

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

No. Labr/130/(LC-IR)/

Date : 05.02.2019

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 1087-I.R. dated 20.10.2008 the Industrial Dispute between M/s Garden Apartment, 25, Gariahat Road, Kolkata-700 031 and their workmen represented by Garden Apartment Staff and Workers' Association, 25, Gariahat Road, Kolkata-700 031 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, First Industrial Tribunal, West Bengal.

AND WHEREAS the Judge of the said First Industrial Tribunal, West Bengal, has submitted to the State Government its award on the said Industrial Dispute.

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)

Sd/-

By order of the Governor,
Deputy Secretary
to the Government of West Bengal

No. Labr/130/1(5)/(LC-IR)

Date : 05.02.2019

Copy, with a copy of the Award, forwarded for information and necessary action to : 1. M/s Garden Apartment, 25, Gariahat Road, Kolkata-700 031.

2. Garden Apartment Staff and Workers' Association, 25, Gariahat Road, Kolkata-700 031.

3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.

4. The Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.

✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

05/02/19

Deputy Secretary

Date : 05.02.2019

No. Labr/130/2(2)/(LC-IR)

Copy forwarded for information to :

1 The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No.39-L.T. dated 04.01.2019.

2.The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Deputy Secretary

In the matter of an Industrial Dispute between M/s. Garden Apartment, 25, Gariahat Road, Kolkata-700 031 and their workmen represented by Garden Apartment Staff and Workers' Association, 25, Gariahat Road, Kolkata- 031.

(Case No. VIII-57/2008)

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

SHRI TANMOY GUPTA, JUDGE

FIRST INDUSTRIAL TRIBUNAL, KOLKATA

A W A R D

The instant case arose out of an order of reference vide G.O. No. 1087-I.R./IR/11L-390-/2008, dated 20.10.2008 and subsequent corrigendum no. 128-I.R./IR/11L-390/2008, dated 03.02.2009 from the Labour Department, Government of West Bengal by it an industrial dispute between M/s. Garden Apartment, 25, Gariahat Road, Kolkata-700 031 and their workmen represented by Garden Apartment Staff and Workers' Association, 25, Gariahat Road, Kolkata-700 031 as mentioned above directing this tribunal to adjudicate the following issues:-

- i) Whether M/s. Garden Apartment Flat Owners' Association, is an industry and whether the employees working in the said Garden Apartment are workmen?
- ii) If so, whether Charter of Demands as submitted by the Garden Apartment Staff and Workers Association on 03.07.2005 before the Garden Apartment Flat Owners' Association is justified?
- iii) If so, what reliefs are the workmen entitled to in respect of the following points of the charter of demands?

On receipt of such order of reference notices were issued to the parties. Both parties appeared and filed written statement.


The union appeared for the workmen in the written statement has stated that Garden Apartment Flat Owners' Association being the principal employer is refusing to accept the charter of demand which was placed by the union and subsequently received by the said Flat Owners' Association. The said Flat Owners' Association has kept the said charter of demand pending for last five years intentionally for which the union moved the Labour Commissioner, Govt. of West Bengal for conciliation. Such attempt for conciliation has been failed due to the non-co-operation of the Flat Owners' Association. The said owners' association is running without any society's registration since its



formation in the year 1991. The expenditure of the said association is more than 1.5 lakhs per month. The major construction in the association's fund from PSU's such as Kanara Bank, IPCL, HCL, ONGC, CMC, STC, EIL, EPI, OIL etc. who are 90% share whole of this association. The said owner's association is claiming that the staffs and the workers are being maintained by the contractor M/s. Tenacity Security but the principal employer Garden Apartment Flat Owners' Association never direct the security agency to pay the staffs as per the minimum wages act of the Govt. of West Bengal. Moreover, the owners' association has been trying to establish that it has no liability as empowered of the said staff since it is entered into an agreement contract with one contractor namely, M/s. Tenacity Security on 1st July 1991 empowering the said contractor to pay the salary of those staffs. The said agreement expired on 30th June 1993. As per said contract the agent was entitled to pay salaries to the staff as settled by the principal employer, the owners' association. So, the said association is bound to settle the charter of demands following the precedents. The said owners' association after taking over the charge of the staff maintenance from the original employer M/s. Builcon Construction Pvt. Ltd., the owners' association has been discharging its duty as principal employer and looking after all the matters directly. A list of documents has been enclosed with the said written statement, on that score the union has prayed for a direction for accepting the charter of demands submitted by it.

