

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(APPELLATE JURISDICTION)

**PRESENT:**

Ch. Muhammad Ibrahim Zia, C.J.  
Raja Saeed Akram Khan, J.

Civil Appeal No. 476 of 2019  
(PLA Filed on 21.10.2019)

M/s Shaheen & sons Constructors, Airport Road,  
Gilgit, Pakistan.

....APPELLANT

VERSUS

1. M/s Habib Rafique (Pvt.) Limited with Head Officer at House No. 06-K Block "H" Gulberg-II Lahore- Regional Office House No. 131, Street No. 57, MPCHS, E-11/3, Islamabad.
2. Physical Planning & Housing Department, Azad Government of the State of Jammu & Kashmir through Secretary PP & H, Civil Secretariat Muzaffarabad.
3. Chief Engineer Building/Public Health Engineering (North) Azad Government of the State of Jammu & Kashmir, Muzaffarabad.
4. Executive Engineer (Public Works Department), Public Health Engineering Division, District Headquarter Muzaffarabad.
5. Bid Evaluation Committee, Physical Planning & Housing Department, Azad Government of the State of Jammu & Kashmir through Chairman/Chief Engineer Building /Public Health Engineering (North), Azad Government of the State of Jammu & Kashmir, Muzaffarabad.
6. Azad Government of the State of Jammu & Kashmir through Chief Secretary Azad Government of the State of Jammu & Kashmir

Civil Secretariat Muzaffarabad.

....RESPONDENTS

7. Grievances Redressal Committee through Chief Engineer/Chairman of the Committee, Physical Planning & Housing Department, Azad Government of the State of Jammu & Kashmir, Muzaffarabad.
8. M/S Techno-Consult International (Pvt.) Limited, Suite No. 302, 3<sup>rd</sup> Floor, Gulberg Arcade, Gulberg-II, Lahore (Pakistan).

....PROFORMA-RESPONDENTS

(On appeal from the Judgment of the High Court dated 16.10.2019 in Writ Petition No. 1143/2019)

FOR THE APPELLANTS: Sardar M. Habib Zia & Ch. Shoukat Aziz, Advocates.

FOR THE RESPONDENTS: M/s. Abdul Rashid Abbasi & Ch. M. Ismaeel, Advocates.

Date of hearing: 05.12.2019.

**JUDGMENT:**

**Ch. Muhammad Ibrahim Zia, C.J.** The captioned appeal by leave of the Court has been directed against the judgment of the learned High Court dated 16.10.2019, whereby, the writ petition filed by respondent No.1, herein, has been accepted.

2. The brief facts of the case are that the contesting parties are private companies registered with Pakistan Engineering Council. Respondent No.3, herein, invited tenders for the project "Construction of Makari Intake Weir and Installation of Flow Metering System" while fixing the date of opening of technical Bids as 20.03.2019. The said tender, however, was cancelled on 16.03.2019. Thereafter, through another notice dated 02.04.2019 tenders were invited and the date of submission and opening of Technical and Financial Bids was fixed as 22.04.2019. It is alleged by respondent-company that after obtaining the bidding documents the company submitted the technical as well as financial Bid in the prescribed manner. The technical Bid of respondent-company, opened on 22.04.2019, was declared as responsive/qualified by respondent No.3 through letter dated 13.06.2019 and company was directed to attend the office on 21.06.2019 for opening of financial Bid. It is further claimed by the respondent-company that on the date fixed the matter of opening of financial Bid was postponed on

the pretext that one of the disqualified participant has put an application/letter on 18.06.2019 and showed his grievance under the AJ&K Public Procurement Rules, 2017 (hereinafter to be referred as PPRA, rules) and on his request the matter is being presented before the Grievance Redressal Committee. In this regard a letter was also addressed to the respondent-company on 21.06.2019. It is further alleged that on the same date the respondent-company filed an application to respondent No.3 that the procurement process cannot be suspended merely on the complaint of a disqualified bidder, however, the respondents in violation of the rules did not resume the process of opening of financial Bids. It is further stated that the official-respondents are not competent to postpone/suspend the process of opening of financial Bid, hence, this act is without lawful authority. The Grievance Redressal Committee has also not submitted its report/decision regarding the so-called complaint lodged by the appellant-company. The respondent-company feeling aggrieved filed a writ

