

(2017) 04 KL CK 0040

In the High Court Of Kerala

Case No : 342 and 393 of 2015 in WP (C) 4077 of 2014

Shereef Secretary

APPELLANT

Vs

Muhammed Shefeek Kattekattu Parambil

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

[Kerala Headload Workers Rules, 1981](#), Rule 26, Rule 26A, Rule 26C, Rule 26A(1), Rule 26A(2), Rule 26A(3), Rule 26A(4)

Citation : (2017) 04 KL CK 0040

Hon'ble Judges : A.M. Shaffique, K. Ramakrishnan

Bench : DIVISION BENCH

Advocate : N. Dharmadan, D.P. Renu, C.S. Ajit Prakash, Thomas Abraham, O.V. Radhakrishnan, K. Radhamani Amma, Antony Mukkath, C.P. Anil Raj, Jos Leo Jose, K.B. Ramanand, P.C. Sasidharan, C.S. Ajith Prakash

Judgement

1. These two writ appeals have been filed against the common judgment dated 8/10/2014 in WP(C) No. 4077/2014 and hence heard and decided together. WA No.342/2015 has been filed by the 3rd respondent and WA No.393/2015 has been filed by the 4th respondent. The parties are shown as referred to in the writ petition. 2. The writ petition has been filed challenging Ext.P5 order dated 28/1/2014 of the District Labour Officer, Palakkad by which an appeal filed under Rule 26C of the Kerala Headload Workers Rules, 1981 (hereinafter referred to as "1981 Rules") has been allowed setting aside the order passed by the Assistant Labour Officer and cancelling the cards issued in the name of the petitioners 2 to 5. 3. The short facts involved in the writ petition would show that the first petitioner claims to be the Managing Partner of M/s. KPM Trade Centre, a partnership firm. They started a business as dealers and distributors of bricks, tiles, paint and other building materials. The establishment was registered in the year 2013 with the Commercial Tax Department. He filed an application for registering the persons engaged by him for loading and unloading work in the firm and accordingly, the 2nd respondent, the Assistant Labour Officer had issued identity cards in favour of 5 persons and petitioners 2 to 5 are among them. Sri.

Moosa, one of them expired. The 3rd respondent preferred an appeal before the 2nd respondent challenging the issuance of the cards. In the said appeal, 2nd respondent issued an order dated 4/10/2013 directing stoppage of engagement of the persons already registered for loading and unloading work. Ext.P3 is the said order. Challenging Ext.P3, the first petitioner filed WP(C) No. 24457/13 wherein, this Court passed an interim order permitting the work to be done through registered workers. The writ petition was disposed of directing the first respondent to consider and pass orders in the appeal within one month after affording opportunity to either side. It is stated that no decision was taken and in the meantime a contempt case came to be preferred. While so, on 28/1/2014, Ext.P5 order came to be passed by which the registration granted was cancelled. In Ext.P5, it is stated that the procedure enumerated in Rule 26A has not been followed. The main contention urged by the petitioners was that there was no procedural violation as contended, the establishment of the first petitioner is a new establishment and it can have its own employees registered under the Act. 4. Counter affidavit has been filed by the 3rd and 4th respondent supporting the stand taken in Ext.P5, for which a reply affidavit is filed by the petitioner. 5. The learned Single Judge having considered the entire issue found that the appeal filed by the 3rd respondent was not maintainable as he is not an aggrieved person in terms of Rule 26C of the 1981 Rules. Further, on factual evaluation of the materials, it was found that there was no procedural infirmity on the part of the Assistant Labour Officer to have issued the cards and accordingly Ext.P5 appellate order was set aside. 6. Learned Senior counsel for appellant in WA No. 342/15, Sri. N. Dharmadan mainly argued on the finding of the learned Single Judge in regard to the maintainability of the appeal. Learned counsel for appellant in WA No. 393/2015, Sri. Thomas Abraham, argued on merits of the case in regard to the findings of the learned Single Judge while setting aside Ext.P5. Learned senior counsel Sri. O.V. Radhakrishnan appeared on behalf of the petitioners, who are respondents in the above appeals who supported the findings of the learned single Judge. 7. Having heard the learned counsel on either side and having perused the records, the first question to be considered is whether appeal filed by the 3rd respondent before the 2nd respondent was maintainable or whether he was a person aggrieved, entitled to prefer an appeal. The learned Single Judge has placed reliance upon the judgment in *Jnana Prakasam v. Natarajan* (2002 (1) KLT 39) to arrive at such a conclusion. While impugning the judgment, learned senior counsel appearing for the appellants argued that the judgment in *Jnana Prakasam* (supra) could not have been made applicable to the facts of the case. In *Jnana Prakasam* (supra), the question considered was whether a registered headload worker could object to the granting of registration to another headload worker when he makes an application for registration under Rule 26A of the 1981 Rules. Learned Single Judge held that he has no such right as he is not an aggrieved party to prefer the appeal. While considering the same, though paragraph 9 has been relied upon by the learned Single Judge, no reference was made to paragraph 11 and in the said judgment where it was held that the appeal filed by existing workmen is

