

SUPREME COURT OF AZAD JAMMU & KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, ACJ.

Ghulam Mustafa Mughal, J.

1. Civil Appeal No.215 of 2020
(PLA filed on 21.5.2020)

1. Ministry of Kashmir Affairs and Gilgit Baltistan, Government of Pakistan, through its Secretary, having office at "R" Block, Pak Secretariat, Islamabad.
2. The Federal Secretary, Ministry of Kashmir Affairs and Gilgit Baltistan, having office at "R" Block, Pak Secretariat, Islamabad.

..... APPELLANTS

v e r s u s

1. M/s ZK Associates (Pvt.) Limited–M/s Shahid Builders (Pvt.) Limited, Joint Venture, 411-Poonch House, Adamjee Road, Saddar, Rawalpindi, through its authorities representative Mansoor Iqbal s/o Abdul Raheem Khan, r/o Mohallah Sethi Bagh, Muzaffarabad.

..... RESPONDENT

2. The Azad Government of the State of Jammu and Kashmir, through its Chief Secretary, AJ&K, having office at New Secretariat Complex, Chattar, Muzaffarabad.
3. The Project Manager, Project Management Unit, Azad Jammu and Kashmir Legislative Assembly Complex, Muzaffarabad.

4. The Bid Evaluation committee, through its Chairman/Director General Architecture Central Design Office, Muzaffarabad.
5. Kingcrete Builders, Office No.12, First Floor, Park Lane Road, 172, Tufail Road, Lahore Cantt.
6. The Azad Jammu and Kashmir Council, through its Secretary, Islamabad.

..... PROFORMA RESPONDENTS

[On appeal from the judgment of the High Court, dated 6.5.2020, in writ petition No.442/2020]

FOR THE APPELLANTS: Mr. Sajid Ali Bhatti,
Additional Attorney-
General and Mr. Bashir
Ahmed Mughal,
advocate.

FOR THE RESPONDENT: Raja Amjad Ali Khan,
Advocate.

FOR PROFORMA-
RESPONDENT NO.4: Syed Ashfaq Kazmi,
Advocate.

2. Civil Appeal No.216 of 2020
(PLA filed on 30.50.2020)

The Project Director, Project Management Unit, Azad Jammu and Kashmir Legislative Assembly Complex at Muzaffarabad.

..... APPELLANT

v e r s u s

1. M/s ZK Associates (Pvt.) Limited–M/s Shahid Builders (Pvt.) Limited, Joint Venture, 411-Poonch House, Adamjee Road, Saddar, Rawalpindi, through its authorities representative Mansoor Iqbal s/o Abdul Raheem Khan, r/o Mohallah Sethi Bagh, Muzaffarabad.

..... RESPONDENTS

2. Azad Government of the State of Jammu and Kashmir, through its Chief Secretary, Muzaffarabad.
3. Azad Jammu and Kashmir Council, through its Secretary, Islamabad.
4. The Ministry of Kashmir Affairs & Gilgit Baltistan, Government of Pakistan through its Secretary, R-Block, Pak Secretariat, Islamabad.
5. The Federal Secretary, Kashmir Affairs and Gilgit Baltistan, B Block, Pak Secretariat, Islamabad.
6. The Bid Evaluation committee, through its Chairman/Director General Architecture Central Design Office, Muzaffarabad.
7. Kingcrete Builders, Office No.12, First Floor, Park Lane Road, 172, Tufail Road, Lahore Cantt.

..... PROFORMA RESPONDENTS

[On appeal from the judgment of the High Court, Dated 6.5.2020, in writ petition No.442/2020]

FOR THE APPELLANT: Barrister Humayun Nawaz Khan, advocate.

FOR THE RESPONDENTS: Raja Amjad Ali Khan, advocate.

Date of hearing: 13th August, 2020

JUDGMENT:

GHULAM MUSTAFA MUGHAL, J.—Both the appeals (supra), by leave, are interconnected, therefore, the same have been heard together and being disposed of through the proposed single judgment. The appeals arise out of the common judgment of the High Court, whereby the writ petition filed by the real respondent, herein, has been accepted with the direction to the Project Director, Project management Unit, to issue the letter of acceptance to the respondent-firm being the lowest successful bidder.

