IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION.
(Special Original Jurisdiction)

Writ Petition No. 7208 of 2012
In the matter of :
An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

And
In the matter of:
Unilever Bangladesh Limited Company's Profit (Workers Participation) Fund and Welfare Fund, Board of Trustee , represented by its Chairman..
.....Petitioner.
Vs.
The Chairman, Labour Appellate Tribunal and others.
.....Respondents.
Mr. Abdur Razzaq Khan With
Mr. Mahabubul Hoq and
Mr. Nesar Ahmed, Advocates
... . For the Petitioner.
Mr. Mohsan Uddin Ahmed Chowdhury with
Mr. Md Mahbub Monzur and
Mr. Rakibul Hasan, Advocates
.....For the Respondent Nos. 3 to 21.
None appear
....For the proforma respondent Nos. 22 and 23.

Hearing on 6.11.2012 and 7.11.2012
And
Judgment on 11.11.2012

Present:
Mr. Justice Nozrul Islam Chowdhury
AND
Mr. Justice Mohammad Ullah.

Mohammad Ullah, J.

This Rule Nisi was issued on an application filed by the petitioner under Article 102 of the Constitution of the People's Republic of Bangladesh, calling upon the respondents to show cause as to why the judgment and order dated 14.5.2012 passed by the Labour Appellate Tribunal i.e. respondent No. 1, in Appeal No. 615 of 2011 dismissing the appeal and affirming the judgment and

order dated 26.10.2011 passed by the 2nd Labour Court, Chittagong, i.e. respondent No. 2, in I.R. Case No. 47 of 2009 should not be declared to have been passed without lawful authority and is of no legal effect. By the Rule issuing order dated 17.6.2012 operation of the impugned judgment and order dated 14.5.2012 passed in Appeal No. 615 of 2011 was stayed.

The facts leading to disposal of the Rule, are briefly stated below:

The petitioner is the Chairman of Board of Trustee of Unilever Bangladesh Ltd. Company's Profit (Workers Participation) Fund and Welfare Fund of the proforma respondent No. 22, a company incorporated under Companies Act and the respondent No. 23 is the Factory Commercial Manager and Secretary of Board of Trustee (Workers Participation) and Welfare Fund, Unilever Bangladesh Ltd. and the respondent Nos. 3 to 21 are workers of the proforma respondent No. 22 company namely Unilever Bangladesh Ltd.

The said respondent Nos. 3 to 21 filed I.R. Case No. 47 of 2009 in the second labour court, Chittagong invoking section ২১৩ of বাংলাদেশ শ্রম আইন, ২০০৬ impleading the writ petitioner and the respondent Nos. 22 and 23 stating inter alia that they are employees of Unilever Bangladesh Ltd. and have been eligible to obtain share of profits of the company as per provisions of Company's Profits (Workers Participation) Act, 1968.

Since the earlier enactment namely Company's Profit (Workers Participation) Act, 1968 was repealed the said respondent Nos. 3 to 21 claimed themselves as the workers as defined in section ২৩৩ (জ) of বাংলাদেশ শ্রম আইন, ২০০৬ who are not concerned with the managerial or administrative nature of work of

the company and they are eligible to get the said benefit of fund in question under বাংলাদেশ শ্রম আইন, ২০০৬ from the fund year 2007.

The petitioner contested the said I.R. case upon filing a written statement contending inter alia that the respondent Nos. 3 to 21 are not workers rather they fall within the meaning of employer as defined in section ২ (৪৯) of বাংলাদেশ শ্রম আইন, ২০০৬ and they are not legally entitled to get share of Company's Profit (Workers Participation) Fund and Welfare Fund.

To prove the respective cases of the parties the respondent Nos. 3 to 21 produced and examined one witness as P.W. 1 namely Mohammad Ibrahim who deposed for himself and on behalf of other respondents (1st parties) on the other hand the petitioner also produced one witness as D.W. 1. Besides, both the parties produced some papers which were duly exhibited in the I.R case before the 2nd labour court, Chittagong.

