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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 8th October, 2021
+ **W.P.(C) 12072/2019 & CM APPLs. 49462/2019, 25815/2021**
KBT PLASTICS PVT LTD & ANR.Petitioners
Through: Mr. Rachit Batra, Advocate
(M: 9818383584)
versus
RAJENDER SINGH Respondent
Through: Mr. Sumit Kumar, Advocate with
Respondent in person (M:
9810603901)
Mr. Rabindra Nanda, Oath
Commissioner (M: 9971386901)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed by the Managements of Petitioner Nos.1 & 2 challenging the Award dated 07th September, 2019 passed by the Labour Court-V, Rouse Avenue Court Complex (*hereinafter* “Labour Court”) in *ID No.2170/17* titled *Sh. Rajender Singh v. M/s. KBT Pvt. Ltd. & Anr.*
3. The background of the case is that the Respondent/Workman was employed with the Petitioners/Managements as a field worker at a monthly salary of Rs.10,000/-. The dispute arises out of the alleged illegal termination of the Workman’s services by the Management on 22nd July, 2016. Thereafter, on 22nd July, 2017, the Workman filed his claim petition before the Labour Court. The case of the Workman is that he joined services with the Management on 1st April, 2007, after which the Management failed

to provide benefits such as appointment letter, weekly and yearly leave, overtime allowance, bonus etc. When the aforementioned benefits were demanded by the Workman, his services were illegally terminated on 22nd July, 2016 without any notice and payment of earned wages for the period between 1st May, 2016 to 21st July, 2016. It was also averred by the Workman that the Managements' firms are being run by the same owners and the Workman was forced to work for both the firms.

4. On the other hand, the case of the Management is that the Workman was employed with the Petitioner No.1 on 1st December, 2010 and has been absconding from his duties from 31st July, 2012 onwards, without any notice. It is submitted that the Workman again approached the Management to join his duties and was reemployed on 11th November, 2014. However, the Workman misappropriated an amount of Rs.20,000/- belonging to the Petitioner No.1 and thereafter, absconded from service yet again in July, 2016. Thus, it is the stand of the Management that the Workman's services were terminated by the Management and the Workman left the job of his own accord.

5. Vide impugned Award dated 07th September, 2019, the Labour Court has, after holding that the Respondent/Workman was an employee of both the Petitioners/Managements and that the Petitioner No.2 had intentionally concealed true facts from the Court, directed Petitioner No.1 to reinstate the Workman with back wages equivalent to 1.5 times of the wages payable to a skilled worker. Further, the Labour Court has awarded a sum of Rs.5 lakhs as compensation to the Workman for harassment, illegal termination and legal costs. The operative portion of the impugned Award dated 7th September, 2019 is extracted below:

““ISSUE No.2 : RELIEF

46. *In view of the discussion made while deciding issue no.1 whereby the court has given a finding to the effect that the claimant was an employee of both the managements but the management no.2. intentionally has not come with clean hands before the court in this respect by denying the relationship, it is very much clear that the claimant was provided salary by the management no.1 only but being made to work with both the managements and as such he is entitled to salary from both the managements and in these circumstances, the court deems it fit to hold that the claimant is entitled to a salary as applicable to a skilled worker plus further half salary as applicable to a skilled worker i.e. one and a half time salary of a skilled worker per month, on account of being employed by two managements at the same time.*

47. *Hence, the claimant is held entitled to the relief of reinstatement with full backwages at the rate of minimum wages as applicable in the case of a skilled worker from time to time, at the rate of one and a half time, if the actual wages are lower than that and in case the actual wages are higher than that, at the rate of actual wages, along with continuity of services and all other consequential benefits besides a compensation of Rs.5 lacs towards harassment, illegal termination and legal cost.*

48. *In case the management fails to give effect to the award within 30 days from the date of publication of the same, claimant is also entitled to simple interest @ 9% p.a. on the amount payable to him till the date the same is actually paid.*

49. *Reference answered accordingly.”*

6. Aggrieved by the impugned Award dated 7th September, 2019, the

Petitioners/Managements preferred the present petition challenging the same. In the course of the proceedings before this Court, notice was issued vide order dated 18th November, 2019. Thereafter, an application seeking litigation expenses was moved by the Workman and the same was listed for the first time on 12th August, 2021. Vide order dated 29th September, 2021, Id. Counsel for the Petitioner had brought to the notice of the Court that the signature of the Deponent i.e., the Workman, in the counter affidavit and the affidavit supporting the application for litigation expenses do not match. Thus, the Workman was directed to appear in person.

