JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.755 of 2021
ANAS Brothers Enterprises (Private) Limited
Versus
Capital Development Authority and others

Date of Hearing:	13.04.2021
Petitioner by:	M/s Ammara Kazmi and Usman Kazmi, Advocates
Respondents by:	Hafiz Arfat Ahmad Ch. and Mr. Tariq Zaman Ch., Advocates

---

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to decide writ petitions No.755/2021 and 1011/2021 since they entail common questions of law and fact.

2. Through writ petition No.755/2021, the petitioner, ANAS Brothers Enterprises (Private) Limited, assails the decision dated 18.02.2021 taken by the Board of the Capital Development Authority (**"C.D.A."**) to revoke the Letter of Intent (**"L.O.I."**) dated 02.09.2020 which was issued to the petitioner after it had successfully participated in a competitive process for the award of the works titled *"Privatization / Provision of Cleaning Services i.e. Cleaning, Sweeping, Collection & Transportation of Solid Waste / Garbage from Sectors G-6, G-7, G-8 etc, Islamabad Package-I"*.

3. Through writ petition No.1011/2021, the petitioner, ANAS Brothers Enterprises (Private) Limited, impugns the decision taken by the respondents not to issue the tender documents pursuant to the tender notice published on 13.02.2021 regarding Privatization / Provision of Cleaning Services in different Sectors of Islamabad.

4. The facts essential for the disposal of these petitions are that vide advertisement dated 21.06.2020, the Metropolitan Corporation Islamabad (**"M.C.I."**) invited bids for the award of contracts for cleaning services in different Sectors of Islamabad. The tender was divided into three packages. Each package was for a different Sector in Islamabad. The technical proposals of the bidders were opened on 10.07.2020. As per the technical bid

evaluation report dated 27.08.2020, five bidders, including the petitioner, were declared to have submitted *"responsive"* bids, whereas the bids of two bidders were declared as *"non-responsive".* The financial bids of the bidders, who had been technically qualified, were opened on 31.08.2020.

5. On 02.09.2020, the M.C.I. issued three L.O.I.s to the petitioner with respect to the three packages. The petitioner was informed that its lowest bid for the three packages had been accepted. Furthermore, the petitioner was requested to mobilize its machinery and manpower immediately to start the cleaning work.

6. On 15.09.2020, three of the unsuccessful bidders, filed writ petition No.2558/2020 before this Court. The petitioners in the said petition sought a declaration to the effect that the process adopted by the M.C.I. for the procurement of services for cleaning, sweeping, collection and transportation of solid waste / garbage through advertisement dated 21.06.2020 was unlawful. Furthermore, they sought a direction to the M.C.I. to scrap the bidding process, and re-initiate the same in accordance with the law.

7. The unsuccessful bidders had also filed a complaint before the Grievance Redressal Committee ("G.R.C.") with respect to the violations of law in the tendering process.

8. Vide notification dated 05.10.2020 issued by the Ministry of Interior, the Directorate of Sanitation / City Sewerage was taken from the control of the M.C.I. and brought under the C.D.A.

9. On 16.10.2020, the C.D.A. constituted a five-member G.R.C. to address the grievances of the bidders regarding the tendering process for the three packages. This Committee was constituted under Rule 48 of the Public Procurement Rules, 2004 ("P.P.R.").

10. During the proceedings before this Court in writ petition No.2558/2020, the position taken by the C.D.A. was that a G.R.C. had been constituted, and that it had also issued a final report which had been forwarded to the Director (Technical), C.D.A. for

further submission to the Chairman, C.D.A. This is apparent from the order dated 27.01.2021 passed in writ petition No.2558/2020.

11. The G.R.C. had issued its report on 07.12.2020. In the said report, the G.R.C. recommended that the petitioner be disqualified for providing incorrect information in its technical proposal. The G.R.C. also concluded that the petitioner did not fulfill the eligibility criteria for participation in the bidding process since it had been registered with the Securities and Exchange Commission of Pakistan in February, 2020 and did not have the requisite standing or work experience of the nature required for the execution of the work of sweeping / garbage collection, etc.

12. The Chairman, C.D.A. had also constituted a Fact Finding Committee to probe into the matter regarding the provision of privatization of cleaning services i.e. cleaning, sweeping, collection and transportation of solid waste package-1 and package-2. The said Committee, in its report on 16.02.2021, concluded that the petitioner had failed to perform its obligation in accordance with the terms and conditions prescribed in the tender documents.

