

/55787/2019

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

No. Labr/724/(LC-IR)/22015(16)/95/22018

Date : 01.08.2019

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 938 - IR/11L-147/05 dated 15.09.15 the Industrial Dispute between M/s Calcutta Electricity Supply Corporation Ltd., CESC House, Chowringhee Square, Kolkata - 700 001 and its workmen represented by CESC Sramik Karmachari Union, C/o CESC House Annex Union Office & CESC workmen Union, 55, Surya Sen Street, Kolkata - 700 009 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, Fourth Industrial Tribunal, Kolkata.


AND WHEREAS the Judge of the said Fourth Industrial Tribunal, Kolkata, 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

Date : 01.08.2019

No. Labr/724/1(5)/LCIR

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

1. M/s Calcutta Electricity Supply Corporation Ltd., CESC House, Chowringhee Square, Kolkata - 700 001.
2. The Secretary, CESC Sramik Karmachari Union, C/o CESC House Annex Union Office & CESC workmen Union, 55, Surya Sen Street, Kolkata - 700 009.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.


Deputy Secretary

Date : 01.08.2019

No. Labr/724/2(2)/LCIR

Copy forwarded for information to :

1. The Judge, Fourth Industrial Tribunal, Kolkata with reference to his Memo No. 854 - L.T. dated 01.07.2019.
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. Calcutta Electricity Supply Corporation Ltd., having registered Office at CESC House, Chowringhee Square, Kolkata – 700 001 and its workmen represented by CESC Sramik Karmachari Union, C/o. CESC House Annex Union Office & CESC workmen Union, 55-Surya Sen Street, Kolkata –700 009.

(Case No. VIII-32/15)

BEFORE THE FOURTH INDUSTRIAL TRIBUNAL, WEST BENGAL

P R E S E N T

SHRI GOPAL KUMAR DALMIA, JUDGE

FOURTH INDUSTRIAL TRIBUNAL

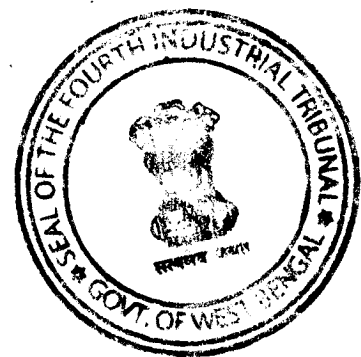
KOLKATA.

A W A R D

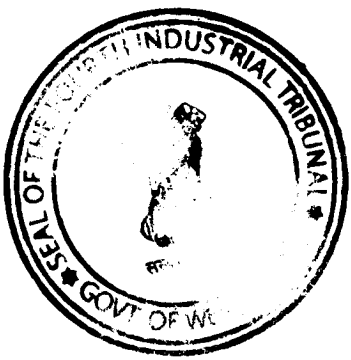
In the matter of an Industrial Dispute between M/s. Calcutta Electricity Supply Corporation Ltd., having registered Office at CESC House, Chowringhee Square, Kolkata – 700 001 and its workmen represented by CESC Sramik Karmachari Union, C/o. CESC House Annex Union Office & CESC workmen Union, 55-Surya Sen Street, Kolkata – 700 009, Vide G.O. No. 938-IR/IR/11L-147/05 dated 15.09.2015 referred to this Tribunal for adjudication of the following issues.

I S S U E (S)

1. Whether the workmen of CESC Limited are entitled to receive two additional lifebuoy cake (washing Soap) or modern washing Material (Powder) in Lieu of Washing Soap?
2. Whether not agreeing to provide two additional lifebuoy cake or modern washing Material (Powder) to the workmen by the mgf. as convention after Palit award is justified?
3. What relief, if any, the workmen are entitled to?



