



Star LAW report

Dismissed or terminated workers barred from trade union

High Court Division (Special Original Jurisdiction)
Writ Petition No. 5905 of 2001
Padma Oil Co Ltd
Vs
The Registrar of Trade Unions and another
Before Mr. Justice Md. Hamidul Haque and
Mr. Justice Salama Masud Chowdhury
Date of Judgement: February 28, 2003
Result : Rule absolute

Background
Salma Masud Chowdhury, J: This Rule Nisi was issued calling upon the respondent to show cause as to why the order contained in the impugned letter No. RTU/CAB (539)/2001/699 dated 9.9.2001 issued by the Registrar of Trade Union Government of Bangladesh Respondent No. 1 (Annexure-A to this petition) should not be declared to have been made without any lawful authority and is of no legal effect and why the respondent No. 1 should not be directed to take proper steps for cancellation of the registration of the respondent No. 2 Union under section 10 (1) and (2) of the IRO for electing as its President, General Secretary and members of the Executive committee some persons who are disqualified under section 7A of the IRO and for contravening the provisions of IRO and the rules of their own constitution or such other or further order or orders passed as to this court may seem fit and proper.

Facts in brief
The case of the petitioner is that the petitioner company is engaged in the sale and distribution of petroleum products in the country and there are two registered Trade Unions of workers and employees of the company namely Padma Oil Company Ltd Labour Union Registration No. B-48 i.e. respondent No. 2 and Padma Oil Company Limited Sramik League Registration No. 2019. In the CBA election held on 6.9.2001 the respondent No. 2 was declared CBA by Respondent No. 1 and it has been alleged that respondent No. 2 illegally participated in the election as Respondent No. 2 i.e. Padma Oil Company Limited Labour Union (Registration No. B-48) was not legally constituted as per law. Because the Executive Committee consisted of disqualified persons as President, General Secretary and Member, who were terminated and dismissed from service on 10.7.97 and 29.4.98. This fact was brought to the notice of Respondent No. 1 by the petitioner Company before the CBA election. But the Respondent No. 1 took a view which was not in accordance with law. The petitioner challenged the declaration of Respondent No. 2 as CBA by Respondent No. 1 (Annexure-A) and prayed for a direction upon the Respondent No. 1 to take proper steps for cancellation of the registration of respondent No. 2 and accordingly moved this court and obtained the present Rule.

Mr. Rafique-Ul-Huq, the learned Senior counsel appearing with Mr. Khalilur Rahman and Mr. Zubayer Rahman Chowdhury on behalf of the petitioner and submitted that the President and the General Secretary of the Executive Committee of the Trade Union Respondent No. 2 were disqualified persons as per section 7-A (1) (b) of the Industrial Relation Ordinance and as such the declaration of that Trade Union to act as a CBA was unlawful. He has also submitted that if a person is not actually employed or engaged in the establishment due to his termination or dismissal from his service he is disqualified from being a member or officer of the Trade Union. He has pointed out that the position of law has been explained and settled by the High Court division in Writ Petition No. 6111 of 1997, which was filed by a disqualified member of the respondent Trade Union.

He has further submitted that an employee who has ceased to be in employment is disqualified from being an officer or member of Trade Union after his termination or dismissal. He drew our attention to the fact that Rafiqul Islam was terminated from service on 10.7.97. Aminul Haque was terminated from service on 29.4.98 and Mohsin Ali Chowdhury was dismissed on 13.4.99. During the last election of the office bearers of Respondent No. 2 held on 11.11.2000, they were elected as office bearers by falsely showing themselves as existing employees of the petitioner and subsequently that Trade Union was declared to be the CBA by the election held on 6.9.2001. The learned counsel further submitted that since some officers or members of the Trade Union (the Respondent No. 2) are disqualified for being the same as per section 7-A(1) (b) of IRO, the registration of such Trade Union must be cancelled in compliance with section 10 (1) (b) (1) and (h) of IRO.

Lastly the learned counsel appearing on behalf of the petitioner has submitted that three disqualified persons after their termination or dismissal filed cases

before the Labour Court which were decided in their favour along with orders for their reinstatement but against that the petitioner preferred writ petition numbers 2237, 4096 and 3597 of 2000 before the High Court Division in which rule was issued and operation of the judgement of the Labour Court were stayed.

