

5IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Before;

Adnan-ul-Karim Memon, J;
Muhammad Abdur Rahman, J;

Constitution Petition No. D-505 of 2024

(Abdul Wahid and others vs. Province of Sindh & others)

Constitution Petition No. D-517 of 2024

(Lal Dino Jakhro and another vs. Province of Sindh & others)

Constitution Petition No. D-518 of 2024

(Tarique Hussain Kubar and another vs. Province of Sindh & others)

Constitution Petition No. D-519 of 2024

(Khadim Hussain Bhambhro and others vs. Province of Sindh & others)

Constitution Petition No. D-520 of 2024

(Khadim Hussain Channa and others vs. Province of Sindh & others)

Constitution Petition No. D-530 of 2024

(Illahi Bux Mahar vs. Province of Sindh & others)

Constitution Petition No. D-543 of 2024

(Wajahat Hussain vs. Province of Sindh & others)

Constitution Petition No. D-544 of 2024

(Ghulam Rasool Rajpar vs. Federation of Pakistan and others)

Constitution Petition No. D-545 of 2024

(Ghulam Rasool Rajpar vs. Province of Sindh & others)

Constitution Petition No. D-546 of 2024

(Zain-ul-Abidin and another vs. Province of Sindh & others)

Constitution Petition No. D-548 of 2024

(Ameer Ali Jatoi vs. Province of Sindh & others)

Constitution Petition No. D-549 of 2024

(Abdul Ahad Buriro vs. Province of Sindh & others)

Constitution Petition No. D-550 of 2024

(Muhammad Yasin Khaskheli vs. Province of Sindh & others)

Constitution Petition No. D-551 of 2024
(Muhammad Shahmir Khaskheli vs. Province of Sindh & others)

Constitution Petition No. D-553 of 2024
(Abdul Ghafoor and another vs. Province of Sindh & others)

Constitution Petition No. D-555 of 2024
(Kashif Hussain and others vs. Province of Sindh & others)

Constitution Petition No. D-556 of 2024
(Mian Asadullah vs. Province of Sindh & others)

Constitution Petition No. D-557 of 2024
(Zikram Rizvi s vs. Federation of Pakistan and others)

Constitution Petition No. D-559 of 2024
(Irshad Ali Morojo and others vs. P.O Sindh and others)

Constitution Petition No. D-563 of 2024
(Zikram Rizvi vs. P.O Sindh and others)

Constitution Petition No. D-567 of 2024
(Muhammad Nawaz and others vs. P.O Sindh and others)

Constitution Petition No. D-570 of 2024
(Muhammad Alam Shar and others vs. P.O Sindh and others)

Constitution Petition No. D-571 of 2024
(Abid Hussain Memon vs. P.O Sindh and others)

Constitution Petition No. D-572 of 2024
(Hamz Ali and others vs. P.O Sindh and others)

Constitution Petition No. D-574 of 2024
(Ahmed Ali Tunio vs. P.O Sindh and others)

Constitution Petition No. D-576 of 2024
(Talib Hussain Lashari vs. P.O Sindh and others)

Constitution Petition No. D-583 of 2024
(Bahawal Jarwar vs. P.O Sindh and others)

Constitution Petition No. D-585 of 2024
(Ghulam Muhammad Bhambhro vs. P.O Sindh and others)

Constitution Petition No. D-586 of 2024
(Ghulam Hussain Mashori vs. P.O Sindh and others)

Constitution Petition No. D-587 of 2024
(Syed Sikandar Ali Shah vs. P.O Sindh and others)

Constitution Petition No. D-588 of 2024
(Muhammad Shah Baig Mari vs. P.O Sindh and others)

Constitution Petition No. D-589 of 2024
(Ghulam Muhammad Mari vs. P.O Sindh and others)

Constitution Petition No. D-600 of 2024
(Asif Ali vs. P.O Sindh and others)

Constitution Petition No. D-601 of 2024
(Kashif Illahi vs. P.O Sindh and others)

Constitution Petition No. D-602 of 2024
(Bilal Hussain vs. P.O Sindh and others)

Constitution Petition No. D-613 of 2024
(Maqsood Ahmed vs. P.O Sindh and others)

Constitution Petition No. D-614 of 2024
(Najeebullah Mahesar vs. P.O Sindh and others)

Constitution Petition No. D-615 of 2024
(Imtiaz Ali Mahesar vs. P.O Sindh and others)

Constitution Petition No. D-616 of 2024
(Muhammad Tahir and others vs. P.O Sindh and others)

Constitution Petition No. D-617 of 2024
(Muhammad Kashif and another vs. P.O Sindh and others)

Date of hearing and Order: 07-05-2024.

