

Stereo. H C J D A-38.  
**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT LAHORE**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.25808 of 2023**

**Pir Muhammad Construction Company Private Limited**  
**Versus**  
**Water and Development Authority through its Chairman, Lahore**  
**& others**

**J U D G M E N T**

Date of hearing: 27.07.2023.  
Petitioner by: M/s. Hassan Iqbal Warraich and Arslan  
Abbas Buttar, Advocates.  
Respondents by: M/s. Salman Mansoor, Muhammad Nadeem  
Iqbal Zahid and Abdul Majeed Abid,  
Advocates.  
Mr. Muhammad Zain Qazi, Assistant  
Attorney General along with Ziarukh Jan,  
Deputy Director (Legal).

**MUHAMMAD SAJID MEHMOOD SETHI, J.:-** This writ petition is directed against order dated 12.04.2023, passed by respondent No.2 / General Manager (Coordination) Power, WAPDA House, Lahore, whereby letter of acceptance for tender No.36-MAT(2022)/TPS opened on 11.01.2023 belonging to Chief Engineer (Power) Tarbela Power Station, was cancelled.

2. Learned counsel for petitioner submits that petitioner-company submitted its bid of Rs.240 Million for the disposal of tender of transformer 79-MVA with accessories. He adds that the said amount was transferred / encashed in favour of respondents and consequently, letter of acceptance of bid dated 31.01.2023 was issued in favour of petitioner. He adds that petitioner-company and its directors have sold valuable properties in order to win the aforesaid tender and now, respondent-authority has knocked out the petitioner-company in an unlawful manner, which is against the fundamental rights of petitioner. He argues that impugned cancellation of tender is in violation of General Conditions of Tender for Disposal of Unwanted Store. He

maintains that material aspects of the matter have been overlooked while passing impugned order, hence, same is unsustainable in the eye of law. In support, he has relied upon National Saving Central Directorate, Islamabad through D.G. and another v. Muhammad Farooq Raja (2021 CLD 370).

3. Contrarily, learned counsel for respondents defends the impugned order by contending that keeping in view the financial situation in the country and non-availability of copper in the market, the transformers are required to be utilized for Hydel Power Stations and distribution companies, therefore, decision of cancellation of bid was taken due to extreme difficult situation. He contends that even otherwise, contract of sale cannot be enforced by recourse to constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“**the Constitution**”). In support, he has referred to Messrs Momin Motor Company v. The Regional Transport Authority, DACCA and others (PLD 1962 Supreme Court 108), State Life Insurance Corporation of Pakistan v. Messrs Pakistan Tobacco Company Ltd. (PLD 1983 Supreme Court 280), Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others (1998 SCMR 2268), Messrs Ittehad Cargo Service and 2 others v. Messrs Syed Tasneem Hussain Naqvi and others (PLD 2001 Supreme Court 116), Messrs Ramna Pipe and General Mills (Pvt.) Limited v. Messrs SUI Northern Gas Pipe Lines (Pvt.) and others (2004 SCMR 1274), Messrs Pacific Multinational (Pvt.) Ltd. v. Inspector-General of Police, SINDH Police Headquarters and 2 others (PLD 1992 Karachi 283), Hassan Associates v. Pakistan Telecommunication Corporation through Divisional Engineer (Development) Cable Planning, Faisalabad and 5 others (1996 MLD 244), Munir Gul and others v. Administrator, Municipal Corporation, Peshawar (1998 CLC 898), Messrs United International Associates through Managing Partner v. Province of the Punjab and another (1999 MLD 2745), Messrs Mirpurkhas Sugar Mills Limited and 4 others v. Province of SINDH through Secretary

Irrigation and 4 others (2021 CLC 1801), Pakistan Oilfields Limited v. Government Holding (Pvt.) Limited and others (2021 CLC 2114) and Mumtaz Ali Rajpar and Brothers through Managing Partner and others v. Province of SINDH through Secretary Mines and Minerals Development and others (2023 PTD 39).

