

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 9378 OF 2015

IN THE MATTER OF:

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

-AND-

IN THE MATTER OF:

Monir Ahmed  
.....Petitioner

-Versus-

Chairman, Labour Appellate Tribunal, Dhaka and others  
..... Respondents

Mr. A. K. M. Shamsuddin with  
Mr. M. A. Karim, Advocates  
.....For the petitioner.

Mr. Abdul Wadud Bhuiyan with  
Mr. Syed Mokaddas Ali and  
Mr. Fahad Mahmood Khan, Advocates  
.....For the respondent no. 11.

Heard on 06.01.2016, 13.01.2016,  
18.01.2016 and 22.02.2016.  
Judgment on 01.03.2016.

Present:

Mr. Justice Moyeenul Islam Chowdhury

-And-

Mr. Justice Md. Iqbal Kabir

**MOYEENUL ISLAM CHOWDHURY, J:**

On an application under Article 102 of the Constitution of the People's Republic of Bangladesh filed by the petitioner, a Rule Nisi was issued calling upon the respondents to show cause as to why the order no. 2 dated 23.08.2015 passed by the Chairman of the Labour Appellate Tribunal, Dhaka in Appeal No. 119 of 2015 (Annexure-'F' to the Writ Petition) should not be declared to be without lawful authority and of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The case of the petitioners, as set out in the Writ Petition, in short, is as follows:

The petitioner is the immediate past President of আন্তঃজেলা মালামাল পরিবহন সংস্থা ট্রাক ও কাভার্ডভ্যান মালিক সমিতি (রেজি নং চট্ট-১১০২). While he had been performing functions as the President of the Samity, the respondent nos. 5-8 illegally formed a Convening Committee without complying with the relevant rules and regulations of the Samity. Thereafter the Convening Committee nominated an Election Commission comprising the respondent nos. 8-10 and the respondent no. 8 published an election schedule in "The Daily Azadi" on 04.08.2015 illegally. Anyway, the petitioner filed I. R. Case No. 23 of 2015 before the 2<sup>nd</sup> Labour Court, Chittagong under Section 213 of the Bangladesh Labour Code, 2006 challenging the election schedule published in "The Daily Azadi" on 04.08.2015. During the pendency of the I. R. Case No. 23 of 2015, the petitioner as first party filed an application in the Labour Court under Section 216 (1)(Chha) of the Bangladesh Labour Code, 2006 praying for an order of ad-interim injunction restraining the second party from holding the election scheduled to be held on 22.08.2015 and the second party nos. 1-8 contested the application by filing a written objection in the Labour Court. After hearing both

the parties, the Chairman of the 2<sup>nd</sup> Labour Court, Chittagong by his order no. 5 dated 19.08.2015 cancelled the election schedule dated 04.08.2015 and directed holding election of the Samity by 11.10.2015 under the supervision of the Registrar of Trade Unions, Chittagong. As against the order no. 5 dated 19.08.2015 passed by the 2<sup>nd</sup> Labour Court of Chittagong, the second party no. 8 preferred Appeal No. 119 of 2015 before the Labour Appellate Tribunal, Dhaka. The learned Judge of the Labour Appellate Tribunal, without hearing the petitioner, disposed of the appeal by the impugned order dated 23.08.2015 staying the operation of the order dated 19.08.2015 passed by the 2<sup>nd</sup> Labour Court, Chittagong and directed the Joint Director of Labour (Registrar of Trade Unions), Chittagong to hold election of the Samity as per law within 7(seven) days from the date of receipt of a copy of the order. Thereafter the respondent no. 8 published a notice in “The Daily Azadi” on 25.08.2015 for holding election of the Samity. On the self-same date (25.08.2015), a perfunctory election of the Samity was held without the presence of most of the voters and a committee was shown to be elected. However, as the order dated 19.08.2015 passed by the 2<sup>nd</sup> Labour Court of Chittagong is an interim order, no appeal lies before the Labour Appellate Tribunal of Dhaka thereagainst and as such the Appeal No. 119 of 2015 before the Labour Appellate Tribunal of Dhaka was misconceived. This being the position, the impugned order dated 23.08.2015 passed by the Labour Appellate Tribunal of Dhaka is without lawful authority and of no legal effect.