The Garden Apartment Flat Owners' Association has contended in the written statement that the workmen allegedly claiming themselves to be the workmen of the Garden Apartment Flat Owners' Association are or never was employees of the said association at any point of time. When the building was constructed those workers were under M/s. Builcon Construction Pvt. Ltd. of 266 Russa Road South, Kolkata-700 033, when they were engaged into construction job by the building contractor in the project/construction of Garden Apartment. After construction initially, M/s. Builcon Construction was the contractor for maintenance and security of the building and they used to get the same done through those workers. Reimbursement of maintenance charges were made to M/s. Builcon Construction by the residents against monthly bills raised by them. Payment, if any to those workers was done by M/s. Builcon construction as per their terms and condition, for which owners' association does not have any record as it was absolutely in the domains of the said contractor. On termination of their service since June 1991 M/s. Tenacity Security took over and preferred to continue with the same workers to provide

various maintenance and security services for the building. The contract between the Flat Owners' Association and said M/s. Tenacity Security has been renewed periodically and/or the contractual amount has been paid on regular basis to M/s. Tenacity Security. The Flat Owners' Association is neither any profit-making organization nor is a trading unit. The said owners' association is neither an industry within the meaning of the Industrial Dispute Act, 1947 nor the petitioner has been able to demonstrate that they are entitled to any protection in any manner whatsoever under the said act. It is contended further that it has been admitted in no uncertain terms by the applicant that the said Flat Owners' Association is not an industry and as such this tribunal is not competent to adjudicate the dispute as raised by the union for the alleged workmen. It is further contended that the Flat Owners' Association makes its expenditure from the fund contributed by the different/various Flat owners for the purpose of payment of electricity dues, Kolkata Municipal taxes and other statutory expenses which are required to maintain altogether 71 flats. The major portion of expenses other than electricity and Kolkata Municipal Corporation Taxes are defrayed to M/s. Tenacity Security. All the allegations and contentious made in the written statement filed by the workmen represented by the staff & workers association have been denied. Finally, it is contended that the Flat Owners Association is not an industry within the meaning of Industrial Dispute Act and in consequence thereof, the members of the Garden Apartment Staff and Workers Association are not the workmen under the said Flat Owners Association. On that score, the Garden Apartment Flat Owners Association has prayed for passing an award dismissing the claim of the alleged workmen.



In support of its case union for the workmen examined one witness namely, Sri Babua Sengupta as WW1 and he was cross examined by the other side. The company adduce no evidence and accordingly the case was posted for hearing of argument since the case is required to be decided on merit as the witness for the workman has been cross examined fully by the other side. Besides such oral evidence the union has produced some documents which have been marked as exhibit-1 to exhibit-21. The other side, namely, the Flat Owners' Association adduced no evidence – either oral or documentary.

Decision with reasons

The said WW1 has stated in his evidence-in-chief that the said workmen are working there since 1980 and during that time construction of Garden Apartment was started. He has further stated during that time the workers used to get their wages from the promoter, Builcon Construction Pvt.

Ltd. He has then stated that Flat Owners Association was established in the year 1985 i.e. after completion of the flat by the promoter. During his cross examination he has stated that at the time of taking over possession of flats by the Garden Apartment Flat Owners Association from the promoter the workers became direct staff under the said association. He has further stated that exhibit-10 has made it clear that there is a list of employees annexed to exhibit-10 issued by the Owners Association.

It appears from the said exhibit-10 is a circular issued by the Secretary of the Owners Association. It has been stated therein that the Owners Association decided to appoint a contractor for maintenance of Garden Apartment complex. It has further been mentioned therein that 17 workers and 2 office staffs of ex-employee of M/s. Bulcon Construction Pvt. Ltd may be employed by the contractor for maintenance work of the complex subject to their giving consent letter individually to the association. It has further been mentioned therein that if the work of those workers and staff discharge the duties satisfactorily shall be recommended for continuous under the new contractor in case the present contractor is changed.

