

IN THE SUPREME COURT OF BANGLADESH

Appellate Division

PRESENT

Mr. Justice Syed Mahmud Hossain, Chief Justice
Mr. Justice Muhammad Imman Ali
Mr. Justice Hasan Foez Siddique
Mr. Justice Mirza Hussain Haider
Mr. Justice Abu Bakar Siddiquee
Mr. Justice Md. Nuruzzaman
Mr. Justice Obaidul Hassan

CIVIL APPEALNOS. 28-44, 46-67, 69-100, 102-103, 105, 107-111, 113-127, 129-131, 134-144, 147-164, 166-204, 206-223, 225, 227-229, 231-242, 244-254, 256-266 AND 268-271 OF 2019 WITH C.P. NOS.1978 OF 2018 AND 4404 OF 2018.

(From the judgement and order dated the 15th day of December, 2016 passed by the High Court Division in Writ Petition Nos. 16679 to 16752, 16782 to 16859, 16926 to 16963, 16969 to 16970, 16972 to 16990, 17000 to 17018, 17058 to 17117 and 17268 of 2012).

Md. Fazlul Haque Sarder	Appellant (In C.A. No.28 of 2019)
Md. KuddusMazi	Appellant (In C.A. No.29 of 2019)
Md. Mohidul Haque Pathan	Appellant (In C.A. No.30 of 2019)
Md. Masrul Hossain Pervej	Appellant (In C.A. No.31 of 2019)
Md. Jahangir Alam	Appellant (In C.A. No.32 of 2019)
Md. Jahangir	Appellant (In C.A. No.33 of 2019)
Md. Abdullah Bhuah	Appellant (In C.A. No.34 of 2019)
Md. Jamal Uddin	Appellant (In C.A. No.35 of 2019)
Monosh Chandra Roy	Appellant (In C.A. No.36 of 2019)
Kamal Hossain	Appellant (In C.A. No.37 of 2019)
Md. Rashed Mollick	Appellant (In C.A. No.38 of 2019)
Md. Rahman Ahmed Ranju	Appellant (In C.A. No.39 of 2019)
Md. Matiur Rahman	Appellant (In C.A. No.40 of 2019)
Md. Abdul Kuddus	Appellant (In C.A. No.41 of 2019)
Md. Abdul Alim	Appellant (In C.A. No.42 of 2019)
Md. Nazrul Islam	Appellant (In C.A. No.43 of 2019)

Md. Mataharul Haque	Appellant (In C.A. No.44 of 2019)
Md. Shamim Akon	Appellant (In C.A. No.46 of 2019)
Md. Hasanur Rahman	Appellant (In C.A. No.47 of 2019)
Md.Saiful Alam	Appellant (In C.A. No.48 of 2019)
Md. Abdul Barek Bakaul	Appellant (In C.A. No.49 of 2019)
Md. Jahangir Hossain	Appellant (In C.A. No.50 of 2019)
Akom Shamual Panda	Appellant (In C.A. No.51 of 2019)
Md. Rafiqul Islam	Appellant (In C.A. No.52 of 2019)
Md. Hadiuzzaman	Appellant (In C.A. No.53 of 2019)
Md. Masum Sharif	Appellant (In C.A. No.54 of 2019)
Md. Alamgir Hossain	Appellant (In C.A. No.55 of 2019)
Md. Mainuddin	Appellant (In C.A. No.56 of 2019)
Mr. Jantaas Morak Josaf	Appellant (In C.A. No.57 of 2019)
Md. Nazimul Haque	Appellant (In C.A. No.58 of 2019)
Md. Shahidul Islam	Appellant (In C.A. No.59 of 2019)
Md. Nur AlomFarzai	Appellant (In C.A. No.60 of 2019)
Md. Shahadot Hossain	Appellant (In C.A. No.61 of 2019)
Md. Jahangir Alom	Appellant (In C.A. No.62 of 2019)
Md. Sirajul Islam	Appellant (In C.A. No.63 of 2019)
Md. Abbas Uddin	Appellant (In C.A. No.64 of 2019)
Md. Kabir Hossan	Appellant (In C.A. No.65 of 2019)
Md. Humaun Kabir	Appellant (In C.A. No.66 of 2019)
Md. Shajahan Ali	Appellant (In C.A. No.67 of 2019)
Md. Rafiqul Islam	Appellant (In C.A. No.69 of 2019)
Md. Abdul Alim	Appellant (In C.A. No.70 of 2019)
Md. AlfuDhali	Appellant (In C.A. No.71 of 2019)
NitayShaha	Appellant (In C.A. No.72 of 2019)
Md. Tazul Islam	Appellant (In C.A. No.73 of 2019)
Khokon Kumar Shil	Appellant (In C.A. No.74 of 2019)
Md. Salim Monshi	Appellant (In C.A. No.75 of 2019)
Md. Alom Sheikh	Appellant (In C.A. No.76 of 2019)
Md. Abul Kalam Azad	Appellant (In C.A. No.77 of 2019)
Md. Shahin Sikder	Appellant (In C.A. No.78 of 2019)
Md. Razaul Karim	Appellant (In C.A. No.79 of 2019)

Md. Wahed Gazi	Appellant (In C.A. No.80 of 2019)
Md. Amirul Islam	Appellant (In C.A. No.81 of 2019)
Md. Harun-or-Rashid	Appellant (In C.A. No.82 of 2019)
Md. Nazrul Islam	Appellant (In C.A. No.83 of 2019)
Md. Lukman Hossain	Appellant (In C.A. No.84 of 2019)
Md. Mithu Miah	Appellant (In C.A. No.85 of 2019)
Md. Muslimuddin	Appellant (In C.A. No.86 of 2019)
Md. Mosharrof Hossain	Appellant (In C.A. No.87 of 2019)
Md. Abdur Razzak	Appellant (In C.A. No.88 of 2019)
Md. Abdul Jalil	Appellant (In C.A. No.89 of 2019)
Md. Nazrul Islam Fakir	Appellant (In C.A. No.90 of 2019)
Mr. Shakhoria Mankhin	Appellant (In C.A. No.91 of 2019)
Md. Saydur Rahman	Appellant (In C.A. No.92 of 2019)
Md. Zakir Hossain	Appellant (In C.A. No.93 of 2019)
Md. Manik Hossain	Appellant (In C.A. No.94 of 2019)
Md. Abdul Kaium	Appellant (In C.A. No.95 of 2019)
Md. Milon Miah	Appellant (In C.A. No.96 of 2019)
Md. Ramjan Ali	Appellant (In C.A. No.97 of 2019)
Md. Rafiqul Islam	Appellant (In C.A. No.98 of 2019)
Md. Alamgir Hossain	Appellant (In C.A. No.99 of 2019)
Md. Abdus Salam (1)	Appellant (In C.A. No.100 of 2019)
Md. Jamal Hossain	Appellant (In C.A. No.102 of 2019)
Md. Nasiruddin	Appellant (In C.A. No.103 of 2019)
Lipon L. Asenson	Appellant (In C.A. No.105 of 2019)
Md. Alamgir Miah	Appellant (In C.A. No.107 of 2019)
Md. Kazi Abdul Hannan	Appellant (In C.A. No.108 of 2019)
Rafiqul Hassan	Appellant (In C.A. No.109 of 2019)
Md. Shahidul Islam	Appellant (In C.A. No.110 of 2019)
G.M. Faruk	Appellant (In C.A. No.111 of 2019)
Md. Mosleh Uddin	Appellant (In C.A. No.113 of 2019)
Md. Lawrence	Appellant (In C.A. No.114 of 2019)
Md. Habibur Rahman	Appellant (In C.A. No.115 of 2019)
Md. MasimMondol	Appellant (In C.A. No.116 of 2019)
Md. Ahsan Habib (Jewel)	Appellant (In C.A. No.117 of 2019)

