

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No: 1430/2021.

Date of Institution: 23.04.2021.

Date of Decision: 26.05.2022.

1. M/S Raja Zain Akbar Khan, under License No.2087 in Category C/4 (under the bylaws of the Pakistan Engineering Council 1987).
2. M/S Raja Awais Rasheed under License No.20886 in category C/5 (under the bylaws of Pakistan Engineering Council 1987).

(Petitioners)

Versus

1. Secretary Public Works Department (PWD) Azad Govt. of the State of Jammu and Kashmir, office situated at New Secretariat Muzaffarabad.
2. Chief Engineer Public Works Department, department of Public Works Road (North), office at New District Complex, Muzaffarabad.
3. Redressal Committee through Chairman Superintending Engineer (PWD) Highways Circle Kotli, Azad Jammu & Kashmir.
4. Superintending Engineer Public Works Department Highways Circle Muzaffarabad, having his office at Old Secretariat, Muzaffarabad.
5. Executive Engineer Public Works Department Highways Division Jhelum Valley, Azad Jammu & Kashmir, having his office at Hattian Bala.
6. Faisal Javed Mughal Govt. Contractor R/o district Jehlum Valley C/o Muslim Book Depot, Hattian Bala.
7. Bid Evaluation Committee through Chairman, Executive Engineer (XEN) Public Works Department Jehlum Valley.

(Respondents)

WRIT PETITION

Before: ***Justice Mian Arif Hussain, J.***
 Justice Syed Shahid Bahar, J.

PRESENT:

Raja Shujat Ali Khan, Advocate for the petitioners.

Raja Amjad Ali Khan, Haroon Riaz Mughal, Advocates and A.A.G on behalf of respondents.

Judgment:

(*Justice Syed Shahid Bahar, J.*). The supra titled writ petition has been filed by the petitioners-Raja Zain Akbar and another under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974, seeking aid of this Court by making specific prayer, reproduced as infra:-

“It is, therefore, very humbly prayed on behalf of the petitioner by accepting the instant writ petition an appropriate writ may kindly be issued against the respondents as under:-

- i. That the decision of the redressal committee dated 26.03.2021 through which the petitioners’ Firm is declared non-responsive for the package of link road construction work No.(i) Link Road Pahul to Lani length 2 kilometer (ii) Link Road Bakat to main Pahul Length 1.5 kilometer total length 3.5 kilometer LA.28 by declaring null and void may be set-aside.
- ii. The acceptance letter issued by the respondent No.4, through which directed the respondent No.5 to furnish the performance security in respect of the disputed construction may also be set-aside.
- iii. The work order dated 19.04.2021 issued in favour of respondent No.6 may also be declared null and void and same may be set-aside.
- iv. The official respondent may also be directed to award/issue the work order in favour of the petitioners in respect of the disputed construction work in light of the letter dated 23.02.2021 issued by the respondent No.4 in favour of the petitioners for the safe administration of justice.

v. Any other relief which deems to be fit may also be granted in favour of petitioners."

I. BRIEF FACTS:-

The succinct facts germane to dispose of instant writ petition are that in first round of litigation, after necessary proceedings in the titled case, the writ petition was finally decided by this Court vide its decision dated 30.12.2021 which was assailed by the respondents before Hon'ble Supreme Court of Azad Jammu & Kashmir, resultant of which, judgment passed by this Court was set-aside through decision dated 20.01.2022 and the instant case was remanded back for denovo decision on merits.

The case of the petitioners is that respondent No.5 invited bids in accordance with Azad Jammu & Kashmir PPRA, Rules, 2017 single stage one envelop bidding procedure from the eligible Firms/contractors/Persons licensed by the Pakistan Engineering Council with specialization code CE-1 for the construction of different link roads construction work through advertisement dated 11.01.2021. It is contended that the petitioner No.1 a registered construction Firm/company named M/S Raja Zain Akbar Khan with Pakistan Engineering Council under license No.2087 in category C/4 under by laws of the Pakistan Engineering Council (1987). The petitioner No.2 a registered construction Firm namely M/S Raja Awais Rasheed with Pakistan Engineering Council under license No.20886 in Category C/4. It is averred that the petitioners being Govt. Contractors completed number of construction works within the territory of Azad Jammu

