JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No.3578 of 2024

M/s KARSAZ (Pvt.) Limited

Versus

Federation of Pakistan and others

Petitioner by:	Raja Muhammad Ali, Advocate.
Respondents No.1 &3 by:	Mr. Faisal Irfan, Deputy Attorney General along with Abdul Nabi, Director Legal and Aitezaz Rashid, Assistant Legal PPRA.
Respondent No.4 by:	M/s Muhammad Waqar Rana and Khalil Khan Sahibzada, Advocates.
Respondent No.5 by:	M/s Ali Raza, Hamza Siddiqui and Sidharth Rashid Raza, Advocates.
Date of Hearing:	**12.03.2025.**

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INAAM AMEEN MINHAS, J:- Through the instant writ petition, the petitioner has assailed the order dated 06.08.2024 **("Impugned Order")** passed by the Public Procurement Regulatory Authority **("PPRA")**, whereby the appeal filed by the petitioner under Rule 48(7) of the Public Procurement Rules, 2004 **("PP Rules, 2004")** against the order dated 13.06.2024 passed by the Grievance Redressal Committee **("GRC")** was dismissed.

2. The brief facts of the case are that respondent No. 4 issued a tender in 2022 for the procurement of the Explosive Detection System **("EDS")** and the petitioner was initially declared the successful bidder but the contract was later cancelled. In 2023, respondent No. 4 reissued the EDS tender, in which the petitioner participated again, and qualified as a bidder. However, the bidding process was again cancelled by respondent No.4/procuring agency despite the petitioner's qualification (these two bidding processes were not challenged by the petitioner).

3. Subsequently, a third tender for the procurement of a cargo/hold automatic EDS was floated by respondent No. 4 in May, 2024 and in response to this the petitioner as well as respondent No.5/M/s IAL participated in the bids and submitted their technical and financial bids. The technical bid of the petitioner as well as respondent No.5 was evaluated on the basis of the category of similar experience and financial status. The petitioner obtained 92 marks out of 100 and respondent No.5 obtained 79 marks out of 100 and technically both qualified. The petitioner being aggrieved by Technical Evaluation Report dated 04.06.2024 filed a grievance petition before the GRC of respondent No. 3. After considering the contention and arguments of the both parties, the committee rejected the grievance complaint vide order dated 13.06.2024. Thereafter, the petitioner filed Appeal No. 44/2024 under Rule 48(7) of the PP Rules, 2004 against the decision of

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GRC, which was also dismissed through the Impugned Order, hence, the instant writ petition.

4. The learned counsel for the petitioner argued that there were serious irregularities and violations of procurement rules in evaluating the third tender for the EDS; that respondent No. 4 without any justification reduced the technical specifications of the EDS, thereby compromising international airport security standards and defeating the very purpose of the procurement. It was further contended that respondent No. 4 manipulated the criteria of "previous similar project of the same size, nature, and complexity" to favour respondent No. 5 by accepting their experience of installing ordinary X-ray scanners as equivalent to the installation of highly advanced CT-based EDS, which was misleading and factually incorrect. He further argued that the petitioner explained that the two systems were entirely different in terms of size, weight, operational challenges, and technical complexity, as a standard X-ray scanner measures about 3-4 feet and weighs around 400-500 kg, while a CT-based EDS measures 17-18 feet and weighs over 7.5 tons; that respondent No. 4 violated Rules 4, 10, 15, 17, 23, and 30 of the PP Rules, 2004 by lowering technical specifications and failing to act in accordance with procurement principles. He also argued that the GRC formed to address the complaints of the participating bidders was unregistered in violation of PP Rules, 2004 and biased; that the petitioner also raised objections that respondent No. 4 wrongly accepted an undertaking from

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respondent No. 5, a distributor instead of the original manufacturer, during the 2024 evaluation process. It was also argued that such actions along with repeated cancellation of tenders and arbitrary changes in technical requirements, amounts to a violation of Rule F (ii) of the PP Rules, 2004.