maintainable. Accordingly, while affirming the judgment of the learned Single Judge to the extent that Ext.P5 was quashed, direction was issued to the appellate authority to rehear the parties including the writ petitioners. He also placed reliance on the judgment in *Nalakath Sainuddin v. Koorikadan Sulaiman* [(2002) 6 SCC 1] wherein the Apex Court while considering a rent control matter held that an "aggrieved party" under Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 would mean a person feeling aggrieved by the ultimate decision and that there is no reason to narrow and limit the scope of revisional jurisdiction of the Court. Another judgment relied upon is that in *Gangadharan v. Abdul Nasir* (2016 (4) KLT 592) wherein it is held that when an objection is raised by existing registered workers in the area in respect of registration of attached workers of an establishment, reliance could be placed to the judgment in *Jnana Prakasam* (supra) but, when objection against granting of registration is raised to more unattached workers in the area, this judgment will not apply. Reference is also made to the judgment of the learned Single Judge in *Majeed v. District Labour Officer* (2015 (1) KLT 750) and after evaluating the judgment in *Jnana Prakasam* (supra) and *Rajeev v. District Labour Officer* (2010 (4) KLT 783), it was held at para 5 as under :- "5. An understanding of the afore-extracted paragraphs would show that any person aggrieved would be permitted to file an appeal from the order of the original authority registering an attached worker. That is not to say that a right is conferred on the already registered workers to be heard before the original authority passes an order. The afore cited decision specifically distinguishes a registration of an attached worker and the registration of new workmen in the area where there are already a set of workmen. In the former case it was specifically found that the "aggrieved person" in the first instance, i.e., on the application being made, would only include the worker and the employer. As far as the other situation, i.e., the inclusion of new workmen; that takes in a situation where new workmen are registered as headload workers who are working under the aegis of the Board itself. In such circumstances, the already registered workers included in a pool would be entitled to be heard before such a registration is made, since the work in the pool or in the area would have to be shared." 8. Learned counsel also placed reliance upon various judgments viz *Shiv Chander More v. Lieutenant Governor* [AIR 2014 SC 2669], *State of Kerala v. Gopalan M.* (2015 (1) ILR Ker. 425) and *Sajith Kumar E.P. v. Assistant Educational Officer and Others* (2016 (4) KHC 353 (DB) to contend that this Court had earlier considered the right of the 3rd respondent to prefer appeal in WP(C) No. 18250/2013. That was a case in which the 3rd respondent challenged the order passed by the Deputy Labour Officer rejecting the recommendation of the Assistant Labour Officer to cancel the registration of certain workers for whom registration was initially granted. In the said case, the writ petition was not entertained proceeding on the basis that the 3rd respondent has a right of appeal under Rule 26C of the 1981 Rules. It is argued that once this Court had already taken a view that the appeal could be filed, it is not open for the petitioners to contend that the appeal is not maintainable. 9. Learned counsel Sri. Thomas Abraham supported the stand

