

19414/2019

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

No. Labr/ 5.47. / (LC-IR)/

Date 12-6-19

**ORDER**

WHEREAS under the Government of West Bengal, Labour Department vide G.O. No. 1236-I.R./IR/11L-108/15, dated 0812.15 the Industrial Dispute between M/s Hazarat Egg Trader Pvt Ltd, Rajpur, P.O.-Arkhali, Amdanga, Norht 24 Pgs, Pin-743221 and their workman represented by Hazarat Egg Trader Pvt. Ltd. Sramik Karmachari Union regarding the issue mentioned in the said order, being a matter specified in the Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, 4th Industrial Tribunal, West Bengal.

AND WHEREAS the Judge of the said 4th Industrial Tribunal, West Bengal, has submitted to the State Government its award on the said Industrial Dispute.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

**ANNEXURE**  
(Attached herewith)

By order of the Governor,



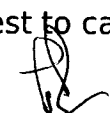
Deputy Secretary  
to the Government of West Bengal

No. Labr/ 5.47. / (1) / (LC-IR).

Date: - 12-06-2019

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

1. M/s Hazarat Egg Trader Pvt Ltd, Rajpur, P.O.-Arkhali, Amdanga, Norht 24 PGs, Pin-743221
2. To the Secretary, Hazarat Egg Trader Pvt. Ltd. Sramik Karmachari Union, Rajpur, P.O.-Arkhali, Amdanga, Norht 24 PGs, Pin-743221
3. The Secretary, Employees Association, 35-B, Nirmal Chandra Street, Kolkata -33 .
4. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
5. The Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 6. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

  
Deputy Secretary

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No. Labor/547/2(2)/(LC-IR)

Date: 12-06-2019

Copy forwarded for information to :

1. The Judge, 4th . Industrial Tribunal, West Bengal with reference to his Memo No. 672-L.T. dated 30.05.19 .
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Deputy Secretary

In the matter of an Industrial Dispute between M/s. Hazrat Egg Trader Pvt. Ltd., Raipur, P.O. – Arkhali, Amdanga, North 24-Parganas, PIN-743221 and their workman represented by Hazrat Egg Trader Pvt. Ltd. Sramik Karmachari Union (Regd. No. 25146), Momin Laskar, Rajpur, Arkhali, Amdanga, North 24-Parganas.

(Case No. VIII-02/16)

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BEFORE THE FOURTH INDUSTRIAL TRIBUNAL: WEST BENGAL

P R E S E N T

SHRI GOPAL KUMAR DALMIA, JUDGE  
FOURTH INDUSTRIAL TRIBUNAL  
KOLKATA.

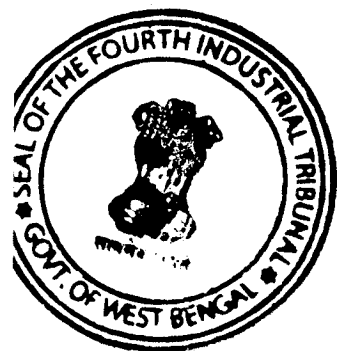
A W A R D

In the matter of an Industrial Dispute between M/s. Hazrat Egg Trader Pvt. Ltd., Raipur, P.O. – Arkhali, Amdanga, North 24-Parganas, PIN-743221 and their workman represented by Hazrat Egg Trader Pvt. Ltd. Sramik Karmachari Union (Regd. No. 25146), Momin Laskar, Rajpur, Arkhali, Amdanga, North 24-Parganas vide G.O. No. 1236-I.R./IR/11L-108/15 dated 08.12.2015 referred to this Tribunal for adjudication of the following issues.

I S S U E S

1. Whether the closure of M/s. Hazrat Egg Trader Pvt. Ltd. with effect from 06.03.2015 was justified and legal?
2. To what relief, if any, the workmen are entitled ?

