

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Before;

Adnan-ul-Karim Memon, J;

Muhammad Abdur Rahman, J;

Constitution Petition No. D- 510 of 2024

(Asghar Ali vs. Federation of Pakistan & others)

Date of hearing and Order: 02.05.2024.

Mr. Nusrat Hussain Memon, Advocate for petitioner.

Mr. Muhammad Aslam Jatui, Assistant Attorney General

ORDER

Adnan-ul-Karim Memon J:- Petitioner has raised his voice of concern about the distribution of BARDANA/wheat bags to him as per policy/guidelines of Food Department for wheat procurement 2023-24, however, the petitioner has raised the similar issue and submit that he has deposited the requisite fee in the concerned Bank, but he has not been provided BARDANA which is discriminatory attitude meted out with him, therefore, the captioned petition is being taken and to be decided in the terms of the ratio of the common judgment dated 24-04-2024 passed by this Court in Constitution Petition No. D- 380 of 2024 (*Ali Hassan Bozdar vs. Province of Sindh & others*) and other connected petitions. For convenience sake an excerpt whereof is reproduce as under:-

“We have heard the learned counsel for the parties and perused the record as well as policy 2023-24 with their assistance.

This Court is of considered view that the discretion to distribute BARDANA as disclosed in the policy 2023-24 is not only susceptible to misuse but is being exercised in a non-transparent and discrete manner by concerned official respondents at distribution centers throughout Sindh. It is an undeniable fact that every grower is not given BARDANA to purchase wheat crops in proportion to the crop cultivated by him/her, rather most of the farmers/growers have not been given a single bag.

This Court reemphasizes the importance of the structured exercise of discretionary powers in terms of law laid down by the Supreme Court in its various pronouncements. The discretion given through the policy is not structured one and, therefore, is not being exercised transparently. The equality clause is being offended; because the price, higher than the market price, to purchase wheat crop is a privilege offered, yet several equally placed farmers/growers are not given a single bag.

Notwithstanding the facts, that the policy is not only capable of being applied discriminately and discretionary powers are being used in a non-transparent manner; this Court is constrained not to strike down the policy, in the presence of the fact that the crop is lying under sky in open field and the delay in its collection shall cause loss of crop, which is national asset, but the grower shall also suffer as they shall be left on the mercy of investors who shall at liberty to determine forced sale price under compelling circumstances.

At this stage learned Additional A.G Sindh has undertaken and assured that the remaining quantity of BARDANA at the relevant centers shall be distributed fairly and transparently without discrimination; therefore, these petitions are disposed of with direction to the competent authority/ Secretary Food/ concerned District Food Controller/Incharge Center who shall ensure that wheat bags/BARDANA are distributed equally amongst the petitioners, similarly placed genuine growers; small farmers, having minimum cultivated holding, who shall be given preference without delay preferably by tomorrow i.e. 25-04-2024. They shall secure the interest of those growers also who could not approach this Court.

Learned Additional A.G is directed to ensure that no mal practice shall be committed by the concerned official respondents and in case they are found to be indulging in such mal practice, he shall ensure initiation of inquiry into the allegation by the directorate of Anti-Corruption Establishment and the petitioners/growers/farmers shall be heard and the actual culprits shall be proceeded against under the law.

The petitioners shall approach the concerned officials for such BARDANA as per policy.

Secretary Food Sindh shall ensure the distribution of BARDANA to the petitioners/growers/Khatedars on or before 25-04-2024 positively without fail; however their other ancillary issues shall be taken care of accordingly.

The compliance report shall be submitted by the Secretary Food Sindh/concerned District Food Controller through the Additional Registrar of this Court accordingly within a week. Office is directed to send the copy of this Order by fax to all concerned. These petitions are disposed of accordingly”.

Learned Assistant Attorney General has submitted 90% target for purchasing Wheat from current season i.e. 2024-25 is almost completed and all the dues of the purchasers have been issued to them and there is no outstanding amount against them; however, he made it clear that if the Government of Pakistan increases the target for purchasing the wheat as per share, further wheat will be purchased from the growers as per policy. At this stage the petitioner remind it that Prime Minister of Pakistan has announced such policy for purchasing the wheat from the growers and the respondents are duty bound to implement the policy decision of the Government of Pakistan. For that learned AAG has submitted that

PASCO has limited quota for purchasing the wheat from the growers only 8% and for 92% wheat from the Government of Sindh, however, they will act as per policy.

The statement of the learned AAG that PASCO is based on the policy decision. However, he has made it clear that if the petitioner or any growers/Khatedars have paid the requisite fee, they shall be accommodated accordingly, so far as the announcement of Policy decision by the Prime Minister of Pakistan, they will act accordingly as and when the policy decision is received by their office.

In view of the above facts and circumstances of the case coupled with the statements of the learned AAG, the the petitioner/growers/Khatedars who have paid the challan for aforesaid purpose shall proceed to appear before the concerned Official incharge Wheat Procurement Centers as notified on 02-05-2024 and after showing their requisite papers/Dhall/land revenue receipts of his land, the same application shall be processed forthwith by the concerned officials and the petitioner/growers/Khatedars and those small farmers who have not approached this Court shall also be issued BARDANA without fail and their ancillary issues about releasing the bills shall also be decided. So far as the receiving the procured wheat bags from the petitioner at the concerned Food Centers, it is subject to the Policy and if the policy so permits the same shall be taken care of by the concerned Officials without discrimination. In the meanwhile the concerned officials shall ensure their availability at the place of Wheat Procurement Centers; however if it is found that they remain absent, it shall be treated violation of the Order of this Court to attract penal action in terms of Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 and they shall be proceeded without further notice.

Office is directed to send the copy of this Order by fax to all concerned.

These petitions are disposed of accordingly.

JUDGE

JUDGE

Nasim/P.A