

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

WP(C) .No. 24100 of 2014 (J)

1. TRIVANDRUM DISTRICT HEAD LOAD AND GENERAL WORKERS UNION (CITU)
REG.NO.143/1970
PARAVANKUNNU UNIT, REPRESENTED BY ITS CONVENOR S.JAYAKUMAR
RESIDING AT VAYALIL VEEDU, PATTANAMKARA, AMBALATHARA
POONTHURA P.O., THIRUVANANTHAPURAM.
2. TRIVANDRUM JILLA GENERAL MAZDOOR SANGH, REG.NO.56/82,
PARAVANKUNNU UNIT, REPRESENTED BY ITS CONVENOR G.BABU
VAYALIL VEEDU, AMBALATHARA, POONTHURA P.O.,
THIRUVANANTHAPURAM.

BY ADVS.SRI.THOMAS ABRAHAM
SMT.MERCIAMMA MATHEW
SRI.V.RENJITH KUMAR
SRI.ASWIN.P.JOHN

RESPONDENT (S) :

1. KERALA HEADLOAD WORKERS WELFARE BOARD, THIRUVANANTHAPURAM
JILLA COMMITTEE, LABOUR WELFARE FUND BOARD BUILDING,
VANCHIYOOR, THIRUVANANTHAPURAM-695 035
REPRESENTED BY ITS CHAIRMAN.
2. KERALA STATE HEADLOAD WORKERS WELFARE BOARD, P.B.NO.2017,
SRM ROAD, KOCHI-18 REPRESENTED BY ITS SECRETARY, 682018
3. DISTRICT LABOUR OFFICER, THIRUVANANTHAPURAM - 695001
4. ASSISTANT LABOUR OFFICER, 1ST CIRCLE, THIRUVANANTHAPURAM
(REGISTERING AUTHORITY UNDER RULE 26 (A) OF THE KERALA
HEADLOAD WORKERS RULES, 1981), 695001.
5. M/S SHAKTHI AGENCIES, KALLATTUMUKKU - 695 009.
6. M/S C-MARC, AMBALATHARA 695 026.
7. M/S. GUHAN GAS SERVICES, AMBALATHARA 695 026.
8. R.RAJESH, TC 48/429, SREE PADMAM, PARAVANKUNNU, MANACAUD P.O
THIRUVANANTHAPURAM 695 009.
9. S.VINU KUMAR, TC 48/329, CHEMBAZHANTHY HOUSE
AMBALATHARA, POONTHURA P.O., THIRUVANANTHAPURAM 695 026.
10. S.SURESH, RAKANDATHIL VEEDU, AMBALATHARA, POONTHURA P.O
THIRUVANANTHAPURAM 695 026.

- 11.MOHAMMED, POOL NUMBER 1840 PAZHAYA ROAD, KAIVARAMBIL VEEDU
PARAVANKUNNU, MANACAUDU P.O, THIRUVANANTHAPURAM 695 009.
- 12.SULAIMAN A., POOL NUMBER 2547, PAZHAYA ROAD, KAIVARAMBIL VEEDU,
PARAVANKUNNU, MANACAUDU P.O, THIRUVANANTHAPURAM 695 009.
- 13.P.JAYAPALAN NAIR, POOL NUMBER 1843, KANNANKARA VEEDU,
KANNANKARA, PARAVANKUNNU, AMBALATHARA, POONTHURA P.O
THIRUVANANTHAPURAM- 695 026.
- 14.ABDUL RASHEED, POOL NUMBER 1842, PUTHUVAL PUTHEN VEEDU
AMBALATHARA, POONTHURA P.O, THIRUVANANTHAPURAM- 695 026.
- 15.MAHEEN, POOL NO.1839, KOCHUPUTHUVAL VEEDU
AMBALTHARA, POONTHURA P.O, THIRUVANANTHAPURAM - 695 026.

R1 & R2 BY SRI.C.S. AJITH PRAKASH, SC, KHWWB
R8 & R9 BY ADV. SRI.M.P.PRAKASH
R3 & R4 BY GOVERNMENT PLEADER SMT. ANITHA RAVEENDRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13.08.2015, ALONG WITH WP(C) NOS. 3585/2015 & 20208/2015,
THE COURT ON 24.11.2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER' (S) EXHIBITS:

EXHIBIT P1. COPY OF THE LIST OF 21 WORKERS WHO ARE MEMBERS OF THE PETITIONER UNIONS.

EXHIBIT P2. COPY OF THE PROCEEDINGS NO.72/2014, DATED 25.2.2014 PASSED BY THE 4TH RESPONDENT.

EXHIBIT P3. COPY OF THE APPLICATION SUBMITTED BY SRI. S.VINU KUMAR IN FORM IX.

EXHIBIT P3(A).COPY OF THE APPLICATION SUBMITTED BY R.RAJESH IN FORM IX.

EXHIBIT P4. COPY OF THE NOTICE DATED 1.2.14 ISSUED BY THE 4TH RESPONDENT TO THE 3 EMPLOYERS.

EXHIBIT P5. COPY OF THE LETTER DATED 11.2.14 ISSUED BY M/S.GUHAN GAS SERVICE TO THE 4TH RESPONDENT.

EXHIBIT P6. COPY OF THE LETTER DATED NIL ISSUED BY C.MARC.

EXHIBIT P7. COPY OF THE LETTER DATED 6.2.14 ISSUED BY THE 5TH RESPONDENT TO THE 4TH RESPONDENT.

EXHIBIT P8. COPY OF THE MINUTES OF THE MEETING DATED 25.1.14 OBTAINED UNDER RTI ACT.

EXHIBIT P8(a) COPY OF THE DOCUMENT EVIDENCING THE DETAILS OF THE WAGES RECEIVED BY RESPONDENTS 8 TO 10 FROM THE 1ST RESPONDENT BOARD DURING THE PERIOD OF THEIR FRAUDULENTLY OBTAINED REGISTRATION.

EXHIBIT P9. COPY OF THE LETTER DATED 10.09.13 ISSUED UNDER RTI ACT.

EXHIBIT P10.COPY OF THE LETTER DATED 27.1.14 ISSUED BY THE 1ST RESPONDENT TO THE 4TH RESPONDENT.

EXHIBIT P11.COPY OF THE APPEAL NO.G2 4911/2014 DATED 26.5.14 BY THE PETITIONERS BEFORE THE 3RD RESPONDENT.

EXHIBIT P12.COPY OF THE STAY PETITION DATED 11.6.14 FILED BY THE PETITIONERS ON 23.8.14 IN EXHIBIT P11 APPEAL.

EXHIBIT P13.COPY OF THE JUDGMENT DATED 2.7.14 IN WPC 16338 OF 2014.

EXHIBIT P14.COPY OF THE ORDER DATED 25.7.14 ISSUED BY THE APPELLATE AUTHORITY.

EXHIBIT P15. COPY OF THE ORDER NO.G(2)4911/2014 DATED 30.8.14 DISMISSING EXHIBIT P12 APPEAL.

EXHIBIT P16 COPY OF THE DOCUMENT DATED 30.06.2014 OBTAINED UNDER RTI ACT

EXHIBIT P17 COPY OF THE APPLICATION SUBMITTED BY THE 8TH RESPONDENT APPENDED ALONG WITH EXT.P16 DOCUMENT OBTAINED UNDER THE RTI ACT.

EXHIBIT P17(a) COPY OF THE FALSE UNDERTAKING GIVEN BY THE 8TH RESPONDENT.

EXHIBIT P17(b) COPY OF THE FALSE UNDERTAKING GIVEN BY UDAYAKUMAR AND HIS MOTHER.

EXHIBIT P17(c) COPY OF THE RATION CARD OF UDAYAKUMAR'S MOTHER.

EXHIBIT P17(d) COPY OF THE ORDER NO.E6/1676/09 DATED 06.02.2010.

EXHIBIT P18 COPY OF THE APPLICATION SUBMITTED BY THE 9TH RESPONDENT.

EXHIBIT P18(a) COPY OF THE FALSE UNDERTAKING GIVEN BY THE 9TH RESPONDENT.

EXHIBIT P18(b) COPY OF THE FALSE UNDERTAKING GIVEN BY RAJEEV AND HIS MOTHER

EXHIBIT P19 COPY OF THE ORDER NO.E7-2386/11 DATED 06.03.2013
[CORRECTED AS EXT.P18(c)]

* EXT.P19 IN R/A IS CORRECTED AS "EXT.P18(c)" AS PER ORDER DATED
06.07.2015

EXHIBIT P19 COPY OF THE ORDER DATED 21.01.2015 GRANTING REGISTRATION TO RESPONDENTS 8 AND 9.

EXHIBIT P19(a) COPIES OF IDENTITY CARDS UNDER THE SCHEME ISSUED BY THE 1ST RESPONDENT BOARD TO RESPONDENTS 8 & 9.

EXHIBIT P20 COPY OF THE PETITION DATED NIL SUBMITTED BY the 8 PERSONS.

EXHIBIT P21 COPY OF THE PETITION DATED 01.04.2013.

EXHIBIT P22 COPY OF THE PROCEEDINGS DATED 28.11.2008.

EXHIBIT P23 COPY OF THE PROCEEDINGS DATED 01.07.2013.

EXHIBIT P24 COPY OF THE INTERIM ORDER DATED 10.07.2013 IN WP(C)
NO.17189/2013

EXHIBIT P25 COPY OF THE JUDGMENT DATED 05.09.2013 IN WP(C) NO.17189/2013

EXHIBIT P26 COPY OF THE DUPLICATE REGISTRATION CERTIFICATE OF THE 1ST PETITIONER UNION.

EXHIBIT P26(a) COPY OF THE BYE-LAWS OF THE 1ST PETITIONER UNION.

EXHIBIT P27 COPY OF THE REGISTRATION CERTIFICATE OF THE 2ND PETITIONER UNION.

EXHIBIT P27(a) COPY OF EXT.P27

EXHIBIT P27(b) COPY OF THE BYE-LAWS OF THE 2ND PETITIONER UNION.