The case of the Hazrat Egg Trader Pvt. Ltd. Sramik Karmachari Union (hereinafter referred to as the Union) in short is that it is a registered trade union having registration no. 25146 under the Trade Unions Act. It was formed to protect the service conditions and livelihood of the workers of Hazrat Egg Trader Pvt. Ltd. It is also claimed by the Union that Hazrat



Egg Trader Pvt. Ltd. was a prosperous and profit making Company which was engaged in the wholesale business of eggs and that a large number of workmen were employed there in the posts of Delivery Man cum Collector, Loader, Driver, Helper, Salesman, Cashier, Accountant, Gardeners, Darwans etcetera for doing various works. It is also alleged by the Union that the management of the Company had knowledge of formation of the Union but it did not take the Union in right spirit and harassed its executives and members. It is claimed by the Union that on 29.08.2014 and 03.09.2014 meetings were held between the members of the Union and the management of the Company wherein various demands of both sides were placed. But the management of the Company turned down the demands of the Union like increasing of wages, leave, compensatory leave, bonus, issuance of appointment letter and identity card etc. Union also placed its Charter of Demands dated 27.09.2014 before the management of the Company and thereafter it approached the Labour Commissioner, Barasat for settlement of the issues as the management of the Company did not pay any heed to said Charter of Demands. It is further claimed by the Union that the Company gave a notice dated 05.02.2015 through its Advocate for closure of the Company on the ground of financial stringencies which was nothing but an excuse to deprive the workmen from their legitimate demands. Thereafter, getting no alternative Union made a representation dated 16.02.2015 to the Assistant Labour Commissioner, Barasat but the management without giving any proper notice closed the Company w.e.f. 06.03.2015. It is also claimed by the Union that closure of the Company is illegal as it was done in complete violation of law. Thereafter, the Union through its letters dated 09.03.2015 and 17.04.2015 addressed to the Company raised protest to such closure and also intimated the matter to the Assistant Labour Commissioner, Barasat. It is urged by the Union that no retrenchment compensation as stipulated in the Industrial Disputes Act is paid to the workmen and that subsequently a new Company under the name and style of Elahi Egg Centre is opened in the same premises and that the management of the Company illegally obtained signatures of the workmen on non-judicial stamp papers. It is also urged by the Union that after receiving a complaint

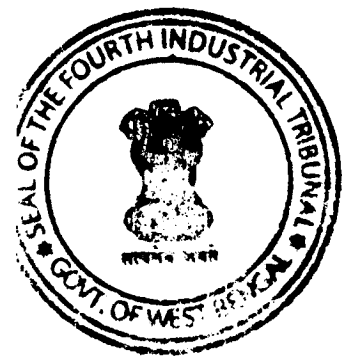


from the Union, the Assistant Labour Commissioner, Barasat and the Deputy Labour Commissioner, Barrackpur initiated a conciliation proceedings but due to high handedness of the management of the Company, dispute could not be resolved and ultimately the Government has referred the present matter to this Tribunal

On the other hand, Hazrat Egg Trader Pvt. Limited (hereinafter referred to as the Company) has claimed that it is a private limited Company which was registered under the Companies Act and that clause 45 of its Articles of Association has a provision for its winding up and that Md. Hazrat Mondal and his wife Mrs. Selima Bibi are its shareholders. It is also claimed by the Company that it has a valid trade licence issued by the Pradhan of Sadhanpur Gram Panchayat within the district North 24 Parganas for carrying on its business. It has denied the material allegations and claim of the Union. It has claimed inter alia that it was under immense financial distress and was unable to run the business and for that it invoked the clause 45 of its Articles of Association. It is further claimed by the Company that it did not intend to deprive its employees and therefore it issued a termination notice dated 05.02.2015 through its Advocate to all the employees intimating them that it intend to clear their all pending dues before entering into the winding up process which was served to them by speed post with A.D. It also appears to have been urged by the Company that out of 46 employees 38 have duly received their respective legitimate dues from the Company which will be evident from the separate letters prepared on non-judicial stamp papers stating that all their respective dues have been paid and that it has no knowledge of any Charter of Demands dated 27.09.2014 and that Union is not entitled to get any relief in the case.

In order to prove the case, Md. Ali Fukri, the Secretary of the Union has been examined as P.W.1 and one Mr. Nasir Ali Mondal has been examined as P.W. 2. Documents have been marked as Exhibits 1 to 15/2.

