

I/209808/2022

Government of West Bengal  
Labour Department,  
I. R. Branch  
N.S. Buildings, 12<sup>th</sup> Floor,  
1, K.S. Roy Road, Kolkata – 700001

No. Labr/ 732/(LC-IR)/11L-34/2015

Date: 27-07-2022.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 326– I.R /11L-34/2015 dated 30.03.2015 the Industrial Dispute between M/s Udygi Moulders (P) Ltd., 294, B.B. Ganguly Street (2<sup>nd</sup> Floor), Kolkata - 700012 and Howrah District Chemical & Pharmaceutical Workmen's Union, 252/1, Panchnantala Road, Howrah - 700101 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.

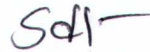
AND WHEREAS the Fourth Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 19/07/2022 on the said Industrial Dispute vide memo no. 1134/ L.T. dated 20/07/2022.

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,



Joint Secretary  
to the Government of West Bengal

I/209808/2022

No. Labr/...../(LC-IR) *732/1(5) & encls* Date: *27-07*...../2022.

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

1. M/s Udygi Moulders (P) Ltd., 294, B.B. Ganguly Street (2<sup>nd</sup> Floor), Kolkata - 700012.
2. Howrah District Chemical & Pharmaceutical Workmen's Union, 252/1, Panchnantala Road, Howrah - 700101.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

No. Labr/...../(LC-IR) *732/2(2)*

*27-07*  
Date: ...../2022.

*[Signature]*  
Joint Secretary

Copy forwarded for information to:

1. The Judge, Fourth Industrial Tribunal, West Bengal with reference to his Memo No.1134/ L.T. dated 20/07/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

*[Signature]*  
Joint Secretary

In the matter of an industrial dispute between M/s. Udygi Moulders (P) Ltd., 294, B.B. Ganguly Street (2<sup>nd</sup> floor) Kolkata-700012, and Howrah District Chemical & Pharmaceutical Workmen's Union, 252/1, Panchanantala Road, Howrah – 700101.

(Case No. VIII-22/2015)

BEFORE THE FOURTH INDUSTRIAL TRIBUNAL: WEST BENGAL

P R E S E N T

SMT. DURGA KHAITAN, JUDGE

FOURTH INDUSTRIAL TRIBUNAL

KOLKATA

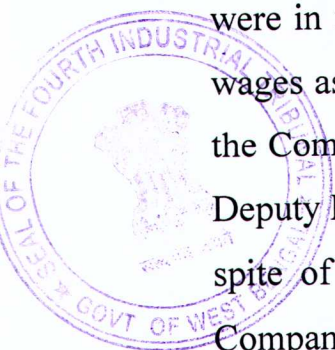
A W A R D

In the matter of an industrial dispute between M/s. Udygi Moulders (P) Ltd., 294, B.B. Ganguly Street (2<sup>nd</sup> floor) Kolkata-700012, and Howrah District Chemical & Pharmaceutical Workmen's Union, 252/1, Panchanantala Road, Howrah – 700101 vide G.O. No. 326-IR/11L-34/2015 dt.30.03.2015 referred to this Tribunal for adjudication. (Case No. VIII-22.2015).

Issues

- a) Whether the suspension of work from 26.07.2014 was justified?
- b) To what relief, if any, are the workmen entitled to?

The case of the Union in brief is that the Company is having branches all over the country including Mumbai, Chennai, Noida, Bhunbaneswar and Ahmedabad. The Workers before this Tribunal are employees of factory situated at Sankrail, Howrah. The Company deals in manufacturing of plastic materials, the dices for which are bought from the market and installed in the factory. The Workmen being paid meagre salary in comparison to other similar industries and were in financial hardship so they submitted charter of demand seeking minimum wages as per law and other service benefits like Provident Fund, Gratuity etc. As the Company refused to comply to their demands, they raised the dispute with the Deputy Labour Commissioner Howrah on 15.07.2009 and again on 11.01.2011. In spite of intervention of Labour Commissioner and assurance by Company, the Company willfully neglected to comply with the conditions enumerated in the



Memorandum of Settlement. More over the work environment was not conducive to the health of workmen, it was hazardous and there was no proper ventilation or fire fighting system or any first aid provision. The minimal salary and such work environment all amounted to unfair labour practice on the part of the Company. Though some of the Workmen were working for 25/30 years the company never issued any appointment letter to any one of them. The union under reference submitted charter of demand to the management by letters dated 24.07.2010 and 30.03.2013 and the last settlement was expired on 31.03.2013. The Company did not comply with the terms and conditions memorandum of settlement. Thus, the Union was compelled to raise industrial dispute on 15.07.2009 and 11.01.2011, thereafter suddenly the management issued illegal suspension of work notice on 26.07.2014. The notice was fake and grounds given were flimsy, there was no allegation against any workman. Before issuance of this notice the Company was periodically removing dices and some of the machines on the pretext of modernization. The union repeatedly requested the management to withdraw the suspension of work but to no effect. On 05.08.2014 the Union raised the industrial dispute with the Labour Commissioner and conciliation proceeding commenced. The company did not appear before the Labour Commissioner and did not participate in the conciliation proceeding hence this dispute was referred to the Tribunal.

It is the further case of Union that suspension of work was illegal and was done only to victimize the workmen for raising demands against the management. The Union has prayed for declaration that the suspension of work was illegal and prayed for full back wages and consequential reliefs.

The case of the Company in brief is that the references is not maintainable in law or in facts. There is no industrial dispute. The union under reference has no locus-standi to contest this matter either before the conciliation officer or before the Tribunal. It is admitted that the Company deals with manufacturing of plastic materials. It is the further case of the company that they manufacture the articles as per orders of the parties and as the orders from the parties decreased so the company was compelled to issue notice of suspension of work on 26.07.2014. the company states that before issuance of this notice it was facing great financial

difficulty in running the factory for lack of order and this fact is known to the employees. The Company has surrendered the electricity connection also. It is the further case of the company that in future if situation changes the company will start their business. The company states that after issuance of notice of suspension of work no workmen or any union made any protest against such suspension of work as they were aware of the facts and suddenly the Assistant Labour Commissioner issued notice dated 25.08.2014 asking the company to appear before him on 28.08.2014 for joint conference and the Company informed the Assistant Labour Commissioner in writing that due to lack of party orders they declared suspension of works and without any further investigation or opportunity of hearing matter was referred to Tribunal.

