

Bench:

Mr. Justice Bishmadev Chakraborty
and

Mr. Justice Md. Akhtaruzzaman

WRIT PETITION NO. 11672 OF 2021

Sanofi Bangladesh Limited represented by its
Managing DirectorPetitioner

-vs-

Bangladesh and others.Respondents
with

WRIT PETITION NO. 11918 OF 2021

Sanofi Bangladesh Limited Workers Employees
Association.Petitioner

-vs-

Bangladesh and others.Respondents

IN THE MATTER OF:

Applications under Article 102(2) of the
Constitution of the People's Republic of
Bangladesh.

Mr. Shah Monjurul Hoque, senior Advocate with
Mr. Palash Chandra Roy,

Mr. Abu Torab Ali,

Mr. Mohammad Harunur Rashid,

Ms. Bilkiss Rahman Billie, Advocates

.....for the petitioner in W.P. No. 11672 of 2021 and
respondent No.3 in W.P. No. 11918 of 2021.

Mr. Md. Yousuf Ali with

Mr. Gobinda Biswas, Advocates

.....for respondent No.5 in W.P. No.11672 of 2021
and petitioner in W.P. No. 11918 of 2021.

Heard on: 11.07.2023, 15.10.2023, 29.10.2023,

30.10.2023, 07.11.2023 and 14.11.2023.

Judgment on: 30.11.2023

Md. Akhtaruzzaman, J.

In Writ Petition (WP) No. 11672 of 2021, the petitioner challenged the order, vide a Memo. dated 03.07.2020 issued under the signature of respondent No. 2 (Annexure C) rejecting the application for cancellation of registration of the respondent No. 5 (registration No. B-2207) as evident from Memo. No. 40.02.0000.034.49.013.19.17 dated 10.01.2021 issued

under the signature of respondent No. 3 (Annexure B) without exercising his authority under section 190(2) of the বাংলাদেশ শ্রম আইন, ২০০৬ (in short, the 'Ain, 2006') by not conducting inquiry and by not seeking permission from the Labour Court to cancel the aforesaid registration.

This Court on 13.12.2021 issued a Rule Nisi and passed an interim order staying the operation of the registration of respondent No. 5 for a period of 6(six) months from date.

In WP No. 11918 of 2021, the petitioner challenged the inaction of respondent No. 2 to hold an election for determining the Collective Bargaining Agent (CBA) for the establishment of respondent No. 3 company in accordance with the provision of section 202 of the Ain, 2006 within 120 days from the date of receipt of the petitioner's application dated 25.02.2021 (Annexure D).

This Court on 06.12.2021 issued a Rule Nisi and passed an interim order directing respondent No. 2 to take steps to hold the election for determining the CBA for the establishment of the respondent No. 3 company immediately in accordance with law.

Being aggrieved by the ad-interim order of direction dated 06.12.2021 passed in WP No. 11918 of 2021 the petitioner company filed Civil Petition for Leave to Appeal No. 05 of 2022 before the Appellate Division wherein the Hon'ble Judge-in-Chamber vide order dated 19.01.2022 stayed the operation of the said order.

Challenging the legality of the order dated 13.12.2021 passed in WP No. 11672 of 2021 respondent No. 5 filed Civil Petition for Leave to Appeal

No. 42 of 2022 before the Appellate Division but the Apex Court did not interfere with the interim order passed by this Division.

Eventually, The Apex Court, vide order dated 17.08.2023 passed in Civil Petition for Leave to Appeal Nos. 05 of 2022 and 42 of 2022 directed this Bench to dispose of both the writ petitions on merit.

As identical question of facts and laws are involved in these writ petitions they were taken together for hearing and are being disposed of by this single judgment.

Brief facts of WP No. 11672 of 2021 leading to the issuance of

Rule:

The petitioner is a multinational medicine company. Its workers had formed a Union on 01.04.1970. After renaming its name the Union has been functioning as '*Sanofi Bangladesh Limited Sramik-Karmachari Union*'. The Medical Information Associates (popularly known as medical representatives) to create chaos among the workers and employees of the company and to introduce unfair labour practices formed another association, namely, '*Sanofi Bangladesh Limited Workers Employees Association*'. Due to the nature of the job the medical representatives do not come within the scope of the definition of the 'workers' (শ্রমিক) as defined in section 2(65) of the Ain, 2006. However, the members of the above-named Association (respondent No.5) by practicing fraud and misrepresentation, on 03.02.2020 obtained registration No. B-2007 under section 182 of the Ain, 2006. They have been abusing the scope of the trade union and by adopting unfair labour practices illegally called strikes, created various impediments in the process of the transfer of shares of the petitioner company and

published press releases to the print and electronic media. They also refrained themselves from discharging their duties. As a result, the petitioner company drew attention of respondent No.1 for securing a congenial atmosphere in the company. Accordingly, respondent No. 1 requested respondent No. 2 for cancellation of the registration of respondent No. 5. But respondent No. 2 without exercising its power under section 190(2) of the Ain, 2006 issued a letter stating that he has no legal authority to cancel the said registration without having permission from the Labour Court, vide the impugned Memo. dated 03.07.2020. Respondent No. 5 had tried to establish themselves as CBA of the petitioner company but their application was rejected by respondent No. 4, vide Memo. No. 40.02.0000.035.99.002.21.103 dated 23.02.2021 (Annexure D). In the aforesaid premises, the petitioner company filed the instant writ petition and obtained the Rule and order of stay.

Brief facts of WP No. 11918 of 2021 leading to the issuance of

Rule and order of direction:

Respondent No. 3, Sanofi Bangladesh Limited, is the employer of the members of the petitioner Union, namely, *Sanofi Bangladesh Limited Workers Employees Association*. They have been working there for a long time. The members of the petitioner Union are always vigilant about their legal rights and accordingly on 03.02.2020 obtained its registration being No. B-2207 (Annexure-A) from the office of respondent No. 2 and since then has been performing its function as per the constitution of the Association as well as in accordance with the relevant provisions of the Ain, 2006. On 21.01.2021 respondent No.3 announced its intention to sell its

entire shares. During the transition period, the petitioner Union negotiated with the management of respondent No. 3 on several occasions to ensure their earned benefits, compensation and a satisfactory exit package. On every occasion, respondent No. 3 assured the petitioner Union to meet their demand but actually did not take any steps. On 24.01.2021 the petitioner raised some demands in writing to respondent No.3 which it had received but did not take any initiative to arrange any meetings on the ground that the petitioner Union is not the elected CBA for the establishment. Under the circumstances, the petitioner on 25.02.2021 submitted an application under section 202 of the Ain, 2006 to respondent No. 2 requesting him to hold the election for determining the CBA for the establishment of respondent No. 3 company within the statutory time frame but no initiative whatsoever was taken by respondent No. 2. Challenging the inaction of respondent No.2, the petitioner filed the instant writ petition and obtained the Rule and order of direction.

Mr. Shah Monjurul Hoque with Mr. Palash Chandra Roy, learned Advocates appearing for the petitioner in WP No. 11672 of 2021 and respondent No.3 in WP No. 11918 of 2021 (hereinafter, the petitioner company) at the outset submits that the members of respondent No.5 were appointed as medical representatives. Their main tasks are only to disseminate information of medicine to the doctors. They are not engaged in any work of selling or promoting medicines with pharmacists or medicine users. The learned Advocate next submits that their nature of the job does not fall within the category of trade promotion and, as such, the medical representatives could not be treated as 'workers' (শ্রমিক) under section 2(65)

of the Ain, 2006. Mr. Hoque also submits that as per the terms and conditions of their appointment letters, the members of respondent No.5 agreed that during their employment in the company, they would not engage in any trade union activities but by practicing fraud and misrepresentation of facts on 03.02.2020 they illegally obtained the registration of trade union being No. B-2207 following which the petitioner approached the matter to respondent No. 1 who referred the same to respondent No. 2 for cancellation of registration of respondent No.5. Mr. Hoque further contends that respondent No. 2 without exercising his authority under section 190(2) of the Ain, 2006 issued the impugned order mentioning that registration of a trade union cannot be cancelled without having prior permission from the Labour Court which is misconceived and wrong interpretation of law. The learned Advocate also submits that the members of respondent No.5 have remained absent from their work for a long time and the petitioner company on several occasions requested them to join in the work but they did not continue their duties. Subsequently, their services were terminated and as such, they are not eligible to form a trade union in view of section 180(1)(kha) of the Ain, 2006-Mr. Hoque yoked. In respect of the maintainability of WP No. 11918 of 2021 the learned Advocate contends that since the petitioners are not to be treated as 'workers', they have no *locus standi* to file the instant writ petition challenging the inaction of respondent No. 2. Mr. Hoque refers to the cases of *Dada Match Workers Union and others v. Government of Bangladesh and others*, 29 DLR 188 and *BSP v. Bangladesh*, 43 DLR (AD) 126 and relied on the ratio laid therein.

