

I/470855/2024

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

No. Labr/.22../(LC-IR)/22015(16)/338/2019 Date: 05/01/2024.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/502-IR/I.R./11L-07/2000 dated 26.05.2009 the Industrial Dispute between M/s. Hotel Hindusthan International, 235/1, A.J.C. Bose Road, Kolkata - 700020 and its workmen Hotel Hindusthan International Karmachari Union, 249, B.B. Ganguly Street, Kolkata - 700012 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, First Industrial Tribunal, West Bengal.

AND WHEREAS the First Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 26.12.2023 in case No. VIII - 23/2009 on the said Industrial Dispute vide memo no. Dte/1st IT/162 dated 29/12/2023.

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 ^{Solt} Secretary
to the Government of West Bengal

/470855/2024

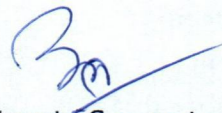
(2)

No. Labr/.²² 1(5)/(LC-IR)

Date: 05/01/2024.

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

1. M/s. Hotel Hindusthan International, 235/1, A.J.C. Bose Road, Kolkata - 700020.
2. The Secretary, Hotel Hindusthan International Karmachari Union, 249, B.B. Ganguly Street, Kolkata - 700012.
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.

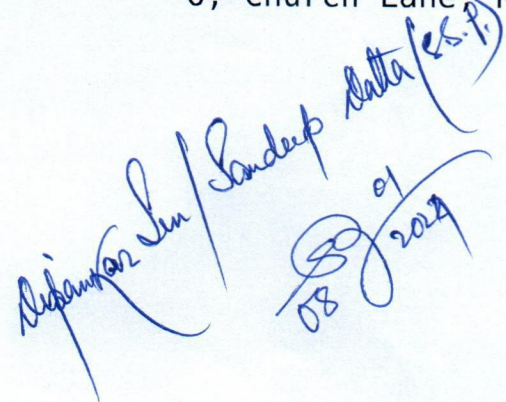

Assistant Secretary

No. Labr/.²² 2(2) /(LC-IR)

Date: 05/01/2024.

Copy forwarded for information to:

1. The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No. Dte/1st IT/162 dated 29/12/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.


Assistant Secretary

In the matter of an Industrial Disputes exists between M/s Hotel Hindusthan International, 235/1, A.J.C. Bose Road, Kolkata – 700 020 and their Workmen represented by Hotel Hindusthan International Karmachari Union, 249, B. B. Ganguly Street, Kolkata – 700 012.

G.O. No. 502-I.R./IR/11L – 07/2000 dated 26.05.2009

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

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

Date of Order : 26.12.2023

Case No.: VIII – 23/2009

The instant case has been initiated on receipt of Government Order No. 502-I.R./IR/11L – 07/2000 dated 26.05.2009 from the Labour Department, Government of West Bengal, referring an industrial dispute exists between M/s Hotel Hindusthan International, 235/1, A.J.C. Bose Road, Kolkata – 700 020 and their Workmen represented by Hotel Hindusthan International Karmachari Union, 249, B. B. Ganguly Street, Kolkata – 700 012 for adjudication the present dispute u/s 10 of the Industrial Disputes Act upon the following issues:

ISSUES

- 1) What should be the scale of pay, variable Dearness Allowance, Leave Travel Allowance, Medical Allowance and Night Allowance of the workmen, of M/s Hotel Hindusthan International?
- 2) To what relief, if any, are the Workmen entitled?

UNION's CASE

The main contention of the Union's (under reference) case is that the Company is the one of the reputed hotels in Kolkata having good number of employees and the Union under reference is a registered Trade Union and one settlement was existed by and between the management of the hotel and union under reference being signed on 21.07.1992 which was valid upto 3 (three) years and thereafter from 01.08.1995 to 01.06.1999 but the management by-passing the union under reference started to make settlement with their stooge union on 11.06.1999, 26.09.2004 and lastly on 21.06.2008 for a period of 3 (three) years from 01.06.2008. On 25.09.2007 over time the union under reference having majority members on behalf of them as claimed made protest against the said unwanted settlements as stated above though the management clearly assured by their letter dated 21.02.2000 that after expiry of settlement dated 11.06.1999 the management would make agreement with the union under reference failing which the union under reference submitted one Charter of Demands on 31.05.2002 then again on 25.09.2007.



