

In the matter of an industrial dispute between M/s. Bharat Chamber of Commerce, Park Mansion (2nd Floor), 57A, Park Street, Calcutta-700016 and their workman represented by Bharat Chamber of Commerce Staff Welfare Association (Regd. No. 14281), Park Mansion (2nd Floor), 57A, Park Street, Calcutta 700016 vide G.O. No. 1078-I.R. dated 12.06.2001.

(Case No. VIII – 132 of 2001)
U/s. 10 of the Industrial Dispute Act, 1947

Before the Eighth Industrial Tribunal: West Bengal

Present Sri Amit Chattopadhyay
Judge,
Eighth Industrial Tribunal,
West Bengal.

Bharat Chamber of Commerce Staff Welfare Association.....**Applicant / workman**

Vs.

M/s. Bharat Chamber of Commerce O.P. Company

A W A R D
Dated 20.12.2024

Received a copy of order of reference vide G. O. No. 1078-I.R. dated 12.06.2001 from the Labour Department, Govt. of West Bengal and reference no. 3115-IR/IR/3A-6/59, dated 21/06/1960 referring an industrial dispute which exists between M/s. Bharat Chamber of Commerce, Park Mansion (2nd Floor), 57A, Park Street, Calcutta-700016 and their workman represented by Bharat Chamber of Commerce Staff Welfare Association (Regd. No. 14281), Park Mansion (2nd Floor), 57A, Park Street, Calcutta 700016 for adjudication.

The said Seventh Industrial Tribunal shall submit its award to the State Government within a period of three months from the date of receipt of this order by the said Seventh Industrial Tribunal in terms of Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), subject to the other provision or provisions of the said Act.

The said Seventh Industrial Tribunal shall meet at such places and on such dates as it may direct.

In view of G.O. No. Labr./700/(LC-IR)/23099/15/2019 dated 26.07.2019 this case has been withdrawn from the file of 7th Industrial Tribunal and transferred the same to the Eighth Industrial Tribunal, Kolkata, for adjudication.

I S S U E (S)

1. Scale and Grades of Pay of the Staff and Sub-staff including special increment if any.
2. Fixed D.A.
3. Variable D.A.
4. Medical Allowance
5. Tiffin Allowance
6. Leave Travel Allowances
7. Accumulation of Privilege Leave with encashment facility
8. Age of superannuation.

As per Bharat Chamber of Commerce the facts of the case is that the Chamber is a non-profit making concern registered under the Companies Act. The activities of the Chamber are to provide services to its members and the funds are generated from the annual subscriptions paid by its members. A part of the expenses made by the Chamber in organizing Seminars,

Workshops, etc for professional development is also met from the funds paid by the Office Bearers. A part of the deficits on year to year basis is also made by Office Bearers to be able to meet the operative expenses. The Chamber's accumulated loss have been to the tune of Rs. 65,34,000/-. The Chamber despite its financial constraints and limited source of income has always tried to accommodate the requirements of its employees to the extent it is possible. The salaries/wages are paid to its employees keeping in mind the aspect of the capacity to pay. There is no non-compliance of the statutory provisions on the part of the management of the Chamber in any manner what so ever. In spite of knowing everything pertaining to financial constraints, the Union/Association under reference placed a Charter of Demand before the management. Although, several meetings were held between the management and the members of the Union wherein the management has explained its inability to meet the demand due to financial constraints, the Union under reference however never came to reasons and created serious impediments in the smooth functioning of the institution and service to the members. A so-called dispute was also raised before the Labour Directorate, Government of West Bengal and ultimately by an Order of reference certain issues were referred by the appropriate Government for adjudication by this Learned Tribunal. From a plain reading of the said issues, nothing could be discernable as to what has been sent for adjudication.

Submission on behalf of the Chamber :

There is no doubt that the issues under reference have a direct nexus with the financial capacity of the Chamber and as such the basic stand taken by the Chamber in connection with the said issues are as follows:

- i. Source of income.
- ii. Loss incurred by the Chamber vis-à-vis financial position and capacity to pay.
- iii. Comparability with other Chambers.
- iv. Items in issue are already been provided by the management.
- v. Increase in payment.
- vi. No provision to bear extra financial load.
- vii. Basis of demand vis-à-vis financial impact not known to the Union/Association under reference.

