

## MOOT PROBLEM - SECOND ROUND

The HMT is a public Company having its registered office in the district of Ranchi. It maintains some branch offices at Calcutta and Patna. It carried on the business primarily of manufacturing and selling iron pipes and poles and has been employing a large number of workmen, their number being 1000 on the relevant date. According to balance sheet of the company, which have not been questioned it is a prosperous company and between the years 2007 and 2012 the appellant paid its employees bonus equivalent to four months' wages every year except in 2010-11. For the subsequent three years bonus was paid at the rate of four per cent under the Payment of Bonus Act, 1965 (Act XXI of 1965). The workmen were not satisfied with the payment at the rate of four per cent and raised a dispute. On August 22, 2013, they made a demand for bonus at the rate of 20 per cent of their annual salary or wages for the accounting year 2014-15. Certain correspondence started between the Assistant Labour Commissioner, the Management and the General Secretary of the Union (Dhurba Tubes Mazdoor Sangh). On September 21, 2015, the Manager (Administration) notified that bonus at the rate of 4 per cent for the year 2014-15 had been sanctioned by the Management. The General Secretary of the Union asked the Manager to review the above notice and to send a copy of the balance sheet for the accounting year in question. On September 25, 2015, the District Labour Officer informed the Manager that he had fixed October 2, 2015, (11 A. M.) for discussion in the matter of the payment of bonus. The Manager sent a copy of the balance sheet to the General Secretary of the Union on October 1, 2015. On that day the General Secretary asked the Assistant Labour Commissioner to examine the profit and loss account for the year 2014-15 and to

apply the requisite formula under the Payment of Bonus Act. On October 1, 2015 about 150 workmen assembled after 2 P. M. at the gates of the Administrative Building in which about 40-47 members of the staff were present. They were not allowed to leave the Building till 5 A. M. next day. Meanwhile the Officer-in-charge Ranchi Police Station and the Assistant Labour Commissioner went to the place where all this was happening. The factory remained closed on October 2, 2015 on account of Gandhi Jayanti. On the morning of October 3, 2015 the Management issued a notice declaring a closure of the factory. It is common ground that up till now the factory has remained closed. The Management offered to pay wages for one month in lieu of notice and reduced compensation under the proviso to sub-section (1) of Section 25-FFF of the Industrial Disputes Act, 1947. It has not been disputed that out of 1000 workers, 113 workers accepted compensation under the aforesaid provision. The remaining workmen, however, neither agreed to nor accepted any compensation. The reference under the Act was made on October 29, 2015 by the Government of Orissa primarily for adjudicating whether the appellant had declared a lock out by means of the notice dated October 3, 2015 or whether it was a closure. The notice which was issued by the Management on the morning of October 3, 2015 is as follows: "The Management hereby notified that as a direct consequence of the continued and sustained illegal activities of the workmen and their pre concerted and pre-meditated acts since 1st October 2015 by illegally keeping confined and forcibly resisting the exit of the staff and some of the officers of the Company in the Administrative Office building. from about 2 P. M. of the 1st October 2015 till they were forcibly rescued by the Police authorities at about 5 A. M. on the morning of 2nd October 2015 and thereafter continuing with their

illegal trespass into the premises of the Company in the aforesaid Administrative Office, and refusal to allow entry of any of the staff and officers of the Company into the said building; and the consequent refusal by the officers and supervisory staff of the Company to carry on their normal work and discharge their functions being reasonably apprehensive of their safety, it has become impossible to continue to run the factory and its subsidiary Sections and Departments any further. The Company hereby notifies that there will be a complete closure of the Factory on and with effect from 6 A. M. of the 3rd October 2015." Frame the issue and argue on behalf of union ( as petitioner) and company (as respondent).

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