

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**Constitution Petition No. D- 414 of 2024***(Muhammad Younus Channa vs. Province of Sindh & others)*

Before;*Adnan-ul-Karim Memon, J;
Muhammad Abdur Rahman, J;***Date of hearing and order: 24-04-2024.**

Mr. Yasir Javed advocate for the petitioner.

Mr. Liaquat Ali Shar, Additional Advocate General, Sindh along with Abdul Waseem District Food Controller Naushehro Feroze.

ORDER.

Adnan-ul-Karim Memon J:- The issue involved in the instant petition 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 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 petitioner has relied upon certain documents attached with the memo of petition to substantiate his allegation of mal administration and distribution of BARDANA to

fictitious persons. He has 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. He has 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 of District Naushahro Feroze including Taluka Mehrabpur under the policy decision. Learned counsel further submitted that this is public interest litigation as the official respondents in connivance with each other are demanding illegal gratification and the wheat growers are being forced to sale their crop for as low as Rs. 3280/- per KG in the open market other then the Government rate of Rs. 4000/- per 40 KG, hence the genuine wheat growers are being deprived of millions of rupees, as such the plight of thousands of genuine farmers is at stake. Learned counsel added that the provincial Government has established as many as 353 Wheat Procurement Centers across Sindh out of which 58 Centers are established in Shaheed Benazirabad Division and the respondent No.5 has been made incharge of 05 Procurement Centers i.s Kandiaro, Halani, Mehrabpur, Lakha Road and Kotri Kabir, where he has distributed thousands of wheat bags to traders and wheat growers by taking bribe. He prayed for direction to the District & Sessions Judge Naushahro Feroze to nominate Judicial Officer in each Taluka and District Naushahro Feroze to monitor the transparent distribution of BARDANA/Wheat bags to the genuine wheat growers.

Learned Additional A.G. has referred to the statement filed on behalf of respondents Nos. 3 & 4 and submitted that the Food Department Government of Sindh has not opened Wheat Procurement Center at Mehrabpur; however he states that petitioner has neither contacted them nor came for issuance of BARDANA. Learned AAG 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 Partal report or report/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 of District Naushahro Feroze, 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 this petition 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 petitioner 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 him 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, this petition is disposed of with direction to the competent authority/ Secretary Food/ concerned District Food Controller/Incharge Center(s) who shall ensure that wheat bags/BARDANA are distributed to the petitioner 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 petitioner/growers/farmers shall be heard and the actual culprits shall be proceeded against under the law.

Since the petitioner has prayed for direction for nomination of Judicial Officer to monitor the distribution of BARDANA, the petitioner shall approach the learned Sessions Judge Naushahro Feroze who shall take care of the subject issue at his own if he finds appropriate.

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

Secretary Food Sindh shall ensure the distribution of BARDANA to the petitioner/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.

The instant petition is disposed of accordingly.

Judge

Judge

Nasim/P.A