Md. Borhan Uddin	Appellant (In C.A. No.118 of 2019)
Md. Anisur Rahman	Appellant (In C.A. No.119 of 2019)
Sujit Talukder	Appellant (In C.A. No.120 of 2019)
Md. Tohid Khan	Appellant (In C.A. No.121 of 2019)
Md. Shahidul Islam	Appellant (In C.A. No.122 of 2019)
Md. Nurul Amin	Appellant (In C.A. No.123 of 2019)
Md. Jahangir Alom	Appellant (In C.A. No.124 of 2019)
Md. Abu Musa	Appellant (In C.A. No.125 of 2019)
Md. Lukman Hossain	Appellant (In C.A. No.126 of 2019)
Md. Kamrul Hasan (Uzzal)	Appellant (In C.A. No.127 of 2019)
Md. Kabir Hossain	Appellant (In C.A. No.129 of 2019)
Md. Shafiqul Islam	Appellant (In C.A. No.130 of 2019)
Md. Zahirul Islam	Appellant (In C.A. No.131 of 2019)
Md. Kazi Rafiqul Islam	Appellant (In C.A. No.134 of 2019)
Md. Ramzan Ali Khan	Appellant (In C.A. No.135 of 2019)
Nur Mohammad	Appellant (In C.A. No.136 of 2019)
Abdur Rahman	Appellant (In C.A. No.137 of 2019)
Md. Alauddin	Appellant (In C.A. No.138 of 2019)
Md. Yeasin Khan	Appellant (In C.A. No.139 of 2019)
Md. Abul Bashar	Appellant (In C.A. No.140 of 2019)
Md. Helal Uddin	Appellant (In C.A. No.141 of 2019)
Rafayel Cobby Mondal	Appellant (In C.A. No.142 of 2019)
Md. Hafizur Rahman	Appellant (In C.A. No.143 of 2019)
Md. Shahidul Islam	Appellant (In C.A. No.144 of 2019)
Md. Shahidul Islam	Appellant (In C.A. No.147 of 2019)
Mr. Prodip De Costa	Appellant (In C.A. No.148 of 2019)
Md. Shahjahan Ali (2)	Appellant (In C.A. No.149 of 2019)
Md. Osman Goni	Appellant (In C.A. No.150 of 2019)
Md. Rabiul Islam	Appellant (In C.A. No.151 of 2019)
Md. Masud Hossain	Appellant (In C.A. No.152 of 2019)
Md. Imran Shaikh	Appellant (In C.A. No.153 of 2019)
Md. Javed Ali	Appellant (In C.A. No.154 of 2019)
Md. Nasim Uddin	Appellant (In C.A. No.155 of 2019)
Md. Mosharof Hossain Mollah	Appellant (In C.A. No.156 of 2019)

Md. Jasim Uddin Akond	Appellant (In C.A. No.157 of 2019)
Md. Hanfi	Appellant (In C.A. No.158 of 2019)
Nd. Zahir Uddin Sarder	Appellant (In C.A. No.159 of 2019)
Md. Kamruzzaman	Appellant (In C.A. No.160 of 2019)
Md. Shamim Hossain	Appellant (In C.A. No.161 of 2019)
Md. Afaz Uddin	Appellant (In C.A. No.162 of 2019)
Md. Khokon Khan	Appellant (In C.A. No.163 of 2019)
Md. Mazharul Islam	Appellant (In C.A. No.164 of 2019)
Md. Wahiduzzaman	Appellant (In C.A. No.166 of 2019)
Khandaker Nurul Islam	Appellant (In C.A. No.167 of 2019)
Md. Saiduzzaman	Appellant (In C.A. No.168 of 2019)
Md. Jahangir Alam	Appellant (In C.A. No.169 of 2019)
Md. Joinuddin Miah	Appellant (In C.A. No.170 of 2019)
Md. Kutubuddin Khan	Appellant (In C.A. No.171 of 2019)
Md. Shafiqul Alam	Appellant (In C.A. No.172 of 2019)
Md. Amzad Hossain	Appellant (In C.A. No.173 of 2019)
Md. Shahidul Islam	Appellant (In C.A. No.174 of 2019)
Md. Foyes Ahmed	Appellant (In C.A. No.175 of 2019)
Md. Shafiqul Islam	Appellant (In C.A. No.176 of 2019)
Md. Wahed Khalifa	Appellant (In C.A. No.177 of 2019)
Md. Rajo Ahmed	Appellant (In C.A. No.178 of 2019)
Md. Mobarok Hossain	Appellant (In C.A. No.179 of 2019)
Md. Monir Hossain	Appellant (In C.A. No.180 of 2019)
Md. Anowar Hossain	Appellant (In C.A. No.181 of 2019)
Md. Abdus Salam	Appellant (In C.A. No.182 of 2019)
Md. Khalilur Rahman	Appellant (In C.A. No.183 of 2019)
Md. Babul Akter	Appellant (In C.A. No.184 of 2019)
Aslam Ahmed Younus	Appellant (In C.A. No.185 of 2019)
Md. Aman Ullah	Appellant (In C.A. No.186 of 2019)
Md. Shahbuddin (Shihab)	Appellant (In C.A. No.187 of 2019)
Md. Anwor Hossain	Appellant (In C.A. No.188 of 2019)
Md. Habibur Rahman	Appellant (In C.A. No.189 of 2019)
Md. Akhter Hossain	Appellant (In C.A. No.190 of 2019)
Md. Shahidul Islam	Appellant (In C.A. No.191 of 2019)