That apart the union under reference made complaint before the Registrar of Trade Union against the stooge union of the company by their letter dated 21.10.2001 then on 23.09.2002 and on 24.10.2002 but without any result.

Then union under reference again made protest by their letter date 12.08.2004 by stating that the union namely stooge union of the management) Hotel Hindusthan International Employees and Workers Union by pointing out that this union unlawfully using the register No. 20960 in their letter head without filing any return for a long period.

The union under reference also made aware to the Hon'ble Labour Minister, Government of West Bengal by their letter dated 12.12.2002 and the union also demanded the settlement of long pending Charter of Demands before the company management 16.12.2002, but the management did not pay any heed to the same.

The union also filed various letters to settle the long pending Charter of Demands before the company in the year 2003, 2004 and so on but without any result.

The union under reference demanded by their charter of demands dated 25.09.2007 in respect of scale of pay (Basic Salary) which should be increased and Rs. 1200/- should be added accordingly with the existing basic salary and should be revised with proper attention to the seniority of the employees in service and the responsibility undertaken by them.

Secondly the union under reference demanded in respect of variable Dearness Allowance by claiming that the existing rate of neutralization point of VDA should be enhanced from Rs. 1.75 to Rs. 2.50 per point of consumer price index.

It is further stated by the union under reference that it is the matter of record in the settlement dated 21.07.1992 where VDA was revised from Rs. 1.50 to Rs. 1.65 per point. But thereafter by virtue of settlement with the stooge union of the management it was enhanced from Rs. 1.65 to Rs.1.75 per point on 02.02.1996. Thereafter no revision has been made even in the last settlement dated 21.06.2008.

The union under reference further demanded that Leave Travel Allowance should be one month gross salary to each workman in every year before their proceeding on leave having no restriction of the number of days whereas only Rs. 1000/- per head in every 2 (two) years the management is paying as LTA by virtue of settlement dated 21.06.2008 which is calculated proportionate to attendance and sanctioned leave or leave certified by ESI but unauthorized absence is executed.

The union under reference further demanded for Night Allowance of Rs. 20/- per night. To be given to each employee who will perform their duty at night for meeting up their extra expenses.

The union under reference did not demand any Medical Allowance being placed for consideration.



The union under reference stated that in order to maintain cordial administration in the establishment the union under reference advised its neighbours to abide by the benefits being given by the company after being revised bipartite settlement dated 21.06.2008.

The union under reference has claimed that it is also important to note the employees of the same nature of industry like M/s Peerless Inn having its hotel at 12,, J. L. Nehru Road, Kolkata – 700 013 are getting much more benefits than to the employees of the hotel under reference in spite of the fact that hotel is a 4 star hotel whereas the hotel under reference is a 5 star hotel.

As such the union under reference prayed to pass Award considering all aspects and material on record by granting relief to all the employees of the hotel as prayed for with effect from 26.09.2007 and to pass any other relief as the Tribunal may deem fit and proper.

COMPANY's CASE

On the other hand the hotel under reference has contended after denying all material allegations put against them by union under reference to the fact that the instant case is not maintainable for various reasons explained in Part-1 of their Written Statement as well as in Part-2.

The main contention of the hotel under reference is that the union under reference is minority union rather the union namely Hotel Hindusthan International Employees and Workers Union is the union having majority members in their behalf. There is no scope to consider any item of Charter of Demands being placed by the union under reference by their Charter of Demands dated 25.09.1997.

It is further stated reference has been made the Peerless Inn and comparison has been sought to be drawn cannot be considered that there is nothing satisfied the norms of comparison namely standing, strength of employees, the extent of respective customers, position of profits and loss etc.

