

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3823 of 2020

Salah Uddin Khan

Versus

Public Procurement Regulatory Authority and others

Dates of Hearing:	26.05.2021 & 29.09.2021
Petitioner by:	Mr. Muhammad Sadiq Khan, Advocate
Respondents by:	Mr. Ahmed Ejaz Yousaf, Advocate for respondents No.3 to 5

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Salah Uddin Khan, impugns the Terms of Reference / Standard Operating Procedures (“**TORs/SOPs**”) issued on 19.05.2020 by the Sui Northern Gas Pipelines Limited (“**S.N.G.P.L.**”) for the “*pre-qualification of contractors and hiring of services for distribution activities.*” These TORs/SOPs were sent by the Senior General Manager to all the Regional General Managers of S.N.G.P.L. The said TORs/SOPs require all contractors declared pre-qualified or enlisted with S.N.G.P.L to deposit security ranging from Rs.2,00,000/- to Rs.2,000,000/-.

2. The petitioner owns a firm under the name and style of “Salah ud Din Khan and Brothers” (“**the petitioner’s firm**”), which is engaged in the business of ditching works for the natural gas distribution activities of S.N.G.P.L. Vide S.N.G.P.L.’s letter dated 08.01.2020, the petitioner’s firm was qualified as a contractor in category C-2 and was required to deposit security amounting to Rs.5,00,000/- by 31.01.2020. Apparently, on the petitioner’s request, S.N.G.P.L extended the last date for submission of security to 14.02.2020. Vide letter dated 21.02.2020, S.N.G.P.L. turned down the petitioner’s request for a further extension in the period for the deposit of the security.

3. On 19.05.2020, S.N.G.P.L. issued revised TORs/SOPs which *inter alia* required the contractors pre-qualified to carry out ditching works to deposit security amounting to Rs.2,000,000/-. The petitioner submitted representation to S.N.G.P.L. against the said revised TORs/SOPs but to no avail. He also submitted an application dated

11.11.2020 to the Public Procurement Regulatory Authority (“P.P.R.A.”) challenging the TORs/SOPs to the extent of the requirement for the deposit of security from the pre-qualified contractors. P.P.R.A., vide its letter dated 13.11.2020, directed the S.N.G.P.L. to refrain from the practice of obtaining security deposit from the contractors since *“such practices not covered under the Procurement Regulatory Framework.”* Apparently, the S.N.G.P.L. did not abide by the P.P.R.A.’s direction. Hence, this petition.

4. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the P.P.R.A., vide letter dated 13.11.2020, had clearly informed S.N.G.P.L. that other than bid security and performance guarantee, no other security deposit could be taken from any contractors participating in a bidding process; that despite the same, S.N.G.P.L. is not entertaining bids or pre-qualifying contractors who do not submit the security deposit; that S.N.G.P.L.’s prescribed bank challan shows that the security received from the pre-qualified contractors is being deposited in the undocumented category; and that the demand for the security deposit in addition to the bid security or performance guarantee is a violation of the Public Procurement Rules, 2004. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

5. On the other hand, learned counsel for respondents No.3 to 5 / S.N.G.P.L. submitted that services of pre-qualified contractors for ditching works near the S.N.G.P.L.’s distribution lines are engaged in emergency situations like underground gas leakage; that the security deposit is demanded from the pre-qualified contractors in order to indemnify S.N.G.P.L. against any loss to the distribution lines caused by the contractor’s personnel; that under Rule 15 of the Public Procurement Rules, 2004, the employer has a right to ascertain the financial health of the contractor; that the demand for the security deposit has no relevance with the performance guarantee or bid security as it is not required for engaging the services of the contractors but as a condition for pre-qualification; and that the

security deposit is justified as it operates as a guarantee for the material which is handed over to the contractor for execution of works.

6. Learned counsel for S.N.G.P.L. took an objection to the maintainability of the petition and submitted that none of the parties impleaded as respondents in the writ petition possess legal personality, and therefore they cannot be sued. It was submitted that S.N.G.P.L. had not even been impleaded as a respondent in the writ petition. Furthermore, it was argued that since the petitioner has been asking for extension of time in making security deposit, he is estopped by his conduct in challenging the requirement for the deposit of security.

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 and 3 above and need not be recapitulated.

8. After the learned counsel for S.N.G.P.L. took an objection to the maintainability of the instant petition, learned counsel for the petitioner sought an opportunity to amend the petition. Vide order dated 05.08.2021, this Court granted permission to the petitioner to amend the petition. Consequently, an amended memo of petition was filed on 21.09.2021. The amended memo of the parties reads thus:-

“Salah ud din Khan S/O Azizullah Khan R/O shop No.5 Talal Plaza I-9 Markaz opposite Sui Northern Gas Office, I-9 Islamabad.