Md. Abdus Samad	Appellant (In C.A. No.192 of 2019)
Md. Abdul Sobur	Appellant (In C.A. No.193 of 2019)
Md. Abul Bashar	Appellant (In C.A. No.194 of 2019)
Md. Saiful Alam	Appellant (In C.A. No.195 of 2019)
Md. Faruk Hossain	Appellant (In C.A. No.196 of 2019)
Mohammad Shohel	Appellant (In C.A. No.197 of 2019)
Md. Dulal Khan	Appellant (In C.A. No.198 of 2019)
Md. Safar Ali	Appellant (In C.A. No.199 of 2019)
Abdul Malek	Appellant (In C.A. No.200 of 2019)
Md. Masum Billah	Appellant (In C.A. No.201 of 2019)
Md. Shahidul Islam	Appellant (In C.A. No.202 of 2019)
Md. Ruhul Amin	Appellant (In C.A. No.203 of 2019)
Md. Sakander Hayat	Appellant (In C.A. No.204 of 2019)
Md. Mobasser Hossain	Appellant (In C.A. No.206 of 2019)
Md. Shariful Islam	Appellant (In C.A. No.207 of 2019)
Md. Nurul Islam	Appellant (In C.A. No.208 of 2019)
Md. Shahidul Islam	Appellant (In C.A. No.209 of 2019)
Md. Shahadat Hossain	Appellant (In C.A. No.210 of 2019)
Md. Iqbal Hossain	Appellant (In C.A. No.211 of 2019)
Md. Shafayet Bhuiyan	Appellant (In C.A. No.212 of 2019)
Md. Zahidul Rahman	Appellant (In C.A. No.213 of 2019)
Md. Mosharraf Hossain	Appellant (In C.A. No.214 of 2019)
Md. Mehedi Hasan	Appellant (In C.A. No.215 of 2019)
Md. Abul Hossain	Appellant (In C.A. No.216 of 2019)
Ranjith Kumar Nondi	Appellant (In C.A. No.217 of 2019)
Md. Saidul Islam	Appellant (In C.A. No.218 of 2019)
Mohammad Ali	Appellant (In C.A. No.219 of 2019)
Md. Mojam Hossain Gazi	Appellant (In C.A. No.220 of 2019)
Md. Iqbal Hossen	Appellant (In C.A. No.221 of 2019)
Md. Firoz Bakhtiar	Appellant (In C.A. No.222 of 2019)
Md. Abu Sayed	Appellant (In C.A. No.223 of 2019)
Md. Fayaz Ahmed	Appellant (In C.A. No.225 of 2019)
Md. Nure Alam	Appellant (In C.A. No.227 of 2019)
Md. Nazrul Islam (2)	Appellant (In C.A. No.228 of 2019)

Md. Borhan	Appellant (In C.A. No.229 of 2019)
Md. Habibullah	Appellant (In C.A. No.231 of 2019)
Md. Nazrul Islam	Appellant (In C.A. No.232 of 2019)
Md. Anower Hossain	Appellant (In C.A. No.233 of 2019)
Md. Alomgir	Appellant (In C.A. No.234 of 2019)
Md. Khokon Sharder	Appellant (In C.A. No.235 of 2019)
Md. Riaz	Appellant (In C.A. No.236 of 2019)
Md. Mirshed Ibne Reza Shohel	Appellant (In C.A. No.237 of 2019)
Md. Sazzad Hossain	Appellant (In C.A. No.238 of 2019)
Md. Abu Rayan	Appellant (In C.A. No.239 of 2019)
Md. Harun –Ur-Rashid	Appellant (In C.A. No.240 of 2019)
Md. Jamal Hossain	Appellant (In C.A. No.241 of 2019)
Md. Nasir Uddin	Appellant (In C.A. No.242 of 2019)
Md. Kayum Shek	Appellant (In C.A. No.244 of 2019)
Md. Alam Miah	Appellant (In C.A. No.245 of 2019)
Md. Helal Uddin	Appellant (In C.A. No.246 of 2019)
Md. Anower Hossain	Appellant (In C.A. No.247 of 2019)
Md. Rubel Hossain Robi	Appellant (In C.A. No.248 of 2019)
Md. Nazrul	Appellant (In C.A. No.249 of 2019)
Md. Saiful Islam	Appellant (In C.A. No.250 of 2019)
Md. Anamul Haque	Appellant (In C.A. No.251 of 2019)
Md. Iqbal Hossain	Appellant (In C.A. No.252 of 2019)
Md. Rafiqul Alom	Appellant (In C.A. No.253 of 2019)
Md. Omar Ali (Omar)	Appellant (In C.A. No.254 of 2019)
Md. Shak Nozrul Ahoshan	Appellant (In C.A. No.256 of 2019)
Md. Shorab Mia	Appellant (In C.A. No.257 of 2019)
Md. Khairul Islam	Appellant (In C.A. No.258 of 2019)
Md. Mofizur Rahman	Appellant (In C.A. No.259 of 2019)
Md. Zakirul Hasan	Appellant (In C.A. No.260 of 2019)
Md. Golam Mustafa	Appellant (In C.A. No.261 of 2019)
Md. Hafizur Rahman	Appellant (In C.A. No.262 of 2019)
Md. Enayet Hossain	Appellant (In C.A. No.263 of 2019)
Md. Moniruzzaman Monir	Appellant (In C.A. No.264 of 2019)
Md. Faruk Hossain	Appellant (In C.A. No.265 of 2019)

Md. Shamim Hossain	Appellant (In C.A. No.266 of 2019)
Md. Manik Miah	Appellant (In C.A. No.268 of 2019)
Md. Jasim Uddin	Appellant (In C.A. No.269 of 2019)
Md. Mazaharul Islam	Appellant (In C.A. No.270 of 2019)
Md. Badsha Miah	Appellant (In C.A. No.271 of 2019)
Md. Jahangir Hossain.	Petitioner (In C.P. No.1978 of 2018).
Md. Nurul Hoque.	Petitioner (In C.P. No.4404 of 2018).

-Versus-

Grameen Phone Limited and others.

Respondents.
(In all the cases)

For the Appellant :
(In all the cases)

Mr. Shafique Ahmed, Senior Advocate (with Mr. Qumrul Haque Siddique, Advocate and Mr. Ashiq-ul-Huq, Advocate) instructed by Mr. Chowdhury Md. Zahangir, Advocate-on-Record.

For Respondent No.1:
(Civil Appeal Nos. 28-44, 46-67, 69-100, 102-103, 105, 107-111, 113-127, 129-131, 134-144, 147-164, 166-204, 206-223, 225, 227-229, 231-242, 244-254, 256-266 and 268-271 OF2019)

Mr. A.F. Hassan Ariff, Senior Advocate (with Mr. A.M. Aminuddin, Senior Advocate and Mr. Mohammad Mehedi Hasan Chowdhury, Advocate) instructed by Mr. Mohammad Abdul Hai, Advocate-on-Record.

For Respondent Nos.2-4:
(Civil Appeal Nos. 28-44, 46-67, 69-100, 102-103, 105, 107-111, 113-127, 129-131, 134-144, 147-164, 166-204, 206-223, 225, 227-229, 231-242, 244-254, 256-266 and 268-271 OF2019).

Not represented.

For the Petitioner :
(In C.P. No. 1978 of 2018)

Mr. M.A. Samad, Senior Advocate instructed by Mrs. Madhu Malati Chowdhury Barua, Advocate-on-Record.

For the Petitioner :
(In C.P. No. 4404 of 2018)

Mr. Abdul Matin Khasru, Senior Advocate instructed by Mrs. Sufia Khatun, Advocate-on-Record.

For Respondent No.1:
(In C.P. Nos. 1978 and 4404 of 2018)

Mrs. Nahid Sultana, Advocate-on-Record.

Respondent Nos.2-4 :
(In C.P. Nos. 1978 and 4404 of 2018)

Not represented.

Date of hearing :

The 14th day of December, 2020.

Date of judgement:

The 17th day of December, 2020.

