



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY



NO.AD (L-II)/SPPRA/CMS-1365/2020-21/4080

Karachi, dated the 2nd April, 2021

To,

Executive Engineer,
Irrigation East Division,
Irrigation & Power Department,
Government of Sindh,
KHAIRPUR

Subject: DECISION OF REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY AUTHORITY.

The undersigned is directed to refer to the subject cited above and to enclose herewith a copy of the Authority's Review Committee decision (M/s Kamran Ali Jalbani V/s Executive Engineer East Division Khairpur, held on 27.01.2021 & 17.02.2021 for information and necessary action please.


ASSISTANT DIRECTOR (LEGAL-II)

A copy is forwarded for information and necessary action to:

1. The P.S to Secretary to Government of Sindh, Irrigation & Power Department Sindh Karachi.
2. The Superintendent Engineer, Khairpur Irrigation Circle Sukkur.
3. The Deputy Secretary (Staff) to Chief Secretary Sindh, Karachi.
4. The Assistant Registrar (C.P), High Court, Sindh, Karachi (C.P) # 6105/2016.
5. Assistant director (I.T), SPPRA (with advice to post the decision on the Authority's website in terms of Rule-32(11) of SPP Rules, 2010)
6. The Staff Officer to the Chairman / Members Review Committee.
7. The Appellants.



GOVERNMENT OF SINDH
SINDH PUBLIC PROCUREMENT REGULATORY
AUTHORITY



No.AD (L-II) SPPRA/CMS- 1365 /2020-21/2080

Karachi, dated 01st April 2021

**BEFORE REVIEW COMMITTEE OF SINDH PUBLIC PROCUREMENT REGULATORY
AUTHORITY UNDER RULE-32 OF SPP RULES 2010.**

REVIEW APPEAL

M/s. Kamran Ali Jalbani

VS

The Executive Engineer, (East Division), Khairpur

(Blacklisting of contractor order dated 26.6.2020)

Facts and background

The appellant, M/s. Kamran Ali Jalbani, lodged an appeal vide letter received at authority on 24.12.2020 against blacklisting order dated 26.6.2020 issued by the Executive Engineer, East Division, Khairpur regarding the blacklisting of the contractor due to underperformance after getting advance payment.

2. The appellant therein submitted that the procuring agency blacklisted the contractor without reasons and submitted that there are not sufficient grounds for the blacklisting of the contractor.

3. Consequently, the appellant's appeal was enlisted by the Review Committee for hearing in the meeting of the Review Committee and he submitted an appeal, along with the supporting documents and review appeal fee as required under rules.

4. Accordingly, the appellant's case was taken up by the Review Committee for hearing in its meeting scheduled on 27.01.2021 at 11.00 a.m. & 17.2.2021 and in this regard, the Authority issued notices to the parties concerned to appear in person, or depute authorized representative, well conversant with the matter in question, along with the relevant documents and evidence, if any, before the Committee on the scheduled date, time and venue to present and/ or defend the case in terms of Rules-32(6), (8) & (10) *ibid*¹.

5. In compliance, on 17.2.2021 Mr.Sharafu ud din Bhanban, The Executive Engineer, East Division Khairpur 'the procuring agency's representative', and Mr.Kamran Ali Jalbnai Ali, Proprietor, M/s Kamran Ali jalbani 'the appellant' appeared before the Review Committee.

REVIEW COMMITTEE'S PROCEEDINGS

6. The Chairperson of the Committee commenced the meeting by welcoming all the participants of the meeting. Then, the chair asked the appellant to present the case/version over the instant matter of blacklisting in question before the committee.

The appellant's version

¹ On receipt of appeal, along with all requisite information and documents, the Chairperson shall convene meeting of the Review Committee within seven working days. It shall be mandatory for the appellant and the head of procuring agency or his nominee not below the rank of BS-19 to appear before the Review Committee and when called and produce documents, if required. The Review Committee shall hear the parties and announce its decision within ten working days of submission of appeal. However, in case of delay, reasons thereof shall be recorded in writing.

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7. The appellant has submitted that he is a registered government contractor. The bidder claimed to have completed all assignments of government works accordingly. The bidder also claims to have successful experience of 11 years.
8. The appellant also submitted that he had filed a Constitutional Petition NO.6102/2014 wherein he approached the court against the corruption and mal practices committed by the Subhan Allah Construction Company's owner Ghulam Sarwar Kalhoro. The bidder informed that the Honorable court asked National Accountability Bureau to conduct inquiry into the matter. The bidder also claims that the persons involved were declared guilty and they made plea bargain with National Accountability Bureau for the corruption they had committed.
9. The bidder further told that a tender was floated by the Executive Engineer (**Khairpur Division**) wherein the bids were called for different works. The bidder also submitted that the Executive Engineer blacklisted the appellant vide letter dated 26.6.2020 due to non-completion of already assigned work which was assigned by the office.
10. The appellant contended that he was blacklisted in a mala-fide manner and he was barred from working through coercive practices and it was aimed at to just provide tenders to the favorite persons of the procuring agency.
11. The appellant denied that the show-cause notices claimed by the Executive Agency that made reference to the proposed **blacklisting** of the appellant were not received by the bidder and, therefore, the appellant had no opportunity to make a representation in this regard.
12. The appellant also made reservations that no opportunity of personal hearing was given to the appellant before passing the impugned order of backlisting.
13. The appellant also claimed that there was no ground for **blacklisting** the appellant since no term of the agreement was breached by him and as for as non-completion of work is concerned, the bidder submitted that a false and fabricated case was filed by the bidder.
14. The appellant also contended that Mr Abdul Ghaffar kalhoro filed a false and fabricated complaint before Anti-corruption and submitted that the Procuring did not carry out an investigation to determine, whether there is sufficient cause for blacklisting the contractor nor gathered any proven information that may provide the procuring agency satisfying cause for the blacklisting of the appellant. The bidder also contended that the procuring agency did not initiate the process of blacklisting in accordance with the procedure laid down in rules and regulations.
15. It was contended that the actions of **black-listing** bids was illegal, hazardous and likely to cause prejudice to the appellant apart from being contrary to the terms and conditions of contract.
16. Syed Adil Gilani asked the appellant whether he received the notices for backlisting said that he did not receive the notices for blacklisting.
17. Mr. Riaz Hussain Soomro, Chairperson of the Review Committee, asked the appellant whether Enquiry was conducted by Circle Officer Anti-Corruption or not? The appellant submitted that a false and fabricated application was filed the persons who were indicted for corruption by National Accountability Bureau.
18. The bidder also submitted that the Procuring agency had awarded contract to the person who were involved in plea-bargaining and the court has barred that those involved in plea bargaining are not eligible for government contract.

The Procuring Agency's Version

19. The Executive Engineer submitted that it is worthwhile to clear that M/S Kamran Ali Jalbani has been black listed on account of failure to complete the work assigned to him within specified time., ruthlessly neglecting the instruction of the procuring agency which on the one hand was his willful failure to perform in accordance with the term of contract and also

on the other hand the department sustained financial loss, hence keeping in view his willful as explained above undersigned has black listed the above named Contractor by obtaining concurrence from higher authorities in accordance with Rule-35(1) (d) of SPPRA Rules 2010 (Amended 2013).

20. The Executive Engineer submitted that in this regard, the factual position in the matter is that the work of **C.C. Lining of Imdad Ali Minor from RD-0 to 15.900** with other components viz. work of Head Regulator, construction work of modules, work of landhies and earth Filling work relating to the Division of answering respondent was awarded to M/S Kamran Ali Jalbani by the then Executive Engineer Irrigation East Division Khairpur under office work order No. TC/G-55/ 318 dated 14-02-2018 with the specified period of 18 months for its completion viz: up-to 15-08-2019.
21. The Executive Engineer stated that as soon as he took over the charge of Executive Engineer Irrigation East Division Khairpur on 22-07-2019. He inspected the aforesaid work at site and it was very strange to see that the progress of the aforesaid work was incomplete and unsatisfactory. On verification of the office record, it was seen that the excess payment of Rs. 19291248/- was made more than the work done at site to the contractor by the then Executive Engineer Irrigation East Division Khairpur.
22. The Procuring agency also submitted that the above named contractor was issued notice by the Executive Engineer bearing No. TC/G-2(b)/ 1460 dated 16-08-2019 even No. TC/G2 (b)/1661dated20-09-2019) photo copy attached and Final Notice No. TC/G-2(b)/ 498 dated 27-03-2020 for completion of the work of remaining items, but he regretted that neither any response was achieved nor the remaining work was completed by the above named contractor with the result that above important nature works were at the same and deteriorated position.
23. He furthermore submitted that in this connection it is apprised that the concerned Assistant Executive Engineer Irrigation Sub-Division Mirwah made a report to the undersigned vide letter No. SD/TM/56 dated 18-03-2020 regarding failure of the contractor to complete the work requesting therein for taking action against him as per rules. Accordingly, the contractor was issued Final Notice by the Executive Engineer bearing No. T/G-2(b)/ 498 dated 27-03-2020 to complete the works in question but no positive response was received from his side. On the contrary the contractor made high handedness and assaulted upon the office which was a criminal act of the contractor.
24. The procuring agency also contended that accordingly being a law-abiding Government officer the Executive Engineer moved the matter with the Station House Officer PS "A" Section Khairpur under letter NO.IE/EC/G-148/539 dated 09-04-2020 for lodging FIR against the criminals for kind perusal) and FIR No. 83/2020 had been lodged against him due to the assault of the contractor.
25. The procuring agency further informed that Circle Officer Anti-Corruption Establishment Khairpur conducted an enquiry and submitted his report before the Honorable court of Special Judge Anti-corruption Sukkur bearing No.CO/ACE/954 dated 22-06-2020 whereby it had been prayed from the above honorable court to bound down the alleged Assistant Engineer Mr. Ghulam Nabi Babar and above contractor for the recovery of the misappropriated excess payment of Rs. 19291248/- and requested to punish them as per ACE Rules.
26. The Executive Engineer also informed that the Deputy Register Pakistan Engineering Council Islamabad in his office letter No. PEC/Const/Misc-C4-10173/7/2020 dated 14-07-2020 raised certain observation against the black listing of the mentioned firm which have accordingly been replied by the undersigned under this office letter No. TC/G-2(b)/1072 dated 23-07-2020. The Photo state copies of the same are attached herewith.
27. The Executive Engineer also submitted that M/S Kamran Ali Jalbani had filed CP No.D-887

of 2020 in the Honorable High Court of Sindh Bench at Sukkur against his blacklisting and the para-wise comments of the said petition had been filed by the procuring agency and the case is under proceedings in the Honorable High Court. Similarly, he had also filed CPLA No.494-K of 2019 and CMA No. 3427 / 2020 in CPLA No. 494-K in the Honorable Supreme Court of Pakistan Islamabad and comments of these cases had been filed by the undersigned in the honorable Supreme Court of Pakistan and the case is under proceeding in the honorable Apex Court.

28. The Executive Engineer contended that this letter the appeal of M/S Kamran Ali Jalbani against black listing does not fall within the purview of Rule-31(5) as well as Rule-32 of SPPRA Rules 2010. His black listing is just, fair as well as in accordance with Rule-35(1) (d) of SPPRA Rules 2010, hence he requested that appeal of above black listed firm may kindly be set aside.

Findings of the Review Committee

29. The matter involved is regarding the blacklisting of the contractor by the procuring agency due to his underperforming of the contract signed with the procuring agency. The procuring agency claims that he was blacklisted in accordance with the rules and procedure. Contrarily, the bidder submits that he was backlisted without sound reasons, no opportunity for hearing was given and procedure was not adopted accordingly.

Observations of the Review Committee

30. The committee observed that the contractor was given advance payment to facilitate him to complete the works on time. The concept of advance payment has been described in the regulation of works by SPPRA.