The points raised by the management of the Chamber are actually the sum total of the materials on records both oral and documentary. A proper analysis of those points have been made to the following effect:

(i) **Source of income:**

The Chamber is not a manufacturing/production unit and its source of income is purely dependent on the annual subscription made by the members. The relevant portions of the evidence in this regard are as follows :

Evidence of O.P.W.-1 dated 23.09.2011:

- a. *“....Fund of M/s. Bharat Chamber of Commerce is generated from the subscriptions made by its members.”*
- b. *“M/s. Bharat Chamber of Commerce is a non-profit making concern...”*

Evidence of O.P.W.-2 dated 26.03.2013:

“..... M/s. Bharat Chamber of Commerce is the service oriented unit. It is not any production unit. We used to run our office on the basis of the subscription of the members. We do not have any other funding. The deficit amount for running day to day business being funded by office bearers....”

It is pertinent to mention that none of the depositions as mentioned above could be shaken by the Association during cross-examination. Therefore, there is no controversy about the structure of the chamber as well as the source of earnings which is purely dependent on the membership strength and subscriptions thereof. Since there is no concept of profitability is involved, the fund is very limited in nature.

(ii) **Loss incurred by the Chamber vis-à-vis financial position and capacity to pay:**

The actual financial position of the Chamber would come into light from following depositions:

Evidence of O.P.W.-1 dated 23.09.2011:

- a. *“....As our balance-sheet shows, the fund raised out of subscriptions made by the members of the concern is not sufficient to run the concern. It is noted in the balance-sheet how we recovered shortfall. Shortfall is made up b donation made by the President and two Vice-Presidents of the concern as advertisement-support. Besides, we organize some seminars and work-shops and out of such seminar and work-shops we raise fund.*

- b. *“During the financial year 2009-2010, subscriptions to the tune of Rs. 40,30,000/- were received from the members of the concern. Outflow for the salary and allowances given to the staffs amounted to Rs. 35,60,000/- (approximately).*

During the financial year 2009-2010, the deficit was of Rs. 11,15,000/-. The company suffered accumulated loss to the tune of Rs. 65,34,000/-.

We filed written statement on 19.11.2001. on 19.11.2001 the deficit was to the tune of Rs. 16,50,000/-....”

Evidence of O.P.W.-1 dated 04.01.2012 :

“....This is the Auditor’s Report for the year 2009-2010 of M/s. Bharat Chamber of commerce (Marked Ext. Q on admission).

The expenditure on account of salary of employees is reflected in the statements of accounts for the years as above. The increase in salary expenditure is also reflected in statement of accounts for the years as above. The statements of accounts for the years as above also reflect the loss incurred by the company....”

Evidence of O.P.W.-2 dated 19.04.2013:

“....It is not possible for us to take any additional financial burden due to accumulation of deficit fund...”

The loss incurred by the management from the year 1994-95 till 2008-09 would be evident from the following exhibits placed before this Learned Tribunal :

| <u>Sl. No.</u> | <u>Statement of accounts for the year</u> | <u>Exhibit No.</u> |
|----------------|---|--------------------|
| 01. | 1994-1995 | Exhibit-B |
| 02. | 1995-1996 | Exhibit-C |
| 03. | 1996-1997 | Exhibit-D |
| 04. | 1997-1998 | Exhibit-E |
| 05. | 1998-1999 | Exhibit-F |

| | | |
|-----|---|-----------|
| 06. | 1999-2000 | Exhibit-G |
| 07. | 2000-2001 | Exhibit-H |
| 08. | 2001-2002 | Exhibit-I |
| 09. | 2002-2003 | Exhibit-J |
| 10. | 2003-2004 | Exhibit-K |
| 11. | 2004-2005 | Exhibit-L |
| 12. | 2005-2006 | Exhibit-M |
| 13. | 2006-2007 | Exhibit-N |
| 14. | 2007-2008 | Exhibit-O |
| 15. | 2008-2009 | Exhibit-P |
| 16. | Auditor's Report for the year 2009-2010 | Exhibit-Q |

It is needless to mention that the financial constraints on the part of the management as has been reflected in the aforementioned exhibits has not been disputed on behalf of the Union under reference while cross-examining the witness.