In the Supplementary Affidavit dated 16.09.2015 filed on behalf of the petitioner, it has been stated that the election of the Samity was held on

25.08.2015 in flagrant violation of the provisions of Clause 25 of the Constitution of the Samity.

The case of the respondent no. 11, as set out in the Affidavit-in-Opposition, in brief, runs as follows:

The petitioner is not a member of আন্তঃজেলা মালামাল পরিবহন সংস্থা ট্রাক ও কাভার্ডভ্যান মালিক সমিতি (রেজি নং চট্ট-১১০২) and he has no locus standi to file the instant Writ Petition as well as the I. R. Case No. 23 of 2015. However, as per the instruction of the petitioner as former President of the Samity, the Secretary of the Samity convened a meeting of the Executive Committee to be held on 21.05.2015 at the office of the Samity and the petitioner presided over that meeting. Thereafter in the meeting of the Convening Committee held on 26.05.2015, it was decided to form an Election Commission to hold the election of the Samity. By Memo No. আমাপসট্রাকমাস/2015/5/1 dated 26.05.2015, the Convener of the Convening Committee conveyed the decision of the Samity dated 26.05.2015 to the Joint Director of Labour and Registrar of Trade Unions, Chittagong and other authorities. On 28.05.2015, the Convening Committee formed a 3-member Election Commission to hold the election of the Samity in a fair and impartial manner. Subsequently on 03.08.2015, the Election Commission declared the election schedule of the Samity fixing 22.08.2015 as the date of holding election and the election schedule of the Samity was published in the local daily, that is to say, "The Daily Azadi" on 04.08.2015. However, in the meeting of the Election Commission of the Samity held on 12.08.2015, the filing of the I. R. Case No. 23 of 2015 in the 2<sup>nd</sup> Labour Court of Chittagong was discussed wherein the Chief Election Commissioner and others were made second parties. In the meantime, the 2<sup>nd</sup> Labour Court of Chittagong

passed the order dated 19.08.2015 cancelling the election schedule of the Samity. As against the order dated 19.08.2015, Appeal No. 119 of 2015 was preferred before the Labour Appellate Tribunal of Dhaka. The Labour Appellate Tribunal, however, by the impugned order dated 23.08.2015 stayed the operation of the order dated 19.08.2015 passed by the Labour Court and directed holding of the election within 7(seven) days from the date of receipt of a copy of the order dated 23.08.2015. Pursuant to the impugned order dated 23.08.2015 passed by the Labour Appellate Tribunal, Dhaka, the election of the Samity was held duly on 25.08.2015. On the self-same date (25.08.2015), the Election Commission declared the election result of the Samity and one Latif Ahmed was elected as President, Sree Anil Chandra Paul was elected as Executive President and Chowdhury Zafar Ahmed was elected as General Secretary of the Samity. On 26.08.2015, the Joint Director of Labour received the result sheet of the newly-elected Executive Committee formed in pursuance of the election dated 25.08.2015. The impugned order dated 23.08.2015 was passed by the Labour Appellate Tribunal in accordance with law and that being so, no exception can be taken thereto.

In the Affidavit-in-Reply dated 01.03.2016 filed on behalf of the petitioner, it has been mentioned that the petitioner is the immediate past President of the Samity and he is a member of the Samity and his membership has never been cancelled. It is manifestly clear from the written objection filed by the respondent nos. 4-11 in I. R. Case No. 23 of 2015 that the petitioner as the President of the Samity convened a meeting of the Executive Committee on 21.05.2016 where 16 members including the petitioner out of 19 members were present and therefore it is self-contradictory to claim that the petitioner is not a

member of the Samity. Neither in the Labour Court nor in the Labour Appellate Tribunal, the respondent no. 11 raised any objection claiming that the petitioner has no locus standi in filing the I. R. Case No. 23 of 2015 as he is not a member of the Samity or his membership has been cancelled for non-payment of subscription fees of the Samity. Besides, no document has been annexed to the Affidavit-in-Opposition to substantiate the claim that the membership of the petitioner has been cancelled because of non-payment of subscription fees of the Samity.

