



Star LAW report

Definition of worker does not include a person working under a contractor

Appellate Division (Civil Jurisdiction)
The Supreme Court of Bangladesh
Civil Appeal No. 80 of 1997
Karnaphuli Paper Mills Workers Union v Karnaphuli Paper Mills Ltd. and another
Before Mr. Justice ATM Afzal, Chief Justice; Mr. Justice Mustafa Kamal, Mr. Justice Latifur Rahman, Mr. Justice Mohammad Abdur Rouf, Mr. Justice Bimalendu Bikash Roy Choudhury
Judgment : January 22, 1998
Result : Appeal dismissed

Background:
Bimalendu Bikash Roy Choudhury, J. This appeal is directed against the judgment and order of the High Court Division in Writ Petition No. 2109 of 1996.

There are two registered trade unions in Karnaphuli Paper Mills, Ltd. (KPM). One is Karnaphuli Paper Mills Workers Union (the Workers Union) and the other Karnaphuli Paper Mills Ltd. Employees Union (the Employees Union), both duly registered with the Registrar of Trade Unions, Chittagong Division, under the Industrial Relations Ordinance, 1969, hereinafter referred to as the Ordinance. The Employees Union was the collective bargaining agent of KPM on five terms, but on the last two terms the Workers Union was the collective bargaining agent. Their tenure having expired on 12 June 1995, the Employees Union filed an application with the Registrar of Trade Unions in accordance with section 22(2) of the Ordinance to hold election for determination of the collective bargaining agent (CBA). The Registrar, on receipt of the application, called upon KPM by a letter dated 21 June 1995 to submit a list of all workers employed in the establishment, excluding those whose period of employment in the establishment was less than three months or who were casual or badli workers, showing in respect of each worker his parentage, age, the section or department and the place in which he was employed, his ticket number and the date of his employment in the establishment as required under sub-section (5) (a) of section 22 of the Ordinance. KPM supplied a list of 2607 workers in compliance therewith. It was accepted after a scrutiny by the Registrar. Accordingly a list of voters for determining the CBA was prepared. Thereafter the Registrar sent a second letter dated 13 September 1995 to KPM, with a copy to the General Secretary of the Employees Union, requesting them to supply the names of the workers of the contractors. The Employees Union after having received the copy of the letter sent a letter on 14 September 1995 to the Registrar pointing out that the said second letter was untenable, in the meantime KPM supplied a list of contractors' workers without giving parentage, age, the section or department, place of work, ticket number and the date of employment as required under sub-section (5) (a) of section 22 of the Ordinance. On the basis of the said list the Registrar prepared a further list of voters.

The Employees Union then preferred Writ Petition No. 2109 of 1995 calling in question the legality of the letter of the Registrar of Trade Unions, Chittagong, dated 13 September 1995 and the second voters list on the ground that the letter of the Registrar asking KPM to supply the list of contractor's workers and enlistment of the contractor's workers as voters for determination of CBA were violative of the provisions of section 22 (5)(a) of the Ordinance inasmuch as the said workers were not workers of KPM

within the meaning of the Ordinance. The Registrar of Trade Unions, Chittagong Division, (respondent no. 2), resisted the writ petition by filing an affidavit-in-opposition contending, inter alia, that the contractors' workers participated in the previous elections and as such they were competent to participate in the present election for determination of CBA and that the provision of section 22(5)(a) of the Industrial Relations Ordinance, 1996 was directory and not mandatory.

Similar affidavit-in-opposition was filed by the Employees Union who was subsequently impleaded as a party to the writ petition by way of amendment. They added that the labourers employed by the contractors were the workers of KPM.

The learned Judges of the High Court Division considering Annexure "G" to the supplementary-affidavit of the writ petitioner where terms and conditions of the contractors' workers were enumerated came to the conclusion that since the documents and papers of the Mills clearly showed that the contractors' workers were all casual workers, they were debarred from being enlisted as voters for election of the CBA under the provisions of section 22(5)(a) of the Ordinance, and that inclusion of their names in the voters' list Annexure "D" was unauthorised and without jurisdiction. Moreover, the contractors' workers list showed that it was not prepared in accordance with requirements of section 22(5)(a) of the Ordinance, because the parentage, age, the section or department and the place in which each of the worker was employed and his ticket number and the date of his employment were



not given in the said list. The Workers Union then filed this appeal with leave against the judgment of the High Court Division.