5. On the other hand, the learned counsel for respondent No. 4 argued that the procurement process of EDS was carried out by respondent No.4, which works under the Sialkot Chamber of Commerce and manages procurement for Pakistan's first privately funded Sialkot International Airport; that this matter requires early disposal in order to avoid further financial losses due to continuous changes in international prices; that the petitioner had made misleading claims, wrongly applied the provisions of the PP Rules, 2004 and raised new grounds in the in the instant writ petition that were not taken or argued in appeal proceedings before the PPRA and therefore is not entitled to any relief; that the procurement process was evaluated according to PPRA guidelines, all legal standards were followed and all bidders were treated equally. He further contended that the petitioner had agreed to the first tender due to its high prices and participated in the re-tendering process without any objection; that the changes in technical specifications were made within the legal framework to maintain a balance between international aviation security standards and financial feasibility, especially considering budget limitations. He also added GRC and the PPRA being appellate

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authority had thoroughly examined the procurement process and found no violation of rules or procedures; that the petitioner's objections are merely an attempt to disrupt a competitive and cost-effective process for personal gain. Lastly, the learned counsel highlighted that the latest tender attracted greater competition, resulting in significantly lower prices, while the petitioner's bid remained unreasonably high compared to the lowest bid received.

6. The learned counsel for respondent No.4 contended that the instant writ petition is not maintainable as it has been filed by an authorized representative on the basis of a letter of authority issued by the Company Secretary, whereas in terms of Article 45 of its Articles of Association, the petitioner being a corporate company, can only initiate legal proceedings through a Board Resolution passed by its Directors; that the instant writ petition is based mala fide and ulterior motive as the petitioner kept changing its stance regarding technical specifications and the similarity of projects, misrepresented the terms of the tender and intentionally hidden important grievance-related documents from the Court to mislead it; that respondent No.4 has the legal right to manage its procurement process and the petitioner cannot interfere with or challenge that right without proper justification.

7. I have heard the arguments of the learned counsel for the parties and gone through the record with their invaluable assistance.

8. Perusal of the record reveals that the petitioner's primary grievance pertains to the Technical Evaluation Report dated

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04.06.2024, which was challenged before the GRC but was dismissed. Aggrieved thereby, the petitioner preferred an appeal before respondent No.3, which was also dismissed. The record clearly establishes that the bids submitted by both the petitioner and respondent No.5 were evaluated strictly in accordance with the technical and financial criteria stipulated in the tender documents. The entire evaluation process was carried out transparently, ensuring the petitioner had full and fair opportunity to participate and raise objection if any. The petitioner submitted all required documents and was given an adequate opportunity to demonstrate its technical qualifications per the prescribed parameters. Upon thorough scrutiny, both the petitioner and respondent No.5 were found technically compliant and qualified. Although the petitioner raised objection to the technical evaluation report dated 04.06.2024, a detailed examination of the record reveals that the petitioner failed to produce any convincing or credible evidence to establish that the procurement process was tainted with bias, arbitrariness, or discrimination. Therefore, the petitioner's challenge to the technical evaluation report is devoid of merit and unsustainable in law. It is a settled principle of law that mere dissatisfaction with the evaluation result, without demonstrating any procedural irregularity, violation of rules, or mala fide intent, cannot render a lawfully conducted procurement process invalid. Before proceeding further it is essential to see the grounds taken by the petitioner in his complaint before GRC, which are reproduced as under:-

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1. Referring to Annexure B.1, our team has noted that the second bidder has been awarded full marks in a category requiring similar project experience in Pakistan. However, our team review indicates that the second bidder does not has any comparable projects even installed.

Sr. #	*Description*	*Mix points*	*M/s Karsaz*	*M/s IAL*
1.	*Projects of similar size, nature and complexity in Pakistan, to be supported with Purchase Order / Agreement (At least one project is mandatory, max 4 projects) (05 Marks for each project)*	*20*	*20*	*20*
2.	*Projects of smaller nature and complexity with at least Rs.200 million (or equivalent) to be supported with Purchase Order / Agreement (At least one project is mandatory, Max 4 projects) (05 Marks for each project).*	*20*	*20*	*15*
3.	*Experience of previous training to technical staff / engineers of clients on similar equipment with details of training and trainees and proof of training.*	*10*	*10*	*10*
4.	*Registration of bidder of OEM with pertinent international professional bodies/associations. (Valid certificate shall be furnished by the bidder) (At least one Certificate is mandatory, max 5 Certifications), (02 Marks for each project).*	*10*	*2*	*4*
	Total:	*60*	*52*	*49*

