

(2012) 07 KL CK 0336
In the High Court Of Kerala
Case No : W.R. (C) No. 16349 of 2012

Basheer, P. A. and others

APPELLANT

Vs

Assistant Labour Officer

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Kerala Headload Workers Act, 1978 — Section 14, 14(1)

Citation : (2012) 4 ILR (Ker) 346 : (2012) 3 KLJ 824

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : N. Nagaresh, Sri Shaji Thomas, Sri Binu Paul and Sri T.V. Vinu, for the Appellant; G. Krishna kumar, Sri Titto Thomas and Sri K.A. Ani Joseph, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice K. Surendra Mohan

1. Whether the existing Headload Workers in an area can claim a right to be heard, in the matter of consideration of an application for registration of another, as a Headload Worker? This is the question that arises for determination in this writ petition. The brief facts of the case are the following:

The petitioners have filed this writ petition complaining of the delay in granting registration to them under the Kerala Headload Workers Act, 1978 ("the Act" for short). According to the petitioners they have submitted Ext.-P-1 to P-25 applications for getting themselves registered as Headload Workers under Rule 26A of the Kerala Headload Workers Rules, 1981 ("the Rules" for short). The petitioners seek the issue of appropriate directions for the consideration of their applications expeditiously.

2. As per order in I.A. No. 10125/2012 additional respondents 2 to 4 have got themselves impleaded in the writ petition. Additional respondents 2 to 4 are existing Headload Workers of the area. They have already obtained registration

under the Act and Rules. They oppose the grant of registration to the petitioners. According to them, they are also entitled to be heard before final orders are passed on the applications for registration submitted by the petitioners.

3. The learned Government Pleader on instructions submits that objections of the Kerala Headload Workers Welfare Board, Local Committee have been sought, in the matter of granting registration to the petitioners. As soon as objections are received, they would be considered and appropriate orders would be passed on the applications, it is submitted.

4. In view of the claim of the existing Headload Workers that they have a right to be heard in the matter, arguments were advanced by the respective counsel, specifically on the point. I have also been taken through the various provisions of the Act and the Rules. Sub-rules 2 and 3 of Rule 26A prescribe the procedure to be followed before granting registration to Headload Workers. Sub-rules 2 and 3 are extracted hereunder for convenience of reference:

26A. Registration of Headload Workers.--[(1) Any headload worker may] submit his application for registration in Form IX to the Registering Authority concerned, with as many additional copies as there are employers or contractors from whom he claims to work.

[(2) On receipt of such application the Registering Authority shall issue notice in Form X to the employers or contractors from whom the Headload Worker claims work and in area where the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 is in operation, to the Chairman, Kerala Headload Workers Welfare Board Local Committee in such area with copy of the application inviting objections, if any, on such application.]

(3) After considering the objections, if any, received and after giving an opportunity of being heard, the Registering Authority shall register the name of the Headload Worker in the Register of Headload Workers, on being satisfied that the Headload Worker is eligible for registration and communicate the fact to the parties within two weeks of such registration. The Registering Authority shall also issue identity card to the registered Headload Worker (in Form XI). If the name is not registered, the Registering Authority shall communicate the fact to the applicant with reasons therefore.

5. A reading of sub-rules 2 and 3 above, shows that the Registering Authority has to issue notices to the employers and contractors from whom the Headload Worker claims work. With respect to an area to which the Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983, ("the Scheme" for short) is applicable, notice is required to be issued to the Chairman, Kerala Headload Workers Welfare Board, Local Committee also. Copies of the applications for registration submitted by the Headload Workers are to be supplied to all the persons to whom notices are to be issued as stated above and their objections are required to be invited on such application/ applications. The Registering Authority is to grant or refuse registration to a Headload Worker only

after considering the objections if any received and after giving an opportunity of being heard to the persons mentioned above.

6. The first two categories of persons, namely, the employers and/or contractors, who are required to be given notice by the above provisions are the persons from whom the headload worker or workers claim work. The said persons are required to be issued with notice and heard, irrespective of whether it is a scheme covered area or not. The reason is because primarily, the person who would be affected by the grant of registration is the employer or contractor. However, with respect to an area to which the scheme is applicable the Chairman, Kerala Headload Workers Welfare Board, Local Committee, is also required to be heard. He is a representative of the registered Headload Workers of the area. The above is clear from the scheme of the Act and the Rules. The Kerala Headload Workers Welfare Board is constituted u/s 14 of the Act read with Rule 4 of the Kerala Headload Workers Rules, 1981 ("the Rules" for short). Section 14(1) of the Act reads as follows:

14. Board.--(1) The Government may, by notification in the Gazette, establish a Board to be known by such name as may be specified in the notification for the purpose of exercising the powers and performing the functions of the Board under this Act and the schemes.