Deliberation:
The decision of this appeal centres round the construction of section 22(5)(a) of the Ordinance which reads thus:
"(5) Every employer shall-

(a) On being so required by the Registrar, submit to the Registrar a list of all workers employed in the establishment, excluding those whose period of employment in the establishment is less than three months or who are casual or badli workers, showing in respect of each worker his parentage, age, the section or department and the place in which he is employed, his ticket number and the date of his employment in the establishment, and also

as many copies of such list as may be demanded by the Registrar."

The expression 'worker' occurring in this provision has been defined in section 2 (XXVIII) as "any person including an apprentice not falling within the definition of employer who is employed in an establishment or industry for hire or reward either directly or through a contractor to do any skilled, unskilled, manual, technical or clerical work whether the terms of employment be expressed or implied".

Whether a person is a worker or not depends upon, the definition in section 2 (XXVIII) of the Ordinance vis-a-vis the terms of the agreement under which they are employed. No general proposition can be laid down to apply in all cases of workers working for an establishment or industrial organization. The words 'directly or through a contractor' occurring in the definition mean that the employment may be by the management directly or through a contractor. In either case there has to be a contract of employment between the management and the person employed. Therefore a worker, according to the definition, is a person who enters into a contract of service under the management and does not include a person who works under the control and supervision of the contractor. In order to arrive at the conclusion whether a person working in the establishment is a worker under the establishment or a worker under an independent contractor, that is, whether the employment is by and under the establishment through a contractor or by the independent contractor for the benefit of whom the employment is given, one has to look to the terms of employment. The terms of employment must establish a relationship of master and servant or employer and employee between the person employed and the establishment and it is not enough that a person is working in the premises of a certain establishment.

The terms of the work-orders, in the instant case, leave no room for doubt that the so-called casual labourers supplied by the contractors are really the employees of the contractors over whom they have absolute control and supervision. They receive payment from the contractors. They are in the payroll of the contractors which is separately and independently maintained by the contractors themselves. Their attendance sheet is maintained by the contractors who are responsible for their discipline. They are hired and fired by the contractors on their own terms and conditions over which KPM has no control at all. The contractors are also liable to compensate KPM for any loss suffered by it for the negligence, carelessness or willful default of the workers. There is thus no contract of service between the labourers and KPM. So these labourers cannot be termed as the workers of KPM.

The learned Counsel for the appellant raised a point that the High Court Division did not examine the rest of the work order for supplying casual labourers and sweepingly jumped at the conclusion that they were all alike. But we do not find any substance in it since the appellant did not bring on record the other work orders and made no effort to prove that they were different. The appellant did not take any such stand before the High Court Division.

Decision:
We, therefore, uphold the decision of the High Court Division although on different ground. In passing we may observe that the second list of voters really lack in the particulars required under section 22(5) (a) of the Ordinance which is also an infirmity of the said list. The appeal is accordingly dismissed without any order as to costs.

Mr. Nurullah, Senior Advocate, instructed by Mr. Sharifuddin Chaklader, Advocate-on-Record, for the Appellant. Mr. Rokanuddin Mahmud, Senior Advocate, instructed by Mr. Shamsul Haque Siddique, Advocate-on-Record, for respondent-No. 1. Mr. A W Khondker, Senior Advocate, instructed by Mr. M Nawab Ali, Advocate-on-Record, for the added party.

LAW week

Eleven new judges appointed

The newly appointed 11 additional judges of the High Court Division have taken their oath despite the boycott of the Supreme Court Bar Association. Chief Justice Mainur Reza Chowdhury has administered the oath ceremony at the judges' lounge on 29 July. The Government has appointed 11 additional judges to the High Court Division against the strong protest from a section of lawyers of the Supreme Court. The new judges were Siddiqur Rahman Mia, District Judge of Dhaka Court, Public Solicitor AKM Fazlur Rahman, and Advocates Hasmat Ali, Mashuk Hussain Ahmed, Abdul Awal, Sharifuddin Chaklader, Mizanur Rahman Bhuiyan, Syed AB Mahmudul Haq, Tariqul Hakim, Begum Salma Masud Chowdhury and Abdus Salam Mamun. They were appointed under Article 95 of the Constitution by the President. Earlier a section of senior lawyers under the banner of Sammilitiya Ainjibi Shamannaya Parisad have criticized the appointments and urged the Chief Justice to refrain from administering oath. The lawyers further demanded confirmation of three judges who were earlier recommended by the Chief Justice and said that the Government can not appoint new judges without confirming the appointments of the three judges. It is noted that Salma Masud Chowdhury is the second women Judge of the High Court Division and first women lawyers appointed as such. It is reported that Abdul Awal has misused a lot of money of the Supreme Court Bar Association while he was the secretary of the said association in 1998-1999 and a General Diary (GD no. 186 of 1999) was filed by the then Assistant Secretary ABM Bayazid. -Law Desk.

