

**ORDER SHEET**  
**LAHORE HIGH COURT, LAHORE**  
JUDICIAL DEPARTMENT  
**W.P. No. 19723 of 2023**

Syed Faisal G.Meeran, Advocate      Vs.      Province of Punjab, etc.

<i>Sr. No. of order/ proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
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04.04.2023	Mr. Waqar Amin Sheikh, Advocate for petitioner. Nemo for petitioner in W.P. No.20229 of 2023. Mr. Muhammad Nawaz Shah, Addl. Advocate General, Punjab along with Dr. Zia-ul-Haq, Dy. Director Admin, Food Department, Lahore and Tahir Mahmood Superintendent.
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Through this consolidated order, W.P. Nos.19723 and 20229 of 2023 shall be decided, as common questions of facts and law are involved.

**2.** Through W.P. No.19723 of 2023, stated to be filed in public interest, petitioner who is an Advocate of this Court has prayed as under:

*“In light of the aforesaid facts and grounds it is most respectfully prayed that the release price of Rs.3900/- fixed by the Respondents be declared illegal, unconstitutional, unlawful; misuse, abuse and colourless exercise of authority, based upon undue enrichment, violative of the Election Act, 2017 and be struck down by directing the Respondents to restore the release price of Rs. 2200/- per 40 Kg alongwith the subsidy forthwith provided in the past in the shape of sale at the rate of Rs. 1765/- per 40 Kg in the best interest and larger public interest.*

*It is further prayed that till the final decision of the titled Writ Petition, the increase of release price from Rs.2200/- to Rs.3900/- per 40 Kg may kindly be suspended in the supreme interest of justice.*

*Any other relief which this Honourable Court deem fit and proper may also be awarded.”*

**3.** Through connected W.P. No.20229 of 2023, stated to have been filed in public interest, petitioner, who is a social worker, has prayed as under:

*“In light of the aforesaid facts and grounds it is most respectfully prayed that the notification*

*dated 16.03.2023 to the extent of fixing release price of existing wheat in the stock (which was procured under the wheat Procurement Policy, 2022-23) at the rate of Rs.3900/- fixed by the Respondents be declared illegal, unconstitutional, unlawful; misuse, abuse and colourful exercise of authority, based upon undue enrichment, violative of the Election Act, 2017 and be struck down by directing the Respondents to restore the release price of Rs. 2200/- per 40 Kg alongwith the subsidy forthwith provided in the past in the shape of sale at the rate of Rs. 1765/- per 40 Kg in the best interest and larger public interest.*

*It is further prayed that till the final decision of the titled Writ Petition, the increase of release price of existing stock of wheat from Rs.2200/- to Rs.3900/- per 40 Kg may kindly be suspended in the supreme interest of justice.*

*Any other relief which this Honourable Court deem fit and proper may also be awarded.”*

**4.** The main crux of arguments raised on behalf of petitioners is that Government purchased wheat for the season 2022-23 at the rate of Rs.2200/- per 40 kg from the growers, which the Government is supplying to the flour mills at the rate of Rs.3900/- per 40 kg by fixing said price through notification dated 16.03.2023 by increasing the same from initial subsidized price of Rs.1765/- per 40 kg fixed vide notification dated 19.05.2022, which was there-after increased to Rs.2300/- per 40 kg through notification dated 20.09.2022. It is claimed that even if Government is not in position to provide subsidy, it cannot sell wheat to flour mills at enhanced rates because by the said act of the Government not only price of flour has increased manifold resulting in inflation but also poor public is suffering from the same and have been made to starve. The comparative prices of wheat and flour mentioned in different notifications dated 19.05.2022 and 20.09.2022 attached with this petition and as disclosed by the petitioners for policy dated 16.03.2023, copy of

price fixation notification of which has not been attached with their petitions are provided below:

Sr. No.	Date of Policy with Price of Wheat per 40 kg	Ex. Mill price of 10 kg flour bag	Ex. Mill price of 20 kg flour bag	Retail Price of 10 kg flour bag	Retail Price of 20 kg four bag
1	19.05.2022 Rs.1765/-	Rs.475/-	Rs.950/-	Rs.490/-	Rs.980/-
2	20.09.2022 Rs.2200/-	Rs.632/-	Rs.1265/-	Rs.648/-	Rs.1295/-
3	16.03.2022 Rs.3900/-	Not Available	Not Available	Rs.1158/-	Rs.2316/-

