

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No. D-1092 of 2025

[Farooque Ahmed. vs. Province of Sindh & Ors]

BEFORE:

**JUSTICE MUHAMMAD SALEEM JESSAR
JUSTICE NISAR AHMED BHANBHRO**

Petitioner:

Farooq Ahmed Mr. Sajid Ali Gorar, advocate

Respondent No 2: M/s Abdul Rahim Lakho
 Muneer Ahmed Channa, advocates

Respondent No 4: Mr. Imtiaz Ali Channa, advocate

Province of Sindh: Mr. Muhammad Ismail Bhutto,
 Additional A.G Sindh

Date of hearing : 27.10.2025

Date of decision : 31.10.2025

Date of Announcement : 17.11.2025

ORDER

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NISAR AHMED BHANBHRO, J: Through this petition, the petitioner seeks following reliefs:

- a) To declare the procurement proceedings in respect of the NIT No.TC/423 dated 10-03-2025 as illegal and unlawful, unfair being mis-procurement in material violation of Sindh Public Procurement Rules 2010 and further direct the respondents to issue above NIT and procurement proceedings afresh.*
- b) To declare that the petitioner is entitled for award of contracts having offered lowest bids*

than all the other participating bidders and direct the respondent to award contracts to the petitioner, having applied for, in NIT No.TC/423 dated 10-03-2025.

- c) To declare Order dated 19-05-2025 passed by Complaint Redressal Committee (CRC) and disqualification Letter sent on 08-05-2025 by mentioning a previous date i.e. 18-03-2025 in order to award contracts to blue eyed contractors of the respondent No.2 as illegal, unlawful, being result of malafide and ulterior motives.*
- d) To restrain the respondents from issuing work orders, allocating or issuing any funds to their blue eyed contractors for carrying on the above mentioned works per NIT No.TC/423 dated 10-03-2025 till the disposal of the instant petition, as if any work orders or the funds are issued, the petitioner shall be deprived his fundamental right and funds will be misappropriated, as the works/contracts have been awarded to the blue eyed contractors of the respondent No.2, secretly in absence of all participating contractors without following procedure provided under SPPRA Rules, 2010.*

2. Learned counsel for the petitioner submits that the petitioner is a government contractor and pursuant to NIT issued by the respondent No.2, he submitted his bids for the works at Sr. No.2, 5, 11, 12 and 28 of the NIT, however, the respondent No.2 malafidely and surreptitiously, without opening the bids in the presence of all participants, awarded the contract to his chosen favorite despite the fact that petitioner was the lowest bidder; that the petitioner was lowest one by submitting the bid for an amount of Rs.7,918,220/-, whereas the other participants were highest bidders having submitted the bid for Rs.8,289,578/- and Rs.8,293,588/- respectively; that the petitioner filed complaints dated 02.05.2025 before the Complaint Redressal Committee and in response to which the petitioner was shown technically disqualified through a back dated letter, despite the fact that pursuant to another NIT petitioner was declared technically qualified and awarded contract accordingly; that the back-date of the disqualification letter dated 18.03.2025 is evident from the fact that the postal stamp on the envelope is dated 08.05.2025; that even otherwise the back dated disqualification letter has been signed by the Respondent

No.2 (Azmat Ali Phull) on 18.3.2025, whereas his posting Notification is itself dated 20.3.2025. He lastly prayed for allowing this petition as prayed for.

3. Learned counsel for the respondent No.2 and 4 denied the allegations and argued that the petitioner has failed to submit complete documents despite of the fact that it was specifically mentioned in para-4 of the NIT that tenders shall be carefully and neatly filled and signed by the bidders; that the petitioners submitted two affidavits bearing same number that are managed one and as such the petitioner for this act is liable to be proceeded against; that the petitioner was disqualified on account of technical flaws, therefore, question of lowest bid does not arise at all; that in fact the disqualification letter was signed and issued on 18.04.2025, but due to typing error and bonafide mistake the date has been mentioned in said letter as 18.03.2025; that petitioner had failed to submit affidavits on stamp papers, rather he had filed some unsigned documents; that Complaint Redressal Cell (**CRC**) also maintained the disqualification decision in respect of the petitioner while the Review Committee dismissed the complaint of the petitioner being barred by time in terms of Rule 31(5) of Sindh Public Procurement Rules 2010 (**SPP Rules**); that petitioner has approached this Court with unclean hands, therefore, he is not entitled for any relief.

