IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C.P. Nos.D-521, 670 and 1714 of 2021

C.P. No.D-72 of 2022 & C.P. Nos.D-171, 172 and 238 of 2023

PRESENT
Mr. Justice Zafar Ahmed Rajput
Mr. Justice Zulfiqar Ahmad Khan

Petitioners through	:	M/s. Qurban Ali Malano and Israr Ahmed Shah, Advocates for Petitioners in C.P. Nos. D-521 & 670 of 2021 and 72 of 2022. M/s. Sohail Ahmed Khoso and Aftab Hussain Soomro, Advocates for Petitioners in C.P. No.D-1714 of 2021. M/s. Ali Abid Zuberi, Habibullah Masood Memon and Agha Ali Durrani, Advocates for Petitioners in C.P. Nos.D-171, 172 & 238 of 2023
Respondents through	:	Mr. Bahawal-ud-Din Shaikh, Special Prosecutor, NAB. Mr. Zulfiqar Ali Naich, Assistant Advocate General, Sindh along with Syed Imdad Ali Shah, Director Food Sindh, Karachi Qareebullah Soomro, Deputy Director Food, Sukkur and Mr. Shafi Muhammad Mahar, DPG.
Date of hearing	:	**28.03.2023**
Date of announcement	:	**31.05.2023**

J U D G M E N T

Zulfiqar Ahmad Khan, J:- Through this judgment, we intend to dispose of petitions bearing C.P. Nos. D-521, 670 & 1714 of 2021, D-72 of 2022, D-171, 172 & 238 of 2023, as a similar point is involved in all these matters.

2. These petitions have been filed by owners, licensees and partners of various Flour Mills who claim that they have been running their business for a long time but allege that since the inception of

the new Wheat Release Policy (detailed in the foregoing, also called "Quota Policy"), officers of the Food Department of the Sindh Government, are not issuing them Wheat Quota, i.e. providing subsidized wheat for milling. The petitioners claim to have approached the respondents for the said quota, but the respondents have seemingly refused to grant such quota, alleging that the present petitioners or past owners or licensees of these Mills had National Accountability Bureau (NAB) cases against them, and as per Wheat Policy no quota could be given to any person who had made a plea bargain with NAB. The petitioners claim that they are neither defaulters nor have they misappropriated government funds, and thus, they are entitled to their respective quotas and allege that the refusal has caused them irreparable losses as well infringing their constitutional rights as to freedom of trade. In the case of C.P. No.D-1714 of 2021, the petitioners also claim that despite their being owners and co-partners in their Flour Mill, the respondents are not issuing clearance certificates to them for the above reasons. In the case of C.P. No.D-72 of 2022, the petitioner claims to be a part-owner of Jahangir Flour Mill and states that his father leased out the said Mill for a period of three years, and after the expiry of that tenure, the Mill was handed over to him, but due to similar policy issues the Department is not renewing his license, notwithstanding that the petitioner is willing to pay the government charges. Seemingly, the reason assigned for all such denials is that the Mills or their owners (including past lessees or owners) had some NAB cases or they had violated some provisions of the old wheat quota policies.

3. All the respective counsels (even from the Government side) have heavily relied on the judgment rendered by a learned Division Bench of this Court reported as 2022 MLD 1962 (Suresh Kumar v. Province of Sindh) wherein allegedly similar grievances were redressed, except for one time to the petitioners which were present before the Court in these petitions, hence not considered as a precedent. Nonetheless to start with, it would be appropriate to lay down the Wheat Release Policy so that its impositions could be well understood: -

GOVERNMENT OF SINDH
FOOD DEPARTMENT
Karachi dated the 14th October, 2020

To,
The Director,
Directorate of Food, Sindh, Karachi

The Deputy Director Food,
Karachi/Hyderabad/Sukkur/Larkana/Mirpurkhas/S.Benazirabad.

