

I/208396/2022

Government of West Bengal
Labour Department, I. R. Branch

N.S. Buildings, 12th Floor, 1, K.S. Roy Road, Kolkata - 700001
No. Labr/ 708 / (LC-IR)/22015(16)/629/2019 Date : 20/07/2022

ORDER

WHEREAS under reference of Labour Department's Order No. 516-IR/IR/11L-175/08 dated 17.12.2002 the Industrial Dispute between M/s Murlidhar Ratanlal Export Ltd., Unit - India Jute Mill, Sreerampur, Hooghly and their workman Shri Kailash Singh, 16, K.M. Sha Street, Sreerampur, Hooghly 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 First Industrial Tribunal, Kolkata.

AND WHEREAS the said First Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 29.06.2022 on the said Industrial Dispute vide Memo No. 1043 - L.T. dated 12.07.2022.

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,

SD/-

Joint Secretary

to the Government of West Bengal

No. Labr/ 708 / (1(5))/(LC-IR) Date : 20/07/2022
Copy, with a copy of the Award, forwarded for information and necessary action to :

1. M/s Murlidhar Ratanlal Export Ltd., Unit - India Jute Mill, Sreerampur, Hooghly.
2. Shri Kailash Singh, 16, K.M. Sha Street, Sreerampur, Hooghly.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

SD/-
Joint Secretary

No. Labr/ 708 / (2(3))/(LC-IR) Date : 20/07/2022
Copy forwarded for information to :

1. The Judge, First Industrial Tribunal, Kolkata with reference to his Memo No. 1043 - L.T. dated 12.07.2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.
3. Office Copy.

Joint Secretary

In the matter of an Industrial Disputes exists between M/s Murlidhar Ratanlal Export Ltd., (formally known as M/s Hooghly Mill Company Ltd.) Unit – India Jute Mill, Sreerampur, Hooghly and their Workman Sri Kailash Singh residing at 16, K. M. Sha Street, Sreerampur, Hooghly.

Case No. VIII – 25/2009 of the Industrial Dispute Act 1947

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

**SHRI UTTAM KUMAR NANDY, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA**

Date of Order: 29.06.2022

Case No.: VIII – 25/2009

The instant case has been initiated on receipt of copy of Government Order of reference No. 516-I.R./IR/11L-175/8, dated 17.12.2002 on 28.05.2009 from the Labour Department, Government of West Bengal referring an industrial dispute between M/s Murlidhar Ratanlal Export Limited (formally known as M/s Hooghly Mill Company Ltd.) Unit – India Jute Mill, Sreerampur, Hooghly and their Workman Sri Kailash Singh residing at 16, K. M. Sha Street, Sreerampur, Hooghly for adjudication of the matter and submitting its award to the State Government in respect of the following issues:

- 1) *Whether the dismissal of Sri Kailash Singh by the management of M/s Murlidhar Ratanlal Export Ltd. with effect from 31.12.2006 is justified?*
- 2) *What relief, if any, is he entitled to?*

The fact of the statement of claim of the Workman in a nutshell is that the Workman was appointed in Hooghly Jute Mill Company Limited, Unit – India Jute Mill in the year 1972.

Thereafter, the management of the Company has been changed and M/s Murlidhar Ratanlal Export Limited Company the Opposite Party under reference came into picture as the present management.

It is further stated that on 23.08.2004 while the Workman was on duty was assaulted by Md. Jahangir and his associates and consequence of such assault the Workman sustained serious bodily injuries followed by hospitalization (ESI Hospital) and treated there till 10.09.2004 and thereafter he was declared fit by the concerned doctor with effect from 07.10.2005.

Be it mentioned here that a criminal case was registered against said Md. Jahangir and others in respect of the incident dated 23.08.2004 being recorded as Sreerampur Police Station G. R. Case No. 902 dated 23.08.2004 and it is further stated by the Workman that followed by the above mentioned

incident said Md. Jahangir and others were placed under suspension though no proceeding was initiated against them by the management of the then Company i.e. OP No. – 2.