The said labour court framed only one issue to determine the case as to whether the respondent Nos. 3 to 21 i.e. first party in the labour court are entitled to get any share of profit from Company's Profit (Workers Participation) Fund.

Upon hearing the parties and on consideration of the materials on record the labour court allowed the case of the respondent Nos. 3 to 21 by its judgment dated 26.10.2011.

Thereafter unsuccessful petitioner preferred appeal against the said judgment of the labour court dated 26.10.2011 before the Labour Appellate Tribunal being Appeal No. 615 of 2011 and the learned Chairman of the Labour Appellate Tribunal after hearing the parties and also on consideration of the

materials on record dismissed the appeal and thereby affirmed the judgment of the labour court by his judgment and order dated 14.5.2012.

Then the petitioner approached this Court and obtained the present Rule and order of stay as stated above.

Mr. Abdur Razzaq Khan, the learned Advocate, appearing with Mr. Mahabubul Hoq and Mr. Nesar Ahmed, Advocates on behalf of the petitioner having placed the evidence on record including the impugned judgment submits that the labour court and the Labour Appellate Tribunal illegally and improperly failed to distinguish the definition of 'worker' as defined in section 2 (65) of বাংলাদেশ শ্রম আইন, ২০০৬ with the definition given in section 233 of the same Ain.

Mr. Khan, the learned Advocate submits further that the respondent Nos. 3 to 21 failed to establish their claim and status as 'worker' and they did not adduce any evidence for their entitlement of fund benefit as defined in section ২৩৪ of বাংলাদেশ শ্রম আইন, ২০০৬ and as such both the courts below acted without lawful basis and both the judgment of labour court as well as the Labour Appellate Tribunal should be declared to be without lawful authority and are of no legal effect.

Mr. Khan, the learned Advocate next submits that both the labour court and the Labour Appellate Tribunal failed to consider that the respondent Nos. 3 to 21 fall within the category of employer as defined in section ২ (৪৯) of বাংলাদেশ শ্রম আইন, ২০০৬ and in such view of the matter the impugned judgment should be declared without any lawful authority and is of no legal effect.

Mr. Khan, finally submits that the labour court as well as the Labour Appellate Tribunal have fallen into grave error of law taking into consideration

of the judgment passed by this Court in Writ Petition No. 5111 of 2008 filed by one Md. Jalaluddin, a Junior Store Officer of Meghna Petroleum Ltd. inspite of the fact that there is no relevance to the facts and circumstances of the present case with the judgment of the said writ petition on that count the impugned judgment should be declared to have been passed without lawful authority and is of no legal effect.

On the other hand Mr. Mohsan Uddin Ahmed Chowdhury, the learned Advocate appearing with Mr. Md.Mahabub Monzur and Mr.Rakibul Hasan, Advocates on behalf of the respondent Nos. 3 to 21 by filing affidavit-in-opposition and supporting the judgment of the labour court as well as the Labour Appellate Tribunal submits that the respondent Nos. 3 to 21 are the workers of the company as defined in section ২৩৩ (জ) of বাংলাদেশ শ্রম আইন, ২০০৬ and they are legally entitled to get benefit of the Company's Profit (Workers Participation) Fund.

Mr. Chowdhury, the learned Advocate in support of his submission has given emphasis upon the decision passed in Writ Petition No. 5111 of 2008 and submits that the decision which has been given by this Court in the said writ petition is exactly similar and identical to that of the present case in the hand and as such the Rule should be discharged.

Mr. Chowdhury also referred to another unreported judgment of this Court and submits that similar views were also taken by this Court in writ petition No.5024 of 2012 in the case of Mr. Abu Taher vs. Bangladesh and others.