Government's move to amend police law

The Government is planning to amend the police laws in order to make the police force more disciplined and effective in the backdrop of the changing situation. The Cabinet Committee on Law and Order in its 27th meeting on 24 July asked the Ministry of Home Affairs to make necessary amendments of the police laws. The said ministry was also asked to take measures to form Counter Intelligence Units to monitor the activities of the police and to computerise records at police stations. -The Independent, 24 July.

Proposal to amend electoral laws

The Election Commission (EC) has sent a 12-point proposal to the Government seeking amendments to some electoral laws concerning local government bodies, including city corporation, pourasavas and union paraisads. Under the proposed amendments, no public representatives will be allowed to hold office for more than five years, no one should be allowed to contest from more than one post in city corporation and no one should be allowed to hold two elected posts together. The proposal was sent to the Ministry of Local Government, Rural Development and Co-operative on 28 July. After necessary inquiry the Ministry will seek recommendations from the Ministry of Law and Parliamentary Affairs before placing the issue in Parliament for final approval. In the proposed amendments the public representatives will automatically cease to hold their offices after the expiry of their tenure and the government will appoint an official for the office till the next election. The proposal also includes that it should be made obligatory to the candidate in any local election to submit an account of his/her personal property to the Election Commission before the election and the elected candidate also has to submit a similar account at the end of his/her tenure. It is also recommended in the proposal to repeal the law that empowers government to review and reduce the punishment of convicted persons and thus allow them to contest in the city corporation elections. The Election Commission also requests the Government to enact a specific law to resolve demarcation disputes of different election areas. Like the parliamentary election the Election commission has proposed introduction of a pre-election investigation system for the election of local bodies. -The Financial Express, 30 July.

All Jails overcrowded

Living condition of all jails of the country, particularly the Dhaka Central jail, has become abysmal as 75,000 prisoners are accommodated to all jails with a total capacity of 25,000. The prison inmates are being denied minimum facilities as it is not possible to manage the crowd. There are 70 jails in the country of them 9 are Central jails, 55 District jails and 16 are Thana jails. The number of prisoners of the Dhaka Central jail last week was 8700 against its minimum capacity of 3000 prisoners. Everyday new prisoners are sent only to worsen the plight of the prisoners. Delay in disposal of cases is one of the main reasons for this miserable situation. Even one is confined in jail for years for a simple case, which could be disposed of within one or two months. Owing to the overcrowding in the jails human rights of the prisoners are being violated. Prisoners do not get adequate food and space for sleeping. The condition inside the jails is totally unhygienic and there is overspread fear of contamination by various ailments. The allocation of food per day for a convict or an under trial prisoner is 200 grams of rice, 80 grams of fish/meat, 90 grams of beef, 133.50 grams of vegetables and 146 grams of pulse. But in practice, the quantity supplied is reportedly much less than the quota. -News Today, 27 July.

Operation of the letter issued against Janakantha stayed

The High Court Division passed an order on 27 July staying for 4 weeks the operation of the letter dated July 21 issued by the Ministry of Home Affairs directing the authority of the Daily Janakantha to furnish the materials to the Ministry concerning the news published in it regarding the monetary transaction for transfer of 5 high police officials. The court also issued a Rule Nisi upon the Secretary, Ministry of Home Affairs and 3 others including the Inspector General of Police to show cause within 2 weeks as to why the impugned letter issued by the Ministry of Home Affairs to the Editor, Printer and Publisher of the Daily Janakantha should not be declared to have been made without any lawful authority and was of no legal effect. The Division Bench comprising Justice Shah Abu Nayeem Mominur Rahman and Justice Md. Arayashuddin Ahmed issued the rule and order of stay following a writ petition filed by MATIqullah Khan Masud, the Executive Editor of the Daily Janakantha. The main contention of the petitioners was that the said letter issued by the Ministry of Home Affairs was clear violation of the fundamental rights of the petitioners guaranteed under Articles 27, 31 and 39 of the Constitution. - The Bangladesh Observer.

