

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

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Writ Petition No. 2615 of 2020.
In the matter of:

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

-And-

In the matter of:

Banglalink Digital Communications Ltd.
..... Petitioner.

Vs.

First Labour Court, Dhaka and others.
..... Respondents.

Mr. M. Yousuf Ali, Advocate
..... For the petitioner.

Mr. Mr. Bipul Bagmar, D.A.G with
Mr. Mohammad Nazrul Islam
Khandaker, A.A.G with
Ma. Tahmina Polly, A.A.G with
Mr. Md. Delower Hossain, A.A.G with
Mr. Md. Salim Azad, A.A.G
..... For the Government.

The 26th February, 2020.

Present:

Mr. Justice Sheikh Hassan Arif

And

Mr. Justice Md. Mahmud Hassan Talukder

SHEIKH HASSAN ARIEF, J:

Banglalink Digital Communications Ltd., as petitioner, has filed this application under Article 102 of the Constitution of the People's Republic of Bangladesh calling in question the judgment dated 23.01.2020 passed by the First Labour Court, Dhaka in B.L.A (Appeal) Case No. 609 of 2019 (Annexure-L).



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Back ground facts leading to the filing of this application, are that some employees of the petitioner-company formed a trade union under the name "Sanglalink Employees Union" and they filed an application before the Registrar of Trade Unions through their President and (Secretary) Upon receipt of such application for registration, the concerned Director of Labour Directorate conducted an enquiry and made various queries to the trade union concerned. The executives of the Trade Union accordingly replied those queries. Thereupon, the said Director of Labour Directorate, vide order dated 06.04.2016 (Annexure-F), refused to grant such registration and, accordingly, rejected their application. Being aggrieved by such rejection order, the proposed trade union filed B.L.A (Appeal) Case No.609 of 2019 before the Labour Court, Dhaka in view of the provisions under sub-section (4) of Section 179 of the Bangladesh Labour Act, 2006. The First Labour Court, Dhaka then, after hearing the parties, allowed the said appeal vide impugned judgment dated 23.01.2020. The employer petitioner then moved this Court by this application under Article 102 of the Constitution of the People's Republic of Bangladesh.

Mr. A.M. Aminuddin, learned advocate appearing for the petitioner-company, submits that the Labour Court concerned rejected various conclusions reached by the Labour Directorate, particularly as regards the similarity of the signatures of some of the members of the said proposed trade union and the issue whether the top executives of the said proposed trade union were at all workers. He submits that

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No. 2019 of 3120 (Order dated 06.04.2016)

When the Labour Directorate, by making reference to various documents, held that top executives of the said proposed trade union were not workers within the meaning of Section-2(65) of the Labour Act, 2008 on the ground that they were holding managerial positions and performing managerial jobs, the Labour Court rejected such conclusion without relying on any contrary evidences or record or without calling for any other evidence. By referring to the impugned judgment, Mrs. Aminuddin, learned advocate further argues that the Labour Court concerned has merely ruled out almost each and every conclusion reached by the Labour Directorate without making reference to any contrary evidence. He submits that the company was required to be made party in the said BLA case as it was the company which would ultimately be the sufferer of any illegality being committed in granting registration in favour of the said trade union. Accordingly, he submits that the issues raised by the petitioner-company as well as by the Labour Court concerned should be considered again by the Labour Court and as such it should be directed to add the petitioner company as party in the appeal concerned so that contrary evidences may be put forward before the Labour Court.

It appears from the impugned judgment dated 23.01.2020 that in fact the Labour Court concerned has ruled out each and every conclusion of the Labour Directorate without making any reference to any contrary evidence on record. Since the proposed trade union preferred an appeal before the Labour Court concerned, being the

W.P. No. 2613 of 2020 (Order dated 26.02.2020)

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first appellate authority, it was incumbent upon the Labour Court to do reassessment of evidences on record and/or to call for any additional evidences. Admittedly, since the top executives and other members of the proposed trade union are employees of the petitioner-company, we are of the view that without the petitioner-company being made a party in the said appeal, such contrary evidences may not be available before the Labour Court. This being so, we are of the view that this case should be remanded back to the Labour Court concerned to rehear the appeal in line with our above observation. We are also of the view that the Labour Court should add this petitioner as respondent in the said appeal so that contrary evidences, if any, to be produced by this petitioner may be assessed and/or reassessed by the Labour Court as the first appellate authority.

Besides, the points raised by the parties in this application should not be determined by this Court in this particular case after issuance of Rule as because such issuance of Rule will make in-ordinate delay in resolving the said issues given that, under writ jurisdiction, we cannot do assessment or reassessment of evidences. In this regard, we have considered the relevant provisions of the Labour Act, 2008 and have not found any restrictions in making the petitioner a party in the said appeal.

In view of above, the impugned order dated 23.01.2020 is hereby set aside. The case, namely, BLA (Appeal) Case No. 609 of 2019 is

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remanded back to the Labour Court concerned for rehearing of the said appeal upon adding this writ petitioner as a respondent in the said appeal. Labour Court concerned is directed to add the petitioner as respondent in the said appeal and dispose of the same upon assessment/reassessment of evidence on record as well as to be adduced by the parties upon giving them ample opportunity of cross-examining any witnesses they may produce. Labour Court is directed to dispose of the said appeal within a period of 60(sixty) days from receipt of the copy of this order.

With the above observation and directions, this application under Article 102 of the Constitution of the People's Republic of Bangladesh is disposed of.

Communicate (1) is.

S.H. Arif.

(Sheikh Hassan Arif, J)

I agree.

Md. Mahmud Hassan Talukder

(Md. Mahmud Hassan Talukder, J)

প্রত্যাযুক্ত অবিকল প্রতিলিপি

19-07-2020
সিদ্ধান্তী বেসিক প্রদান
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