

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WP(C).No. 12985 of 2013 (W)

PETITIONER:

A.J. WALSTON
ELAMBASSERIL HOUSE, VAYALA P.O, KADAPLAMATTOM
PIN 686 587 KOTTAYAM.

BY ADVS.SRI.P.BABU KUMAR
SRI.P.YADHU KUMAR

RESPONDENTS:

1. KADAPLAMATTOM GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY, KADAPLAMATTOM P.O
KOTTAYAM 686 571.
2. KADAPLAMATTOM GRAMA PANCHAYAT COMMITTEE
REPRESENTED BY ITS SECRETARY, KADAPLAMATTOM P.O
KOTTAYAM 686 571.
3. STATE OF KERALA
REPRESENTED BY THE SECRETARY, REVENUE DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM 695 001.
4. DIRECTORATE OF MINING AND GEOLOGY
KESAVADASAPURAM, PATTAM PALACE P.O
THIRUVANANTHAPURAM 695 001.
5. SENIOR GELOGIST
MINING AND GEOLOGY DEPARTMENT, DISTRICT OFFICE
KOTTAYAM 686 001.
6. DIRECTOR OF MINES SAFETY
D.G.M.S, BANGALORE REGION, NO.5
1ST FLOOR, 17TH MAIN, 100 FEET ROAD
4TH B BLOCK, KORAMANGALA, BANGALORE 560 034.
7. DISTRICT COLLECTOR
KOTTAYAM 686 001.
8. REVENUE DIVISIONAL OFFICER
PALA, KOTTAYAM 686 575.
9. TAHSILDAR
MEENACHIL TALUK, PALA, KOTTAYAM 686 575.
10. ENVIRONMENTAL ENGINEER
KERALA STATE POLLUTION CONTROL BOARD
KOTTAYAM 686 001.
11. DISTRICT MEDICAL OFFICER

KOTTAYAM 686 001.

Addl.12. MARY VARKEY
ELAMBASSERIL, ELACKAD VILLAGE, VAYALA.P.O.
KOTTAYAM. ADDL. R12 IS IMPEADED AS PER ORDER
DATED 11.07.2013 IN IA 8098/2013.

R5 BY SRI.NOUSHAD THOTTATHIL, GOVERNMENT PLEADER
R1-R2 BY ADV. SRI.K.C.CHARLES
R1-R2 BY ADV. SRI.M.POLY MATHAI
R6 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
R6 BY ADV. SRI.JAYAPRADEEP. V., ADDL.CGSC
R10 BY ADV. SRI. M.AJAY, SC, KERALA STATE
POLLUTION CONTROL BOARD
R BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD
RADDL 12 BY ADV. SRI.SHAJI THOMAS
RADDL 12 BY ADV. SRI.N.NAGARESH
RADDL 12 BY ADV. SRI.BINU PAUL
RADDL 12 BY ADV. SRI.T.V.VINU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26.06.2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1. TRUE PHOTOCOPY OF NOC ISSUED BY THE DISTRICT MEDICAL OFFICER DATED 18.3.2009.

EXHIBIT P2. TRUE PHOTOCOPY OF THE QUARRYING PERMIT GRANTED BY THE SENIOR GEOLOGIST DATED 27.7.2011.

EXHIBIT P3. TRUE PHOTOCOPY OF THE LE3 LICENSE ISSUED BY THE JOINT CHIEF CONTROLLER OF EXPLOSIVE, SOUTH CIRCLE CHENNAI DATED 27.7.2009.

EXHIBIT P4. TRUE PHOTOCOPY OF THE PERMIT ISSUED BY THE MINE SAFETY BANGALORE DATED 25.1.2012.

EXHIBIT P5. TRUE COPY OF THE LICENSE ISSUED BY THE PANCHAYAT DATED 18.4.2011.

EXHIBIT P6. TRUE PHOTOCOPY OF THE INTERIM ORDER ISSUED BY THE HONOURABLE HIGH COURT OF KERALA DATED 8.2.2012.

EXHIBIT P7. TRUE PHOTOCOPY OF THE STOP MEMO ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT DATED 17.2.2012.

EXHIBIT P8. TRUE PHOTOCOPY OF THE INSTRUCTION ISSUED BY MINE SAFETY BANGALORE DATED 24.10.2011.

EXHIBIT P9. TRUE PHOTOCOPY OF THE DIPLOMA CERTIFICATE ISSUED TO MR.M.EZHILARSAN DATED 9.9.1991.

EXHIBIT P10.TRUE PHOTOCOPY OF THE NOTIFICATION ISSUED BY THE GOVERNMENT CONFERRING FOREMAN CERTIFICATE DATED 29.12.1993.

