

Workmen of Modi (P) Ltd., Bombay

Vs

M/S. Modi (P) Ltd., Bombay

Civil Appeal No. 1358 of 1967

G. K. Mitter, C. A. Vaidialingam JJ)

10.03.1972

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal, by special leave, is directed against the Award, dated February 14, 1967 of the Industrial Tribunal, Maharashtra, in Reference (IT) No. 213 of 1965. The dispute that was referred for adjudication was as follows :

"All workmen who were employed in Strand Cinema during the years 1962-63 and 1963-1964, should be paid 25 per cent of their total annual earnings during those years as bonus without any conditions attached thereto and whether they are now in service or not."

2. There is no controversy that the claim for bonus for these two years will have to be considered on the basis of the Labour Appellate Tribunal Full Bench Formula, as approved by this Court.

3. The respondent Modi Private Limited is a private limited company and was carrying on the business of investment and managing the cinema theatre named Strand.

4. Western India Theatres Ltd., is a public limited company carrying on the business of cinema films, particularly the exhibition of the films in theatres. The said company had several theatres in the major cities of the country and it was the lessee of Strand Cinema in Bombay. Western India Theatres Ltd., notified by its circular, dated January 30, 1961 of the closing down of Strand Cinema, Bombay, from March 1, 1961 and discharging all the employees. The circular stated that the closure was on account of unavoidable circumstances beyond the control of the company. On May 15, 1961, an agreement was entered into between Western India Theatres Ltd. and the Theatres' Employees' Union, Bombay. The agreement related to the payment of the amount mentioned therein from the date of closure till the reopening of Strand Cinema. On or about February 15, 1962, Strand Cinema started functioning. On March 31, 1962, an agreement was entered into between Western India Theatres Ltd., and the respondent Modi Private Ltd. The agreement refers to the fact that Western India Theatres Ltd., were the tenants of Strand Cinema and that as the said theatre needed renovation, repairs and air-conditioning, Messrs. Modi Private Ltd. has agreed to take up the management of the said theatre on the following conditions :

"(1) That Modi Private Limited have been entrusted with the management of the said theatre premises as from the February 15, 1962, being the date of reopening of the said theatre.

(2) Modi Private Limited have agreed to and shall account to and reimburse Messrs. Western

India Theatres Limited for all the profits made by the said theatre as from the said date.

(3) Whenever called upon, Modi Private Limited shall retransfer the management of the said theatre to the Western India Theatres Limited."

5. As will be seen from clause (1), extracted above, the respondent Modi Private Limited has been entrusted with the management of Strand Cinema from February 15, 1962, on which date the said Cinema was reopened.

6. The respondent issued on February 5, 1962, new appointment letters to the workmen of Strand Cinema and the workmen accepted the same. On January 21, 1964, the Union demanded bonus for the year 1962-63. The demand was made against both Western India Theatres Ltd., and the respondent. The demand was that the workmen of Strand Cinema should be paid not less than 50 per cent. of their total earnings as bonus for the year 1962-63. Again, on August 12, 1964, a similar demand was made on both the respondent and Western India Theatres Ltd. But this demand was for payment of bonus for two years, namely, 1962-63 and 1963-64. The claim was that the workmen should be paid for these two years bonus at 25 per cent. of their total annual earnings. On August 29, 1964, the respondent issued a circular intimating that one month's basic pay will be paid as ex gratia and that the said payment is without prejudice to the contention of the Company regarding its financial condition. It was also stated that the respondent reserves its right to take into consideration the payment that is being made, if in future it was required to pay any bonus.

7. On September 26, 1964, Western India Theatres Ltd., sent a reply to the Union's demand, dated August 12, 1964, for payment of bonus for the years 1962-63 and 1963-64. In this reply it was stated that Western India Theatres Ltd., has not been managing Strand Cinema for several years to the knowledge of the workmen. There is also reference to the fact that in respect of certain demands against Strand Cinema, the said Company was sought to be made a party, but it was decided that the Company has no concern with the dispute.

