

I/219028/22

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

No. Labr/ 851/(LC-IR)/10L-03/15

Date : 09-09-2022

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 82-I.R./8L-14/2008 dated. 21/01/2009 the Industrial Dispute between M/s Kesoram Textiles Mills (M/s. Kesoram Industries Ltd., Textile Division), 42, Garden Reach Road, Kolkata - 700024 its Head Office at 9/1 R.N. Mukherjee Road, Kolkata - 700001 and their workmen 1) Garden Reach Textile Woker's Union, P - 66, Garden Reach Road, Kolkata - 700024, 2) Garden Reach Sutakal Sramik Union, P - 40, Garden Reach Road, Kolkata - 700024, 3) Kesoram Cotton Mills Employees Union, P - 176, Bichali Ghat Road, Kolkata - 700024, 4) Kesoram Cotton Mills Employees Union, S - 163 Lichu Bagan, Kolkata - 700024, 5) Kesoram Industries Cotton Mills Mazdoor Sangh, 10, Kiran Sankar Ray Road, Kolkata - 700001 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Fourth Industrial Tribunal, West Bengal.

AND WHEREAS of the said Fourth Industrial Tribunal, West Bengal, has submitted to the State Government its award 31/08/2022 on the said Industrial Dispute vide memo no.1370 - L.T. dated 02/09/2022.

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,



Joint Secretary
to the Government of West Bengal

I/219028/2022

No. Labr/ 851/1(8)
...../2022

Date : 09-09-

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

1. M/s Kesoram Textiles Mills Ltd. (M/s. Kesoram Industries Ltd., Textile Division), 9/1 R.N. Mukherjee Road, Kolkata - 700001.
2. Garden Reach Textile Worker's Union, P - 66, Garden Reach Road, Kolkata - 700024.
3. Garden Reach Sutakal Sramik Union, P - 40, Garden Reach Road, Kolkata - 700024.
4. Kesoram Cotton Mills Employees Union, S - 163 Lichu Bagan, Kolkata - 700024.
5. Kesoram Industries Cotton Mills Mazdoor Sangh, 10, Kiran Sankar Ray Road, Kolkata - 700001.
6. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
7. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 8. The Sr. Deputy, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Joint Secretary

No. Labr/ 851/2(2)
...../2022

Date : 09-09-

Copy forwarded for information to:

1. The Judge, Fourth Industrial Tribunal, West Bengal with reference to his Memo No. 1370 - L.T. dated 02/09/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Joint Secretary

In the matter of an industrial dispute between M/s. Kesoram Textiles Mills Ltd. (erstwhile M/s. Kesoram Industries Ltd., Textile Division) 42, Garden Reach Road, Kolkata - 24 having its Head Office at 9/1 R.N. Mukherjee Road, Kolkata – 700001 and their workmen represented by

- 1) Garden Reach Textile Worker's Union, P-66, Garden Reach Road, Kolkata -700 024,
- 2) Garden Reach Sutakal Sramik Union, P-40, Garden Reach Road, Kolkata -700024,
- 3) Kesoram Cotton Mills Employees Union, P-176, Bichali Ghat Road, Kolkata-700 024,
- 4) Kesoram Cotton Mills Employees Union, S-163 Lichu Bagan, Kolkata – 700 024,
- 5) Kesoram Industries Cotton Mills Mazdoor Sangh, 10,Kiran Sankar Ray Road, Kolkata – 700 001

(Case No. VIII-02/2009)

BEFORE THE FOURTH INDUSTRIAL TRIBUNAL: WEST BENGAL

P R E S E N T

SMT. DURGA KHAITAN, JUDGE

FOURTH INDUSTRIAL TRIBUNAL

KOLKATA

A W A R D

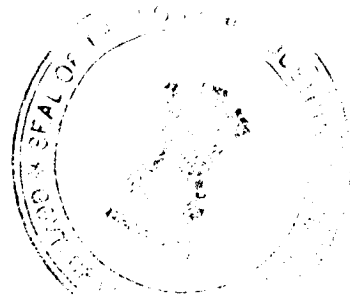
In the matter of an industrial dispute between M/s. Kesoram Textiles Mills Ltd. (erstwhile M/s. Kesoram Industries Ltd., Textile Division) 42, Garden Reach Road, Kolkata - 24 having its Head Office at 9/1 R.N. Mukherjee Road, Kolkata – 700001 and their workmen represented by

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vide G.O. No. 82-IR/IR//8L-14/2008 dt.21.01.2009 referred to this Tribunal for adjudication.

Issues

- 1) Whether the management is justified in declaring the suspension of work with effect from 05.30 a.m. of 05.01.1999?
- 2) Whether the management's demand for not running the plain loom shed and weft spinning department including related sections is justified?
- 3) Whether the management's demand for restructuring the basic wage of the workman from basic of Rs. 28/- or Rs. 208/- as the case may be to at least 60% of total of the basic + D.A. + V.D.A. as on November, 1998 is justified?
- 4) Whether the management's demand for freezing V.D.A. 1898 points of CPI (Calcutta Base 1960 = 100) in contravention of the tripartite agreement dt. 11.06.1995 is justified?
- 5) Whether the management's demand for payment of wages on pro-rata basis i.e. wages linked with production / productivity is justified?
- 6) Whether the management's demand for payment of 50% of the wages to the new entrant is justified?
- 7) Whether the management's demand for higher work-load as per their proposal submitted to the union in January, 1999 is justified?



- 8) Whether the management's demand for reduction of damage caused to the production from 9.1% to at least 4% is justified?
- 9) What relief, if any the workman is entitled to in respect of items 1 to 8 above?

Written statement of workman represented by Gardenreach Textile Workers' Union (Union No. 1) and Kesoram Cotton Mills Employees' Union (Union No. 3).

The case of these Unions in brief is that since inception the company was doing good business and was paying lucrative dividends to its shareholders. On 19.04.1997 the board of directors resolved in the annual general meeting that the working of textiles section on the whole was not unsatisfactory and the Company has established various divisions out of profit of this Company. these are:- (i) Textiles Section, (ii) Rayon and transparent paper section, (iii) spun pipe section, (iv) Re-factory section, (v) Cement Section, and (vi) Birla Tyres. The Company got national award and Karnataka State Award. It also got ISO 9002 certificate from DNV Netherlands in November, 1996.

It is the further case of workman that the Company had 8500 employees in 1948 but the number of employees came down to 3800. The terms and condition of service of workmen was guided by the awards of the Industrial Tribunal's constituted under I.D. Act, 1947 and subsequently revised by the industry-wise settlement for cotton textile industry. The awards of First Industry-Wise Tribunal 1948, Second Industry-Wise Tribunal 1958 published on 10.06.1958. Later on the terms and conditions were regulated by Tripartite Agreements dt. 04.06.1972, 15.05.1973, 14.09.1979 and 11.06.1995. Between 14.09.1979 and 11.06.1995 there was a tripartite settlement on 11.11.1989 after a prolonged lock out imposed by the Company.

It is the further case of Unions that on 22.01.1998 the Company sought permission from Government to close down plain loom shed and some sections related with plain loom shed U/s. 25-O of I.D. Act. Simultaneously, the company submitted another application on 22.01.1998 seeking permission to retrench 1189 workmen with effect from 27.04.1998 as U/s. 25N of I.D. Act. The Government however after hearing both sides refused permission for both the applications vide order dt. 09.03.1998 and 10.03.1998. On 27.07.1998 the federation of the 5 Unions of workmen of Cotton Textile Industry expressed their intention to terminate tripartite settlement dt. 11.06.1995 for submitting fresh charter of demands and stated that after expiration of two months from the date of notice the tripartite settlement will not have any binding effect on the workmen but the benefits arising from the settlement would continue until it is replaced by a subsequent settlement. Immediately on receipt of this notice U/s. 19(6) Industrial Disputes Act the Eastern India Textile Mills Association on behalf of the member mills issued a notice dt. 24.08.1998 U/s. 9A of I.D. Act and Rule 34 of the Rules and served it to the secretaries of different federations of workmen expressing intention to effect some prejudicial changes in the existing service condition with effect from 16.10.1998. On 01.09.1998 the West Bengal Cotton Textile Workers' Federation wrote a letter of protest

objecting to the notice of change of service condition initiated by the employer's association U/s. 9A and sent to the Secretary Eastern India Textile Mills Association and to the Government. On 02.09.1998 it sent another letter to the Government requesting the Government to intervene in the matter and convene a joint meeting of the party.

On 09.11.1998 the Company submitted another letter to the Government U/s. 25M of I.D. Act seeking permission to lay off 1086 workmen of plain loom shed but after hearing both sides the Government refused permission by order dt. 04.01.1999.

It is the further case of workmen that on 23.11.998 the factory manager of the Company issued notice of change of service condition of the workmen thereby freezing the D.A. at 1998 points of CPI and ordering that any new entrants would be taken as a learner for a period of three years and after three years of satisfactory apprenticeship, the learner may be employed as casual/ badli worker and further ordered that the wages and D.A. of the new entrants will be (a) basic wage @ 60% of Calcutta and Howrah Municipal Area Wages (b) D.A. @ 50% of the Calcutta and Howrah Municipal Area D.A.

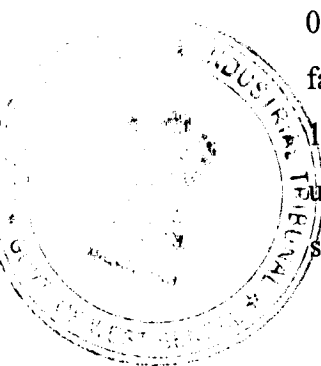
The Garden reach Textile Workers' Union informed the factory manager vide its letter dt. 24.11.1998 that conciliation proceeding is initiated by the Labour Commissioner and the conciliation officer requested the representative of the Eastern India Textile Mills Association not to give effect to the changes proposed and not to freeze D.A. etc. Union No. 1 requested the factory manager to withdraw the notice dt. 23.11.998. The same union submitted representation to the Labour Commissioner to instruct the Company not to give effect to the notice. The company however did not agree to the requests.

It is the further case of the workmen that on 27.11.1998 four operating trade unions sent a joint representation to Sri S.K. Birla, senior president of the Company claiming withdrawal of the notice dt. 23.11.1998 and informing that otherwise the workmen would have no alternative but to cease work from any day subsequent to 14.12.1998. ON 28.11.1998 Union No. 1 sent another representation to the Labour Commissioner requesting him to intervene.

The management did not consider the suggestion of the trade unions in complete disregard to the tripartite settlement and effect of their notice on the living conditions of the workmen. So, the workmen had to start peaceful agitation against the company. on 04.0.1999 at about 10.30 p.m. the company displayed the notice on the main gate of the factory declaring suspension of work at its Textile Division from 05.30 a.m. 5th January, 1999 while conciliation proceedings were pending. Thus, 4000 workmen were forcibly unemployed and are suffering severe poverty and hardship. Such imposition of suspension of work w.e.f. 05.01.1999 was completely illegal.

On 09.01.1999 the management replied to the trade unions in respect of their joint representation against suspension of work and explained their company's stand in connection with their notice suspending work of factories.

On 08.01.1999 Garden reach Textile Workers' Union submitted a representation against the pleas taken by the company in support of their notice of suspension of work



and requested the Government to urge the Company to withdraw the illegal suspension of work and for payment of full wages for the period of suspension of work.

The Additional Labour Commissioner under took conciliation proceeding. On 08.02.1999 the three operating unions submitted further representation to the Additional Labour Commissioner requesting him to direct the company to withdraw the illegal freezing of V.D.A. from 01.01.1998 and to lift the illegal suspension of work from 05.01.1999. But despite all efforts of the Unions and the Government the dispute could not be resolved due to the adamant and uncompromising attitude of the company. Having no alternative, the conciliation officer submitted report U/s. 12(4) of I.D. Act, 1947 recommending for adjudication of the disputed issues and accordingly the Government made this reference for adjudication of 9 issues.

It is the further case of the Unions that so far as issue no. 1 is concerned Union No. 1 & 3 served a two months' notice on 11.06.1995 on Eastern India Settlement for submission of fresh charter of demands and immediately on receipt of this notice the Eastern India Textile Mills Association issued notice U/s. 9A of I.D. Act and served it upon the Secretaries of different Unions on 24.09.1998 proposing various adverse changes in the service condition of the workman earned through awards of Industrial Tribunals and various tripartite settlements. Accordingly, the company started freezing further enhancement of VDA and engagement of contractual workmen etc. at reduced wages. All attempts to stay the implementation of the notice U/s. 9A by the Unions and the request of Labour Commissioner were not adhered by the management of company so, the workmen agitated against curtailment of their rights.

The company sought permission of Government to close down and retrench workmen U/s. 25(O) and U/s. 25(N) of I.D. Act but both permissions were rejected by the Government vide order dt. 09.03.1998 and 16.03.1998.

On 09.11.998 the company submitted application U/s. 25M of I.D. Act seeking permission to lay off 1089 workmen but the Government rejected this prayer on 04.01.1999 after hearing all sides.

After this, the Company displayed notice of suspension of work on 04.01.1999.

The prayer of company to lay off 1089 workmen was rejected on 04.01.1999 and on that day itself the company displayed notice of suspension of work. So, it is clear that they did it to satisfy their grudge against the workmen and to victimise them so, it is nothing but unfair labour practice.

It is the further case of the Union that suspension of work is actually a lock out as defined in section 2(1) of I.D. Act which implies temporary closing of place of employment or suspension of work or refusal by employer to continue to employ any number of employees. Lock out or suspension of work is used by the employer as a weapon of collective bargaining to compel the employee to accept its proposal and in this case company used this weapon to force the employees to leave the job or die of

starvation because they demanded their lawful rights. Thus, the suspension of work was illegal and unjustified. The Union pleads that such suspension of work by company was nothing but an act challenging the decision of Government rejecting their company's application U/s. 25M, 25N and 25O. Moreover, the suspension of work was declared during pendency of conciliation proceeding so, it is illegal. The suspension of work is illegal because it was declared in connection with issues which was covered under the tripartite settlement / award.

About issue No. 2 the Union's case in brief is that on 22.01.1998 the management wrote to the Government seeking permission to close down some Sections U/s. 25O of I.D. Act and after hearing all sides the Government rejected the application being defective and lacking in particulars on 12.03.998. So, all these applications of the company seeking permission U/s. 25(M), 25(N) & 25(O) were rejected by the Government and the Company never moved any higher forum against such orders of Government. So, issue No. 2 is neither maintainable nor fit for adjudication.

It is a further case of the Union that the issues of wage structure, basic wages, D.A. etc, were regulated by tripartite agreements dt. 04.06.1972, 15.05.1993 & 14.09.1989 and 11.06.1995. the Company did not serve any notice expressing its intention to terminate the last tripartite settlement dt. 11.06.1995 and without termination of that tripartite agreement the company cannot claim or place demand of restructuring of the basic wages of the workmen. and there was no justification or change of circumstances for restructuring of wage structure. So, issue No. 3 should be answered in negative by the Tribunal.

So far as issue No. 4 is concerned the case of the Unions is that the definition of wages includes dearness allowance and D.A. is awarded to compensate for change in cost of living and D.A. too was covered under the binding tripartite agreement dt. 11.06.1995. So, the company could not lawfully freeze the same. As such issue No. 4 & 5 may be rejected in limini.

In response to issue No. 5 & 6 the case of the Unions is that payment of wages on pro rata basis is not acceptable to the Unions.

In response to issue No. 7 the case of Union No. 1 & 3 is that the issue of high work load requires joint work study by the competent representatives of the management and Unions.

The Union's case is that all the factors contributing to the damage to production need to be taken into consideration and with proper upgradation the damage to production can be minimized.

In response to issue No. 9 the case of the Union is that the suspension of work declared by company was unjust and illegal and that all the affected workmen should be permitted to resume their duties and all consequential benefits should be awarded to all these workmen.

Issues under consideration may be accordingly decided in favour workmen pleaded these Unions. Issue No. 2 to 6 may be rejected fully and finally. For issue No. 7 & 8 suitable direction may be passed to accommodate the demand of the management on the basis of suggestions made by the unions.

Written statement of Company

The company's case in brief is that the Unions lacks work culture and their members are reluctant to work and they are deliberately decreasing the productivity and making unreasonably demands and such conducts of the workmen have brought the company towards situation where either it can change the condition of service or shut down the entire industrial concern causing starvation to the employees and economic chaos to the state. Even in such situation the employer has shown fairness and restraint by continuing to abide by the last binding agreement between the employer and the workmen and appropriate government.

It is the further case of the company that the union adopted absurd stand claiming that the binding agreement would not bind the employees yet the employees will be entitled to benefits under the said agreement until a new agreement is reached. Although they placed a new charter of demand asking the employer to pay more money to the workmen and to run the unit at loss. Such demand of unions is utopian and unlawful and the industrialist's throat cannot be cut for the workmen to live in luxury.

