

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Before;

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

Constitution Petition No. D-561 of 2024
(Muhammad Iqbal vs. Province of Sindh & others)

Constitution Petition No. D-566 of 2024
(Abdul Ghani Solangi vs. Province of Sindh & others)

Constitution Petition No. D-581 of 2024
(Rehmatullah Chachar vs. Province of Sindh & others)

Constitution Petition No. D-584 of 2024
(Muhammad Rafique vs. Province of Sindh & others)

Constitution Petition No. D-591 of 2024
(Akshay Kumar and others vs. Province of Sindh & others)

Constitution Petition No. D-592 of 2024
(Shakeel Ahmed Korai vs. Province of Sindh & others)

Constitution Petition No. D-593 of 2024
(Altaf Hussain Rajput vs. Province of Sindh & others)

Constitution Petition No. D-596 of 2024
(Muzamil Bashir and another vs. Province of Sindh & others)

Constitution Petition No. D-620 of 2024
(Baida Khan vs. Province of Sindh & others)

Constitution Petition No. D-621 of 2024
(Ahmed Bakhsh Mangrio vs. Province of Sindh & others)

Constitution Petition No. D-622 of 2024
(Syed Mureed Ali Shah vs. Province of Sindh & others)

Constitution Petition No. D-623 of 2024
(Ali Sher and others vs. Province of Sindh & others)

Constitution Petition No. D-627 of 2024
(Ameer Ali Rajpar vs. Province of Sindh & others)

Constitution Petition No. D-630 of 2024
(Ghulam Akbar Narejo vs. Province of Sindh & others)

Constitution Petition No. D-631 of 2024
(Loung Khan Rajpar vs. Province of Sindh & others)

Constitution Petition No. D-632 of 2024
(Alam Khan and another vs. Province of Sindh & others)

Constitution Petition No. D-633 of 2024
(Hafiz Mehboob and others vs. Government of Sindh & others)

Constitution Petition No. D-636 of 2024
(Altaf Hussain Khaskheli vs. Director Food Department Sindh and others)

Constitution Petition No. D-637 of 2024
(Tarique Hussain Rajpar vs. Province of Sindh & others)

Constitution Petition No. D- 638 of 2024
(Jamal Din Shambani vs. Province of Sindh & others)

Constitution Petition No. D- 641 of 2024
(Allah Bux Qambrani vs. Province of Sindh & others)

Constitution Petition No. D- 642 of 2024
(Umed Ali Sahito and others vs. Province of Sindh & others)

Constitution Petition No. D- 643 of 2024
(Fida Hussain Narej vs. Province of Sindh & others)

Constitution Petition No. D- 644 of 2024
(Ghulam Rasool Rajpar vs. Province of Sindh & others)

Constitution Petition No. D- 645 of 2024
(Ghulam Sarwar and others vs. Province of Sindh & others)

Constitution Petition No. D- 646 of 2024
(Ameer Ali Rajpar vs. Federation of Pakistan and others)

Constitution Petition No. D- 647 of 2024
(Lal Muhammad Magsi vs. Province of Sindh & others)

Constitution Petition No. D- 654 of 2024

(Ghulam Raza Arain and others vs. Province of Sindh & others)

M/s Gul Feroze Kalwar, Advocate for petitioner in CPD No. 566/2024, Jai Kumar, Advocate for petitioner in CPD No. 584/2024, Ajeebullah Junejo, Advocate for petitioner in CPD No. 592/2024, CPD No. 593/2024, Athar Hussain Abro, Advocate for petitioner No.1 in CPD No. 596/2024, Waqar Ali Phulpoto, Advocate for petitioner in CPD No. 620/2024 and CPD No. 654/2024, Abdul Mujeeb Shaikh, Advocate for petitioner in CPD No. 621/2024, Syed Mureed Ali Shah, Advocate petitioner in-person in CPD No. 622/2024, Syed Jaffer Ali Shah, Advocate for petitioners in CPD No. 623/2024, CPD No. 637/2024, CPD No. 641/2024, Nusrat Hussain Memon, Advocate for petitioner in CPD No. 627/2024, CPD No. 646/2024, Muhammad Farooque Rajpar, Advocate for petitioner in CPD No. 630/2024, Wajid Ali Shaikh, Advocate for petitioner in CPD No. 632/2024, Mr. Sanwal Khan Chachar, Advocate for petitioners in CPD No. 633/2024, Aqleem Hyder, Advocate for petitioner in CPD No. 636/2024, Gulsher S.R Mahar, Advocate for petitioner in CPD No. 638/2024, Deedar Ali M Chohan in CPD No. 642/2024, Samandar Ali Shaikh, Advocate for petitioner in CPD No. 645/2024,

Syed Naimat Ali Shah, Advocate for respondents No. 4 to 6, in CPD No. 591/2024

Mr. Laiqat Ali Shar, Additional Advocate General Sindh

M/s Bashir Ahmed Shaikh, Deputy Director Food Department Sukkur, Abdul Rasheed Chachar Food Inspector, Sajjad Memon Food Inspector, Athat Ali Bozdar DFC Ghotki, Ali Zar Food Inspector.

Date of hearing: **09.05.2024**

Date of Decision: **09.05.2024**

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. Liaquat Ali Shar, learned Additional Advocate General Sindh states that the issue involved 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 as discussed supra. He further pointed out that the BARDANA which was supplied to the concerned wheat procurement centers have already been exhausted however, they are making efforts to arrange the BARDANA to be distributed to the actual khatidars/growers/farmers of the respective areas and the same shall be distributed as per policy 2023-2024. The Secretary, Food Department of Sindh is directed ensure availability of requisite BARDANA for distribution amongst the genuine khatidars /growers/farmers as per policy as they are raising their voice of concern and putting allegations against the concerned officials about their malpractice, this factum shall be taken care of by the Secretary Food Department without fail.

The learned counsel representing the petitioners and some of the petitioners who are present in person submit that they are fed up with the attitude of the official respondents who are harassing the petitioners and other growers/khatidars by demanding illegal gratification without lawful justification and they are compelling the petitioners to sell their crops on meager amount which is apathy on their part. At this stage, the petitioner Syed Mureed Ali Shah in CPD No. D-622 of 2024 has sought indulgence of this Court by referring complaint regarding misuse of powers and authority, misconduct and intimidation by the official respondents against the petitioner and his Kamdar Suhrab Khan Solangi for that he has already approached the learned Sessions Judge/Ex-Officio Justice of Peace Naushehro Feroze by filling criminal miscellaneous application under section 22-A Cr.PC. He prayed for inquiry and action against the concerned officials. Be that as it may, he has to avail his remedy as per law in the meanwhile no harassment shall be caused to any of the petitioner (s) by the official respondents.

After submitting their brief submissions all the parties request that these petitions may be disposed of in terms of the common judgment passed by this Court as discussed in the preceding paragraph. Learned

AAG submit that he will look into the allegations of the petitioners and other growers/khatidars/farmers and if found correct appropriate action shall be suggested against the delinquent officials without delay, 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 10-05-2024 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