Subject:- WHEAT RELEASE POLICY 2020-21

I am directed to refer to the subject cited and to state that in exercise of the powers conferred under Section 3 of Sindh Food Stuffs (control) Act, 1958, and in pursuant to the decision of the Sindh Cabinet accorded in its meeting held on 13.10.2020, the Government of Sindh, is pleased to promulgate the following Wheat Release Policy for the year 2020-21:-

(i) The Issue Price of Wheat (including cost of bardana) will be Rs.,3687.50/100 kgs bag, as notified by this Department vide Notification No.SO(W)-4(09)/2020-21/Releases, dated 14-10-2020.

(ii). Release of wheat will start from 16-10-2020.

(iii). Wheat will be issued to the Flour Mills/Chakkies which remained functional at lease for a period of 06-months during last one year (October, 2019 to September, 2020) and already on Government roaster on the notified Issue Price.

(iv). The release of wheat will be made under “bodyh Formula” (i.e. only functional Roller bodies) for Flour Mills and “Stone Formula” (only for functioning stones) for Chakkies.

(v). In the first instance the stocks which are lying in open spaces at PRCs/WPCs will be released.

(vi) In No Case wheat shall be released on credit basis. In case of any violation in this regard respective District Director Food shall personally be held responsible and accordingly recovery shall be made from District Food Controller and respective Deputy Director Food.

(vii) The Ex-mill price and retail price of Atta will be notified by the Department keeping in view the recommendations of a Committee comprising representative of Divisional Commissioner/District Administration, All Pakistan Flour Mills Association, Additional Director and Director Food, Sindh constituted under Order No.SO(W)-10(01)/2013-Atta prices, dated 16-08-2013.

(viii) The Deputy Directors Food/District Food Controllers shall ensure grinding of wheat issued from Government godowns/stocks by flour mills/Chakkies through examination of their monthly electric consumption before making next allocation.

(ix) The Flour Mills found defaulters in any kind of misappropriation of government wheat/irregularity in payment of government dues such as cost of wheat, mark-up would not be released wheat from the Department.

(x) No wheat quota shall be issued to any flour mills prior clearance/N.O.C. from Director Food, Sindh.

(xi) Un-lifted/lapsed a allocated quota of wheat shall be surrendered to Government at the end of the month. However, the Flour Mills/Chakkies who could not lift wheat inspite of payment of Challan may be adjusted in the next month quota.

(xii) The Flour Mills involved in Plea Bargain with NAB shall not be allowed to buy Government wheat.

(xiii) The electricity consumption shall be criteria for releases of wheat. Hence, to avail quota of government wheat flour mills shall be required to submit electricity bill to the Director Food in order to establish the exact quantity of grinding of wheat of preceding month while quota of government wheat will be released to a Chakkies on submission of electricity bill of the previous month to the Deputy Director concerned.

2. All the above instructions and related codal formalities regarding issuance of wheat shall be

> strictly adhered to. In case of any violation/deviation from the policy the concerned Deputy Director/District Food Controller, shall be held responsible. Besides, strict legal action which includes recovery of Government loss will be taken against the Flour Mills which fail to grind the subsidized wheat."

4. In this regard it is also pertinent to mention that vide letter dated 16.10.2020 the above referred Policy was amended to allow Wheat Quota to the respective Flour Mills subject to fulfillment of the condition Nos. (iii), (iv), (vii) and (viii) only, whereas with regard to the condition (xii) it was made clear that such a condition as regards NAB cases would be observed strictly, as well as, the Mills were directed to furnish electricity bills for the last 12 months.

5. Counsels appearing for the petitioners also made a reference to Article 18 of the Constitution of Islamic Republic of Pakistan, which enshrines freedom of trade, however, admitted that the said Article also empowered the Government to set-up regulations over any such trade or profession. It is also a common factor in all the cases that NAB enquiries had taken notice of misappropriation of the Wheat Quota either by the owners of the Mills or by their respective Lessees and in furtherance thereof either Quotas have been denied to the Petitioners or their Mills have not been accorded for such an award. Whereas counsels for NAB and those representing the office of the Advocate General attempted to defend the criterion posed by the Policy.