It is the further case of company that the order of reference is not maintainable as it was signed by the Assistant Secretary (this question was decided by this Tribunal on 24.01.2011 and said order was upheld by Hon'ble Court)

It is the further case of the company that the reference is not maintainable in its present form and in law as the government did not apply its mind and the suspension of work was w.e.f. 05.01.1999 and it was 'legally stale' and thus not maintainable. There is no specific dispute so the same could not be referred for adjudication U/s. 2(K) of Industrial Disputes Act. 1047.

It is the further case of the company that this is not a case of termination of service and as such it cannot be converted to an 'industrial dispute' without support of substantial number of workmen and the names of the persons affected have not been furnished in the order of reference. So, it cannot be adjudicated.

It is the further case of the company that the unions do not have any locus standi to espouse the cause of the workmen so, the order of reference is the nullity in the eyes of law.

It is the further case of the company that since its establishment the company has tried to modernize its plants and machineries to increase its profitability but every time the Unions protests, agitation and non-co-operation blocked such attempts of the company. the company spent lakhs of rupees in training the workmen but at the instance of Union the workmen deliberately did not complete the training and those who completed they deliberately did not operate the new machineries. To increase efficiency and productivity the company entered into an industry-wise settlement in June, 1995

where financial benefit to workmen was based on their co-operation with management to improve work culture and to increase productivity but the workmen used this settlement as a cash-cow, used the financial benefit without fulfilling their part of settlement. The textile mill suffered huge losses every year. So, the company sought intervention of State Government vide letter dt. 17.02.1998. The employer again entered into a bi-partite settlement on 09.06.1998 with the Garden reach Textile Workers Union in relation to operation of the Textile Mills with a view to achieve viability of the Unit. In this settlement the Union admitted the sickness of the textile mill. On 18.06.1998 another settlement was signed with Garden reach Textile Workers Union.

It was expressly admitted in that settlement that even a consensus figure 20% approximately on and average increase in work load has been totally out dated and the present prevailing critical situation which has raged the Cotton Textile industry and in particular composite Textile Mills including this Company and the utmost necessity of implementing the work norms as per settlement dt. 13.11.1989 and 11.06.1995 is required to bring back the mills to normal health and make it a viable unit. This agreement spoke of reduction of wastages. This settlement was signed on behalf of the workmen also and is binding on parties. The intention was to increase the 'work load and productivity' with proportionate incentive and progressive decrease of wastage to make all Composite Textile Mills commercially viable.

The Unions are alleging that the increase in workload was tyrannical and that the workmen are entitled to get the incentivised wages without improving work culture and that the workmen are entitled to get paid without working at their optimum capacity.

The Unions did not comply with the terms and the spirit of settlement.

The company issued advisory on 16.06.1998 to all concerned for adhering to the binding settlement.

Despite several notices the workmen flouted the settlement and started adopting unlawful and illegal means to coerce the company into giving more benefits without improving productivity. The company issued further notice on 17.06.1998 informing all concern to abide by the bipartite agreement.

On 20.06.1998 the company again issued notice to all with copy to the Garden reach Textile Workers Union inviting their attention to the settlement dt. 09.06.1998 and of the fact of low productivity. The company informed that the management will be deducting pro-rata wages and pro-rata D.A. in the event of less than prescribed production.

Due to steep fall in productivity management was forced to stop operation of several looms but kept paying wages to the idle work-force without any lay off.

After all these notices, settlement and meetings the workmen failed and neglected to work and snubbed all efforts of the company for better work culture and company suffered financial loss and the company requested all the Unions by letter dt. 22.07.1998.

Considering such condition of the company Eastern India Textile Mills Association proposed some changes to mitigate such crisis and issued notice dt. 24.08.1998 U/s. 9A of I.D. Act 1947 and the reasons for proposed changes were: -

- i) The Cotton Textile Workers' Federation notice of termination of settlement dt. 11.06.1995 on expiry of three years;
- ii) The number of Textile Mills in the state has decreased from 42 to only 8 in the last 30 years due to uneconomical working conditions in the state.
- iii) The remaining mills are in dire difficulty and are surviving only because of support from other units which is difficult to arrange.
- iv) The wages in all other states have increased in last decade but it is much lower in comparison to West Bengal.
- v) The consumption of yarn has not improved in the State and the local mills are forced to bring raw materials from outside the state and such transportation is putting burden on the mills.
- vi) The sales tax in West Bengal is very high at 13% to 17 % against 2% – 4% in other states.

It is the further case of the company that the Unions failed to appreciate all endeavours of management and the severity of crisis and were resorting to frequent calls for strikes and were taking negative and non-co-operative attitude which hindered production and increased the cost of production. So, on 28.08.1998 the management sought intervention of the State through the Hon'ble Labour Minister.

The workmen / Unions breached settlements of 1995 and 1998 and their conduct caused huge unbearable loss to company. On 24.10.1998 the company wrote a letter to all 5 unions and on 26.10.1998 the company sought intervention of State Government and also sent letters to Hon'ble Minister for minority, Wakf Estate intimating the critical financial situation of Textile Mills. The employer also sent letter to Hon'ble Chairman of WBIDC.

The employer held various meetings with the Unions but the Unions were misleading the workmen towards violating the terms of settlements. On 14.11.1998 several proposals were made to the Union to reduce losses like persuading the State Government through political parties to grant permission to install three MW Captive Oil Based Power Plant, to request the State Government to reduce the sales tax, to request the Central Government for granting excise relief etc.

The Unions agreed to the proposal but in fact neither production increased nor was the damage reduced by the workmen.

Thus, the company was forced on two occasions since March, 1998 to close down the plain loom-shade but the State Government refused to grant permission for such shutting down or for lay off of workmen. The company wanted to lay off some workmen to ensure survival of rest workmen. The employer did not act in bad faith at any point of time and did not do anything illegal.



production of huge quantity of damaged and sub-standard cloth. They were late in attending their duty hours.

Such conduct of workmen led to unbearable loss.

There were frequent calls for strike by Unions and disturbance by their leaders. The leaders were bent upon bringing the Birla Group and the composite Mill to a standstill.

Moreover, there was overall recession in demand. The cotton prices increased. The law and order situation worsened due to militant trade unionism. The company accumulated losses of Rs. 23 crores in three years ending March 31, 1998.

Under such circumstances on 05.12.1998 the employer sent letter to all the Unions expressing its intention to declare suspension of work. The Trade Unions and workmen were fully aware of the grave situation but they were not willing to follow the law and indulged in illegal activities. There were intimidations, threats of violence, holding unauthorised meetings, demonstrations and assembly inside the premises of the Mill regularly.

Since 21.12.1998 at the end of the three shifts various big illegal meetings were held blocking the gate of the Mill.

The Unions did not take any corrective steps rather they threatened the management with strikes and resorted to illegal strike on 04.01.1999. After all these, the employer found it not economically viable to run the mill and it was no longer possible for the employer to keep the mill operational anymore and employer was forced to suspend the working of the mill w.e.f. 5.30 a.m. on and from January 5, 1999 by issuing a notice of suspension of work on 04.01.1999.

Even after suspension of work the Unions and workmen started resorting to various criminal activities in and around premises. Loyal employees were beaten up, violent demonstrations were held and employer had to pray for intervention of the Hon'ble Chief Minister vide letter dt. 17.01.2000.

The workmen continued the violent activities including obstruction of the gate, putting up barricades, beating up loyal employees, assaulting staff members etc. FIRs were lodged but police took no action. The Unions rejected proposals given by the Company.

On the date of order of reference, the number of the workmen on the roll was less than 80% of total strength after termination, resignation and retirement. Most of the unionised workmen were not in employment.

The company pleads that the action of the employer suspending work was completely justified.



The company has denied all allegations levelled by the Unions in their pleadings except what is matter of record and denied that the company challenged the decision of Government by declaring the suspension of work.

It is further case of the company that State Government's orders refusing permission for closure and retrenchment were not passed on merit but were passed on mere technical grounds and as these orders were passed 10 years ago it cannot have any relevance in the present changed situation.

It is the further case of Company that demands of management as noted in issue no. 2 to 8 of the reference have not caused any violation of any settlement and the dispute is very much an issue to be decided.

It is the further case of the company that no res judicata is applicable as the decision of the Government was administrative decision and not a legal decision and the union is not entitled to allege that issue No. 2 cannot be agitated before this Tribunal.

It is a further case of the Company that the unions have made self-contradictory statement in their written statement and the change in the socio-economic sphere from the time of settlement till 1999 will be proved by the Company. The company states that no financial support in the form of Bank loans etc. is available to a company which is not profitable unit and the Government of West Bengal hardly subsidises industrial consumers. The SARFAESI Act 2002 takes over all assets of a company without recourse to bank or Tribunal. There is no emphasis of labour welfare and hire and fire is the way of life and there is minimal interference by judiciaries even where there is SEZ and because of economic liberalization sick industrial units do not get rehabilitated.

So far issue No. 3 is concerned as the unions have themselves repudiated the settlement, they are now estopped from alleging that the company was bound by the settlement.

The company further pleaded that the changes proposed by the Apex Federation of Textile Manufacturers would not have led to unfair competition or discrimination or industrial unrest rather those changes would have increased productivity and decreased damages. All members of Eastern India Textile Mills Association are bound by the decision of the Federation. The company pleaded that the situation of units run by NTC cannot be compared with this Company as those units are administered by Government of India and the GOI underwrites its losses and guarantees repayment. The Unions are suffering from blindness caused by leftist eye patch on both eyes and believe that the workman does not need to work but he should be rewarded.

So far issue No. 4 is concerned the company states that it is related to Issue No. 3 and thus does not require to be addressed separately.

The company denies that its proposal for freezing VDA ought to have been rejected.

So far as issue No. 5 & 6 are concerned the Company pleads that the Unions are relying on omnibus award of 1948 & 1958 which are more than 60 years old when the socio-economic and political scenario was completely different. The company denied that there had been no betterment in production process and / or technical improvement.

So far as issue No. 7 is concerned the company pleads that the Unions accepted the settlements of 1989, 1995 and 1998 linking the benefits given to workmen to increase of work-load. But the Unions, their thugs and politically led anti-social elements did not allow the management to cause necessary maintenance thus, the condition of machineries deteriorated and the unions are trying to take advantage of their own wrong.

So far as issue No. 8 is concerned the company pleads that the company has ascertained the factors contributing to the damage but the Unions mis-led the workmen causing apathy and callousness the proposal and admission that damages could be reduced by workmen came too late instead there were illegal strikes which led to declaration of suspension of work.

It is the further case of the company that the lack of work culture on the part of workmen has resulted in such dismal condition. More over after laps of above 10 years all senior management and technical staff have left the Company, no technical hands are available and the availability of imported cloth has made domestic cloth market very competitive. The company pleads that more than 80 % or workmen have left their job with the company.

So far as issue No. 9 is concerned the company pleads that more than 80 % or workmen have left their job with the company. The company has stated that, "The tragic but fictional story of workmen remaining unemployed and living in starvation with their family members would have made good script for a art-film, but is simply not true. The workmen who have left the services took their legal dues". The company further states that no one was forced to resign. It is the Unions, their mis-direction and malicious and mala fide act that brought the composite mill in West Bengal to a standstill and now they are trying to seek sympathy of Tribunal by writing fictional stories of starvation. They have shown their true colours. The company pleads that the unions are after money, not for the workmen, but for their own coffers and to fuel the lifestyle of the leaders of the union. So, suspension of work cannot and should not be withdrawn unconditionally or at all.

The company was compelled to declare suspension of work as a last resort as the workmen despite notice did not mend their conduct. The company is



passing through acute financial crisis as a result of the accumulation of losses of crores of Rupees. The machines have become obsolete by passage of time and there is no scope to re-open the Mill in the present condition.

All the demands of management are legal, reasonable and justified and were made to save the Mill.

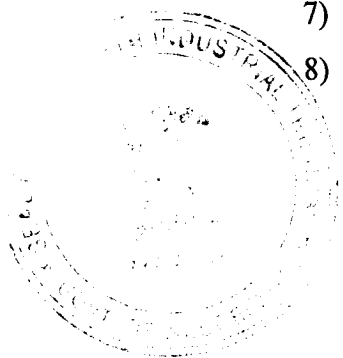
The Unions are not entitled to any relief as prayed for. The order of suspension of work is not required to be withdrawn and no workmen can be allowed to join their duties.

The company has further denied that the workmen are unemployed and has pleaded that it is for the Unions to prove the same.

Evidence of Company

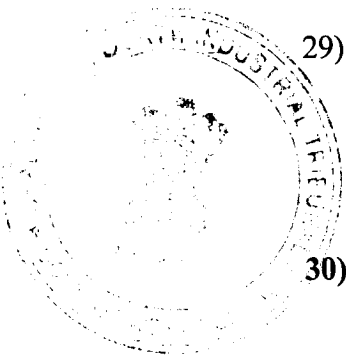
To prove its case Company examined one Sanjoy Kr. Sinha, the CEO of the Company, he corroborated company's written statement and proved following documents: -

- 1) Company's petition filed before Hon'ble Court vide No. 387 of 1999 (Ext. A) – an application filed U/s. 391(2) and 394 of the Company's Act, 1956 and order dt. 08.10.1999 passed in this connection,
- 2) Order passed on 03.02.1999 and on 28.01.1999 in W.P. 180/99 (Ext. B & C) – Order passed in respect of ingress and egress and movement at factory gate, in Ext. C Hon'ble Court has clarified that, "This order will not prevent the private respondent from creating their lawful trade union activities within the space provided by the company,
- 3) Petition of W.P. 180/99 (Ext. D) - The company filed this writ petition of 27.01.1999 after notice of suspension of work alleging obstruction by unions.
- 4) Annual report and accounts of the Company for F/Y 1999-2000 (Ext. E) – The annual report and accounts of the company for the year 1999 - 2000,
- 5) Annual report and accounts of the Company for F/Y 2007-2008 (Ext. F) - The annual report and accounts of the company for the year 2007-2008,
- 6) Annual report and accounts of the Company for F/Y 2008-2009 (Ext. G) -The annual report and accounts of the company for the year 2008-2009,
- 7) Memorandum of settlement dt. 11.06.1995 (Ext. H) – ,
- 8) Letter dt. 17.02.1998 of Sri S.K. Birla, Senior president of Textile Section to Sri Santi Ranjan Ghatak, Labour Minister (Ext. I) – The author wrote that they entered the settlement of 11.06.1995 but the trade unions are not co-operating and unless the Trade Unions co-operate it will not be possible for the management to continue the Mills so, they will reduce the total wages and D.A. as it was in May, 1995 w.e.f. 1st March, 1998 till the Mill operate,



- 9) Bipartite agreement dt. 09.06.1998 between the Company and Garden Reach Textile Workers' Union (Ext. J) – Parties agreed that there will be increase of 20% work load within three months from date of settlement and the management will give ad hoc increase of Rs. 100/- per month plus increase in D.A. as per industry-wise settlement among other things. Parties agreed that the settlement dt. 09.06.1998 will come in force from 16.06.1998 and the binding of parties for a period of four years and can be terminated only after due notice from either of the parties required under law and shall continue till substituted by fresh agreement,
- 10) Memorandum of Settlement dt. 18.06.1998 between the Company and Garden Reach Textile Workers' Union (Ext. K) – This agreement induced some changes in the terms of settlement dt. 09.06.1998 ,
- 11) Notice dt. 16.06.1998 issued by the factory manager (Ext. L) – The Factory Manager notified that the workmen who did not take additional work-load as per settlement dt. 09.06.1998 but were enjoying ad hoc increase in wages @ Rs. 100/- per month and enhanced D.A. as per tripartite settlement of 11.06.1995 shall not be entitled to the same and management's notice dt. 25.05.1998 will be applicable to them w.e.f. 16.06.1998,
- 12) Letter forwarding this notice to the Union on 16.06.1998 (Ext. L series) .
- 13) Letter issued by the factory manager on the same date i.e. 16.06.1998 to different Unions (Ext. M series),
- 14) Notice dt. 17.06.1998 issued by the factory manager, Jagmal Singh Rao (Ext. N) – Management issued notice that some workmen are not discharging their duties as per settlement dt. 09.06.1998. so, such workmen will be paid pro rata wages and pro rata D.A. on the basis of actual work done and will also face other disciplinary action,
- 15) Five forwarding letters sent by the factory manager enclosing notice dt. 17.06.1998 to various Unions (Ext. O collectively),
- 16) Another Notice by the factory manager dt. 20.06.1998 (Ext. P) – Management issued notice that most of the winders have increased their productivity by about 3% to 7% and few have not increased their production at all and those who are giving low production will get pro rata wages and pro rata D.A. All workmen of that department were asked to increase production by 20% in default they will face pro rata deduction of wages and shall be liable for disciplinary action,
- 17) The Letter forwarding this notice to the Union (Ext. Q)- The factory Manager wrote to the G.S. of the Union to advise the workmen to increase productivity by 20%,
- 18) Notice of change dt. 24.08.1998 issued by Secretary, Eastern India Textile Mills Association (Ext. R) – The Eastern India Textile Mills Association issued the notice informing the Federations and the Unions about the changes their proposing as regards increase in work-load, freezing of VDA, decrease in basic wages etc.,
- 19) Letter dt. 28.08.1998 by Sri S.K. Birla to the Labour Minister (Ext. S) – After one-day token strike called by Union on 27.08.1998 the senior president of the Company informed the Labour Minister that such meetings and inflammatory speeches at the main gate of the Mill are disrupting work leading to heavy financial losses.

