

IN THE HONOURABLE SUPREME COURT OF REPUBLIC OF LIBERIA  
SITTING IN ITS OCTOBER TERM, A. D. 2016

BEFORE HIS HONOR: FRANCIS S. KORKPOR, SR.....CHIEF JUSTICE  
 BEFORE HIS HONOR: KABINEH M. JA'NEH.....ASSOCIATE JUSTICE  
 BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE  
 BEFORE HIS HONOR: PHILIP A. Z. BANKS, III.....ASSOCIATE JUSTICE  
 BEFORE HER HONOR: SIE-A-NYENE G. YUOH.....ASSOCIATE JUSTICE

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Western Steel and Allied Industries (Liberia), )  
 Inc., of the City of Monrovia, Republic of )  
 Liberia .....APPELLANT/PETITIONER )  
 ) APPEAL

VERSUS )

His Honour Peter N. Gbeneweleh, Judge, Sixth Judicial )  
 Circuit Court and the Public Procurement & Concession )  
 Commission (PPCC) and its Complaints, Appeals and )  
 Review Panel (CARP), by and thru the Executive Direct- )  
 or and other authorized officers, and its Chairman, re- )  
 spectively, and North Star Industries, Inc., represented )  
 by its authorized officials, all of the City of Monrovia, )  
 Liberia .....APPELLEES/RESPONDENTS )

GROWING OUT OF THE CASE: )

Western Steel and Allied Industries (Liberia), Inc. of )  
 the City of Monrovia, Republic of Liberia...PETITIONER) )  
 ) PETITION FOR  
 ) JUDICIAL  
 ) VERSUS )  
 ) REVIEW

The Public Procurement and Concession Commission )  
 (PPCC) and its Complaints, Appeals & Review Panel )  
 (CARP), by and thru the Executive Director and other )  
 authorized officers, and its Chairman, respectively, )  
 and North Star Industries, Inc., represented by its )  
 authorized officials, all of the City of Monrovia, )  
 Liberia.....RESPONDENTS )

GROWING OUT OF THE CASE: )

North Star Industries, Inc., represented by its )  
 authorized officials, of the City of Monrovia, )  
 Liberia.....COMPLAINANT )

VERSUS )

APPEAL:  
 IRREGULAR  
 SCORING

Nimba County Administration, by and thru )  
 Superintendent.....1<sup>ST</sup>RESPONDENT )

AND )

Western Steel and Allied Industries (Liberia), Inc. )  
.....2<sup>ND</sup> RESPONDENT )

Heard: November 16, 2016.

Decided: February 28, 2017

Counsellor Albert S. Sims of Sherman and Sherman, Inc. appeared for the appellants. Counsellors T. Negbalee Warner and Charles D. Karmo of Heritage and Partners, Inc. appeared for the appellees.

MR. JUSTICE BANKS delivered the Opinion of the Court.

This is the second time that this Court is called upon to resolve issues of dissatisfaction by the appellant, Western Steel and Allied industries (Liberia) Inc. The appellant alleged that the Public Procurement and Concession Commission (PPCC) and the Complaints, Appeals and Review Panel (CARP) had irregularly handled the matter of the bidding exercise placed before them as well as appellant's displeasure and disagreement with the award of bids made by the Nimba County Procurement Committee (NCPC) in connection with unused structures and scrap metals within the Arcelor Mittal Concession area in Nimba County. The first appeal was taken to this Court from the ruling of the Justice in Chambers. In that ruling, the Justice had denied the petition for the issuance of a writ of prohibition against the awarding of the bid contract to North Star Industries, Inc. The primary contention of the petitioner/appellant, Western Steel and Allied Industries (Liberia) Inc., was that it had been denied the right of due process of law by the CARP. The Justice in Chambers, although agreeing that the petitioner had made a case for due process, denied the writ because of the petitioner's failure to comply with the requirement of the law for the issuance of the writ and especially since the petitioner had already taken an appeal from an administrative ruling which he said the petitioner should pursue. The Supreme Court, whilst agreeing with the Justice in Chambers that challenge by the appellant to the appeal taken by the Co-appellee, North Star Industries, Inc. from the decision of the Bid Evaluation Panel (BEP) and the Nimba County Procurement Committee (NCPC) lacked legal merits, noted that the Justice had acknowledged that the petitioner was not accorded the opportunity of the due process of law in the hearing of the appeal before

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CARP, and therefore decided that in the interest of justice and fair play the petition for the writ of prohibition should be granted and the petitioner accorded the opportunity of a hearing into the appeal taken from the decision of the PPCC. It was from that new hearing by CARP, directed by this Court, that the petitioner believed to be in error and from whence it appealed to the Circuit Court, Sixth Judicial Circuit, Montserrado County, for judicial review. That judge presiding by assignment over that court, after a hearing of the petition for judicial review, believing that the due process of law directed by the Supreme Court had been accorded to the petitioner and that CARP had not erred in its decision that as the scoring patterns adopted by BEP and NCPC were irregular a new examination should be held, ruled sustaining the ruling made by CARP. Hence, he denied the petitioner's petition. The appellant/petitioner, not being satisfied with the ruling of the trial judge, excepted thereto and announced an appeal to this Court. Hence, for the second time, we are called upon to resolve the core issue of due process to be accorded to Western Steel, as directed by the Supreme Court. This exercise will include examination of matters surrounding the award of the bid contract by PPCC to North Star Industries, Inc. This time, however, rather than dwelling on procedural issues, as we did in the previous appeal, we are called upon and shall accordingly concentrate on the substance of the appeal, which is to delve into bidding process conducted by the public institutions, co-appellees herein, determine whether in fact the bid was legally awarded to co-appellee North Star Industries, Inc. and ascertain therefrom if the trial judge was in error in affirming the ruling made by CARP. In order to make that determination, we believe it important that we capture, firstly, the ruling made by the trial judge and, secondly, the allegations set forth in the bill of exceptions filed by the appellant. Indeed, a recital of the two instruments obviates the need to recite the documents filed before the administrative bodies since the judge's ruling recites and incorporates into the ruling the most critical of the documents filed with the administrative bodies and embodies the basic contentions of the parties made before those bodies. Here is what the trial judge set out as the basis for his agreement with the CARP:

COURT'S RULING

The brief history of this case before this court for judicial review is as follows:

The petitioner herein, Western Steel and Allied Industries Liberia, Inc. and the North Star Industry Inc. participated in a bid, predicated upon an invitation to bid, dated November 18, 2013, which said invitation was posted by Nimba County in the Monday, November 18, 2013 edition of the Daily Observer Newspaper. Nimba County, in said invitation to bid, solicited bid for the purchase, removal, and disposal of all unused structures and scrap metals, located in Nimba County. Both the petitioner and Co-defendant North Star participated in said bid, and both of them presented their bid to Nimba County procurement committee. Both the petitioner and Co-respondent North Star Industries Inc. attended the opening of the bid on December 31, 2013 in the conference room of the Nimba County administration building in Saniquellie. The bid evaluation panel of Nimba County evaluated the bids of both the petitioner and Co-respondent North Star and notified the petitioner on February 12, 2014 declaring the petitioner as the most responsive bid and therefore declared the petitioner as the winner of the process. The records before this court show that Co-respondent North Star Industries Inc. wrote a letter dated February, 20, 2014 to the Superintendent of Nimba County and chairman of the Nimba County Procurement Committee, protesting to the bid evaluation panel which declared its bid as not responsive. Co-respondent North Star alleged in its protest letter that it had reliable information that the report emanating from the evaluation panel to the procurement committee was not signed by its chairman and a second person due to irregular scoring patterns. Copy of this February 20, 2014 protest letter was sent to the Executive Director of the Public Procurement and Concession Commission and the complaints, appeals, and review panel. The records also show that co-respondent North Star also wrote a protest letter on the 20th of February 2014 to the Public Procurement and Concession Commission protesting that the Nimba Procurement Committee's decision denouncing its bid as not responsive. Paragraph two of that letter alleged that co-respondent North Star reliably learned that the report from the bid evaluation panel which was submitted to Nimba Procurement Committee on February 4, 2014 was not signed by the chairman of the panel and that another panelist did not sign said report due to scoring patterns by the other three panelists, that was grossly inconsistent with fact and observations clearly stated in the panel chairman's due diligence findings.

Notwithstanding co-respondent North Star protest letter of February 20, 2014 to the Nimba County Procurement Committee, on the 21st day of February 2014, the petitioner was invited as winner of the bid for discussion and negotiation leading to signing of the contract. On the 20th day of March 2014 co-respondent North Star wrote the Executive Director of the Public Procurement and Concession Commission complaining the Nimba County Procurement Committee for its failure to investigate the protest letter of co-respondent North Star dated February 20, 2014. On the 30th day of April 2014 the Chairman of the complaints, appeal and review panel, Cllr. Beyan

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D. Howard wrote the County Superintendent and the chairman of the Nimba County Procurement Committee informing the Nimba County Procurement Committee of the protest letter of co-respondent North Star relative to the scoring patterns and requested the Nimba County Procurement Committee to furnish CARP with all relevant documents relating to the subject matter on or before May 7, 2014. The Nimba County Procurement Committee furnished CARP with the relevant documents by communication dated May 5, 2014 which provided the requested information. On the 13th day of May 2014 the Chairman of CARP acknowledged receipt of the Nimba County Procurement Committee letter dated May 5, 2014, and observed therein that the complaint of Co-respondent North Star dated February 20, 2014 was not investigated by the Nimba County Procurement Committee due to the county leadership which was in transition which unable the county procurement committee to investigate the complaint. CARP then gave the Nimba County Procurement Committee fourteen days to conduct an investigation that the outcome of the said investigation being communicated to North Star and copy thereof be submitted to CARP through the Chief Executive Officer of the Public Procurement and Concession Commission. CARP also halted the Nimba County Procurement Committee to hold on to all processes leading to the award of the contract pending the conclusion of said investigation. The Nimba County Procurement Committee conducted its investigation and informed Co-respondent North Star in a letter dated May 29, 2014 of its decision to confirm the petitioner as winner of the bid.

The records further show that co-respondent North Star communicated with the PPCC in a letter dated June 4, 2014, reminding the PPCC of its earlier letter sent relative to its protest to the decision of its bid which was declared non-responsive, and appealed to the PPCC to investigate the merit of its complaint. PPCC sent this letter to its complaints, appeals and review panel (CARP) to conduct an investigation into this matter. CARP then conducted its investigation and invalidated the decision of the bid evaluation panel against the North Star, and ordered that a new bid panel be constituted to conduct another evaluation of the two bids at new. A new evaluation panel was then established consistent with CARP's decision and mandate which declared North Star most responsive and winner of the bid and the petitioner as non-responsive by a letter dated July 30, 2014. The petitioner expressed concern by a letter dated August 14, 2014 at the decision of the committee reversing its previous decision declaring petitioner as winner of the bid. The Nimba County Procurement Committee informed the petitioner that it reevaluated the bids based upon the decision and mandate of CARP. Petitioner then flew to the Chambers Justice of the Supreme Court of Liberia and an alternative writ of prohibition was issued, heard and granted, which ruling of the Chambers Justice was confirmed by full bench of the Supreme Court. The Supreme Court adjudged as follows:

*"That the appellant/petitioner, Western Steel and Allied Industries Liberia, Inc. was denied the right to due process of law when the appellees/respondents, without issuing notice and service thereof on Western Steel and Allied Industries Liberia Inc. as party of real interest, conducted a hearing and thereupon set aside the status of appellant/petitioner as "most*

responsive" and therefore not winner of the competitive public bidding for the purchase, removal and disposal of old, unused structures and scrap metals within the Arcelor Mittal Concession area, in Yekepa, Nimba County, Republic of Liberia.

That under the compelling circumstances of this case, appellant/petitioner's petition for a writ of prohibition will lie.

Accordingly, first, second, third and fourth appellees/respondents are returned to status quo; that is, as at the time appellant/petitioner, Western Steel and Allied Industries Liberia, Inc. was declared winner of the bid for the second time, and therefrom, conduct a hearing into the complaint lodged by North Star Industries, Inc., co-appellee/third respondent."

Pursuant to the mandate of the Supreme Court, CARP resumed jurisdiction over this matter and investigated same as mandated by the Supreme Court of Liberia. On the 23rd day of October 2015 CARP ruled in this matter and we here under quote a portion of this ruling for the benefit of our ruling:

#### OPINIONS/FINDINGS

Wherefore and in view of the foregoing facts and laws, it is the opinion of the Independent Complaints, Appeals and review Panel of the Public procurement and Concession Commission of the Republic of Liberia and that the Bid Evaluation Panel of Nimba County was in violation of the PPCC Act of 2000, when she awarded irregular scores to the bidders irrespective of meeting the criteria alike which led to the refusal of the Chairman of the Bid Evaluation panel to sign the report of the Panel. The CARP believes that the bone of contention is not in the presentation of Bids, but in the way scores were allotted/awarded. As such, if different eyes and minds took a fresh look at the scores, different result would be obtained.

#### RULING

Accordingly, the Complaints, Appeals and Review Panel (CARP) nullifies the decision of the Bid Evaluation Panel against the North Star Industries, Inc. The Nimba County Administration is hereby ordered to constitute a new Bid Evaluation Panel to conduct evaluation of all bids de novo and present a report to the Parties not later than fifteen (15) days as of the receipt of this Ruling. And it is hereby so ordered."

It is from this ruling of the CARP that the petitioner excepted to, announced an appeal and filed a petition for judicial review before this Honourable Court on the 3rd day of December 2015 which was amended on the 11th day of December 2015. Counts ten (10), eleven (11) and twelve (12) of the petitioner's petition are relevant and hereunder quoted for the benefit of our ruling:

"10. Petitioner says that the Ruling of the Co-respondent CARP is erroneous because the panel failed to consider the matter before it. Petitioner submits that the PPCC having mandated the Nimba County Procurement Committee to conduct an investigation into the complaint of North Star, and the County having conducted said investigation and submitted its findings in its report of May 29, 2014, what should have been considered by CARP as an appeal from the County's Report, and the issue of whether or not the Report was consistent with law. Section 126 of the PPCC Acts lays out the procedures for an appeal to be heard by CARP. Subsection (2) provides inter alia, first the request for appeals must (emphasis ours) be filed with the Executive Director for the commission for the attention of the Complaints, Appeals and Review panel. Further, that a Complainant requesting an appeal must (emphasis ours) deliver a copy of the request for appeal to the relevant

entity at substantially the same time as filing with the Complaints, Appeals and Review Panel. Sub-section Five (5) further provides inter alia that appeal shall (emphasis ours) state the facts and laws relied upon to establish that the initial decision of the Procuring or concession Entity was erroneous. Petitioner submits that the June 4, 2014 letter from Co-respondent, North Star cannot and should not be considered as a request for appeal as same did not meet the requirements of the Act; (i) same was neither attention to the Complaints, Appeals and Review panel nor delivered to the County as required; and (ii) the letter does not state the facts or law relied upon. Petitioner submits that the co-respondent North Star having failed to meet the requirements of the PPCC Act for the perfection and hearing of an appeal, the CARP should have denied and dismissed such appeal as prayed for by petitioner. Instead, CARP proceeded to rule on the report of the bid evaluation panel; which had already been investigated by the County's Procurement Committee, and did not consider the County's report. And for this reason, judicial review will lie to correct this erroneous error. And this petitioner so prays.

11 Petitioner says further that the issue of the scoring pattern as contended in Co-respondent North Star's protest letter of February 20, 2014, was investigated by the Nimba County Procurement Committee as mandated by CARP. In its investigation into North Star's Complaint, and in deciding whether or not the scoring patterns adversely affected the bid of Co-respondent North Star, the Nimba County Procurement Committee adopted a scenario where both bidders were assigned the maximum point of five for each item, except the quoted offered price for the scrap metals. The Committee determined that because Western Steel's offered price being higher than North Star's, Western Steel's bid was indeed more responsive; Your Honor is requested to take judicial notice of the May 29, 2014 report of the Nimba County Procurement, which is a part of Petitioner's Exhibit P/3.

12. That the Procurement Committee having settled the issue of the scoring pattern, it was erroneous for the Complaints, Appeals & Review Panel to again send the matter back to the same Committee for a re-evaluation. Petitioner submits that nothing is going to change since it is the bid proposals which were submitted by the both petitioner and Co-respondent North Star in December 2013. It is worth mentioning that the bid is a commercial bid for the Nimba County's sale of its scrap metal so, obviously, the bidder who offers the highest price for the purchase of the scrap should be the winner, especially when both bidders are equal on all other required aspects of the bid. Petitioner submits that there need be no further evaluation for the bid and the Co-respondent North Star having failed to appeal from the decision of the Nimba County Procurement Committee, CARP should have entered a Ruling confirming the ruling of the Procurement Committee and further confirm petitioner as the winner of the bid. For CARP to do otherwise, was erroneous and prejudicial and for which reason, Judicial Review will lie. And this petitioner so prays."

The Respondent North Star Industries Inc. filed returns on the 18th day of December 2015. We hereunder quote counts one, two, three, four, twenty-three, twenty-four and twenty-six for the benefit of our ruling.

"1. That as to the entire petition, co-respondent says that same is a fit subject for dismissal because this court is without jurisdiction to review a matter or point decided by the Supreme Court, which is what the petition

seeks since the question of whether Co-respondent North Star filed a valid complaint alleging violation of the PPCC Act was heard and decided by both the then Chambers Justice Philip A. Z. Banks and also the full Bench. Your Honor is respectfully requested to take judicial notice of the opinion' of the Honorable Supreme Court in the Case *Western Steel and Allied Industries Liberia v. Nimba County et al.*, Petition for Writ of Prohibition, which was decided during the March 2015 Term of the Court, and in which the Court agreed with the following ruling of His Honor, Mr. Justice Banks:

*A reading of the Complaint letter shows that it did indeed satisfy the requirements of Section 125 (3) (c) of the PPCC Act. The letter needed to firstly state with acceptable clarity the circumstances upon which the third respondent sought to establish the existence of a violation of the Act. In the second paragraph, the third respondent clearly describes the allegation of wrongdoing. It explains the improprieties that occurred during the bid evaluation stage, and specifically the inconsistent scoring patterns by three panelists, which it considered so appalling that the remaining two panelists, including the Panel chairman, refused to sign the Nimba County Bid Evaluation Report. This depiction of the events is not a mere general allegation of wrong doing; it is very specific with regard to the number of panelists involved in the alleged misconduct and the reaction of the other panelist. Moreover, and also in accordance with the requirement of the subsection mentioned above, the complaint further refers to the provision of the Act that was generally violated*

2. Further to Count One (1) of this Returns, 3rd respondent says that not only did the Full Bench agree with Chambers Justice Banks that North Star's February 20, 2014 letter to the Nimba County Superintendent was a valid complaint, the Supreme Court also agreed that the failure of Nimba County to have acted on the complaint within statutory time entitled 3rd Respondent to appeal to Co-respondent CARP as the said 3rd respondent did, by way of its subsequent letter dated March 20, 2015, and that the subsequent appeal taken by 3rd respondent to CARP therefore granted CARP jurisdiction over the matter and the parties, with the only defect in process being that CARP did not give petitioner due process. Of course, CARP could not have had jurisdiction over the parties and therefore obliged to accord petitioner due process unless Co-respondent North Stars had first filed a valid complaint thereafter appealed to CARP.