2. The facts forming background of the captioned appeals, briefly stated, are that the Project Director, Project Management Unit for Azad Jammu and Kashmir Legislative Assembly Complex, Muzaffarabad, invited bids for the construction of Legislative Assembly Complex at Muzaffarabad, from eligible bidders, who are in possession of the following qualification:-

“7. Only eligible bidders with the following qualification should participate in the bidding process,

VIZ:

- a) Has completed at least one (01) contract of similar nature of work, with at least value of PKR 1800.00 million, during the last five (5) years.
- b) Bank Statement/Audited financial statement showing an average annual construction turnover of minimum Rs.1000.000 million, during the last 03 years.”

Among others, M/s Z.K. Associates (Private) Limited and M/s Shahid Builders (Private) Limited respondents herein, offered their bid, as Joint Venture, and participated in the bidding process. As per record, their bid was declared non-responsive by the competent authority and the contract for construction of the complex was awarded to the Kingcrete Builders, respondent No.7, herein, vide order dated 6.3.2020. The legality and correctness of the order dated 6.3.2020, whereby the bid of the respondents was rejected and work was ordered to be awarded to respondent No.7, was challenged through a writ petition before the Azad Jammu and Kashmir High Court on 9.3.2020, by the respondent, herein. After necessary proceedings, through judgment dated 6.5.2020, the division bench of the learned High Court accepted the writ petition and set aside the order dated

6.3.2020, with the direction to the Project Director, PMU, to issue the letter of acceptance in favour of the respondent-firm. Both, the Ministry of Kashmir Affairs and Gilgit Baltistan and others as well as the Project Director, PMU, Azad Jammu and Kashmir Legislative Assembly Complex, have challenged the legality of the impugned judgment dated 6.5.2020 through the separate appeals.

3. M/s Sajid Ali Bhatti, the learned Additional Attorney-General and Bashir Ahmed Mughal, advocate, appearing on behalf of the appellant in Civil Appeal No.215/2020, argued with vehemence that the impugned judgment of the High Court of Azad Jammu and Kashmir is without jurisdictional competence. They submitted that under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, a direction can be issued against a person performing functions in connection with the affairs of Azad Jammu and Kashmir or the local authority, whereas, in the case in hand, the direction has been given to respondents No.3 and 4, who are performing functions in the affairs of Federation of Pakistan, hence the impugned judgment

is not sustainable. The learned counsel further submitted that the project in question has been prepared, finalized and approved by the Government of Pakistan in accordance with the provisions of the constitution of Islamic Republic of Pakistan, 1973, and the same is being executed under the executive jurisdiction of the Government of Pakistan, hence, the Azad Jammu and Kashmir High Court has got no jurisdiction in respect of the project and no direction or writ can be issued to respondent No.5, who is delegatee of the Principal Accounting Officer, i.e. the Secretary, Ministry of Kashmir Affairs and Gilgit Baltistan. The learned counsel next argued that vide order dated 6.3.2020, the bid of respondent No.7 was accepted and the approval was conveyed to the Project Director, PMU, therefore, the learned High Court cannot issue the direction to the delegatee, hence, the writ issued is in-executable. The learned counsel placed reliance on the case reported as *Yasir Bashir vs. Saba Yasir & others* [PLD 2019 SC (AJ&K) 9]. The learned counsel submitted that the writ petition was also not maintainable on the ground that the petitioner before the High Court was not a State-subject and no any