- 20) Letter dt. 24.10.1998 by the factory manager to the five Unions (Ext. T) – The Factory Manager wrote to all Unions that the memorandum of settlement dt. 09.06.1998 is not been implemented by the workers, they are not delivering stipulated work-load. So, the Unions were requested to take necessary action,
- 21) Forwarding letters dt. 26.10.1998 sent to the Labour Commissioner and Labour Minister (Ext. U collectively),
- 22) Memorandum dt. 09.11.1998 sent by the Senior President of the Company to the Minister for Minority and Wakf Estate (Ext. V) – The Senior Vice-President narrated how the high-power rates, high sales tax, high excise duty is leading to high financial losses to the company,
- 23) Memorandum dt. 16.11.1998 sent by S.K. Birla to the Chairman of W.B.I.D.C. and Member of Parliament Sri Somnath Chatterjee (Ext. W),
- 24) Letter dt. 12.12.1998 addressed to the five Unions by the Factory Manager (Ext. X) – The Factory Manager wrote to the Unions that some workmen are still not implementing the high production, low damage terms of agreement dt. 09.06.1998 and the Unions were requested to ensure the same,
- 25) Letter dt. 24.12.1998 addressed to the General Secretary of Five Unions by the factory manager Ext. Y) - The Factory Manager wrote to the Unions that some workmen are still not implementing the high production, low damage terms of agreement dt. 09.06.1998 and the Unions were requested to ensure the same,
- 26) Notice dt. 21.11.1998 issued by Mr. P.P. Singh (Ext. Z) – The Factory Manager issued notice that in view of request by the Deputy Labour Commissioner, the management shall not give effect to the proposed stoppage of work / no work no pay, from 23rd November, 1998 till 27th November, 1998,
- 27) Letter dt. 21.11.1998 forwarding this notice to the Unions (Ext. Z1),
- 28) Notice dt. 23.11.1998 issued by P.P. Singh forwarded to the Labour Secretary, Government of West Bengal vide letter dt. 23.11.1998 (Ext. AA series) – On 23.11.1998 the company issued notice that from 01.11.1998 the D.A. will be frozen at 1898 points and the new entrants will be taken as learners for three years and after three years of satisfactory apprenticeship the learner may be employed as casual / badly worker on stated wages and D.A.,
- 29) Letter dt. 31.12.1998 by Sri S.K. Birla, Senior president of the company to the Labour Minister and its receipt dt. 04.01.1999 (Ext. BB) – The Senior President of the Company Sri S.K. Birla wrote to the Labour Minister about the poor financial condition of the company seeking co-operation of Government,
- 30) Letter dt. 28.12.1998 addressed to O.C., Garden Reach Police Station by the factory manager (Ext. CC)- this is a complaint to the O.C about raising of slogans by workman at 5.30 a.m., 5.30 p.m. & 9.30 p.m. for more than 20 minutes each time and the factory manager has expressed apprehension that the workmen **may** lose their rational control and there **may** be law and order situation etc.



- 31) Notice d. 29.12.1998 issued by the Factory Manager (Ext. DD), - The factory manager has issued notice directing the workman to stop assembling in front of administrative office building blocking ingress and egress for more than 20-25 minutes at 5.30 a.m., 5.30 p.m. & 9.30 p.m. everyday since 21.12.1998.
- 32) Notice dt. 28.12.1998 issued by the factory manager to the workmen, copy sent to Labour Commissioner and the Unions (Ext. EE series), - The factory manager has issued this notice directing the workmen to increase efficiency, reduce damage, proper maintenance of machinery, take up required work-load and extend full co-operation. The factory manager has concluded the notice stating that if all this is not done the situation will drift towards heavy losses and carry the unit to a dark future.
- 33) Letter dt. 08.04.1997 addressed to O.C. Garden Reach Police Station by the factory manager with forwarding letter to the D.C., Port (Ext. FF), - The factory manager has lodged complaint stating that on 07.04.1997 some workmen namely Rampati Singh, Shyamji Yadav and Qader Khan assaulted one Shyam Narayan Bari outside the Mill premises when he was going back home after work.
- 34) Letter dt. 07.04.1997 by the factory manager addressed to O.C. Garden Reach Police Station forwarded to D.C., Port (Ext. GG) – The factory manager lodged complaint to O.C. that on 07.04.1997 few workers instigated workers of winding department and on such instigation the workers have gone on strike since 9.40 a.m. The five workmen namely Sri Susantmal, Sri Rampati, Sri Tapan, Sri Keso and Sri Laxmi Narayan Singh who have instigated are suspended from work at 11.30 a.m. and the order of suspension shall continue till a domestic enquiry is completed.
- 35) Discharge Certificate of workman ShyamNanayan Bari, O.P.D. ticket (Ext. HH series) -
- 36) Memorandum of settlement dt. 13.11.1989, between the Company, four Unions, conciliation officer and Labour Commissioner, Government of West Bengal (Ext. II) – vide this settlement the lock out declared by management w.e.f. 15.02.1987 was lifted w.e.f. 15.11.1989. The conditions for such lifting of lock out were that the total period of lock out will be treated as no work no pay and in future no demand of any nature whatsoever will be raised individually or collectively through the Union on the question of wages and any benefits incidental thereto and various such other conditions. Parties agreed that they will file joint compromise petition in respect of all the disputes pending before the Tribunals and before the Hon'ble High Court as on 13.11.1989 except the one preferred by the company against award passed by the First Industrial Tribunal on 23.05.1988 within a week of the settlement. The company agreed that all previous police cases will be compromised and no workmen will be victimized for trade union activities and all previous settlements, wage board recommendations, cotton textile award 1958 etc. will continue save and except altered by this settlement.
- 37) Letter dt. 05.12.1998 addressed to the five Unions by the factory manager Sri Jagmal Singh Rao and forwarded to the Labour Commissioner (Ext. JJ) – The Factory



Manager stated that in view of the notice of demands served by workmen on 27.11.1998, stating that if their demands are not met they will go on seize-work on any date after 14.12.1998, the company has decided to declare suspension of work of Textile Division on and from 24.12.1998.

- 38) Notice dt. 04.01.1999 issued at 10.30 p.m. by Sri Jagmal Singh Rao declaring that the suspension of work will take effect from 5.30 a.m. of 05.01.1999 (Ext. KK),
- 39) Letter dt. 17.01.2000 by Sri S.K. Birla Director of Kesoram Textiles Mills Ltd. addressed to the Home Minister Sri Buddhadeb Bhattacharjee (Ext. LL) – The Director of the company informed the Chief Minister about the bad law and order situation, assault on employees by union leaders, police inaction etc.
- 40) Copy of Letter dt. 17.01.2000 issued by Sri S.K. Birla Director of Kesoram Textiles Mills Ltd. sent to Sri T.K. Sengupta, the Joint Secretary, Chief Minister's Secretariat, Government of West Bengal on 20.01.2000 (Ext. MM collectively),
- 41) Notice dt. 01.04.1993 issued by the Factory Manager, Kesoram Industries (Ext. NN) – The Factory Manager informed that some workmen employed as weavers and helpers are not working properly. So, they were asked to work properly and increased productivity, in default management will take serious action.
- 42) Notice dt. 02.04.1993 issued by the Factory Manager, Kesoram Industries (Ext. OO) – All workmen employed as weavers and helpers were directed to prepare damage free cloths and increase productivity, in default management will take appropriate action.
- 43) Notice dt. 12.06.1993 issued by the Factory Manager, Kesoram Industries (Ext. PP) – The contents of this notice were similar to the previous notices issued to weavers and helpers.
- 44) Notice dt. 08.07.1993 issued by the Factory Manager, Kesoram Industries (Ext. QQ) – The contents of this notice were similar to the previous notices issued to weavers and helpers.
- 45) Four Notices dt. 21.07.1993, 30.08.1993, 23.09.1993, 30.09.1993 issued by the Factory Manager, Kesoram Industries (Ext. RR) - The contents of this notice were similar to the previous notices issued to weavers and helpers. Further similar notices were issued on 30.08.1993 (Ext. RR/1), on 23.09.1993 (Ext. RR/2), on 30.09.1993 (Ext. RR/3).
- 46) Letter dt. 05.10.1993 issued by the Factory Manager to the General Secretary of GRTW Union enclosing notice dt. 04.10.1993 (Ext. SS series) - The contents of this notice were similar to the previous notices issued to weavers and helpers.
- 47) Notice dt. 12.02.1994 issued by the Factory Manager (Ext. TT) - The contents of this notice were similar to the previous notices issued to weavers and helpers.
- 48) Letter dt. 09.03.1994 addressed to the General Secretary GRTW Union (Ext. UU) - The contents of this notice were similar to the previous notices issued to weavers and helpers.

- 49) Five Notices dt. 21.04.1994, 09.07.1994, 16.07.1994, 27.10.1994 and 12.11.1994 issued by the Factory Manager, Kesoram Industries (Ext. VV) - The contents of this notice were similar to the previous notices issued to weavers and helpers. Further similar notices were issued on 09.07.1994 (Ext. VV/1), on 16.07.1994 (Ext. VV/2), on 27.10.1994 (Ext. VV/3), 12.11.1994 (Ext. VV/4).
- 50) Notice dt. 29.11.1994 issued by the Factory Manager, Kesoram Industries along with forwarding letter addressed to the General Secretary GRTW Union (Ext. WW) – The Factory Manager issued notice to all workmen and employees detailing the situation and directing them to take corrective steps
- 51) Notice dt. 03.12.1994 issued by the Factory Manager, Kesoram Industries (Ext. XX) - All workmen employed as weavers and helpers were directed to prepare damage free cloths and increase productivity,
- 52) Notice dt. 17.12.1994 issued by MW-1 Sanjoy Kr. Sinha (Ext. YY) - All workmen employed as weavers and helpers were directed to prepare damage free cloths and increase productivity,
- 53) Fifteen Notices dt. 21.01.1995, 02.03.1995, 02.09.1995, 10.01.1996, 08.03.1996, 09.03.1996, 12.04.1996, 05.07.1996, 06.08.1996, 26.04.1997, 21.08.1997, 29.08.1997, 18.09.1997, 24.10.1997 and 25.10.1997 issued by the Factory Manager, Kesoram Industries (Ext. ZZ) – On 21.01.1995 The Factory Manager gave 10 days' notice to the workmen of loom shed to increase productivity and reduce damage in default management will take drastic action of closing down the loom shed.
- 54) Notice dt. 15.11.1997 issued by the Factory Manager, Kesoram Industries (Ext. AAA) - All workmen employed as weavers and helpers were directed to work properly, increase productivity and decrease damage.
- 55) Two Notices dt. 22.11.1997 and 10.12.1997 issued by the Factory Manager, Kesoram Industries (Ext. BBB) – The contents were similar to Ext. AAA.
- 56) Seven Notices dt. 21.01.1998, 21.01.1998, 28.01.1998, 11.02.1998, 17.02.1998, 21.02.1998 and 16.03.1998 issued by the Factory Manager, Kesoram Industries (Ext. CCC) - The contents were similar to Ext. AAA.
- 57) Letter dt. 28.06.1996 issued by the Factory Manager to the Joint Labour Commissioner with annexures (Ext. DDD collectively) – The Factory manager had informed JLC that despite settlement dt. 11.06.1995 and 13.11.1989 the workmen are not complying with the terms of settlement and the JLC is requested to direct the Trade Unions and the workmen to discharge their duties and give required production in terms of settlement dt. 11.06.1995.
- 58) Letter dt. 05.07.1996 issued by the Factory Manager to the General Secretaries of five Unions (Ext. EEE) – The Factory Manager wrote to all Unions requesting that the workmen should immediately start complying the terms of settlement dt. 11.06.1995 and 13.11.1989.
- 59) Letter dt. 10.09.1996 issued by the Factory Manager to the Labour Commissioner (Ext. FFF)- The Factory Manager informed the Labour Commissioner that despite the settlement and various attempts by the company there is no improvement in the

situation in terms of increase of productivity of work load and his intervention was sought for.

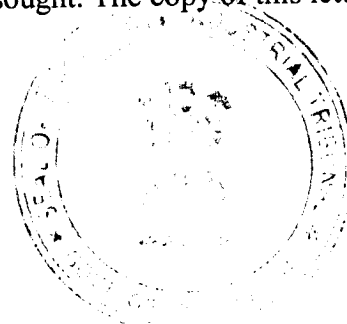
- 60) Three letters dt. 23.09.1996, 12.12. 1996 and 28.12.1996 issued by the Factory Manager to the Labour Commissioner, (Ext. GGG) – The Factory Manager sought intervention of Labour Commissioner.
- 61) Letter dt. 10.04.1997 written by the Factory Manager to the General Secretary, Garden Reach Sutakal Shramik Union (Ext. HHH) - The Factory Manager wrote to the Unions to take steps to ensure increased productivity and work load by workmen and for revision of basic rates as per settlement dt. 11.06.1995.
- 62) Letter dt. 10.04.1997 addressed to the General Secretary K.C.M.E. Union by the Factory Manager (Ext. III series) - The Factory Manager wrote to the Unions to take steps to ensure increased productivity and work load by workmen and for revision of basic rates as per settlement dt. 11.06.1995.
- 63) Letter dt. 10.04.1997 addressed to the General Secretary KICM Majdoor Sangh by the Factory Manager (Ext. JJJ) - The Factory Manager wrote to the Unions to take steps to ensure increased productivity and work load by workmen and for revision of basic rates as per settlement dt. 11.06.1995.
- 64) Letter dt. 02.07.1997 by the Factory Manager to the Labour Commissioner along with forwarding to the MIC, Labour Department (Ext. KKK) – The Factory Manager wrote to the Labour Commissioner for taking appropriate steps for implementation of settlements for increasing productivity and work load and revision of basic wages in terms of settlement dt. 11.06.1995.
- 65) Four letters dt. 04.07.1997 addressed to the G.S. of GRSS Union, KICMM Sangh, KCME Union by the Factory Manager (Ext. LLL series) – The Factory Manager wrote similar letters to the Unions.
- 66) Letter dt. 24.07.1997 addressed to the G.S. of five Unions by the Factory Manager (Ext. MMM) - The Factory Manager wrote similar letters to the Unions.
- 67) Letter dt. 24.07.1997 addressed to Labour Commissioner by the Factory Manager forwarded to the Labour Secretary (Ext. NNN) - The Factory Manager wrote similar letters to the Labour Commissioner.
- 68) Four letters dt. 27.08.1997 by the Factory Manager addressed to the G.S. of GRSS Union, KICMM Sangh, KCME Union and GRTW Union (Ext. OOO) – The Factory Manager wrote similar letters to the Unions to ensure implementation of settlement dt. 11.06.1995.
- 69) Notice dt. 03.09.1997 issued by the Factory Manager along with the covering letter addressed to G.S., GRTW Union (Ext. PPP) – The Factory Manager issued notice

informing that the management will instal technologically new boiler and the existing boiler operator shall be imparted training. If interested they may apply.