M/s Yasin Ali Ghunio, Advocate for petitioners in CPD No. 505/2024, Sheraz Fazal, Advocate for petitioners in CPD No. 517/2024, 518/2024, 519/2024, 520/2024, Gulsher S.R

Mahar, Advocate for petitioner in CPD No. 530/2024, Nusrat Hussain Memon, Advocate for petitioner in CPD No. 543/2024, CPD No. 602/2024, Aijaz Ahmed Sipra, Advocate for petitioner in CPD No. 546/2024, CPD No. 570/2024 and CPD No. 616/2024, Abdul Sattar Mahesar, Advocate for petitioner in CPD No. 548/2024, CPD No. 571/2024, Sajjad Ahmed Khokhar, Advocate for petitioners in CPD No. 549/2024, CPD No. 555/2024, Yasin Khashkeli, Advocate for petitioner in CPD No.551/2024, Muhammad Farooque Rajpar, Advocate for petitioner in CPD No. 559/2024, Irshad Ali Dharejo, Advocate for petitioner in CPD No. 567/2024, Athar Hussain Abro, Advocate for petitioners in CPD No. 572/2024, Syed Jaffer Ali Shah, Advocate for petitioners in CPD No. 574/2024, CPD No. 585/2024, CPD No. 586/2024, CPD No. 587/2024, CPD No. 588/2024, CPD No. 589/2024, CPD No. 600/2024, CPD No. 601/2024, Mr. Amjad Ali Almani, Advocate for petitioner in CPD No. 576/2024, Mr. Najeebullah Maeshar, Advocate for petitioner in CPD No. 615/2024,

None present in CPD No. 544/2024 and 545/2024

M/s Ali Raza Balouch and Ghulam Mustafa Abro, Assistant Advocate General Sindh along with Akhtar Hussain Bozdar DFC Ghotki, Mr. Rasheed Ahmed Chachar incharge Jarwar, Sajjad Ahmed incharge Mirpur Mathelo, Gagdesh Kumar DFC Sukkur, Hakim Ali Mahar, DFC Khairpur.

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ORDER

Adnan-ul-Karim Memon J:- The above petitions are of the same nature as already decided and the petitioners prayed for similar treatment to be meted out with them in terms of ratio of the judgment/order 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 of the judgment dated 24-04-2024 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”.

Mr. Ghulma Mustafa Abro, learned Additional Advocate General Sindh present in Court states that the issue involve in these petitions is related to the distribution of BARDANA/wheat bags to the petitioners as per policy/guidelines of Food Department for Wheat Procurement Policy 2023-24 and the similar matters have already been decided by this Court in Constitution Petition No. D- 380 of 2024 (*Ali Hassan Bozdar vs. Province of Sindh & others*) and other connected petitions vide common judgment dated 24-04-2024 and he will endorse the point of view of the learned Additional A.G appeared in the aforesaid petitions. If this is the position of the case, coupled with the consent of the parties, these petitions are disposed of in the following terms:-

(a). The petitioners and all the growers/Khatedars/small farmers of the concerned area shall approach the concerned officials for such BARDANA as per policy notified by the Government of Sindh.

(b) The Officials shall ensure their presence at that concerned wheat procurement Centers for distribution of BARDANA to the genuine growers as per Policy. The ancillary issues of the growers/khatedars/farmers shall be taken care of as per Policy and in the intervening period no harassment shall be caused to them by the Officials of whatsoever nature and they shall be dealt with in accordance with law

(c) Secretary Food Sindh shall ensure the distribution of BARDANA to the petitioners/growers/Khatedars on or before 08-05-2024 positively without fail.

The compliance report shall be submitted by the Secretary Food Sindh/concerned District Food Controller through the Additional Registrar of this Court accordingly. 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