3. Still further to counts one (1) and two (2) of this Returns, Co-respondent North Stars says that based on the Supreme Court's findings that CARP had jurisdiction, it mandated the said CARP to proceed with the matter but in keeping with the opinion of the Supreme Court's mandate and that due process is accorded to all parties.

4. Assuming without admitting that Co-respondent North Star had not filed a valid complaint and therefore no appeal had been made to CARP, such argument and contention is inapplicable and waived because the Petitioner never raised same when it complied with the mandate of the Supreme Court to appear before CARP and indeed appeared before CARP without objection to its jurisdiction when the CARP did hear the complaint/appeal of Co-Respondent North Star and made the decision that is the subject of this petition. Co-Respondent North Star request Your Honor to kindly take judicial notice of the records in these proceedings at the PPCC.

23. That as to count nine (9) (actually count 7) of the petition, Co-

respondent says that while the facts narrated do not present any traversable issues, co-respondent says that the expressed admission of the petitioner that "CARP resumed jurisdiction over the matter and proceeded to hear the appeal Co-respondent North Star is a categorical admission by petitioner that CARP had jurisdiction and that co-respondent had indeed filed an appeal after its initial complaint. Co-respondent further says that where the jurisdiction of CARP is not contested, a petition for judicial review will lie only if the ruling of CARP was clear arbitrary or without any basis in law or facts, which is not the situation in this case. It is obvious that a petition for judicial review cannot question jurisdiction duly acknowledged, conceded to and never challenged by the petitioner up to the end of the administrative hearing in question.

24. That as to count ten (10) (actually count 8) of the petition, Co-respondent submits that the averments are false and legally baseless, and should therefore be denied and dismissed. Co-respondent North Star says that in keeping with PPCC Act, initial complaints are cognizable before the procuring entity, and not before CARP, but where the initial complaint is not heard by the procuring entity, the complaining party has statutory right to file or move its complaint to the PPCC. It is for this reasons that the PPCC does not only have a panel to hear appeals, but have a "Complaint, Appeals and Review Panel (CARP), which hears (i) complaints; (ii) appeals, and (iii) reviews. In any case, the petitioner is guilty of inconsistent pleading in that it concedes that CARP had jurisdiction, but contends that co-respondent never filed a complaint. If Co-respondent North Star never filed any complaint, under what provision of the PPCC Act did CARP acquire the jurisdiction it had and/or "resumed", as expressly acknowledged by the petitioner?

26 Further to count twenty-five (25) above, co-respondent says that the provisions of Section 126 of the PPCC Act are clear. Section 126 subsection (2) and (5) of PPCC Act states as follows:

126. Further Review by the Complaints, Appeals and Review Panel.

*"(2) A complainant may (1) request the Complaints, Appeals and Review Panel decide the complaint if the relevant entity does not issue a decision within fifteen (15) days of the complaint being filed for (ii) file with the Complaints, Appeals and Review Panel an appeal of a decision of the relevant entity. All requests for decision and appeals to the Complaints, Appeal and Review Panel under this section 126, and all other fillings or submissions relating thereto, must be filed with the Executive Director of the Commission for the attention of the Complaint. Appeals and Review during regular office hours of the Commission. In the case of a request for a decision by the Complaints, Appeals and Review Panel upon the failure of the relevant entity to respond by the due date for resolution of the complaint, the request must be filed on a business day within ten (10) days after such due date. In the case of an appeal; from an adverse decision by the relevant entity, the appeal must be filed on a business day within ten (10) days after the date of the decision of the relevant Entity. A complainant requesting a decision on a complaint or filing an appeal under this section must deliver a copy of the request for appeal to the relevant Entity at the location specified in subsection (2) of Section 125 of this Act at substantially the same time as filling with the Complaints, Appeals and Review Panel.*

(5) The complaint forwarded to the Complaints, appeals and Review Panel

with a request for decision may not raise new claims or evidence not presented in the complaint filed under Section 125. Appeals shall state the facts and law relied upon to establish that the initial decision of the procuring or concessions entity was erroneous and may not raise new claims or issues that were not within the scope of the initial complaint or the decision being appealed.

Co-respondent submits that the unequivocal provision of section 126 of the PPCC Act defeats petitioner's argument. Co-respondent contends that it complied with the dictates of the referenced subsections (2) and (5) of Section 126. Co-respondent says that it filed its complaint with the Complaints, Appeals and Review Panel, by and through the Executive Director on March 20 when the procuring entity, Nimba County, failed to issue a decision to its complaint filed with that body on February 20, 2015 within fifteen (15) days as required by Section 126 (2i) of the PPCC Act. Co-respondent submits that by filing its complaint with the PPCC in keeping with Section 126 (2i), only the PPCC, by and through CARP, could then hear and determine the complaint and not the procuring entity, since the procuring entity had lost its jurisdiction by operation of Section 126 (2i)."

The pleadings and arguments before this court present the following issues which are dispositive of this case:

1. Whether or not the Supreme Court of Liberia decided the jurisdiction of the CARP over Co-respondent North Star's complaint?
2. Whether or not the CARP proceeded wrongly in hearing the complaint subject of this petition for Judicial review and therefore the ruling is reversible?

We address the issues in the order presented.

As to issue number one, which is Whether or not the Supreme Court of Liberia decided the jurisdiction of the CARP over Co-respondent North Star's complaint, we answer in the affirmative. In its ruling in the case: *Western Steel and Allied Industries Liberia, Inc. versus The Public Procurement & Concession Commission, et al.*, decided August 13, 2015, the Supreme Court en bane upheld the ruling of the Chambers Justice regarding the legality of North Star's Complaint before the CARP and CARP's jurisdiction over the complaint as follows:

*In his Ruling dealing with this issue, and with which position of Mr. Justice Banks we are in full agreement, he stated thus:*

*"A reading of the complaint letter shows that it did indeed satisfy the requirements of Section 125 (3) (c) of the PPCC Act. The letter needed to firstly state with acceptable clarity the circumstances upon which the third respondent sought to establish the existence of a violation of the Act In the second paragraph, the third respondent clearly describes the allegation of wrongdoing. It explains the improprieties that occurred during the bid evaluation stage, and specifically the inconsistent scoring patterns by three panelists, which it considered so appalling that the remaining two panelists, including the panel chairman, refused to sign the Nimba County Bid Evaluation Report. This depiction of the events is not a mere general allegation of wrongdoing;... By alleging that the scoring pattern was erratic and showed inconsistencies in the criteria across bidders, the clear implication was that the Bid Evaluation Panel did not fulfill its statutory obligation under Section 30 (c), to evaluate all of the bids "in accordance with the pre-determined and published evaluation criteria as outlined to bidders"."*

Further, in the concluding part of the opinion, the Supreme was very

categorical in remanding the case to the CARP. It stated: "Therefore, we have here amended the Ruling of our Esteemed Colleague... by granting the peremptory writ of prohibition. Consequently, First, Second, Third and Fourth appellees/respondents are hereby returned to status quo. By this we mean that the appellant/petitioner is reinstated to the status of winner of the public bidding for the purchase, removal and disposal of old, unused structures and scrap metals within the Arcelor Mittal concession area in Nimba County, Republic of Liberia. Following the reinstatement of the appellant/petitioner, Western Steel and Allied Industries Liberia Inc., a hearing shall be conducted consistent with law of the land into the complaint lodged by Co-appellee/third respondent North Star."

In the mind of this Court, the clear and unambiguous ruling of the Supreme Court, firstly upheld the complaint of North Star as being properly lodged before the CARP and ordering the parties to return to status quo at the point Western Steel was declared winner of the bid. We observe Petitioner's argument that the complaint that CARP should have then considered was North Star's letter of June 4, 2014. This Court, however, is not persuaded by this argument for reason because the complaint before CARP which the parties were ordered to return, was North Star's complaint to CARP ordered investigated by the Supreme Court of Liberia. The Petitioner appeared before CARP and participated in the hearing of the North Star's Complaint without any objection. This Court is subordinate to the Supreme Court of Liberia and cannot under the law pass on any issue of law or fact decided by the said court. The Supreme Court having made the determination of the jurisdiction of CARP and the legality of North Star's complaint, the Petitioner are barred under the principle of issue preclusion, which has been espoused by our Honorable Supreme Court in the case: NPA v. Retirees of NPA, 38 LLR (1998) as follows:

*"The term "issue preclusion" means that when a particular issue has already been litigated, further litigation of the same issue is barred. As it relates to civil actions, it means that any fact, question or matter in issue and directly adjudicated or necessarily involved in determination of an action before a court of competent jurisdiction in which judgment is rendered on the merits, is conclusively settled by the judgment therein and cannot be re-litigated in any future action between the parties or privies, either in the same court or in a court of concurrent jurisdiction."*

Regarding issue number two, which is whether or not the CARP proceeded wrongly in hearing the complaint subject of this petition for judicial review and therefore the ruling is reversible, this answers in the negative.

