

(1998) 08 KL CK 0057

In the High Court Of Kerala

Case No : O.P. No"s. 4338 and 14983 etc. of 1993 and connected O.Ps.

Raghavan

APPELLANT

Vs

The Superintendent of Police and Others

RESPONDENT

Date of Decision : 27-08-1998

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226, 227
Kerala Headload Workers Act, 1978 — Section 13, 18, 2, 21, 25
Kerala Headload Workers Rules, 1981 — Rule 26, 26A, 26B, 26C, 27

Citation : (1998) 08 KL CK 0057

Hon'ble Judges : S. Marimuthu, J;K.K. Usha, J;K. Narayana Kurup, J

Bench : Full Bench

Advocate : K.N. Sivasankaran, in O.P. 4338 of 1993 N, for the Appellant; M.K. Damodaran, General for Respondent Nos. 1 to 3, for the Respondent

Judgement

K.K. Usha, J.—The above Original Petitions are referred for consideration of a Bench of three Judges as per reference order dated 7th January 1997 which reads as follows:

Heard. In all these cases a common question is involved regarding police protection under the Headload Workers Act. It was represented on behalf of the Bar that considering the importance of the matter, the question involved in these cases may be decided by a Larger Bench.

We have considered the suggestion of the Bar and, accordingly, direct that these matters will be posted before a Bench of three Judges on 14th January, 1997. The learned Advocate General has taken notice and he has agreed to assist the Court on that day.

2. After hearing both sides, we are given to understand that the reference was necessitated in the light of a different view expressed by a Bench of this Court in Sathyan, S. v. Sunila Sudhakaran and Ors. ILR 1997 Ker 549 in the matter of grant of police protection when a dispute arises regarding engagement of headload workers. Even though, the Division Bench dismissed the appeal against

the judgment of a learned Single Judge granting police protection to an employer when a dispute arose regarding unloading of goods in his business premises, certain observations were made in the judgment to the effect that all such disputes should be resolved within the machinery provided under the Kerala Headload Workers Act, 1978 and no order for police protection shall be granted. Counsel appearing on both sides submitted before us that the above view is in conflict with the consistent view expressed by this Court in a series of decisions from 1989 onwards.

3. We heard learned Advocate General also. He submitted that certain aspects of the provisions of the Kerala Headload Workers Act, 1978 which had not come up for direct consideration in the earlier Judgments, are also to be clarified, since the entire matter is being considered by a Larger Bench.

4. The Kerala Headload Workers Act, 1978 (Act 20/80) (hereinafter referred to as "the Act"), came into effect on 3rd October 1980. The object of the Act was to regulate the employment of headload workers in the State of Kerala and to make provision for their welfare, for the settlement of disputes in respect of their employment or non-employment and for matters connected therewith. The term "headload worker" is defined u/s 2(m) of the Act as follows:

(m) "Headload worker" means a person engaged directly or through a contractor in or for an establishment, whether for wages or not, for loading or unloading or carrying on head or person or in a trolley any article or articles in or from or to a vehicle or any place in such establishment, and includes any person not employed by any employer or contractor but engaged in the loading or unloading or carrying on head or person or in a trolley any article or articles for wages, but does not include a person engaged by an individual for domestic purposes.

Section 2(j) defines the term "establishment" as an establishment specified in the Schedule and includes the precincts thereof. Chapter IX of the Act deals with registers and records to be kept in connection with working of the provisions of the Act. It provides that an authority or officer shall maintain a register of headload workers working within its or his jurisdiction. Section 28 mandates that every employer shall maintain such registers and records as maybe prescribed. Chapter IV of the Kerala Headload Workers Rules, 1981 contains provisions for maintenance of registers and records. Rule 26 provides that Asst. Labour Commissioner shall be the authority to prepare the register of headload workers working in the area within his jurisdiction and he shall keep the register in Form No. VI. Rule 26A provides for the manner in which applications are to be made by the headload worker for getting registered. Rule 26B is regarding registration of dependents of workers dying-in-harness and Rule 26C contains provisions for appeal. As per Rule 27, every employer is bound to maintain a register of employment and wages in Form No. V. Payment of wages, inspection of registers, the manner in which registers are to be kept etc., are all provided under Rule 27.