At the outset, Mr. A. K. M. Shamsuddin, learned Advocate appearing on behalf of the petitioner, submits that the Writ Petition is maintainable under Article 102 of the Constitution in view of the admitted fact that the petitioner is the immediate past President of the Samity and the assertion on behalf of the respondent no. 11 that the petitioner is not a member of the Samity is wholly devoid of substance and neither before the 2<sup>nd</sup> Labour Court of Chittagong nor before the Labour Appellate Tribunal of Dhaka, it was ever contended on behalf of any of the respondents that the petitioner was not a member of the Samity at the relevant point of time and as a member of the Samity, the petitioner paid subscription fees till July, 2015 and given this scenario, it is palpably clear that the claim of the respondent no. 11 that the Writ Petition is not maintainable has no legs to stand upon.

Mr. A. K. M. Shamsuddin next submits that the order no. 5 dated 19.08.2015 passed by the 2<sup>nd</sup> Labour Court of Chittagong in the I. R. Case No. 23 of 2015 is an interim order and not a final order and as it is an interim order, no appeal lies thereagainst before the Labour Appellate Tribunal of Dhaka and the Appeal No. 119 of 2015 preferred by the second party of the I. R. Case No.

23 of 2015 was misconceived in law and the Tribunal had no jurisdiction to pass the impugned order dated 23.08.2015 in Appeal No. 119 of 2015. In this regard, Mr. A. K. M. Shamsuddin relies upon the unreported decision dated 13.02.2014 passed by the High Court Division in Writ Petition No. 12300 of 2012 in the case of Dhaka Electric Supply Company Limited (DESCO)...Vs...Chairman, Labour Appellate Tribunal, Dhaka and another and the decision dated 29.05.2014 passed by the High Court Division in Writ Petition No. 15635 of 2012 analogously heard with the Writ Petition Nos. 15636 of 2012, 15637 of 2012, 15638 of 2012 and 15639 of 2012 in the case of Md. Baizid M.L.S.S., Head Office and others...Vs...Bangladesh Forest Industries Development Corporation and others.

Per contra, Mr. Abdul Wadud Bhuiyan, learned Advocate appearing on behalf of the respondent no. 11, submits that the Writ Petition is not maintainable in that the petitioner is no longer a member of the Samity as he defaulted in paying subscription fees of the Samity and as a defaulter, he can not file any Writ Petition under Article 102 of the Constitution and over and above, he is not personally aggrieved to invoke the writ jurisdiction of the High Court Division. In this respect, he refers to the decisions in the cases of Chairman, Civil Aviation Authority of Bangladesh...Vs...Kazi Abdur Rouf and others, 46 DLR (AD) 145; Bangladesh Sangbadpatra Parishad (BSP) represented by its Secretary General Anwarul Islam....Vs...The Government of the People's Republic of Bangladesh represented by its Secretary, Ministry of Information and four others, 43 DLR (AD) 126 and S. N. Goswami, Advocate and another...Vs...Government of the People's Republic of Bangladesh and others, 55 DLR (HCD) 332.

Mr. Abdul Wadud Bhuiyan further submits that the impugned order dated 23.08.2015 passed by the Labour Appellate Tribunal of Dhaka is sustainable in law inasmuch as the order no. 5 dated 19.08.2015 passed by the 2<sup>nd</sup> Labour Court, Chittagong in the I. R. Case No. 23 of 2015 is a final order and not an interim order and since the order dated 19.08.2015 is a final order, the Appeal No. 119 of 2015 preferred before the Labour Appellate Tribunal of Dhaka was very much competent. On this question, he adverts to the decisions in the cases of Harish Chandra Acharja...Vs...The Nawab Bahadur of Murshidabad, 15 CWN (PC) 879 and Mahendra Pratap Kapur...Vs...Burmah Shell Oil Storage and Distributing Company Ltd. and another, AIR 1973 Allahabad 109.

