

I/64454/2019

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

No. Labr/ 924/(LC-IR)/22015(16)/199/2018

Date : 30/09/2019

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 562 – IR/11L-33/2016 dated 09/06/2016 the Industrial Dispute between M/s Adams Elevator Company Private Ltd., P-35, Kasba Industrial Estate, Phase-II, Kolkata-700107 and their workmen represented by Adams Elevator Company Permanent Workers Union (Kasba), Regn No. 27188, Vill+P.O.- Tentulia, P.S.- Baruipur, Dist.- South 24 Parganas, Pin-743610 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, Third Industrial Tribunal, Kolkata.

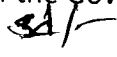
AND WHEREAS the Judge of the said Third Industrial Tribunal, Kolkata, has submitted to the State Government its award on the said Industrial Dispute.

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 : 30.09.2019

No. Labr/924/(5)/(LC-IR)

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

1. M/s Adams Elevator Company Private Ltd., P-35, Kasba Industrial Estate, Phase-II, Kolkata-700107.
2. The Secretary, Adams Elevator Company Permanent Workers Union (Kasba), Regn No. 27188, Vill+P.O.- Tentulia, P.S.- Baruipur, Dist.- South 24 Parganas, Pin-743610 .
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.

RS 30.9.19.

Deputy Secretary

Date : 30/09/2019

No. Labr/924/2(2)/(LC-IR)

Copy forwarded for information to :

1. The Judge, Third Industrial Tribunal, Kolkata with reference to his Memo No. 1244 – L.T. dated 11.09.2019.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Deputy Secretary

BEFORE THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL

PRESENT: *SRI SUBERTHI SARKAR, JUDGE, THIRD INDUSTRIAL TRIBUNAL.*

CASE NO.. VIII-23/2016

DATE – 30th August,2019

Workmen represented by Adams Elevator Company Permanent Workers Union (Kasba), Regn. No. 27188, Vill + Post -Tentulia, P.S.-Baruipur, Dist. 24 Parganas (South), Pin -743610

.....Applicant

-VS-

M/s. Adams Elevator Company Private Limited, P-35, Kasba Industrial Estate, Phase-II, Kolkata – 700 107

..... Opposite Party

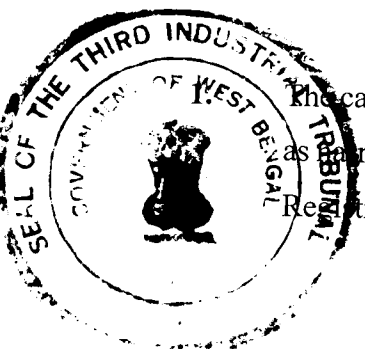
A W A R D

This case was referred by the Government of West Bengal, Labour Department vide G.O. No. 562-I.R./IR/11L-33/2016 dt. 9th June,2016 U/s. 10 relating to an Industrial Dispute between M/s. Adams Elevator Company Private Limited, P-35, Kasba Industrial Estate, Phase-II, Kolkata – 700 107 and their workmen represented by Union namely Adams Elevator Company Permanent Workers Union (Kasba), Regn. No. 27188, Vill + Post -Tentulia, P.S.-Baruipur, Dist. 24 Parganas (South), Pin -743610 to this Tribunal for adjudication of the following issues:

I S S U E(S)

1. Whether the suspension of work in partial with effect from 15.01.2015 in their factory at P-35, Kasba Industrial Estate, Phase – II, Kolkata – 700 107 by the management of M/s. Adams Elevator Company Private Limited is justified?
2. Whether one hundred fifty four (154) workmen who were affected due to suspension of work in the said factory are eligible for full wages during the operational period of said suspension of work?
3. What relief if any are the workmen entitled to?

The case of the Petitioners (namely, Adams Elevator Company Permanent Workers Union) as stated in the written statement is that the Petitioner is a registered Trade Union having Registration No. 27188 and being represented by the Secretary, Shri Arabinda Mondal.



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The respondent is a Private Limited Company being engaged in the business of installation and maintenance of elevators and/or lifts. It is the case of the Petitioners - Union that on 06.01.2015 various workers of the said Company lodged a complaint before the Labour Commissioner of the Government of West Bengal informing him of various irregularities being carried out by the management of the said Company, and requesting the concerned Labour Commissioner to take appropriate action against the Company management, alleging that the Company management was neither paying the salaries to the workers within time nor paying the other benefits to the workers. The management has also defaulted in making payment of Provident Fund and E.S.I. dues to its workers. It was also alleged that the management of the Company had been forcing its workers to take voluntary retirement that too without paying them their bonafide dues including the gratuity, provident fund dues. As a counter blast action of such complaint, the Management of the Company on 03.02.2015 served a letter upon the Labour Commissioner, Government of West Bengal stating therein that, due to disruption of service and mass resignation, the Management of the Committee was bound to declare suspension of work w.e.f. 15.01.2015. Thereafter, with the intervention of Deputy/Assistant Labour Commissioner, West Bengal a joint meeting was held on 08.04.2015 being attended by the Company Management as well as the representatives of the Applicant/Union but no fruitful result was achieved. Thereafter, the Petitioners/Union filed several representations before the Government of West Bengal requesting to take necessary action. The Petitioners also filed a demand of justice before the Statutory Authority by filing representation dt. 03.12.2015. They also filed another complaint dt. 21.12.2015 before the Regional Provident Fund Commissioner requesting him to take immediate steps against the management of the respondent Company. Being highly aggrieved by and dissatisfied with the inaction on the part of the Statutory Authorities, the Petitioners filed a writ application before the Hon'ble High Court, Kolkata under Article 226 of the Constitution of India bearing W.P. No. 963(W) of 2016, however, subsequently the same was withdrawn. Ultimately by order dt. 09.06.2016 the present dispute was referred by the Deputy Secretary, Government of West Bengal before this Tribunal for adjudication.

So far as the issue no. 1 is concerned it is contended on behalf of the Union that, it is illegal and arbitrary on the part of the Company to close down their unit without following due process of law. Neither the respondent/Company initiated any steps for retrenchment/termination of the duties of the Petitioners, nor the Petitioners received any notice to show cause from the respondent. It is very unfortunate that the Management of the Company had sought to close-down their business without adhering any of the procedure prescribed under the law. The Petitioners denied and disputed the blatant lie that there was mass-resignation of workers at the said factory. Recently, the Petitioners came to know that the management has started a partnership firm under the name and style of 'Adams Elevator' and is trying to shift the business of 'Adams Elevator Company Limited' into a new firm by employing new sets of employees. Thus, in one hand, the

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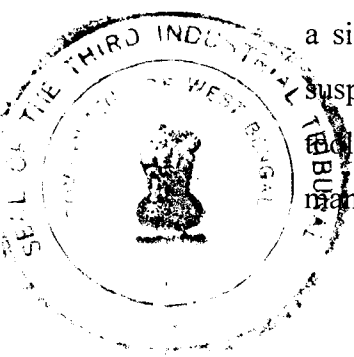
Company is trying to deprive its present and retired employees, their bonafide dues, salaries, wages and other benefits and on the other hand they are trying to continue with their profitable business through a sister concern of their own.

It is contended further, that, surprisingly the workmen worked till 30th January, 2015 but suppressing such fact a back dated notice was issued declaring alleged suspension of work on 15.01.2015. It is also very surprising to note that on 15th January, 2015 one advertisement was published in the leading Bengali newspaper 'Ananda Bazar Patrika' stating that "normalcy has been restored and all services are now available". This is nothing but an act of duplicity and misguiding the poor workers.

Due to such illegal high-handed activity of the Management of the Company the Petitioners are entitled to full back wages from the date of the issuance of alleged suspension of work till disposal of the present dispute, as well as the other benefits as per prayer portion of the written statement.

