

Stereo.HCJDA 38.
JUDGMENT SHEET.

LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI.
JUDICIAL DEPARTMENT

W.P.No.940 of 2023

Muhammad Ibrar, etc.

Versus.

Govt. of Punjab, etc.

JUDGMENT.

Date of hearing: **31.05.2023.**

Petitioners by: ***Mr. Taufique Asif, Advocate.***

Respondents by: ***Malik Amjad Ali, Additional Advocate General for Punjab with Syed Muhammad Shah, Advocate/Legal Advisor, Muhammad Zaman Watoo, Secretary Food, Punjab and Muhammad Ramzan, District Food Controller.***

Mirza Viqas Rauf, J. *The petitioners herein are owners of flour mills operating in various parts of District Attock. They are seeking writ of mandamus for enhancement of wheat quota. The grievance of the petitioners is that the respondents are though bound to release the wheat for each district on the basis of need of the targeted population of that district but instead they have decreased the supply of wheat quota to the flour mills of District Attock without any lawful excuse.*

2. *In response to this petition, respondents No.1 and 2, being the most concerned to the subject, submitted their report and parawise comments. It is stated therein that Punjab Food Department Procures wheat every year from growers at support price fixed by the Government to maintain food security reserves, to cater the requirements of targeted population and to stabilize the price of flour and wheat in the open market with the intervention of the Wheat Release/Milling Policy. To this effect a*

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policy was notified on 19th May, 2022 as Wheat Release/Milling Policy, 2022-23 in terms whereof wheat was to be released for each district on the basis of need of the targeted population of the particular district. It is stance of the respondents that subsidized wheat quota is only issued to cater for the need/requirement of the targeted population/urban population of the concerned district and the flour mills cannot claim the enhancement of wheat quota as a matter of right.

3. Learned counsel for the petitioners contended that in the previous years, a reasonable wheat quota was fixed for the District Attock but in the current year, quota has been decreased considerably without assigning any lawful reasoning. Learned counsel contended with vehemence that it is the bounden duty of the State to provide basic necessities of life to its citizens, which includes wheat as well. It is argued that the respondents have failed to adhere the mandate of Article 38 of the Constitution of the Islamic Republic of Pakistan, 1973. Learned counsel submitted that despite clear recommendations from the District Administration, no concrete steps have been taken by the respondents to ensure the release of required wheat in District Attock. Reliance is placed on IBRAHIM FLOUR AND GENERAL MILLS, DISTRICT SHEIKHUPURA through Chief Executive v. GOVERNMENT OF PUNJAB through Secretary to the Government of the Punjab, Food Department, Lahore and another (PLD 2008 Lahore 184).

4. Conversely, learned Law Officer submitted that the petitioners being the mill owners have no vested right to claim the enhancement of wheat quota. He added that supply of wheat is within the domain of the respondents and they are regulating the activity under a policy framed for the said purpose. Learned Law Officer contended that wheat quota cannot be fixed at the whims of the petitioners and this petition is not tenable under the law.

5. Heard. Record perused.

6. *The petitioners are admittedly the mill owners operating within District Attock. The grievance of the petitioners is restricted to the allocation of wheat quota. In order to control the supply, distribution and movement of, and trade and commerce in, foodstuffs in the Punjab, the Punjab Foodstuffs (Control) (Act XX of 1958) (hereinafter referred to as "Act, 1958") was promulgated. Sub-article 2(a) provides the definition of foodstuff, which reads as under: -*

- 2(a)** "foodstuff" means any of the following classes of commodities:--
- (i) Wheat, wheat atta, maida, rawa and suji;
 - (ii) Rice and paddy;
 - (iii) Sugar; and
 - (iv) Such other commodity or class of commodities as may be declared and notified by the Government to be foodstuffs for the purposes of this Act;

Wheat is clearly a foodstuff in terms of the above definition.

