

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 33214 of 2014 (B)

PETITIONER(S):

1. SARISH.V, S/O.SADANANDAN, AGED 33 YEARS,
VATTOMPADIKKAL HOUSE, AMARAMBALAM,
THOTTEKKAD, MALAPPURAM DISTRICT.
2. SANDEEP V., S/O.SADANANDAN,
VATTOMPADIKKAL HOUSE, AMARAMBALAM,
THOTTEKKAD, MALAPPURAM DISTRICT.
3. RAJESH K.,
S/O.SANTHA, KURUPATH HOUSE, ORAVANKUNDU,
AMARAMBALAM, MALAPPURAM DISTRICT.

**BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU**

RESPONDENT(S):

1. THE DISTRICT LABOUR OFFICER,
MALAPPURAM, PIN - 676 505.
2. THE ASSISTANT LABOUR OFFICER,
NILAMBUR, MALAPPURAM DISTRICT, PIN - 679 329.
3. SANTHOSH KUMAR C.K.,
CHIRAKKAL HOUSE, THACHARAPOYIL, AMARAMBALAM,
MALAPPURAM DISTRICT, PIN - 679 332.

***ADDL.R4 IMPEADED**

***ADDL.R4: THE KERALA HEADLOAD WORKERS WELFATE FUND BOARD,
REPRESENTED BY THE CHAIRMAN, NILAMBUR SUB OFFICE,
NILAMBUR, MALAPPURAM DISTRICT,PIN-679 329**

***ADDL.R4 IS IMPEADED AS PER ORDER DATED 6/01/2015 IN IA.NO.17105/14.**

**R1 & R2 BY GOVERNMENT PLEADER SRI.R.RANJITH
R3 BY ADV. SRI.V.P.PRASAD
SRI.K.R.RAJKUMAR
ADDL.R4 BY ADV. SRI.C.A.MAJEED, SC, KHWWB**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE REGISTRATION ISSUED BY THE 2ND
RESPONDENT UNDER THE SHOPS AND COMMERCIAL
ESTABLISHMENTS ACT DATED, 19.3.2014 TO THE FIRST PETITIONER.
- EXT.P2: TRUE COPY OF THE APPLICATION MADE BY THE FIRST PETITIONER
TO THE FIRST RESPONDENT DATED 6.2.2014.
- EXT.P3: TRUE COPY OF THE COMMUNICATION GIVEN BY THE FIRST
RESPONDENT TO THE 2ND RESPONDENT DATED 14.2.2014.
- EXT.P4: TRUE COPY OF THE REPLY GIVEN BY THE SECOND RESPONDENT TO
THE FIRST PETITIONER DATED 5.3.2014.
- EXT.P5: TRUE COPY OF THE IDENTITY CARD ISSUED TO THE 2ND PETITIONER
BY THE 2ND RESPONDENT DATED 20.6.2014.
- EXT.P6: TRUE COPY OF THE IDENTITY CARD ISSUED TO THE 3RD PETITIONER
BY THE 3RD RESPONDENT DATED 20.6.2014.
- EXT.P7: TRUE COPY OF THE ORDER PASSED BY THE FIRST RESPONDENT AS
ORDER NO.HLA-02/2014 DATED 3.12.2014.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

K. VINOD CHANDRAN, J.
=====

W.P.(C) No.33214 of 2014 - B
=====

Dated this the 19th day of March, 2015

J U D G M E N T

The first petitioner is a proprietor of an establishment, in which the petitioners 2 and 3 are said to be working as loading and unloading workers. The petitioners together approached the Assistant Labour Officer, Nilambur, the 2nd respondent herein, under the Kerala Headload Workers Act, 1978, for registration of the petitioners 2 and 3 under Rule 26A of the Kerala Headload Workers Rules, 1981. The same was allowed and identity cards were issued to the petitioners 2 and 3. The pool leader of headload workers under the Headload Workers Welfare Fund Board approached the District Labour Officer with an appeal against the grant of registration under Rule 26A . The same was allowed by Ext.P7.

2. Ext.P7 order indicates that, two grounds were

found for allowing the appeal and setting aside the registration granted under Rule 26A. The first ground was that, the pool workers were not heard. The same is covered by a decision of this Court reported in **Baheer P.A @ Abdul Basheer P.A and Others v. Assistant Labour Officer, Perumbavoor [2012 (3) KHC 650]**, wherein it was unequivocally stated that, headload workers in an area cannot claim any right to be heard when the registration of even headload workers under Rule 26A is considered. Herein, the establishment is seeking registration of its own loading and unloading workers under Rule 26A, which is said to be permissible by a Full Bench decision of this Court in **Raghavan v. Superintendent of Police [1998 (2) KLT 732]**, and affirmed by a majority in another Full Bench decision of this Court reported in **Karunakara Kurup v. State of Kerala [2004(1) KLT 215]**.

3. However, the welfare of the registered workers are protected by the Board. It is a mandate that

under Rule 26A, the Board has to be heard before the registration is granted. It is also stated in the impugned order that the Assistant Labour Officer had proceeded on the basis that, it is not a Scheme covered area. It is only proper that the matter be restored to the files of the Assistant Labour Officer and considered afresh after issuing notice to the Board. It is made clear that no notice be issued to any of the additional respondents impleaded herein, since, they are pool workers, who are not entitled to object to such registration and whose interest will be protected by the Board.

4. The writ petition is disposed of, to the extent of setting aside Ext.P7 order finding that, the Board have to be heard before Rule 26A registration is granted. The remand however is upheld and authority is directed to consider the issue afresh. The petitioners and the Board shall appear before the Assistant Labour Officer on 09.04.2015 and produce the certified copy of this judgment. The issue shall

be considered and orders passed within a period of two months from 09.04.2015. It is made clear that the first petitioner would be entitled to employ the 2nd and 3rd petitioners in exclusion to any other pool workers till orders are passed on the application for registration made under Rule 26A, and thereafter as governed by the said order.

The writ petition is disposed of with the above observations.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge