

In the Supreme Court of Bangladesh  
High Court Division  
(Special Original Jurisdiction)

**Writ Petition No. 10580 of 2021.**

**In the matter of:**

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

**In the matter of:**

Md. Maksudur Rahman and another.

..... Petitioners.

Vs.

Bangladesh, represented by the Secretary, Ministry of Labour, Bangladesh Secretariat Building, Ramna, Dhaka-1000 and others.

...Respondents.

Mr. Mantu Chandra Ghosh,  
Advocate

...For the petitioners.

Mr. Khurshed Alam Khan with  
Mr. Md. Abdullah Al Masud  
with

Mr. Md. Nasir Shikder,  
Advocates

...For the respondent No. 05

**Heard on 27.11.2023,  
10.12.2023 and 08.01.2024.  
Judgment on: 11.01.2024.**

**SHEIKH HASSAN ARIF, J**

1. At the instance of the petitioner, Rule Nisi was issued calling upon the respondents to show cause as to why the order dated 09.11.2021, being Reference No.

**Present:**

**Mr. Justice Sheikh Hassan Arif  
And  
Mr. Justice Md. Bazlur Rahman**

40.02.0000.034.48.173.70.377, issued by the respondent No. 2, the Director General of Labour (Additional Secretary), cancelling the registration of petitioners' trade union, namely, Bangladesh Inland Water Transport Authority Employees Union (Registration No. B-1440), under Section 190 (3) of the Labour Act, 2006, should not be declared to be without lawful authority and is of no legal effect.

## **2. Background Facts:**

2.1 Facts, as stated by the petitioner in the petition, are that the petitioners are the President and General Secretary of Bangladesh Inland Water Transport Authority Employees Union (Registration No. B-1440). The said trade union elected an executive committee on 18.02.2017 in accordance with the constitution of the same, and, in the said election, the petitioners were elected as President and Secretary. That the petitioners' trade union has been functioning as the trade union of workers of Bangladesh Inland Water Transport Authority, a statutory body mandated by law for the development of river and navigation etc. It is stated that as per

law, only three trade unions can be established in an enterprise, and, in 2016, respondent Nos. 5 and 6 formed a trade union under the name BITWA Sramik Kormachari Union (Registration No. B-2176). That such registration of the said trade union was illegal and unlawful, that one of the petitioners (petitioner No. 02), filed writ petition, being Writ Petition No. 14266 of 2016, before the High Court Division seeking cancellation of the registration of the said trade union. That the petitioner No. 02 also filed Writ Petition No. 14266 of 2016 before the High Court Division against declaration of Collective Bargaining Agent in favour of other trade union, and the Rule issued in the said writ petition was made absolute by a division bench of the High Court Division. Accordingly, the High Court Division directed to hold election for electing Collective Bargaining Agent. However, the Appellate Division stayed the operation of the said judgment in Civil Petition for Leave to Appeal No. 2055 of 2020 as preferred by respondent Nos. 5 and 6.

2.2 That respondent No. 5 and 6 filed a Labour Case, being BLA Case No. 338 of 2017, before the Second Labour Court, Dhaka, wherein, the petitioners were not made party and they sought cancellation of registration of petitioners' trade union. The petitioners then entered appearance after knowing about it and added themselves as party. That in the said case, the Labour Court concerned passed an order dated 12.08.2021 directing the respondent No. 2-Director General of Labour to dispose of the application filed by the respondent Nos. 5 and 6 seeking cancellation of registration of petitioners' trade union. That respondent No. 7 then held an enquiry and, thereafter, passed the impugned order dated 09.11.2021 (Annexure-H), thereby, cancelling the registration of petitioners' trade union. Being aggrieved by such cancellation, the petitioners moved this Court and obtained the aforesaid Rule. At the time of issuance of the Rule, a division bench of this Court, vide ad interim order dated 22.11.2021, stayed operation of the impugned order for a period of 02 (two) months. Being aggrieved by the said ad-

interim order of the High Court Division, the respondent No. 05 moved Civil Miscellaneous Petition for Leave to Appeal No. 676 of 2021, whereupon, the Hon'ble Judge-in-Chamber of the Appellate Division stayed operation of the said interim order followed by an order of the full bench of the Appellate Division in Civil Petition for Leave to Appeal No. 912 of 2022 as preferred by respondent No. 05 regarding continuation of the said order of stay.

