

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Before;

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

Constitution Petition No. D-445 of 2024

(Irshad Ali vs. Province of Sindh & others)

Constitution Petition No. D-446 of 2024

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

Constitution Petition No. D-447 of 2024

(Haji Abdullah 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-451 of 2024

(Sarang Latif vs. Province of Sindh & others)

Constitution Petition No. D-454 of 2024

(Muhammad Amjad vs. Province of Sindh & others)

Constitution Petition No. D-455 of 2024

(Sarfraz Qureshi and another vs. Province of Sindh & others)

Constitution Petition No. D-456 of 2024

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

Constitution Petition No. D-457 of 2024

(Abdul Ghaffar Ghanghro vs. Province of Sindh & others)

Constitution Petition No. D-458 of 2024

(Liaquat Ali Arain and others vs. Province of Sindh & others)

Constitution Petition No. D-459 of 2024

(Shabbir Ahmed and another vs. Province of Sindh & others)

Constitution Petition No. D-460 of 2024

(Sagheer Ahmed and another vs. Province of Sindh & others)

Constitution Petition No. D-461 of 2024

(Gul Hassan and others vs. Province of Sindh & others)

Constitution Petition No. D-470 of 2024

(Hidayatullah and others vs. Province of Sindh & others)

Constitution Petition No. D-471 of 2024

(Hajan Mahar and another vs. Province of Sindh & others)

Constitution Petition No. D-474 of 2024

(Abdul Qayoom vs. Province of Sindh & others)

Constitution Petition No. D-475 of 2024

(Abdul Qayoom and another vs. Province of Sindh & others)

Constitution Petition No. D-479 of 2024

(Shah Nawaz and others vs. Province of Sindh & others)

Constitution Petition No. D-481 of 2024

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

Constitution Petition No. D-482 of 2024

(Ghulam Abid vs. Province of Sindh & others)

Constitution Petition No. D-483 of 2024

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

Constitution Petition No. D-484 of 2024

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

Constitution Petition No. D-485 of 2024

(Niaz Hussain vs. Province of Sindh & others)

Constitution Petition No. D-486 of 2024

(Niaz Hussain vs. Province of Sindh & others)

Constitution Petition No. D-492 of 2024

(Sajjad Raza Abbasi vs. Province of Sindh & others)

Constitution Petition No. D-493 of 2024

(Gulzar Ahmed vs. Province of Sindh & others)

Constitution Petition No. D-494 of 2024

(Riaz Hussain and others vs. Province of Sindh & others)

Date of hearing and order 30-04-2024.

M/s Ghulam Nabi Chadar, Advocate for petitioner in CPD No. 445 of 2024, Mr. Riaz Ali Shaikh, Advocate for petitioners in CPD No. 446 of 2024, Mr. Nusrat Hussain Memon, Advocate for petitioners

in CPD No. 447 of 2024, CPD No. 449 of 2024, CPD No. 458 of 2024, CPD No. 459 of 2024, CPD No. 460 of 2024, Mr. Alam Sher Khan Bozdar, Advocate for petitioner in CPD No. 451 of 2024, Mr. Athar Hussain Abro, Advocate for petitioner in CPD No. 454 of 2024, Mr. Iftikhar Ali Arain Advocate for petitioner in CPD No. 455 of 2024, Mr. Rashid Ali, Advocate for petitioner in CPD No. 457 of 2024, Mr. Sheraz Fazal, Advocate for petitioners in CPD No. 461 of 2024, Mr. Aijaz Ahmed Sipra, Advocate for petitioners in CPD No. 470 of 2024, CPD No. 479 of 2024, Syed Jaffar Ali Shah, Advocate for petitioner in CPD No. 474 of 202, Mr. Shakeel Ahmed Abro, Advocate for petitioner in CPD No. 475 of 2024, Syed Tanveer Abbas Shah, Advocate for petitioners in CPD No. 481 of 2024, Mr. Muhammad Shakeel Lakho, Advocate for petitioner in CPD No. 482 of 2024, CPD No. 483 of 2024, Mr. Amjad Ali, Advocate for petitioners in CPD No. 484 of 2024 and CPD No. 494 of 2024, Mr. Badaruddin Memon, Advocate for petitioner in CPD No. 485 of 2024, CPD No. 486 of 2024, Mr. Abdul Sattar Mahesar, Advocate for petitioner in CPD No. 492 of 2024, CPD No. 493 of 2024, Muhammad Usman, petitioner in-person in CPD No. 471 of 2024

M/s Liaquat Ali Shar, Additional Advocate General, Sindh and Mr. Ali Raza Balouch, Assistant Advocate General Sindh

M/s Hakim Ali Kalwar, DFC Khairpur, Abdul Waseem Jamali, DPC Naushehro Feroze, Rajoo Lund Food Supervisor Sukkur, Shoukat Ali Arain, Food Inspector Kamal Dero

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 AAG 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 02-05-2024 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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