6. To commence the discussion, it would be appropriate to consider the legislative mechanism which regulates supply of the Wheat Quota to various Flour Mills and under what conditions such Quotas could be restricted or with-held. These laws include Sindh Foodstuffs (Control) Act, 1958 as well as Flour Mills (Control) Order, 1969, keeping in mind that the said Act of 1958 is taken word by word

from the West Pakistan Foodstuffs (Control) Act, 1958, and that the 1969 Order is not relevant with regards NAB proceedings.

7. An overview of the Act, 1958 shows that it provides for the continuance of powers to control the supply and distribution of and trade and commerce in foodstuff (meant to include Wheat, Atta, Maida, Rawa and Suji) wherein the Government, gauging the need to maintain supply of any item of foodstuff or for securing its equitable distribution and availability at fair prices, is empowered to regulate and prohibit *the keeping, storage, movement, transport, supply, disposal, acquisition, use, or consumption thereof and trade or commerce therein*. Said Act is aimed towards regulating licensees, permits or otherwise for the manufacture of any foodstuff; controlling the prices at which any foodstuff may be bought or sold; regulating licenses, permits or otherwise, for the storage, transport, distribution, disposal, acquisition, use or consumption of any foodstuff; prohibiting the withholding from sale of any foodstuff ordinarily kept for sale; requiring any person holding stock of any foodstuff to sell the whole or specified part of the stock to such persons or class of persons or in such circumstances as may be specified in any Order regulating or prohibiting any class of commercial or financial transactions relating to any foodstuff which, in the opinion of the authority making the order, is or is likely to be detrimental to public interest. Such scheme of law can be broadly described as follows: -

> Licensing: the law requires all persons engaged in the production, storage, distribution, or sale of foodstuffs to obtain a license from the government.

Price control: the Government has the power to fix the maximum price at which foodstuffs can be sold. This is done to prevent hoarding and profiteering.

Seizure and forfeiture: The government has the power to seize and forfeit any foodstuff that is being sold at a price higher than the maximum price fixed by the government.

Inspection: The law provides for the inspection of foodstuffs by government officials to ensure that they are of the prescribed quality and fit for human consumption.

Prohibition of adulteration: The law prohibits the sale of any foodstuff that is adulterated or not of the prescribed quality.

Offences and penalties; the law prescribes penalties for various offences such as the selling of foodstuffs at a price higher than the maximum price fixed by the government, the adulteration of foodstuffs, and the obstruction of government officials in the performance of their duties.

8. The Act finds its teeth in Section 3 which provides as under: -

> **3. Powers to control supply, distribution, etc., of foodstuffs.—** (1)The Government, so far as it appears to it to be necessary or expedient for maintaining supplies of any foodstuff or for securing its equitable distribution and availability at fair prices, may, by notified order, provide for regulating or prohibiting the keeping, storage, movement, transport, supply distribution, disposal, acquisition, use or consumption thereof and trade and commerce therein.
>
> (2) Without prejudice to the generality of the powers conferred by sub-section (1) an order made thereunder may provide:-
>
> (*a*) for regulating by licences, permits or otherwise the manufacture of any article of food from any foodstuffs;
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> (*b*) for controlling the prices at which any foodstuffs may be bought or sold;
>
> (*c*) for regulating by licences, permits or otherwise, the storage, transport, distribution, disposal, acquisition, use or consumption of any foodstuff;
>
> (*d*) for prohibiting the withholding from sale of any foodstuff ordinarily kept for sale;
>
> (*e*) for requiring any person holding stock of any foodstuff to sell the whole or a specified part of the stock to such persons or class of persons or in such circumstances as may be specified in the order;
>
> (*f*) for regulating or prohibiting any class of commercial or financial transactions relating to any foodstuff which, in the opinion of the authority making

> the order is, or is likely to be, detrimental to public interest;
>
> (*g*) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;
>
> (*h*) for requiring persons engaged in the supply or distribution of, or trade or commerce in, any foodstuffs, to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto as may be specified in the order; and
>
> (*i*) for any incidental and supplementary matters including, in particular, the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any articles in respect of which such person has reason to believe that a contravention of the order has been, is being, or is about to be committed, or any records connected therewith, the grant or issue of licences, permits or other documents, and the charging of fees therefor." [Underlining is ours]