EXHIBIT P11.TRUE PHOTOCOPY OF THE CERTIFICATE OF PROFICIENCY OF MR.M.EZHILARASAN DATED 13.12.1993.

EXHIBIT P12.TRUE PHOTOCOPY OF THE APPROVAL OF APPOINTMENT ORDER ISSUED BY THE MINE SAFETY BANGALORE DATED 13.3.2011.

EXHIBIT P13.TRUE PHOTOCOPY OF THE ORDER ISSUED BY MINE SAFETY BANGALORE DATED 1.2.2013.

EXHIBIT P14.TRUE PHOTOCOPY OF THE SKETCH OF THE QUARRY PRODUCED BEFORE THE MINE SAFETY DATED NIL.

EXHIBIT P15. TRUE PHOTOCOPY OF THE NOC PASSED BY THE MINE SAFETY, BANGALORE DATED 16.5.2012.

EXHIBIT P16. TRUE PHOTOCOPY OF THE DEMAND DRAFT ISSUED IN THE NAME PANCHAYAT DATED 23.5.2012.

EXHIBIT P17. TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE 1ST RESPONDENT DATED 30.5.2012.

EXHIBIT P18.TRUE PHOTOCOPY OF THE LETTER ISSUED BY THE PANCHAYT DATED 30.5.2012.

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EXHIBIT P19.TRUE PHOTOCOPY OF THE OBJECTION FILED BY THE PETITIONER DATED 25.6.2012.

EXHIBIT P20.TRUE PHOTOCOPY OF THE REPLY ISSUED BY THE PANCHAYAT DATED 2.7.2011.

EXHIBIT P21.TRUE PHOTOCOPY OF ORDER OF THE PANCHAYAT COMMITTEE DT.16.8.2012.

EXHIBIT P22.TRUE PHOTOCOPY OF THE PUBLIC NOTICE ISSUED BY THE PANCHAYAT PRESIDENT DATED 2.7.2012.

EXHIBIT P23.TRUE PHOTOCOPY OF THE REPLY ISSUED BY THE PANCHAYAT DATED 12.9.12.

EXHIBIT P24.TRUE PHOTOCOPY OF THE COUNTER AFFIDAVIT FILED BEFORE THE HONOURABLE COURT BY THE PANCHAYAT DATED 30.6.12.

EXHIBIT P25.TRUE PHOTOCOPY OF THE GOVERNMENT ORDER DATED 15.3.2010.

EXHIBIT P26.TRUE PHOTOCOPY OF THE COUNTER AFFIDAVIT FILED BY THE PANCHAYAT DATED 15.6.2012.

EXHIBIT P27.TRUE PHOTOCOPY OF THE STATEMENT FILED BY ASSISTANT SOLICITOR GENERAL OF INDIA DATED 15.11.2012.

EXHIBIT P28.TRUE PHOTOCOPY OF THE COUNTER AFFIDAVIT FILED BY THE PANCHAYAT SECRETARY DATED 10.6.2012.

EXHIBIT P29.TRUE PHOTOCOPY OF THE COMMISSION REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER DATED 14.8.2012.

EXHIBIT P30.TRUE PHOTOCOPY OF THE THE POSSESSION CERTIFICATE, SKETCH APPROVED BY THE TAHSILDAR DATED 13.12.2012.

EXHIBIT P31.TRUE PHOTOCOPY OF THE RP NO.107/12 FILED BY THE PETITIONER BEFORE THE TRIBUNAL FOR KERALA LOCAL SELF INSTITUTIONS, THIRUVANANTHAPURAM DATED 19.10.2012.

EXHIBIT P32.TRUE PHOTOCOPY OF THE COUNTER AFFDIAVIT FILED BY THE 3RD RESPONDENT DATED 24.12.2012.

EXHIBIT P33.TRUE PHOTOCOPY OF THE ORDER OF THE TRIBUNAL FOR KERALA LOCAL SELF INSTITUTIONS, THIRUVANANTHAPURAM DATED 3.5.13.

RESPONDENTS' EXHIBITS

ANNEXURE R10 (A) : TRUE COPY OF THE CONSENT RENEWAL ORDER.

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TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

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Dated this the 26th day of June, 2015

JUDGMENT

The petitioner who has been conducting quarrying operation of granite stones in Kadaplamattom Panchayat has filed this writ petition, challenging Ext.P33 order passed by the Tribunal for Local Self Government Institutions. The facts leading to Ext.P33 are as follows:

2. By Ext.P8 order, the Director of Mines Safety, who is the 6th respondent herein, had issued a direction to the petitioner under section 22(3) of the Mines Act, 1952, informing that certain violations were found on inspection of the open cast workings of the petitioner's quarry. This order was issued on the basis of an inspection conducted on 22.10.2011, in the presence of the petitioner. The violations found are as follows:

Reg.34(7) r/w Reg. 39 of the Metalliferous Mines Regulations, 1961: The Mine was being worked in absence of mananger and other statutory officials.