- 70) Letter dt. 22.10.1997 by the Factory Manager to the G.S. of five Unions (Ext. QQQ) – The Factory Manager wrote to all Unions that the Unions have not taken any steps towards increase in productivity, increase in work load as per settlement dt. 11.06.1995 and the Trade Unions were requested to advise the workmen to increase productivity and increase work load.
- 71) Letter dt. 22.10.1997 addressed to the Labour Commissioner by the Factory Manager forwarded to the Labour Secretary (Ext. RRR) – The Factory Manager wrote similar letter as Ext. QQQ to the Labour Commissioner.
- 72) Notice dt. 06.11.1997 issued by the Factory Manager along with the covering letter dt. 10.11.1997 addressed to the Labour Minister and to the Labour Commissioner (Ext. SSS) – The Factory Manager issued notice detailing low productivity and high damage by workmen and lack of effort to implement settlement of 11.06.1995. Copies of this notice were sent to the Labour Minister and the Labour Commissioner.
- 73) Letter dt. 14.11.1997 addressed to the G.S. of five Unions by the Factory Manager (Ext. TTT) – Similar letter was issued to all Unions.
- 74) Letter dt. 14.11.1997 addressed to the Labour Commissioner by the Factory Manager (Ext. UUU) - The Factory Manager wrote similar letter as Ext. SSS to the Labour Commissioner.
- 75) Letter dt. 02.01.1998 addressed to the G.S. of five Unions by the Factory Manager along with forwarding letter to the Labour Minister and Labour Commissioner (Ext.VVV) – The Factory Manager wrote to all Unions that due to the low productivity, low work load and high value loss there was left with no option but to close it down partially or completely and to take steps to reduce unnecessary losses and make it a viable units in three months and the Unions were requested to use influence and pressure on the workmen to act seriously, act fast and act practically to achieve higher work load and low damages.
- 76) Letter dt. 08.01.1998 addressed to the G.S. of five Unions by the Factory Manager along with five covering letters to the Labour Commissioner (Ext. WWW) – The Factory Manager wrote to all Unions to take necessary steps for implementation of settlement dt. 13.11.1989.
- 77) Notice dt. 10.01.1998 issued by the Factory Manager (Ext. XXX) – The Factory Manager issued notice to the workmen employed as weavers and helpers informing that as they were not paying attention to the repeated notices, the management will be compelled to stop operation in weaving department.
- 78) Letter dt. 12.01.1998 addressed to the G.S. of five Unions by the Factory Manager and forwarded to the Labour Minister, Labour Secretary, Labour Commissioner and Additional Labour Commissioner and letter dt. 15.01.1998 addressed to Secretary of EITM Association (Ext.YYY& YYY/1) – The Factory Manager wrote to all Unions that despite industry-wise settlement of June, 1995, the Unions and workmen have

intentionally failed in its implementation. So, it was a final request to the Unions to ensure implementation. Copy of this letter was sent to the Secretary of Eastern India Textile Mills Association (Ext. YYY/1).

- 79) Letter dt. 19.01.1998 addressed to G.S. of GRTW Union by the Factory Manager (Ext. ZZZ) – The Factory Manager wrote to the G.S. of GRTW Union in response to their letter dt. 16.01.1998 informing that the agreement of 1989 has not been implemented and that the company will not implement the reductions / freezing of wages if its proposal dt. 02.01.998 for increase in work load is accepted and implemented.
- 80) Letter dt. 21.01.1998 addressed to the G.S. of five Unions by the Factory Manager along with forwarding letter to the Additional Labour Commissioner (Ext. AAAA) – The Factory Manager wrote to all Unions to expedite increase in production and work load. Copy of this letter was sent to the Additional Labour Commissioner (Ext. AAAA/1).
- 81) Letter dt. 21.01.1998 addressed to G.S. of five Unions by the Factory Manager (Ext. BBBB) – The Factory Manager wrote to all Unions alleging low production in winding Department.
- 82) Letter dt. 21.01.1998 addressed to the Principal Secretary, Labour Secretary, Labour Commissioner and Labour Minister forwarding Ext. BBBB (Ext. CCCC) – The Factory Manager wrote to all Unions alleging extremely high damages and very low productivity in the Plain, Auto and uti-B Sections of weaving department. Copy of this letter was sent to the Chief Minister, to the Labour Secretary, to the Labour Minister and to the Labour Commissioner.
- 83) Letter dt. 22.01.1998 addressed to the G.S. of five Unions by the Factory Manager forwarded to the Principal Secretary, Labour Secretary and Labour Minister (Ext. DDDD) – The Factory Manager wrote to all Unions that due to non-implementation of increased productivity and increased work load the company is suffering heavy losses so, assistance and co-operation of all concern was sought. Copy of this letter was sent to the Chief Minister, to the Labour Secretary, to the Labour Minister and to the Labour Commissioner.
- 84) Letter dt. 22.01.1998 addressed to the G.S. of five Unions by the Factory Manager (Ext. EEEE) - The Factory Manager wrote to all Unions about non-implementation of increased productivity and increased work load and co-operation of all concern was sought.
- 85) Letter dt. 28.01.1998 addressed to the G.S. of five Unions by the Factory Manager and forwarded to the Labour Commissioner (Ext. FFFF) - The Factory Manager wrote to all Unions about non-implementation of increased productivity and increased work load and co-operation of all concern was sought. The copy of this letter was sent to the Labour Commissioner.



- 86) Letter dt. 03.02.1998 sent by the Factory Manager to the G.S. of GRTW Union (Ext. GGGG)-The Factory Manager wrote to the G.S., GRTW Union about the installation of technologically advanced boiler.
- 87) Letter dt. 12.02.1998 addressed to Secretary of Five Unions by the Factory Manager (Ext. HHHH) – The Factory Manager wrote to all Unions about increasing productivity and informing that in default they will have to close down the unit.
- 88) Letter dt. 20.02.1998 addressed to the G.S. of five Unions by the Factory Manager (Ext. IIII) – The Factory Manager informing all Unions that the management shall reduce and freeze the total wages to the level of May, 1995 w.e.f. March, 1998.
- 89) Letter dt. 14.03.1998 addressed to the G.S. of five Unions by the Factory Manager (Ext. JJJJ) – The Factory Manager wrote to all Unions about implementation of settlements dt. 13.11.1989 and 11.06.1995.
- 90) Notice dt. 22.04.1998 issued by the Factory Manager and forwarded to the G.S. of five Unions and the Labour Commissioner on 23.04.1998 (Ext. KKKK) – The Factory Manager issued notice informing that the management is unable to continue operation due to low productivity and high damage. So, if trade unions do not extend full co-operation, the management will be compelled to review the situation. Copy of this letter was sent to the labour commissioner.
- 91) Notice dt. 16.05.1998 issued by the Factory Manager and forwarded to the G.S. of five Unions and the Additional Labour Commissioner and Labour Secretary on 16.05.1998 (Ext. LLLL) – Similar notice was issued by the factory-men and compliance was sought by 22.05.1998. Copy of this letter was sent to the labour commissioner and Secretary, Labour Department.
- 92) Notice dt. 10.07.1998 by Sri P.P. Singh (Ext. MMMM)- The Factory Manager issued notice seeking increased production in default face appropriate disciplinary action else management will pull out of settlement dt. 13.06.1998.
- 93) Notice dt. 16.07.1998 by P.P. Singh along with forwarding letter to the G.S. of GRTW Union (Ext. NNNN) – The Factory Manager issued notice giving schedule of training for the workmen. Copy of this notice was sent to G.S., GRTW union.
- 94) Notice dt. 21.07.1998 issued by P.P. Singh (Ext. OOOO) – The Factory manager issued notice giving ultimatum to comply by the increased productivity norms within 3 days else the management will take disciplinary action and will get out of the memorandum of settlement dt. 13.06.1998.
- 95) Notice dt. 07.08.1998 issued by J.S. Rao the Factory Manager forwarded to the G.S. of GRTW Union vide letter dt. 07.08.1998 (Ext. PPPP) – The Factory Manager issued notice of training to workers.
- 96) Letter dt. 29.08.1998 by the Factory Manager forwarded to The G.S. of five Unions (Ext. QQQQ) – The Factory Manager issued notice for immediate compliance of reducing damage and increasing production. Copy of this notice was sent to all unions.

- 97) Letter dt. 01.09.1998 by the Factory Manager forwarded to The G.S. of five Unions (Ext. RRRR) – The Factory Manager issued similar notice. Copy of this notice was sent to all unions.
- 98) Notice dt. 09.10.1998 by the Factory Manager (Ext. SSSS) – Similar notice was issued.
- 99) Notice dt. 15.10.1998 by the Factory Manager forwarded to The G.S. of five Unions (Ext. TTTT) – notice calling for application for training. Copy of this notice was sent to all unions.
- 100) Notice dt. 20.10.1998 issued by the Factory Manager (Ext.UUUU) - The Factory Manager issued notice for immediate compliance of increasing production by 20%.
- 101) Notice dt. 22.10.1998 issued by the Factory Manager (Ext.VVVV) – Similar notice was issued.
- 102) Notice dt. 23.10.1998 issued by the Factory Manager and forwarded to the G.S. of five Unions (Ext.WWWW) – The factory Manager issued final warning directing immediate raise in production. Copy of this notice was sent to all unions.
- 103) Notice dt. 05.11.1998 issued by the Factory Manager forwarded to the G.S. of GSTW Union (Ext. XXXX) – The factory manager issued notice that as the workmen have not achieved revised / increased production. So, they are liable for pro rata deduction from wages and D.A.
- 104) Letter dt. 16.11.1998 by P.P. Singh to G.S. of all Unions (again marked Ext. XXXX). The factory Manager informed the Unions that to reduce the extra-ordinary heavy financial losses the Senior President of the Company suggests that the operation of entire plain loom shed and all the connected sections and machines be stopped for two months starting 23.11.1998 on no work no pay basis alternatively the whole Mill will work only for four days in a week and the next two days will be no work no pay for the workers.
- 105) Letter dt. 16.11.1998 by P.P. Singh to G.S. of all Unions forwarded on 17.11.1998 to the Labour Commissioner (Ext. YYYY) – The copy of above letter dt. 16.1.1998 was forwarded to the Labour Commissioner.
- 106) Letter dt. 21.11.1998 by P.P. Singh addressed to DLC and Conciliation Officer (Ext. ZZZZ) – The factory manager informed the Deputy Labour Commissioner and conciliation Officer that in view of his letter dt. 20.11.1998 the management has postponed the stoppage of plane shades till 27th November 1998.
- 107) Letter dt. 25.11.1998 by P.P. Singh addressed to G.S. of SKS Union (Ext. AAAAA) – The Factory Manager wrote to the G.S., GRSS union informing that the management has postponed the stoppage of plain loom sheds till 27th November 1998.
- 108) Letter dt. 28.11.1998 by J.S. Rao addressed to G.S. of five Unions (Ext. BBBB) - The Factory Manager wrote to all unions informing that the management has postponed the stoppage of plain loom sheds till 27th November 1998.

- 109) Letter dt. 28.11.1998 by J.S. Rao addressed to G.S. of four Unions (Ext. CCCCCC) – The Factory Manager wrote to all Unions that their representation dt. 27.11.1998 is illegal, unilateral and motivated and that on 23.11.1998 the management has issued notice of change effective from 01.11.1998 as per the notice of change sent by the Eastern India Textile Mills Association. So, the management cannot withdraw the notice and cannot pay enhanced D.A. The Factory Manager wrote that the Unions threat to strike work from any date subsequent to 14.12.1998 is illegal, unjustified and unwarranted.
- 110) Letter dt. 30.11.1998 by J.S. Rao addressed to G.S. of five Unions (Ext. DDDDDD) – The Factory Manager wrote to all Unions to ensure implementation of terms of settlement dt. 09.06.1998.
- 111) Five letters dt. 05.12.1998 by the Factory Manager to the G.S. of four Unions (Ext. EEEEE) – The Factory Manager wrote to the G.S. to the Unions that all workmen of plain look shed and related sections scheduled to retire on 01.0-7.1999 should take retirement from 10/11 December, 1998 and those retiring from 1st July, 2000 or 1st July, 2001 should follow thereafter at an early date and the physically weak workmen should resign by 11.12.1998 or they will be terminated and that rest workmen of plain loom shed and connected department will take two months' leave within 14th December, 1998 (without pay).
- 112) Letter dt. 12.12.1998 addressed to the G.S. of GRTW Union by the Factory Manager (Ext. FFFFF) – The Factory Manager wrote to the G.S., GRTW union reiterating the contents of their letter dt. 05.12.1998 and denying that there was a threat in the notice of intention for suspension of work on and from 24.12.1998 or any date thereafter.
- 113) Notice dt. 19.12.1998 signed by J.S. Rao forwarded to five Unions by separate letters (Ext. GGGGG) – The Factory Manager issued notice to all workmen to increase productivity and decrease damage. Copy of this notice was sent to all Unions.
- 114) Notice dt. 23.12.1998 signed by J.S. Rao forwarded to the G.S. of five Unions by separate letters (Ext. HHHHH) – The Factory Manager issued notice informing that since 21.12.1998 the workmen were assembling at 5.30 a.m., 5.30 p.m. and 9.30 p.m. and shouting slogan for several minutes and blocking the entrance and all workmen were directed not to assemble or hold such demonstrations. Copy of this notice was sent to all Unions.
- 115) Letter dt. 23.12.1998 signed by J.S. Rao to the O.C., Garden Reach P.S. (Ext. IIIII) – The Factory Manager lodged complaint to the O.C. informing that since 21.12.1998 the workmen were assembling at 5.30 a.m., 5.30 p.m. and 9.30 p.m. and shouting slogan for several minutes and blocking the entrance and that there was apprehension of breach of peace.
- 116) Letter dt. 25.12.1998 signed by J.S. Rao to the O.C., Garden Reach P.S. (Ext. JJJJJ) - The Factory Manager lodged complaint to the O.C. informing that since 21.12.1998 the workmen were assembling at 5.30 a.m., 5.30 p.m. and 9.30 p.m. and

shouting slogan for several minutes and blocking the entrance and that situation may turn into a serious breach of peace.

- 117) Notice dt. 25.12.1998 by J.S. Rao along with forwarding letter (Ext. KKKKK) - The Factory Manager issued notice informing that since 21.12.1998 the workmen were assembling at 5.30 a.m., 5.30 p.m. and 9.30 p.m. and shouting slogan for several minutes and blocking the entrance and all workmen were directed not to assemble or hold such demonstrations. Copy of this notice was sent to all Unions.
- 118) Notice dt. 25.12.1998 by J.S. Rao along with forwarding letter to G.S. of GRTW Union (Ext. LLLLL) - The Factory Manager issued notice that the surplus workers of plain loom shed are not improving their work and the efficiency percentage has gone down from 90% to 75%. So, such surplus workmen were directed to improve their work in default management will take disciplinary action. Copy of this notice was sent to G.S., GRTW Union.
- 119) Letter dt. 28.12.1998 by J.S. Rao to G.S. of GRTW Union (Ext. MMMMM) - The Factory Manager wrote to the G.S., GRTW union denying allegation of threat of illegal closure by the management in its letter dt. 23.12.1998 and all other allegations of Union. There is allegation of decreasing production and increasing damage due to careless attitude of workmen. The author has claimed that the freezing of V.D.A. w.e.f. 01.11.1998 is not illegal and it is done as per the notice of change U/s. 9A given by the EITM Association.
- 120) Notice dt. 01.01.1999 issued by J.S. Rao forwarded to five Unions (Ext. NNNNN) - The Factory Manager issued notice informing that since 21.12.1998 the workmen were assembling at 5.30 a.m., 5.30 p.m. and 9.30 p.m. and shouting slogan for several minutes and blocking the entrance and all workmen were directed not to assemble or hold such demonstrations.
- 121) Letter dt. 02.01.1999 signed by J.S. Rao to the O.C., Garden Reach P.S. forwarded to D.C. Port (Ext. OOOOO) - The Factory Manager informed the O.C. and D.C. that they have heard that workmen will be setting up temporary structure of Bamboos and Tarpaulin in front of the main gate of Mill on Sunday, 03.01.1999 and will commence a Dharna from 8 a.m. till 8 p.m. So, necessary precautionary measures may be taken to avoid any breach of peace.
- 122) Letter dt. 04.01.1999 signed by J.S. Rao to the O.C., Garden Reach P.S. forwarded to D.C. Port (Ext. PPPPP) - The Factory Manager informed the O.C. that he is apprehending serious breach of peace in and around the Mill on 05.01.1999 at 4.30 a.m. and on words which may lead to serious law and order problem etc. So, strong police force may be posted at and around the Mill. This letter was received by P.S. at 2 p.m., another similar letter was sent on the same day (Ext. PPPPP/1).
- 123) Five letters of five different dates addressed to the Labour Minister by Sri S.K. Birla, Senior President, Kesoram Industries (Ext. QQQQQ) - The Senior President, Sri S.K. Birla wrote various letters to the Labour Minister about the critical financial

condition and labour problem of the Company on 29.07.1997, 08.08.1997, 25.08.1997, 15.05.1998 and 28.08.1998.