4. Learned Additional A.G Sindh as well as learned counsel for respondent No.4, while adopting the arguments advanced by learned counsel for respondent No.2, prayed for dismissal of this petition.

5. Arguments heard and record perused.

6. The core issue in the present lis is whether the petitioner was knocked out from participating in the tender process with malice and ulterior motives, in order to accommodate other contractors in violation of law? Whether the contracts were awarded to the higher bidders which resulted in loss to national exchequer and was sufficient ground to declare misprocurement and the Petitioner was not dealt with in accordance with law??

7. Meticulous perusal of the record revealed that Respondent No 2 (Procuring Agency) invited tenders for execution of development schemes through tender notice dated 10.03.2025 published in Daily Kawish newspaper's issue dated 15.03.2025. The sealed tenders were invited under Single Stage – Two Envelope Procedure.

8. The Petitioner participated in the bidding process, by submitting Technical and Financial Proposals. The bids were opened on 25.04.2025. Petitioner's Technical Proposal was found insufficient and was disqualified at Technical Stage. The Financial Bids were opened as per schedule and Contracts were awarded to the contractors found eligible at the technical stage.

9. Under SPP Rule 2010 in case of a single stage two envelop bidding process, the bidders are required to furnish the single package containing two separate envelopes, each containing technical proposal and financial proposal as per procedure codified under Rule 46(2). The NIT under lis also involves single stage two envelop procedure. For the sake of convenience sub-rule 2 of Rule 46 of SPP Rules 2010 is reproduced below:

- (2) Single stage – two envelope procedure**
- (a) bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;*
- (b) envelopes shall be marked as "FINANCIAL PROPOSAL" and "TECHNICAL PROPOSAL" in bold and legible letters to avoid confusion;*
- (c) initially, only the envelope marked "TECHNICAL PROPOSAL" shall be opened;*
- (d) envelope marked as "FINANCIAL PROPOSAL" shall be retained in the custody of the procuring agency without being opened;*
- (e) procuring agency shall evaluate the technical proposal in a manner prescribed in advance, without reference to the price and reject any proposal which does not conform to the specified requirements;*

- (f) *no amendments in the technical proposal shall be permitted during the technical evaluation;*
- (g) *financial proposals of technically qualified bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance;*
- (h) *financial proposal of bids found technically non-responsive shall be returned un-opened to the respective bidders; and*
- (i) *bid found to be the lowest evaluated or best evaluated bid shall be accepted.*

10. The Procurement Committee reasoned that technical proposal furnished by the Petitioner was not in accordance with the rules, therefore, he was disqualified at the technical stage. It would be conducive to reproduce the decision of Procuring Committee, which reads as below:

*Office of the Executive Engineer (Dev)
Public Health Engg: Division Dadu*

No: TC/PHED/6165 Dated: 18/03/2025

To

*M/s Farooq Ahmed Malik,
Government Contractor,
Dadu*

*Subject: DIS-QUALIFICATION IN TECHNICAL
EVALUATION WITH RESPECT OF
NIT NO.TC/423/DATED: 10.03.2025*

It is to inform that you stood disqualified as per Departmental criteria by the Procurement Committee, while evaluation of technical profile of your company in respect of NIT captioned subject.

You are therefore requested to get your documents back along with financial bid (un-opened) from this office in working days.

Reason:

- i) Technical Documents is not signed named & stamp by the authorized person of the firm.*
- ii) No Signature & Original Stamp on Affidavit.*
- iii) Authorized letter / Affidavit of concerned Contractor/firm is not provided*

Sd/-

(AZMAT ALI PHULL)

EXECUTIVE ENGINEER (DEV)

PUBLIC HEALTH ENGG: DIVISION

DADU

11. The Procuring Agency communicated the Technical Disqualification of Petitioner through letter dated 18.03.2025. Learned Counsel for the Petitioner attacked the disqualification decision on the ground that letter was managed as the bids were opened on 24.04.2025, how the Technical Proposal can be rejected on 18.03.2025. Though the procuring agency justified the date as typographical mistake but failed to furnish any proof of the actual date of the decision of Procurement Committee.

