



Appeal No. PPRA/AP-09/2025
Government of Pakistan
Public Procurement Regulatory Authority
(Appeal & Review Petition Secretariat)
1st Floor, FBC Building, G-5/2, Islamabad
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ORDER

M/s R.K CONSTRUCTORS (PVT.) LTD.

...the "Appellant"

Vs.

FAISALABAD ELECTRIC SUPPLY COMPANY (FESCO)

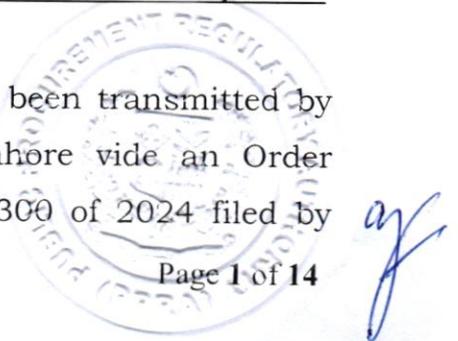
...the "Respondent"

<u>Date of Hearings</u>	
19.03.2025	Mr. Umar Farooq, Advocate, Mr. M. Ashfaq Khan (COO) (On behalf of Appellant)
17.03.2025	
11.03.2025	Sardar Taimoor Aslam, Advocate, Raja Abdul Muqteet, Mr. Muhammad Usman, Assistant Director (MM) (On behalf of Respondent, FESCO)
	Mr. Mehmood (On behalf of M/s Rajput Concrete)
	Mr. Ghulam Murtaza, Managing Partner, Rana Amir Nadeem (On behalf of Gunj Bukhash Builders)
	Mr. Saqib Haroon, Advocate, Mr. Mehmood Shafi, Advocate (On behalf of Rajput Concrete & Gunj Bukhash Builders)

APPEAL UNDER RULE 48(7) OF THE PUBLIC PROCUREMENT RULES, 2004

The instant case / Appeal has been transmitted by the Honourable Lahore High Court, Lahore vide an Order dated 04.03.2025 passed in W.P. No.78300 of 2024 filed by

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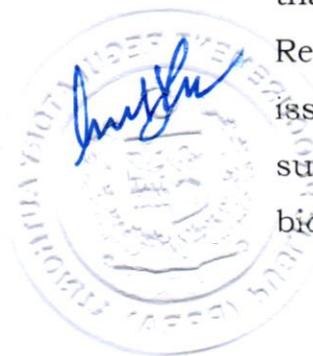
M/s R.K. Constructors (Pvt.) Ltd. ("the Appellant") against the FESCO ("the Respondent" / "the procuring agency"). The relevant part of the Order dated 04.03.2025 is reproduced as under:-

"5. In view of the above, I am inclined to transmit a copy of this petition, along-with all its annexures, to respondent No.7 with the direction to treat it as an appeal on behalf of the petitioner and decide the same, strictly in accordance with law, after affording an opportunity of hearing to all concerned within a period of 07 days from the date of receipt of certified copy of this order. In order to facilitate the process, petitioner is directed to appear before the said respondent on 11.03.2025 at 11:00 a.m. Compliance report shall be submitted to this Court through Deputy Registrar (Judicial)."

2. In compliance of the said Order dated 04.03.2025, passed by the Honourable Lahore High Court, Lahore, the Authority took up the matter and fixed the said Appeal for hearing. The above mentioned learned counsel(s) and representative(s) of the parties tendered appearance before the Appellate Committee and furnished their arguments at length.