Mr Tufailur Rahman, the learned counsel appeared on behalf of the respondent No. 2 and filed the affidavit in opposition. The learned counsel appearing on behalf of the respondent No. 2 submitted that three persons who were in the Trade Union were dismissed or terminated in a most unlawful manner and those orders were set aside by the Labour Court along with the direction for their reinstatement. But subsequently the judgements of the Labour Court were stayed in the writ petitions, which are pending for disposal. He further submitted that the Executive Committee of Respondent No. 2 Trade Union has already been re-constituted on 12.9.2001 following resignation by the disqualified persons on 30.8.2001 and a letter dated 19.9.2001 intimating the re-constitution was sent to the Registrar of the Trade Union.

With reference to that he drew our attention to annexure-5 and 6 of the affidavit-in-opposition and submitted that since the disqualified persons were dropped the registrar lawfully declared Respondent No. 2 as CBA. He has further submitted that the registration of Trade Union cannot be challenged merely on the ground that two or three of its members are not qualified. Lastly the learned

Trade Union being registration No. B-48 (Respondent No. 2) and the employer petitioner approached the Registrar of the Trade Union (Respondent No. 1) for taking appropriate steps against Respondent No. 2 the Trade Union (Registration No. B 48) for concealing the fact that the President, the General Secretary and a member were not the employees of the petitioner as they were dismissed or terminated workers.

We find the reply of the Registrar in Annexure-D wherein the registrar considered the application of the present petitioner for taking steps against the Trade Union (Respondent No. 2). In the reply, Registrar has clearly mentioned that a dismissed member cannot be either an officer or a member of the Trade Union. In fact we find that this is the legal position as per section 7-A of the IRO.

From annexure-6 of the affidavit-in-opposition we find that the executive committee of the Trade Union (Respondent No. 2) was reconstituted and the dismissed and the terminated employees were excluded from the executive committee on 19.9.2001 and thus till that date the dismissed or terminated workers were office bearers which is in clear violation of section 7-A of the IRO.

Section 10 (1) (b) (h) of the IRO provides that the registration of a Trade Union may be cancelled by the Registrar if the trade union has obtained registration by fraud or by misrepresentation of facts or if the trade union has elected as its office a person who is disqualified under section 7A.



counsel submitted that the petitioner is not an aggrieved body and thus the writ petition is not at all maintainable, and moreover the company has no scope to interfere with the internal domestic management and affairs of the Trade Union by seeking remedy under writ jurisdiction.

The learned Assistant Attorney General appearing on behalf of the respondent No. 1 supported the contention made by the learned lawyer appearing on behalf of the respondent No. 2.

Deliberation

We have considered the submission made by the learned lawyers appearing on behalf of the petitioner and respondents and perused the writ petition, affidavit-in-opposition including the Annexures and the relevant provision of law i.e. sections 7-A and 10 of the IRO, Section 7-A of the Industrial Relations Ordinance 1967 mentions about the persons who will be disqualified from being an officer or a member of a Trade Union.

Section 7-A (1) (b) makes it clear that a person shall not be entitled to be a member or officer of a Trade Union formed in any establishment or group of establishments if he is not or was employed or engaged in that establishment. It is admitted that some of the dismissed and terminated employees of Padma Oil Company Limited were elected as members of the executive committee of the

As it is admitted that one or two of the office bearers were dismissed workers, the view taken by the Registrar of the Trade Union as we find from annexure-D1, appears to us to be incorrect. The Registrar has given interpretation about the terminated workers but remained silent about the dismissed workers. We find that there were also dismissed workers who became members of the executive committee of the Trade Union and thus the Registrar had the scope to take action under section 10 of the IRO.

The dismissed and terminated workers filed cases before the Labour Court in which their termination and dismissal were declared illegal but we find that the operation of the judgement of the Labour Court has been stayed by the High Court Division in writ petitions Nos. 2227, 4096 and 3597 of 2000 and thus those workers and employees still remain dismissed/terminated.

Regarding the submissions made on the question of maintainability of the writ petition by the learned lawyer of Respondent No. 2 that the petitioner is not aggrieved we cannot accept this view because the petitioner being the

employer is entitled to challenge the declaration of CBA as made by the Registrar of the Trade Union.

