

I/434579/2023

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

No. Labr/ 822/(LC-IR)/22015(16)/43/2021

Date : 11-09-2023

ORDER

WHEREAS under reference of Labour Department's Order No. Labr./03/(LC-IR)/22015(16)/43/2021 dated 03.01.2022 the Industrial Dispute between M/s Aditya Birla Insulators, Pravash Nagar, Rishra, Hooghly, Pin – 712249 and its workman Shri Ashok Halder, 2/A, Srimani Ghat Lane, P.O. Rishra, Hooghly, Pin - 712248 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 Third Industrial Tribunal, Kolkata.

AND WHEREAS the said Third Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 23.08.2023 in case No. 06/2022/10 on the said Industrial Dispute vide Memo No. 1097 - L.T. dated 23.08.2023.

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,

Assistant Secretary

to the Government of West Bengal

No. Labr/ 822/1(5)/(LC-IR)

Date : 11-09-2023

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

1. M/s Aditya Birla Insulators, Pravash Nagar, Rishra, Hooghly, Pin – 712249.
2. Shri Ashok Halder, 2/A, Srimani Ghat Lane, P.O. Rishra, Hooghly, Pin - 712248.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 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.

Assistant Secretary

No. Labr/ 822/2(3)/(LC-IR)

Date : 11-09-2023

Copy forwarded for information to :

1. The Judge, Third Industrial Tribunal, Kolkata, N.S. Building, 2nd Floor, 1, K.S. Roy Road, Kolkata-700001 with reference to his Memo No. 1097 - L.T. dated 23.08.2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.
3. Office Copy.

Assistant Secretary

10/11/14
S. J. G. 11

**IN THE THIRD INDUSTRIAL TRIBUNAL,
NEW SECRETARIAT BUILDINGS, KOLKATA-700 001**

Case No. 06/2022/10

Present: Sri Mihir Kumar Mondal

Judge, 3rd Industrial Tribunal

Kolkata

A W A R D

Dated: 23rd August, 2023

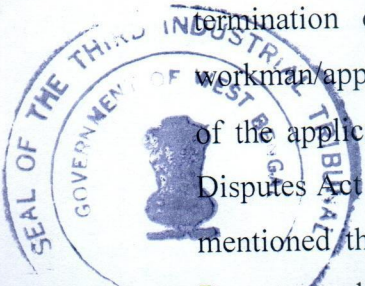
The Government of West Bengal, Labour Department has referred an Industrial Dispute between M/s. Aditya Birla Insulators, Pravash Nagar, Rishra, Hooghly, Pin-712249 and its Workman Sri Ashok Halder, 2/A, Srimani Ghat Lane, P.O. Rishra, Hooghly, Pin-712248 to this Tribunal vide G.O. No. Labr./03/(LC-IR)/22015(16)/43/2021 dated 03.01.2022 along with Corrigendum bearing Order No. Labr/60/(LC-IR)/22015(16)/43/2021 dated 21.01.2022 on the following issue(s) for adjudication:

I S S U E S

- 1) Whether the termination of service with effect from August 2019 of Sri Ashok Halder by the management of M/s. Aditya Birla Insulators in the guise of refusal of employment is justified?
- 2) To what relief, he is entitled?

On receiving the 'Order' of the appropriate Government containing 'Reference of Disputes', this Tribunal on 01.02.2022 by its Order No. 1 issued Notice upon both the parties. On receiving notice Sri Ashok Halder appeared in person and M/s. Aditya Birla Insulators entered their appearance through Ld. Advocate Sri Ranajoy Dey by filing Vakalatnama. Subsequently, the workman and the Company submitted their respective Written Statement.

