

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

1. Constitution Petition No. D- 1818 of 2024
(Khalid vs. Province of Sindh & others)
2. Constitution Petition No. D- 2158 of 2024
(Ghulam Akber Mughul vs. Province of Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;

Muhammad Saleem Jessar, J;
Adnan-ul-Karim Memon, J

Date of hearing and Order: 26.02.2025.

Mr. Abdul Sattar Thaheem, Advocate for petitioner in CPD No.1818 of 2024.

None present for petitioner in C.P No. D-2158 of 2024.

Mr. Zulifqar Ali Naich, AAG.

ORDER

Adnan-ul-Karim Memon J:- The petitioners request the court to cancel the joint tenders (NIT 2322/2024 and 580/2024), order separate electrical work tenders for licensed contractors, and halt the opening of the current tenders.

2. The petitioners, who claim to be the licensed electrical contractor (M/S SK Corporation), are challenging two joint tenders issued by the respondents for school construction and renovation projects. These tenders combine civil and electrical work, violating Rule 48 of the Electricity Act 1910, which requires separate tenders for electrical work by licensed electrical contractors. Learned counsel for the petitioners emphasized that Petitioners' claims of tender irregularities, involving public funds, warrant scrutiny. They act as potential "whistleblowers." Public bidding must be transparent and yield the best price. Courts must ensure fair, equal, and non-discriminatory tender awards, preventing arbitrary use of public funds. Public interest demands this accountability.

3. The petitioners, a licensed electrical contractors, submit that the respondents' joint tenders (NIT 2322/2024 and 580/2024) violate Rule 48

of the Electricity Act 1910, which requires separate electrical work tenders. They assert that the respondents disregarded their objections and prior court orders (CP 3396/2013 and 1370/2009), with tender openings imminent, they seek court intervention.

4. The Sindh government acknowledges the devastating 2022 floods, which severely damaged thousands of schools, impacting millions of students. To address this, a reconstruction project (ADP No. 2941 and PSDP No. 224 of 2024-25, estimated cost Rs. 12.337 billion) was approved, with a tight completion deadline of June 2026.

5. The learned Assistant Advocate General (AAG) argued that the school reconstruction project is of utmost urgency, with potential delays causing significant financial losses and impacting students. To ensure timely completion, the government opted for joint tenders requiring contractors with both civil and electrical licenses, a practice permissible under SPPRA policy and the Electricity Rules 1937. Learned AAG submitted that to ensure the project's timely completion by financially capable contractors, the government established tender requirements that align with regulations. These requirements, including PEC category C-4 and specific electrical licenses, comply with Rule 48 of the Electricity Rules 1937. Precedent supports dismissing such petitions due to the project's urgency. The government denies any rights violations, asserts the petitioner's misrepresentation, and requests dismissal with costs.

6. Electric Inspector Masroor Ahmed Mughal, under the Sindh Energy Department, has explained his duties with the narration that he is bound to resolving electricity disputes under the Electricity Act 1910, Sindh Inspection Order 2004, and enforcing electrical licensing rules (Electricity Rules 1937, Rule 48). He emphasized that Rule 48(1) mandates licensed electrical contractors for electrical work, requiring separate electrical contracts without PEC registration. This Court has previously affirmed this in CP No. D-1370/2009 and CP No. 3396/2013. Though the petitioners contacted the tender issuers, they failed to inform the Electric Inspectorate about the violation of potential Rule 48. Consequently, the Inspectorate, responsible for enforcement, notified the tender issuers of

Rule 48 and this court's ruling in CP No. 1370/2009. He prayed for dismissal of the petitions.

7. We have heard the learned counsel for the parties and perused the record with their assistance.

8. Despite ongoing school reconstruction efforts in Sindh, funded by various projects, petitions are causing delays, impacting 824,008 children. Competent Authorities are directed to ensure transparency and prevent fund misappropriation, with accountability for any misconduct.

9. Established legal principle dictates that when a law prescribes a specific procedure, that procedure must be strictly followed. Courts are tasked with interpreting statutes based on their clear and ordinary meaning, not with adding or altering provisions, regardless of perceived benefits. Courts should not insert words into legislation, particularly those not reasonably implied by established interpretive principles.

10. The petitioner requests the court to declare the petitioners the rightful recipient of the procurement electric contract; however, opt for cancellation of the tenders. This indicates the petitioner's role was solely that of a participant in the tendering/bidding process. Whereas the school reconstruction project is urgent. To prevent delays and financial losses, the government used joint tenders, as allowed by SPPRA and Electricity Rules 1937. These tenders, requiring PEC C-4 and specific electrical licenses, comply with Rule 48. Due to the project's urgency and precedent, the government denies the rights of the petitioners. Based on the weight of the cited legal basis, we conclude that mere participation in the tender process does not create any vested rights for the petitioners to be awarded the procurement contract. According to the Supreme Court in Javed Iqbal, 1996 SCMR 1433, rejecting the highest bid and ordering a re-bid, which provides equal opportunity, does not violate natural justice principles.

11. It is settled law that disputed question of fact and/or contractual matters are not generally amenable for determination in the exercise of Constitutional jurisdiction; however, we do unreservedly retain the

jurisdiction to judicially review the commercial actions of state enterprises, upon the anvil of the settled principles of law.

12. To ensure a fair and legal tender process, the responsible authority will conduct a detailed review. They will investigate any potential favoritism, arbitrariness, or illegal activity and take swift corrective measures. As public money is at stake, the project's completion within the agreed timeframe is mandatory.

13. Following the reasoning outlined above, these petitions are disposed of, with the observations noted in the previous paragraphs.