2. The Company contested the case of the Petitioners/Union by filing a written objection denying the case as well as allegations of the Petitioners, stating inter-alia that the case filed by the Petitioners suffers from gross suppression and distortion of relevant facts. It is contended that in the year 2013-2014 innumerable separate entities were formed by different sections of workers under different name and style and started taking away the business of Adams Elevator Company Pvt. Ltd. Due to lack of business and due to financial stringency, many staff were transferred to different locations, such as New Delhi, Chennai, Asansol and Patna office, including the Secretary of the Union, but they refused to leave the station and they were without pay since they never reported to the locations where they were transferred w.e.f. December, 2014. Further, case is that since June/July, 2014 onwards, the management noticed that a number of its employees forming group under the leadership of Bappa Mukherjee and S.K. Gani (supposed to be members of the said Union), being conspired with each other to form some business establishment within the property of KMDA, provoked all employees of the Company to resign and join the alternative establishment. It is contended that since October, 2014, all such employees being instigated by said Bappa Mukherjee and S. K. Gani, stopped other employees to discontinue their output. The Management organised meeting with the workers Union to intervene the issue, but the workers Union being provoked by outsiders took the side of the outgoing employees without settling any demand and raising any dispute from the employers/Adamas. The workers Union have denied its duty under the statute and never tried to assist the management to run the factory in its proper form. It is contended that in a single day about 90% of employees (in maintenance department) either resigned or suspended their job without any intimation and illegally carried out all the equipment and tools and parts (of lift) with them. Other existing employees declared non-cooperation with management, virtually declared strike. In their written statement, the Company mentioned

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the names of Forty employees who submitted their resignation. Accordingly, the Company under compelling circumstances declared suspension of work w.e.f. 15.01.2015. Thus, it is contended that suspension of work is not due to any fault of the employer/Management of the Company, and that all the statutory stipulations were complied with by the management of the Company. The suspension of work is being called in response to an illegal strike. By letter dt. 17.02.2015, the management communicated the reasons of such 'Suspension of Work' at the factory of the Adams. It is further contended that on the date of suspension of work, the employees who expressed their willingness in writing to continue their job with the Company, they already worked and obtained their regular salary and as such the workers who resigned from their job are not at all entitled to get full wages during the operational period of said suspension of work. So, they are not entitled to get any relief from the Company. Contending all such facts and circumstances, the Company has prayed for dismissal of the petition filed by the Union with exemplary cost.

3. The contesting parties were given the chance to adduce their evidence. Accordingly, the Union adduced two witness namely, P.W.-1 Shri Arabinda Mondal and P.W.-2 Shri Banamali Dolui. The following documents were produced and proved from the side of the Union :-

S.L No.	Exhibit	Name of Documents	Documents Date	Exhibit Date
1.	1 (4 pages)	Complaint Letter	06.01.2015	11.12.2017
2.	2 (3 pages)	Suspension of work letter and Notice	03.02.2015	11.12.2017
3	3 (4 pages)	Letter of the Union and the notice of the Ld. Labour Commissioner (W.B.)	12.03.2015 & 16.03.2015	11.12.2017
4	4 (2 pages)	Representations	21.05.2015	11.12.2017
5.	5 (4 pages)	Complaint to ALC, Kolkata	26.06.2015	11.12.2017
6.	6 (6 pages)	Demand of Justice on behalf of the Union by Shri Sumanta Biswas, Advocate	03.12.2015	11.12.2017
7.	7	Advertisement of the Company published in 'Ananda Bazar Patrika'	15.01.2015	11.12.2017

On the contrary Shri Debasish Dey was examined as O.P.W.-1 from the side of the Company. Some documents were marked as exhibit. But thereafter he did not turn up to give an opportunity to the other side for cross-examination. Thereafter as per prayer of the O.P./Company, the entire evidence of O.P.W.-1 was expunged by Order no. 36 dt. 15.02.2019. Afterwards the O.P./Company did not want to tender any evidence and accordingly their evidence was directed to be closed by Order no. 38 dt. 08.04.2019.

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These are all the evidence and materials on records.

4. **Decisions with reason**

In the instant case the petitioner is the workers Union claiming itself a registered trade Union. The Union has adduced two witnesses namely Shri Arabinda Mondal (PW-1) and Shri Banamali Dolui (PW-2), both of the said witnesses were cross-examined at length by the opposite party/Company. Now, it appears that the OP/Company brought witness namely Shri Debasish Dey (OPW-1). Some documents were also exhibited on their behalf. But thereafter the Company was not able to bring him in this Tribunal and accordingly the Petitioner/Union could not get opportunity to cross-examine him. However, as per prayer of the OP/Company the entire evidence of OPW-1 was expunged. Thus, it is very much clear that the OP/Company contested the present case by cross-examining PW-1 and PW-2 at length and accordingly a substantial portion of the evidence has been recorded. Moreover, though the OP expunged evidence of OPW-1, the Ld. Advocate placed his argument before this Tribunal. Thus, the entire dispute should be disposed of as a contested one.

5. The first point of objection raised by the OP/Company is that the trade Union headed by Shri Arabinda Mondal is not recognized by the administration of OP/Company. It is contended that there is no such Union with Registration No. 27188 having registered office at P-35, Kasba Industrial Estate, Phase – II, Kolkata – 700 107. It is also contested that the alleged trade Union having no connection with affairs of the Company, having its office at Vill & P.O. – Tentulia, P.S.-Baruipur, District-24 Parganas (South), for its being far away from the business of the Company at Kasba, Kolkata. On the contrary the Petitioners / trade Union opposed such allegation of the Company and submitted, that the petition dt. 07.12.2016 filed by the Company for dismissal of the instant proceeding on the aforesaid ground was rejected by this Tribunal and the order being affirmed by Hon'ble High Court, Calcutta in W.P. 22510 (W) of 2017.

PW-1 is Shri Aronbindo Mondol i.e. the Secretary of the Petitioners/Union. In cross-examination he deposed that the workers Union is a registered Union and the Registration No. 27188 dt. 27.08.2012. The Union having its registered office at P-35, Kasba Industrial Estate, Phase – II, Kolkata – 700 107, but presently they are using Corresponding Address of the Union at Vill & P.O. – Tentulia, P.S.-Baruipur, Dist.-24 Parganas (South). He deposed that at present more than 154(one hundred fifty four) workmen are the members of their Union. He proved **Exhibit '1'** which is a complaint dt. 06.01.2015 lodged by the Union to the Labour Court and the said complaint shows the signature of a large number of workmen/employees of the OP/Company. PW-2, Shri Banamali Dolui is the Assistant Secretary of the applicant Union. In cross-examination he specifically deposed that there are 173 members of M/s. Adams Elevator Company Permanent Workers Employees Union. There is no evidence from the side of the Company to prove that the Petitioners/

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trade Union has no locus-standi to file the instant case. Moreover, by Order no. 13 dt. 23.06.2017 this Tribunal held that the employee's Union has been validly constituted and it is representing the majority of the workers of the said Company. Labour Deptt., Government of West Bengal has duly recognized the Union. Thus, this Tribunal has no hesitation to hold that the petition of the dismissal of the instant proceeding on the ground of non-maintainability is not sustainable. In W.P. 22510(W) of 2017, the Hon'ble High Court, Calcutta by order dt. 15.09.2017 was pleased to hold that such order impugned suffers from no impropriety. The issue regarding the maintainability raised by the Company has been properly addressed by this Tribunal with reference to the appropriate provisions of law and accordingly the writ petition was disposed of. The said order passed by the Hon'ble High Court, Calcutta has not been challenged by the Company and accordingly, it has now become binding. Thus, considering all the evidence and the materials on record as well as the order passed by the Hon'ble High Court, Calcutta as aforesaid, I am of the view that the present case is well maintainable by the Petitioners/Union.

