

I/390889/2023

Government of West Bengal
Labour Department, I. R. Branch
N.S. Building, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/ 340 /(LC-IR)/11L-24/2016 Date: 02-05-2023.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/283/IR/11L-24/2016 dated 28/03/2016 the Industrial Dispute between M/s. Proprietor Kusum Chitrabani Keshiakole (Sathighat), P.O. – Keshiakole, Dist. – Bankura, Pin. - 722155, and its workmen Sri Gurupada Adhikari, Vill & P.O. – Rajgram, P.S. – Bankura, Dist. – Bankura, Pin. – 722155 and 4(four) other workmen namely Sri Rakhal Das, S/o – Dukhabhanjan Das, Uper Teligora, P.O. & Dist. – Bankura, Sri Saktipada Dey Karmakar, S/o – Late Prallad Dey Karmakar, Vill. – Doltara, Dist. – Bankura, Sri Dulapada Pal, S/o – Late Dakhin Chandra Pal, Vill. & P.O. – Poddarpara (Jora Sibmandir), Dist. – Bankura, & Sri Durgapada Majhi, S/o – Late Atul Chandra Majhi, Vill. – Dharmadaspur, P.O. – Purandarpur, Dist. - Bankura regarding the issue mentioned in the said order, being a matter specified in the Second / Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Ninth Industrial Tribunal, West Bengal.

AND WHEREAS the Ninth Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 31/03/2023 on the said Industrial Dispute vide memo no. 46 - I.T. dated – 05/04/2023.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,



Assistant Secretary
to the Government of West Bengal

I/390889/2023

No. Labr/340/1(9)(LC-IR)

Date: 02-05-2023.

Copy, with a copy of the Award, forwarded for information and necessary action to:

1. M/s. Proprietor Kusum Chitrabani Keshiakole (Sathighat), P.O. – Keshiakole, Dist. – Bankura, Pin. – 722155.
2. Sri Gurupada Adhikari, Vill & P.O. – Rajgram, P.S. – Bankura, Dist. – Bankura.
3. Sri Rakhal Das, S/o – Dukhabhanjan Das, Uper Teligora, P.O. & Dist. – Bankura.
4. Sri Saktipada Dey Karmakar, S/o – Late Prallad Dey Karmakar, Vill. – Doltara, Dist. – Bankura.
5. Sri Dulapada Pal, S/o – Late Dakhin Chandra Pal, Vill. & P.O. – Poddarpara (Jora Sibmandir), Dist. – Bankura.
6. Sri Durgapada Majhi, S/o – Late Atul Chandra Majhi, Vill. – Dharmadaspur, P.O. – Purandarpur, Dist. – Bankura.
7. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
8. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
9. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Ba
Assistant Secretary

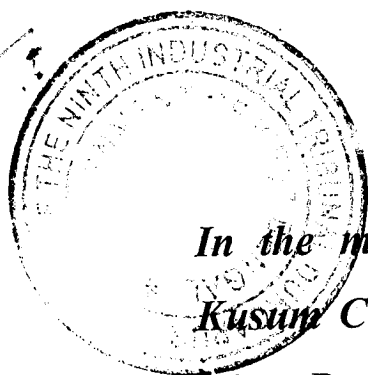
No. Labr/340/2(2)(LC-IR)

Date: 02-05-2023.

Copy forwarded for information to:

1. The Judge, Ninth Industrial Tribunal, West Bengal, Durgapur, Administrative Building, City Centre, Pin - 713216 with reference to his Memo No. 46- I.T. dated - 05/04/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Assistant Secretary



In the matter of an Industrial dispute between Proprietor, Kusum Chitrabani Keshiakole (Sathighat) , P.O - Keshiakole, Dist.- Bankura, PIN-722155 and Sri Gurupada Adhikari , Vill. & P.O-Rajgram, P.S - Bankura, Dist. - Bankura & 4(four) other workmen namely, Sri Rakhal Das, S/O- Dukhabhanajan Das of Upar Teligora, P.O & Dist-Bankura, Sri Shaktipada Dey Karmakar, S/O- Lt. Prallad Dey Karmar of Vill. Doltara, Dist.- Bankura, Sri Dulapada Pal, S/O- Lt. Dakshin Chandra Pal, Vill. & P.O - Poddarpara (Jora Sibmandir), Dist.- Bankura & Sri Durgapada Maji, S/O - Lt. Atul Chandra Maji, Vill.- Dharmadaspur, P.O - Purandarpur, Dist.-Bankura.