(iii) **Comparability with other Chambers:**

Undoubtedly, this aspect has got a major bearing so far as the claim pertaining to Charter of Demand is concerned. The so called demand has to be judged after taking into consideration as to whether there are comparable industry/organization in the region or not. In case, there are similar nature of industry or organization, the same can be compared with the organizations in which the Charter of Demand has been placed. The comparability, for all practical purposes depends on the income of the organization. Most of the other Chambers earn from rent as they own their premises. Besides this, the number of employees and other co-related factors are also required to be taken into consideration. The evidence on record leaves no room for any doubt that there is no comparable industry in the State of West Bengal, so far as Bharat Chamber of Commerce is concerned in respect of number of employees and the generation of fund are concerned. The material portions of evidence in this regard are to the following effect:

Evidence of O.P.W.-1 dated 04.01.2012 :

“..... So far as norms of the comparison are concerned, M/s. Bharat Chamber of Commerce is not comparable with the other chambers of commerce.

There is no scope of comparability and capability of our company with Indian Chamber of Commerce and Bengal National Chamber of Commerce and Industry.

The income of Indian Chamber of Commerce and Bengal National Chamber of Commerce and Industry is more higher than that of the income of our company.

The capability as reflected in the Memorandums of Settlement (Ext. 21 to 27 of Indian Chamber of Commerce and Bengal National Chamber of Commerce and Industry is not comparable with the capability of our company.”

Evidence of P.W.-1 dated 15.09.2008 :

“.....I do not know that is the income of Bengal National Chamber of Commerce and Industry and Indian Chamber of Commerce. So far I know till last year that the employees’ strength of Bengal National Chamber of Commerce and Industry had 25 employees and Indian National Chamber of Commerce had 43 employees. I do not know what is the strength of membership of this two authorities. In so far as Bharat Chamber of Commerce is concerned there are 400 members belong to there.”

Evidence of P.W.-1 dated 25.08.2009 :

“..... I have not submitted any paper to show that the other Chambers whose names have been stated in my earlier evidence have the same and similar in respect of financial status, employee’s strength, number of membership as well as collection of money, donation, liability & overhead expenditure of money with that of Bharat Chambers of Commerce. We have not sent any letter to any member of other Chambers or to the union of that chamber to apprise us of the aforesaid status of respective chambers. We have not submitted any letter to the management of the company or to the Labour Commissioner for implementation of the issue wise demand raised by the union to the employee as per settlement under Ext. 24 to 27 of this case.”

Evidence of P.W.-1 dated 16.09.2009 :

“....The employee strength of other Chamber of commerce and the employees of the Bharat Chamber of Commerce are not equal in number. I do not know what is the exact figure of subscription collected by Bharat Chamber of Commerce. I also do not know that is the amount of subscription collected by other Chamber of Commerce. I know that the other Chambers spent money for the payment of salary to the employees higher than that of the payment of salary being paid by the Bharat Chamber of Commerce to its employees. I know the number of members of Bharat Chamber of Commerce but I do not know the number of members of the other chamber of Commerce.”

Evidence of P.W.-2 dated 23.11.2009 :

“....I am not connected with the expenditure of the Chamber. I have the knowledge about other Chamber of Commerce. I cannot say at the moment what is the income of Indian chamber of Commerce nor I can say at this moment what is the expenditure of Indian Chamber of Commerce and the membership strength of this Chamber of Commerce. I also cannot say what is the amount of subscription collected by Indian Chamber of Commerce members. I do not know anything about Bengal National Chamber of Commerce and Industries.”

Evidence of P.W.-3 dated 06.05.2010 :

“....There is difference of financial capacity in respect of different Chamber of Commerce. The payment we make as per our financial capability to the employees may or may not have the same capability of the other Chambers of Commerce for such payment...”