Reg.106(1) & (2) (a) of the Metalliferous Mines Regulations, 1961: Against a maximum permitted height of 06m, the quarry was being

worked, manually, with a face height varying from 06 m to 40m with almost vertical face having loose masses dangerously hanging at a number of places - endangering safety of the persons deployed at the bottom of high faces.

Reg.164(1B) (a) r/w Reg.160(1) of the metalliferous Mines Regulations, 1961:

Though, there were a number of structures not belonging to the owner, within the "Danger Zone" of 300m of the quarry, neither a record of blasting was maintained showing that provision of Reg.164 (1B) were followed nor a competent person for blasting was appointed.

It was further found that there was urgent and immediate danger to the lives and safety of the persons employed in the open cast workings and to the persons residing within the danger zone of his mine on account of the aforesaid violations. Therefore, the Director of Mines Safety, in exercise of his powers under section 22(3) of the Mines Act, 1952 prohibited the petitioner from employing any work person at any place in the open cast workings of his mine including movement of vehicles in the quarry except for formation of benches from top downwards in accordance with the provisions of Regulation 106 (1) and (2),

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Regulation 164 (1B) and (C) and Regulation 160 (1) read with Regulation 39(1) of the Metalliferous Mines Regulations, 1961. It was further ordered that no person shall be employed except those stated above and normal work in the opencast workings shall not be resumed till defects noticed were rectified to the satisfaction of the Directorate and till the order was vacated in writing. The petitioner was also directed to provide proper precautionary measures, while employing persons for rectification work.

3. At the relevant time, this Court had directed in W.P.(C) No.29512 of 2011 that all the statutory authorities were to see that due compliance of the order-Ext.P8 issued on 24.10.2011 was ensured. The direction issued by this Court is produced as Ext.P6 in this writ petition and the same was issued in a writ petition filed by one Smt.Mary Varkey, who is the additional 12th respondent in this writ petition. While so, the Kadaplamattom Grama Panchayat issued a stop memo-Ext.P7 in the light of the interim order passed in W.P.(C) No.29512 of 2011 and in the light of Ext.P8 order passed by the Director of Mines Safety,

directing the petitioner to stop quarrying operations. Thereafter the Director of Mines Safety issued Ext.P15 order dated 16.5.2012, on the basis of the proposal submitted by the petitioner, the surface plan and the documents furnished by him and issued no objection in taking up the rectification work strictly in compliance to the provisions of all Rules and Regulations including those under the Mines Act, 1952. It was also directed that the rectification work shall be personally supervised. The following conditions were also directed to be complied with.

(i) As proposed by you vide letter No.nil dated 9.2.2012 Mining Mate/a Blaster Certificate holder under the Metalliferous Mines Regulations, 1961 shall be appointed before the starting the rectification work and he shall personally supervise drilling, charging and blasting operations in the quarry under over all guidance of the Manager.

(ii) Your attention is invited towards the provisions of Regulation 164 (1B)(a) of the Metalliferous Mines Regulations, 1961, wherein it is required that "No Blasting in the quarry shall be done when the distance of any structure, not belonging to the owner is less than 50m, unless permitted in writing by this Directorate"

(iii) The rectification work shall be started from top and shall gradually move downwards with

proper height and width of benches.

4. On compliance of the aforesaid conditions, the Directorate General of Mines and Safety informed that it has no objection on sale of granite rubble produced as a product of rectification work at the rate of Rs.1125 Cu.M. per month for a period of 5 months, from the date of issue of such letter that is up to 15.10.2012.

5. On receipt of Ext.P15 NOC, from the Director of Mines Safety, the petitioner approached the Panchayat with requisite fee as per Ext.P16 demand draft. The Panchayat rejected his application as per Ext.P17 letter dated 30.5.2012, saying that the Panchayat had already issued a stop memo on the basis of the direction contained in W.P.(C) No.29512 of 2011 to stop the quarrying operations and therefore the license fee will not be accepted. Hence the same was returned. By another letter of same date, the Panchayat, informed the petitioner that the Panchayat can take any further action on his request only after hearing the additional 12th respondent Smt.Mary Varkey who had filed W.P.(C) No.29512 of 2011 and therefore the copies of the

application submitted by the petitioner was forwarded to Smt.Mary Varkey and the petitioner was asked to submit objections, if any, within a period of 30 days. Therefore the application of the petitioner along with the documents were forwarded to Smt.Mary Varkey calling for objections, if any. The petitioner thereupon objected to this action of the Panchayat by submitting Ext.P19 objection pointing out that the Directorate of Mine Safety has already issued no objection and permitted him to carry on quarrying operations. Again the Grama Panchayat had by Ext.P20 letter dated 2.7.2011 informed the petitioner that his application cannot be considered during the pendency of W.P. (C) No.14641 of 2012 filed by the petitioner. Thereafter, on appeal from the petitioner, the Grama Panchayat in its meeting held on 16.8.2012 rejected the same on the ground of pendency of W.P.(C) No.29512 of 2011 and 14641 of 2012 before this Court. As against the orders passed by the Panchayat, the petitioner approached the Local Self Government Tribunal by filing a revision petition. The Tribunal after hearing either parties, rejected the revision petition by Ext.P33 order. The Tribunal,