5. On the other hand, the respondents have defended the impugned action of the Government by controverting the arguments of the counsel for the petitioners by relying upon comments/reply submitted by the respondents/Food Department wherein it is mentioned as under:

*“Punjab Food Department procures wheat every year at the support price fixed by the Government, to maintain food security reserves, cater for the requirement of general consumers and to stabilize the price of flour and wheat in the open market with the intervention of the Wheat Release / Milling Policy. During Wheat Procurement Drive 2022-23, Punjab Food Department procured 4.48 MMT of wheat in addition to the carry forward stock of 0.7 MMT.*

*Keeping in view, the public interest and consumption requirements of public at large/ consumers, to overcome any chance of shortage of flour, to prevent the price hike in the open market, current Wheat Release / Milling Policy, 2022-23 was notified on 19.05.2022 after approval from the Provincial Government (Annex-A). According to which, wheat @ Rs.1765/40Kg was being issued at the lowest release price even below the support price/ purchase price to flour mills of the Punjab, in order to provide / sell flour in the open market four months earlier than the previous practice of the wheat releases. However, on 20.09.2022, the rate of subsidized wheat as being issued under the Wheat Release Policy, 2022-23 and depicted in Notification dated 19.05.2022 was enhanced to Rs.2300/40kg vide Notification dated 20.09.2022.*

*Further added that the Government of Sindh announced for the current Season @ Rs.4000 per 40 kg for the year 2023-24 and accordingly Government of Punjab also notified the procurement price/minimum support price of wheat @ Rs.3900 per 40 kg for the current Wheat Procurement Scheme, 2023-24. The open market rates responded accordingly and increase in open market prices was also witnessed thereof. It is pertinent to point out here that due to the early release of wheat, the public stocks of wheat started*

*to depreciate / decrease and thus, to overcome any shortage of wheat, to cater for the consumer requirements, to maintain the wheat stocks of the Government and for any other unforeseen incidence, the Federal Government was requested to allow to procure wheat through import. Thus, the Federal Government allowed to import 0.8 MMT of wheat which has increased the incidental charges / mark up, etc. to be borne out by the Provincial Food Department. Considering the Holy Month of Ramadan, the Provincial Government also approved to provide three (03) bags of flour of 10Kg free of cost to the deserving section of society already scrutinized under PMT 60 Score of National Socio Economic Registry Survey under the BISP. Considering the increase in the procurement price as announced by the Government of Sindh, Ramadan Package, to prevent the illegal transportation of wheat due to the wheat procurement price as fixed by the Government of Sindh and to sustain the heavy burden of incidental charges and mark up as being borne out due to the import of wheat, the Government approved to increase the rate of subsidized wheat from Rs.2300/ 40 Kg to Rs.3900/40Kg from 19.03.2023 (Annex-C). It is pertinent to point out here that still Government is providing huge amount of subsidy while issuing the subsidized wheat @ Rs.3900/40Kg to the flour mills. The contentions of the petitioner are baseless and the petition is liable to be dismissed.”*

**6.** The stance of the respondents is that the Food Department during wheat procurement drive 2022-23 procured 4.48 MMT of wheat in addition to carryforward stock of 0.7 MMT. To overcome any chance of shortage of flour and to prevent the price hike in the open market, Wheat Release / Milling Policy, 2022-23 was notified on 19.05.2022 after approval from the Provincial Government, according to which, wheat @ Rs.1765/40Kg was being issued at the lowest release price even below the support price/ purchase price to flour mills of the Punjab, in order to provide / sell flour in the open market four months earlier than the previous practice of the wheat releases. However, on 20.09.2022, the rate of subsidized wheat as being issued under the