Rule 4 of the Rules provides for the constitution of the Board in the following words:

4. Constitution.--The Board appointed u/s 14 of the Act shall be called the Headload Workers Welfare Board and the members of the Board shall be nominated as specified below:

(i) Five representatives of the employers in consultation with the interests concerned.

(ii) Five representatives of the headload workers in consultation with the interests concerned.

(iii) Five Officials to be nominated by the Government. The Government shall appoint one of the members as the chairman of the Board.

The nature of the powers and functions of the Board set out in Rule 13 of the Rules make it clear beyond any doubt that the Board is constituted for the welfare of the Headload Workers. Rule 13(1)(b) provides as follows:

13. Powers and functions of the Board. -- (1) In addition to and without derogation of the powers conferred on the Board under the Act. Rules and the Scheme, the Board shall have the following powers and shall be responsible for. -

(a) dealing with all matters connected with the administration of the fund as specified in the Scheme or Schemes.

(b) laying down general policies regarding welfare of the headload workers.

The Local Committee of the Board is therefore the authority competent to represent the interests of the existing registered workers of the local area. It is for the said reason that the said authority is required by law, to be issued with notice of any application for registration as a Headload Worker. Since the interests of the existing Headload Workers are to be statutorily represented by the Headload Workers Welfare Board, Local Committee, through its Chairman, whose objections are necessary to be considered before the grant of any fresh registration, it is not necessary for the individual Headload Worker to be heard before the grant of registration to another Headload Worker. Grant of such an opportunity of being heard would only make the procedure cumbersome and unworkable. The same would also be against the statutory scheme. The provisions make it clear that the Registering Authority can grant registration to a Headload Worker only after considering the objections received and after hearing the persons from whom such objections are required to be invited. In the above scheme of things, there is no provision for the grant of a right of hearing to the existing individual Headload Worker, as already noticed above. Therefore, I do not find any justification for directing the Registering Authority to afford such an opportunity of being heard to the petitioners in this Writ Petition.

7. It is pointed out by the counsel for additional respondents 2 to 4 that as per the decision reported in *Jnana Prakasam v. Natarajan* 2002(1) KLT 39, a Division Bench of this Court has held that "the existing workmen" are persons who come within the expression, "persons aggrieved" and therefore, they have a right to file an appeal challenging the registration that has been granted to another Headload Worker. For the above reason, it is contended that the existing Headload Workers should be given an opportunity to contest the grant of registration to other Headload Workers, under Rule 26A also.

8. As already noticed above, Rule 26A does not envisage a procedure of affording an opportunity of being heard to any of the existing workmen. Since additional respondents 2 to 4 have the right to challenge any registration that may be granted to the petitioners, they already have a remedy for ventilating their grievances, if they are aggrieved in any manner by the decision of the Registering Authority. The question of filing an appeal arises only if registration is granted to the petitioners. They can have no grievance if the registration is declined. Therefore, respondents 2 to 4 are not prejudiced in any manner by the denial of a right of hearing, at the stage of deciding whether or not to grant registration under Rule 26A of the Act.

9. According to the learned Government Pleader, the applications Ext. P-1 to P-25 submitted by the petitioners would be considered in accordance with law and appropriate orders would be passed thereon within a short time. For the above reasons, it is held that the existing Headload Workers have no right to be heard in the matter of grant or refusal of registration to fresh workers under Rule 26A of the Kerala Headload Workers Rules, 1981. Therefore, the claim of additional respondents 2 to 4 to be afforded an opportunity of being heard while

considering exhibits P-1 to P-25 applications of the petitioners is rejected. The first respondent is directed to consider the applications for registration submitted by the petitioners, evidenced herein by Ext. P-1 to P-25, in accordance with law, and to pass appropriate orders thereon, as expeditiously as possible, at any rate within a period of six weeks from the date of receipt of a copy of this judgment.