

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 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WA.No. 2471 of 2015 IN RP.657/2015

AGAINST THE ORDER IN RP 657/2015 DATED 29-09-2015
AND JUDGMENT IN W.P.(C) No.14393/2015 DATED 03.07.2015
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APPELLANT/PETITIONER :

JUSTIN JOHN
KOLLAPPILLIL HOUSE, KOODAPPULAM, RAMAPURAM BAZAAR PO
KOTTAYAM-686 576.

BY ADV. SRI.G.BHAGAVAT SINGH

RESPONDENTS/RESPONDENTS :

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1. KERALA STATE POLLUTION CONTROL BOARD
REPRESENTED BY ITS MEMBER SECRETARY, PATTOM PO
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 PO
KOTTAYAM-686 576.
 4. THE SECRETARY
RAMAPURAM GRAMA PANCHAYAT, RAMAPURAM BAZAAR PO
KOTTAYAM-686 576.
 5. J & B BLUE METALS,
REPRESENTED BY JAISON JACOB, MANAGING PARTNER
KODAPPULAM, RAMAPURAM BAZAAR PO, KOTTAYAM-686 576.

R1 & R2 BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD
R3 & R4 BY SRI.P.C.HARIDAS
R5 BY SRI.JOBI JOSE KONDODY

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S EXHIBITS :

ANNEXURE 1 : TRUE COPY OF THE UNDERTAKING SUBMITTED BY
SRI.RAJAN BEFORE THE 2ND RESPONDENT DATED 09.03.2006.

ANNEXURE 1(A) : ENGLISH TRANSLATION OF ANNEXURE 1.

RESPONDENTS' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

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

W.A. No. 2471 OF 2015

Dated this the 18th day of November, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard both the sides. This writ appeal has been filed against the order dated 29.09.2015 passed in R.P. No.657 of 2015 as well as the judgment dated 03.07.2015 passed in W.P.(C) No. 14393 of 2015. The appellant was the writ petitioner who had filed the writ petition challenging Exts.P1, P4, P6 and P7.

2. The learned Single Judge observed that the petitioner has a remedy to file appeal as per the Air (Prevention & Control of Pollution) Act, 1981 where all the issues can be raised. Thus learned Single Judge refused to exercise his jurisdiction to entertain the writ petition.

3. A Review Petition was filed by the petitioner raising various grounds including that there was no consent by the Pollution Control Board when the Unit was transferred and the Unit could not have run. In the Review Petition it was also

contended that at the time when the writ petition was filed, the appellate authority was not functioning. Learned Single Judge disposed of the Review Petition noticing the fact that at the time of disposing of the writ petition the appellate authority was not functioning, however, it was noted that the appellate authority has now been constituted and the Review Petition was disposed of deleting paragraph 9 of the original judgment.

4. Learned counsel for the appellant in support of the writ appeal contended that this was a case where the writ court ought to have entertained the writ petition by staying the functioning of the Unit, since there was no valid consent for the Unit. He submits that since the appellate authority was not functioning when the writ petition was filed, the learned Single Judge has committed error in not entertaining the writ petition. He submits that even if the petitioner is relegated to avail the remedy of appeal, an interim order be granted stopping the functioning of the Unit.

5. We have considered the submissions of learned counsel for the parties and perused the record.

6. There is no dispute that a statutory remedy is available against the orders which were impugned in the writ petition and the statutory remedy before the Tribunal could have been availed by the petitioner.

7. The issues raised were issues which require adjudication of facts which can appropriately be done by the appellate authority. It is true that at the time when the writ petition was disposed of, the appellate authority was not constituted, but it has been noticed in the order disposing of the Review Petition that now the appellate authority has been constituted.

8. Learned counsel for the petitioner submits that the appellate authority is not functioning. Be that as it may, the appellate authority having been constituted, the appellant can very well file an appeal and can raise all the issues which are sought to be raised in the Writ Petition and Review Petition. It is also open for the appellant to file such application as may be necessary, if so advised.

We are of the view that no error has been committed by the learned Single Judge by relegating the petitioner to avail statutory remedy and also disposing of the Review Petition by order dated 29.09.2015. We thus dismiss the Writ Appeal. We, however, observe that in the event the appellant/writ petitioner files an appeal within a period of 30 days from today, the same shall also be considered and decided.

**Ashok Bhushan,
Chief Justice.**

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