Thereafter on submission an apology letter followed by the requesting letter from the Union to the management vide letter dated 19.10.2004, the suspension of the said Workmen was withdrawn and they were allowed to resume their work by the management in spite of the fact that subsequently Investigation Officer of the Sreerampur Police Station submitted charge-sheet being No. 240 of 2004 in connection with the incident dated 23.08.2004 against the accused said Md. Jahangir and others under Section 147, 148, 199, 341, 345 of IPC of 30.10.2004 and the same was pending.

While

On the other hand on 12.09.2004 the Maintenance Manager of the Company issued a charge-sheet against the Workman and he was informed that he had to be placed under suspension on and from 13.09.2004 wherein it is allegedly stated that he has caused injury to Md. Jahangir with a hammer though the facts remain that the Workman was admitted in hospital for the injury caused by Md. Jahangir and others, on 23.08.2004.

It is claimed by the Workman that it is a clear case of discrimination since no legal step has been taken against Md. Jahangir and others by the then management. It is further claimed by the Workman that the Maintenance Manager has / had no authority to issue charge-sheet upon the Workman as the Maintenance Manager so far below the rank of Manager (Personnel), who was the appointing authority of the Workman.

Thereafter, said Maintenance Manager by a letter dated 24.09.2004 informed the Workman about holding a domestic enquiry without mentioning any date, time, place and name of the Enquiry Officer.

The Workman further states that he had filed a suit for declaration and injunction before the Additional Civil Judge, Junior Division at Sreerampur being Suit No. 129/05 challenging the legality of the charge-sheet since issued against the Workman, wherein Ld. Court held that the charge-sheet was bad in law and not maintainable.

It is further claimed that on 11.12.2005 at the domestic enquiry the Enquiry Officer without recording the true statement of Sri Birendra Nath Ghosh compelled the witness to put his signature on the proceeding for which the Workman compelled to make a representation before the Enquiry Officer (E.O.) on the said date requesting Enquiry Officer to conduct the enquiry either in Bengali or in Hindi as the statement so recorded was in English and the same was not explained to the Witness. The Workman has also requested



to the management to release a subsistence allowance. Subsequently the said Birendra Nath Ghosh, factory mechanic of the Opposite Party Company by a registered letter dated 13.12.2005 drew the attention of the Chief Executive (Works of the Management) and also invited the attention of the Deputy Labour Commissioner about the intention of the Enquiry Officer regarding "not recording his correct deposition".

Thereafter erstwhile Enquiry Officer Mr. D. Chatterjee was changed and Mr. D. N. Sanyal was appointed as Enquiry Officer before whom a representation was made on 16.05.2006 by the Workman. But Mr. D. N. Sanyal without considering the said representation issued a letter dated 03.06.2006 informing the Workman to remain present before the enquiry proceeding on 17.06.2006 at 04:00 PM.

The Workman drew the attention of Mr. D. N. Sanyal by a letter dated 16.06.2006 about the willful non consideration of the representation of the Workman and even then date was fixed on 01.07.2006 for hearing of the enquiry proceeding against which the Workman submitted representation on 29.06.2006 but the Enquiry Officer again without considering the said representation proceeded the enquiry on exparte and submitted his reports and findings to the management on 06.07.2006 without providing the Workman the reasonable opportunity of self defense and lastly on 22.07.2006 the Workman was received the copy of the report being submitted by the Enquiry Officer against which the Workman submitted his representation before the Chief Executive (Works) on 29.07.2006 and the management without considering the said representation dismissed the Workman vide letter dated 31.12.2006 along with the cheque (No. 748023, dated 29.12.2006) amounting to Rs. 6026/- (Rupees six thousand twenty six) only being forwarded and thereafter the Workman challenged the legality of his dismissal from service by a registered letter dated 08.01.2007 and returned the cheque.

In view of the above facts and circumstances the Workman states that the allegations raised against him are totally false and the contention of the management in respect of conducting the enquiry in a proper and fair manner is also totally false as no reasonable opportunity has been provided to the Workman in the enquiry by flouting the basic principles of natural justice.