petition before the High Court on 17.07.2019 for declaring the postponement of opening of financial Bid as without lawful authority, directing the respondents to complete the process of opening of financial Bid and awarding the contract to the respondent-company and restraining the respondents from changing the terms of Bid and allotting the work order to appellant-company. Through amended writ petition the respondent-company also alleged that on the direction of High Court the respondent No.2 furnished copies of some documents from which it transpired that the appellant-company apart from other reasons is disqualified for the project on the grounds of not providing the Appendix I (i.e. Soundness and Access to Financial Resources/specific line of credit needed to be certified by the Bank) and non-fulfillment of requirement of 'similar nature of work'. It was further alleged that the Bids Evaluation Committee declared the Bid of the appellant-company as non-responsive, however, the Grievance Redressal Committee has declared his Bid as responsive

without going through the report of Bids Evaluation Committee. It was further stated that the very formation of the Grievance Redressal Committee through order dated 04.07.2019 is against the requirements of law, hence, liable to be set-aside. Consequently, the appellant-company be declared ineligible and disqualified. The writ petition was contested by the appellant-company on the ground that opening of financial Bid was postponed due to filing of complaint under the PPRA rules which was sent to the Grievance Redressal Committee, who declared the appellant-company as qualified. Furthermore, the appellant-company also placed on record the 'project specific line of credit' with the bidding documents and the list of contracts of projects of similar nature of work, hence, the writ petition is liable to be dismissed. The learned High Court after necessary proceedings has decided the writ petition in the following manner:-

*"The nub of the above detailed discussion is that the instant writ petition is accepted. The impugned decision of the Redressal of Grievance Committee dated 04.07.2019 is*

*hereby set at naught, resultantly, the decision of the Bid Evaluation Committee stands restored and the employer/Department is set at liberty to evaluate the Financial Bid of the petitioner-company strictly in accordance with law on the subject and decide in the best interest of the project”.*

3. After hearing the parties, keeping in view the nature of the project and controversy, specially, the divergence of opinions of Bids Evaluation Committee and Grievance Redressal Committee, vide order dated 04.11.2019 we deemed it appropriate to direct the concerned Bids Evaluation Committee to submit its report. After receiving the report, the arguments were heard and following short order was passed on 05.12.2019.

*“The details shall be followed, however, we deem it appropriate to issue the following directions:*

1. *As according to the case history there is divergence of opinion between Bids Evaluation Committee and Grievance Redressal Committee and keeping in view the overall facts, only two contestants are competing in this bid. The appellant according to the report has failed to furnish the Financial Soundness Certificate as according to the required proforma, if he provides the required Financial Soundness Certificate and completion of the project of similar nature according to*

*the required standard, he may be allowed to compete subject to the condition that for fulfilling the required condition, the relevant documents shall be furnished within two days.*

2. *The authorities are directed to ensure the completion of bidding process before the target of 22<sup>nd</sup> December;*
3. *After completion of the process, the Chief Engineer shall furnish the report before the Registrar of this Court and also regarding the successful bidder. The department and successful bidder shall also file the undertaking in this Court for ensuring the completion of the project within the stipulated period and also the schedule of the work. It is further directed that six month's progress report of the project shall also be submitted."*

Following are the detailed reasons for our short order.

4. Sardar Muhammad Habib Zia and Chaudhary Shoukat Aziz, Advocates, the learned counsel for the appellant after narration of necessary facts submitted that the appellant-company has been technically knocked out without any legal justification on baseless grounds of not providing the 'project specific line credit' which was needed to be certified by the bank and non-fulfillment of the requirement of 'similar nature of work'. They further



submitted that if any clarification was required the same should have been asked for. The Grievance Redressal Committee has rightly attended the matter and the technical knock out of the appellant-company by the Bids Evaluation Committee is just to give walk over to the sole bidder, which is against law and the rules.

5. Conversely, M/s. Abdul Rasheed Abbasi and Ch. Muhammad Ismaeel, Advocates, the learned counsel for the respondents while rebutting the arguments of learned counsel for the appellants submitted that this appeal has been filed without any legal justification. The appellant-company has failed to fulfill the requirements of law and furnish the relevant documents, specially, the documents relating to the soundness and access to the financial resources/project specific line credit and completion of contract of similar size and nature. The matter has been once again evaluated by the Bids Evaluation Committee on direction of this Court, thus, neither the appellant-company has got any cause of action

nor entitled for any relief. This appeal has no substance and liable to be dismissed.