5. Chapter II of the Act contains provisions regarding appointment of conciliation

officers, appellate authorities and inspectors. Chapter III contains provisions regarding hours of work, limitation of employment, daily intervals and rest, payment of wages etc. Chapter IV refers to schemes which Government may, by notification, make for any employment or group of employments in one or more areas in the State,

6. Kerala Headload Workers (Regulation of Employment and Welfare) Scheme, 1983 was notified on 30th November 1983. Clause 3 of the Scheme provides that it shall come into force in the area specified in the schedule attached to the scheme in respect of all establishments from such date as may be fixed by the Government by notification in the Gazette. Admittedly, the scheme not made applicable to all parts of Kerala. Chapter II of the scheme contains provisions regarding procedure for regulation of employment of headload workers in scheme areas. Procedure for registration of the headload workers are contained in Clause 6A and 6B. Clause 7 provides that every employer in the area regularly requiring services of headload workers shall also register with the Committee constituted u/s 18 of the Act after remitting a prescribed fee. A register shall be kept by the Committee of all such persons registered. These are some of the provisions of the Act, Rules and Scheme which are relevant for consideration of the issues before us.

7. The facts of the case considered in ILR 1997 Ker 549 supra were as follows: An Original Petition was filed under Article 226 of the Constitution before this Court by the Proprietrix of Kottakkal Arya Vaidya Sala, Varkala alleging that the Respondents Union created obstruction to the loading, unloading and delivery of goods belonging to the Petitioner and demanded huge amounts as delivery charges. A learned Single Judge directed police authorities to afford adequate protection to deliver the medicines at the business premises of the Petitioner as and when they arrived. It was also directed that the dispute between the Petitioner and the Respondent Union shall be settled by labour authorities as provided under the Kerala Headload Workers Act, 1978. Against the above judgment, the Union filed an appeal, while considering the appeal, the Bench referred to the provisions contained u/s 21 and certain other provisions of the Act and observed as follows:

After examining these various provisions of the Kerala Headload Workers Act, we are of the view that such disputes under the Kerala Headload Workers Act should not normally be entertained in a Writ Petition filed under Articles 226 and 227 of the Constitution of India. As seen above, a complete machinery has been provided for settling such disputes which will require the evidence to be filed by the parties and oral examination of witnesses may be necessary in order to find out the alleged obstruction put by such persons in lawful exercise of the right of the other party. From the facts of the case presented above, it is obvious that it was a dispute between the Appellant Union and its workers as against workers employed by the first Respondent. If such are the disputes relating to the unlawful activities of the Appellant Union and the other employees not belonging

to their Union, we see no reason how such a dispute will be legitimately settled by Police interference. A Writ Petition under Article 226 cannot be entertained as a matter of course merely because a Police protection is asked for to settle such a dispute.

This Court would not be justified in giving such a Police protection when it has no machinery to settle such a dispute arising between two labour unions or two sets of labourers or a dispute arising between the employer and its workmen who might not have been paid their legitimate wages. If by a writ of mandamus, such Police protection is given without there being any effective machinery in the hands of this Court to settle such a score between these parties, then it would result in causing injustice to the other who will have to succumb to the pressure of the Police without his legitimate right being settled under the Act. In such cases, even the first information reports are not lodged by those who suffer at the hands of the unlawful elements. If the first information reports would be lodged then the criminal action would be set into motion and the Police will have to proceed with the investigation. In case of their failure, the parties would go to the Court of the Magistrate of competent jurisdiction for appropriate action. In a case, if an injunction order is required, the parties would go to the civil Court of competent jurisdiction and get an appropriate order where parties concerned would prove their claim by leading such evidence as may be required in a given case. Besides all these measures, a complete remedy is provided and the machinery is set out in the Act itself to settle such disputes. Ignoring all these, the parties hasten to file such writ petitions for a writ of mandamus as a matter of course which, we find, is not a proper remedy when full and complete machinery has been set out in the Kerala Headload Workers Act itself.