9. The analysis of this section of the law is of particular importance since the Wheat Release Policy is issued under it. As to its intention, it is abundantly clear that while the intent of the law is ascertained not only from the language in which it is clothed, form, design, consequences and followings envisaged by the statute, and in this regard the words, "may", "shall" and "must" are clueful. The courts have held that those provisions of law which have the words "**shall**" and "**must**" are to be taken as mandatory provisions, the breach of which necessarily invalidates the process to which they relate; while directory rules are procedural rules the breach of which, does not necessarily invalidates the process to which they relate and such rules are procedural in nature, breach whereof does not necessarily have this effect usually have the word "**may**" therein. In one of the recent case[1] dilating on the issue, the Hon'ble Supreme Court held that the "ultimate test to determine whether a provision

[1] 2022 SCMR 1333

is mandatory, or directory is that of ascertaining the legislative intent" that determines mandatory or directory nature of a provision. In the case of Wattan Party[2], the Hon'ble Judges of the Supreme Court held that the "*whole purpose of the legislation is also to be kept in view to determine whether the duty cast is of absolute nature or of directory nature*". As could be seen from the analysis of section 3 of the Act that it has purposely chosen not to use the word "shall" but even the use of the word "may" is contingent upon the finding having been (previously) given by the Government of the circumstances where it had determined (by application of a judicious and independent mind) and where such impositions have become necessary or expedient for maintaining supplies of any foodstuffs or for securing its equitable distribution and availability at fair prices, hence only in such circumstances application of the said provision of law is competent and not otherwise – that too while remaining in the ambit of the statute itself. Interestingly, such *contingently directive provision of law* only exists in a very few pieces of legislations besides the Act of 1958 as the phase "*so far as it appears to it to be necessary or expedient*" is not so often used in legal and regulatory frameworks to provide discretionary powers to authorities or decision-makers, as ordinarily laws allow regulators to take action or make decisions based on the circumstances of the case but strictly in accordance with law with just reasoning. In discussing this, Haney[3] points out that, whilst ostensibly the government follows due democratic process in getting an Act on to the statute book, the vagueness of *contingently directive provision of law* allows it to take

[2] 2006 PLD SC 697
[3] Haney J. (2012) Regulation in Action, London, Karnac Books

executive action at some future date *by way of a secondary piece of legislation*.

10. The phrase **"so far as it appears to it to be necessary or expedient"** usually suggests that a decision or action will be taken based on what is considered necessary or advantageous judged by the person or entity making the decision. This phrase also implies that there is some level of subjective involvement in the decision-making process, as what may be necessary or expedient to one person or entity may not be the same for another. It also suggests that the decision-makers are using their own judgment and discretion to determine the best course of action, based on the information available to them at the time. In legal or governmental contexts, this phrase is often used where decisions must be made based on the best available information and in the interests of the public or a particular group of people. It acknowledges that there may be different opinions or perspectives on what is necessary or expedient and allows the decision-maker to use their own judgment in weighing the available evidence before making a decision. Interestingly, this phrase also formed part of the Indian Gold (Control) Act 1968 where a parametria provision exists under Section 5(2) worded as "*The Administrator may, so far as it appears to him to be necessary or expedient for carrying out the provisions of this Act, by order…*" In the case of Harakchand Ratanchand Banthia[4] it was argued that the said phrase was a subjective formula and that action of the Administrator in making the orders under the said provision of law were arbitrary and unreasonable. But the Court held that "*in our*

[4] 1970 AIR 1453

opinion the formula is not subjective and does not constitute the Administrator the sole judge as to what is in fact necessary or expedient for the purposes of the Act". It was held that "*in the context of the scheme and object of the legislation as a whole the (said) expression cannot be construed in a subjective sense and the opinion of the Administrator as to the necessity or expediency of making the order must be reached objectively after having regard to the relevant considerations and must be reasonably tenable in a Court of law"*. The Court held that it *must be assumed that the Administrator will generally address himself to the circumstances of the situation before him and not try to promote purposes alien to the object of the statute*. [Emphasis supplied]