fundamental right of the petitioner before the High Court, guaranteed by the Constitution, was infringed. It was argued that the Government of Azad Jammu and Kashmir or the Council has no concern with the project, therefore, the High Court has no jurisdiction over the matter. The learned counsel maintained that the respondent-firm i.e. M/s Z.K. Associates has no speciality of ME03 whereas M/s Shahid Builders was also lacking the specialization under the codes; EE01, EE02, EE03 and ME02, hence both the firms were not eligible. They also argued that the respondent-firm was not fulfilling the criteria of eligibility for the project because one of the conditions was that the bidder should have completed at least one project of similar nature, within the minimum cost of 1800 million Pakistani rupees. They submitted that the respondent did not meet the requirement, as it has never performed any work of such a nature and value. They argued that in order to overcome the discrepancy, they associated M/s Shahid Builders (Private) Limited as a Joint Venture partners but they failed to furnish the bid security in the name of joint venture, as required by para 3.4 of the Standard Procedure for evaluation of

bids for procurement of works. The learned counsel argued that the interference by the High Court was not justified because contractual obligations cannot be enforced while resorting to the writ jurisdiction of the High Court. In support of their submissions, the learned counsel referred to and relied upon the cases reported as *Messrs Power Construction Corporation of China Ltd. vs. Pakistan Water and Power Authority etc* [PLD 2017 SC 83], *Messers Haji Abdul Baqi & others vs. Managing Director, KW&SB & 6 others* [2008 YLR 1919] and *Dilshad Kausar vs. Azad Government & others* [2005 PLC (CS) 1048].

In the first case referred to hereinabove, it was observed by the learned Apex Court of Pakistan that the Courts in the exercise of their powers of judicial review, ordinarily, did not interfere with public policy decisions and exercise judicial restraint.

In *Messers Haji Abdul Baqi's* case referred to hereinabove, it was observed that two disqualified persons on any ground even in cases of joint venture tender would not be qualified by joining hands and each contractor must be qualified in his own right

before forming a partnership to tender for a joint venture project.

4. Barrister Humayun Nawaz Khan, advocate, the learned counsel, appearing for the appellant in Civil Appeal No.216/2020, *inter alia* submitted that the writ petition was liable to be dismissed on the principle of acquiescence and estoppel, as the respondent, after accepting the addendum issued in pursuance of clause IB-09 of the instructions to the bidders, (annexure 'PK'), the undertaking, (annexure 'PJ'), the letter dated 16.12.2019, (annexure 'PL') and the undertaking dated 14.12.2019, (annexure 'PM'), have participated in the bidding process and in case their bid is declared non-responsive, they have no right to challenge the same at any forum. The learned counsel further placed reliance on annexure 'PQ', the check-list, available at page 119 of the paper-book. In support of his submissions, the learned counsel placed reliance on the cases reported as *Ghulam Mustafa vs. Azad Government & 2 others* [1996 SCR 7], *Engineer Muhammad Khalid vs. The University of AJ&K & 8 others* [2004 SCR 467], *Abdul Qadir vs. Abdul Karim & 4 others* [2000 SCR 97] and

Chief Engineer Buildings/Public Health vs. Sardar Ilyas Alam [2017 SCR 1609]. The learned counsel further argued that the writ petition was not maintainable, as an alternate efficacious remedy was available to the respondent under rule 48 of the Public Procurement Rules, 2017, they invoked the extraordinary jurisdiction without exhausting the same. In this regard, the learned counsel placed reliance on the cases reported as *Syeda Shaista Mumtaz vs. Secretary Education & 6 others* [2003 SCR 446], *Muhammad Munir vs. Chairman/Chairperson AJ&K BISE & 3 others* [2006 SCR 29], *Noman Razzaq vs. Faryad Hussain Ch. & 13 others* [2014 SCR 921] and *University of AJ&K & 2 others vs. Mohtasib (Ombudsman) & 2 others* [2018 SCR 1257]. The learned counsel next argued that the competent authority has rightly declared the bid of respondent-firm as non-responsive, as the security submitted by it was without ensuring the mandatory joint liability of all the partners of the joint venture, in the light of conditions No.IB-11.2 and IB-15.03 of the conditions of the contract. The learned counsel submitted that the findings of the learned High Court in this regard are against the record and the relevant