12. From plain reading of letter dated 18.03.2025, it can be deduced that the technical disqualification of the petitioner was not in accordance with SPP Rules 2010. Rule 30 thereof provides disqualification of a supplier and contractor which includes that the information submitted by a supplier /contractor was false and/or he/she is involved in corrupt practices etc. For the sake of convenience Rule 30 of SPRA Rules is reproduced herein below:

30. Disqualification of Suppliers, Contractors and Consultants

- (1) The procuring agency shall disqualify a supplier, consultant or contractor, whether already pre-qualified or not, if it finds at any time, that the information submitted by him concerning his qualification and professional, technical, financial, legal or managerial competence as supplier, consultant or contractor, was false and materially inaccurate or incomplete; or*
- (2) At any stage has indulged in corrupt and fraudulent practices, as defined in these rules;*
- (3) A supplier, contractor or consultant being aggrieved by the decision of the procuring agency regarding*

disqualification may seek relief through the mechanism of grievance redressal, as provided under Rule 31.

13. Perusal of letter dated 18.03.2025 further reveals that none of the discrepancies prescribed under Rule 30 were traced in the technical proposal furnished by the petitioner, therefore, the reasons advanced by the Procurement Committee for Technical Disqualification fell outside the purview of Rule 30 and were curable and could have been rectified under Rule 23 of the SPP Rules.

14. As discussed above, it evidenced from the record that letter dated 18.03.2025 was managed to be back dated, it was sent to the petitioner by courier on 07.05.2025, it was delivered to petitioner on 08.05.2025. It is also matter of record that petitioner had filed a complaint on 02.05.2025 before the CRC and on that complaint, notices were issued to the Procuring Agency for hearing on 09.05.2025. In the complaint the petitioner had leveled the specific allegation that the bidding was not done in accordance with the Rules and he was not informed about bidding process. It appears that on receiving the notice dated 07.05.2025 from CRC, a back dated letter 18.03.225 was managed and sent to the petitioner that was received by him on 08.05.2025 against which petitioner also preferred second complaint on 09.05.2025.

15. To address the grievance of Petitioner, CRC held meetings on 09.05.2025, 13.05.2025 and 16.05.2025 to decide the fate of the complaint filed by Petitioner. CRC did not investigate the allegations of Petitioner and dismissed the complaint through a non-speaking order and rendered observations which read as follows:

“The CRC concurs with the Procurement Committee’s decision regarding the disqualification of M/S Farooq Ahmed Malik from participating in NIT No TC/423, dated 10.03.2025 of PHE Dadu was correct.”

16. Aggrieved by the decision of CRC, Petitioner filed appeal before Review Committee (RC), which too was declined on the ground that the same was time barred. Such decision was communicated to the Procuring Agency through letter dated 15.07.2025 (available as Annexure D with reply filed by Respondent No 2). Under Rule 31(5) of SPP Rules, the decision of

CRC can be appealed against within seven days. CRC rendered its decision public on 19.05.2025, Petitioner filed its appeal on 26.05.2025 which was within time specified under the Rules, but RC being in league with Procuring Agency did not entertain the appeal.