As against these, Mr. Md. Yousuf Ali with Mr. Gobinda Biswas, learned Advocates appearing for respondent No.5 in WP No. 11672 of 2021 and petitioner in WP No. 11918 of 2021 (hereinafter referred to as respondent No. 5) attempted to refute the submissions of the learned Advocate for the petitioner company on the following counts:

- (i). that the impugned letter dated 03.07.2020 (Annexure-C) was issued by respondent No.2 at the instance of a letter sent by বাংলাদেশ ঔষধ শিল্প সমিতি (in short, the *Samity*) dated 02.03.2020 (Annexure Z-7 to the supplementary affidavit) and not on the basis of the letter dated 18.02.2021 (Annexure-L) sent by the petitioner company;
- (ii) that the said *Samity* is not the petitioner of WP No. 11672 of 2021 and the correspondences made between respondent Nos. 1 and 2 on the basis of the letter of the *Samity* are inter-ministerial or inter-departmental communication and thus, the petitioner company is not in any way aggrieved by the said impugned letter and, as such, the petitioner has no *locus standi* to file WP No. 11672 of 2021;
- (iii) that the members of respondent No.5 are actively engaged in promoting the sales of the medicines manufactured in the factory of the petitioner company and thus, they certainly participate in the trade promotional activities which entail them to be included within the definition of 'workers' (শ্রমিক) under section 2(65) of the Ain, 2006;

- (iv) that considering the nature of the work, respondent No.2 on a proper inquiry and investigation as well as assessment of the status of the members of respondent No.5 legally issued registration No. B-2207 on 03.02.2020 in favour of respondent No. 5. Neither fraud nor misrepresentation of facts have been committed by them and the petitioner company in its writ petition has failed to clarify the same;
- (v) that inserting barriers in the appointment letters of the members of respondent No. 5 is a clog on their right to form a trade union guaranteed by the Constitution;
- (vi) that before issuing the impugned memo. the petitioner company did not raise any objection to respondent No.2 and the latter validly issued the said memo. under section 190(2) of the Ain, 2006 and without taking prior permission from the Labour Court, respondent No.2 has no right to cancel the registration of respondent No. 5;
- (vii) that based on pressure made by the petitioner company, the members of respondent No.5 tendered resignation which was ultimately disregarded by the company. Under section 175 of the Ain, 2006 retrenched, discharged, dismissed or otherwise separated persons also fall within the definition of the 'workers'; and
- (viii) on 25.02.2021 respondent No.5 being petitioner filed an application under section 202 of the Ain, 2006 to respondent No.2 for convening and conducting an election to determine the

CBA for the establishment of the petitioner company but no initiative has been taken by him and this inaction compelled respondent No.5 to file WP No. 11918 of 2021.

To substantiate his submission, learned Advocate relied on the ratio laid in the cases of *Bangladesh v. Zafar Ahmed Chowdhury*, 56 DLR (AD) 175 and *Tayeeb v. Bangladesh*, 67 DLR (AD) 57.

We have considered the submissions of the learned Advocates, perused the impugned order including other connected materials available on records and also considered the facts and circumstances of the writ petitions explicitly.

On consideration of the facts of both the writ petitions, the determining factors before us are whether the medical representatives would be deemed to be ‘workers’ (শ্রমিক) under section 2(65) of the Ain, 2006 and whether they have the right to form trade union as well as whether respondent No.2 is duty bound under section 202(2) of the Ain, 2006 to hold election for determining the CBA of the petitioner company.

In WP No. 11672 of 2021, it is stated that due to the nature of the job, the medical representatives under section 2(65) of the Ain, 2006 are not treated as workers. But by practicing fraud and misrepresentation, the members of respondent No. 5 have obtained registration under section 182 of the Ain which is required to be cancelled under section 190(a)(c).

In the affidavit-in-opposition, respondent No. 5 states that on 03.02.2020 they obtained the registration certificate from the office of respondent No. 2 and since then have been functioning as a trade union as per the constitution of the union and the provision of the Ain, 2006; the

medical representative are the workers within the purview of section 2(65) of the said Ain; they are performing trade as well as sales promotion activities of the medicines manufactured in the petitioner company; the petitioner company on several occasions had negotiated with the representatives of respondent No.5 as a trade union which is evident from Annexure-L to the writ petition; and under section 191(2) of the Ain, 2006 a registered trade union could continue its function even pending any appeal challenging the cancellation of the registration of the said trade union.

Admittedly, the members of respondent No. 5 were appointed as medical representatives in the petitioner company (Annexure M, M-1) to support the business need of the company. On perusal of the appointment letters, it transpires that the members of respondent No.5 were not entrusted with any administrative, supervisory or managerial functions of the petitioner company. They were appointed in the said post to run and promote the business of the company. The post was transferable anywhere in Bangladesh depending on the business needs of the company. In the appointment letter, it is further mentioned that the title, position and responsibility of the medical representatives may change from time to time and according to the business needs of the company.

It has been vehemently argued on behalf of the petitioner company that the medical representatives do not come within the scope of the definition of the workers as envisaged in section 2(65) of the Ain, 2006.

For ready reference, section 2(65) is reproduced below:

“(৬৫) ‘শ্রমিক’ অর্থ শিক্ষাধীনসহ কোন ব্যক্তি, তাহার চাকুরীর শর্তাবলী প্রকাশ্য বা উহ্য যে কোন ভাবেই থাকুক না কেন, যিনি কোন প্রতিষ্ঠানে বা শিল্পে সরাসরিভাবে বা কোন ঠিকাদারের মাধ্যমে মজুরী বা অর্থের বিনিময়ে কোন দক্ষ, অদক্ষ, কায়িক, কারিগরী, ব্যবসা উন্নয়নমূলক অথবা কেরানীগিরির

কাজ করার জন্য নিযুক্ত হন, কিন্তু প্রধানত: প্রশাসনিক বা ব্যবস্থাপনামূলক কাজে দায়িত্বপ্রাপ্ত কোন ব্যক্তি ইহার অন্তর্ভুক্ত হইবেন না।” *(emphasis put)*

According to section 2(65) ‘Worker’ means any person including an apprentice employed in any establishment or industry, either directly or through a contractor to do any skilled, unskilled, manual, technical, trade promotional or clerical work for hire or reward, whether the terms of employment are expressed or implied but do not include a person employed mainly in a managerial, administrative or supervisory capacity.

The words ‘*trade promotion*’ (ব্যবসা উন্নয়নমূলক) used in section 2(65) mean a marketing activity that is designated to increase sales, encourage customer loyalty, or generate brand awareness. It usually involves offering a discount or some other type of incentive for customers to buy the products or engage with the brand manufactured by the pharmaceutical companies.

A trade promotion is a marketing strategy in which a business uses a temporary campaign or offers to increase interest or demand in its product or service.

The benefits of trade promotion are:

Creating new leads: Trade promotions increase customer acquisition by offering them discounts, free products, free trials, and more. Many potential buyers are willing to try something for a lesser price, and if they like the product they become part of the concerned company’s loyal base.

Introducing a new product: Even extremely successful companies need a little help launching a new product. New customers may need incentives to buy, and long-term customers may be committed to their usual products. Providing a discount or

promotion on a new product is a great way to create product awareness without doing a sales presentation.

Selling out overstock: No one wants to be in this position, but overstocking happens. When it does, a sales promotion can be a useful tool to get rid of inventory while attracting new customers who may not have the overstocked product yet. It's worth noting that there is a line in terms of selling overstock and it's easy to step over into unethical selling.