instructions. The learned counsel further submitted that the High Court also fell in error while taking the view that all the formalities including the execution of contract etc. were to be fulfilled after declaring the respondent-firm as the lowest bidder. The learned counsel next argued that the High Court does not have any authority to declare any participant as the lowest bidder, because it is the job of the competent authority, who is in possession of special skills and expertise, hence, the declaration of the learned High Court is violative of rule 2(1)(k) of the Azad Jammu and Kashmir Public Procurement Rules, 2017. The learned counsel argued that the respondent-firm was not in possession of the required qualification, hence, his bid was rightly returned. He submitted that the writ was not maintainable as the project was funded by the Government of Pakistan without any contribution from the Government of Azad Jammu and Kashmir as neither the Government of Pakistan nor the PPH and PMU were impleaded in the line of respondents, therefore, the petition was liable to be dismissed on this sole ground. Reliance was placed on the case reported as *Mirza Lal Hussain vs. Custodian of Evacuee*

Property & 2 others [1992 SCR 214]. The learned counsel lastly argued that the writ was not maintainable for having been filed by unauthorised person, whose appointment was question before the High Court but the same has not been resolved properly.

5. Raja Amjad Ali Khan, advocate, counsel for the respondent-firm, argued with vehemence that the question of jurisdiction has not been raised before the High Court of Azad Jammu and Kashmir, therefore, this question cannot be raised now by the appellants. The learned counsel submitted that even otherwise the project in question is being executed in Azad Jammu and Kashmir and the whole process of tendering/bidding is being carried out within the territories of Azad Jammu and Kashmir, hence, it cannot be said that the High Court of Azad Jammu and Kashmir has no jurisdiction to issue any direction. In this regard, the learned counsel referred to and relied upon the following case-law:-

- i) *Federation of Pakistan vs. Malik Muhammad Miskeen & others* [1995 SCR 43],

- ii) *New Jubilee Insurance Ltd. vs. The Collector of Customs, Dry Port & others* [1995 SCMR 1535],
- iii) *Mst. Shahida Maqsood vs. President of Pakistan* [2005 SCMR 1746],
- iv) *Messrs Air Ciro through Senior Partner vs. Government of Pakistan* [2018 YLR 164],
- v) *Asghar Hussain vs. Election Commission of Pakistan* [PLD 1968 SC 387],
- vi) *Amir Textile Mills Pvt. Ltd. vs. Islamic Republic of Pakistan & 3 others* [1998 SCMR 2389],
- vii) *Anoud Power Generation Ltd. & others vs. Federation of Pakistan & others* [PLD 2001 SC 340],
- viii) *Khalid Habib vs. Pakistan Telecommunication Corporation Ltd. & others* [2014 PLC (CS) 203],
- ix) *Sandalbar Enterprises (Pvt.) Ltd. Vs. Central Board of Revenue & others* [PLD 1997 SC 334] and

The learned counsel further submitted that it was mandatory for the appellants to constitute the Grievance Redressal Committee, as provided in the instructions to bidders but the same was not constituted, hence, there being no alternate, efficacious remedy, hence, the respondent had no option except to invoke extraordinary jurisdiction of the High Court. The learned counsel submitted that the respondent-firm is fully qualified to participate in bidding process and the

bank guarantee furnished was in accordance with the bidding documents and condition No.11.2 to the instructions to bidders. The learned counsel submitted that the only requirement for a successful bidder was the verification of its guarantee and in the case in hand the Project Director sought verification from the bank, which was accordingly verified. He further submitted that the purpose of bank guarantee is just to ensure the seriousness of the bidder and its validity is only up to the time of declaration of the successful bidder. The bank guarantee in case of the respondent-firm had become irrelevant as the same was used to serve the *mala fide* intention of the appellants, which is also apparent from the fact that the bid security was returned through post vide letter dated 6.3.2020, in violation of clause 3.6(d) of Standard Procedure for Evaluation of Bids for procurement of works. He further submitted that the impugned judgment of the learned High Court is perfectly justified on facts and law and does not require interference of this Court.

