

Present:

Mr. Justice Mohammad Bazlur Rahman

and

Mr. Justice Md. Ruhul Quddus

Writ Petition No.1590 of 2011

Van Ommeren Tank Terminal (Bangladesh) Ltd. and
another

...Petitioners

-Versus-

First Labour Court, Chittagong and another

...Respondents

Mr. Hasan Mohammad Riyad with Mr. Soweb Uddin
Khan, Advocates

... for the petitioners

No one appears for the respondents

Judgment on 24.07.2013

Md. Ruhul Quddus, J:

This *rule nisi* at the instance of an employer-company and its Assistant General Manager was issued challenging the legality of order dated 12.01.2011 passed by the First Labour Court at Chittagong in Bangladesh Labour Act (P. W.) Case No. 2 of 2008 rejecting the petitioners' application for exempting them from producing some documents.

Respondent 2 Md. Elahi Box, a worker of the petitioner-company filed Bangladesh Labour Act (P.W.) Case No. 2 of 2008 before the First Labour Court at Chittagong on 21.04.2008 under section 132 (1) of the Bangladesh Labour Act, 2006 (hereinafter called the Act, 2006) for payment of arrears over time allowance.

The petitioner-company as opposite party in the case entered appearance and filed a written statement on 22.06.2008 denying the material allegations of the case contending, *inter alia*, that the respondent-worker was not a permanent worker and not entitled to the arrears he claimed. The respondent-worker also filed an application under section 216 (1) of the Act, 2006 for enforcing attendance of some workers and employees of the petitioners company to record evidence and also for production of some documents, namely, (i) Log sheet of VOTT Tank Terminal and VOTT Oil Refinery Boiler Operation for the period December 2002-April 2008, (ii) Entry-exit book of the main gate for the same period, (iii) Salary record for the same period and (iv) Service book and personal file of the respondent-worker.

The petitioner filed a written objection against the said application stating, *inter alia*, that the log sheet, entry and exit book being not important documents for preservation, were not available to its office and that since the respondent-worker was a temporary employee, the company did not preserve or maintain any service book or personal file for him.

The Labour Court after hearing the application, allowed the same directing the petitioner-company to produce the documents within 25.10.2010 by order dated 08.09.2010.

Thereafter, the petitioner-company filed an application dated 02.12.2010 to the Labour Court seeking exemption from furnishing the documents. The Labour Court rejected the said application by the impugned order dated 12.01.2011 and further directed the opposite parties (herein petitioners) to

produce the documents within 28.02.2011 with an additional clause that in case of non-compliance, the Labour Court would bring contempt proceeding against them.

Mr. Hasan Md. Riyad, learned Advocate appearing for the petitioners submits that the documents sought for to be produced were not that much important to be kept for a long period. Those were, therefore, not available to the petitioner-company. The Labour Court cannot compel a party to produce any document which is not under his custody or control and in such case the petitioners' failure to produce the documents would not be construed as willful disobedience to the Labour Court's order.

We have gone through the record and consulted the relevant provisions of law. The petitioner-company being an employer is supposed to maintain its registers, service book and personal files of the workers and staff. From the written objection and subsequent application filed by the petitioner, it does not appear as to why those are not available to the company. Various sections under chapter II of the Act, 2006 provide legal obligation to maintain the documents mentioned therein including service books and registers for all workers. Of them section 9 is applicable for a temporary worker as well. For better appreciation of law, section 9 of the Act, 2006 is quoted below:

- ৓9| (1) গৱ্জ K Zvni cŃZŃv* i mKj kŃg* i Rb" GKŃU kŃgK vŃR ÷vi i vŃL* b, Ges Bnv mKj KgfŃg* cŃi `kR KZŃcŃi `k* i Rb" cŃj† i vŃL* nB* |
- (2) kŃgK vŃR ÷v* i logŃj vŃLZ wŃl q, wj wj wce× _vŃK* , h_vt-
- (K) cŃZ"K kŃg* i bvg I Rb† Zwi L;
- (L) wŃxv* i Zwi L;
- (M) Kv* i aib;