The Company has denied all material averments and allegations made by the Union in their written statement. It is the further case of the Company that the workmen are gainfully employed in other factories. So, the issues ought to be decided against the Union.

The dispute was referred to Tribunal by the Government of West Bengal vide No. 326-IR/11L-34/2015, dated Kol. 30<sup>th</sup> March, 2015.

#### EVIDENCE:

On behalf of the Union one Radheshyam Biswas the Assistant Secretary of Howrah District Chemical and Pharmaceutical's Workmen's Union and one of the workman of this company corroborated the case of the union by filing affidavit in chief and proved his letter of authorization issued by the Secretary of their union Nandalal Mukherjee (Exhibit-I), Notice of suspension of work dated 26.07.2014 (Exhibit-2), Memorandum of Settlement of 2008 (Exhibit-3, 3 pages), Tripartite agreement dated 11.05.2012 (Exhibit-4, 2 pages), Union's letter dated 19.11.2011 addressed to the management, received by one Raja Purkait on 23.11.11 (Exhibit-5), Union's letter addressed to the Managing Director dated 24.09.2010 received by the Company on 25.09.2010 (Exhibit-6), Union's letter dated 29.03.2013 received by the company on 30.03.2013 (Exhibit-7), the Company's letter addressed to the Howrah District Chemical and Pharmaceutical's Union, dated 19.08.2011 drawing attention of Mr. Abdul Selim SK – President in response to union's notice of demand dated 05.08.2011 (Exhibit-8), Company's letter dated 19.11.2013 addressed to Mr. Seikh Abdul Selim, President, Centre of Indian Trade Union's (Exhibit-9), Letter of this Union to the Deputy Labour Commissioner

(Exhibit-10), letter of Assistant Labour Commissioner dated 15.07.2009 addressed to the company (Exhibit-11), letter of Assistant Labour Commissioner dated 11.01.2011 addressed to the Company (Exhibit-12), letter of the union to the Deputy Labour Commissioner dated 04.01.2014 (Exhibit-13, 2 pages), letter of the union to the Deputy Labour Commissioner dated 10.02.2015 (Exhibit-14), letter of union addressed to the O.C., Nazergunje Investigation Centre, Howrah, dated 10.07.2015 (Exhibit-15), letter of the Assistant Labour Commissioner addressed to the union dated 14.07.2014 (Exhibit-16), letter of the Assistant Labour Commissioner addressed to the company dated 25.08.2014 (Exhibit-17), certificate of registration of trade union dated 03.09.1999 (Exhibit-18), rules and constitution of the Union (Exhibit-19, 6 pages), copy of register of members of union (Exhibit-20, 27 pages), annual return of the union for 2014 (Exhibit-21, 4 pages), list of workmen with corresponding dates of joining and monthly wages (Exhibit-22).

During cross examination PW-1 deposed that he has personal knowledge of this case and he is working in this company since 1998 and is attached with the union since 2006. He deposed that neither he nor any of his colleagues wrote to the company for issuance of appointment letter in their respective personal capacity. PW-1 deposed in positive during cross examination that union wrote a letter to the company for giving appointment letters to 24 workmen and that union has not submitted that letter before the Tribunal. He denied suggestion to the contrary. PW-1 deposed that neither he nor any of his colleagues wrote to the company alleging that they are being paid less salary in their respective personal capacity. PW-1 deposed that neither he nor any of his colleagues wrote to the company regarding the prevailing work environment in the company not being conducive to work in their respective personal capacity.

PW-1 deposed that they are covered under ESI acts and rules. He deposed that employee of different organizations are also members of this union and that he was a member and Assistant Secretary of one unit of the union in 2014 when suspension of work was declared. PW-1 deposed that after suspension of work the union held a meeting and resolved that the union would institute a case against suspension. On showing Exhibit-13 PW-1 deposed that out of 24 workmen 14 had signed Exhibit-13. He deposed that only 22 out of 24 workmen are members of

this union. PW-1 further deposed that they raised objection against the company in writing for declaring suspension of work but they have not filed that letter. They appeared before the Labour Commissioner after getting the notice. They submitted complaint before the Deputy Labour Commissioner against the suspension of work and their complaint was received by the Deputy Labour Commissioner on 04.08.2014. PW-1 deposed in positive during cross examination that Sunil Bhattachrjee a one of the employees of the Company and Sunil Bhattachrjee and 10 other workmen signed on Exhibit-13. He admitted that Exhibit-22 does not mention who prepared the list of workmen. PW-1 deposed that the register, Exhibit-20 does not show who prepared it and volunteered that Buddhadev Bhattacharya who sits in the union room prepared this. He admitted that all the columns of Exhibit-20 are not filled up in respect of every employee. He confirmed that his name and residential address is mentioned in Exhibit -20 but his designation i.e. Assistant Secretary is not mentioned. He deposed that Exhibit-9 contains the signature of Biswanath Coley at Page-5. He denied that the documents are manufactured.

PW-1 further deposed during cross-examination that union placed charter of demand to the company but as the company did not accept their demands the union raised the dispute with the DLC. PW-1 deposed that there is no seal or signature of government officer in Exhibit-4, no seal of company on Exhibit-5, no seal or signature of DLC on Exhibit-10. PW-1 denied that the union did not send any request to the company to withdraw the notice of suspension of work. PW-1 deposed in positive that overtime was not stopped before the issuance of notice of suspension. He deposed that no pay slips were issued to the workmen. He denied knowledge of decreased production in six months preceding suspension of work. He deposed that the workmen used to pay subscription to the union.

PW-1 deposed that they lodged complaint before police station and referred to Exhibit-15. He admitted that he had not filed any document to show that repeated requests were made to the management to withdraw the notice of suspension of work. PW-1 deposed that his family consists of 4 members i.e. he, his wife, two school going daughters 11 and 6 and half respectively and he is working as hawker and his wife working in other's houses. PW-1 denied any

knowledge of Bappa Hait entering into any settlement with the company or other workers working in some other factory namely Kalimata Industries Limited. He denied suggestions to the contrary.

P.W.-2 Joydeb Das deposed that he is a workman of the Company and a member of the Union. He deposed that he was working since 06.06.2001 though no formal appointment letter was issued and the last salary paid to him was Rs. 3250/- in July, 2014 and thereafter no salary is paid. He corroborated Union's case as found in their written statement in his affidavit-in-chief.