Evidence of P.W.-4 dated 11.05.2010 :

“....Excluding our Chamber of Commerce there are other Chambers of Commerce which have income but I cannot exactly say what is their actual income. It is a fact that the pay scale as shown in Clause no. 6 of this memorandum of settlement under Ext. 28 has been fixed on the basis of income and expenditure of this Chamber of Commerce. There are different income and expenditure of different Chamber of Commerce. All the Chamber of Commerce do not have equivalent capability of income and expenditure.

Therefore, it is explicitly clear from the materials on records that the income of the organizations like Bharat Chamber of Commerce or other Chambers really depends upon the membership strength co-related with the subscription collected in that particular year. There cannot be any homogeneity in capacity to pay as the same has got direct nexus with the strength of membership co-related with the collection thereof. Besides this, other factors are there which have got direct impact on the financial health of the organization. In such view of the matter, considering the peculiarity that exists in different Chambers, one cannot be compared with the other and as a result whereof the salary structure or the higher capacity to pay by a particular Chamber does not have anything to do as far as Bharat Chamber of Commerce is concerned.

(iv) **Items in issue are already been provided by the management :**

It cannot be deciphered from the issues under reference practically what is the demand of the Association under reference since all the items are being provided by the management to its employees. The evidence on record leave no room for any doubt that in Bharat Chamber of Commerce all the items mentioned in the issue under reference are invoked in the organization.

(v) **Increase in payment:**

It is submitted that inspite of financial constraints, the management of the Chamber always tried to accommodate the requirements of the employees in its humble way. The evidence on record testifying the bonafide approach on the part of the management read as follows :

Evidence of P.W.-1 dated 25.08.2009 :

“....It is a fact that all the employees got increased salary since 1993 till today however whatever may be extent. The witness volunteers that the salary increased was made in respect of employees on the basis of scale of pay and VDA. There is no single employee who refused to accept the increased salary as charter of demand is not settled.”

Evidence of P.W.-2 dated 12.01.2010 :

“....In the year 1993 I was working under Bharat Chamber of Commerce. I cannot remember what was my salary in 1993. Presently, I get a salary of Rs. 6090/- per month from this authority. Obviously I was getting less salary than that of present.”

Evidence of O.P.W.-1 dated 03.11.2011 :

“....The salary of employees is fixed on the basis of grade and scale. The grade and scale of the employees is provided in the settlement. Not a fact the employees are getting the same salary since 1993.

After the union submitted charter of demand to our concern, the salary of the management staff and the employees was increased from time to time. Besides the increment of salary according to grade and scale, increment was given to the employees according to their performance and variable dearness allowance. During the pendency of the charter of demand, our concern promoted the staff of management as well as other staffs (workmen) who were eligible....”

Besides this oral testimony, the documentary evidence being Exhibit-S as well as Exhibit-A clearly indicate that there is a substantial increase in the pay packet of the employees of the Chamber. The increase in salary in respective category of employees as mentioned in Exhibit-S is to the following effect :

| <i>Category of employees</i> | <i>Average Salary in December, 1991</i> | <i>Average Salary in December, 1993</i> | <i>Net salary in December, 2011</i> |
|--|---|---|-------------------------------------|
| Peon cum Bearer and Darwan | Rs. 1318/- | Rs. 1612/- | Rs. 6994/- |
| Jr. Astd., Jr . typist, Jr. Telephone Operator | Rs. 1517/- | Rs. 1813/- | Rs. 7335/- |
| Jr. Steno gr. | Rs. 1570/- | Rs. 1810/- | Rs. 7861/- |
| Sr. Steno grapher | Rs. 2036/- | Rs.2435/- | No one was there. |
| Senior Assistant | No one was there. | No one was there. | Rs. 8011/- |

