

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 6745 of 2015 (P)

PETITIONER(S):

**BINDU S.,
W/O. K.SANTHAKUMAR, SEETHU GRANITIES, VITHANASSERY,
NENMARA P.O., PALAKKAD DISTRICT-678 508.**

**BY SRI.KURIAN GEORGE KANNANTHANAM, SENIOR ADVOCATE
ADVS. SRI.TONY GEORGE KANNANTHANAM
SRI.THOMAS GEORGE**

RESPONDENT(S):

- 1. THE GEOLOGIST,
DISTRICT OFFICE OF THE DEPARTMENT OF MINING AND GEOLOGY,
PALAKKAD-678 508.**
- 2. THE STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY,
PALLIMUKKU, PETTAH P.O., TRIVANDRUM-695 024.**

BY SENIOR GOVERNMENT PLEADER SRI.JOSEPH GEORGE

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
24-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 6745 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1 : TRUE COPY OF THE PERMIT DTD.7.4.2014 ISSUED BY THE DEPARTMENT OF MINING AND GEOLOGY TO THE PETITIONER.

EXT. P2 : TRUE COPY OF THE LICENSE DTD.7.5.2014 ISSUED BY THE SECRETARY OF NEMMARA GRAMA PANCHAYAT.

EXT. P3 : TRUE COPY OF THE ACKNOWLEDGMENT ISSUED BY THE OFFICE OF THE 2ND RESPONDENT.

EXT. P4 : COPY OF THE INTIMATION DTD.19.11.2014.

EXT. P5 : TRUE COPY OF THE APPLICATION DTD.2.2.2015 BY THE PETITIONER APPLIED TO THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 6745 of 2015

Dated this the 24th day of March, 2015

JUDGMENT

The grievance of the petitioner is with regard to the refusal on the part of the 1st respondent in renewing the quarrying permit expired on 9.2.2015.

2. The case of the petitioner is that, the petitioner is conducting a quarry in the Palakkad District and is continuing the operation for the past several decades. The quarrying operation was being pursued by the petitioner after obtaining valid licence/permit issued by all concerned authority. However, referring to the absence of Environmental Clearance, for which the petitioner has made an application as early as on November, 2014, the renewal application was not considered by the 1st respondent. It is stated that the application for issuance of the Environmental Clearance was not considered and issued for the fact that the office of the concerned authority is lying vacant for quite long, for which no fault can be attributed upon the petitioner. It is also pointed out that, by virtue of the KMMC Rules, 2015, in the case of quarries which were in existence prior to 9.1.2015, Environmental Clearance is not necessary and renewal can be given.

3. During the course of hearing, it is brought to the notice of this Court that renewal of the permit and the alleged requirement to have environmental clearance for quarries, including the closed quarries, was the subject matter of consideration before a Division Bench this Court in W.P.(C) No. 31148 of 2014 and connected cases including W.A No. 1566 of 2014. It is stated that final verdict has already been pronounced by the Division Bench yesterday [23.03.2015]. The learned Government Pleader points out that the Division Bench has made clear that the Government Order dated 10.01.2014 cannot be relied on by the parties in view of the restraint order issued by the National Green Tribunal dated 27.09.2013 till such time the restraint order continues. The observation of the Bench in paragraph 82 of the said judgment is relevant, which is extracted below :

82. In view of the foregoing discussion, we come to the following conclusions.

(i) In case where quarrying/mining/lease which were existing on the date of issuance of Notification dated 14.09.2006 or on the date of issue of the order dated 18.05.2012 by the Government of India, Ministry of Environment and Forests with regard to area less than 5 hectares no environmental clearance with regard to extraction of minor mineral is required. Notification dated 14.09.2006 contemplated obtaining environmental clearance only with regard to new projects/new activities.

(ii) Government Order dated 10.01.2014 cannot be relied on by the parties in view of the restraint order issued by the National Green Tribunal dated 27.09.2013 till such time the restraint order continues.

(iii) By amendment of Section 14 by Act 37 of 1986 making Section 4 applicable to minor minerals also the provision contained in Section 4 shall be applicable to mining operations by a person holding mining lease or any other kind of mineral concession. It cannot be accepted that mining operation with effect from 10.02.1987 cannot be continued by a person holding any other mineral concession apart from mining lease.

(iv) Judgment of the Apex Court in **Deepak Kumar's case (supra)** did not contemplate environmental clearance for an area less than 5 hectares with regard to existing mining lease/mining permits on the date of judgment. Paragraph 29 of the judgment clearly directed that leases of minor minerals including their renewal for an area of less than five hectares be granted by the State/Union Territories only after getting environmental clearance.

(v) Environmental clearance as contemplated by Notification dated 14.09.2006 required environmental clearance for new projects/new activities.

(vi) The Notification dated 14.09.2006 having been applied vide order dated 18.05.2012 of the Government of India, Ministry of Environment and Forests all mining operations for new project and new activities for an area less than 5 hectares after

18.05.2012 required environmental clearance carried through either a mining lease or mining permit.

(vii) Interim order passed by the Apex Court on 27.01.2012 was intended by the Supreme Court to operate till the Rules have been framed by the States taking into consideration the guidelines and recommendations of the Ministry of Environment and Forests.

(viii) As per Rule 68 no mining/quarrying operations can be permitted without there being an approved mining plan. But such rule is subject to exception as engrafted in Rule 66, i.e., for existing lease holders, time has been allowed to submit mining plan

In the said circumstance, the 1st respondent is directed to consider Ext.P5 application preferred by the petitioner and pass appropriate orders in the light of the judgment passed by the Division Bench as above and after affording an opportunity of hearing to the petitioner at the earliest, at any rate within 'one month' 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 1st respondent for further steps.

The writ petition is disposed of.

**P.R. RAMACHANDRA MENON,
JUDGE.**