RESPONDENT' (S) EXHIBITS:

EXT.R8(a) COPY OF THE LETTER DATED 21.09.2014 OF SRI.SUJITH R.

EXT.R8(b) COPY OF THE LETTER DATED 21.09.2014 OF SRI.SUJEESHKUMAR

EXT.R8(c) COPY OF THE LETTER DATED 29.11.2008 OF M/S SAKTHI AGENCIES.

WP(C) .No. 24100 of 2014 (J)

EXT.R8 (d) COPY OF THE LETTER DATED 28.11.2008 OF M/S C-MARC.

EXT.R8 (e) COPY OF THE LETTER DATED 29.11.2008 OF M/S GUHAN GAS AGENCIES

EXT.R8 (g) COPY OF THE LETTER DATED 29.11.2008 OF M/S MARGIN FREE SUPER
MARKET.

EXT.R8 (h) COPY OF THE LETTER DATED 29.11.2008 OF M/S FOOD FATS &
FERTILISERS LTD.

EXT.R8 (i) COPY OF THE LETTER DATED 30.11.2008 OF M/S GATI

EXT.R8 (j) COPY OF THE LETTER DATED 29.11.2008 OF M/S DHANYA HARDWARES

//TRUE COPY//

PA TO JUDGE

bka/-

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) Nos. 24100 of 2014, 3585 & 20208 of 2015

Dated this the 24th day of November, 2015

J U D G M E N T

The registration of certain persons under the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 (for short, “the Scheme”), on the strength of some documents, claiming to be the dependents of the employees of KB-4 Pool coming under the Assistant Labour Officer, Thiruvananthapuram, which is the registering authority under Rule 26 of the Kerala Headload Workers Rules, 1981 (for short, “the Rules”), is the subject matter of these writ petitions.

2. W.P.(C) No. 24100/2014

- The petitioners alleges that they are registered trade unions representing registered headload workers. Aggrieved by the registration granted to respondents 8 to 10 as per Ext.P2 order, which, according to the petitioners, is against the provisions of the Scheme, the

petitioners preferred Ext.P11 appeal dated 26.05.2014 before the 3rd respondent. Ext.P11 appeal is dismissed as per Ext.P15 order, which, according to the petitioners, is without considering any of the valid grounds canvassed. According to them, it is factually incorrect to say that respondents 8 to 10 had been headload workers at any point of time. They allege that respondents 8 to 10 worked only for a short period of less than 2 months, that too, on the basis of forged certificate produced before the 1st respondent board claiming to be legal heirs of three registered headload workers as evidenced by Ext.P8 minutes. According to the petitioners, unless they are actually legal heirs of retiring/deceased workers, the only method available to them is to get enrolled as applicants for registration and wait in the queue till their turn reaches, which also is possible only if they have registration under Rule 26A or consequent registration under the scheme managed by the 1st respondent. Therefore, according to them,

respondents 1 to 4 have egregiously erred in having recommended/granted/upheld the registration granted to respondents 8 to 10 under Rule 26A and the registration under the scheme to respondents 8 & 9. Hence, according to them, Exts.P2, P10, P14, P15, P19 & P19(a) are liable to be quashed. They further allege that the 3rd respondent appellate authority was adopting a highly prejudiced approach towards the petitioners from the beginning itself. According to them, the statutory provisions were openly flouted by the said officer. It is alleged that only after directions were issued by this Court, the 3rd respondent disposed of the appeal, that too, at the fag end of the period prescribed by this Court for the disposal of the appeal. According to them, even a cursory glance through Ext.P15 order would reveal that the 3rd respondent has deliberately avoided considering all the vital aspects raised in the appeal in order to favour respondents 8 to 10, who command immense influence over political

echelons in power. It is further alleged that Exts.P19 & 19(a) also reveal that the 1st respondent would go to any extent and even falsely rely on the orders of this Court to commit grave illegalities, ultimately to please the political echelons in power. It is with this background, the petitioners have come up before this Court.

- Respondents 8 & 9 filed a detailed counter affidavit along with Exts.R8(a) to R8(j) and an additional counter affidavit, contending as follows;

The averment that the petitioners are trade unions representing registered headload workers is not admitted and the petitioners are put to strict proof. According to them, two persons, viz., Sujith R (Sl.No.13) and Sajeeshkumar M. (Sl.No.15) in Ext.P1 list are not members of the petitioner trade union. It is further contended that the averment that there are total 21 workers, who are members of the petitioner unions, is not correct; and hence, the averment to the effect that the persons in Ext.P1 are represented by the petitioners is stoutly denied.

According to them, the 8th respondent had worked as Helper Headload Worker during 2005-08 assisting a registered headload worker, viz., late Udayakumar, who was suffering from cancer. It is further contended that it has become a practice in Kerala that a sick registered headload worker engages a helper to assist him. The 9th respondent also worked as a helper headload worker assisting one Rajiv, who is a registered headload worker suffering from back pan, from 2006 onwards. They pointed out that respondents 5, 6 & 7, as per Ext.R8(c) letter dated 29.11.2008, Ext.R8(d) letter dated 28.11.2008 and Ext.R8(e) letter dated 29.11.2008 respectively, had informed the 1st respondent that 10 persons including respondents 8 & 9 are doing loading and unloading work in their establishment. They have also produced Exts.R8 (f), R8(g), R8(h), R8(i) & R8(j) showing that various establishments had informed the 1st respondent about the persons doing loading/unloading in their respective establishments. It is further pointed out that in Exts.R8(c) to (j), the names of respondents 8 & 9 are included. Therefore, according to respondents 8 & 9, the averment of the petitioners that respondents 8 to 10 are not headload workers, is baseless, untrue and hence denied.