3. At the outset of the hearing, learned representative of the appellant i.e., M/s R.K CONSTRUCTORS (PVT.) LTD. submitted that the appellant is a private limited company duly incorporated in accordance with the law of Pakistan and deals with manufacturing, HT/ LT spun hollow poles etc., they are recognized as name of reliability and excellence in the pole manufacturing industry etc.,

4. The representative of the appellant also submitted that the Respondent No. 1 (Chief Executive, FESCO) through Respondent No. 3 (Director Material Management, FESCO) issued a tender Notice dated 10.07.2024 inviting sealed and super-scribed tenders under Single Stage-One Envelop bidding process for the supply of material mentioned in the



said tender notice along-with the supply of LT PC Spun Hollow Poles 31-Feet, HT PC Spun Hollow Poles 36-Feet and HT PC Spun Hollow Poles 45 feet confirming to WAPDA / PEPCO'S drawing / specification with the bid validity of 75 days on Ex-Plant basis on the rates in local currency without involving foreign exchange element inclusive of all taxes and duties exclusive of General Sales Tax. Later on, vide letter dated 01.08.2024 the date of opening and receiving of bid documents was changed from 05.08.2024 to 03.09.2024.

5. The representative of the appellant further submitted that, the appellant's Company, after fulfilling all the cordial requirements including payment of the requisite Tender Fee amounting to Rs.6000/- for each bid documents, received three bidding documents including the invitation bid, Bid Schedule, Instructions to Bidders / Tenderers and all other relating documents concerning tenders No.2742, 2743 and 2744/FESCO/DMM/DIST/2024-25. The appellant's Company after fulfilling all the cordial formalities submitted its bidding documents with Respondent No 1. During the process of submission of bid documents it was revealed to the Petitioner Company that some of the conditions / terms of the tender documents are in clear violation of Public Procurement Rules, 2004 against fair, transparent and competitive bidding process. Further submitted that, during the process of submission of bidding documents by other prospective bidders, it came to the knowledge of the appellant company that some of them are blacklisted companies i.e. M/s Rajput Concrete (Pvt) Limited and dissolved partnership firm entangled in litigation i.e. Gunj Bukhash Builders were also participating in the bidding process and, included an ambiguous condition no. 8 in general / special conditions for bidding of bidding document. After coming to know about the said facts, the appellant company wrote a letter dated 16.09.2024 to Respondent No. 2, 3, 4 & 5 informing

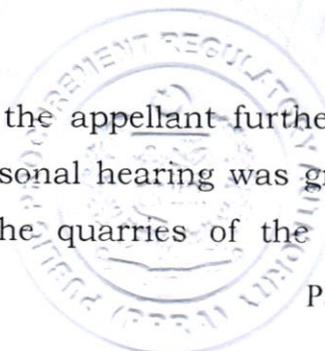
Respondent No. 2 about the above narrated facts requiring him to constitute Grievance Redressal Committee (GRC) under Rule 48(4) of the PP Rules, 2004.

6. The representative of the appellant also submitted that, in response to appellant's company letter dated 16.09.2024 requiring Respondent no. 2 to constitute / formulate the GRC, the Respondent No. 6 vide letter No. 1104 dated 25.09.2024 returned appellant's company grievance being not maintainable at this stage with the remakes that "the case may be submitted to the procuring agency, communicate your grievance to Tender Evaluation Committee for consideration at the time of evaluating bid". During the course of proceedings Chief Engineer (TS), FESCO through letter dated 14.10.2024 transmitted appellant company grievance application to Respondent No. 3 requiring him to look into the said complaint / grievance against M/s Rajput Concrete (Pvt) Limited and M/s Gunj Bakhsh Builders before awarding the contract, to avoid any kind of litigation. Further, the Respondent No. 3, in response of such letter evaluated the bids of all the prospective bidders and submitted his report. Moreover, on completion of the evaluation of tender process, appellant company once again agitated vide letter dated 21.10.2024 in continuation of its previous letter dated 16.09.2024 regarding grievances relating to participation of M/s Rajput Concrete (Pvt) Limited and Gunj Bukash Builders in the bidding process. Through the same letter, the appellant company also challenged condition No. 8 of the tender being restrictive and unfair and requested Respondent No. 6 to formulate the GRC to redress above narrated grievances of appellant's company.

