



WP(MD)No.20539 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.20539 of 2018

Kudankulam Nuclear Power Employee's Union,
Ministry of Labour & Employment,
Rep by its Secretary,
New Delhi.

...Petitioner

Vs

1.The Government of India,
Ministry of Labour and Employment,
rep by its Secretary, New Delhi.

2.Kudankulam Nuclear Power Project,
An Unit of Nuclear Power Corporation of India,
Rep by its Site Director,
Kudankulam – Post,
Radhapuram – Taluk,
Tirunelveli District.

...Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of certiorarified mandamus after calling for the records from the 1st respondent Labour Court relating to the impugned order of the 1st respondent dated 21.07.2017/26.07.2017 passed in L-42011/137/2013-IR(DU), quash the same and consequently direct the 1st respondent to refer the dispute as to whether the employees of the 2nd respondent KKNPP are entitled for UAPP reward on par with



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the employees of the head quarter of NPCIL and as received by them during the period from 2006-2007 to 2011-2012 till the project units become commercial operating production units as justified or not for adjudication to the Central Government Industrial Tribunal cum Labour Court, Chennai -6 within a specified time.

For Petitioner : Mr.A.Azhagesan,

For Respondent : Mr.K.Govindaraj

No.1

Deputy Solicitor General

for Mr.Paulpandi,

Senior Panel Counsel

For Respondent : Mr.Muthusaravanan

No.2

for Mr.Ramasubramanian Associates

ORDER

The petitioner union claiming incentive for the year 2012-2013 had raised an industrial dispute before the Regional Labour Commissioner, Madurai on 09.03.2025. The Regional Labour Commissioner has recorded the failure minute and has referred the dispute to the Central Government. The Central Government by its order dated 26.07.2024 considered the issue that it is not fit for adjudication and declined the dispute. As against the order passed by the Central Government under Section 10 of the Industrial Disputes Act, this writ petition has been filed.



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2.The learned counsel for the petitioner submits that Nuclear Power Corporation of India [NPCIL] has framed Employees Construction Incentive Scheme (ECIS) in the year 2003 with effect from 01.04.2003. This scheme was implemented in the 2nd respondent unit and it was reviewed and modified in the year 2007. This scheme is applicable including to workmen and non-workmen (Supervisors and Executives). A Sum of Rs.7,578/- was provided as incentive for the year 2008 to the employees of the 2nd respondent on par with the incentive paid to headquarters employees for the year 2007-2008. Similarly the incentive increment was provided in the year 2009, 2010 and 2011. However incentive was denied to the 2nd respondent for the year 2012-2013. Therefore, the industrial dispute has been raised by the petitioner union. The conciliation failed and therefore the dispute was referred to the Government under Section 10 of the Industrial Disputes Act and the Central Government without any reasons declined to refer the dispute to the Tribunal.

3.The learned counsel by referring to the Judgment of the Hon'ble Supreme Court in *Titaghur Paper Mills Co.Ltd Vs Its Workmen*



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reported in **1959 AIR (SC) 1095** submits that the tribunal has jurisdiction under the Industrial Disputes Act to deal with the scheme of production of bonus as well as the incentive and it has already been settled by the Hon'ble Supreme Court. However, the 1st respondent has declined to refer the of dispute on the powers under Section 10 of the ID Act. The learned counsel has also relied on the judgment of this court in WP.Nos.19138 of 2013 dated 12.01.2016 and submits that under what circumstances the reference can be declined has already been discussed by this court that it can be denied if it is patently frivolous, vexatious, belated, if the dispute referred for adjudication is likely to impact the general relations between the employers and the employees and the matter is covered by a subsisting settlement or award. In this case the dispute referred does not fall under the purview of these factors on which it can be declined by the Government under Section 10 of the ID Act.

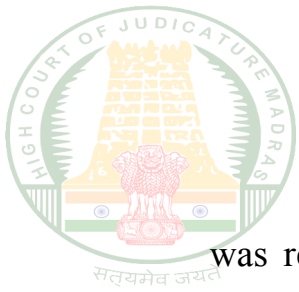
4.The learned counsel for the 1st respondent submits that incentive is provided based on the performance and from the profit accrued from its units. The 2nd respondent unit has not accrued any profit for the year 2012-2013 and therefore, the dispute of this petitioner was declined for



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the reasons that the desired target was not at all achieved, not even nearer to the desired goal. He further submits that the petitioners were paid with salary. However this Annual Physical Profit Incentive alone has been denied to the petitioner's members working in Koodankulam based on the performance. He further submits that upon receipt of the conciliation failure report from the Regional Labour Commissioner, the petitioner was provided with an opportunity and thereafter they have taken the conscious decision under Section 10 of the ID Act not to refer the dispute for adjudication. He further submits that the industrial employees of Kudankulam Nuclear Power Project, Radhapuram, Tirunelveli is a factory established under the Factories Act, 1948. The Headquarters employees are not covered under the Factories Act, 1948. They were not represented by the union in the instant dispute and they are out of the purview of the ID Act.

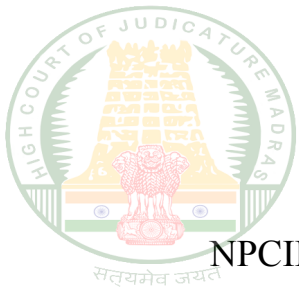
5.The learned counsel for the 2nd respondent submits that NPCIL Employees Construction Incentive Scheme (ECIS), 2003 for KKNPP-1 and 2 was approved and implemented with effect from 01.04.2003 at KKNPP-1 and 2 and subsequently, this Construction Incentive Scheme



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was reviewed in the NPCIL 112th Board Meeting held on 06.03.2007 was modified on 16.04.2007 as (i) Payment of Monthly Incentive; (ii) Monthly Capacity Factor Reward; (iii) Introduction of "Annual Physical Progress Award- Unit Specific; (iv) Enhancement in the Annual Incentive for maintaining Good IR Relations- Unit Specific (v) Introduction of Industrial Safety Award- Unit Specific Prior to that the employees of KKNPP were governed by HQs Incentive Scheme. The incentive for the KKNPP employees were paid at par with the NPCIL- Headquarters employees and subsequently KKNPP specific Construction Incentive Scheme came to effect in 2004-05. The employees of all Construction Projects of NPCIL are considered for Payment of Incentive as per the notified Scheme of the Corporation from time to time.

6.He further submits that as per the provision of NPCIL Performance Linked Incentive Scheme (PLIS) the employees of NPCIL are considered for payment of incentive subject to meeting the targets stipulated under various parameters The Incentive scheme contains the components of (i) Incentive linked to MoU ratings (ii) Incentive linked to



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NPCIL Annual Capacity Factor (NACF) and (iii) Individual Performance Related (IPR) Incentive (For Executive)/ (iii) Incentive linked to NPCIL Monthly Capacity Factor (NMCF) (For Other than Executive). The methodology adopted for calculation of Annual Reward shall be Station / Project wise separately. The annual rewards linked to sustained improvement in specific areas of the Station Operation and performance targets per se are outside the purview of scheme and will be declared every year keeping in view the safety culture/ standards, ALARA principles and overall performance of each Operating Station/ Project the Annual Rewards are declared by Chairman and Managing Director (CMD) for year-to-year basis keeping in view the overall performance, safety culture, ALARA Principles etc, as a) Project Progress Reward - APP Reward b) Reward for Industrial Safety c) Reward for safety Culture and Good Housekeeping d) Reward for Good HR Practices and Industrial Relations e) Reward for NPCIL Availability Factor

7.He further submits that the maximum Annual Reward for achieving the Station Production and Project Progress are as follows:

a) Project Progress Reward Rs 37,000/-



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b) Reward for Industrial Safety Rs 7,000/-

c) Reward for Safety Culture and Good Housekeeping

Rs. 5,000/-

d)Reward for Good HR Practices and Industrial Relations

Rs.4,000/-

e) Reward for NPCIL Availability Factor Rs.5,000/-

Total: Rs.58,000/-.

8.He also submits that in case of KKNPP since the parameters set against the Annual Physical Progress (APP) award were not achieved from the year 2012-13 and 2013-14, all the employees of KKNPP including executive and other than executive were not eligible for APP award. At the other construction projects, where the parameters against the APP award were not met, the employees of those projects were also not considered for payment of APP award. During the year 2012-14, even the employees of Kakrapar Atomic Power Project-3&4 and Rajasthan Atomic Power Project- 7 and 8 could not get APP award as they also could not achieve the required targets. Further, the employees of Rajasthan Atomic Power Project-7&8 were also not considered for APP

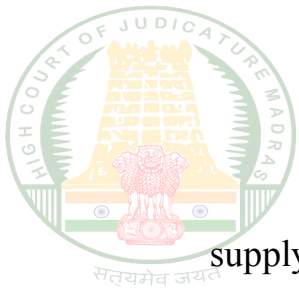


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award during the year 2012-13 due to non-achievement of the required targets. Further during the above period, the KKNPP employees were considered for other awards such as Industrial Safety (for the year 2012-14), Safety Culture and Good Housekeeping, Good HR Practices and Industrial Relations, as the set parameters were met and therefore, payments against these awards were released accordingly.

