Cinema Theatres

v.

Their Workmen

(Supreme Court Of India)

HON'BLE MR. JUSTICE P. B. GAJENDRAGADKAR (CJI) HON'BLE MR. JUSTICE K.N.WANCHOO HON'BLE MR. JUSTICE K.C.DAS GUPTA

Civil Appeal No. 527 Of 1963 | 26-03-1964

Wanchoo, J.

1. This appeal by special leave arises out of an award of the industrial tribunal, Delhi. A dispute between 34 cinemas and their employees was referred for adjudication to the tribunal embracing a number of questions. In the Present appeal, however, we are only concerned with three matters :

(1) pay-scale and dearness allowance,

(2) leave, and

(3) holidays.

2. The case of the workmen-respondents was that pay-scale and dearness allowance had been fixed as far back as 1951 and required upward revision. The workmen also claimed that the provision for leave and holidays required liberalization. The appellants contended that there was no proof of any material change in the circumstances since 1951 and therefore there was also a dispute between the parties whether the cinemas should be classified into three classes or into two. As to leave and holidays, the appellants claimed that no case had been made out for any change.

3. The tribunal accepted the case of the workmen and held that there had been material change in circumstances since 1951 as compared to 1956, when the reference was made. It also upheld the contention of the workmen that the cinemas should be classified into two classes and not into three. On this basis it increased the pay-scales and dearness allowance after taking into account all the circumstances including the financial condition of the appellants. It also made certain changes in the matter of leave and holidays in favour of the workmen. The award was made on 9 November 1959, and it was ordered that the pay-scales and dearness allowance awarded thereunder would come into force from 1 January 1960. Thereupon the appellants obtained special leave from this Court, and that is how the matter has come up before us. It may be mentioned however that out of the 34 cinemas which were parties before the tribunal only 14 have come up in appeal, and the remaining 20 belonging to both classes A and B have apparently accepted the award of the tribunal.We shall take the three matters in dispute seriatim. Turning first to pay-scales and dearness allowance, the contention of the appellants is twofold. In the first place it to urged that there is no proof of change of circumstances since 1951 to justify an upward revision of the scales of pay and dearness allowance. Secondly it is urged that the tribunal went wrong in not classifying the cinemas into three classes as contended for on behalf of the appellants. So far as the first contention is concerned, it is in our opinion beyond doubt that there has been material change in circumstances since 1951 when the grades of pay and dearness allowance were last fixed, particularly when it is taken into account that the award is ordered to come into force from 1 January 1960. The main change of circumstance is the rise in the index of cost of living since 1951 as compared to 1 January 1960, from which date the award has to come into force. In the circumstances we are of opinion that the tribunal was right in holding that a case had been made out for an upward revision of pay-scales and dearness allowance, which is not linked to cost of living index but is on a sliding scale according to wages.

4. Turning now to the question of classification of the cinemas, the tribunal has classified them into two classes. The classification is based on gross revenue, and the dividing line fixed by the tribunal is at rupees four lakhs. Cinemas with gross revenue of rupees four lakhs and above have been put in class A, whereas cinemas with gross revenue of below rupees four lakhs have been put in class B. It has not been disputed that the cinemas had to be divided into classes, for the appellants' case was also that they should he divided into classes, though they urged that the classes should be three in number and not two, as contended for

by the respondents. Further we are of opinion that the criterion of gross revenue taken by the tribunal as the basis of classification appears to be a satisfactory criterion. Even the appellants' case was that classification should be made on the basis of gross revenue, though what they meant by gross revenue was somewhat different from what the tribunal has taken as the gross revenue. According to the tribunal the gross revenue meant the total receipts of a cinema without any deduction whatsoever. The appellants however contended that gross revenue should be calculated after deducting entertainment tax and distributor's share of the receipts. There is no doubt that total receipts of a cinema include entertainment tax as well as what is paid by the exhibitors (namely, the cinema) to the distributor as a charge for exhibiting a film. The appellants therefore wanted that gross revenue should be calculated after deducting entertainment tax and distributor's share from the total receipts and thereafter cinemas should be classified into three classes, namely -(i) those with gross revenue so calculated of less than rupees one lakh,

(ii) those with gross revenue of more than rupees one lakh but up to rupees two and a half lakhs, and

(iii) those with gross revenue of over rupees two and a half lakhs.