- (N) Zvnvi Rb" wbañi Z Kvñngq;
- (O) wektg Ges Avnvxi Rb" Zvnvi cõc" wei wZKvj ;
- (P) Zvnvi cõc" wektgi w` b;
- (Q) wwb Mõxi A%ß nBx Dvni Dxl;
- (R) Zvnvi Mõc cvj vq KvR Kwi x, wwi xzx Zvnvi KvR eiví -Dvni Dxl; Ges
- (S) weia Øvi v wbañi Z Ab"vb" eYØv|
- (3) hw` cwí` kR GB gZ wvY Kxb wv Dc-aviv (2) G Dwj wLZ weeiY wwb cõZõvx i wJb gwcdK i wñZ gvóvi wvj ev wvR÷vxi wj wce× Kiv Avx Zvnn nBx wZwb, wj wLZ Avxk Øviv, GB gñibxR w` x cwí x b wv D³ gv÷vi wvj ev wvR÷vi ktgK wvR÷vi wnmv MY" nBx Ges Zrcwi eX®Bnv i wñZ nBx|
- (4) mi Kvi weia Øviv ktgK wvR÷vxi dig, Dnv i ñxi c%6Ges msi ñxi wñv` wbañY Kwi x cwí x|
- (5) gwj K cõZ`K ktgKx wbgñj wLZfvx wJxU ev KwWñi ei vn Kwi xb, h_vt-
- (K) cõZ`K wñv ktgKx Zvnvi bñji DxlceR wñv wefvMxq wJxU;
- (L) cõZ`K e`j x ktgKx GKwU e`j x KwW, hvnvZ wZwb wvmg` t b KvR Kwi qvxb Zvnvi Dxl_wkx Ges hvnv Zvnvi wñv PvKix cõBi wñv wñi Z w` x nBx;
- (M) cõZ`K A wñv ktgKx GKwU A wñv wJxU, hvnv Zvnvi PvKix cwí Z vxi wñv ev wñv PvKix cõBi wñv wñi Z w` x nBx;
- (N) cõZ`K mvgwqK ktgKx GKwU mvgwqK KwW, hvnvZ wZwb wvmKj w` b KvR Kwi qvxb Zvnvi Dxl_wkx; Ges
- (O) cõZ`K wñv vaxb ktgKx GKwU wñv vaxb KwW, hvnv Zvnvi cõkñY Z vxi mgq ev wñv PvKix cõBi wñv wñi Z w` x nBx|ö

The above quoted section of the Act, 2006 clearly speaks of the legal obligation to maintain a workers register for the purpose of documentation of every detail of his service. So, it cannot be said that the documents sought to be produced are not important documents. However, whether the petitioner-company maintains those documents for proper functioning of its administration and to fulfill the legal requirements as provided in the Act, 2006 or whether the company destroyed all those documents in accordance with law are questions of facts and without determination of those facts, although the

petitioner-company can be directed to produce the documents, cannot be prosecuted in a contempt proceeding for non-compliance of such direction. However, if it fails to produce the documents reasonable presumption and factual inference will be drawn against the petitioner-company or in favour of the respondent-worker. But for non-compliance of the Labour Court's order to produce the documents as passed in the present case, the petitioner-company and its officials should not be prosecuted for committing contempt of Court without coming to a conclusion on trial that the petitioners willfully disregarded the Labour Court's order. Under the circumstances we are of the view that it would be just and proper if the relevant portion of the impugned order regarding prosecution of the officials of the petitioner-company in contempt proceeding is quashed.

Accordingly, the relevant portion of the impugned order i.e. *৓েঁ_ঞiq Zvnixi wei x Av`vj Z Aegvbbvi Awf x M Avbvqb Kiv nB x ö* is quashed and the impugned order is modified to that effect.

With the above modification the Rule is disposed of. The order of stay granted earlier stands vacated. The First Labour Court, Chittagong is directed to dispose of the case expeditiously.

Mohammad Bazlur Rahman, J:

I agree.