

Present:
Mr. Justice S M Kuddus Zaman
And
Mr. Justice Fahmida Quader

Criminal Miscellaneous Case No.49766 of 2021

Professor Muhammad Yunus @ Professor Dr.
Muhammad Yunus

.... Accused-Petitioner

-Versus-

The State

.... Opposite Party

Mr. Abdullah-Al-Mamun, with
Mr. Khaja Tanvir Ahmed,
Mr. Md. Ibrahim, Advocates

.... For the petitioner

Mr. Md. Khurshid Alam Khan, Advocate

... For the opposite party No.2.

Mr. K. M. Masud Romy, DAG

... For the State

Heard on 11.08.2022 and Judgment on 17.08.2022.

S M Kuddus Zaman, J:

On an application under section 561A of the Code of Criminal Procedure this Rule was issued calling upon the opposite parties to show cause as to why the proceedings of B.L.A. (Criminal) Case No.228 of 2021 under Sections 303(Uma) and 307 of Bangladesh Labor Act, 2006, now pending in the Court of learned third Labor Court, Dhaka, so far it relates to the petitioner shall not be quashed and after hearing the parties, and perusing the record, and the cause shown, if any, make the Rule absolute and/or pass such other

or further order or orders as to this Court may seem fit and proper.

Facts in short are that Mr. S.M. Arifuzzaman, Labour Inspector (General), Department of Inspection Factories and Establishments, Dhaka, lodged a petition of complaint with the Third Labour Court, Dhaka on 20.08.2021 alleging that in course of inspection of GTC (hereinafter referred to as GTC) he detected infringements of the following provisions of Bangladesh Labor Ain, 2006 and Bangladesh Labor Rules, 2015:

- (1) On completion of probationary period jobs of the labors and employees are not made permanent in violation of section 4(7) of বাংলাদেশ শ্রম আইন, ২০০৬;
- (2) Labors and Employee are not granted annual leave with pay or money against earned leave in violation of Section 117 of Bangladesh Labor Ain, 2006, and
- (3) Labor Participatory Fund and labor welfare Fund were not constituted and 5% of the net profit was not deposited in above fund under the Labor Welfare Foundation Law, 2006.

The complaint sent by registered post a letter to the defendants vide Memo No.3982/উঃমঃপঃ/ঢাকা on 01.03.2020 for stopping above violations and taking remedial measures. The defendants sent a letter of compliance on 09.03.2020, but the same was found to be not satisfactory. On the direction of the higher authority he again inspected GTC on 16.08.2021 and

sent another letter on 19.08.2021 to the defendants who again sent a letter of reply but the same was again found to be not satisfactory. The defendants have committed an offence punishable under Section 303(UMO) and 307 of Bangladesh Labor Law, 2006 and Bangladesh Labor (Amendment) Law, 2013.

The learned Judge of the Labor Court took cognizance of above complaint and initiated the instant proceedings.

Being aggrieved by and dissatisfied with above order of the learned Judge of the Labor Court the petitioner moved to this Court and obtained this Rule.

Mr. Abdulla-Al-Mamun, learned counsel appearing for the petitioner submits that there is no date of occurrence of this case and this case is barred by the law of limitation for not having filed within 6 months as provided in Section 314 of Bangladesh Labor Ain, 2006. A clear and plain reading of the petition of complaint does not disclose any offence under the Bangladesh Labor Ain, 2006. Even if all the averments made in the complaint are taken as true in its entirety even then no complicity of the petitioner can be established with alleged infringement of any above provisions of the Bangladesh Labor Ain, 2006.

The learned Advocate further submits that the complainant has stated in the complaint that the GTC gave replies to the letters issued by the complainant, but the complainant did not make a decision on the basis of above

replies nor communicated the same to the petitioner enabling the GTC to prefer an appeal to the Government under Section 3(4) of Bangladesh Labor Ain, 2006. As such, filing of this case is both premature and violative of the provision of Section 3(4) of above Ain.

The learned Advocate further submits that the defendant is a Nobel laureate and an internationally acclaimed personality who had no role in the management of financial or administrative affairs of the GTC. The petitioner has been implicated in this case due to personal rivalry and grudge and in violation of Section 312 of the Bangladesh Labor Law, 2006.