Rewarding current customers: Sales success doesn't stop at the first purchase. Nurturing customers over time is essential to keeping brand credibility and loyalty high. Sales promotions are an easy way to provide loyal customers with a discount, voucher, or free product that will continue to keep them engaged with the brand of the company.

Admittedly, medical representatives of the petitioner company were not given any managerial, administrative or supervisory work. They were appointed for the business needs and promotion of business of the petitioner company. Their main job is to introduce and familiarize the medicines manufactured by the petitioner company with the doctors, pharmacists and medicine sellers. Without the help of medical representatives, it is not at all easy on the part of any pharmaceutical company to run their business smoothly. It is the medical representatives who took the initiative to introduce a new manufactured medicine to the relevant stakeholders. The publicity of the medicine manufactured by the pharmaceutical company mainly depends upon the activities of the medical representatives.

It is to be remembered that in order to meet highly ambitious growth objectives, pharmaceutical companies are always looking for smart, energetic and hard-working persons with the objectives of effectively and efficiently promoting pharmaceutical products to medical professionals: generating prescriptions from doctors and collecting orders from chemists shops for achieving the sales target. The medical representatives are the key persons who disseminate the new products of a pharmaceutical company to the respective stakeholders and thus, collect orders from the chemists.

Key responsibilities of the medical representatives as it appears from the different authorities are:

1. Organising appointments and meetings with community and hospital-based healthcare staff;
2. Identifying and establishing new business negotiating contracts;
3. Demonstrating or presenting products to healthcare staff including doctors, nurses and pharmacists;
4. Undertaking relevant research;
5. Meeting both the business and scientific needs of healthcare professionals by maintaining detailed records;
6. Attending and organising trade exhibitions, conferences and meetings;
7. Managing budgets;
8. Reviewing sales performance; and
9. Writing reports and other documents.

Taking into consideration of the job description as well as the responsibilities of the medical representatives in general and the benefits of trade promotion in particular, it is our considered view that the members of respondent No.5 have been directly participating in promoting and selling the products of the companies whether that is pharmaceutical drugs or medical equipment. The role of the medical representative is to create demand for an existing pharma product or launch a new product ensuring availability at retailers and stockiest.

In the instant case, admittedly, the members of respondent No. 5 were appointed as medical representatives by the petitioner company to promote sales of the medicines and/or products manufactured in the petitioner's factory. Thus, it reveals from the forgoing discussion that they are engaged in the trade promotional activities (ব্যবসা উন্নয়নমূলক কার্যক্রম) of the company which entails them to be included within the definition of the term 'workers'.

In the supplementary affidavit, the petitioner company contended that the members of respondent No.5 were not eligible to form any trade union due to the terms of conditions of their appointment letters. The learned Advocate appearing for the petitioner company draws our attention to the appointment letters issued by the company and submits that ignoring the terms and conditions of the appointment letters the members of respondent No.5 had illegally as well as fraudulently formed trade union. It is further contended in the supplementary affidavit that since the members of respondent No.5 are not working in the petitioner company, they are not entitled to be members of trade union of the company. It is also narrated in

the supplementary affidavit that the demand made by the members of respondent No.5 shows that they formed the trade union only to materialize their illegal demands which are not backed by any law. However, the learned Advocate of the petitioner remained silent regarding the eligibility of the members of respondent No.5 as workers as defined in section 2(65) of the Ain, 2006.

Referring to the provisions laid down in sections 195 and 291 of the Ain, 2006 Mr. Md. Yousuf Ali, learned Advocate appearing for respondent No. 5 submits that putting any clog on the appointment letters restraining the members of a trade union from being engaged in trade union activities is illegal and punishable offence which the petitioner company has already been committed.

In the appointment letters (Annexures M and M-1) issued by the petitioner company, it has been stated, among others:

“You are not allowed during your employment in this company:

(a) to accept any other employment, either paid or unpaid;

(b) to engage in any civic, political or trade union activities or private business during or after working hours without the approval of management;

(c) to use property or premises of the company other than company purposes without the prior consent of the management.”

[emphasis given]

From the above, it appears that at the time of issuance of appointment letters to the members of respondent No.5, the petitioner company restrained them not to engage in any trade union activities which, in our view, is contrary to one’s fundamental right guaranteed by Article 38 of the

Constitution. Moreover, under sections 195 and 291 of the Ain, 2006 these types of restraintment of the employer is a punishable offence.

Article 38 is reproduced below:

“38. **Freedom of association** - Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interests of morality or public order:

Provided that no person shall have the right to form, or be a member of the said association or union, if-

- (a) it is formed for the purpose of destroying the religious, social and communal harmony among the citizens ;
- (b) it is formed for the purposes of creating discrimination among the citizens, on the grounds of religion, race, caste, sex, place of birth or language;
- (c) it is formed for the purposes of organizing terrorist acts or militant activities against the State or the citizens or any other country ;
- (d) its formation and objects are inconsistent with the Constitution.”

Section 195 of the Ain, 2006 runs as under:

“১৯৫। মালিকের পক্ষে অসৎ শ্রম আচরণ।- (১) কোন মালিক অথবা মালিকগণের ট্রেড ইউনিয়ন অথবা তাহাদের পক্ষে ভারপ্রাপ্ত কোন ব্যক্তি-

- (ক) কোন চাকুরী চুক্তিতে সংশ্লিষ্ট শ্রমিকের কোন ট্রেড ইউনিয়নে যোগদান করা অথবা কোন ট্রেড ইউনিয়নে উহার সদস্য পদ চালু রাখার অধিকারের উপর বাধাসম্বলিত কোন শর্ত আরোপ করিবেন না;
- (খ) কোন শ্রমিক কোন ট্রেড ইউনিয়নের সদস্য বা কর্মকর্তা আছেন অথবা নহেন- এই অজুহাতে তাহার চাকরীতে নিয়োজিত করিতে অথবা নিয়োজিত রাখিতে অস্বীকার করিবেন না;
- (গ) কোন শ্রমিক কোন ট্রেড ইউনিয়নের সদস্য বা কর্মকর্তা আছেন অথবা নহেন- এই অজুহাতে তাহার চাকরীতে নিযুক্তি, পদোন্নতি, চাকুরীর শর্তাবলী অথবা কাজের শর্তাবলী সম্বন্ধে তাহার বিরুদ্ধে কোন বৈষম্য করিবেন না;
- (ঘ) কোন শ্রমিক কোন ট্রেড ইউনিয়নের সদস্য অথবা কর্মকর্তা আছেন অথবা হইতে চাহেন, অথবা অন্য কোন ব্যক্তিকে উক্তরূপ সদস্য বা কর্মকর্তা হওয়ার জন্য প্ররোচিত করেন, এই কারণে অথবা কোন ট্রেড ইউনিয়নের গঠন, কার্যকলাপ ও উহার প্রসারে অংশগ্রহণ করেন এই কারণে তাহাকে চাকুরী হইতে বরখাস্ত, ডিসচার্জ

অথবা অপসারণ করা যাইবে না বা উহা করার ভয় প্রদর্শন করা যাইবে না, অথবা তাহার চাকুরীর কোন প্রকার ক্ষতি করার হুমকি দেওয়া যাইবে না;

(ঙ) কোন শ্রমিককে বা অন্য কোন ব্যক্তিকে কোন সুযোগ দিয়া বা সুযোগ দেওয়ার প্রস্তাব করিয়া অথবা তাহার জন্য সুযোগ সংগ্রহ করিয়া অথবা সংগ্রহ করার প্রস্তাব দিয়া তাহাকে কোন ট্রেড ইউনিয়নের সদস্য বা কর্মকর্তা হইতে বিরত রাখার জন্য অথবা উক্ত পদ ছাড়িয়া দেওয়ার জন্য প্রলুব্ধ করিবেন না;

(চ) ভীতি প্রদর্শন, বল প্রয়োগ, চাপ প্রয়োগ, হুমকি প্রদর্শন, কোন স্থানে আটক, শারীরিক আঘাত, পানি, শক্তি এবং টেলিফোন সুবিধা বিচ্ছিন্ন করিয়া অথবা অন্য কোন পন্থা অবলম্বন করিয়া কোন যৌথ দরকষাকষি প্রতিনিধি কর্মকর্তাকে কোন চুক্তিতে উপনীত হওয়ার অথবা নিষ্পত্তিনামায় দস্তখত করার জন্য বাধ্য করিবেন না বা বাধ্য করার চেষ্টা করিবেন না;

... ..”