JUDGEMENT

MUHAMMAD IMMAN ALI, J:-These civil appeals, by leave, are directed against the judgement and order dated 15.12.2016 passed by the High Court Division in Writ Petition Nos. 16679 to 16752, 16782 to 16859, 16926 to 16963, 16969 to 16970, 16972 to 16990, 17000 to 17018, 17058 to 17117 and

17268 of 2012 making the Rules *Nisi* absolute. All these appeals and two civil petitions for leave to appeal, Civil Petitions for Leave to Appeal No.1978 of 2018 and No. 4404 of 2018, which arise out of Writ Petition Nos. 16802 and 16956 of 2012 respectively, concern common questions of law and facts and were heard together and those are dealt with by this single judgement.

Hearing of these matters commenced at the time when this court was sitting virtually because of COVID-19 pandemic. At the request of the learned Attorney General, President of the Supreme Court Bar Association, and other senior lawyers we passed an order to meet the exigencies of the emergent situation and the need to meet the urgent requirements of the litigant public to have access to justice. The contents of the order that we passed will be reproduced at the end of this judgement.

During the course of hearing appellants Md. Amir Hossain Babu in Civil Appeal No.45 of 2019, Md. Lal Mia in Civil Appeal No.68 of 2019, Md. Saiful Islam in Civil Appeal No.101 of 2019, Md. Shofiquel Islam in Civil Appeal No.104 of 2019, Md. Gaus Chowdhury in Civil Appeal No.106 of 2019, Pronit Thridgidy in Civil Appeal No.112 of 2019, Md. Shahidul Islam in Civil Appeal No.128 of 2019, Md. Munsur Ali in Civil Appeal No.132 of 2019, Babul Ali Sheikh in Civil Appeal No.133 of 2019, Md. Shamsul Alom in Civil Appeal No.145 of 2019, Md. Jahedul Islam in Civil Appeal No.146 of 2019, Md. Nurul Afsar in Civil Appeal No.165 of 2019, Md. Shahjalal in Civil Appeal No.205 of 2019, Md. Abdul Hai in Civil Appeal No.224 of 2019, Maunglawem in Civil Appeal No.226 of 2019, Manuwel Ghagra in Civil Appeal

No.230 of 2019, Md. Mizanur Rahman in Civil Appeal No.243 of 2019, Md. Omar Ali Dewan in Civil Appeal No.255 of 2019 and Md. Abdus Sattar in Civil Appeal No.267 of 2019 have withdrawn their respective appeals and, are therefore, no longer appellants before us.

The facts, necessary for disposal of the instant civil appeals and civil petitions for leave to appeal, are that the employees (drivers), writ-respondent No.3 in each of the writ petitions (appellant herein in each of the appeals and petitioner in each petition for leave to appeal), as plaintiff, filed separate applications under section 213 of the বাংলাদেশ শ্রমআইন, ২০০৬ (the Ain, 2006) against the writ-petitioner (Grameen Phone) for a direction to treat them as permanent workers and provide them facilities of permanent workers. They alleged, *inter alia*, that they were appointed as drivers on 18.02.2007 and on various other dates, and since their appointments they have been driving the cars of Grameen Phone and were provided with 'Identity Cards', staff uniforms and were paid salaries, bonus, overtime, and other benefits by Grameen Phone. The further case of the writ-respondents (drivers) is that writ-respondent No.4, Smart Services Limited (SSL)/Jamsons International, (Jamsons) as the case may be, is a company engaged in supplying workers through whom the writ respondents got employed in Grameen Phone. Writ-respondents No.3 in each of the writ petitions are not employees of SSL/Jamsons, rather they are employees of Grameen Phone. But Grameen Phone is illegally treating the drivers as employees of SSL/Jamsons. The drivers on several occasions requested Grameen Phone to treat them as its permanent workers but Grameen Phone refused to do so and hence they were constrained to file petitions under Section

213 of the Ain in the Labour Court for a direction upon Grameen Phone to treat the drivers as permanent workers of Grameen Phone.

The Grameen Phone contested the cases before the Labour Court by filing written statement denying the material allegations made in the petitions contending, *inter alia*, that there was no contractual relationship between Grameen Phone and the drivers, who were engaged by SSL/Jamsons to render services for Grameen Phone on outsourcing basis as employees of SSL/Jamsons and that SSL/Jamsons was being paid by Grameen Phone for the service and that SSL/Jamsons paid the salaries and other benefits to the drivers for the services they rendered to Grameen Phone and, therefore, the drivers had no *locus standi* to file the cases against Grameen Phone in the Labour Court and the said Labour Cases were not maintainable in their present form and manner.

Writ-respondent No.4, SSL/Jamsons also contested the said Labour Cases by filing separate written statement contending, *inter alia*, that there is no contractual relationship between the drivers and Grameen Phone. SSL/Jamsons is engaged in providing workers on outsourcing basis and in the course of its business SSL/Jamsons entered into an agreement with Grameen Phone in the case of SSL on the 1st day of April, 1999 for a period of one year which was renewed yearly and lastly on 01.12.2008 for a period of one year up to 31.12.2008 to carry on its business of providing drivers on outsourcing basis and SSL/Jamsons employed and appointed a number of drivers, issued letters of appointment in their favour, including these drivers and thereafter placed them with the Grameen Phone for discharging the duties as drivers. Jamsons did likewise. It

was further stated that according to the terms of the said agreement SSL/Jamsons received remunerations from Grameen Phone and SSL/Jamsons recruited the drivers on temporary basis to render service as drivers for Grameen Phone as employees of SSL/Jamsons and Grameen Phone never appointed the drivers on temporary or permanent basis and never issued any letters of appointment to them or gave them any assurance that they would be absorbed permanently in the employment of Grameen Phone and the case is liable to be dismissed.

The First Labour Court after hearing the parties and considering the evidence and materials on record by its decision dated 30.03.2011 allowed all the cases.

Being aggrieved, the Grameen Phone Limited filed Appeals before the Labour Appellate Tribunal, which after hearing the parties by judgement and order dated 12.09.2012 dismissed the appeals. Then the Grameen Phone Limited moved the High Court Division by filing the above-mentioned writ-petitions and obtained Rules *Nisi*.

Writ-respondents No.3 (the drivers) filed Affidavits-in-Opposition in their respective cases stating, *inter alia*, that they were employed by Grameen Phone and were provided identity cards and after completing their probation period satisfactorily they have acquired the status of permanent workers as per the provisions of the Ain. It was further stated that the drivers have been working for Grameen Phone as per their requirement and driving their cars as drivers and SSL have no control and supervision in their services and work rendered by the drivers and, therefore, they are the employees of Grameen Phone, and they are entitled to be

treated as permanent employees/workers of Grameen Phone and to get benefits as permanent workers.

