

JUDGMENT SHEET

IN THE ISLAMABAD HIGH Court, ISLAMABAD

(Judicial Department)

Writ Petition No. 1251 of 2020

Constructors Association of Pakistan
Versus
Pakistan Engineering Council (PEC) and another.

Petitioner By: Mr. Babar Ali Khan, Advocate.
RespondentNo.1 By: M/s. Umer Ijaz Gillani and Armaghan S. Khan, Advocate.
Date of Hearing: 06.05.2020.

Ghulam Azam Qambrani, J.:- Through the instant Constitutional petition, filed under Article-199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner have made the following prayers:-

“In view of the above, it is most respectfully prayed that:

- i. The respondent be directed to accept the Bid Security and Performance Security in all forms listed in the Standard Form of Bidding Documents for Civil Works.*
- ii. During the pendency of the instant petition, the respondent be restrained from receiving the bid from any bidder and subsequently awarding any contract to any bidder for the works, and that any bid submitted by a bidder, or contract awarded for the Works by the respondent on the deadlines for submitting the bids for the Works, i.e. 29.04.2020 for the Peshawar works, and 30.04.2020 for the Lahore Works, be declared as illegal, void and ineffective upon the rights of the petitioners and all other interest bidders.*
- iii. The respondent be directed to act in accordance with law.*
- iv. Cost of the petition may be awarded to the petitioner.*
- v. Any other relief which this Honourable Court deems fit and appropriate may also be*

awarded in favor of the petitioner as against the respondent.”

2. Briefly stated facts of the instant petition as narrated by the petitioner are that the petitioner is a registered entity incorporated under the Companies Ordinance, 1984. The respondent is a statutory body corporate established under the Pakistan Engineering Council Act, 1975 and the basic function of the respondent is to prepare standard bidding and contract documents to be used for engineering works that have been given the force of law and on 20.04.2020, the respondent issued Addendums to two projects denying petitioner's right to submit Insurance Bonds as securities in such projects (hereinafter referred to as the ***“Impugned Lahore Addendum”*** and ***“Impugned Peshawar Addendum”*** respectively). Whereas the proforma respondent is an autonomous body established under the Public Procurement Regulatory Authority Ordinance, 2002 endowed with the responsibility of prescribing regulations and procedures for public procurements by public sector organizations operated by the Federal Government, with a view to improve governance, management, transparency, accountability, competitiveness, and quality of the public procurement of goods, works and services. It also plays the responsible role of monitoring the procurement of goods, works and services by public sector organizations operated by the Federal government. The respondent invited bids from Civil Works contractors for the construction of Lahore Pakistan Engineer Council (hereinafter be referred as ***“PEC”***) Regional office Building (*the “Lahore Works”*) and Peshawar PEC Regional office Building (*the “Peshawar Works”*). It is stated by the petitioner that the bid documents for the Works were in stark contrast to the statutory PEC Standard Bidding Documents that had been formulated by the respondent itself and the main issues relate to the provisions regarding the submission of the Bid Security and Performance Security. In the bidding documents for both the works the respondent has limited the form which the Bid Security shall take to either a *“deposit at call”* or a *“pay order”* or a *“bank draft”* and in doing so the respondent had denied the statutorily protected right of petitioner and other bidders to have the

option of submitting Insurance Bond as a form of Bid Security. Similarly, the respondent has also limited the form which the Performance Security shall take in Clause 10.1 of Part II of the bidding documents for both Works where it is stated that the Performance Security shall “*be in the form of bank guarantee from any Scheduled Bank in Pakistan*”. As such, the respondent has denied the statutorily protected right of petitioner and other bidders to have the option of submitting Insurance Bond as a form of Performance Security.

3. Report and para-wise comments were called for from the respondent vide order dated 28.04.2020. In response to which, the respondent filed report and para-wise comments refuting the assertions leveled in the petition.

