

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No: 989/2024.

Date of Institution: 23.04.2024.

Date of decision: 24.06.2024.

1. Qazafi Surgical Private Ltd. through Muhammad Yasir, Area Manager, office/manufacturing unit situated at Nadeem Chowk Rasheedpura Lahore, Pakistan.
2. BIO Medical Service Pakistan Limited through Waqas Rasool, Area Manager, office situated at Blue Area Islamabad, Pakistan.
3. The Medical Solution Pakistan Limited through Abdul Rehman, Area Manager, office situated at Bahria Town Phase-II Rawalpindi.
4. Northedge Enterprises Private Limited through Muhammad Qasim CEO, office situated at KRL Road Rawalpindi.
5. Idea Medicals Private Limited through Shahbaz Aslam, Director, office situated at Pindora Market Rawalpindi.
6. Health Take Private Ltd. through Tanveer Ahmed CEO, office at Satellite Town Rawalpindi.
7. Cares Worth Private Limited through Muhammad Zubair, Director, office situated at Sector I-8/4 Extension Islamabad.
8. Medi Take Private Limited through Khurram Saleem office situated at Lahore Pakistan.
9. Biotronik Enterprises Private Limited through Muhammad Faizan CEO, office situated at Sector I-8/4 Extension Islamabad.
10. Grace Enterprises/ Medicine Distributors Private Limited through Muhammad Usman office situated at Gojra Bypass Road Muzaffarabad.
11. Sial Traders Health Care Company Private Limited through Muhammad Akhtar Director office situated at New Garden Town Lahore.
12. Afroze Traders Private Limited through Muhammad Ahmed Director, office situated at Lawrence Road Adra Rawalpindi Cant. Pakistan.

(Petitioners)

Versus

1. Secretary Health, Azad Govt. of the State of Jammu & Kashmir office situated at New Secretariat Muzaffarabad.
2. Director General Health, Govt. of Azad Jammu & Kashmir, office situated at Block "F", New District Complex Muzaffarabad.
3. Chairman Bids Committee through Secretary Health, Azad Government of the State of Jammu and Kashmir, office situated at Block No.10, New Secretariat Chatter, Muzaffarabad.

...Respondents

WRIT PETITION

Before: Justice Syed Shahid Bahar, J.

PRESENT:

Raja Aftab Ahmed, Advocate for the petitioners.

Syed Wasif Ali Gardezi, Legal Advisor for Health Department.

Judgment:

Through the constitutional petition in hand filed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974, the petitioners are seeking infra relief:-

“(i) The impugned invitation for bids, corrigendum for postponed of bidding and corrigendum for extension of invitation for bids (Annexure “PD” to “PD/2”) may kindly be set-aside by declaring the same against the law, rules and violative of the fundamental rights of the petitioners.

(ii) Restraining the respondents to proceed further in the light of impugned invitation for bids, corrigendum for postponed of bidding and corrigendum for extension of invitation for bids.

(iii) Directing the respondents to issue work order in favour of petitioners being successful bidders.”

2. The long and the short of the instant lis as per petitioners is that they are the taxpayer companies and they running their business with utmost hard work and best of capabilities and capacity and having good repute, specially in medical field. They contended that previously respondents invited bids for the procurement of Electro-medical equipment/instruments, furniture, bedding, clothing items and generators during the financial year 2022-23 against the development schemes through advertisement in daily newspapers as well as on the official website of the Department and also AJ&K PPRA website. They further contended that they