M/s. Aditya Birla Insulators has contested this case by filing Written Statement. M/s. Aditya Birla Insulators (hereinafter referred to as the 'Company') by its Written Statement has denied all the material allegations leveled against it by the Workman by its letter dated 14.03.2022. The Company has claimed that the 'Reference' is not maintainable since Sri Ashok Halder was working as 'Badli' and thus he has no substantial right of employment as well as he is not entitled to get protection under the Industrial Disputes Act, 1947. The Company has also taken the plea of not maintainability of the case on the ground that there was no incident of termination of the employee as well as there was no refusal of employment of the workman/applicant. It has been mentioned that since there was no event of termination of service of the applicant as well as refusal of his employment, the reference u/s 2A of the Industrial Disputes Act is not maintainable and also erroneous. In the Written Statement, the Company has mentioned that Sri Ashok Halder had been working as 'Badli' workman in the Tool Room Department but he started 'non-reporting' for duty on and from 26.08.2001. It has been disclosed that on 25.08.2001 at about 5.25 a.m. while the applicant Sri Ashok Halder was going out after completing 'C' shift duty, in course of normal checking at the gate, one iron water tap packet was detected inside his uniform, which was kept on his bicycle carrier. It is mentioned in the W.S. that Ashok Halder by his letter dated 25.08.2001 had admitted the fact of recovery of iron

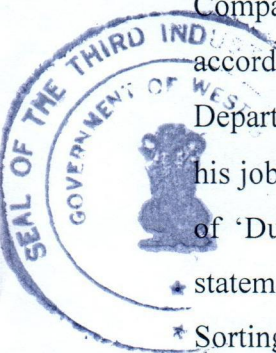


water tap packet from his uniform, which was kept on his bicycle and thereafter the applicant Sri Ashok Halder did not turn up to attend his duty but after a lapse of about 9 months his letter containing false allegations was received. It is mentioned in the WS that after being caught red handed, Sri Ashok Halder started to absent himself from attending duty and thereafter he never reported for duty. It is pleaded that consequent to the incident dated 25.08.2001, the applicant had gave up his employment but the Management never terminated him from his service and further there was no refusal of employment to the applicant from the part of the Company. The Company in the WS has admitted that according to the record, Sri Ashok Halder got an injury in his right ankle but cause of receiving injury was not known to the Company. It is also mentioned that Ashok Parida, Section in-Charge took Sri Halder to the factory dispensary and ultimately Mr. Parida took him to ESI Hospital, Serampore. It is also mention that Mr. Parida reported to the Management that the attending Doctor of ESI Hospital intended to release Sri Ashok Halder on the same date, but Sri Halder insisted for his admission and ultimately on 07.02.2019 he was discharged from the ESI Hospital. The Company by its Written Statement has prayed for passing an award of dismissal of the claim of the applicant.

The case of the workman, in a nutshell, is that he had been working under the Company M/s. Aditya Birla Insulators on and from 25.08.1988 as a Badli workman under Sorting Department. He has mentioned that on 01.02.2019 during 'A-shift' duty hours i.e. in between 6 a.m. to 2 p.m. he met with an accident and as a result, he sustained severe injury in his right ankle and was thus compelled to remain on leave on and from 02.02.2019 to 30.08.2019 and thereafter on 31.08.2019 he went to the factory to resume duty but Mr. Alope Parida, in-charge of Sorting Department did not allow him to join duty. He told him that he would not be able to allow duty to him and when he asked the reason, Mr. Parida asked him to take recourse to the Court. Subsequently, on various occasions he requested Mr. Parida as well as HR Manager to permit him to join duty but they lent a deaf ear. He has mentioned that the workmen who are junior to him are working but his employment has been denied and thus he remains unemployed. He in his rejoinder Written Statement, has pleaded that the Company intentionally kept him in the category of Badli workman till 2022. He has stated that the Company in its Written Statement has made false statements. He has mentioned in the Written Statement that the Company with the intention to fulfill their goal divided their workmen in various categories according to their whim and also according to the rules made by them. He has mentioned that the Department in Charge of the Company refused his employment and instructed him to get back his job taking recourse of law. He has denied the allegations leveled against him over the matter of 'Duty'. He has pointed out that the Company has made confusing and self contradictory statements and has confirmed that workmen who are junior to him are still working under Sorting Department of the Company. Accordingly, he prayed for proper justice and redress of his grievance.

After submission of Written Statements and list of documents by the parties, exchange of documents took place. Thereafter, the matter was fixed for hearing on merit.

During evidence stage, the 'Workman' examined himself as PW1 and he was cross-examined in full by the Company. After closing the evidence of the applicant, the Company had adduced its witness. One Mr. Alope Ranjan Parida filed examination in chief on affidavit as



OPW1 and he was cross-examined by the applicant Sri Ashok Halder in full. The Company prayed for time for adducing OPW2.

Before adducing OPW2 by the Company, a talk of settlement of the dispute amicably was started and subsequently, after much deliberation, finally both the parties have come to a consensus regarding settlement of dispute. Accordingly, on 16.08.2023, the parties to this case filed a joint petition along with a joint 'Memorandum of Settlement' with the prayer for accepting the said settlement and to dispose of this case in terms of joint 'Memorandum of Settlement'. One Sri Mithilesh Singh, Department Head (ER) of Grasim Industries Ltd., Unit-Aditya Birla Insulators on behalf of the Company was present to represent M/s. Aditya Birla Insulators and Sri Ashok Halder was present before this Tribunal on 16.08.2023. Mr. Mithilesh Singh and Mr. Ashok Halder were joint signatories on the joint petition and joint 'Memorandum of Settlement'. According to the 'Memorandum of Settlement' the Company has agreed to pay Rs.8,98,847/- by way of four numbers of A/c. Payee Cheques bearing numbers 882766, 882768, 882767 and 001076 to Sri Ashok Halder against full satisfaction of his claim and the Company will co-operate with Sri Ashok Halder in the matter of his claim of EPS, if he applies for the same.

In the perspective of such joint petition and joint Memorandum of Settlement, the applicant Sri Ashok Halder prayed for his re-examination on recall and thus re-examination of P.W.-1 was resumed and he was examined in chief on recall and his cross-examination was declined and discharged.

Sri Mithilesh Singh, Department Head (ER) of Grasim Industries Ltd., Unit-Aditya Birla Insulators was examined-in-chief as O.P.W-2 and his cross-examination was declined and discharged.

After completion of the evidence of this case, Sri Mithilesh Singh, Department Head (ER) of Grasim Industries Ltd., Unit-Aditya Birla Insulators handed over four numbers of A/c. Payee Cheques bearing numbers 882766, 882768, 882767 and 001076 total amounting to Rs.8,98,847/- in the name of Sri Ashok Halder drawn on HDFC Bank to Sri Ashok Halder against proper receipt.

Sri Ashok Halder openly before this Tribunal has stated that he spontaneously, voluntarily and without being influenced by any person or force has entered into amicable settlement of the Industrial Dispute and he put his signatures on the joint petition and joint 'Memorandum of Settlement'. He has submitted that he has received four numbers of A/c. Payee Cheques bearing numbers 882766, 882768, 882767 and 001076 total amounting to Rs.8,98,847/- drawn on HDFC Bank total amounting to Rs.8,98,847/- from the representative of M/s. Aditya Birla Insulators in full settlement of his claim and he has expressed his satisfaction in the matter of amicable settlement of long pending Industrial Dispute. He has also declared that he will have no objection if the Company takes necessary steps for withdrawal of WPA 16368 of 2004 pending before the Hon'ble High Court, Calcutta after passing the Settlement Award of this case since he has relinquished all his rights in connection with Award dated 22.07.2004 passed by Ld. 4th Industrial Tribunal, Kolkata-1.

Ld. Advocate for M/s. Aditya Birla Insulators has prayed for passing Award on settlement of the Industrial Dispute amicably.

In view of greater interest of keeping industrial peace and good relationship between the Management and the workman, I accept the Memorandum of Settlement made by the parties to this case jointly and thus, an order of Award is being passed over the same. The Memorandum of Settlement be made part of the Award in respect of industrial dispute raised.

In view of such amicable settlement of the dispute, there is no necessity of making discussion on the issues, so framed in the referral order to make appropriate decision. Accordingly, both the issues are disposed of in the light of joint Memorandum of Settlement.

Hence,

it is

Ordered

That the instant Industrial Dispute under the reference is settled in terms of joint Memorandum of Settlement.