During cross-examination he deposed that he joined the Company as permanent employee in 2001 and before that he was a casual employee for three years. He deposed that he never asked the Company to issue formal letter of employment and has not filed any document of his salary. P.W.-2 deposed that the notice of suspension of work was in English and the ground of suspension was mentioned as shifting of dices and machineries and that they were asked to shift for some time as work relating to electricity was going on. P.W.-2 deposed that he cannot read or write English and that they complained before police regarding removal of dices and machinery. He deposed that their union is Howrah District Chemical and Pharmaceutical Workmen's Union and that he has not filed any document to show that he is a member of the Union. He deposed in positive during cross-examination that they all protested against suspension of work. He denied the suggestion that no one protested in writing to Company against the suspension of work. He deposed that his family consist of five members. He knows Tapasi Banik, Sunil Bhattacharjee, Milan Das, Jagadish Bin, Romen Sashar, Arun Maity, Madan Das, Subhash Das Kar, Audip Samanta, Bappa Hait, Buddhadev Dutta, Joydev Mondal and Tapan Maity as they were his co-worker, but he is not aware whether they have settled their dispute with the Company or have taken any settlement amount. P.W.-2 deposed that he cannot say whether workmen collectively gave a letter to the Company for issuing appointment letters to the workmen. He denied that he deposed falsely.

P.W.-3 Mrs. Jyotsna Adhikary is a workman and a member of the Howrah District Chemical and Pharmaceutical Workmen's Union. She deposed that she is working in the Company since 01.12.1998 though no formal letter of appointment was given to her. P.W.-3 deposed that the Company did not issue any appointment letter to any of the concerned workman. She received last salary of Rs. 3588/- upto

July 2014. She used to receive allowance for overtime work like other men. No salary slip was issued to her or to other workmen. After July 2014 she has not received any salary and is passing her days in severe hardship somehow by borrowing from friends and relatives. She corroborated Union's case as found in their written statement in her affidavit-in-chief and deposed that she has no source of income and prayed as per prayer of the written statement.

She deposed that she cannot read and write and her affidavit-in-chief was prepared by her advocate and read over and explained to her and there after she put her thumb impression.

During cross-examination she deposed that she has not filed any document to show that she is working in the Company since 01.12.1998 or that she is a member of the Union.

She deposed that she personally never asked the Company to issue appointment letter. She deposed that she is a member of the Union. P.W.-3 deposed that the Union did not give any letter to the company to issue any appointment letters to all workmen. She deposed that she did not write any letter to the Company requesting it to withdraw the order of suspension of work. P.W.-3 deposed that she does not remember the exact date of notice of suspension of work or whether it was 26.07.2014 or 28.07.2014. She could not read the contents of the notice and personally did not give any protest letter against suspension of work. She deposed that she is working as a maidservant to survive and her husband died 8 years ago.

#### Evidence of Company:-

To prove their case the Company examined its production manager Mr. Rajendra Kr. Agarwal as O.P.W.-1. In his affidavit-in-chief he deposed that there were 22 employees in the Company and most of them were engaged for over time also. He corroborated the statement of Company as reflected in their written statement and deposed that as orders of parties were decreasing gradually the company was facing great difficulty in running the factory so it had to stop the over time of employees and subsequently the factory was in losses. So having no other alternative the company issued suspension letter on 26.07.2014 and after issuing the notice the company surrendered the electricity. He deposed that the workmen are aware of the situation of orders / production. O.P.W.-1 deposed that neither the union nor any employee made any protest against the suspension of

work. He deposed that the employees are not member of the Union under reference and the Union has not got no locus standi in this matter. O.P.W.-1 deposed that Out of the total employees 13 employees have settled their claim as full and final settlement during this proceeding. He deposed that the director of the Company has authorised him to deposed in this case. He proved the copy of letter dt. 25.08.2014 given by the Assistant Labour Commission to the Company (Ext. A), the Copy of letter dt. 03.09.2014 signed by him on behalf of Company (Ext. B), copy of letter dt. 15.07.2014 signed by him addressed to the Deputy Labour Commissioner (Ext. C). Copy of 7 letters issued by the authorised signatory of the company addressed to the C.E.S.C. Ltd. dt. 12.11.2014, 21.10.2014, 13.10.2014, 12.09.2014, 09.09.2014, 26.08.2014, 30.07.2014 (Ext. D series), copies of 7 electric bills of their company for the month of October, 2014, September, 2014, August, 2014, (Ext. E series), photo copies of 3 letters dt. 27.10.2014, 30.09.2014 & 26.08.2014 issued by the C.E.S.C. Ltd. addressed to their company (Ext. F series), photo copies of profit and loss account and balance-sheet of the company for the year ending 31<sup>st</sup> March, 2014 & 2015 (marked Ext. G collectively). He deposed that the balance sheet were prepared for two productions unit of the Company.

During cross-examination he deposed that in his affidavit-in-chief he has not stated the name of the company where he is working now. He deposed that he is authorised to depose in this case but no such document is proved in this case and the signature verifying the written statement of the company is his. He deposed that the name of the person who authorised him to appear on behalf of company is not mentioned in the written statement. He deposed that there are two factories within the state of West Bengal and they have offices in Kolkata, Bombay, Noida, Bhuwaneswar, Chennai and Ahmedabad. He admitted that it is not mentioned in the written statement that the company had to stop the over-time work of the employees. O.P.W.-1 deposed that the balance sheet for the year ending 31.03.2014 was signed by the Director Natwar Bagri and that of the year ending on 31.03.2015 was signed by the Director Natwar Bagri and Mukund Bagri. Natwar Bagri is the Managing Director of the Company. O.P.W.-1 deposed that he has not filed any copy of the director's report or any financial statement in this case and that the statement of account filed by him is incomplete. On the next date O.P.W.-1 deposed that he is presently the Commercial Executive of Udygi Moulders Pvt. Ltd. and in 2013 and 2014 he was working as production manager of the Company but he has not filed any document to show his designation. He deposed that he has

not field any document to show that he was authorised to depose in this case by Mr. Natwar Bagri. O.P.W.-1 deposed that at present he is working at the unit situated at Jalan Complex, Jangalpur, Howrah and gets his salary from Udygi International and earlier he used to get his salary from Udygi Moulders Pvt. Ltd.