It is evident from Exhibit-A that the Chamber being a non-productive unit has made substantial increase in the pay package of the employees. The following graphical statement would testify the same :

| <i>Year</i> | | <i>Total net salary paid</i> | <i>Yearly increased in salary</i> |
|-------------|-----------------|------------------------------|-----------------------------------|
| 1994 | Rs.11,71,642.50 | | |

| | | | |
|------|------------------|---|-----------------------------|
| 1995 | Rs.12,07,052.00 | Increased Rs.35,409.50 | Rs.(12,07,052-11,71,642.50) |
| 1996 | Rs.13,20,006.00 | Increased Rs.1,12,954.00 | Rs.(13,20,006-12,07,052) |
| 1997 | Rs.12,93,519.00 | | |
| 1998 | Rs.11,30,039.00 | | |
| 1999 | Rs.13,14,488.00 | Increased Rs. 20,969 from the year 1997 | Rs.(13,14,488-12,93,519) |
| 2000 | Rs. 12,82,497.00 | | |
| 2001 | Rs. 13,53,505.00 | Increased Rs.71,008.00 | Rs.(13,53,505-12,82,497) |
| 2002 | Rs. 15,13,417.00 | Increased Rs.1,59,912.00 | Rs.(15,13,417-13,53,505) |
| 2003 | Rs.15,86,631.00 | Increased Rs.73,214.00 | Rs.(15,86,631-15,13,417) |
| 2004 | Rs.16,69,173.00 | Increased Rs. 82,542.00 | Rs.(16,69,173-15,86,631) |
| 2005 | Rs. 16,90,890.00 | Increased Rs. 21,717.00 | Rs.(16,90,890-16,69,173) |
| 2006 | Rs. 17,27,161.00 | Increased Rs. 36271.00 | Rs.(17,27,161-16,90,890) |
| 2007 | Rs. 18,31,417.00 | Increased Rs. 104310.00 | Rs.(18,31,471-17,27,161) |
| 2008 | Rs. 20,30,371.00 | Increased Rs. 198900.00 | Rs.(20,30,371-18,31,471) |
| 2009 | Rs. 21,56,295.00 | Increased Rs. 125924.00 | Rs. (21,56,295-20,30,317) |
| 2010 | Rs. 21,94,022.00 | Increased Rs. 37727.00 | Rs.(21,94,022-21,56,295) |

Therefore, it is explicitly clear that despite its limited resources, the management always tried to accommodate the employees to the extent it was possible.

(vi) **No provision to bear extra financial load :**

The materials on record before this Learned Tribunal testify that the Chamber does not have any fund to bear the extra financial load by virtue of the alleged demand made by the association. Undoubtedly, all the demands have got serious financial impact but the association is totally oblivious of the fact. The material portion of the evidence in this regard are appended hereinafter :

Evidence of P.W.-1 dated 16.09.2009 :

“....I do not know that is the financial impact of the aforesaid benefits upon the company in rupees. After tiffin allowance and leave travel is allowed by the company in favour of the employees that will enhance the financial liability of the company.

Bharat Chamber of Commerce has already sold out a building at a price of rupees four crore and from this amount the interest accrued on it in favour of the chamber of commerce and by this this the Bharat Chamber of Commerce can take the burden of extra financial liability for rendering extra benefits to the employees (volunteers). We have not filed any document in support of my such statement that Bharat Chamber of Commerce sold out a building at a price of rupees four crore. The building was sold out by the chamber in the year 2004, in course of proceeding of this case. We have not submitted any application informing this Tribunal that Chamber of Commerce has sold out a building at a price of rupees four crore. We have not submitted any letter till date to the management that as the chamber of commerce sold out a building at a price of rupees four crore the chamber has sufficient financial strength to render us the benefits as we claimed.....”

Evidence of P.W.-2 dated 12.01.2010 :

“....We have not filed any document to show that Bharat Chamber of commerce got Rs. 4 crore by selling of their office building. I have not filed personally any document to show that I submitted a letter to the company stating that by selling of their office building they have acquired substantial amount of money and by which they can meet the charter of demand submitted by the union. The witness after searching the document on record states that I do not find any letter submitted by the union stating that as the company authority got huge sum of money by selling their office building they have sufficient capability now to meet the demand submitted in the charter of demand.