They have relied on the decision of this Court in **Rajeev v. District Labour Officer** [2010 (4) KLT 783], wherein it was held that what is required for registration under Rule 26A is a good physique and an employer, who is prepared to engage the applicant as a headload worker; and it is not necessary that he should have already been working under the employer, under whom he seeks registration.

It is further contended that the petitioners cannot be held to be 'person aggrieved' appearing in Rule 26C of the Rules; and therefore, they cannot be permitted to challenge the correctness of Ext.P2. At any rate, the challenge to Ext.P2 is barred by constructive res judicata. The legal contention in para 4 is untenable, opposed to facts and there is no requirement in law that the registering authority should conduct a detailed enquiry, verifying the registers regarding employment, payment of wages etc. Therefore, there is no legal infirmity in issuing Ext.P2 by the 4th respondent; according to them. It is further contended that the averment that if records are perused, the same would have revealed that respondents 8 to 10 worked only for a short period, that too, on the basis of forged certificate claiming to be legal heirs of three registered headload workers and that their

registration under the scheme was cancelled on finding that records produced for obtaining registration, were false and baseless. They have pointed out that they were granted Rule 26A cards on issuance on Ext.P2 order.

As per Rule 26A of the Rules, the registering authority is required to issue notice to the employers under whom the applicant claims to be working and the 1st respondent, in case the place where the applicant seeks to work is a scheme covered area, shall require the employers to state whether they have any objection in granting registration. According to respondents 8 & 9, they had worked as headload workers and they are having good physique and therefore, they are entitled to get registration under Rule 26A of the Rules. It is further pointed out that the 1st respondent, in its meeting on 25.01.2014, by a majority decided to issue Ext.P10 letter, informing the registering authority that the 1st respondent has no objection in issuing Rule 26A cards. It is further contended that the petitioners presume that for registration under Rule 26A, a certain period of experience is required and therefore, they would wrongly contend that respondents 8 to 10 had only worked for less than two months, which, according to respondents 8 & 9, is irrelevant and untenable.

- The 1st respondent has filed a statement, stating as follows;

The applications for issue of 26A cards were recommended by the Board to the 4th respondent as per the existing norms only. The following are the particulars;

No.	Place	Recommended date to 4 th respondent for issue of 26A card	Date of issue of labour card
1	Paravankunnu	26.01.2014	04.02.2014
2	Killipalam	04.08.2014	24.09.2014
3	Alumukku	26.12.2013	18.03.2014
4	Anthiyoorkonam	26.12.2013	22.01.2014
5	Kunnathukal	27.01.2014	24.02.2014

The card was obtained from the Assistant Labour Officers belong to different places in Thiruvananthapuram District. According to the 1st respondent, he only expressed the views and opinion in granting 26A card to the eligible workers.

When the 4th respondent makes enquiry on the application for the 26A card, the only aspect to be inquired is that whether the applicant was a loading and unloading worker in the area or currently he is engaged in the loading and unloading work. It has to be presumed that considering these aspects, the 4th respondent issued 26A card to respondents 8 & 9 on satisfying that they had

worked in the said area. Therefore, according to them, the issue of 26A card to the party respondents are valid in the eye of law.

- The petitioners have filed a detailed reply affidavit against the counter affidavit filed by respondents 8 & 9 and the statement filed by the 1st respondent.

3. WP(C) No.20208/2015

- This writ petition also is filed by the Thiruvananthapuram District Headload and General Workers Union (CITU) and another, challenging Ext.P8 alleging that the same was issued in glaring infraction of the statutory provisions.
- According to the petitioners, it is mandatory that 2 years' period should be there after obtaining registration under Rule 26A and that the aspirants should be senior most among the applicants and that they should be working as headload workers in the same area. The petitioners alleges that respondents 3 & 4 in this writ petition obtained registration under Rule 26A only on the date of Ext.P2, i.e., 25.02.2014,

and the '2 year mandatory period' would be completed only on 24.02.2016. Therefore, according to them, since the main requirement of '2 years' is not satisfied, the 1st respondent board has no powers at all under the Act, Rules or the Scheme to grant them registration under the Scheme. Thus, it is alleged that from any view of the matter, Ext.P8 cannot sustain if tested at the anvil of law and is liable to be quashed. It is further alleged that on the strength of the illegally obtained registration, might of the fist and political influence, respondents 3 & 4 are attempting to do loading and unloading work, done by the members of the petitioner unions. Hence, this writ petition.

