

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WP(C).No. 7210 of 2015 (A)

PETITIONER :

**M/S.KOTTUKAPILLY SAND & METAL PRIVATE LIMITED,
KORANCHIRA (P.O), KIZHAKKANCHERRY,
PALAKKAD DISTRICT - 678 003,
REPRESENTED BY ITS MANAGING DIRECTOR, GEOGY GEORGE.K.,
AGED 51 YEARS,S/O. K.J.GEORGE, KOTTUKAPILLY HOUSE,
KALPATHY (P.O), PALAKKAD - 678 003.**

BY ADV. SRI.JOBI JOSE KONDODY

RESPONDENT(S):

- 1. KIZHAKKANCHERRY GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
KIZHAKKANCHERRY GRAMA PANCHAYAT OFFICE,
KIZHAKKANCHERRY (P.O), PALAKKAD DISTRICT - 678 684.**
- 2. THE SECRETARY,
KIZHAKKANCHERRY GRAMA PANCHAYAT,
KIZHAKKANCHERRY GRAMA PANCHAYATH OFFICE,
KIZHAKKANCHERRY (P.O), PALAKKAD DISTRICT - 678 684.**
- 3. KERALA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY THE MEMBER SECRETARY, PATTOM (P.O),
THIRUVANANTHAPURAM - 695 004.**
- 4. THE ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD,
DISTRICT OFFICE, NEAR DISTRICT PANCHAYAT OFFICE,
PALAKKAD - 678 001.**
- 5. THE GEOLOGIST,
MINING & GEOLOGY DISTRICT OFFICE,
TOWN BUS STAND COMPLEX, PALAKKAD - 678 014.**

R1 & R2 BY ADV. SRI.P.RAVINDRA NATH

SRI.N.KRISHNA PRASAD

R3 & R4 BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BO

R5 BY GOVERNMENT PLEADER SMT.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: A TRUE COPY OF THE QUARRYING LEASE GRANTED BY THE STATE GOVERNMENT TO THE PETITIONER DATED 23.09.2011.
- EXT.P2: A TRUE COPY OF THE CONSENT TO OPERATE ISSUED BY THE FOURTH RESPONDENT DATED 16.01.2012 VALID UPTO 31.12.2014.
- EXT.P3: A TRUE COPY OF THE CONSENT RENEWAL ORDER DATED 10.12.2014 RENEWING EXHIBIT P2 VALID UPTO 09.02.2015.
- EXT.P4: A TRUE COPY OF THE G.O.(MS).NO.2/14/ENVT. DATED 21.02.2014 ISSUED BY THE ENVIRONMENT DEPARTMENT.
- EXT.P5: A TRUE COPY OF G.O.(MS).NO.144/2012/ID DATED 11.12.2012 PASSED BY THE FIRST RESPONDENT.
- EXT.P6: A TRUE COPY OF THE G.O.(MS).NO.5/2014/ID DATED 10.01.2014 PASSED BY THE GOVERNMENT OF KERALA.
- EXT.P7: A TRUE COPY OF THE D & O LICENSE ISSUED BY THE SECOND RESPONDENT DATED 09.07.2014 FOR THE YEAR 2014-2015.
- EXT.P8: A TRUE COPY OF THE NOTICE DATED 03.02.2015 ISSUED BY THE RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

DAMA SESHADRI NAIDU, J.

W.P.(C) No. 7210 of 2015

Dated this the 12th day of March, 2015

JUDGMENT

Succinctly stated, the petitioner, a Private Limited Company, has Exhibit P1 quarrying lease valid up to 22.09.2021 issued by Mining and Geology Department of the State. Initially, the fourth respondent issued to the petitioner Exhibit P2 consent to operate the quarry up to 31.12.2014; in turn, the first respondent Grama Panchayat issued Exhibit P7 D&O licence for the year 2014-2015 ending on 31.03.2015, with a rider that the licensee shall have the consent renewed by the fourth respondent with effect from 01.01.2015.