Wheat Release Policy, 2022-23 and depicted in Notification dated 19.05.2022 was enhanced to Rs.2300/40kg vide Notification dated 20.09.2022. It is further added that the Government of Sindh had announced wheat procurement price for the current Season @ Rs.4000 per 40 kg for the year 2023-24 and accordingly Government of Punjab also notified the procurement price/minimum support price of wheat @ Rs.3900 per 40 kg for the current Wheat Procurement Scheme, 2023-24. The open market rates responded accordingly and increase in open market prices was also witnessed thereof. It has also been pointed out that due to the early release of wheat, the public stocks of wheat started to depreciate / decrease and thus, to overcome any shortage of wheat, to cater for the consumer requirements, to maintain the wheat stocks of the Government and for any other unforeseen incidence, the Federal Government was requested to allow to procure wheat through import. Thus, the Federal Government allowed to import 0.8 M.MT of wheat which has increased the incidental charges / mark up, etc. to be borne out by the Provincial Food Department. Considering the Holy Month of Ramadan, the Provincial Government also approved to provide three (03) bags of flour of 10Kg free of cost to the deserving section of society already scrutinized under PMT 60 Score of National Socio Economic Registry Survey under the BISP. Considering the increase in the procurement price as announced by the Government of Sindh, Ramadan Package, to prevent the illegal transportation of wheat due to the wheat procurement price as fixed by the

Government of Sindh and to sustain the heavy burden of incidental charges and mark up as being borne out due to the import of wheat, the Government approved to increase the rate of subsidized wheat from Rs.2300/- 40 Kg to Rs.3900/40Kg from 19.03.2023. It has also been pointed out that still Government is providing huge amount of subsidy while issuing the subsidized wheat @ Rs.3900/40Kg to the flour mills.

**7.** The claim of the respondents is that due to early supply of wheat to mills, the previous stocks were diminishing and in view thereof to avoid likelihood of shortage, wheat has been procured at higher rate through import and other sources and as the market sources control the price of wheat and flour therefore, the price at which the wheat was to be provided to the flour mills had to be raised to Rs.3900/- per 40 Kg which price had also been fixed by providing huge subsidy because the present market price is much higher.

**8.** The petitioners claim that stock of 3.3 MMT wheat is still available with the respondents but the same is an assertion only and they have not shown from any document on record the exact quantity of stocks of wheat previously procured by the Government or the Food department and still available with those respondents, the cost of storage of the same, the amount obtained as loan/finance by the department to procure said stocks, rate and amount of mark-up to be paid for return of said finance and other relevant factors necessary for determining the price by the Government or the Food department and their only reliance is on the price at which the wheat was

procured in the procurement process for season 2022-23, hence, this Court cannot assume that Government which is claiming to have procured additional wheat is not providing the correct facts about the availability of stocks of wheat for the said procurement or is making wrong statement about subsequent procurement and import at higher rates. The pricing of a commodity such like wheat, etc., involves several factors and is obviously directed and controlled by market forces and the determination of said aspect of the matter falls within the exclusive domain of the executive and polices framed by them from time to time. This Court does not ordinarily interfere in the policy decisions of the government unless the same are shown to be without lawful authority, perverse and against any provision of law and the Court's role was not to interfere in policy decisions, unless it was manifest that, such policy decisions were the outcome of arbitrary exercise of power, mala fides, patently illegal or manifestly unreasonable. Reliance may be placed upon judgments reported as "*Abdul Hameed and others Vs. Water and Power Development Authority through Chairman Lahore and others*" (**2021 SCMR 1230**), "*Asaf Fasihuddin Khan Vs. Government of Pakistan*" (**2014 SCMR 676**) and "*M/s Dossani Travels Pvt. Ltd. and others Vs. Messrs. Travel Shop Pvt. Ltd. and others*" (**PLD 2014 SC 1**). The counsel for the petitioner has not been able to point out from the facts of the instant case availability of any of the grounds mentioned in the afore-referred judgments for this Court to

interfere in the policy decision whereby the price of wheat has been fixed at Rs.3900 per 40 kg.