4. Learned counsel for the petitioner submits that furnishing of Bank Guarantee is very difficult and cumbersome process and in this way the entire amount in the guarantee is required to be deposited as cash or asset collateral in the bank furnishing the bank guarantee; that the ECNEC has approved PEC standard bidding documents on 11.06.2007, as such, the petitioner has right to file Insurance Bond as a form of Bid Security and Performance Security as they are prescribed in the ECNEC statutory PEC Standard Bidding Document. Further submitted that many contractors are not in a position to furnish such bank guarantees, and thus would be excluded from taking part in the competitive bidding process; that by not allowing all the forms in which Bid and Performance Security can be submitted by interested parties in their bid for the Works, the respondent is in conflict with the Construction and Operation of Engineering Works Bye-Laws, 1987, Paragraph 7(5) and the said bye-laws were framed by the Executive Committee of the respondent. Next, contended that actions of the respondents are in contradiction to its own standard form of bidding documents and in contradiction to clause IB 15.2 of the Standard Form of Bidding Documents for Civil Works. It is also argued that the actions of the respondents are also violative of the decision of the ECNEC dated 12.11.2007 and Notification dated 12.02.2008 issued by the

Planning and Development Decision, Government of Pakistan whereby, it was made clear to all departments of the Federal and Provincial Government that the Standard Form of Bidding Documents framed by the respondent are to be applied in the procurement process of all engineering goods, works and services. That the respondent under the procurement process cannot act in departure to the policy of law, and it is utterly astounding that it is departing from its own law and in this way, the respondent is acting as if, it has absolute prerogative to act and exercise administrative power in violation of the constitutionally protected rights of the petitioner whereas, the respondent was required to exercise its power of awarding procurement contracts in strict observance of law. Further, contended that the action of respondent is in violation of Articles-4, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973.

5. On the other hand, learned counsel for the respondent vehemently opposed the arguments advanced by the learned counsel for the petitioner contending that the present petition is liable to be dismissed on the ground that the petitioner is not a bidder hence, lacks *locus standi*; that writ is not attracted over P.E.C's procurement decisions as it is not performing any function of the Federal Government and is also not controlled by the Federal Government whereas the petitioner has tried to mislead the Court regarding the relevant Standard Form of Bidding Documents; that the petitioner did not participate in the bid, neither the petitioner is a bidder nor a potential bidder, as such, it cannot be considered an aggrieved person within the meaning of Article-199 of the Constitution; that it is true that in human right cases the term "aggrieved person" used in Article-199 of the Constitution has indeed been interpreted expansively by the superior Courts, but the same laxity does not apply in commercial case like the case in hand. Further submitted that in procurement related writs, the Courts have generally interpreted the requirements of *locus standi* strictly; that through this petition, the petitioner is seeking a writ of mandamus which it is a settled rule that the petitioner has to show *locus standi* whereas, the petitioner has not opted to participate in the proceeding

by not fulfilling any of the condition mentioned in the impugned public notice, as such, the petitioner has no *locus standi* to file the instant petition. He further contended that a writ under Article 199 can only be issued to a person performing the functions in connection with the affairs of the Federation, a province or a local authority, whereas in the instant case the respondent is carrying out a procurement of works for its own use, therefore, PEC does not fall in this jurisdiction, as such, the instant petition is liable to be dismissed. He next argued that if it is admitted that some actions of PEC are liable to writ jurisdiction but it would apply on to those actions which involve the actions of sovereign powers or public functions. That the petitioner has mislead the Court by submitting the wrong PEC Standard Bidding Documents whereas, there is no Standard Bidding Documents prescribed by PEC or all kinds of Bidding and there are numerous documents which have been prescribed for different kinds of bidding methods. Further argued that the petitioner is not one of the bidder whereas the PEC bidding document is consistent with the SSTE document, therefore, the fear of the petitioner that the competition has been reduced because of the Bid Security and Bank Guarantee requirements, is totally ill-founded as not less than sixteen bidding documents were sold for the Lahore project while eighteen documents were sold for the Peshawar project and in this way a large number of competitor have already shown their interest in competing under the present terms and conditions; further that the petitioner has a remedy to approach the Competition Commission of Pakistan for redressal of its grievances. That the bids security clause in SSTE document, does not mention the word "Insurance" at all but the petitioner has deliberated misquoted this clause from another, irrelevant document. Further submitted that the performance security clauses of the SSTE document do not create any statutory protected right of the petitioner and other bidders to have the option of submitting Insurance Bond as a form of Performance Security whereas, the bare perusal of clauses (IB 32.1, BDS 32.1 GCC 10.1 and PCC 10.1) shows that the form of Performance Security has been left at the discretion of the

Employer. Lastly, prayed that the instant petition may be dismissed with costs.