6. So far, the issue no. 1 is concerned, let us find out whether the suspension of work is justified or not. In page 3 and 4 of their written statement it is the plea of the Company that in the year 2013-2014 innumerable separate entities were formed by the different sections of workers. It is contended that due to lack of business and financial stringency many staff were transferred to different locations including the Secretary of the Petitioners/Union, but they refused to leave the station and were without pay since they never reported to the locations where they were transferred w.e.f. December,2014. It is further contended that since June/July onwards the Management of OP/Company noticed that a large number of its employees forming group under the leadership of Bappa Mukherjee and S.K. Gani who are the members of the said workers Union and with a conspiracy provoked all the employees of the OP/ Company to resign the said Company. Accordingly, all the employees stopped working and forced other employees to discontinue their output. The workers Union have derailed from their duties under the statute and never tried to assist the management to run the factory in its proper form. Accordingly, the said group of employees being parasite slowly broke the infrastructure of the Company and so the Company on and from October,2014 became unable to provide regular service to its clients as well as the production and other regular business activities had been stopped w.e.f. November,2014. It is further contended that in a single day 90% of the employees either resigned or suspended their work from job without any intimation and illegally carried out all the equipment and tools and parts (of lift) with them. Other existing employees declared non-cooperation with the management, virtually declared strike. Few employees who were ready and willing to participate in regular job were restricted by other employees. Thus, the Company under compelling circumstances declared suspension of work w.e.f. 15.01.2015.

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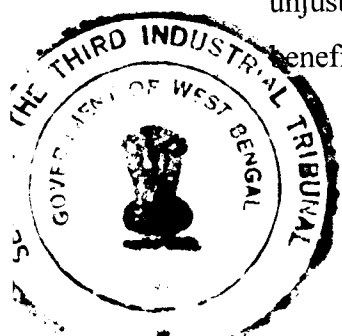


Now, let's find out whether the aforesaid contention of the Company remains merely a pleading or it is supported by any evidence. It has already been noticed that the only witness adduced on behalf of OP/Company is OPW-1. But the Company could not bring such witness to make himself available for cross-examination by the Petitioners/Union. Not only that, it further appears that such evidence of OPW-1 was expunged as per prayer of the OP/Company. So, there appears no evidence at all to justify the reason of suspension of work by the Company. On the contrary, the Petitioners/Union had tendered sufficient witnesses to prove that such suspension of work by the management of OP/ Company is unjust. PW-1 is the Secretary of the petitioners' Union. He deposed that the trouble started after taking over of the Company by the new owners. The new management started to use abusive languages to the workers. Mentioning various irregularities carried out by the Company like non-payment of salaries, wages and other benefits to the workers within time, default in making payment of provident fund, ESI dues to the workers. The Petitioners / Union lodged complaint before the Labour Commissioner, West Bengal on 06.01.2015. Such letter is marked as **Exhibit ' 1'** in the instant case. Thereafter PW-1 deposed, in a counter blast action the management of the Company declared suspension of work w.e.f. 15.01.2015 (**Exhibit '2'**) . The applicant Union repeatedly made complaint before the Statutory Authority (**Exhibit ' 4'**). There were several correspondence from the side of the Union to prove the suspension of work by the management of the OP/ Company is unjustified. PW-2 also corroborated the evidence of PW-1. They were cross-examined by the OP/ Company at length, but no benefit was obtained by the Company from such cross-examination. Although, there is allegation against the two specific employees, namely, Shri Bappa Mukherjee and Shri S.K. Gani, it is found that the OP/Company has not adduced any evidence on that score. There is no copy of F.I.R. filed from the side of the Company to show any positive steps taken by the Company against the two workers.