**9.** Learned counsel for petitioner has vehemently argued that caretaker Government had not got jurisdiction and could not have fixed the prices by enhancing the previous prices which even otherwise is against the Election Act, 2017 but this Court is not impressed by the said stance taken by the learned counsel for the reason that previous stock was depleting resulting in fresh procurement and import of wheat at higher rate and prices have been increased to be compatible with the open market and price fixed in province of Sindh which was required to prevent transportation and smuggling of wheat out of province and its shortage and the same had necessitated taking of immediate measures by the Government without any loss of time to cater to the needs of the people and to avoid shortage of wheat, which exercise, if not carried out immediately, could become a reason for increase of wheat price and making the same out of reach of the general public. The Caretaker Government by its mandate provided by Section 230(a) of Election Act, 2017 was empowered to manage and take necessary steps to cater to the said situation as the same related to the day to day matters necessary to run the affairs of the Government and the fixing of wheat price was within the jurisdiction and powers of the said Government.

**10.** Learned counsel for the petitioner states that the stance taken by the Government relating to smuggling or transporting wheat out of province is without any legal justification for the reason that it

is the Government itself which has to prevent the said situation from arising. In response to the same the respondents claim that increase in price of wheat had to be made to make the same compatible with market prices, which amongst others is a measure taken by the Government to prevent smuggling and transportation out of province. The said stance taken by the respondents effectively negates the stance of the petitioners.

**11.** Be that as it may, it is settled by now that fixation of prices of commodities such like purchase and sale of wheat by Government, provision of wheat to flour mills, subsidized value, framing of policy to provide flour to public at a particular rate or free of cost to deserving people of society falling below the poverty line is within policy making domain of Government which function has to be performed by the Government keeping in view the afore-mentioned position including availability of stocks coupled with demand and supply and other factors regulating market forces and thereafter price is to be fixed by the executive on the basis of data available with it and the same cannot be fixed at the whims and desires of the petitioners who even otherwise neither have any such data available with them nor they have the capability/capacity to determine various aspects of the price fixing criteria and the said power of the executive cannot be ordinarily interfered with by this Court in its constitutional jurisdiction. In reaching the said conclusion, reliance in this behalf, *inter alia*, is placed upon principles laid down in judgment in the matter of "Regarding Enormous increase in the price of

*Flour*" (**2014 SCMR 329**) relating to fixation of price of wheat, wherein the Court referred the matter of fixation of wheat price for determination to the Government/Executive by observing that under the Price Control and prevention of Profiteering and Hoarding Act, 1977, fixation of prices is to be dealt with by the Federal Government but it seems that no such exercise has been undertaken by the Federal or Provincial Governments under the relevant provision of law. It was further held that Provincial Governments are duty-bound to control all the prices of foodstuffs without any discrimination. Reliance may also be placed on case reported as "*Mian Muhammad Aslam versus Federation of Pakistan through President and 4 others*" (**PLD 2020 Islamabad 352**), which although relates to fixation of fuel prices, yet principles mentioned therein are applicable to the instant case, wherein it is provided that grievance of the petitioner is regarding increase in prices of petroleum products by the Federal Government. The pricing of a commodity involves several factors and is obviously directed by the market forces. It has nexus with the economic conditions and policies of the executive. It thus falls within the exclusive domain of the executive branch of the State.

**12.** This Court in case titled "*Munir Ahmad versus Government of Pakistan through Secretary Finance, Islamabad and 19 others*" (**PLD 2022 Lahore 108**), while hearing the matter of fixation of price of sugar, declined to indulge itself in technicalities of price fixation by observing as under:-

*"12. On being confronted that appeal is available against this Notification before Appellate Committee, under the Rules, the petitioners' side, on instructions, wanted to argue the case against the exercise of power, prior to the promulgation of the Rules.*

*The Court is not convinced. Since the legal issues have already been resolved or settled, therefore, this court would not indulge itself in technicalities of price fixation, when a competent forum, for this purpose, has already been created under the law. The august Supreme Court, while remanding the case has given following observation on exercise of jurisdiction by this Court under Article 199 of the Constitution, which are binding under the Article 189:--*

*"2. The Constitutional Courts of the country have a duty to resolve legal disputes coming before them in accordance with the Constitution and the law. In the discharge of their duties and functions the Courts do not supervise pricing nor monitor profit and loss dealings by or between the stakeholders. In our view, the High Court has in the present case entered the uncertain territory of monitoring commercial and policy terms regulating the supply of an edible commodity in the market. This endeavor is far removed from its jurisdiction vested by Article 199 of the Constitution and is likely to involve technical details that are outside the realm of judicial adjudication. """*

