

I/189102/2022

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

No. Labr/417/(LC-IR)/22015(15)/110/2019

Date: 22/04/2022.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/485/I.R./10L-11/08 dated 08/05/2013 the Industrial Dispute between M/s. Crawley & Ray (Founders & Engineers) Pvt. Ltd., 32, Foreshore Road (Near B. Garden), Howrah-711103 and their workmen represented by three Unions - (1) Howrah Metal & Engg. Worker's Union, Crawley & Ray Branch, Foreshore Road (Near B. Garden), Howrah - 711103, (2) Crawley & Ray (F & E) Pvt. Ltd. Sramik Union, 33 No. Daspara Lane, B. Garden, Howrah - 711103 & (3) Crawley & Ray (Founders & Engineers) Pvt. Ltd. permanent Labour Union, Andul Purba Para, Andul Mouri, Howrah regarding the issue mentioned in the said order, being a matter specified in the Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Second Industrial Tribunal, West Bengal.

AND WHEREAS the Second Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 07/04/2021 on the said Industrial Dispute vide memo no. 808 - L. T. dated. 27/07/2021.

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/189102/2022

No. Labr/417/117/(LC-IR)

Date: 22/04/2022.

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

1. M/s. Crawley & Ray (Founders & Engineers) Pvt. Ltd., 32, Foreshore Road (Near B. Garden), Howrah-711103.
2. Howrah Metal & Engg. Worker's Union, Crawley & Ray Branch, Foreshore Road (Near B. Garden), Howrah - 711103.
3. Crawley & Ray (F & E) Pvt. Ltd. Sramik Union, 33 No. Daspara Lane, B. Garden, Howrah - 711103.
4. Crawley & Ray (Founders & Engineers) Pvt. Ltd. permanent Labour Union, Andul Purba Para, Andul Mouri, Howrah.
5. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
6. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 7. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


 Joint Secretary

No. Labr/ /(LC-IR)

Date: /2022.

Copy forwarded for information to:

1. The Judge, Second Industrial Tribunal, West Bengal with reference to his Memo No. 808 - L. T. dated. 27/07/2021.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.


 Joint Secretary

Before the 2nd Industrial Tribunal, Kolkata

**Present : Shri Partha Sarathi Mukhopadhyay, Judge
2nd Industrial Tribunal, Kolkata**

Case No. VIII-28 of 2013

Under Section 10(2A) of The Industrial Disputes Act, 1947

The Workmen represented by Howrah Metal & Engineering Workers' Union
and two other Unions

-Vs-

M/S. Crawley & Roy (Founders & Engineers) Private Limited

Dated, 07.04.2021

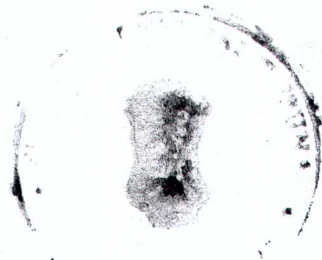
J U D G E M E N T

This case has been referred by the Labour Department, Govt. of West Bengal to this Tribunal for adjudication of industrial dispute and two issues have been framed by the Labour Department, Govt. of West Bengal.

The two issues framed are as follows:-

- 1] Whether the decision of the management disbursing bonus to the workers @ 8.33% instead of 15% for the accounting year 2011-12 is justified.
- 2] To what relief, if any, are the workers entitled ?

After reference both parties have appeared in this case and filed written statements and contested this case.



The case of the petitioners as per their written statement, in short, is that on 02.01.2008 an agreement was signed between the management of the O.P. company and the Union Nos. 1 & 2 in the reference and it was mutually agreed that the annual bonus in future shall be restricted to 15% till further amendment of the Bonus Act, 1965 and before signing the said agreement the management used to pay bonus @ 20% to the employees but surprisingly on 22.09.2012 the O.P. company issued a notice declaring that the employees would get Puja bonus @ 8.33% for the financial year 2011-12 but the management paid Puja bonus to the employees @ 15% for the years from 2007-08 to 2009-2010 and since the factory was closed in the year 2010 the Union Nos. 1 & 2 after discussion with the employees of the company decided to receive bonus @ 8.33% for the year 2010-11 sympathetically considering the situation of the company and after knowing the contents of notice dt. 22.09.2012, the employees of the company requested the management to disburse the bonus @ 15% in terms of the agreement dt. 02.01.2008 but the management did not agree and the employees refused to receive bonus @ 8.33%.

The petitioners further submit that the Union No.3 sent one letter dt. 06.10.2012 to the company and requested to pay the said bonus as per the said agreement but the management did not agree and then the petitioners raised the dispute before the Labour Commissioner, Govt. of West Bengal but no fruitful result was obtained in the conciliation proceedings. Hence, the petitioners have filed this case praying for bonus @ 15% according to the said agreement and other reliefs.

The O.P. company has contested this case by filing a written statement denying therein all the material allegations in the written statement of the petitioners.

This O.P. company submits that according to the agreement dt. 02.01.2008 the maximum annual bonus was restricted to 15% and minimum as per the Payment of Bonus Act, 1956 and according to the statute, the company is liable to pay the minimum bonus @ 8.33% and according to the agreement dt. 02.01.2008 the maximum bonus was restricted to 15% subject to the profit of the respective financial year of the O.P. company and there is no violation of the agreement dt. 02.01.2008 by not paying the bonus @ 15% and the company is not liable to pay the bonus @ 15% for

each and every year in spite of financial loss of the company and all the allegations made by the petitioners are false. Hence, the O.P. company has prayed for an award holding that the bonus declared to be paid @ 8.33% for the year 2011-12 is justified and the workmen are not entitled to any other reliefs as prayed for.

DECISIONS WITH REASONS

In order to prove the case the petitioners have examined two witnesses and proved some documents. The O.P. company has examined one witness and proved some documents.

The PW-I Tarun Kumar Mondal has deposed according to the written statement of the employees and he has proved one memorandum of settlement as Exbt.2 and one notice of the O.P. company dt. 22.09.2012 as Exbt.3 and he has also proved other documents.

The PW-2 Pradip Kumar Das has deposed according to the written statement of the petitioners and he has proved some documents and **in his crossexamination** he has stated that the employees did not accept the Puja bonus @ 8.33% in the year 2011-12.

The OPW-I Moloy Roy has deposed according to the written statement of the O.P. company and he has proved some documents.

According to the cases of both sides, admittedly on 02.01.2008 the O.P. company and the workmen represented by the two Unions executed one memorandum of settlement which has been marked as Exbt.2 and it is the basis of this case as well as the disputed matter of this case and it is the most vital document along with the Exbt.3 to make proper adjudication according to the cases of both sides, and other exhibited documents are not so vital and relevant for adjudication of the present dispute.

Admittedly the workmen have been represented by three unions and they work under the O.P. company.

According to the case of the petitioners, on 02.01.2008, three unions entered into an agreement or memorandum of settlement with the O.P. company, and as per this settlement, they received bonus @ 15% till the year 2009-10 and since the factory was closed in 2010, the Unions after discussing with the employees decided to receive bonus @ 8.33% for the year 2010-11 but in the next year 2011-12 the O.P. company declared bonus @ 8.33% to them and they refused to accept the same and thereafter this case has been filed by the petitioners.

On the other hand, the O.P. company has admitted the execution of the said memorandum of settlement dt. 02.01.2008 with the Unions of the employees but the O.P. submitted that according to this settlement, the maximum ceiling of bonus was limited to 15% and the minimum ceiling has to be made according to the Payment of Bonus Act, 1956 and as the financial condition of the company was not good, the employees accepted bonus @ 8.33% in the year 2010-11 and in the year 2011-12 the financial condition of the company was also not good for which the company declared bonus @ 8.33% in the year 2011-12 to the employees who did not receive it.

The PW-I Tarun Kumar Mondal has stated that after the said agreement dt. 02.01.2008 the company paid bonus to the employees @ 15% from the year 2007-08 to 2009-10 and this statement of the PW-I has not been denied specifically by the O.P. company in his crossexamination.

The PW-2 Pradip Kumar Das has stated that after the agreement dt. 02.01.2008 the company paid Puja bonus to the employees @ 15% for the years from 2007-08 to 2009-10 and this statement of the PW-2 has not been challenged specifically by the O.P. company in his crossexamination.

The OPW-I Moloy Roy has stated that the agreement dt. 02.01.2008 is not disputed and he has not whispered anything as to whether the employees got bonus @ 15% from 2007-08 to 2009-10 from the O.P. company.

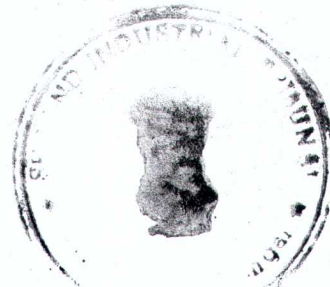
Admittedly for poor financial condition of the O.P. company in the year 2010-11 the employees received bonus @ 8.33% sympathetically from the O.P. company.

So the Exbt.2 is the most vital document in this case for proper adjudication and on perusing this Exbt.2, I find that in the term no.1, it has been mentioned that the annual bonus in future shall be restricted to 15% till further amendment of the Bonus Act. This Exbt.2 is the admitted document of both sides, and the O.P. company **has not taken any plea that out of misrepresentation or threat or coercion or undue influence, this Exbt.2 was executed out of compulsion.** On the contrary, it is the admitted document of both sides and according to this Exbt.2, the O.P. company has paid bonus @ 15% to the employees till the year 2009-10.

So it has to be presumed legally that this Exbt.2 has been executed legally, and **with consent** of both sides.