- Respondents 3 & 4 filed a detailed counter affidavit along with Exts.R4(a) to R4(d), contending as follows;

The petitioners do not have a legal existence and cannot maintain the writ petition alleging violation of rights of somebody else. The respondents rely on the decision of the apex court in **Chairman, SBI v. All Orissa State Bank Officers Association** [2003 (11) SCC 607], wherein it was

held that there is no common law right of a trade union to represent its members whether for the purpose of collective bargaining or individual grievances of members that it is an inroad made into the common law by special statutes and that either the special statute operates proprio vigore or it does not. According to respondents 3 & 4, only the registered trade union have a perpetual succession and a common seal as per Section 13 of the Trade Unions Act, 1926; and therefore, only the person authorised by the registered bye-law can represent its members. Therefore, according to them, the writ petition filed by the conveners of the trade union is not maintainable in law. It is pointed out that in WP(C) No.24100/2014, respondents 8 & 9 therein (the 3rd & 4th respondents herein) filed IA No.2247/2015 seeking direction to the petitioners to produce the registered bye-laws and the registration certificate. On the said IA, this Court had issued Ext.R4(a) order dated 06.07.2015, directing the petitioners to produce the bye-laws and the registration certificate before this Court.

It is further contended that there is no cause of action for filing the writ petition. According to them, Ext.P8 is the one issued on rendering Ext.P7 judgment. Ext.P5 interim order cannot operate after the termination of the main

proceedings by Ext.P7 judgment; and therefore, Ext.P8 is legally justifiable; according to them.

It is contended that the second prayer in the writ petition is not maintainable as the petitioners had already instituted WP(C) No.24100/2014. That apart, the second relief sought for is anticipatory in nature and cannot be granted. It is pointed out that as can be seen from Ext.R4 (a), the petitioners had sought amendment of the said writ petition. However, the petitioners had not sought the second prayer made herein in the earlier writ petition and therefore, the second prayer is bad for res judicata/constructive res judicata; according to respondents 3 & 4.

It is further contended that the petitioners' attempt is to deny the respondents' livelihood and the petitioners want to monopolize their union activity among the headload workers and those, who are not members of the petitioners union, are illegally and unreasonably prevented from working as headload workers. They have further pointed out that though the petitioners sought for stay of Ext.P2 in WP(C) No.24100/2014, the same was not granted. According to them, they have granted registration under the Scheme in exercise of the powers under the Scheme and not based on

Ext.P3 interim order. Therefore, according to them, setting aside Ext.P3 order would not demolish the registration granted to them under the Scheme.

It is further contended that they were granted registration earlier and on finding that the claim made by them under Scheme 6C is not legal, they were temporarily kept away from the rolls. Ext.R4(b) is order of the 1st respondent, temporarily keeping away the 3rd respondent from its rolls. It is further pointed out that Ext.R4(b) is produced by the petitioners also along with their reply affidavit in WP(C) No.24100/2014 as Ext.P17(d). Therefore, according to them, the present action of the 1st respondent to recommend their names for grant of registration under Rule 26A of the Rules and to grant registration under the Scheme, is legally justified as they have been granted registration under Rule 26A of the Rules. It is further pointed out that the petitioners have not challenged Ext.R4 (b) till date and therefore, it would not lie in the mouth of the petitioners to submit that they were granted registration illegally without following the procedure prescribed by the statute. According to them, the averments made in para 3 of the writ petition are not supported by any document or material and they remain bald allegations.

It is further contended that the averment that in 2013, owing to the illegal interference of political influential persons, the 1st respondent committee decided to recommend to the registering authority under Rule 26A to issue identity cards to respondents 3 to 5, for which, the committee has no power at all, is vague and unfounded. According to them, there is no violation of the statutory rules in issuing Rule 26A cards to them. It is further contended that the committee constituted under the Kerala Head load Workers Act, in its meeting dated 25.01.2014, had decided to recommend their names to the Assistant Labour Officer for registering their names under the Rules. Ext.R4(c) is the copy of relevant portions of the minutes of the meeting dated 25.01.2014, which also is produced as Ext.P8 in WP(C) No.24100/2014. It is pointed out that the same is not challenged; and therefore, Ext.P2 cannot be assailed.

It is further contended that admittedly, WA No.130/2015 was filed against Ext.P3 order, in which, the petitioners herein had also sought for the main reliefs sought for in the writ petition. Therefore, according to them, the reliefs sought for in the said writ appeal were beyond the scope of the appeal. The 1st respondent in the

purported compliance of Ext.P5 order dated 21.01.2015 wrongly issued Ext.P6. In Ext.P5, a Division Bench of this Court had only directed to defer all proceedings and the operation of Exts.P2, P10, P14 and P15 therein for a period of one month. Admittedly, Ext.P4 was also issued on 21.01.2015. There was no direction to keep them away from doing the work of loading and unloading. Further, the 1st respondent had no power to issue Ext.P6 order. Therefore, according to respondents 3 & 4, Ext.P6 order was not based on Ext.P5 and was separately challenged. Thereafter, they had filed IA No.192/2015 [Ext.R4(d)] in WA No.130/2015 seeking to vacate Ext.P5 order. They have pointed out that the petitioners herein are parties to WP(C) No.3585/2015 and they had not filed any counter affidavit opposing the reliefs sought for. According to them, it is untenable and highly improper to canvass that the filing of another writ petition was improper and is an abuse of process of this Court without filing a counter affidavit in the said case. The petitioners are not justified in attacking the filing of WP(C) No.3585/2015 and is one intended to mislead this Court and they are not justified in suppressing the filing of Ext.R4(d) petition and the repeated requests made before the Division Bench to vacate Ext.P5 order. WA No.130/2015 was