7. The representative of the appellant further submitted that, in response to the above said letter dated 21.10.2024, the Respondent No. 6 formulated / constitution

of GRC and intimated the appellant's company vide letter dated 29.10.2024 about the formulation of GRC and advised the appellant to appear before GRC along with the details / supporting record / documents on 31.10.2024 at 11:30 AM in the office of Respondent No. 6. Moreover, through letter dated 31.10.2024, Respondent No. 6 intimated the appellant that the meeting of the GRC which was held on 31.10.2024 was changed to 05.11.2024 at 11:30 AM in Respondent No. 6 office. After that, the appellant company on the said date of hearing i.e., 05.11.2024 appeared before the GRC and presented certain details / documents / supporting record annexed with covering letter dated 04.11.2024 to prove its grievance before the GRC. Further, the representative of the appellant submitted that Mr. Lutfullah Khan (currently participating as Rajput Concrete Pvt. Ltd.) was the real owner and beneficiary of M/s Rajput Builders and Contractors (Pvt.) Limited, which was blacklisted in the year 2020 by Respondent No. 1 on account of breach of contractual obligations contained in purchase / variation orders No. 679 dated 03.10.2017, No. 11978-83 dated 26.03.2018, No. 696 dated 09.11.2017 and, No. 11990-95 dated 26.03.2018 executed for the supply of LT/HT/PC Spun Hollow poles, and missing of poles, such information was never revealed disclosed by M/s Rajput Builders & Contractors (Pvt) Limited at the time of submission of bid documents, which is in grave violation of Statutory Notification (S.R.O) dated 10.05.2022, which make it mandatory upon the company participating in the bidding process to disclose required information of the beneficial owner and in case of non-disclosure, false or partial information, such company can be blacklisted, its bid can be rejected.

8. The representative of the appellant further argued that another opportunity of personal hearing was granted to all concerned to respond to the queries of the GRC. In



response to this, the appellant company appeared before GRC and agitated its case with all the documentary proves as was agitated before the GRC on the last date of hearing. Moreover, it was transpired to the appellant that the Respondents No. 1 to 6 in utter violation of Public Procurement Rules, 2004, unfairly treating all the prospective bidders, without any written intimation to petitioner Company and to give benefit to their blue eyed, extended the time of bid validity period, which is in utter violation Article 25 of the Constitution of Islamic Republic of Pakistan, 1973 and Rules 26(3) and 5 of the PP Rules, 2004. The said violation of extension of bid validity period by Respondents No. 1 to 6 without any written intimation to the appellant and the same was duly conveyed by appellant to Respondent No. 5 vide letter dated 29.11.2024, which was totally ignored by Respondent No. 5 and to date, no action was taken by Respondents No 1 to 6. Further, the GRC by ignoring all the material produced before it during all the dates of hearings and without considering the said material, passed the impugned order dated 06.12.2024.

9. The representative of the appellant further added that the Hon'ble Islamabad High Court has already held in clear terms that the invocation of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is not available in cases where the remedy of statutory appeal is available. Given that an appellant is required to file an appeal before PPRA in accordance with Regulation 7 read with Schedule II of the Regulation 2021 which requires to deposit a disproportionality high fee for filing an appeal under Rule 48(7) of the Public Procurement Rules, 2004, therefore such an appeal cannot be considered to be an effective and an adequate remedy.