Thus the plea of 4 star hotel is disputed and broadly it is claimed that union under reference is not entitled to get any relief as prayed for.

ISSUES

- 1) What should be the scale of pay, variable Dearness Allowance, Leave Travel Allowance, Medical Allowance and Night Allowance of the workmen, of M/s Hotel Hindusthan International?
- 2) To what relief, if any, are the Workmen entitled?

In support of the case the Union produced 1) Mrs. Minoti Bhowmick as WW-1 and 2) Shri Gobinda Banerjee as WW-2 that apart Union has cited the following documents:

- 1) Photocopy of memo of Settlement dated 21.07.1992 . Marked as **Exhibit -1**.



- 2) Photocopy of memo of Settlement dated 02.02.1996. Marked as **Exhibit -2**.
- 3) Photocopy of memo of Settlement dated 11.06.1999. Marked as **Exhibit -3**.
- 4) Photocopy of Charter of Demands of Union dated 31.05.2002. Marked as **Exhibit -4**.
- 5) Photocopy of memo of Settlement dated 26.09.2004. Marked as **Exhibit - 5**.
- 6) Photocopy of Charter of Demands of Union dated 25.09.2007. Marked as **Exhibit -6**.
- 7) Photocopy of memo of Settlement dated 21.06.2008. Marked as **Exhibit -7**.
- 8) Photocopies of Union's 3 (three) letters to Registrar of Trade Union. Marked as **Exhibit – 8** (series).
- 9) Photocopy of Registrar of Trade Union's letter to Union rejecting the prayer dated 22.11.2002. Marked as **Exhibit -9**.
- 10) Photocopy of Union's letter to Registrar of Trade Union dated 12.08.2004. Marked as **Exhibit – 10**.
- 11) Photocopy Union's letter to Minister-in-Charge, Labour Department. Marked as **Exhibit – 11**.
- 12) Photocopy of Conciliation Notice of Assistant Labour Commissioner dated 19.12.2002. Marked as **Exhibit – 12**.
- 13) Photocopies of Union's 6 (six) letters to Management. Marked as **Exhibit – 13** (series).
- 14) Photocopies of Union's 2 (two) letters to Labour Commissioner. Marked as **Exhibit – 14** (series).
- 15) Photocopy of conciliation notice. Marked as **Exhibit – 15**.
- 16) Photocopies of Union's 3 (three) letters to Management. Marked as **Exhibit – 16** (series).
- 17) Photocopy of Union's letter to Labour Commissioner, dated 29.11.2004. Marked as **Exhibit – 17**.
- 18) Photocopy of settlement between Union and Peerless Hotel. Marked as **Exhibit – 18**.
- 19) Photocopy of letter of Union dated 16.12.2002 to the Company. Marked as **Exhibit – 19**.

On the other hand, to counter the claim of the Workmen/Union some oral and documentary evidences have also been adduced by the Company as follows:

- 1) Sri Law Kumar Gupta as CW-1

That apart Company has filed some copies of documents as per list which have been marked as follows:

1. Copy of the Settlement dated 21.06.2008. Marked as **Exhibit-A**.
2. A chart showing Grade & Scale effective from 01.06.2008 with category of employees. Marked as **Exhibit-B**.
3. Copies of the letters given by individual workmen (125 Nos.) to the Account Department, Hotel Hindustan International. Marked as **Exhibit-C** collectively.



