

IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAZA ALI KHAN

CIVIL PLA No. 576 OF 2023

Civil Misc. No. 383 of 2023

(On appeal from the judgment of the High Court dated 21.06.2023, passed in Writ Petition No. 1062/2021).

Neelum View Hotel through Abdul Mateen Khan s/o Abdul Waheed Khan representative Neelum Road, Muzaffarabad, Azad Jammu and Kashmir.

...Petitioner

VERSUS

Vice Chancellor Azad Jammu and Kashmir University, having his office at Chehlah Campus Muzaffarabad & 02 others.

...Respondents

Public Procurement Regulatory Authority, Azad Jammu and Kashmir Muzaffarabad.

...Proforma Respondent

Appearances:

For the Petitioner:

Mr. Mushtaq Ahmed Janjua,
Advocate.

For the Respondents: Raja Shujahat Ali Khan and Raja Gul Majeed Khan, Advocates.

Date of hearing: 30.08.2023

ORDER:

Raza Ali Khan, J:- The captioned petition for leave to appeal arises out of the judgment of the High Court dated 21.06.2023, whereby, the writ petition filed by the petitioner, herein, has been dismissed.

2. The facts necessary for disposal of instant petition for leave to appeal are that petitioner, herein, filed a writ petition before the High Court seeking direction for issuance of the work order in its favor on the basis of being successful firm for running the messes, canteen and cafeteria for hostels of King Abdullah Campus Chatter Kallas of Azad Jammu and Kashmir University in the light of the advertisement dated 24.11.2019 and also in accordance with PPRA rules as mentioned in the advertisement. It was further sought that the respondents may kindly be restrained from the issuance of the work order for running of the canteen/cafeteria, to any other party. The learned High Court after necessary proceedings dismissed the writ petition through the impugned judgment dated 21.06.2023. Hence this petition for leave to appeal.

3. Mr. Mushtaq Ahmed Janjua, the learned advocate appearing for the petitioner argued that the impugned judgment of the High Court is against law, facts and the record of the case, hence, the same is liable to be set-aside. While referring to the documents available at page 80 and 81 of the paper book, he submitted that they have filed an application before the Finance Director and

Vice Chancellor, hence, it was imperative for the concerned authorities to refer the matter to the redressal committee but he failed to do so. He further argued that many of the firms were lacking the basic qualification to apply for tendering on the last date of advertisement but the respondents after lapse of the time for submission of the relevant documents before the authority, submitted illegal documents and made part of the file of the contract by making fraud which is unfair and clearly shows that the authority is interested to invest its capital through their kith and kin by favoring on the basis of favoritism which is against the law. He finally submitted that the instant petition involves important legal questions of law of public importance justifying the grant of leave.

4. On the other hand, Raja Shujahat Ali Khan and Raja Gul Majeed Khan, while controverting the arguments advanced by the learned counsel for the petitioner submitted that these two applications have no nexus with the matter in hand. In fact these applications were filed much before the issuance of work order, therefore, the learned counsel tried to mislead the Court and these two applications do not come within the purview of appeal which can be filed under rule 48 of the PPRA Rules. They forcefully defended the impugned judgment of the learned High Court and submitted that the learned High Court has rightly appreciated the record while handing down the impugned judgment. They finally prayed that no question of public importance is involved in the instant petition for leave to appeal, therefore, leave may be refused.

5. I have heard the learned counsel for the parties and gone through the record of the case made available. The perusal of the record divulges that in the earlier round of litigation, the learned High Court dismissed the writ

petition vide judgment dated 30.10.2021, however, the said judgment was called in question before this Court by way of appeal. This Court vide its judgment dated 12.01.2023, while allowing the appeal, remanded the case to the High Court for decision of the case on merit. The learned High Court after remand of the case heard the parties and after necessary proceedings has dismissed the writ petition through the impugned judgment solely on the ground that an alternate remedy under Rule 48 of the Azad Jammu and Kashmir Public Procurement Rules, 2017 (*hereinafter to be referred as PPRA Rules*) was available to the petitioner but despite this, he directly invoked the extra ordinary jurisdiction of the High Court, therefore, no relief can be granted to the petitioner.