According to the joint Memorandum of Settlement, Sri Ashok Halder is entitled to get Rs.8,98,847/- in full satisfaction of his claim of this case and he has already received four numbers of A/c. Payee Cheques bearing numbers 882766, 882768, 882767 and 001076 total amounting to Rs.8,98,847/- drawn on HDFC Bank in full satisfaction of his claim against proper receipt and he has already encashed all those A/c. Payee Cheques and an amount of Rs.8,98,847/- has been credited to his Bank Account. He will have no further demand from M/s. Aditya Birla Insulators in any manner whatsoever. The Management of M/s. Aditya Birla Insulators will render necessary assistance to Sri Ashok Halder in the matter of his claim of EPS if he applies for the same.

This is the settlement Award of this case passed by this Tribunal.

Copies of this Award be sent to the Labour Department, Government of West Bengal in accordance with usual norms and rules.

Dictated and corrected

Sd/-

Judge

Judge
3rd Industrial Tribunal
Govt. of West Bengal

Sd/-

Judge

Third Industrial Tribunal
Kolkata-1

Judge
3rd Industrial Tribunal
Govt. of West Bengal



MEMORANDUM OF SETTLEMENT

Under Section 2(p) of the Industrial Disputes Act, 1947
read with Rule 68 of the West Bengal Industrial Disputes Rules, 1958.

01. Names and addresses of the parties. :: M/s. Aditya Birla Insulators,
Pravash Nagar, Rishra, Hooghly, PIN-712249.

-And-

Sri Ashok Halder, 2/A, Srimani Ghat Lane, P.O.-Rishra, Hooghly, PIN-712248.

02. Representing the Employer:: 1.Mithilesh Kumar Singh, Department Head (ER) of Grasim Industries Limited, Unit-Aditya Birla Insulators.

03. Representing the workman:: The workman himself.

04. Short Recital of the case::

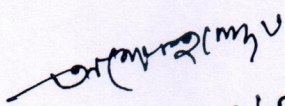
Sri Ashok Halder used to be engaged as badli in the factory of the Company situated at Pravash Nagar, Rishra, Hooghly, PIN-712249 against absenteeism of regular employees. Initially, he raised an alleged industrial dispute against the Company in 2001 and ultimately the same was referred to the Learned Fourth Industrial Tribunal vide Order of Reference dated 16.06.2003. The Learned Tribunal passed an Award in favour of Sri Halder which has become a subject matter of a writ proceedings being WPA 16368 of 2004 [M/s. Jayashree Insulators, a unit of Indian Rayon and Inds. Ltd., now known as Birla NGK Insulators Pvt. Ltd. Vs. Fourth Industrial Tribunal]. The said writ application came up for

16/08/2023

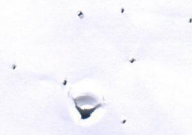
Mithilesh Kr. Singh
16/08/2023



hearing on 15.06.2005 before the Hon'ble High Court, Calcutta whereupon the Hon'ble Justice Soumitra Pal, as His Lordship then was, pleased to stay the operation of the Award until further orders. Before the Hon'ble Court the Company also submitted that without prejudice to the rights and contentions of the parties, Shri Halder would be at liberty to report for duties. Accordingly, he started reporting as 'badli'. Admittedly, due to poor demand of Porcelain Insulator in the national and international market the plant started running with 30% of its reduced capacity from April 2019. The financial condition of the Company is also in 'red' for last few years. It is stated that due to poor demand in the local and international markets the Company is compelled to operate at 1/3rd of its production capacity and as a consequence thereof the management of the company is not in a position to deploy all the permanent employees as usual. As a matter of fact, due to diminishing market condition coupled with adequate man power requirement, there is no occasion for the company to deploy any 'badli' in the shorting section sometimes from 2019 itself. However, inspite of all these aspects, Sri Halder again raise an alleged industrial dispute contending termination by refusal of employment and ultimately by an Order of Reference dated 03.01.2022 the appropriate Government has sent the same before the Learned Third Industrial Tribunal, West Bengal for adjudication of the same. The said case has been registered as Case No. 06/2022 U/s. 10 of Industrial Disputes Act, 1947.