4. A certified copy of the Judgement dated September 9, 2008 in A.P.O. 454 of 2002, W.P. 2265/05 and A.P.O. 469/06, W.P. 2250/03 passed by the Hon'ble Division Bench High Court, Calcutta. Marked as **Exhibit-D** collectively.
5. Letter dated 23rd October, 1995 addressed to the General Secretary, Hotel Hindustan International Karmachari Union. Marked as **Exhibit-E**.
6. Letter dated 11th September, 1998 addressed to the Vice President, Hotel Hindustan International Karmachari Union. Marked as **Exhibit-F**.
7. Letter dated August, 02, 2008 addressed to Dy. Labour Commissioner. Marked as **Exhibit-G**.
8. Letter dated September 19, 2007 addressed to the Dy. Labour Commissioner. Marked as **Exhibit-H**.
9. Letter dated September, 5, 2007 addressed to the Additional Labour Commissioner. Marked as **Exhibit-I**.
10. Letter dated January 7, 2005 addressed to the Labour Commissioner, Government of West Bengal. Marked as **Exhibit-J**.
11. Letter dated June 13, 2007 addressed to Dy. Labour Commissioner, Government of West Bengal. Marked as **Exhibit-K**.
12. Letter dated 06th October 2004 addressed to the Hon'ble Chief Minister of West Bengal. Marked as **Exhibit-L**.
13. Letter dated October 8, 2003 addressed to the Additional Labour Commissioner, Government of West Bengal. Marked as **Exhibit-M**.
14. Letters dated April, 18, 2008, June 26, 2008, August 23, 2007 addressed to the Dy. Labour Commissioner, Government of West Bengal. Marked as **Exhibit-N** collectively.
15. Letters dated 29th September, 2008 addressed to Additional Labour Commissioner, Government of West Bengal. Marked as **Exhibit-O**.

Decision with Reason:

Mrs. Minoti Bhowmick being WW-1 deposed on 10.08.2010 wherefrom it is revealed that on the date of deposition she worked as Floor Supervisor. She has been working in the House Keeping Department for the last 22 years at the relevant point of time. She has stated the case of the union under reference. She is one of the member of the Executive Committee of Hotel Hindusthan International Karmachari Union i.e. union under reference. She has marked Exhibits being No. 1 to 18.

From her cross examination she admits that no statutory forum has ever stated that the union under reference is the majority union and the other union is a minority union.

It is further revealed that at present the employees of the company under reference are getting the benefits as per settlement vide Exhibit-7. Be it mentioned here that Exhibit-7 was executed in a bipartite level on 21.06.2008.

She further claims that all the members get benefits under protest though she could not file any document to show that the total strength of membership of the union under reference on the date of reference or on the date of signing.



According to her Exhibit-7 was for a period of 3 years and this settlement relating to scale of pay, variable dearness allowance, leave travel allowance, medical allowance and night allowance as mentioned in the order of reference dated 26.05.2009 but except the scale of pay and leave travel allowance no other item was considered at the time of settlement.

She further admits that in Exhibit-6 i.e. Charter of Demands dated 25.09.2007 filed by the union under reference there were 25 items in the Charter of Demands whereas Government referred 5 items in the order of reference.

She further admits that after the settlement vide Exhibit – 5 & 7 (executed on 26.09.2004 and 21.06.2008), Exhibit – 13 (i.e. some letters dated 16.12.2002, 03.03.2003, 05.04.2003, 16.04.2003, 31.05.2003 and 30.08.2003 whereby the union requested the General Manager of the Hotel Hindusthan International to discuss the Charter of Demands submitted by them), Exhibit – 14 (letters dated 31.05.2004 and 26.06.2004 whereby the union under reference informed the said matter to Labour Commissioner, Government of West Bengal requesting him to kindly intervene and conciliate the Charter of Demands) and Exhibit – 16 (letters dated 03.09.2004, 04.10.2004 and 05.11.2004 whereby the union under reference requesting the management for bipartite discussion on the Charter of Demands submitted by the union under reference) have lost its force.

She further states that during continuation of the settlement of the year 2008 vide Exhibit – 7, the union under reference wants determination of the point raised by them where are not fulfilled there.

She further states last settlement was done in the year 2011 and therefore, Exhibit – 7 is not the last settlement.

WW-2 Shri Gobindo Banerjee of the union under reference states that he joined as Trainee Steward on 15.12.1992 and he was confirmed on 16.06.1997. He is the Executive member of the union under reference. He demands that no tripartite agreement has been made till this date i.e. on 28.02.2014.