Writ petition for ETV's continuation rejected

A Division Bench of the High Court comprising Justice Shah Abu Nayeem Mominur Rahman and Justice Md. Arayashuddin Ahmed on 27 July 2002 rejected a writ petition filed by 15 noted personalities of the country including former Chief Justice Kemaluddin Hussain, popular writer Dr. Humayun Ahmed, magician Jewel Aice, TV actress Afsana Mimi and writer Rakib Hassan praying for a direction to the concerned authority to continue with broadcasting programme of Ekushey Television. Earlier on 27 March 2002 a High Court Division Bench declared the licence of ETV illegal and void in a writ petition. ETV applied for a leave to appeal against the verdict before the Appellate Division of the Supreme Court of Bangladesh, which has been refused. ETV subsequently filed a review petition. - The Independent, 28 July.

Promotions to Deputy Secretaries stayed

The High Court on 28 July stayed all promotions to the post of deputy secretary for three months and issued rule upon the government to submit the "secret SRO". The Division Bench comprising Justice Shah Abu Nayeem Mominur Rahman and Justice Md. Arayashuddin Ahmed made the rule returnable within eight weeks. The rule came upon a writ petition filed by three senior assistant secretaries who in their petition feared that the government through the "secret SRO" would promote a select group of officers loyal to the government superseding seniors. Earlier the petitioners in writing asked the authorities concerned to supply them the "secret SRO" and later by issuing legal notice, but to no avail. Advocate for the government said that there was no secret statutory regulatory order. But when the court asked him to certify it, he refused. Advocate for the petitioners submitted that the government had taken a move in violation of the BCS Recruitment Rule, 1981 and Public Service Advertisement Rule, 1982 to promote selected officers loyal to it depriving the seniors. - The News Today, 28 July.

READER'S queries

Your Advocate



This week your advocate is Mr. Probir Neogi of the Supreme Court of Bangladesh. His professional interests include civil law, constitutional law and banking law. Send your legal and human rights queries to the Law Desk, The Daily Star. A panel of lawyers will address your problems.

Q: Few months ago I applied for a job as Management Trainee in a Bank. The Bank sought applications from interested candidates for the job by publishing advertisements in different newspapers. It was stipulated in those advertisements that when one joins the post he will have to continue it for two years. If he leaves the job within this period he will have to return half of the total remuneration he received. I want to know what is the legal basis of such stipulation. Can any company compel a person to work for it for a stipulated time? Does not it amount to forced labour which is prohibited by our Constitution? If I join the bank and leave it before completion of two years, will I really have to return half of my remuneration? If I refuse to do that, can the Bank take any legal action against me? Please advise.

Firoz Ahmed, Noorjahan Road, Mohammadpur, Dhaka.

Your Advocate: The Bank's stipulation does not amount to forced labour. The Bank as the employer has right to formulate and set forth the terms and conditions of employment. It is for every prospective employee to decide independently and voluntarily whether he will join the job accepting the terms and conditions of a particular appointment or not. When a selected candidate joins a job voluntarily accepting the terms and conditions of employment, no question of forced labour arises as the employee has entered into the employment contract voluntarily. If you join the Bank and leave it before completion of two years, you will be liable to refund half of the remuneration received as per terms and conditions of your employment contract which you have accepted voluntarily. It is an obligation on your part arising out of a contract which you voluntarily entered into. If you refuse to discharge the said obligation, certainly the Bank can take legal action against you.

Corresponding Law Desk

Please send your mails, queries, and opinions to: post - Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email dslawdesk@yahoo.co.uk; interactive email lawdesk20@hotmail.com

FOR YOUR information

Choosing a lawyer, you should know...

LAW DESK REPORT

(Continued from last issue)
Is there anything I can do to reduce my legal costs?

Yes, there are several cost-cutting methods available to you. First, answer all your lawyer's questions fully and honestly. Not only will you feel better but you also will save on legal fees. If you tell your lawyer all the facts as you know them, it will save time that might be spent on the particular case and will help your lawyer do a better job.

Remember that the ethics of the profession bind your lawyer to maintain in the strictest confidence almost anything you reveal during your private discussions. You should feel free to tell your lawyer the complete details in your case, even those that embarrass you. It is particularly important to tell your lawyer facts about your case that reflect poorly on you. These will almost certainly come out if your case goes to trial.