and Kashmir in efficient manners within specified duration. It is also averred that petitioners applied against the advertised Construction Work i.e. (i) Link Road Pahul to Lahni length 2 kilometer (ii) Link Road Bakat to Main Pahul, length 1.5 kilometer, total length 3.5 kilometer, situated at LA-28, estimated costs of the aforementioned work was fixed as Rs.289 million, later on the cost was decreased to R. 65.661 million, alongwith the construction of (i) Link road Chanania to Mandakuli, length 1 km (ii) Link road Chakmakam to Kapagali, length 2 km, total length 3 km, situated at LA-29, estimated cost of work fixed as 59.830 million. It is further averred that both the Firms applied against the aforesaid work through joint venture agreement dated 26.01.2021. It is further contended that the petitioners after obtaining the bidding document from the office of Executive Engineer PWD Highway Division Jehlum Valley (Hattian Bala) submitted the bids before the concerned quarter on 01.02.2021, as per schedule against the aforesaid construction work. The petitioners' Firms and others participated in Bidding Process in open competition. It is maintained that official quarters opened the bids of different Firms including the petitioners Firms against the aforesaid construction works on 01.02.2021 at 12 afternoon. Respondent No.5 after opening the bids of different Firms and analyzing the rates of the contenders declared the Petitioners' Firms as a successful bidder being lowest in the competition. It is vehemently contended that after preparing the comparative statement in respect of the rates of

the different bidders against the aforementioned construction work, respondent No.4 through letter dated 23.02.2021 to respondent No.3, recommended for approval of the tenders submitted by the Firms of the petitioners being lowest bidder. It is vehemently contended that respondent No.6 with malafide intention without any justification moved an application under AJK PPRA Rules, 2017, before the redressal Committee for allotment of the aforementioned work in his favour without impleading the petitioners and others concerned quarters; and redressal Committee against the facts and record, without affording an opportunity of hearing to the petitioners while leveling false and fabricated objections against the petitioners' Firms declared them non-responsive for this package through decision dated 26.03.2021, whereas, the petitioners' Firms through joint venture fulfilled the required qualification which is evident from the letter dated 23.02.2021. It is averred that the aforesaid work order was issued in favour of respondent No.6 on 19.04.2021 by ignoring the petitioners against law, rules and justice, therefore, the same are liable to set-aside and official respondents are liable to be directed to allot work order of the aforesaid construction work in favour of the petitioners.

II. PETITIONERS' SUBMISSIONS:-

The learned counsel for the petitioners, Mr. Raja Shujat Ali Khan, reiterated the facts and grounds as taken in the writ petition and contended that the official respondents with mala

fide intention without lawful authority by misuse of powers while ignoring the petitioners in the garb of false and fabricated objection allotted the construction work to respondent No.6, which is bad in the eye of law, therefore, the decision of Redressal Committee, letter of acceptance in favour of respondent No.6 and work order dated 19.04.2021 are liable to be set-aside. The learned counsel maintained that the rates of the petitioners' Firms were lowest as compare to other contractors. He staunchly contended that Redressal Committee without affording an opportunity of hearing to the petitioners and without taking into account of fact and record of the case, unilaterally declared the petitioner' Firms non-responsive in respect of the disputed construction work, whereas the petitioners' firms fulfilled the required qualification as per law and rules, hence, the decision of Redressal Committee regarding acceptance letter in favour of respondent No.6 for disputed construction work and disputed work order are liable to be set-aside and the official respondents are liable to be directed to issue the work order in favour of the petitioners.

III. RESPONDENTS' SUBMISSIONS:-

Conversely, Raja Amjad Ali Khan and Haroon Riaz Mughal, the learned counsel appearing on behalf of respondent No.6 opposed the arguments of the learned counsel for the petitioners and contended that respondent No.6 is registered with Pakistan Engineering Council bearing license of category C-3, who is eligible for the required criteria mentioned in tender notice

for the road of LA.28. The learned counsel further contended that letter of acceptance and work order have been issued in favour of respondent No.6 and a valuable right is accrued in his favour, which cannot be neglected. The learned counsel strongly contended that the work order has rightly been issued in favour of respondent No.6 by the official respondents. The learned counsel staunchly contended that the petitioner participated in all the proceedings and failed to fulfill the required criteria of the project, now, they cannot challenge the process of selection. The learned counsel submitted that the official respondents have imposed conditions in the bid book of the tender notice for both the packages i.e. for the package of LA-28 for which the petitioner is declared successful and work order is issued in favour of petitioners, the conditions were clearly mentioned in the standard form of bidding documents, the condition No.26(v)&(vi) are imposed for the qualification which respondent No.6 qualified as having past experience as well as completion certificates according to the demanded criteria, whereas the petitioners were refused the tender LA-28, because they have no past experience of similar nature of work, during last five years and has completed at least 3.5 kilometer road and petitioners have also lacking the requirement of the impugned work according to law and rules. The learned counsel maintained that both the works have different criteria, so both were sanctioned in accordance with the law. The learned counsel strongly contended that bids security for the Joint