Lastly the concerned Workman further states that the physical assault as initiated against him made him to suffer with loss of vision to the extent of 40% but the management despite submission of the injury report to ESI Corporation intentionally did not disburse any temporary disablement benefit and subsequently the permanent disablement benefit.

The Workman prays for passing an Award in view of the above facts and circumstances in favour of him directing the management thereby to reinstate him in service with full back wages along with other consequential



service benefits and / or to pass such order / orders as the Tribunal may deem fit and proper.

On the other hand the Company under reference has filed no such Written Statement on merit of the case but they have filed Written Statement as well as Written Objection in respect of the petition filed by the Workman under Section 15 2(b) of the Industrial Disputes Act, wherein they specifically denied the all allegations made against them by contending inter-alia to the effect that the instant case is out of jurisdiction of this Tribunal and the principle of res-judicata and res-sub-judice are applicable to this case as (the Workman filed a title suit being No. 129 of 2005 before the Ld. Additional Civil Judge, Junior Division, Sreerampur, Hooghly against the order of which an appeal has been preferred by the Company and which is pending till date), and therefore, Tribunal cannot simultaneously adjudicate upon such a matter as the matter is sub-judice before different forums.

The Company under reference further states that the Workman was an employee of M/s Hooghly Mill Company Ltd., Unit – India Jute Mill, Sreerampur and he was dismissed by the then Company with effect from 31.12.2006 followed by a departmental proceeding / domestic enquiry in respect of the charge-sheet dated 12.09.2004 and thereafter the instant case has been referred to this Tribunal after raising dispute before the Labour Department, Government of West Bengal by the Workman.

The Company under reference also demands that M/s Murlidhar Ratanlal Export Ltd. took over the said Jute Mill at Sreerampur by virtue of an agreement dated 20.06.2007 and as per clause 12 under the heading “liabilities” on pages 29,30 and 31 of the said agreement dated 20.06.2007 (the relevant provision being noted in 12.1 and 12.5 clauses) and in view of the same the purchaser being the M/s Murlidhar Ratanlal Export Ltd., the Company under reference is not responsible and / or liable at any circumstances and should be relieved by this Tribunal as the Workman concern is/was never a Workman under the Company under reference and, therefore, the Workman is not entitled to any relief as sprayed for.

Notable Facts:

During the pendency of the case the Company under reference filed a petition on 14.03.2013 for addition of M/s Hooghly Mills Company Ltd., Unit-India Jute Mills on 26.07.2013. M/s Hooghly Mills Company Ltd. made appearance in the instant case and as per Order of this Tribunal dated 12.07.2013 said M/s Hooghly Mills Company Ltd., Unit – India Jute Mills is added as party to the instant case and filed their Written Statement on 02.09.2013 by stating inter-alia to the effect that the order of reference made by the Government of West Bengal for adjudication the dispute in between the M/s Murlidhar Ratanlal Export Ltd. and their Workman Sri Kailash Singh and



therefore, Ld. Tribunal cannot travel beyond the order of reference as made by the Government of West Bengal because of the facts that the added party Company had already sold out its unit of India Jute Mill situated at Sreerampur, Hooghly, in the year 2007 to the Company under reference along with all its assets and liabilities and the said Unit of India Jute Mill is being run by the Company under reference and the added party M/s Hooghly Mills Company Limited has nothing to do in regard to the instant case.

That apart the instant Company Hooghly Mills Company Limited denied the dispute, refuted the entire allegations / statements / averments / submissions as made by the Company under reference in their Written Statement save and except what are the matters of record.

It is further stated that dismissal of the Workman Kailash Singh was effected after holding a proper and domestic enquiry which is legal and justified and as such the Workman is not entitled to any relief as prayed for.

It is further stated that since all records and documents attached to this case, letter being kept under the custody of the Company under reference, the added party is not in a position to say / add any further in this matter in absence of the said records and documents and eventually it is prayed by the added party Company to the effect that Tribunal be graciously be pleased to hold that the added party Company has no liability and / or to do nothing in the instant case and the Workman is not entitled to any relief against above named added party Company.

