

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Before;

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

Constitution Petition No. D-477 of 2024
(Khursheed Ahmed Leghari vs. Province of Sindh & others)

Constitution Petition No. D-478 of 2024
(Ashique Hussain Leghari vs. Province of Sindh & others)

Constitution Petition No. D-488 of 2024
(Manzoor Hussain Dehraj and others vs. Province of Sindh & others)

Constitution Petition No. D-449 of 2024
(Zakir Ali and others vs. Province of Sindh & others)

Constitution Petition No. D-491 of 2024
(Ghulam Akber Shahani & others vs. Province of Sindh & others)

Constitution Petition No. D-497 of 2024
(Hafeezullah and others vs. Province of Sindh & others)

Constitution Petition No. D-504 of 2024
(Muhammad Siddique Khaskheli and others vs. Province of Sindh & others)

Constitution Petition No. D-506 of 2024
(Misri Khan vs. Province of Sindh & others)

Constitution Petition No. D-507 of 2024
(Khan Muhammad vs. Province of Sindh & others)

Constitution Petition No. D- 508 of 2024
(Nadir Ali Bhatti vs. Province of Sindh & others)

Constitution Petition No. D-509 of 2024
(Asghar Ali vs. Province of Sindh & others)

Constitution Petition No. D-512 of 2024
(Zahid Hussain and others vs. Province of Sindh & others)

Constitution Petition No. D-513 of 2024
(Sheheriyar vs. Province of Sindh & others)

Constitution Petition No. D- 514 of 2024

(Jabir Ali vs. Province of Sindh & others)

Constitution Petition No. D-515 of 2024

(Imdad Ali and others vs. Province of Sindh & others)

Constitution Petition No. D-521 of 2024

(Mushtaque Ali Rajper and others vs. Province of Sindh & others)

Constitution Petition No. D-522 of 2024

(Ali Bux and others vs. Province of Sindh & others)

Constitution Petition No. D-524 of 2024

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

Constitution Petition No. D-526 of 2024

(Ghulam Murtaza and others vs. Province of Sindh & others)

Constitution Petition No. D-527 of 2024

(Jam Mashooque and others vs. Province of Sindh & others)

Constitution Petition No. D-528 of 2024

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

Constitution Petition No. D- 532 of 2024

(Akk Bhambhro vs. Province of Sindh & others)

Constitution Petition No. D- 533 of 2024

(Niaz Hussain vs. Province of Sindh & others)

Constitution Petition No. D-534 of 2024

(Awal Khan vs. Province of Sindh & others)

Constitution Petition No. D- 535 of 2024

(Jan Muhammad vs. Province of Sindh & others)

Constitution Petition No. D- 536 of 2024

(Dhani Bux vs. Province of Sindh & others)

Constitution Petition No. D-537 of 2024

(Muhammad Raheem vs. Province of Sindh & others)

Constitution Petition No. D-538 of 2024

(Douro vs. Province of Sindh & others)

Constitution Petition No. D-539 of 2024

(Ali Madad vs. Province of Sindh & others)

Constitution Petition No. D-540 of 2024
(Hussain Bux vs. Province of Sindh & others)

Constitution Petition No. D-541 of 2024
(Ali Hassan vs. Province of Sindh & others)

Constitution Petition No. D-542 of 2024
(Saboo vs. Province of Sindh & others)

Date of hearing and order 02-05-2024.

M/s Irshad Hussain Dharejo, Nisar Ahmed Bhanbhro, Nusrat Hussain Memon, Shabbir Ali Bozdar, Sanwal Khan Chachar, Abdul Sattar Mahesar, Tanveer Abbass Shah, Illahi Bux Jamali, Muhammad Nasir, Shahid Ali Memon, Ghulam Murtaza Korai, Muhammad Farooque, Mujahid Ali Shah, Aijaz Ahmed Sipra, Badaruddin memon, Abdul Raheem Mahar, Abdul Salam Shaikh, Sanwal Khan, Ali Akber Shar, Nadeem Ahmed Malik and Asif Ali Dharejo.

M/s Liaquat Ali Shar, Additional Advocate General, Sindh.

M/s Hakim Ali Kalwar, DFC Khairpur, Jagdeesh Kumar DFC Sukkur, Qurban Kalwar, Centre Incharge Food department.

ORDER.

Adnan-ul-Karim Memon J:- The petitioners have raised their voice of concern about the distribution of BARDANA/wheat bags to them as per policy/guidelines of Food Department for wheat procurement 2023-24, therefore, the captioned petitions are being taken up together for disposal in the terms of the ratio of the common judgment 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. **Petitioners have prayed for same treatment to be meted out with them. For convenience sake an excerpt whereof 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”.

Learned Addl.A.G has submitted that the petitioners will be issued BARDANA as per Policy notified by the Government of Sindh dated 18-03-2024.

Upon the undertaking of the AAG coupled with statement of the Officers present in Court, Secretary Food Sindh is directed to ensure the distribution of BARDANA to the petitioners/growers/Khatedars on or

before 07-05-2024 positively without fail; however their other ancillary issues shall be taken care of accordingly.

Petitioners/growers/Khatedars shall proceed to appear before the concerned District Food Controller/incharge Wheat Procurement Centers as notified and after showing their requisite papers/Dhall/land revenue receipts of their respective lands, the same applications shall be processed forthwith by the concerned officials and the petitioners/growers/Khatedars and those small farmers who have not approached this Court shall also be issued BARDANA without fail. In the meanwhile the concerned officials shall ensure their availability at the place of Wheat Procurement Centers; however if it is found that they remain absent , it shall be treated violation of the Order of this Court to attract penal action in terms of Article 204 of the Constitution of Islamic Republic of Pakistan, 1973 and they shall be proceeded without further notice.

The compliance report shall be submitted by the Secretary Food Department 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

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