

In the Federal Constitutional Court of Pakistan
(Original/Appellate/Advisory Jurisdiction)

Present:

Justice Amin-ud-Din Khan, Chief Justice
Justice Ali Baqar Najafi
Justice Arshad Hussain Shah

C.P.L.A. No.515-P of 2022

(On appeal from judgment of Peshawar High Court, D.I. Khan
Bench dated 30.3.2022 passed in Writ Petition No.585-D of 2015)

Managing Director, Frontier Highway Authority and others

Petitioners

Versus

M/s Brothers Constructions & Builders (MCB) through its
Managing Partner

Respondent

For the Petitioners: Mr. Khalilullah Khalil ASC with
Mr. Abid Shafi Director (Law)

For the respondent: Mian Abdul Rauf, ASC

Date of hearing: 3.2.2026

Judgment

Arshad Hussain Shah, J: Succinctly facts of the case are that the petitioners advertised Notice Inviting Tenders (NIT) on 16.5.2011, inviting tenders from pre-qualified contractors for five packages on 26.5.2011. Respondent No.1 (hereinafter referred to as the “bidder”), challenged the term () i.e. “only one form shall be issued to a contractor” before the High Court through Writ Petition No.470 of 2011. During the pendency of the said Writ Petition, by way of interim relief, the bidder was allowed to participate in the

process of tenders through order dated 24.5.2011. The bidder submitted three applications but was supplied documents for one package only. The bidder became successful for Package-I for improvement and widening of D. I. Khan-Chashma Road Phase-I in Package-I (8 km) with estimated cost of Rs.138.65 million. His tender was 7% below the Composite Schedule of Rates (CSR) 2009, therefore, he deposited earnest money amounting to Rs.2.773 million @ 2% of the estimated cost. Meanwhile, petitioners demanded 8% additional security on the basis of engineer estimate of Rs.143.563 million, as, according to the petitioners, the bid of the bidder was 22.5% below the engineer estimate, which the bidder refused to deposited. Resultantly, the bid was rejected, earnest money was forfeited and the bidder was also debarred for participating in bids for a period of six months vide Notification dated 18.7.2011. Initially, the bidder challenged this Notification by way of filing C.M. in the pending Writ Petition, which was dismissed. C.P.L.A. against this order was dismissed by the Supreme Court being barred by time.

2. In the second round, the bidder challenged the Notification in the Writ Petition, judgement whereof has been assailed in the instant C.P.L.A., before the Peshawar High Court with the following prayer:-

“It, therefore, most respectfully prayed that by accepting the instant writ petition this honourable Court may kindly be pleased to declare the Notification dated 18.7.2011 illegal, unjust, void, arbitrary and without any lawful authority and jurisdiction having no effects on the rights of the petitioner with a further prayer that they are bound to return the amount Rs.2,773,000/- with the prevailing bank rate and

keeping in view devaluation of the currency as per US Dollars rate”.

3. The High Court allowed the writ petition mainly on the ground that the petitioners did not mention the engineer estimate in the NIT, therefore, the bidder could not be burdened with additional security @ 8% of the engineer estimate. Operative part from the judgment of the High Court is reproduced below:-

“In this view of the matter, this writ petition is admitted and allowed, and consequently, the impugned Notification dated 18.7.2011 to the extent of forfeiture of earnest money stands cancelled and respondents are directed to refund the 2% earnest money to petitioner, so received from him. However, as far the remaining part of impugned notification, debarring the petitioner to participate in the bids for a period of six months, is concerned, the same has already been expired and, therefore, petition to this extent has become infructuous.”.

4. We have heard the learned counsel for the petitioners as well as learned counsel for the bidder, who has appeared on caveat. Learned counsel for the petitioners submitted that the High Court has not appreciated the facts in their true prospective as the rates of the bidder were much less than 22.5% below on the engineer's estimate, therefore, according to Clause No.3 of the NIT the bidder was bound to deposit 8% additional security. When confronted, the learned counsel for the petitioners conceded that engineer estimate was not mentioned in the NIT. Learned counsel has failed to point out any illegality or perversity in the impugned judgment. Learned counsel for the bidder submitted that the bidder was illegally deprived of his right of contract despite having been declared successful and earnest money was forfeited arbitrarily.

5. We have gone through the record as well as the impugned judgment. Admittedly, engineer estimate was not mentioned in the NIT, therefore, the bidder was required to deposit earnest money @ 2% of the estimated cost of Rs.138.65 million and not 8% additional security as per engineer estimate. Hence the High Court has rightly allowed the writ petition and directed refund of earnest money to the bidder, therefore, impugned judgment warrants no interference by this Court. Leave is refused. Petition stands dismissed.

Chief Justice

Judge

Judge

Islamabad

3rd February, 2026

Approved for Reporting.

Riaz