10. On the other hand learned counsel of the respondent i.e., FESCO raised preliminary objection regarding

the instant appeal and submitted that the Rule 48 of the PP Rules, 2004 provides a comprehensive mechanism for redressal of grievances by the procuring agency. In particular, Rule 48(1) mandates the constitution of a Grievance Redressal Committee ("GRC") by the procuring agency to address complaints from bidders arising prior to the execution of the procurement contract. Moreover, Rule 48(3) of PP Rules, 2004 stipulates that any bidder feeling aggrieved by an act or omission of the procuring agency after submission of the bid may file a written complaint before the GRC. Further, under Rule 48(7), a bidder who is dissatisfied with the decision of the GRC may file an appeal before the Authority within thirty (30) days of the communication of the GRC's decision, subject to payment of the prescribed fee and in accordance with the procedure laid down by the Authority. The decision of the Authority in such cases is to be treated as final. Further submitted that, it is imperative to note that the appellant filed a grievance complaint dated 16.09.2024 ("Complaint") before the GRC constituted by Respondent No.1. The GRC, after due consideration, unanimously dismissed the Complaint via its order dated 06.12.2024, relying on its Fact-Finding Report, hence liable to be dismissed.

11. The counsel of the respondent (FESCO) also submitted that the appellant's allegations regarding Mr. Latif Ullah's association with M/s. Rajput Concrete ("M/s RC") are factually incorrect. Upon scrutiny of RC's documents, it has been verified that Mr. Latif Ullah is neither a director nor a shareholder. M/s RC is a duly incorporated and independent legal entity, licensed by the Pakistan Engineering Council ("PEC") through letter dated 02.11.2024. Furthermore, the appellant's grievances appear to pertain to M/s. Rajput Builders ("M/s RB"), an entity which did not participate in the relevant tender process. Moreover, the appellant lacks *locus*

standi to raise objections against M/s RC as the appellant did not submit bids in all the “lots” where M/s RC participated.

12. The Counsel of the respondent (FESCO) further submitted that, without prejudice to the above, M/s RB was blacklisted by Respondent No.1 for breach of contractual obligations for a period of three (3) years via letter dated 24.11.2020. This blacklisting period has since expired. Moreover, this fact was not concealed by M/s RC, and was duly disclosed to Respondent No.1. Further submitted that, M/s. Gunj Bukhash Builders (“M/s GBB”) is an active and legally constituted entity and its alleged dissolution is currently under adjudication before a competent Civil Court and has not attained finality. The bid submitted by M/s GBB was considered by the Procurement Committee on equal terms with other bidders in accordance with the PP Rules, 2004. The existence of litigation regarding M/s GBB’s dissolution was known to Respondent No.1 and not withheld.

13. The counsel of the respondent further submitted that Respondent No.1 exercised its discretion under the PP Rules to extend the bid validity period with the consent of the participating bidders. The appellant has repeatedly attempted to stall the procurement process, beginning with the lodging of the Complaint, which caused undue delay during the bid evaluation and after filing Writ Petition before the Hon’ble Lahore High Court, Lahore. It is worth highlighting that the appellant submitted higher rates in the tender and, is therefore not a serious contender. The appellant’s actions are aimed at coercing Respondents No.1 to 4 and No.6 into disregarding competitive bids and awarding the contract at inflated rates, which would cause substantial financial losses, potentially in the hundreds of millions to both Respondent No.1 and the public exchequer. Further added that FESCO, in urgent need of LT/HT PC Spun Hollow Poles, acted under

Rule 26(3) of the PP Rules, 2004 and requested all bidders to extend the validity of their bids. Out of the total, nine (9) bidders agreed while two (2) declined, and their bid securities were returned. No violation of the PP Rules was committed by Respondent No.1 at any stage, and actions remain in full compliance with the law.

14. The counsel of the respondent (FESCO) further argued that the evaluation of bids has been conducted in strict accordance with Clause 8 of the General / Special Conditions of the Bidding Documents. An additional cost of Rs.10 per kilometer was added to the offered rates of bidders whose pole plants are located outside FESCO's designated jurisdiction. This transportation evaluation criterion was explicitly stated in Clause 8 of the bidding documents. The appellant was fully aware of this requirement, having previously participated in FESCO tenders under the same terms and even received multiple purchase orders. The present challenge is thus an opportunistic attempt to interfere with the procurement process.