The case of the Calcutta Electric Supply workmen's Union (hereinafter referred to as the Union No. 2) in short is that since 1955 a select category of workmen of the CESC Ltd. have been receiving a certain quantity of washing soap in terms of the "Palit Award". In 1966, as per agreement between the management of the Company and the workmen an arrangement was made and thereby the workers started receiving a full bar of washing soap in addition to the soap which they were receiving for the purposes other than washing of uniform. With the passage of time, in the year, 1980, the erstwhile ball form soap was replaced with Sunlight soap. In the year, 1993 the manufacturer of the soap stopped manufacturing the soaps weighing 150 grams and started producing soap weighing 200 grams. Accordingly, the allotment of number of washing soap cakes was changed keeping the total quantum of weight of soaps unchanged. It is also claimed by the Union no. 2 that in the year, 2011 the allotment of soap was revised and every concerned workman became eligible to get two Lifebuoy soap cakes and three Sunlight soap cakes per month. In the year, 2015 the Union no. 2 raised demand for providing modern washing materials in lieu of washing soap. But the CESC Shramik Karmachari Union (Union No. 1) with a view to frustrate the legitimate demand of the Union No. 2, started demanding more soaps for personal hygiene over and above what was being received by the workmen. It is also urged by the Union No. 2 that per capita consumption of soap for personal hygiene is lower than that of washing soap in India and that the laundry soap that had been traditionally used for washing of clothes / fabric has limitations in its performance in highly alkaline or acidic water and that washing soap cannot be used in washing machines. It is further averred in the written statement of the Union No. 2 that lifebuoy soap is used for personal hygiene and Sunlight laundry soap is used for washing clothes and that the soap provided for personal hygiene is adequate and there is no requirement of enhancement of quantity of said soap. It is also claimed by the Union no. 2 that demand of modern washing material i.e. synthetic detergent powder in lieu of washing soap is quite justified. It has prayed for an award declaring that the workmen of CESC Ltd. are entitled



to get detergent powder in lieu of washing soap in addition to the soap received for maintaining personal hygiene.

The CESC Shramik Karmachari Union (hereinafter referred to as the Union No. 1), has filed its written statement denying material allegation made by the Union no. 2 against it. The case of the Union No. 1, in brief is that it is a recognized trade union having registration no. 20672. It has claimed that as per long practice and usages, a section of Company's workmen have been receiving soaps for cleaning their uniform and their entitlement of soaps was reviewed from time to time. In the year, 2011 the entitlement of washing soap was revised in some departments of the Company and it started supplying two lifebuoy soaps in lieu of two washing soaps and system of supplying balance quota of washing soaps was introduced. The Union No. 1 being the sole bargaining agent raised demand for two additional lifebuoy soaps in addition to the quota of washing soaps awarded by the Tribunal. It has also stated about the reference of the dispute to the Additional Labour Commissioner by a letter dated 07.01.2015 of the management of the Company and a meeting held on 03.02.2015 in the chamber of the Additional Labour Commissioner and suggestion / recommendation of the Joint Labour Commissioner for restoring supply of 675 grams of washing soap which was the maximum quantity of that soap introduced by the management of the Company by a memo No. IR: 3523 dated 10.05.1993 without affecting the other existing facility and implementation of said recommendation by the Calcutta Electricity Supply Corporation Limited. It is also stated that due to non acceptance of the demand for issuance of modern soap, the Union No. 2 moved a writ application before the Hon'ble High Court, Calcutta and after hearing, in presence of the parties, the Hon'ble Justice Tapabrata Chakraborty was pleased to dispose of said writ application by setting aside the recommendation dated 03.02.2015 of the Joint Labour Commissioner. The Union No. 1 has also claimed that all the employees / workmen who are members of the Union Nos. 1 & 2 are accepting and enjoying the benefits conferred by the memo No. 9387 dated 10.02.2015 of the General Manager (IR) of the CESC Limited without making any demur and protest.