Vs.

1. *Public Procurement Regularity Authority (PPRA) through Managing Director 1st Floor FBC Building near State Bank Sector G-5/2 Islamabad.*
2. *Ministry of Petroleum through its Secretary Petroleum Islamabad.*
3. *The General Manager Sui Northern Gas Pipe Line Limited (SNGPL) Islamabad.*
4. *Managing Director Sui Northern Pipe Line Limited (SNGPL) Islamabad.*
5. *The Senior General Manager Distribution North Sui Northern Gas Pipe Line Limited (SNGPL) 21 Kashmir Road Gas House Lahore.*
6. *Managing Director Sui Northern Gas Pipe Line Limited (SNGPL) 21 Kashmir Road Gas House Lahore.”*

9. The instant petition has been filed to enforce rights of a civil nature. A petition filed under Article 199 of the Constitution to enforce civil rights would be deemed civil proceedings and the procedure provided in the Code of Civil Procedure, 1908 (“C.P.C.”) would be applicable. Reference in this regard may be made to the case titled Muhammad Yar Vs. Muhammad Amin (2013 SCMR 464), wherein the Hon’ble Supreme Court held that *“High Court while exercising constitutional jurisdiction under Article 199 of the Constitution in matters pertaining to civil nature could validly and duly resort to provision of Civil Procedure Code, 1908, which shall be attracted and applied until and unless such application had been excluded by law.”*

10. Now, Order I, Rule 3 C.P.C. provides that *“[a]ll persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative.”* Since the word “person” has not been defined in the C.P.C., the interpretation of the said word in Section 3 of the General Clauses Act, 1897 would apply according to which a “person” shall include any company or body of individuals whether incorporated or not. This shows that “person” would include both natural and legal persons.

11. S.N.G.P.L. is a private limited company registered under the erstwhile Companies Act, 1913 and is indeed a legal person having the capacity to sue or be sued. In the instant petition, the petitioner has arrayed P.P.R.A. and Ministry of Petroleum as respondents No.1 and 2, respectively, but no relief has been sought against them. Since no relief has been prayed for against the said respondents, they are to be considered as *performa* respondents.

12. Besides respondents No.1 and 2, the petitioner has impleaded as respondents' official designations *i.e.*, General Manager, Managing Director at Islamabad, Senior General Manager and Managing Director at Lahore. Since these official designations are not infused with a legal *persona* they are not capable of being sued. These official designations can neither be termed as legal nor natural persons. A

writ can either be instituted against a legal or natural person. The petitioner, despite having been given opportunity to amend the petition, has not joined S.N.G.P.L. in the array of respondents. Such a petition suffers from a fatal defect in form and cannot be held to be maintainable.

13. In the case of Secretary B.&R., Government of West Pakistan Vs. Fazal Ali Khan (PLD 1971 Karachi 625), the Hon'ble High Court of Sindh held that a suit against official designations was bad in form. Similarly, in the case of Nagina Bakery Vs. Sui Southern Gas Limited (2001 CLC 1559 Sindh), the Hon'ble Sindh High Court held that a Constitutional petition filed by a consumer against the official designations of Sui Southern Gas Limited was not maintainable. In the said report it was held as follows:-

"It is settled law that legal proceedings can be filed by or against natural or legal person only and cannot be filed against official designations or titles. The petitioner has filed the petition against the designations and titles of officers of SSGC who are not legal or natural persons and, therefore, the petition to that extent is bad in form and not maintainable..."

Law to the said effect was also laid down in the cases of Muhammad Hayat Vs. Director General Lahore Development Authority (2016 MLD 1287 Lahore), Mst. Khadija Karim Vs. Zia-ur-Rehman Khanzada (PLD 1999 Karachi 223), Ghulam Sarwar Vs. Ghulam Rabbani (PLD 1992 Peshawar 130), Bore Muhammad Vs. Mst. Aziza Begum (2001 CLC 701), Manahem S. Yesheeva Vs. Union of India (AIR 1960 Bombay 196) and P.B. Shah and Co. Vs. Chief Executive Officer (AIR 1962 Calcutta 283).

14. Since the petition in the present form is not maintainable, I do not feel the need to delve into the merits of the case, for which an occasion will arise in proceedings pursuant to a properly instituted and properly constituted writ petition.

15. In view of the above, the instant petition is dismissed as not maintainable. There shall be no order as to costs. Before parting with the judgment, I deem it appropriate to direct the Office/Institution Branch of this Court not to accept petitions for filing where the

respondents are official designations and do not possess legal personality. The Objection Form may accordingly be amended.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON 07/12/2021

*Qamar Khan**

APPROVED FOR REPORTING

(JUDGE)

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