Case No. X-15/2016 U/s 10 of Industrial Disputes Act, 1947.

BEFORE THE 9TH INDUSTRIAL TRIBUNAL,
DURGAPUR, WEST BENGAL, KOLKATA.

PRESENT :- SHRI SUJIT KUMAR MEHROTRA,
JUDGE, 9th INDUSTRIAL TRIBUNAL, DURGAPUR.

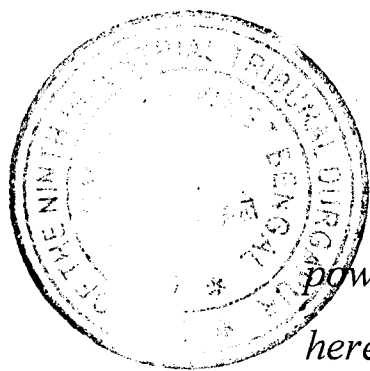
Ld. Advocate for the Workmen: - Mr.S.K.Panda &
Smt.Anima Majhi.

Ld. Advocate for the O.P./Employer :- Exparte.

The Award dated:-31st day of March, 2023.

A W A R D

The Deputy Secretary to the Govt. of West Bengal Labour Deptt. upon noting an industrial dispute exist between the parties, as mentioned herein above, by an order No.283-I.R/11L-24/16 dated 28.03.2016 & Corrigendum No.398-IR/11L-24/16 dated 02.05.2016 referred such disputes to this tribunal in exercising of



power conferred by Sec.10 of the Industrial Disputes Act, 1947 ---
hereinafter referred to as I.D Act for adjudication of the
following issues :-

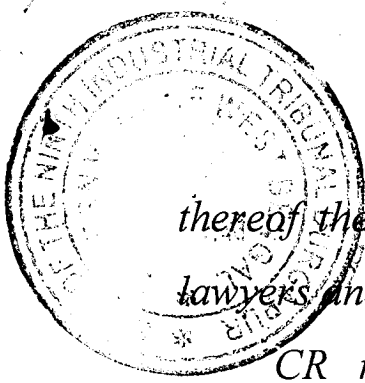
- i) Whether the closure declared vide notice Ref. No. Nil dated 18.02.2014 on and from 20.03.2014 by the employer is real?
- ii) What relief/s if any, are workmen entitled to get?

This Tribunal entered upon the references, registered references as the instant case put the disputed parties on notice.

At the very outset I must mention herein that the instant case is the best example of adopting all sorts of dilatory tactics adopted by the employer to drag adjudication of the referred industrial disputes of this tribunal.

It reveals from the CR that after registration of the reference order as the case in hand notices were issued upon the employer on several occasions but the same returned unserved with various types of endorsement from the Postal Deptt. and finding no other alternative the then Ld. P.O passed order no.10 dated 06.03.2017 by taking resort to Or.5 R.5 read with Sec.151 of the CP Code and General Sec.27 of the General Clauses Act and directed the I C of Bankura P.S to ensure presence of the owner proprietor namely, Artri Kumar Dey on 06.04.2017. As a consequence of the same employer appeared on 06.04.2017 through his Ld. lawyer and prayed for filing his WS. Subsequent order reveals that the said proprietor did file the WS on 30.08.2017 and as per averment of his WS notice upon to other co-owners of the Industrial establishments namely, Dilip Kumar Dey and Beni Madhab Dey have been issued and in consequence

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31.08.2017
NINTH INDUSTRIAL TRIBUNAL, BANKURA, WEST BENGAL



thereof they appeared in this case through their respective ld. lawyers and prayed for time for filing WS.

CR reveals that as the proprietors/employers stopped appearing in the instant case, so the instant case was fixed for ex-parte hearing on 16.04.2020 and subsequent dates thereto but when the matter was fixed for ex-parte hearing on 31.05.2022 one the employers namely, Atri Kumar Dey appeared and by filing a petition prayed for vacating the ex-parte hearing order against him and this tribunal allowed his such prayer with cost of Rs.1,000/-. Accordingly, the instant case was fixed for evidence of the workmen on 30.06.2022 and on that day one of the workmen namely, Gurupada Adhikari was partly examined as P.W-1 and 27.07.2022 was fixed for further examination of P.W-1 but on that day the said employer prayed for time by filing a petition on the ground that the matter is going to be settled.

Subsequent order reveals that this tribunal adjourned hearing of this case on 11.08.2022, 31.08.2022, 21.09.2022, 02.11.2022, 28.11.2022, 14.12.2022, 20.12.2022, 05.01.23 & 30.01.2023 on the ground of filing compromise petition but as the employer stopped appearing in the instant case, so P.W-1 was examined in exparte on 15.02.2023 in the instant case.

Now, coming back to the fact of the instant case as revealed from the WS of the workmen

The epitome of the workmen's pleading case is that they were permanent employee of the Cinema Hall/Industrial Establishment namely, Kusum Chitrabani and they joined in service in the month of June, July, 1986 and Nov.1987 and used to get salary of about Rs.3,000/0 per month.



It is their further pleading case that they were in continuous service on and from their date of joining till the date of illegal closure of the said Cinema Hall by its employer on 20.03.2014.

Workmen in their WS further averred that employer illegally shut down the said Cinema Hall on 20.03.2014 and did not pay any retrial benefits and all other benefits to any of them under the provisions of law. Accordingly, they made several appeals to the employer for their reinstatement and for their due salaries. As the employer did not pay any heed to their such appeal, so they approached the Assistant Labour Commissioner, Bankura and he referred the dispute for conciliation to the conciliation authority but as the conciliation failed, so the matter was referred to the Labour Commissioner by the conciliation authority for settlement of industrial dispute.

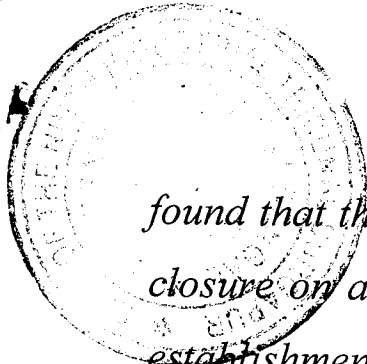
In the back drop of above averments of their pleading case the workmen prayed for declaration that the closure of the said Cinema Hall is illegal and for payment of their back wages and all other service benefits by the employer.

Decision with reasons

In discharge of their legal obligation to prove both the referred issue in their favour the workmen examined one of them Sri Gurupada Adhikari as P.W-1 in this case. Besides that, copy of letter dated 12.03.2014 addressed to the ALC, Bankura and received copy of letter dated 04.04.2014 addressed to the ALC, Bankura have been marked as Exbt.A & B respectively.

Issue No.1 :-

The instant issue is the crux of industrial disputes between the workmen and the industrial establishment as because if it is

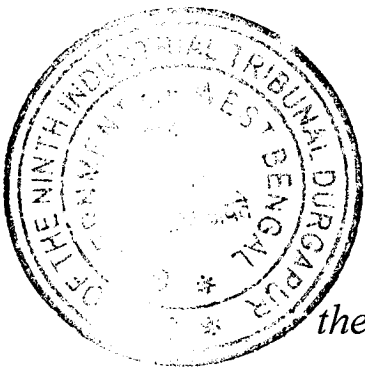


found that the closure notice dated 18.12.2014 having effected of closure on and from 20.03.2014 of the Cinema Hall / industrial establishment / undertaking is in accordance with the provisions of law, then the same would affect the claimed benefits of the workmen in the instant case. On the reverse findings the amplitude of Issue No.2 would be much wider than the claim of the workmen.

In my considered view, before venturing upon discussion concerning materials of this case with respect to the pleading case of the workmen on the issue on hand it would be pertinent to mention about admitted fact of this case, as evident from the pleading of the workmen as evidence on oath as well as the concerning provisions of law under the Act, 1947.

From the pleading of the workmen as well as unchallenged oral evidence of P.W-1 it is the undisputed fact of this case that all the referred workmen were permanent employee of the Cinema Hall / Establishment since the year 1996 and 1997 and that the impugned Cinema Hall has been closed by its proprietor / employer on 20.03.2014.

It is further evident from the unchallenged oral evidence of P.W-1 that after closure of the Cinema Hall they have not been provided with any benefits under the provisions of law and accordingly they knocked the door of ALC, Bankura vide Exbt. 1 but conciliation proceeding did not succeed and the matter was referred to the Labour Deptt. by the ALC alongwith failure report which resulted into the impugned reference.