6. Heard argument of the learned counsel for the parties and gone through the available record with their able assistance.

7. Before proceeding further in the matter I intend first to deal with the question of maintainability of this petition, it is to be seen as to whether the petitioner could invoke the constitutional jurisdiction of this court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. Under Article 199(1), it is provided as under:--

"Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law--

(a) On the application of any aggrieved party, make an order--

(i) *directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or*

(ii) *declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or*

(b) On the application of any person, make an order--

(i) *directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or*

(ii) *requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or*

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the fundamental rights conferred by Chapter 1 of Part-II.

8. The words used in Article 199 (1) (a) "on the application of any aggrieved party" are important. In the instant case, it is to be seen whether the petitioner falls within the category of an "aggrieved party" or "aggrieved person". The above phrase has not been defined in Article 199 *ibid*, therefore, in order to understand its connotation, its meaning, as described in Black's Law Dictionary, 9th edition at page 1232, is as under:--

*"A party entitled to a remedy especially a party whose personal, pecuniary or **proprietary** rights have been adversely affected by another person's action or by a court's decree or judgment".*

According to above meaning, it is necessary for a party to become an "aggrieved person" or "aggrieved party" to show that his personal, pecuniary or property rights have been adversely affected by another person's action or by a court's decree or judgment. Perusal of the record shows that the respondent had invited bids from Civil Works contractors for the construction of Lahore PEC Regional office Building (*the "Lahore Works"*) and Peshawar PEC Regional office Building (*the "Peshawar Works"*) but the petitioner did not participate in the bid, as such, neither the petitioner is a bidder nor a potential bidder, so it cannot be considered an aggrieved person within the meaning of Article-199 of the Constitution. From the perusal of the record, it is clear that the bidders, who have actually participated in the bid process, in presence of these terms and conditions, issued by the respondent, for the construction of Lahore PEC Regional office Building (*the "Lahore Works"*) and Peshawar PEC Regional office Building (*the "Peshawar Works"*), did not raise any objection in the existing terms and conditions of bid documents. The case law on the subject is also to be found in many reported judgments. In a case *"M/s Associated Cement Companies Ltd. v. Pakistan through the Commissioner of Income Tax, Lahore Range and 7 others"* (PLD 1978 SC 151), it was laid down that "writ petition can be maintained by a person provided he be an 'aggrieved person' and in order to be an aggrieved person, it is imperative for party to show any of his proprietary or personal right, as recognized by law, to be invaded or

denied". The same point came to be considered in another case titled as "*Hafiz Hamid Ullah v. Saifullah etc.*" (**PLD 2007 SC 52**), wherein it was laid down that "the aggrieved person was elaborated and it was laid down that constitutional jurisdiction of High Court under Article 199(1) (a) of the Constitution, can be invoked by an aggrieved person, which denotes the persons who have suffered a legal grievance against whom a decision has been pronounced which has wrongfully deprived him or wrongfully refused him something, which he was legally entitled". Another case on the subject is to be found "*NWFP Public Service Commission etc. v. Muhammad Arif etc.*" (**2011 SCMR 844**). After considering the case law on this point, it was laid down that "the right which is the foundation of an application under Article 199 of the Constitution, is a personal and individual right. The legal right may be statutory right or a right to be recognized by the law. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to perform relating to the right. There must not only be a right but a justiciable right in existence, to give jurisdiction to the High Court in the matter. In this regard, reference may also be made to the cases reported in "*Zaheeruddin Sheikh and 30 others v. United Bank Ltd.*" (**2002 CLC 147**), "*Syed Mufeed Shah and another v. Principal, Khyber Medical College, Peshawar and 4 others*" (**2003 CLC 1348**) and "*Muhammad Idrees v. Province of Punjab through Collector District Sialkot and others*" (**2014 CLC 130**).