8. Modi Private Ltd., the respondent herein, also sent a reply on the same day to the Employees' Union. In this reply it was stated that the financial condition of the said Company was such that it did not permit consideration of the demand made by the Union for payment of bonus for the years 1962-63 and 1963-64, in respect of the staff of Strand Cinema. The respondent further stated that there was no surplus to award bonus.

9. As the demand of the Union was not met with by the respondent and as conciliation failed, the Government of Maharashtra by order, dated June 23, 1965, referred the dispute, earlier set out, to the Industrial Tribunal for adjudication.

10. It may be stated at this state that Western India Theatres Ltd. was not a party to the dispute before the Tribunal. We are referring to this aspect because being a claim for bonus being paid out of profits, the Union will have to establish to sustain its claim against the respondent that it had made profits by managing Strand Cinema.

11. The material averments in the statement of claim of the Union before the industrial Tribunal were as follows : The respondent Modi Private Limited is a distinct legal entity and registered as a private limited company under the Indian Companies Act. In order to deprive the workmen of Strand Cinema of their claim to share a large and substantial profit, the respondent had stated before the Conciliator that as per its agreement, dated March 31, 1962, with Western India Theatres Ltd., it

was only managing Strand Cinema and that at the end of each financial year the profits of Strand Cinema were handed over to Western India Theatres Ltd. The said statement of the respondent about its managing Strand Cinema in a fiduciary capacity is contrary to facts. The respondent is a distinct and separate legal entity. Any consideration of the profits and losses of Western India Theatres Ltd. for adjudication of the claim for bonus for the years 1962-63 and 1963-64 is irrelevant and unnecessary as the liability to pay the same is that of the respondent. The respondent in its written statement, dated September 23, 1965, pleaded as follows : Strand Cinema belonged to Western India Theatres Ltd. The said cinema was closed down for purposes of renovation early in 1961. After renovation, Strand Cinema started functioning in February, 1962, under its management. In pursuance of the agreement, dated March 31, 1962, with Western India Theatres Ltd., the entire profits that accrued from Strand Cinema were transferred at the end of each year to Western India Theatres Ltd. As no profits have been made and no remuneration received by the respondent during the two years in question, it was not liable to pay bonus. Western India Theatres Ltd. has incorporated in its accounts the entire receipts and expenditure of Strand Cinema and therefore the profits and loss account and balance-sheet of Western India Theatres Ltd. should form the basis for considering the claim for bonus.

12. As Western India theatres Ltd., manages several theatres at different places, it maintains one consolidated account for all its activities having one balance-sheet and one profit and loss account. In the financial years 1962-63 and 1963-64, Western India Theatres Ltd. has suffered losses and therefore no bonus can be paid by that company either.

13. On October 10, 1965, the Union made an application to the Tribunal to direct the respondent to produce its balance-sheets and profit and loss accounts as also any separate account maintained by it for the said years in respect of Strand Cinema. The Union further stated in this application that the profit and loss account of the respondent should be considered in the first instance regarding the claim for bonus. The Union further emphasised that the workmen of the respondent have nothing to do with Western India Theatres Ltd., which was a separate legal entity and which incorporates all the expenditure and receipts in respects of its trading activities throughout India. The prayer of the Union finally in the said application was to direct the respondent to produce :

- (1) Audited balance-sheets and profit and loss accounts of Messrs. Modi Private Ltd. for 1962-63 and 1963-64.
- (2) Audited statement of account maintained by Messrs. Modi Private Ltd. for Strand Cinema for the years 1962-63 and 1963-64 containing all the expenses, receipts and profits together with assets and liabilities in respect of Strand Cinema.
- (3) A copy of the arrangement or agreement between Western India Theatres Ltd., and Modi Private Ltd. under which the management of Strand Cinema is given to Messrs. Modi Private Ltd.

14. The respondent in its reply, dated February 28, 1966, reiterated its stand that it was only managing Strand Cinema in accordance with its agreement, dated March 31, 1962, with Western India Theatres Ltd. It further stated that the workmen of Strand Cinema were not its employees but were the employees of Western India Theatres Ltd. The claim for bonus, if at all, has to be made, against Western India Theatres Ltd. The claim for bonus, if at all, has to be made, against Western India Theatres Ltd. after satisfying the Tribunal that Western India Theatres Ltd. has earned profits. The respondent further stated that though the accounts of Strand Cinema were kept separate,

nevertheless the entire receipts and expenditure were transferred to the accounts of Western India Theatres Ltd. together with the profits at the end of each year.

15. The respondent, after pleading that its balance-sheets and profit and loss accounts have no bearing regarding the claim for bonus, however, expressed its willingness to produce all the records as required by the Union in its application. At this stage it may be mentioned that the respondent had produced before the Tribunal various account books, etc., that it was called upon to produce and the Tribunal has also referred to those books of account.

16. The Industrial Tribunal by its award under attack has recorded the following findings : In view of the agreement, dated March 31, 1962, the management of Strand Cinema has been entrusted to Modi Private Ltd., the respondent, and the latter was liable to account and reimburse Western India Theatres Ltd. for all profits. The management of the Cinema by the respondent was not the subject of any supervision or control by Western India Theatres Ltd. The respondent must be considered to be the contractor under Western India Theatres Ltd. for the purpose of managing Strand Cinema. As the appointment of the employees has been made by the latter after it assumed management of Strand Cinema, the workmen of Strand Cinema are the employees of the respondent. The said workmen are entitled to claim bonus from the profits made by their employer, namely, Modi Private Ltd., the respondent. But from the audited balance-sheets and profit and loss accounts produced by the respondent, it is seen that the latter for the year 1962-63 has suffered a loss of Rs. 1,13,279.75 and again a loss of Rs. 1,02,675.41 for the year 1963-64. For both these years the respondent earned no profits and hence there was no available surplus for payment of bonus. Even on the assumption that the workmen are the employees of Western India Theatres Ltd., as the latter maintains a consolidated balance-sheet and profit and loss account, which shows loss, no bonus is payable by the said Company either. If Strand Cinema is taken as a separate entity, it had a surplus of Rs. 3,38,724 for the year 1962-63 and again a surplus of Rs. 2,42,678 for the year 1963-64. But this surplus for the two years cannot be treated as the profits made by the respondent as those amounts had been transferred to Western India Theatres Ltd. as per agreement, dated March 31, 1962. The respondent, therefore, had earned no profits and it had received no remuneration for its management during the two years in question. As the workmen who are the employees of the respondents can claim bonus only out of the profits made by Modi Private Ltd., and as the latter had made no profits, no bonus is payable. In consequence the claim for bonus was rejected.

17. We have fairly exhaustively dealt with the circumstances under which the claim for bonus was made as well as the findings of the Tribunal. One significant fact that emerges is that notwithstanding the specific plea raised by the respondent that in view of the agreement with Western India Theatres Ltd., it has transferred all the profits to the said Company and that if at all the claim for bonus should be made against Western India Theatres Ltd., the latter has not been made a party to the dispute. This circumstance assumes greater importance especially in view of the fact that the claim for bonus was made by the Union on January 21, 1964, and August 12, 1964, against both the respondent and Western India Theatres Ltd.

18. Another circumstance to be noted is that though in its statement of claim, dated July 23, 1965, the Union had stated that the agreement, dated March 31, 1962, entered into between the respondent and Western India Theatres Ltd. was with a view to deprive the workmen of Strand Cinema of their legitimate share in the profits of the said Cinema, before the Tribunal, the Union gave up this stand and did not challenge either the terms of the said agreement or the validity and propriety of the said agreement. It has been recorded by the Tribunal in its Award that the workmen did not challenge the terms of the agreement, dated March 31, 1962; nor did they challenge the genuineness and the