He further demands that as the revision of salary and other benefits were not enhanced up to their demands so they had to place Charter of Demands firstly before the management and subsequently before the Labour Commissioner.

WW-2 has corroborated the statement of WW-1. From his cross examination he admits that the workmen individually did not lodge any protest petition in black and white to their union to take further necessary step on their behalf.

It is further revealed that there are 2 union (union under reference is older than the other union namely Hotel Hindusthan International Employees and Workers Union).

Exhibit-7 was executed in between the management and the other union not in the presence of the older union so it was bipartite settlement.



From his evidence it is revealed that the employees of the company under reference are getting VDA @ Rs. 1.75 per unit and LTA @ Rs. 1200/- in every alternative year.

On the other hand Mr. Law Kumar Gupta, Accounts Manager has deposed on behalf of the Company under reference.

He admits that the management always entered into the settlement with the having majority number of workmen.

He has stated the case of the union vividly.

He states that the union under reference claimed in their charter of demands dated 25.09.2007 (Exhibit – 6) under the headings VDA, LTA, MA and Night Duty Allowance.

He further states that Exhibit-7 was in vogue from 21.06.2008.

He has stated some result of cross examination of WW-1 and WW-2 which have already discussed.

CW-1 denied all allegations raised by union under reference. He has exhibited some documents which have been marked as Exhibit A to O.

From his cross examination it is revealed that CW-1 is not the signatory of the Memorandum of Settlement which he filed on the date of cross examination i.e. on 19.09.2022.

He admits that he heard from the management that Exhibit-13 regarding chart showing grade and scale benefits from 01.06.2008 with the settlement between the union and the management.

He has failed to show at the relevant point of time 125 letters i.e. Exhibit-C, collectively was filed thought at the relevant point of time he was the Accounts Manager and on that day he was present on spot.

CW-1 could not remember whether he filed any documents to show the union under reference did not have substantial allowance.

He admits that the company would sign the settlement regarding charter of demands with the present union under reference when they were in majority in numbers.

He also failed to file any such document to show that the members of other union i.e. union under reference have also been satisfied with the settlement dated 21.06.2008.

Being retired employee CW-1 could not answer correctly with the question at the time of cross examination being held on 04.05.2023.

CW-1 could not say the then consumer price index on the relevant point of time when the settlement was executed and he was not present in the meeting of settlement dated 21.06.2008.



He denied the Hotel Hindusthan International Employees and Workers Union was the pocket union of the management.

In support of their respective case Ld. Counsel for the parties have argued.

Ld. Counsel for the Company has argued to the effect that the union under reference has no locus-standi to ventilate the grievances in respect of charter of demands.

Ld. Advocate for the company has argued the case of the union under reference along with the evidence to the effect that the union under reference has completely failed to prove their representative character and the reliefs to be considered as prayed for.

In support of his contention Ld. Advocate for the Company has filed the following judgements of the Hon'ble High Court and Supreme Court:

- 1) Deepak Industries Ltd. and another vs State of West Bengal and others, High Court, Calcutta, 1975.
- 2) Union of India vs. CLW Labour Union 2019(4) CHN (CAL) 192.
- 3) Manager, Reserve Bank of India, Bangalore vs S. Mani and Others (2005) 5 SCC 100.
- 4) W.P. No. 306 of 2012 Citation CDJ 2012 Cal HC 360.
- 5) Reserve Bank of India and others vs C. N. Sahasranaman and others 1986 (Supp) SCC 143.
- 6) ITC Ltd. Workers Welfare Association and Another vs management of ITC Ltd. and Another (2002) 3 SCC 411.
- 7) Transmission Corporation, A. P. Ltd. and Others vs. P. Ramachandra Rao and Another (2006) 9 SCC 623.
- 7) Herbertsons Ltd. vs the Workmen of Herbertsons Ltd. and Others (1976) 4 SCC 736.
- 8) Hindustan Fasteners (P) Ltd. vs Nasik Workers Union (2007) 11 SCC 660.
- 9) Indian Express Newspapers (P) Ltd. and Others vs Union of India and Others 1995 Supp (4) SCC 758.
- 10) A. K. Bindal and Another vs. Union of India and Others (2003) 5 SCC 163.
- 11) Punjab State Cooperative Milk Producers Federation Limited and Another vs Balbir Kumar Walia and Others (2021) 8 SCC 784.
- 13) Commissioner of Central Excise, Bangalore vs Srikumar Agencies and others (2009) 1 SCC 469.