6. Syed Ashfaq Kazmi, the learned Advocate appearing for Kingcrete Builders (respondent No.5) has

opposed the arguments advanced by Raja Amjid Ali Khan, Advocate, and prayed for setting aside the impugned judgment.

7. We have heard the learned counsel for the parties and perused the record along with the impugned judgment.

8. Before proceeding further, we would like to take up the question of jurisdiction of the High Court of Azad Jammu and Kashmir, as has been raised by the learned Additional Attorney General. He submitted that the Federal Secretary, Ministry of Kashmir Affairs and Gilgit Baltistan is not performing functions in connection with the affairs of Azad Jammu and Kashmir, therefore, the High Court of Azad Jammu and Kashmir has got no jurisdiction to issue writ to him under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974. This argument, in view of the scheme of the constitution, in our considered view, has no substance in it. The question of jurisdiction has been considered by the superior Courts with regard to the issuance of writ to the Federal Government or the authorities located beyond the territories of Azad

Jammu and Kashmir in various cases and it was resolved that the order passed by the Federation or the authorities even located beyond the territory of Azad Jammu & Kashmir which perform functions in connection with the affairs of the Azad Govt. of the State of Jammu & Kashmir or Council are amenable to the jurisdiction of the High Court of Azad Jammu & Kashmir. It is strange that in the present case, the order has been passed by the Secretary Kashmir Affairs Division and it has been argued by the advocates representing the appellants that the same could not be challenged before the Azad Jammu & Kashmir High Court. An identical question regarding the jurisdiction of this Court was raised before the Azad Jammu and Kashmir High Court, in the case reported as *Malik Muhammad Miskeen & 2 others vs. Government of Pakistan through Secretary Kashmir Affairs and Northern Affairs Division Islamabad and 10 others* [PLD 1993 AJ&K 1], which was repelled by the full bench, after considering the same, in the light of the provisions contained in article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974. At page 120 of the report, it was observed as under:-

“It is evident from the aforesaid scheme that the Interim Constitution Act conceived, among others, the sphere of jurisdiction of the Government, the Legislature, the Council and the Government of Pakistan. All these have been assigned specific sphere of jurisdiction under the Act. The jurisdiction of these institutions, obviously pertained to Azad Jammu and Kashmir. Therefore, in addition to the Government and the Council, the Government of Pakistan has been equally assigned its executive authority in connection with the affairs of Azad Jammu and Kashmir. The authority of the Government of Pakistan overlapped the authority of the Azad Government and the Council, as noticed in the provisions of section 56. This supra power of the Government of Pakistan was exercisable to the exclusion of the executive, legislative authority of the Council and the Assembly, but it was subject to judicial review of the High Court, in all situations. The High Court was, therefore, empowered to examine an action of the Government of Pakistan purported to have been taken in exercise of powers under section 56 read with section 31(3) of the Act. This aspect of the jurisdiction was fully protected by the provisions of section 44(1)(a) and (b).

148. The aforesaid analysis leads to the conclusion that the writ of the High Court may run:

- (i) in Azad Jammu and Kashmir and beyond;
- (ii) in connection with the affairs of Azad Jammu and Kashmir,

- (iii) in connection with the affairs of the State; and
- (iv) to and against the Azad Government, the Council, the Government of Pakistan or any other person or local authority which performed functions in connection with the affairs of Azad Jammu and Kashmir of the State, as the case may be."

On appeal to this Court, the view taken by the High Court was approved. In the case reported as *Federation of Pakistan vs. Malik Muhammad Miskeen & others* [1995 SCR 43], at page 68 of the report, it was observed as under:-

"It may be stated that the question as to whether the writ could be issued against the Federation of Pakistan in the instant case has been dealt with in earlier part of this judgment generally speaking, it is correct that a writ against a person not residing within the territorial limits of a Court is not competent. However, this restriction does not apply to the High Court of Azad Jammu and Kashmir and this Court because from section 44 of the Interim Constitution Act, 1974, the words in Azad Jammu and Kashmir were deleted by the Interim Constitution (1st Amendment) Act (Act IX) of 1975. It is due to this amendment that the High Court of Azad Jammu and Kashmir is able to issue writ against the functionaries like Azad Jammu and Kashmir Council and the Chief Election Commissioner of Azad Jammu and