17. The legislature in order to place check on performance of Procuring Agency enacted Sindh Public Procurement Act 2009 (**SPP Act**) and framed Sindh Public Procurement Rules 2010 (**SPP Rules**), wherein the Statutory Forums have been provided to address the grievances relating to the tendering process. Under Rule 31 **Complaint Redressal Committee** (CRC) has been constituted to look into the anomalies and complaints of malpractices during procurement process, which comprises of odd number of persons, with appropriate powers and authorizations, to address the complaints of bidders that may occur during the procurement proceedings. CRC is headed by head of the procuring agency or an official of the procuring agency, at least one rank senior to the head of the procurement committee and shall include District Accounts Officer, or a representative of the Accountant General, Sindh; an independent professional from the relevant field concerning the procurement process in question, to be nominated by the head of procuring agency. Any bidder being aggrieved by any act or decision of the procuring agency after the issuance of notice inviting tenders may lodge a written complaint to CRC and if the CRC was satisfied it may prohibit the procurement committee from acting or deciding in a manner, which is consistent with SPP Rules. CRC was required to announce its decision within seven days. If the CRC fails to arrive at the decision within seven days, the complaint shall stand transferred to the **Review Committee** (RC) which shall dispose of the complaint in accordance with the procedure laid down in rule 32. The Procuring Agency is bound to award the contract after the decision of CRC.

18. Under Rule 31 of SPP Rules, CRC is conferred unfettered powers to decide the fate of procurement which included the declaration of mis procurement. Filing of Complaint with CRC halts the further proceedings for seven days until its decision on complaint. A bidder if not satisfied with decision of the procuring agency's complaints' redressal committee has two options to avail, first to lodge an appeal to the Chief Secretary through the

Authority, who shall refer the matter to a review panel as per Rule 32 or second to file an appeal before RC under Rule 32. The RC shall comprise of the Managing Director; Director General Audit Sindh or his nominee not below the rank of BS-19; two private members represented on the Sindh Public Procurement Regulatory Authority (SPPRA) Board, an independent professional having expertise of relevant field concerning the procurement. RC was empowered to point out the infirmities and breach of rules and regulations by the procuring agency; annul in whole or in part of a non-compliant act or decision of a procuring agency, other than any act or decision bringing the procurement contract into force. If it is found that the procuring agency is in breach of its obligations under the Act, Rules or Regulations, RC can order the payment of compensation by the officer(s) responsible for mis-procurement for cost incurred by the bidder on preparation of bid; or direct that the procurement proceedings may be terminated, in case the procurement contract has not been signed, and declare the case to be one of mis-procurement if material violation of Act, Rules, Regulations, orders, instructions or any other law relating to public procurement, has been established. The RC is mandated to hear the parties and bound to announce its decision within ten working days of submission of appeal and its decision shall be final and binding upon the procuring agency. After the decision has been announced, the appeal and the decision thereof shall be hoisted by the Authority on its website.

19. CRC, Review Panel (RP) and RC were conferred unabridged powers to decide the complaints regarding the procurement and point out the infirmities and breach of rules and regulations by the procuring agencies; suggest annulment in whole or in part of a non-compliant act or decision of a procuring agency. CRC, RP and RC were provided a cumulative period of seventeen days to decide the fate of complaint or appeal as the case may be. If as a result of the recommendation of the above forums, the authority declares the case to be of mis procurement, on account of any material violation of provisions of the Act, Rules, Regulations, orders, instructions or any other law relating to public procurement, in addition to declare the mis procurement, the Authority or the Review Committee shall refer the case to the Competent Authority for initiation of disciplinary proceedings against the officials of the procuring agency responsible for mis procurement and

may also refer the matter to the Sindh Enquiries and Anti-Corruption Establishment for initiating action against such officials as envisaged under Rule 32 – A of the SPP Rules.

20. The underlying scope of the legislation on the procurement related issues is to ensure transparent, fair and impartial Procurement Process. Transparency in the procurement process is vital aspect in the Development Sector, as it brings value for money to Procuring Agency. If Procurement Process lacks any of the factors mentioned herein above, there should be no hesitation to declare the procurement process as mis procurement by directing the Procuring Agency to revise the entire process and invite tenders a fresh. Given the Crucial task of overseeing development works, maintaining self-accountability, discipline, integrity and effective check on executing agencies are essential for Sindh Public Procurement Regulatory Authority.

21. Since procurement was purely a technical work, the Complaint Redressal Committee (CRC) and Review Committee (RC) services of experts from relevant fields were best suited forums to address issues related to tender process. The SPP Act & Rules lay down a complete scheme for public procurement. Rules envisage that while procuring goods, works or services, procuring agencies shall ensure that procurement process is done in a fair and transparent manner, the procurement brings value for money to the agency and the procurement process is efficient and economical. SPPR envisaged the method and manner of the procurement, in case of violation of settled parameters, the procurement can be declared null and void and mis-procurement followed by disciplinary and criminal action against delinquent officers.