In due course, after hearing the parties, the High Court Division made the Rules *Nisi* absolute. Then, writ-respondents No.3 (the drivers) filed the civil petitions for leave to appeal Nos.253, 254-266 of 2018, C.P. Nos.276-300 of 2018, C.P. Nos.301-312 of 2018, C.P. Nos.339-350 of 2018, C.P. Nos.352-391 of 2018, C.P. Nos.420-447 of 2018, C.P. Nos.468-487 of 2018, C.P. Nos.524-533 of 2018, C.P. Nos.551-566 of 2018, C.P.Nos.594-605 of 2018, C.P. Nos.622-641 of 2018 and C.P. Nos.665-678 of 2018, C.P.Nos.951, 952-965 of 2018, C.P. Nos.995, 996-1002 of 2018 and C.P. Nos.1036-1038 of 2018). Leave was granted to consider the following submissions of the learned Advocate for the petitioners:

"I. That the High Court Division erred in law in not appreciating that Chapter-II of the Bangladesh Sromo Ain, 2006 has conferred several rights to workers, which are to be complied with by the employer when under law they acquire the status of permanent worker and for enforcing those rights guaranteed by law, the petitioners filed the cases before the Labour Court and thereby, the High Court Division arrived at a wrong decision in holding that, the cases were not maintainable under section 213 of the said Act.

II. That the High court Division committed error of law in holding that "outsourcing is a new concept" without considering that such outsourcing agreements were aimed at avoiding legal liabilities and as such are *void ab initio* being contrary to law. The learned Advocate lastly submits that the High court Division failed to appreciate that by Act No.30 of 2013, Bangladesh Sromo

Ain has been amended inserting section 3KA to impose the legal liability on the contractors supplying worker and which is not applicable in the present cases.”

These appeals and civil petitions were heard by virtual means in accordance with the provisions of the **আদালত কর্তৃক তথ্য-প্রযুক্তি ব্যবহার আইন, ২০২০**।

Mr. Shafique Ahmed, learned Senior Advocate with Mr. Qumrul Hoque Siddique and Mr. Ashiq-ul-Huq, learned Advocates appeared on behalf of the appellants in all the appeals. It was submitted on behalf of the appellants that the High Court Division erred in law in finding that the cases filed under the Labour Law were not maintainable as the drivers did not come to Court to enforce any right guaranteed to them under any 'Law', 'Award' or 'Settlement' rather they came to court to establish a “new right”. This view, it is submitted is absolutely misconceived because the drivers came to court to be treated as 'Permanent Worker' under section 4(1)(Cha) of the Sromo Ain, 2006 and proved that they are driving motor vehicles of Grameen Phone for a continuous period of 2 to 10 years on the date of filing the BLL Cases and the same is admitted by all the parties. To be appointed in any establishment as a worker no written contract under the present law or the previous law is needed. Once a person is engaged for any work, it is the duty of the employer to give him an appointment letter, prepare and maintain a service book, give him identity card, allow him leave and holidays, if leave is not enjoyed to pay wages in lieu of leave, to give service benefit on termination, retrenchment, discharge, retirement, death or even on dismissal under sections 5, 6, 9, 10, 11, 12, 16, 19, 20, 21, 22, 26, 28, 29, 30 and 31 of the Ain, 2006. Thus, all the BLL Cases being for enforcing the existing

rights guaranteed under the said sections of the Ain, 2006 were well maintainable.

It was also submitted that the respondents SSL and Jamsons have very specifically stated in their written objection filed in the Labour Court, that, they are unable to pay gratuity to the drivers because Grameen Phone does not pay that big amount to them. By the said statement made in the written objection it is admitted by pleading that the drivers are being deprived of their rights guaranteed under law and therefore they have filed the BLL Cases. So, their cases were very much maintainable under section 213 of the Ain, 2006. He submitted that Grameen Phone has said that the drivers are not workers of Grameen Phone, rather they are workers of "Outsourcing Companies" as per terms of the contract Grameen Phone had entered with SSL and Jamsons. It is true that the concept of outsourcing is a new concept. This new concept has been incorporated in the Ain, 2006 by way of amendment made by Act No. 30 of 2013, which was published in the Bangladesh Gazette Extra-Ordinary on the 22nd July, 2013. But all the BLL Cases were filed in the year 2008, when the Ain 2006 did not permit employment of workers in any shop, commercial or industrial establishment through contractor to be treated as worker of the contractor. On this point the definition of the term "শ্রমিক" as given in section 2(65) of the Ain, 2006 both before and after amendment of 2013 is pertinent. The learned Advocate submitted that definition of "শ্রমিক" in the Ain, 2006 before amendment of 2013 was "শ্রমিক" অর্থ শিক্ষাধীনসহ কোন ব্যক্তি, তাহার চাকুরীর শর্তাবলী প্রকাশ্য বা উহা যে ভাবেই থাকুক না কেন, যিনি কোন প্রতিষ্ঠানে বা শিল্পে সরাসরি ভাবে বা কোন ঠিকাদারের মাধ্যমে মজুরী বা অর্থের বিনিময়ে কোন দক্ষ, অদক্ষ, কায়িক, কারিগরী, ব্যবসা উন্নয়ন মূলক অথবা কেরানীগিরির কাজ করার জন্য নিযুক্ত হন, কিন্তু

প্রধানতঃ প্রশাসনিক বাব্যবস্থাপনা মূলক কাজে দায়িত্বপ্রাপ্ত কোন ব্যক্তি ইহার অন্তর্ভুক্ত হইবেন না; After amendment of 2013 the definition of "শ্রমিক" stood as "শ্রমিক" অর্থ শিক্ষাধীনসহ কোন ব্যক্তি, তাহার চাকুরীর শর্তাবলী প্রকাশ্য বা উহা যে ভাবেই থাকুকনা কেন, যিনি কোন প্রতিষ্ঠানে বা শিল্পে সরাসরি ভাবে বা কোনঠিকাদার, যে নামেই অভিহিত হউক না কেন, এর মাধ্যমে মজুরী বা অর্থের বিনিময়ে কোন দক্ষ, অদক্ষ, কায়িক, কারিগরী, ব্যবসা উন্নয়ন মূলক অথবা কেরানীগিরির কাজ করার জন্য নিযুক্ত হন, কিন্তু প্রধানতঃ প্রশাসনিক, তদারকি কর্মকর্তা বাব্যবস্থাপনা মূলক কাজে দায়িত্বপ্রাপ্ত কোন ব্যক্তি ইহার অন্তর্ভুক্ত হইবেন না;

It is clear from the above two definitions that, workers supplied by contractors before 2013 were workers of the shop, commercial or industrial establishment, where they were engaged to work, and contractors were not treated as employers.