6. Before proceeding further, it is important to note that a fundamental tenet underscores the role of judicial review as a final recourse measure. Therefore, in cases where an alternative remedy is available, it becomes imperative to exhaust such recourse before invoking the constitutional jurisdiction enshrined under Article 44 of the Interim Constitution. Legal precedents elucidate that when a statutory alternative remedy is accessible, the issuance of writs for relief remains an extraordinary measure. However, this principle is not absolute; circumstances may arise where an alternative remedy proves inefficacious and inappropriate, leading to an outcome that miscarries justice or contravenes the principle of natural justice, in such situations, the avenue of judicial review remains accessible. Instances arise where specific statutes provide an autonomous framework for resolving inquiries that fall within their purview, and the law provides avenues for redressal, such as through appeals, reviews, or revisions. The relevant authority, tribunal, or forum possesses complete competence to adjudicate on the

matter and grant appropriate remedies. Disputed factual issues, the resolution of which necessitates the acquisition of diverse forms of evidence, can only be addressed by the competent court or authority vested with jurisdiction over the matter. In cases of this nature, constitutional petitions lack the requisite competence.

7. Coming to the case in hand, it is an admitted fact that the petitioner directly approached the High Court for redressal of his grievance, whereas an alternate efficacious remedy in shape of lodging complaint before Grievance Redressal Committee (GRC) was available to him under Rule 48 of the PEPRA Rules¹. We would like to reproduced hereunder the aforesaid statutory provision for better appreciation:

"48. Redressal of Grievances by the Procuring Agency:-

(1)The procuring agency shall constitute a committee comprising of odd number of persons, with necessary powers and authorizations, to address the complaints of bidders that may occur prior to the entry into force of the procurement contract;

2) Any party may file its written complaint against (the eligibility parameters, evaluation criteria or any other terms and conditions prescribed in the bidding documents if found contrary to the provisions of the procurement regulatory framework redressal committee (GRC) well before the proposal submission deadline;

(3) Any bidder feeling aggrieved by any act of the procuring agency after the submission of his bid may lodge a written complaint concerning his grievances within seven days of announcement of the technical evaluation report and five days after issuance of final evaluation report."

8. The perusal of sub-Rule (1) of the Rules (supra) postulates that the procuring agency, which is responsible

¹ Rule 48 of the Azad Jammu and Kashmir Public Procurement Rules, 2017

for managing the procurement process, is required to create a committee. This committee should consist of an odd number of individuals, which ensures to avoid tie votes. The committee should be empowered with the necessary authority and permissions to handle the grievances or complaints raised by bidders and these grievances may arise before the procurement contract becomes effective, meaning they occur during the pre-contract phase. Similarly, Sub Rule (2) of the Rules postulates that any party (including bidders) has the right to submit a written complaint. This complaint can be related to issues with the eligibility requirements, evaluation criteria, or any other terms and conditions mentioned in the bidding documents, however, the complaint must be grounded in the argument that these elements contradict the regulations set out in the procurement regulatory framework. It's important to note that such complaints must be submitted to the redressal committee (GRC) well in advance of the proposal submission deadline, ensuring that any concerns are addressed before the bidding process concludes.

9. The case in hand revolves around Sub-Rule (3) of the PPRA Rules, where a bidder believes that he has been subject to unjust treatment by the procuring agency after he has submitted his bid, he retains the right to register a formal, written complaint outlining his grievances. This formal complaint must be submitted within a specific timeframe: seven days from the announcement of the technical evaluation report or within five days from the issuance of the final evaluation report, if one is generated. By establishing these clear time limits, the framework offers bidders the opportunity to challenge any actions or decisions made by the agency post-bid submission, thus ensuring a structured and prompt mechanism for

addressing concerns. This mechanism plays a crucial role in upholding transparency, fairness, and accountability throughout the procurement process. The available record does not indicate that the petitioner has taken any action to formally lodge a written complaint addressing his grievances within the stipulated period of seven days following the announcement of the technical evaluation report, and within five days after the issuance of the final evaluation report. Instead, the petitioner directly sought recourse through the Constitutional jurisdiction of the High Court. This course of action might be seen as not aligning with the appropriate procedural path available to the petitioner, especially considering that Rule 48 of the Public Procurement Regulatory Authority (PPRA) rules lays out a clearly defined statutory provision for the redressal of grievances. Even during the course of arguments before the Court, the learned counsel for the petitioner was unable to justify that he had availed the remedy under Rule 48 of the PPRA Rules. In such a state of affairs, as stated above, when an alternate efficacious remedy was available to the party, no direct writ lies to the High Court. This Court in its plethora of pronouncements has already settled this proposition. Reference may be made to the case reported as *Azad Govt. & others vs. Mubashar Aziz Qadri*², wherein, it has been held as under: -

“Although, the parties have not raised this point in the written arguments but in our considered view for redressal of such grievance under rule 48 of the AJ&K Public Procurement Rules, 2017, the alternate remedy is provided. In our considered view in such like matters for expeditious and effective disposal, the bidder before approaching the Court must have approached the Committee constituted under the referred Rule.”

² [2019 SCR 71]

In the other case reported as *Noman Razzaq vs. Faryad Hussain Ch. & others*³, the proposition of maintainability of writ petition under Article 44 of the Interim Constitution, 1974 has been dealt with in detail. The relevant portion of the judgment is reproduced hereunder for better appreciation: -

“For resolution of the point regarding the maintainability of writ petition, section 44 of the Azad Jammu and Kashmir Interim Constitution Act, 1974 is relevant, which is reproduced herein below as under:— “44. Jurisdiction of High Court.-

(1) The High Court shall have such jurisdiction as is conferred on it by this Act or by any other law.

(2) Subject to this Act, the High Court, if it is satisfied that no other adequate remedy is provided by law—

(a) on the application of any aggrieved party, make an order—

(i) directing a person performing functions in connection with the affairs of Azad Jammu and Kashmir or local authority to refrain from doing that which he is not permitted by law to do, or to do that which he is required by law to do; or

(ii) declaring that any act done or proceedings taken by a person performing functions in connection with the affairs of the State or a local authority has been done or taken without lawful authority, and is of no legal effect; or

(b) on the application of any person, make an order—

(i) directing that a person in custody in Azad Jammu and Kashmir be brought before the High Court so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or

(ii) requiring a person holding or purporting to hold a public office [in connection with the affairs

³ 2014 SCR 921]

of Azad Jammu and Kashmir] to show under what authority of law he claims to hold that office; or

(c) on the application of any aggrieved person, make an order giving such directions to the person or authority, including the Council and the Government, exercising any power or performing any function in, or in relation to, Azad Jammu and Kashmir as may be appropriate for the enforcement of any of the fundamental rights conferred by this Act,

- (3)
- (4)
- (a)
- (b)
- (5)

..... The opening words of section 44 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, in sub-section 2 provide that ‘subject to this Act, the High Court may, if it is satisfied that no other adequate remedy is provided by law.’ After bare reading of the above said Constitutional provision, it is spelt out that the Constitutional jurisdiction of the High Court can only be invoked when there is no other remedy available.”

Similarly, in the other case reported as *Muhammad Rasib vs. Mst. Maqsood Begum*⁴, wherein, it has been observed as under: -

“Writ jurisdiction of the High Court is regulated by article 44 of the AJ&K Interim Constitution Act, 1974, which according to its phraseology, at the very outset provides that a writ petition can only be filed if there is no alternate remedy available to an applicant as has been handed down in umpteen cases so far by the superior Courts and leaves no room for the High Court to entertain a writ petition where it appears from the record that the controversy brought before the

⁴ [2011 SCR 59]

Courts is one of civil nature, competently to be decided by the civil Court or all within the jurisdiction of a special Court or tribunal with specific backing of some codal provisions”.

10. Additionally, it is imperative to consider the current state of affairs within the High Court, which finds itself inundated with a plethora of cases spanning diverse legal issues. Granting litigants unrestricted access to bring forth a wide array of disputes to the High Court, without first requiring them to exhaust the remedies explicitly outlined in the legal framework, would undoubtedly lead to an excessive burden on the court's resources and capabilities. Such an approach not only undermines the efficient functioning of the court but also goes against the very purpose for which these alternative remedies were established. This practice, if consistently adopted by the litigant public, runs the risk of being perceived as an exploitation or misuse of the constitutional jurisdiction vested in the High Court. This jurisdiction is fundamentally designed to be invoked in exceptional circumstances, those instances where alternative means of redressal fail to adequately address the concerns of the aggrieved parties. Therefore, a balanced approach that upholds the intended purpose of alternative remedies while reserving constitutional jurisdiction for cases of utmost necessity serves to maintain the integrity and efficacy of the legal system as a whole.⁵

11. In view of the comprehensive analysis provided above, this petition for leave to appeal along-with application for interim relief fails.

JUDGE

Muzaffarabad,
30.08.2023

⁵ Ch. M. Ismail vs. Fazal Zada, Civil Judge, Lahore [PLD 1996 SC 246]