The GTC is a nonprofit organization registered under Section 28 of the Companies Act, 1991 for advancement of telecom facilities in the rural Bangladesh and thereby empowering the poor people. The Directors of the company do not get any profit from the Company. As such, the labor and employees of the company are not legally entitled to get 5% of the net profit in their welfare fund.

The learned Advocate again submits that the GTC works in the telecommunication sector on the basis of its contract with other companies, namely, Polly Phone Services and Nokia sales Services. Since the GTC works on contractual basis its labors and employees are also appointed on contractual basis and although their jobs are not made permanent they are given all facilities and benefits of permanent labors and employees, stated the learned Advocate.

In view of above facts and circumstances and legal position the taking of cognizance of the above false and unfounded complaint by the learned Judge of the Labor Court is an abuse of the process of the Court. All the allegations made in the complaints preposterous and not tenable in law and above still born proceedings shall only cause harassment to the innocent petitioner without bringing any fruitful result. As such, this still born, preposterous and illegal proceeding may be quashed, concluded the learned Advocate.

In support of above submission the learned Advocate refers to the case laws reported in 28 DLR (AD) Page-38, AIR 1989 (SC) Page-2222 and 17 BLD (AD) 1997 Page-44.

On the other hand Mr. Md. Khurshid Alam Khan, learned Counsel appearing for the opposite party No.2 submits that the complainant an inspector of labor in course of inspection detected some violations of the labor law by the GTC which have been stated in the petition of complaint. The complainant issued two letters on 01.03.2020 and 16.08.2021 respectively to the defendants to refrain from continuous violations of the labor laws and implement remedial measures.

The defendants have admitted the facts of above violations and tried to justify those in their replies to the complainant. Accordingly, the complainant has filed this case under Section 319(5) of the Bangladesh Labor Ain, 2006.

The learned advocate further submits that the complaint discloses several infringements of the Labor Ain by the GTC. The questions whether the GTC is exempted from implementation of above labor laws or whether the petitioner as the Chairman of the Board of Directors is responsible for above violations of the labor laws or not are contentious questions of facts which will be determined at trial on consideration of evidence. The learned Advocate lastly submits that the Appellate Division of the Supreme Court of Bangladesh has clearly defined the areas and competence of a court while dealing with a petition under Section 561A of the Code of Criminal Procedure in the case reported in 70 DLR (AD) 2018 and in above yard stick this petition has no substance and all the claims made by the petitioner are defense case which must go through the trial process for determination. In support of above submissions the learned Advocate refers to the case law reported in 70 DLR(AD) 2018 page-1990.

We have considered the submissions of the learned Advocates for respective party and carefully examined the petition of complaint and other materials on record.

As mentioned above Opposite No.2 an Inspector of Labor in course of inspection of the GTC on 09.02.2020 and 16.08.2021 under Section 319 of the Bangladesh Labor Ain, 2006 detected some violations of the labor law and submitted a complaint under Section 219(5) of the above Ain.

In above complaint mention has been made about following violations of the Labor Law by the GTC;

Firstly on completion of probationary period job of the labors and employees are not made permanent.

Secondly, the labors and employees are not granted annual leave with pay or encashment of leave or money in lieu of annual leave and;

Lastly, the company did not constitute Labor Participation Fund and Labor Welfare Fund nor deposited 5% of net profit in above fund under the Sramik Kollan Foundation Ain, 2006.

In view of above specific allegations of violations we are unable to find any substance in the submissions of the learned Advocate for the petitioner that if above complaint is taken in its face value and accepted as true in its entirety even then no prima facie case of violations of above provisions of Bangladesh Labor Ain, 2006 against the GTC is made out.

The learned Advocate for the petitioner mentions about not making of a decision by the complainant on the basis of two replies of the GTC and communicate the same to the GTC under Section 3(2) of above Ain which could enable the GTC to prefer an appeal to the government under Section 3(4) of the above Ain. As such the learned Advocate submits, above proceeding is premature and violative of section 3(4) of above Ain.