This proposition becomes clearer, when it is read with amended section 3Ka of the Ain, 2006, which reads as follows: -

৩ক। (১) অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুকনা কেন, কোন ঠিকাদার সংস্থা, যে নামেই অভিহিত হউক না কেন, যাহা বিভিন্ন সংস্থায় চুক্তিতে বিভিন্ন পদে কর্মী সরবরাহ করিয়া থাকে সরকারের নিকট হইতে রেজিস্ট্রেশন ব্যতীত এইরূপ কার্যক্রম পরিচালনা করিতে পারিবে না।

২। এই আইনের অধীন এতদুদ্দেশ্যে বিধিপ্রণীত হইবার ০৬(ছয়) মাসের মধ্যে দেশে বিদ্যমান সকল ঠিকাদার সংস্থা সরকারের নিকট হইতে রেজিস্ট্রেশন গ্রহণ করিতে বাধ্য থাকিবে।

৩। ঠিকাদার সংস্থা দ্বারা সরবরাহকৃত শ্রমিকগণ সংশ্লিষ্ট ঠিকাদারের শ্রমিক হিসাবে গণ্য হইবেন এবং তাহারা শ্রম আইনের আওতাভুক্ত থাকিবেন।

৪। এই ধারার অধিন রেজিস্ট্রেশন প্রদানের পদ্ধতি বিধি দ্বারা নির্ধারিত হইবে।

ব্যাখ্যা:এই ধারার উদ্দেশ্য পূরণকল্পে কর্মী বলিতে "শ্রমিক" সহনিরাপত্তাকর্মী, গাড়ীচালক ইত্যাদিকে বুঝাইবে।

It was submitted that the High Court Division, in making the Rule absolute, erroneously relied upon the ground of "Outsourcing- the new concept" in Labour law without taking into consideration the letters of the law before and after amendment of the Ain, 2013 as explained above and as such it demands interference. The learned Advocate lastly submitted that in view of the above facts and circumstances all the

Civil Appeals are fit to be allowed and the judgement and order dated 15.12.2016 passed by the High Court Division in Writ Petitions No. 16679 to 16752, 16782 to 16859, 16926 to 16963, 16969 to 16970, 16972 to 16990, 17000 to 17018, 17058 to 17117 and 17268 all of 2012 are liable to be set aside.

Mr. A. F. Hassan Ariff, Senior Advocate, Mr. A. M. Aminuddin, Senior Advocate and Mr. Mohammad Mehedi Hasan Chowdhury, Advocate appeared on behalf of the respondent No.1-Grameen Phone Limited. It was submitted that Grameen Phone Ltd did not issue the drivers any appointment letter as an employer rather they are the user of the services against which Grameen Phone Ltd. pays in the form of service charge to the Respondent Company (Smart Services Ltd) every month as per the contractual agreement between Grameen Phone and SSL.

It was also submitted that Smart Services Ltd./Jamsons international is supplier of the services of drivers to Grameen Phone as per the letter of appointment and set rule of Smart Services Ltd./Jamsons international and thereby earns money as their business is totally service oriented and based on the demand by the client; that Smart Services Ltd./Jamsons international is the temporary and contract basis employer of the appellants as stated in Section 5 of Bangladesh Labour Law, 2006. Grameen Phone neither appointed the appellant in the service nor furnished them any appointment letter.

As an example, learned Counsel drew our attention to Clause 01 of the undertaking given by the appellant in Civil Appeal No.261 of 2019 which provides: -

অঙ্গীকার নামা

“১। আমি স্মার্ট সার্ভিসেস লিঃ এর একজন ড্রাইভার হিসাবে গ্রামীন ফোন অফিসে চাকুরী করতে আগ্রহী।

- ২। আমার মাসিক বেতন হবে ৫৩২০.০০ টাকা।
- ৩। যদি আমি এ্যাক্সিডেন্ট না করে গাড়ী চালাতে পারি ও আমার পরিষ্কার-পরিচ্ছন্নতা, ব্যবহার ও গাড়ী চালনায় কর্তৃপক্ষ সন্তুষ্ট হন তাহলে আরো ৫৬০ টাকা প্রতি মাসে পেতে পারি। যা তিন মাস পরে পাওয়া যাইতে পারে।
- ৪। আমার চাকুরীর মেয়াদ যোগদান থেকে ১২ মাস পর্যন্ত হবে। ভালো কাজের জন্য সময় বৃদ্ধি হতে পারে।
- ৫। আমি অথবা কর্তৃপক্ষ চাইলে এক মাসের নোটিশে চাকুরীর চুক্তিপত্র বাতিল করতে পারবো।
- ৬। তবে চুরি, অসামাজিক কার্যকলাপ, খারাপ ব্যবহার, মাদকাসক্তি ও নিয়ম ভঙ্গের কারণে এবং মারাত্মক দুর্ঘটনার কারণে যে কোন সময় আমাকে চাকুরী বরখাস্ত করা যাবে। এক্ষেত্রে আমি কোন প্রতিবাদ করতে পারব না অথবা কোন সংস্থার সাহায্য প্রার্থনা করবো না।
- ৭। আমি যখনই গ্রামীন ফোন অফিসের গাড়ী চালাবো তখনই আমাকে কোম্পানী থেকে প্রদত্ত ইউনিফর্ম পরতে হবে। যে কোন কারণেই এর অন্যথা করা যাবে না।
- ৮। প্রতিদিন ১০ ঘন্টা কাজ করতে হবে এবং এর অতিরিক্ত কাজ করলে তা ওভারটাইম বলে বিবেচিত হবে।
- ৯। ওভারটাইমের জন্য প্রতিঘন্টায় আমি ২৭ টাকা করে পাবো এবং কার্যস্থলের বাইরে কোন অফিসিয়াল কাজে রাত্রি যাপন করলে প্রতি রাত্রির জন্য ৬০০ টাকা থাকা ও খাওয়া হিসাবে পাবো।
- ১০। ১২ মাস চাকুরী পূর্ণ করার পর আমি দুইটি উৎসবে, “উৎসব ভাতা” পেতে পারি যা গ্রামীনফোন অফিস স্মার্টের মাধ্যমে দেবেন। এক একটি বোনাস ২৮০০/- টাকা।
- ১১। স্মার্ট সার্ভিসেস লিমিটেড তাদের নিয়ম অনুসারে আমার কাছ থেকে মোট ৬,০০০ (ছয় হাজার) টাকা সিকিউরিটি ডেপোজিট রাখবে। আমার ব্যক্তিগত কারণে গ্রামীণ ফোন এর গাড়ীর ক্ষতি হলে এই টাকা থেকে কেটে রাখা হবে অন্যথায় চাকুরী ছেড়ে গেলে ঐ টাকার বাকী অংশ ফেরত পাবো।
- ১২। গ্রামীন ফোন থেকে নির্ধারিত মাইলেজ আমাকে দিতে হবে। দিতে অপারগ হলে আমাকে চাকুরী থেকে বরখাস্ত করা যাবে। অথবা অন্য ব্যবস্থা গ্রহণ করতে পারবে।
- ১৩। আমি জানি যে গাড়ী চালানোর সময় আমাকে সিটবেল্ট বাধতে হবে।
- ১৪। গাড়ীর লগবই যথাযথ লিপিবদ্ধ করতে হবে।
- ১৫। কোম্পানীর প্রদত্ত মোবাইল ফোন এর ব্যবহার মাসিক ১৫০০ (ভ্যাট ও ট্যাক্স ছাড়া পনের শত টাকা) সীমিত রাখিব বেশী বিল হলে অতিরিক্ত অর্থ দিতে বাধ্য থাকবো। পরপর ৩ মাস বিল বেশী হলে কোম্পানী আমার বিরুদ্ধে ব্যবস্থা নিতে পারবে।
- ১৬। মাত্র এক মাসের নোটিশে আমাকে চাকুরী থেকে বরখাস্ত করা যাবে, সে ক্ষেত্রে আমার কোন বক্তব্য অথবা দাবী প্রযোজ্য হবে না।

আমি সুস্থ অবস্থায় স্বজ্ঞানে ও ইচ্ছাপ্রনদিত হয়ে এই অঙ্গিকার নামায় আমার দস্তখত দিলাম এবং এর নিয়ম পালন করবো বলে স্বীকারোক্তি করলাম।”

Hence, it is clear from the above that Grameen Phone Ltd. had never employed the instant appellant as its employee, rather he was employed by Smart Services Ltd./Jamsons International by following their appointment procedure, as a driver to render required service to Grameen Phone Ltd. as per the agreement executed between Smart Services Ltd./Jamsons International and Grameen Phone Ltd.

