

In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

Present

Mr. Justice Fatema Najib

and

Mr. Justice Sikder Mahmudur Razi

Writ Petition No. 6624 of 2024

In the matter of:

An application under Article 102 of the
Constitution of the People's Republic of
Bangladesh.

In the matter of:

Roots Developments Ltd.

-----Petitioner.

-Versus-

Chairperson, Review Panel No. 2 of
Bangladesh Public Procurement Authority
(BPPA) Implementation, Monitoring and
Evaluation Division (IMED), Ministry of
Planning Sher-E-Bangla Nagar, Dhaka-
1207 and Others

-----Respondents.

Mr. K. M. Rezaul Firoj, advocate with
Mr. A H M Kholilullah (Sajib), Advocate

-----For the petitioner.

Mr. Shyikh Mahdi with

Mr. Saifullah Hawlader with

Mr. Shariful Hasan, Advocates.

-----For the respondent no. 4

Mr. Mohammad Osman Chowdhury, D.AG
with

Mr. Akhtar Hossain Md. Abdul Wahab with

Mr. S. M. Emamul Musfiqu, A.A.G with

Ms. Tamanna Sultana, A.A.G with

Ms. Khandaker Asma Hamid, AAG with

Mr. Imrul Kayes Rana, AAG

-----For the Respondents-Government.

Heard on 23.04.025 and 28.05.2025

Judgment on: 13.08.2025

Sikder Mahmudur Razi, J.

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh *Rule Nisi* was issued in the instant matter in the following terms:

Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned judgment and order dated 15.05.2024 passed by the Respondent Nos. 1 and 2 (Review Panel No. 2 of BPPA) in Review Appeal No. 048 of 2024 as communicated through Memo no. 21.00.0000.393.27.082.24-649 dated 15.05.2024 allowing the same and thereby directing procuring entity to conduct re-tender under Tender Invitation Reference No. CS/Patua/Outsourcing/2023-24/578 dated 24.03.2024 (Annexure-F) should not be declared to have been passed without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

Facts leading to the instant writ petition are that;

On 24.03.2024, the Civil Surgeon, Patuakhali i.e. respondent no. 7 published Tender Invitation bearing Reference no. CS/Patua/Outsourcing/2023-24/578 inviting recognized suppliers for recruitment of manpower on outsourcing basis under Open

Tender Method (OTM) for Patuakhali Civil Surgeon Office, six Upazilla Health Complex, Patuakhali Sadar, TB Clinic, 20 Bed Hospital (Kuakata & Kathaltali)(Annexure B and B-1 to the writ petition). As per requirements, the tenderer has to be enlisted with the relevant trade organization and to have minimum experience as Prime Contractor in providing satisfactory service in completion of supplying minimum 56 (fifty six) persons or employee at least in one contract of similar nature in public sector. The petitioner having the required qualifications (Annexure C to C-7 to the writ petition) participated in the tender. Apart from the petitioner two other companies including respondent no. 4 participated in the tender. The tender opening date was 09.04.2024. The Tender Evaluation Committee headed by respondent no. 7 and 8 scrutinized the bids and found the petitioner as the sole responsive bidder while the other two namely Mugni Services and Ltd and respondent no. 4 i.e. Bithi & Green Services (Pvt) Ltd. as non-responsive. Accordingly, respondent no. 7 communicated their recommendation to the Director General of Health Services i.e. respondent no. 6 on 21.04.2024 for approval (Annexure- D to D-2 to the writ petition).

While the petitioner was waiting for Notification of Award they came to know that respondent no.7 is taking preparation for publishing re-tender notice. On query the petitioner came to know that respondent no.4 preferred a Review Appeal being no. 048 of 2024 before the Bangladesh Procuring Authority and the Review

Panel by their judgment and order dated 15.05.2024 cancelled the decision of the procuring entity and directed to conduct re-tender for the job in question (Annexure-F to the writ petition). Challenging the said decision of the Review Panel, the petitioner has filed the instant writ petition and obtained Rule in the manner as described earlier.

Mr. K. M. Rezaul Firoj, along with Mr. A H M Kholilullah (Sajib) learned advocates appearing on behalf of the petitioner drawing our attention to the statements of the writ petition and the annexures thereon submitted that this is not for the 1st time the respondent no. 4 created obstacles in lawful trade of the petitioner. Earlier in financial year 2022-2023 respondent no. 4 raised similar type of objection which gave rise to Review Appeal No. 041 of 2023 and failed.

He next submitted that the petitioner was not made party in review petition and resultantly no notice was served upon him and principle of natural justice has been violated in dealing with the matter in issue.

Mr. Firoj further submitted that the review panel itself was *coram non judice* since the formation of the panel was not in accordance with Rule 58(2)(Ga) of the Public Procurement Rules, 2008 and therefore, the decision so passed is without jurisdiction.

