

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT**  
**RAWALPINDI BENCH, RAWALPINDI**  
**JUDICIAL DEPARTMENT**

Writ Petition No.3042 of 2022

*Al-Khalid Flour Mills*      V/S      *Government of Punjab and others*

**JUDGMENT**

<b>Date of hearing</b>	<b>17.10.2023</b>
<b>Petitioner(s) by</b>	Malik Qamar Afzal, ASC with Malik Sheharyar Afzal, Advocate.
<b>Respondent(s) by</b>	Malik Amjad Ali, Additional Advocate General alongwith Abid Aziz Rajori, Assistant Advocate General and Muhammad Ramzan, DFC, Attock.

**JAWAD HASSAN, J.** By way of this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”), the Petitioner has challenged Clause-6 of Standing Operating Procedure (SOP) dated 21.09.2022 (the “**SOP**”) issued by Director Food Punjab, Lahore which reads as:

“No wheat quota to any flour mill will be issued during the days of Army grinding”.

**I.      BRIEF BACKGROUND**

2. Brief facts for the disposal of this petition are that Al-Khalid Flour Mills (the “**Petitioner Mill**”) holds license under the Foodgrains (Licensing Control) Order, 1957 for purchase, grinding, sale or storage of foodgrains and manufacturer of value-added products. It grinds subsidized wheat in terms of policy of Government of Punjab according to permitted quota per day which allows the “*Petitioner Mill*” to grind private wheat including Pakistan Army quota. The “*Petitioner Mill*” entered into a contract with the Government of Pakistan, Ministry of Defence Production, Directorate General Procurement (Army), Rawalpindi as per wheat release milling policy

2022-2023 dated 19.09.2022 (the “*Policy*”) and is aggrieved of Clause-6 of the “*SOP*” whereby wheat quota of the “*Petitioner Mill*” has been restricted during the days of army grinding.

## **II. ARGUMENTS OF PARTIES**

3. Malik Qamar Afzal, ASC *inter alia* argues that clause-6 of the “*SOP*” is ultra vires to the “*Policy*” and infringes fundamental rights of trade and business as envisaged under Article 18 of the “*Constitution*”; that the “*Petitioner Mill*” was allowed to grind private wheat stock subject to condition stipulated in Clause-2 of the “*Policy*” but impugned clause-6 of the “*SOP*” restricts the “*Petitioner Mill*” to grind defence wheat which is also violative to previous policies dated 19.09.2021 and 19.05.2022; that the “*Petitioner Mill*” is under contract with Director General Procurement (Army), Rawalpindi read with Official Secrets Act, 1923 and is obligated not to disclose the grinding capacity of the army wheat quota/quantity etc; that the “*SOP*” issued by the Respondent No.2 lacks sanction of the Respondent No.1/Secretary Food Department. He has relied on “SUI NORTHERN GAS PIPELINES LIMITED through Authorized Attorney versus FEDERATION OF PAKISTAN through Secretary, Ministry of Energy (Petroleum Division) and another” (2022 MLD 1158).

4. Conversely, Law Officer filed report and parawise comments according to which, though no restriction on private grinding has been imposed upon the flour mills and they are at liberty to grind private wheat stock yet they are bound to submit monthly grinding schedule to the District Food Control approved by the Ministry of Defence Production, Directorate General Procurement Army, Rawalpindi for issuance of subsidized wheat quota under the “*Policy*”. It has been stated that the “*Petitioner Mill*” has failed to provide requisite information in terms of the “*SOP*” and letter dated 22.09.2022 issued by the Respondent No.2 and permission for private grinding from the concerned OC CMF of Army. It has been argued on behalf of the Respondents that the Government of Punjab has no objection upon issuance of quota of wheat to the “*Petitioner Mill*” if required

information is provided and in absence of such information, it is impossible for monitoring the grinding process and supply of wheat provided by the Government of Punjab at subsidized rates.

### **III. DETERMINATION BY THE COURT**

5. The sole ground agitated by the “*Petitioner Mill*” is that clause-6 of the “*SOP*” patently contradicts to the “*Policy*” and also the “*SOP*” issued by the Respondent No.2/Director Food Punjab lacks sanction of the Respondent No.1/Secretary Food Department. Pertinently, Director Food, Punjab is the head of attached department of Food Department and falls under First Schedule, Column-III, Sr.No.12 of the Punjab Government Rules of Business, 2011 (the “**Rules**”). The Food Department has the mandate to legislate, formulate policy and plan as a measure of food security through wheat procurement, construction and maintenance of storage accommodation, storage of wheat, financial arrangements with the banks, transportation of wheat and release of wheat and its overall monitoring. For the release of wheat stock available and to ensure its uninterrupted supply and stabilization of its price in market, the Food Department introduced the “*Policy*” under Section 3 of the Punjab Foodstuffs (Control) Act, 1958 with certain terms and conditions specifically Clause-III, which entitles the flour mills to grind private wheat stock, reads as:

“**VIII. Flour mills getting wheat from Punjab Food Department shall also be entitled to grind their private wheat stocks. Flour mills getting wheat from Punjab Food Department shall be bound to deliver minimum 25% flour obtained from their private wheat stocks in their respective Districts**”.

