

**PESHAWAR HIGH COURT, PESHAWAR**  
*(JUDICIAL DEPARTMENT)*

CR No. 754-P/2022

Dilawar Khan

.....Petitioner.

Versus

Government of Khyber Pakhtunkhwa  
Through Secretary Transport & Mass Transit,  
Khyber Pakhtunkhwa, Peshawar and others.

.....Respondents.

For the Petitioner:

Mr. Barkatullah Khan, Advocate.

For the Respondents:

Mr. Mubashir Manzoor, AAG,  
along with Hamdullah, Assistant  
Director Transport Department.

Date of Hearing:

21.12.2022

**JUDGMENT**

**SYED ARSHAD ALI, J:-** Called in question herein are the concurrent findings both the Court below summarily dismissing the suit of the petitioner/plaintiff.

2. The learned counsel appearing on behalf of the petitioner has argued that through a suit before the Civil Court, the petitioner had challenged the conduct of the respondents whereby despite being the next higher bidder for collection Adda fee/tax, the respondents have refused to execute a contract with the petitioner for the collection of Adda fee for the year, 2020-2021 when the higher bidder had failed to honour his commitment and resultantly his bid security was forfeited. The learned counsel has drawn the attention of this Court to the minutes of the meeting of the Authority dated 12.02.2020 wherein it is stated that the minimum

price/reserved price for the auction of Adda fee was fixed as Rs. 113,850,000/- and against that one Nadeemullah has quoted his rate as Rs. 25 millions wherein the petitioner had offered the second highest bid as Rs. 115,500,000/-. It is recommended by the Committee in the aforesaid meeting that the bid should be first offered to Nadeemullah contractor and on his failure to deposit the required amount, it should be further negotiated with the petitioner. Instead of offering the same to the petitioner, the respondents have re-tendered the auction which is against the vested rights of the petitioner, which he had acquired as evident from the minutes of the meeting dated 12.02.2020. The learned counsel in support of his arguments has relied upon the cases of *Cantonment Board through Executive Officer, Cantt. Board, Rawalpindi vs. Ikhlaq Ahmed and others* (2014 SCMR 161), *Haji Abdul Hamid Khan vs. Amanullah Jan Khattak* (2014 MLD 113), *Lahore Development Authority and another vs. Muhammad Tariq* (Civil Appeal No. 152-L of 2010 decided on 27.08.2020), *Hazara (Hill Tract) Improvement Trust through Chairman and others vs. Mst. Qaisra Elahi and others* (2005 SCMR 678) and has argued that even before the re-tendering, no notice was issued to the petitioner.

3. The learned AAG along with Mr. Hamdullah Assistant Director, Transport Department have stated that the petitioner was already holding a contract for collection of Adda fee and the impugned process was initiated for the

financial year, 2020-2021 which since long has elapsed therefore, the petitioner has no right as he himself is still holding the agreement, pursuant to the interim relief granted by various court including this Court. The contract was for one year and the petitioner is enjoying the same for the last two years; thus, he is not entitled to any relief.

4. Arguments heard and record perused.

5. The present issue relates to tender of collection of toll tax/adda fee in relating to the Peshawar Bus Terminal. According to the policy of the respondents, the collection of Peshawar Bus Terminal toll tax is out sourced annually. The petitioner won the contract for the year, 2019 and accordingly he also participated in the auction for the year, 2020, which took place on 12.02.2022. The minutes of the meeting of the Committee which was supervising the auction under the supervision of Director Transport Mass Transit Khyber Pakhtunkhwa being its Chairman would show that the reserved price for the collection of Peshawar Bus Terminal Toll Tax was fixed as Rs. 113,850,000/- per annum. Pursuant to the tender, three persons had responded the tender by offering their bid. Nadeemullah had offered the highest bid of Rs. 25 crore, Dilawar Khan the petitioner had offered the second highest bid of Rs. 11,55,000,00/-. The Committee, thus, had unanimously decided to issue offer letter to the highest bidder Nadeemullah and has also unanimously held that if the said Nadeemullah had failed to deposit 1/4<sup>th</sup> amount

during the prescribed period of seven days, his call deposit shall stand forfeited and, therefore, the contract should be then awarded to the second highest bidder Mr. Dilawar Khan, the petitioner after negotiation of rate and approval of the competent authority. In the meanwhile, the petitioner since was holding the contract, therefore, his request for extension of the contract was also extended till the final execution of contract with the new bidder on the then existing rate of Rs. 287,500/- per day.

6. Admittedly, Nadeemullah has failed to deposit 1/4<sup>th</sup> of the amount of auction despite repeated requests and accordingly his security was forfeited.

7. On forfeiture of the security, the respondents had once again issued a fresh auction notice soliciting proposal from the public for collection of Peshawar Bus Terminal Toll Tax. The said auction was challenged by the petitioner through suit No. 90/1 of 2020 before the Civil Court whereby the petitioner sought a decree for declaration, perpetual injunction claiming that he being second successful bidder should have been granted the contract on the failure of Nadeemullah to execute a contract with the respondents-department.

8. Reiterating the aforesaid admitted facts would clearly show that there was no concluded contract between both the parties. Pursuant to the offer made to the public by the respondents soliciting their participation in the open

auction, the petitioner along with others participated in the open auction; he offered his bid, however, the acceptance of his bid was contingent with the conditions that the first highest bidder if fails to pay 1/4<sup>th</sup> amount of the auction within stipulated period of time, the bid amount would be negotiated with the petitioner. The counter offer of the petitioner so far has neither been agreed by the respondents-department nor has been approved; hence, in my humbly view, there is no concluded contract between the parties.