It is the specific case of the OP/Company that in a single day 90% of the employees either resigned or suspended their work from job without any intimation. But from Para 5 of the written statement submitted by the Company, it appears that there was no mass resignation at all. According to the information given by the Company in page 5 of their written statement, it is clear that the different employees made resignation on different dates. Some of them resigned in January,2015, some of them resigned in May,2014, July,2014, December,2014 and on different dates. Now, the Company wants to club those to a single issue. Accordingly, it is observed that there was no mass resignation at all. Moreover, it is very curious to note that the employee namely Shri Shyamal Bera (Sl. No. 12), Shri Muktaram Paul (Sl. No. 18). Shri Tushar Roy (Sl. No. 25), Shri Sanjoy Pradhan (Sl. No. 40) resigned after the date of suspension of work i.e. 15.01.2015, as it appears from the information given in page 5 of the written statement filed by the Company. The copy of the F.I.R. lodged by the Company on 03.01.2015 addressed to the Officer-In-Charge., Anandapur Police Station, Kolkata 700 107, it appears that the allegation was against the

employees regarding the agitation by the workers merely and not regarding any theft of the equipment and tools and parts of lift. The Company has no authority to deprive the total 365(three hundred sixty-five) employees for those 40 (forty) employees who resigned. Para 8 of the written statement of the Company mentioning page 7 is contradictory with the suspension notice. The Management of the Company after issuance of alleged suspension of work notice dt. 15.01.2015, did not initiate in steps for retrenching/terminating the duties of the Petitioners/ workmen, nor the Petitioners received any notice of show-cause from the management. Although the Management declared suspension of work w.e.f. 15.01.2015, it is very curious to note that the Management of the Company published an advertisement on the same date i.e. on 15.01.2015 in the leading Bengali Newspaper namely 'Ananda Bazar Patrika' informing that "normalcy has been restored and all services are now available". So, such type of declaration is nothing but duplicity taken by the Management for misguiding the workers and the concerned authorities. As it appears that the management of the Company sought to close down their business without following any of the procedure prescribed under the law. The provision of Industrial Disputes Act, 1947 has not been followed by the Company. There is no oral as well as documentary evidence at all adduced from the side of the Company to show that the so-called suspension of work by the Management is justified. Thus, in absence of any evidence from the side of the OP/Company, I am inclined to hold that the stated suspension of work w.e.f. 15.01.2015 in the factory of the OP/Company is not justified.

7. In order to consider the Issue No. '2' let us go through the evidence on behalf of the Petitioners on record. The PW-1 and PW-2 deposed the entire case of the Petitioners/workmen while there is no evidence adduced from the side of the OP/Company. The OP/Company only cross-examined those two witnesses i.e. PW-1 and PW-2. However, the evidence from the cross-examination of PW- '1' and PW '2' will not help the OP/Company to establish their case. The Company cross-examined the PW-1 only regarding the status of the Union and the cross-examination of PW-2 is not relevant regarding the dispute of the present case. The Company had not taken the endeavour to bring appropriate witness before this Tribunal to prove the attendance register and the documents regarding the Provident Fund dues and other vital documents. In absence of such document which ought to be filed by the Company so as to mark as the exhibits by adducing evidence of appropriate witness, it appears that the case of the OP/Company does not stand at all. On the contrary, PW-1 and PW-2 narrated the entire case of the Company. They have also filed the various documents in support of their evidence as well as their claim. It has already been held that suspension of work by the Management of the Company is illegal and the matter of closing down their unit without due process of law is totally unjustified. Thus, it is clear, that the Petitioners are entitled to the back wages and other benefits during the operational period of the said suspension work.



Thus, both the issues are decided in favour of the Petitioners. Accordingly, the Petitioners are entitled to the relief as prayed.

Hence it is -

Ordered

That the written statement filed by the Union is allowed on contest, but without cost. The suspension of work dt. 15.01.2015 issued by the respondent Company was published without following due process of law. The Workers are entitled to get full back wages from the date of the issuance of alleged suspension of work. The respondent Company is directed to allow immediately the Petitioners/ Workmen to resume their normal duties. The OP/Company is hereby directed to pay the back wages to the Petitioners/Workers within a period of 90 (Ninety) days from the date of passing of this award, in default the Petitioners/Workers are entitled to put the award in execution.

Let, the copies of the award be sent to the Labour Department, Government of West Bengal in accordance with the usual rules and norms.

Dictated and corrected by me.

Judge



(Subeethi Sarkar)
Judge
3rd Industrial Tribunal
Kolkata
30.07.2019