8. Learned Counsel appearing on behalf of the Petitioners in the Original Petitions before us, contended that the view expressed by the Bench that all disputes regarding headload workers should be resolved under the provisions of the Headload Workers Act and under no circumstances, police protection can be granted, is totally unjustified in the light of a series of decisions of this Court. Learned Counsel further pointed out that the Bench was under a misapprehension that police protection is sought for a settlement of the dispute between the parties. Police protection is never sought for settlement of dispute nor was it ever granted by this Court in any proceeding. Protection is always sought from the obstruction created by members of the Union or workers in the loading and unloading activity carried on by the Petitioners alleging that such workers have no legal right to insist for being engaged by the Petitioner-employer. Protection is also sought for the property and person of the employer and willing workers. It is submitted by learned Counsel that in all cases where such protection is granted, if there is a labour dispute, this Court used to direct the labour authorities to adjudicate the matter.

9. The first decision referred by the learned Counsel is Joy Mathew v. Supdt. of Police 1989 (1) KLT 314. A learned Single Judge took the view that when the

Petitioner was having permanent employees to attend to the loading and unloading work in his establishment and so long as he carries out the loading and unloading work with the help of his permanent employees, the Petitioner cannot be compelled to employ anybody else other than his permanent employees. Direction was therefore given to the police to give necessary protection to the Petitioner to carry on the loading and unloading work in his establishment engaging his permanent employees. In *Swati Roller Flour Mills (P) Ltd. and others Vs. State of Kerala and others*, the questions whether a committee constituted u/s 18 of the Act has got any plenary power to control all loading and unloading work in an area and if an establishment has got permanent workers for loading and unloading, whether any headload worker in that locality can raise a claim to do such work, were elaborately considered by the same learned Judge. In the facts of the case, it was found that the establishment concerned was not in an area where the scheme under the Act has been extended. It was observed therein that even in an area where the scheme is made applicable, the employer need approach the committee constituted u/s 18 of the Act only when he has no permanent employees to attend the loading and unloading work or even when there are permanent workers, the employer requires services of additional workers. It was held that the scheme of the Act does not recognise any union of headload workers. Therefore, no Union can advance a claim on behalf of its members, to attend to loading and unloading work in an establishment. In this case also, direction was given to the police to give protection to the employer to carry on the loading and unloading work with his permanent workers in case of obstruction created by the Respondents.

10. In *Ibrahimkutty v. Superintendent of Police* 1991 (1) KLT 829, a Bench of this Court took the view that granting of police protection would arise when there is likelihood of breach of peace and there is a reasonable apprehension of commission of offence and direction was given to give police protection to the employer in the event of members of Respondent Union obstructing labourers of the employer's choice from getting the work of loading and unloading done. It is not clear from the facts of the case whether the establishment of the employer was in an area where the scheme was made applicable or not. It was also not clear from the judgment that by reference made to labourers of his choice whether the Court intended the permanent workers of the employer. Apart from the general principle that when there is a breach of peace, police has got the duty to give protection, we do not find any relevance for this decision regarding the effect of the different provisions of the Act.

11. In *Kochayyan Subrahmanian v. Cochin Cadalas (P) Ltd.* 1992 (2) KLT 269 which is also a Bench decision, the different provisions of the Act and the Rules were referred and discussed. Ultimately, it was held that there is no provision in the Act and the Rules conferring any preferential right for employment on the registered headload workers in the absence of any scheme made u/s 13. Since, on the facts of the case, it was admitted that the scheme had not been extended to the area where the factory was situate, it was held that the learned Judge was

fully justified in granting police protection to the writ Petitioner from the obstruction created by other workers claiming rights under the Headload Workers Act, 1978. In *Malapfiuram District Headload Workers Federation v. Kunju Mohammed* 1993 (2) KLT 57 a Bench of this Court considered an appeal from an order by a learned Single Judge in civil miscellaneous petition, granting police protection to the writ Petitioner employer to engage his own workers. While dismissing the writ appeal, it was observed that, if the employer wants to employ his own workmen for the purpose of running his industry or for the purpose of his establishment or other organisation, he has a right to engage workers of his choice and this right falls clearly from Article 19(1) of the Constitution of India. It was further observed that the Kerala Headload Workers Act, 1978 is in no way intended to interfere with the said right.