participated in bidding process by submitting their Call Deposit and after due process of law, the respondents recommended the petitioners as more advantageous bidders and also recommended for purchase of the items. They alleged that after the previous bidding, the respondents published another invitation for bids in daily newspaper as well as on official website of AJK PPRA for procurement of C.T Scan Machine as well as other electro-medical equipment/instruments etc. during financial year 2022-23 against the development scheme, thus, the petitioners applied for participated in the bid in light of terms and conditions mentioned in the above said invitation for bids and deposited CDR, after due process the respondents recommended the petitioner for purchase the instruments as most advantageous bidder. The petitioners averred that instead of issuance of work order in favour of petitioners, respondents have once again published another invitation for bids separately against the AJ&K PPRA Rules for procurement of Electro Medical equipment instruments etc. The petitioners further averred that the respondents firstly issued the corrigendum for postponed of bidding and again issued a corrigendum for extension of invitation for bids and now are going to open the bids on 23.04.2024 at 10:30 am, thus, the whole process regarding issuance of impugned invitation for bids is baseless, against the law and rules as well as against the fundamental rights of petitioners, hence, the same is liable to be set-aside. The petitioners alleged that the act of official respondents regarding re-bidding/issuance of impugned invitation for bids is against the law, rules and against the natural justice.

3. Comments have been filed on behalf of the respondents wherein the claim of the petitioners have been negated in detail.

4. *Written arguments have been submitted on behalf of the parties and record of the case has also been perused.*

5. The petitioner has challenged the impugned invitation of bids, corrigendum for postponement of bidding and corrigendum for extension of invitation for bids with a prayer to set-aside the same. The petitioner alleged that the act of official respondents regarding re-bidding/issuance of impugned invitation for bids is against the law, rules and against the natural justice, thus, the same is liable to be declared null and void.

6. The record appended with the petition shows that AJ&K Health Department i.e. Director General Health Office, Muzaffarabad, issued proclamations i.e. invitation for Bids for procurement of Electro medical equipment/instruments, Furniture items, bedding clothing and Generators, published in national newspapers and also uploaded the same on AJ&K PPRA website and due date for technical bid opening was fixed as 20.02.2024, which later on was also extended by the respondents.

7. Be that as it may in the codal scheme 2 type of remedies are available to the aggrieved one to project his grievance, i.e. under Rule 48 of AJ&K Public Procurement Rules, 2017, prior to entry into force of the procurement contract through filing complaint before the Grievance Redressal Committee (GRC) while in juxtaposition after coming into force of the procurement contract,

disputes can be settled through arbitration under Rule 49 of the above said rules.

8. Petitioners have failed to avail the alternate remedy provided under **Rule 48 of the PPRA Rules, 2017**. Law is settled that in presence of alternate remedy, writ is not competent. If there is an alternate legal remedy available to an individual, they must exhaust that remedy before approaching a higher court or seeking a writ. Remedy of writ is an extraordinary remedy which cannot be invoked at random.

9. Record further shows that the petitioners have not arrayed the bidding committee in line of respondents, who are necessary party in the instant matter, thus, on this score writ petition is also not maintainable.

Squeezed Analysis

10. The petitioner has not arrayed the bidding committee as a party in the line of respondents. Although matter of availability of alternate fora within the departmental hierarchy is not an absolute barrier for entertaining the writ petition, but in this connection it is responsibility of the petitioner to disclose as to why he is not satisfied with the statutory fora provided for the purpose. The petitioner has failed to establish his case on this score. Fora of GRC (Grievance Redressal Committee) is a statutory fora equipped with professional expertise and acumen, having technical knowhow of the matter. Where remedy of appeal is provided before GRC that must have been availed prior to approaching this Court by invoking extraordinary jurisdiction conferred under Article 44 of the Interim

Constitution, 1974. Adjudication of any matter where party has bypassed and took refuge from the departmental fora by switching over to writ jurisdiction, that too without disclosing extraordinary circumstances. This Court cannot pre-empt and indulge to resolve the disputed question of facts.

(Underlining is mine)

11. Only petitioners No.1, 7 and 10 participated in bidding process, thus, how other petitioners have got a locus standi to file the instant petition.

12. Petition is bereft of merit and liable to be dismissed.

13. Nub of above discussion is that finding no substance in the instant petition, therefore, the writ petition stand dismissed in limine.

File shall be kept in archive, after due completion.

Muzaffarabad,
24.06.2024.^(RAK)

JUDGE

Approved for reporting

JUDGE