#### Underlying for emphases

6. The above clause clearly demonstrates that no restriction was imposed upon the flour mills on the private grinding but with only condition to deliver 25% of flour obtained from private wheat stocks in their respective districts. Pursuant to issuance of the “*Policy*” by the Secretary Food Department, the Director Food Punjab, in order to ensure proper monitoring with regard to grinding of Government

wheat, its production and supply to flour mills, issued the “SOP” which reads as under:

1. *The concerned flour mill, will submit monthly grinding schedule to concerned District Food Controller (DFC), duly approved by the concerned authority of Pakistan Army (OC CFM). This schedule must be in accordance with the Agreement between the mill and Pak Army (OC CFM).*
  2. *After completion of required quota of Army grinding during a month in accordance with the timelines/grinding schedule under the Agreement between the flour mill and Pakistan Army (OC DFM), concerned DFC may release daily wheat quota only for the remaining working days of the specific month excluding holidays.*
  3. *Before the release of daily wheat quota, concerned DFC will personally take/record reading of electricity meter.*
  4. *Before start of next grinding schedule for the next month issued by the concerned authority of Pakistan Army, DFC will again record/take electricity reading to access the justification of further grinding of Government wheat.*
  5. *DFC will also keep the record of Army grinding and Government grinding separately in up-to-date condition.*
  6. *No wheat quota to any flour mill will be issued during the days of Army grinding.*
  7. *All other instructions under the Wheat Release Policy 2022-2023, as per the Notification No.S.O(F)3-46(W.E.) dated 20/09/2022, will remain the same and apply.*
7. Bare reading of above clauses reveals that the flour mills grinding private wheat for the Army, are bound to submit monthly grinding schedule to the concerned District Food Controller duly approved by the Ministry of Defence for the issuance of subsidized wheat quota from the Government of Punjab under the “SOP”. It is also evident from above said clauses that daily wheat quota will only be issued by the District Food Controller for the working days of the specific month excluding holidays after completion of required quota of Army grinding during a month in terms of schedule under the Agreement and that too the concerned District Food Controller, will

personally record the reading of electricity meter before the release of daily wheat quota and will keep the record of Army and Government grinding separately. It is specifically stated in under challenged Clause-6 of the “SOP” that no wheat quota to any flour mill during the days of Army grinding will be issued while Clause-7 clearly states that other instructions as per the “Notification” will remain the same. It is crystal clear from bare reading of the “SOP” that quota of subsidized wheat will only be issued by the Government to the licensed flour mills after complying with the “SOP”.

8. When confronted whether the “*Petitioner Mill*” has complied with the terms of “SOP” for the release of subsidized quota, Malik Qamar Afzal, ASC, stated that as the “*Petitioner Mill*” is under contract for grinding wheat with Directorate General Procurement (Army), Rawalpindi, Ministry of Defence Production, Government of Pakistan and under clear terms of the agreement, is not authorized to provide any information about defence wheat being grinded. While on the other hand, the counsel for the Respondents states that clauses of the “SOP” put no restriction upon the “*Petitioner Mill*” on private grinding of wheat stock rather Clauses 2 and 39 of the Agreement executed between the “*Petitioner Mill*” and Government of Pakistan, Ministry of Defence Production, Directorate General Procurement Army, Rawalpindi, grant permission on private grinding. He has also pointed out that two flour mills namely M/s Baddar Flour Mill, District Sheikhupura and M/s Al-Jehan Flour Mill, District Multan are also engaged in grinding of Army wheat but they had provided the requisite information and permission from the concerned OC CMF of Pakistan Army for the issuance of subsidized wheat quota in terms of the “SOP”. It is also evident from the statement made by Muhammad Shoaib, District Food Controller, Attock on 02.11.2022 that Government of Punjab has no objection upon the issuance of quota of wheat to the “*Petitioner Mill*” if the information is provided in terms of the “SOP” as already provided by one M/s Al-Jehan Flour Mills, Multan during continuance of contract with Directorate General Procurement (Army) and in this regard he had submitted copy of letter