O.P.W.-1 deposed that the second unit of the company is situated at Chunabhati, Andul. Podra unit is within Chunabhati Unit and there is a separate establishment named as Udygi International at Jangalpur.

O.P.W.-1 deposed that no suspension of work is declared in the unit of Udygi Moulders Pvt. Ltd. at Jangalpur and that about 80 employees are working there and 46 employees are working in Udygi International. Safety jackets are prepared at Jangalpur unit of Udygi Moulders Pvt. Ltd and the employees of said unit get salary from Udygi Moulders Pvt. Ltd. O.P.W.-1 deposed that besides these two factories no other factory of Udygi Moulders Pvt. Ltd. is there in West Bengal. There is a group of companies and Udygi Moulders Pvt. Ltd. is one of them. No suspension of work is done in any office or factory of any sister company of Udygi Moulders Pvt. Ltd. O.P.W.-1 deposed that he cannot recollect when the company started functioning. O.P.W.-1 deposed that no employee provident fund was created for the employees but the company deposited money in employee's P.P.F. accounts. Employees of other sister companies of Udygi Moulders Pvt. Ltd. have E.P.F.

O.P.W.-1 deposed that he does not have any document to show that the workman or the Union was aware of the situation leading to the notice of suspension of work and that the reason for suspension of work cropped up about 6 to 7 months before date of suspension of work notice.

O.P.W.-1 deposed that he can file the previous electricity bills to show the loss. They are not paying salary to the workers. No notice of suspension was issued after 26.7.2014 and the company has not surrendered the license of the factory. O.P.W.-1 deposed that around 250 employees are working in all the sister companies of Udygi Moulders Pvt. Ltd. There are 30 other staffs of the group of companies within the country. He has not filed any document to show that concerned employees are not the members of the union under reference and that the company attended conciliation proceeding held before the Labour Commissioner. O.P.W.-1 deposed that he does not know about any charter of demand of the employees. On showing Ext. 3 O.P.W.-1 deposed that the document

bears the signature of representative of the Company but he could not identify the signature of Ext. 4. He deposed that Mr. Giriraj Kr. Mundra was the Chairman of the company and there was an Accounts Manager also by the name Giriraj Kr. Mundra. O.P.W.-1 could not identify the signature on Ext. 8 and Ext. 9. He deposed that he does not know whether the charter of demand was discussed before the Deputy Labour Commissioner or not. He could not identify Ext. 11 & 12. He deposed that he cannot say whether notice of suspension of work is in accordance of law or not. He denied that they have shown less than actual profit in their balance-sheet or have issued notice of suspension to harass the workman or it was issued without any reason.

The company examined one Bidyut Basak, the accountant of Udygi Moulders Pvt. Ltd. as O.P.W.-2. He proved his authorization letter signed by the Director of the Company Mr. Natwar Bagri (Ext. H). He proved the copies of profit and loss account and balance sheet of the company for the year ending 31.03.2014 and 31.03.2015 (Ext. I & J) respectively.

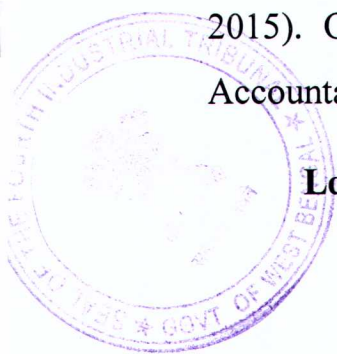
During cross-examination O.P.W.-2 deposed that he joined the company in November, 2015 and there are two directors namely Mr. Natwar Bagri and Mr. Mukund Bagri of the Company. He deposed that he has not filed the documents / records of the company from which the particulars were supplied to the Chartered Accountant for preparing Ext. I & J. he deposed that he has not filed any copy of Income Tax return and that "returns were not filed on the basis of Ext. I & J". O.P.W.-2 deposed that moulding division does not have any separate PAN. There are two divisions namely moulding and harness division in the company. O.P.W.-2 deposed that, "separate profit and loss account and balance-sheet were not prepared for the harness division of the company".

He deposed that he saw the records and heard about the subject matters of this case after he joined in the Company (he joined the company in November, 2015). O.P.W.-1 deposed that, "Ext. I & J were prepared by out Chartered Accountant for filing in this case".

**Ld. Counsel for the Company argued that :-**

1) The union has no locus standi to represent the workman before the Government or before this Tribunal:-

a) Ld. Counsel for the Company argued that this is a Omnibus Union and not Company's Union. So they ought to have



filed authorization by workman, notice of meetings and resolutions of meetings etc. to prove their locus standi.

b) Ld. Counsel for the Company argued that P.W.-1 deposed that he is the assistant secretary of the Union and P.W.-2 & 3 have deposed that they are members of the union but none of them filed any document to show their such status.

c) Ld. Counsel for the Company argued that P.W.-1 deposed that he was authorised to deposed on behalf of the union but no such authorization was filed by him.

d) Ld. Counsel for the Company argued that P.W.-1 deposed that after suspension of work the union held meeting and passed resolution but no notice of any such meeting and no copy of any such resolution is filed in this case. Thus, the union has failed to prove its locus standi in this case argued Ld. Counsel for the company.

e) Ld. Counsel for the Company argued that a membership register of the union is proved (Ext. 20) but there is no mention of who prepared the same and there is no signature of the scribe namely Buddhadev Bhattacharjee on it. Some entries are incomplete where either the father's name or other particulars are missing. So, no evidentiary value can be given to this.

f) Ld. Counsel for the Company argued that the union did not file any document showing that they protested against the suspension of work and P.W.-1, 2 & 3 all deposed that they have not filed any document to show their alleged objection against suspension of work. Thus, the union has failed to prove that they have any right to represent the workman in this case, argued Ld. Counsel for Company.

2) Ld. Counsel for the Company argued that Ext. 3, 4, 5, 6 to 14 are all manufactured document and none of these documents bear any signature or seal of the company. Exhibit 3 & 4 are said to be tripartite agreements but there is no signature of representative of the company or seal of the company on it argued Ld. Counsel for Company.

3) Ld. Counsel for the Company argued that suspension of work order was issued as company was in financial difficulty and they even surrendered the electricity connection.



4) Ld. Counsel for the Company argued that the Union has claimed that they have submitted charter of demands but no such charter of demands is proved by Union before this Tribunal.

5) Ld. Counsel for the Company argued that the Union has claimed that they have requested the company to withdraw the notice of suspension of work but no document showing any such request is proved by Union before this Tribunal and workmen's witnesses have admitted during cross-examination dated 21.11.2016, 19.12.2016, 10.02.2017, 19.3.2018, 12.06.2018 that no such document is filed by them here. The letter to Deputy Labour Commissioner dated 04.08.2014 is signed only by 11 workmen but there are 24 workmen, so rest workmen did not raise any objection argued Ld. Counsel for company. All the witnesses for Union deposed that they never wrote any letter of protest against order of suspension of work in their personal capacity.

6) Ld. Counsel for the Company argued that company has filed copy of Balance sheet to show that company was running in losses at the relevant point of time and declaration of suspension of work is justified and lawful if the company is running in losses argued Ld. Counsel.

7) Ld. Counsel for the Company argued that the workmen did not suggest to company's witness(OPW-1) that the grounds of suspension of work are illegal.

Thus the notice of suspension of work dated 26.7.2014 was justified argued Ld. Counsel for Company.

**Ld. Counsel for the Union argued that:-**

1) The union has locus standi to represent the workman before the Government and before this Tribunal: -

a) Ld. Counsel for the Union argued that the company itself gave their letter dated 19.08.2011(Exhibit-8 & 9) to this union and as this is a recognised union so the company gave letter to this union so now they cannot challenge the locus standi of this union. Ld. Counsel for the Union argued that Exhibit-3 shows the name of the Union and such usage show that this is a recognised union.



Thus the union has locus standi to represent the workman before the Government or before this Tribunal argued Ld. Counsel for the Union.

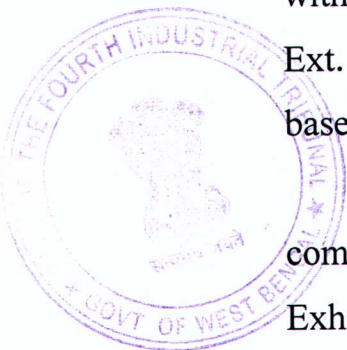
b) Ld. Counsel for the Union argued that Exhibit-7 is written by this Union to the Company and the company has not replied to them saying that they are not a recognised union. So the argument of company that this is not a recognised union and it does not have any locus standi to represent the workmen is baseless.

c) Ld. Counsel for Union argued that Ext. 11 and 12 shows that the Assistant Labour Commissioner sent copy of letter dt. 15.07.2009 and 11.01.2011 to their Union and this shows that theirs is a recognized Union. Ld. Counsel for workman argued that the Company has admitted authority of the Union in para-10 of their written statement yet Ld. Counsel for company argued that they are not recognized Union or they have no locus standi. Ld. Counsel for Union argued that the Company never raised this issue even before the Labour Commissioner. So, the Company cannot now suddenly question the authorization and recognition of the Union. Ld. Counsel for Union argued that as their's is a omnibus union so non-production of resolution or non-filing of any receipt of membership fee is of no consequence.

2) Ld. Counsel for the Union argued that Ld. Counsel for the company has argued that Ext. 3 is a manufactured document but Company's witness O.P.W.-1 has admitted signature of company's representative on Ext. 3 during his cross-examination so this argument of company is false and baseless.

3) Ld. Counsel for the Union argued that Ld. Counsel for the company has argued that Union did not raise any charter of demands but Exhibit-9 & 6 show that the workmen raised charter of demands.

4) Ld. Counsel for the Union argued that the notice of suspension of work dt. 26.07.2014 (Ext. 2) does not give any provision of law under which it is issued and does not give any urgency for suspending the work. It is further argued that the notice shows that the workmen knew about the alleged reason but there is no evidence of any such knowledge of workmen.



Ld. Counsel argued that there is no seal of the Company on this notice and there is no legible signature on it either. It is not clear from this notice who signed it. In other words, no name or designation of the signatory of this notice is found in the four corners of the notice. So, it is totally vague and illegal.

5) Ld. Counsel for the Union 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 but despite passage of 8 years since 26.07.2014 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.

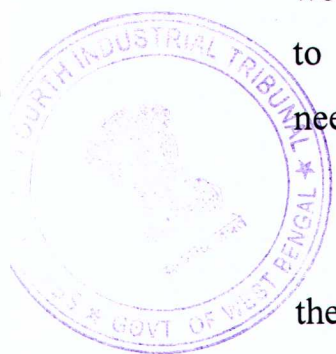
6) Ld. Counsel for the Union argued that the company has proved some balance-sheet to show that they were running in losses but O.P.W.-1 during his cross-examination admitted that these statements of account were incomplete and that these were prepared for the purpose of this case. So, no evidentiary value can be attached to it.

7) Ld. Counsel for the Union argued that the company's witness O.P.W.-1 has not filed any authorization by any director of the company and has not even named any person who has allegedly authorised him to depose in this case. So, his affidavit-in-chief has no value.

8) Ld. Counsel for Union argued that in the cross-examination company's witness has admitted that they have never paid any E.P.F. to the workmen which by itself is a punishable offence.

9) Ld. Counsel for Union argued that Company has argued that the workman did not ask for appointment letter but it is the duty of the Company to issue appointment letter to every workman and the workman does not need to prove that he asked for issuance of appointment letter.

10) Ld. Counsel for Union argued that in the written statement of the Company the person verifying the written statement has not mentioned any authorization on behalf of the Company in his favour and even in his affidavit-in-chief the Company's witness did not mention any authorization by the Company whereas in the written statement filed by the workman the verification shows that it is signed by Mr. Radheshyam Biswas, the

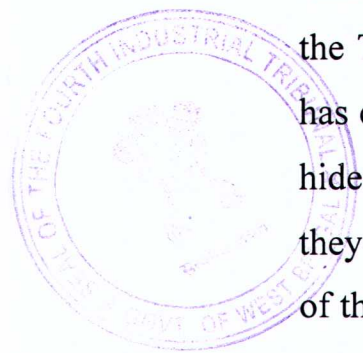


Assistant Secretary of HDCP workers' Union. So, the verification by the Union is lawful and proper unlike that by the Company.