However, Grameen Phone Ltd. has neither issued any appointment letter nor any Identity Card to the outsourced personnel like the drivers, rather the appointment letter and joining letter were issued by Smart Services Ltd./Jamsons to their employees. Further, the appellant-drivers failed to exhibit any ID card in the trial. The deposition of the witnesses and the ID Cards submitted before the Hon'ble Court shows that the Identity Card is different from the Identity Cards issued by Grameen Phone Ltd. to its regular employees, keeping the office premises restricted for entrance by anyone other than its regular employees having their respective Identity Cards issued by Grameen Phone Ltd.

He submitted that, therefore, the provisions of the agreement between Grameen Phone Ltd. and Smart Services Ltd./Jamsons International and the deposition of P.W.1 prove that no uniform was provided by Grameen Phone to the drivers but the same was provided by Smart Services Ltd./Jamsons international in accordance with the agreement executed between Grameen Phone Ltd. and Smart Services Ltd./Jamsons International.

Mr. Ariff submitted that the aforesaid evidence clearly denotes that Grameen Phone did not pay the salary and allowances to the drivers against the services rendered by them. However, Grameen Phone Ltd. has been paying Smart

Services Ltd./Jamsons International regularly, in terms of the agreement executed between them against procurement of service rendered by the drivers supplied by Smart Services Ltd./Jamsons International.

Mr. Ariff pointed out that the trial court did not consider the deposition of D.W-2, who is the concerned banker in relation to disbursing salaries of the outsourced personnel and made clear and unambiguous statement in his deposition to the effect that the salary, allowances, and bonus were paid by Smart Services Ltd. to the workers through the bank account of the concerned worker maintained with the Bank.

He submitted that the evidence presented before the Labour Court clearly show that Grameen Phone Ltd. did not deal with "leave" of the drivers. As per the provisions of law and the agreement between Grameen Phone Ltd. and Smart Services Ltd./Jamsons International leave of the drivers was dealt with by Smart Services Ltd./Jamsons International. Also, appointment letter and Identity Card, Staff Uniform, Salary Allowances and Bonus, Leave, Administrative Actions and Control etc. was with Smart Services Ltd./Jamsons International and, therefore, the drivers can never be treated as employees of Grameen Phone Ltd.

It was further submitted that the status of outsourced personnel and their respective employer is defined in the amendment of the Labour Act and provisions have been made for registration of independent contractor (outsource service provider). Accordingly, the Smart Services Ltd. has already submitted application for its registration before the authority concerned in this regard.

We have considered the submissions of the learned Advocates for the parties concerned, perused the impugned judgement and order of the High Court Division and other connected papers on record.

In the impugned judgement the High Court Division has placed reliance upon the concept of outsourcing services in coming to a finding that the services of the drivers were outsourced to Grameen Phone and as such there was no employment contract between the service recipient (Grameen Phone) and service renderers (the drivers). Accordingly, the High Court Division found that if there is a breach suffered by the contractor, then his remedy lies against the contractor.

This concept of outsourcing services through contractors was apparently not recognised under the Labour Act, 2006 until the amendment introduced in 2013 in section 3Ka of the Act. Since the drivers/appellants/petitioners herein were engaged in service before coming into force of section 3(Ka) of the Act, we are inclined to deal with the matters under the provisions of Labour Act as they existed at the time of their appointment.

To be appointed in any establishment as a worker no written contract under the present law or the previous law is needed. Once a person is engaged for any work, it is the duty of the employer to give him an appointment letter, prepare and maintain a service book, give him identity card, allow him leave and holidays, if leave is not enjoyed to pay wages in lieu of leave, to give service benefit on termination, retrenchment, discharge, retirement, death or even on dismissal. The duties noted above are squarely on the employer.

We Note from the evidence of P.W.1-Golam Mostafa-appellant in Civil Appeal No.28 of 2019 that in his examination-in-chief he stated that he was employed by Grameen Phone and that they took written and viva examination, but they did not issue any appointment letter. He denied that he was employed by Smart Services Ltd. to work for Grameen Phone. He stated in his cross-examination that his uniform was provided by Grameen Phone but admitted that there was no mark of Grameen Phone on it. He stated that he received his salary form Grameen Phone through Brac Bank. He denied that he received his salary through Smart Services Ltd. He admitted his signature on an application for leave dated 18.03.2010 addressed to Smart Services Ltd. From Exhibit-'Tha' series submitted by Grameen Phone it appears that in respect of Md. Golam Mostafa there is a monthly salary statement issued by Smart Services Ltd. showing the amount of his salary as well as bonus etc. We also find from Exhibit-'Tha-4' that driver Md. Golam Mostafa applied to Smart Services Ltd. on 31.03.2010 on their "Leave Form" for one day's leave for the purpose of "কোর্ট হাজিরা"। P.W.2 Abul Kalam, another appellant (applicant in BLL case No. 284 of 2008) also stated in his examination-in-chief that he was employed by Grameen Phone but was not given any appointment letter. He stated that he received his salary from the Assistant General Manager of Grameen Phone. He admitted in his cross-examination that he had been brought to the Court by Golam Mostafa to give evidence.

D.W.4 the Managing Director of Smart Services Ltd. gave details in his examination-in-chief as to how his company issues publicity for appointment of workers who are then

supplied to various organisations. He produced the *ongikarnama* given by Golam Mostafa which he signed before joining his service. He admitted that the salary for the workers was paid through them. We find support for this statement from the evidence of D.W.2-Branch Manager of Brac Bank Ltd. He stated in his examination-in-chief that the salary of the employees is transferred to their account from the account of Smart Services Ltd.

From the evidence produced before the Labour Court it is clear that Grameen Phone took the service of the drivers who had been appointed by either Smart Services Ltd. or Jamsons International. Evidently any application for leave made by Golam Mostafa was to Smart Services Ltd.

It is also in evidence that there is a room provided by Grameen Phone for the officials of Smart Services Ltd. who supervise the drivers supplied by them to Grameen Phone.

From the agreement between the Smart Services Ltd. and Grameen Phone Ltd. we find that it is the responsibility of Smart Services Ltd. to train all outsourced personnel on their duties and responsibilities and they remain fully responsible for pay, allowance, festival bonus, food, accommodation, uniform, leave, medical and conveyance of outsource personnel. Also, Smart Services Ltd. would be responsible for the arrangement of all kinds of holidays and leave for the outsource personnel. With regard to uniform, the contract provides that Smart Services Ltd. would receive dress allowance for the outsourced personnel which implies that the uniform would not be provided by Grameen Phone. This we find from the evidence of P.W.1, who admitted that

there was no logo of Grameen Phone on his uniform.