Kashmir who perform functions while sitting outside Azad Jammu and Kashmir. There are certain provisions in the Interim Constitution Act, 1974, under which the Government of Pakistan has been invested with certain powers with regard to the affairs of Azad Jammu and Kashmir. Thus, an action performed in exercise of such powers may be open to judicial review under section 44 of the Interim Constitution Act. Consequently, if exercise of such powers by the Government of Pakistan is shown to be violative of law, an appropriate order may be made in exercise of writ jurisdiction, despite the fact that officers of Government of Pakistan are located beyond the territorial jurisdiction of Azad Jammu and Kashmir.”

In view of the above settled position of law, the objections regarding the jurisdiction of the Azad Jammu & Kashmir High Court, is repelled being devoid of any force.

9. The next argument of the learned Additional Attorney-General that the respondent is not a State-subject, therefore, has no right to file the writ petition before the Azad Jammu and Kashmir High Court, is also devoid of any force. It may be stated that for construction of Legislative Assembly Complex, the amount has been donated by the Government of Pakistan through Ministry of Kashmir Affairs and Gilgit

Baltistan but the whole tendering process including evaluation of the bids submitted by the participants has been conducted at Muzaffarabad, therefore, it cannot be said that the cause of action has not arisen within the territorial jurisdiction of Azad Jammu and Kashmir and if any violation is made in the tendering process, the same can be questioned before the Azad Jammu & Kashmir High Court notwithstanding the fact that the matter can be taken to any other High Court in Pakistan. This view lends support from the case-law reported as *Lt. Gen. (R) Salahuddin Tirmizi vs. Election Commission of Pakistan* [PLD 2008 SC 735] and *Sandalbar Enterprises (Pvt.) Ltd. Vs. Central Board of Revenue & others* [PLD 1997 Supreme Court 334].

10. It is the common argument of the learned counsel representing the appellants, herein, that the petition was not maintainable on the ground of acquiescence and estoppel, as the security was not submitted by the respondent as joint venture. We are of the view that this submission has substance in it. It is well settled principle of law that if a party against whom the acquiescence and estoppel is pleaded, was

aware about the dents pointed out by the other party, and even then it has participated in the process without raising any objection then in case of adverse order, such party cannot take an inconsistent position. In the letter dated 16.12.2019, the respondent-firm has given undertaking as joint venture and declared that they have no reservation about the bidding documents including the addenda issued under the instructions to bidders (IB-09). Similarly, in the letter dated 14.12.2019, it has been undertaken that in case of rejection of their financial bid, they will not challenge the decision of the authority.

11. The most crucial question, upon which the fate of the case depends, is the question as to whether it was mandatory to the respondent to submit the security as joint venture and if the needful is not done, what is its effect on their bid. For resolution of the aforesaid issue, clause 3.4(c) of the instructions to bidders is relevant, which reads as under:-

- (c) **Bid Security:** The bidding document may require submission of a bid security. If so, the bid security must conform to the requirements of the ITB, and it must accompany the bid. If the bid

security is issued as a bank guarantee, it must be consistent with the wording of the bid security form provided in the bidding document. Submission of a copy of the security is unacceptable. Furthermore, securities for an amount smaller or for a period shorter than the one specified in the ITB are not acceptable. However if Bid Security amount is short within 10% of Bid Security amount and period is short by one or two days. Employer should consider the same as minor deviation provided the bidder(s) undertake to make them up in response to the queries. The security for a bid submitted by a joint venture should be in the name of joint venture.