[emphasis supplied]

Section 195 puts restrictions on the part of the employer in respect of adding any unfair condition in the letter of appointment including debarring from taking part in a trade union. The restraining clause as stipulated in the appointment letters (Annexures M, M-1) is violative of clause (a) of sub-section 1 of section 195.

We have observed from Annexures M and M-1 that admittedly the petitioner company initially put restrictions on the members of respondent No.5 so that they could not form or participate in any trade union during their job in the petitioner company which is violative to the provisions laid down in Article 38 of the constitution as well as section 195 of the Ain, 2006. The consequences of violation of the above provision have been laid down in section 291(1) of the same Ain.

The relevant provision of section 291 is quoted below:

“২৯১। অসৎ শ্রম আচরণ বা এন্টি-ট্রেড ইউনিয়ন ডিসক্রিমিনেশনের দণ্ড।- (১) কোন ব্যক্তি ধারা ১৯৫ বা ১৯৬ক এর কোন বিধান লঙ্ঘন করিলে তিনি এক বৎসর পর্যন্ত কারাদণ্ডে, অথবা দশ হাজার টাকা পর্যন্ত অর্থদণ্ডে, অথবা উভয় দণ্ডে দণ্ডনীয় হইবেন।

... ..”

From the above it is crystal clear that the restraining provision is not at all enforceable against the employees, rather the employer should be prosecuted under section 291(1) of the Ain for putting restrictions in engaging in trade union activities by the members of the respondent No.5 and as such, such restrictions in the appointment letters are illegal as well as derogatory to the existing laws which are guiding the welfare of the workers.

The learned Advocate of the petitioner company submits that the members of respondent No.5 were unusually absent in their work. The company requested them to join in the work but they refused to do so. Subsequently, they resigned from their job and as such, they are no more in the employment of the company.

We have gone through the show cause notice regarding unauthorized leave of absence from work (Annexure-O), final notice (Annexure-O1), show cause notice along with letter of suspension (Annexure-P), reply to show cause notice (Annexure-P1), notice regarding return to work (Annexure-V) and other connected materials available on records. The petitioner company alleged that the members of respondent No.5 were absent from their work. The learned Advocate of the petitioner company submits that on several occasions the company requested them to resume their work but they did not pay any heed to it. Consequently, the company appointed new employees to run the business of the company. At present, according to the learned counsel, they are no longer in the service of the company and, as such, do not have the right to seek any remedy under the Ain, 2006.

Per contra, the learned Advocate of respondent No.5 submits that under section 175 of the Ain, 2006 a discharged or dismissed employee of the company should be treated as a ‘worker’ and he is entitled to form and participate in a trade union.

Section 175 runs as under:

“ ১৭৫। শ্রমিকের বিশেষ সংজ্ঞা।- বিষয় বা প্রসঙ্গের পরিপন্থী কোন কিছু না থাকিলে এই অধ্যায়ে ‘শ্রমিক’ অর্থ ধারা ২ (৬৫) এ সংজ্ঞায়িত কোন শ্রমিক, এবং এই অধ্যায়ের অধীন শিল্প বিরোধ সম্পর্কে কোন কার্যধারার প্রয়োজনে, উক্ত বিরোধের সূত্রে অথবা বিরোধের ফলে লে-অফকৃত, ছাঁটাইকৃত, ডিসচার্জকৃত বা বরখাস্তকৃত অথবা অন্যভাবে চাকুরী হইতে অপসারিত কোন শ্রমিক অথবা যাহার লে-অফ, ছাঁটাই, ডিসচার্জ, বরখাস্ত বা অপসারণ হইতে উক্ত বিরোধ উত্থিত হইয়াছে এরূপ কোন শ্রমিক ইহার অন্তর্ভুক্ত হইবেন; কিন্তু কোন প্রতিষ্ঠানের পাহারা টহলদারী অথবা নিরাপত্তা স্টাফ, অগ্নি-নির্বাপক স্টাফের কোন সদস্য এবং গোপনীয় সহকারী ইহার অন্তর্ভুক্ত হইবেন না।”

[emphasis supplied]

Section 175 provides that the workers who have been retrenched, discharged, dismissed or otherwise separated in relation to any proceeding are also workers for trade union purposes. Therefore, considering the facts and circumstances as well as materials on record, we are of the view that the members of respondent No. 5 are deemed to be ‘workers’ under the purview of sections 2(65) and 175 of the Ain, 2006 and accordingly, entitled to form a trade union.

It is contended by the learned Advocate of the petitioner company that respondent No. 2 did not exercise his statutory authority and failed to conduct any inquiry as required under section 190(2) of the Ain, 2006 and illegally issued the impugned letter stating that he has no legal authority to cancel the registration of respondent No.5 without having permission from the Labour Court, vide Memo. dated 03.07.2020.

We have given our anxious considerations to the impugned memo. dated 03.07.2020 issued by respondent No.2. Under the law, respondent No. 2 has no authority to cancel the registration of any trade union by itself. He could cancel the registration as per the provision of section 190 of the Ain which is reproduced below:

“১৯০। রেজিস্ট্রি বাতিলকরণ।- (১) এই ধারার অন্য বিধান সাপেক্ষে, মহাপরিচালক কোন ট্রেড ইউনিয়নের রেজিস্ট্রি বাতিল করিতে পারিবেন, যদি-

(ক) রেজিস্ট্রি বাতিলের জন্য ট্রেড ইউনিয়ন সাধারণ সভায় গৃহীত সিদ্ধান্তের ভিত্তিতে দরখাস্ত করে;

(খ) উহার অস্তিত্ব বিলুপ্ত হয়;

(গ) উহা প্রতারণা অথবা কোন তথ্যের মিথ্যা বর্ণনার মাধ্যমে রেজিস্ট্রি হাসিল করিয়া থাকে;

(ঘ) (বিলুপ্ত);

(ঙ) উহা কোন অসৎ শ্রম আচরণ করিয়া থাকে;

(চ) উহার সদস্য সংখ্যা এই অধ্যায়ের অধীন প্রয়োজনীয় সংখ্যার নীচে নামিয়া যায়; অথবা

(ছ) উহা এই অধ্যায় বা কোন বিধির বিধান লঙ্ঘন করিয়া থাকে।

(২) যে ক্ষেত্রে মহাপরিচালক তদন্তান্তে এই মর্মে সন্তুষ্ট হন যে, কোন ট্রেড ইউনিয়নের রেজিস্ট্রি বাতিল করা উচিত, সে ক্ষেত্রে তিনি উহার রেজিস্ট্রি বাতিল করার জন্য অনুমতি প্রার্থনা করিয়া শ্রম আদালতে দরখাস্ত পেশ করিবেন।

(৩) মহাপরিচালক শ্রম আদালত হইতে অনুমতি প্রাপ্তির ত্রিশ দিনের মধ্যে উক্ত ট্রেড ইউনিয়নের রেজিস্ট্রি বাতিল করিয়া দিবেন।

(৪) কোন ট্রেড ইউনিয়নের রেজিস্ট্রি উপ-ধারা (১) (ঙ) অনুযায়ী বাতিল করা যাইবে না যদি না উক্ত ট্রেড ইউনিয়ন কর্তৃক অভিযোগে বর্ণিত অসৎ শ্রম আচরণ সংঘটিত হওয়ার তিন মাসের মধ্যে শ্রম আদালতে দরখাস্ত করা হয়।”

[emphasis added]

Section 190(1) of the Ain provides that respondent No. 2, Director General, is empowered to cancel the registration of a trade union under the following circumstances:

(a) if the trade union, on the basis of the decision adopted in the general meeting, applies for cancellation of its registration;

- (b) if it ceased to exist;
- (c) if it obtained registration by practicing fraud or by way of misrepresentation of facts;
- (d) if it committed any unfair labour practice;
- (e) if its membership has fallen short of the number of members required under the Ain; or
- (f) if it contravened any provisions of the Ain or the rules.

Sub-section (2) of section 190 further provides that if respondent No.2 on proper enquiry is satisfied that there is a necessity to cancel the registration of a trade union, in that case, he shall submit an application to the Labour Court seeking permission to cancel such registration.

Under sub-section (3) of section 190 respondent No.2 shall cancel the registration of the trade union within 30 (thirty) days from the date of receipt of the permission from the Labour Court. In case of unfair labour practice alleged by the concerned company it should be submitted to the Labour Court within 3(three) months from the date of commission of the alleged occurrence and upon receiving permission from the Court respondent No.2 under sub-section (4) of section 190 is entitled to cancel the registration of a trade union.

It is stated in WP No.11672 of 2021 that the members of respondent No.5 started to create chaos and unrest among the workers and employees of the company and also started unfair labour practices. Be that as it may, the materials on record do not substantiate/corroborate the statements. Moreso, neither the company nor respondent No.2 filed any application within the stipulated time before the Labour Court seeking redress regarding the so-called unfair labour practice committed by respondent No.5. It is further evident from the records that before issuing the impugned Memo., the

petitioner company did not raise any objection to respondent No.2 in respect of the allegations raised in the writ petition.

Contention has been raised by respondent No.5 that WP No.11672 of 2021 is not maintainable. The learned Advocate submits that the impugned Memo. dated 03.07.2020 is an internal communication between respondent No.1 and 2. No copy of the said memo. was ever distributed to the petitioner company and as such, the petitioner has no reason to be aggrieved by and dissatisfied with the said memo., and therefore, the Rule is liable to be discharged.

Mr. Shah Monjurul Hoque, learned Advocate opposed the matter and submits that the impugned order was passed at the instance of an application dated 02.03.2020 filed by the President of the বাংলাদেশ ঔষধ শিল্প সমিতি asking respondent No.1 to cancel the registration of respondent No.5 which was forwarded by respondent No.1 to respondent No. 2, vide letter dated 11.03.2020. Mr. Hoque further submits that if the registration of respondent No.5 subsists it will hamper the interest of the entire medicine manufacturing companies of the country including the petitioner company. In such a situation the petitioner is certainly an aggrieved person and the writ petition is maintainable.

On perusal of Annexure Z-7 it appears that the President of the বাংলাদেশ ঔষধ শিল্প সমিতি wrote the letter to the Hon'ble State Minister for Labour and Employment requesting her to take immediate steps for cancellation of the registration of respondent No.5. The copy of the said letter was forwarded to respondent No. 1 for information only. It is evident from Annexure-C, the impugned letter dated 03.07.2020 that it was not

communicated to the present petitioner company by which the petitioner company became aggrieved.

The exact text of বাংলাদেশ ঔষধ শিল্প সমিতি (Annexure Z-7 of the supplementary affidavit of the writ petition) is reproduced below:

“মার্চ ০২, ২০২০

বেগম মনুজান সুফিয়ান, এমপি

মাননীয় প্রতিমন্ত্রী

শ্রম ও কর্মসংস্থান মন্ত্রণালয়

বাংলাদেশ সচিবালয়, ঢাকা।

বিষয়ঃ আবেদিত সানোফি বাংলাদেশ লিমিটেড ওয়ার্কস্ এমপ্লয়িজ এসোসিয়েশন এর নিবন্ধন প্রসঙ্গে।

মহোদয়,

আমরা অবগত হয়েছি সানোফি বাংলাদেশ লিমিটেডের নিবন্ধিত ট্রেড ইউনিয়ন সংগঠন বহু বছর ধরে কার্যকর থাকা অবস্থায় সম্প্রতি প্রতিষ্ঠানের কতিপয় বিক্রয় কর্মকর্তা সানোফি বাংলাদেশ লিমিটেড ওয়ার্কস্ এমপ্লয়িজ এসোসিয়েশন নামে নতুন একটি ট্রেড ইউনিয়নের নিবন্ধনের জন্য আপনার মন্ত্রণালয়ে আবেদন করেছে।

গণমাধ্যমে প্রকাশিত তথ্যাদি ও বিভিন্ন সূত্রানুযায়ী আমরা অবগত হয়েছি বহুজাতিক কোম্পানি সানোফি এস এ বাংলাদেশ তার কার্যক্রম বন্ধ করে দেয়ার সিদ্ধান্ত গ্রহণ করেছে। স্বল্প সময়ের মধ্যে সানোফি বাংলাদেশ লিমিটেডে থাকা শেয়ারসমূহ বিক্রি বা হস্তান্তরের মাধ্যমে বাংলাদেশে সানোফি নামে ব্যবসায়িক কার্যক্রম বন্ধ করার প্রক্রিয়া অব্যাহত রেখেছে। এই বিষয়ে প্রকাশিত সংবাদ ও তথ্যসুত্রসমূহ এতদসঙ্গে সংযুক্ত করা হল।

এমতাবস্থায়, সদ্য আবেদিত সানোফি বাংলাদেশ ওয়ার্কস্ এমপ্লয়িজ এসোসিয়েশন এর নিবন্ধনের অনুমতি প্রদানের কোন যৌক্তিকতা নাই বলে আমাদের কাছে প্রতীয়মান হয়। এরকম কোন নিবন্ধন অনুমোদন করা হলে তা দেশীয় অন্যান্য ঔষধ শিল্পসমূহে অনাকাঙ্ক্ষিত অস্থিরতার সূত্রপাত করতে পারে।

সানোফি বাংলাদেশ লিমিটেড ওয়ার্কস্ এমপ্লয়িজ এসোসিয়েশন এর নিবন্ধনের অনুমতি রহিতকরণে সংশ্লিষ্ট দপ্তরে প্রয়োজনীয় নির্দেশনা প্রদানের জন্য বিনীত অনুরোধ জানাচ্ছি।

নাজমুল হাসান এমপি

সভাপতি

সদয় অবগতির জন্য অনুলিপি:

শ্রম ও কর্মসংস্থান সচিব মহোদয়ের অবগতির জন্য তাঁর একান্ত সচিব, ঢাকা।

সংযুক্তি: বাংলাদেশে সানোফি ব্যবসা কার্যক্রম বন্ধ বিষয়ে গণমাধ্যমে প্রকাশিত তথ্যাদি ও সূত্রাদিসমূহ।”

[emphasis added]

It transpires from the said letter that the sender of the letter (who is the president of the concerned *Samity*) termed the members of respondent No.5 as the **sales officers** of the petitioner company which, in our view, is not correct since admittedly they were appointed as the medical representatives of the company and they were not given any managerial or official duties.

The term 'sales officer' is not synonymous to 'medical representative'. Generally, the holder of the post 'sales officer' may or may not come within the definition of worker, whereas, in the instant case, it has already been held that the members of respondent No.5, who are medical representatives, are workers. Therefore, they cannot be termed as 'sales officer'. As a competent authority, respondent No.2 upon conducting proper inquiry and investigation gave registration to respondent No.5. But the sender through a demi-official (DO) letter (Annexure Z-7) requested the hon'ble State Minister to cancel a valid registration certificate arguing that there is no necessity of issuing such types of registration to respondent No.5.

Hon'ble State Minister for Labour and Employment endorsed the letter to respondent No.1. On receipt of the letter dated 11.03.2020 from the respondent No.1, the respondent No.2 on 03.07.2020 issued the impugned memo. showing his inability to cancel the registration of respondent No.5 and the same was accordingly informed to the Hon'ble State Minister and respondent No.1 respectively. The copy of the said memo. was neither sent nor forwarded to the petitioner company. In our view, the above mentioned memo. is an inter-ministerial communication by which the petitioner company is not in any way aggrieved.

In ***Secretary, Internal Resources Division, Ministry of Finance and Chairman, NBR, Dhaka v. Nasrin Banu and others***, 48 DLR(AD) 171 and ***Alhaj Abdul Bashir v. Bangladesh*** 50 DLR(AD) 11, it has been held:

"Inter-ministerial/Divisional Communications made in the process of reaching a decision, uncommunicated to the affected persons, do not create a legal right in their favour". These two reported cases were referred to and discussed in ***Bangladesh Biman Corporation and others v. Md. Zahangir Farazi and others*** 65 DLR(AD) 116 wherein it was held that *"When an inter-*

ministerial/ divisional communication or departmental notes are given effect to or communicated to the persons concerned and some overt acts take place as a follow up of such communication then the same no more retains the character of just an inter-ministerial/ divisional communication made in the process of reaching a decision or inter-ministerial communication as mere policy guidelines in respect of certain matters concerning the business of the Government as held in the said two reported cases. We are of the view that once the inter-ministerial/divisional communications or departmental notes are given effect to by way of communication and the parties, so communicated act on that, a legal right is accrued to them and if that right is infringed or is threatened to be infringed then they may approach a Court of law to protect such right as happened in the instant cases".

Inter ministerial communications approaches, programs, policies and action plans between and across several ministries or departments of government for smooth running of the concern ministry or departments. Effective interdepartmental communication leads to better collaboration and teamwork, more efficient decision-making and improved problem-solving. So, by the impugned Memo. the petitioner company is not in any way has been aggrieved.

The petitioner company filed WP No. 11672 of 2021 before this Division and obtained an order of stay dated 13.12.2021 against which Civil Petition for Leave to Appeal No. 42 of 2022 was preferred by respondent No.5 and the Hon'ble Judge-in-Chamber affirming the said order vide order dated 19.01.2022.

Respondent No. 5 also filed WP No. 11918 of 2021 where they obtained an order of direction dated 06.12.2021 upon respondent No.2 for taking steps against to hold CBA election of the petitioner company in accordance with law.

The respondent No.5 also filed another WP No. 12267 of 2021 for the purpose of Nullifying the departmental proceedings brought against the members of respondent No.5 and obtained an order of direction dated 12.12.2021 upon the respondent No.2 to dispose of the application dated 29.11.2021 with in a period of 30(thirty) working days from the date of receipt of the order and also obtained an order of status-quo in respect of the disciplinary action in question for a period of 30(thirty) days.

The petitioner company challenged both the aforesaid orders dated 06.12.2021 and 12.12.2021 in Civil Petition for Leave to Appeal No. 05 of 2022 and 2854 of 2021 respectively and the Hon'ble Judge-in-Chamber of the Appellate Division after hearing both the sides stayed operation of the said order on 19.01.2022.

In WP No. 11672 of 2021 the petitioner company contends that due to the nature of the job, the medical representatives do not come within the definition of workers as defined in section 2(65) of the Ain, 2006 in spite of that the members of respondent No.5 have obtained their registration certificate under section 182 of the Ain by practicing fraud and misrepresentation of facts, and as such, the registration of respondent No.5 is required to be canceled under section 190(1)(c) of the said Ain and further that impugned memo. dated 03.07.2020 was passed by respondent No.2 illegally and without lawful authority which has no legal effect.

For better appreciation of the matter the impugned memo. (Annexure C) is reproduced below:

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
শ্রম ও কর্মসংস্থান মন্ত্রণালয়
শ্রম অধিদপ্তর
ট্রেড ইউনিয়ন শাখা
www.dol.gov.bd

০৩ জুলাই ২০২০

সূত্র: শ্রম ও কর্মসংস্থান মন্ত্রণালয়ের ১১/০৩/২০২০ ইং তারিখের ৪০.০২.০০০০.০৪২.৯৯.০০১.১৭.১২৪ নং পত্র

উপর্যুক্ত বিষয় ও সূত্রোক্ত পত্রের প্রেক্ষিতে জানানো যাচ্ছে যে, বাংলাদেশ শ্রম আইন-২০০৬ (অদ্যাবধি সংশোধিত) অনুযায়ী সকল শর্তাদি পূরণ করায় বর্ণিত আইনের ১৮২(১) ধারা মোতাবেক অত্র দপ্তর কর্তৃক সানোফি বাংলাদেশ লিমিটেড ওয়ারকার্স এমপ্লয়িজ এসোসিয়েশন (রেজি: নং বি-২২০৭)-কে গত ০৩/০২/২০২০ খ্রিঃ তারিখ রেজিস্ট্রেশন প্রদান করা হয়েছে।

এমতাবস্থায়, বাংলাদেশ শ্রম আইন, ২০০৬ এর ধারা ১৯০(৩) মোতাবেক মাননীয় শ্রম আদালতের আদেশ ব্যতীত অত্র দপ্তর কর্তৃক রেজিস্ট্রিকৃত কোন ট্রেড ইউনিয়ন/ফেডারেশন এর রেজিস্ট্রেশন বাতিল করার আইনানুগ এখতিয়ার এ দপ্তর সংরক্ষণ করে না।

ইহা মহোদয়ের সদয় অবগতির জন্য প্রেরণ করা হলো।

৩-৭-২০২০

এ,কে,এম, মিজানুর রহমান
মহাপরিচালক (অতিরিক্ত সচিব)

সচিব, শ্রম ও কর্মসংস্থান মন্ত্রণালয়, বাংলাদেশ সচিবালয়, ঢাকা-১০০০।

স্মারক নম্বর: ৪০.০২.০০০০.০৩৪.৪৯.০১৩.১৯.২৫১/১(৩)

তারিখ: ১৯ আষাঢ় ১৪২৭

০৩ জুলাই ২০২০

সদয় অবগতি ও কার্যার্থে প্রেরণ করা হল:

- ১) প্রতিমন্ত্রী মহোদয়ের একান্ত সচিব, প্রতিমন্ত্রীর দপ্তর, শ্রম ও কর্মসংস্থান মন্ত্রণালয় (মাননীয় প্রতিমন্ত্রী মহোদয়ের সদয় অবগতির জন্য)
- ২) শাহীন আখতার, উপসচিব (অতিরিক্ত দায়িত্ব), শ্রম শাখা, শ্রম ও কর্মসংস্থান মন্ত্রণালয়
- ৩) অফিস নথি।

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মোঃ গিয়াস উদ্দিন
পরিচালক”

[emphasis given]

From the impugned letter it is evident that after fulfillment of the pre-conditions laid down in section 182(1) of the Ain, 2006 respondent No.2 issued the registration certificate in favour of respondent No.5.

Section 182 runs as follows:

“১৮২। রেজিস্ট্রিকরণ।- (১) মহাপরিচালক, কোন ট্রেড ইউনিয়ন কর্তৃক এই অধ্যায়ের সকল প্রয়োজনীয় বিষয়াদি পালিত হইয়াছে এই মর্মে সন্তুষ্ট হওয়ার পর, বিধি দ্বারা নির্ধারিত রেজিস্টারে উহাকে রেজিস্ট্রি করিবেন, এবং রেজিস্ট্রিকরণের জন্য দরখাস্ত প্রাপ্তির পঞ্চদশ দিনের মধ্যে বিধি দ্বারা নির্ধারিত ফরমে একটি রেজিস্ট্রিকরণ প্রত্যয়নপত্র প্রদান করিবেন।

(২) যদি মহাপরিচালক উক্ত দরখাস্তে অত্যাৱশ্যক কোন তথ্যের অসম্পূর্ণতা দেখিতে পান তাহা হইলে তিনি দরখাস্ত প্রাপ্তির বার দিনের মধ্যে উক্ত বিষয়ে তাহার আপত্তি ট্রেড ইউনিয়নকে লিখিতভাবে জানাইবেন, এবং ট্রেড ইউনিয়ন উহা প্রাপ্তির পনের দিনের মধ্যে ইহার জবাব দিবে, তবে নির্ধারিত সময়ের মধ্যে সংশ্লিষ্ট পত্রের জবাব পাওয়া না গেলে আবেদনটি নথিজাতকরণের মাধ্যমে নিষ্পত্তি করা যাইবে।

(৩) যখন মহাপরিচালক কর্তৃক উত্থাপিত আপত্তি সন্তোষজনকভাবে মিটানো হয়, তখন তিনি উপ-ধারা (১) এর বিধান অনুযায়ী ট্রেড ইউনিয়নটিকে রেজিস্ট্রি করিবেন; এবং উহা যদি সন্তোষজনক ভাবে মিটানো না হয়, তাহা হইলে তিনি দরখাস্ত প্রত্যাখ্যান করিবেন।

(৪) যে ক্ষেত্রে মহাপরিচালক কোন দরখাস্ত প্রত্যাখ্যান করেন অথবা আপত্তি মিটানোর পরেও উপ-ধারা (১) এর উল্লিখিত পঞ্চদশ দিন সময়সীমার মধ্যে দরখাস্ত নিষ্পত্তি না করেন, সেক্ষেত্রে সংশ্লিষ্ট ট্রেড ইউনিয়ন উক্তরূপ প্রত্যাখ্যানের তারিখ অথবা উল্লিখিত সময়সীমা অতিক্রান্ত হওয়ার তারিখ, যাহা আগে হইবে, উহা হইতে ত্রিশ দিনের মধ্যে শ্রম আদালতে আপীল করিতে পারিবে।

