

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C).No. 5305 of 2015 (K)

PETITIONER(S) :

**JAGFAR, AGED 34 YEARS,
SON OF ABDUL RAHMAN, RESIDING AT KOZHIKKAL HOUSE,
THARUR (P.O), ALATHUR, PALAKKAD DISTRICT, PIN- 678 544,
(OWNER OF A LORRY BEARING REGISTRATION NO.KL-49-B-3240).**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S) :

- 1. THE DEPUTY TAHASILDAR,
HEAD QUARTERS, TALUK OFFICE, ALATHUR,
PALAKKAD DISTRICT- 678 864.**
- 2. THE STATE OF KERALA REPRESENTED BY SECRETARY TO
GOVERNMENT, INDUSTRIAL DEPARTMENT,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.**

BY SR.GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 5305 of 2015 (K)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE SEIZURE MAHAZAR DATED 12.02.2015 PREPARED BY THE FIRST RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE GO(MS)NO.20/14/1D DATED 12.02.2014 ISSUED BY THE PRINCIPAL SECRETARY TO GOVERNMENT, INDUSTRIAL DEPARTMENT, GOVERNMENT OF KERALA.

EXHIBIT P3: TRUE COPY OF THE INTERIM ORDER DATED 07.04.2014 IN W.P.(C).NO.8183 OF 2014 OF THIS HONOURABLE COURT.

EXHIBIT P4: TRUE COPY OF THE INTERIM ORDER DATED 30.01.2015 IN W.P.(C).NO.3100 OF 2015 OF THIS HONOURABLE COURT.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R. RAMACHANDRA MENON, J.

.....
W.P.(C)No.5305 OF 2015
.....

Dated this the 19th February, 2015

J U D G M E N T

The petitioner is the owner of the vehicle bearing No.**KL.49.B.3240**, which was seized by the first respondent/Deputy Tahsildar as per Ext.P1 seizure mahazar dated 12.02.2015 alleging violation of the provisions under the Kerala Minor Mineral Concession Rules, 1967. According to the petitioner, no offence has been committed by the petitioner and further that absolutely no authority is vested with the first respondent/Tahsildar in so far as he is not a notified authority to proceed with the steps in terms of the provisions of the KMMC Rules.

2. The learned Government Pleader submits that seizure was effected only on the basis of specific direction given by the District Collector as evident from Ext.P1 seizure Mahazar. District Collector is the competent authority as mentioned in Ext.P2 Government Order (Sl.No.2) and as such, the idea and understanding of the petitioner is quite wrong and misconceived, submits the learned Government Pleader.

3. The learned Counsel for the petitioner submits that the petitioner is ready to compound the offence

4. Section 23A of the Mines and Minerals (Development and Regulations) Act, 1957 and Rule 60A of the Kerala Minor Mineral Concession Rules, 1967 enable the parties to have the offence compounded. The Rules specifically stipulate that any offence under the Rules can be compounded subject to the satisfaction of the maximum fine prescribed under the Rules, which is stated as Rs.5,000/-. But in respect of the transportation of sand/earth without any valid pass/sanction, it is stated as an offence under the 'Act' itself by virtue of the incorporation of Section 4(1A), for which separate penalty is provided under the 'Act' itself. The maximum fine in respect of such offence prescribed under the 'Act' is stated as **Rs.25,000/-**. It was in the said circumstance, that this Court has been passing various orders in connected similar matters enabling the concerned petitioners to have the interim custody of the vehicle released on satisfaction of a sum of **Rs.25,000/-** and also by directing the concerned respondent to consider the application for compounding, if any.

5. A question arose before this Court as to whether the prosecution proceedings could be pursued further, once the offence is compounded in accordance with the relevant provisions. This issue has already been considered and decided by this Court in **2013 (1) KLT 600 (Digil v. Sub Inspector of Police)**, holding that, once the offence is compounded, there cannot be any further prosecution proceedings.

6. In view of the law declared as mentioned herein before, there will be a direction to the concerned respondent to accept the application filed by the petitioner to compound the offence; which shall be considered and appropriate orders shall be passed forthwith, subject to satisfaction of a sum of **Rs.25000/-** as the compounding fee. Once the offence is compounded, no prosecution proceedings shall lie against the petitioner.

The writ petition is disposed of.

P.R.RAMACHANDRA MENON
JUDGE

/k