11) Ld. Counsel for Union argued that the Company has never denied that it has many branches spread all over India and in no other Unit has the Company declared any suspension of work and this fact is contrary to their claim that Company is suffering from losses. Ld. Counsel argued that if Company is suffering from losses how all other Units are running. Ld. Counsel for workman argued that the Company gave no justified reason for suspension of work. No compelling circumstances were there and no reason was given in the notice of suspension. The company could not give any justified reason for such decision in their written statements or in their evidence.

12) Ld. Counsel for Union argued that the workman raised dispute before the Labour Commissioner on 15.07.2009 and 11.01.2011 and thereafter the Company declared suspension of work from 26.07.2014 and the sequence of events clearly shows that it is an act of revenge on the part of the Company. Suspension was declared as workers raised demands.

13) Ld. Counsel for Union argued that by obtaining special leave Company has filed two documents both signed on 05.02.2019 (Ext. I and Ext. J) stated to be the balance-sheet but company's witness has admitted during cross-examination that these documents were prepared for the purpose of these case. Ext. I shows loss of around Rs. 15 lakhs and Ext. J shows loss of around Rs. 16 lakhs by Ext. G does not show any such loss and it is admitted by Company's witness O.P.W/-1 that their income tax return were not submitted on the basis of these documents. Ext. G the balance-sheet of 31.03.2014 (4 pages) shows that it is Part OF Financial statement but said financial statement of Ext. G is a part is not filed before the Tribunal. No annexures as stated in Ext. G were filed either. Company has consciously not filed the auditor's report or the income tax return just to hide the actual position. Page 4 of Ext. G shows profit and also shows that they earned from their equity shares also during this year and page-2 and 4 of this document show that there was increase in profit from 204-15. During cross-examination company's witness deposed that they will file it but still they did not file it and such suppression shows that the company is actually falsely claiming that there was any loss or for any such reason they issued



notice of suspension of work instead they filed some manufactured document like Ext. I and J to mislead the Tribunal. Company's witness admitted that Udygi Moulders had no separate PAN yet no profit and loss account is prepared for the harness division and all these statement prove the falsity of company's claim that it was running in losses.

14) Ld. Counsel for Union argued that on 22.01.2019 O.P.W.-1 admitted that they have not filed the statement of accounts and on 25.01.2019 he admitted that there was no suspension of work in other units of the same company running in the same district. So the story of loss is totally false.

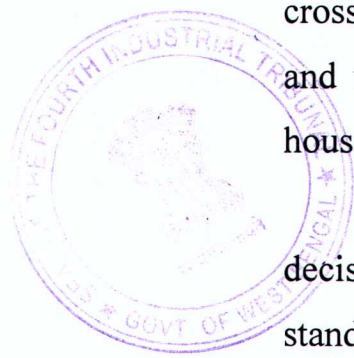
15) Ld. Counsel for Union argued that on 25.01.2019 company's witness had admitted that they had not surrendered the licence of factory so technically the factory is still existing yet the workman have not received any salary since the date of notice of suspension of work till day. Ld. Counsel for the Union argued that in their written statement the union has stated the salaries of the workmen and the company has not denied that the workmen were being paid stated salary. So, the salary of these workmen for all these years is due.

16) Ld. Counsel for Union argued that the signature and seal of registrar is present on the reverse side of Ext. 19 & 20 which were proved by union and Ext. H is a public document. The register of names of members of the union does not bear all particulars in 3- 4 entries because those workers are not working in this company but their members of the said union.

17) Ld. Counsel for Union argued that on 10.02.2017 during his cross-examination the workman deposed that he is not gainfully employed and that he is working as a hawker and his wife is working at people's houses. So they are entitled to all back-wages and benefits.

18) Ld. Counsel for Union argued that the company has referred to decision of Hon'ble Court as reported in 79 CWN 410 to argue that locus standi of the union must be proved but referred cases distinguishable as :-

Referred case was related to dismissal of employees whereas this case is about suspension of work. In referred case the company claimed that the employees were not working in their company whereas in the case before this Tribunal it is admitted that these workmen were working in this



company. in referred case it was admitted that the dismissed employees were not members of that union but in the case before this Tribunal all the employees are members of the union. So, referred case is factually distinguishable from this case.

19) Ld. Counsel for Union argued that Section 2A, Section 10 and Section 10A of Industrial Disputes Act are amended and now even a individual workman can approach the Tribunal and the judgement referred by Company (79 CWN 410) was prior to the amendment of 1972. Thus, the suspension of work was totally illegal and unjustified and the workmen are entitled to reinstatement and full back-wages and consequential relief argued Ld. Counsel for the 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 M/s. Udygi Moulders Pvt. Ltd. was having their factory at stated place and admittedly further these workmen were working in that factory.

2) Admittedly, the company never issued any appointment letter to any of these workmen and never enrolled them in EPF scheme. As per Section 43(1) Of EPF Act 1991 it is mandatory for the company to enrol these workmen in EPF Scheme which the Company admittedly did not. There is no denying the fact that it is the duty of the company to issue appointment letter to each workman although the company tried to put the blame on the workman by asking their witnesses whether they ever wrote to the company for issuance of appointment letter. The liability in this regard is solely of the company which admittedly it never discharged.

3) It is admitted by company's witness that they issued the suspension of work notice AFTER they received notice for attending conciliation proceeding from the Deputy Labour Commissioner. So, admittedly the Conciliation proceeding was pending when the Company put-up 'Suspension of work Notice'.

4) 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 prejudicial to the interest of workmen during pendency of conciliation proceeding was prohibited by Legislature.

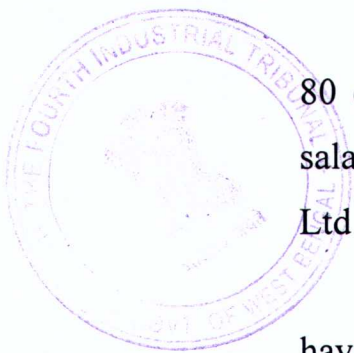
5) The workman proved that they raised demand before the Labour Commissioner on 15.07.2009 and 11.01.2011 and thereafter the company issued suspension of work notice with effect from 26.07.2014 so it looks like a revengeful act on the side of the company as it was done after demands were raised by company and the company received notice from the Deputy Labour Commissioner.