On the other hand, the CESC Limited (hereinafter referred to as the Company) has denied the material allegations of the Union No. 2 and claimed inter alia that Union No. 1 has been elected as the sole bargaining agent in the election conducted in the year, 2016 as per the provisions of the Trade Unions Act, 1926 and Rules framed thereunder. It is claimed by the Company that it has 8266 workmen and reportedly not even 11% of its workmen are members of the Union No. 2 and that the present order of reference is not maintainable. The Company has also claimed that though the Union No. 1 is the recognized sole bargaining agent but it has not raised any dispute regarding allotment or distribution of washing soap / powder or soap for hygiene and that the Union No. 1 has accepted the recommendation made by the office of the Conciliation Officer. The workers of the Mains Department are provided with uniform but not even 10% of them wear uniform. It also appears to have been claimed by the Company that there was an industrial dispute regarding a Charter of Demand pertaining to the cost of washing uniform which was referred to the First Industrial Tribunal and the Ld. Tribunal held that one bar of soap weighing 500 grams per month be given to the workers for the purpose of cleaning their uniform and the Company implemented the said direction by an order dated 02.11.1966. The Company has also stated in its W.S. about the supply of the soaps of various brands to the concerned workmen as per their entitlement. It is also urged by the Company that on 17.09.2011 it was decided that the employees of Mains Department were entitled to get lesser quantity of "lifebuoy" and "Sunlight" soaps after introduction of medicated soap and accordingly a notice dated 17.09.2011 was issued. It is also urged on behalf of the Company that the dispute with regard to quantum and variety of washing soap was referred to the Office of the Labour Commissioner by the management of the Company through its letter dated 07.01.2015 inasmuch as the Union No. 1 at that point of time started demanding two additional lifebuoy soaps in addition to the quota of washing soaps awarded by the Tribunal and the Union No. 2 also raised demand for issuance of modern washing materials in lieu of washing soap. The Conciliation Officer convened the joint meeting and on 03.02.2015 it was implored from his end to the parties to restore supply of 675 grams of



washing soap which was the maximum quantity of washing soap introduced by the management of the Company through its memo. dated 10.05.1993 without affecting other existing facility. Said request was duly implemented by the Company w.e.f. 01.02.2015 by a notice dated 10.02.2015. Union No. 2 filed a writ petition bearing W.P. No. 4679 (W) of 2015 challenging the minutes of the meeting dated 03.02.2015 and the recommendation made therein by the Conciliation Officer. It is also stated that various orders were passed by the Hon'ble Court in respect of said writ petition and ultimately said writ petition was disposed of.

The Company has also claimed that the entitlement of the soap varies from section to section. All its workmen are not employed in such sections or department where cleaning of uniform is necessary. Workmen of various sections / departments are provided with different quantities of soaps, but the quality and brand of the soaps are same. No other department's workmen have any grievance in this regard. After the issuance of letter dated 10.02.2015 of the management of the Company, there has been unequivocal acceptance of the benefits flowing therefrom, by the eligible workmen of the Company in the concerned Section i.e. Mains Department. Subsequently, a letter dated 11th February, 2015 was received from the Union No. 2 in which "washing soap" was interpreted as "washing detergent". Said letter was forwarded to the Conciliation Officer. However, by that time, the system of providing 675 grams of washing soap cakes along with existing facility of providing two lifebuoy soaps had already been implemented for the same category of employees. The allotment of Lifebuoy soap for maintenance of hygiene of person of workman is different from the allotment of washing soap cakes and that the quality of the washing soap cakes, in its chemical value has increased substantially. The Company has prayed for deciding the issues of the reference in its favour and against the Union.

On behalf of the Union No. 1, one Samir Kumar Panja has been examined as P.W.-1 and documents have been marked as Exhibits 1 and 2. One Shri Tarun Bharadwaj has been examined on behalf of the Union No. 2 as P.W.-2 and documents have been marked as Exhibits 3 to 9. Whereas



one Abhijit Sarkar has been examined as O.P.W.-1 on behalf of the Company and documents have been marked as Exhibits A to I.

Exhibits 1 and 3 to 9 are photo copies of different letters and Exhibit 2 is a photo copy of a certificate issued by the Registrar of Trade Unions, W.B.

Exhibits A, B, C, E and F are photo copies of different letters. Exhibit-D is a photo copy of the minutes of the meeting held on 03.02.2015 in the chamber of the Additional Labour Commissioner. Exhibit-G is a photo copy of the writ petition bearing W.P. No. 4679 (W) of 2015. Exhibit-H is a copy of the order of the Hon'ble Court passed on 16.04.2015 in connection with the said writ petition and Exhibit-1 is photo copy of some pages of a register.

DECISION WITH REASONS

In order to decide the subject matter of the issues referred to this Tribunal effectively and properly some important claims of the parties are required to be looked into and considered carefully.