In the written statement the O.P. company has taken a plea that according to the Exbt.2, the maximum bonus was restricted to 15% **subject to the profit of the respective financial year of the company and the minimum ceiling will be as per the Payment of Bonus Act, 1956, and this Exbt.2 does not mean that the company has to pay bonus @ 15% for each and every year in spite of financial loss of the company,** but the above statements of the O.P. company in the written statement **do not find place in the term No.1 of the Exbt.2 or in any portion of the Exbt.2.**

In the written argument the O.P. company has taken a plea that if the agreement is contrary to the provisions of the Payment of Bonus Act, 1956, it is void and cannot be enforced under the law and according to the said Act, the minimum bonus payable is 8.33%. **But the O.P. company has not pleaded this matter in the written statement and accordingly this submission cannot be considered and accepted legally.** Moreover, the Exbt.2 was executed by both sides in a joint meeting with the unions and the Exbt.2 mentions that **in the said joint meeting the management of the company placed good proposal of payment option for balance bonus and after several discussions both parties agreed to and accepted the four terms and conditions as mentioned in the Exbt.2.**



Admittedly after execution of the Exbt.2 between both sides, the O.P. company paid bonus to the employees @ 15% from the year 2007-08 to 2009-10, and **it proves that by conduct also** the O.P. company accepted the Exbt.2 regarding bonus of 15% for some next years and out of poor financial condition of the O.P. company the employees accepted bonus of 8.33% in the year 2010-11 **but that does not legally mean** that in every succeeding years they have to receive the said rate of bonus even if there is any financial loss or profit to the company.

Financial loss or profit of the company after the execution of the Exbt.2 is not a material point to consider legally for both sides regarding the rate of annual bonus.

So considering the admitted Exbt.2, the term No.1 of the Exbt.2 and subsequent conduct of the O.P. company regarding payment of bonus of 15% to the employees till 2009-10, I hold that for the year 2011-12 the O.P. company cannot give bonus @ 8.33% to the employees, and the Exbt.3 shows that the company declared to give bonus @ 8.33% for the year 2011-12.

The Exbt.2 does not specifically mention that if the financial condition of the O.P. company does not become good in future, the employees have to accept bonus @ 8.33% for any year.

An agreement or memorandum of settlement is made by two parties to comply with the conditions thereof and they cannot be allowed to violate any of the conditions of the agreement and if any of the parties violates any of the conditions of the agreement, then, what is the purpose of making an agreement between two parties !

So considering the Exbt.2 and the Exbt.3, the pleadings of both the parties and the evidences of both the parties, I hold that the decision of the O.P. company to disburse bonus to the workers @ 8.33% instead of 15% for the year 2011-12 is not justified and it is illegal and on the basis of the Exbt.2, the employees are entitled to get bonus @ 15% in the year 2011-12.

As the petitioners have been suffering financially and mentally for not getting bonus @ 15% for the financial year 2011-12, they are entitled to get cost as compensation.

So considering the entire materials on record as discussed above, I hold that the petitioners have been able to prove their case and they are entitled to get relief as prayed for and the case is maintainable in its present form and law and the petitioners have cause of action to file this case because by the Exbt.3 the O.P. company has refused to give them bonus @ 15% for the year 2011-12.

In the result the case succeeds.

Hence, it is

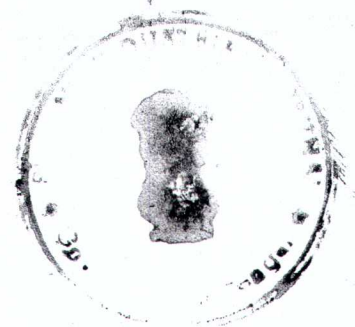
ORDERED

that the Case No. VIII-28 of 2013 under Section 10(2A) of The Industrial Disputes Act, 1947 is allowed on contest against the O.P. company with a cost of Rs.25,000/-.

It is hereby declared that the decision of the O.P. company to disburse bonus to the workers @ 8.33% instead of 15% for the year 2011-12 is unjustified and illegal and the petitioners are entitled to get bonus @ 15% for the year 2011-12 from the O.P. company.

The O.P. company is directed to pay bonus @ 15% for the year 2011-12 to the petitioners along with compound interest @ 10% p.a. on the entire amount from the year 2011-12 till realisation within 07.05.2021.

Let this judgement and order be treated as an award.



According to Section 17AA of The Industrial Disputes Act, 1947, let a certified copy of this award be sent to the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, K.S. Roy Road, Kolkata 700 001 for information, and let a certified copy of this award be supplied to each of both the parties of this case, free of cost, forthwith for information.

The case is disposed of today.

Dictated & corrected by me.

Partha Sarathi Mukhopadhyay
Judge

Partha Sarathi Mukhopadhyay
(Partha Sarathi Mukhopadhyay)
Judge
2nd Industrial Tribunal