9. It is well settled that for a petitioner in a constitutional petition, it is essential that:--

- (i) *he had a locus standi to invoke constitutional jurisdiction being an aggrieved person as his right was denied to be give to him*
- (ii) *the right was infringed and the right so infringed was justiciable right and that*
- (iii) *he had no alternate, adequate remedy for redressal of his grievance except a petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.*

10. In the case in hand, admittedly, respondent had invited bids from Civil Works contractors for the construction of Lahore PEC

Regional office Building (*the “Lahore Works”*) and Peshawar PEC Regional office Building (*the “Peshawar Works”*) but the petitioner did not participate in the bid, as such, neither the petitioner is a bidder nor a potential bidder so it cannot be considered an aggrieved person with the meaning of Article-199 of the Constitution. Further, the bidders, who have actually participated in the bid process, in presence of these terms and conditions, issued by the respondent, for the construction of Lahore PEC Regional office Building (*the “Lahore Works”*) and Peshawar PEC Regional office Building (*the “Peshawar Works”*), they have not raised any objection on the terms and conditions of bid documents. In fact the bidders who actually participated in the bid process, may be the aggrieved persons and they could challenge the terms and conditions existing in the bid documents but they have not come forward to challenge the same.

11. It was argued on behalf of the petitioner, that the bid documents for the Works were in stark contrast to the statutory PEC Standard Bidding Documents that had been formulated by the respondent itself and the main issues relate to the provisions regarding the submission of the Bid Security and Performance Security and for both the works the respondent has limited the form i.e. Bid Security shall either be a “*deposit at call*” or a “*pay order*” or a “*bank draft*” and in doing so the respondent had denied the statutorily protected right of petitioner and other bidders to have the option of submitting Insurance Bond as a form of Bid Security. It may be noted that actions of PEC are liable to writ jurisdiction but it would apply to those actions, which involve the actions of sovereign powers or public functions. There is no Standard Bidding Documents prescribed by PEC or all kinds of Bidding and there are numerous documents which have been prescribed for different kinds of bidding methods. Further, the PEC bidding document is consistent with the SSTE document, in this way, the fear of the petitioner that the competition has been reduced because of the Bid Security and Bank Guarantee requirements, is totally ill-founded as not less than sixteen bidding documents were sold for the Lahore project and eighteen bidding documents were sold for the Peshawar project, as

such, a large number of competitors have already shown their interest and willingness for competing under the existing terms and conditions. The petitioner has a remedy to approach the Competition Commission of Pakistan for redressal of its grievances. The bids security clause in SSTE document, does not mention the word "Insurance". The performance security clauses of the SSTE document do not create any statutory protected right to the petitioner and other bidders to have the option of submitting Insurance Bond as a form of Performance Security. Bare perusal of clauses (IB 32.1, BDS 32.1 GCC 10.1 and PCC 10.1) reveals that the form of Performance Security has been left at the discretion of the Employer. The petitioner/association, being a third party, in my humble view, had no *locus standi* to challenge the terms and conditions existing in the bidding documents nor the petitioner falls within the category of an "aggrieved person".

12. The learned counsel for the respondent has rightly argued that the petitioner, is not aggrieved person, as contemplated under Article 199 (1)(a) of Constitution of Islamic Republic of Pakistan, 1973 as neither it has obtained tender documents and/or participated in tender process. Otherwise, also the petitioner has failed to establish any violation of law and rules, thus is not an aggrieved person as envisaged under Article-199 of the Constitution, therefore, could not make a recourse to the High Court under its Constitutional jurisdiction. It is *sine qua non* for invoking jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 that the petitioner must be an aggrieved person and also has *locus standi*.