Decision

From our above discussion we find that when the respondent No. 2 Trade Union being registration no. B-48 was declared CBA of Padma Oil Company Limited, at that time its President and General Secretary were either dismissed or terminated and thus were not qualified for being an officer or a member of a Trade Union in view of section 7-A of the IRO. We have also found that the Registrar of the Trade Union had the scope to take steps or cancellation of the registration of the Trade Union under section 10 of the IRO in view of the disqualification of the President and General Secretary of the Trade Union concerned.

So, in the result, the Rule is made absolute. The impugned declaration of CBA in favour of Respondent No. 2 vide annexure-A by Respondent No. 1 is unlawful and is of no legal effect. The Registrar of the Trade Union i.e. Respondent No. 1 shall take steps regarding the prayer of the petitioner for cancellation of registration of respondent No. 2 Trade Union (Respondent No. B-48) in accordance with law.

Mr. Rafique-Ul-Huq with Mr. Khalilur Rahman and Mr. Tufailur Rahman for the respondent No 2 and Mr. Md. Afsar Hossain, AAG for the respondent No 1.

READER'S queries

Your Advocate



This week your advocate is M. Moazzam Husain of the Supreme Court of Bangladesh. His professional interests include civil law, criminal law and constitutional law.

Q: I am the owner of a plot of land in Dhanmondi residential area. Recently one house building developer company has offered me that they will build a high-rise apartment on the land. They offered handsome amount of money for the deal. But the problem is that they will not pay the amount in a single transaction and also they want me to execute a power of attorney to them. I want to know what would be the consequence if I execute power of attorney to them and they refuse to pay the money later. I would be grateful if you please suggest me and also advice what are the areas I should look in the future contract with the developer company.

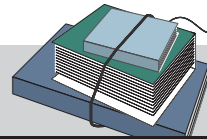
Answer: Aham, Dhaka.

Your Advocate: Yours is a very big deal involving huge amount of money. So there should be appropriate documentation covering every single transaction. Power of attorney is a unilateral document empowering a person to act for and in the name of the person executing it and the donee of the power of attorney may execute or do any assurance, instrument or thing in and with his own name and signature, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

The instrument of power of attorney is basically a deed of agency having hardly anything to do with monetary transaction of the kind you have indicated. In your case there must be contract between you and the developers setting out all the terms and conditions agreed upon by the parties. The instrument may be a deed of agreement which, amongst other things, will contain the clauses covering the modality of payment of money by the developers. Only a bilateral document of the kind should be the basic instrument which can provide the owner of the land with adequate safeguards in respect of the dues payable to him.

In our country no uniform law and practices have developed in this area of activity. This is really a new and emerging area claiming uniformity of law and practice. Since there is none it would be advisable to share experiences from your neighbourhood. Over and above, in view of the gravity of the deal, you should take help of an experienced lawyer.

LAW lexicon



Ombudsman

A person whose occupation consists of investigating customer complaints against his or her employer. Many governments have ombudsmen who will investigate citizen complaints against government services.

Onus

Latin: the burden. It is usually used in the context of evidence. The onus of proof in criminal cases lies with the state. It is the state that has the burden of proving beyond reasonable doubt. In civil cases, the onus of proof lies with the plaintiff who must prove his case by balance of probabilities. So "onus" refers both to the party with the burden, and to the scope of that burden, the latter depending whether the context is criminal or civil.

Open-ended agreement

An agreement or contract which does not have an ending date but which will continue for as long as certain conditions, identified in the agreement, exist.

Ordinance

An executive decision of a government which has not been subjected to a legislative assembly (contrary to a statute). It is often detailed and not, as would be a statute, of general wording or application. This term is in disuse in many jurisdictions and the words "regulations" or "bylaws" are preferred.

LAW letter



Government's decision & our rights

We are the first non-technical four years honours graduates from autonomous university in Bangladesh. When the four-year honours graduation courses were introduced, our demand and expectation was that we would get the equivalent value of previous three years honours plus one-year masters degree. But unfortunately neither our university authority nor the government considered our demand. On the face of strong student movement in favour of our demand, Dhaka University authority decided to confirm our demand and announced that these non-technical four years honours graduations are equivalent to previous three years honours graduation plus one year masters degree. At the same time, Ministry of Education & Ministry of Establishment agreed with Dhaka University's decision in a government gazette notification in 31st July 2003 and assured us that they (the Government) will inform all relevant government, semi-government, autonomous, semi-autonomous and non-government organisation of the matter. But recent some recruitment advertisements recall us that the government commitment is not working. For example, recently Directorate of Education published an advertisement in (12th September 2003) for recruiting 600 High School Teachers and Bangladesh Public Service Commission (BPCS) published another advertisement on 9th September 2003 for recruiting 344 District and Upozilla Election Officers. But both of these government organisation does not confirm government decision and fulfil our demand.

