



**Appeal No. PPRA/A&RP-30/2023**  
Government of Pakistan  
**Public Procurement Regulatory Authority**  
(Appeal & Review Petition Secretariat)  
1<sup>st</sup> Floor, FBC Building, G-5/2, Islamabad  
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**ORDER**

M/s Total Engineering (Pvt.) Limited

*...the "Petitioner"*

*Vs.*

Pakistan Petroleum Limited (PPL)

*...the "Respondent"*

<b><u>Date of Hearing</u></b> <b>27.02.2024</b>	Mr. Afnan Karim Kundi, Advocate Supreme Court, Mr. M. Mobeen Ashraf, Mr. Zafar Iqbal, Ms. Tahira Wajid, Mr. Anwaar Shah <p style="text-align: right;"><i>(On behalf of the Petitioner)</i></p> Barrister M. Aemal Khan, Misbah Ul Mustafa, Advocate, Mr. Ikram Ullah <p style="text-align: right;"><i>(On behalf of the Respondent)</i></p>
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The above mentioned learned counsel(s) and representative(s) of the parties tendered appearance before the Review Petition Committee (the Committee) at the date and time fixed for hearing.

2. At the outset of hearing, learned counsel of the petitioner i.e. M/s Total Engineering (Private) Limited ("TEL") submitted that they filed the instant Review Petition under Rule 19(3) of the Public Procurement Rules, 2004 ("the 2004 Rules") against the decision dated 09.11.2023 of the respondent i.e. Pakistan Petroleum Limited ("PPL" / the procuring agency) whereby the petitioner, along with its directors, employees, partners, associated company or affiliated company, have been blacklisted for a period of six (06) years for allegedly indulgence in fraudulent practices by submitting misleading

information / documents and, hence, debarred to participate in upcoming procurement process initiated by respondent.

3. The counsel of the petitioner also submitted that in the month of November 2022, the respondent floated a tender for the “Construction of Access Road & Well Site-MUSAL XI Dhok Sultan, Punjab” based on a ‘single stage, two envelope’ procurement procedure. The initial bid submission date of the tender was 09.12.2023. After purchasing the tender / bidding documents including Invitation to Bid (“ITB”), the petitioner noticed serious compliance issues of the said tender / bidding documents with regards to the guidelines issued by the Public Procurement Regulatory Authority and others concerned and raised the same with the respondent company and asked to revise the same accordingly and also to extend the bid submission date.

4. The counsel of the petitioner further submitted that the respondent extended the bid submission date of the tender till 28.12.2022. However, the petitioner received no response from the respondent side till the last date of bid submission. The petitioner / M/s TEL again requested for extension of bid submission deadline and further informed the respondent that due to petitioner’s funds being stuck with its clients due to closing of December quarter, it could not participate in the tender thereby seeking a one-week extension.

5. The counsel of the appellant argued that the respondent did not oblige and thereafter, the petitioner unwillingly submitted his bid on 28.12.2023 through the online *Tejari* portal out of protest without submitting the pay order of bid security in original which was a mandatory requirement imposed by the respondent for entertaining any bid as per sub-clause 2.5 of the section 2 “Bid / Quotation Submission” of the respondent's Instructions, Terms & Conditions for Services of the Tender.

6. The counsel of the appellant further argued that they wrote a letter dated 03.01.2023, as a matter of principle to ensure balanced contracts in future, the petitioner again raised its grievance before the respondent for its failure to standardize the bidding documents in line with letter and spirit of PPRA's procurement framework and meanwhile respondent cancelled the tender and refloated the same thereafter.

7. The counsel of the appellant further submitted that after some time, the petitioner vide their letter dated 06.02.2023 raised his grievance before the Authority, whereupon vide letter dated 02.03.2023, the Authority directed the respondent to form a Grievance Redressal Committee ("GRC") to address the petitioner's aforementioned grievance raised before the respondent. Resultantly, after further pursuing the matter with the respondent for constitution of GRC vide letter dated 09.03.2023, the petitioner was eventually given an opportunity of hearing before the GRC through an online meeting which took place on 22.03.2023. However, ever since, the GRC's decision on the petitioner's grievance is awaited till date.

8. The counsel of the petitioner added that upon receipt of PPRA's directives dated 02.03.2023 to address the petitioner's grievance through the GRC, the respondent suddenly issued a Show Cause Notice ("SCN") dated 07.03.2023 to the petitioner relating to an affidavit copy which was submitted online with their bid for the tender wherein the petitioner had stated that neither the petitioner as a company nor its directors have been blacklisted. The SCN enclosed printouts from PEC's website which contained outdated corporate information of the petitioner based whereon the SCN was issued. That on 13.03.2023, the petitioner submitted an interim reply and requested for extension of time to file a final detailed reply to the SCN. On 21.03.2023, a detailed reply was submitted by categorically denying the allegations levelled in the SCN.



9. The counsel of the petitioner further submitted that surprisingly, on 20.03.2023, the entire procurement process for the tender was cancelled by the respondent. After that, on 13.04.2023, an online hearing was held by the respondent on 11.04.2023, the petitioner provided further clarifications to their earlier detailed reply to the SCN emphasizing that M/s Allied Contractors (a sole proprietorship), Allied Contractors (Private) Limited and the petitioner i.e. Total Engineering (Private) Limited are three separate and distinct legal / juridical entities. Also, on the date of filing the affidavit, Mr. Azhar Iqbal was not a director of the petitioner's company since his three years term as Director stood expire in October, 2022. Subsequently, after the lapse of seven months, respondent eventually issued the impugned decision dated 09.11.2023 regarding blacklisting of the petitioner, hence, filed the instant Review Petition.