On careful perusal of the judgements of Hon'ble High Courts and Supreme Court as well as evidences of both parties along with consideration of the submission of both sides it is the admitted position that there are two unions are exists in the company under reference one is Hotel Hinsusthan International Karmachari Union and Hotel Hindusthan International Employees and Workers Union.



Admittedly the contention of the instant case relates to charter of demands of some points as referred by Govt. of West Bengal and except the matter of VDA, I find no item to consider a fresh.

On perusal of the facts of the case as advanced by the parties to the case it is fact that Exhibit-1 was executed in between union under reference and the management on 21.07.1992 where VDA was revised from Rs. 1.50 to Rs. 1.65 per point and thereafter by virtue a settlement with the other union dated 02.02.1996 VDA was revised from Rs. 1.65 to Rs. 1.75 per point and thereafter no revision has been made even in the settlement dated 21.06.2008, in respect of VDA.

So in my opinion it should be revised to some extent considering the present consumer price index. That apart I could not find any other point of charter of demands to be considered at this stage by careful examining the charter of demands and the substance of Exhibit-7.

In respect of locus-standi I must say that it is the settled position of law that it is not necessary that a registered body should sponsor a workmen's case to make it an industrial dispute. Once it shows that a body of workmen either acting through their union or otherwise had sponsored workmen case it become an industrial dispute.

So, I am of firm opinion that the union under reference has locus-standi to espouse the grievances of the concerned workmen in respect of the contention of this case.

It is the admitted position of the present case as claimed by the company under reference that the union under reference is existed but having minority numbers of the total strength of employees of the company under reference.

It is also notices at the argument led by the Ld. Advocate for the workmen that the company under reference being a 5 star hotel is not paying the salary and perquisite in comparison to other hotels being marked as 3 star, 4 star or 5 star, which has been strictly challenged by the company under reference.

In my humble opinion comparison could not be the basis of charter of demands because it depends on various questions i.e. the strength of labour force, the extent of respective customers, position of profits and loss incurred by the hotel in question, the extent of business carried on by hotel, the capital invested, the nature of business carried on, the presence and absence and the extent of their reserves, the dividend declares and so on.

Now let us see what happens in earlier time and what is happening now.

As I stated above on earlier occasion after considering the Exhibit-1 it is seen that VDA was revised from Rs. 1.50 to Rs. 1.65 per point i.e. Rs. .15 per point was enhanced after revision but it would not maintain either on 02.02.1996 when VDA was revised from Rs. 1.65 to Rs. 1.75 per point or at any point of time thereafter where it is evident that no revision is/was made in respect of VDA on and after 21.06.2008. So, the present situation is the VDA has not been revised on and after 21.06.2008, and therefore it was to revise after 3 years as the norms of the present



company under reference. So, considering all aspects I am of opinion after considering the market value and circumstantial conditions V.D.A. should be revised from 1.75 to 1.90 per point.

In sum the case succeeded as per observations made above.

Hence it is

AWARDED

That the instant case being No. VIII – 23/2009 be and same is allowed on contest without any cost.

The Company is hereby directed to revise the VDA from 1.75 to 1.90 per point on and from 2012 and all the workmen irrespective the member of any union or not shall get the benefits including the arrear amount which shall be calculated by the management to be paid by the company in 6 (six) equal instalments and the current VDA per point i.e. 1.90 per point shall run from and within 3 (three) months after publication of the award.

This is my Award.

Let the Award be sent to the Government of West Bengal.

Sd/-

Dictated & corrected by me

Sd/-

(Uttam Kumar Nandy)
Judge

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

