

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

*Constitutional Petition No.D-421 of 2026.
(M/S Syed & Company & Brother and another Vs.
Federation of Pakistan and others).*

<i>Date of hearing</i>	<i>Order with the signature of Judge.</i>
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Before:-

***Mr. Justice Amjad Ali Bohio,
Mr. Justice Ali Haider 'Ada'.***

Fresh Case

1. For orders on CMA No.1646/2026 (U/A).
2. For orders on office objections.
3. For orders on CMA No.1647/2026 (Ex/A).
4. For the hearing of the main case.
5. For orders on CMA No.1648/2026 (S/A).

04.03.2026.

Mr. Mehfooz Ahmed Awan, Advocate for the Petitioners.

Ali Haider 'Ada' J; The petitioner has designated himself as a Government contractor and, in that capacity, applied for a contract pursuant to a Notice Inviting Tender (NIT) issued by the National Highway Authority for various locations for the establishment of permanent way stations/mobile way stations. Through the instant petition, he has challenged the said NIT and has prayed that the respondent authority be directed to permit him to participate in the bidding process and to disclose the reserve price and estimated cost of each package.

2. Learned counsel for the petitioner mainly contends that the NIT does not mention the earnest money or the reserve price, which, according to him, is against the spirit and transparency of the tender process. He further submitted that the petitioner is a qualified contractor falling under Category O-5 with specialization code EE-11. It was also argued that this Court, vide order dated 03.12.2025, passed in Constitutional Petition No. D-1655 of 2025 had directed the National Highway Authority and the concerned SSPs to ensure the provision of

police stations at the locations of way stations in accordance with law. He further submits that the petitioner had raised objections to the NIT and to the instructions to bidders by filing a complaint before the Chairman, National Highway Authority, but the same has not yet been decided. He also objected to the condition in the NIT that only one package in the current bidding process shall be awarded to a single bidder, contending that such a condition is contrary to law and against fair and transparent competition. On these grounds, he prayed that the conditions imposed in the NIT be declared illegal and that the tender process be set aside.

3. Heard learned counsel and perused the material available on record and relevant laws.

4. At the outset, it is observed that the matter relates to a procurement process, which is governed by the Public Procurement Rules, 2004 (**Rules-2004**). The procurement rules are comprehensively regulated under these Rules. **Rule 20** prescribes the principal methods of procurement, while **Rule 21** provides for open competitive bidding. The Rules-2004 also deal with the pre-qualification of bidders. In this regard, **Rule 15** empowers the procuring agency to invite bids only from technically and financially capable firms possessing adequate managerial capacity. The relevant factors include past experience, performance history, availability of personnel, equipment, and plant, and sound financial position.

5. In the present case, the petitioners have primarily relied upon their specialization code EE-11 relating to operational work for toll plazas. However, mere possession of a particular specialization, without demonstrating compliance with pre-qualification criteria or technical and financial capability as required under the Rules, is not sufficient to claim an enforceable right to participate in every tender.

6. It is also pertinent to note that the Rules of 2004 provide a complete mechanism for redressal of grievances and settlement of disputes. **Rule 48(2)** clearly lays down that any bidder who feels aggrieved by an act or decision of the procuring agency may lodge a complaint within fifteen days of the **announcement of the bid evaluation report**. Furthermore, **Rule 35** provides for the proper announcement and publication of the bid

evaluation report, thereby ensuring transparency in the process. For convenience, Rule 35 of the Public Procurement Rules, 2004 is reproduced hereunder:

*35. Announcement of evaluation reports.-*Based on the procedure adopted for the respective procurement, the procuring agency shall announce the result of bid evaluation, in the form of final evaluation report giving justification for acceptance or rejection of bids at least fifteen days prior to the award of procurement contract:*

Provided that in case where technical proposal is to be evaluated separately, prior to opening of financial proposal, the technical evaluation report shall be announced before opening of the financial proposal.

7. In view of the above statutory framework, it is evident that the procurement process is regulated by a self-contained mechanism providing transparency, competition, and an effective remedy to an aggrieved bidder. In the present case, the petitioner's own stance is that he submitted a complaint before the Chairman on 03.03.2026. However, it is noteworthy that in the said complaint, there is no averment that he placed on record that the bid evaluation report had not been announced.