(৫) শ্রম আদালত আপীলটি শুনানীর পর উপযুক্ত বিবেচনা করিলে, উহার রায়ে কারণ লিপিবদ্ধ করিয়া মহাপরিচালককে ট্রেড ইউনিয়নটি রেজিস্ট্রি করিবার জন্য এবং উহার তারিখ হইতে সাত দিনের মধ্যে রেজিস্ট্রি প্রত্যয়নপত্র প্রদান করিবার জন্য নির্দেশ দিতে পারিবে অথবা আপীলটি খারিজ করিতে পারিবে।

(৬) উপ-ধারা (৫) অনুসারে শ্রম আদালত কর্তৃক প্রদত্ত রায়ের বিরুদ্ধে সংক্ষুব্ধ পক্ষ শ্রম আদালতের আদেশ প্রাপ্তির ৩০ (ত্রিশ) দিনের মধ্যে শ্রম আপীল আদালতে আপীল দায়ের করিতে পারিবেন।

(৭) রেজিস্ট্রেশনের আবেদন নিষ্পত্তির জন্য সরকার এই ধারার বিধানাবলীর সহিত সামঞ্জস্য রাখিয়া মানসম্পন্ন পরিচালনা পদ্ধতি (Standard Operating Procedure) প্রণয়ন করিবে।”

[emphasis added]

Section 182(2) provides that if the Director General (respondent No.2) is satisfied that a trade union has complied with all the requirements of the Ain then he will register that trade union and shall issue a registration certificate within 55(fifty-five) days from the date of receipt of the application for registration.

Mr. Shah Monjurul Hoque, the learned Advocate submits that the members of the respondent No. 5 filed BLA (IR) Case No. 704 of 2021 before the Labour Court challenging the legality of their voluntary resignation from the service of the company. Since the matter is under challenge in a Court of law, then without final adjudication of the said case, the question of forming trade union by them does not arise at all -the learned Advocate added.

Per contra, Mr. Md. Yousuf Ali, learned Advocate appearing for respondent No.5 contends that the members of this respondent under coercion, threat and undue influence were compelled to put their names and signatures in the prescribed forms of resignation previously prepared by the company during 16.05.2021 to 20.05.2021. They challenged the legality of the resignation in question in the above case. Mr. Ali next submits that soon after filing the case, the petitioner company, vide letter dated 07.07.2021 disregarded the resignation letters and affirmed that the employment of the members of the trade union would continue as per their respective original appointment letters.

Upon hearing the learned Advocates we have gone through the records.

Annexure Y-1 addressed to Mr. Sanjib Kumar Chakraborty who is one of the members of respondent No.5. It is stated in Annexure Y-1:

“We have received a notice dated 28 June 2021 from the First Labour Court, Dhaka in connection with the BLA (IR) Case No. 704 of 2021 (“BLA Case”), where your name appears as First Party No. 1.

In the aforesaid BLA case you have prayed, amongst others, as follows:

“WHEREFORE, it is most humbly prayed that your honour would graciously be pleased to pass:

A) A decree holding that the resignation letters supplied during 16.05.2021 to 20.05.2021 by the opposite parties to the petitioners and signature obtained under coercion, threat and undue influence without paying any compensation or benefits are void, illegal and without lawful authority;...”

Thus, in the aforesaid BLA Case, you have yourself disputed your resignation letter and consequently the letter of appointment signed by you too would be construed as being disputed, and the issue is therefore sub judice. **Accordingly, the Company will disregard your**

resignation letter, the new letter of appointment and will not settle your accrued benefits.

Consequently, your employment with the Company will continue as per the original appointment letter and not under the new appointment letter dated 1 July 2021. Further, we hereby remind you that the opportunity to settle benefits was valid only until 20 May 2021. However, the Company in good faith is willing to extend this timeline for you until 11 July, 2021 whereafter it shall be assumed that you do not wish to exercise this option.”

[emphasis supplied]

Considering the contents of Annexure Y-1 as well as the materials on record, it is palpably clear that the members of respondent No.5 have been in continuous service of the petitioner company since their first appointment.

It reveals from the records that being workers, the members of respondent No.5 formed a trade union in the name of “*Sanofi Bangladesh Limited Workers-Employees Association*” and subsequently filed an application under section 177 read with section 178 of the Ain to respondent No.2 who upon holding enquiry under Chapter 23, lawfully issued the registration certificate (Annexure A to WP No.11918 of 2021) in favour of respondent No.5. Considering the facts and circumstances of the case, we are of the considered view that in issuing the said registration certificate no illegality whatsoever was committed by respondent No.2 inasmuch by exercising lawful authority under section 189 of the Ain read with Rule 172(2) of the concerned rules the name of respondent No.5 was registered in the book preserved by respondent No.2 and a registration certificate was issued accordingly.

Mr. Md. Yousuf Ali, the learned Advocate contends that even after issuance of the impugned letter, the petitioner company recognized the president and secretary of the trade union and negotiated with them by

taking part in different meetings on several occasions and thus, the petitioner company is barred by the principles of waiver, acquiescence and estoppel which entails the Rule liable to be discharged.

Replying to the matter, Mr. Shah Monjurul Hoque submits that merely holding meetings with the president and secretary of an illegal trade union cannot make such trade union legal and consequently, the writ petition is not barred by the principles of estoppel, waiver and acquiescence.

It appears from Annexures F-1 and L that the petitioner company initiated open discussions and arranged a number of meetings *i.e.* on 27.01.2021, 31.01.2021 and lastly on 02.02.2021 with the authorized representatives of the trade union (respondent No.5) with a view to reaching to an agreement amicably which ultimately proved that the petitioner company admitted the existence of respondent No.5 trade union. In the above premises, our considered view is that the members of respondent No.5 had validly formed the trade union and eventually got registration from the office of respondent No.2. Accordingly, the WP No.11672 of 2021 is not maintainable.

Respondent No. 5 filed WP No. 11918 of 2021 challenging the inaction of respondent No. 2 in not arranging an election for determining the CBA for the establishment of respondent No. 3 company in accordance with the provision of section 202 of the Ain within 120 days from the date of receipt of the petition.

In the said writ petition the respondent No. 5 contends that after getting registration from the proper authority they had tried to negotiate with the petitioner company for settling their disputes. But since they did not

acquire the status of CBA, the petitioner company refused to settle the matter with them. Respondent No. 5 thereafter filed an application to respondent No.2 on 25.02.2021 under section 202 of the Ain requesting him to hold an election for determining the CBA for the establishment of the said company within the statutory time frame. But respondent No. 2 is yet to convene the election.

The application dated 25.02.2021 is reproduced below:

“সূত্র: সাঃ বাঃ লিঃ ওঃএমঃএসো/বি/২২০৭/২০২১/০১

তারিখ ২৫/০২/২০২১

বরাবর,

মহাপরিচালক
শ্রম অধিদপ্তর
গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
শ্রম ভবন, ১৯৬, শহীদ সৈয়দ নজরুল ইসলাম সারণী
(বিজয় নগর), ঢাকা-১০০০।

বিষয়ঃ যৌথ দরকষাকষি প্রতিনিধি (সিবিএ) নির্ধারণী নির্বাচন প্রসঙ্গে।

মহোদয়,

যথাবিহীন সম্মান প্রদর্শনপূর্বক বিনীত নিবেদন এই যে, আমাদের ইউনিয়নটি সমগ্র বাংলাদেশব্যাপী সানোফি বাংলাদেশ লিমিটেড-এ কর্মরত শ্রমিক-কর্মচারীদের নিয়ে গঠিত একটি রেজিস্ট্রার্ড ট্রেড ইউনিয়ন। আমাদের প্রতিষ্ঠানে “সানোফি বাংলাদেশ লিমিটেড শ্রমিক ও কর্মচারী ইউনিয়ন, রেজিঃ নং-৩০” নামে ঢাকা বিভাগীয় শ্রম দপ্তর হতে কারখানা ভিত্তিক অপর একটি রেজিস্ট্রার্ড ট্রেড ইউনিয়ন বিদ্যমান রহিয়াছে। আমাদের ইউনিয়নটির