11. With this understanding, now when one reads section 3, many aspects become obvious. First being that it is a contingently directive provision of law giving discretionary powers to the Government to make decisions based on its judgment and discretion, rather than strict or inflexible rules, and the vagueness of such wording allows it to take executive action at some future date by way of a secondary piece of legislation. Secondly, the decision ought not to be arbitrary or unreasonable to the extent that it must not constitute the government sole judge as to what is in fact necessary or expedient for the purposes of imposing provisions of the Act, as it confronts the decision maker posed with the necessity or expediency of making the order to objectively deliberate on all relevant considerations, and lastly the outcome must be reasonably tenable in a Court of law, assuming that the decision-makers will generally address to the

circumstances of the situation before them justly and not try to promote purposes alien to the object of the statute.

12. Now when one applies foregoing understanding to the Wheat Quota Policy, it is could easily be deducted that it is not mandatory to use Section 3 unless the decision maker has objectively deliberated on all relevant perquisites, and outcome of the Policy must be reasonably tenable assuming that the decision maker has justly addressed all just circumstances of the situation in advance and has not tried to promote purposes alien to the object of the law. Also of importance is the fact that such a policy has to be the outcome of a legislative act rather than being an executive decision. As to why a Wheat Quota Policy is needed, one must keep in mind that wheat is a major staple food crop in Pakistan and plays a critical role in the country's economy and food security. Pakistan is one of the largest wheat producers in the world, and the crop is grown by millions of farmers across the country. A wheat policy is therefore needed to ensure that the wheat sector is managed effectively, and that the production, distribution, and pricing of wheat are in line with the needs of the country's population and economy. Some of the key reasons why wheat policy is needed include (a) Food Security: Wheat is a critical component of the Pakistani diet and is consumed in various forms including bread, chapatis and other food items. Ensuring the adequate availability of wheat in the market at an affordable price is important for the food security of the country; (b) Price Stabilization: Wheat prices can be volatile due to a variety of factors, including weather, pests, and international market prices. A wheat policy aims to stabilize prices and protects farmers and

consumers from price fluctuations; (c) Income Generation: Wheat production is a key source of income for millions of farmers in Pakistan. A wheat policy can help to ensure that farmers are able to earn a fair price for their crops, which can help to improve their livelihood and support rural development. In a nutshell, a wheat policy is essential for managing the wheat sector effectively ensuring that the mechanism is able to meet the needs of the population and the economy, but the question arises as to whether the impugned two-paged "letter" reproduced in paragraph 5 above qualifies to be a Wheat Policy or not. In our view, the latter may be more appropriate, since the said Policy falls short on many fronts, from what is required from such a Policy under section 3.

13. Coming back to the Act 1958, one does not fail to see that the said Act envisioned the making of Rules, which seemingly have not been made. But equally important are the penal provisions encompassed by section 6, which prescribes that "*If any person contravenes any order made under section 3, he shall be punished with imprisonment for a term which may extend to three years, or with fine or with both and, if the order so provides, any Court trying such contravention shall direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to the Government, unless for reasons to be recorded in writing, it is of the opinion that the direction should not be made in respect of the whole, or as the case may be, a part of the property and further that if any person to whom a direction is given under subsection (2) of section 3 fails to comply with the direction, he shall be punished with imprisonment for a term which may extend to*

three years, or with fine or with both" With regards to corporations (including companies) Section 8 provides that "*if the person contravening an order made under section 3 is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention*. A question thus arises that since the Act, 1958 through Section 6 and 8 has already provided punishments for any contraventions of section 3, prescription of an added punishment through the Policy (under clause "xii", for example) for disqualifying an individual or a Mill from the grant of the Quota under NAB pretext is sustainable or not?