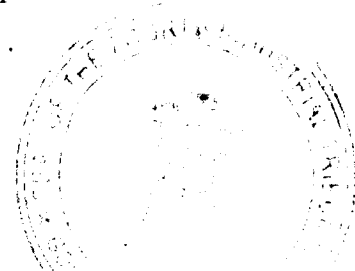
- 124) Six letters of different dates by J.S. Rao addressed to O.C. Garden Reach P.S. (Ext. RRRRR) – The Factory Manager wrote various complaints to the Officer-in-charge, Local P.S. on 08.04.1997, 10.04.1997, 25.04.1997, 29.04.1997 informing that on 07.04.1997 at about 9.30 p.m. workmen Rampati Singh, Shyamji Yadav, Quader Khan and others assaulted Shyam Narayan Bari and the subsequent letters were reminder for taking necessary action.
- 125) Copies of injury report of Shyam Narayan Bari annexed with these letters (Ext. SSSSS),
- 126) Two letters by J.S. Rao addressed to O.C. Metiabruz P.S. (Ext. TTTTT) – The Factory Manager informed the O.C. on 06.07.1999 that on 05.07.1999 some workmen and some anti-socials assaulted Rambhuj Yadav,
- 127) Letter dt. 16.01.2000 by J.S. Rao to the O.C. along with copy of medical report and general diary dt. 15.01.2000 (Ext. TTTTT/1, TTTTT/2, TTTTT/3 & TTTTT/4) – One Ashok Kr. Mishra informed the Factory Manager that he is a workman and on 14th January Rampati and Shyamji assaulted him near Mill-gate but police took no action.
- 128) Complaint dt. 20.01.2000 by Factory Manager to O.C., Metiabruz P.S. with annexure (Ext. UUUUU) – The Factory Manager informed the O.C. that Ashok Kr. Mishra was assaulted by Rampati and Shyamji and the Factory Manager has forwarded the letter of Ashok Kr. Mishra with annexure to O.C. for necessary action.
- 129) Complaint dt. 25.01.2000 by Factory Manager to O.C., Metiabruz P.S. with annexure (Ext. UUUUU/1),
- 130) Notice dt. 14.01.1999 by J.S. Rao with covering letter addressed to G.S. of three Unions (Ext. VVVVV) – The Factory Manager issued notice that the services of 12 employees named therein will be required for essential work at factory from 15th January, 1999 until further order.
- 131) Fourteen letters by the Factory Manager sent on different dates to the Secretaries of three Unions some of which were forwarded to the Labour Commissioner, O.C. & D.C. (Ext. WWWWW) – The contents of notice dt. 14.01.1999 was informed to the Unions through the Unions. On 11.02.1999 the Factory Manager informed the Union that the services of 14 workmen including five / six named in earlier notice will be required for upkeep of the machines etc. until further order. On 15.02.1999 the Factory Manager gave list of 30 workmen whose services will be required for protection of machineries and that their unobstructed entry to the Mill should be ensured.
- 132) Letter dt. 07.12.2001 signed by the Company's witness S.K. Sinha addressed to the Principal Secretary and Labour Commissioner informing about the present condition of the Mill as discussed in the bipartite meeting held on 18.06.2001 and 03.12.2001 (Ext. XXXXX).
- 133) Letter dt. 27.08.2002 by the witness to G.S., GRSS Union and GRTW Union informing that free ingress and egress of experts for inspection of damage in Mill is to be ensured (Ext. YYYYY).

- 134) Two notices dt. 11.09.2002 and 16.02.2004 both signed by the witness relating to occupancy of company's quarters and terms and conditions and discipline and restrictions to the followed (Ext. ZZZZZ).
- 135) Letter dt. 06.10.2004 by this witness to G.S., GRTW Union and GRSS Union informing that some of the occupants of the workers' colony are acting indisciplined and they must comply the norms to maintain peace and harmony (Ext. AAAAAA).
- 136) Letter dt. 15.09.2004 by S.R. Chamaria addressed to the Secretary, Industries Department informing that the net worth of the company has fully eroded by the year-ending 31.03.2004 and there is a reference to BIFR (Ext. BBBB).
- 137) Covering letter dt. 25.07.2008 addressed to the Joint Labour Commissioner enclosing status report dt. 24.07.2008 (Ext. CCCCC).

During cross-examination witness Sanjoy Kr. Sinha deposed that he was deposing in the capacity of Factory Manager and was appointed constituted attorney by the Company to depose in this case on behalf of the Company and he has signed the written statement at the verification. He admitted that conciliation was held on behalf of the Government as the Company declared suspension of work. He deposed that GRTW Union, GRSS Union, KCME Union and KCMM Sangha are functioning in their company and that the GRTW Union is recognized by the company. He admitted that the company challenged the maintainability of this reference and this Tribunal dismissed that petition and against that order the company preferred writ application before Hon'ble Court and Hon'ble Court dismissed the writ application holding that the order of Tribunal does not warrant any interference. He denied that the averment made in his affidavit-in-chief are false or the grievance of the Union made in its statement of claim comes within the purview of Section 2K of the I.D. Act. He deposed that around 3500 workmen were working at the Company when it declared suspension of work. M.W. -1 deposed on 19.07.2016 that there are around 600 employees working in the company now. He deposed that vide Ext. 20 the Union raised protest against notice of suspension of work and vide Ext. 22 i.e. letter dt. 18.01.1999 the Union protested the illegal suspension of work and urged the company to withdraw it.

M.W.-1 admitted that before suspension of work the company sought permission of Government for closing down parts of factory and the Government rejected that prayer on 12.03.1998 and thereafter the Company sought retrenchment of 1189 workmen and the Government rejected that prayer. M.W.-1 admitted that the Federation requested the Company for cancellation of tripartite agreement and for submitting new charter of demands (Ext. 6). M.W.-1 deposed that the ETM Association wrote to the Secretaries of 9 Union U/s. 9A of I.D. Act for effecting certain changes. M.W.-1 admitted that on 01.09.1998 the G.S. of WBCTW Federation wrote to the Secretary of EITF Association raising protest against notice U/s. 9A of I.D. Act sent to the 9 Unions (Ext. 9).

M.W.-1 admitted that the WBCTW Federation raised protest with the Labour Commissioner against notice U/s. 9A given by the Company (Ext. 10).



M.W.-1 denied that as the Government turned down their prayer for closing the factory and retrenching the workmen so, due to vindictiveness the company declared suspension of work w.e.f. 05.01.1999. He denied that the reasons given for suspension of work are all false. He admitted that out of the five Unions only GRTW Union is a recognized Union.

M.W.-1 admitted that there were tripartite agreement relating to wage structure production and productivity and the agreement (Ext. 3) was issued on behalf of Eastern India Textiles Mills Association of which this Company was a member and the company follows the agreement. M.W.-1 deposed that the company is bound by Ext. 3 i.e. the agreement dt. 11.06.1995. He denied that in view of the agreement dt. 11.06.1995 the Company cannot restructure the wages or the D.A. or V.D.A. He denied that the demand for restructuring of basic wages and freezing of D.A. / V.D.A. was illegal and in contravention to the settlement dt. 04.06.1972, 15.05.1972, 14.09.1979 and 11.06.1995. He denied that the reduction of damage caused depends upon factors like conditions of machinery, quality of raw materials and spare parts etc.

He denied that the statements made in the written statement filed by the company and the statement made in his deposition are false.

Evidence of Unions:-

On behalf of the Unions one Manas Som the General Secretary of Garden Reach Textile Worker's Union tendered his affidavit-in-chief corroborating all statements made in their written statement.

He proved the following documents:-

- 1) First Omnibus Cotton Textile Tribunal 1948 (Ext. 1),
- 2) Second Omnibus Cotton Textile Tribunal (Ext. 2),
- 3) Tripartite agreement dt. 11.06.1995 (Ext. 3),
- 4) Fair wages committee report of 1948 (Ext. 4),
- 5) Decision of 15th session of Indian Labour Conference 1957 (Ext. 5),
- 6) Notice dt. 27.07.1998 by Eastern India Textile Mills Association expressing intention to terminate the tripartite settlement dt. 11.06.1995 (Ext. 6),
- 7) Notice of change U/s. 9A issued on 24.08.1998 by Eastern Mills Textile Association (Ext. 7),
- 8) Order of Labour Department dt. 12.03.1998, 16.03.1998, 28.10.1998 rejecting prayer of Company for closure of particular department of the Company (Ext. 8 series),
- 9) Letter dt. 01.09.1998 issued by West Bengal Cotton Textile Workers Federation objecting against application proposing changes U/s. 9A of Eastern India Textile Mills Association (Ext. 9).
- 10) Letter dt. 02.09.1998 by the G.S. of the Union addressed to the Labour Commissioner raising objection against notice of change U/s. 9A issued by the EITM Association (Ext. 10).

- 11) General notice dt. 23.11.1998 freezing the D.A., lowering basic wages and reducing wages and salaries of workers and also of new entrants who were to be posted as learners for three years (Ext. 11).
- 12) Notice dt. 23.11.1998 issued by the Company informing that the D.A. will be frozen at 1898 points and new entrants will be admitted as learners for three years and after three years they may be employed as casual / badly worker for 60% of basic wages and 50% of D.A. (Ext. 12).
- 13) Letter dt. 24.11.1998 issued by GRTW Union addressed to the Factory Manager objecting to company's notice dt. 23.11.1998 proposing freezing of D.A. at 1898 points w.e.f. 1st. November, 1998 etc. and informing that the issue has been taken up in conciliation proceeding by the Labour Commissioner and two joint conferences have been held on 29.10.1998 and 18.11.1998 and on 18.11.1998 the Labour Commissioner has requested the Mill in presence of Sri S.K. Birla, not to give effect to the notice of change including freezing of D.A. etc. So, the notice may not be given effect as the next meeting with Labour Commissioner will be held on 25.11.1998 (Ext. 13).
- 14) Letter dt. 24.11.1998 by the G.S., GRTW union to the Labour Commissioner stating that as conciliation proceeding is on going so the notice of change proposing freezing of D.A. etc. should not be given effect from 01.11.1998 (Ext. 14).
- 15) Letter dt. 24.11.1998 issued by the Additional Labour Commissioner directing the Company not to implement notice of change U/s. Section 9A as notified by company on 23.11.1998 (Ext. 15).
- 16) Letter dt. 25.11.1998 by the Factory Manager to the General Secretary, GRTW Union informing that the Company does not agree to the request of not giving effect to the notice of change dt. 23.11.1998 w.e.f. 01.11.1998 (Ext. 16).
- 17) Letter dt. 27.11.1998 by the four Unions to the Senior president of the company expressing their objection to the notice of change and stating that if the notice is not withdrawn the workmen will seize work from any date after 24.12.1998 (Ext. 17).
- 18) Letter dt. 28.11.1998 by the GRTW Unions addressed to the Labour Commissioner informing that the workmen have accepted the wage bill under protest on 26.11.1998 and requesting the Labour Commissioner to request the company to withdraw the notice of change and pay D.A. @ 2000 points of CPI instead of 1898 points of CPI w.e.f. 01.11.1998 (Ext. 18).
- 19) Notice dt. 04.01.1999 issued by the company declaring suspension of work w.e.f. 5.30 a.m. of 05.01.1999, forwarded to the Unions (Ext. 19).
- 20) Letter dt. 05.01.1999 protesting against suspension of work by company issued by three Unions addressed to the Factory Manger (Ext. 20).
- 21) Letter dt. 09.01.1999 issued by the Company to the Unions denying the allegations and claims made in the Union's letter dt. 05.01.1999 against suspension of work (Ext. 21).
- 22) Memorandum dt. 18.01.1999 from the Unions to the Company against the illegal and unjustified imposition of suspension of work (Ext. 22).

- 23) Joint representation dt. 12.04.2002 signed by the workmen addressed to Mr. B.K. Birla, Chairman of the company expressing their difficulties on account of prolonged suspension of work and proposing to sacrifice and accept any condition for operation of the Mill and praying for lifting the suspension of work (Ext. 23).
- 24) The Consumer Price Index of that time (Ext. 24),
- 25) The balance-sheet and profit & loss account of the company for the year 1995-2000 (Ext. 25),
- 26) Two letters dt. 02.02.1998 and 22.09.1998 by the KCME Union addressed to the Secretary, Labour Department against company's letter seeking permission for retrenchment of 1189 workmen and against company's application for partial closure of Kesoram Industries (Ext. 26).
- 27) Applications dt. 04.01.1998 and 23.01.1998 by the company seeking permission to close down parts of the company and to retrench 1189 workmen (Ext. 27 series).
- He deposed that the pleas taken by the company are false.

During cross-examination P.W.-1 deposed that he has not filed any document to show how many workers he was representing at that time of this reference. He deposed that every time the company opened there was agreement between the management and workmen regarding the service conditions and the last settlement was on 11.06.1995.

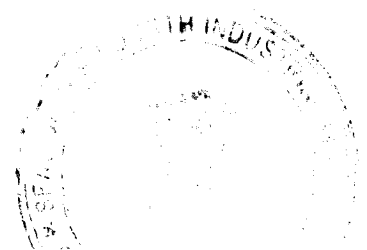
During cross-examination P.W.-1 deposed that letters have been issued by the Union terminating the agreement dt. 11.06.1995 with the request to continue with the same terms and conditions till a further settlement is entered into. P.W.-1 deposed that the agitation activities (as narrated in page 11 of his affidavit-in-chief) started after issuance of notice for freezing D.A. P.W.-1 deposed that although he never worked as labour under Kesoram Textile he is aware of the incidents as he is the General Secretary of the Union and is part of the decision-making body of the Union. He deposed that none of the members of the Union agitated against the decision to prefer this reference.

P.W.-1 deposed that on some occasions he entered the factory premises with the permission of officers.

During cross-examination P.W.-1 deposed in positive that agitational programmes included gate meetings, processions outside gate and slogans shouting outside gates after duty hours for 10 to 15 minutes – up to half an hour after shift duty.

P.W.-1 deposed that the agitational program continued after receipt of notice dt. 12.12.1998, 28.12.1998 and 31.12.1998 but after 23.11.1998 the Unions had series of discussions with the management and with the Labour Commissioner.

P.W.-1 deposed that on 04.01.1999 a one-day strike was called against the ex-party decision of the management against the policy of management to freeze to D.A. and no notice was given to the management that the workers will go on strike on 04.01.1999 although strike notice was issued on 27.11.1998 no date was mentioned therein.



He denied that he used to enter the factory and encourage agitational program leading to huge loss of company.

P.W.-1 deposed that he was elected by the Executive Committee as the General Secretary and this election was approved by the general meeting. He admitted that the instant case was filed for redressal of injustice, perpetrated on the employees effected by order of suspension dt. 04.01.1999. P.W.-1 deposed on 20.07.2012 that in the last year there were about 685 member of their union and many have retired, expired or left service. He said that there were around 900 members in the Year 2009. The criteria for being a member of Kesoram Textile Mills Union is that the worker should be a worker of Textile Mills and should be between age of 18 and 58.

P.W.-1 deposed that all the workers were affected due to the suspension of work. He denied that the application is filed out of political agenda.

In his written and oral argument Ld. Counsel for the Company argued that:-

- 1) Out of the five unions only Union No. 1 & 3 have come before this Tribunal.
- 2) Ld. Counsel for the Company argued that in the issues framed in the order of reference issue No. 2 to 8 are in no way related with workman and are framed from the perspective of the Company only. Issue No. 9 is also not properly framed.
- 3) Ld. Counsel for the Company argued that the demand for Articles produce by the Company decreased with time and gradually Company had to reduce its costs by reducing number of employees and they sent notice for reframing terms of employment by sending notice Under Section 9(a) of Industrial Disputes Act (issued No. 4). The union objected to it. The Company asked for settlement and meetings for resolution.
- 4) Ld. Counsel for the Company argued that in 1997 the Company sought permission from State Government to close down one department and to retrench workman working in that department but the State Government refused permission. Thereafter, Company sought permission for laying of some workman but the State Government refused that too. Thereafter, when the Company decided to freeze V.D.A. the Union called strike on 04.01.1999. In response to that strike the Company declared suspension of work on 05.01.1999. During this suspension of work all the workmen participated in agitation continuously and the sole witness for union has admitted this agitation in his evidence before the Tribunal as (reference cross-examination of P.W.-1 dt. 15.03.2012). It is admitted in the written statement of the Union also. The agitation made it impossible for the Company to withdraw the suspension of work.
- 5) Ld. Counsel for the Company argued that when the workman has admitted of 'agitation' it is clear that 'agitation' can never be peaceful, for any such protest to be peaceful it may be 'demonstration' and not 'agitation'. In his cross-examination dt. 14.05.2012 P.W.-1 has admitted that production may have been affected from 23.11.1998 to 05.01.1999. So, the management was justified in suspension of work in view of the agitation argued Ld. Counsel.

