

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D- 487 of 2024

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
-----------------	-------------------------------

Before;

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

1. *For orders on CMA No. 1904/2024 (U/A)*
2. *For orders on CMA No. 1905/2024 (Ex/A)*
3. *For hearing of main case*

Date of hearing and order 30.04.2024

Mr. Amjad Ali Almani, Advocate for petitioner

1. Granted.
2. Exemption is granted, subject to just all legal exceptions.
3. Mr. Liaquat Ali Shar, learned Additional Advocate General Sindh present in Court in some others matters has waived notice of captioned petition and states that the issue involve in this petition is related to the distribution of BARDANA/wheat bags to the petitioner as per policy/guidelines of Food Department for Wheat Procurement Policy 2023-24 and the similar matter has already been decided by this Court in Constitution Petition No. D- 380 of 2024 (*Ali Hassan Bozdar vs. Province of Sindh & others*) and other connected petitions vide common judgment dated 24-04-2024.

Petitioner is of the same view and prayed for similar treatment to be meted out with the petitioner. For convenience sake an excerpt of the judgment dated 24-04-2024 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”.

The petitioner 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 **02-05-2024** 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.

These petitions are disposed of accordingly.

JUDGE

JUDGE

Nasim/P.A