I have heard that Bharat Chamber of Commerce had purchased a land at 9/1, Syed Amir Ali Avenue for the purpose of construction of office building. I cannot say at what consideration amount was paid by the Bharat Chamber of commerce in purchasing the above said land. I also cannot say for the purpose of electric supply how much money was spent by Bharat Chamber of Commerce at that place. I do not know also how much money is being paid by the chamber

of commerce to the KMC on account of payment of KMC tax and security expense.....”

Evidence of O.P.W.-1 dated 04.01.2012 :

“....The sale of part of our building has no connection with the issues involved in the instant case. The loss incurred by the company has not been made up out of the sale proceeds of the said building.”

Evidence of O.P.W.-2 dated 26.03.2013 :

“....At present our office situated at Park Street and prior to that it was situated at Hemanta Basu Sarani, Dalhousie, Calcutta. At present there is no existence of office of M/s. Bharat Chamber of Commerce at Hemanta Basu Sarani. That premises have been sold in lieu of consideration money. The demands in question could not be settled with the consideration money received by us. The said money was invested for purchasing a new property of M/s. Bharat Chamber of Commerce. We have purchased the new property at 9/1, Syed Amir Ali Avenue, Kolkata – 17. At present in the said land, construction Civil Structure of the premises is going on. We have taken loan for constructing our new premises at 9/1, Syed Amir Ali Avenue as the consideration money was not sufficient.....”

Therefore, the projection sought to be made out on behalf of the union under reference about availability of the fund with the management is not borne out by facts. In fact, in the written statement at paragraph 11A, the management has categorically mentioned that the Chamber was running at a deficit of Rs. 16.5 lacs in 2001 and obviously the same has increased substantially by the passage of time. In such view of the matter it is well nigh impossible on the part of the management to bear any extra financial load in any manner what so ever.

(vii) Basis of demand vis-à-vis financial impact is not known to the association under reference :

In the instant case, a peculiar situation has come into light. In one hand, the association under reference has admitted that the prayer made in their written statement has got no co-relation with the pleadings and on the other hand, they have admitted that they do not have any knowledge of the financial implications in respect of their demands nor as to whether the management has got the capacity to pay the same. The relevant portions of the depositions in this regard are appended hereinafter:

Evidence of P.W.-2 dated 25.08.2009 :

“....It is a fact that statement in the prayer portion of the written statement filed by the union and the prayer portion of my deposition in the examination in-chief dated 15.09.2008 before this Tribunal are not same....”

Evidence of P.W.-2 dated 02.02.2010 :

“....I know that this charter of demands under Ext.-23 was placed before the management of this employer. I cannot say what would be the monetary liability of arrear payment in respect of clause (a) of the charter of demand under Ext.-23. I cannot say what would be the total additional monetary liability of grade pay of the employees as mentioned in clause (b) of the charter of demands under Ext.-23. I also cannot say what would be the total amount of additional monetary liability of payment of VDA as mentioned in clause (c) of charter of demand under Ext. 23.

Consumer price index is determined by the State Government and we accordingly act on it. I do not know what was the consumer price index in April, 2001. I cannot say what would be the total monetary liability for other benefits as mentioned in clause (d) of this charter of demands under Ext. -23. The witness volunteers that although I cannot say that as above but I know there is sufficient money with the Bharat Chambers of Commerce. As I know that the Chamber has earned Rs. 1 crore for the financial year 2009-2010. About 32 lakh is spend for payment of salary to the employees of the Chambers in a year. I cannot say what is the additional expenditure being spent by the Chambers. I do not know what is the additional expenditure on ad hoc increment on basic being incurred by the Chambers in a year. I cannot say what would be the additional expenditure to be caused in respect of clause (2c) of the charter of demands under Ext.-23 by the company. I also cannot say what would be the probable expenditure to be spent by the Chambers on VDA as mentioned in clause (2d) of the charter of demands under Ext. – 23. I also cannot say what would be the probable expenditure to be made as House Rent as mentioned in Ext.-23.

I get house rent allowance from this Chamber. I get 5% house rent allowance per month. I cannot say what would be the expenditure to be made by the company for additional house rent allowance as mentioned in Ext. – 23. I also cannot say what would be the probable amount of expenditure to be made by the Chamber for leave encashment to the employees.