8. Furthermore, it has come on record that vide letter No. GM(P&CA)/NHA/GRC/2024/241 dated 06.06.2024, a Grievance Redressal Committee (GRC) was duly constituted by the National Highway Authority in terms of the Public Procurement Rules, 2004. The said constitution of the Committee was also communicated to the Managing Director of the Public Procurement Regulatory Authority for information and record. The establishment of such a Committee reflects compliance with Rule 48, which mandates every procuring agency to constitute a Grievance Redressal Committee for expeditious resolution of complaints. However, it is also an admitted position that the National Highway Authority has framed its own Standard Operating Procedures (SOPs) for handling contractual disputes. Under the said SOPs, disputes are categorized according to their nature and are required to be addressed by the competent authority within the prescribed administrative hierarchy. For the sake of ready reference, the letter constituting the Grievance Redressal Committee and SOP are reproduced as under:

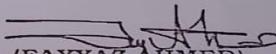
Subject: **GRIEVANCE REDRESSAL COMMITTEE**

Reference: This office letter no. GM(P&CA)/NHA/2022/340 dated 16th June 2022.

In continuation of above referred letter, it is to inform that NHA has revised the Grievance Redressal Committee as follows:

i. General Manger (Planning) NHA HQ	Convener
ii. Director (Design) NHA HQ	Member
iii. Director (RAMD) NHA HQ	Member
iv. Director (Legal) NHA HQ	Member
v. Engr. Umer Iqbal <i>Procurement Expert (Independent)</i>	Member
vi. Ms. Saeeda Mujtaba, <i>Financial Expert (Independent)</i>	Member
vii. Director (P&CA) NHA HQ	Member
Malik M. Imran Nazeer <i>Dy Director (Engineer) NHA</i>	Secretary (Non-voting)

2. The above is forwarded for your kind information, please.


(FAYYAZ AHMED)
General Manager (P&CA)

Cc:

- Member (Planning) NHA, Islamabad.
- GM (Planning) NHA / Convener (GRC), Islamabad.
- GM (Admn) NHA, Islamabad.
- All Members (GRC)
- SPS to Chairman NHA, Islamabad.
- Director (MIS) NHA HQ *to upload on NHA & PPRA Websites*
- Secretary (GRC), Islamabad.



NATIONAL HIGHWAY AUTHORITY
27 Mauve Area, G-9/1, Islamabad

No. (03)-DRC/NHA/11/01

Islamabad, July 23, 2011

Subject: **SOP for Handling Contractual Disputes**

1. NHA is engaged in hundreds of billion rupees contracts and disputes arising out of these contracts are also huge in terms of claims against NHA. In recent past it has been seen that except few odd cases which were contested through institutionalized litigation steering committees, NHA has lost by and large most of the cases causing hundreds of millions damage to National Exchequer. In a recent case six similar arbitration cases were decided against NHA in a most causal way due to extremely poor rather negligent defense by NHA lawyers.

2. It is therefore, imperative that some SOP should be laid out to contest contractual disputes with dedication and transparency to save hundreds of million rupees of NHA. It is therefore, suggested that Dispute Resolution and Litigation committees should be formed to handle contractual and land disputes as follows:

Nature and Value of Dispute		DR& LC Proposed	
i.	Land disputes uptoRs. 10 million	PD of Project DD/AD(Admn) Project AD Legal/Land in the vicinity	Chairman Member Member
ii.	Land disputes above Rs. 10 million	GM Project DD/AD Land Project/Region DD/AD Legal Project/Region DD (Admn) Regions/Project	Chairman Member Member Member
iii.	Contractual disputes uptoRs. 50 million	PD of Project AD Legal Project/Region DD/AD Construction HQ NHA	Chairman Member Member
iv.	Contractual Disputes Rs. 50 million to Rs. 500 million	GM Project Director (Const.) NHA HQ DD/AD Accounts Project DD/AD Legal Project/Region	Chairman Member Member Member
v.	Disputes above Rs. 500 million or unquantified	M/(Admn) or M/(Finance)/ GM(B&A)/ GM(Finance)/ GM(Audit) GM(Construction) Director (Accounts) Project Director (Legal)	Chairman Member Member Member
vi.	Encashment of bank guarantees above Rs. 10 million and foreign litigation	M/(Finance) GM(Audit)/GM(Finance) Director (Accounts) Project GM/Director (Legal)	Chairman Member Member Member

3. The Committee at serial No. I & iii above i.ePD level committees will be reporting to respective GM office where as all other committees shall have dispute resolution cell (DRC) NHA as their Secretariat/base office. DRC M-1 shall for time being serve as DRC NHA till proper DRC NHA is put in place.

