

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D- 380 of 2024

(Ali Hassan Bozdar vs. Province of Sindh & others)

Constitution Petition No. D-381of 2024

(Muhammad Hayat and others vs. Province of Sindh & others)

Constitution Petition No. D-383 of 2024

(Muhammad Azam Abro vs. Province of Sindh & others)

Constitution Petition No. D- 384 of 2024

(Fayaz Ali Banbhan and others vs. Province of Sindh & others)

Constitution Petition No. D-387 of 2024

(Hakim Ali Jatoy Vs. Province of Sindh & others)

Constitution Petition No. D- 398 of 2024

(Abdul Ghaffar Chang vs. Province of Sindh & others)

Constitution Petition No. D- 403 of 2024

(Gulsher Ahmed vs. Province of Sindh & others)

Constitution Petition No. D- 405 of 2024

(Niaz Muhammad Shambani vs. Province of Sindh & others)

Constitution Petition No. D- 407 of 2024

(Allah Bachayo Mari and another vs. Province of Sindh & others)

Constitution Petition No. D- 408 of 2024

(Muhammad Ameen Arain vs. Province of Sindh & others)

Constitution Petition No. D-410 of 2024

(Muhammad Siddique Indhar Vs. Province of Sindh & others)

Constitution Petition No. D- 411 of 2024*(Sohbat Ali Shar and another vs. Province of Sindh & others)*

Constitution Petition No. D- 413 of 2024*(Mumtaz Ali Siyal and others vs. Province of Sindh & others)*

Constitution Petition No. D- 415 of 2024*(Zafrullah Bullo vs. Province of Sindh & others)*

Constitution Petition No. D- 417 of 2024*(Muhammad Ameen Rajpar vs. Province of Sindh & others)*

Constitution Petition No. D- 418 of 2024*(Ghulam Mujtaba and another vs. Province of Sindh & others)*

Constitution Petition No. D- 423 of 2024*(Talib Hussain Gadani and another vs. Province of Sindh & others)*

Constitution Petition No. D- 419 of 2024*(Kashmir vs. Province of Sindh & others)*

Constitution Petition No. D- 421 of 2024*(Altaf Hussain Shar vs. Province of Sindh & others)*

Constitution Petition No. D- 424 of 2024*(Abdul Sattar Haryah and others vs. Province of Sindh & others)*

Constitution Petition No. D- 426 of 2024*(Mehrab vs. Province of Sindh & others)*

Constitution Petition No. D- 427 of 2024*(Zameer Hussain Khorkhan and others vs. Province of Sindh & others)*

Constitution Petition No. D- 430 of 2024

(Rahib Ali Bhanbhro and others vs. Province of Sindh & others)

Constitution Petition No. D-431 of 2024

(Muharram Ali & 04 others Vs. Province of Sindh & others)

Constitution Petition No. D- 432 of 2024

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

Constitution Petition No. D- 433 of 2024

(Muhammad Hassan Mahar vs. Province of Sindh & others)

Before;

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

Date of hearing and order: 24-04-2024.

M/s Syed Naimat Ali Shah, Advocate for petitioners in CPD Nos. 380 and 423 of 2024, Abdul Naeem Pirzada, Advocate for petitioners in CPD No. 381 of 2024, Sohail Ahmed Khoso, Advocate for petitioner in CPD No. 383 of 2024, Abdul Qadir Bhatti, Advocate for petitioner in CPD No. 384 of 2024, Rahib Islam Nabi advocate for petitioner in CPD No. 387 of 2024, Rehmat Ali Raza, Advocate for petitioner in CPD No. 398 of 2024, Abdul Ahad Buriro, Advocate for petitioners in CPD Nos. 403 & 419 of 2024, Shafique Ahmed Laghari, Advocate for petitioner in CPD No. 405 of 2024, Nusrat Hussain Memon, Advocate for petitioner in CPD Nos. 407, 408, 413 of 2024, Ajeebullah Junejo advocate for the petitioner in CPD No. 410 of 2024, Mr. Bashir Ahmed Shar, Advocate for petitioners in CPD Nos. 411 of 2024, Ajeebullah Junejo, Advocate for petitioner in CPD No. 415 & 433 of 2024, Aijaz Ahmed Sipra, Advocate for petitioner in CPD Nos. 417 & 418 of 2024, Mansoor Hussain Maitlo, Advocate for petitioner in CPD No. 421 of 2024, Illahi Bux Jamali, Advocate for petitioners in CPD No. 424 of 2024, Badaruddin Memon, Advocate for petitioner in CPD No. 426 of 2024, Wajid Ali Shaikh, Advocate for petitioners in CPD No. 427 of 2024, Syed Tanveer Abbas Shah, Advocate for petitioners in CPD No. 430 of 2024, Petitioners Muhammad Ali and others **in person** in CPD No. 431 of 2024, Sheraz Fazal, Advocate for petitioners in CPD No. 432 of 2024.

