

**(2022) 06 KL CK 0197**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) No. 25860 Of 2021**

T.P.Tiles Centre

APPELLANT

Vs

District Labour Officer Civil Station, Wayanad 673 122

RESPONDENT

**Date of Decision : 17-06-2022**

**Acts Referred:**

Constitution of India, 1950 — Article 19, 19(1)(g)  
Kerala Headload Workers Act, 1978 — Section 13  
Kerala Headload Workers Rules, 1978 — Rule 26A, 26A(4)<

**Citation : (2022) 06 KL CK 0197**

**Hon'ble Judges : Amit Rawal, J**

**Bench : Single Bench**

**Advocate : V.Shyam, P.Arun, Saheera K., Justin Jacob, Thomas Abraham, Anil K.Nair, George J.Nalappat**

**Final Decision : Dismissed**

## Judgement

Amit Rawal, J

1. This order of mine shall dispose of two writ petitions; W.P(C).25860 of 2021 preferred by the establishment against the orders dated 05.07.2021 of the Assistant Labour Officer and dated 03.11.2021 of the District Labour Officer rejecting the application for registering the employees as headload workers under the Kerala Headload Workers Act and the Rules framed thereunder (hereinafter referred to as 'first writ petition') and W.P(C).No.8909 of 2021 titled as Sri.Siddique Akbar and others Vs.State of Kerala wherein writ in the nature of mandamus has been sought for issuing directions to the 4th respondent Assistant Labour Officer to take a call on the representation dated 01.03.2022 submitted by the petitioners to verify and register the records maintained under Kerala Shops and Commercial Establishment Act for the purpose of ascertaining whether the person on whose behalf the applications for registration under Rule 26A of the Rules were included in the register of the workers or not (hereinafter referred to as 'second writ petition').

2. First writ petitioner is claiming to be a partnership firm dealing in tiles, sanitary wares, hardwares, bathroom fittings, plumbing etc., in Kalpatta, Wynad district. It has a showroom situated near Water Authority, Kalpatta, three godowns and one branch within the radiance of 1.5 kilometers. For carrying out the aforementioned had already been issued a trade licence by the Municipality on 09.06.2021 Ext.P2 and registration under the Kerala Shops and Commercial Establishment Act had also been obtained as evident from Ext.P3 requiring the service of skilled and trained head load workers for the purpose of carrying out loading and unloading work in the main showroom and also in the branch/three godowns. Skilled labours were appointed for the said purpose as it had been dealing with costly marbles, vitrified and ceramic tiles. An application for registration of fifteen (15) headload workers, exclusively for such purpose, under Rule 26A of the Kerala Headload Workers Rules (hereinafter referred to as 'the Rules' for short) was submitted. The area under which the showroom was situated falls under the scheme promulgated under Section 13 of the Act as evident from the application Exts.P5 and P19.

3. Learned counsel appearing on behalf of the petitioner submitted that the Labour Officer dismissed the application vide impugned order dated 05.07.2021 in a most mechanical and sketchy manner and appeal taken before the Appellate Authority i.e., District Labour Officer had also resulted into dismissal on the ground that in case the persons who sought to be registered for the purpose of unloading and loading having a particular skill would take away the right of livelihood of other head load workers already registered under the Act in view of the existence of the scheme. The said orders are liable to be set aside as the said decision is against the dictum of various judgments and also Article 19(1)(g) of the Constitution of India. The prime reason assigned by the District Labour Officer was that in case of allowing the application, the Welfare Fund Board would not be able to collect contributions and would adversely be affected. Once the objections were filed by the Welfare Board, the authority was enjoined upon obligation to register the head load workers by issuing the Registration Certificate, even if the workers had been discharging the duties higher than what they were entitled into. It is owing to the pandemic certain kind of duties which were in existence have been truncated by the establishment in order to sustain, such applications were filed since they had the skill and knowledge of handling the particular material which petitioners' firm was dealing with. The impugned orders are against the decision of the Division Bench of this Court in 2016 (5) KHC 238 Ganngadharan C.P. and another Vs. Abdul Naseer and others. Impleadment of the local head load workers an opposition would reveal that it is a clear cut case of violation of Article 19 (1)(g) of the Constitution of India.

4. Mr.Thomas Ibrahim, learned counsel representing the Welfare Board supported the impugned orders on the ground that the registered pool workers would sustain considerable loss.

5. The loading and unloading works of the establishment is being done by

registered pool workers. There are about thirty nine(39) pool workers in the Gudalai area which is a scheme covered area and issuance of registration to the employees of the petitioner would affect the livelihood of registered pool workers and de-stabilize the system envisaged in the statutory scheme. The establishment was required to be registered under the Kerala Shops and Commercial Establishments Act, 1960 for the purpose of filing the objection and inspection was carried out by the officers of the Board but the petitioner refused to provide records evidencing the list of employees. The officers intended to meet fifteen (15) employees who have submitted application for issuance of the card under Rule 26A, seven (7) were present but it was found that they were not doing head load works. In fact three of them were sales executives and four were salesmen. The non-availability of the other applicants had also not been satisfactorily replied with. As per the additional affidavit placed on record, it was found that the management had paid only a paltry amount of cess under the Head load workers Act meaning by they are indulging into exploitation of the workers.

6. Learned counsel representing the already registered headload workers countered the arguments for placing the reliance on Ext.R4(f) whereby seven (7) applicants were discharging duties of salesmen. They could not be permitted to be registered as headload workers, a job lower than what they would be discharging and they were required to be registered under the Shops and Commercial Establishment Act. It is in that background representation was submitted but in the absence of any decision thereon compelled to approach this Court vide the second writ petition.

7. I have heard learned counsel for the parties and appraised the paper books.

8. Section 13 of the Kerala Head load Workers Act, 1978 empowers the promulgation of the scheme which has been defined as Kerala Head load Workers (Regulation of Employment and Welfare) Scheme, 1983 dealing with the registration, obligation and welfare of the head load workers, the employers, conditions of service of registered head load workers, constitution of the committee and finance of the committee. In the absence of the registration as headload workers no headload worker under the provisions of the rule shall be required or allowed to work in any area where the scheme is applicable. Rule 26A of the Rules empowers the registering authority to receive an application for registration under Form IX with additional copies of employers and contractors and on receipt of the application, the authority is required to issue notice in Form X to the employees of the contractors from whom the headload worker claims work and the area where the scheme is in operation, the Chairman, Kerala Head load Workers Welfare Board, Local Committee and after considering the objection and opportunity of hearing, registering authorities shall register the name of head load workers in the Register of headload workers and shall issue identity cards in Form XI. Cancellation of the registration is also permissible under Sub-rule 4 of Rule 26A.

9. The Board and the registered workers vigorously argued in support the impugned decision as it is a ploy by the management in scouting the employees already discharging duties of sales executive and salesmen by registering them as headload workers which would not only demeaning but glorying the discharge of the duties and take away the valuable right of already existed workers. The chances to earn the livelihood considerably reduced is not acceptable for the reason that it is against the framework of provisions of Article 19 of the Constitution of India.

10. Rule 26A empowers the registering authorities to register the headload worker after examination of the objection and cancellation of registration. An attempt was made by the respondents to cite judgment of Division Bench of this Court in Suresh Kumar R. and others Vs. State of Kerala in Writ Appeal No.1151 of 2019. The question involved in the cited case was whether the affected registered workers in a scheme would have a right to assail the order in an appeal viz. registration of the Head load workers affecting their rights. The Division Bench of this Court in Gangadharan supra has laid down that whenever the employer seeks the registration of its own workers though the objection can be raised by the existing unattached registered workers, but every person has a fundamental right to live by doing works of his choice and therefore registration cannot be denied merely for the reason that other registered unattached workers in the area would be deprived of work. The authorities have to be akin to the scheme of the statute without compromising fundamental principle of equality before law. Employer can engage sufficient number of employees of his choice and registering authority is obliged to give registration to such attached workers and it is always open for the employer to make appropriate arrangements by engaging workers of his choice to do the loading and unloading operations.

11. Even if the workers are registered as salesmen and discharging duties of sales executives there is no estoppel and bar for them to do the job of loading and unloading as the pandemic has made society to live a simple and hardworking life as number of the jobs available have been abolished by the management to mete out the day to day expenses. This cannot be an estoppel for an employee or an employer for submitting the application for registration under Rule 26A of the Rules.

12. Reasoning of the impugned order of the Assistant Labour Officer and District Labour Officer is that it would take away the valuable right of the already unattached workers registered under the Act in the area falling under the scheme, in my view is wholly against the dictum of the law referred supra. For the reason aforementioned the impugned orders dated 05.07.2021 and 03.11.2021 are quashed. W.P(C).25860/21 is allowed.

As far as the second writ petition is concerned respondents have sought direction to dispose of the representations submitted to Assistant Labour Officer on behalf of T.P.Tiles Centre for conducting the inspection of the establishment, verify the

register/records, which, in my view, would not sustain as by way of additional affidavit, the entire material has already been placed on record and referred to in discharge the duties. W.P(C).8909/22 is dismissed.