

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D- 607 of 2024

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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1. For orders on MA No. 2289/2024 (U/A)
2. For orders on MA No. 2290/2024 (Ex/A)
3. For hearing of main case

09.05.2024

M/s Munwar Ali Shaikh and others Advocate for petitioner
Mr. Liquat Ali Shar, Advocate for petitioner

1. Granted.
2. Exemption is granted, subject to just all legal exceptions.
3. At the outset, learned Additional Advocate General has put his appearance, waives notice of this petition and submits that this petition may be disposed of in terms of common judgment/order 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. Petitioner's counsel is of the same view and seeks disposal of this petition in terms of the statement made by learned Additional Advocate General Sindh, an excerpt whereof is reproduced 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".

If this is the position of the case, coupled with the consent of the parties, this petition is disposed of in the following terms:-

(a). The petitioner and all the growers/Khatedars/small farmers of the concerned area shall approach the concerned officials for such BARDANA as per policy notified by the Government of Sindh.

(b) The Officials shall ensure their presence at that concerned wheat procurement Centers for distribution of BARDANA to the genuine growers as per Policy. The ancillary issues of the growers/khatedars/farmers shall be taken care of as per Policy and in the intervening period no harassment shall be caused to petitioner by the Officials of whatsoever nature and they shall be dealt with in accordance with law.

(c) Secretary Food Sindh shall ensure the distribution of BARDANA to the petitioner/growers/Khatedars on or before 10-05-2024 positively without fail.

The compliance report shall be submitted by the Secretary Food 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.

This petition is disposed of accordingly.

J U D G E

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*M.Ali/steno**