2.3 It is further contended by one of the petitioners by filing supplementary-affidavit that the petitioner No. 1 died on 22.11.2022, i.e. during pendency of the writ petition, and as such, the Senior Vice President, Md. Mazharul Islam, has been performing the function of President as per the constitution of the trade union. It is contended that the petitioner No. 2 had already retired from service on 06.10.2019 even before filing of the writ petition. However, petitioner No. 2 is still entitled to represent the trade union as its Secretary in view of the provisions under Section 180 of the

Bangladesh Labour Act, 2006 read with the relevant provisions of Bangladesh Sramo Bidhimala, 2015.

2.4 The Rule is contested by respondent No. 05 by filing affidavit-in-opposition and supplementary-affidavit-in opposition contending, *inter alia*, that the writ petition is not maintainable as the writ petitioners could have preferred an appeal before the Labour Appellate Tribunal against the impugned order. It is further contended by this respondent that the petitioners' trade union was a dormant trade union and was not performing as a trade union at all and, accordingly, the registration of the said trade union was lawfully cancelled pursuant to the order dated 12.08.2021 passed by the Labour Court. It is further contended that respondent No. 2 passed the impugned order upon receipt of information from BIWTA authority vide BIWTA's letter dated 01.11.2021 regarding the status of writ petitioners and that since the petitioner No. 01 has died during pendency of the writ petition and petitioner No. 02 had retired from service long before filing of the writ petition, the petitioner do not

have any interests and *locus-standi* to maintain this writ petition.

### 3. **Submissions:**

3.1 Mr. Mantu Chandra Ghosh, learned advocate appearing for the petitioners, submits that the petitioner No. 02 has categorically stated in the supplementary affidavit that petitioner No. 01 has died during pendency of the writ petition and petitioner No. 02 had retired from service even before filing of the writ petition. By referring to the provisions under proviso to sub-section (1) of Section 180 of Bangladesh Labour Act, 2006 as well as the explanation to sub-rule (4) of Rule 169 of the Bangladesh Labour Rules, 2015, he submits that in case of the trade union like the petitioners', 10% of the members of the executive committee may function as executive committee members being out of service or retired. Therefore, according to him, petitioner No. 02 is lawfully entitled to perform his function as secretary of the trade union concerned and as such he has *locus-standi* to file this writ petition.

3.2 By referring to the provisions under Section 190 of the said Act, he submits that it is apparent from the impugned order that the impugned order was not passed in compliance with the mandatory provisions under Section 190 of the said Act inasmuch as that no approval from the Labour Court concerned was obtained by respondent No. 02 before issuance of the impugned cancellation order. This being so, according to him, the impugned order, being an order without jurisdiction, should be set aside by this Court. He further submits that the parties in this writ petition, in particular the petitioner and respondent No. 5 and 6, have filed various cases including writ partitions against each other, which are not the subject matter of this writ petition and as such, according to him, those issues should be left for consideration or determination by proper forum like the Labour Court.

3.3 As against above submissions, Mr. Md. Khurshid Alam Khan, learned senior counsel, appearing along with Mr. Md. Abdullah-Al-Masud, learned



advocate, for the respondent No. 5, submits that the petitioners do not have *locus-standi* to file the writ petition particularly when the petitioner was a retired employee of the BIWTA at the time of filing of the writ petition. He further submits that the very existence of petitioners' trade union is questionable particularly when it does not have any one from the BIWTA employees as its members. Therefore, he submits, such fake, or paper union, cannot be allowed to file any writ petition before the High Court Division. In this regard, he has tried to describe before this Court various disputed issues between the parties regarding the existence of the petitioners' trade union as well as factual and legal entitlement of such trade union to perform as trade union as per law. However, we are not inclined to refer to those submissions as they are not relevant in the facts and circumstances of the case, in particular for disposal of the Rule in this writ petition on merit, given that respondent No. 5 will always be at liberty to agitate those issues before a proper forum like Labour Court in accordance with law.