- 6) Ld. Counsel for the Company argued that issue No. 2 as framed in the order of reference is challenged by the union itself in para-28 of their written statement and the Union has also prayed for rejection for issue No. 2. Ld. Counsel for the Company argued that if Tribunal cannot adjudicate issue No. 2, it cannot decide issue No. 1 as Issue No. 1 is the cumulative effect or outcome of issue No. 2 to 8.
- 7) Ld. Counsel for the Company argued that the order of reference does not mention point No. 3, 4 & 5 of notice issued U/s. 9 (A) as mentioned in para-36 of written statement of Union.
- 8) Ld. Counsel for the Company argued that the Union has made contradictory statement as regard issue No. 5.6 & 7. In their written statement at para-34 they have stated that they reject pro-rata wages and issue No. 7 they are arguing for productivity-based remuneration. Thus, they have contradicted their own argument.
- 9) Ld. Counsel for Company argued that the agreement in force between the Company and the Unions was of 11.06.1995. On 27.07.98 the Union issued notice to Company to terminate the agreement and thereafter the Company sent notice U/s. 9A of the Act and matter was referred to conciliation. Ld. Counsel for the Company argued that after notice by Union dt. 27.07.1998 the Company's notice U/s. 9A dt. 23.11.1998 was nothing but a counter proposal.
- 10) Ld. Counsel for the Company argued that Company never actually seized the V.D.A. and that it proposed a new salary structure that is 50% of salary to new entrants so this proposal did not actually effect any of the existing workman. Moreover, argued Ld. Counsel, the Union proposed the same in their proposal dt. 24.08.1998.
- 11) Ld. Counsel for the Company argued that on 27.07.1998 the Union gave notice of termination of agreement and in terms of Section 19(2) of Industrial Disputes Act any party to an agreement may give notice of termination of agreement. Ld. Counsel for the Company argued that as the notice dt. 27.07.1998 by the Union had the effect of termination of agreement dt. 11.06.1995 so there is no question of the notice dt. 23.11.98 being in contravention to the agreement dt. 11.06.1995.
- 12) Ld. Counsel for Company argued that dearness allowance is a rise only for a temporary period so freezing of D.A. is not prejudicial to the workman as it does not decrease the salary'
- 13) Ld. Counsel for Company further argued that on 24.08.1998 the Eastern India Textile Mills Association proposed the changes in their notice and one of the proposals was the D.A. will be frozen at 1898 points of CPI and before this on 27.07.1998 the same Association sent notice to the Government as well as the various federations expressing intention to terminate the tripartite settlement dt. 11.06.1995. So, there was nothing wrong in the company's action of freezing D.A.
- 14) Ld. Counsel for company argued that Union's witness has admitted that they held agitations and that they called one day strike on 04.01.1999 without any notice to the management and such evidence amounts to admission in support of management's decision to declare suspension of work. So, it is clear that it was not conducive on the part of management to continue operation post issuance of notice dt. 23.11.1998. Thus,

issue No. 1 is to be decided in favour of management. Regarding other issues the company argued that the Unions have categorically refused to participate in the proceeding on the ground of want of study by expert body. The management has argued that as the Unions have failed to challenge management's action, contentions of management remain unchallenged. So, all issues are to be answered in favour of management.

15) Ld. Counsel for Company submitted a compendium of judgement of Hon'ble Courts:-

- a) **M/s. Tata Iron and Steel Co. Ltd. Vs. Workman ((1972) 2 SCC 383** – Hon'ble Court laid down the purpose and object of Section 9A – Hon'ble Court held, "the real object and purpose of enacting Section 9A seems to be to afford an opportunity to the workman to consider the effect of the proposed change and, if necessary, to represent their point of view on the proposal. Such consultation further serves to stimulate a feeling of common joint interest of the management and the workman in the industrial progress and increased productivity. This approach on the part of industrial employer would reflect his harmonious and sympathetic co-operation in improving the status and dignity of the industrial employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence, which strives to treat the capital and labour as co-sharers and to break away the tradition of labour's sub-servience to capital". (relevant para-12)
- b) **North Brook Jute Company Ltd. and another Vs. workmen (Ref. AIR 1960 SC 879)** – Hon'ble Court elaborated on the three steps contemplated by Section 9A as, "The first stage is the proposal by the employer to effect a change; the next stage is when he gives notice and the last stage is when he effects the change in the condition of service on the expiry of 21 days from the date of notice. The condition of service do not stand changed either when the proposal is made or the notice is given but only when the change is actually effected. The actual change takes place when the new condition of service are actually introduced." Para-6B.
- c) **Gordon Woodroffe Employees' Union Vs. State of Tamil Nadu (Ref. (1990) 60 FLR 61)** – Hon'ble Court held that Section 9A of the Act provides for procedure for alteration of condition sub-service with respect to matters specified in the 4th schedule when there is no industrial dispute or conciliation proceeding pending.
- d) **Workmen of M/s. Sur Iron and Steel Co. Pvt. Ltd. Vs. M/s. Sur Iron and Steel Co. Pvt. Ltd. (Ref. 1970 (3) SCC 618)** – Hon'ble Court held that no notice U/s. 9A of Industrial Disputes Act is required when there is a notification by the State Government U/s. 9B that no such notice is necessary in respect of matters specified in item 4, 6 and 11 of 4th schedule.
- e) **Hindusthan Lever Ltd. Vs. Rammohan Roy and Others ((1973) 4 SCC 141** – Hon'ble Court held that to bring a change under the purview of Section

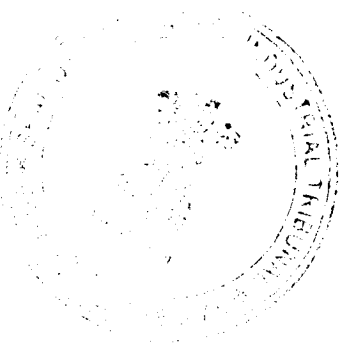


9A it must be shown that the workman is likely to be adversely effected by the change.

- f) **Amrit Banaspati Co. Ltd. Vs. S. Taki Bilgrami and Others (1971) (2) SCC 633** – Hon’ble Court dealt with whether the workmen were adversely effected by the change .
- g) **Life Insurance Corporation of India Vs. D. J. Bahadur and Others{ (1981) 1 SCC 315}** Hon’ble Court held that,” Settlement or award continues to operate even after service of notice and laps of two months subsequent there to ----- or notice proposing change in condition of service U/s. 9A and terminates only when replaced by another settlement or award. (head note A)
- h) **Metal Box India Ltd. Vs. State of Tamil Nadu, Metal Box Staff Association and Metal Box Company Employees’ Union Madras (Ref. 1996 (1) LLJ 763 Madras)**- Hon’ble Court held that the Government cannot unilaterally decide 19 out of 20 demands against workmen and refer only one for adjudication and such situation would not be productive of industrial peace which is the objective of Industrial disputes Act. If Government feels that it should prohibit strike U/s. 10 (3) it must give scope for the merit of such a dispute or demand being gone into by some other adjudicatory body by making reference of all those demands. Hon’ble Court held that, “This stands to reason and justice and a demand which is suppressed by the prohibitory order and is not allowed to be ventilated for adjudication before a Tribunal will explode into industrial unrest and run contrary to the policy of Industrial jurisprudence.” (Relevant para 4)
- i) **Ahmedabad Mill Owners Association Vs. Textile Labour Association (Ref. AIR 1966 SC 497** – Hon’ble Court held that, “A broad and over all view of the financial position of the employer must be taken into account and attempt should always be made to reconcile the natural and just claims of the employees for a fair and higher wage with the capacity of the employer to pay it.” (Relevant para 70). Further in this judgement Hon’ble Court has held that, “This principle, however, does not apply to the cases were the wages paid to the employees are no better than the basic minimum wage. If what the employer pays to his employees is just the basic subsistence wage, then it would not be open to the employer to contend that even such wages beyond his paying capacity. Industrial adjudication has consistently recognized and enforce the principle that social justice requires that an industrial employer must be able to pay his employee a wage structure which can be reasonably regarded as basic minimum wage “ (relevant para-72). In referred case however Hon’ble Court has held that, “That the demand for textile product will never be on the decrease in future and the Hon’ble Court was pleased to disagree with the plea of the appellant textile industry about their claim that demand for textile product was decreasing in future and they were unable to bear the additional burden of pay to the workman. The appeal was dismissed.

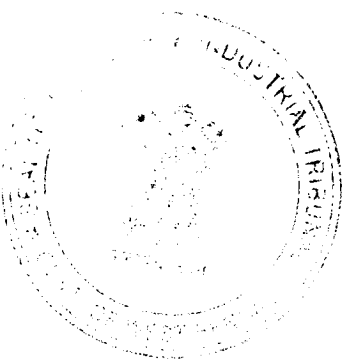


- j) **Kamani Metals and Alloys Ltd. Vs. workmen (Ref. AIR 1967 SC 1175)** – The Industrial Tribunal revised the wages pays and Dearness Allowance of the workman And being aggrieved by the same the company moved Hon'ble Supreme Court and Hon'ble Supreme Court observed that, "Fixation of a wage structure is always a delicate task because a balance has to be struck between the demands of social justice which requires that the workman should receive their proper share of the national income which they help to produce with a view to improving their standard of living, and the depletion which every increase in wages makes in the profit of the industry" (relevant para 7). Hon'ble Court was however pleased to dismiss the appeal.
- k) **Bengal Chemical and Pharmaceutical Works Ltd. Vs. Workmen and Another (AIR 1969 SC 360)** – the company moved Hon'ble Court seeking reduction in the dearness allowance granted by the Tribunal. In referred case Hon'ble Court has pleased to observe that, "In this case, we do not find in the written statement, filed by the Company, any plea taken that if the claim of the union, as made in its charter of demands in respect of dearness allowance is accepted, it will cast a very heavy financial burden on the resources of the company. In the absence of any such pleas having been taken, we consider it unnecessary to pursue this contention of the appellant any further" (relevant para-25) and Hon'ble Court has pleased to hold that the increase or decrease of D.A. must be related with the cost-of-living index (relevant para-28 and para-40).
- l) **State of Madhya Pradesh Vs. C. Mandawar (AIR 1954 S.C. 493)**. In this case the point agitated was whether the resolution of the Government fixing a scale of D.A. is repugnant to Article 14 of the Constitution. Ld. Counsel for Company referred to para-5 of this Judgement where Hon'ble Court has pleased to opine that as per Rule 44 of the Fundamental Rules it is a matter of discretion of the Government whether it will grant Dearness Allowance and if so, how much. But this observation was made by Hon'ble Court in the context whether a writ of mandamus can be issued to compel the state to grant Dearness Allowance and Hon'ble Court was of the view that Rule 44 of Fundamental Rules merely confers a power on the state to grant compassionate allowance at its own discretion and it does impose any duty on the state to grant it so no Mandamus can be issued to compel the exercise of such power.
- m) **Crown Aluminium Works Vs. Workman { (Ref. 1958) 1 L.L.J. 1}**. Ld. Counsel referred to para-11 of this Judgement to argue that the wage structure can be revised to the prejudice of the workman. But Hon'ble Court has observed in para-11 that such revision of pay by a Tribunal to the prejudice of the workman is permissible only when the wage structure in question falls in a higher category. Hon'ble Court held that, "If the Tribunal is satisfied that a case of reduction in the wage structure has been established then it would be



open to the Tribunal to accede to the request to the employer to make appropriate reduction in the wage structure subject to such condition that the Tribunal may deem fit or expedient to impose". This judgement is thus factually distinguishable from the case before this Tribunal.

- n) **Workmen of Gujrat Electricity Board, Baroda Vs. The Gujrat Electricity Board, Baroda** [Ref. 1969 (1) SCC 266] in referred case Hon'ble Court has pleased to dismiss the appeal filed by the workman challenging the award of the Tribunal rejecting their plea to increase their pay and D.A.
- o) **State of Karnataka and Another Vs. Karnataka State Patels Sangha and Another** [Ref. (2007) 4 SCC 207] Ld. Counsel for Company referred to para-4 of this Judgement but in para-4 Ld. Counsel before Hon'ble Court referred to judgement of Hon'ble Court in state of M.P. Vs. G.C. Mandawar (Supra) and Hon'ble Court was pleased to hold that "referred case was case of individual seeking D.A. under Rule 44 of Fundamental Rules and in that context Hon'ble Court held in G.C. Mandawar that no Mandamus can be issued for grant of D.A. but this case i.e. State of Karnataka Vs. Karnataka State Patels Sangha and Another stands on a different footing and is for invoking Article 14 when two class of persons are similarly situated then one cannot be discriminated against." Thus, referred case is factually distinguishable from the case before this Tribunal.
- p) **Workmen represented by Secretary Vs. Reptakose Brett and Company Ltd. And Another** [Ref. (1992) 1 SCC 290] and argued that Hon'ble Court has held that the wage structure can be revised to detriment of workman. But in referred case Hon'ble Court has pleased to hold, "The question is often asked a to whether it would be advisable for Tribunals and Courts to revise the wage structure of workman to their prejudice when a dispute arises. Normally the answer would be in the negative. Tribunals and Courts can take judicial notice of one fact ; and that is that the wages of workmen, except in exceptionally rare cases, fall within the category of mere "" subsisting wages". That being so, it would be inadvisable to tinker with the wage structure of workmen except under compelling circumstances". Hon'ble Court held that, "The D.A. scheme which has stood the test of time for almost 30 years has been unjustifiably abolished by the Courts below and the award And Judgement are unsustainable." (Relevant para-29 & 30). Hon'ble Court has pleased to decline and reject the reference of the Company for restructuring of D.A.
- q) **Precision Bearing India Ltd. Vs. Baroda Majdoor Sabha and Another** [Ref (1978) 1 SCC 235] Ld. Counsel argued that in this case Hon'ble Court has held that D.A. fixation is to be done as per employee's capacity and referred to para-8 of the judgement. In para-8 the finding of the Tribunal is noted but in para-12 & 13 Hon'ble Court has pleased to clarify that it is only for the reason of deliberate omission to make a reference of relevant item to



the Tribunal that the finding of Tribunal falls outside the jurisdiction of the Tribunal and it is for that reason that the award was partly modified and Hon'ble Court has pleased to hold, "We should not be taken to suggest that the 40% and 20% plus is either wrong or excessive by way of high cost allowance. Indeed, we even fail to see that the lowest bracket up to Rs. 100 needed full neutralisation of the rise in the cost of living as has been held in Killick Nixon Ltd. Vs. Killick and Allied Companies Employees Union (AIR 1975 SC 1778). Nor do we fail to see the post of Shri Garg's submission that social justice perspective being integral to industrial jurisprudence, the high-cost allowance as a component of D.A. is not impermissible in principle. It is a legitimate item". (relevant para-12).

- r) **Tamil Nādu Electricity Board Vs. Tneb-ThozhilalarAykkiya Sangam (2019) 15 SCC 235.** In referred case the employees demanded that the T. N. Electricity Board should continue the existing practice of revision of D.A. at par with State Government employees. Hon'ble Supreme Court held that in view of the various settlement entered into between parties, "The settlement, as long as it is in force will govern both parties and one of the parties cannot unilaterally transgress the terms of the agreement or ignore the same"..... as the demand of the workers was not inconsonance with the terms of the agreement, on this ground Hon'ble Court was pleased to allow the appeal.

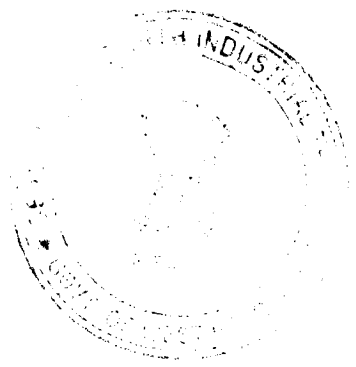
In his written and oral argument Ld. Counsel for the Unions argued that: -

- 1) Ld. Counsel for the Unions argued that Section 2(l) of Industrial Disputes Act, (West Bengal amendment) is the only place in the Act where the term, "suspension of work" is mentioned and this provision clearly lays down that it is purely temporary in nature but despite passage of decades this suspension of work has not been withdrawn and such conduct on the part of the company is contrary to the concept of the suspension of work.
- 2) Ld. Counsel for the Unions argued that the mala fide and anti-labour intention of the company is clear from the fact that first the company sought permission of Government for retrenchment of 1189 workmen but the Government rejected permission and thereafter the company sought another permission U/s. 25N but the Government rejected the same also. The company never moved any higher forum against both these order of Government rejecting the applications of Company. Rather the company declared suspension of work.
- 3) Ld. Counsel for the Unions argued that the suspension of work was declared during pendency of conciliation proceeding but Section 22 & 23 of Industrial Disputes Act prohibits any such act on the part of Company during pendency of conciliation proceeding.

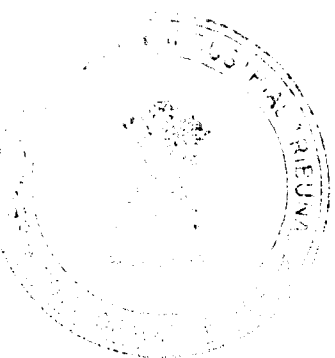


- 4) Ld. Counsel for Union argued that legally employer-employee relationship continues during suspension of work and as such the employees are entitled to receive their salary for whole of this period.
- 5) Ld. Counsel for the Unions argued that the company challenged maintainability of this reference before this Tribunal but this Tribunal rejected that application vide order No. 38 dt. 24.01.2011. Being aggrieved by this order of this Tribunal the company moved High Court but Hon'ble High Court upheld the order of this Tribunal and held that the reference is maintainable.
- 6) Ld. Counsel for the Unions argued that the notice of suspension of work was w.e.f. 05.01.1999 and the grounds given were: -
 - a) Non-co-operation by unions,
 - b) Gherao, Bandh etc. &
 - c) Financial exigency;

but the company has obtained ISO certificate in 1998 (Ext. 22) and this certificate is issued only when the company is financially sound and running successfully. The annual report of chairman of Company for the year 1998 also shows the sound financial health of the company. The summarized balance-sheet of last 5 years (Ext. 25) shows increasing profit graph. So, the claim of company suffering losses could not be proved by company, argued Ld. Counsel for Unions.
- 7) Ld. Counsel for unions argued that so far as allegation of agitation by workman are concerned during cross-examination by company Union's witness deposed on 14.05.2012 that, "I entered the premises on rare occasions with permission of management. We raised slogans after office hours outside the premises only for 15 to 30 minutes". Such statements of Union's witness during cross-examination by Company proved the falsity of allegation of agitation. Ld. Counsel for Unions argued that raising slogans of their demands outside the factory premises after office hours is part of right of the trade union and cannot be termed as 'agitation'.
- 8) Ld. Counsel for the Unions argued that the tripartite agreement on 11.06.1995 was not replaced by any new agreement so, its terms and conditions were binding on the company and the company declared suspension of work and imposed conditions like freezing of VDA etc. is in contravention to the terms of the tripartite agreement.
- 9) Ld. Counsel for Unions argued that in the instant case the justifiability of suspension of work on stated ground declared by notice dt. 04.01.1999 is to be adjudicated and it is clear from the sequence of events that the company having failed to achieve its objective of retrenching workmen resorted to such illegal suspension of work during pendency of conciliation proceeding which is illegal as U/s. 23 of I.D. Act.