Like the government organisation, the non-government organisation decision was also same. September 1st, 2003 in the Daily Star's recruitment advertisement of The Bank Asia Ltd and 27th August 2003 in the Daily Star's recruitment advertisement of The Premier Bank Ltd were wanted Masters degree for their "Management Trainee" & "Management Trainee Officer" respectively. When the unemployment rate is increasing day by day and we the unemployed are missing different recruitment chance one after another then what will we do? To look blank to government inactive decision or again march student movement for our right!

Md. Zillur Rahaman & Kamruzzaman Masum,
MSS Economics, Bangabandhu Hall, Dhaka University.

LAW week



Corruption alleged against 20 ministries

Different parliamentary standing committees have raised allegations of irregularities and corruption in the activities of at least 20 out of the 39 ministries. Thirty-nine parliamentary bodies on as many ministries are still reviewing their activities. Most of them held two or three meetings and found mismanagement and irregularities, especially in different projects. Four of the ministries blamed for such misdeeds are under the prime minister -- Chittagong Hill Tracts (CHT) affairs, energy, power and mineral resources, establishment, primary and mass education ministries. Other ministries accused of mismanagement and corruption are home, commerce, housing and public works, food, health, communication, religious affairs, cultural affairs, land, water resources, fisheries and livestock, information, environment and forestry, science, information and communication technology, liberation war affairs, and expatriates welfare and overseas employment. - Daily Star, 8 November.

IGP faces contempt charge

The High Court has issued a suo moto rule on the IGP asking him to explain why he would not face contempt charges for his use of language in a clarification sent to the registrar of the Supreme Court on queries in regard to a contempt case against five police sergeants in August. The Court also directed the Inspector General of Police (IGP) Shahudul Haque to appear in court in person to explain the matter. The HC Division Bench of Justice MA Aziz and Justice Syed Rezaul Karim issued the rule on and the directive to the IGP. The Court observed that the IGP sent a clarification containing some contemptuous statements degrading the status of a judge of the High Court. It may be mentioned that on August 20, an HC Division Bench of Justice Md Tafazzul Islam and Justice AFM Abdur Rahman issued a notice of query on the IGP to explain whether they teach the warrant of precedence and conduct of behaviour to their police personnel.

The contempt was drawn by the then Justice of the HC division, AHM Shamsuddin Chowdhury as some police personnel did not salute him on June 23 near Farmgate. The IGP in his clarification mentioned that a traffic policeman on duty is not obliged to salute anybody but a discretion is left to him to pay compliment to anybody without risking traffic accident. The duty of a driver is to obey the direction of the traffic policeman and he has no right to conduct a research as to whether the direction given by the traffic policeman is right or wrong. The IGP sought for drawing charges against Justice AHM Shamsuddin Chowdhury under relevant sections of the penal code, if not barred by the law, for the incident. Law Desk.

Court orders seizure of magistrate's power

A Dhaka court has asked the government to seize the power of a metropolitan magistrate for passing unlawful orders in a criminal case. Metropolitan Sessions Judge Md Matiur Rahman issued the order on Thursday 6 November against Magistrate Shafiq Anwar for passing irregular, illegal and arbitrary orders on a bail petition to an accused in a criminal case. The order came upon a criminal revision by the accused on 3rd November. The judge in his order said one Abed Hossain Mukul

filed a criminal case with the Court of Chief Metropolitan Magistrate, Dhaka on August 26 against one Mohammad Ali alias Jinnah on charge of non-payment of Tk 18 lakh. The court took the case into cognisance and issued a warrant of arrest against the accused. The court also asked the accused to appear before it on December 6. Meanwhile, the case was transferred to Magistrate Shafiq Anwar for trial, though the time fixed for appearance of the accused -- December 6 -- did not expire. Moreover, the magistrate issued several orders including declaration of the accused as an absconder, attachment of his property and ban on his leaving the country. Such orders are irregular, illegal and arbitrary since the date of his appearance was on 4 December. The judge observed that the magistrate was abusing the laws and the motives and intentions of the court were illegal. He also found the sending of the accused to custody illegal. The judge also observed that Magistrate Shafiq Anwar's knowledge of law is very poor and so his magisterial power needs to be seized at once. Law Desk.

