

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 12164 of 2025

Eastern Chemofarb Pvt. Ltd.

Vs.

Eastern Chemofarb Pvt. Ltd. Permanent Worker's Union & Anr.

For the Petitioner : Mr. Sachin Shukla,
Ms. Khushi Kedia.

For the Respondents : None.

Hearing concluded on : 22.07.2025

Judgment on : 13.08.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging an award dated 8th April, 2025 passed by the learned Judge, 9th Industrial Tribunal, Durgapur.
2. The petitioner's case is that it is a company engaged in the business of manufacturing "lac" and has its factory at Purulia wherein it has employed not exceeding the figure of 80 workmen at any material point of time.

3. Respondent no. 1 is the Trade Union which has purportedly raised an industrial dispute over the issue of suspension of work at the factory of the petitioner company.
4. The petitioner company had been facing severe operational challenges including loss of market shares and lack of orders and expected cooperation and extension of commitment from the side of the workers to keep the factory operational. The management gave a proposal on 26th September, 2019 that instead of paying idle wages to the entire work force at the factory, it would be expedient for the survival of the employees as well as the management that the workers might accept the proposal to work for 15 days a month on rotation basis.
5. The respondent Union rejected such proposal and as such the situation continued to deteriorate. Resultantly the management issued a suspension of work notice on 16th May, 2021 proposing to affect such suspension from 01.06.2021.
6. On the basis of such notice of suspension of work, a purported industrial dispute was raised in conciliation by the respondent union. The petitioner company, however, agreed at that stage not to give effect to the suspension of work in course of consideration after due deliberations and representations had been exchanged in course of the conciliation proceeding.
7. On 9th July, 2021 the management was constrained to declare suspension of work at the factory in Purulia.

8. On the date of declaration of suspension of work at the factory, the numbers of workmen were forty six (46), out of which thirty (30) were found to be sitting idle and received wages without any production.
9. The respondent union again raised an industrial dispute over the issue of suspension of work which was taken up in conciliation.
10. The conciliation officer, in the meeting held on 13th July, 2021 prepared a daily note sheet wherein the then existing situation prevailing as regards the non productivity and payment of idle wages to the workers at the factory were also recorded.
11. The dispute over the suspension of work declared vide notice dated 9th July, 2021 not having been settled in conciliation, the Government of West Bengal made a reference to the learned Tribunal for adjudication of the issues referred to in the order of reference dated 29th June, 2022.
12. The 9th Industrial Tribunal then passed its award dated 8th April, 2025 which was published by publication order dated 17th April, 2025. The petitioner received the same at its factory address on 25th April, 2025, and the said order is now under challenge.
13. **It is the case of the petitioner** that the factory could not be put into operation within 30 days from the date of the award as during the suspension of work 293 workmen had superannuated and resigned and only 17 workmen remained on the role of the company. The plant and machinery were rusted and could not be

made functional within a short period of time and as such have preferred the present appeal challenging the said award.

- 14.** Vide the order under challenge, the 9th Industrial Tribunal decided the following issues under a reference:-

“Date of Award : 8th April, 2025.”

This is a referred case under Section-10 of Industrial Dispute Act, 1947 (14 of 1947) for adjudication of the following issues in terms of the Letter no. Labr/647/(LC-IR)/22015(16)/29/2022 dated 29/06/2022 issued by the Joint Secretary, Government of West Bengal, Labour Department.

ISSUES

- 1) Whether the suspension of work in M/s. Eastern Chemofarb Pvt. Ltd., Vill.- Damda, P.O.-Simulia, Dist.-Purulia, PIN-723102 with effect from 13.07.2021 is justified?**

- 2) If not, what relief, the workmen are entitled to?”**

- 15.** The Tribunal finally on taking evidence and on hearing the parties and considering the materials on record ordered as follows:-

“ORDERED

that the instant referred case under section -10 of Industrial Dispute Act, 1947 framing the issues therein forwarded to this Industrial Tribunal under Letter No. Labr/647/(LC-IR)/22015(16)/29/2022 dated 29/06/2022 issued by the Joint Secretary to the Government of West

Bengal, Labour Department be and the same is considered, adjudicated and allowed on contest against the M/s Eastern Chemofarb Pvt. Ltd. and it's Management and without any cost and/or costs.

Accordingly, it is declared that the Suspension of work in M/S Eastern Chemofarb Pvt. Ltd., Village-Damda, P.O.- Simulia, Dist.- Purulia with effect from 13/07/2021 issued by the notice of suspension of work by the Management and its Employer, M/S Eastern Chemofarb Pvt. Ltd. is unjustified.

It is further directed the M/S Eastern Chemofarb Pvt. Ltd. And it's Management to allow the workmen to resume their duty and effect from 13/07/2021 along with all their service benefits which they are entitled to receive in accordance with law.

The Employer, M/S Eastern Chemofarb Pvt. Ltd and it's Management are directed to release all the service benefits of the workmen form 13/07/2021 till the date/dates of their respective joining in the factory immediately within 1 (one) month from the date of communication of the award to Employer by the appropriate Government.

A copy of this award be sent to the Secretary, Labour Department, Government of West Bengal for their information and taking necessary action in accordance with law.

Thus, this case hereby stands disposed of.

**Sd/-
Judge, 9th Industrial Tribunal,
Durgapur”**

- 16.** The contention of the petitioner praying for setting aside of the award under challenge is that the learned Tribunal passed an erroneous award, as Section 25-(O) of the Industrial Disputes Act would not be applicable to the present case as the factory was not closed and it was only a suspension of work and also because at the material point of time, the management had not employed 100 or more workmen at the factory. It is further submitted that suspension of work as declared was not illegal, as it is not prohibited by law and as such it is stated that the learned Tribunal wrongly applied the provision of Section 25(O)(1) of the Industrial Disputes Act and held that the suspension of work is unjustified.
- 17.** The specific reason for not implementing the award under challenge is that there is no sufficient number of workmen remaining in the factory after superannuation/retirement of majority of the workers and that the machines have now become dysfunctional because of factory being closed for a long period.
- 18.** Written notes has been submitted by the petitioner but there is no representation on behalf of the respondents. It appears that the learned Tribunal held that onus was upon the employer to prove the cause of suspension and it's justification.
- 19.** It is the petitioner's case that it is the party which challenges the justifiability of suspension of work must prove the same.

20. The petitioner has relied upon the following judgments in support of their case:-

- i) *Collector of Customs, Calcutta and ors. -vs- Biswanath Mukherjee, in FMA 435 of 1970 passed on 20.12.1974;***
- ii) *Management of Express Newspapers (Pvt.) Ltd., Madras vs. The Workers and others, reported in AIR 1963 SC 569;***
- iii) *Management of Rodio Foundation Engineering Ltd. And anr. -vs- State of Bihar and others, reported in 1969 SCC Online Pat 44.***

21. From the materials on record and the relevant provisions of the Act it is evident that the tribunal decided the reference on the following findings:-

- i.** The Employer/Eastern Chemofarb Pvt. Ltd. has failed to prove the fact before this Industrial Tribunal that the notice of suspension of work was issued by the Management of Employer that due to recision of market, diminishing the production of goods, excessive employees sitting in idle and suffering from financial crunch by the employer in running the factory open month by month and year after year by adducing sufficient and cogent evidence.
- ii.** The company has not submitted any statement of financial loss and profit of the company to come to a finding that the company was suffering from financial crunch in running the

factory or the intention of the employer is to take the factory to closing down of the factory.

iii. That the case of the company that they had lack of work/orders, which led to the suspension, was demolished by way of evidence when the tribunal found that in their (company) cross examination (opw-1), it came before the Court that the company had received bulk order of good after issuance of notice of suspension of work.

22. The tribunal on holding that the suspension of work in this case amounted to 'lock-out' under Section 2(l) of the Industrial Dispute Act, applied Section 25(O)(1) of the Act and held as follows:-

*“.....In view of the aforesaid definition of the Section -25(O)(1) of the Act, 1947, I am of the considered view that the Employer/Eastern Chemofarb Pvt. Ltd. or it's Management has not produced any application of prior permission from the appropriate Government before this Industrial Tribunal before the closure of the factory and issuance of notice of suspension of work that the Employer had made an application in the prescribed format to the appropriate Government for **prior permission** at least ninety days before the date on which the intended closure i.e 13-07-2021 is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and service of a copy of such application simultaneously on the representatives of the workmen in the prescribed manner.....”*

23. The following definitions in the Industrial Dispute Act, 1947 are relevant in this case:-

Section 2(cc) of the Industrial Dispute Act, lays down:-

*“**closure**” means the permanent closing down of a place of employment or part thereof;”*

Section 2(kkk) of the Industrial Dispute Act, lays down:-

*“**lay-off**” (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer **on account of shortage of coal, power or raw materials** or the accumulation of stocks or the break-down of machinery [or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.”*

Section 2(l) of the Industrial Dispute Act, lays down:-

*“**lock-out**” means the [temporary closing of a place of employment] or the **suspension of work**, or the refusal by an employer to continue to employ any number of persons employed by him;”*

24. **Section 22** of the Act provides for **prior notice** in an establishment which is involved in **public utility service** before the employees can go on strike or the employers can declare a lock out.
25. Admittedly, the petitioners herein is a manufacturer of “lac” and thus do not run a public utility service.
26. The Industrial Dispute Act, 1947, doesn’t provide the definition of ‘suspension’. **The word ‘suspension of work’ is mentioned in the definition of “lock out” under Section 2(l) of the Act.** As such the tribunal rightly held the suspension ‘Notice’ issued by the petitioner to be a ‘lock out’.
27. But, the tribunal was wrong in applying the provision under Section 25(O)(1) of the Act, as admittedly the company does not provide, nor

is involved in any public utility service and as such in view of Section 22 of the Act, the tribunal wrongly applied Section 25(O)(1) of the Act.

28. The petitioner/company in this case could have taken recourse to Section 2(kkk) of the Act which defines 'lay off' which provides for such Act in certain situations **including "shortage of raw materials", which was** one of the reasons given by the petitioner/company for issuing the "suspension of Notice".
29. As such, the findings of the tribunal to the extent that the petitioner/company could not prove that there was sufficient justifiable reasons for 'suspension of work', being in accordance with law, requires no interference.
30. Thus, the reference has been answered in accordance with law by the tribunal in it's award under challenge.
31. **WPA 12164 of 2025 is dismissed.**
32. Pending applications, if any, stands disposed of.
33. Interim order, if any, stands vacated.
34. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)