2. As could be seen from Exhibit P3, on 10.12.2014 the fourth respondent issued renewed consent to operate, which was valid up to 09.02.2015, though the fee was collected for three years, i.e. up to 31.12.2017. Since the renewed consent from the fourth respondent came to an end by 09.02.2015, the second

respondent issued Exhibit P8 stop memo directing the petitioner not to carry on quarrying operations until and unless it has produced the renewed consent from the fourth respondent for the period beyond 09.02.2015. Assailing Exhibit P8, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner has strenuously contended that the fourth respondent, while issuing Exhibit P3, after collecting the requisite fee for three years, has not considered the distinction between a mining lease and a mining permit. In elaboration of his submissions, the learned counsel has contended that a mining lease is for a long period, in the present instance up to 2021; whereas a mining permit is usually on an annual basis. According to him, there could have been a justification for the fourth respondent to limit the period of consent in the case of mining permit, but not in the case of mining lease. In support of his submissions the learned counsel has placed reliance on judgment dated 20.12.2014 in W.P.(C) No. 35185/2014.

4. The learned counsel has also contended that even in terms of Rule 33 of the Kerala Minor Mineral Concession Rules, 2015, which came into effect on 07.02.2015, the conditions that came to be imposed therein would be operative vis-a-vis either fresh leases or renewals thereof. In the present instance, since the mining lease has been given till 2021, the refusal of the fourth respondent, contends the learned counsel, to renew the consent to operate cannot be sustained.

5. Even if one were to consider Rule 66 of the Rules, the requirement of having the mining plan approved would be done within one year from the date of enforcement of the present rules, also is the contention of the learned counsel for the petitioner.

6. The learned counsel for the first respondent Grama Panchayat, on his part, has submitted that consent to operate from the fourth respondent is a pre-condition for the Grama Panchayat to consider the petitioner's application for renewal of D&O licence.

7. The learned Standing Counsel for the fourth respondent has, however, submitted that the fourth respondent has issued instructions to all the mining operators that their applications for renewal of consent to operate shall be filed much in advance -- at least three months prior to the expiry of the consent to operate. He has submitted that since most of the mining operators are in the habit of submitting their applications just before the expiry of the consent period, the fourth respondent could not consider all the applications expeditiously.

8. The learned Standing Counsel has further submitted that in the light of the Government Orders and also subsequent change in the rule position, the fourth respondent has issued Exhibit P3 limiting the consent up to 09.02.2015. To his credit, the learned Standing Counsel has fairly submitted that the fourth respondent will make every endeavour to consider petitioner's case for further renewal of the consent as expeditiously as possible, keeping in view the extant statutory position.

9. Heard the learned counsel for the petitioner, the learned counsel for the respondent Grama Panchayat, as well as the learned Standing Counsel for the fourth respondent, apart from perusing the record.

10. Indeed, there is justification on the part of the first respondent to insist on the petitioner's producing a consent from the fourth respondent before it could take up the petitioners' application for renewal of the D&O licence.

11. In so far as the fourth respondent is concerned, it has issued Exhibit P3 limiting the validity of the consent up to 09.02.2015, despite collection of fee for three years, i.e., up to 2017. No cogent reason has been emanating from Exhibit P3 justifying such practice as limiting the consent to operate for a short period.

12. Going by either Rule 33 or Rule 66 of the Rules, I do not find, as has been repeatedly held earlier by this Court under similar circumstances, any legal impediment for the fourth respondent to renew the consent to operate for the period it has

collected the fee.

13. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned Standing Counsel as well as the learned counsel for the respondents, this Court disposes of the writ petition with a direction to the fourth respondent to re-consider Exhibit P3 order, without reference to Rule 33 which has application only to either fresh leases or renewals thereof, but not to subsisting leases, and pass appropriate orders thereon as expeditiously as possible, at any rate, within a period of four weeks from the date of receipt of a copy of this judgment.

14. Short of consent to operate, if the petitioner has all other requisite permits, licences, etc, it is at liberty to carry on with its mining operations pending the consideration of its applications by the fourth respondent for renewal of consent to operate.

15. It is made clear that while the petitioner continues its mining operations, if there is any infraction of any other statutory

provision, as could be pointed out by any relevant authority, the said authority is at liberty to proceed in accordance with law.

With the above observations and directions, the writ petition stands disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-