4. Arguments heard. Available record perused.
5. Record shows that petitioner's bid pertaining to subject tender for the purchase of store i.e. Auto Transformer 79 MVA with accessories without oil (07 No) was accepted, for which it deposited CDR No.00169781 dated 09.01.2023 amounting to Rs.24,000,000/- in the bank account of respondent-office and the balance amount to be deposited is Rs.284,880,000/-. It was directed that upon payment of full amount a Release Order will be issued in petitioner's favour by respondent-office on the basis of receipt of Bank Deposit Slip to be furnished by petitioner and confirmation from bank regarding receipt of the amount for which its tender bid had been accepted. For facility of reference, letter of acceptance of bid dated 31.01.2023 is reproduced hereunder:-

Subject:- **LETTER OF ACCEPTANCE FOR TENDER NO.36-MAT(2022)/TPS OPENED ON 11.01.2023 BELONGING TO CHIEF ENGINEER (POWER) TARBELA POWER STATION.**

Your bid pertaining to the subject tender for the purchase of following store has been accepted. For this purpose, your deposited CDR No.00169781 dated 09.01.2023 amounting to Rs.24,000,000/- has been deposited in this office bank account vide Bank Deposit Slip No.67783544 dated 18.01.2023.

Lot No.	Survey Report No. & date	Description of Store	Amount (Rs)
1	CE/Store//4(02)/3/933(Revised) 19.10.2020	Auto Transformer 79 MVA with accessories without oil (07 No)	240,000,000/-
Sale Tax @ 17%			40,800,000/-
<b>Sub Total</b>			<b>280,800,000/-</b>
Income Tax @ 10%			28,080,000/-
<b>Grand Total</b>			<b>308,880,000/-</b>
Amount already submitted vide above CDR			24,000,000/-
<b>Balance Amount to be deposited</b>			<b>284,880,000/-</b>

Weight mentioned as above was approximate, only for the assessment of bid price. Since, the tender is floated on “**AS IS WHERE IS BASIS**”, you have already been instructed to inspect and satisfy regarding the type, quantity and condition of the store. Failure to inspect the disposable goods will not be advanced as a plea in any claim.

Kindly arrange to deposit with Habib Bank Limited WAPDA House Branch Lahore, Account No.05527900561501 either in cash or by CDR / Bank Draft drawn in favour of the **Director General (Purchase & Disposal) WAPDA** for **Rs.284,880,000/- (Rupees Two Hundred Eighty Four Million Eight Hundred & Eighty Thousand Only)** (including all taxes) within 21 working days after the issue of this letter (**Last Date being 01.03.2023**) failing which the Earnest Money for this tender will be forfeited without any further notice and no claim shall lie or be raised against this decision.

On payment of the full amount a Release Order will be issued in your favour by this office on the basis of receipt of Bank Deposit slip to be furnished by you and confirmation from bank regarding receipt of the amount for which your tender bid has been accepted.

You will be held responsible for any loss due to incomplete / incorrect or change in postal address as given by you.

6. As per terms of General Conditions of Tender for Disposal of Unwanted Store, an invitation of a tender would not constitute any liability on the part of the Authority until a Letter of Acceptance was issued. It is nowhere provided that after acceptance of bid, tender could have been cancelled / withdrawn. Respondents have not cited any provision of applicable law or placed any document on record to show that such prerogative was vested with them. Under the celebrated principle of *locus poenitentiae*, a right was accrued in petitioner's favour, thus, the same could not have been taken away unilaterally by respondents without associating the petitioner. The reasons for withdrawal of letter of acceptance provided in the impugned order are extraneous to bid documents and not plausible as well. Reliance is placed upon Muhammad Farooq Raja's case supra, Mian Atta Ullah v. Lahore Development Authority Tribunal and 5 others (1996 CLC 1943) and Messrs Lucky Cement Limited v. The Central Board of Revenue and others (PLD 2001 Peshawar 7).

In the case of Muhammad Farooq Raja supra, the Hon'ble Supreme Court has observed as under:-

“6. We have noticed that the petitioner was under incumbent duty to scrutinize the status of the respondent prior to issuing acceptance which has accrued a right in favour of respondent, any slackness at the part of the petitioner at belated stage cannot be burdened to the respondent and the same is hit by principle of locus poenitentiae. In a similar case reported as (PLD 1992 SC 207) "The Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalaluddin" this court while adjudicating the matter has held which is reproduced as under:-

"However, as the respondent had received the amount on the bona fide belief, the appellant is not entitled to recover the amount drawn by the respondent during this period when the letter remained in the field.... We consider that as far as the recovery of amount in question is concerned, the principle of locus poenitentiae would be applicable and the appellants are not entitled to recover the amount. The appellants have themselves taken a liberal view and the recovery of only 12 months is being made"

Otherwise the case of the respondent is also covered by section 24-A of General Clauses Act, 1897, which clearly reflect that once a right is accrued, the same cannot be withdrawn unless and until it is established that the scheme was obtained by practicing fraud or misrepresentation. Section 24-A of the General Clauses Act, 1897, is reproduced as under:-

"24-A. Exercise of power under enactments.-

(1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.