decided primarily for the reason that their counsel did not seriously oppose the setting aside of the order impugned since the impugned order had not adjudicated the rights of the parties. At any rate, the Division Bench only set aside the order impugned and it does not mean that the 1st respondent has no power to issue registration under the Scheme. Therefore, according to them, invalidation of Ext.P3 order would not make Ext.P4 order illegal. It is further contended that it is not correct to say that WP(C) No.3585/2015 also became infructuous on the date, on which Ext.P7 was rendered, as even after Ext.P7 decision dated 25.05.2015, the 1st respondent did not recall Ext.P6 order. According to them, it was only on 30.06.2015, as per Ext.P8, they were allowed to work as headload workers.

- The 1st respondent has filed a counter affidavit, contending as follows;

Respondents 3 & 4 are issued with 26A registration cards as per the Rules by the appropriate registering authority under the Act and Rules. Later, those workers were issued with 6A cards so as to work in a scheme covered area under the Scheme. According to the 1st respondent, there is no irregularity in issuing the 26A card,

because, the recommendation to issue 26A card is made on the decision of the District Committee of the Board. Such a recommendation happened to be issued taking into consideration of their previous experience as headload workers. This fact is enquired by the Assistant Labour Officer concerned. Therefore, the Board has taken a decision in favour of the workers in order to earn their livelihood.

Respondents 3 & 4 have already been worked in KB 4 Pool before the merger of KB 6 Pool with KB 4 Pool in 2008 before getting registration cards. Workers are recruited in the Pool when there were vacancies in the Pool through death and medical invalidation of 3 workers in the KB 4 Pool.

KB 4 and KB 6 Pool are the ones among the highest wage earning Pools in Thiruvananthapuram District. Therefore, there is no question of affecting earnings of other workers. In the absence of a complaint from the co-workers with regard to the sharing of work, the union cannot approach this Court. The said issue also be considered; according to the 1st respondent. The writ petitioners originally belonged to KB 4 Pool and there were earlier disputes with regard to the merger of pools.

The District Committee of the Board has taken a lenient view, which is evident from the minutes of the Board decision. This decision was arrived at giving due weightage to the report of the Assistant Labour Officer. Moreover, the workers are inducted into the pool in view of the existence of vacancies. Further more, the District Committee of the Board has recommended to the Assistant Labour Officer, only because of the committee came to know that they have worked in KB 4 Pool for 3 years before getting the registration card. The Board has only issued a recommendation or NOC and it is the duty of the Assistant Labour Officer to enquire whether the workers are real headload workers. It is the stand of the Board that the committee has not committed any serious mistake in issuing the 6A card.

This Court, in WP(C) No.24100/2014, has granted liberty to proceed with consideration of 6A card notwithstanding the pendency of the writ petition. The committee acted only after such clearance from this Court. Thereafter, the Thiruvananthapuram District Committee convened a meeting on 19.01.2015 and decided to grant registration under 'the Scheme 1983' to respondents 3 & 4. As per para 19 of the scheme, it is the privilege of the

committee to determine number of workers in a particular area. Hence, the 1st respondent has taken the stand that the action of the Statutory District Committee is in order.

- The petitioners filed a detailed reply affidavit against the counter affidavits filed by respondents 1, 3 & 4.

3. WP(C) No. 3585/2015

- This writ petition is filed by the 8th & 9th respondents in WP(C) No.24100/2014, who are the 3rd & 4th respondents in WP(C) No.20208/2015.
- The petitioners allege that they were granted registration and issued with identity cards under Rule 26A of the Rules, which was challenged by the rival unions unsuccessfully before the District Labour Officer, Thiruvananthapuram. They point out that the order of the District Labour Officer dismissing the appeal is under challenge before this Court in WP(C) No.24100/2014 and is pending, in which, the petitioners are respondents 8 & 9. When the said writ petition came up for consideration, it was submitted on behalf of the petitioners herein that they are not issued with

cards under Scheme 6A of the Scheme due to pendency of the said writ petition; and this Court clarified in Ext.P4 order dated 16.01.2015 that the pendency of the writ petition would not bar the District Committee from taking a decision for issue of the cards since there is no stay. It is further pointed out that the rival union filed WA No.130/2015 against Ext.P4 order dated 21.01.2015. When the said writ appeal came up for consideration, the petitioners herein submitted that the order impugned in the writ appeal is not the one adjudicating claims and it only clarified that there is no stay and therefore, the writ appeal is not maintainable. The petitioners allege that the Division Bench, without going to the maintainability of the writ appeal, issued Ext.P7 order. According to the petitioners, they are taking steps to vacate the above interim order. It is further alleged that the District Committee of the Kerala Headload Workers Welfare Board, Thiruvananthapuram, as per its decision dated