12. In *Desiya Chumattu T. Union v. Superintendent of Poince* 1993 (2) KLT 280 a Bench considered the claim for police protection made by an employer, who has an establishment in an area where the scheme was not made applicable. While following the earlier decision in 1992 (2) KLT 269 *supra*, it was observed by the Division Bench that it should not be understood that if the scheme is extended to the area in dispute, the employer can be compelled not to engage workmen of his choice. It was held that the employer in that case was entitled to police protection from the obstruction created by outside workers. In this case also, it is not clear from the facts that when reference to workmen of the employer's choice is made with reference to permanent workers or not.

13. The last of the series of the decisions placed before us by both sides is *Francis v. Kerala Headload Workers Welfare Fund* 1997 (2) KLT 883. The Original Petitions came up before the Bench on a reference made by a learned Single Judge. The Petitioners therein contended that they have permanent workers for doing the loading and unloading work in their business establishments and that the members of the Union impleaded as Respondents in the petition had no right to claim work under the Petitioners. It was contended that even in an area which is covered by the scheme under the Act, the owner of a private establishment could engage his own workers for loading and unloading of goods within his premises. It was further contended that the Act has no application to headload workers who are attached to private employers. Apart from the contentions raised on certain factual allegations in the Original Petitions, Respondents as well as learned Government Pleader put forward certain contentions on the basis of the provisions of the Act, Rules and scheme. Learned Government Pleader contended that the scheme envisaged under the Act requires that every headload worker was bound to register his name and all are brought under the purview of the welfare scheme. According to 4th Respondent-Union, the Petitioners were bound to engage workers who are included in the pool as per the scheme under the Act. The Bench, after referring to the definition of the term "headload worker", observed as follows:

The definition of the word "headload worker" given in the Act does not include a

person employed by any employer or contractor privately for his purpose. But it will certainly include the employees of an employer or contractor who is engaged for the purpose of loading and unloading or carrying on head or person or in a trolley any article or articles, in or from or to a vehicle or any place in any establishment. A domestic worker is also not included in the definition of "headload worker". So, a headload worker attached to an establishment is covered by the definition of "headload worker", irrespective of the fact that he is directly employed by an employer or through a contractor.

But, on the facts of the case, the Bench found that the business premises of the Petitioners therein would not come within the term "establishment" and therefore the Petitioners are at liberty to engage their own workers. It was then observed as follows:

Such workers are not required to be registered as per the provisions of the Headload Workers Act and Rules. But as and when the Petitioners require the services of any headload worker, they can make such requisition and they are bound to pay wages to such workers.

14. One of the main issues argued before us by both sides is the status of permanent workers attached to an establishment with reference to the provisions contained under the Act and Rules and scheme thereunder. When we use the term "establishment", we refer to the establishments included in the schedule to the Act as per the definition of the term u/s 2(j). It was contended by the learned Counsel for the Petitioners, who are employees that the term "headload worker" as defined u/s 2(m) of the Act would not take in a permanent worker attached to an establishment. It is submitted that the following words in the definition, namely, "and includes any person not employed by any employer or contractor but engaged in the loading or unloading or carrying on head or person or in a trolley any article or articles for wages" would mean that persons permanently employed in an establishment are excluded from the definition. According to learned Counsel, the terms "employment" and "engagement" have different connotation and the Act takes in to its fold, only the head-load workers who are engaged and not employed. We do not find any merit in this contention. A reading of the definition as a whole would clearly show that it takes in two sets of persons and excludes specifically persons engaged by an individual for domestic purposes. The first set of persons included in the definition are persons engaged directly or through a contractor in and for an establishment, whether for wages or not. The second group are persons who are not employed by any employer or contractor, but who are engaged in loading and unloading work for wages. The first group are persons who have specific employers. But, in their case, such employment need not be for wages. In the case of second group of persons, who are also engaged in loading and unloading work, it must be for wages, even though not under any specific employer or contractor. We cannot accept the contention that a person permanently employed in an establishment for loading and unloading work would not come within the first category of