15. At last, the counsel of the respondent (FESCO) added that Respondent No.1 has ensured that the bidding process remained fair, transparent, and compliant with applicable legal and regulatory frameworks. The procurement exercise has resulted in exceptionally competitive pricing significantly lower than previous contracts thus saving substantial public funds. Delays instigated by the appellant could jeopardize public interest projects and escalate procurement costs if fresh tenders become necessary, hence request for dismissal of the instant appeal.

16. On the other hand learned counsel of the respondent No. 8 & 9 submitted that the appellant lacks the requisite *locus standi* to challenge Tender Nos. 2742, 2743,

and 2744. Admittedly, the appellant did not participate in Tender No. 2744 at all and did not submit bids for Lot Nos. 1, 2, and 4 of Tender Nos. 2742 and 2743, which pertain to Respondent No. 8. Moreover, the appellant did not contest in any lots involving Respondent No. 9. Accordingly, the appeal in hand is liable to be dismissed for want of *locus standi*. Moreover, the counsel of respondent no. 8 & 9 also submitted that the contracts have already been awarded, and purchase orders issued to the following companies after necessary approval by the competent authority, including the Board:

- Gunj Bakhsh Builders
- Rajput Concrete (Pvt.) Limited
- Mian Brothers (Pvt.) Limited
- Precast Building System (Pvt.) Limited
- Bliss Construction (Pvt.) Limited
- Unze Trading (Pvt.) Limited

The substantial mobilization and expenditure have already occurred and the appellant has already withdrawn its bid securities, indicating a withdrawal from the tender process. Consequently, it has no subsisting cause of action or *locus standi* to challenge the tenders in question. Therefore, the instant appeal, in its current form, is infructuous and not maintainable.

17. The counsel of the respondent no. 8 & 9 further argued that the appellant has made certain false allegations against the Respondents, which are categorically denied as incorrect. It is submitted that the appellant has wrongly claimed that Rajput Builders is a blacklisted company. In this regard, it is clarified that Rajput Builders never participated in the subject Tender. Moreover, Rajput Concrete (Pvt.) Limited is a distinct and separate legal entity, having no connection with Rajput Builders or any other company. Further submitted that M/s Rajput Builders was blacklisted by FESCO on 24.11.2020 due to breach of contractual

obligations. As per Rule 19(b) of the PP Rules, 2004, the maximum blacklisting period in such cases is three years, which lapsed on 23.11.2023. Regarding Respondent No.8, M/s Gunj Buksh Builders is a legally constituted partnership firm. Disputes among its partners led to the filing of a petition under Sections 14 and 17 of the Arbitration Act, 1940.

18. After perusal of all the available record and arguments made by all the parties, the Committee observed that the appellant did not raised the issue of bid validity period at the GRC stage. At belated stage, the appellant taken a stance that the procuring agency did not seek the extension of bid validity period. It is held by the Supreme Court of Pakistan that *"it is settled law that a party is not allowed to improve its case beyond what was originally setup in the pleadings."* [P L D 2020 Supreme Court 338]. In another case, reliance is made on the Honorable Court judgement on the principle of *'lite pendente nihil innovetur'* which means that during legal proceedings nothing new should be introduced [2022 M L D 1459]. Therefore, in the light of principles settled by the superior courts, the Committee is of the view that stance of the appellant, regarding not seeking the extension of bid validity period, carry no weightage.

19. The Committee also observed that the procuring agency was bound to seek the extension of the bid validity period from the respective bidders through official communication or by writing a letter. However, in the instant case the respondent / procuring agency sought extension through electronic medium i.e., WhatsApp and the documentary proof was provided in this regard. As per the apex court judgments the official communication though WhatsApp may be considered as valid communication. So, the objection raised by the appellant, regarding not obtaining the extension of bid validity through letter, is baseless.