Under our statute and laws controlling, "An administrative agency's findings as to the facts which are supported by substantial evidence are binding and conclusive, and may not be disturbed or set aside by a court, in the absence of fraud or bias." Johnson v. LAMCO J. V. Operating Co., 31 LLR 735 (1984). The Supreme Court further held in this case that "A reviewing court of administrative determination will not disturb the finding of facts by the agency because the finding and determination of questions of fact are conclusively within the province of the administrative agency and therefore such finding is final and binding except under certain situations."

In the instant case, we see no distortion of the factual circumstances or wrong application of the laws by the CARP to want a reversal of its decision as prayed for by Respondent. The CARP, pursuant to the power vested in it by Section 127 (4) of the Public Procurement and Concessions Act (as amended and Restated 2010), as follows:

"If a decision of a designated complaint and appeal panel of the Complaints,

Appeals and Review Panel upholds the complainant's contention that a violation of the Act or its regulations has occurred, the complaint and appeal panel may direct such of the following remedies as it deems to be appropriate in accordance with such decision:

*"(b) Where necessary to provide relief from the effect of the violation, require the relevant Entity, Concession Bid Evaluation Panel...to follow the required procedures;*

*"(c) If deemed necessary to ensure compliance with the Act, require that the procurement or Concession proceedings be cancelled (the decision on whether and when to restart the procurement or Concession proceedings being the responsibility of the relevant Procuring or Concession Entity)"*

A review of the records, which are admitted by the parties, shows that upon assuming jurisdiction as mandated by the Supreme Court, the parties submitted their respective legal memorandum with the CARP and subsequently argued their side of the matter; whereupon CARP made its ruling; upheld the complaint of North Star, declared the Bid Evaluation Panel's report and selection of petitioner as the winner of the bid as illegal, irregular and a violation of the PPCC and order Nimba County to set up a new Bid Evaluation Panel to re-evaluate the bid. It is from this ruling that the petitioner seeks judicial review.

Although the pleadings and records of the hearing at the PPCC show that the Petitioner participated in every stage of the proceeding, and thereby subjected itself to the jurisdiction of the PPCC and argued North Star's petition, it argued before this court that PPCC heard the wrong appeal. Petitioners are estopped under the principle of judicial estopped from contradicting its earlier position, for *"under the doctrine of judicial estopped, a party is bound by his judicial declarations and may not contradict them in a subsequent proceeding involving the same issues and parties. Thus a party who, by his pleadings, statements or contentions under oath, has assumed a particular position in a judicial proceeding, is estopped from assuming an inconsistent position in a subsequent action."* *NPA v. Retirees of NPA*, 38 LLR (1998). Hence, respondent cannot now disavow its submission to the hearing at CARP of North Star's March 20, 2014 complaint.

A review of the records fully support CARP's decision to nullify the declaration of Petitioner as the winner, because there are glaring instances of irregular, unfair and illegal scoring of the two bids. We note that Nimba County requested some specific information documents in the publication for the bid, as follows:

- i. Transmittal letter;
- ii. Valid Scrap Dealership License;
- iii. Evidence of Experience in handling this product or similar ones;
- iv. Price offered;
- v. Financial Capability/Bank Statement and proof of requisite financial resources to undertake dismantling, weighing, shipment and payment for said scrap;
- vi. Proof of managerial and technical competencies;
- vii. Proof of previous successful involvement with scrap activities for the last five (5) years;
- viii. Name of business and address;
- ix. Contact person and phone number of said person;
- x. company's profile including brief history and past performance record with at least three references;
- xi. Company's articles of incorporation (including notary certificate);
- xii. Valid 2013 Business Registration Certificate;
- xiii. Current Tax Clearance;
- xiv. Available and Visible office in Monrovia; and

xv. Valid Performance Bond issued through a reputable bank at 10% of the value of the bid.

Bid evaluation panels are required by law, specifically Section 32 of the PPCC Act, to abide by the qualification requirements published by them for bids. Section 32 of the PPCC Act provides in pertinent part as follows:

"(1) In order to participate in procurement proceedings, a bidder must qualify by meeting the criteria set by the procuring entity, which may include:

- (a) Professional and technical qualifications;
- (b) Equipment availability, where applicable;
- (c) Past performance;
- (d) After sales service, where applicable;
- (e) Spare parts availability;
- (f) Legal capacity;
- (g) Financial resources and condition;
- (h) Verification by the internal revenue authority of payment of taxes and social security contributions when due

(2) The qualification criteria set under subsection (1) shall be applied by examining, through investigation... to ascertain whether or not the bidder meets the minimum qualification criteria for the bid and not by using a point system for comparing the relative level of qualifications of participating bidders."

Hence, Nimba County BEP was obliged to score the bidders based on the compliance of each of them to the pre-determined criteria. However, although the BEP stated that their award was based on the tallied scores and the BEP Due Diligence Report developed by the entire Panel based on documentary review and field inspections and which supposedly informed the scoring, it is obvious that the outcome of the evaluation that produced petitioner as the winner disregarded the published pre-determined criteria and the due diligence. For instance, some members of the panel gave Western Steel maximum points of five, and zero point for North Star, although the BEP findings clearly concluded that North Star Industry Inc. has evidence of handling this product and similar ones owing to its eight (8) . years' record in the business. Western Steel and Allied Industries Liberia Inc. is a new establishment that has no evidence of handling this product. Additionally, Western Steel was given score for Performance Bond although they never produced one; and should ultimately have been disqualified.

WHEREFORE AND IN VIEW OF THE FOREGOING, the petition for judicial review is hereby denied and dismissed and the ruling of the CARP ordering Nimba County to empanel new BEP to re-evaluate the bid is hereby sustained. CARP is accordingly ordered to enforce its ruling. Costs are ruled against petitioner. IT IS HEREBY SO ORDERED.

GIVEN UNDER MY HANDS AND SEAL OF COURT THIS  
7<sup>th</sup> DAY OF MARCH A.D. 2016.

PETER W. GBENEWELEH  
ASSIGNED CIRCUIT JUDGE, SIXTH JUDICIAL CIRCUIT,  
CIVIL LAW COURT."

It is from the ruling quoted above that the petitioner/appellant took exceptions to and announced an appeal to this Honourable Court. As required by law, and within the time stipulated by the appeals statute, the

appellant filed its bill of exceptions. We quote herewith the seven-count bill of exceptions, as follows, to wit:

BILL OF EXCEPTIONS

AND NOW COMES PETITIONER/APPELLANT, having excepted to Your Honor's Final Ruling, and announced an appeal therefrom, now presents this Bill of Exceptions for the following legal and factual reasons to wit:

1. That Your Honor committed a reversible error when Your Honor determined that amongst the issues raised in appellant/petitioner's petition for judicial review, was the issue of the jurisdiction of the Complaints, Appeal and Review Panel (CARP) of the PPCC. And for this error of Your Honor petitioner/appellant, excepts.

2. That in its petition for judicial review, petitioner/appellant raised the issue that the respondent/appellee had failed to comply with the procedures set out in the Amended PPCC Act governing appeal before CARP and hence, respondent/appellee's appeal was dismissed under the law. Notwithstanding, CARP and Your Honor failed to pass upon this crucial and significant issue. And for this error of Your Honor, petitioner/appellant excepts.

3. That when the Honorable Supreme Court ruled in the prohibition filed by petitioner/appellant, the Court mandated that the parties be returned to the position to which they were when petitioner/appellant bid for the second time. Petitioner/appellant submits that the Supreme Court's mandate in effect meant that the parties be returned to the time when the Nimba County Procurement Committee confirmed petitioner/appellant as winner of the bid in its May 28, 2014 investigative decisions before CARP. Petitioner/appellant contended that it was the May 28, 2014 decision which should have been the subject of review. However, CARP completely ignored the referenced decision and proceeded to rule on the basis of the respondent/appellee's initial complaint; and for which error petitioner/appellant proceeded to this court for a petition for judicial review. That Your Honor also erred when your Ruling failed to take cognizant of the May 28, 2014 Report of the Nimba County Procurement Committee. And for this error of Your Honor, petitioner/appellant excepts.