dated 14.10.2022 submitted by the Officer Commanding to the District Food Controller, Multan mentioning the grinding schedule for the relevant month. It is interesting to note that the “*Petitioner Mill*” despite complying with the “*SOP*” for getting subsidized wheat quota, is reluctant to provide the grinding schedule merely stating that the Respondents are not issuing the wheat quota which infringed his fundamental rights of trade and business under Article 18 of the “*Constitution*”. No doubt, the said Article promotes the rights of trade/business of every citizen to carry out lawful trade but these rights are subject to certain qualifications as prescribed by the law and the law in this case is the “*SOP*” issued in pursuance of the “*Notification*” by the Food Department under the “*Rules*”. It is a settled principle of law that when a law describes or requires a thing to be done in a particular manner, it should be done in that manner or not at all. Reliance in this regard may well be placed upon observation in “ATTAULLAH KHAN versus ALI AZAM AFRIDI and others” (2023 PLC (C.S) 182).

9. During the pendency of this writ petition, the counsel for the “*Petitioner Mill*” has placed on record letter dated 05.01.2023 through C.M.No.56 of 2023, issued by the Officer Commanding to the “*Petitioner Mill*” by mentioning the grinding schedule of defence wheat for the month of January 2023 to be completed on 31 January, 2023 and that grinding for the month of February 2023 will start from 1<sup>st</sup> February 2023. A letter dated 14.11.2022 has also been placed on record through aforesaid application which was addressed to Deputy Attorney General by the Lieutenant Colonel (Retire) for Directorate General Procurement (Army) by stating that Pak Army has no objection on private milling on completion of grinding requirement of Pak Army against each month but with respect to sharing information it was stated as under:

- a. Any information about the sale/purchase of the stores under the contract shall not be communicated to any person, other than the manufacturer of the stores or to any

*press or agency not authorized by Director General Procurement (Army) to receive it. The breach of the undertaking shall be punishable under the Official Secrets Act, 1923.*

- b. By giving the information, “it can easily be identified, how many troops are dependent on the flour mill, hence is sensitive in nature, therefore, sharing of information by the contractor will lead to breach of Security and may threaten the life as well as State Security.*
- c. However, Food Department being a Government Department can ask any clarification as and when required directly from Directorate General Procurement (Army) through official channel rather than asking from the contractor.*

10. In view of the above observations, it is quite obvious that no information with regard to sale/purchase of stores under the contract with the Army shall be communicated to any person, other than the manufacturer of the stores or to any press or agency not authorized by Director General Procurement (Army) to receive it. It is quite evident from the “SOP” under challenge that the “*Petitioner Mill*” is only obligated to submit monthly grinding schedule to the concerned District Food Controller duly approved by the concerned authority of Pakistan Army and not the information with regard to sale or purchase of stores which amounts to breach of certain terms and conditions of the contract executed between the “*Petitioner Mill*” and the Pak Army. Moreover, the “*Petitioner Mill*” has not brought on record specific grinding days of Pak Army in a month for the release of Government wheat quota. It is manifest from the letter dated 22.09.2022 issued by the District Food Controller, Attock requiring the “*Petitioner Mill*” to submit information in terms of days specified for grinding of Pak Army but the “*Petitioner Mill*” remained fail to provide such information pursuant to which the “*Petitioner Mill*” was refused to get government wheat quota during the days of Pak Army grinding.

11. It is settled law that writ is for enforcement of fundamental rights and not for the entitlement of rights and if any equitable relief is sought from the Court then it can only be granted subject to provision of relevant law. Reliance is placed on the judgment of Supreme Court of Pakistan in a case reported as "ASADULLAH MANGI and others Versus PAKISTAN INTERNATIONAL AIRLINES CORPORATION and others" (**2005 SCMR 445**). Admittedly the "*Petitioner Mill*" has approached this Court under Article 199 of the "*Constitution*" seeking directions against the Respondents and while seeking such directions, Article 4 and 5 of the "*Constitution*" have to be kept in mind. It is also worth mentioning that it is inalienable right of every citizen to be treated in accordance with law as envisaged by Article 4 of the "*Constitution*" but it is subject to Article 5 of the "*Constitution*" which cast duty and inviolable obligation on every citizen to obey the constitution and the law, and the relevant law in this case is the "*SOP*" issued by the Respondent No.2 in the light of "*Policy*" introduced by the Food Department under the "*Rules*".

12. In view of above, the "*Petitioner Mill*" has failed to point out solid reasons to declare the "*SOP*" as an act without lawful authority or violative to fundamental rights, which otherwise have been issued by the lawful authority strictly under the "*Rules*". Therefore, this petition holds no merit hence **dismissed**.

(JAWAD HASSAN)  
JUDGE

**Approved for Reporting**

JUDGE