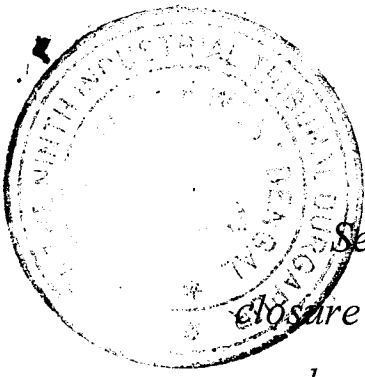
At this juncture, it would be pertinent to mention herein that the employer/proprietor namely, Atri Kumar Dey in his WS did not utter anything regarding the closure of the Cinema Hall in accordance with the provisions of the Act, 1947.

Although the instant case has been heard in ex-parte against the employer/proprietor but to consider the validity of the closure notice the contents of the WS of the employer/proprietor should be taken into consideration.

It is the specific pleading case of the workmen that the employer/proprietor has illegally closed the Cinema Hall and P.W-1 in his unchallenged oral evidence also stating about the same.

At this juncture I must mention herein that the workmen did not produce the impugned the closure notice but he same was filed by the employer alongwith his WS and since it is settled proposition of law that the provisions of the Indian Evidence Act, 1872 do not apply in strict sense in a proceeding under the Act, 1947, so there is no impediment in taking into consideration of the said closure notice.

From the impugned closure notice dated 18.02.2014 it is evident that the same was issued by the proprietor-Atri Kumar Dey for the impugned Cinema Hall stating therein that the Cinema Hall would be closed on and from 20.03.2014. Thus, from the said notice it is evident that same was issued just 32 days prior to the date of closure and not 60 days before the date of intended closure.

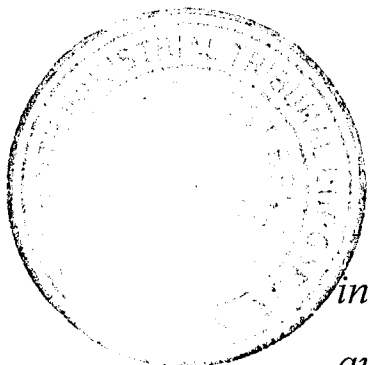


Sec. 25 FFA of the Act, 1947 speaks about the notice of closure of any undertaking and as per such said provisions the employer shall serve 60 days notice before the date on which the intended closure is to become effective. It further provides that the notice must be given in the prescribed manner on the appropriate Govt. stating clearly the reasons for intended closure of the undertaking.

However, the proviso of Sub-sec. 1 speaks about certain contingency for exemption of such notice of closure. Since the employers/proprietor of the Cinema Hall in the instant case chooses not to contest the instant case, so this tribunal is not in a position to consider whether the said undertaking/ Cinema Hall was exempted from issuing such notice under sub-section 1. As a result of which it cannot be said that the employers/proprietor was exempted from giving 60 days notice of closure of their such Cinema Hall /undertaking prior to its closure on and from 20.03.2014.

Having regard to my above discussion I do not have any sort of hesitation to come to the findings that the employers/proprietor of Kusum Chitrabani Cinema Hall did not comply with the mandatory requirement of law before closing their such establishment by virtue of the closure notice on 18.02.2014.

Furthermore, Rule 78B of the West Bengal Industrial Dispute Rules, 1958 speaks about the notice of closure and the format under which the same has to be served upon the appropriate Govt. As per said Rule the notice of closure shall be



in triplicate in Form P-1 and the same be served on the Govt. authorities as mentioned therein.

But in the instant case no such notice has ever been served by the employers/proprietor. In other words, there is nothing to prove that the employers/proprietor of the Cinema Hall complied with the mandatory requirements of Rule 78 B of the WB Industrial Dispute Rules 1958.

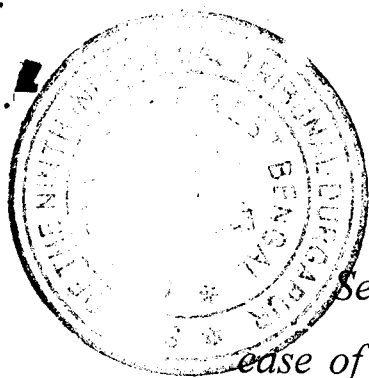
It is also to be mentioned herein that had the proprietor of the said Cinema Hall applied the appropriate Govt in prescribed Form as mentioned herein above, then the same would have been considered by the appropriate Govt. as per sub-sec.2 of the Sec.25 FFA and Rule 78C of the WB Industrial Dispute Rules 1958.

It is more pertinent to mention herein that the employers/proprietor in his WS nowhere stated that he ever approached the appropriate Govt. as per the above discussed provisions of law and the appropriate Govt allowed his prayer for closure in terms of above discussed provisions of law.