(2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate give reasons for making the order or, as the case may be, for issuing the direction and shall provide a copy of the order or as the case may be, the direction to the person affected prejudicially."

7. Law on the subject is very clear that where Government controlled functionaries made a promise which created a right to anyone who believed in it and acted under the same, then such functionaries were precluded from acting detrimental to the rights of

such person/citizen. In the case reported as Pakistan through Ministry of Finance Economic Affairs and another v. FECTO Belarus Tractors Limited (PLD 2002 Supreme Court 208), the Hon'ble Supreme Court while discussing the concept of doctrine of *promissory estoppel*, has ruled as under:-

“23. It will be necessary to Coach the true concept of the doctrine of promissory estoppel. Before proceeding further this doctrine has been variously called 'promissory estoppel' 'requisite estoppel', 'quasi estoppel' and 'new estoppel'. It is a principle evolved by equity to avoid injustice and though commonly named 'promissory estoppel'. It is neither in the realm of contract nor in the realm of estoppel. The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. The doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the Courts for doing justice and there is no reason why it should be given only a limited application by way of defence. There is no reason in logic or principle why promissory estoppel should also not be available as a cause of action.”

8. Even otherwise, there is no force in the contention of learned counsel for respondent-WAPDA that there was no concluded contract between the parties. It is a common ground between them that the offer made by respondent-WAPDA through the tender was accepted by the petitioner. It is also evident on the face of the record that in implementation of the contract, petitioner even deposited CDR dated 09.01.2023 amounting to Rs.24,000,000/-. Even otherwise, once an offer has been accepted, a concluded contract has come into being and it is not open in the person who has accepted the offer to retract from the same as provided by the Contract Act, 1872. Reliance is placed

upon Messrs O.K. Agencies v. Chief Controller and others (2000 YLR 1867).

9. It is well settled law with the mandate of the dictums of the superior courts of the country that inaction, slackness and dubious acts of executive functionaries cannot be accorded approval by the superior courts more particularly when suchlike actions on face of it are besides the law, mandate of the constitution and principle of natural justice. The other defect from which the impugned order suffers is that the petitioner was not granted any opportunity of showing cause or of hearing before passing the impugned order, which is against the global principle of natural justice i.e. “*Audi Alteram Parterm*”. Reference is made to Pakistan State Oil Company Ltd. through General Attorney v. National Highway Authority through Chairman and another (PLD 2012 Islamabad 50).

10. So far as the objection regarding maintainability of instant petition for enforcement of concluded contract is concerned, admittedly the High Court in exercise of its Constitutional jurisdiction is possessed of power to examine the validity of the order in regard to grant of a concluded contract and strike it down on the grounds of *mala fide*, arbitrary exercise of discretionary power, lack of transparency, discrimination and unfairness etc. provided the challenge is made promptly and contentious questions of fact are not involved. It has consistently been held that while routine contractual disputes between private parties and public functionaries are not open to scrutiny under the Constitutional jurisdiction, breaches of such contracts, which do not entail inquiry into or examination of minute or controversial questions of fact can adequately be addressed. In this case, no factual dispute exists between the parties with regard to floating of tender, acceptance of offer and partial payment by petitioner. Needless to say that remedy of Constitutional petition would be permitted to be resorted to in cases involving contract between private persons and State statutory functionary for such remedy was considered to be more efficacious and speedy remedy as compared to

civil suit or arbitration proceedings. Reliance can be placed upon Messrs Airport Support Services v. The Airport Manager, Quaid-e-Azam International Airport, Karachi and others (1998 SCMR 2268), Messrs Ittehad Cargo Service and 2 others v. Messrs Syed Tasneem Hussain Naqvi and others (PLD 2001 Supreme Court 116) and Messrs SIEYUAN-NEIE-NAEEM & Company v. The Federation of Pakistan through Secretary, Ministry of Water and Power and others (2022 CLC 516).

The case law cited by learned counsel for respondent-WAPDA in this regard, having distinguishable facts and circumstances, is not attracted to this case.

11. The stance of respondents that transformers in question are required to cope with acute shortage of copper has no strong footing to cancel the acceptance letter as respondents themselves are offering tenders for disposal of other transformers, which is evident from documents attached with C.M. No.3 of 2023 at its pages 4, 5 & 6.

12. For the reasons recorded above, instant petition is allowed and impugned order is declared to be illegal and without lawful authority. Respondents are directed to proceed in the matter of tender in question as per applicable law / rules / procedure and finalize the same at the earliest.

(Muhammad Sajid Mehmood Sethi)  
Judge

APPROVED FOR REPORTING

Judge

\*A.H.S.\*