validity of the terms of the said agreement. Both in the statement of claim as well as in its application, dated December 10, 1965, the Union has taken a categorical stand that the workmen have nothing to do with Western India Theatres Ltd. and that the respondent Modi Private Ltd. is a distinct legal entity and it is the respondent that is liable to meet the claim for bonus. The Union never made any claim at any stage that the profits of Strand Cinema alone has to be considered separately for the purpose of meeting its claim for bonus. Once the agreement, dated March 31, 1962, stands and profits have been transferred by the respondent to Western India Theatres, one fails to see how it is possible to sustain the claim of the Union for bonus against Modi Private Ltd. The agreement, dated March 31, 1962, may be a very clever arrangement, but the Union has accepted its genuineness as well as the terms and conditions contained therein. In view of all these circumstances, it is clear that the claim for bonus was made by the Union against the respondent alone. When that is so, the claim being one for payment of bonus out of profits, the Union will have to establish that Modi Private Ltd. has earned profits by managing Strand Cinema or has received remuneration for managing the said Cinema, from and out of which the bonus claim could be met.

19. At this stage it may be mentioned that the fact that the entire profits which accrued during the two financial years in question from Strand Cinema have been transferred by the respondent to Western India Theatres Ltd., has not been challenged either before the Tribunal or before this Court by the Union. In fact when once they have accepted the genuineness of the agreement as well as the binding nature of the terms contained therein it follows as a natural corollary that the transfer of the profits to Western India Theatres Ltd. must be one of the consequences of the agreement.

20. The question then is whether the Union has been able to establish in this case that the respondent had made profits which can be called its own and whether it had received any remuneration for managing Strand Cinema. On both these points the findings are against the appellant. We have already referred to the terms of the agreement. The entire profits accruing from Strand Cinema have to be accounted for and transferred by the respondent to Western India Theatres Ltd. The agreement does not provide for any payment of remuneration to the respondent for managing Strand Cinema.

21. Mr. C. L. Dudhia, learned counsel for the appellant, no doubt urged that when once the Tribunal had found that the workmen are the employees of the respondent and that Strand Cinema by itself has made profits in the years 1962-63 and 1963-64, the respondent is liable to pay bonus. In our opinion, this is over-simplifying the matter. No doubt, the Tribunal negating the plea of the respondent has found that the workmen are the employees of Modi Private Ltd. But this finding by itself will not solve the problem, unless it is further established that the respondent had profits, which could be called its own. The Union has all along been taking the stand that the respondent was a separate entity. It has never raised the contention that the profits of Strand Cinema must be taken by itself for the purpose of considering the claim for bonus. No doubt, Strand Cinema, as found by the Tribunal, has made profits in both the relevant years. But those profits have been transferred to Western Indian Theatres Ltd. in pursuance of the agreement, dated March 31, 1962. These profits do not find a place in the audited balance-sheets and profit and loss accounts produced by the respondent before the Tribunal. On the other hand, the respondent has made a loss of Rs. 1,13,279.75 and Rs. 1,02,675.41 in the years 1962-63 and 1963-64 respectively. It is also clear from the accounts produced by the respondent that it has not received any remuneration from Western India Theatres Ltd. for managing Strand Cinema. The business of the respondent is of managing cinemas and of investment. From both these sources it had made no profits whatsoever. It is only if the respondent has made profits from the business carried on by it that the workmen who have been held to be its employees can claim bonus. In view of the findings of the Tribunal, supported as they are by the evidence on record, it is clear that the respondent has made no profits by managing

Strand Cinema; nor has it received any remuneration for the said management during the two years in question.

22. No doubt, the Tribunal has considered the case in the alternative of the workmen being the employees of Western India Theatres Ltd. It has found that Western India Theatres Ltd. Keeps a consolidated account of all the cinemas under its management and the said Company had sustained losses during the two years. It is not necessary for us to express any opinion on this aspect because we are not concerned in these proceedings with the rights, if any, of the workmen in relation to Western India Theatres Ltd., especially as the latter is not a party to this adjudication. In this view we are not referring to the various balance-sheets and profit and loss accounts of Western India Theatres Ltd. that have been produced before the Tribunal and to which the Tribunal has also made a reference.

23. As the claim for bonus, out of profits, has been made for both the years against the respondent and as the latter has established that it had not made any profits, it follows that the claim of the workmen has been rightly rejected by the Tribunal.

24. In the result, the Award of the Industrial Tribunal is confirmed and this appeal will stand dismissed. There will be no order as to costs.

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