

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 2ND DAY OF SEPTEMBER 2015/11TH BHADRA, 1937

WA.No. 1912 of 2015 IN WP(C).19700/2015

AGAINST THE JUDGMENT IN WP(C) 19700/2015 DATED 04.08.2015
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APPELLANT/5th RESPONDENT :

SEENA ABDUL AZEEZ, AGED 46 YEARS,
W/O.ABDUL AZEEZ, PROPRIETRIX,
CHAITHANYA GRANITES, KADAVIL HOUSE,
PONGASSERY P.O., PERUMBAVOOR,
ERNAKULAM DISTRICT.

BY ADVS.SRI.V.JAYAPRADEEP
SRI.V.JAYADHAR
SRI.SHANE WILFRED MORRIS

RESPONDENTS/PETITIONERS & RESPONDENTS 1 TO 4 :

1. K.B.PEETHAMBARAN AGED 68 YEARS
S/O.BHASKARAN, KARAYIL HOUSE
H.NO.XIII/47(22/229) ARACKAPADY VILLAGE
VENGOLA KARA, PONJASSERY PO, PERUMBAVOOR
ERNAKULAM DISTRICT-683 547.
2. REV.K.GEORGE JACOB
KUNNATHU HOUSE, VENGOLA KARA, PONJASSERY PO
PERUMBAVOOR, ERNAKULAM DISTRICT-683 547.
3. STATE OF KERALA
REP. BY CHIEF SECRETARY, THIRUVANANTHAPURAM-695 001.
4. SECRETARY TO LAW DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
5. AIR (PREVENTION & CONTROLLER) OF POLLUTION APPELLATE AUTHORITY,
REP. BY ITS SECRETARY, THIRUVANANTHAPURAM.

6. ENVIRONMENTAL ENGINEER
KERALA STATE POLLUTION CONTROL BOARD, PERUMBAVOOR
ERNAKULAM-670 673.

R1 & R2 BY ADVS.SRI.P.VIJAYAKUMAR
SRI.C.R.REGHUNATHAN
SRI.B.HARRYLAL

R3 TO R5 BY SPL.GOVERNMENT PLEADER, SMT. GIRIJA GOPAL
R6 BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 02-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 1912 OF 2015

Dated this the 2nd day of September, 2015

JUDGMENT

Shaffique, J.

Heard learned counsel appearing for the appellant, learned Government Pleader, learned Standing Counsel for Pollution Control Board and learned counsel appearing for the party respondents who are the writ petitioners.

2. The appeal is filed by the 5th respondent in the writ petition challenging the judgment of learned Single Judge. The writ petition was filed by respondents 1 and 2 herein seeking for the following directions:

“i. Issue a writ of mandamus commanding the 4th respondent not to give extension of Ext.P12 consent without affording an opportunity to the petitioners to submit and explain their grievance and to demonstrate various elements of sound and dust pollution with the help of accredited Pollution Assessment Agencies.”

3. Substantial relief sought for is for a direction to the Pollution Control Board not to give extension of Ext.P1 consent without hearing the petitioners and to explain their grievances. Petitioners contended that they had already preferred an appeal before the Air (Prevention and Control) of

Pollution Appellate Authority as A.P. No.52/2014 against the grant of consent in favour of the appellant. However, the said appeal was not disposed of so far and therefore, the renewal should not be granted.

4. The learned Single Judge after hearing all the parties observed that since the Appellate Authority has been constituted by notification dated 29.06.2015, the Appellate Authority has to dispose of the appeal within three months from the date of receipt of a copy of the judgment. It is also stated that the Appellate Authority shall also get a report from the Pollution Control Board as to whether the renewal is feasible as things stand now. It is further directed that the renewal application shall be kept in abeyance till orders are passed by the Appellate Authority in the appeal. The 5th respondent/appellant is also directed not to carry on any quarrying operation until the appeal is disposed of and consent is obtained from the 4th respondent.

5. The grievance projected by the appellant is that she has been operating the quarry for the last 26 years with valid consent/permission from competent authorities. But on expiry of

the consent to operate which was valid till 30.06.2015, an application for renewal of the same has already been submitted on 17.06.2015. The same had not been considered on account of the pendency of the writ petition as well as the appeal before the Appellate Authority. It is submitted that the direction of learned Single Judge restraining the appellant from operating the quarry will do substantial injustice in so far as the quarrying activity was a continuing process for the last several years and it is only on account of the delay on the part of the Pollution Control Board in not renewing the consent that this order came to be passed.

6. Learned counsel for the Pollution Control Board submits that the renewal application was not considered on account of the fact that the writ petition was pending. Further, the consent already given was under challenge in appeal filed by the writ petitioners.

7. Learned counsel appearing for the writ petitioners would submit that the learned Single Judge was justified in directing the Appellate Authority to dispose of the appeal within a period of three months. It is also stated that the unit of appellant is causing substantial pollution and the appellant has

not complied with the terms and conditions given in the consent given by the Pollution Control Board in so far as they are using high powered motors which is against the conditions in the consent to operate. It is stated that there is no reason to interfere with the judgment of learned Single Judge.

8. It is apparent that even before the expiry of the consent to operate issued by the Pollution Control Board, the petitioner had submitted an application for renewal. In fact the application for renewal ought to have been considered by the Pollution Control Board in accordance with the statutory provisions. When the application is submitted two weeks prior to the expiry of the consent to operate, definitely the same should have been considered and appropriate orders should have been passed taking into consideration the factual circumstances. Under such circumstances it is on account of the delay on the part of Pollution Control Board in considering the renewal application of the petitioner that the eventuality as narrated by the appellant has occurred. In the result, we are of the view that learned Single Judge was not justified in not permitting the Pollution Control Board to consider the application for renewal of

the consent and further restraining the petitioner from operating the unit. Hence, we are of the opinion that the appeal can be disposed of modifying the judgment of learned Single Judge to the following extent:

i) That the 6th respondent Environmental Engineer shall consider the application for renewal of consent to operate the unit submitted by the appellant within a period of one week from the date of receipt of a copy of this judgment and the appellant shall be permitted to operate the unit in accordance with the terms and conditions prescribed in the consent.

ii) This order of course will be subject to the orders to be passed by the Appellate Authority in the appeal filed by the writ petitioners and as directed by the learned Single Judge.

The Writ Appeal is disposed of as above.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**