taken by learned counsel Sri. Dharmadan, and further argued that there is clear violation of Rule 26A. There is no material to indicate that notice had been issued to the Board. The area in question is a scheme covered area in which event before issuing any cards, the Assistant Labour officer was bound to issue notice to the Board. The material produced by the 4th respondent is the inward register maintained in the office in usual course of business and there is no reason to disbelieve the same. Though such an argument was made, no attempt had been made on behalf of the Assistant Labour Officer to prove the fact of issuance of notice other than a statement filed in that regard. It is contended that in a scheme covered area, when more number of employees are issued with cards, necessarily, it will affect the interest of the other members in the pool. Further, a proper enquiry has not been conducted in the matter which is evident from the particulars mentioned in Ext.P5. 10. Learned senior counsel Sri. O.V. Radhakrishnan appearing for the petitioners, who are respondents in the appeal, supported the judgment of the learned Single Judge and contended that there is no material to indicate that the 3rd respondent is an office bearer of a registered trade union and there is no reason why his appeal should be entertained. He does not represent any one of the headload worker nor does he have any right to prefer an appeal. On facts also, it is submitted that when the learned Single Judge had arrived at a finding based on the factual materials made available and had come to a conclusion that there was no procedural irregularity, there is no reason why the said finding of fact should be disturbed by this Court by exercising appellate jurisdiction. He also placed upon reliance upon the judgments in *V-Star Creations (P) Ltd v. District Labour Officer* (2012 (2) KLT 883), *Foreshore Cooperative Housing Society Ltd v. Praveen D. Desai* (2015) 6 SCC 412, *Karunarkara Kurup v. State of Kerala* (2004 (1) KLT 215 (F.B)), *Ayaubkhan Noorkhan Pathan v. State of Maharashtra* (2013) 4 SCC 465, *Management of Narendra & Company Private Limited v. Workmen of Narendra & Company* (2016) 3 SCC 340, *Raghavan v. Superintendent of Police* (1998 (2) KLT 732 (F.B)). 11. The first question to be considered is whether an appeal could have been filed by the 3rd respondent before the competent appellate authority challenging order passed by the Assistant Labour Officer issuing identity card to certain workers. 12. In *Jnana Prakasam* (supra) certain headload workers were granted registration under Rule 26A of the 1981 Rules by the Assistant Labour Officer for the purpose of loading and unloading work in the timber sales depot of the Forest Department at Walayar. Certain headload workers in the locality engaged in the loading and unloading work at Walayar Forest Coupe challenged the same and filed appeal under Rule 26C. The learned Single Judge held that the co-workers who had already obtained registration under the Rules cannot challenge registration and identity cards issued to another set of workers. The Division Bench while considering the appeal observed that there are two types of headload workers - attached worker and unattached worker. Attached workmen are permanently employed by the shop owners or the contractors who also requires registration under the Rules. The unattached workmen does the loading and unloading work in a particular area. They do loading and unloading in

various establishments in that area. They also do casual works that may arise as a result of construction of buildings etc., and after considering the rival contentions, the Division Bench observed that in regard to the registration of workmen in a particular area, at the first instance, aggrieved persons will include only the applicants and the contractors. It is further held that when it comes to the case of application by new workmen in an area where there are already a set of workmen, the interpretation given by the learned Single Judge will not be correct. It is further found that if in an area fresh workmen also enter, that would result in sharing the cake by more mouths resulting in depletion of the share of existing workmen. It is further held at para 11 as under : "11. So, the action of the Registration Officer in granting registration to workmen in the very same area where there are other registered workmen will definitely affect the availability of work to the existing workmen which will deplete the income they have received till the entry of new workmen. This will affect their livelihood which is part of their right to life enshrined in Article 21 of the Constitution of India. Therefore, the existing workmen can certainly maintain an appeal." 13. Ultimately in that particular case, though the Court did not interfere with Ext.P5, the judgment of the learned Single Judge was reversed and the appellate authority was directed to rehear the appeal with an opportunity to be heard to all affected parties. It was further held that dearth or surplus of workmen in an area should be the main criteria in deciding whether the additional workmen should be granted registration. It could therefore be seen that the law laid down by the learned Single Judge has virtually been set aside by the Division Bench. Therefore, Jnana Prakasam (supra) cannot be taken as a proposition to hold that workmen in an area cannot challenge the registration of other workers in that particular area. 14. The question to be considered is, when employees of an establishment are given identity cards and registration under Rule 26A, whether it can be objected by other members of the pool who already had identity cards, and who are termed as unattached workers. 15. In Raghavan v. Superintendent of Police, Palakkad (1998 (2) KLT 372), the Full Bench after considering various provisions of the statute held that the definition of the term headload workers under the Act would take both permanent workers attached to an establishment as also workers in the establishment from time to time, and that all headload workers including permanent workers attached to establishment are liable to get registration under Rule 26A. It is further held that in an area where the scheme is made applicable, if the employer has his attached workers registered, he can employ them for headload works, but if he requires additional workers, he has to get their services through the committee formed under Section 18 and in accordance with the scheme. It may therefore be noticed that there is no distinction in the manner relating to granting registration as far as headload workers are concerned. If he is an attached worker, which means that if he is employed in an establishment, he has to submit an application under Rule 26A(1). 16. Learned counsel for the respondent had argued that the 3rd respondent had not produced any material to indicate that he represents a registered trade union or not and no materials are available to substantiate the