7. *Section 3 of the "Act, 1958" bestows power upon the Government to ensure supply and equal distribution of foodstuffs within the province and also to take all necessary measures for the said purpose. In furtherance thereof, the Government of Punjab promulgated Wheat Release/Milling Policy, 2022-23. In terms of clause V of the policy, wheat shall be released for each district on the basis of need of the targeted population of that district. District Attock is amongst the said districts whose daily authorized quota was allocated as 488 metric tons. As per clause VIII of the Policy, 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.*

8. *It is thus evident that process of grinding of flour mills is not restricted to the wheat collected through fixed quota from the Government but mills can grind their private wheat stocks as well. Though much emphasis was laid by learned counsel for the petitioners while making*

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reference to certain recommendations of the District Administration that wheat quota of District Attock has been gradually decreased but in order to properly appreciate this aspect of the matter, a report was also requisitioned from the respondents wherein it is narrated that earlier the Punjab Food Department has surplus wheat stocks procured through wheat procurement policies. The specific quantity of subsidized wheat quota was allocated to each district, however, the flour mills were allowed to uplift subsidized wheat from the surplus districts during Wheat Procurement Policies 2015 to 2019 but thereafter the subsidized wheat quota was allowed to be issued to the respective flour mills of the district on the basis of targeted/ urban population of the concerned district which brought the figure of wheat quota down-hill. In order to justify the apparent decrease in the wheat quota, it is stated by the respondents that population of District Attock is 1883554 and after inclusion of 2.34% growth rate for two years, total figures of population are reported as 2112836. It is stated that as per Crop Reporting Service (Agriculture Department), the production of wheat is 310340 metric tons from an area of 452000 acres. As per calculation of the Ministry of National Food Security & Research, per capita per annum requirement is 115 kg. During current year against the requirement of 178 metric tons, following cascading based increase as per requirement was made in quota for release of wheat to mills: -

- | | | |
|------|------------|-------------|
| i) | 19.05.2022 | 488 M. Tons |
| ii) | 23.09.2022 | 537 M. Tons |
| iii) | 21.12.2022 | 585 M. Tons |
| iv) | 09.01.2023 | 674 M. Tons |

It is stance of the respondents that in order to cater the requirement of flour of urban population (490006 individuals) in District Attock, per day quota calculates to 178 metric tons and as per requirement of flour and availability of wheat in open market, the quota was gradually increased to cater the requirement of general public. It is explained by the respondents that multiple factors lead towards calculation of quota for district Attock i.e.

urban & rural population, wheat production in the area, availability of stocks with the flour mills, refugees residing in district and military cantonments etc. It is pointed out that as per policy, the flour mills will supply 25% share out of per day grinding in the market as well and quota of every district is decreased as maximum population has benefited from the Benazir Income Support Program (BISP) (Free Flour) and arrival of the new crop in open market as well. The explanation with regard to apparent decline in the figure of wheat quota of District Attock is quite logical.

9. *So far judgment in the case of IBRAHIM FLOUR AND GENERAL MILLS, DISTRICT SHEIKHUPURA through Chief Executive supra is concerned, it is noticed that in the said case, the petitioners therein were treated discriminatory by the Food Department in the matter of allocation of quota of wheat according to their entitlement. In that backdrop, their petitions were accepted in the light of Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as "Constitution"). Facts in the said case are thus rested on entirely different footings. The principles laid down in the said judgment are hardly attracted to the present case.*

10. *As already observed that in terms of section 3 of the "Act 1958", the Government is vested with the power to control the supply of foodstuffs for ensuring equal distribution as well as price hike. Fixation of quota is clearly a function of executive falling within its policy making domain. Wheat Release/Milling Policy 2022-23 clearly has a lawful backing under section 3 of the "Act, 1958". This Court in exercise of constitutional jurisdiction cannot abridge the powers of executive to frame a policy or to settle its terms as per wishes and whims of a particular individual or a group of society. While analyzing the vires of a policy, the Court is obliged to keep in mind the concept of trichotomy of powers between legislature, executive and judiciary. This well-known principle is inbuilt in the "Constitution" which is founded on the ground that the legislature being representative of the people enacts the law and the law so enacted acquires legitimacy.*

Framing of a policy with regard to a particular subject is within the exclusive domain of the executive, which is in a better position to decide on account of its mandate, experience, wisdom and sagacity which are acquired through diverse skills. The last pillar of the trichotomy of powers is the judiciary, who is entrusted with the task to interpret the law and to play the role of an arbiter in cases of disputes between the individuals inter se and between individual and the State. Guidance in this respect can be sought from DOSSANI TRAVELS PVT. LTD and others v. Messrs TRAVELS SHOP (PVT) LTD. and others (PLD 2014 Supreme Court 1). The relevant extract from the same is reproduced below: -

"26. One of the seminal principles of the Constitution of Islamic Republic of Pakistan is the concept of trichotomy of powers between the Legislature, Executive and the Judiciary. This principle underpins the rationale that framing of a government policy is to be undertaken by the Executive which is in a better position to decide on account of its mandate, experience, wisdom and sagacity which are acquired through diverse skills. The Legislature which represents the people enacts the law and the law so enacted acquires legitimacy. The judiciary on the other hand, is entrusted with the task of interpreting the law and to play the role of an arbiter in cases of disputes between the individuals inter se and between individual and the State. We may remind ourselves that judiciary neither has sword nor purse. The legitimacy and respect of its judgments is dependent on peoples' confidence in its strict adherence to the Constitution, its integrity, impartiality and independence. In changing times and judicialization of political issues, a certain degree of judicial activism by fearless and impartial judiciary is also essential for maintaining its integrity and peoples' trust. In most of the modern democracies, judiciaries have been called upon to provide wider meanings to various provisions of the Constitution so as to meet the challenges of modern times and to fill the gap between the law and the requirements of substantive justice. Every institution has to play its role in enforcing the Constitution and the law. It is a multi-disciplinary exercise. However, implementation of rule of law is the primary function of judiciary. This role is multi-dimensional and the most challenging facet of this role is to keep various institutions and the judiciary itself within the limits of their respective powers laid down in the Constitution and the law. The legitimacy of its judgments does not arise from the beauty of the language or the use of populist rhetoric. Rather it radiates from the dynamism reflected in interpreting the Constitution and in particular its Fundamental Rights provisions, in judicial restraint displayed in deference to the principle of trichotomy of powers, and in an impersonal and impartial application of law."

11. Right of freedom of trade, business or profession is not an absolute and unbridled right, rather it is regulated by some restrictions. Article 18 of the "Constitution" is very clear and unequivocal in its terms, which reads as under: -

18. **Freedom of trade, business or profession.** Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent—

(a) the regulation of any trade or profession by a licensing system; or

(b) the regulation of trade, commerce or industry in the interest of free competition therein; or

(c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.

From the bare perusal of Article 18 of the "Constitution", there remains no cavil that right of freedom, trade, business or profession is always subject to such qualifications, if any, as may be prescribed by law. These qualifications empower the Government to frame a policy, which is even provided under section 3 of the "Act, 1958". It is an oft repeated principle of law that in absence of any illegality, perversity, arbitrariness or an established malafide, it will not be open for the High Court to annul a policy framed by the executive.

12. Article 38 of the "Constitution" guarantees the promotion of social and economic well-being of the people. Sub-article (d) though ordains that the State shall provide basic necessities of life e.g. food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment but its

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mandate cannot be extended for the benefit of petitioners being mill owners only to promote their business.

13. *For the foregoing reasons, this petition being devoid of any merits fails and dismissed with no order as to costs.*

**(MIRZA VIQAS RAUF)
JUDGE**

*Dictated:
05.07.2023*

*Signed
11.07.2023.*

Announced in open Court on 11.07.2023.

JUDGE

Approved for reporting

JUDGE

Zeeshan