He next submitted that while the review panel was only authorized to make recommendation regarding any irregularity in tender process but the in the present case, the review panel exceeding their authority and mandate as given in Rule 60(3) of the Rules, 2008 cancelled the tender and directed the procuring entity to hold fresh tender.

Finally, the learned advocate for the petitioner drawing analogy from the fact that the decision of the tender evaluation committee was dated 17.04.2024 while the review appeal was filed on 24.04.2024 submitted that the respondent no. 4 did not exhaust the statutory provisions in accordance with Rule 57 of the Public Procurement Rules, 2008.

With these submissions, Mr. K. M. Rezaul Firoj prayed to make the Rule absolute.

Per contra, the learned advocate for the respondent no.4 submitted that since the tenure of one year has been expired therefore, the Rule has become infructuous.

Heard the learned advocates of the respective parties, perused the writ petition, supplementary affidavit and the annexures thereon.

Public Procurement Act, 2006 (hereinafter referred to as the Act, 2006) is the parent law in this regard which provides the substantive provisions while the Public Procurement Rules, 2008

(hereinafter referred to as the Rules, 2008) provides the detail procedures to effectuate the purpose of the Act. The complaint procedure including the formation of the review panel has been provided in sections 29 and 30 of the Act, 2006; in Rules 56, 57, 58, 59 and 60 of the Rules, 2008 and in Schedule-2 appended therewith. We have gone through the said provisions of law.

The chronological events involved in the instant matter are as follows:

Sl No.	Date	Event	Annexure
1	25.03.2024	Publication of Invitation for Tender	Annexure-B to the Writ Petition
2	08.04.2024	Tender Last Selling date	Do
3	09.04.2024 at 12.00 PM	Tender submission date and time	Do
4	09.04.2024 at 12.30 PM	Tender Opening date and time. 3 members Tender Opening Committee opened the tender and found 3 (three) bids.	Annexure- B and D to the Writ Petition
5	17.04.2024	6 members Tender Evaluation Committee held its meeting for evaluation of the tenders and	Annexure- D-1 to the Writ Petition

		unanimously found the petitioner i.e. Roots Development Ltd. as the sole responsive bidder	
6	21.04.2024	Respondent No. 7 forwarded the report to respondent no. 6 i.e. DG, Health for approval.	Annexure- D-2 to the Writ Petition
7	24.04.2024	Filing of Review Appeal No. 048/2024. The memo of appeal further evinced the following facts: (i) 1 st Complaint was made before the Procuring Entity on 08.04.2024; (ii) Complaint to the Head of Procuring Entity on 16.04.2024; (iii) Complaint to the Secretary of the concerned Ministry on 21.04.2024.	Annexure- G to the Supplementary Affidavit to the Writ Petition
8	15.05.2024	Review Appeal No. 048/2024 filed by respondent no. 4 was allowed.	Annexure- F to the Writ Petition

The objections that have been raised by the respondent no. 4 in the tender process in question can be found in the memo of appeal dated 24.04.2024 (Annexure- G to the supplementary affidavit of the writ petition). On meticulous examination of the same it appears that respondent no. 4 not only raised objection in respect of the tender in question which has been invited vide memo no. CS/Patua/Outsourcing/2023-24/578 dated 24.03.2024 but also in respect of tender that was invited vide memo no. সিএস/পটুয়া/দরপত্র-আহবান/২০২৩/৫৪৮ dated 02.04.2023. It is interesting to note that respondent no. 4 in similar way raised objections in respect of tender dated 02.04.2023 which was tested up to the review stage and the Review Panel by their Judgment and order dated 10.07.2023 (Annexure-E to the writ petition) rejected the review filed by the respondent no. 4. Therefore, by drawing reference and events of a past and closed transaction the respondent no. 4 made an attempt to perplex the authority which demonstrated their *malafidness*.

Here, in the instant matter the tender was opened on 09.04.2024 and before that date the respondent no. 4 set the complaint procedure into motion on 08.04.2024 while most of the alleged objections were related to events that could be revealed only on opening the tender and after the decision of the Tender Evaluation Committee dated 17.04.2024. Therefore, we find that,

in initiating the complaint procedure under Rule 57 of the Rules, 2008 there is gross procedural impropriety and incoherence.

However, the circumstance of this particular matter prompted us to examine the objections so raised and to find out the answers to those and those are as follows:

Objection-I: That 2 (two) tender documents had been accepted directly although those were not dropped/entered into the tender box.

