shall be struck down provided there is no statute or principle of law which would make it unjust or inequitable to strike it down." In *Province of Punjab v. Muhammad Zafar Bukhari* (PLD 1997 SC 351) it was observed:

"A study of various cases decided by this Court would show that before a person can be permitted to invoke the discretionary powers of a Court, it must be shown that the order sought to be set aside had occasioned some injustice to the parties. If it does not work any injustice to any party rather it cures a manifest illegality then the extraordinary jurisdiction ought not be allowed to be invoked PLD 1973 SC 236 (258); likewise in the case of *Begum Shamsun Nisa v. Said Akbar Abbasi and another*, PLD 1982 SC 413, it was held that the High Court in exercise of its discretionary jurisdiction is not bound to interfere in all circumstances and it would have been proper exercise of its discretion, if it had not interfered with the order of the Chief Settlement Commissioner in that case even if it felt that the order of the Chief Settlement Commissioner whereby he rendered the order of the Settlement Commissioner as null and void, was not strictly legal". Again this Court refused to intervene where the grant of relief would amount to retention of ill-gotten gains or

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of the SPP Rules for the decision of the CRC is directory, not mandatory. Rule 31 does not go on to stipulate any penal consequences if the CRC does not decide the complaint in 7 days. The intent of that provision is not that the CRC becomes *functus officio* after 7 days. It is that if delay by the CRC is to the detriment of a bidder, he may approach the Review Committee instead for a decision under Rule 32, and that is why disposal of the complaint by the Review Committee is tied to an appeal by an aggrieved bidder.

would lead to injustice or aiding the injustice. See *Gul Muhammad v. Addl. Settlement Commissioner*, 1985 SCMR 491; *Nazim Ali etc. v. Mustafa Ali etc.*, 1981 SCMR 231; *Wali Muhammad and others v. Sheikh Muhammad and others*, PLD 1974 SC 106; *Meraj Din v. Director, Health Services*, 1969 SCMR 4; *Tufail Muhammad v. Muhammad Ziaullah Khan*, PLD 1965 SC 269; *Azmat Ali v. Chief Settlement and Rehabilitation Commissioner*, PLD 1964 SC 260. The object of the superior Courts while exercising its discretionary jurisdiction is to foster justice, preserve rights and to right a wrong and keeping this object in view, it may in equity set aside or annul a void judgment or enjoin enforcement by refusing to intervene in the circumstances of the case before it.”

12. The principle laid down in the above precedents is that even where the order of an authority is illegal or irregular, it is not always necessary to strike it down, rather the test is to see whether it would be unjust not to strike it down. Though that principle was discussed by the Supreme Court in the context of writ jurisdiction, in my view it would apply equally to equitable jurisdiction exercised under the Specific Relief Act, 1877. That principle is also embodied in Rule 32(A) of the SPP Rules which envisages a declaration of misprocurement only where the case presents a ‘material violation’ of the law relating to public procurement. Therefore, unless the Plaintiff can demonstrate *prima facie* that despite the lower price quoted by the Defendants No.5 this is nonetheless a case of a material violation of the law, I am not inclined to interfere to derail a public project merely because the circumstances have presented the Plaintiff with an unintended irregularity committed by the Defendant No.2, which I might add, is also not the case set-up in the plaint.

13. Out of the grounds of attack to the eligibility of the Defendant No.5 taken in para 5 of the plaint, learned counsel for the Plaintiff presses only the following requirement in clause (ii) of the notice inviting tender:

*“...ii. At least one similar nature of work having minimum cost 80% of the estimated cost of the work or two works of 50% cost of the work executed during past 3 years duly supported with successful completion certificate(s) from respective department and SPPRA ID’s showing Bid Evaluation Reports.”*

In response, counsel for the Defendant No.5 draws attention to the documents with his written statement to show a completion

certificate dated 08.11.2023 issued by the Executive Engineer, Provincial Buildings Division No.III in respect of a similar project which also meets the minimum threshold of 80% cost. Plaintiff's counsel then submits that the requirement of disclosing the SPPRA ID for such project was not met. Counsel for the Defendant No.5 explains that such project was a direct contract under Rule 16(b) of the SPP Rules and therefore the SPPRA ID was not generated.

14. The other argument advanced by the Plaintiff's counsel is that the Procurement Committee did not disclose the bid evaluation report and the technical evaluation report prior to opening Financial Proposals on 04.12.2024, thus implying *malafides*. On the other hand, the Defendant No.2 submits that those reports were duly uploaded on the web-site of SPPRA within the time stipulated in the Rule 45 of the SPP Rules. Be that as it may, admittedly, the bid evaluation report and the technical evaluation report were made public on 09.12.2024 and are on the record. Learned counsel is not able to point out anything from those reports that could imply *malafides* or a material violation of the law in awarding the contract to the Defendant No.5.

15. For the foregoing reasons, the Plaintiff does not make out a *prima facie* case for the grant of a temporary injunction. The balance of convenience is also in favor of continuity of the public project. Therefore, CMA No. 18892/2024 is dismissed.

**JUDGE**

Karachi  
Dated: 30-01-2025

\*PA/SADAM