Should I wait for my lawyer to say what he or she needs from me?

No, some things should be obvious to you. Before the first meeting with your lawyer, think about your legal problem and how you would like it resolved. If your case involves other people, write down their names, addresses, and telephone numbers. Also jot down any specific facts or dates you think might be important and any questions you want answered. Bring the information with you to the first meeting, along with any relevant documents such as contracts or leases. By being organized, you will save time and money.

If something related to my case has occurred, should I wait until my next scheduled meeting to tell my lawyer about it?

No, situations can vary from one day to the next. Tell your lawyer immediately of changes that might be important to your case. It might mean that the lawyer will have to take a totally different action—or no action at all—in your case. This could greatly affect your lawyer's fee.

Can I reduce my legal costs if I get more involved in my case?

Sometimes. Stay informed and ask for copies of important documents related to your case. Let your lawyer know if you are willing to help out, such as by picking up or delivering documents or by making a few telephone calls. You should not interfere with your lawyer's work. However, you might be able to move your case quicker, reduce your legal costs, and keep yourself better informed by doing some of the work yourself. Discuss this with your lawyer.

Types of costs

The amount a lawyer charges you for legal services may include the lawyer's fees plus additional expenses and costs. If the lawyer will represent you in a court proceeding, you may have to pay a filing fee or other court costs as well.

There are a number of costs that may appear on your lawyer's bill. Some lawyers may charge for these costs separately. Other lawyers may lump the expenses together as a separate item on your bill, while others may include some of these costs in their fee. Be sure to find out before you hire your lawyer if these types of costs are included and whether they will be itemized on your bill. Costs in addition to the lawyer's time may include: filing fees and court costs, photocopying, telephone and postage charges, computer or research related costs, process servers (delivery of legal documents relating to case), travel expenses, etc.

There may be other charges not listed above. It is a good idea to ask the lawyer for a written estimate of anticipated costs to make sure you understand all the different costs that you will have to pay. If you are concerned about the costs building up, you can also tell your lawyer that any costs over a certain amount have to be approved by you in advance. You also may be able to negotiate in advance the amount charged for many of these costs.

Reducing your costs and expenses

There are a few things you can do during the course of the matter to help you and your lawyer manage the overall fees and costs:

Get Organized: During your initial interviews, bring as much information as you can and share it with your lawyer. Think about the case in advance before talking to a lawyer. Write down the questions that you want your lawyer to answer. This could help cut down the time that the lawyer will spend investigating the case and gathering information.

Be Thorough: Tell your lawyer all the facts. Do not assume that your lawyer knows them all. Your lawyer should tell you that all your information will be kept in confidence. In order to represent you efficiently, it will help your lawyer to know as much as possible about your case and to avoid surprises during the course of the representation.

Be Efficient: Try to be as concise as possible. In many circumstances you will pay for every minute you spend with your lawyer. A friendly relationship can facilitate the handling of your case, but you should try to limit your discussions to your legal matter. You will not want to pay for a long, friendly conversation about non-legal matters.

Examine Your Bill: Make sure that your bills do not contain costs or expenses beyond those you agreed to pay for.



LAW lexicon

Amicus curiae
Amicus curiae is a Latin term which means friend of the court. It refers more specifically to persons asking for permission to intervene in a case in which they are neither plaintiff or defendant, usually to present their point of view (or that of their organization) in a case which has the potential of setting a legal precedent in their area of activity. This is common, for example, in civil rights cases and, in some instances, can only be done with the permission of the parties or the court.

Power of attorney

An instrument by which one person authorizes another to act for him in a manner which is as legally binding upon the person giving such authority as if he personally were to do the acts. It does not have to be made in favour of a licensed attorney. Most standard powers of attorney are automatically revoked should you become incompetent.

Power of attorney also means a document under which a grantor gives an agent powers to act on behalf of the grantor.

Prima facie

Prima facie is a Latin term. It refers to a legal presumption which means "on the face of it" or "at first sight". Law-makers will often use this device to establish that if a certain set of facts is proven, then another fact is established prima facie. For example, proof of mailing a letter is prima facie proof that it was received by the person to whom it was addressed and will be accepted as such by a court unless proven otherwise. Other situations may require a prima facie case before proceeding to another step in the judicial process so that you would have to at least prove then that at first glance, there appears to be a case.

Source: The Lectric Law Library's Lexicon & Duhaime's Law Dictionary.