

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

**TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937**

**RPNo. 657 of 2015 (Y)**  
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**AGAINST THE JUDGMENT IN WP(C).NO.14393/2015 DATED 03-07-2015.**  
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**REVIEW PETITIONER/PETITIONER:**  
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**JUSTIN JOHN,  
KOLLAPPILLIL HOUSE, KOODAPPULAM,  
RAMAPURAM BAZAAR. P.O., KOTTAYAM-686 576.**

**BY ADV. SRI.G.BHAGAVAT SINGH.**

**RESPONDENTS/RESPONDENTS:**  
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- 1. KERALA POLLUTION CONTROL BOARD,  
REPRESENTED BY ITS MEMBER SECRETARY,  
PATTOM. P.O., THIRUVANANTHAPURAM-695 004.**
- 2. THE ENVIRONMENTAL ENGINEER,  
KERALA POLLUTION CONTROL BOARD,  
DISTRICT OFFICE, KOTTAYAM-686 001.**
- 3. RAMAPURAM GRAMA PANCHAYAT,  
REPRESENTED BY ITS SECRETARY,  
RAMAPURAM BAZAAR. P.O., KOTTAYAM-686 576.**
- 4. THE SECRETARY,  
RAMAPURAM GRAMA PANCHAYAT,  
RAMAPURAM BAZAAR. P.O., KOTTAYAM-686 576.**
- 5. J & B BLUE METALS,  
REPRESENTED BY JAISON JACOB, MANAGING PARTNER,  
KODAPPULAM, RAMAPURAM BAZAAR. P.O., KOTTAYAM-686 576.**

**R1 & R2 BY ADV. SRI. M.AJAY, SC.  
R3 & R4 BY ADV. SRI.P.C.HARIDAS, SC.  
R5 BY ADV. SRI.JOBI JOSE KONDODY.**

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD  
ON 10/08/2015, THE COURT ON 29/09/2015 PASSED THE  
FOLLOWING:**

**rs.**

**RPNo. 657 of 2015 (Y)**

**APPENDIX**

**PETITIONER'S ANNEXURES:-**

**ANNEXURE I      COPY OF THE CIRCULAR DATED 17/03/2006 ISSUED BY THE  
1ST RESPONDENT.**

**ANNEXURE II      COPY OF THE CIRCULAR DATED 30/04/1998 ISSUED BY  
THE 1ST RESPONDENT.**

**RESPONDENT'S ANNEXURES:-      NIL.**

**//TRUE COPY//**

**P.S. TO JUDGE**

**rs.**

**A.V. RAMAKRISHNA PILLAI, J.**

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R.P. No. 657 of 2015  
in  
W.P.(C) No. 14393 of 2015

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Dated this the 29<sup>th</sup> day of September, 2015

**ORDER**

The writ petitioner is in review.

2. The petitioner filed the writ petition for quashing Exts.P1 & P6 in the writ petition and to declare that Exts.P4 & P7 are illegal and unsustainable and also for issuing a writ of mandamus, directing the 3<sup>rd</sup> respondent to dispose of the appeal filed by the petitioner and others within a time frame and to stay Exts.P1 & P6 till the appellate authority is appointed/constituted by the Government.

3. In the review petition, the petitioner alleges that the judgment under review is the result of apparent errors on the face of records and against the provisions of law. It is also pointed out that the respondents in the writ petition made a false statement in the counter affidavit

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that the appellate authority under the Air (Prevention & Control of Pollution) Act was constituted and the petitioner has approached this Court as a short cut to see that the unit of the 5<sup>th</sup> respondent is stopped.

4. The party respondent has filed a detailed counter affidavit.

5. Arguments have been heard.

6. In the counter affidavit filed by the party respondent, it is contended that though it is true that the higher appellate authority was not functioning at the time of filing of the writ petition, the same has started functioning recently; and therefore, there is no error in relegating the petitioner to approach the higher appellate authority to invoke the appellate remedy. The case of the 5<sup>th</sup> respondent is that M/s. Vijaya Metal Crusher, which is the erstwhile owner of the unit of the 5<sup>th</sup> respondent, had obtained necessary consent to establish the primary crusher unit from the 1<sup>st</sup> respondent much prior to the purchase of the unit by the party respondent herein. His

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definite case is that he had already started construction of the unit in time; and the same was obstructed by the petitioner and his family members, which resulted in non-completion of the same in time. These facts were brought to me at the time of hearing the petitioner.

7. It could be seen from Exts.R5(a) and R5(b) judgments that the unit of the party respondent was functioning from 1991 onwards without any interruption and even the petitioner also does not have a case that the said unit was not functioning from 1991. The learned counsel for the petitioner relied on Annexures I and II circulars to substantiate his case. However, as the said unit was functioning from 1991 onwards, what is applicable is Ext.R5(d) circular dated 05.09.2012 issued by the 1<sup>st</sup> respondent, on the basis of which, the party respondent is entitled to establish a primary crusher without any distance criteria if the secondary crusher unit is functioning from 14.07.2003. The anxiety expressed by the petitioner is that the production

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capacity of the unit could be increased by establishing the primary crusher is out of place as the capacity of the secondary crusher unit of the party respondent is only 25 HP. It is relevant to note that the local authority, which issues D&O licence, calculated the horse power of ancillaries and the difference in the run capacity is shown in the D&O licence issued to the petitioner. The only error in the impugned judgment is the observation that the air appellate authority was functioning at the time of the writ petition. Apart from that, there is no error apparent on the face of the record.

Therefore, the review petition is disposed of deleting para 9 of the impugned judgment. In all other respects, the impugned judgment shall stand.

Sd/-  
**A.V. RAMAKRISHNA PILLAI**  
**JUDGE**

bka/-