22. It further transpired from record that petitioner had submitted the lowest financial proposal, but the work was awarded to the other bidders, who offered higher rates in comparison to the petitioner. In para No 5 of the Petition the comparison of the Financial Bids has been made. The Respondents have not denied this assertion of the Petitioner; however, they have controverted this stance on the ground that Petitioner's Financial Bid

could not be considered on account of his technical knock-out. For the ease of reference para No 5 of petition, is replicated below:

Name of Scheme	Bid Offered by Petitioner	Bids offered by contractors who have been awarded contracts as per Bid Evaluation Report
Sr. No 2 as per NIT	1,15,64,624	1,46,37,374
Sr. No 5 as per NIT	1,34,99,166	1,46,37,374
Sr. No 11 as per NIT	1,55,50,925	1,59,68,357
Sr. No 12 as per NIT	2,28,52,447	2,43,67,285
Sr No 28 as per NIT	79,18,220	82,89,578

23. Though it was a fit case for exercise of the powers conferred under sub-rule 7(d), (e), (f) and (g) of Rule 32 of SPP Rules by Review Committee to *annul in whole or in part of a non-compliant act or decision of a procuring agency; to Order for payment of compensation by the officer(s) responsible for mis-procurement for cost incurred by the bidder on preparation of bid; to terminate the procurement proceedings or to declare the case to be one of mis-procurement on account of the material violations of provisions of SPP Act & Rules.*

24. Taking up the vehemently pressed objection regarding balance of inconvenience as to the issuance of writ at this stage, the stance of the respondents, that bidding process had completely and contracts had already been awarded. At site 50% work was executed has no relevance, when the entire process was marred by illegalities and irregularities. The purpose of competitive process of a tender is to save public exchequer from plundering and taxpayer's money be utilized in a fair and transparent manner, which is lacking in the case of NIT under instant lis. In cases where the allegations are against public functionaries for violating the rules which they are bound to follow while discharging their functions, then balance of inconvenience hardly matters as it is the bounded duty of the Court to ensure that the public functionaries while discharging their functions should act strictly in accordance with the rules and therefore, cannot ignore such violation while weighing the balance of convenience. The power vested in Government

functionaries is a sacred trust and they are bound to exercise such powers and perform their duties as trustees in a most transparent manner and in cases where the decisions of the State functionaries are either mala fide or contrary to law, the same are liable to be struck down. In the instant case violation of Sindh Public Procurement Rules, 2010 as well as Sindh Public Procurement Act 2009 has been sufficiently established and any procurement in violation of the Rules cannot be sustained and liable to be declared as mis-procurement as envisaged under SPP Act & Rules, which follows the penal consequences provided under Rule 32 - A and in such circumstances, balance of inconvenience is hardly of any importance.

25. Development Works are executed out of the tax payers' money. The Executing Agency is entrusted with a sacred duty rather fiduciary obligation to utilize the public funds in a fair, transparent manner and to ensure that money gets its value in terms of execution and it is not wasted. It is important to note that a fiduciary obligation is not merely an ethical precept. As a legal imperative, fiduciaries must, perform their functions with care and complete fidelity. The basis of discretionary power of state functionaries is the delegation of authority by the principal, the people of this country. The State's legal authority is derived from this fiduciary relationship and functionaries are obligated to abide by the laws.