It is claimed by the Union No. 1 that as per long practice and usages a section of workmen of the Company has been receiving soaps for cleaning their uniforms and their entitlement of soaps was reviewed from time to time. In the year, 2011 management started supplying two lifebuoy soaps for the hygiene of person of the concerned workmen after deducting two washing soaps from the quota of washing soaps to be supplied to the workmen. Then Union No. 1 started demanding two additional lifebuoy soaps over and above quota of washing soaps fixed by the Tribunal. It also appears to have been claimed by the Union No. 1 that by a communication dated 10th February, 2015 the General Manager (IR) of the Company has restored the supply of 675 grams of sunlight washing soap in addition to two lifebuoy soaps. The Company has claimed the same thing in its written statement.

On the other hand, Union No. 2 claims that in the year, 2011 the allotment of soaps was revised and every concerned workman became eligible to get two lifebuoy soaps and three sunlight soaps per month. It



has also claimed that in the year, 2015 Union No. 1 started demanding more quantity of soaps for personal hygiene with a view to frustrate the legitimate demand of the Union no. 2 for providing modern washing materials in lieu of washing soaps. It has further claimed that the quantity of soaps provided for personal hygiene is quite adequate and there is no need of enhancement of quantity of said soap.

From the written statements of the parties it appears that the Union No. 1 has demanded more soaps for personal hygiene and Union No. 2 has demanded modern washing materials / synthetic detergent powder in lieu of washing soaps. The Union No. 1 has not raised any demand of synthetic detergent powder. Whereas Union No. 2 has claimed that the quantity of soaps provided for personal hygiene is sufficient and it requires no enhancement.

Now let me see and analyse the evidences produced by the parties. In respect of the aforesaid matter, P.W.-1 Shri Samir Kumar Panja, who is a Joint Secretary of the Union No. 1 has deposed in the line of the W.S. of the said Union. While deposing on behalf of the Union No. 1, he has claimed that it relies upon the notice bearing No. 9387 dated 10th February, 2015 of the Company regarding revision of entitlement of soap cakes and on the basis of said notice all workmen of both the Unions have been receiving lifebuoy cakes and washing soaps by admitting the contents of said notice. He has identified a photo copy of said notice dated 10th February, 2015 of the Company (Exhibit-1) and a photo copy of a certificate issued by the Registrar of Trade Unions, W.B. on 18.11.2016 (Exhibit 2) showing that the Union No. 1 having secured more than 50 per cent (precisely 86.58%) of votes cast in the election held on 18.11.2016, has been found to be eligible for recognition as the sole bargaining agent in M/s. C.E.S.C. Ltd. Chowringhee Square, Kolkata-700 001 and concerned employer was directed to recognise the aforesaid Union as the sole bargaining agent in the above mentioned industrial establishment for a period of two years with effect from 18.11.2016.

O.P.W-1 Shri Abhijit Sarkar is the General Manager (IR-Distribution) of the Company. He has deposed in the tune of the statements made in the W.S. of the Company. He has stated inter alia that



the election of the Trade Unions was held in the year, 2016 and CESC Shramik Karmachari Union was elected as the sole bargaining agent under the provisions of Trade Unions Act, 1926. Again on 08.02.2019 said Union was elected as the sole bargaining agent and that CES Workmens Union i.e. union No.2 did not even get 7% votes. It is also stated by him that not even 10% of the workmen of the Mains Department is required to wear uniform. The Company provides two sets of terry cotton uniform every year as per the binding tripartite settlement arrived at the instance of the Conciliation Officer appointed by the Govt. of W.B. It also appears to have been stated by him that since 2011, the Company started giving hygienic soap to workers of the Mains Department and reduced the quantity of washing cakes whereas in other departments earlier system was continued. He has stated about the disputes raised by the Unions, meeting held on 03.02.2015 and minutes of the said meeting. He has also stated about the writ petition being No. W.P. 4679 (W) of 2015 filed by the Union No. 2 and has further stated that the Hon'ble High Court, Calcutta by an order dated 16.04.2015 set aside the Conciliation Officer's recommendation dated 03.02.2015. Copies of the said writ application and order of the Hon'ble Court have been marked as Exhibits G & H. It appears from Exhibit-H that by the order dated 16.04.2015, the Hon'ble Justice Tapabrata Chakraborty has been pleased to dispose of the said writ petition by holding inter alia that "In the conspectus of the facts and in view of the submissions made by the learned counsels appearing for the respective parties, the writ application is disposed of setting aside the impugned recommendation dated 3rd February, 2015 issued by the respondent No. 4."