- 10) Ld. Counsel for Unions argued that the grounds stated in the notice of suspension of work are covered by the tripartite agreement dt. 11.06.1995 and the company has acted in violation of such agreement by declaring suspension of work. More over the company failed to prove any financial loss, per contra the trade unions have proved that the company was making profit continuously in financial year 1995-96, 1996-97, 1997-98 and so on. The company has not produced balance-sheets for financial year 1996-97, 1997-98, 1998-99 (Ext. 25) which shows good financial condition of Company. The company has produced balance-sheet for financial year 1999-2000, 2007-08 and 2008-09 (EFG) and during this period the company was under suspension of work. So, these three balance-sheets failed to justify the order of suspension of work dt. 04.01.1999. The company has failed to prove any financial loss immediately preceding the declaration of suspension of work.
- 11) Ld. Counsel for Unions argued that so far as issue No. 2 to 8 are concerned the company was party to the awards passed by the Cotton Textile Tribunal in 1948 and 1958 and various tripartite settlement were executed between parties including the one dt. 11.06.1995. The employer never issued any notice U/s. 9A of I.D. Act seeking change in the condition of services. The term 'employer' does not include the Association representing the employer and the employer did not issue any notice expressing intention to terminate the tripartite settlement dt. 11.06.1995. So far as letter dt. 27.07.1998 issued by the Federation of Cotton Textile Industry Unions expressing intention to terminate the settlement dt. 11.06.1995 is concerned it was specifically mentioned that upon expiry of the statutory period although the settlement will cease to have any binding effect on the workmen but the benefits flowing therefrom would continue and cannot be curtailed. So, letter dt. 27.07.1998 does not extinguish the rights of the workmen and the contract dt. 11.06.1995 continued to govern the relation between parties till it is replaced by another contract as per law argued Ld. Counsel for Union.
- 12) Ld. Counsel for Unions argued that all the issues relating to wages and service condition of workmen of Cotton Textile Industry were regulated on industry-wise basis to avoid unfair competition and to maintain uniformity in wage structure. So, this company could not take a different approach to the detriment of the employees.
- 13) Ld. Counsel for Unions detailed the reason and necessity of granting dearness allowance in view of change in price index and resultant cost of living.
- 14) Ld. Counsel for Unions argued that as the process of conciliation commenced vide notice dt. 24.08.1998. The notice issued by Company on 23.11.1998 altering service condition was violative Section 9A and 33 of I.D. Act. Thus, issue No. 4 is to be decided against the management.



15) Ld. Counsel for Unions argued that Issue No. 5 and 6 are contrary to terms of settlement dt. 11.06.1995 and no evidence is led by the company to justify issue No. 7. So, these issues are to be adjudicated against the management. Therefore, the suspension of work is void ab initio, illegal and not at all justifiable.

16) Ld. Counsel for Unions referred to following judgements of Hon'ble Court: -

- a) **M/s. Jenson & Nicholson (I) Ltd. Vs. The State of West Bengal and Others (W.P. No. 29968(W) of 2015, order dt. 06.03.2017** of Hon'ble Single Bench of Hon'ble Calcutta High Court where Hon'ble Court held that suspension of work declared during the pendency of conciliation proceeding violates provision of Section 23 of I.D. Act and that financial stringency cannot be a good ground for sustaining suspension of work for such a long period.
- b) **1957(2) LLJ at page-256, AIR 1964 SC page-1522, 1980 Lab IC page-1218 SC at page 1235** and argued that in these judgement Hon'ble Court has held that termination of settlement does not extinguish the rights flowing from the settlement and the rights flowing therefrom are not wiped out and the settlement will continue to govern the relations between the parties till it is replaced by another contract / settlement.

17) Ld. Counsel for Unions argued that the Judgement cited by the Company are distinguishable on points of law and fact and so referred judgements are not applicable to the instant case.

Thus, the order of suspension of work is void ab initio, illegal and not justifiable and all issues may be adjudicated accordingly, argued Ld. Counsel for Union.

In view of pleadings of parties, oral and documentary evidence on record, having regard to the arguments advanced by both side and judgements referred it is found that: -

- 1) Admittedly the notice of suspension of work was issued on 04.01.1999 to take effect from 05.30 a.m. of 05.01.1999.
- 2) Relationship between parties is not disputed.
- 3) It is admitted by parties that they had a tripartite agreement dt. 11.06.1995 binding on all sides including the Company and the same was not replaced by any other agreement till 04.01.1999/05.01.1999.
- 4) So far as the 9 issues under reference are concerned in their written statement both the unions and the Company have stated that some of the issues are not maintainable and need not be adjudicated and the company has based its argument on such pleading of the Union so far as stated issues are concerned. The question whether the Tribunal is to

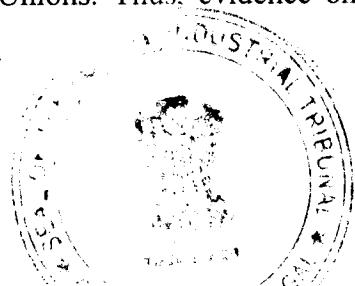
adjudicate on all the issues under reference notwithstanding the statements of either or both the parties or not can be addressed as follows:-

- A) Ld. Counsel for the Company argued that if Tribunal cannot adjudicate issue No. 2, it cannot decide issue No. 1 as Issue No. 1 is the cumulative effect or outcome of issue No. 2 to 8.
- B) In 1967, 1 LLJ *Supreme Court*, page 423 (*Delhi Cloth and General Mills Company Ltd. Vs Their workmen and others*- Hon'ble Court observed that" From the above it, therefore, appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the tribunal *must* confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the tribunal... must confine its attention to the points specifically mentioned(in the reference) and anything which is incidental thereto. Hon'ble Court has been pleased to observe that "The parties would be allowed by their respective statement of cases to place before the tribunal such facts and contentions as would explain their conduct or their stand, but they could not be allowed to argue that the order of reference was wrongly worded and that the very basis of the order of reference was open to challenge. The cases discussed go to show that it is open to the parties to show that the dispute referred was not an industrial dispute at all and it is certainly open to them to bring out before the tribunal the ramifications of the dispute. But they cannot be allowed to challenge the very basis of the issue set forth in the order of reference.
- C) In 1976 (33) *FLR*, page,14 (*Sabitri Motor Service Pvt. Ltd. vs. State of W.B. and others*)- Hon'ble Calcutta High Court has pleased to observe that "In law, the Tribunal could not travel beyond the ambit of the reference. It was only left for the Tribunal to decide whether termination of service was justified or not and on the basis of the answer to that question, to award or not to award relief"

Similar view is expressed by Hon'ble Courts in various other judgements. The position of law is that the Tribunal is to address the issues made out in the reference and the fact that the Unions or the Company are of the view that the Tribunal need not or should not adjudicate on some of the issues referred to it is of no consequence in determining such duty of the Tribunal. In view of stated position of law and the argument advanced by Ld. Counsel for both sides moreso by Ld. Counsel for Company, this Tribunal is duty bound to address all the issues under reference.

- 5) So far as issue No. 2 is concerned the company sought permission of the Government U/s. 25(O) on 04.09.1998 to shut down the operation of the textile mill and the concerned department of the Government rejected such prayer of the Company and after such refusal by the Government the management demand for not running some departments is neither lawful nor justified. Issue No. 2 is adjudicated accordingly.

- 6) So far as issue No. 3, 4, 5, 7 and 8 are concerned the basic wage structure, issue of D.A. / V.D.A., demand of payment of wages on pro rata basis, issue of higher work load and demand for reduction of damage were determined and guided by memorandum of settlement dt. 11.06.1995 (Ext. 3) and the same could be altered only through due process of law, that is, by replacing the binding agreement of 11.06.1995 by another agreement between parties and admittedly no such agreement altering all these conditions of work and wages was entered into between parties. So, such steps, whether contemplated or acted upon were in contravention to the binding agreement of 11.06.1995.. Issue No. 3,4,5 and 7 are adjudicated accordingly.
- 7) So far as company's argument that the agreement dt. 11.06.1995 was no more binding on the company as the association itself expressed intention to terminate the memorandum dt. 11.06.1995 vide their letter dt. 27.07.1998, is concerned, the letter dt. 27.07.1998 (Ext. 6) shows that the author of the letter has expressed in clear terms that, "..... but the benefits flowing from that settlement would continue until it is replaced by a subsequent settlement". So, the argument of company that in view of letter dt. 27.07.1998 the agreement dt. 11.06.1995 lost its legal and binding force is not sustainable in law. It is clear that despite letter dt. 27.07.1998 the agreement dt. 11.06.1995 was binding on the company so far as benefits arising out of the agreement to the workmen is concerned. *Tamil Nādu Electricity Board Vs. Tneb-ThozhilalarAykkiya Sangam (2019) 15 SCC 235*. In referred case Hon'ble Supreme Court held that in view of the various settlement entered into between parties, "The settlement, as long as it is in force will govern both parties and one of the parties cannot unilaterally transgress the terms of the agreement or ignore the same"..... as the demand of the workers was not inconsonance with the terms of the agreement, on this ground Hon'ble Court was pleased to allow the appeal. In 1957(2) LLJ at page-256, AIR 1964 SC page-1522, 1980 Lab IC page-1218 SC at page 1235, in all these judgements Hon'ble Court has held that termination of settlement does not extinguish the rights flowing from the settlement and the rights flowing therefrom are not wiped out and the settlement will continue to govern the relations between the parties till it is replaced by another contract / settlement. Thus the agreement was binding on the Company.
- 8) Moreover, all these issues i.e. issue No. 2, 3, 4, 5, 7 & 8 are essentially based on company's claim of suffering financial losses but the balance-sheet of three consecutive financial years preceding the issuance of notice of suspension of work i.e. financial year 1995-96, 1996-97, 1997-98, 1998-99 (Ext. 25) shows good financial condition of Company. The Unions have disproved the claim of company suffering losses by detailing the profits and growth of company in their Evidence as found from Exhibit-22 and 23. Company failed to thwart such evidence produced by the Unions. Thus, evidence on record also fails to justify the issues in favour of management.



- 9) So far as issue No. 6 is concerned Ld. Counsel for the Company argued that the Company never actually implemented the same and it proposed a new salary structure that is 50% of salary to new entrants so this proposal did not actually effect any of the existing workman. The same being matter of policy and not effecting the existing workmen, it will be premature to adjudicate the same at this stage.
- 10) It is not denied by company that they issued the suspension of work notice during pendency of conciliation proceeding from the Deputy Labour Commissioner. So, admittedly the Conciliation proceeding was pending when the Company put-up 'Suspension of work Notice'. Section 22(2)(d) in The Industrial Disputes Act, 1947 lays down that No employer carrying on any public utility service shall lock- out any of his workmen during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings. It is true that Section 22(2)(d) in The Industrial Disputes Act, 1947 per se does not apply to instant situation as there was no 'lock out' but it is clear from this provision that Company unilaterally taking a drastic step like indefinite suspension of work prejudicial to the interest of workmen during pendency of conciliation proceeding was prohibited by Legislature.
- 11) Ld. Counsel for the Company argued that on 27.07.1998 the Union gave notice of termination of agreement and in terms of Section 19(2) of Industrial Disputes Act any party to an agreement may give notice of termination of agreement. Ld. Counsel for the Company argued that as the notice dt. 27.07.1998 by the Union had the effect of termination of agreement dt. 11.06.1995 so there is no question of the notice dt. 23.18.98 being in contravention to the agreement dt. 11.06.1995.
- Ironically it was the Company that referred to Judgement of Hon'ble Supreme Court in *Life Insurance Corporation of India Vs. D. J. Bahadur and Others* { (1981) 1 SCC 315 } Hon'ble Court held that, "Settlement or award continues to operate even after service of notice and laps of two months subsequent there to ----- or notice proposing change in condition of service U/s. 9A and terminates only when replaced by another settlement or award. (head note A).
- The agreement dt. 11.06.1995 was valid as on 23.11.98 and it remains operative till it is replaced by an alternative agreement, so this argument is not found sustainable in law.
- 12) Ld. Counsel for Company further argued that on 24.08.1998 the Eastern India Textile Mills Association proposed the changes in their notice and one of the proposal was the D.A. will be frozen at 1898 points of CPI and before this on 27.07.1998 the same Association sent notice to the Government as well as the various federations expressing intention to terminate the tripartite settlement dt. 11.06.1995. So, there was nothing wrong in the company's action of freezing D.A. But on 01.09.1998 the West Bengal Cotton Textile Workers' Association objected to the Secretary, Eastern India Textile Mill's Association against their notice of change U/s. 9A of I.D. Act dt. 24.08.1998 where they expressed strong objection to the unilateral and illegal decision of the

association proposing freezing of D.A. at 1898 points of CPI. It is pertinent to note that the instant case is initiated on prayer of the West Bengal Cotton Textile Workers' Association. Moreover as the tripartite agreement dt. 11.06.1995 was not replaced by any fresh agreement, the same was very much binding on the Company on 23.11.1998 and on 05.01.1999. (Ref- Life Insurance Corporation of India Vs. D. J. Bahadur and Others (1981) 1 SCC 315).

- 13) Ld. Counsel for company referred to decision of Hon'ble Court in *M/s. Tata Iron and Steel Co. Ltd. Vs. Workman* ((1972) 2 SCC 383 – Hon'ble Court laid down the purpose and object of Section 9A and held, “the real object and purpose of enacting Section 9A seems to be to afford an opportunity to the workman to consider the effect of the proposed change and, if necessary, to represent their point of view on the proposal. Such consultation further serves to stimulate a feeling of common joint interest of the management and the workman in the industrial progress and increased productivity. This approach on the part of industrial employer would reflect his harmonious and sympathetic co-operation in improving the status and dignity of the industrial employee in accordance with the egalitarian and progressive trend of our industrial jurisprudence, which strives to treat the capital and labour as co-sharers and to break away the tradition of labour's sub-servience to capital”. (relevant para-12). But in instant case in their Written Statement the Company has all through pleaded that the Unions/workers never wanted to work, deliberately caused damage, never desired company's growth, and resorted to militant Trade Unionism only to get financial benefit without working. The Unions also prevented the loyal workers from working or taking part in training or operating new machineries. There is no reflection of any feeling of common joint interest of the management and the workman or harmonious and sympathetic co-operation from the side of the company. In their settlement of 13.11.1989 also it is found that the Company lifted three year long lock out on condition that “total period of lock out will be treated as no work no pay”, and **“in future no demand of any nature whatsoever will be raised individually or collectively through the Union on the question of wages and any benefits incidental thereto”** and various such other conditions.

- 14) Ld. Counsel for company referred to decision of Hon'ble Court in *Hindusthan Lever Ltd. Vs. Rammohan Roy and Others* ((1973) 4 SCC 141 – Hon'ble Court held that to bring a change under the purview of Section 9A it must be shown that the workman is likely to be adversely effected by the change. In instant case there is no denying the fact that freezing of VDA will adversely effected the Workmen.

- 15) Ld. Counsel for company referred to decision of Hon'ble Court in *Ahmedabad Mill Owners Association Vs. Textile Labour Association* (Ref. AIR 1966 SC 497 – In referred case Hon'ble Court has held that, “That the demand for textile product will never be on the decrease in future and the Hon'ble Court was pleased to disagree with the plea of the

appellant textile industry about their claim that demand for textile product was decreasing in future and they were unable to bear the additional burden of pay to the workman. The appeal was dismissed. Thus the observation of Hon'ble Apex Court in referred case contradicts and disproves the claim of the company that the demand for textile product is decreasing so they are/were unable to bear the additional burden of pay VDA to the workman.