7. On the next date i.e., 1st October, 2021, the Workman appeared in person and reaffirmed that the signatures in the said affidavit did not belong to him. It was also noted that the Id. Counsel appearing for the Workman had falsely identified the Deponent having signed the affidavit, as the affidavit was not signed in his presence. Thus, this Court observed that the practice of filing affidavits without actual and proper signatures of the deponent and the Id. Counsels identifying the same in spite of the Deponent not having signed in their presence, as also the Oath Commissioner attesting the affidavit without the Deponent being present, ought to be deprecated. The said order reads as under:

“2. The Respondent has appeared in person today, and submits that the signatures in the affidavit, supporting the application for litigation expenses, are not his signatures. He submits that at the time when the application was to be signed, he had hurt his right hand and thus, had asked his friend Mr. Gurpreet Singh to sign on his behalf.

3. The Id. Counsel for the Respondent, Mr. Sumit Kumar, has also identified the deponent's signature without considering as to who had

signed the affidavit. It is also not clear as to who appeared before the Oath Commissioner.

4. One Mr. Aman Yadav, the court clerk of the Respondent's counsel states that he is an individual clerk who works for various lawyers. He submits that the Aadhar card number of the Respondent was given to the Oath Commissioner.

5. From the above facts, it is clear that the deponent of the affidavit, in fact, did not sign the affidavit in support of the application seeking litigation expenses, at all. The ld. Counsel appearing for the Respondent has also misleadingly identified the deponent having signed the affidavit, as the affidavit was not signed in his presence. When confronted with the same, he apologises to the Court.

6. The practice of filing affidavits without actual/proper signatures of the deponent, the ld. counsel identifying the same in spite of the deponent not having signed in front of him, and the Oath Commissioner attesting the affidavit without the deponent being present, ought to be deprecated.

7. Repeatedly, Courts have observed that such practices are being followed by counsels, court clerks, as also litigants. This would clearly be contrary to the provisions of the Advocates Act 1961, Oaths Act, 1969, and various other statutes.

8. Accordingly, let the original application for litigation expenses, along with the original affidavit, which has been attested by the Oath Commissioner, be handed over to the Court Master, and the same be taken on record."

8. Pursuant to the order dated 1st October, 2021, the original application for litigation expenses was handed over to the Court Master along with the supporting affidavit, and a fresh application was also filed by the ld. Counsel

for the Workman.

9. On the last date i.e., 7th October, 2021, the Oath Commissioner, Mr. Rabindra Nanda, had appeared before this Court and produced his register containing the attestation records of 4th October, 2021. After a perusal of the said register, the Oath Commissioner was directed to produce the register with the attestation records of 5th August, 2021 i.e., the date on which the affidavit in question was signed and verified.

10. Further to the previous order dated 7th October, 2021, the Oath Commissioner, has appeared and has shown to the Court the original register maintained by him for 5th August, 2021. A perusal of the same shows that the signature in the Oath Commissioner's register does not match with the signature in the affidavit supporting the application for litigation expenses filed by the Respondent/Workman. On being questioned as to the process followed by the Oath Commissioner, he states that since the affidavit was identified by Mr. Sumit Kumar, Id. Counsel for the Deponent, he merely took the Aadhaar Number of the Deponent, and took some signatures in the register. He categorically informs the Court that the Deponent was not present on 5th August, 2021. He also states that the signatures on the register on 5th August, 2021 was made by the Deponent when he came on 4th October, 2021 to sign the fresh application seeking litigation expenses and the supporting affidavit. He submits that the court clerk of the Respondent's Counsel, Mr. Aman Yadav got four affidavits attested on the same date i.e., 5th August 2021, and all four of the deponents were not present. The Oath Commissioner apologises for the events that have transpired.