13. Since in terms of clause 1(a) of Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the petitioner is not an aggrieved party as envisaged under Article 199 of the Constitution, thus could not competently make a resort to the High Court under its Constitutional Jurisdiction. It is pertinent to mention that the petitioner has no *locus standi* for availing such a jurisdiction. The word 'aggrieved' or 'aggrieved party' has not been defined in the Constitution; however, from time to time it has been interpreted by

the superior Courts in the given circumstance of the case. Reliance in this regard is placed upon *“Province of Balochistan through Secretary, Excise And Taxation Department, Civil Secretariat, Quetta and 2 others v. Murree Brewery Company Ltd. Through Secretary”* [PLD 2007 SUPREME COURT 386].

14. In the case of *“Messrs Associated Cement Companies Ltd. v. Pakistan, through the Commissioner of Income Tax, Lahore Range, Lahore and 7 others”* [PLD 1978 SC 151], It was observed as under:-

“It is true that under Article 98, a High Court had the jurisdiction to grant to an ‘aggrieved party’ relief in a proper case provided it could successfully show that there was ‘no other adequate remedy’ provided to him by law. Now in order to be an ‘aggrieved party’, within the meaning of sub-Article (2) of Article 98, it would be imperative for a party to show that any of his proprietary or personal right, as recognized by the laws of the country, has been invaded or denied to him. ‘Right’ and ‘remedy’ are no doubt complementary concepts, because right without remedy would be meaningless just as it would be inconceivable to think of a remedy without a corresponding right. In other words ‘a right’, be it tangible or intangible, such as the right of a person to enjoy his property or to remain secure in his reputation, clearly postulates something of value to a person for the protection or the realization of which remedy is provided in every civilized legal system. Inevitably, therefore, if a person is unable to show that any of his right as recognized by law has been invaded or denied to him then he would have no cause of action to seek any relief, for evidently he cannot claim to be ‘aggrieved’. Seen in this context, Article 98 (ibid), which clearly does not confer upon or create any substantive right in a party, would seem to provide to a party only an additional remedy provided he is able to show that any of his personal or proprietary right, duly recognized by law, has been invaded or denied to him.”

15. In the case of *“Nisar Ahmed and 2 others v. Additional Secretary, Food and Agriculture, Government of Pakistan and 3 others”* [1979 SCMR 299]; it was held that the petitioner in order to avail such jurisdiction must establish direct or indirect injury to himself and substantial interest in the subject-matter of proceeding.

The case of Nisar Ahmed (supra) was followed in the case of *“Anjuman Araian Bhera v. Abdul Rashid and others”* **PLD 1982 SC 308**, wherein it was endorsed that a party must show some interest in property to which some legal sanctity was attached in order to bring itself within the ambit of the definition of "aggrieved party". In the case of *“Mst. Noor Jehan Begum v. Dr. Abdus Samad and others”* [1987 **SCMR 1577**], it was held that mere possibility that a person can obtain property by making highest bid if a property is disposed of by public auction does not give such a potential bidder a vested right in property. Such person is not an aggrieved person and has no right to maintain a constitutional petition. In the case of *“Mian Muhammad Nawaz Sharif v. Federation of Pakistan through Secretary, Ministry of Defence, Government of Pakistan Islamabad and 8 others”* [1994 **CLC 2318**], it was observed that a person could not be held to be an aggrieved person unless he had a right in the performance of statutory functions by a person performing functions in connection with the affairs of the Federation or Province in respect of any right which he may have in relation to the performance of the said functions and if he did not have any right directly in the matter had no *locus standi* to maintain constitutional petition. Relief sought must be in relation to grievance of said aggrieved person and not the grievance of any third person. In the case of *“Dalmia Cement Ltd. v. District Local Board, Karachi and 2 others”* [PLD 1958 (W.P.) **Karachi 211**] the High Court of West Pakistan at Karachi, after making reference to a number of judgments i.e., the judgment of Supreme Court of India in case of *“Charanjit Lal v. Union India”*, wherein it was held that:-

"It has been held in a number of cases in the United States of America that no one except those whose rights are directly affected by a law can raise the question of the constitutionality of that law. This principle has been very clearly stated by Huges J. in McCabe v. Atchison (1914) 235 U.S. 151 in these words:--

It is an elementary principle that in order to justify the granting of the extraordinary the complainant's need of it and the absence of an adequate remedy at law must clearly appear. The complainant cannot succeed because someone else may be hurt. Nor does it make any difference that other persons who may be injured

are persons of the same race or occupation. It is the fact clearly--established of injury to the complainant---not to others---which justifies judicial interference."