Presently the age of superannuation is 59 years but we demanded for 60 years. I cannot say what would be the additional expenditure to be incurred by the Chamber for rising the year of superannuation from 59 years to 60 years....”

Evidence of O.P.W.-1 dated 04.01.2012 :

“....From the written statement filed by the union, I find that no prayer has been made by the union for implementation of any charter of demands placed by them...”

Submissions on behalf of the Union/Association under reference :

During the course of submission, the union under reference has categorically stated that so far as the contention of the Chamber are concerned, vis-à-vis the proposition of law, placing reliance on which the submissions have been made on behalf of the management they are not joining any issue on that. In other words, they have virtually accepted the submissions and the logic put forward on behalf of the Chamber. They have confined their submissions purely on the basis of Ext.-38 and Ext.-38/1.

Reply on behalf of the Chamber :

It is the specific case of the management that the Chamber is not a production/manufacturing house and consequently it has got no income generating avenue. It is purely a service providing organization confining itself within the members thereof. The main and only source of income is the annual subscription receivable from the members and the same is always variable in nature. Since the resources of the Chamber are very limited, it does not have any capacity to bear any extra financial load beyond its capacity. It is the consistent endeavour of the management to comply with all statutory benefits and accommodate the employees to the extent it is possible for the management keeping in view the stability of the organization without which the entire system will fall flat. The demands as mentioned in Exhibit-38 and Exhibit-38/1 are really beyond the financial capacity of the Chamber to pay. We should not be oblivious of the fact that this Chamber cannot be compared with any of the other Chambers in the State of West Bengal simply because of the fact that there is no homogeneous factor amongst them. In such view of the matter, there cannot be any rational behind the claim put forward in Exhibit-38 as well as in Exhibit-38/1. Besides this aspect, nothing has been placed on behalf of the union/association under reference to establish as to how their demands can be considered to be a workable solution in the facts and circumstances of the case.

Admittedly, the Chamber being an institution without any productivity and/or manufacturing activities. The resources are very limited. The other sources of generation of fund

are specific for the purpose of meeting particular expenses for functioning of the Chamber through Seminars, Workshops and Meetings. Such funds are to be spent for specific purpose and not for paying anything on any account. Basically, it is dependent on the collection of the annual membership subscriptions which is a fixed one and others are variable in nature. With this financial limitation, the Chamber has always made an endeavour to accommodate the requirement of the employees to the extent it is possible by observing all statutory compliances.

It is fundamental in the absence of manufacturing activity or any activity having co-relation with the market, the means of generating funds are very limited and as a consequence thereof, the financial load bearing factor is also very limited. It cannot be stretched otherwise the functioning of the entire organization would be a well nigh impossibility. In the instant case, demands have been made but nowhere the financial capacity of the organization has been kept in mind by the association in question nor any plausible explanation has been put forward by them in support of their demand. Undoubtedly, it is very basic requirement of any legitimate claim or demand and in the absence thereof the same becomes irrational and unjustified in nature.

In the instant case, the materials on records, both oral and documentary leave no room for any doubt that the management is constantly making positive endeavour to accommodate the benefits of the employees keeping in view the market condition co-related with its financial constrain and capacity to pay. Any extra financial burden, in the facts and circumstances of the case would create a serious financial crunch in the organization which may lead to a serious predicament in smooth functioning of the organization. Moreover, it is also an undisputed situation that the demands were made without justifying the same nor taking into consideration the capacity of the management to pay co-related with the financial condition of the Chamber.

Under these circumstances, it is respectfully submitted that the members of the association are not entitled to anything more than what they are presently receiving from the management considering the financial limitation of the organization which has got a close nexus with the capacity to pay. A financially unsound organization should not be made more crippled with any sort of extra financial burden. Keeping all these aspects in mind, the management of the Chamber prays for an Award dismissing the claim made on behalf of the union/association under reference.

On scrutiny of the entire record I find that after the completion of evidence both sides date for filing written notes of arguments by both the parties was fixed on 25.09.2024. I further find that from that date no step was taken by the Union / applicant and this Court directed the Union to show cause on 01.10.2024 as to why the argument shall not be heard ex-parte. Accordingly the Union / applicant neither took any step nor filed any show cause.