11. It is clear from the above facts so also the facts noted in the previous orders that the application which was originally filed before the Court

seeking litigation expenses was not filed with the deponent's signatures. The signatures on the same were of some other person. Mr. Sumit Kumar, Id. Counsel for the Respondent/Workman falsely identified the Deponent as it is now evident and admitted by the Deponent, Mr. Rajender Singh, that he did not sign the affidavit dated 5th August, 2021. Thus, the first instance where a mistake was committed by the Id. Counsel for the Deponent was when he identified the signature on the affidavit as belonging to the Deponent, despite it being in his knowledge that the affidavit was signed by someone else. It is now admitted by Mr. Sumit Kumar, Id. Counsel that he had wrongly identified the signature of the Deponent and he also tenders his apology in this regard. The Oath Commissioner has attested the affidavit on the basis of the identification done by the Id. Counsel for the Respondent/Deponent. The Oath Commissioner has also now permitted the deponent to append his signature in the register on 5th August, 2021 at a later in point of time, when the Deponent had appeared on 4th October, 2021.

12. This Court has noticed that the entire manner in which the affidavit has been filed before the Court, is contrary to the applicable provisions of law. The counsel, court clerk, the Oath Commissioner and the Deponent have collectively filed a forged affidavit before this Court. The sanctity and integrity of affidavits would be completely destroyed if such procedure is permitted to be followed.

13. In this regard, the observations of the Ld. Single Judge of the Karnataka High Court in ***V.R. Kamath v. Divisional Controller, Karnataka State Road Transport Corporation & Ors. [AIR 1997 Kant 275]*** are found to be relevant in the present case. The said observations read as under:

“3. Notaries and Oath Commissioners are required to follow the Rules carefully in administering oath/affirmation. The act should not be done in a casual or incomplete manner giving room for an impression that the affidavit has been attested in the absence of the deponent or that the affidavit has been attested on a day other than the day on which it was signed by the deponent or that the transaction has not been entered in the Oath Register. The possibility of a mix up in regard to the persons signing the affidavits or possibility of an oath or affirmation being administered to a wrong person, is a matter of grave concern. The Rules have been framed precisely to safeguard against such contingencies and to ensure that such mistakes do not occur. On account of the Rules not being followed sincerely, such mistakes and mix-ups continue to occur.

4. It is unfortunate that the importance of affidavits and the seriousness attached to due and proper execution thereof is constantly ignored or missed by the persons concerned. An affidavit is not a mere typed format, to be signed and attested as an empty formality. An affidavit is a solemn and voluntary declaration or statement of facts in writing, relating to matters in question or at issue, and sworn or affirmed and signed by the deponent before a person or officer duly authorised to administer such oath or affirmation. An affidavit constitutes evidence, where so provided or agreed. Ordinarily evidence has to be recorded viva voce and matters should be decided on such oral evidence. But in several types of cases, in particular summary proceedings, facts are permitted to be proved by affidavits; and affidavits are treated as a substitute for oral evidence. The Courts are required to determine disputes or causes and make orders or give judgments, acting

on such affidavits. In the absence of due 'affirmation' or 'swearing', an affidavit has no value and in fact is not valid.

4.1. Order 19, Rule 1 of C.P.C. provides that any Court may order that particular fact may be proved by affidavit. Order 37A, Rule 3 of CPC provides that every interlocutory application shall be supported by an affidavit. Chapter X, Rule 2 of the High Court of Karnataka Rules, 1959 provides that every interlocutory application shall be supported by an affidavit.

4.2. Writ Petitions being summary proceedings, are decided on the basis of affidavits. Rule 3 of the Writ Proceedings Rules, 1977 provides that every petition under Articles 226 and 227 of the Constitution of India shall be supported by an affidavit in the prescribed form verifying the facts set out in the petition, specifically indicating which facts are verified from knowledge of the deponent and which facts from information and his belief and also contain a statement that the copies of documents produced are true copies. Rules 5 and 21 of the said Writ Rules provide that objections to a writ petition and a reply to objections in a writ petition shall also be supported by affidavits. Unless the subject-matter involves complicated questions of facts requiring oral evidence, the writ petitions are decided on the averments contained in the writ petition and the statement of objections, truth of which is affirmed in the affidavits verifying such writ petition and statement of objections.