O.P.W-1 Shri Abhijit Sarkar has stated clearly in his evidence that presently the Company provides 4 ½ Nos. of Sunlight Soaps (675 grams per unit) to each workman per month in various departments. That apart, each eligible workman is also given two Lifebuoy Soaps per month.

It depicts that Joint Labour Commissioner, West Bengal was the respondent No. 4 in said writ petition. It has also become clear that recommendation made by the Joint Labour Commissioner, West Bengal was set aside by the Hon'ble Calcutta High Court. In this regard, Ld.



Advocates for the Company and Union No. 1 have argued that though by the order dated 16.04.2015 the Hon'ble High Court, Calcutta set aside the recommendation made by the Joint Labour Commissioner, West Bengal but there was no restriction upon management of the Company for giving 675 grams of washing soaps and 2 Lifebuoy Soaps to its concerned workman as the Hon'ble Court did not restraint the Company from doing so. Said contention is not opposed by the Ld. Advocate of the Union No. 2. On careful perusal of the materials on record, I find substance in the aforesaid submission of the Ld. Advocates for the Company and Union No. 1.

It is also urged by the O.P.W-1, Shri Abhijit Sarkar in his deposition that no workmen of the Union had ever complained that the system of giving washing soaps is in any manner detrimental to the object of granting the same or that the washing soaps presently provided by the management is of sub-standard quality or inadequate for washing two sets of uniform per year provided by the management. He has stated about the demand of Union No. 2 for providing washing materials in lieu of washing soaps and has claimed that no data or information has been provided as to how many workmen actually own washing machines or as to whether they actually face any difficulty with the present system of washing soaps or not. The resultant cost effect has also not been disclosed by the Union No. 2. It is further stated by him that over a period of more than four decades, the management has never received any complaint to the effect that maintenance of two sets of uniform per year has been adversely affected in any manner whatsoever by reason of the washing soaps being provided by the management. He has further stated that the demand for modern washing materials or detergent powder in lieu of washing soap is vague and there is no basis for such classification to be made.

On the other hand, P.W.-2 Shri Tarun Bharadwaj, who is the General Secretary of the Union No. 2 has deposed in the tenor of the written statement of said Union. He has stated inter alia that workmen were always entitled to receive washing soap apart from the soap used for other purposes like personal hygiene etc. and that with the passage of time the ball form soap was replaced with Sunlight soap in the year, 1980 and said



Sunlight soap falls in the category of washing soap used for the purposes other than personal hygiene etc. It is further stated by him that in the year, 2011 the allotment of soaps was revised and workman became eligible for two lifebuoy soap cakes and three Sunlight Soap cakes per month. It is further stated by him that in the year, 2015 the Union No. 2 raised the demand for providing modern washing materials in lieu of washing soap but Union No. 1 started demanding more quantity of soaps for personal hygiene over and above what was being received by the workmen only to frustrate the legitimate demand raised by the workman through Union No. 2. He has also stated about some limitations of washing soap and has claimed that synthetic detergent is superior in performance and that washing soap cannot be used in washing machine. He has also stated about the description of Lifebuoy and Sunlight soaps and has urged that Lifebuoy soap is used for personal hygiene and Sunlight laundry soap is used for washing clothes. It is also stated by him that the quantum of soap provided for personal hygiene is adequate and there is no requirement for enhancement of the quantity of said soap. It is further urged by him that demand for modern washing material namely synthetic detergent powder in lieu of washing soap is justified as it has better cleansing property than that of laundry soap. He has identified photo copies of 7 (seven) letters (Exhibits 3 to 9). During cross-examination he has stated clearly that they did not get consent of all members of their union before raising the dispute in question. In the same time he has stated further that they demanded high quality soap for the workers. It has been clearly admitted by him that members of their union also are receiving the washing materials provided by the CESC Limited. He could not say how many members of the Union No.2 are using washing machines. It is clearly stated by him that "In the year, 2016, CESC Shramik Karmachari Union was elected as the sole bargaining agent. Our Union withdrew itself from taking part in the said election process of the year, 2016."

