

**JUDGMENT**  
**Messrs FAST TRACKS through Sole Proprietor----Petitioner**  
**Versus**  
**FEDERAL INVESTIGATION AGENCY through Director General, and 3 others----**  
**Respondents**

Writ Petition No. 2166 of 2020

**GHULAM AZAM QAMBRANI, J.----**Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has invoked the jurisdiction of this Court, with the following prayer;-

"It is, therefore, respectfully prayed that by accepting the instant petition, the impugned letter No. FIA/NR3C P-III/TENDER-C & M/2019-20/215 dated 01-07-2020 may very graciously be declared illegal and unlawful, resultantly be stuck down in the best interest of justice. It is further prayed that the petitioner may also be declared to be entitled to receive the payment against the purchase order No. FIA/NR3C P411/ TENDER-C&M/2019-20/179 doled 18-05-2020 and the respondents may very humbly be directed to make the said payment to the petitioner.

Any other relief which this Honourable Court deems fit and appropriate may also be awarded to the petitioners to meet the ends of justice."

2. Brief facts giving rise to the instant petition are that the petitioner is running a business in the name and style of "M/s Fast Tracks" dealing in printing, office stationary, office equipments and general order supplier duly registered with the Income Tax Authorities; that in response to the advertisement appeared in Daily "Ausaf" as "Tender Notice" regarding procurement of Digital Forensic Tools, software, network equipments, furniture, computer and machinery and stationary dated 05.04.2020, got published by respondent No.2, petitioner applied for the same and being a successful bidder, Purchase Order No.FIA/NR3C P-III/TENDER-C&M/2019-20/179 dated 18-05-2020 was issued to him by respondent No.2 regarding purchase of 25KVA Generator. In compliance of said Purchase Order, 5 Generators were supplied to the respondents on 03.07.2020 and its bill amounting to Rs.74,44,500/- was submitted to the respondents, which was forwarded to the office of Accountant General of Pakistan (AGPR) by respondents Nos.2, 3 and 4, for issuance of cheque, but the same was returned to the respondents for re-submission of the same after fulfilling the shortcomings; that, on 07.07.2020, petitioner received a letter No.FIA/NR3C P-III/ TENDER-C&M/2019-20/215 dated 01.07.2020 (hereinafter referred to as "Impugned letter") regarding cancellation of purchase order-tender of NR3C-FIA, whereupon, petitioner through letter dated 11.07.2020 requested respondent No.2 for payment of aforementioned billing amount but in vain. Lastly, the petitioner sent a legal notice to the respondents on 23.07.2020 but still un-responded, hence instant petition.

3. Learned counsel for the petitioner contends that the impugned letter was issued without any prior issuance of explanation warning or show-cause notice to the petitioner; that the cancellation of purchase order through impugned letter is without lawful authority and justification. Further contended that the process undertaken by the respondents for issuance of cheque shows that goods/5 generators have been duly received by the respondents, examined and entered in Stock Register at Sr. No.52 Court bearing signature and stamp of respondents Nos.3 and 4, therefore, impugned letter has no sanctity in the eye of law. That, despite pandemic situation of COVID-19, which badly affected the whole world, petitioner delivered the ordered goods within stipulated period, therefore, after receiving the required items, cancellation of purchase order is an act of arbitrariness and required judicial review by this Hon'ble Court. Next contended that the envelop of the impugned letter and date written in the letter by hand speak volumes of the manipulation, which creates doubt in the mind of general prudence that a letter, which was purportedly shown to be written on 01.07.2020, why it was sent/posted on 06.07.2020. Further argued that action of the respondents for issuance of impugned letter is a result of colourful exercise of powers. Lastly, prayed for acceptance of

the instant petition.

4. On the other hand, learned counsel for the respondents submitted that financial year had been closed on 30.06.2020 and the petitioner has alternate remedy of filing a civil suit for recovery of the said amount; that factual controversies are involved in the matter, which cannot be resolved in writ jurisdiction; therefore, the instant petition is liable to be dismissed.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

6. Perusal of the record reveals that respondent No.2 got published a Tender Notice in Daily "Ausaf" for procurement of Digital Forensic Tools, software, networks equipment, furniture, computer and machinery and stationary dated 05.04.2020 and in response to the same, the petitioner applied for the same and being a successful bidder, Purchase Order No.FIANR3C P-III/TENDER-C&M/2019-20/179 was issued to him on 18-05-2020 by respondent No.2 regarding purchase of 25KVA Generators, which were supplied to the respondents and a receipt in token of same was issued to the petitioner, which fact is strengthened by M. Moazzam Ishaq Hanjra, Drawing and Disbursing Officer, CCW/F.I.A, Islamabad, but the respondents failed to make the payment of the same to the petitioner amounting to Rs.74,44,500/-. On 07.07.2020, petitioner received impugned letter No.FIA/NR3C P-III/ TENDER-C&M/2019-20/215 dated 01.07.2020 regarding cancellation of purchase Order/Tender of NR3C-F.I.A, which was issued without providing an opportunity of hearing to the petitioner as such, the same is against the principle of natural justice. Although Rule 48 of The Public Procurement Rules, 2004 does not expressly provide for any opportunity of a personal hearing to the petitioner, but under the principle of natural justice, the aggrieved party may be provided such an opportunity and 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. Thus, -without participation of a party, affected by an order or a decision, amounts to an action without lawful authority. The requirement of the principle audi alteram partem is not confined to proceedings before Courts but it extends to all proceedings by whomsoever held, which may affect a person or property or other rights of the parties concerned in dispute. The principles of natural justice must be read into each and every statute unless and until it is prohibited by the statute itself. Even if there is no provision as to issuance of notice of personal hearing to the affected party, in a statute, it cannot override the principle of natural justice and an opportunity of a hearing has to be provided to the affected party. Reliance in this regard is placed upon the cases reported as "Pakistan v. Public at Large" (PLD 1987 SC 304) and "Abdul Majeed Zafar v. Governor of Punjab" (2007 SCMR 330).

7. Perusal of the record reveals that 25KVA Generators Lovol Model No.1003G have been delivered to the respondents through Delivery Challan against Bill No.3568 and receipt of the same has been ensured by the Store Incharge. Further, the Drawing and Disturbing Officer, CCW/F.I.A, Islamabad has certified that "all the articles detailed in the vouchers attached to the bill and in those retained in my office has been accounted for in the Stock Register" and further certified that "purchases bill for have been received in good order that their quantity are correct and their quality good, that the rates paid are not in excess of the accepted and the market rates and that the suitable notes of payments have been recorded against the indents and invoices concerned to prevent double payments." In view of the same, the impugned letter No.FIA/NR3C P-III/TENDER-C&M/2019-20/215 dated 01-07-2020 was issued by the respondents, which shows mala fide, arbitrary exercise of discretionary power, lack of transparency and unfairness; therefore, the same is liable to set aside and the petitioner is entitled to receive the payment against the Purchase OrderNo.FIA/NR3C P411/TENDER-C&M/2019-20/179 dated 18-05-2020.

8. In view of the above facts and circumstances, as the delivery of 25KVA Generators has been made to the respondents, through Delivery Challan against Bill No.3568, therefore, this petition is allowed. Resultantly, the impugned letter No.FIA/NR3C P-III/TENDER-C&M/2019-20/215 dated 01.07.2020 is hereby set aside. The respondents are directed to make

payment against the Supply Order dated 18.05.2020 of 25KVA Generators, amounting to Rs.74,44,500/- to the petitioner, under intimation to this Court, through the Deputy Registrar (Judicial) of this Court for perusal in Chamber.

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