16/08/2023

Mithlesh Kr. Singh
16/08/2023



During the pendency of the matter before the said Learned Tribunal, a proposal has come from Sri Ashok Halder for an amicable settlement of the pending matter. Accordingly, discussions were held in an atmosphere of cordiality between the parties for an amicable settlement of the matter and thereafter the same has been settled by and between the parties on following terms:

5. TERMS AND CONDITIONS OF SETTLEMENT:

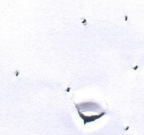
(a) It is agreed and accepted by Sri Ashok Halder that he is a badli and there is no scope for the management of the Company to terminate him from service in any manner what so ever with effect from August, 2019.

(b) It is agreed and accepted by both the parties to the settlement that the entire dispute has been resolved outside of the Learned Tribunal without creating any liability on the management of the Company in connection with Sri Ashok Halder in any manner whatsoever.

(c) It is agreed and accepted by Sri Ashok Halder that there is no scope for him to be employed by the Company in any manner what so ever nor shall he pray for reinstatement/re-employment / re-induction in the Company in any manner what so ever including back wages, leave wages, bonus and Gratuity before any Authority, Labour Court, Tribunal or any Court of Law.

For M/s. 21 M/s.
16/08/2023

Mithlesh Kr. Singh
16/08/2023



(d) It is agreed and accepted by both the parties to the instant settlement that Sri Ashok Halder is being paid a sum of Rs. 2,00,000/- (Rupees two lakhs) only by the Company, as a settlement money in full and final settlement of his all dues and claims statutory or otherwise against the Company including reinstatement/re-employment / re-induction in the Company in any manner what so ever along with back wages, leave wages and bonus before any Authority, Labour Court, Tribunal or any Court of Law. Sri Ashok Halder is also being paid today a sum of Rs. ^{98,847} 6,96,073/- (Rupees Six Lakhs ^{Eight} Ninety ^{Eight hundred} Six Thousand ^{Seventy} ~~Seventy~~ ^{Forty seven} ~~Three~~) only in full and final settlement of gratuity and accumulations under Employees' Provident Funds And Miscellaneous Provisions Act, 1952. The details of payment made to Sri Ashok Halder in terms of the foregoing settlement are to the following effect:

Sl. No.	Head of accounts	Amount (Rs.)	Cheque/Demand Draft Nos.	Dated
01.	Settlement amount	2,00,000/-	HDFC BANK Cheque No. 882766	02/08/2023
02.	Provident Funds	4,14,729/-	HDFC BANK Cheque No.001076	09/08/2023
03.	Gratuity	1,80,182/-	HDFC BANK Cheque No. 882767	08/08/2023
04	ABI Co-opr Cr. Society after adjusting of company dues	1,03,936/-	HDFC BANK Cheque No. 882768	08/08/2023

(e) It is agreed that Sri Ashok Halder consequent upon payments as aforesaid, has got no claim (statutory or otherwise) in respect of the

Signature of Sri Ashok Halder
16/08/2023

Mithlesh k. Singh
16/08/2023

Company nor shall he himself or authorise anybody including any Union/Association to prefer any claim, statutory or otherwise including reinstatement/re-employment / re-induction in the Company in any manner what so ever along with back wages, leave wages, bonus and Gratuity before any Authority, Labour Court, Tribunal or any Court of Law.

(f) It is confirmed by Sri Ashok Halder that in receiving the Demand Drafts/Cheques for the aforesaid amounts, he shall handover a receipts as a token of his acceptance of the said amount in full and final settlement of his all dues and claims against the Company.

(g) It is confirmed by Sri Ashok Halder that he is not interested to proceed with the Case No. 06/2022 under Section 10 of the Industrial Disputes Act, 1947 pending before the Learned Third Industrial Tribunal, Government of West Bengal in any manner whatsoever.