Mr. Qurban Ali Malano advocate for respondent No.7, 8 & 9 in CPD No. 423 of 2024.

Mr. Liaquat Ali Shar, Additional Advocate General, Sindh along with Dildar Ali Kalwar, District Food Controller Sukkur, Hakim Ali Mahar, District Food Controller Khairpur, Abdul Waseem District Food Controller Naushehro Feroze, Akhtiar Ali Bozdar, District Food controller Ghotki, Abdul Rasheed Chachar, Food Inspector, Sajjad Ali Memon Food Inspector, Qurban Ali Kalwar Food Inspector.

ORDER.

Adnan-ul-Karim Memon J:- This order shall decide the captioned petitions as the issue involved in these petitions relates to the exercise of discretion for distributing BARDANA under the wheat procurement policy 2023-24 vide Notification No. SO(W)-7(31)/2023-24.

It appears from the record that several constitutional petitions have been filed alleging misuse of discretionary powers under the policy 2023-24 while distributing BARDANA to the growers. Petitioners have raised their voices of concern alleging mal-administration in distribution of BARDANA to some fictitious persons having no agricultural land in the relevant areas. It is argued by the petitioner's side that a mafia in collusion with official respondents in all petitions is active at the wheat procurement centers (WPCs). Small farmers are made to stand in lines to submit their applications, yet BARDANA is being distributed to the favorites upon political interference and influence or to fictitious persons by manipulating records.

Learned counsel for the parties have relied upon certain documents attached with the memo of petitions to substantiate their allegation of maladministration and distribution of BARDANA to fictitious persons. They have pointed out that BARDANA is being consistently issued every year to those persons who do not cultivate any agricultural land in the relevant area of the distribution center. They have also pointed out certain illegalities and mal practices committed by the official respondent in connivance with political

figures/traders, who have nothing to do so with the Wheat Procurement and distribution of BARDANA to the growers under the policy decision. They prayed for allowing the petitions.

Learned Additional A.G. has referred to different clauses of policy 2023-24, and appraised that BARDANA was being distributed to meet the wheat purchase target as per support price of Rs.4000/- per 40 KG for fresh crop 2023-24 and to implement the policy, District and Taluka-wise allocation was made by establishing Wheat Procurement Centers. As per learned Additional A.G, applications of growers are being received and entertained by Center incharges on the basis of passbook or latest Dhal report or Partial report or recommendation of the competent Revenue authority certifying the bonafides of applicant as bonafide growers. Learned Additional A.G further submitted that provincial cabinet waived of the condition of Form-VII to be provided by the growers to ascertain their eligibility for receiving BARDANA.

When asked whether the distribution of BARDANA had been made to ensure equitable distribution amongst the growers, he could only explain that this is a policy of the Government of Sindh to distribute the BARDANA on equitable distribution amongst the growers without discrimination. Learned Additional A.G. further submitted that the Government of Sindh is not under any statutory obligation to purchase wheat from growers; however, wheat is purchased for many reasons as explained in the policy. Explaining the query on discrimination, he has submitted that BARDANA is distributed amongst the growers under the policy as no Center incharge is allowed to issue BARDANA without prior permission of District Food Controller concerned in writing. However, he agreed for disposal of these petitions in the terms of policy 2023-24 and submitted that District Food Controller concerned as well as Center Incharge shall ensure distribution of Food grain bags/BARDANA without discrimination and the genuine growers/khatedars/small farmers and other aggrieved persons shall be allowed to receive the

BARDANA at the rate provided in the policy 2023-24. He further assured that no BARDANA shall be allowed to be sold to the traders at any costs and the same shall be given to the genuine growers in accordance with law. The aforesaid stance has been refuted by the learned counsel representing the petitioners on the premise that official respondents are demanding illegal gratification for releasing of empty bags (BARDANA). On the aforesaid stance, learned AAG has assured that no illegal gratification for releasing the BARDANA shall be allowed and if any official of Food Department is found to be involved, legal action shall be taken against them including disciplinary proceedings and criminal action under the law.

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.

Judge

Judge

Nasim/P.A