13. The C.D.A. Board, in its meeting dated 18.02.2021, after taking into consideration the reports of the G.R.C. and the Fact Finding Committee, decided to withdraw the L.O.I.s issued to the petitioner for the three packages. It was also decided to proceed against the petitioner under Rules 18 and 19 of the P.P.R. for providing false and materially inaccurate or incomplete information; for its failure to provide satisfactory performance; and for indulging in fraudulent practices. The C.D.A. Board also decided to constitute a Fact Finding Inquiry Committee for fixing responsibility on the officers / officials who were involved in the irregular processing of tenders and the issuance of the L.O.I.s.

14. Since it had been decided to withdraw the L.O.I.s issued to the petitioner, the C.D.A. Board decided to re-initiate a tendering process for the award of contract for the provision of sanitary and cleaning services for the areas of Sectors G-6, G-7, G-8, G-9, G-10, G-11, H-11, I-8, I-10 and the Express Highway by issuing a

corrigendum to the advertisement already issued by the Directorate of Sanitation inviting bids for the provision of the sanitation services for the Rural Areas of Islamabad.

15. The decision of the C.D.A. Board to withdraw L.O.I.s issued to the petitioner caused the petitioners in writ petition No.2558/2020 to withdraw the said petition. Vide order dated 03.03.2021, the said petition was dismissed as withdrawn. However, the petitioners in the said petition reserved their right to approach the Court in the event any decision is taken by the C.D.A. pursuant to any order that may be passed in writ petition No.755/2021 which operates to their detriment.

16. As mentioned above, writ petition No.755/2021 was filed by the petitioner to *inter alia* challenge the withdrawal of the L.O.I.s dated 02.09.2020 whereas writ petition No.1011/2021 was filed against the C.D.A.'s decision not to issue tender documents to the petitioner pursuant to the advertisement dated 13.02.2021 and its corrigendum dated 10.03.2021. The petitioner is also challenging Clauses 4 and 5 of the said corrigendum. Clause 4 provides that the bidders must own or possess on bank leased specialized machinery such as garbage compactor, skip lifting vehicles, mechanical sweepers, tractor with buckets etc. whereas Clause 5 provides that any bidder whose services had been discontinued due to poor performance will not be eligible to participate in the bidding process.

17. Learned counsel for the petitioner, after narrating the facts leading to the filing of the said writ petitions, submitted that neither the G.R.C. nor the Fact Finding Committee afforded an opportunity of a hearing to the petitioner before submitting their respective reports; that the findings of the said Committees operate to the petitioner's detriment and spoil the petitioner's business prospects; that the requirements of due process were flouted by the G.R.C. inasmuch as neither the petitioner nor the complainants / unsuccessful bidders were heard; and that since the petitioner had been technically qualified and had submitted the lowest financial bid, there was no legal infirmity in the

acceptance of its bids and the issuance of the L.O.I.s dated 02.09.2020.

18. Learned counsel further submitted that the primary ground on which the G.R.C. held that the petitioner was not eligible for the award of contracts was that it was incorporated in February 2020; that the G.R.C. did not take account of the fact that prior to the petitioner's incorporation, it had operated as a partnership firm by the name of *"M/s ANAS Brothers and Co",* which had been registered with the Registrar of Firms at Lahore on 27.09.2013; that the partners in the said firm were the owners of the petitioner / company; and that the experience of the Association of Persons could be counted as the petitioner's experience in view of the law laid down by the Gauhati High Court in the case of G.R. Engineering Works Ltd. Vs. Oil India Limited (2007 (3) GLR 899) and the Delhi High Court in the case of Consortium of Alstom Transport Vs. Dedicated Freight Corridor decided on 28.08.2017. Learned counsel for the petitioner prayed for the writ petitions to be allowed in terms of the relief sought therein.

19. On the other hand, learned counsel for the C.D.A. drew the attention of the Court to the marks awarded to each of the bidders by the technical bid evaluation committee, and submitted that there were glaring similarities between the marks awarded to each of the bidders; that the manner in which the marks awarded had rendered technical bid evaluation process doubtful; that the decision taken by the C.D.A. Board to withdraw the L.O.I.s issued to the petitioner did not suffer from any legal infirmity since the said decision was based on the findings in the G.R.C.'s report and the Fact Finding Committee's report; that the petitioner was not eligible to participate in the bidding process since it did not have any previous experience of doing work of a similar nature; that the petitioner did not submit a certificate of financial soundness; that the petitioner did not have the requisite machinery / equipment for garbage collection; that since the petitioner was incorporated in February 2020, it was not possible for it to have the requisite experience to make it eligible for

participation in the tender; that the matter regarding bid evaluation and the award of L.O.I.s had also been referred to the Federal Investigation Agency; and that since the illegalities in the bidding process were glaring, there was no need for the G.R.C. to afford an opportunity of a hearing to either the petitioner or the complainants / unsuccessful bidders. Learned counsel for the C.D.A. prayed for the writ petitions to be dismissed.

20. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of these petitions have been set out in sufficient detail in paragraphs 4 to 16 above and need not be recapitulated.

21. Writ petition No.755/2021 has features of a writ of *certiorari* since the decision to withdraw the L.O.I.s issued to the petitioner was taken by the C.D.A. Board on the basis of the G.R.C.'s report has been assailed by the petitioner. As mentioned above, the G.R.C. was constituted vide C.D.A.'s letter dated 16.10.2020 pursuant to Rule 48 of the P.P.R. to address the complaints of the bidders regarding the tender bidding process for the award of contracts for the provision of cleaning services under the three packages.

22. Rule 48(2) of the P.P.R. provides that 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 not later than fifteen days after the announcement of the bid evaluation report. Clause 48(3) provides that the Committee shall *"investigate and decide"* upon the complaint within fifteen days of the receipt of the complaint.

23. The power to investigate and decide given by statute or statutory instrument to a body would imply the requirement for the observance of due process. In the case at hand, it is an admitted position that the G.R.C. neither heard the petitioner nor the complainants / unsuccessful bidders before giving adverse findings against the petitioner in its report dated 07.12.2020. Without hearing the petitioner, the G.R.C. concluded that the petitioner did not fulfill the eligibility criteria for the issuance of

the L.O.I. It was also recorded that the petitioner did not have the requisite experience on account of having been incorporated in February 2020. This report became the basis for the decision of the C.D.A. Board to withdraw the L.O.I.s dated 02.09.2020 which had been issued to the petitioner. Not just that it was also decided that the petitioner would be proceeded against in accordance with Rules 18 and 19 of the P.P.R. Rule 18 of the P.P.R. provides that the procuring agency shall disqualify a supplier or a contractor if it finds, at any time, that the information submitted by him concerning his qualification as a supplier or a contractor was false and materially inaccurate or incomplete. Under Rule 19, it is provided that the procuring agency can prescribe a mechanism to permanently or temporarily blacklist suppliers and contractors who consistently fail to provide satisfactory performances.

24. As regards the disputes between the petitioner and the C.D.A. regarding the former's performance after the issuance of the L.O.I.s, I am of the view that such disputes cannot be resolved without the recording of evidence. The parties are in disagreement on the question whether the petitioner had the requisite machinery and manpower for the performance of its contractual obligations. Whether or not the petitioner's performance was up to the mark is also a matter that this Court in exercise of its Constitutional jurisdiction cannot delve into.

25. The report of the Fact Finding Committee constituted by the Chairman, C.D.A. primarily deals with the petitioner's inability and non-fulfillment of its contractual obligations. The C.D.A. is at liberty to take decisions regarding the contractor on the basis of the Fact Finding Committee's report.

26. As for the G.R.C., it could not have drawn conclusions against the petitioner without affording it an adequate opportunity of a hearing. The C.D.A. Board also did not feel the need to hear the petitioner before taking decisions which have the potential of ruining the petitioner's future prospects of doing business. Violation of the principle of *audi alteram partem* (no one should be condemned unheard) is enough to vitiate even the

most solemn proceedings. This principle is said to have originated from the Islamic principle of justice and would be read and considered as part of every statute. This principle is not just confined to proceedings before the Courts but extends to all proceedings by whosoever held which may affect the person or property or other right of the parties concerned in the dispute. The findings given by the G.R.C. against the petitioner without affording it an opportunity of a hearing are void. The same would be the case regarding the decision taken by the C.D.A. Board on the basis of the G.R.C.'s findings.

27. In the case Gemalto Middle East FZ-LLC Vs. Federation of Pakistan (2020 CLD 151), I had the occasion to hold as follows:-