(h) It is confirmed by Sri Ashok Halder that he has accepted the said payment without any reservation and without being influenced by anyone. He also confirms that consequent upon payments as aforesaid by the management, he is not entitled to receive any amount from the Company over and above the said amount statutory or otherwise in connection with Case No. Case No. 06/2022 under Section 10 of the Industrial Disputes Act, 1947 pending before the learned Third Industrial Tribunal, Government of West Bengal. This settles all the disputes, demands and differences between the parties fully and finally including the proceeding

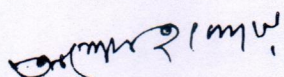
[Signature] 21/11/22
16/02/2023

Mithlesh Kr. Singh
16/08/2023

pending before the Hon'ble High Court being WPA 16368 of 2004 [M/s. Jayashree Insulators, a unit of Indian Rayon and Inds. Ltd., now known as Birla NGK Insulators Pvt. Ltd. Vs. Fourth Industrial Tribunal]. He further confirms that he will not take any step statutory or otherwise to enforce the Award dated 22.07.2004 impugned in the said writ application.

(i) Sri Ashok Halder by and for himself and on behalf of his heirs, successors, and assigns, fully and forever release and discharge M/s. Aditya Birla Insulators, their employees, officers, subsidiaries, directors, shareholders, partners, members, predecessors, successors, affiliates, assigns, insurers and trustees as well as its or their present and former officers, directors, trustees, employees and agents, individually and in their official capacities from any and all claims, rights, liens, demands, liabilities, obligations, damages, actions, and causes of action, of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of any act, omission, event or transaction, including without limitation, all past, present, and future claims and demands arising out of, or having a basis in whole or in part of, any claims or causes of action arising from or relating to the claim contemplated herein in this settlement.

(j) Sri Ashok Halder warrants that he has not assigned, pledged, or otherwise sold or transferred any right, title, or interest which Sri Ashok Halder had or may have in the claims hereby released.

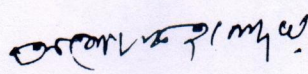

16/08/2023

Mithlesh Kr. Singh
16/08/2023

(k) It has been further agreed by Sri Ashok Halder that he shall keep the terms and condition of this settlement confidential and not to disclose the same to any employees (whether present or former) of the Company or any third party (es) from the date of execution of the foregoing settlement.

06. It is confirmed by Sri Ashok Halder that he shall have no reservation in the event the present case, as mentioned in Clause 5 of the foregoing settlement is disposed of consequent upon signing of this settlement and payment in terms thereof by virtue of an Award on the basis of the instant settlement. He further confirms that he shall extend fullest co-operation in making a joint application for disposal of the Case being No. Case No. 06/2022 under Section 10 of the Industrial Disputes Act, 1947 pending before the Learned Third Industrial Tribunal, Government of West Bengal in terms of the settlement on the date of signing and receiving the payment in terms thereof.

Sri Ashok Halder further confirms that consequent upon receiving the amounts mentioned in the foregoing settlement, he has got no reservation in the event the Company takes necessary steps, placing reliance on the instant settlement for withdrawal of the writ application being WPA 16368 of 2004 [M/s. Jayashree Insulators, a unit of Indian Rayon and Inds. Ltd., now known as Aditya Birla Insulators Vs. Fourth Industrial Tribunal] as he has relinquished all his rights, if any, accrued in his favour in connection with the said Award dated 22.07.2004

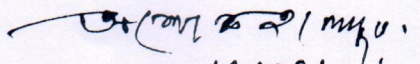

16/08/2023

Withlesh Kr. Singh
16/08/2023

passed by the Learned Fourth Industrial Tribunal, Government of West Bengal.

07. This settlement settles all disputes and demands arising out of the Case No. 06/2022 under Section 10 of the Industrial Disputes Act, 1947 pending before the Learned Third Industrial Tribunal, Government of West Bengal fully and finally and connected proceedings including the Award dated 22.07.2004 passed by the Learned Fourth Industrial Tribunal, Government of West Bengal.

IN WITNESS WHEREOF the parties put their signatures
this the 16th day of August, 2023.

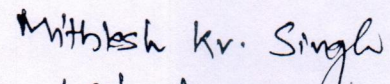

16/08/2023
Sri Ashok Halder

M/s. Aditya Birla Insulators

Witness(es):

1.

2.


16/08/2023