Be it mentioned here that the added party Company did not file any Written Statement on merit and the Company under reference made a prayer to frame preliminary issue to decide the Validity of Domestic Enquiry first before entering into the merit of the case.

Issues

- 1) *Whether the dismissal of Sri Kailash Singh by the management of M/s Murlidhar Ratanlal Export Ltd. with effect from 31.12.2006 is justified?*
- 2) *What relief, if any, is he entitled to?*

Decision with reasons

Before going to merit let us considering the position of the record.

The instant case was referred to this Tribunal under order of reference vide Government Order No. 516-I.R./IR/11L-175/8 dated 28.05.2009, then the Company under reference appeared on 22.07.2009 and thereafter since



neither of the parties were present for a long time, a "no dispute Award" was passed on 16.09.2009.

Then on 15.01.2010, the case was restored on the prayer of the Workman. Company filed a petition stating inter-alia that the Workman filed a title suit being No. 129 of 2005 which was decreed against the Company under reference and Company under reference filed an appeal against the said judgment of Civil Court, which is still pending and in support of the said submission xerox of the order of the Hon'ble Ld. District Judge, Hooghly against the Title Appeal No. 54 of 2010.

Thereafter, the Workman preferred an interim relief petition under Section 15 (2)(b) of the Industrial Disputes Act, 1947 and the said petition was continued till 14.03.2012 when interim relief petition was "not pressed" followed by a prayer of settlement of the instant dispute amicably. Consequently interim relief petition is rejected on consent and then M/s Hooghly Mills Company Ltd. is added as a party to the instant case and as per prayer of the added party Company, the Validity of Domestic Enquiry was started.

Be it mentioned here that inadvertently the predecessor of this Tribunal started taking evidence on merit after appearance of the added party Company when Kailash Singh the Workman was examined on merit in full and crossed in part and documents filed by him had been marked and exhibited 1 to 13 respectively and when on 26.08.2014 OP parties drew the notice of the predecessors of this Tribunal to the effect that the Validity of Domestic Enquiry should be adjudicated first over the charges labeled against the Workman as the Workman had challenged the validity of Domestic Enquiry. The evidence already taken on merit stood closed, and the same had been expunged along with the documents being already marked.

Then, evidence was taken on the point of validity of Domestic Enquiry both oral and documentary for the parties to the case and order has been passed wherein it was held that the domestic enquiry as done is not found to be fair and proper and the same cannot be said to be valid. Consequently no reliance can be placed on such domestic enquiry as held by the Enquiry Officer. Company under reference, and OP No. – 2 are asked to lead their evidences on merit.

Thereafter evidence on merit was ordered to start when the Company under reference filed a petition on 08.04.2014 praying for deciding the point of maintainability of the reference and who is the employer of the Workman.

After contested hearing it is held by this Tribunal M/s Murlidhar Ratanlal Export Limited is the present employer of the Workman and the petition of the Company under reference dated 08.04.2019 stands rejected



and since Murlidhar Ratanlal Export Limited did not appear even after Covid-19 pandemic situation, it is ordered that the case shall be heard in the absence of Murlidhar Ratanlal Export Limited the Company under reference considering the age of the dispute.

Findings:

In view of the facts and circumstances, the evidence of OP No. -1 (Murlidhar Ratanlal Export Limited) stood closed, as the Company under reference remained absent in spite of repeated opportunity being given to them which ended in smoke. Then OP No. - 2 was asked to lead their evidence, Ld. Counsel for OP No. - 2 appeared and submitted that OP No. - 2 i.e. Hooghly Mills Company Limited, Unit - India Jute Mill desired not to adduce any evidence on their behalf and accordingly evidence of OP No. - 2 stood closed on 11.03.2022. So the record is taken up for evidence of the Workman under reference.

In support of the case, the Workman has examined himself as WW-1. He is crossed by OP No. - 2 i.e. Hooghly Mills Company Limited, Unit - India Jute Mill and OP No. - 1, the Company under reference found unavailable at the time of the cross examination.