Although in issue No. 2 the name of Palit Award is mentioned but none of the parties has filed any copy of said Award. On being asked respective Ld. Lawyers of the Company and Union Nos. 1 & 2 have submitted that said Palit Award was passed long ago and they do not have



any copy thereof and as such they are unable to file any copy of said Award. Therefore, this Tribunal does not have any opportunity to read the contents of said Award. As regards the question regarding convention of providing washing soaps to the workmen, it has become clear from the pleadings of the parties and evidences of the respective witnesses that washing soaps are being provided to the workmen since 1966. There is no evidence or material to show that the washing / detergent powder was being provided to the workmen. So, it cannot be said that there was any convention of providing washing / detergent powder to the workmen. On the contrary, it depicts that washing soaps are being provided to the workmen for washing their uniforms since long.

As regards the demand of Union No. 1 for providing two additional lifebuoy soaps, it has become clear to me that at present in addition to 675 grams of washing soap, two lifebuoy soaps for the personal hygiene are being given to the every concerned workman. From the deposition of P.W.-2, Shri Tarun Bharadwaj it has become crystal clear that the quantum of soaps provided for personal hygiene is quite adequate and there is no need of enhancement of quantity of said soap. Moreover, I do not find anything from the deposition of P.W.-1 Shri Samir Kumar Panja also who has deposed on behalf of the Union No. 1 to state that there is a need of enhancement of the quantity of soaps for personal hygiene to be supplied to the workmen. In addition to above, O.P.W-1 Shri Abhijit Sarkar has stated in his examination in chief on affidavit that the management has already increased the number of hygienic soaps per workman per month after February, 2015 Conciliation Meeting. During argument said matter is not disputed by the Ld. Advocate of the Union No. 2. Under the circumstances, I find it just and proper to hold that the workmen of CESC Limited are not entitled to receive additional / more Lifebuoy soaps than that of being supplied to them.

Another issue which has been raised by the Union No. 2 in this case is that the workmen are entitled to get modern detergent powder in lieu of washing soap. It depicts from the materials and evidence on record that in the year, 2011 the management of the Company reduced the supply of washing soaps but subsequently in the year, 2015 by issuing a letter



bearing No. IR: 9387 dated 10.02.2015 (copies of said letters have been marked as Exhibits 1 and E.) supply of 675 grams of Sunlight Soap cakes has been resumed. From the cross-examination of P.W.-2 Shri Tarun Bharadwaj it discerns clearly that at present all concerned workmen of the Company are enjoying the benefits given on the strength of said letters. The Union No. 2 has not made any demand of monetary benefit in lieu of washing soap. It has nowhere stated the number of workmen who are demanding detergent powder instead of washing soaps. Even it has not stated how many workmen are using washing machines or how many workmen have to wear uniform. The W.S. of the Union No. 2 and the evidence of its witness P.W.2, Shri Tarun Bharadwaj are completely silent about the quantum of washing powder claimed by the Union No. 2 in lieu of washing soaps. Moreover, I do not find any averment in the written statement of the Union No.2 that its demand of detergent powder in lieu of washing soap will not create any extra financial burden upon the Company. In the light of the aforesaid attending circumstances, facts of the case, evidences both oral and documentary produced by the parties and regard being had to the principles of law it cannot be said that the demand of Union No. 2 for providing detergent powder in lieu of washing soap is justified.

Hence, it is declared that the workmen of CESC Limited are not entitled to receive two additional lifebuoy cakes. They are also not entitled to receive modern washing material (powder) in lieu of washing soap. The management of the CESC Limited is justified in not agreeing to provide two additional Lifebuoy cakes (soaps) to the workmen. Management of the Company is also justified in not agreeing to provide modern washing powder / detergent powder in lieu of washing soap.

This is my Award.

Sd/- Gopal Kumar Dalma

Judge

Dictated & Corrected by me,

Sd/- G. K. Dalma

Judge

Fourth Industrial Tribunal

Kolkata

28.06.2019

Judge

Fourth Industrial Tribunal. W.B