Venture should be from the Joint Venture Account of both Members as prescribed in Joint Venture Agreement Schedule-4, whereas, CDR No.12195477 dated 29.01.2021 of Allied Bank which is attached with bidding form was prepared from Individual Account of one of the petitioner, according to the law it should be prepared or formed from the Joint Venture Account which was prerequisite by the Department through letter dated 24.03.2021 and also mentioned in AJ&K PPRA Rules, 2017, so the petitioners are/were not entitled to be successful bidders. The learned counsel staunchly contended that bid of the petitioners was rejected on the following reasons:-

- (i) Raja Zain Akbar (Associate Partner) provided credit limit of 50 million.
- (ii) The leading partner has not provided any credit limit.
- (iii) Although the Associate partner did not have his license renewal till June, 2021 but he participated in this bidding process as JV.

The learned counsel finally prayed that by accepting the submissions/arguments on behalf of respondent No.6, instant writ petition may be dismissed with cost.

The learned Legal Advisor appearing on behalf of respondents No.1 to 5 supported the arguments of the learned counsel for respondent No.6 and also prayed that the writ petition may be dismissed.

We have heard the learned counsel for the parties and gone through the record of the case with due care.

IV. DETERMINATION BY THE COURT:-

In response of the suggestion, as to why not the matter in hand be remitted and remanded back to the redressal of grievance Committee (constituted under statutory rules) in order to revise the matter by addressing all the legal and factual points agitated before the Court as per pleaded stance of both the rival parties alongwith official respondents agreed upon disposal of the petitioner accordingly.

As adumbrated order impugned herein is not speaking enough as no reasons whatsoever have been mentioned therein quo piecemeal acceptance of the petitioners bid on the one hand to the extent of one assignment through which his bid was declared responsive while simultaneously on the other hand on the same documentation/biding document become non responsive.

Parties should have been given full opportunity to make their defence and substitute their version, in case of any adverse order is required to be passed against them as no one should have been condemned unheard and no order having consequentially adverse affect to someone could be passed on his back.

The law governing and regulating the matter is in field and known as Azad Jammu & Kashmir Public Procurement Regulatory Authority Act, 2017 as well as Rules, 2017 made thereunder in view of section 27 of the aforesaid Act. As per rule

48(2) of the AJ&K PPRA Rules, 2017 a right to file complaint was availed by the petitioner by filing complaint before the redressal of grievances and settlement of disputes Committee and the said Committee dealt with the matter and adjudicated the same against the petitioners, hence, the petition in hand.

Majesty of law requires that every authority from top to lowest cog in the hierarchy of administration is under legal obligation to pass speaking and well reasoned orders perfectly in legal attire.

In the case in hand remedy of filing complaint has been provided by the statutory rules.

Before parting with the decision, it is in the fitness of things to draw the attention of the relevant quarters, particularly, who are at the helm of affairs that Dispensation of Justice is not only within the jurisdictional spheres of the Courts of law but everyone who possess powers to decide any matter by either way at his end is under legal obligation to adjudicate and decide the same by either way fairly, justly and in transparent manner in view of the doctrine of administrative justice which takes breath from preamble clause of the Constitution.

We circumscribe our discussion to the issue before us. Parties in the lis i.e. petitioners, private respondent and official respondents are in agreement for disposal of the lis by remanding

back the same to the grievance redressal Committee. We have reached the conclusion that decision of the respondent No.3, redressal Committee merits revisit in order to decide the matter afresh by providing administrative justice.

Thus, the matter is remanded back to the Grievance Redressal Committee constituted under Rule 48 of the AJ&K PPRA Rules, 2017 with a direction to decide the Complaint of the petitioner afresh stricto senso in accordance with law on merit (without influencing from verdict of Court quo factual controversy) within 15 days after providing full opportunity of hearing to both the parties by attending and addressing all the points pro and contra.

The writ petition is disposed of in the manner ut-suprat.

Muzaffarabad,
26.05.2022.

-Sd-
JUDGE

-Sd-
JUDGE

Approved for reporting

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JUDGE