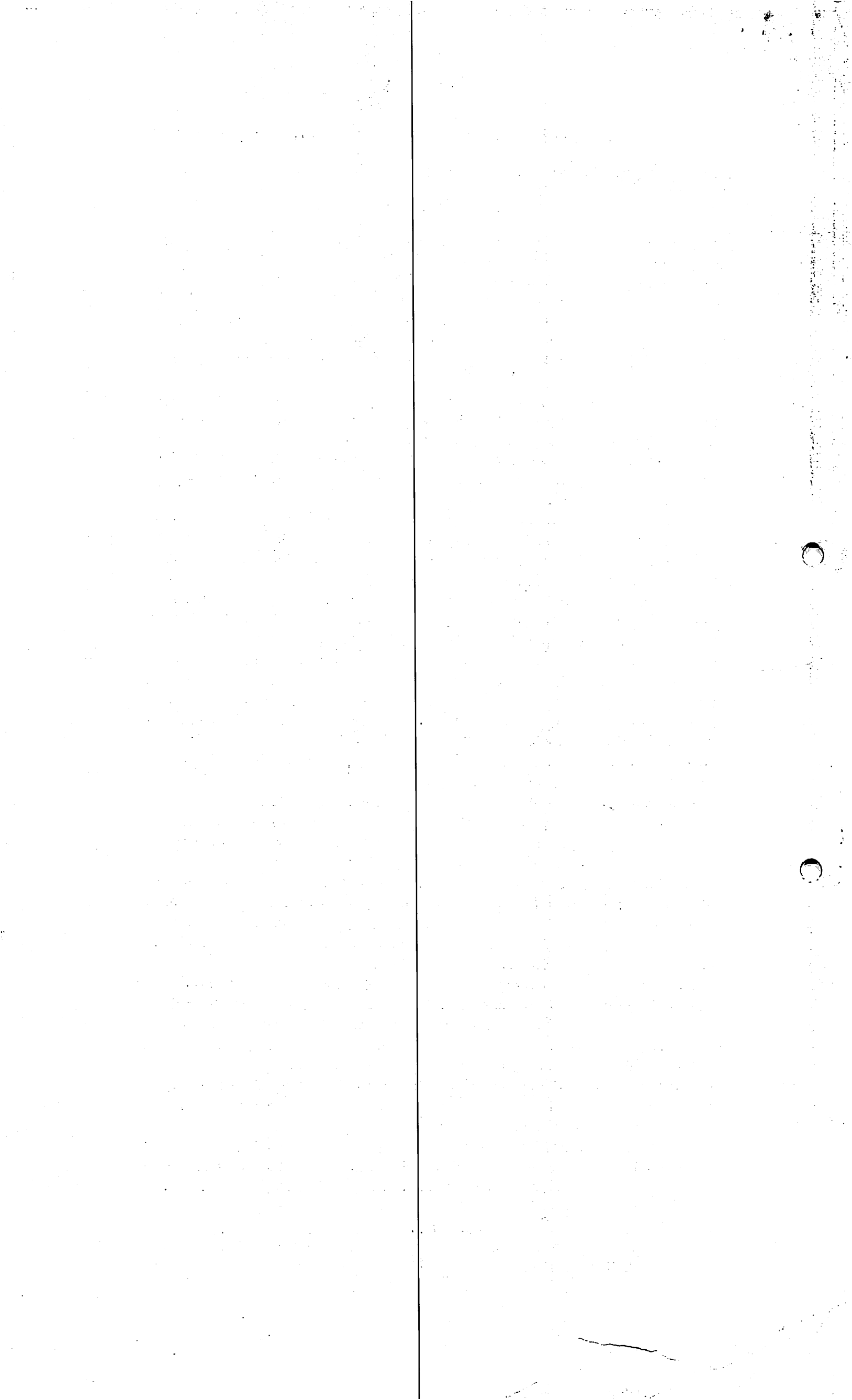
4. That Your Honor committed a reversible error when Your Honor ruled that the matter before CARP was the original complaint made by the respondent/appellee rather than an appeal from the decision of the Nimba County procurement committee. And for this error of Your Honor, petitioner/appellant excepts.

5. That Your Honor committed a reversible error in the application of the doctrine of judicial estoppel to the facts of the matter contained in the petitioner/appellant's petition for judicial review and completely ignored the laws cited and relied upon by petitioner/appellant in its argument before this court. And for this error of Your Honor, petitioner/appellant excepts.

6. That in Your Honor's Ruling, Your Honor cited the several criteria laid down by the Nimba County Procurement Committee but failed to state which of these criteria was not followed by the Bid Evaluation Panel (BEP). Your Honor further proceeded to state how the BEP had scored in one instance, and how the petitioner/appellant had not provided a performance bond. Petitioner/appellant says that Your Honor did not subpoena the records of the BEP but relied solely on allegations or assertions made by respondent/appellant. And for this error of Your Honor, petitioner/ appellant excepts.

7. That Your Honor erred when Your Honor failed to make a Ruling which would bring finality to the matter but concurred with CARP that a new BEP be set up for a new evaluation. And for this error of Your Honor, petitioner/appellant excepts.

WHEREFORE AND IN VIEW OF THE FOREGOING LAWS, FACTS AND CIRCUMSTANCES, appellant submits these Exceptions for Your Honor's approval to allow appellant perfect its appeal to have the Honorable Supreme Court review Your Honor's Final Ruling."



The backdrop, summarized above, presents a full overview of the nature of the dispute before us. The Court reiterates that this is the second time that the matter is before us. More importantly, the Court takes note that this dispute is into the fourth year since the Nimba County Procurement Committee (NCPC) extended an invitation for bids for the purchase, removal and disposal of unused structures and scrap metals within the Arcelor Mittal Steel area in Nimba County and a full three years since the first decision by the NCPC as to the winner of the bid. Given the critical need for the use of the resources accruing from the sale by the County of the metal structures and scrapes for the development of core programs for the County in the period of grave economic shortfalls, this Court is no longer disposed to have this matter prolonged any further. Hence, we shall, in the interest of justice and the superseding needs of the County, resolve the dispute once and for all. Let us proceed, therefore, to the issues as seen from the lenses of the parties.

We note that although the appellant filed a seven-count bill of exceptions wherein it cataloged what it believed were the errors committed by the trial judge, in its brief filed before this Court, it set out that there are only two issues which warrant the attention and resolution by this Court. Put differently, the seven counts of the bill of exceptions embodies only two issues, as follows:

1. Whether or not the matter for consideration before CARP was the original complaint of appellee North Star or the May 29, 2014 Report of the Nimba County Procurement Committee?
2. Whether or not appellee North Star had complied with the provisions of the governing law for the hearing of an appeal before CARP?

For their part, the appellees believed that, from their examination of the appellant's bill of exceptions, there are two issues reflected therein. They have framed them in a different manner:

1. Whether or not the circuit court judge erred in not entertaining the petitioner's contention that the appellee/respondent North Star failed to comply with the procedure set out in the amended PPCC Act governing appeal when the said appellee/respondent first filed

its complaint against the irregular scoring that led to petitioner being declared a winner?

2. Whether or not it was reversible error on the part of the circuit court judge in only reviewing the decision of CARP and limiting his ruling to affirming the said decision of CARP and dismissing the appellant/petitioner's petition for judicial review?

The issues, as advanced by the parties, although framed differently, reference the same theme in respect to the decision of the trial court. Thus, in dealing with the contentions of the parties we are required to review two important elements of the case. Firstly, what were the thrust behind and the basis of the Supreme Court's Mandate to CARP? In other words, what were the events out of which the Mandate grew? These require that we take recourse to the prohibition proceedings out of which the mandate grew and the basic claims and contentions of the parties in the prohibition proceedings. In taking recourse to the prohibition proceedings, we are further required to summarily review the facts of the case, which is the second important element of the case, and which generated the filing of the petition for the writ of prohibition. These will provide the appropriate perspectives and context, both for the analysis of the claims and contentions of the parties and for the conclusions reached herein.

The thrust of the petition filed by the petitioner therein, appellant herein, Western Steel and Allied Industries Liberia Inc. was: (a) that although it had won and had been declared on two occasions as winner of the bid for the contract in contention the CARP, said to have been acting upon the receipt of a letter of complaint or appeal taken to it by co-appellee North Star, a copy of which was allegedly not served on the appellant, had and without affording the appellant the opportunity to traverse or defend against the appeal taken by North Star and the allegations made, proceeded to cancel the award, declaring it invalid, and ordering a new bidding process which had resulted into a new award being made, but this time in favor of North Star which was declared the most responsive by the NCPC; (b) that on the basis of the new award to North Star, which was endorsed by the PPCC, the NCPC was proceeding to conclude a contract with North Star; and (c) that the appeal taken by North Star was deficient in its compliance with the

requirements of the PPCC Act regarding appeals taken to CARP, and hence, that CARP lacked the jurisdiction to hear the appeal. Therefore, the petitioner in the prohibition proceedings averred that the act by CARP, in reversing the earlier award of the bid made to it, without according it a hearing on the appeal taken by Co-appellee North Star, constituted a clear denial of Western Steele's due process of law right, guaranteed both by the Constitution and the statute.

The records reveal that as to the first contention asserted by the appellant, the Justice in Chambers declared that same was without any legal and factual basis, and hence, he did not only deny the claim made by the appellant, but held further that Appellant North Star had met the requirements set forth in the PPCC Act for an appeal before CARP, and that such being the case, CARP had properly and legally acquired jurisdiction over the appeal. Accordingly, the Justice noted that CARP had the authority to hear and dispose of the appeal. For the purpose of ensuring that there is full clarity as to how the issue was disposed of by the Justice in Chambers, we herewith quote excerpts from the Justice's ruling as follows, to wit:

"A reading of the complaint letter shows that it did indeed satisfy the requirements of Section 125(3)(c) of the PPCC Act. The letter needed to firstly state with acceptable clarity the circumstances upon which the third respondent sought to establish the existence of a violation of the Act. In the second paragraph, the third respondent clearly describes the allegation of wrongdoing. It explains the improprieties that occurred during the bid evaluation stage, and specifically the inconsistent scoring patterns by three panelists, which it considered so appalling that the remaining two panelists, including the panel chairman, refused to sign the Nimba County Bid Evaluation Report. This depiction of the events is not a mere general allegation of wrongdoing; it is very specific with regard to the number of panelists involved in the alleged misconduct and the reaction of the other panelists. Moreover, and also in accordance with the requirements of the subsection mentioned above, the complaint further refers to the provision of the Act that was allegedly violated. In the communication, the third respondents indicated to the Chairman of the Nimba County Procurement Committee, who was also the Superintendent of Nimba County, that the complaint was based on Section 30 of the Act, which includes the responsibilities and duties of the Bid Evaluation Panels. Section 30(c) states: "A Bid Evaluation Panel shall be responsible for the evaluation of bids in

accordance with the predetermined and published evaluation criteria as outlined to bidders in the bid documents in accordance with this Act." By alleging that the scoring patterns were erratic and showed inconsistencies in the criteria across bidders, the clear implication was that the Bid Evaluation Panel did not fulfill its statutory obligation, under Section 30(c), to evaluate all of the bids "in accordance with the predetermined and published evaluation criteria as outlined to bidders". Furthermore, the statute's provisions must be interpreted within the context of the intent of the Legislature in passing the Act, which were all listed in Part I, under the section titled, "Objectives of the Law". Therein are enumerated goals of the Public Procurement and Concessions Commission Act, as follows:

- (a) Maximize economy and efficiency in procurement and concessions, and obtain best value for public expenditures;
- (b) Promote economic development of Liberia;
- (c) Build capacity of officials and institutions in public procurement;
- (d) Promote competition and foster participation in procurement proceedings and concession agreements by qualified suppliers, contractors and consultants;
- (e) Provide equal access without discrimination to all eligible and qualified providers of goods, works and services and fair and equitable treatment of all bidders;
- (f) Promote integrity, fairness, accountability and public confidence in the procurement process;
- (g) Achieve transparency in the procedures, processes and decisions relating to procurement and concession agreements;
- (h) Decentralize public procurement to procuring entities;
- (i) Promote the growth of an indigenous Liberian Private sector;
- (j) Harness private sector financial, human and technical resources through concession agreements; and
- (k) Eradicate monopolies and promote competitiveness in the concession procurement process.

In performing its duty as outlined in Section 30, the Bid Evaluation Panel had the obligation to carry out its functions in a manner that would achieve the above listed statutory goals, especially the emphasized portions, stated in Part I of the Act. It was clearly the violations of the underlined portions that the complaint letter had reference to. Indeed, the complaint letter, in addition to containing precise accusations against the Panel, also drew specific attention to the segment of the Act that relates to the responsibilities of the Bid Evaluation Panel. By doing so, the third respondent was essentially informing the first respondent that the Bid Evaluation Panel further violated Section 30(1), which calls for Bid Evaluation Panels to "to evaluate bids solicited by the Procuring Entity". Because such evaluations are obligated to be done in a form that conforms to the objectives of the Act, the scoring of the bids irregularly not only did not promote the listed goals of the Act but were in clear violation of the Act. Given that as the complaint letter referenced Section 30 of the Act, the third respondent is deemed to have abided by Section 125(3)(c)'s requirement

that a complainant shall state the exact provision of the Act that is said to have been violated. Accordingly, the contents of the complaint was sufficient to bestow the procuring entity, and subsequently, CARP, with the jurisdiction to investigate the third respondent's claim of malfeasance by the Nimba Procurement Committee's Bid Evaluation Panel.

The petitioner has also challenged CARP's jurisdiction on the grounds that the third respondent did not follow the appellate procedure contained in Part VIII of the Act, specifically Section 126(2), which reads, in part:

A complainant may (i) request that the Complaints, Appeals and Review Panel decide the complaint if the relevant entity does not issue a decision within fifteen (15) days of the complaint being filed or (ii) file with the Complaints, Appeals and Review Panel an appeal of a decision of the relevant Entity.

The petitioner alleges that CARP violated this provision twice during the course of the investigation into the third respondent's complaint. The first violation, the petitioner says, occurred on May 13, 2014, when CARP ordered the Nimba Country Procurement Committee to investigate the third respondent's February 20<sup>th</sup> complaint. The petitioner argues that, since the complaint letter was addressed to CARP and not the Nimba County Procurement Committee, CARP did not have authority to make that order because Section 126(2) requires a complainant to first lodge a protest with the procuring entity and then proceed to CARP if (i) the procuring entity does not rule within fifteen days of the filing of the complaint or (ii) after the procuring entity has ruled, an appeal of the entity's decision is filed with CARP; the claim is, neither of the two options were fulfilled to allow CARP to order an investigation by the procuring entity since the third respondent forwent the procuring entity and submitted their complaint directly to CARP. The respondents refute this contention by countering that they indeed followed the requisite steps by initially filing their complaint with the Nimba County Procurement Committee, and as proof, the above quoted February 20<sup>th</sup> letter to the Procurement Committee was attached as an exhibit. An inspection of the letter clearly indicates that the complaint was addressed to the procuring body, and PPCC was merely seen as a recipient in accordance with Section 125(2), which requires that a copy of the complaint to the procuring entity be "filed on the same day with the Executive Director of the Commission for the attention of the Complaints, Appeals and Review Panel during regular office hours." The third respondent asserts that it was only after the Nimba County Procurement Committee failed to respond and to issue a ruling about the complaint within the required fifteen days did it, on March 20, 2014, filed the

following letter with the PPCC.”

...

“Based on the documents exhibited to this Court, we agree with the third respondent that, in accordance with Section 126(2), they first complained to the Nimba County Procurement Committee, and that it was only after the fifteen day response period had expired, that PPCC was contacted, which allowed CARP to assert its jurisdiction over the initial complaint. Consequently, the petitioner’s claim that the third respondent circumvented the process to allow CARP to prematurely get involved with this matter is without any basis in law or in fact.

Western Steel, the petitioner, also raised a further issue about CARP’s jurisdiction. This additional jurisdictional question pertains to CARP’s July 4<sup>th</sup> ruling wherein that body ordered that, as a result of the finding that the first Bid Evaluation Panel had indeed scored the bids irregularly, the Nimba County Procurement Committee should constitute a new Bid Evaluation Panel to assess the bids *de novo*. This ruling grew out of the investigation that CARP, on May 13, 2014, had ordered the Nimba County Procurement Committee to conduct. Upon the completion of its investigation, the Procurement Committee, on May 29, 2014, had re-confirmed the petitioner as the winner of the bid. The petitioner alleges that the third respondent did not appeal this finding by the Procurement Committee and, without an appeal, as required by Section 126(2), CARP did not acquire the necessary jurisdiction to overrule the Procurement Committee’s May 29<sup>th</sup> decision.”

The Justice in Chambers quoted the letter which Co-appellee North Star had sent to the CARP in respect of the said decision of the NCPC, and articulated the following in regard to the appellant’s contention:

“The quoted letter clearly evidenced that an appeal was taken, consistent with the requirement of the law. Perhaps the petitioner was unaware of the letter when it argued that the third petitioner did not appeal the first respondent’s decision sustaining the Panel’s naming it, the petitioner, as the winner of the bid. We note that the referenced letter clearly implores PPCC “to prioritize our appeal by investigating the merits of our protest”. In the eyes and mind of this Court, the letter unquestionably demonstrates that the third respondent appealed the first respondent’s ruling, thereby bestowing CARP with the appropriate jurisdiction to probe into the matter and to ultimately overturn the conclusions reached by the first respondent. Accordingly, this Court holds that all of the steps outlined in the PPCC Act, requisites for the conferral of jurisdiction on CARP, were complied with and, hence, none of the actions taken by CARP are considered void on account of any lack of jurisdiction. To the contrary, as jurisdiction was conferred and properly exercised, the decision by CARP has all the elements of legal validity under the law and has the force of the law.”

The foregoing shows that the Justice in Chambers, in a clear,

unmistakable and unambiguous terms, dealt with the issue raised by the petitioner in the prohibition proceedings relative to the jurisdiction of CARP, including the claim referencing an appeal which was allegedly or supposedly taken by Co-appellee North Star from the May 29, 2014 decision by the NCPC. The Supreme Court, upon review of the Chambers Justice's ruling as regards the issue of the jurisdiction of CARP, including the May 29, 2014 decision of CARP, sustained and upheld the Justice's ruling without any reservations or qualifications. In its unanimous decision, handed down by our Esteemed Colleague, Mr. Justice Kabineh M. Ja'neh, this is what this Court said: "In his Ruling dealing with this issue, and with which position of Mr. Justice Banks we are in full agreement.". The Court then proceeded to quote the Justice's ruling with which it said it was in "full agreement". The quoted portion of the Supreme Court's Opinion clearly shows that not only was the Court fully aware of the position taken by the Chambers Justice but also that the Court fully endorsed the position, which thereby became a part of the Court's ruling and decision.

The Court wonders, therefore, if Appellant Western Steel expected that the Supreme Court, having dealt with and disposed of the issue, would re-litigate the issue anew. Such act would clearly have been in contempt of this Court, and hence, the trial judge was not in error in ruling that the issue having been dealt with by the Supreme Court, he was without the power or the authority to entertain and rule upon the same issue. Indeed, this Court in its decision, in agreeing that the appeal taken by North Star was properly before CARP, noted only one reservation, brilliantly articulated by Mr. Justice Ja'neh, that CARP had not accorded the appellant its due process of law to defend against the appeal taken by North Star. In respect of that issue, the Justice in Chambers had agreed that the appellant was not accorded its due process of law right by CARP at the appeal level, but denied the issuance of the writ because an appeal had been taken by the appellant by way of the administrative process, and that the appellant could not choose to abandon or circumvent the process by resorting to the writ of prohibition. The Supreme Court did not share that position, stating that in as much as the Chambers Justice had acknowledged that the appellant was denied due process by not having been notified to appear and defend against the appeal,

the writ should be granted so that the appellant is accorded the opportunity of enjoyment of its due process of law right. Here is how the Court articulated its position in respect of the due process contention:

It is the rule hoary with time in this jurisdiction that in every case where a tribunal or administrative agency, though having jurisdiction but proceeded by rules different from those to be observed at all times, a petition for writ of prohibition is properly authorized and shall issue. *Gittens & Davies v. Yanfor et al.*, 10 LLR 176, 180 (1949). Also in the case *Liberia Agricultural Company v. Hage et al.*, the Supreme Court held that "Prohibition will be granted when the trial court is without, or exceeds jurisdiction, or proceeds contrary to rules which ought to be observed at all times, or where a party litigant is not afforded due process of law." 38 LLR 259 (1995). [Emphasis Supplied].

In other words, unless there was a demonstrated showing, and in the instant case we hold there was not, that an administrative agency, as the First, Second and Fourth Respondents in the instant proceedings, in exercise of their powers and authority, accorded a party its right to due process of law, the conduct is deemed *ultra vires*. Their conduct would amount to an oppression of a party's vested right and can never be upheld as an appropriate exercise of administrative powers in any body politic where justice is fairly administered.

Under the facts and detailed circumstances of this case, the other piece of the consolidated question is whether prohibition will lie. There is absolutely no doubt that the Liberian Constitution (1986) guarantees every person, natural or juridical, certain basic rights, amongst which is the right to "due process". See: Article 20 (a) of the Liberian Constitution. It commands that: "*No person shall be deprived of life, liberty, security of the person, property, privilege or any other right except as the outcome of a hearing judgment consistent with the provisions laid down in this Constitution and in accordance with due process of law.*" This provision seems to me the foundation upon which every legal proceeding stands and without which all legal proceeding falls. The most cardinal element of this principle, as articulated by Mr. Chief Justice Louis Arthur Grimes in the famous case *Wolo v Wolo*, 5 LLR 423, 428-429 (1937), is notice.

In our jurisdiction, nothing legal can be properly done to bind a person without first issuing a notice and service thereof on a party involved in a dispute. In the instant case, there is no showing of a single notice and service thereof on the Petitioner. The Chambers Justice certainly recognized in his ruling of February 12, 2015, that no such notice was issued and served on Petitioner Western Steel to said petitioner's material prejudice and in flagrant disregard of the law of the land, and that for this breach, the writ of prohibition shall properly issue."

It was predicated upon the foregoing that the Court then proceeded to amend or modify the ruling of the Chambers Justice and to grant the peremptory writ of prohibition. Here is how the Court set out the grant of the writ:

"Therefore, we have here amended the Ruling of our Esteemed Colleague, then presiding in the Chambers of the Supreme Court, by granting the peremptory writ of prohibition. Consequently, First, Second, Third and

Fourth appellees/ respondents are hereby returned to status quo. By this, we mean that the appellant/petitioner is reinstated to the status of winner of the public bidding for the purchase, removal and disposal of old, unused structures and scrap metals within the Arcelor Mittal concession area in Nimba County, Republic of Liberia. Following the reinstatement of the appellant/petitioner, Western Steel and Allied Industries Liberia Inc., a hearing shall be conducted consistent with law of the land into the complaint lodged by co-appellee/third respondent, North Star Industries, Inc."

This Court is therefore clear in its mind that the appellant could not raise the same issue of the jurisdiction of CARP to entertain the appeal because Co-appellee North Star had not met the appeal requirements. Indeed, count 8 of the petition filed with the lower court for judicial review of the decision of CARP clearly set out, after reciting all of the facts of the case that had occurred up to the point of the Supreme Court's decision acknowledged that the only basis for appellant resorting to the Supreme Court was that CARP had made its July 30, 2014 decision, upon which the Nimba County Procurement Committee had proceeded to re-evaluate the bids and declared North Star as the most responsive, thus reversing its earlier decision which had declared the appellant as the most responsive.

We believe that the confusion generated in the matter and which may have formed the basis for the assertion made by the appellant that it was the May 29, 2014 decision of the Nimba County procurement Committee that should have been appealed to CARP, and not the February 12, 2014 decision, was due to how the CARP had initially handled the appeal taken to CARP by Co-appellee North Star.

We find it rather strange that a complaint will be lodged against acts of a body and the body is directed to investigate the complaint, but that an investigation is said to have been conducted without a hearing been had in which the complainant is invited to state the basis for the complaint. We wonder if such act is not tantamount to the denial of the due process right, the same as this Court had earlier determined that the failure of CARP to accord the appellant the opportunity the right to defend against the appeal was a denial to the appellant of its due process of law right. The Constitution of Liberia accords to all the equal protection of the law and this Court has consistently said that the provision must be respected buy all. *Republic v. The Leadership of the Liberian National Bar Association*, 40 LLR 635 (2001); *Toe v.*

*FrintPage Africa Newspaper*, Supreme Court Opinion, March Term, A. D. 2013. We believe that it was clearly an error, therefore, for NCPC to have conducted an alleged investigation into North Star's complaint without according the complainant the opportunity to be heard or to present its case in respect of the said complaint.

Finally, on the issue of the jurisdiction of CARP, this Court must clarify, in the face of the misinterpretation of its mandate by the appellant, that its mandate was not directed to the NCPC. Rather, the Mandate was directed to CARP. It was that body that had deprived the appellant of the opportunity of the due process of law when it failed to cite the appellant to defend against the appeal that was taken to CARP against the decision of NCPC. The argument before this Court in the prohibition proceedings was not that CARP did not have jurisdiction over the case. Rather, the issue was that the appellant was never invited or cited to defend against the appeal before CARP proceeded to make a decision reversing the ruling of the NCPC. As noted above, amongst other things, it was the NCPC that had forwarded the matter to CARP for its consideration, without the objections of any of the parties thereto. It was that matter, pending before CARP, that had been disposed of without according the appellant the opportunity to appear and defend against the appeal. Hence, the mandate of this Court was directed at CARP to resume jurisdiction over the case and to proceed with the hearing of the appeal, ensuring that the parties were accorded their due process of law right. That right was accorded to and enjoyed by the parties. The parties appeared and defended their respective positions, which did not include the jurisdictional issue later raised by the appellant in its petition for judicial review of the ruling made by CARP. Hence, it is the holding of this Court that its mandate was fulfilled by CARP. The only inquiry, therefore, for this Court to resolve is whether the decision made by CARP after the investigation, carried out in obedience to the mandate of the Supreme Court, is supported by the records, for it is that decision that forms the crust of this appeal, the jurisdictional issue having been dealt with. In response to the inquiry, this Court holds that the decision of CARP is supported by the records before us. Accordingly, we affirm the decision of CARP, but with modification and for reasons which we set out below.

In its February 20, 2014 letter of complaint to the NCPC, North Star accused three of the members of the Bid Evaluation Panel of conspiracy in the scoring patterns designed to deny it the chance of winning the bid, which had caused the Chairman of the Bid Evaluation Panel and another member to refuse to affix their names and signatures to the report. It was this complaint that the NCPC failed to investigate and hence caused North Star to appeal the matter to CARP. In its appeal to CARP, North Star expanded on the violations which it said the BEP had committed, including the following:

- (1) The on February 20, 2014, North Star, in compliance with the PPCC Act, filed a letter of protest with the NCPC which was not investigated or responded to within fifteen (15) days of the date of the letter, as required by the PPCC Act, thus causing North Star to exercise the right of appeal to CARP, as provided by the PPCC Act.
- (2) That the report submitted to the NCPC by the BEP, was signed by the Co-Chairman of BEP, one of the three (3) panelists who had rendered "unsubstantiated scoring patterns" and who it had accused of conspiracy.
- (3) That the Chairman and another member did not sign the submission made by the BEP to NCPC because they sense collusion and prejudice in the scores delivered by the other three panelists.
- (4) That the scoring patterns of three of the five panelists were in contradiction to the facts and observations that were clearly stated in the Panel's Chairman's Due Diligence Finding.

These were the appealed accusations which CARP had directed the NCPC to investigate and which, as stated before, the NCPC alleged it had undertaken, but which the records show were not carried out as directed and which necessitated CARP to review the report submitted therefrom by the NCPC to CARP for its consideration. We note from the records however that although in his communication to NCPC, the Chairman of CARP noted the allegations levied against the BEP and NCPC and directed that an investigation be held into the said complaint, the NCPC, rather than investigating the matter on the merits of the claims (i.e. the scoring patterns, the conspiracy accusations, and the refusal of the Chairman and another member to have their names and signature affixed to the BEP report and the

basis for the refusal) limited itself instead to insignificant procedural technicalities, on vague references to lower and higher bid prices, and review of the Bid Evaluation Format and Predetermined and Published Evaluation Criteria.

These were the issues and the contentions that formed the basis for the action taken by the CARP when the matter was again forwarded by the NCPC to CARP for its further consideration. They formed the basis for CARP's reversal of the prior determinations made by the BEP and NCPC, based upon which CARP ordered a new examination which resulted into Co-appellee North Star being awarded the bid contract. However, because CARP had made its decision without according Appellant Western Steel the opportunity to appear and contest the issues, this Court, in the prohibition proceedings, ordered and mandate CARP to resume jurisdiction over the case and accord the appellant its due process of law opportunity to be heard. The records before us reveal that upon CARP resuming jurisdiction of the case, the parties were duly cited and allowed the opportunity to address the issues. It was upon this new hearing, undertaken by CARP as mandated by this Court, that a new decision was reached by CARP wherein it again invalidated the earlier awards made to the appellant and ordered that a new examination be conducted into the bidding patterns and a winner announced. These were the elements that formed the basis for the decision of the NCPC in reaffirming the award to the appellant. But what was core and remained core was how the NCPC had reached the conclusion, for it was the backdrop for the basis for the conclusion that CARP disagreed with and ordered that a new bidding process be undertaken. It is from that decision that the appellant filed a petition for judicial review. It is the decision of the lower court judge denying the petition that the matter is before this Court for the second time.