Advance Payments: Financial assistance is given to the contractor to enable him to overcome financial encumbrances and shall be made available by adopting any one of the following methods:-

(a) Secured Advance on the written request of the contractor whose contract is for finished work is allowed to a contractor on the basis of non-perishable/noncombustible materials brought and properly stocked/stored to site of work. Secured advance as a good practice is avoided/discouraged. However, wherever allowed, it should be strictly in conformity with the rules and procedure in addition to the condition mentioned below:-

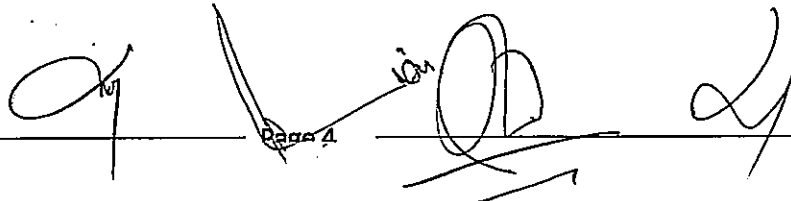
(i) on verification and certification of quality, quantity and market rates of the material by the Assistant Engineer/Engineer 's representative;

(ii) contractor has to furnish the "Indenture Bond" (Annexure D);

(iii) secured advance shall be paid to the contractor on the quantities brought and properly stored at site of work. Full quantities of materials for entire work / contract should not be advanced;

(iv) recoveries of advances so made should be made from his bills for work done as the materials are used, the necessary deductions be made whenever the items of work in which are used are billed for, or shall be recovered in full within 90 days, even if unutilized;

(v) new secured advance should not be allowed until and unless the previous advance, if any, stands fully recovered.



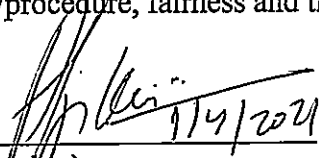
(vi) advance amount is calculated on the basis of 75% of the market value of that material.

It has been observed that the procuring agency did not follow the regulations for allowing the advance payment. The illegal disbursement of advance payment needs proper and timely necessary action against the officials of the procuring agency.

31. It was also observed that the Enquiry conducted by the Circle officer shows that the work was not completed by the contractor after getting advance payment which requires thorough enquiry in accordance with the rules.
32. Mr. Manzoor Ahmed Memon, member of the Review Committee, observed that the procuring **agency blacklisted the contractor three days before the opening of tender**. The backlisting seems to be pre-determined and he observed that the procuring agency awarded the contract to the person who had made plea bargain. Awarding contract to the bidder who had made plea bargain and was involved in corrupt activities, was against the rules and the decision of the Honorable Supreme court of Pakistan.
33. It was observed by the Review Committee that the bidder was not heard properly before blacklisting. Law is well settled that nobody should be blacklisted without giving an opportunity of being heard. An order of blacklisting a person results in civil consequences. It affects the reputation of the person blacklisted not only in his dealings with the Government but in his dealing with private firm. It affects his business prospects. Therefore, it was necessary to provide the opportunity of personal hearing to the bidder before blacklisting to the bidder.
34. The committee also observed that such decision to **blacklist contractor** for all times is highly disproportionate..

Decision of the Review Committee

35. After due deliberations, the Review Committee unanimously decides that the instant Review Appeal is allowed, as the blacklisting done by the procuring agency is without fulfilling the requisite rules/procedure, fairness and transparency.



(Member)

Syed Adil Gilani

Private Member SPPRA Board

Representative Transparency International



(Member)

Engr. Munir Ahmed Shaikh

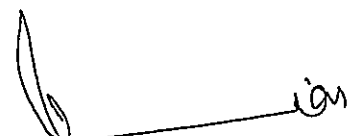
Independent Professional



(Member)

Manzoor Ahmed Memon

Member SPPRA Board



(Chairman)

Riaz Hussain Soomro

Managing Director

Sindh Public Procurement Regulatory

Authority