10. On the other hand, the learned counsel of the respondent i.e., Pakistan Petroleum Limited (PPL) presented their arguments at length and denied all the assertions made by the petitioner's side regarding blacklisting proceedings and raised preliminary submissions / objections regarding the instant review petition.

11. The counsel of the respondent submitted that the captioned petition is not maintainable for the reason that no new evidence has been placed before this Authority to seek relief. The Impugned Order dated 09.11.2023 was passed by the respondent in terms of provisions of Rule 19 of the Public Procurement Rules, 2004 ("Procurement Rules") in which the petitioner was given full opportunity to defend himself along-with the documentary record. The petitioner is repeating their submissions in the captioned petition and thus the review cannot be granted to the petitioner.

12. The counsel of the respondent also submitted that the submission made by the petitioner regarding false undertaking tantamount to fraudulent practice. The petitioner, when asked to show cause as to why they should not be blacklisted for such fraudulent



practice, attempted to mislead the respondent by submitting further documents which substantiated the allegation that the said undertaking was false. Hence, there appears no ground for reviewing the impugned decision.

13. The counsel of the respondent further submitted that the show cause notice was issued to the petitioner on 07.03.2023 to explain their position regarding the issue that one of the Director (Mr. Azhar Iqbal) of both companies i.e., M/s Allied Contractors and M/s Total engineering is same person. Notably, M/s Allied Contractors and its directors etc., have been blacklisted by respondent (PPL). This was the sole issue which pertains to the role and status of Mr. Azhar Iqbal (Director) in M/s Allied Contractors as well as in the petitioner's company. The petitioner submitted their three responses to the said show cause notice, vide its letters dated 13.03.2023, dated 21.03.2023 and dated 13.04.2023. It may be noted that all the above referred replies were vague in nature and the petitioner avoided to explain the role and status of Mr. Azhar Iqbal in clear terms. Only in paragraph No.3 of the last response dated 13.04.2023, the petitioner stated that "he has been working through delegated powers by the entities, even otherwise he does not fall under the order of blacklisting issued by Pakistan Petroleum Limited ("PPL") against M/s Allied Contractor, sole proprietor."

14. The counsel of the respondent argued that the petitioner has been blacklisted due to his misrepresentation and furnishing fake information through an undertaking along-with the bid that "the company (petitioner) or any of its Directors have not been blacklisted by the Government or any agency". The bid submission date was 28.12.2022. While scrutinizing, it was transpired that Mr. Azhar Iqbal is Chief Executive Officer of the petitioner who was also the Managing Director of M/s Allied Contractors. The said M/s Allied Contractors along-with its Directors were already declared blacklisted through an order dated 03.11.2022 for submitting counterfeit Bank Guarantee. This matter was

carefully examined by the respondent which came to the conclusion that Mr. Azhar Iqbal being Managing Director of M/s Allied Contractors was blacklisted and thus the undertaking submitted by the petitioner was a misrepresentation amounting to fraudulent practice within the meaning of the Public Procurement Rules, hence request for dismissal of the instant review petition.

15. After perusal of all available record and arguments made by both the parties, the Review Petition Committee (“the Committee”) is of the considered opinion that the respondent erroneously perceived that Mr. Azhar Iqbal was Director of the petitioner’s company at the time of filing of affidavit in the bidding process. The Committee also observed that the respondent was not justified to exercise the power of blacklisting upon the petitioner in an irresolute way. The Committee pointed out that the petitioner has a status of private limited company which means that the company having a separate legal entity and it can’t be blacklisted as unguided manner. Whereas, the respondent blacklisted the petitioner’s company along with its Directors, employees, partners, associated company or affiliated company which transpires that the respondent misemployed the power of blacklisting in terms of Rule 19 of the Public Procurement Rules, 2004.

16. The Committee further observed that Mr. Azhar Iqbal was the Managing Director of M/s Allied Contractors (a sole proprietorship), who had been blacklisted by the respondent. It is relevant to mention that as a Managing Director, Mr. Azhar Iqbal was an employee of the M/s Allied Contractors at the time of blacklisting of the said firm. In this scenario, the Committee is of the opinion that the effect of said blacklisting order / decision shall effect only to the extent of his sole proprietorship firm (M/s Allied Contractor). Their employee(s) shall not come within the ambit of the said debarment / blacklisting order of M/s Allied Contractor. Therefore, being the Director or CEO of M/s Total Engineering, the respondent (procuring agency) cannot declare Mr. Azhar Iqbal as blacklisted / debarred. So, the impugned decision dated

09.11.2023 regarding blacklisting of the petitioner is not in accordance with the Public Procurement Rules, 2004.

17. Hence, the instant review petition is **allowed** and the blacklisting order dated 09.11.2023 passed by the respondent i.e. Pakistan Petroleum Limited is hereby **set-aside**.

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

**(Dr. Asim J. Abro)**  
Director (M&E)  
(Member)

**(Maqbool Ahmad Gondal)**  
Managing Director (PPRA)  
(Head of the Committee)

**Dated:08.03.2024**

Note: A copy of this order is being forwarded to the Director General-IT (PPRA) for implementation of this order and to de-list the petitioner's company i.e., **M/s Total Engineering (Pvt.) Limited** from the list of active blacklisted / debarred firms on PPRA's website.

*Each page of the order has been signed by all members of the Review Petition Committee. The order comprises seven (07) pages.*