We have heard the submissions of the learned Advocate Mr. A. K. M. Shamsuddin and the counter-submissions of the learned Advocate Mr. Abdul Wadud Bhuiyan and perused the Writ Petition, Supplementary Affidavit, Affidavit-in-Opposition and Affidavit-in-Reply and relevant Annexures annexed thereto.

It has been clearly, unmistakably, categorically and unequivocally stated in the Affidavit-in-Opposition filed by the respondent no. 11 that the petitioner is the immediate past President of আন্তঃজেলা মালামাল পরিবহন সংস্থা ট্রাক ও কাভার্ডভ্যান মালিক সমিতি (রেজি নং চট্ট-১১০২). The second party in the I. R. Case No. 23 of 2015 did not raise any plea before the 2<sup>nd</sup> Labour Court of Chittagong that the petitioner is no longer a member of the Samity. Besides, this question was also not raised before the Labour Appellate Tribunal of Dhaka. It transpires that for the first time, the alleged non-membership of the petitioner has been raised before us in the instant Writ Petition. However, from the written objection filed by the present respondent nos. 4-11 in the I. R. Case No. 23 of 2015 as



evidenced by Annexure-‘C-1’ to the Writ Petition, it is ex-facie clear that the petitioner as President of the Samity convened a meeting of the Executive Committee on 21.05.2015 where 16 members including the petitioner out of 19 members were present. Besides, it appears from Annexure-‘I’ series annexed to the Affidavit-in-Reply that the petitioner paid subscription fees up to the month of July, 2015. In this connection, it may be noted that no document has been produced on behalf of the respondent no. 11 to show that the membership of the petitioner was cancelled at any point of time. Mere making of a statement in the Affidavit-in-Opposition that the petitioner is no longer a member of the Samity will not suffice. The respondent no. 11 must substantiate this claim of non-membership of the petitioner; but we find that he has signally failed to prove the same. This being the panorama, we are led to hold that the petitioner has filed the Writ Petition as a member and ex-President of the Samity. The decisions on which Mr. Abdul Wadud Bhuiyan has relied upon in the matter of incompetency of the Writ Petition arose out of all Public Interest Litigations. Indisputably the instant Writ Petition has not been brought pro bono publico. As the petitioner has felt aggrieved by the impugned order dated 23.08.2015 passed by the Labour Appellate Tribunal of Dhaka in Appeal No. 119 of 2015, he has come up with the instant Writ Petition. So we find that the Writ Petition is maintainable under Article 102 of the Constitution. Consequently the submission of Mr. Abdul Wadud Bhuiyan that the Writ Petition is incompetent stands discarded.

The next contentious issue between the parties is that whether the order no. 5 dated 19.08.2015 passed by the 2<sup>nd</sup> Labour Court of Chittagong in the I. R. Case No. 23 of 2015 is a final or an interim order. In this connection, Section 217 of the Bangladesh Labour Code, 2006 may be quoted below verbatim:

“217. Appeal against judgment etc. of Labour Court.— Subject to this Code, any party aggrieved by an award, decision or judgment of the Labour Court, may prefer an appeal to the Labour Appellate Tribunal within sixty days of the delivery thereof and the decision of the Tribunal in such appeal shall be final.”