From the documents filed by the union particularly exhibit-13 which is a contract agreement entered into by and between the Garden Apartment Flat Owners Association and M/s. Tenacity Security, it appears that the said Tenacity Security agency was subsequently entrusted to provide suitable necessary workers and staffs to the said Flat Owners Association for the purpose of maintenance of the said Apartment. It further appears from exhibit-1 that there are several blocks in the project constructed by the promoter and some areas in the said project as shown in the said exhibit-1 are absolutely separate and those are being maintained separately. It is clearly mentioned in the said letter that the above areas as specified in the said letter are clearly excluded from the other residential areas sold by the said promoter namely, Bulcon construction Pvt. Ltd. to the Govt. of India undertaking and others, as will be evident from the agreed joint plinth area measurement available with the Apartment Flat Owners Association.

From the testimony of WW1 it appears that there are four blocks in the said Garden Apartment and in some blocks there are some School, Offices, Guest House etc. He denied the suggestion that those private office including school are not the members of Garden Apartment of Association. It has further come out from his testimony that maintenance charge for the residents of the said Apartment is much lesser than the charges being paid by the others namely, the different office, guest house, school etc. Such statement

corroborates the term mentioned in exhibit-1 which a letter written by Bulcon Construction Pvt. Ltd (Developer cum Promoter) to the Flat Owners Association that the residential areas have clearly been excluded from the areas which have been sold to the Govt. of India undertakings and others. There is no dispute to the fact rather it is admitted by WW1 that Bulcon Construction Pvt. Ltd. was the promoter of the entire project.

It appears from the materials that on termination of agreement with M/s. Bulcon Construction, M/s. Tenacity Security was entrusted by the said Flat Owners Association to provide various maintenance and security services to the Flat Owners. It appears from exhibit-14 (collectively) that said Tenacity Security received a sum of Rs. 49,201/- from the Garden Apartment Flat Owners Association for the month of October 2006. From the other sheets of the said exhibit it is clear that the said amount was received by M/s. Tenacity Security for providing service of the employees to the flat owners. From exhibit-15 it is evident that said M/s. Tenacity Security made payment to the persons who were engaged by the said Tenacity Security in the said residential apartment for rendering service to the flat owners. It has already been discussed by placing reliance on exhibit-1 that there are several blocks in project constructed by the promoters but the residential portion handed over to the flat owner's association is absolutely separated from other portions in the said projects. The said security agency might have provided services to the other blocks of that Apartment, the same does not mean that the areas under the control and possession of the Flat Owners will be considered and treated as a part of any commercial services.

In the instant case in the order of reference the issue no. 1 is whether M/s. Garden Apartment is an industry and whether the employees working in the Garden Apartment are workmen. To decide this issue, it would be very much pertinent to mention that in the written statement filed by the union in page no. 2, it has categorically been stated that "we never claim that the Garden Apartment is an industry but the association which is running without any society registration since its formation in 1991.....".

From the discussion as made earlier as well as from the materials on record it is absolutely clear that the Garden Apartment Flat Owners Association namely, the opposite party is an association for the residential purpose. In a case as reported in **2001 Vol.-1-LLJ 1413 (SC) Management of Som Vihar Apartment Owner Housing Maintenance Society Ltd. Vs Workmen C/o, Indian Engineering and General Mazdoor**. It has been held by the Hon'ble Court that – "It is clear when personal services are rendered to

the members of a society and that society is constituted only for the purposes of those members to engage the services of such employees, we do not think its activity should be treated as an industry nor are, they workmen. In this view of the matter so far as the appellant is concerned it must be held not to be industry”.

On giving an anxious consideration of all aspects of the evidences and materials on record and in view of forgoing discussions and reasons stated therein and also following the observations as made by the Hon’ble Apex Court in the aforesaid reported case, I am constrained to hold that the M/s. Garden Apartment Flat Owners Association can not be considered to be an industry within the meaning of Section 2(J) of the Industrial Disputes Act’ 1947 nor the employees can be considered as workman under the management of M/s. Garden Apartment Flat Owners Association. The issue no.-1 is thus decided and disposed of accordingly. In view of the above the other 2 issues as mentioned in the said order of reference have become redundant.

This is my A W A R D.

Dictated & corrected by me.

Sd/- T. Gupta
Judge.

Sd/- T. Gupta

Judge
First Industrial Tribunal
Kolkata
24.12.2018

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