19.01.2015, directed to grant registration to the petitioners under Scheme 6A of the Scheme; and accordingly, identity cards were issued to the petitioners on 21.01.2015. However, immediately, on knowing the Ext.P7 order, the respondent issued Ext.P8 order, which, according to the petitioners, is without jurisdiction and legally unsustainable. Ext.P7 order of the Division Bench of this Court cannot confer jurisdiction on the respondent to issue Ext.P8 order. The issue of cards under Scheme 6A to the petitioners are not the subject matter of the earlier writ petition or the writ appeal. According to the petitioners, in case, Ext.P8 order is allowed to operate, it would deny the petitioners their rights guaranteed under Articles 19 & 21 of the Constitution. Hence, this writ petition.

- Additional respondents 2 & 3, who are the petitioners in the other two writ petitions, have filed detailed counter affidavit reiterating their contentions in the other writ petitions.

4. Arguments have been heard.

5. For convenience of discussion, the parties can be referred to as they are arrayed in WP(C) No.24100/2014.

6. The learned counsel for the petitioners would submit that the loading and unloading work presently done by the members of the petitioner unions is their only source of income, which would be detrimentally affected by the illegal registration granted to respondents 8 to 10. It was argued that as per Rule 26C(2) of the Rules, the appellate authority, who is the 3rd respondent, has to decide the appeal within a period of 30 days from the date of receipt of the appeal. It is submitted that the petitioners preferred Ext.P11 appeal against Ext.P2 order passed by the 4th respondent as early as on 26.05.2014; and hence, the 3rd respondent was bound to dispose of the appeal before 25.06.2014. It was pointed out that even notice was not issued despite the passage of one month from the date of filing the appeal. The definite stand

taken by the petitioners is that respondents 8 to 10 had never been the headload workers at any point of time. They worked only for a short period of less than two months, that too, on the basis of forged certificate produced before the 1st respondent Board.

7. The learned counsel for the party respondents, per contra, would submit that the Rule does not require that an applicant for registration under Rule 26A should have already been working under an employer, under whom he seeks registration. Therefore, according to them, the argument that they worked for two months using fraudulent methods and that they are not entitled for working as headload workers, is untenable. It was also submitted that the argument that when the documents produced by them were found to be false and forged, they were terminated by the 1st respondent Board and the said period cannot be construed as the period they worked as loading and unloading workers, is also incorrect. According to the learned counsel for the party

respondents, for registration under Rule 26A, there is no stipulation that the applicant should have working experience of any specified period. It was further submitted that the petitioners cannot be 'aggrieved persons' in order to file an appeal under Rule 26C of the Rules; and therefore, Ext.P11 appeal is not maintainable. Reliance was also placed on the decision of this Court in **Jnana Prakasam** v. **Natarajan** [2002 (1) KLT 39] to argue that the existing headload workers would also come within the meaning of 'person aggrieved' as the issue of new cards would result in sharing of the cake by more mouths resulting depletion of the share of the existing workers. According to the learned counsel for the party respondents, the petitioners cannot be held to be 'persons aggrieved' for maintaining Ext.P11 appeal.

8. The learned counsel for the petitioners, referring to the reply affidavit, would submit that issue of 26A card was in gross violation of the statutory provisions under Rule 26A. It was pointed out that so long as there

is a procedure stipulated in the statute, the 1st respondent or the 4th respondent registering authority has no right to deviate from the same. As rightly submitted by the learned counsel for the petitioners, the committee has no role in the issue of Rule 26A card and no suo motu recommendation by the committee is also contemplated under Rule 26A. The registering authority has to issue notice under Form X to the Chairman, the Kerala Headload Workers Welfare Board Local Committee, where the scheme is in operation with the copy of the application inviting objections, if any, on such application, is the provision under Rule 26A(2) of the Rules. Without receiving such a notice in Form X from the registering authority with a copy of the application of the headload worker concerned as contemplated in the Rules stated above, the committee has no power to make any suo motu recommendation, which vitiates the entire proceedings.

9. The party respondents had stated in their

applications that they had been working under three employers from 2010 onwards. The learned counsel for the petitioners would submit that the employers, under whom the party respondents had claimed to have worked, had stated that they had worked as headload workers three years back. It was pointed out that verification of the records maintained by the committee would have proved that the claim of the party respondents was wrong as the said employers were registered employers right from the inception of the coverage of the scheme in the area. Therefore, the best evidence in their claim that they worked for three years from 2010 onwards would definitely be the records maintained by the 1st respondent regarding registration, remittance/disbursement of wages, collection of levy etc. The statement filed by the 1st respondent is silent about those crucial aspects. I see valid force in the said submission.