persons referred in the definition clause since the word used therein is "engaged". It can be seen from the different provisions of the Act that the words "engage" and "employ" have been used in just apposition with each other. For example, the term "employer" is defined u/s 2(i) as follows:

(i) "employer" means,-

(1) in relation to a headload worker engaged by or through a contractor, the principal employer;

(2) in relation to a headload worker who is not employed by any employer or contractor, the committee constituted u/s 18; and

(3) in relation to any other headload worker, the person who has ultimate control over the affairs of the establishment in or for which the headload worker is employed and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an agent, manager or by any other name prevailing in such establishment.

The above would show that even though, in Clause (1), the word used is "engaged", in Clauses (2) and (3), the word "employed" is used. So also, in Section 2(s) where the term "wages" is defined, reference is made to a headload worker employed in an establishment. Reference to the definition of the term "dispute" would also show that there is no merit in the contention that there is difference between headload workers who are employed and headload workers who are engaged and that headload workers who are employed would not come within the purview of the Act.

15. The next question to be considered is whether the permanent workers employed in an establishment are liable to be registered under the provisions of the Act, Rules and scheme. We find that two types of registration are contemplated. First is the one coming u/s 25 read with Rule 26 and 26A. Rule 26A provides that any headload worker may submit his application for registration. On receipt of such application, registering authority shall issue notice to the employers or contractors from whom the headload worker claims work, inviting objections, if any. After considering the objections, if any, registering authority shall register the name of the headload worker in the register of headload workers and also issue an identity card to the registered headload worker. No provision of the Act or the Rules was brought to our notice by the learned Counsel for the Petitioners, which would exempt the permanent workers engaged in loading and unloading in an establishment from the above-mentioned process of registration. Section 26 read with Rule 27 give a mandate to the employer to maintain a register of employment and wages in Form No. V. There is nothing to show that the above provisions would not apply in the case of permanent workers employed for loading and unloading in the establishment.

16. But, when we come to the scheme, we find that registration contemplated therein is not applicable to headload worker who is permanently employed by an

employer or contractor. Clause 6A of Chapter II of the scheme provides that at the commencement of the scheme in any area, a headload worker who is not permanently employed by an employer or contractor and who is registered under the provisions of the Kerala Headload Workers Rules may submit his application to the convenor of the committee for registration under the scheme. If, his application is in order, his name will be included in the register of the headload workers of the committee. He will also be issued an identity card in Form C. Clause 6 provides that no headload worker who is not a registered headload worker under the provisions of the Rules, shall be allowed or required to work in any area to which the scheme applies and that from the date of commencement of the functional operation of the Scheme in any area, no headload worker who is not permanently employed by an employer or contractor, shall be allowed or required to work in any area to which the scheme applies, unless he is granted a further registration under the provisions of the scheme.

17. Clause 7 provides that every employer in the area where the scheme is made applicable regularly requiring the services of headload workers shall also register with the committee after remitting a fee. The register of such persons will be kept by the committee. Clause 11 under Chapter III provides that after coming into force of the scheme for an area, no headload worker shall be employed or paid wages except in accordance with the provisions of the scheme.

18. The above provisions would make it clear that the registration contemplated by the scheme is not applicable to permanent headload workers employed in an establishment either directly by the employer or through a contractor. But, that does not mean that such permanent workers cannot get registered as per the provisions contained under Rule 26A. As mentioned earlier, the Act and the Rules are made applicable for the whole of the State and the requirement of registration under Rule 26A is effective throughout the State whether it is an area to which the scheme is made applicable or not. Therefore, all headload workers whether permanently employed in an establishment or not are to get registration under Rule 26A.

19. What will be the consequence, if a headload worker does not get registered under Rule 26A? If he is not a permanent employee attached to an establishment and if he is working in an area where the scheme is made applicable, he will not be entitled to get registered under the scheme without first getting registered under Rule 26A. Without a registration under the scheme, he will not be able to work in that area. It is true that a permanent headload worker need not get registered under the Scheme as contemplated by Clause 6A. But, in view of the provisions contained under Clause 6(1), he will not be allowed or required to work in any area to which the scheme applies from the date of commencement of the functional operation of the scheme in that area unless he is a registered headload worker under the provisions of the Kerala Headload Workers Rules. The provisions of Sub-clause (1) of Clause 6 are of general application to all headload workers unlike Sub-clause (2) requiring a further registration of headload

workers excluding headload workers who are permanently employed.

20. If, in an area where the scheme is made applicable, the employer requires services of headload workers other than those whom he had permanently employed, he has necessarily to get them allotted through the committee. But, in an area where the scheme is not made applicable and therefore there is no committee, we find no provision under the Act and the Rules which would compel the employer to engage a headload worker who has got registration under Rule 26A. Therefore, it has to be taken that he is entitled to engage workers of his own choice. It is true that even in such cases, the provisions contained under Chapter III of the Act regarding hours and limitations of employment and wages would be applicable, since those provisions are not limited to registered headload worker, but are applicable to all headload workers. All sides agreed before us, and correctly too, that the provisions of the Act will have no application in respect of a worker engaged by an individual for loading and unloading for domestic purposes.

21. Yet another point raised before us was the case of workers employed in the establishments, who are doing the work of loading and unloading along with other duties. Learned Counsel for the Petitioners would contend that in such circumstances, the workers cannot be treated as headload workers coming under the definition of that term under the Act. We do not think that this is an issue where an answer in general can be given. It will depend on the facts of each case. If the worker is doing loading and unloading work regularly in the establishment, he cannot be taken out of the purview of the Act only for the reason that he is discharging some other duties also. On the other hand, if he is principally employed to carry on the work other than loading and unloading and if occasionally he does the work of loading and unloading, it may not be possible to treat him as a headload worker coming within the definition. But, as mentioned earlier, it will depend on the facts of each case.

22. The Act and the Rules provide for a machinery for settlement of disputes between the employer and the worker. In the normal course, the dispute between the employer and the headload workers employed by him are to be settled in accordance with the machinery thus provided under the statute just like in the case of any other labour dispute being settled in accordance with the provisions contained under the relevant statutes. Such disputes may include an issue whether a particular worker is a headload worker at all. But the fact that there is a machinery provided under the Act to settle the disputes between the parties cannot stand in the way of the employer seeking police protection when there is a law and order problem. When such an employer approaches this Court under Article 226 of the Constitution seeking protection of person and property of the employer as well as willing workers, this Court will be justified in granting direction to the police to give protection, if circumstances so warrant. One such consideration can be irreparable injury that would be suffered by the employer and/or the willing workers. There may be other circumstances also which would

justify grant of such direction in the facts of particular case. Therefore, according to us, the extreme view taken by a Bench in ILR 1997 (1) Kerala 549 supra that under no circumstances, if the dispute is one arising under the Headload Workers Act, order for police protection can be granted, cannot be sustained. To that extent ILR 1997 Ker 549 stands over ruled.

23. We do not also agree with the view taken in 1989 (1) KLT 314, 1993 (2) KLT 57 and 1994 (1) KLT 417 (Kerala Spinning Mill Workers Union v. Kerala Spinners Ltd.) that it is not necessary for the permanent workers to get registered under the provisions of Rule 26A. According to us, all headload workes including permanent Workers would come under the above provision. This is the view taken in 1997 (2) KLT 883 also. We cannot agree with the view expressed in this decision that a saw mill and timber business would not come within the definition of the term "establishment" as they are "private business". The Schedule u/s 2(j) reads as follows:

1. Iron and Steel markets or shops.
2. Cloth and cotton markets or shops.
3. Grocery market or shops.
4. Railway yards and goods sheds.
5. Establishments employing workers for loading or unloading of goods and other operations incidental and connected thereto.
6. Vegetable markets (including onions and potatoes markets).
7. Establishments employing workers for loading, unloading and carrying of foodgrains and such other work incidental and connected thereto.
8. Bus stands, boat jetties, landing places of country crafts.
9. Forest supply and sale coupes, timber and firewood depots.
10. Quarries.
11. Markets (including fish and meat markets) and factories employing workers; which are not covered by any other entries in this Schedule.
12. Rubber, Tea, Coffee, or Cardamom Plantations where workers are employed or engaged for loading or unloading timber or wooden loges in or from or to a vehicle, trolly or cart.
13. Establishment employing or engaging workers for loading or unloading Liquified Petroleum Gas Cylinders in or from, or to a vehicle.

A saw mill and timber business would certainly come under item 5. The Act does not contemplate a separate category called "private business" nor does it exempt such business premises from the term "establishment". But, when a worker is engaged for loading and unloading goods for domestic purposes, he will

not come within the definition of headload worker. Domestic purpose will not take in private business. Domestic purpose may take in loading and unloading of furniture and other articles and goods required for domestic use, building materials for one's own use and such other and similar activity. If a private business comes within any of the item in the Schedule, it will be an establishment for the purpose of the Act.

24. In the light of the above discussion, following principles can be deduced: (1) The provisions under Chapter III of the Act are applicable to all headload workers coming within the definition of the term under the Act. (2) The definition would take in both permanent workers attached to an establishment as also workers engaged in the establishment from time to time. But, workers engaged for domestic purposes are excluded. (3) The provisions of the Act would be applicable only to those headload workers who are engaged in establishments coming under the Schedule u/s 2(j). (4) All headload workers including permanent workers attached to establishments are liable to get registered under Rule 26A. (5) In the areas where the scheme is made applicable, no headload worker who is not a registered headload worker as per the Kerala Headload Workers Rule, shall be allowed or required to work in that area. It is also necessary that such headload worker shall get a registration under the provisions of the scheme. But, a headload worker who is permanently employed by an employer or a contractor is not liable to get registration under the scheme. (6) An employer is bound to maintain registers and records in respect of every headload worker employed by him as per the provisions contained under Rule 27 including supply of wage card to any headload worker. (7) It is open to the employer to engage his permanent headload workers attached to his establishment to do the loading and unloading work whether it is in an area where the scheme is made applicable or not. (8) But, in an area where the scheme is made applicable, if the employer requires additional workers, he has to get them through the committee formed u/s 18 and in accordance with the provisions of the Scheme. In an area where the Scheme is not made applicable, there is no such obligation on the part of the employer and he can engage workers of his own choice. But, he will be bound to comply with the provisions of Rule 27 in respect of such headload workers also. (9) If a headload worker permanently attached to an establishment is carrying on other work also, that, by itself, will not take him out of the definition of "headload worker" under the Act. It will depend upon the nature of the principal engagement and that again has to be decided on the facts of each case.

25. As mentioned earlier, any dispute regarding matters connected with the provisions of the Act, Rules and scheme is to be resolved in accordance with the machinery provided under the Act. But, in the meanwhile, if there arises a law and order situation, police is bound to interfere to maintain law and order. If there is failure on the part of the police to do their duty, it is open to the parties to approach this Court to get appropriate orders in the matter. While granting such relief, this Court will take into consideration the relevant facts of the case

including the question of any irreparable injury that may be suffered by any of the parties as in the case of an application for police protection in a situation arising out of any labour dispute. We do not think that there is any necessity of a special guideline in matters arising out of a dispute between headload workers and the employers. Discretion will be exercised by this Court, taking into consideration the facts and circumstances of each case.

We answer the reference as above and send back the original petitions to be heard on merits by appropriate Benches.

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