16. In the case of "*Nisar Ahmad and 2 Others v. Additional Secretary, Food and Agriculture, Government of Pakistan and 3 others*" [1979 SCMR 299], it has been held as under:-

"We find that the learned Judge in the High Court has in a well-reasoned order and after discussing the judgments for and against on the point of the petitioner's locus standi held that the writ petition was not maintainable at their instance and we have not been persuaded to take a different view. Clearly, it is a sine qua non for invoking the writ jurisdiction of the High Court under Article 199 that the petitioner should be an aggrieved person. He must, therefore, establish a direct or indirect injury to himself and substantial interest in the subject-matter of the proceedings. The stand of the petitioners throughout has been that they were tenants paying rent to the Evacuee Trust Board and never claimed the transfer of the property and indeed in law they were not so entitled. Their writ petition was, therefore, rightly dismissed by the High Court and no ground for interference exists. This petition accordingly fails and is dismissed hereby."

It is sine qua non for initiation of proceedings under Article 199 of the Constitution that the Petitioner should have a *locus standi* to institute the proceedings or in other words the Petitioner should be an aggrieved party from the action of the Respondents. Pivotal judgment of the apex Court on this issue is "*Mian Fazal Din v. Lahore Improvement Trust, Lahore*" (PLD 1969 SC 223) and the Lahore High Court titled "*Montgomery Flour and General Mills Ltd., Montgomery v. Director, Food Purchases, West Pakistan and others*" (PLD 1957 (W.P) Lahore 914) wherein it was observed that for a person to have *locus standi* to initiate a petition for issuance of writ, he must have some right in the matter and he needs not have a right in that strict sense of the term which is provided in Article-170 of the Constitution.

17. In the case reported as "*Dr. Imran Khattak and another v. Ms. Sofia Waqar Khattak, PSO To Chief Justice and others*" [2014 SCMR 122] the Hon'ble Supreme Court of Pakistan held as follows:

"It would exercise such jurisdiction under Article 199(1)(a)(i), (ii) and (c) on the application of an aggrieved person while under 199(1)(b)(i) & (ii) on the application of any person whether aggrieved or not, and not on an information or on its own knowledge. In the case of "Tariq Transport Company, Lahore v. Sargodha Bhera Bus Service and others" (PLD 1958 SC (Pak) 437), this Court held that a High Court was not competent merely on an information or on its own knowledge to commence certiorari proceedings or other proceedings of a similar nature under Article 170 of the Constitution of Islamic Republic of Pakistan, 1956. In the case of "Fazl-e-Haq, Accountant General, West Pakistan v. The State" (PLD 1960 SC (Pak) 295), this Court reiterated the view by holding that the extraordinary jurisdiction relating to a writ could only be exercised by the High Court when moved by a party whose legal rights have been denied"

In the case reported as *"Hafiz Hamadullah v. Saifullah Khan and others"* [PLD 2007 SC 52] the Hon'ble Supreme Court has held as under:

"With regard to the first objection it may be noted that under Article 199(1)(a) of the Constitutional jurisdiction of the High Court can be invoked by an aggrieved person which denotes a person who has suffered a legal grievance, against whom a decision has been pronounced which has wrongfully deprived him or wrongfully refused him something which he was legally entitled to. It is also the requirement that the person invoking the constitutional jurisdiction under Article 199 of the Constitution has to establish that any of his legal or fundamental right guaranteed under the Constitution has been violated resulting in legal loss"

Further, in the case of *N.W.F.P. Public Service Commission and others v. Muhammad Arif and others* [2011 SCMR 848] it was observed as follows:

"The right which is the foundation of an application under Article 199 of the Constitution is a personal and individual right. The legal right may be a statutory right or a right recognized by the law. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to perform relating to the right. There must not only be a right but a justiciable right in existence, to give jurisdiction to the High Court in the matter. Unless whatever right personal or otherwise, on which the application is based is established, no order can be issued under Art. 199."