Ld. Advocate for the company completed its argument and submitted copy of some citations on that day.

Accordingly, for the ends of justice this Tribunal fixed several dates for passing award but the Union/ workmen did not turn up. As such the Tribunal has got no other option but to hold that the Union is not interested to proceed with the instant case any further and pass Ex-parte award.

Therefore, it is,

ORDERED

That in view of the above facts and circumstances this Tribunal has got no other option but to pass award ex-parte in favour of Bharat Chamber of Commerce and to hold that the members of the Association are not entitled to get any award what they are presently receiving from the management.

Accordingly, this case is disposed off on ex-parte and this order is to be treated as an Award of this Tribunal.

Let the necessary number of copies of this judgment and award be sent to the Secretary, to the Government of West Bengal, Labour Department, New Secretariat Buildings, 12th Floor, 1 No. Kiran Shankar Roy Road, Kolkata – 700 001.

Dictated & Corrected by me

Judge

-Sd-
Judge
Eighth Industrial Tribunal,
Kolkata
20-12-2024

GOVERNMENT OF WEST BENGAL
DIRECTORATE OF INDUSTRIAL TRIBUNALS
NEW SECRETARIAT BUILDINGS
BLOCK – 'A', 2ND FLOOR
1, KIRAN SANKAR ROY ROAD
KOLKATA – 700001

Memo No. Dte./8th I.T./120/2024

Dated Kolkata, the 20.12. 2024

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From: Shri Amit Chattopadhyay,
Judge,
8th Industrial Tribunal,
Kolkata – 1.

To : The Secretary to the
Govt. of West Bengal,
Labour Department,
New Secretariat Buildings, 12th Floor,
1, Kiran Sankar Roy Road,
Kolkata – 700 001.

Sir,

I am sending herewith the Award passed in the matter of an industrial dispute between M/s. Bharat Chamber of Commerce, Park Mansion (2nd Floor), 57A, Park Street, Calcutta-700016 and their workman represented by Bharat Chamber of Commerce Staff Welfare Association (Regd. No. 14281), Park Mansion (2nd Floor), 57A, Park Street, Calcutta 700016 being case No. VIII-132/2001 vide G.O. No. 1078-I.R. dated 12.06.2001 for information and necessary action.

Encl: As stated above.

Yours faithfully,

Judge,
Eighth Industrial Tribunal,
Kolkata
20.12.2024

I/592198/2025

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

No. Labr/ 07 / (LC-IR)/22015(16)/101/2018

Date : 03-01-2025


ORDER

WHEREAS under reference of Labour Department's Order No. 1078-IR dated 12.06.2001 reference of the Industrial Dispute between M/s. Bharat Chamber of Commerce, Park Mansion (2nd Floor), 57A, Park Street, Calcutta-700016 and their workman represented by Bharat Chamber of Commerce Staff Welfare Association (Regd. No. 14281), Park Mansion (2nd Floor), 57A, Park Street, Calcutta 700016, regarding the issues 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 Eighth Industrial Tribunal, Kolkata.

AND WHEREAS the said Eighth Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 20.12.2024 in case No. VIII-132 of 2001 on the said Industrial Dispute vide E-mail dated 23.12.2024 in compliance of u/s 10(2A) of the I. D. Act, 1947.

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/ 07 /1(5)/(LC-IR)/ 22015(16)/101/2018

Date : 03-01-2025

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

1. M/s. Bharat Chamber of Commerce, Park Mansion (2nd Floor), 57A, Park Street, Calcutta-700016.
2. Bharat Chamber of Commerce Staff Welfare Association (Regd. No. 14281), Park Mansion (2nd Floor), 57A, Park Street, Calcutta 700016.
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/ 07 /1(3)/(LC-IR)/ 22015(16)/101/2018

Date : 03-01-2025

Copy forwarded for information to :

1. The Judge, Eighth Industrial Tribunal, Kolkata, N.S. Building, 2nd Floor, 1, K.S. Roy Road, Kolkata-700001 with reference to his E-mail dated 23.12.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary