# ORDER SHEET
# IN THE ISLAMABAD HIGH COURT, ISLAMABAD
# JUDICIAL DEPARTMENT

**W.P. No.4795 of 2022**
**Shirazi Trading Company (Pvt.) Limited**
**Versus**
**National Institute of Rehabilitation Medicine and others**

| S. No. of order / proceedings | Date of order / Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|---|---|---|
| | **21.02.2023** | **Mr. Mohammad Bin Mohsin, Advocate for the petitioner.**<br>**Ch. Sajid Abdullah Sraa, Advocate for respondent No.4.**<br>**Mr. Arshid Mehmood Kiani, learned Deputy Attorney General along with Rana Umer Farooq, Dy. Dir, Ministry of NHSR&C.**<br>**Mr. Samiullah Baloch, Accounts Officer, N.I.R.M. / respondent No.1.**<br><br>**Through the instant writ petition, the petitioner, Shirazi Trading Company (Pvt.) Limited, has called in question order dated 30.11.2022 passed by the Public Procurement Regulatory Authority (“P.P.R.A.”), dismissing the petitioner’s appeal under Rule 48(7) of the Public Procurement Rules, 2004 (“P.P.R., 2004”) against the letter dated 13.09.2022 from National Institute of Rehabilitation Medicine (“N.I.R.M.”) informing the petitioner that the Grievance Redressal Committee (“G.R.C.”) constituted by N.I.R.M. had turned down the petitioner’s complaint against the rejection of its technical bid for the award of the contract for procurement of new electro-medical equipment.**<br><br>**2. The record shows that vide advertisement dated 13.03.2022, N.I.R.M. invited expression of interest for prequalification of bidders for the award of contract for the procurement of electro-medical equipment i.e., (i) MRI 1.5 Tesla, and (ii) Cleaning and Washing Unit for OT. The petitioner was one of the bidders who submitted its technical and financial bid on 19.05.2022. The manufacturer of the equipment which was proposed to be supplied provided clarifications to** |

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N.I.R.M.'s queries vide letters dated 27.05.2022 and 04.06.2022. On 14.06.2022, the technical evaluation report was issued according to which the petitioner's technical bid was rejected for non-compliance with clauses 2.3, 7.7 and 7.8 of the approved specifications which was sought to be procured by N.I.R.M. Against the rejection of its bid, the petitioner submitted a complaint to the G.R.C. on 22.06.2022.

3. Vide letter dated 13.09.2022, N.I.R.M. informed the petitioner that its complaint had been rejected by the G.R.C. The petitioner preferred an appeal against the said decision to the P.P.R.A. on 06.10.2022 and deposited a fee of Rs.1 million. Vide impugned order dated 30.11.2022 (which according to the petitioner was received by it on 12.12.2022), the petitioner's appeal was dismissed. The said order dated 30.11.2022 has been assailed by the petitioner in the instant writ petition.

4. Learned counsel for the petitioner asserts that the G.R.C. did not afford an opportunity of a hearing to the petitioner at any material stage and thereby acted in violation of the law laid down by this Court in the case of Gemalto Middle East FZ-LLC Vs. Federation of Pakistan (2020 CLD 151). Learned counsel for the petitioner further submitted that the tender documents were tailored in order to oust the petitioner from the bidding process; that the petitioner's financial bid is lower than that of respondent No.4 who has been declared as the most responsive bidder; that the petitioner's unopened financial bid is still in possession of N.I.R.M.; and that till date the procurement contract has not been awarded.

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**5. Mr. Samiullah Baloch, Accounts Officer has tendered appearance on behalf of N.I.R.M. / respondent No.1, which is the procuring agency in the instant case.**

**6. He drew the attention of the Court to the minutes of the meeting of the G.R.C. on the complaint submitted by the petitioner with respect to the procurement process in question.**

**7. Perusal of the said decision shows that the G.R.C. had not afforded an opportunity of a hearing to the petitioner before the rejection of its complaint. The G.R.C. could not have drawn conclusions against the petitioner without affording it an adequate opportunity of a hearing. 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, therefore, void.**

**8. 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***

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*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 audialterampartem 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. Fazal ur 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 Majeed Zafar 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. ..”*

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**9. 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 decision rejecting the petitioner's complaint to be void. In its appeal before P.P.R.A., the petitioner had taken a specific ground that the G.R.C. had not afforded an opportunity of a hearing to the petitioner. P.P.R.A. did not address this crucial ground in its order dated 30.11.2022. Therefore, the instant writ petition is allowed and the G.R.C.'s said decision as well as P.P.R.A.'s order dated 30.11.2022 are set-aside. The matter is remanded to the G.R.C. (which ought to be constituted in accordance with Rule 48 of P.P.R.-2004) with the direction to decide the petitioner's grievance petition through a reasoned order after affording it an opportunity of a hearing.**

**10. Since after the filing of the instant petition, the procurement contract has already been awarded to respondent No.4, it would be essential for the G.R.C. to also afford an opportunity of a hearing to respondent No.4. Rule 48(6) of the P.P.R., 2004 obligates the G.R.C. to investigate and decide upon the complaint within ten days of its receipt. Therefore, it is expected that the G.R.C. would decide the petitioner's complaint, through a reasoned order, within ten days from the date of the receipt of this order.**

**11. It is further directed that this exercise be completed within a period of two weeks from the date of receipt of this order. There shall be no order as to costs.**

**(MIANGUL HASSAN AURANGZEB)**
**JUDGE**

***Ahtesham****

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