


Or.....07  
23.10.2021

Presence as before. The counsel for the plaintiff once again sought adjournment. Adjourned for last time with directions to argue the same on next date otherwise, the order will be announced on the available record.

File is to come up for arguments of plaintiff's counsel and order on 29.10.2021.

  
**(Rehmat Ullah Wazir)**  
Civil Judge-I,  
Orakzai at Baber Mela

Or.....08  
29.10.2021

Presence as before.

Through my this single order, I intend to decide the maintainability of the instant suit filed by plaintiff against the defendants.

Brief facts of the case are that the plaintiffs filed the instant suit for declaration-cum-perpetual and mandatory injunction and cancellation of tenders and issuance of the same once again to the effect that the defendant no. 01 published assessment and construction of new solar tube-well and solarization of existing tube-wells (AIP), (ADP No. 2459/195,196-2020-21 through E-Bidding. That the plaintiff submitted bids for the tender no. 02 & 03 on 04.08.2021, on 10% below rate but on 24.08.2021, the defendant no. 03 told the plaintiff that your company has been disqualified because you have not annexed system design with the bids despite the fact that the plaintiff had annexed system design with the bids but the same was removed by the concerned office, which is illegal, ineffective upon the rights of the plaintiff and liable to cancellation and directions be issued to the defendants not to give the contract to any other company till decision of the suit.

*Continued.....*

  
Rehmat Ullah Wazir  
Civil Judge/JM-I  
Orakzai at (Babar Mela)

Or.....08  
Continued  
29.10.2021

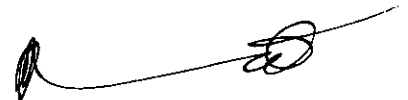
Arguments heard and record perused.

After hearing of arguments and perusal of the record, I am of the opinion that as per the sec. 35 of the KPK Public Procurement Regulatory Authority Act, 2012, there is a mechanism for the redressal of the grievances of a bidder, who shall file a complaint to the head of the procuring entity and then an appeal to the authority against the order of the entity and the decision of the authority shall be final. Further, as per sec. 35-C of the Ibid Act, the jurisdiction of the civil court has been specifically barred, which provides as "*no civil court shall have jurisdiction to entertain any proceedings, grant any injunction or make any order in relation to any matter, order and proceedings carried out by procuring entity and authority against anything done, Intended or purported to be done, in good faith, under this Act*". Further, it is a legal procedure where a special remedy is provided for under the law, it may not be bypassed and the civil courts should not be approached directly without exhausting the highest forum in the authority. Guidance in this respect is derived from *SCMR 2020, Page: 483*.

Thus, in the light of the aforesaid findings, the suit of the plaintiff is not maintainable being barred by law, therefore, the plaint of the plaintiff is rejected being not maintainable in the eyes of law with costs.

File be consigned to the record room after its necessary completion and compilation.

Announced  
29.10.2021



(Rehmat Ullah Wazir)  
Civil Judge-I,  
Orakzai at Baber Mela