10. Though it was strenuously argued by the learned counsel for the party respondents that the

petitioners have no locus standi to approach this Court, it has to be noted that the said unions have approached this Court on behalf of their members for protecting their rights. The very purpose of the formation of a union is to ensure that the collective rights of the workers are protected and that the rights of the individual workers are not alienated for want of resources to seek justice. Therefore, the argument that the individual workers ought to have been impleaded or ought to have approached this Court separately is baseless. In support of the argument that the petitioner unions are competent to file these writ petitions, the learned counsel for the petitioners invited my attention to Exts.P9 & P10 registration certificates of 1st & 2nd petitioner unions respectively and Exts.P9(a) & P10(b) bye-laws of 1st & 2nd petitioner unions respectively produced in WP(C) No.20208/2015. On a perusal of the same, it can be seen that the petitioner unions are both registered under the Indian Trade Union Act, 1926 and that they are entitled

to represent their members in the writ petitions.

11. It was pointed out by the learned counsel for the petitioners that the quantum of work available in the scheme covered area is carried out by the workers belonging to the two petitioner unions. Without there being any increase in the quantum of work or decrease in the number of registered headload workers, there is no necessity for new recruitment. Ext.P16 reiterates the information provided in Ext.P9 that respondents 8 to 10 had entered the rolls claiming to be dependents of disabled registered headload workers and when it was found that the said information was incorrect, they were removed from the rolls. The petitioners have the right to protest the illegalities perpetrated by the party respondents in pursuit of their goals. As rightly pointed out, being a scheme covered area, only registered headload workers are eligible to work there. There are two ways to secure registration. Sub-para 2 of Para 6B of the Scheme stipulates that registration can be granted

only to those workers, who have been working continuously for more than two years with valid registration under Rule 26A, or to the legal heirs of deceased/disabled registered headload workers, and is dealt with under Rule 26B of the Rules. Neither the relevant statutes nor the rules recognize the nomenclature 'helper headload worker'. Rule 26B clearly provides that in the event of a headload worker becoming disabled or deceased, a dependent can secure registration. Exts.R8 (c) to R8(j) documents are said to have been issued to the party respondents by their former employers. However, Ext.P2 reveals that in the applications submitted by the party respondents before the 1st respondent registering authority, the establishments, where they claimed to have worked, are Sakthi Avencies, C-MARC and M/s Guhan Gas Service. The registering authority in turn has sent Form X registered notice to these employers for enquiring as to whether they had any objection against the party respondents being given registration under

Rule 26A. Respondents 8 to 10 are liable to answer as to how these establishments do not find a place in the applications submitted by them before the 1st respondent authority and subsequent proceedings.

12. It was pointed out that in 2013, with the surreptitious design to induct new persons in KB-4 Pool with extraneous motives, the Board District Committee decided to recommend to the registering authority, the Assistant Labour Officer, to issue 26A identity cards to three persons, who are the petitioners in WP(C) No.3585/2015 and another person, viz., S.Suresh. It was opposed by the petitioner unions. However, the registering authority decided to grant registration to the petitioners as per Ext.P2 order without following the procedure laid down under Rule 26A. Though an appeal under Rule 26C was filed before the District Labour Officer by the petitioner unions, it was dismissed overlooking the patent illegalities in the issue of 26A cards. It is under this circumstance, the petitioner unions

approached this Court with WP(C) No.24100/2015. When WP(C) No.24100/2015 came up before this Court, this Court issued an interim order stating that the pendency of WP(C) No.24100/2015 would not be a bar to the District Committee from taking a decision for issue of cards. The petitioner unions preferred WA No.130/2015 against the same. In the meanwhile, the Thiruvananthapuram District Committee of the Kerala Headload Workers Welfare Board granted registration to the party respondents under Para 6B of the Scheme [Ext.P5 order in WP(C) No.3585/2015]. A perusal of the said order would reveal that the reason for granting registration under Para 6A of the Scheme was the issue of Ext.P4 interim order in WP(C) No.24100/2014. It is crucial to note that the procedure for replenishment of workers in the rolls of the committee is dealt with in Sub-Para 2 of Para 6B of the Scheme. Sub-Para 2 of Para 6B of the Scheme stipulates that registration can be granted only to those workers, who have been working

continuously for more than 2 years with valid registration under Rule 26A. Admittedly, two years have not passed since the party respondents were issued with 26A identity cards and as such, they are not entitled for registration under Para 6A of the Scheme. As per the interim order dated 21.01.2015 granted by the Division Bench of this Court in the aforesaid writ appeal, the said registration granted under the Scheme was kept in abeyance. The interim order granted in WP(C) No.24100/2015 was vacated by the Division Bench of this Court as per judgment dated 25.05.2015 in WA No.130/2015. Therefore, all the consequential orders would meet the same fate. Therefore, WP(C) No.3585/2015 has become infructuous.

On a consideration of the entire materials now placed on board,

- WP(C) No.24100/2014 & 20208/2015 are disposed of quashing the impugned orders and directing the respondents concerned to reconsider the appeal

preferred by the petitioner unions in the light of what has been stated above after affording the petitioner unions and the affected parties an opportunity of being heard. This exercise shall be completed within a period of two months from the date of receipt of a copy of this judgment. Till that exercise is completed, the existing state of affairs shall continue. That means, the petitioners in WP(C) No.3585/2015 shall not have the right to work as registered workers.

- WP(C) No.3585/2015 is dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-