

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WP(C).No. 8764 of 2014 (U)

PETITIONER(S):

1. V.PVARGHESE, S/O. PAULOSE,
ALKARAKUZHAYIL HOUSE, KURINJI P.O.,
KOTTAYAM DISTRICT, PIN-685 583.
 2. K.M.PRAKASH, S/O. MALDHAVAN,
KALATHEL HOUSE, KURINJI P.O.,
KOTTAYAM DISTRICT, PIN- 685 583.
 3. K.A. SUDHAKARAN, S/O.ACHUTHAN,
KALATHEL HOUSE, KURINJI P.O.,
KOTTAYAM DISTRICT, PIN- 685 583.
 - *4. SAJI AUGUSTINE, INCHANANIYIL HOUSE,
KURINJI P.O., KOTTAYAM DISTRICT, PIN- 685 583. *(CORRECTED)
- * THE NAME OF THE POST OFFICE IS CORRECTED AS "KUNINJI"
INSTEAD OF "KURINJI" AND THE NAME OF THE DISTRICT IS
CORRECTED AS "IDUKKI DISTRICT" INSTEAD OF "KOTTAYAM DISTRICT"
AS PER ORDER DATED 20/05/2015 IN I.A. NO.6512/2014.

BY ADV. SRI.GEORGEKUTTY MATHEW.

RESPONDENT(S):

1. CLEMENT K.JOSE,
S/O. K.K.JOSE, DIRECTOR,
COCHIN BLUE METALS INDUSTRIES PVT. LTD.,
METHIRI P.O., KOTTAYAM DISTRICT,
RESIDING AT KARIYATTIL HOUSE, VALAPPAD P.O.,
THRISSUR, PIN-680 567.
2. THE SECRETARY,
PURAPPUZHA GRAMA PANCHAYATH,
PURAPPUZHA P.O., IDUKKI DISTRICT, PIN-685 583.
3. THE PURAPPUZHA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
PURAPPUZHA P.O., IDUKKI DISTRICT, PIN-685 583.

WP(C).No. 8764 of 2014 (U)

- 4. THE KERALA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY ITS ENVIRONMENTAL ENGINEER,
ST.ANTONY'S COMPLEX, NAGAMPADOM, KOTTAYAM,
PI-686 001.**

*** ADDL. R5 IMPEADED**

- 5. JOSE, S/O.THOMAS, AGED 46 YEARS,
110, EDATHATTAMKUNNEL, 5,
RAMAPURAM, MEENACHIL.**

*** ADDL. R5 IS IMPEADED AS PER ORDER DATED 28/08/2014 IN
IA. NO.11397/2014.**

**R1 BY SRI.P.K.SURESH KUMAR, SENIOR ADVOCATE.
ADV. SRI.K.P.SUDHEER.
R4 BY ADV. SRI. M.AJAY, SC.
ADDL. R5 BY ADVS. SRI.NISHIL.P.S.,
SRI.JOSWIN THAMBI KUNNATH.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30/01/2015, THE COURT ON 20/05/2015 DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1- A TRUE COPY OF THE WRITTEN STATEMENT DATED 07-10-2013 FILED BY THE PETITIONERS IN APPEAL NO. 562/13 IN THE FILE OF TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.
- EXHIBIT P2- A TRUE COPY OF THE CIRCULAR DATED 20-07/2011 ISSUED BY THE KERALA POLLUTION CONTROL BOARD.
- EXHIBIT P3- INTERIM ORDER DATED 12-12-2013 IN WRIT APPEAL NO. 1715/13.
- EXHIBIT P4- THE TRUE COPY OF REGULATION NO. 164 OF THE METALLIFEROUS MINES REGULATIONS.
- EXHIBIT P5- A TRUE COPY OF THE ORDER DATED 19-02-2014 IN APPEAL NO. 562/13 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS.

RESPONDENT'S EXHIBITS:-

- EXT.R1A COPY OF THE CONSENT TO OPERATE DATED 01/08/2012 ISSUED BY KERALA STATE POLLUTION CONTROL BOARD.
- EXT.R1B COPY OF THE CONSENT TO OPERATE (RENEWAL) DATED 03/10/2013 ISSUED BY KERALA STATE POLLUTION CONTROL BOARD.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J

WPC No.8764 of 2014

Dated this the 20th day of May, 2015

JUDG

Under challenge in this writ petition is Ext.P5 order passed by the Tribunal for Local Self Government institutions in Appeal No.562/2013 by which the order passed by the third respondent Panchayat was set aside and the Panchayat was directed to grant permission to the first respondent to run the quarry within a reasonable time provided the first respondent produces the renewal of consent by the Pollution Control Board since the consent was valid only up to 16.7.2013.