6) Company's witness O.P.W.-1 has admitted that this he is still working for Udygi Moulders Pvt. Ltd. O.P.W.-1 deposed that no suspension of work is declared in the unit of Udygi Moulders Pvt. Ltd. at Jangalpur and that about 80 employees are working there and the employees of said unit get salary from Udygi Moulders Pvt. Ltd. and 46 employees are working in Udygi International. O.P.W.-1 deposed that besides these two factories no other factory of Udygi Moulders Pvt. Ltd. is there in West Bengal. There is a group of companies and Udygi Moulders Pvt. Ltd. is one of them. No suspension of work is done in any other office or factory of any sister company of Udygi Moulders Pvt. Ltd.

7) So, the company is not only in existence but also working as per statement of O.P.W.-1. So, the suspension of work notice was meant only for a specified number of workmen and not for everyone working for the company or for that unit of the company.

8) The unit of Udygi Moulders Pvt. Ltd. at Jangalpur where about 80 employees are working and the employees of said unit are getting salary from Udygi Moulders Pvt. Ltd. That unit of Udygi Moulders Pvt. Ltd is also running and there has been no suspension of work in that Unit.

9) O.P.W.-1 has admitted that Udygi Moulders Pvt. Ltd. does not have a separate PAN No and that it has a PAN No. jointly with its sister concern namely (Udyogi International) And that said sister concern Udygi International is still functioning and there has been no suspension of work or any such adverse development in stated sister concern. When two units having same PAN No. that is to say their income is calculated under the same head it can never be logically or practically possible to



segregate the two and claim that one was suffering such huge losses that there was suspension of work for all these workmen.

10) As per the issues this Tribunal is to adjudicate on the question whether 'suspension of work' from 26.07.2014 was justified or not. In this context the most important document is Ext. 2 the notice of suspension of work dt. 26.07.2014. let us first check the validity of this document:-

a) There is no name or designation of the signatory in the four corners of the notice.

b) The notice says, "the workmen and the employees of all categories excepting whose services are specially requisitioned shall be covered under this notice of suspension of work."

c) It is clear from the language of this notice that the factory is NOT closing down.

d) No names of employees whose services are specially requisitioned is mentioned in this Notice, no list of such employees is annexed either. But it is clear that services of some employees and workmen is requisitioned.

e) Company's witness deposed that he is still working in this company.

f) The Notice says, "....the management agrees to pay 50% of wages for the period 27.7.2014 to 02.08.2014", that is to say the employees were to be paid 50% of 5 day's wages in all.

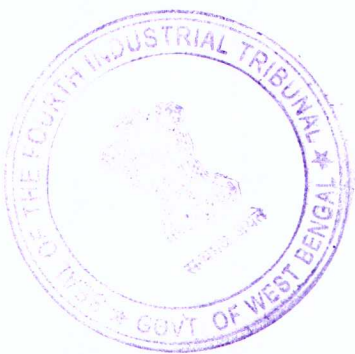
g) The term used is 'Suspension of work', had it been 'closure' provisions of Section 25F, 25FFA, 25FFF would have applied. But the company used the word 'Suspension of work' and made it a continuous indefinite process thereby denying the workmen any rights whatsoever. By using the word 'Suspension of work' the company tried to avoid issuance of statutory prior Notice and payment of due Wages/compensation as per law. Neither has the company taken any steps for 'Winding up' again clearly to deprive the workmen of their lawful dues.

h) In case of 'Suspension of work' the employer-employee relationship continuous and as there is no cessation of relationship the right of workman to get salary stands. The employees have



their legal right to arrears of salaries as part of their human rights and this is also a fundamental right under Article 21.

i) Section 25C in The Industrial Disputes Act, 1947 lays down 25C. 1 Right of workmen laid-off for compensation.- Whenever a workman (other than a badli workman or a casual workman) whose name is borne on the muster rolls of an industrial establishment and who has completed not less than one year of continuous service under an employer is laid- off, whether continuously or intermittently, he shall be paid by the employer for all days during which he is so laid- off, except for such weekly holidays as may intervene, compensation which shall be equal to fifty per cent. of the total of the basic wages and dearness allowance that would have been payable to him had he not been so laid- off: Provided that if during any period of twelve months, a workman is so laid- off for more than forty- five days, no such compensation shall be payable in respect of any period of the lay-off after the expiry of the first forty- five days, if there is an agreement to that effect between the workman and the employer: Provided further that it shall be lawful for the employer in any case falling within the foregoing proviso to retrench the workman in accordance with the provisions contained in section 25F at any time after the expiry of the first forty- five days of the lay- off and when he does so, any compensation paid to the workman for having been laid- off during the preceding twelve months may be set off against the compensation payable for retrenchment.



11) So far as Company's argument that the union has no locus standi to represent the workman before the Government or before this Tribunal is concerned. Ld. Counsel for Union argued that Union/workmen have produced sufficient documentary and oral evidence to corroborate their locus. Exhibit 7 shows that the letter dated 29.03.2013 is written by these workmen under the letter head of this Union. Exhibit-8 i.e. letter dated 19.08.2011 written by the company is also addressed to this Union. Exhibit-9 i.e. letter dated 19.11.13 written by the company is also addressed to Mr. Sk. Abdul Salim President of the

Trade Union and Udygi Unit Committee Howrah Zonal Committee no-6. Similarly, the communications by the Labour Commissioner also recognised the authority of this Trade Union. But the authority or registration of the Union per-se is not of relevance here. Locus standi or authority to represent is based on the relationship of these workmen with the Union. The question which ought to have been addressed by the Union here was the relationship between the union and these workmen. Despite repeated reference to the issue of locus standi and questions during cross-examination about membership, payment of membership fee, receipt of fee etc the witnesses did not produce any scrap of paper to show their membership of this Union.

12) But, from the very beginning the Company contended that the union had no authority to represent the workmen. Therefore, in such circumstances it became incumbent on the union to produce material and documentary evidence to show it has the requisite authority to represent these workmen. Merely because the union was registered under the Indian Trade Union and sometime prior to the reference some letters were addressed to the Union by the Government or management are not conclusive to give the alleged dispute "the character of industrial dispute" within the meaning of Section 2K of the Industrial Disputes Act, 1947. No documentary proof of these workmen's membership of Union is produced by the Union all through the Trial. Not a single Resolution of any meeting of Union in this regard is produced in Evidence.