20. Furthermore, the Committee observed that as per the stance of the appellant Mr. Lutfullah Khan (currently participating as Rajput Concrete Pvt. Ltd.) was the real owner and beneficiary of M/s Rajput Builders and Contractors (Pvt.) Limited, which was blacklisted in the year 2020 by Respondent No. 1 on account of breach of contractual obligations. Moreover, the appellant has claimed that Rajput Builders is a blacklisted company and didn't able to qualify and declared as successful / most advantageous bidder. Whereas, the record shows that M/s. Rajput Builders ("M/s RB") was blacklisted by Respondent No.1 for breach of contractual obligations for a period of three (3) years vide a letter dated 24.11.2020 and the blacklisting period has expired / lapsed on 23.11.2023.

21. The Committee further observed that M/s Rajput Concrete (Pvt.) Limited is a distinct and separate legal entity, having no connection with Rajput Builders or any other company. Therefore, it cannot be restrained to participate in the bidding process until blacklisted or debarred under Rule 19 of the PP Rules, 2004. Furthermore, the appellant's grievances appear to pertain to M/s. Rajput Builders, an entity which did not participate in the relevant tender process, so the said ground raised by the appellant is not tenable.

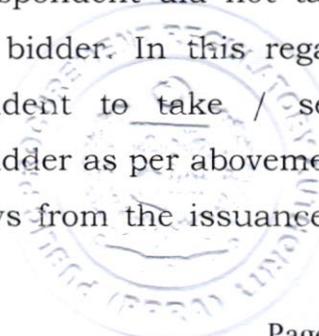
22. With regard to the question of dissolution of M/s Gunj Bukhash Builders, the Committee is of the view that since the issue is currently under adjudication before a competent legal forum and has not attained finality. Moreover, as per the relevant record, the status of M/s Gunj Bukhash Builders is still intact / alive as a company and legal entity. Therefore, just existence of a litigation do not restrict M/s Gunj Bukhash Builders' participation in the ongoing procurement process. Hence, the objection raised by




the appellant on the declaration of M/s Gunj Bukhash Builders as successful / most advantageous bidder, is baseless.

23. The Committee further observed that the Evaluation Report was published by respondent (FESCO) dated 22.10.2024, whereas, the appellant filed its grievance before the GRC of the respondent dated 04.11.2024. Upon this, the Committee highlighted that as per Rule 48(3) of the Public Procurement Rules, 2004 “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 within seven days of the announcement of the technical evaluation report and five days after issuance of final evaluation report.” However, in the instant case, the appellant filed its grievance before GRC after the lapse of time as stipulated in the said rule, hence, the said grievance of the appellant was time barred.

24. The Committee further observed that Regulation 4 of the Declaration of Beneficial Owners' information of Public Procurement Contract Awarded Regulations, 2022 states that “all successful bidders who have entered into contract worth Rs.50 Million and above are advised to comply with the mandatory requirement of declaration and provision of beneficial owner’s information under these regulations to the procuring agencies and PPRA within 30 days of publication of this notice. In case of failure to do so, the proceedings under the regulations shall be undertaken”. However, in the instant case, the procuring agency / respondent did not take said declaration from the successful bidder. In this regard, the Committee directed the respondent to take / seek the declaration from the successful bidder as per abovementioned regulations within seven (07) days from the issuance of this



order, failure to do so, the procurement process may lead to mis-procurement.

25. In view of above, the Committee unanimously decided that the grounds raised by the appellant are baseless and not tenable. Therefore, the appeal filed by M/s R.K Constructors (Pvt.) Ltd. is devoid of merit and disposed of accordingly.


(Dr. Muhammad Aslam Waseem)
Director General (Legal)
(Member)


(Sheikh Afzaal Raza)
Director (M&E)
(Member)


(Hasnat Ahmed Qureshi)
Managing Director (PPRA)
(Chairman of the Committee)

Each page of the order has been signed by all members of the Review Petition Committee. The order comprises of fourteen (14) pages.