As mentioned above the complaint of this case was lodged under section 319(5) of the Bangladesh Labor Ain, 2006 not under section 3 of above Ain. Secondly, it turns out from above replies of the GTC as reproduced at paragraph No.8 of this application under Section 561A of the Code of Criminal Procedure that the GTC has in fact admitted all the allegations made in the complaint. The GTC has tried to justify its position in above replies stating that the GTC was registered under Section 28 of the Companies Act as a non-profit company so the provisions of constitution of a Labor Welfare Fund and deposit of 5% of the net profit to that account are not applicable for the GTC.

As far as the allegation that after completion of probationary period the jobs of the labors are not made permanent is concerned it has been stated that all the employees and labors of the GTC are appointed on contractual basis. So, their jobs cannot be made permanent.

As to not granting of the annual leave with pay or encashment of annual leave it has been stated that after completion of six years contractual service the employees and labors get leave with pay or one month full salary in lieu of leave.

In view of above replies of the GTC it is not understandable as to what a different decision could be made by the complainant excepting a decision to present a

complaint to the concerned labor court and exactly that has been done by the complainant.

The learned Advocate for the petitioner repeatedly submits that the GTC is a nonprofit company and registered under Section 28 of Companies Act. As such GTC is not liable to contribute 5% of the net profit to the Labor Welfare Fund. In support of above submission the learned Advocate produced the Memorandum and Articles and Association of the GTC.

But there is no mention in above Memorandum that the GTC is a nonprofit company. On the contrary Article 71 of above Memorandum shows that GTC may earn profit but the profit shall be utilized for the advancement of the objectives as stated in the above Memorandum. Since the GTC is a profit earning company it is not understandable as to why the company will not contribute a very insignificant part of its net profit for the welfare of its labors. There is nothing in Section 28 of the Companies Act which exempts any Company registered under above provision from making above contribution to the Labor Welfare Fund.

The petitioner is the Chairman of the Board of Directors of the GTC. The learned Advocate for the petitioner submits that the petitioner holds a ceremonial position. He merely presides over the meeting of the Board and he has no role or contribution in the management of the affairs of the company.

Article 33 and 34 of the Memorandum and Articles and Association of the GTC mentions about the constitute of Board of Directors, its powers and functions in following terms;

“33. The affairs of the GTC shall be supervised by a Board of Directors, which shall have the responsibility to determine the direction and scope of the activities of the GTC. The Board of Director shall exercise full management and financial control of the GTC. For the purpose of the Act, the Board of Directors shall be deemed to be the Directors of the GTC.

34. The Board of Directors, subject to the general control and supervision of the General Body, Shall generally pursue and carry out the objects of the GTC as set forth in the Memorandum of Association and the Board Shall be responsible for the management and administration of the affairs of the GTC in accordance with the Articles of Association and the Rules, Regulations and Bye-laws made hereunder.”

It is crystal clear from above Articles that the Board of Directors exercises full managerial and financial control over the GTC and is responsible for the management and administration of the affairs of GTC. As such it cannot be said at this stage of the proceedings that the petitioner has no role in the financial management and administration of the GTC.

The learned Advocate for the petitioner mentions that this case does not have a date of occurrence and the case is

barred by limitation as the same has not been filed within six months as provided in Section 314 of the Bangladesh Labor Ain, 2006.

The alleged violations were first detected by the complainant on 09.02.2020. He issued a letter to the GTC for taking remedial measures. No satisfactory reply having received a second inspection was held on 16.08.2021 and again the same violations were discovered. This Complaint was filed in the concerned labor court on 28.08.2021. As such, it prima facie appears that this case has a date of occurrence and the same has been filed within six months from the date of occurrence as provided in Section 314 of Bangladesh Labor Ain, 2006. Moreover it is well settled that a question of limitation is a mixed question of law and facts which can be determined on consideration of evidence to be adduced at trial.

The facts and circumstances of the cases referred to above by the learned Advocate for the Petitioner are distinguishable from those of the case in hand, as such; above cited case laws have no application in the instant case.

On consideration of above facts and circumstances of the case and materials on record and relevant laws we are unable to find any substance in this petition under section 561A of the Code of Criminal Procedure and the rule issued in this connection is liable to be discharged.

In the result, the Rule is discharged.

Communicate this judgment and order to the Court
concerned at once.

Fahmida Quader, J:

I agree.

Md. Masudur Rahman
Bench Officer