> ***"93. It is an admitted position that at no material stage in the proceedings before the G.R.C. was the petitioner afforded an opportunity of hearing. This is despite the fact that the petitioner, through its letter dated 17.07.2018 to N.S.P.C.L., had pointed out that the G.R.C. had not conducted any hearing pursuant to the petitioner's complaints. P.P.R.A., in its written comments, has taken the position that although Rule 48 of the 2004 Rules does not expressly provide for any opportunity of a personal hearing but under the principle of natural justice the aggrieved party may be provided such an opportunity. In all proceedings by whomsoever held, whether judicial or administrative, the principle of natural justice has to be observed if the proceedings resulted in consequences affecting the person or property or other rights of the parties concerned. Without participation of a party affected by an order or a decision amounts to an action without lawful authority. The requirement of audi alteram partem is not confined to proceedings before Courts but extends to all proceedings by whomsoever held which may affect a person or property or other rights of the parties concerned in the dispute. The principles of natural justice must be read into each and every statute unless and until it is prohibited by the statute itself. In the case of Commissioner of Income Tax East Pakistan v. Fazalur Rehman (PLD 1964 SC 410), it has been held inter alia that even if there is no provision as to notice in a statute, it cannot override the principle of natural justice and an opportunity of a hearing has to be given. Law to the said effect has also been laid down in the cases of University of Dacca and another v. Zain Ahmed (PLD 1965 SC 90), Abdul Wadood Khan v. Chief Land Commissioner (PLD 1983 SC 183), Pakistan Chrom Mines Limited v. War Risk Insurance (1983 SCMR 1208), Pakistan v. Public at Large (PLD 1987 SC 304), Abdul MajeedZafar v. Governor of Punjab (2007 SCMR 330) and Ali Muhammad v. The State (PLD 2010 SC 623).***
>
> ***94. If the principles of natural justice are violated in respect of any decision, it is, indeed, immaterial whether the same decision would have been arrived at in the absence of departure from the essential principles of justice. A decision taken in***

violation of the principles of natural justice must be declared to be no decision as held in the case of Medical Education Registration of U.K. v. Spackman [1943] 2 All ER 337. It is well settled that an order passed in violation of the principles of natural justice is void. Reference in this regard may be made to the law laid down in the case of Muhammad Swaleh and another v. United Grain and Fodder Agencies (PLD 1964 SC 97). Therefore, the decision of the G.R.C. taken in violation of the principles of natural justice was void. The fact that the G.R.C.'s decision was not challenged by the petitioner would not obviate the fact that it was void. ..”

28. The petitioner having not been afforded an opportunity of a hearing before the G.R.C. is reason enough to declare the findings and conclusions of the G.R.C. in its report dated 07.12.2020 to be void. The decision of the C.D.A. Board having been made on the basis of such findings and conclusions of the G.R.C. is also not sustainable. Therefore, the G.R.C.’s report dated 07.12.2020 as well as the decision dated 18.02.2021 of the C.D.A. Board taken on the basis of the G.R.C.’s report are set-aside. Since the members of the G.R.C. have given damning findings against the petitioner without the observance of the principles of natural justice, it would not subserve the interests of justice if the matter is remanded to the G.R.C. which was constituted through C.D.A.’s letter dated 16.10.2020. Therefore, the Chairman, C.D.A. is directed to immediately constitute a G.R.C. pursuant to Rule 48 of the P.P.R. comprising of senior and independent members, who shall decide the grievance petition filed by the complainants / unsuccessful bidders after affording an opportunity of hearing to such complainants / unsuccessful bidders as well as the petitioner. This process ought to be completed within a period of two weeks. Office is directed to serve a copy of this judgment on the Chairman, C.D.A. today through Special Messenger.

29. The petitioner’s grievance against the requirement in the corrigendum for a bidder to own or possess the machinery through bank lease which is proposed to be deployed by a bidder for the purposes of garbage collection etc. has no legal foundation. This requirement introduced by the C.D.A. is to ensure that the cleaning services are performed uninterrupted and are not impeded by disputes between the lessee and lessor

of the machinery to be deployed for the purpose of garbage collection.

30. As regards the contention of the learned counsel for the petitioner regarding the petitioner's ouster from the fresh tender bidding process on the basis of the advertisement dated 13.02.2021 read with the corrigendum dated 10.03.2021, learned counsel for the C.D.A. confirmed that the petitioner has not been ousted from the said process, and that the petitioner has also participated in the pre-bid meeting. In this view of the matter and since the report of the G.R.C. dated 07.12.2020 as well as the C.D.A. Board's decision dated 18.02.2021 against the petitioner are set-aside, the petitioner shall be at liberty to participate in the fresh bidding process. However, such participation shall be subject to the outcome of the proceedings before the G.R.C. pursuant to this judgment.

31. Vide interim order dated 18.03.2021 passed in W.P.No.1011/2021, this Court had directed status *quo* to be maintained with respect to the fresh bidding process initiated through advertisement dated 13.02.2021 and corrigendum dated 10.03.2021. This process shall remain halted until the decision of the G.R.C.

32. Both the writ petitions are disposed of in the above terms. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 15/04/2021

(JUDGE)

*Qamar Khan**