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referred to the judgments in W.P.(C) Nos.29512 of 2011 and 14641 of 2012, wherein this Court held that the local authority may not issue the permission, unless the petitioner had a valid quarrying permit from the Geology Department in terms of Kerala Mines and Minerals Rules and that in the absence of a valid mining license from the Geology Department, he will not be able to carry out any blasting operations or quarrying work as envisaged. After considering the judgment of this Court, the Tribunal held that the order passed by the Panchayat was correct and renewal of license was not proper. It is as against this order, the petitioner has approached this Court. Upholding the action of the Panchayat, the Tribunal found that an establishment permit has to be obtained and license cannot be renewed without obtaining the same. It was further found that the petitioner had to prefer an application. The Tribunal had in paragraph 20 of its order directed as follows:

"20. Hence the option now available before the petitioner is to prefer an application under Rule 12(2) of the D & O Rules seeking establishment/installation permit of the quarry. On receiving such an application the Secretary shall

conduct an enquiry and report before the Panchayat as to whether the setting up of the quarry is objectionable due to density of population, nuisance and pollution as mandated under section 233(10) Kerala Panchayat Raj Act. On receiving such a report along with the application the Panchayat shall consider the various reports mentioned in section 233 (4) of the Kerala Panchayat Raj Act, the consent of the Pollution Control Board, the documents under the Mines Act and allied Rules and decide whether a permit could be granted or not. Only if the Panchayat decides to grant permit the Secretary will get the authority to issue D & O license”.

6. The petitioner is aggrieved by the order passed by the Tribunal mainly because the Tribunal has directed the Panchayat to treat him as a fresh applicant. According to the petitioner, he is not supposed to apply for a permit as in the case of a person who is seeking a fresh license, as he was operating the quarry for the last several years.

7. The respondents - Panchayat, Pollution Control Board, Director of Mines Safety, Geologist as well as the additional 12th respondent have filed their respective counter affidavits.

8. Heard the learned counsel appearing on either side.

9. Learned counsel appearing for the Panchayat pointed out that Kerala Minor Mineral Concession Rules, 2015 have come into force, according to which environmental clearance is necessary for conducting quarrying operations. In this case the petitioner also does not have a case that such a certificate is not required.

10. The learned standing counsel for the Pollution Control Board pointed out that Annexure R10(a) Consent was issued by the Pollution Control Board on 15.6.2012 though for a period of 3 years, subject to condition that the petitioner has to obtain necessary environmental clearance as directed by the Supreme Court in I.A.No.12-13 of 2011 in S.L.P.(C) No.19628-19629 of 2009.

11. The grievance of the petitioner is mainly on the ground that he was unable to carry out rectification works on account of the illegal and discriminatory attitude on the part of the Grama Panchayat. According to him, in case, he was allowed to undertake rectification works, he would have been able to continue quarrying operation.

12. Rule 12 of the Kerala Minor Mineral Concession Rules,

2015 insists that a quarrying permit can be renewed only after complying with the procedures provided for granting permit under rule 9 subject to production of all other statutory licenses/clearances/NOC etc. from other statutory authorities concerned. Rule 9 of the Rules provides for the procedure to be adopted on receipt of application for grant of quarrying permit, according to which the competent authority shall make site inspection and take decision regarding the precise area to be granted for the said purpose and intimate the applicant to submit approved mining plan and environmental clearance for the precise area. It is only after receipt of the approved mining plan and environmental clearance and collection of other statutory licenses/clearances/NOC from other statutory authorities, the competent authority can issue quarrying permit.

In view of the developments on account of the amendment effected in the Rules insisting environmental clearance for quarrying operations, I think it is unnecessary to go into other questions. Therefore the petitioner can approach the Panchayat afresh once he obtains environmental clearance and produces all

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the statutory clearances/permits. As and when he seeks necessary permission from the Panchayat along with all the requisite documents and submits application for license, the Panchayat shall consider his application in accordance with law and pass orders expeditiously.

This writ petition is disposed of accordingly

**P.V.ASHA,
JUDGE.**

rkc