**13.** Another aspect of the matter is that respondents claim that most of the wheat of the procurement-2022/23 purchased by them had been supplied to flour mills and very little stock was available with the Food Department, therefore, more stock was required to be procured to avoid shortage of stock for emergent situations, for which purpose, they had to import 0.8 MMT wheat to maintain the minimum stock, which procurement has been made at the rate of more than Rs.4000/- per 40 kg calculated, *inter alia*, on the basis of loans obtained by the Food Department from banks returnable at interest and it is claimed that due to the fact that the wheat is

stored at different places throughout the whole province, hence, no distinction can be made between previously and recently procured wheat stock for supply to various mills as the respondents cannot supply wheat at two different rates to the mills, which itself may be treated as discriminatory in the given situation, hence price of available stocks after fresh procurement has evenly been fixed; besides the Government of Sindh has already fixed price of wheat at the rate of Rs.4000/- per 40 kg which also tends to lead to transportation and smuggling from Province of Punjab to Province of Sindh because of disparity in prices maintained by different provinces; moreover, what quantity of previous stock was available and what was its present position, location, storage charges, loans obtained from banks for procurement and rate of return coupled with other factors relating to market forces and fixation of prices by other Provinces as well as in open market are factual aspects of the matter which need to be considered by the government for fixation of price from time to time and same requires determination of some disputed facts which is also beyond the jurisdiction of this Court and hence this petition is not proceedable on the basis of the said grounds. Reliance is placed on “*Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others versus Intizar Ali and others*” (**2022 PLC (CS) 837 (SC)**), wherein it is provided that Superior Courts cannot engage in factual controversies and matters pertaining to factual controversy can only be resolved after thorough inquiry and recording of

evidence in a civil court/appropriate forum. Reliance may also be placed on the principles laid down in “*Pakistan WAPDA Employees Pegham Union versus Member, National Industrial Relations Commission, Islamabad and others*” (**2014 SCMR 1676**) wherein it is settled that High Court cannot resolve factual controversies in Constitutional Jurisdiction.

**14.** It is important to note here that it is not the vested right of individuals or public at large i.e. consumers to claim that subsidy should be mandatorily provided to them in purchase of wheat or flour, hence, this Court in the absence of any law or policy justifying the same cannot issue direction to respondents to provide the same to the consumers at subsidized rates. Moreover, supply of flour free of cost to the underprivileged can also not be called in question before this Court as it is for the Government to provide the people living below poverty line with sources for providing them with food and for that purpose if the situation so demands, the Government can provide flour free of cost to the people who cannot purchase the same from their own sources, therefore, the contention of the petitioner that supply of free wheat by the Government be stopped to provide wheat and flour to the others citizens at subsidized/lower rates is without any legal justification and said supply of flour free of cost under Ramadan package providing for three bags of flour of 10kg each being a policy decision of the Government and not shown to be suffering from any discrimination rather being based on intelligent differentia and reasonable classification

did not merit to be interfere with by this Court for the reason that Government is authorized to make such classifications if the situation so requires. Reliance is placed on judgment reported as "*I.A. Sherwani and others versus Government of Pakistan through Secretary Finance Division, Islamabad and others*" (**1991 SCMR 1041**).

**15.** In view of what has been discussed above, as the fixing of price of wheat is within the policy making domain of the Provincial Government, which is executive organ of the State and regulates the same through the Food Department by basing its decision on various factors and no *mala fide*, discrepancy, perversity or violation of any law has been pointed out by the petitioners in the instant as well as in the connected petition against the policy decision of the Government whereby price of wheat has been fixed at Rs.3,900/- per 40kg and the said fixation of price does not in any manner amount to unjust enrichment of the Government as benefit of the same is being provided to deserving people, hence, the said decision cannot be declared to have been made without any lawful authority for the purpose of declaring the same to be of no legal effect, therefore, this Court is not inclined to allow the relief prayed for and claimed by the petitioners.

**16.** In view of what has been discussed above, both the above mentioned petitions being devoid of merits are **dismissed**.

(Muzamil Akhtar Shabir)  
Judge

*Muzamil Mohsin\**

Approved for reporting.