Taking into consideration of the discussed materials of this case as well as the provisions of law I am of the view that the impugned notice of closure cannot be termed as a valid notice of closure under the provisions of Act, 1947. Thus, I decide this issue against the proprietor of Cinema Hall.

Issue No.2 :-

In view of my findings regarding the referred issue no.1 against the proprietor Kusum Chitrabani Cinema Hall, we are to consider the provisions of law regarding relief to the workmen in case of closing down of undertaking.

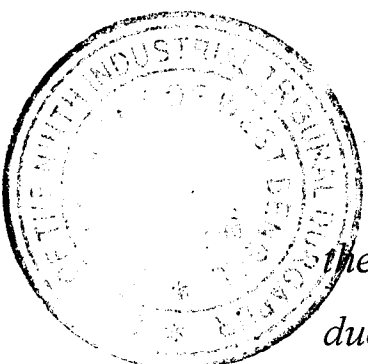


Sec.25FFF of the Act, 1947 – Sub-Sec. 1 provides that in case of closure of undertaking every workman who has been in continuous service for not less than one year immediately before such closure shall be entitled to notice and compensation in accordance with the provisions of Sec.25F. Since the fact of the instant case does not attract the conditions of proviso and subsequent sub-sec. I refrain myself from making any discussion on the same.

So far these workmen were remaining in their said continuous service of not less than one year before the date of closure of the cinema hall is concerned P.W 1 in his oral evidence on oath also stated about the same. Besides that, the proprietor in his W.S also did not deny workmen's such pleading case. Not only that, proprietor in his W.S clearly stated that these workmen were in employment from the date of their appointment i.e. since the year 1986 and 1987. Accordingly, there exists no reason to disbelief P.W 1's such unchallenged oral evidence on that issue.

It is also the undisputed fact of this case that the said cinema hall has been closed and some of these workmen have already crossed the age of superannuation.

In my considered view while considering the nature of relief to be granted to these workmen beside their monthly wages of Rs. 3,000/- all these factors are to be taken into consideration. Thus I am of the view that justice would be served if these workmen are provided with the relief of one time compensation. Accordingly, taking into account of all the facts and circumstances of this case, I am of the view that compensation of Rs. 50,000/- to each of



them would be the just relief to these workmen for their suffering due to the illegal manners of closure of the cinema hall by its proprietor.

Before parting with this judgement/order, I must make it clear that since this forum is not empowered to deal with the alleged due of these workmen under the PF Account as well as Gratuity Account, so workmen shall be at liberty to approach the appropriate forum under the appropriate provisions of law.

Thus, both the referred issues are disposed of accordingly and the instant proceeding succeeds on contest.

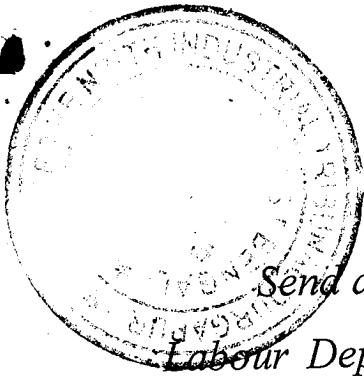
Hence, it is

O R D E R E D

that the case under reference number, as mentioned herein above, is hereby allowed on contest but without cost.

The closure declared vide notice reference no. NIL dated 18.02.2014 on and from 20.03.2014 by the employer is not tenable under the provisions of the Industrial Disputes Act 1947 and each of the workmen, as mention herein above, are entitled to get compensation of Rs. 50,000/- (Fifty Thousand) from the proprietor of Kusum Chitrabani Keshiakole (Sathighat), Bankura.

The proprietor/employer of Kusum Chitrabani Keshiakole (Sathighat), Bankura, is hereby directed to pay compensation of Rs. 50,000/- (Fifty Thousand) to each of the workmen as mention in the order of reference within one month from the date of publication of this award. Accordingly, an award is passed to that effect.



Send a copy of this award to the Additional Chief Secretary,
Labour Department, Govt. of West Bengal for information and
necessary action.

D/C by me

Sd/- Sri Srijit Kumar Mohanta
31-03-23
JUDGE
NINTH INDUSTRIAL TRIBUNAL
DURGAPUR

Sd/- Sri Srijit Kumar Mohanta
Judge, 9th I.T. 31.3.23
Durgapur

JUDGE
NINTH INDUSTRIAL TRIBUNAL
DURGAPUR