9.This court considered the rival submissions made and also perused the materials placed on record.

10.Nuclear Power Corporation of India [NPCIL] has introduced incentive scheme for its employees with effect from 01.04.2003. Incentive claim was also reviewed in the year 2007. Incentive has been provided to the employees working at Koodankulam in the year 2007, 2008, 2009, 2010 and 2011. However it has been denied for the year 2012-2013 on the ground that the incentives are provided based on the profit and the 2nd respondent unit has not even achieved nearer to the desired goal. However the petitioner claims that there was a delay in commencing the project due to the delay caused by the Russian agency to



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supply the machinery. There is no deficit in the performance of the employees of Koodankulam. In order to develop the unit, they have also worked during late night hours and the union members have worked by taking risk of their lives and has also managed to work despite the agitations in and around Koodankulam and therefore, they have been considered for the increment from the year 2007 to 2011. However incentive increment has been denied only for the year 2012 – 2013.

11.The failure report has been filed by the conciliation officer and the matter has been referred to the Government. Section 10 of the ID Act enables the Government to decide whether to refer or decline to refer the dispute to the labour court. Section 10(1) of the ID Act is extracted as under:

“ 10. Reference of disputes to Boards, Courts or Tribunals.—(1) 1[Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing,— (a) refer the dispute to a Board for promoting a settlement thereof; or (b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or 2[(c) refer the dispute or any matter appearing to be



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connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication.”

12.The scope of Section 10 of the ID Act has been discussed by this court in WP.No.19183 of 2013 and after discussing various judgments of the Hon'ble Supreme Court and this court, it has been held as under:

“25. Therefore, incidental question arise for consideration is whether the first respondent, while declining to make a reference, has gone into the merits of the case?

26. In G.O.(D).No.370 dated 20.08.2014 passed by the first respondent, along with the Government Order enclosure has been made and a perusal of the same would disclose that detailed reasons have been given, touching upon the merits of the claim and also as to the reasons for declining the reference.



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27. *In Western India Match Co. v. Workmen* [Air 1070 SC 1205 = (1970) 1 SCC 225], the Hon'ble Supreme Court of India, after taking into consideration the decision in *State of Madras v. C.P.Sarathy* [1953 SCR 334] held that it was so held presumably because the Government cannot go into the merits of the dispute, its function being only to refer such a dispute for adjudication so that the industrial relations between the employer and his employees may not continue to remain disturbed and the dispute may be resolved through a judicial process as speedily as possible. It has been further held that discretion conferred on the Government was neither unfettered nor arbitrary.

28. *In Bombay Union of Journalists v. State of Bombay* [AIR 1964 SC 1617], the learned Judge identified two circumstances in which it would be incompetent for the Government to refuse to make a reference viz., (a) where the dispute raises question of law; and (b) where it involves disputed questions of fact, because both these circumstances fall within the province of the Tribunal. In the very same judgment, it has been held that it is mandatory for the Government to record and communicate the reasons to the parties concerned,



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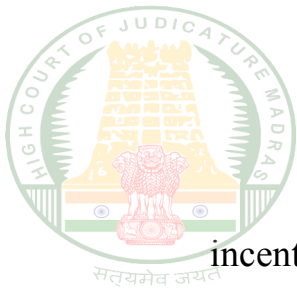
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where the dispute has been gone through conciliation and a failure report has been submitted and if the Government refuses to refer the dispute on extraneous grounds, irrelevant considerations or acts of mala fide, the party would be entitled to move the High Court for a Writ of Mandamus.

29. It has been held in a catena of decisions that the power of the Government in refusing to make a reference is subject to following conditions:

- (i) The claim is patently frivolous or vexatious; or*
- (ii) It is clearly belated or, in other words, has become stale; or*
- (iii) The dispute, if referred for adjudication, is likely to impact the general relations between the employers and the employees in the region adversely; and*
- (iv) The matter is covered by a subsisting settlement or award.”*

13.As stated supra, the dispute has been raised by the petitioner union does not fall under the ambit of the above conditions, in which the Government can decline to refer the dispute. As rightly pointed by the learned counsel for the petitioner, the denial of production bonus and



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incentive can also be referred under Section 2(k) of ID Act. The relevant portion of the Hon'ble Supreme Court in ***Titaghur Paper Mills Co.Ltd***

Vs Its Workmen reported in ***1959 AIR (SC) 1095***.