#### **4. Deliberations, Findings, and Orders of the Court:**

4.1 The very Rule Nisi is specific about the issues involved in this writ petition which is—whether or not the cancellation of registration of petitioners' trade union has been legally done. To determine such issue, therefore, we will confine ourselves to the very perimeter of the Rule Nisi itself. However, to determine the issues involved in this writ petition, we first need to check whether the petitioners have *locus standi* to file this writ petition at all.

4.2 Admittedly, petitioner No. 02 retired as an employee/worker of BIWTA long before filing of the writ petition and petitioner No. 01 has died during pendency of the writ petition. Now let us check whether petitioner No. 02, who had retired long before filing of the writ petition, has *locus standi* to maintain this writ petition. It appears from the provisions under Section 180 of the Labour Act that notwithstanding anything contained in the constitution of the trade union concerned, no one can be elected as executive member of the said

union if he/she is not a worker of the establishment concerned. However, the proviso to sub-section (1) of Section 180 has kept an exception for nationalized industrial sector, and, according to this proviso, the members of trade unions in such sectors may keep 10% of its total members of the executive committee who are not employed in the establishment concerned. Now the question has arisen as to whether the BIWTA, being a statutory authority, may come within the definition of the 'nationalized industrial sector' particularly when the term 'nationalized industrial sector (  $\text{ivóáZ jvkí } \text{†m± i}$  )' has not been defined by the Labour Act, 2006 and/or the Rules made thereunder. However, if this proviso to Section 180 is read with the provisions under sub-rule (4) of Rule 169 of the Bangladesh Labour Rules, 2015, we find the case in favour of the petitioner's submissions, given that the explanation to sub-section (4) has clearly provided that all nationalized institutions/establishments will come within the purview of 'nationalized industrial

sector' as provided in Section 180 if the said establishment has the practice of trade union.

4.3 Admittedly, the BIWTA, whatever may be its nature, has trade union practice in it, and the very dispute in this writ petition is between two trade unions, or representatives of two trade unions, and the registration of one of such trade unions has been cancelled by the impugned order. This being so, we are of the view that the term 'ivóqZ; vkí t±i' (nationalized industrial sector), as provided by the proviso to sub-Section (1) of Section 180 of the said Act may include the establishment of BIWTA for the very reason that it has employees' workers' trade union in it and the said employees are involved in trade union practice. This being the position, we have no option but to hold that petitioner No. 02, although had retired long before filing of the writ petition, was very much entitled to be a member of the executed committee of the petitioners' trade union and as such he was entitled to file this writ petition as it's elected Secretary.

Therefore, this writ petition is maintainable. It is true that there is dispute as regards election of the petitioner No. 2 as its Secretary or the very existence of the trade union of the petitioner. However, as stated above, the parties raising such dispute may agitate those issues before proper forum and this writ petition is not the said proper forum or avenue.

4.4 With the above findings of this Court about maintainability of the writ petition, let us now examine whether the respondent No. 2 has passed the impugned order of cancellation of registration of petitioner's trade union in accordance with law. It appears from materials on records, in particular the impugned Memo dated 09.11.2021 (Annexure-H), that the respondent Nos. 5 and 6 filed a BLA Case, being BLA Case No. 338 of 2017, before the Second Labour Court, Dhaka seeking cancellation of petitioner's trade union. Thereupon, the Labour Court passed order dated 12.08.2021 directing the respondent No. 02 to dispose of the application

filed by the respondent Nos. 5 and 6 seeking cancellation of the registration of said trade union. In such disposal, the respondent No. 2 held an enquiry and found that registration of petitioner's trade union should be cancelled. Accordingly, he issued the impugned Memo dated 09.11.2021, thereby, cancelling the registration of petitioner's trade union purportedly under Section 190 (1) (Kha) (Cha) of the said Act read with sub-section (3). In this regard, we may examine the provisions under Section 190 of the said Act, which is titled 'cancellation of registration'. For our ready reference, the said provision may be reproduced here:

“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 কারিয়া থাকে;
- (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 লংঘন 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।

(Underlines supplied)

It appears from the above quoted provision that the Director General of the Labour Directorate has been empowered by law to cancel registration of any trade union on various grounds mentioned in Clauses-‘Ka’ to ‘Chha’ under sub-section (1) of Section 190. Sub-section (2) of Section 190, however, has provided a procedure for cancellation of such registration. According to this provision, the Director General is required to hold an enquiry, and, after such enquiry, if it is satisfied that the registration of a particular trade union should be cancelled, he is required to submit an application before the Labour Court concerned seeking permission for cancellation of the registration of the

said trade union. Sub-section (3) provides that once such permission is obtained from the Labour Court, the Director General shall cancel the registration of the said trade union within thirty (30) days.

4.5. If we examine the impugned Memo dated 09.11.2021 (Annexure-H) as against above requirement of law as provided by Section 190 of the said Act, it is apparent that the Director General (respondent No. 02) has not complied with the procedure mandated by law, particularly when he has issued the impugned Memo cancelling the registration of petitioners' trade union without submitting any application before the labour Court seeking permission for such cancellation and without obtaining any such permission from the Labour Court concerned. Learned advocate appearing for the respondent No. 5 has tried to impress upon this Court on this point by saying that since the labour Court concerned, vide order dated 12.08.2021, directed the Director General to dispose of the application of respondent Nos. 5 and



6 for cancellation of registration of petitioner's trade union, it should be regarded that the Labour Court gave permission for cancellation of such registration. We find no substance in such submission, particularly when the law is very clear in this regard as provided by sub-sections (2) and (3) of Section 190 of the said Act. Submission of application by the Director General seeking permission from the Labour Court is mandatory for another reason which is that the person aggrieved by the order of the Labour Court granting such permission, or rejecting such permission, has been given a statutory right of appeal against such order under Section 191. This being the provisions of law, this Court is of the view that the procedures mandated by Section 190 for cancellation of registration of a trade union are mandatory in nature, particularly when such procedure has granted a statutory right of appeal in favour of the person aggrieved. When such procedure is not followed by the Director General concerned, as has happened in the instant case, the statutory right of

the aggrieved to prefer appeal as granted by Legislation is taken away. A right granted by statute cannot be taken away by an executive order of any high official. Therefore, we are of the view that this impugned order dated 09.11.2021 (Annexure-H) cannot sustain in law. If the said order is allowed to remain, the provisions under Section 190 and 191 of the Labour Act, 2006 will be rendered redundant, which cannot be allowed by a Court of law. In view of above facts and circumstances of the case, we find merit in the Rule and as such the same should be made absolute.

4.6. In the result, the Rule is made absolute. The impugned order dated 09.11.2021, being Reference No. 40.02.0000.034.48.173.70.377, issued by respondent No. 2, the Director General of Labour (Additional Secretary), cancelling the registration of petitioner's trade union, namely, Bangladesh Inland Water Transport Authority Employees' Union (Registration No. B-1440) is declared to be without lawful authority and is of no

legal effect. However, the Director General concerned (respondent No. 02) will still be at liberty to file an application before the Labour Court seeking permission for cancellation of registration of petitioner's trade union and, in which case, the petitioner and other contesting parties will be at liberty to take appropriate legal recourse in accordance with law.

Communicate this.

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**(Sheikh Hassan Arif, J)**

I agree.

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**(Md. Bazlur Rahman, J)**