14. Whilst leaving the issue of double jeopardy aside at the moment, in this part of the judgment, we would attempt to answer the question as to whether additional punishments can be given to a defaulter of section 3 in addition to what have been prescribed by Sections 6 and 8. In general, punishments for offenses are prescribed by statutes, and the authority to impose punishment lies solely with Courts. Even in the aforementioned scenario while there may be some discretion afforded to judges in certain circumstances, they are generally bound by the punishments outlined in the relevant statues. It is not typically permissible for individuals or organizations to impose their own punishments outside of the legal system as this can constitute vigilantism or other illegal activity. To safeguard against such excessive punishment, Article 12(b) of the constitution comes into play which ensures that "*no law shall authorize the punishment*

of a person for an offence by a penalty greater than or of a kind different from the penalty prescribed by law for that offence at the time the offence was committed". In the case of Muhammad Iqbal Khan Niazi v. Vice Chancellor University of Punjab[5], the Hon'ble Supreme Court, while dilating on the General Disciplinary Rules of the University of Punjab read with Constitution of Pakistan (1973) Article. 12, where a student was rusticated for a period of three years as well as barred him from future medical education, although the Rules only provided for a maximum rustication of one year, held that such a punishment of addition two years was arbitrary and set aside the excessive part of the punishment. This judgment upholds the trite that subordinate legislations, rules or policies cannot confer power or create jurisdiction above and beyond the statutory provisions of the principal statute itself. When the statute itself has provided for punishments against the violations of Section 3, making additional conditionalities, penalties or restrictions against any violations of the said section would always be held to be excessive and without jurisdiction. Also, Article 11 of the Universal Declaration of Human Rights is relevant which states that "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. *Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed".* [Emphasis supplied]

15. Perhaps, at this juncture, it would not be out of place to briefly discuss the implication of excessive punishment prescribed by

[5] 1979 PLD S.C 1

the Policy from the lens of double jeopardy, where if one is convicted under NAB, could additional restrictions be placed through a Policy? It would be useful to start discussion on this issue with the dictum laid down in the case of Saiful Rehman Khan v. Chairman NAB Islamabad[6] where the accused petitioner pleaded that in view of the proceedings conducted by the Securities and Exchange Commission of Pakistan (SECP), the subsequent proceedings by the National Accountability Bureau (NAB) regarding the same matter amounted to double jeopardy and thus infringe his fundamental right to protection against double punishment as guaranteed by Article 13 of the Constitution. The Hon'ble Supreme Court held that SECP was not a Court of law, nor did the offences under the Companies Act, 2017 for which it had imposed penalties on the accused and his companies constituted of the same ingredients as that of the offence defined in Section 9 of the National Accountability Ordinance, 1999, thus, the shield of Article 13 of the Constitution was therefore not available to the petitioner to prevent the proceedings against him under the National Accountability Ordinance, 1999. What this judgment teaches us is that whilst two parallel proceedings under NAB law and some other statute could be undertaken (as long as ingredients of the offences under both laws are different or distinct) without violating Article 13 of the Constitution, there would still be no permission to borrow conviction from one (e.g. NAB) law and superimpose it on the conviction granted under any other law (e.g. Act, 1958). Thus, conviction under NAB law cannot form basis for disqualifying an otherwise qualified individual or Flour Mills from the Wheat Release Policy on a number of grounds including but not limited to the fact

[6] 2022 PLD (SC) 409

that NAB Act under section 9 [that does not fail to include a host of other laws] would not make violation of section 3 of the Act, 1958 an offence of which, cognizance could be taken under the NAB laws, thus if a contrary view is taken (as presently contained in the Policy) such acts would violate Article 13 of the Constitution on the plane of double jeopardy. Such conclusion supports, the findings given in Cornell University's Paper titled "Double Jeopardy as a Limited on Punishment" by Carrissa Byrne Hessick and F. Andrew Hessick[7], which challenged one of the most common reasons for a sentencing enhancement where the defendant had a prior conviction and where courts had previously rejected claims that these recidivism enhancements violated the prohibition against double jeopardy as it was (mistakenly) understood that the Double Jeopardy clause does not prohibit the legislature from authorizing multiple punishments for one offence and that, in any event, the Double Jeopardy clause did not apply to sentencing. The paper demonstrates that the central motivation for the Double Jeopardy clause is the prohibition against multiple punishments and that allowing recidivism enhancements undermines the said protection.