2. Furthermore, in the referred table, at S. No. 04 the Committee assigned a score of 02 out of 10 to Karsaz. We would like to understand the analogy for such conclusion in comparison to other bidder, as we included all required certifications

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according to the latest TSA (7.2), as well as the previous standard 5.8., provided all necessary certifications and lists for ECAC and DFT UK certifications, all product quality certifications were included as part of our bid. Our machine is approved and is in conformity of up-to-date TSA/ECAC/DFT UK/STAC standards, whereas the other bidder only meets out of date 5.8 standard of TSA.

3. It's important to note that Karsaz first bid (2022) was both technically and commercially approved after fulfilling all necessary procedures, resulting in the signing of a contract as the most advantageous bidder. However, such signed contract was unexpectedly cancelled after four months, without any apparent justification for which legal remedy was not sought by Karsaz, giving priority to prestige and customer relations.

4. Thereon tender was republished in 2023, with changes made to the bid scope. Once more, we successfully qualified technically, and our commercial bid was opened. However, the bid process was abruptly canceled and then re-initiated.

5. Tender republished again in the year 2024 by lowering the technical standard of equipment. No any plausible justification ever was offered for making such compromise over security of a public airport. Leaving room for natural conclusion of creating unfair advantage in one party's favor.

6. This marks our firm's third participation in the bidding process. However, the Technical Bid evaluation report provided is not only self-contradictory but is tainted with malice.

7. Therefore, you are advised not to open the commercial bid before addressing and clearing above noted apparent abnormalities, falling which. Karsaz reserve the right to take up the matter before relevant forum, which may kindly be noted

8. We at Karsaz are looking forward for transparent and fair "Technical evaluation" for all and will continue to work for resolution of the situation with the respected committee members in order to save time and to provide the best equipment available in market for the security of the premises. We seek free and fair opportunity to discuss and record our grievances through meaningful dialogue in the given abrupt circumstances outlined.

9. Parting away with this letter, it is once again reiterated that the commercial bid ought not to be opened without addressing abnormalities, tainted with apparent unjust favor.

Your Truly

Karsaz Pvt. Ltd.

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9. From the above referred grounds it is abundantly clear that the grounds urged by the petitioner in the instant writ petition are substantially different and materially distinct from those earlier raised before GRC and subsequently before the appellate authority. This conduct of the petitioner is legally unsustainable as it is against the settled principles of law governing procedural discipline and fairness in judicial proceedings. It is a trite principle of law that a party cannot be permitted to raise entirely new grounds for the first time before the High Court, which were neither pleaded nor agitated before the forums of original jurisdiction or the appellate forums provided under the applicable statutory framework. This principle was also reiterated in ***Pakcom Limited vs. Federation of Pakistan,*** **(PLD 2011 SC 44)**, as follows:-

> *"It is well settled by now that ordinarily petitioner cannot be allowed, while invoking High Court's constitutional jurisdiction, to raise a completely new point for the first time before it."*

10. This principle aims to ensure procedural fairness, prevent prejudice to the other party and uphold the sanctity and effectiveness of the grievance redressal mechanism. The petitioner, having consciously participated in the grievance proceedings and the appellate process without raising the specific objections raised in the instant writ petition, cannot be allowed to circumvent the established procedure and expand the scope of the writ jurisdiction by introducing fresh grounds at this belated stage. Reliance is placed upon ***Nasir Ahmad Shaikh v. Nahid A. Shaikh,*** **(1986 SCMR 1621)**, ***Akhtar Iqbal Puri vs. Settlement***

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Commissioner, Lahore, **(PLD 1977 Lah. 249)** *and* ***Abdul Sattar v. Addl. District Judge, Rawalpindi*** **(1984 SCMR 925)**.

11. Similarly, any plea not raised before the GRC or the appellate authority is deemed to have been waived and cannot be permitted to be raised directly before this Court in the exercise of its constitutional jurisdiction. Waiver is an intentional and conscious relinquishment of a known right. It may be, by a positive act of relinquishment or it may be, inferred from the conduct of the party.