Exhibit 1 is a photo copy of a Certificate of Registration of Trade Union issued in the name of Hazrat Egg Trader Pvt. Ltd. Shramik Karmachari Union. Exhibit 2 is a photo copy of the Certificate of Incorporation issued in the name of the Hazrat Egg Trader Pvt. Ltd. by the



Deputy Register of Companies, West Bengal. Exhibits 3 and 4 are photo copies of notes dated 29.08.2014 and 03.09.2014 related to bipartite negotiations said to have been held between the Company and the Union. Exhibit-5 is a copy of Charter of Demands dated 27.09.2014. Exhibits 6, 8 & 10 are photo copies of letters dated 31.12.2014, 16.02.2015 and 09.03.2015 of the Union all addressed to the Assistant Labour Commissioner, Barasat. Exhibit-7 is a photocopy of a notice regarding closure of the Company and copies of some documents annexed thereto. Exhibits 9, 11 & 13 are photo copies of letters dated 09.03.2015, 17.04.2015 and 08.06.2015 of the Union addressed to the Management of the Company. Exhibit 12 is a photo copy of a letter dated 25.05.2015 and a photo copy of a declaration of one Nasir Ali Mondal addressed to the Director of the Company. Exhibit 14 is a photo copy of a written authorization signed by the members of the Union in favour of Md. Ali Ahmed Furki. Exhibits 15, 15/1 and 15/2 are photo copies of letters given by Firoz Mondal, Sirajul Haque Furki and Zakir Hosen Mondal to the Company.

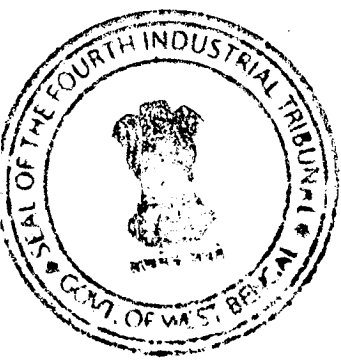
On the other hand, no evidence is adduced on behalf of the Company. It is pertinent to mention here that examination in chief on affidavit of P.W.2, Nasir Ali Mondal was filed on 29.11.2017 but subsequently the Company did not take part in the proceedings of the case and as such a notice to show-cause was issued upon it but it did not show any cause and ultimately on 19.04.2018 W.W.2, Nasir Ali Mondal tendered his examination in chief on affidavit in the evidence of the case. It depicts from the deposition sheet of said witness that in spite of repeated calls none appeared to cross-examine him. So, his cross-examination was presumed to be declined and the case was fixed for hearing of exparte argument. It is also not less significant to mention here that on 17.12.2018, after hearing the submission of Ld. Advocate of the Union this Tribunal observed that the Company has contested this case by placing its version through a written statement and cross-examining the W.W.1. Thereafter a fresh notice was issued upon the Company asking it to show cause as to why the case shall not be heard and proceeded with in its absence.



Thereafter, the Company again appeared in the case but it did not show any cause.

### DECISION WITH REASONS

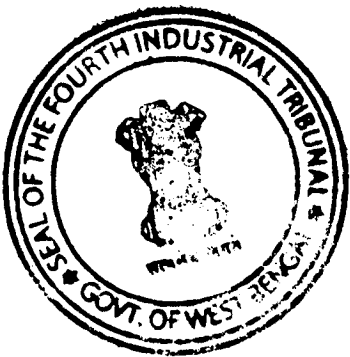
It is claimed by the Union that on 29.08.2014 and 03.09.2014 meetings were held between the members of the Union and the management of the Company wherein various demands of both sides were placed. But the management of the Company turned down the demands of the Union like increasing of wages, leave, compensatory leave, bonus, issuance of appointment letter and identity card etc. Union also placed its Charter of Demands dated 27.09.2014 before the management of the Company and thereafter it approached the Labour Commissioner, Barasat for settlement of the issues as the management of the Company did not pay any heed to said Charter of Demands. It is further claimed by the Union that the Company gave a notice dated 05.02.2015 through its Advocate for closure of the Company on the ground of financial stringencies which was nothing but an excuse to deprive the workmen from their legitimate demands. Thereafter, getting no alternative Union made a representation dated 16.02.2015 to the Assistant Labour Commissioner, Barasat but the management of the Company without giving any proper notice closed the Company w.e.f. 06.03.2015. Thereafter, the Union through its letters dated 09.03.2015 and 17.04.2015 addressed to the Company raised protest to such closure and also intimated the matter to the Assistant Labour Commissioner, Barasat. It is urged by the Union that no retrenchment compensation as stipulated in the Industrial Disputes Act is paid to the workmen and that subsequently a new Company under the name and style of Elahi Egg Centre is opened in the same premises and that the management of the Company illegally obtained signatures of the workmen on non-judicial stamp papers. It is also urged by the Union that after receiving a complaint from the Union, the Assistant Labour Commissioner, Barasat and the Deputy Labour Commissioner, Barrackpur initiated a conciliation proceedings but due to high handedness of the management of the Company, dispute could not be resolved. It is also



claimed by the Union that closure of the Company is illegal and void as it was done in complete violation of law.

