

**IN THE HIGH COURT OF SINDH, KARACHI**

Constitution Petition No. D- 2091 of 2024

**Present: Mr. Justice Muhammad Junaid Ghaffar  
Mr. Justice Jawad Akbar Sarwana**

For the Petitioner: M/s Hussain Ali Almani and Akbar Sohail, Advocates for the Petitioner.

For the Respondents: Sardar Zafar Hussain, Advocate for Respondent along with Mr. Hubban, Appraising officer (East).  
Mr. Kashif Nazeer, Assistant Attorney General along with Nasir Ahmed, Deputy Director (Quarantine), Department of Plant Protection.

For Respondent No.4: Mr. Asim Iqbal Advocate along with Mr. Farmanullah and Azhar Ali Channa, Advocates

For Respondent No.5: Mr. Maqsoom-ul-Hakim, Advocate

**Date of hearing: 14.5.2024**  
**Date of Order: 14.5.2024**

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through this petition, the Petitioner has sought the following prayers: -

*I. Declare that the Impugned Direction-I, Impugned Direction-II, Impugned Office Memorandum and Impugned Letter are unlawful, discriminatory, and void;*

*II. Direct the Respondent No.2 to remove the hold/block on Petitioner's wheat consignment and ensure release from East Wharf Karachi Port;*

*III. Suspend the operation of the Impugned Documents and/or restrain the Respondents and their officers and assigns from, directly or indirectly, taking any action on the basis of the Impugned Documents including but not limited to interfering with the discharge of cargo on MV Queen Win and/or release of all wheat consignment;*

2. Learned counsel appearing on behalf of the Petitioner has contended that pursuant to relaxation with regard to Import of wheat by the private Sector, the Petitioner approached the Department of Plant Protection on 13.1.2024 and was issued a permit for import of wheat, which was valid from 13.1.2024 to

13.7.2024 and accordingly a consignment of 50,000 Metric Tons of wheat from Russia was imported. Per learned counsel, a meeting of the Wheat Board was held on 23.2.2024 and it was decided that import of milling wheat by the private sector will be allowed till 31.3.2024, whereas, the Department of Plant Protection was supposed to ensure proper inspection of wheat till 31.3.2024. According to him, as per Office Memorandum dated 06.3.2024, the decision of the Wheat Board was notified and along with that Office Memorandum, a list of 19 vessels was also annexed, which had already arrived at Karachi port, whereas, vide Office Memorandum dated 28.3.2024 further directions were issued. According to him, all such vessels which had already arrived or were mentioned in the Annexure to the minutes of the meeting held on 23.2.2024 were permitted to be berthed and discharged accordingly. He submits that notwithstanding these clear directions, suddenly, by way of impugned directions, an altogether different stance has been taken by the Respondents by way of Office Memorandum dated 01.5.2024, wherein an attempt has been made to clarify the minutes of the meeting of the Wheat Board held on 23.2.2024 and 26.3.2024 by stating that it was decided that no vessel will be allowed to off-load cargo after 31.3.2024. Per learned counsel, this amounts to reading into the decision already taken as it was never decided that no vessel will be allowed off-loading after 31.3.2024, rather, all such vessels which had arrived by 31.3.2024, were supposed to be allowed discharge and release for which directions were also issued to the Plant Protection Department, Karachi. He submits that acting on this Memorandum, the Customs and Port Authorities have suddenly halted the process of discharge of wheat which was going on smoothly as approximately 28,126 M/Tons has already been discharged and cleared. He has prayed that the Office Memorandum be set aside to the extent of the Petitioner.

3. On the other hand, learned Assistant Attorney General has relied upon the comments filed by the Ministry of National Food Security and Research and submits that since there is a wheat crisis in the country, whereas, excess wheat is available locally, the impugned decision has been taken and no further discharge can be allowed. Insofar as Respondent KPT is concerned, learned Counsel submits that vessel in question had already arrived at Port before 31.3.2024, and was in the process of discharge when this impugned Memorandum has been issued; hence, KPT was bound to act upon the same.

4. We have heard the Petitioner's counsel as well as learned Assistant Attorney General and perused the record.

5. It appears that import of wheat, which otherwise is regulated by the Government, was allowed and permitted to the private sector, based on which the Petitioner obtained an import permit from the Department of Plant Protection, Karachi, a Division of Respondent No.1 and to that effect there appears to be no dispute. It further appears that after the wheat was permitted to be imported by the private sector, several meetings of the Wheat Board were held and in this regard 4<sup>th</sup> meeting held on 23.2.2024 is relevant after which on 06.3.2024, an Office Memorandum was issued. The same reads as under: -

**MOST IMMEDIATE**

F. No. 1-1/2020/DFSC-II/Senate  
Government of Pakistan  
Ministry of National Food Security & Research

.....

Islamabad, the 06<sup>th</sup> March, 2024

**OFFICE MEMORANDUM**

Subject: **4<sup>TH</sup> MEETING OF THE WHEAT BOARD**

The undersigned is directed in continuation of this office letter of even number dated 27<sup>th</sup> February, 2024 regarding decisions of the Wheat Board taken in its 4<sup>th</sup> meeting held on 23-02-2024. The decisions are reproduced as below:

- a. *Import of specified milling wheat by the private sector has been allowed till the 31-03-2024.*
- b. *No further import should be allowed, in any case, after 31-03-2024.*
- c. *Department of Plant Protection (DPP) will ensure proper inspection of specified wheat vessels till 31-03-2024 as per list provided by private importers (Annex-1).*

2. In this regard, Department of Plant Protection (DPP) is resensitize to extend their inspection for the vessels given in the list above. As the permission for Import arrival is until 31-03-2024, therefore, DPP should confine to the specified vessels given at Annex-I till that specified period, in order to ensure the local production of wheat and minimum support price of wheat.

Encl: as above,

**(MUHAMMAD ASIF)**  
Deputy Agricultural Development  
Commissioner  
Tel: 051-9208368

**Director General,**  
Department of Plant Protection (DPP),  
Malir Halt, Shahrah-e-Faisal,  
Karachi.

C.C to:

1. PS to Minister for NFS&R, Islamabad.
2. PS to Secretary, M/o NFS&R, Islamabad.
3. Cereal Association of Pakistan, Karachi.
4. Pakistan Flour Mills Association (All Zones).

6. Perusal of the aforesaid Office Memorandum reflects that the import of specified milling wheat by the private sector was allowed till 31.3.2024 and after that date no further imports were to be allowed. It was further decided that the Department of Plant Protection will ensure proper inspection of wheat vessel till 31.3.2024 as per list provided by the private importers. It is not in dispute that the list which is part of the minutes of the meeting and Office Memorandum as above, contains the name of the Petitioner's vessel at Serial No.14, which admittedly had arrived by that time. It further appears that suddenly on 01.5.2024, another Office Memorandum was issued, which apparently has made an attempt to clarify the earlier Office Memorandum and the decisions taken in the 4<sup>th</sup>

and the 5<sup>th</sup> meeting of the Wheat Board. This memorandum reads as under; -

**MOST IMMEDIATE**

F. No. 1-1/2020/DFSC-11/Senate  
Government of Pakistan  
Ministry of National Food Security and Research  
\*\*\*\*\*

Islamabad, the 1<sup>st</sup> May, 2024

**OFFICE MEMORANDUM**

Subject: **ARRIVAL, INSPECTION AND UNLOADING OF WHEAT VESSELS BEYOND CUT OFF DATE OF 31-03-2024**

In continuation of this office letters of even number dated 06-03-2024 and 28-03-2024, the undersigned is directed to state that it has come to the knowledge of the ministry through reliable resources that arrival of wheat vessels is still continuing in violation of the directions of the ministry and the process of unloading is underway at the Sea-ports. The matter was clearly deliberated during the 3<sup>rd</sup> and 4<sup>th</sup> meetings of the "Wheat Board" held on 23-02-2024 and 26-03-2024 respectively and clear instructions were communicated for strict compliance (copies enclosed).

2. In the above referred meetings of the "Wheat Board", it was categorically decided ***that no vessels shall be allowed in any case to be offloaded in the country after 31-03-2024***. You are, therefore, directed to immediately ensure absolute compliance and approach the Ports Authorities to restrict the off-loading process. Furthermore you are directed to share complete details of wheat vessels arrived in Pakistan from 01-05-2023 till date with special emphasis on any vessel arrived 31-03-2024. off-loaded after 31-03-2024.