From the provisions of Section 217 of the Bangladesh Labour Code, it seems that any party aggrieved by any award, decision or judgment of the Labour Court may prefer an appeal before the Labour Appellate Tribunal within the given time-frame of sixty days subject to the provisions of the Code. Now a pertinent question arises: is the order no. 5 dated 19.08.2015 passed by the 2<sup>nd</sup> Labour Court of Chittagong in the I. R. Case No. 23 of 2015 an award or a decision or a judgment of that Court? The order no. 5 dated 19.08.2015 passed by the 2<sup>nd</sup> Labour Court of Chittagong is not an award or a judgment of that Court on the face of it. Whether or not the order no. 5 dated 19.08.2015 comes within the purview of “decision” as contemplated by Section 217 of the Bangladesh Labour Code is the moot point. The definition of “decision” as given in Section 2(76) of the Bangladesh Labour Code contemplates that “decision” in relation to a Labour Court, means any order or decision of that Court, other than an award, finally disposing of a case. By the order no. 5 dated 19.08.2015 passed in the I. R. Case No. 23 of 2015, the 2<sup>nd</sup> Labour Court of Chittagong, it seems, did not finally dispose of that case. The case is still pending before the 2<sup>nd</sup> Labour Court of Chittagong and the last date, that is to say, 11.10.2015 was fixed for filing written statement by the concerned second

parties. According to us, Mr. A. K. M. Shamsuddin has rightly adverted to 2(two) unreported decisions in the cases of Dhaka Electric Supply Company Limited (DESCO)...Vs...Chairman, Labour Appellate Tribunal, Dhaka and another in Writ Petition No. 12300 of 2012 and Md. Baizid M.L.S.S., Head Office and others...Vs...Bangladesh Forest Industries Development Corporation and others in Writ Petition No. 15635 of 2012 analogously heard with Writ Petition Nos. 15636 of 2012, 15637 of 2012, 15638 of 2012 and 15639 of 2012 in this regard. From a bare perusal of those 2(two) unreported decisions, it appears to us that an interim order passed by any Labour Court is not subject to appeal before the Labour Appellate Tribunal under Section 217 of the Bangladesh Labour Code, 2006. The decisions referred to by Mr. Abdul Wadud Bhuiyan in this respect in the cases of Harish Chandra Acharja...Vs...The Nawab Bahadur of Murshidabad, 15 CWN (PC) 879 and Mahendra Pratap Kapur...Vs...Burmah Shell Oil Storage and Distributing Company Ltd. and another, AIR 1973 Allahabad 109 are not ex-facie applicable to the facts and circumstances of the present case. What we are driving at boils down to this: under Section 217 of the Bangladesh Labour Code, 2006, the Labour Appellate Tribunal can not entertain any appeal against any interim order passed by any Labour Court.

The upshot of the above discussion is that the Writ Petition is maintainable in the High Court Division under Article 102 of the Constitution and the order no. 5 dated 19.08.2015 passed by the 2<sup>nd</sup> Labour Court of Chittagong in the I. R. Case No. 23 of 2015 is an interim order and not a final order as contended by Mr. Abdul Wadud Bhuiyan. As the interim order dated 19.08.2015 passed by the 2<sup>nd</sup> Labour Court of Chittagong is not an appealable

order, the Labour Appellate Tribunal of Dhaka exceeded its jurisdiction in entertaining the Appeal No. 119 of 2015 and passing the impugned order dated 23.08.2015.

Both Mr. A. K. M. Shamsuddin and Mr. Abdul Wadud Bhuiyan have made a catena of submissions touching upon the merit of the case. As the Labour Appellate Tribunal's impugned order dated 23.08.2015 is coram non iudice, we refrain from making any reference to and observation on those submissions.

In view of what have been stated above and regard being had to the facts and circumstances of the case, we find merit in the Rule. The Rule, therefore, succeeds.

Accordingly, the Rule is made absolute without any order as to costs. The order no. 2 dated 23.08.2015 passed by the Chairman of the Labour Appellate Tribunal, Dhaka in the Appeal No. 119 of 2015 as evidenced by Annexure-'F' to the Writ Petition is declared to be without lawful authority and of no legal effect.

The 2<sup>nd</sup> Labour Court of Chittagong is, however, directed to proceed with the hearing of the I. R. Case No. 23 of 2015 in accordance with law.

Let a copy of this judgment be immediately transmitted to the Chairman, 2<sup>nd</sup> Labour Court of Chittagong and the Chairman, Labour Appellate Tribunal of Dhaka each for information and necessary guidance.

**MD. IQBAL KABIR, J:**

I agree.