said contention. It is argued that a trade union has to be registered under the Trade Unions Act. Since no particulars of registration is produced, it has to be assumed that the 3rd respondent does not represent even the attached workers in the area. 17. Before proceeding further it is useful to understand the scope of the statutory scheme under the Kerala Headload Workers Act, 1978. The preamble to the Act, clearly indicates that the Act is promulgated for the purpose of regulating 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. "Headload worker" is defined under Section 2(m) as under:- "(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." "Employer" is defined under Section 2(i) as under; (i) "employer" means - (i) in relation to a headload worker engaged by or through a contractor, the principal employer; (ii) in relation to a headload worker who is not employed by any employer or contractor, the committee constituted under section 18; and (iii) in relation to any other headload worker, the person who has ultimate control over the affairs of the establishment in or for which the head-load 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;" "Dispute" is defined under Section 2(h) as under : "(h) "dispute" means any dispute or difference between employers and employers or between employers and headload workers or between head-load workers and headload workers, which is connected with the employment or nonemployment or the terms of employment or the conditions of employment, of any headload workers." 18. It is rather clear that the word "dispute" is defined in very wide terms and includes dispute or difference between employers and employers or between employers and headload workers or between headload workers and headload workers, which is connected with the employment or non employment etc. Therefore, a dispute raised by registered workers in regard to a registration given to other headload worker either attached to an employer or a contractor or attached to the committee appointed under Section 18, can also be termed as a dispute or in other words it is possible for a registered headload worker to raise a dispute with reference to registration of another headload worker in the area, and it can even be termed as a dispute, if a headload worker is attached to an employer as well. Settlement of disputes is covered by Section 21. Section 23 relates to representation of parties in respect of a dispute. Section 23(1) relates to the manner of representation of a headload worker which reads as under:- "23. Representation of parties - (1) A headload worker who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by :-

(a) any member of the executive or other office bearer of a registered trade union of which he is a member; (b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated; (c) where the headload worker is not a member of any trade union, by any member of the executive or other office bearer of any trade union connected with, or by any other headload worker employed in, the establishment under which the headload worker is employed and authorised in such manner as may be prescribed." 19. Coming to the 1981 Rules, Rule 26 gives authority to the Assistant Labour Officer to prepare a register of headload workers working in the area within his jurisdiction and a register shall be maintained in Form No. IV. Form No. IV contains various entries including name and address of the employer. Rule 26A relates to registration of headload workers. The headload worker has to submit an application for registration in Form IX to the registering authority concerned. Form IX contains the name and address of headload worker and the names and addresses of employers under whom the headload worker is working, nature of work, date of commencement of work under the employer etc. Sub Rule (2) indicates that on receiving 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 and objections are to be invited. It is after considering such objections and on being satisfied that the headload worker is eligible for registration, the registering authority shall register the name of headload worker in the register of headload workers. Sub rule (4) relates to cancellation of registration of a headload worker after giving one month's notice in writing specifying the ground on which the registration is cancelled. Rule 26C is the appellate provision which reads as under:- "26C. Appeal (1) Any person aggrieved by an order of the Registering Authority under [sub-rules (3) or (4) of Rule 26A may file an appeal within 60 days from the date of receipt of such order before an officer not below the rank of District Labour Officer notified by Government as Appellate Authority in this behalf: Provided that the Appellate Authority may admit an appeal filed after the expiry of the said period if he is satisfied that the appellant had sufficient cause for not filing the appeal within the said period: Provided further that no such appeal shall be admitted after a period of six months from the date of the order of the Registering Authority appealed against. (2) On receipt of an appeal, the appellate authority may make such enquiries as he deems fit and after giving the employer/employers if any and headload worker an opportunity of being heard and decide the appeal within a period of 30 days from the date of receipt of the appeal. The decision of the appellate authority shall be final." There is no dispute about the fact that appeal can be filed by "any person aggrieved". Person aggrieved had been subject to interpretation of the Apex Court and this Court in various judgments. It will be advantageous to refer to the Apex Court judgment in Bar Council of Maharashtra v. M.V. Dabholkar [(1975) 2 SCC 702] wherein it is

