

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

WA.No. 2064 of 2015 IN WP(C).17637/2015

AGAINST THE JUDGMENT IN WP(C) 17637/2015 of HIGH COURT OF KERALA
DATED 15-06-2015

APPELLANT(S)/PETITIONER:

K.C.MUHAMMED BASHEER, AGED 43 YEARS
S/O.MAMUKOYA, RESIDING AT K.C.M HOUSE, ANTHIYOORKUNNU
P.O.PULIKKAL, ERNAD TALUK, MALAPPURAM DISTRICT
PIN - 673 673.

BY ADVS.SRI.J.R.PREM NAVAZ
SRI.P.T.SHEEJISH

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE DEPARTMENT OF INDUSTRIES
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.
2. THE JOINT SECRETARY
INDUSTRIAL DEPARTMENT (FIRST APPELLATE AUTHORITY),
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.
3. THE PRINCIPAL SECRETARY TO THE GOVERNMENT
INDUSTRIAL DEPARTMENT (FINAL APPELLATE AUTHORITY)
SECRETARIAT, THIRUVANANTHAPURAM PIN -695 001.
4. THE DIRECTOR
MINING AND GEOLOGY DEPARTMENT, THIRUVANANTHAPURAM
PIN - 695 009.
5. GEOLOGIST
MINING AND GEOLOGY, DISTRICT OFFICE, MINI CIVIL STATION
MANJERI, MALAPPURAM DISTRICT-676 121.

BY Sr.GOVERNMENT PLEADER SMT.GIRIJA GOPAL

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 12-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WA.No. 2064 of 2015 IN WP(C).17637/2015

APPENDIX

APPELLANT'S EXHIBITS :

ANNEXURE A1 : TRUE COPY OF THE JUDGMENT IN S.C.NO.130/07

ANNEXURE A2 : TRUE COPY OF THE APPEAL DATED 14.1.2010

ANNEXURE A3 : TRUE COPY OF THE APPEAL DATED 12.9.2011

ANNEXURE A4 : TRUE COPY OF THE REVIEW DATED 20.3.2012

RESPONDENTS' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE

ami/

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

W.A.No.2064 of 2015

Dated this the 12th day of October, 2015.

J U D G M E N T

ASHOK BHUSHAN, C.J.

Heard the learned counsel for the appellant and the learned Senior Government Pleader in the matter.

2. This writ appeal has been filed challenging the judgment dated 15.6.2015 in W.P.(C)No.17637 of 2015, by which judgment, the learned Single Judge has dismissed the writ petition filed by the appellant challenging the orders passed by the State Government. In the appeal as well as in the orders passed by the Geologist directing the petitioner to make payment of the amount on the ground that he had been recently quarrying granite from a site with regard to which there was no quarrying permission. A surprise inspection took place on 8.12.2005 and a report dated 23.12.2005 was submitted by the inspection team, wherein it was found that quarrying permit has been issued to

Mr.K.C.Muhammed Basheer for quarrying granite from Survey No.28/1 but the quarrying is taking place in Survey No.31/3. The memorandum for transporting the granite from Survey No.28/1 is being used illegally for transporting granite quarried from Survey No.31/3. A notice was served to the petitioner asking him as to why the amount being not recovered. The petitioner had filed an appeal against the said order of the Geologist. The appeal was dismissed by the State Government by order dated 16.8.2011. A review prayed for, was also rejected. The State Government after considering the inspection report and other materials, recorded a finding that the petitioner was found in illegal quarrying and there is no illegality in the order of the Geologist. The appellant challenged the order passed by the State Government before the learned Single Judge by filing a writ petition, which has been dismissed.

3. The learned counsel for the appellant submits that the inspection report dated 23.12.2005 was never supplied

to the appellant and due to the non supply of the said report, the principles of natural justice have been violated and all proceedings resulting thereafter are to be set aside on this ground alone. He submits that he has raised the issue before the appellate authority. He further submits that the case which was booked against the appellant would come under Section 9B(2) of the Explosive Act and Section 5 of the Explosive Substances Act. The appellant/petitioner was acquitted on 21.6.2008 and the charge on the appellant relates to the same day, on which date, the inspection was done by the team. He submits that, the fact that the petitioner was acquitted in that case, would fairly indicate that, the report which was submitted against the petitioner could not be relied upon. We have considered the submissions of the learned counsel and perused the records. In so far as the appellant's submission, that he was not supplied with the copy of the report of 23.12.2005, is concerned, it is suffice to say that the learned Single Judge

has adverted to the said submission in paragraph 6 of the judgment. The notice which was given by the Geologist clearly mention about the report as item no.2. The learned Single Judge has held about the notice that, the petitioner was intimated about the inspection report by Ext.P2 notice dated 13.11.2009 and there is no case for the petitioner that he was asked for the copy of the report and it was not supplied. The learned Single Judge has observed that the petitioner having moved the authorities and having not sought for the report and on the said basis, the matter cannot be remanded and no explanation being forthcoming from the petitioner as to why he has not demanded the report. The learned counsel also tried to challenge the report and the findings recorded on the ground that there was no case of quarrying by the appellant in Survey No.31/3 when he has already permitted in Sy.No.28/1. It is not for us to consider the said issue and record any findings, as from the facts it was found that the appellant was quarrying in

Sy.No.31/3 instead of Sy.No.28/1, for which he had quarrying permit. Thus the ground, to set aside the inspection report on the basis of non-receipt of copy of the report, does not appeal us. The next submission which has been pressed into by the learned counsel for the appellant is that, since he had been acquitted in a case under Explosive Substances Act, the report is to be rejected. The case which was booked against the appellant was under the Explosive Substances Act and the said case has nothing to do with the unauthorised quarrying. More so, the standard of proof in a criminal case for convicting a person is entirely different, for taking a decision on the basis of statutory rules. A mere fact that the appellant has been acquitted in a case under the Explosive Substances Act which was booked on the same day, does not in any way impeach the veracity of the report so as to come to a conclusion that the appellant has not engaged himself in unauthorised quarrying. The findings of the fact which had been recorded by the State Government

after considering the relevant materials, were also upheld by the learned Single Judge. We do not find any good ground in this appeal to interfere with the decision of the learned Single Judge. Accordingly, this writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN,
CHIEF JUSTICE.

Sd/-
A.M.SHAFFIQUE,
JUDGE.

ami/

//True copy//

P.A.to Judge