5. It may be that there is some force in the contention of the appellants that gross revenue should be calculated in the manner contended on their behalf, for entertainment tax and distributor's share of the total receipts do not form part of the appellants' real gross revenue. But all that the appellant did before the tribunal was to file a list of classification of cinemas divided into three classes but without any facts and figures in support of the list. In effect, therefore, the appellants wanted the tribunal to accept their ipse dixit as to classification without any proper attempt to justify the classification from their balance sheets. On the other hand, the workmen produced facts and figures for classification of the cinemas into two classes. Naturally, the tribunal preferred the workmen's contention, supported as it was by facts and figures as against the mere ipse dixit of the appellants. Learned counsel for the appellants had to concede that there was nothing on the record as printed for this Court to justify the classification as suggested on their behalf. In these circumstances we fail to see how we can at this late stage interfere with the decision of the tribunal dividing the cinemas into two classes, which is supported by facts and figures, prepared

from the balance sheets of the appellants' cinemas. The contention that the cinemas should have been divided into three classes must in the circumstances fail.

6. Our attention has been drawn in this connexion to the Stadium Cinema, which is one of the appellants before us. It appears that by mistake the list of 34 cinemas which were parties to the dispute contained two names, namely, Stadium Cinema at No. 6 of the reference, and Irwin Stadium Cinema at No. 33 of the reference. Now it is not in dispute before us that there is only one cinema known as the Stadium Cinema at Irwin Stadium, New Delhi. But the same cinema appears to have been treated as two cinemas and we find that it has been put both in classes A and B. In class A, it appears at No. 3 and in class B it appears at No. 18 in the award of the tribunal. Obviously the same cinema cannot be both in classes A and B; and we have therefore to decide in which class it should be put. We are of opinion that this cinema should be put in class B for two reasons : first place it appears more or less of the same standard as the Race-course and the Palam Cinemas, which are in class B. In the second place as it has been put in both classes A and B, it is only fair that it should remain in the lower class. Therefore, so far as Pay scales and dearness allowance are concerned, the only relief that the appellants can get is that the Stadium Cinema should be deleted from class A and should remain in class B as Irwin Stadium Cinema.Next we come to the position of leave. The tribunal has allowed privilege leave under the Delhi Shops and Establishments Act VII of 1954 (hereinafter referred to as the Act), and there is no dispute about that. It has also allowed fifteen days' sickness-cum-casual leave, while under the Act sickness or casual leave can only be allowed up to twelve days. It is true that the appellants conceded that sickness-cum-casual leave might be raised to fifteen days per year. But it seems that this concession was made overlooking the provisions of S. 22(1)(2) of the Act, Which provides for sickness or casual leave with wages for a total period not exceeding twelve days. This Court pointed out in Dalmia Cement (Bharat), Ltd. v. Their workmen [1961 - II L.L.J. 130] that S.22 of the Act provides for a maximum of twelve days total leave for sickness or casual leave. That cannot be exceeded by a tribunal. In that case the tribunal exceeded the maximum on its own; in the present case it has exceeded the maximum on a concession by the appellants. That in our opinion makes no difference. We, therefore, reduce the total period of sickness-cum-casual leave to twelve days as provided in the Act.

7. Next we come to holidays. At the time when the reference was made eight festival holidays including three national holidays on 26 January, 15 August and 2 October were being granted by the appellants. The tribunal has increased the holidays to ten including the three national holidays. We do not think that this is a matter which calls for any interference by this Court.

Learned counsel for the appellants wanted to attack the grant of Rs. 5 as cash handling allowance to the booking clerks only. We did not permit him to do so as the point was not specifically raised in the statement of case. The appeal therefore fails except with regard to two matters, namely,

(1) Stadium Cinema will be deleted from class A for the purpose of pay-scales and dearness allowance and will remain in class B, and

(2) casual-cum-sickness leave is reduced to twelve days from fifteen days. The respondents will get their costs from the appellants.