

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WP(C).No. 5684 of 2015 (I)

PETITIONER(S):

**ALEX P. CYRIAC
PERUMALIL HOUSE, ARUNNOOTTIMANGALAM P.O.,
KADUTHURUTHY, KOTTAYAM - 686 604.**

BY ADV. SRI.ROY CHACKO

RESPONDENT(S):

- 1. THE SENIOR GEOLOGIST,
DEPARTMENT OF MINING & GEOLOGY, DISTRICT OFFICE,
KOTTAYAM - 686 001.**
- 2. THE JOINT SECRETARY TO GOVERNMENT,
DEPARTMENT OF INDUSTRIES, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 3. THE PRINCIPAL SECRETARY,
DEPARTMENT OF INDUSTRIES, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 4. THE DEPUTY THASILDAR (R.R.),
VAIKOM - 686 501.**

BY GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 5684 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT P1 : TRUE COPY OF QUARRYING PERMIT DATED 17-02-2012 ISSUED BY THE GEOLOGIST TO THE PETITIONER.

EXT P2 : TRUE COPY OF COMMUNICATION DATED 31-08-2013 ISSUED BY THE GEOLOGIST.

EXT P3 : TRUE COPY OF THE REQUEST DATED 01-10-2013 SUBMITTED BY THE PETITIONER.

EXT P4 : TRUE COPY OF THE DEMAND NOTICE DATED 26-10-2013 ISSUED BY THE GEOLOGIST.

EXT P5 : TRUE COPY OF APPEAL MEMORANDUM DATED 14-12-2013 BEFORE 2ND RESPONDENT.

EXT P6 : TRUE COPY OF THE STAY PETITION DATE 14-12-2013 BEFORE 2ND RESPONDENT.

EXT P7 : TRUE COPY OF THE JUDGMENT DATED 12-06-2014 IN WPC.NO.14943/2014 OF HON'BLE HIGH COURT OF KERALA.

EXT P8 : TRUE COPY OF NOTICE 05-11-2014 ISSUED BY THE 1ST RESPONDENT.

EXT P9 SERIES : TRUE COPY OF THE COVERING LETTER DATED 09-01-2015 AND THE DOCUMENTS.

EXT P10 : TRUE COPY OF THE ORDER DT. 28-01-2015 ISSUED BY THE DEPUTY SECRETARY, INDUSTRIES DEPARTMENT.

RESPONDENT(S)' EXHIBITS

P.R. RAMACHANDRA MENON, J.

W.P.(C) No.5684 of 2015

Dated this the 26th day of February, 2015.

JUDGMENT

The petitioner has approached this Court challenging the correctness and sustainability of Ext.P10 order dated 28.1.2015 passed by the second respondent.

2. Heard the learned Government Pleader and the learned counsel appearing for the petitioner as well.

3. It is seen that the petitioner had approached this Court earlier by filing W.P.(C) No.14943 of 2014, which was disposed of as per Ext.P7 judgment dated 12.6.2014, directing the second respondent therein (Joint Secretary to Government, Department of Industries, Thiruvananthapuram) to consider the stay application preferred along with the appeal and pass appropriate orders, simultaneously intercepting the coercive proceedings till such time. Now the proceedings have been finalized by the Government as per Ext.P10 order, paragraph 6 of which reads as follows:

"Government have examined the matter in detail with the report of the Director, Mining and Geology, the documents furnished therewith and considered the arguments of the appellant. The arguments of the petitioner are devoid of merit and the appellant has failed to produce any valid documents to substantiate his claim. Illegal extraction has been substantiated by the officials of Mining & Geology Department with the support of documentary evidences. Hence it is clear that the appellant made illegal extraction and thereby violated the rules and sustained financial loss to Government."

4. It is seen that as per the relevant provisions of the Statute, the 'first appeal' has to be considered and decided either by the Joint Secretary or the Deputy Secretary, in their capacity as the designated authority. There is a provision for 'second appeal' before the Government, which has to be heard and disposed of by the Special Secretary. Since the matter has already been considered by the Government, as reflected from paragraph 6 of Ext.P10, the chance of the petitioner to avail further remedy is virtually lost.

In the said circumstance, this Court finds that the matter has to be reconsidered. Accordingly, Ext.P10 stands set aside

and the second respondent/designated authority is directed to reconsider and finalise the appeal, after affording an opportunity of hearing to the petitioner, which shall be done at the earliest, at any rate, within 'two months' from the date of receipt of a copy of this judgment.

The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps. The writ petition is disposed of.

Sd/-
P.R. RAMACHANDRA MENON
JUDGE

Scl.