“ 9.Let us now turn to the question of jurisdiction of the tribunal under the Act to consider a production bonus scheme at all. The argument is that the introduction of a production bonus scheme is purely discretionary with the employer and no tribunal can impose such a scheme. Whether there should be increased production in a particular concern is a matter to be determined entirely by the employer and depends upon a consideration of so many complex factors, namely, the state of the market, the demand for the product, the range of prices, and so on. It is, therefore, entirely for the employer to introduce a production bonus scheme or not. There is good deal of force in the argument up to this point ; but the argument goes further and it is said that even after the scheme is introduced, it is for the same reasons in the discretion of the employer whether to continue it or not. Therefore, it is urged that the tribunal cannot have jurisdiction to consider a production bonus scheme at all, for the tribunal would then be doing something which the employer can set at naught by withdrawing the scheme or by nullifying the effect of the



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tribunal's order by so arranging that the production does not reach the level at which production bonus becomes payable, for example, by not providing enough raw material for the purpose. It is further urged that if it is entirely in the discretion of the employer to introduce or not to introduce a production bonus scheme, the fact that the employer introduces a scheme will not give jurisdiction to the tribunal to interfere with it in any way, for otherwise the tribunal would be compelling the employer in the guise of a revision of the scheme to do something which the tribunal could not initially do. Our attention in this connection was drawn to Shalimar Rope Works Mazdoor Union, Howrah v. Messrs; Shalimar Rope Works Ltd., Shalimar, Howrah (1), where it was observed that though a production bonus scheme may be desirable in the interest of harmonious relationship between the employer and employees, there is no obligation on the part of the management to give production bonus and no decision had been brought to the notice of the Labour Appellate Tribunal holding that a scheme of production bonus was obligatory on the part of the company ; (see p. 504). We are-, however, not called upon to decide in this case whether a demand for the introduction of a production bonus scheme where there was none before can be made a subject- matter of industrial dispute as



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defined in s. 2 (k) of the Act or whether a scheme of production bonus can for the first time be imposed on the employer by a tribunal under the Act. The problem that is before us is whether the tribunal under the Act will have jurisdiction to deal with a production bonus scheme in a concern where it has been introduced. The answer to this question depends upon the terms of the Act and not on the consideration whether the scheme can be initiated only by the employer in the first instance. In order that the tribunal may have jurisdiction all that is necessary is that an industrial dispute within the meaning of s. 2 (k) of the Act should exist or be apprehended and there should be a reference of such dispute by the appropriate government to the tribunal under s. 10. Now 'industrial dispute' has been defined in very wide terms in s. 2 (k) and for our purpose it means any dispute or difference between the employers and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. We have already held that the production bonus scheme in this case is an incentive wage plan and what is paid under the scheme over and above the basic wage is supplementary emolument depending upon annual production. A dispute arising about such an emolument clearly comes within the words " terms of employment ".



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As soon therefore as an employer introduces a production bonus scheme and the same is put in operation and the workmen accept it becomes a term of employment of the workmen working under him and any dispute with respect to such a term of employment is an industrial dispute and if it is referred to a tribunal under [s. 10](#), as has been done in this case, it has jurisdiction under [s. 15](#) to deal with it. The argument therefore on this head must be rejected and it must be held that the tribunal had jurisdiction under the Act to deal with the scheme of production bonus which had been introduced in this company and was in force at all material times.”

14.The petitioner is having a reason that there was delay on the part of the Russian agency in installing the plants. The employees of the petitioner's union were provided with incentive for the year 2007 to 2011. The incentive can also be an dispute under the Industrial Dispute Act as per the judgment of the Hon'ble Supreme Court cited supra. Whether the petitioner union members have not performed or they have been prevented from performing is a matter for adjudication before the labour court.



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15. Therefore, in the light of the above judgment, this Court set aside the impugned order dated 21.07.2017 and 26.07.2017 and remand the matter for fresh consideration by the 1st respondent government in the light of the judgment of the Hon'ble Supreme Court and of this court cited supra.

This petition is allowed in the above terms. No costs.

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Index : Yes / No

DSK

To

1. The Government of India,
Ministry of Labour and Employment,
rep by its Secretary, New Delhi.
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