The first focus of this Court is whether in fact the appellant was accorded its due process of law by CARP, as mandated by this Court. We should emphasize that the Mandate of this Court was addressed to CARP and to no other party. The records reveal that CARP, upon receipt of the Judgment and Mandate of this Court, invited the parties for the reading of the Mandate; that upon the reading of the Mandate, CARP resumed jurisdiction over the case as directed by this Court; that upon resuming

jurisdiction over the case, CSRP invited the parties to a hearing of the matter, soliciting from them Legal Memorandum in regard to their respective contentions; that upon receipt of the Legal memorandum from the parties, CARP conducted a hearing and entertained arguments from the parties in regard to their respective contentions; and that it was only after arguments by the parties that CARP subsequently handed down its ruling, wherein it invalidated the prior bid awards on grounds that the bidding patterns were irregular and the results thereof contrary to the facts and the law. There is therefore no question that CARP complied fully with the Mandate of this Court. There is no controversy as to that. Indeed, the only issues raised in that respect were procedural issues as to the jurisdiction of CARP to entertain the matter in the first place and whether Co-appellee North Star had complied with the statutory requirements for appeals to CARP and whether the trial judge erred in confirming the decision of CARP, including whether CARP had jurisdiction to hear the appeal. But since those issues have already been addressed, they shall not be alluded to any further in this opinion. What is at issue is whether the records indicate that the scoring patterns were irregular, contrary to the facts and the law, and that the decision of BEP and NCPC predicated thereon could therefore not be sustained. We hold that the records are clear on their face that such was the case and hence, that there was ample legal reasons for a reversal of the original decisions made by BEP and NCPC.

The report of the NCPC, upon which it affirmed the award of the bid in favor of Western Steel showed, for example, that whereas the parties were required to post a performance bond and North Star had complied while Western Steel had not, the NCPC the proceeded to declare that a performance bond was not necessary until one was declared a winner. Did the NCPC believe it was fair for the rules and the requirements to be changed after the bids had been closed? We think not. Also, by what parity of reasoning, again made after the bids were closed, could NCPC equate the experience of the company on the ground with another company that had no such experience on the ground but deemed to have experience on the ground by virtue of allegations that the foreign parent company has that experience and hence give the competitors the same score. We could enumerate many

other serious discrepancies that justified discrediting the scoring patterns of the members of the BEP. We therefore believe and hold that upon CARP conducting an investigation of the allegations levied in Co-appellee North Star appeal, and according the appellant the opportunity to defend against the said allegations, CARP was justified in declaring the award of the bid to Western Steel null and void. The irrational, irregular and inequitable manner in which the scores were made, evidenced from the document attached to the letter of May 29, 2014, clearly showed an attempt by the BEP, affirmed by NCPC, to award the bid and contract to Western Steel by giving to that entity scores where it did not meet the requirements in total or in part and hence was not entitled to the same or equal scores with North Star.

Accordingly, we reiterate that CARP, upon review of the documents relating to the bids and scoring which on their face showed a clear abuse of the scoring patterns, was not in error in reversing the bid award and directing that a new BEP be set up to review the bids anew and make a determination thereon, ensuring that proper scores are awarded and reflect the true picture of the bidders fulfilment of the requirements laid down for the bids. In the wake of this holding, we hold also that the trial judge was correct in affirming the action of CARP as being consistent with the facts and the law.

In light of the above, the only further question which we believe warrants our consideration is whether, given what the bid documents and the scoring patterns followed by the BEP and the NCPC reveal, and the clear impression from the documents that had the BEP and NCPC acted properly and followed the criteria laid down for the bidders, Co-appellee North Star would have won the bid and been entitled to the award and the award contract, there is need to have the matter remanded for a new BEP to be set up and a new examination of the bids conducted. We do not believe that such a course is warranted or necessary. The records of the bids and of the scoring patterns followed by the original BEP and subsequent BEPs, as well as the justification documents submitted by the NCPC for the original award and the reaffirming of that award to the appellant; and further, that as the documents showing subsequent action by a new BEP and by the new NCPC and the CARP, available to the CARP and the judge of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, who made the determination of

the petition for judicial review, reveal that there was justification for the conclusions reached that Appellant Western Steel was not entitled to the award and that instead that Co-appellee was entitled to the award, there was no basis for a remand of the case for a new examination to be had by the lower administrative bodies. The CARP had determined, the same as the lower court judge, and with which we have concurred, that the documents are clear on their face that the original BEP and NCPC were clearly in error, both as to the facts and as to the law, in awarding the bid to the appellant when the records showed that not only had the appellant failed to meet several of the required criteria, prerequisites and conditions laid down for successful award of the bid, but that had the BEP and the NCPC followed the guidelines and the very criteria which they had developed and set as conditions for the award of the bids, the obvious winner was or would have been Co-appellee North Star. What is the necessity in our remanding the case for a new determination to be made of the bidding documents? It is the view of this Court that in light of the decision made by the lower court as to the irregularities committed by the original BEP and NCPC, and that had they followed the guidelines for the award of the bid, Co-appellant North Star would have emerged the winner, all of those clearly shown in the documents in the case file, the judge should have so held and ordered that in the face of such clear evidence North Star be awarded the bid. Hence, even as we affirm the ruling of the trial judge, we hold that the same should be modified to obviate the need for any further examination of the bid documents, and that the NCPC should proceed not only to issue the required award certification to North Star but that it should proceed to conclude a contract with that entity as the winner of the bid.

We premise our modification of the ruling of the lower court judge on two factors. Firstly, the Supreme Court has said in a number of Opinions that as part of the authority vested in the Court to affirm, reverse, or modify the rulings of the lower court, it is vested with the power and the authority to render such ruling or judgment as the lower court should have given in the circumstances of the case. *The Ministry of Foreign Affairs v. The Intestate Estate of the late Jarbo Sartee*, 41 LLR 285 (2002); *Emirates Trading Agency Company v. Global Import and Export Company*, 42 LLR 204 (2002). In the

instant case, where the records and all the documents reviewed by the Court clearly disclose and show that, except for the irregularities committed in the scoring patterns, the award of the bid would have been made to Co-appellee North Star as opposed to Appellant Western Steel, and which conclusion was recognized both by the reconstituted NCPD and the lower court, there is no rationale for remanding the case for a new examination of the very records and documents already passed upon by all of the mentioned bodies, including this Court. In the circumstances and under the strength of the authority referenced herein above, vested in this Court, we have determined that as no party will suffer any injustice as a result thereof, to enter the judgment which the lower court should have entered and give finality to the proceedings. The records are too clear that Appellant Western Steel did not win and was not entitled to an award of the bids, and hence, the disposition of the matter in its finality under the powers granted this Court would work no injustice to it or to any other party. It is only a prolongation of the disposition that would work an injustice.

The second premise for our decision not to remand the case, given that the records reveal that Appellant Western Steel had not met a number of the requirements to qualify as winner and that Co-appellee North Star had met those requirements and was in fact the winner of the bid, is that a county's development program has been placed on hold for the period that this case has been in court. We noted before that the matter has been pending now for almost four years. No new bids have been solicited. Rather, the focus has been review of the bid already submitted by the competitors to the bid process. At a time of severe economic constraints and the consequential rollback of the county development programs, further delays in the disposition of the case as would occur by a remand of the case since the remand would require new actions and decisions by the lower bodies, which in turn would be the subject of further unending appeals, we do not believe that the county should be made to suffer what could be tantamount to penalties to its programs and its people.

Moreover, a remand of the case, in the face of the obvious facts revealed in the records, would not only serve no useful purpose but would only prolong the disposition of the matter and impose an injustice upon the

parties and Nimba County and the people of the Nimba County who are the ultimate beneficiaries of the proceeds of the award. This Court is not prepared to indulge in a remand process that would inflict such injury and injustice, especially on an innocent people who had absolutely no say or part to play in the dispute but who would be the victims of a prolonged litigation.

Thus, a remand of the case, when the results are so obvious, would in fact work such hardship and serve no utility. Hence, in such situation, this Court, in the proper exercise of its authority to give such judgment as the lower courts should have given, hereby affirms the ruling of the lower court but with the modification that as the records indicate that North Star won the bid and should have been awarded the bid, the said entity is hereby under the facts of this case declared to be the winner of the bid. As such, NCPC is ordered to proceed to conclude a contract with Co-appellee North Star as per the bid, and to do so expeditiously so that the County and its people reap the long outstanding benefits associated therewith but held up as a result of the contentious litigations.

Wherefore and in view of the foregoing, the ruling of the lower court is affirmed but with the modification that the case not be remanded for any further examination of the bids; that Co-appellee North Star as declared winner of the bid as per the records clearly showing that it had met the bid requirements and that appellant had not; and that NCPC and any other authority responsible for the conclusion of the bid contract are directed to enter into such contract with North Star forthwith as per the bid.

The Clerk of this Court is hereby ordered to send a mandate to the lower court directing the judge presiding therein to proceed to enforce the judgment of this Court, including directing NCPC to act as per the judgment of that court with the modification stated herein. Costs are ruled against the appellant. AND IT IS HEREBY SO ORDERED.