

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1069 of 2021
Dragon Security Services (Private) Limited
Versus
Federation of Pakistan and others

S. No. of order / proceedings	Date of order / Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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29.09.2021

Ch. Hasan Murtaza Mann, Barrister Sajeel Sheryar Swati and Ms. Saman Mamoon, Advocates for the petitioner.
Mr. Arshid Mehmood Kiani, learned Deputy Attorney General.
Mr. Jawad Ahmad, Assistant Director, Directorate General of Immigration and Passports.

Through the instant writ petition, the petitioner, M/s Dragon Security Services (Private) Limited, impugns the report dated 10.03.2021 issued by the Grievance Redressal Committee ("G.R.C.") turning down the petitioner's grievances regarding the tender bidding process initiated by respondent No.2 / Directorate General of Immigration & Passports ("Directorate General, I&P") for hiring the services of registered security company at the Directorate General, I&P and Regional Passport Offices. The petitioner also seeks a declaration to the effect that the formula adopted by respondent No.2 for calculation of minimum wage is not in accordance with the law. The petitioner was disqualified on account of its financial bid being lesser than the minimum wage as prescribed by the Government of Pakistan and inclusive of all permissible deductions and applicable taxes.

2. The record shows that on 30.11.2020, the Directorate General, I&P published an advertisement inviting bids for the grant of contract for hiring security services at the Headquarters of Directorate General, I&P and

163 Regional Passport Offices throughout Pakistan. The bids were required to be submitted by 17.12.2020. The petitioner participated in the bidding process and also furnished tender security equal to 2% of the tender price. The technical bids submitted by the bidders were opened on 17.12.2020. Six companies, including the petitioner, were declared as technically qualified. The financial bids were opened on 14.01.2021. According to the bid evaluation report, respondent No.3 (M/s GB Security Services (Private) Limited) was declared as the lowest bidder, whereas the petitioner and two other bidders were disqualified on account of their financial bids being lower than the minimum wage prescribed by the Government of Pakistan.

3. Clause 2.2.15 of the bidding documents required the bidders to abide by and comply with all the relevant laws and statutory requirements covered under Labour Law, minimum wages etc. with regard to the security personnel engaged for the assignment works. The petitioner's grievance is that the procuring agency i.e. the Directorate General, I&P has miscalculated the minimum wage to be Rs.23,324/-. The petitioner asserts that the calculation of the minimum wage by respondents No.1 and 2 is inaccurate and not in accordance with the law laid down by the Hon'ble High Court of Sindh in the judgment dated 19.01.2021 passed in C.P.No.8014/2018. Furthermore, it is asserted that since the petitioner's financial bid was higher than the minimum wage, and lower than respondent No.3's bid, the petitioner had the vested right for the contract to be awarded to it. The G.R.C. did not afford an opportunity of a hearing to the

petitioner before turning down its grievance petition.

4. Paragraph 15 of the written comments filed on behalf of respondents No.1 and 2 shows that the G.R.C. had not afforded an opportunity of a hearing to the petitioner before deciding its grievance petition. The impugned order, whereby the petitioner's grievances were turned down, is totally devoid of reasons and therefore, in contravention of Section 24-A of the General Clauses Act, 1897.

5. The G.R.C.'s report dated 10.03.2021 shows that the petitioner's plea that the minimum wage announced by the Federal and the Provincial Governments through notifications was Rs.17,500/-, and that the applicable taxes were to be calculated in accordance with the above referred judgment dated 19.01.2021 passed by the Hon'ble High Court of Sindh, was not even considered by the G.R.C.

6. Rule 48(2) of the Public Procurement Rules, 2004 ("P.P.R.") provides that any bidder feeling aggrieved by any act of the procuring agency after the submission of his bid may lodge a written complaint concerning his grievances not later than fifteen days after the announcement of the bid evaluation report. Clause 48(3) provides that the Committee shall "*investigate and decide*" upon the complaint within fifteen days of the receipt of the complaint.

7. The power to investigate and decide given by statute or statutory instrument to a body would imply the requirement for the observance of due process. In the case at hand, it is an admitted position that the G.R.C. did not afford an opportunity of a hearing to the petitioner before giving adverse findings against the petitioner in

its report dated 10.03.2021. Without hearing the petitioner, the G.R.C. simply endorsed the evaluation report through which the petitioner was disqualified on account of having submitted a financial bid which was alleged to be lesser than the minimum wage announced by the Federal Government.

8. As for the G.R.C., it 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 void.

9. 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 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 audi alteram partem 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. ..”

10. 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 report dated 10.03.2021 to be void. Therefore, the instant writ petition is allowed and the G.R.C.'s said report is set-aside. The matter is remanded to the G.R.C.

with the direction to decide the petitioner's grievance petition through a reasoned order after affording it an opportunity of a hearing. 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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