26. In the case of Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others reported as 1998 SCMR 2268, the Honorable Supreme Court held that:

"Further a contract, carrying elements of public interest, concluded by functionaries of the State, has to be just, fair transparent, reasonable and free of any taint of mala fides, all such aspects remaining open for judicial review. The rule is founded on the premises that public functionaries, deriving authority from or under law, are obligated to act justly, fairly equitably, reasonably, without any element of discrimination and squarely within the parameters of law, as applicable in a given situation. Deviations, if of substance, can be corrected through appropriate orders under Article 199 of the Constitution. In such behalf even where a contract, pure and simple, is involved, provided always that public element presents itself and the dispute does not entail evidentiary facts of a disputed nature, redress may be provided

27. In the case of Raja Mujahid Muzaffar and others v. Federation of Pakistan and others reported as 2012 SCMR 1651, Honorable Supreme Court of Pakistan has held as under:

"31. Public funds, public property, licenses, jobs or any other government largesse is to be dealt with by public functionaries on behalf of and for the benefit of the people. Public authority must necessarily be examined in accordance with law keeping in view the Constitutional Rights of the citizens. Thus, this Court has not hesitated in the exercise of its jurisdiction of judicial review"

28. In the case of Muhammad Yasin v. Federation of Pakistan reported as PLD 2012 SC 132, Honorable Supreme Court of Pakistan held that:

"holders of public office are first and foremost fiduciaries and trustees for the people of Pakistan and when performing the functions of their Office, they can have no interest other than the interests of the honourable People of Pakistan."

29. To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. The rule of law constitutes the bedrock of governance. When the law stipulates that something has to be done in a particular manner that is how it should be done. And any person who exercises authority must do so in accordance with law. Strength in this regard is derived from the dictum laid by Honorable Supreme Court of Pakistan in the case of Karachi Electric Supply Corporation Limited v. Karachi Electric Supply Corporation Ltd. Labour Union reported PLD 1967 SC 513, wherein it was held that:

'any action of any authority which is taken otherwise than in accordance with law as duly construed, would necessarily fall within the authority reserved to the superior courts to declare the law.'

30. Since the petitioner was condemned unheard at the time of rejection of technical proposal and such adverse action was communicated to him at belated stage, which offended his fundamental rights of fair trial enshrined under article 10 – A of the Constitution, further petitioner was denied the due process of law as articulated under article 4 of the constitution. Article 4

of the Constitution stipulates that citizens have an inalienable right to be treated in accordance with the law, but if public sector procuring agencies, funded by the taxpayers' money do not operate in accordance with laws governing them, then citizens are not being treated in accordance with the law.

31. An overview of the aforementioned discussion leaves little room for doubt that the Respondents have acted in violation of law and rules as such their actions cannot be sanctified and stamped to carry forward. Since the Contracts have already been awarded to the competing firms and Petitioner of own choice did not implead the alleged successful bidders as party, therefore any adverse order against the said firms or contractors would defeat their right to a fair trial invigorated and bolstered under the Constitution articulated under Article 10A of the Constitution, which stipulated that, "For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process."

32. In the present case we find that the forums below have acted beyond the parameters prescribed by the law, they acted in excess of authority and rendered decisions in arbitrary and slipshod manner. The pick and choose in award of the contracts on the part of Procurement Committee established the malice on their part, least to say that the Procurement Committee was predetermined to award contracts to their blue-eyed firms. Further, no fetter can be placed on the power of this Court to examine and scrutinize executive actions to determine their legality and adherence to the law. The quintessence of the observations is that since the entire procurement proceedings were founded on an illegal award of the contracts, therefore cannot be sustained.

33. For the aforementioned reasons, this petition is allowed. The order dated 19.05.2025 passed by the CRC is set aside. Complaint filed by the Petitioner shall be deemed to be pending before CRC. The CRC is directed to decide the complaint afresh after giving a notice of hearing to all concerned including the contractors/firms who were awarded works at serial No 2, 5, 11, 12 and 28 of the NIT under lis and decide the fate of the NIT to the extent

of schemes subject matter of the Petition in terms of Rule 32 and 32-A of SPP Rules 2010, within a period of one month from the date of this Order. Till the decision of CRC, the status quo order dated 24.06.2025 passed by this Court shall remain in field with respect to aforementioned schemes (serial No 2, 5, 11, 12 and 28 of the NIT).

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34. Office is directed to send copy of this Order to the Respondents for compliance. Additional Registrar to ensure compliance.

JUDGE

JUDGE

Sajjad Ali Jessar

Approved for reporting

Dated: 31.10.2025

Hyderabad