পরিধি দেশব্যাপী হওয়ায় আমাদের ইউনিয়নের পক্ষে শ্রম বিরোধ উত্থাপন করিয়া লিখিতভাবে কতিপয় দাবীনামা পেশ করি। উল্লেখিত দাবীনামার বিষয়ে ত্রিপক্ষীয় সালিশের মাধ্যমে নিষ্পত্তির জন্য গত ১০/০২/ ২০২১ খ্রিঃ তারিখের পত্র মারফত আপনাকে অনুরোধ করা হয়। আমাদের উল্লেখিত পত্রের প্রেক্ষিতে আপনার দপ্তরের গত ২৩/০২/২০২১ খ্রিঃ তারিখের ৪০.০২.০০০০.০৩৫.৯৯.০০২.২১.১০৩ নং পত্রের মাধ্যমে প্রতিষ্ঠানে দুইটি রেজিস্ট্রার্ড ট্রেড ইউনিয়ন বিদ্যমান থাকায় আমাদের ইউনিয়নটি প্রতিষ্ঠানে কর্মরত শ্রমিক-কর্মচারীদের জন্য যৌথ দরকষাকষি প্রতিনিধি (সিবিএ) হিসাবে গণ্য হইবে না মর্মে উল্লেখ করিয়া “সালিশ গ্রহণ করা গেল না” মর্মে জানান।

এমতাবস্থায়, আমাদের প্রতিষ্ঠানে বিদ্যমান ইউনিয়নসমূহের মধ্যে বাংলাদেশ শ্রম আইন, ২০০৬ এর ২০২ ধারার বিধান মোতাবেক যৌথ দরকষাকষি প্রতিনিধি (সিবিএ) নির্ধারণী নির্বাচন অনুষ্ঠানের জন্য আপনাকে বিনীত অনুরোধ করিতেছি।

অতএব মহোদয়, আমাদের প্রতিষ্ঠানে বিদ্যমান রেজিস্ট্রার্ড ট্রেড ইউনিয়নসমূহের মধ্যে যৌথ দরকষাকষি প্রতিনিধি (সিবিএ) নির্ধারণী নির্বাচন অনুষ্ঠানের পদক্ষেপ গ্রহণ করতঃ বাধিত করিতে মর্জি হয়।

আপনার বিশ্বস্ত-

(মোঃ মুক্জামান রাজু)

সভাপতি

সানোফি বাংলাদেশ লিমিটেড ওয়ারকার্স-এমপ্লোয়িজ এসোসিয়েশন
(রেজিঃ নং, বি-২২০৭)

(সঞ্জীব কুমার চক্রবর্তী)

সাধারণ সম্পাদক

সানোফি বাংলাদেশ লিমিটেড ওয়ারকার্স-এমপ্লোয়িজ এসোসিয়েশন
(রেজিঃ নং, বি-২২০৭) ”

In support of the contention of the above letter, the learned Advocate appearing for respondent No. 5 submits that under section 202(2) of the Ain, respondent No. 2 is duty bound to dispose of the petition and the inaction of

respondent No. 2 is violative to the provision laid down in section 202 of the Ain as well as the provision enshrined in Articles 31, 32 and 40 of the Constitution. The learned counsel for the petitioner company opposed the matter.

We are of the view that respondent No.5 had lawfully filed the petition before the respondent No.2 but the respondent without showing any valid reasons yet to decide the matter to which the petitioner upon filing writ petition has challenged the inaction of the said respondent.

Section 202 of the Ain, 2006 runs as under:

“২০২। যৌথ দরকষাকষি প্রতিনিধি।- (১) যে ক্ষেত্রে কোন প্রতিষ্ঠানে একটি মাত্র ট্রেড ইউনিয়ন থাকে সে ক্ষেত্রে উক্ত প্রতিষ্ঠানের জন্য উহা যৌথ দরকষাকষি প্রতিনিধি বলিয়া গণ্য হইবে।

(২) যে ক্ষেত্রে কোন প্রতিষ্ঠানে একাধিক ট্রেড ইউনিয়ন থাকে সে ক্ষেত্রে ইউনিয়নসমূহ নিজেদের মধ্যে নির্বাচন কমিশনার মনোনয়নপূর্বক যৌথ দরকষাকষি প্রতিনিধি (CBA) নির্বাচনের ব্যবস্থা গ্রহণ করিবে অথবা কোন ট্রেড ইউনিয়ন অথবা মালিক এতদুদ্দেশ্যে দরখাস্ত করিলে মহাপরিচালক দরখাস্ত প্রাপ্তির একশত বিশ দিনের মধ্যে প্রতিষ্ঠানে কোন ট্রেড ইউনিয়ন যৌথ দরকষাকষি প্রতিনিধি হইবে, ইহা নির্ধারণের জন্য গোপন ভোটের ব্যবস্থা করিবেন।

(৩) উপ-ধারা (২) এর অধীন কোন দরখাস্ত প্রাপ্তির পর মহাপরিচালক লিখিত নোটিশ দ্বারা সংশ্লিষ্ট প্রতিষ্ঠানের সকল ট্রেড ইউনিয়নকে নোটিশে উল্লিখিত সময়ের মধ্যে, যাহা পনের দিনের অধিক হইবে না, গোপন ব্যালটে প্রতিদ্বন্দ্বিতা করিবে কি না ইহা জানাইবার জন্য নির্দেশ দিবেন।

(৪) যদি কোন ট্রেড ইউনিয়ন উপ-ধারা (৩) এর অধীন প্রদত্ত নোটিশের উল্লিখিত সময় সীমার মধ্যে গোপন ব্যালটে উহার প্রতিদ্বন্দ্বিতা সম্পর্কে মহাপরিচালককে কিছু জানাইতে ব্যর্থ হয়, তাহা হইলে উহা, উক্ত ব্যালটে প্রতিদ্বন্দ্বিতা করিবে না বলিয়া বুঝিতে হইবে।

(৫) যদি নোটিশে উল্লিখিত সময়সীমার মধ্যে কোন ট্রেড ইউনিয়নই গোপন ব্যালটে উহার প্রতিদ্বন্দ্বিতা সম্পর্কে মহাপরিচালককে কিছুই না জানায় তাহা হইলে যে ট্রেড ইউনিয়ন উপ-ধারা (২) এর অধীন দরখাস্ত করিয়াছে উহাকে উক্ত প্রতিষ্ঠানে যৌথ দরকষাকষি প্রতিনিধি হিসাবে ঘোষণা করা হইবে, যদি প্রতিষ্ঠানে নিযুক্ত শ্রমিকগণের মোট সংখ্যার অন্যান্য এক-তৃতীয়াংশ শ্রমিক উহার সদস্য থাকে।

... ..”

(emphasis given)

From the above, it appears that once an application under section 202(2) of the Ain is made to respondent No. 2 for holding an election for determination of the CBA of any establishment, statutory obligation is imposed upon him to hold such an election through secret ballot and thereby determine the CBA within 120 days from the date of receipt of such application. But in the instant case, respondent No.2, in spite of having received such an application utterly failed to perform his statutory obligation in arranging an election to determine the CBA within the stipulated time frame. As such, the above respondent No.5 has failed to initiate an effective industrial claim for the petitioner company. In the aforesaid premises, we are of the view that the inaction of the respondent No. 2 in disposing the petition dated 25.02.2021 filed by respondent No.5 is liable to be declared illegal and without any lawful authority.

From the foregoing discussions, our unanimous view is that the submission made by the learned Advocate for the petitioner in WP No. 11672 of 2021 bears no substance. The members of respondent No.5 of WP No. 11672 of 2021 be treated as 'workers' under the provision of section 2(65) of the Ain, 2006. They have validly obtained registration certificate from the proper authority. The respondent No.2 has no legal authority to cancel the registration of respondent No.5 without taking permission from the Labour Court.

In the aforesaid premises, the Rule issued in WP No. 11672 of 2021 is discharged and the Rule issued in WP No. 11918 of 2021 is made absolute without any order as to costs.

Respondent No.2 of WP No. 11918 of 2021 is directed to take steps to hold the election for determining the CBA for the establishment of respondent No.3 company immediately in accordance with law.

Bhishmadev Chakrabortty, J.

I agree.