**Encl: as above.**

**(IMTIAZ ALI GOPANG)**  
Food Security Commissioner-II  
Ph. # 053-9208707

**Director General**  
Department of Plant Protection,  
Karachi.

CC:

1. PS to Minister for NFSR, Islamabad.
2. PS to Secretary, MNFSR, Islamabad.

7. From perusal of the aforesaid Office Memorandum, it reflects that according to the Ministry concerned, it has come to their knowledge through reliable resources that arrival of wheat vessels is still continuing in violation of the directions of the

ministry as process of un-loading is underway at sea port. While reiterating the earlier decisions taken on 23.2.2024 and 26.3.2024, it was clarified through this Memorandum that in the above referred meeting of the Wheat Board, it was categorically decided that no vessels shall be allowed in any case to be off-loaded in the country after 31.3.2024. Based on this clarification, the Director General, Department of Plant Protection was directed to ensure compliance and also approach Port Authorities to restrict the off-loading. This memorandum was then forwarded to the concerned Port Authorities and the off-loading of the vessel in question was suddenly stopped by the Port Authorities. From perusal of the two Office Memorandums along with the minutes of the meeting held on 23.2.2024 as above, it clearly reflects in the earlier Memorandum it was never directed that **no off-loading will be allowed after 31.3.2024;** rather the Plant Protection Department was directed to carry out inspection and fumigation of wheat till 31.3.2024 and not only this, a list of 19 vessels was also annexed with the earlier Memorandum. Insofar as the impugned memorandum dated 01.5.2024 is concerned, it clearly reflects that it is an attempt to read into this Memorandum the words **no off-loading will be allowed in the country after 31.3.2024** as such decision was never part of the minutes of the 3<sup>rd</sup> and 4<sup>th</sup> as well as the 5<sup>th</sup> meeting of the Wheat Board.

8. Notwithstanding this, even otherwise if a vessel has already arrived before the cutoff date and has been duly inspected and fumigated by the Plant Protection Department, then the off-loading of cargo is merely a procedural event which naturally takes time and cannot be stopped in between in the manner as has been attempted by Respondent No.1 through impugned Memorandum dated 01.5.2024. When it was decided that “Imports” will not be allowed after 31.3.2024, then there

was no occasion to make an attempt to substitute or replace it with “offloading” or “discharge” of cargo. In our considered view, use of the words “Imports” in the earlier decision is clear and the Petitioner’s vessel had arrived and would mean that it had been imported. The word “import” in ordinary parlance means bringing into the Country, whereas, in the instant matter not only wheat has been imported, but even the vessel has arrived; import manifest has been filed, GD’s have been processed and around 28,126 M/Tons have been discharged and cleared from the Port. We do not see as to how the Respondent No.1 intends to reverse this. It has, in fact, no such authority to do so. At best, it is the Ministry of Commerce which can regulate the import by putting any embargo; but even that does not apply to the goods already shipped as per the proviso to Para4 of the Import Policy Order, 2022. Here in this matter, the case of the petitioner is on a far better footing as not only the shipment has been made, but in fact, it has already arrived at port even before 31.3.2024 and was detained only due to rush at the port and unsuitable conditions of the berth so allotted for discharging wheat. Therefore, insofar as the present petitioner is concerned, in our considered view the Office Memorandum dated 01.5.2024 cannot be acted upon so as to read any additional words in the decision already taken in the 3<sup>rd</sup> & 4<sup>th</sup> meeting of the Wheat Board; hence, is not applicable to the present consignment of the Petitioner.

9. In view of hereinabove facts and circumstances of this case, on 14.5.2024, this petition was allowed by way of a short order, which reads as under: -

*“.....For reasons to be recorded later on, this petition is allowed. Impugned Office Memorandum dated 01.05.2024 (Page-257), Letter dated 01.05.2024 (Page-259) and Directions dated 01.05.2024 & 02.05.2024 to Respondents No.3,4 & 5 available at Pages 261 to 265 are hereby set aside to the extent of the Petitioner. The goods of the Petitioner shall be allowed to be discharged / offloaded and clearance from the Port.”*

The above are the reasons in support thereof.

**JUDGE**

**JUDGE**

Zahid/\*