OC closed over release of top smuggler

Officer-in-charge (OC) of Khulna Police Station Shafiqul Alam Swapan has been closed to Boyra Police Lines on 8 November following the submission of a probe report by Additional Police Commissioner Sajjad Ali. Sajjad submitted the report to the Khulna Metropolitan Police commissioner, suggesting immediate withdrawal of the OC. The OC has also been accused of delinquency. Shafiqul arrested listed smuggler Shamsul Alam Shamsu on Sunday 7 November and released him next morning. Mustafizur Rahman, the police commissioner, formed a committee at the instruction of Inspector General of Police Shahudul Huq to probe the allegation that Shafiqul forced Shamsu to pay Tk 3 lakh for his release. The probe body could not prove the exchange of money, but it found that Shafiqul arrested and released Shamsu at his will. Janakantha, 9 November.

Indian editor, journalists face jail over articles

State Assembly of Tamil Nadu of India has sentenced five journalists of a top daily 'The Hindu' to 15 days in jail and sent police to the newspaper office over articles critical of the government. The assembly ordered the jail terms for publishing articles and an editorial that said the provincial government showed "rising intolerance." The state assembly ordered jail for 'The Hindu's publisher, editor, executive editor and two other journalists for "breach of privilege" over articles and an editorial about Chief Minister Jayalalitha Jayaram's government. The newspaper had written that the government made "crude use of state power" by arresting a leading political opponent and allegedly harassing independent media. - Daily Star, 9 November.

Internet telephony legalised

The government has finally legalised internet telephony, technically termed the voice over internet protocol (VoIP). The move will reduce international call charges substantially and is expected to boom IT-enabled services. It will also allow the mobile-to-mobile phone users to receive overseas calls. A cabinet meeting presided over by Prime Minister Khaleda Zia took the decision on

Monday 10 December. The meeting, however, set some conditions like paying licence fees and security deposit for obtaining licence for the internet-based technology. The operators will also have to generate and terminate calls through the Bangladesh Telegraph and Telephone Board (BTTB) international gateway. The BTRC will award licences and oversee the operation of the VoIP operators. Ittefaq, 11 November.

Charges pressed against 7 ex-cops for mugging

Charges were pressed against seven former policemen of Khilgaon Police Station and an ansar after it was proved that they mugged two businessmen at Meradia, Goran on 31 October. Inspector Salahuddin of Khilgaon Police Station, the investigation officer (IO) of the case, submitted the charge sheet to the Court of Chief Metropolitan Magistrate, Dhaka on Monday 10 November, 10 days after the incident. Of the seven policemen who stand accused of mugging, Sub-Inspector (SI) Shahjahan Sabuj and constables Habibur Rahman, Abul Khair Mollah and Mohammad Faruq are evading arrest. The four other accused are now in Dhaka Central Jail. The IO sought court order to confiscate the property of the fugitive policemen and a warrant of arrest against them. The IO however did not press charge against police informant Delwar, as his name and address could not be found. He made 15 people prosecution witnesses. Prothom Alo, 11 November.

1,000 acres of land grabbed by real estate firms

Real estate builders have illegally grabbed about 1,000 acres of state land in Dhaka and its environs. This was revealed by a parliamentary body. The body also asked the government to act immediately. It said a big chunk of the land fell to the hands of Eastern Housing, Basundhara, Madhumati, Jamuna, Amin Mohammad Foundation and Magura Housing Company. Discussing a report submitted to it, the parliamentary standing committee on the land ministry also asked the government to publish gazettes detailing vested property, occupied by encroachers because of neglect of authorities.

It asked the ministry to file cases under the Speedy Trial Act against the real state developers, who used fake documents to grab the land. The members of the committee observed that the law should be amended, if need be, to recover the lands that have fallen to grabbers and use them in public interest. - Daily Star, 7 November.

Corresponding Law Desk

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