The Company has claimed inter alia that it was under immense financial distress and was unable to run the business and for that it invoked the clause 45 of its Articles of Association. It is further claimed by the Company that it did not intend to deprive its employees and therefore it issued a termination notice dated 05.02.2015 through its Advocate to all the employees intimating them that it intend to clear their all pending dues before entering into the winding up process which was served to them by speed post with A.D. It also appears to have been urged by the Company that out of 46 employees 38 have duly received their respective legitimate dues from the Company which will be evident from the separate letters prepared on non-judicial stamp papers stating that all their respective dues have been paid and that it has no knowledge of any Charter of Demands dated 27.09.2014 and that Union is not entitled to get any relief in the case.

For deciding the present matter in dispute effectively, the Tribunal has to see how many workmen had been working in the Company. In this regard the written statement of the Union is silent. Even, the W.W.-1, Md. Ali Fukri and W.W.-2 Nasir Ali Mondal have not stated anything about the number of workmen worked in the Company. But in paragraph no. 9 of the written statement of the Company it is claimed inter alia that out of 46 employees of the Company 38 after receiving the notice have duly settled their legitimate dues with the Company. From the above statement it has become clear that as per the Company it had total 46 workmen / employees at the relevant time. Although no oral evidence is present to show the number of workmen of the Company but Exhibit-7 which is a photo copy of a notice dated 5<sup>th</sup> February, 2015 regarding winding up of Hazrat Egg Traders Pvt. Ltd. issued by its Advocate Mr. Samrat Choudhury upon one Mr. Jakir Hosen speaks loudly the number of workmen of the Company. It appears from the said document that copies of said notice were also sent to 47 other workmen / employees of the said Company. From the said document and averment of the written statement of the Company it has become crystal clear that the Company had less than 50 workmen. On careful perusal of testimonies of the witnesses, exhibited documents and





other materials on record, I do not find any averment or iota of evidence to show that 50 or more workmen were employed in the Company at any point of time.

During argument, Ld. Advocate for the Union fairly submitted that as less than 50 workmen had been working in the Company they are entitled to get compensation as per section 25-FFF of the Industrial Disputes Act, 1947 but they were not paid any proper compensation.

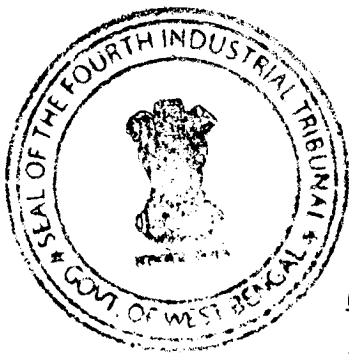
To appreciate the above argument of Ld. Advocate of the Union, I find it just and proper to mention here the provisions of Section 25-FFF of the I. D. Act, which runs as follows :-

*“(1) Where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall, subject to the provisions of sub- section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman had been retrenched: Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer, the compensation to be paid to the workman under clause (b) of section 25F shall not exceed his average pay for three months.*

*[Explanation.-- An undertaking which is closed down by reason merely of--*

*(i) financial difficulties (including financial losses); or  
(ii) accumulation of undisposed of stocks; or  
(iii) the expiry of the period of the lease or licence granted to it; or  
(iv) in case where the undertaking is engaged in mining operations, exhaustion of the minerals in the area in which such operations are carried on, shall not be deemed to be closed down on account of unavoidable circumstances beyond the control of the employer within the meaning of the proviso to this sub- section.]*

*(1A) Notwithstanding anything contained in sub- section (1), where an undertaking engaged in mining operations is closed down by reason merely of exhaustion of the minerals in the area in which such operations are carried on, no workman referred to in that sub- section shall be entitled to any notice or compensation in accordance with the provisions of section 25F, if--*



*(a) the employer provides the workman with alternative employment with effect from the date of closure at the same remuneration as he was entitled to receive, and on the same terms and conditions of service as were applicable to him, immediately before the closure;*

*(b) the service of the workman has not been interrupted by such alternative employment; and*

*(c) the employer is, under the terms of such alternative employment or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by such alternative employment.*

*(1B) For the purposes of sub-sections (1) and (1A), the expressions "minerals" and "mining operations" shall have the meanings respectively assigned to them in clauses (a) and (d) of section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957).*