2. The first respondent approached the respondent Panchayat for a quarrying permit under section 233 of the Panchayat Raj Act. Though the same was rejected by the respondent Panchayat, the first respondent took the matter in appeal before the Tribunal for Local Self Government Institutions.

3. The petitioners herein, who are the additional respondents, contended that there are no exposed rocks

in the land of the first respondent and there are residential houses within the dangerous zone of 300 metres. The grievance of the petitioners is that without considering any of these contentions raised by the petitioners, the Tribunal passed Ext.P5 order.

4. It is submitted by the petitioners that the application submitted by the first respondent is only for a permit under Section 233 which is only for installation of machinery and quarry can be operated only after obtaining license under Section 232 for which the application is not submitted by the first respondent. Therefore, according to the petitioners, the direction to grant permission to run the quarry is against all legal procedures and liable to be set aside by this Court.

5. In the counter affidavit filed by the first respondent, they justified the stand taken by the Tribunal for Local Self Government.

6. I have heard the learned counsel for the petitioners, the learned senior counsel for the first respondent, the learned standing counsel for the

respondent Panchayat and the learned counsel for the additional 5th respondent who was subsequently impleaded.

7. The petitioners pointed out that severe damage would be caused due to uncontrolled commercial use of land including dangerous and offensive trade like the quarry operations. It was pointed out that the first respondent is planning to operate the quarry even by removing surface soil. Large number of standing trees in the lands are to be removed. Such harmful use of land would create far reaching environmental impacts upon the entire area and the petitioners and the other people in the area would be the victims; so submitted the learned counsel for the petitioners.

8. By Ext.P5 order the Tribunal has rejected the stand taken by the third respondent in the matter for granting permission for running the quarry and directed the Panchayat to issue the permit. It was held by the Tribunal that the Panchayat did not assign any legally valid reason for rejecting permission and therefore, the refusal cannot

be sustained, especially, when the appellant before the Tribunal had complied with all the legal formalities.

9. One of the objections raised by the petitioners is that it is the unexposed rock that is allowed to be excavated and therefore, the same would offend Ext.P2 circular. Ext.P2 is the circular issued by the Pollution Control Board on 20.7.2011. It is crucial to note that the very same Board has issued consent to the first respondent on 1.8.2012 after inspecting the site. Therefore, the learned senior counsel for the respondent would point out that if the rock was unexposed, the Board would not have issued the consent. True copy of the consent of the Pollution Control Board was produced by the first respondent and marked as Ext.R1(a) and the proceedings by which it was renewed was produced and marked as Ext.R1(b).

10. Another ground of attack is that the provisions of Regulation 164 of the Metalliferous Mines Regulations, 1961 would be violated if the quarry is permitted. As rightly pointed out by the learned senior counsel for the

respondent, the said Rule only prescribes some precautionary measures and does not impose any restrictions to quarry. The petitioners have no case that they are living within the dangerous zone. Regulation itself would indicate that in case of open cast working, the safeguards to be observed are lesser. The petitioners did not have a case that the first respondent is not going to observe those safeguards. More over, the Mines Act is intended for the benefit of the workers and it does not provide a cause of action for an outsider.

11. On a clear reading of Ext.P5, this Court could not find any jurisdictional error as far as the order is concerned. It is also relevant to note that as the period of validity of the consent issued by the Pollution Control Board expired, the direction to grant permission was subject to further production of the renewed consent from the Pollution Control Board.

12. A Division Bench of this Court in **Action Council v Benny Abraham** (2001(2) KLT 690) has observed that if an entrepreneur produces sufficient positive certification

from the competent authorities, the local authority is liable to act on the same and issue permission unless bound by valid policy reasons.

Viewed in that profile, this Court is of the view that the petitioner is not entitled to succeed.

In the result, this writ petition fails and accordingly, dismissed.

However, it is made clear that while granting permit to the first respondent as directed in the impugned order, the respondent Panchayat shall be guided by the decision of this Court in ***All Kerala River Protection Council v State of Kerala*** (2015(2) KLT 78).

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

CSS/

true copy

P.S.TO JUDGE