6. We have heard the learned counsel for the parties and gone through the record made available. In view of the reports of the Bids Evaluation Committee as well as the Grievances Redressal Committee the scope of the controversy has been narrowed down. The Bids Evaluation Committee, initially declared the appellant-company non-responsive on the grounds of non-furnishing the required Appendix-I (i.e. the Soundness and Access to Financial Resources/specific line of credit and non-completion of work of similar size and nature). The Grievances Redressal Committee subsequently declared the findings of the Bids Evaluation Committee unsatisfactory. Thereafter, on the direction of this Court the Bids Evaluation Committee once again re-examined the completeness of Bids of both the contestants and submitted the report. According to Table 4 (Examination of Completeness of Bids) of this report, only at serial No.(9) the appellant's Bid has been declared lacking the

qualification of bidder as required under Appendix I. While elaborating Appendix I two reasons have been advanced (i) Soundness and Access to Financial Resources/Project Specific Line of the credit have to be certified by the Bank and (ii) contract of similar size and nature has to be completed. For convenience, we would like to reproduce here Table-4 of the report as under:-

Item No.	Description	Bider	
		M/s. Shaheen & sons	M/s Habib Rafique (Pvt.) Ltd.
1.	Bid		
1.1	One Original and Two Copy	Y	Y
1.2	Letter of Technical Bid	Y	Y
1.3	Appendix to Bid		
	(1) Appendix A- Special Stipulations	Y	Y
	(2) Appendix B-Proposed Construction Schedule	Y	Y
	(3) Appendix C-Method of Performing the Work	Y	Y
	(4) Appendix D- List of Major Equipment-Related Items	Y	Y
	(5) Appendix E- Construction Camp and Housing Facilities	Y	Y
	(6) Appendix F-List of Sub-Contactors	NA	NA
	(7) Appendix G-Organization Chart	Y	Y
	(8) Appendix H-Integrity Pact	Y	Y
	(9) Appendix I-Qualification of Bidder?	N	Y
	(10) Appendix J- Additional Information Form	Y	Y
	(11) Appendix K-Affidavit	Y	Y
1.4	Bid Security (in separate envelope)	Y	Y
2	Written Power of Attorney	Y	Y
3.	Completeness of Bids	P	Y

Y=Yes      P=Partial      NA – Not Applicable”

In this regard, the findings of the Committee are as follows:-

“... Due to the strict re-evaluation, as provided in para 4 above, there remain no need of checking the financial soundness/specific line of credit of M/s Shaheen & Sons. Moreover, M/s. Shaheen &

Sons has not provided project specific line of credit indicated in BD I-1 for this project which was needed to be certified by the Bank. Said certificate was not provided with the Technical Bid.

The similar nature of works requires the construction of coffer dam as per BD Appendix 1-2. M/s. Shaheen & Sons do not have experience to Construct Coffe Dam. Therefore, M/ss Shaheen & Sons does fulfill the requirement of "Similar Nature of Work".

7. In our considered view, the parties as well as the concerned committee has unnecessarily prolonged the matter. Under the provisions of Rule 31 of the PPRA rules the matter falls within the competence of procuring agency. As mentioned hereinabove the appellant-company has been declared non-responsive on above referred grounds, whereas, the perusal of the record reveals that the appellant-company has furnished some documents relating to both the objected requirements. If any further clarification was required the procuring agency under the provisions of Rule 31 was under obligation to seek clarification. We would like to refer here rule 31 of PPRA rules as follows:-

"31. Clarification of Bids.- (1) No Bidder shall be allowed to alter or modify his Bid after the Bids have been opened. However, the Procuring Agency may seek and accept

clarifications to the Bid that do not change the substance of the Bid.

(2) Any request for clarification in the Bid, made by the Procuring Agency shall invariably be in writing. The response to such request shall also be in writing.”

In our considered view as the procuring agency has failed to adhere to the statutory rules. The deficiencies attributed to the appellant, as hereinabove mentioned, purely fall within the scope of Rule 31 and keeping in view the statutory provisions we have already through short order, reproduced hereinabove, directed the appellant-company to furnish within two days the documents for clarification of already submitted Bid. The furnishing of additional documents of such nature neither amounts to alteration or modification of Bid nor changes the substance of Bid.

8. As the project is one of public importance and there is apprehension of delay in completion of bidding process as well as the project, which may cause harm to the public interest and this unnecessary delay may also result into enhancement of the cost of project, therefore, in the public interest

for ensuring the timely completion of the bidding process and the project we have also issued directions (2) and (3) in our short order, reproduced hereinabove.

The aforesaid are the detailed reasons of our short order dated 05.12.2019.

CHIEF JUSTICE

JUDGE

Muzaffarabad,  
11.12.2019