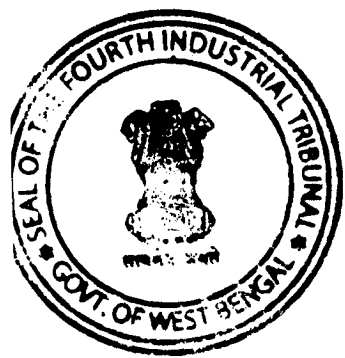
*(2) Where any undertaking set-up for the construction of buildings, bridges, roads, canals, dams or other construction work is closed down on account of the completion of the work within two years from the date on which the undertaking had been set-up, no workman employed therein shall be entitled to any compensation under clause (b) of section 25F, but if the construction work is not so completed within two years, he shall be entitled to notice and compensation under that section for every completed year of continuous service or any part thereof in excess of six months."*

It appears that by the W.B. Act of 57 of 1980, in the application of provisions of said Section to the State of West Bengal, in sub section (1) of it, before the existing proviso, the following proviso has been inserted:—

*"Provided that the prior payment of compensation to the workman shall be a condition precedent to the closure of any undertaking"*

and in the existing proviso the words "Provided that" have been substituted by the words "Provided further that".

In this case it has been claimed by the Company that it was under financial distress and for that the decision of its closure was taken. In view of the Explanation to the proviso to sub-section (1) of Section 25-FFF of the Industrial Disputes Act, the Hazrat Egg Trader Pvt. Ltd. shall not be deemed to be closed down on account of unavoidable circumstances beyond the



control of the employer. From the materials available on record it discerns that Hazrat Egg Trader Pvt. Ltd. was set up for doing wholesale business of eggs etcetera and not for the construction of buildings, bridges, roads, dams or other construction work and therefore it does not come within the ambit of sub section (2) of Section 25-FFF of the Act also. In view of the aforesaid provisions of law, every workman who was in continuous service for not less than 1 year in the said Company immediately before its closure shall be entitled to notice and compensation in accordance with the provisions of Section 25-F of the Act as if the workmen had been retrenched. On careful analysis of the materials available on record I do not find any oral evidence to show that the concerned workman were in continuous service for not less than 1 year in the Company immediately before its closure on 06.03.2015. But Exhibit-5 which is a copy of Charter of Demands dated 27.09.2014 placed by the Union before the management of the Company is of great help in the matter. Said document has been proved by the W.W.-1, Md. Ali Fukri @ Furki. It appears that no question regarding said document was put to the said witness during his cross-examination by the Company. It is clearly stated in the Charter of Demands that the management of the Company did not enhance the wages of the workmen since last 3 years. It is also pertinent to mention here that the Company also has nowhere claimed that its workmen were not in continuous service for one year before its closure. Said matter clearly shows that the concerned workmen were in continuous service for not less than one year in the Company before its closure on 06.03.2015. Therefore, they are entitled to notice and compensation.

In this case it is claimed by the Company that it issued notice through its Advocate on 05.02.2015 to all its employees intimating them the matter of its closure and settlement of their dues. Said claim of the Company is not disputed by the Union. Rather, the Union has supported the said claim of the Company by producing a copy of the said notice i.e. Exhibit 7. That apart the W.W.-1 Md. Ali Fukri @ Furki has clearly claimed in his deposition that the Company sent a letter dated 05.02.2015 bearing caption "Notice regarding winding up Hazrat Egg Traders Pvt. Ltd." through its Advocate. Aforesaid evidence and materials on record and facts and circumstances of the case



clearly show that notices regarding closure of the Company were given to the workmen.