4.3. Thus, when an affidavit is tendered in Court, it is intended to be acted upon as evidence in such proceedings. Evidence, unless given on oath or solemn affirmation, is of no value. Normally

administering oath before recording evidence is the function of persons authorised to receive evidence. This important and solemn function is assigned and entrusted to Notaries, Oath Commissioners and Designated Officers, under Code of Civil Procedure, Code of Criminal Procedure and High Court Rules. Persons entrusted with the duty and power of administering oath or affirmation should always bear in mind, the solemnity and sanctity attached to the act of administering oath/affirmation; they should not forget that affidavits are intended to be acted upon as evidence for rendering decisions determining rights and obligations of parties. Decisions on Writ Petition, Civil Petitions, Interlocutory Petitions wholly depend on averments affirmed by affidavit, replacing the requirement of oral evidence. Administering oath/affirmation to a wrong deponent is nothing but permitting impersonation of a witness giving evidence. Making an endorsement relating to administration of oath or affirmation in the absence of a party, is similar to recording evidence in the absence of the witness. Such things should not happen; these things cannot be permitted to happen; and that these matters are required to be reminded to the persons concerned, is an indication of the sad state of affairs.”

14. The Delhi High Court has also issued ‘Instructions to an Oath Commissioner’, vide Circular No.332/Genl-II/DHC dated 14th September, 2001, further substituted by substituted vide Circular No.148/Genl/DHC dated 21st February, 2014. The said Circular dated 14th September, 2001 stipulates as under:

“1. An Oath Commissioner is given a commission under the provisions of Section 139 of the Code of

Civil Procedure, 1908, Section 297 of the Code of Criminal Procedure, 1973 and Section 3 of the Oaths Act, 1969 for attesting affidavits for judicial proceedings only. An Oath Commissioner cannot attest an affidavit which is intended to be filed for administrative purposes or before an executive authority.

2. An Oath Commissioner is appointed for a particular period and for a particular Court Complex. He/she is expected to be available in that particular Court Complex during the period of the commission.

3. Oath Commissioners will mutually decide, in consultation with the Bar Association of the Court Complex to which they have been appointed, the place or places where they (or any one of them) will be available for attesting an affidavit.

4. The Bar Association of the concerned Court Complex shall ensure that adequate space is available to an Oath Commissioner for attesting affidavits between 10.00 am and 5.00 pm on every working day.

5. At least one Oath Commissioner should be available for attesting affidavits at the place or places designated by the concerned Bar Association between 10.00 am to 5.00 pm on every working day.

6. The Bar Association of the concerned Court Complex shall ensure that all Oath Commissioners adhere to the timings prescribed for their availability.

7.()¹ All Oath Commissioners are henceforth permitted to attest the affidavits from their respective offices including Chambers with the Court Complex, while maintaining the system of rotational duty in the designated Oath Commissioners' Room. There shall be, at-least, one Oath Commissioner available between 10.00 am*

¹ Substituted vide Circular No.148/Genl/DHC dated 21.02.2014.

and 5.00 pm on all working days in the Oath Commissioners Room by rotation. However, attestation work shall not be done within the precincts of the Court Buildings, including lobby area, Consultation room, Bar room, library, Lawyers Canteen etc. These instructions will be adhered to by Oath Commissioners in letter and spirit.

8. Between 10.00 am and 5.00 pm, every Oath Commissioner shall, while attesting an affidavit at the designated place or places, maintain the dress code prescribed by the High Court for practising advocates.

9. All Oath Commissioners shall (whether attesting affidavits at the designated place(s) or otherwise) maintain a register clearly giving the following:-

- a) Date and serial No. of the affidavit.*
- b) Case No. for which the affidavit is being attested. In the event of a new case, the case number may be left blank.*
- c) Name of the deponent.*
- d) Name of the father/mother of the deponent.*
- e) Address of the deponent as per the affidavit.*
- f) Name of the person identifying the deponent.*
- g) Signature of the deponent.*

(Note: The Address of the person identifying the deponent should also be given – but this may prove cumbersome)

10. Every Oath Commissioner shall maintain three rubber stamps as prescribed by the High Court. These rubber stamps shall provide for the following:

- a) Name of the Oath Commissioner in block letters.*
- b) Number given by the High Court to the Oath Commissioner.*
- c) Period of Commission.*

- d) A statement that the Oath Commissioner has been appointed by the High Court.*
 - e) Space for the name, occupation and signature of the person identifying the deponent.*
 - f) The name of the deponent.*
 - g) The name of the father/mother of the deponent.*
 - h) The address of the deponent.*
 - i) Date and serial number of the affidavit.*
 - j) Space for the signature of the Oath Commissioner.*
- 11. An Oath Commissioner attesting an affidavit shall scrutinize the document as to its correct form.*
- 12. Where the deponent of an affidavit is known to the Oath Commissioner, he shall append on it a certificate to that effect.*
- 13. Where the deponent of an affidavit is illiterate or is not conversant with the language in which the affidavit is written, the Oath Commissioner shall, before attesting the same, translate and interpret the contents of the affidavit to the deponent in the language known to the deponent and shall separately certify the fact of his/her having done so.*
- 14. Where the deponent understands the language in which the affidavit is written, it is enough if the Oath Commissioner certifies that the contents of the affidavit has been duly read over by the deponent and that the deponent has duly acknowledged the same to be true and correct.*
- 15. Where the deponent is a "Pardanashin" lady she shall, unless she is known to the person attesting the affidavit, be identified by a person to whom she is known and that person shall prove the identification by means of a separate affidavit.*
- 16. Every exhibit annexed to an affidavit shall be marked, initialled and dated by the Oath Commissioner before it is sworn to or affirmed.*

*17.** The Register(s) maintained by an Oath Commissioner shall be deposited after expiry of his/her term with the District and Sessions Judge, or the High Court, as the case may be.*

It is made explicitly clear to all Oath Commissioners that any violation of the above instructions will result in cancellation of the commission given to an Oath Commissioner.

This circular is issued in suspension of the circulars dated 4th August, 1967, No.61/Genl./G.I./OC/IX.B.2 dated 7th August, 1973, No.111/Genl.II/G.I. Dated 8th May, 1975, No.249 and 250/Genl./G.I./OC/DHC dated 22nd November, 1986 and other instructions issued from time to time and on the direction of the Delhi High Court.

*(**) Vide orders dated 13.07.2017 of this Court Clause 17 is re-produced as under:-*

“The Register(s) maintained by an Oath Commissioner shall be deposited at the end of each Calendar year with the concerned District and Sessions Judge, Registrar General of Delhi High Court and Secretary General of Supreme Court of India, as the case may be.”

15. Considering the fact that the Respondent was a Workman, this Court takes a sympathetic view against the Respondent. Insofar as the Respondent's Counsel, Mr. Sumit Kumar, is concerned, he has given an apology on the last date which has been recorded by the Court. The said apology is accepted on this one occasion. The present order along with the acceptance of the apology by this Court shall be sent to the Bar Council of Delhi and shall remain in their records. However, if there is any future case in which such complaints are raised against Mr. Sumit Kumar, action would be liable to be taken by the Bar Council of Delhi. In such a situation, the present case would also be reactivated and the apology advanced by the

Counsel shall stand withdrawn. The Bar Council would then be free to proceed in accordance with law and take strict action. The Oath Commissioner is cautioned to ensure that, in future, the genuinity of the Deponent is ascertained before attesting affidavits in an indiscriminate and blind fashion.

16. The Counsel for the Respondent shall deposit a sum of Rs.5,000/- with The Delhi High Court Middle Income Group Legal Aid Society for their improper conduct in this present petition. The proof of payment of the same shall be placed before this Court. Insofar as the Oath Commissioner is concerned, in view of the unconditional apology made by the Oath Commissioner, no costs are being imposed on him. The original register is returned to the Oath Commissioner.

17. Insofar as the Respondent/Deponent is concerned, considering the fact that the clients usually go by the advice of the Counsels in terms of signing of affidavits and applications as also bearing in mind the fact that the Respondent is a Workman, no action is being taken against the Respondent/Deponent.

18. The parties have also been heard on merits. Since the Respondent was present in Court, the Court put a query to him as to whether he is willing to join back the Petitioners/Managements. He expressed reluctance to join the Petitioners/Managements on the ground that he does not expect them to behave well with him. Therefore, it is clear that no useful purpose would be served with the relief of reinstatement in service.