held that the meaning of the expression "person aggrieved" will have to be ascertained with reference to the purpose and the provisions of the statute. One of the meanings is that person will be held to be aggrieved by a decision if that decision is materially adverse to him. The restricted meaning of the expression requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with the property rights but deal with professional misconduct and morality. Therefore the totality of the circumstances under which the statute have been framed has to be looked into while considering whether the 3rd respondent is a person aggrieved or not. 20. The Act basically, deals with a regulation in regard to the rights of headload workers in a particular area. The statute contemplates two aspects. One is the right of headload workers to have employment and secondly the application of the Act to a particular area. The Kerala Headload Workers (Regulation of Employment and Welfare) Scheme 1983, has been formulated for the purpose of the scheme being made applicable in a specified area by virtue of a notification issued by the Government. Clause 6 of the Scheme indicates that no headload worker who is not a registered headload worker under the provisions of the 1981 Rules shall 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 the area. Clause 6(2) further indicates that from the date of commencement of 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. There is no doubt about the proposition that in an area where the Scheme is made applicable, only headload workers registered under the Act and the Rules framed thereunder are eligible for carrying on the headload work, either attached to an employer or a contractor or not. Therefore, when registration is being done in an area covered by a scheme, in respect of an attached worker who is employed in an establishment, a permanent headload worker is being given registration by the competent authority. In such an event, the unattached workers will definitely be affected as they loose the right to demand work. Therefore, it cannot be stated that the same does not affect the rights of unattached worker. For example, in an area where the scheme applies, the employer does not have permanent workers who cannot be granted registration cards, the said work can be done only by the unattached workers. Therefore, when registration is granted to attached workers of an establishment, necessarily, the unattached workers will have a right to challenge the said registration if according to them, the registration is given without conducting proper enquiry into the matter. Merely for the reason that notice had been ordered only to the Board in an area notified under the Scheme, does not preclude the unattached workers from challenging the registration. But if it is not a scheme covered area, the situation may be different. 21. Now the only question is whether the 3rd respondent allegedly representing a Union can file the appeal. Perusal of the impugned judgment would show that no contention had been urged stating that he does not

represent a registered Union. Whereas the said fact is virtually admitted. His competence is denied on the ground that he is not a person aggrieved or he is not a registered worker and the Union is not registered. At this juncture it would be useful to refer to Section 23(1) which comes under Chapter VII in regard to settlement of disputes where while representing parties, a headload worker can either be represented by a member of the executive or the registered Union of which he is a member or any member of the executive or other office bearer of a Federation of Trade Unions to which the trade union is affiliated or where the headload worker is not a member of the trade union by any member of the executive or other office bearer or trade union connected with or by any other headload worker employed in thereunder which the headload worker is employed as may be prescribed. Therefore, right of representation of the parties has been given in the statute itself. An office bearer of a registered Trade Union can represent the headload worker or he can even be represented by a Trade Union in which he is not a member or even by another headload worker. In the case on hand, though a contention is raised at this stage of the proceedings that the 3rd respondent does not represent a registered trade union, it is rather clear from the nomenclature itself that he is the Secretary of Deshiya Chumattuthozhilali Union. Whether that Union has been registered or not has not been raised as a question in the writ petition. Under such circumstances, the said contention cannot be sustained. Therefore, we are of the view that this is an instance where a Secretary of a Union of workers have challenged the registration of certain employees of an establishment and therefore the 3rd respondent also becomes a person aggrieved. In so far as the right of registered workers to work in an establishment will be definitely be hampered, if registration is given by a competent authority to the permanent workers of the employer. Whether the said employees are permanent workers, whether they are only casual labourers, whether there is requirement of a particular number of workers etc., are matters which are germane for consideration depending upon the nature of work. Therefore, the 3rd respondent can only be taken as a person representing the headworkers of a Union and the appeal filed by him cannot be thrown away on the ground of locus standi. 22. Coming to the merits of the matter, learned counsel appearing in WA No.393/2015 submitted that the area in question is a scheme covered area and therefore it was mandatory on the part of the Assistant Labour Officer to have issued notice to the Board under Rule 26A(2) of the 1981 Rules. There is no material to indicate that such notice had been issued. He refers to a statement filed by the Assistant Labour Officer wherein he has stated that notice has been sent by ordinary post. The despatch register was not produced by the Assistant Labour Officer. Whereas from the inward register produced by the Board during the relevant time, when the notice is purported to be issued, there is no entry regarding receipt of such a notice. It is contended that learned Single Judge committed serious error in coming to a different finding from that of the appellate authority without any basis. It is therefore contended that there is serious irregularity which cannot be waived in so far as the irregularity has gone to the root of the matter. It is for the Board to defend a