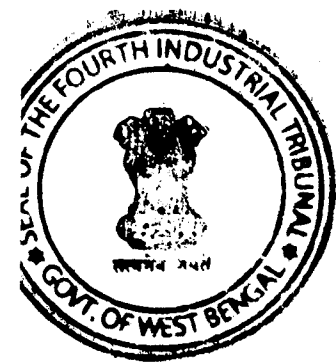
In view of the insertion of a proviso to sub section (1) of Section 25-FFF of the Industrial Disputes Act, 1947 by the W.B. Act 57 of 1980, the prior payment of compensation to the eligible workmen has become a condition precedent to a valid closure of any undertaking. Now, let me see whether prior payment of compensation was made to the workmen or not. The Company has claimed in its written statement that after getting notice, out of 46 employees 38 have duly settled their respective dues with the Company, but nowhere it is claimed that the Company has paid appropriate retrenchment compensation to the workmen before its closure on 06.03.2015. A copy of the declaration signed by the workman Nasir Ali Mondal on 10.04.2015 which is a part of Exhibit-12 amply throws light on the present matter. It appears that in said document the workman Nasir Ali Mondal has made declaration stating inter alia that he has got his all dues and claims from the Company. But no amount of money said to have been received by him is mentioned therein. It is also pertinent to mention here that though the Company has not adduced any evidence in this case but it has produced photo copies of so many documents including photo copies of the declarations of 40 workmen prepared on non judicial stamp papers, addressed to the Director of the Company stating inter alia that they have got their all dues and claims from the Company. Contents of said declarations are similar to each-other and no amount of money or compensation said to have been paid to the workmen is mentioned therein. Company has also filed photo copies of letters of said workmen addressed to the O.C., Amdanga Police Station, Deputy Labour Commissioner, Barrackpore and Block Development Officer, Amdanga wherein similar statements were made by them. I have noticed a very unusual thing in said photo copies of the letters. It appears that workmen put their signatures on said letters after affixing revenue stamps therein. From the materials on record I do not find anything to show the reason for affixation of revenue stamps on said letters, especially when no amount of money was mentioned therein and they are not the money receipts. That apart, contents of all said letters are similar to each-other. These facts loudly and clearly show that the workmen had to put their respective signatures on the letters prepared in stereotyped manner for the benefit of the Company. On close analysis of the

aforesaid declarations and letters it cannot be said that proper retrenchment compensation was paid to the workmen by the Company. For the sake of discussion, even if, it is accepted that compensation was paid to the 40 workmen, then also it is clear that no compensation was paid to rest workmen. I do not find any evidence or material to show that the Company gave / sent compensation money or cheque thereof to the workmen who did not sign on the declarations as stated above. It is not disputed that the closure of the Company was made on 06.03.2015 but said declarations and letters were signed by the workmen on 10.04.2015, 10.05.2015 and 10.07.2016. It is not a case of the Company that it paid compensation to the workmen prior to 06.03.2015 and subsequently obtained said declarations / letters from them. Under the circumstances, it has become crystal clear to me that no retrenchment compensation was paid to the workmen prior to closure of the Company.

Considering the facts and circumstances of the case, evidence and materials on record and in the light of my foregoing discussions and observations I have no hesitation to hold that closure of Hazrat Egg Trader Pvt. Ltd. with effect from 06.03.2015 is unlawful.

During argument, Ld. Advocate for the Union fairly submitted that this Tribunal cannot pass any order for reopening of the Company but retrenchment compensation and further adequate compensation should be granted to the workmen for the loss suffered by them due to the unlawful closure of the Company.

I find substance in said submission of Ld. Advocate of the Union. Workmen fulfilling statutory requirements are entitled to get retrenchment compensation, even if the closure of the concerned undertaking is made lawfully. Workmen of an undertaking which has been closed lawfully and the workmen of an another undertaking which has been closed unlawfully cannot be placed on the same pedestal. In this case the closure of the Company is unlawful and it cannot be disputed that workmen are the worst sufferers of said unlawful closure. In my humble opinion, the workmen should not be left to suffer for unlawful closure of the Company as no breach of law should be allowed to remain without a remedy. Therefore, with a view to mitigate the sufferings of the workmen an adequate compensation in addition to the



retrenchment compensation should be granted to them. It is relevant to mention here that wage structure which was prevalent for the workmen of the Company is not brought before the Tribunal. Considering all factual aspects and materials on record, I find it just to hold that in addition to the retrenchment compensation, Rs. 50,000/- should also be awarded to each of the workmen for the sufferings caused to them due to unlawful closure of the Company.

Hence, it is declared that closure of Hazrat Egg Trader Pvt. Ltd. w.e.f. 06.03.2015 is unlawful. Hazrat Egg Trader Pvt. Ltd. is directed to pay proper retrenchment compensation to all concerned workmen within 60 days of this day. In addition to above, the Company is directed to pay Rs. 50,000/- to each of the workmen within said period i.e. 60 days.

This is my Award.

Dictated & Corrected by me,

*Sd/- Gopal Kr. Dalmia*

Judge

*Sd/- Gopal Kr. Dalmia*

Judge

Fourth Industrial Tribunal

Kolkata

29.05.2019

**Judge**

**Fourth Industrial Tribunal. W.B**