4. Committees and Notification Responsibility

Steps in handling all above six levels of disputes and responsible individual/office are as following:

- i. Land disputes upto Rs. 10 million shall be reported to GM(EALS) who will notify the committee.
- ii. Land disputes above Rs. 10 million will be reported to member (Admn) who will notify the Committee.
- iii. Contractual disputes upto Rs. 50 million shall be reported to Member concerned who will notify the committee.
- iv. Contractual disputes at Para 2 (Serial No. iv to vi) above will be reported to Chairman NHA who will notify the appropriate committee through DRC NHA for further actions.

5. **Reporting Responsibility**

Employer Representative in every contract i.e GM/PD will be responsible to report occurrence of dispute when any financially adverse Engineer /DAB/DRE decision or challenge to land compensation award (By NHA or land owner) to relevant authority in Para 4 above. Copy of occurrence report shall be given to Secretary DRC NHA for following:

- i. Director (CA&DR) in P&CA Section will be coordinator for all contractual and land disputes management only. He will be Secretary DRC NHA assist by DRC M-1 staff.
 - ii. Director (CA&DR) will have direct access to authorities at Para 4 for this purpose and will ensure no limiting date is missed due to routine file movement or availability of concerned decision making authority.
 - iii. Director (CA &DR) will keep record of all disputes but physically manage only disputes at Sr. # iv to vi at Para 2 above.
6. Procedure to be followed by Committees
- i. The chairman of the Committee will immediately call meeting of the committee on notification and make preliminary assessment of the case.
 - ii. Committee shall collect all relevant record and prepare upto date chronology of events/actions.
 - iii. Committee shall list down contractual and legal limitations and limiting dates if any.
 - iv. Committee shall meet convening officer with their proposed approach to contest the case.

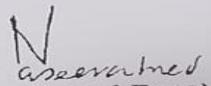
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- v. For all cases involving claims or having values more than Rs. 10 million lawyers shall be selected by the committee and paid market fee under Chapter 4, Short Term Consultants Head of NHA Code. Legal Cell NHA can help in selection of appropriate Counsel.
- vi. Committee will supervise and support the legal team and vet all submissions to Courts/Arbitration tribunals before submission and shall be responsible to feed any and all necessary date/correspondence to the Counsel. A copy of all submissions shall be kept by the Committee.
- vii. Chairman committee shall be designated as authorized representative of NHA by the Chairman for respective case.

7. **Conclusion**

The SOP proposed is a beginning to safeguard against loss of hundreds of millions through poorly contested NHA cases/arbitrations either due to willful connivance or deficient technical guidance to NHA Counsels. the experience of DRC M-1 has been very fruitful hence, same is being attempted at larger canvas. The SOP will be improved in light of the experience gained in implementation in yearly DR Review Meeting at NHA HQ.

8. This SOP is issued with the approval of Chairman NHA, please.


 (Naseer Ahmed Rana)
 Member (Admn)

Chairman Steering Committee M-1/M-9 Litigation

Distribution:

- Y Y All Members
 Y Y Y All General Managers (HQ/Region/Projects)
 Y Y All Project Directors
 Y PS to Chairman NHA

9. Keeping in view the above facts and circumstances, it is a well-settled principle of law that where a specific mechanism and remedy are provided under the relevant statute, the Constitutional jurisdiction of this Court under Article 199 of the Constitution is to be exercised cautiously and only in exceptional circumstances. The Constitutional petition cannot be invoked as a substitute for the remedies expressly provided by law, nor can it be entertained as a matter of routine when an adequate and efficacious alternate remedy is available. In the present case, the matter arises out of a procurement process governed by the Public Procurement Rules, 2004, which not only regulate the bidding procedure but also provide a complete mechanism for redressal of grievances. Additionally, the National Highway Authority has framed its own Standard Operating Procedures for the resolution of contractual disputes. Reliance in this regard is placed upon the judgments reported as **Indus Trading and Contracting Company v. Collector of Customs (Preventive), Karachi and others (2016 SCMR 842)**; **President, All Pakistan Women Association, Peshawar Cantt. v. Muhammad Akbar Awan and others (2020 SCMR 260)**; **Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others (2022 SCMR 92)**; and **Executive Director (P&GS), State Life, Principal Office Karachi and others v. Muhammad Nisar, Area Manager, State Life Corporation of Pakistan, Peshawar Zone (2025 SCMR 249)**. Consequently, the instant petition, being not maintainable, is hereby dismissed in *limine*.

JUDGE

JUDGE