(underlining is ours)

A perusal of the above-reproduced instructions read with clause 11.2(d) of the instructions to bidders, reveals that it was essential that the bid security should be in the name of the joint venture and if the same is not as such, the principal or the employer has every right to reject the tender. The view taken by the learned High Court in this regard is against the record and the instructions. It may be stated that the bid of the respondent-firm was not finalized, rather it was at the stage of evaluation and until it is notified after the approval of the competent authority, no

vested right could have been claimed. The principal in such circumstances has competently rejected the bid by holding the same as non-responsive and such a rejection cannot be challenged, specially so, when the principal has reserved his right to accept or reject any or all of the bids as is provided in the bidding document, volume I, sub-clause 30.1 of clause IB.30, which reads as under:-

“IB.30 Employer’s Right to Accept any Bid and to Reject any or all Bids

30.1 Notwithstanding Clause IB.29, the Employer reserves the right to accept or reject any Bid, and to annul the bidding process and reject all bids, at any time prior to award to Contract, without thereby incurring any liability to the affected bidders or any obligation except that the grounds for rejection of all bids shall upon request be communicated to any bidder who submitted a bid, without justification of grounds. Rejection of all bids shall be notified to all bidders promptly.”

In this regard, reliance can be placed on the case reported as *Fawwad & Fareen Enterprises Ltd. vs. director of Industries, Government of Sind, Karachi & others* [PLJ 1983 SC 230], wherein, in paragraph 9, it was observed as under:-

“9. As already pointed out the Government had unequivocally reserved the right to reject any tender and, therefore, the petitioners cannot claim the grant of the contract on the basis of their tender being the lowest if the concerned authority

in the government chose to reject their tender in its discretion. In *Rehmat Ali v. Revenue Board West Pakistan, Lahore* (1973 SCMR 342) in a somewhat similar situation, this Court held that where the conditions of auction gave discretion to the government authority to confirm or not the confirm the auction, and the authorities concerned came to the conclusion that the auction in favour of the petitioners should not be confirmed, the mere fact of giving highest bid did not create any legal title in favour of the petitioners in the property subjected to auction and no right to file a Writ petition arose in such a case.”

Reliance can further be placed on the case reported as *Moin-ud-Din vs. Negotiating Committee for Disinvestment of AKMIDC Units, Muzaffarabad and 8 others* [PLD 1087 SC (AJ&K) 99].

12. It has been argued on behalf of the respondents that after evaluation, they were declared the lowest bidders and recommendations were also made by the evaluation committee for approval of the competent authority but the decision was taken otherwise, which is *mala fide*. We have perused the original as well as subsequent recommendations on the basis of which the final decision has been taken. While evaluating the process, the question of filing of security of the joint ventures has not been considered by the committee inadvertently, that’s why the letter was sent by the Federal Secretary, Ministry of Kashmir Affairs

and Gilgit Baltistan to the evaluation committee for re-evaluation. After considering the bid submitted by the respondent-firm in the light of aforesaid instructions, it was decided that the respondent's bid is not acceptable due to the fact that the security was not submitted in the name of joint venture. This defect appears to be plausible, as perusal of the record shows that the partner firm has not shared any liability in black and white, rather has been associated to fill in the blanks.

13. The contention of Raja Amjad Ali Khan, advocate, counsel for the respondent-firm that they have not applied as a joint venture, rather have shown their intention to form the joint venture after acceptance of the bid, is against the record. The respondent-firm has applied as the joint venture. Moreover, they have filed the writ petition before the High Court as such. It may be stated that the learned High Court has given the direction to the Project Director, PMU, who has only to execute the work on the direction of the principal. The direction, if any, could have only be given to the Principal Accounting Officer, i.e. the Secretary, Ministry of Kashmir Affairs and Gilgit

Baltistan. In view of the above, the impugned judgment of the High Court is not sustainable in the eye of law.

14. As the appeal is liable to be accepted on the grounds discussed hereinabove, therefore, discussion on the other grounds raised by the learned counsel for the appellants with regard to the question of alternate remedy and the qualification of firms etc., would be of academic.

The upshot of the above discussion is that the appeal is accepted and the impugned judgment passed by the High Court on 6.5.2020 is set aside. Resultantly, the writ petition filed by the respondent-firm before the High Court stands dismissed with no order as to costs.

JUDGE

ACTING CHIEF JUSTICE

Muzaffarabad
20.08.2020