We have heard the learned Advocates of both the sides and perused the impugned judgment including the writ petition, annexures, affidavit-in-opposition and affidavit-in- replay thereto and also gone through the decisions as referred to, wherefrom it transpires that the respondent Nos. 3 to 21 as the first party by filing I.R. Case before the labour court, Chittagong against the writ petitioner and respondent Nos. 22 and 23 as the second party claiming themselves as the employee of the respondent No. 22- Company being the Unilever Bangladesh Ltd. and praying for obtaining share from the workers' profit and participation fund including their arrear with effect from fund year 2007 onward.

The labour court as well as Labour Appellate Tribunal allowed the case of the respondent Nos. 3 to 21 found them as workers of the company as defined in section ২৩৩ (জ) of বাংলাদেশ শ্রম আইন, ২০০৬।

So we have to look into the provision of section ২৩৩ (জ) of বাংলাদেশ শ্রম আইন, ২০০৬ which reads as follows:

২৩৩। বিশেষ সংজ্ঞা।-(১) বিষয় বা প্রসংগের পরিপন্থী কোন কিছু না থাকিলে, এই অধ্যায়ে-

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(খ) ----------
(গ) ----------
(ঙ) ----------
(চ) ----------
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(জ) কোন কোম্পানীর শ্রমিক বলিতে ঐ ব্যক্তিকে বুঝাইবে যিনি পদ-মর্যাদা নির্বিশেষে উক্ত কোম্পানীতে অন্যূন ছয়মাস যাবত চাকুরীতে নিযুক্ত রহিয়াছেন, তবে নিম্নোক্ত কোন ব্যক্তি এই আইনের আওতায় শ্রমিক সংজ্ঞার অন্তর্ভুক্ত হইবেন না-

(১) ব্যবস্থাপনা কিংবা প্রশাসনিক দায়িত্বে নিযুক্ত ব্যক্তি,

(২) তদারকি কর্তৃত্বে নিযুক্ত ব্যাক্তি যিনি পদাধিকারবলে বা তাহার উপর অর্পিত ক্ষমতাবলে ব্যবস্থাপনা বা প্রশাসনিক ধরনের কাজ করিয়া থাকেন।

This provision of section ২৩৩ (জ) and other provisions of বাংলাদেশ শ্রম আইন, ২০০৬ came into operation after repealing the provisions of Company's Profits (Workers Participation) Act, 1968 wherein the new enactment the definition of 'শ্রমিক' in the case of getting workers' profit fund has been clearly defined in section ২৩৩ (জ) and that speaks' the words "irrespective of designation" (পদ মর্যাদা নির্বিশেষে)।

Both the labour court as well as the Labour Appellate Tribunal mainly passed the judgments and orders allowing the case of the respondent Nos. 3 to 21 holding that the respondent Nos. 3 to 21 are the workers in view of the Act itself and the decision of a judgment passed by this Court in Writ Petition No. 5111 of 2008 filed by one Md. Jalaluddin, a Junior Officer of Meghna Petroleum Ltd.

So far the submissions of the learned Advocate for the petitioner that the respondent Nos. 3 to 21 are not fallen within the definition of workers, they performed managerial and administrative functions of the company and they are not entitled to get the benefit from the said welfare fund. We hold that the petitioner could not show/produce any evidence on record that the respondent Nos. 3 to 21 were the part of management of respondent No. 22- Company or they were ever holding any managerial, administrative or supervisory function of the same. It is pertinent to mention here that mere designation does not determine whether an employee is an Officer or a Worker which is clearly

embodied in section ২৩৩(জ) of বাংলাদেশ শ্রম আইন, ২০০৬ wording " **পদ মর্যাদা নির্বিশেষে"**। (under line is given by us.)

In the judgment of the Writ Petition No. 5111 of 2008 we find that the petitioner of that writ petition was appointed as Junior Operation Officer and subsequently promoted as Senior Field Engineer who got the benefits of workers participation fund holding the view that his job was not that of managerial or supervisory in nature.