12. The Honourable Supreme Court in the case of ***Jam Pari Vs. Muhammad Abdullah,*** **(1992 SCMR 786)** held that:-

> *"Waiver is an intentional relinquishment of known right and unless there is cogent evidence reflecting the respondent's conduct clearly indicative of abandonment of his right he cannot be said to have deliberately foregone his such right."*

13. It is paramount to again observe that the petitioner in paragraph No. 3 of his grievance petition before the GRC explicitly stated that legal remedy regarding the earlier cancelled contract was not sought by the petitioner, giving priority to *"prestige and customer relations"*. As such the petitioner acquiesces and waives of its known right by its overt act, which is vividly discernable from the record, it cannot turn around and re-agitate that right. The record clearly reflects that the petitioner, in response to the first and second tender advertisements, submitted bids valuing USD 2.767 million (PKR 614.05 million) and USD 2.576 million (PKR 832.04 million) respectively, both of which exceeded the approved budgetary limits and were consequently cancelled for being financially unviable. It is pertinent to note that the petitioner did not

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object to these cancellations at the relevant time and acquiesced to the process. Had an objection been taken by petitioner at appropriate stage and opportune moment a determination would have followed and proper rectification might have been made. Subsequently, during the third round of bidding, conducted through a competitive single stage - two envelope procedure, the petitioner submitted a revised bid of USD 1.837 million (PKR 538.27 million). In contrast, respondent No.5 offered a significantly lower bid of USD 1.2 million (PKR 400.78 million). This bid comparison clearly demonstrates that the petitioner's offer remained substantially higher than the lowest bid received. The decision of respondent No.4 to proceed with the third tender process was neither arbitrary nor unjustified but in line with the guiding principles of PP Rules, 2004, specifically rule 34 allows procuring agency that it may revise specifications, evaluation criteria or any other condition for bidders as it may deem necessary for the purpose of fair competition and efficient use of public funds.

14. Waiver and estoppel, in legal parlance, are inter-related and complementary *inter se*. It is a trite principle of law that a party is bound by its conduct. The Honorable Supreme Court in the case of ***Combind Investment (PVT) LTD. vs. Wali Bhai and Others,*** **(PLD 2016 Supreme Court 730)** has held that where the principle of estoppel is pressed into service on the basis of some admitted/undisputed facts of the case, a party is bound by his pleadings and conduct. Hence, at any later stage, he cannot turn around to wriggle

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out from the consequence of such admission and conduct of submitting to the jurisdiction of such authority. In the case at hand, besides the principles of waiver and estoppel, the doctrine of approbate and reprobate is also applicable. The maxim *qui approbat non-reprobat* (one who approbates cannot reprobate) provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. This doctrine upholds the sanctity of procedural fairness by disallowing inconsistent positions within the same proceedings.

15. Moreover, to ensure that procurement remained within the financial capacity of the agency without compromising essential functionality, the technical specifications of the EDS were suitably revised in accordance with international standards (IP20). The petitioner’s assertion regarding the technical superiority of its equipment, though noted, does not override the procurement objectives of financial discipline and cost-effectiveness, particularly when the equipment offered by respondent No.5 met the required technical and operational standards. It is a settled principle that public procurement must be guided by objective criteria and equitable competition and the procuring agency is under no obligation to prefer a higher-priced offer merely on the bidder's own assessment of technical superiority. Therefore, the challenge raised by the Petitioner regarding the modification of technical specifications and the awarding of the

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contract to the lowest evaluated bidder is without merit and is not sustainable.

16. Moreover, the matter regarding objections on technical report has already been duly adjudicated by respondent No.3, the competent appellate authority under the statutory framework, which has examined the grievance in detail and rendered its findings on the procurement process. The petitioner has failed to demonstrate any violation of law or established procurement rules, therefore, findings of respondent No.3 are entitled to judicial deference and cannot be interfered with merely based on the petitioner's disagreement. The Impugned Order has been passed in accordance with law.

17. In view of the above discussion, the instant writ petition bears no merits, therefore, **dismissed.**

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 09.04.2025

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Approved for Reporting

R.Anjam.

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