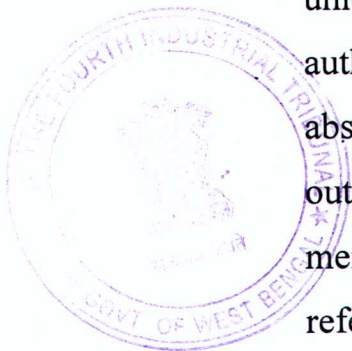
13) On behalf of the workmen one Radheshyam Biswas the Assistant Secretary of Howrah District Chemical and Pharmaceutical's Workmen's Union and one of the workman of this company corroborated the case of the union by filing affidavit in chief and proved his letter of authorization issued by the Secretary of their union Nandalal Mukherjee (Exhibit-I). But NO document was filed by the witness to show that this Radheshyam Biswas the Assistant Secretary of Howrah District Chemical and Pharmaceutical's Workmen's Union or that this Nandalal Mukherjee was the Secretary of stated Union. PW-1 deposed that after suspension of work the union held a meeting and resolved that the union would institute a case against suspension. But NO such resolution of



Union was produced or proved before the Tribunal. PW-1 deposed during cross examination that union wrote a letter to the company for giving appointment letters to 24 workmen and that union has NOT submitted that letter before the Tribunal. Witness proved copy of register of members of union (Exhibit-20, 27 pages) BUT this register does not show any endorsement or seal showing that it is Union's document, witness admitted that Exhibit-22 does not mention who prepared the list of workmen.

14) P.W-1 deposed that the workmen used to pay subscription to the union BUT no receipt of any such payment of subscription is filed. P.W-2 Joydeb Das deposed that he has NOT filed any document to show that he is a member of Union. P.W.-3 Mrs. Jyotsna Adhikary admitted that she has NOT filed any document to show that she is a member of the Union.

15) There must be some material on the basis of which it can be held reasonably that the union is duly authorised to espouse the cause of the said employees in the reference. In the absence of any such material evidence either a resolution of the members or authorisation by an individual workman out of the said workmen or substantial number of them, it cannot be said that the union had the capacity or authority to represent the said workmen at any stage. It is to be noted that all through the Company was disputing the locus standi of the union to represent the workmen and in spite of such question being raised by the Company the union has failed to produce any evidence to establish or prove its authority in the reference to represent the effected workmen. In the absence of authorization by individual workman or a number of workmen out of the said workmen or in the absence of any resolution of the members of the union to espouse the cause of the workmen in the reference it cannot be said on the facts and in the circumstances of this case that the union had locus standi to represent the said workmen. So, the Union failed to establish that the Union has Locus-stadi to represent the workmen in this case. [Ref- Deepak Industries Limited And ... vs State Of West Bengal And Ors. on 11 October, 1974, (1975) ILLJ 293 Cal]



16) In Deepak Industries Limited(Supra) Hon'ble Court held, *" Before the principle of community of interest is laid down it must be proved by material evidence that the workmen are raising a dispute with the Company. In the absence of such proof, the question of community of interest cannot arise for obvious reason that in order to be a community of interest there must be interest existing between all of the workmen. If the said workmen have ceased to have any interest in the employment after their dismissals there cannot exist any community of interest between the said workmen In the facts of this case it must be held that there was no industrial dispute within the meaning of Section 2(K) of the Industrial Disputes Act, 1947 as the union who espoused the cause of the said workmen had no valid or legal authority to represent the workmen"*.

17) Ld. Counsel for Union argued that as there is a omnibus union so non-production of resolution or non-filing of any receipt of membership fee is of no consequence, but there is no law supporting such contention of Ld. Counsel for Union.

In Deepak Industries Ltd. Vs. State of West Bengal (1975) (30) FLR-106, relevant page-113 Hon'ble Court held that, *"It is immaterial whether the said Union is a general Union of the workmen of a particular industry or it is a Union of the particular establishment relating to which the dispute has arisen between it and its workmen. In each case in ascertaining whether an individual dispute has acquired the character of an industrial dispute the test is whether at the date of the reference the dispute was taken up or supported by the Union of the workmen of the employer against whom the dispute is raised by an individual workman or by an appreciable number of workmen"*. Hon'ble Court held, *"Mere negotiations by some official of the Union with the employees for conciliation or executing certain documents on behalf of the workman prior to the reference are no conclusive proof of the authority of the Union to represent the workman whose dispute it is alleged to be espousing before the Tribunal."*

18) Ld. Counsel for Union argued that Section 2A, Section 10 and Section 10A of Industrial Disputes Act are amended and now even a individual workman can approach the Tribunal and the judgement referred by Company (79 CWN 410) was prior to the amendment of



1972. It's is true that even a single workman could have raised dispute but stated position of law does not change the fact that this dispute was not referred by any single workman or group of workman rather it was referred as, "WHEREAS an Industrial Dispute exists between M/s Udygi Moulders (p) Ltd...and Howrah District Chemical and Pharmaceutical Workmen's Union..." and NOT as a dispute between Udygi Moulders (p) Ltd and any individual workman. This tribunal has no authority to convert the nature of dispute or change the names/status of parties to the referred dispute.

19) The best piece of evidence was available with the Union like the membership documents or resolutions of meetings etc wherefrom it could be proved that the Union has locus standi to espouse the cause of these workmen. Failing to produce the best piece of evidence tantamounts to withholding the same and an adverse presumption could legitimately be drawn that had the same been produced, it would have operated to the detriment of the Union.

20) On consideration of all the above factors, the Tribunal is of the view that Union has failed to prove its locus standi and it is found that there was no locus standi of the Union to espouse the cause of these workmen. And in absence of proof of relationship between these workmen and the Union it is found that there is No Dispute between M/s Udygi Moulders (p) Ltd...and Howrah District Chemical and Pharmaceutical Workmen's Union'.

Issues under consideration are decided accordingly.

Hence, it is

### ORDERED

that there is no industrial dispute in existence.

This is my award.

Dictated & corrected by me.

Sd/-  
(Durga Khaitan)  
Judge

Judge  
Fourth Industrial Tribunals W.B.

Sd/-  
(Durga Khaitan)  
Judge

Fourth Industrial Tribunal  
Kolkata  
19.07.2022

Judge  
Fourth Industrial Tribunals W.B.