The principle enunciated by this Court in Writ Petition Nos. 5111 of 2008 and Writ Petition No. 5024 of 2012 are applicable in the present facts and circumstances of the instant case before us and also in all cases of similar facts and involving similar point of law irrespective of difference of job description.

From the evidence on record we find that the petitioner has not been able to prove that the respondent Nos. 3 to 21 were ever engaged in or performed managerial or supervisory job. We also hold that the respondent Nos. 3 to 21 fall within the definition of section ২৩৩ (জ) of বাংলাদেশ শ্রম আইন, ২০০৬ and they are entitled to get benefits of (Workers Participation) Fund and Welfare Fund as prayed for.

We have noticed that the judgment of Writ Petition No. 5111 of 2008 making the Rule absolute by this Court infavour of a worker was challenged by a Leave Petition being No. 1732 of 2009 to the Appellate Division and the leave was granted but subsequently the same was withdrawn.

So it can safely be said that the judgment passed in Writ Petition No. 5111 of 2008 is still in force whereby the definition of worker has been settled by this Court in view of the provision of বাংলাদেশ শ্রম আইন, ২০০৬.

It is pertinent to mention here that the Appellate Division in the case of Chief Engineer, the Local Government and Engineering Department and others Vs. Kazi Mizanur Rahman and 8 others reported in 17 BLC(AD)(2012) observed about the conflicting opinions of different Benches of the High Court Division in the following manner:

> *There should not be conflicting opinions of different Benches of the High Court Division sitting on coordinate jurisdiction. When there will be different opinions on a particular point, it will be difficult for the executive to follow the directions. Whenever, a Division Bench of the High Court Division is called upon to decide question of law, it becomes its duty to ascertain whether any pronouncement of the High Court Division exists on the point and the best procedure is to follow the said opinion. If it does not accept the decision as correct, it may refer the matter to a Full Bench after formulating the point on which it differs on the point of law. If the facts are distinguishable then it can decide the question of law on the facts of the given case.*

The learned Advocate for the petitioner has drawn our attention that the name of the respondent Nos. 3 to 21 are not available in the member list of trade union which implies that they are not worker. In this regard we hold that the member list of trade union cannot be the determining factor of whether one is a worker or not ignoring the prevailing law wherein definition of the expression "worker" has been clearly spelt out.

It is also necessary to mention here that the respondent No.22 company is the appropriate authority to say whether its employees i.e. respondent Nos. 3 to 21 are its workers or not. But it appears that the company (respondent No.22) as the 2nd party No.1 in the labour court did not come forward to prove that the respondent Nos. 3 to 21 are not the workers of the company or they ever performed managerial or administrative functions of the company. Though the respondent No. 22-company by filing a written statement wanted to say that the

fund in question will be distributed among the eligible member of the company and who are the eligible to get it would be determined as per provision of বাংলাদেশ শ্রম আইন, ২০০৬ but after filing a written statement the company did not turn up to contest the claim.

So, on that count we hold that the respondent No.22-company like the petitioner failed to show that the respondent Nos.3 to 21 ever performed the managerial or administrative functions of the company other than workers.

In conclusion we hold that the respondent Nos. 3 to 21 are the workers of the respondent No. 22- company and they are entitled to get benefit from the (Worker Participation) Profit Fund. On the other hand we do not find any evidence from the materials on record to show that the respondent Nos. 3 to 21 fall within the exception of section ২৩৩ (জ) of বাংলাদেশ শ্রম আইন, ২০০৬।

In the light of the discussions made herein above we do not find substance in the submissions of the learned Advocate for the petitioner.

Accordingly, the Rule is discharged. However without any order as to cost.

Send this judgment to the 2nd Labour Court, Chittagong and the Labour Appellate Tribunal, Dhaka along with the lower courts record.

Nozrul Islam Chowdhury, J.

I agree.