Although, the appellant Golam Mostafa stated that his I.D. Card was issued by Grameen Phone, it transpires from his evidence as well as from his plaint that the I.D. Card bears the name and I.D. Number of SSL (Smart Services Ltd.) as well as GP (Grameen Phone). In his cross-examination he denied that the name of Smart Services Ltd. appears in his I.D. card, which is palpably false. Moreover, his denial in cross-examination that he withdrew his salary through Smart Services Ltd. is belied by Exhibit-'Tha-2 and 3' as well as the evidence of D.W.2 who deposed on behalf of Brac Bank, and stated that the salary of the employees is transferred to their accounts from the account of Smart Services.

It is true, as has been submitted on behalf of the appellants that the drivers are liable to receive the benefits under the Labour Act 2006. However, it must be kept in mind that workers under the Labour Act are entitled to receive benefits from the employer by whom they are employed. If for argument's sake it is accepted that the employer of any person engaged in service is bound to provide a letter of appointment/contract of service under the Labour Act, that liability will fall squarely on the person/organisation employing the workers. The appellants/petitioners herein did not bring any action before the Labour Court against Grameen Phone for not issuing them a letter of appointment.

For all intents and purposes, the evidence on record indicates that the drivers-appellants herein were engaged pursuant to publicity made in newspapers by Smart Services

Ltd./Jamsons International. It is also clear that the salaries were drawn by the appellants from their bank account wherein their salaries were transferred by Smart Services Ltd. It is therefore clear that the drivers were employed by Smart Services Ltd. and, thereafter, their service as driver was provided to Grameen Phone. Hence, if anyone is liable to provide the appellants with any letter of appointment, or any other benefit under the Labour Act it is Smart Services Ltd./Jamsons International.

The appellants have stated that Smart Services Ltd./Jamsons International have said that they are unable to pay gratuity to the drivers. However, it is our considered view that such denial by Smart Services Ltd./Jamsons International will not absolve them of their liabilities under the law if it is established that Smart Services Ltd./Jamsons International, as the case may be, is the employer.

The claim that because the drivers were working in the premises of Grameen Phone they are, therefore, workers of Grameen Phone, is not tenable in view of the judgement of this Division in the case of **Karnaphuli Paper Mills Workers Union v. Karnaphuli Paper Mills Ltd. and another** reported in **22 BLD(AD)33**. In that case it was held that, "It is not enough that the person is working in the premises of a certain establishment and does not include a person who works under the control and supervision of the contractor." As mentioned above the evidence and materials on record tend to indicate that the drivers were under the control and supervision of Smart Services Ltd./Jamsons International. Hence, by no stretch of the imagination can it be held that

the drivers were employed by Grameen Phone.

In the course of hearing of the appeals and other civil petitions for leave to appeal it transpired that a good number of appellants had settled their disputes by receiving lump sums from Grameen Phone.

We adjourned the matter so that the remaining appellants may get the opportunity to settle their disputes. As a result, a few more appellants agreed to take lump sum, whereas others did not. We ascertained from the learned Advocates for respondent No.1 that Grameen Phone is still willing to pay lump sums to the remaining drivers according to the calculations made by it taking into consideration their length of service.

In view of the discussion above, we find that Grameen Phone is not the employer of the appellants.

However, we have seen the amount of the lump sums offered to the drivers who have chosen to accept the offer. We find that the sums offered are reasonable and based on rational calculation. Hence, in view of the settlement reached with many of the appellants, and the willingness of Grameen Phone to pay the due lump sums to the remaining appellants/petitioners, we hereby direct Grameen Phone to pay to the remaining drivers-appellants/petitioners their due lump sum payment. This we do in exercise of our power under Article 104 of the Constitution.

Before concluding we reproduce below the order that we had passed in respect of virtual hearings:

"In course of hearing this appeal by virtual means, the

learned Attorney General mentioned the difficulties being faced by the litigants of this country due to the effects of Covid-19. He elaborated that there are numerous cases where special limitations apply and it has not been possible for the parties to any litigation to physically go to the Courts for remedy. He explained that the relentless incidence of Covid-19 is causing fear among the citizens, so much so that even when the Courts reopen, they will be fearful of going to the Courts immediately. He further stated that the Subordinate Courts are open from 5th August, 2020, but there is no certainty that the need will not arise to lockdown again, as is happening in many parts of the world. In such circumstances, he submits that the need is there to have an open-ended safeguard like that pronounced by the Supreme Court of India in *Suo Motu WP (C) No.3 of 2020* allowing a blanket extension of all periods of limitations in all proceedings, including limitations specified in special laws, till further order.

Mr. A.M. Aminuddin, learned Senior Advocate and President of the Supreme Court Bar Association, expressed similar views. Both the leaders of the Bar were supported by other senior members of the Bar, including Mr AF Hassan Ariff, Senior Advocate and former Attorney General for Bangladesh and Mr Qamrul Hoque Siddiqui.

Mr Murad Reza, learned Additional Attorney General has kindly furnished us with details of how other countries, such as the UK, Italy, Spain, the USA, Australia, Canada, India and Sri Lanka have dealt with the issue now raised before us.

It appears that different countries have dealt with the issue in different ways, but all have applied some sort of

concession in view of the emergent situation created by Covid-19 pandemic.

We have given our most anxious thought to the issues raised from the Bar. Indeed, it is an extraordinary and unprecedented situation that has caused turmoil across the globe. The law makers did not and could not have foreseen such calamitous act of God. Our laws on limitation cannot be expected to cover this kind of uncertainty. Needless to say, the litigant public have faced and still face serious challenges in filing petitions/applications/suits/appeals/revisions etc.

In the prevailing facts and circumstances, bearing in mind that there appears to be a likely spike in the incidence of Covid-19 in the aftermath of Eid-ul-Azha celebrations, we consider it our bounden duty to come to the aid of the litigant public. In these extraordinary circumstances we are inclined to overlook the niceties of the existing laws for the sake of justice. The right of the litigant to come before the Court to seek remedy may not be thwarted by the emergent situation which is beyond all control and cannot be averted by humankind.

We are conscious of the fact that the existing laws do not give any Court or Tribunal the authority to extend the period of limitation provided under any special law. However, we are also aware of the singularly unprecedented, unwonted and totally unavoidable circumstances which has compelled people all over the world to be confined to their homes.

Therefore, in exercise of our power and the authority vested in us by the Constitution under article 104, it is thus ordered that any period of limitation in filing

petitions/applications/suits/appeals/revisions/all other proceedings, civil, criminal or administrative, under general or special laws, which expired on or after 26 March, 2020 stands extended till 31st August, 2020.

This order has been passed to do complete justice and is a binding order within the meaning of article 111 of the Constitution on all Courts/Tribunals.”

Let this order form part of this judgement.

With the above observation and discussion these appeals are disposed of without any order as to costs. The Civil Petitions for Leave to Appeal Nos.1978 of 2018 and 4404 of 2018 are similarly disposed of in the light of the judgement of the appeals.

C. J.

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