18. In view of the above judgments of Hon'ble Supreme Court of

Pakistan and from the facts of the case, it is evident that the Petitioner is not aggrieved of any acts or proceedings done or taken by inviting the bids for construction of Lahore Works and Peshawar Works because the petitioner has not participated in the bid process, therefore, the petitioner is not an aggrieved person to approach this Court under Article 199 of the Constitution. Reliance is also placed on the case titled *Ishaq Masih v. District Coordination Officer and others* [2017 PLC (C.S.) 528] wherein it has been observed as under:

"Hon'ble Justice Fazal Karim in his book "Judicial Review of Public Actions" has elaborated the distinction between "Aggrieved Party" and "Aggrieved Person" at page-977 Volume-2 which reads as follows:

"Distinction between "Aggrieved Party" and "Aggrieved Person"

It will be noticed that sub-clause (a) of clause (1) of Article 199 of the *Constitution* uses the expression "aggrieved party" while sub-clause (c) of clause (1) of that Article uses the expression "aggrieved person". On general principle, when the Legislature uses two different expressions, the intention is to convey different meanings. The word "party" can assume importance in cases in which there had been proceedings under the relevant statute to which the applicant under Article 199 was not a party, as it did in *Haji Adam v. Settlement and Rehabilitation Commissioner*. But the word "party" as used in Article 199, clause (1) (a) means one who is competent to maintain an action, and a person not a Party to the proceeding under the relevant statute, can seek relief under Article 199, if he shows that the decision is directed against him or his property in the sense that the enforcement of the decision would involve special, immediate and in its effect a direct injury to his interest." *Tariq Transport Company Case* (PLD 1958 SC (Pak) 437).

19. Further the petitioner has alternate remedy before the Competition Commission of Pakistan, as such, this Court before exercising its extraordinary jurisdiction must be satisfied about the non-availability, or inefficacy of alternate remedy provided under law and once it is shown to the satisfaction of the High Court that alternate remedy is expedient, effective, then courts would be reluctant to exercise writ jurisdiction, which is not meant to bypass

such authority to render such hierarchy as redundant superfluous. Apex court in number of cases has deprecated tendency to invoke writ jurisdiction, bypassing remedy provided under relevant statute, one may refer to case of *Match Company Ltd. v. Authority under Payment of Wages Act*, [2003 SCMR 1492]."

20. In view of what has been discussed above, it is established that neither the petitioner is an aggrieved person, nor has any *locus standi* to file the instant petition nor it has participated in bid process, therefore, this petition is not maintainable against the respondent. Reliance in this regard is placed upon the case reported as "*Pakistan Pharmacists Association Versus Province Of Punjab and 3 others*" [2018 P L C (C.S.) 1063], "*High Court Bar Association, Rawalpindi through Taufiq Asif, President and Members Executive Committee Versus Punjab Bar Council through Vice Chairman and others*" [PLD 2014 Lahore 369], "*Pakistan Medical Association through President Versus Pakistan through Secretary, Ministry of National Health Services Regulations and Coordination, Islamabad and 5 others*" [2016 P L C (C.S.) 676], "*Pakistan Steel Re-rolling Mills Association v. Province of West Pakistan*" [PLD 1964 Lahore 138], and "*The Pakistan Steel Re-Rolling Mills Association, Lahore Versus The Province Of West Pakistan, Through Secretary, Co-Operation, Labour And Social Welfare Department, Lahore*" [PLD 1966 Supreme Court 72].

21. As a result of the forgoing reasons, this petition having no merit, is hereby dismissed.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 20th Day of May, 2020.

JUDGE

"Rana.M.Ift"

Approved for reporting.