The Workman has filed the following documents which have been marked as follows:

- 1) Charge-sheet, dated 12.09.2004 sent to the Workman by the Maintenance Manager. Marked as **Exhibit - 1.**
- 2) Reply to the Charge-sheet dated 20.09.2004 sent to the Maintenance Manager of OP No. - 2. Marked as **Exhibit - 1/1.**
- 3) The dismissal letter dated 31.12.2006 issued by the Chief-Executive (Works) of OP No. - 2. Marked as **Exhibit - 2.**
- 4) Letter dated 08.01.2007 addressed to the Chief Executive (Works) of OP No. - 2 whereby it was informed that the cheque of Rs. 6026/- was returned to the Company vide cheque No. 748023, dated 29.12.2006. Marked as **Exhibit - 3.**

Now, let us consider the evidence of the Workman i.e. WW-1, who in his examination in chief has stated the facts cases being relied by him.

On the cross examination it is revealed that the Workman Kailash Singh i.e. WW-1 has stated to the effect that he has filed the case against OP No. - 1, named Murlidhar Ratanlal Export Limited and prayed relief against the said Company.



At the time of hearing argument Ld. Counsel for the Workman submits that the instant case has been referred by the Government of West Bengal where the Company under reference took part in the conciliation proceeding and since the conciliation proceeding ended without any result the case has been referred to this Tribunal for adjudication of the matter regarding the issues as framed i.e. "whether the dismissal of Kailash Singh by the management of Murlidhar Ratanlal Export Limited with effect from 31.12.2006 is justified?"

Thereafter the said Company took part in the proceeding of interim relief being filed by the Workman under Section 15 2(b) of the Industrial Disputes Act and it was stopped and duly rejected on consent as the Company under reference was agreed to settle the matter amicably and thereafter the Company without taking any step to settle the matter amicably they filed a petition for adding M/s Hooghly Mills Company Limited, Unit – India Jute Mill. The party of the instant case taking the plea that the Company under reference took over the Hooghly Mills Company Limited, Unit-India Jute Mill by virtue of agreement dated 22.06.2007 and as per clause 12 under the heading of liabilities on pages 29, 30 and 31 of the said agreement dated 20.06.2007 (the relevant provision being noted in 12.1. and 12.5 clause), the Company under reference is not responsible and /or liable at any circumstance since the Workman was dismissed by the then Company i.e. OP No. – 2 with effect from 31.12.2006 followed by a departmental proceeding / domestic enquiry after issuing charge-sheet dated 12.09.2004 but the said agreement has not been marked as exhibited documents.

Be it further mentioned here that the Company under reference has claimed that the Workman filed a Title suit being No. 129 of 2005 before the Ld. Additional Civil Judge (Junior Division), Sreerampur, Hooghly against the order of which an appeal has been preferred by the Company and which is pending till date. But it is evident from the record that Title Appeal No. 54 of 2005 was allowed on 30.06.2014 and the judgment of decree passed by the Ld. Additional Court, Civil Judge (Junior Division) Sreerampur in Title Suit No. 129 of 2005 // 154 of 2004 on 15.01.2010 was set set-aside by Ld. Additional District Judge, 2nd Court, Sreerampur.

So, there is no civil case pending on the issue of dismissal of the Workman and this Tribunal is the only competent authority to try the case.

That apart the Company under reference has also taken part in the proceeding on the point of Validity of Domestic Enquiry and when the Validity of Domestic Enquiry is found not proper and valid the Company under reference again filed a petition on the preliminary issues to decide whether the instant case is maintainable or not and to decide the question who is the



employer of the concerned Workman under reference and it is decided by this Tribunal to the effect that the case is maintainable and this Tribunal has well jurisdiction to try the case and it is also decided that the Workman named Kailash Singh is the employee of the Company under reference i.e. Murlidhar Ratanlal Export Limited not the employee of the then Company named Hooghly Mills Company Limited, Unit – India Jute Mill since the OP No. – 1 Murlidhar Ratanlal Export Limited purchased the Unit-India Jute Mill of Hooghly Mills Company Limited in which the present Workman was the employee.