proceeding where certain headload workers are sought to be registered in an area in so far as it substantially affects the right of the other workers. Unless the Board is heard in the matter, the statutory scheme will not work out in accordance with the procedure prescribed. 23. On the other hand, learned counsel appearing for the respondent supported the stand taken by the learned Single Judge by contending that when the learned Single Judge had decided the matter after referring to the factual details, there is no reason why the appellate court should interfere in the matter. There is no dispute about the proposition that issuance of notice to the Board is mandatory before registering headload workers. In the case on hand, there is factual dispute in regard to service of notice. The learned Single Judge however has taken a view that from the materials on record, the issuance of notice is well established. Unless the said finding is perverse, we do not think that this Court will be justified in interfering with the same. The only material available to show that there was service of notice was the statement of the Assistant Labour Officer. In the statement, it is stated that notice was sent by ordinary post. The date on which notice was sent was lacking in the statement. 24. There cannot be any dispute that for a proper consideration of the matter in regard to registration under Rule 26A of the 1981 Rules in a scheme covered area, notice to the Board is absolutely necessary. 25. Rule 26A(2) reads as under:- "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." The learned Single Judge observed that there is no material to indicate absence of notice and did not accept the contention urged by the 4th respondent. In fact, the learned Single Judge proceeded on the basis that the appellate authority ought to have verified the despatch register of the Registering Authority. In that event, necessarily, the matter ought to have been remitted back for a clear understanding of the facts rather than assuming that notice had been sent to the 4th respondent. Another factor observed by the learned Single Judge was that the 4th respondent had not raised any complaint against the grant of Ext.P2 registration. If notice is not received by the 4th respondent, it is not known as to how they will be in a position to know about the grant of Ext.P2 registration. The learned Single Judge also found it inappropriate the manner in which the appellate authority has made certain observations against the Assistant Labour Officer. But having heard the learned counsel appearing on either side, when the Board has a case at least at the appellate stage that they were not heard in the matter and the appellate authority had come to such a conclusion, it was not proper on the part of the learned single Judge to have come to a different finding merely on the basis of

certain assumptions. There cannot be any dispute about the fact that in terms of Rule 26A(2), notice to the Board is mandatory in a scheme covered area and there is no material to indicate that such a notice had been served. The learned Single Judge proceeded on the basis that a properly addressed stamped letter had been sent to the Board and this is based on a statement filed by the Assistant Labour Officer. But if as a matter of fact, receipt of such a notice is not evident from the inward register maintained by the 4th respondent, the same is also a material to consider whether there is service of notice. Of course, the appellate authority ought to have called for the despatch register of the Assistant Labour Officer and verified whether such a notice has been issued. Therefore, when there is a dispute with reference to non compliance of Rule 26A(2), we are of the view that it would have been appropriate to direct the Assistant Labour Officer to reconsider the matter in accordance with law after issuing a proper notice to the Board rather than assuming that there is valid notice. In the said circumstances, we are of the view that the learned Single Judge was not justified in interfering with Ext.P5. 26. Ext.P5 had been interfered by the appellate authority namely the 1st respondent in the writ petition on the ground that there was non compliance of Rule 26A, in which event, it is better that the matter is considered by the Assistant Labour Officer himself after giving notice to the Board and after hearing all affected parties. However, in the facts and circumstances of the case, appropriate direction has to be issued to the 2nd respondent in the writ petition to reconsider the matter after complying with the procedure prescribed under Rule 26A(2) of the 1981 Rules. However, there is no necessity to cancel the cards issued in favour of petitioners 2 to 5 for the time being and while maintaining status quo, the Assistant Labour Officer shall reconsider the same in accordance with law. 27. In view of the aforesaid findings, we are not considering the applicability of all the decisions which had been relied upon by the learned counsel on either side. 28. In regard to the contention of res judicata, we do not think that the decision in WP(C) No. 18250/2013 will preclude the petitioners challenging the maintainability of the appeal especially when the said decision was taken without notice to them. Further, it was not a decision taken on the adjudication of the respective contentions of the parties and the writ petition was disposed of at the admission stage itself proceeding on the basis that the appeal is maintainable. In the result, this writ appeals are allowed, the judgment of the learned single Judge is set aside and the writ petition is disposed of as under:- (i) Ext.P5 is set aside and the matter is remitted back to the Assistant Labour Officer. (ii) The registration cards issued in the name of petitioners 2 to 5 shall be kept in abeyance for a period of 3 months. (iii) Within the aforesaid period, the Assistant Labour Officer shall consider the matter afresh and pass a final order after notice to all the affected parties including the Board as contemplated under Rule 26A(2) of the 1981 Rules.