Findings: However, the Procuring Entity's reply was that as per Rule 96(8) of the Rules, 2008 it is a permissible practice to receive tender documents directly when volume of the tender documents are huge and the same cannot be entered into the box or cabinet. The relevant provision runs as follows;

৯৬।(৮) দরপত্র দাখিলের জন্য তালা-চাবিযুক্ত বক্স বা ক্যাবিনেট ব্যবহার করা যাইবে বা দরপত্রের আকার বৃহৎ হইলে বা দরপত্রের খামের আকার বড় বা পুরু হওয়ার কারণে উহা সাধারণ-ভাবে কোন বাক্স বা ক্যাবিনেটে প্রবেশ করানো সম্ভব না হইলে উহা প্রয়োজনীয় কর্তৃক নিযুক্ত কোন কর্মকর্তা দ্বারা সরাসরি গ্রহণ করা যাইবে।

Objection-II: There was no mention of the code in the “Invitation for Tender” where to deposit the treasury challan.

Findings: However, we find that in the Tender Document dated 24.03.2024 in ITT 20.1(k) clause 7 under the heading “Tender

Preparation” in “Section 2: Tender Data Sheet” provides the relevant Code number. Moreover, admittedly the respondent no. 4 purchased the schedule by way of treasury challan in its correct code.

Objection-III: That the tender schedule was not sold in all the health complexes under Civil Surgeon, Patuakhali.

Findings: However, in the “Invitation for Tender” in clause 20, the tender document selling place was specifically mentioned and it is the discretion of the authority. Moreover, the Tender was published in one national Bangla Daily, one national English Daily and one local newspaper. There is nothing on record to show that the petitioner was prejudiced in any manner.

Objection- III: That the Procuring Entity did not call of any Pre Tender Meeting in the Invitation for Tender.

Findings: However, it is the discretion of the Procuring Entity and from section 44 of the Act, 2006 it appears that the calling of Pre-Tender Meeting is not mandatory rather in depends upon the discretion of the authority.

Objection- IV: That in ITT 24.1(j) past one year audited balance sheet was asked for without mentioning the financial year.

Findings: However, this clause was wrongly interpreted by the respondent no. 4 because “past one year’ means exactly one year

ago. Therefore, if the tender is invited for 2023-2024 financial year the audited balance sheet has to be for 2022-2023 financial year. There is no scope to raise any ambiguity in it. Moreover, the Procuring Entity's reply in this regard was that the Tender Document has been prepared as per "Standard Tender Document" applicable for the work in question.

Objection-IV: That 2 years audit reports, 2 years of experience in similar work in Health Sector with experience of supplying 40 persons, as prime contractor was not asked for as eligibility criteria.

Findings: However, this again is for the relevant authority to decide and set the eligibility/qualification criteria. Here, the qualification criteria have been mentioned in Section 2: Tender Data Sheet of the Tender Document. Moreover, the Procuring Entity's reply in this regard was that the Tender Document has been prepared as per "Standard Tender Document" applicable for the work in question.

Therefore, it is evident that, the objections that have been raised are without any foundation as well as without any legal basis. Nevertheless, the Review Panel allowed the review for the following reasons:

- (a) The Tender Evaluation Committee did not follow the sequence while evaluating the tender documents.

- (b) Though objection was raised as per section 29 of the Act, 2006 read with Rule 56 of the Rules, 2008 but the Procuring Entity did not give any reply.
- (c) There were some inconsistencies between the Invitation for Tender and The Tender Document.
- (d) Tender was accepted directly from the tenderer though those were not dropped/entered into the tender box.

We have already observed that the objections that have been raised lack any foundation. Moreover, going through the events of the instant case as well as the relevant provisions of law we have also found gross procedural impropriety and incoherence in the complaint procedure and those in our view cannot be considered as complaint as per Act, 2006 or Rules, 2008. More so, a decision otherwise correct cannot be questioned merely because of its way of expression and synchronization. Furthermore, the review panel failed to point out the inconsistency between the “Invitation for Tender” and the “Tender Document”. Finally, as per Rule 96(8) of the Rules, 2008 it is a permissible practice to receive tender documents directly when volume of the tender documents of the tenderer are huge and the same cannot be dropped/entered into the box or cabinet.

Therefore, the findings of the Review Panel are erroneous on the face of it. Most importantly, the review panel, to deal with the present issue, was consisted of 2 members, whereas, as per Rule

58(2)(Ga) of Rules, 2008 it has to be formed by minimum 3 members. Therefore, the panel itself was *coram non judice*. Furthermore, the review panel most erroneously cancelled the recommendation of the Tender Evaluation Committee and directed the procuring entity to arrange re-tender which is totally beyond the mandate of the provisions as provided in Rule 60(3) of the Public Procurement Rules, 2008, as because, the review panel is simply authorized to make recommendation regarding any irregularity in the tender process, it cannot straight way cancel the decisions of the procuring entity or cannot direct it to conduct re-tender.

Having regard to the facts and circumstances of the case and the observations made above, we are of the view that the instant Rule has got merit. Accordingly, the same is made absolute. The impugned decision of the Review Panel is hereby declared without lawful authority and is of no legal effect.

Communicate the judgment at once to the respondents.

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(Sikder Mahmudur Razi, J)
I agree

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(Fatema Najib, J)