9. In the case of **Union of India vs. Narain Singh** (AIR 1953 Punj. 274), it was held that:

*“Where the conditions of auction of a liquor shop expressly provided that the acceptance of the bid shall be subject to the confirmation of the Chief Commissioner, there will be no completed contract till the acceptance of the highest bid is confirmed by the Chief Commissioner and the person whose bid has been provisionally accepted is entitled to withdraw his bid. It was further observed that where the bid is so withdrawn before the assent of the Commissioner the bidder will not be liable on account of any breach of contract or for the shortfall on the resale”.*

Similarly, our Apex Court in the case of **Miraj Din vs. Noor Muhammad and others** (1970 SCMR 542) has held that unless the bid is finally concluded, the higher offerer has no right for enforcement of the said offer. Relevant para of the judgment is reproduced as under:

*“He was no doubt the highest bidder at the second auction and had also deposited a substantial amount of the auction-money, but until the confirmation of the auction was made in his favour by the relevant authority, he did not acquire any right in the property whatsoever. Paragraph 9 of the terms and conditions of the auction of ‘building site’ under which the auction in question had been held, provided that the highest bid given by a*

*person could be rejected without assigning any reason for it”.*

In the case of **Munshi Muhammad and another vs. Faizanul Haq etc** (1971 SCMR 533), it was observed that:

*“The view formed by the High Court is unexceptional. Since the auctions in favour of the petitioners were not finally approved, they did not acquire any right in the properties, and had, therefore, no locus standi to ask for their transfer. According to the terms and conditions of the auction itself, the highest bids offered in the auctions were subject to the approval of the Additional Settlement Commissioner concerned, who may or may not accept the bids, without assigning any reasons for his action.*

*The manner of the exercise of this discretion by the relevant authorities, as conferred by law, is not amenable to writ jurisdiction of the High Court, unless it be found to be arbitrary or fanciful.*

This view was followed in **Pervez Qureshi vs. Settlement Commissioner Multan** (1974 SCMR 337)

wherein the Court observed as under:-

*“A mere bid at an auction if the bid is subject to confirmation, does not create any contractual right until the bid is confirmed. It is in the discretion of the auctioneer to confirm or not to confirm it. In the present case, the bid could not be confirmed, because the respondents 2 and 3 claimed that the auction was illegal as the property concerned had already been transferred.*

10. Thus, by now the law is settled that when a public contract is not concluded between the parties, the higher bidder has no right to approach the Court either for specific performance of any contract nor can maintain a suit for declaration/injunction in terms of Section 42 of the Specific Relief Act, 1877 as the non-concluded contract does not bestow upon any bidder the legal character or a right to any property to institute a suit. **Moin-ud-Din vs. Negotiating**

*Committee for Disinvestment of Akmidc Units, Muzaffarabad and 8 others (PLD 1987 SC (AJ&K) 99).*

11. Even otherwise, in the present case, the disputed period for collection of toll tax was to start from the year 2020, date of execution of contract for one year, which by all means has now ended and in view of the fact that the petitioner was already holding the said contract is still enjoying the benefit because initially a restraining order was passed by the Civil Court and thereafter till date it continues as this Court has also passed an interim relief in favour of the petitioner. Therefore, the petitioner was able to achieve the object in a manner which is not only inappropriate but against the established principles of law.

12. Admittedly, it is the policy of the respondents-Government; as evident from record; that when the recovery of toll tax is auctioned for a particular year, at a particular amount, in the following year, the new bidder has to increase the bid by 10% at least. In such circumstances, it is the liability of the petitioner to pay 10% increase to the respondents on the amount of highest bid for the year, 2019-2020. As far as the contention of the petitioner for release of the bid security amount which he has deposited with the respondents-department, the said concerns are genuine and the respondents are, thus, under legal obligation to return the said bid security amount/instrument to the petitioner but after adjustment of the outstanding amount against him. The

respondents are directed to conduct the auction afresh strictly in accordance with law at the earliest.

13. This petition having no merit is according dismissed in the above terms.

**ANNOUNCED.**  
**21.12.2022**

**Judge**

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**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**(JUDICIAL DEPARTMENT)**

**Cr.M/BCA No.287-P/2020**

Sardar Khan vs. Qazi Muneem alias Qazi Chaman and  
another

**J U D G M E N T.**

Date of hearing: **01.03.2021**

Petitioner (s): **By Mr. Waheed Durrani, Advocate.**

Respondent (s): **By M/s Muhammad Sohail Khan AAG &  
Wajid Ahmad, Advocate.**

**SYED ARSHAD ALI, J:-** For reasons to be recorded later, this petition is allowed, the impugned order dated 14.11.2019 of learned Additional Sessions Judge-XII Peshawar whereby accused respondent Qazi Muneem alias Qazi Chaman was granted bail in case FIR No. 1264 dated 30.07.2019 under Section 324/34 PPC registered at Police Pahari Pura is set aside/recalled and the accused-respondent, present in Court, be taken into custody and sent to judicial lock-up.

**ANNOUNCED.**

**Dated: 01.03.2021**

**Judge**

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