16. Lastly, what one must not fail to discuss is the concept of *legislative promise*. Once an Act is legislated, particularly having penal provisions, the later seals the conduct of the executive as well as the judiciary[8] in terms of the embodiments of the statute and

[7] Cornell Law Review Volume 97 Issue 1 November 2011 Article 2. The Article offers several reasons why the Double Jeopardy Clause is the appropriate constitutional provision to limit recidivism enhancements and sketches a framework under which jurisdiction may increase sentences for recidivists under some circumstances, while at the same time providing meaningful constitutional review of such sentences. The Article further explains that the consequence is an inconsistent body of law that maximizes the government's ability to punish at the expense of individual rights.

[8] While it is true that a legislated act with penal provisions lays down strict guidelines for the conduct of both the executive and the judiciary, it does not necessary mean that

promises that everyone who offends that law will be treated strictly as prescribed by the law itself, and in doing so, the law does not leave any room for imagination, re-thinking or judicial overreach to the extent that it ensures that punishments have to be eventual and no extra burden should be placed on the offenders over and above what the law had prescribed in itself, as it is generally true that statutes or laws that include provisions outlining the penalties or consequences for certain illegal actions or behaviors to deter people from engaging in those actions, are to provide a clear framework as to how law enforcement and the justice system should respond with greater precision in cases of an offence having being committed. That is why it is said that **all laws are not created equal**, and the penalties and consequences for different illegal actions vary depending on a variety of factors, such as the severity of the offence, the intent of the perpetrator, and the specific circumstances surrounding the offence. Thus everyone who breaches Section 3 of the Act, 1958 has to at best get the punishment prescribed under section 6 (with an imprisonment for a term which may extend to three years, or with fine, or with both), and in the case of a company or other body corporate, every director, manager, secretary or other officer or agent thereof is (unless) he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention) would be deemed to be

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there is no room for interpretation or judicial overreach since the judiciary has the power to interpret the law and determine the appropriate punishment for a particular offence based on the facts and circumstances of each case. In fact, the concept of judicial review allows the courts to examine the constitutionality and validity of legislation and strike down provisions that are inconsistent with the Constitution. Additionally, courts may also consider mitigating factors and circumstances that may warrant a lesser punishment that what is prescribed by the law, thus while legislated acts with penal provisions provide a framework for the conduct of the executive and the judiciary, there is still room for interpretation, revision, and judicial review. The judiciary also has the discretion to consider mitigating factors and circumstances in determining the appropriate punishment for a particular offence.

guilty of such contravention. The law is so restrictive that in terms of section 10, it restricts courts from taking cognizance of any offence punishable under the Act except on a report in writing of the facts constituting such offence made by a person who is a public servant (as defined in section 21 of the Pakistan Penal Code, 1860).

17. The residual effect of the above discussion is that any excessive penalty imposed through the Wheat Release Policy over and above what has been prescribed by the Act, 1958 in terms of its penal provisions, including those pertaining to NAB convictions or plea bargains addressing to the circumstances and the situation are held to be alien to the object of the Act, 1958 as well as extra-judicial, thus unconstitutional in our view, hence set aside. The Respondents are directed to treat the petitioners while strictly remaining within the ambit of the Act, 1958 and not to prescribe any penalties over and above what the said statute has itself provided (under sections 6 and 8). Thus, also to proceed with the halted clearances and make Wheat Quotas available to the petitioners forthwith if they are otherwise qualified under the Act. These petitions are thus allowed in the above terms, and at the same time, the respondents are directed that all future orders or decisions (including the Wheat Release Policy) issued under section 3 of the Act, 1958 are to be outcome of a Legislative act rather than being an Executive decision, which is the case at present.

Sukkur: Dated ___ May 2023 JUDGE

JUDGE