16) Ld. Counsel for company referred to decision of Hon'ble Court in *Kamani Metals and Alloys Ltd. Vs. workmen* (Ref. AIR 1967 SC 1175) – Hon'ble Supreme Court observed that, “Fixation of a wage structure is always a delicate task because a balance has to be struck between the demands of social justice which requires that the workman should receive their proper share of the national income which they help to produce with a view to improving their standard of living, and the depletion which every increase in wages makes in the profit of the industry” (relevant para 7). Hon'ble Court was however pleased to dismiss the appeal. In the case before this Court the Company has pleaded, “The tragic but fictional story of workmen remaining unemployed and living in starvation with their family members would have made good script for a art-film, but is simply not true....It is the Unions, their mis-direction and malicious and mala fide act that brought the composite mill in West Bengal to a standstill and now they are trying to seek sympathy of Tribunal by writing fictional stories of starvation. They have shown their true colours. The company pleads that the unions are after money, not for the workmen, but for their own coffers and to fuel the lifestyle of the leaders of the union. So suspension of work cannot and should not be withdrawn unconditionally or at all”. Such statement by Company reflects their utter lack of respect towards worker's demands of social justice and their entitlement to receive their proper share of the national income.

17) Ld. Counsel for company referred to decision of Hon'ble Court in *Bengal Chemical and Pharmaceutical Works Ltd. Vs. Workmen and Another* (AIR 1969 SC 360) – the company moved Hon'ble Court seeking reduction in the dearness allowance granted by the Tribunal. In referred case Hon'ble Court has pleased to hold that the increase or decrease of D.A. must be related with the cost of living index (relevant para-28 and para-40). As inflation is a reality so the ratio of finding of Hon'ble Court is clearly against freezing of VDA.

18) Ld. Counsel for company referred to decision of Hon'ble Court in *Workmen represented by Secretary Vs. Reptakose Brett and Company Ltd. And Another* [Ref. (1992) 1 SCC 290] and argued that Hon'ble Court has held that the wage structure can be revised to detriment of workman. But in referred case Hon'ble Court has pleased to hold, “The question is often asked as to whether it would be advisable for Tribunals and Courts to revise the wage structure of workman to their prejudice when a dispute arises. Normally the answer would be in the negative. Tribunals and Courts can take judicial notice of one fact ; and that is that the wages of workmen, except in exceptionally rare cases, fall

within the category of mere subsisting wages". That being so, it would be inadvisable to tinker with the wage structure of workmen except under compelling circumstances". Hon'ble Court held that, "The D.A. scheme which has stood the test of time for almost 30 years has been unjustifiably abolished by the Courts below and the award And Judgement are unsustainable." (Relevant para-29 & 30). Hon'ble Court has pleased to decline and reject the reference of the Company for restructuring of D.A. Thus the ratio of finding of Hon'ble Court in this case is against freezing of VDA.

19) Ld. Counsel for company referred to decision of Hon'ble Court in *Precision Bearing India Ltd. Vs. Baroda Majdoor Sabha and Another* [Ref (1978) 1 SCC 235] In para-12 & 13 Hon'ble Court has pleased to clarify that it is only for the reason of deliberate omission to make a reference of relevant item to the Tribunal that the finding of Tribunal falls outside the jurisdiction of the Tribunal and it is for that reason that the award was partly modified and Hon'ble Court has pleased to hold, "We should not be taken to suggest that the 40% and 20% plus is either wrong or excessive by way of high cost allowance. Indeed, we even felt that the lowest bracket up to Rs. 100 needed full neutralisation of the rise in the cost of living as has been held in *Killick Nixon Ltd. Vs. Killick and Allied Companies Employees Union* (AIR 1975 SC 1778). Nor do we fail to see the force of submission that social justice perspective being integral to industrial jurisprudence, the high-cost allowance as a component of D.A. is not impermissible in principle. It is a legitimate item". (Relevant para-12). Thus the ratio of finding of Hon'ble Court in this case also is against freezing of VDA.

20) Ld. Counsel for company referred to decision of Hon'ble Court in *North Brook Jute Company Ltd. and another Vs. workmen* (Ref. AIR 1960 SC 879) – Hon'ble Court elaborated on the three steps contemplated by Section 9A as, "The first stage is the proposal by the employer to effect a change; the next stage is when he gives notice and the last stage is when he effects the change in the condition of service on the expiry of 21 days from the date of notice. The condition of service do not stand changed either when the proposal is made or the notice is given but only when the change is actually effected. The actual change takes place when the new condition of service are actually introduced." (Relevant Para-6b). But in the case before this Tribunal notice of change was issued on 23.11.1998/24.11.1998 and the effect was given from 01.11.1998. Such act of the Company was in contravention to above direction of Hon'ble Court.

21) Ld. Counsel for company referred to decision of Hon'ble Court in *Gordon Woodroffe Employees' Union Vs. State of Tamil Nadu* (Ref. (1990) 60 FLR 61) – Hon'ble Court held that Section 9A of the Act provides for procedure for alteration of condition sub-service with respect to matters specified in the 4th schedule when there is no industrial dispute or conciliation proceeding pending. But in instant case no such procedure was followed by the Company.

22) Ld. Counsel for the Company argued that Company never actually seized the V.D.A. Evidence on record shows that on 24.11.1998 the Additional Labour Commissioner

directed the Company not to implement notice of change U/s. Section 9A as notified by company on 23.11.1998 (Ext. 15), yet Company gave effect to the notice and gave reduced wages according to the notice dated 24.11.1998 to the workmen w.e.f 1.1.1998(Exhibit-18). This argument of Ld. Counsel for Company is not found to be based on fact in view of Exhibit-12,13,14,15 & 16.

23) So far as Issue no-1 and 9 are concerned - The three reasons for issuance of suspension of work notice given by Company are :-

- a) Non-cooperation by Unions,
- b) Gherao, Bandh etc, &
- c) Financial exigency.

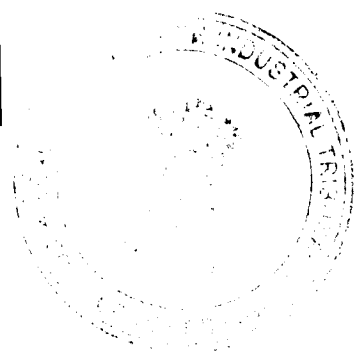
Let us see how far the Company has proved these reasons: -

- a) So far as allegation of non-cooperation by Unions is concerned the Company has tripartite agreement with Unions in 1995 and thereafter bipartite agreement with Unions in 1998. These agreements show a harmonious relationship between the company and Unions. Although the company has alleged all through in their written statement that the Unions did not cooperate and instigated the workman not to work there is no credible evidence of such non-cooperation except the repeated letters sent by company to the Unions alleging lack of work culture of workmen generally. There is no specific allegation or list of workmen who were not working or contributing to the damages. No evidence is adduced by company showing that any disciplinary action was taken against any workmen for such alleged dereliction of duties.
- b) Ld. Counsel for Company argued that the costly training system introduced by employer was completely rejected by the Unions and the workmen but although Company has proved two notices inviting applications for imparting training to workmen, no evidence whatsoever is adduced of alleged rejection of such training by the Unions.
- c) Ld. Counsel for the Company argued that in his cross-examination dt. 14.05.2012 P.W.-1 has admitted that production may have been affected from 23.11.1998 to 05.01.1999. So, the management was justified in suspension of work in view of the agitation argued Ld. Counsel. Under given circumstances where Company unilaterally gave reduced salary for November 1998, adverse effect on production for 10 days can by no stretch of imagination justify such indefinite Suspension of work.
- d) Company has proved several notices issued by Factory manager(Exhibit- NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY) alleging that some weavers and helpers are not working properly and not preventing damages but all these notices are of 1993 and 1994 and the Tripartite agreement was signed in 1995, so these documents are of no relevance for the purpose of this adjudication.

- e) Company has proved several notices issued by Factory manager alleging that workers are not working, not increasing production or decreasing damages but none of such notices including Exhibit-L,N etc identifies any such workman/workers, no list of such workers is annexed to any of the notices and no disciplinary steps are taken by Company against stated unnamed workmen for dereliction of duties.. Contrary to Company's argument Exhibit -P shows that the management issued notice stating that "most of the winders have **increased** their productivity by 3% to 7% but few have not increased production..". Exhibit-Y of Company shows that On24.12.1998 the Factory Manager wrote to the Unions that **some workmen** are still not implementing the high production, low damage terms of agreement dt. 09.06.1998. So,merely generally alleging that all of them are not working does not substantiate the argument.
- f) The Company has alleged Gherao, Bandh etc. as another reason for suspension of work. Evidence on record shows that on 23/24.11.1998 the Eastern India Textile Mills Association served notice of change and on 27.11.1998 all the Unions objected to this notice and demanded due D.A. and stated that if the same is not paid the workers will cease-work from any date subsequent to 14.12.1998.
- g) on 23.11.1998 the Company issued notice of change effective from 01.11.1998 and being aggrieved by such notice of change which was against the terms of the tripartite settlement of 11.06.1995 the Trade Unions served a notice on the company on 27.11.1998 putting forward some demands and stating that if their demands are not met with they will go on cease-work from any date subsequent to 14.12.1998. In response to this notice by the Unions the Company on 05.12.1998 served a letter on the Unions expressing intention to declare the suspension of work on and from 24.12.1998. And after around 10 days of 24.12.1998 on 04.01.1999 Company declared suspension of work.
- h) Earlier there were complaints of incidents of 07.04.1997 that some workers assaulted Shyam Narayan Bari and of 5.7.99 that some workers assaulted one workman Rambhuj Yadav and of 16.1.2020that some workers assaulted one Ashok Kumar Mishra on 15.1.2020(Ex-TTTTTT series) . Such one off criminal incidents ,one of 1997(Before almost two years of Suspension of work), another of 1999(after Seven months of Suspension of work) and of 15.1.2020 (after one year of Suspension of work)cannot be termed as agitation by workmen.
- i) On 23.12.1998 factory manager J.S. Rao informed the O.C., Garden Reach P.S. (Ext. IIIII) that since 21.12.1998 the workmen were assembling at 5.30 a.m., 5.30 p.m. and 9.30 p.m. and shouting slogan for several minutes and blocking the entrance and that there was **apprehension** of breach of peace.
- j) On 25.12.1998 factory manager J.S. Rao wrote to the O.C., Garden Reach P.S. (Ext. JJJJJ) informing that since 21.12.1998 the workmen were assembling at 5.30 a.m., 5.30 p.m. and 9.30 p.m. and shouting slogan for several minutes and blocking the entrance and that situation may turn into a serious breach of peace.

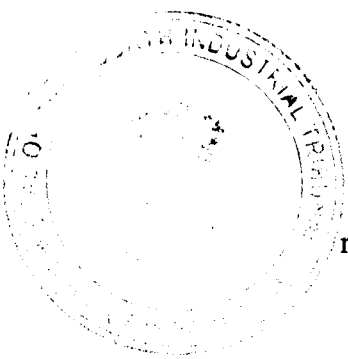


- k) So, admittedly there were slogans for some minutes after each shift and there was only apprehension of breach of peace. The sequence of events prove that the workers started giving such slogans Only after the Company implemented the freezing of DA with effect from 01.11.1998 despite pendency of Conciliation proceeding and despite request by the unions and the Labour Commissioner not to give effect to the Notice dated 23.11.1998 freezing VDA w.e.f. 01.11.1998. Such non-violent shouting of slogans for few minutes after each shift by workmen being aggrieved by unilateral freezing of DA by company with effect from a back date is very much within the Trade Union rights of the workmen. Hon'ble Court held in orders passed on 03.02.1999 and on 28.01.1999 in W.P. 180/99 (Ext. B & C) – Order passed in respect of ingress and egress and movement at factory gate, in Ext. C Hon'ble Court has clarified that, “This order will not prevent the private respondent from creating their lawful trade union activities within the space provided by the company.”
- l) All information to the local P.S. alleging blockage at the main gate of factory by workmen are of dates subsequent to declaration of suspension of work viz 11.01.1999, 18.01.1999, 20.01.1999, 22.01.1999, 24.01.1999, 26.01.1999.
- m) Thus, there is no complaint by the management to police of any alleged violent agitation by workmen before declaration of suspension of work. So, the allegation of violent agitation, Gherao and bandh etc. being reason of suspension of work could not be corroborated by sufficient documentary proof.
- n) From the evidence of Company itself it is found that there was no allegation/FIR of any Violence by workmen before the Suspension of Work Notice dated 04.01.1999. So, Company failed to prove any Gherao, Bandh etc as reason justifying suspension of work.
- o) On the other hand, the Company's Exhibit-II shows that Company declared lock out w.e.f. 15.02.1987 and it was lifted after around three years vide Memorandum of settlement dt. 13.11.1989 between the Company, four Unions, conciliation officer and Labour Commissioner, Government of West Bengal (Ext. II). The conditions for such lifting of lock out were that the “total period of lock out will be treated as no work no pay”, and “in future no demand of any nature whatsoever will be raised individually or collectively through the Union on the question of wages and any benefits incidental thereto” and various such other conditions. Parties agreed that they will file joint compromise petition in respect of all the disputes pending before the Tribunals and before the Hon'ble High Court as on 13.11.1989 except the one preferred by the company against award passed by the First Industrial Tribunal on 23.05.1988 within a week of the settlement. So, it is clear from the past behaviour that the Company used lock out as a weapon against the workmen and the whole period of around three years was treated as No work-No Pay.
- p) The Company has claimed financial exigency but the company has obtained ISO certificate in 1998 (Ext. 22) and this certificate is issued only when the company



is financially sound and running successfully. The annual report of chairman of Company for the year 1998 also shows the sound financial health of the company. The summarized balance-sheet of last 5 years that is for the year 1995 to 1999 (Ext. 25) shows increasing profit graph. The company has produced balance-sheet for financial year 1999-2000, 2007-08 and 2008-09 (EFG) and during this period the company was under suspension of work. So, these three balance-sheets failed to justify the order of suspension of work dt. 04.01.1999. The company has failed to prove any financial loss immediately preceding the declaration of suspension of work. The Company has pleaded in their WS that, "The company states that no financial support in the form of Bank loans etc. is available to a company which is not profitable unit and the Government of West Bengal hardly subsidises industrial consumers. The SARFAESI Act 2002 takes over all assets of a company without recourse to bank or Tribunal. There is no emphasis of labour welfare and hire and fire is the way of life and there is minimal interference by judiciaries even where there is SEZ and because of economic liberalization sick industrial units do not get rehabilitated" but the subsequent legislations enacted after the declaration and execution of suspension of work by the Company are of no relevance for adjudication of this reference. The Company has pleaded in their WS that , "The machines have become obsolete by passage of time and there is no scope to re-open the Mill in the present condition", but it was the Company which declared suspension of work for which machines are lying idle for decades and now the Company can not take advantage of it's own wrong. Evidence on record shows that on 12.04.2002 the workmen submitted Joint representation addressed to Mr. B.K. Birla, Chairman of the company expressing their difficulties on account of prolonged suspension of work and proposing to sacrifice and accept any condition for operation of the Mill and praying for lifting the suspension of work (Ext. 23) yet the Company paid no heed to such request.

- q) *In M/s. Jenson & Nicholson (I) Ltd. Vs. The State of West Bengal and Others (W.P. No. 29968(W) of 2015, order dt. 06.03.2017 Hon'ble Calcutta High Court held that suspension of work declared during the pendency of conciliation proceeding violates provision of Section 23 of I.D. Act and that financial stringency cannot be a good ground for sustaining suspension of work for such a long period.*
- r) When parties are acting under and bound by a tripartite settlement (of 11.6.1995) which deals with every aspect of wage structure including DA the question raised by Ld Counsel for Company as regards whether DA can be claimed as a matter of right is of no relevance in this adjudication.
- s) Thus, company failed to justify the reasons cited for declaring the suspension of work with effect from 05.30 a.m. of 05.01.1999.
- t) The relationship between workmen and Company subsists during Suspension of work.



All issues are adjudicated accordingly. It is found that Management was not justified in declaring the suspension of work with effect from 05.30 a.m. of 05.01.1999.

Hence, It is ,

ORDERED

That the suspension of work declared by the Company with effect from 05.30 a.m. of 05.01.1999 is unjust and illegal. Company is directed to recall the order of suspension of work by 30.09.2022 and permit all workmen to resume work and to clear their dues for the period since 05.01.1999 till date of joining by 30.10.2022. The dues of workers who have died or reached the age of superannuation during last 23 years are to be cleared by 30.10.2022.

This is my award.

Let a copy of this award be sent to The Principal Secretary to the Government of West Bengal, Labour Department, N.S. Buildings, 1, Kiran Sankar Roy Road, Kolkata-700001.

Dictated & Corrected by me,

SDH (Durga Khaitan)
Judge

Fourth Industrial Tribunal

Judge *SDH (Durga Khaitan)*
Kolkata

31.08.2022

Judge
Date: 31.08.2022