19. Vide the impugned Award dated 7th September, 2019 passed by the Labour Court in *New ID No. 2170-17* titled *Sh. Rajender Singh v. M/s. KBT Pvt. Ltd. & Anr.*, the Labour Court has considered the Respondent to

be a skilled worker, and has also held that he is entitled to a salary as applicable to a skilled worker in addition to half the salary as applicable to a skilled worker i.e. one and a half time salary of a skilled worker per month, on account of being employed by two Managements at the same time. Further, the Respondent has been granted a compensation of Rs.5 lakhs towards harassment, illegal termination and legal costs. In the facts of the present case, the amount awarded to the Respondent seems to be on the higher side. The Petitioner has already deposited a sum of approximately Rs.3.59 lakhs, and the amount which is lying in the Fixed Deposit as of 8th October, 2021 is Rs. 3,91,771/-. Mr. Sumit Kumar, Id. Counsel for the Workman has stated that the Respondent is willing to accept a full and final settlement of Rs. 3,50,000/-, in respect of the dispute between the parties. Mr. Batra, Id. Counsel for the Petitioner/Management is also willing to resolve the dispute. In view of the above conduct of the Respondent and his counsel, a sum of Rs. 20,000/- is being directed to be deposited from the settlement amount, for a charitable purpose.

20. Accordingly, the following directions are issued:

- i) A sum of Rs.3,30,000/- is directed to be released in favour of the Respondent/Workman within a period of two weeks as a full and final settlement and satisfaction of the impugned Award dated 7th September, 2019.
- ii) In view of the conduct of the Respondent/Workman, his Counsel and the various facts recorded above, a sum of Rs. 20,000/- out of the amount lying deposited shall be credited to The Delhi High Court Middle Income Group Legal Aid Society (A/c No. 15530110135488, UCO Bank, High Court of Delhi). The sum

of Rs. 5,000/- which was imposed on the Counsel shall, thus, stand satisfied in view of this deposit.

iii) The remaining amount lying with the bank shall be refunded to the Petitioner/Management. The TDS on the interest component shall be borne by the Petitioner/Management in this case.

21. The fresh application dated 4th October 2021 filed on behalf of the Workman for litigation expenses has been handed over in Court today and the same is to be numbered by the Registry.

22. With these observations, the petition along with pending applications is disposed of by awarding lump sum compensation to the Respondent/Workman in lieu of reinstatement in service. This shall be a full and final settlement of disputes between the parties and the workman shall not be entitled to claim any further amounts from the Management.

Directions qua attestation of affidavits:

23. Considering the facts of the present case and the manner in which the affidavit came to be attested, without the deponent having even signed the affidavit, the manner in which the counsel identified the deponent's signatures, and the attestation of the said affidavit by the Oath Commissioner, this Court is of the opinion that certain safeguards need to be prescribed to maintain the sanctity of the process of signing and attestation of affidavits, which are statements on oath filed before a Court. Accordingly, in addition to the conditions stipulated by the Delhi High Court in the Circular extracted above, the following safeguards shall also be followed for the purposes of attestation of affidavits:

- (a) Whenever advocates identify the deponents on affidavits, the advocates shall ensure that the deponent is signing in their presence.
- (b) Whenever affidavits are identified by the Counsels for the deponents, the enrolment number and the mobile number of the Counsel shall be mentioned below the signature and name of the advocate concerned.
- (c) Oath Commissioners/Notaries before whom the deponents do not appear personally, shall attest the affidavits on the basis of the identification of the advocates where the particulars in (b) above are fully mentioned. In addition, details of a Government issued ID card, such as Aadhaar card, passport, PAN card shall be mentioned in the Register of the Oath Commissioner or Notary concerned, along with the name and mobile number of the person who has brought the affidavit for attestation such as a Court Clerk, *Munshi* etc.

24. The present order be communicated to the worthy Registrar General of this Court, for considering whether fresh and comprehensive guidelines need to be issued for attestation of affidavits by Oath Commissioners and Notaries. Let a copy of this order be communicated to the Bar Council of Delhi for maintaining the same in their records. The present order be also circulated to all the Bar Associations in Delhi including the DHCBA.

PRATHIBA M. SINGH, J.

OCTOBER 8, 2021

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(Corrected and released on 21st October 2021)