Ld. Advocate further argues since the Company under reference has put its feet into the shoes of the erstwhile Company i.e. Hooghly Mills Company Limited, Unit – India Jute Mill, the Company under reference cannot avoid his liability in respect of the prayer of the Workman. So in no way M/s Hooghly Mills Company Limited is liable to the present Workman in respect of any relief as claimed by the Workman.

Admittedly after the order of this Tribunal in respect of the petition dated 08.04.2014 filed by the Company under reference praying for deciding the point of maintainability of the reference and who is the employee of the Workman, the said Company Murlidhar Ratanlal Export Limited did not appear before this Tribunal at any point of time in respect of repeated chances being given to the Company under reference and for which I am constraint to hold that the Company under reference has nothing to say regarding the status of the employee and prayer of the relief as claimed by the Workman.

I have carefully gone through the the agreement dted 22.06.2007 along with the relevant provision as pointed out by the Company under reference in their Written Statement being filed at the time of hearing of peition under Section 15 2(b) of the Industrial Dispute Act 1947 and after carefully consideration of the entire record, evidence, documents as well as the submission of Ld. Counsel for the Company, I find no reason to discard the submission laid by Ld. Counsel for the OP No. – 2 Company i.e. Hooghly Mills Company Limited, Unit – India Jute Mill and accordingly I am of firmed opinion that the Workman has righly proved their case in all respect.

Be it mention here that at the time of hearing on the point of Validity of Domestic Enquiry it is revealed that the bone of contention of the instant case (that is to say whether the Workman has made any misconduct towards his superior officers on 23.08.2004 or not) has been decided to the effect that the domestic enquiry was found not proper and legal and therefore, I need no repetition of the same fact to say that the allegation against the Workman on the point of the incident dated 23.08.2004 is disproved.

So, in view of the aforesaid discussion with reasons and findings and also accepting the arguments as advance by the Ld. Counsels for the



Workman and OP No. – 2, the issues have been decided to the effect that the dismissal of Sri Kailash Singh by the management of the erstwhile Company i.e. Hooghly Mills Company Limited, Unit – India Jute Mill which was taken over by the Company under reference i.e Murlidhar Ratanlal Export Limited is not justified and the Workman is entitled to get the relief as prayed for.

Since the Workman during the pendency of the case attained the age of superannuation he should be favoured with full back wages on and from 31.12.2006 to the date of his superannuation along with consequential benefits as the dismissal was illegal and unlawful and he has been languishing a mental agony coupled with physical disablement.

Thus all the issues are disposed of in favour of the Workman.

Hence it is

ORDERED

That the instant case being No. VIII-25/2009 be and the same is allowed on contest against OP No. – 2 and exparte against OP No. – 1 under reference at final stage being absent for the reasons best known to them with cost of Rs. 10,000/- (Rupees ten thousand) only to be paid by the Company under reference i.e. Murlidhar Ratanlal Export Limited and the reference made by Government of West Bengal is well maintainable in its present form and law and the Tribunal has well jurisdiction to try this reference and accordingly it is ordered that the Workman named Kailash Singh since attained the age of superannuation is entitled to full back wages along with all consequential benefits from the date of his illegal and unlawful dismissal till the date of his superannuation as well as a compensation to the tune of Rs. 1,00,000/- (Rupees one lakh) only for his long mental agony and physical disablements to be paid by the Company under reference as mentioned above within 3 (three) months from the date of this Award. In default the applicant Kailash Singh may execute the Award as per provision of law in this respect.

This is my AWARD.

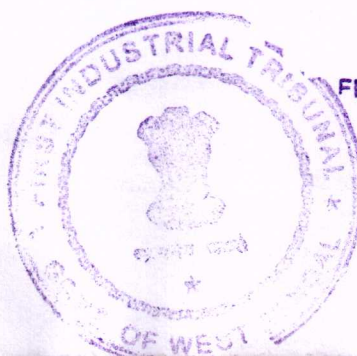
The AWARD be sent to the Government at the earliest.

Sd/-

Dictated & corrected by me.

Sd/-

(Uttam Kumar Nandy)
Judge
JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL



(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata
JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL