

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2015/8TH ASWINA, 1937

WP(C) .NO. 10694 OF 2015 (S)

PETITIONER(S) :

1. THE PARISTHITHY SAMRAKSHANA JANAKEEYA SAMITHY,
REP.BY ITS PATRON P.P.PHILIP
REGISTRATION NO.ER 527/03, KARUKUTTY.P.O. MAMBRA
ERNAKULAM DISTRICT, PIN - 683 576
REP.BY ITS PATRON P.P.PHILIP.
2. K.J.JOSHY, AGED 45 YEARS
S/O. K.I. JOSE, KALAMPARAMBAN HOUSE, KARUKUTTY.P.O.
MAMBRA, ERNAKULAM DISTRICT, PIN - 683 576.

BY ADV. SRI.K.ABDUL JAWAD

RESPONDENT(S) :

1. THE STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT
INDUSTRIES DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. THE DIRECTOR OF MINES SAFETY,
BANGALORE, PIN - 560 002.
3. THE DISTRICT COLLECTOR (THE DISTRICT MAGISTRATE) ,
ERNAKULAM - 682 011.
4. THE TAHSILDAR,
ALUVA, ERNAKULAM DISTRICT - 683 576.

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5. THE GEOLOGIST,
DISTRICT OFFICE OF THE DEPARTMENT OF MINING & GEOLOGY
CIVIL STATION, KAKKANAD, ERNAKULAM DISTRICT - 682 030.
6. THE STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY, KERALA, REPRESENTED BY ITS CHAIRMAN,
PALLIMUKKU PETTA.P.O., THIRUVANANTHAPURAM, PIN-695 024.
7. THE DEPUTY CHIEF CONTROLLER OF EXPLOSIVES,
KENDRIYA BHAVAN, BLOCK C-2, 3RD FLOOR
KAKKANAD.P.O., ERNAKULAM DISTRICT, PIN - 682 037.
8. THE SUB INSPECTOR OF POLICE,
ANGAMALY POLICE STATION
ERNAKULAM DISTRICT - 683 576.
9. THE KERALA STATE POLLUTION CONTROL BOARD,
REPRESENTED BY ITS ENVIRONMENTAL ENGINEER
THE DISTRICT OFFICE, ERNAKULAM - 682 011.
10. THE PARAKKADAVU GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, KURUMASSERY.P.O.
ERNAKULAM DISTRICT - 683 576.
11. T.K.THOMAS,
THANDAPPILLY HOUSE, KARUKUTTY.P.O.
ERNAKULAM DISTRICT - 683 576.
12. ELIAS.P.V.,
PATTAMMADY HOUSE, PULIYANAM.P.O.
ERNAKULAM DISTRICT - 683 576.
13. N.T.VINODKUMAR,
NATAKASALAYIL HOUSE, KARUKUTTY.P.O.
ERNAKULAM DISTRICT - 683 576.
14. K.M.JOY,
KACHAPPILLY HOUSE, PULIYANAM.P.O.
ERNAKULAM DISTRICT - 683 576.
15. P.C.JOSE,
PALLIYAN HOUSE, PULIYANAM.P.O.
ERNAKULAM DISTRICT - 683 576.

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16. K.D.VARKEY,
KALLOKKARAN HOUSE, KARUKUTTY.P.O.
ERNAKULAM DISTRICT - 683 576.
17. K.D.MARTIN,
KACHAPPILLY HOUSE, KARUKUTTY.P.O.
ERNAKULAM DISTRICT - 683 576.

ADDITIONAL RESPONDENT IMPEADED:

18. ALL KERALA CRUSHER OWNERS ASSOCIATION,
REGISTRATION NO.13/2000 HAVING REGISTERED
OFFICE AT GALAXY COMPLEX, KAKKAD ROAD,
SOUTH BAZAR, KANNUR, REPRESENTED BY ITS
GENERAL SECRETARY, M.A.ALI, S/O.ABDUL KHADER,
AGED 60 YEARS, AND RESIDING AT MOOKADA HOUSE,
KALADI P.O., ERNAKULAM.

IS IMPEADED AS ADDITIONAL RESPONDENT NO.18
VIDE ORDER DATED 6.8.2015 IN I.A. NO.11513/15

R2&7 BY ADV. SRI.P.S.GOPINATH, CGC
R11,R12,R17 BY ADV. SRI.V.K.BEERAN (SR.)
R11,R12,R17 BY ADV. SRI.V.P.REGHURAJ
R11,R12,R17 BY ADV. SRI.V.SHYAM
R15&16 BY ADV. SRI.K.A.HASSAN
R15&16 BY ADV. SMT.JULIA PRIYA RESHMY
R13,R14 BY ADV. SRI.PRATHAP PILLAI
R1, 3, 4, 5, 8, 9 BY SENIOR GOVERNMENT PLEADER
SHRI C.S.MANILAL
RADDL-RR 18 BY ADV. SRI.PRAVEEN K. JOY
RADDL-RR 18 BY ADV. SRI.T.A.JOY
RADDL-RR 18 BY ADV. SRI.NIXON PAUL
RADDL-RR 18 BY ADV. SRI.E.S.SANEEJ
RADDL-RR 18 BY ADV. SRI.M.P.UNNIKRISHNAN
RADDL. BY ADV. SRI.P.A.SALIM
RADDL BY ADV. SRI.P.M.ZIRAJ
R2,7 BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R9 BY SRI. M.AJAY, SC, KERALA STATE
POLLUTION CONTROL BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
02.09.2015, THE COURT ON 30.09.2015 DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S) ' EXHIBITS:

EXT.P1	TRUE COPY OF THE ORDER DTD.12-12-2013 IN W.A.1715/13 OF THIS HON'BLE COURT.
EXT. P2	TRUE COPY OF THE MASS PETITION SUBMITTED BY 1ST PETITIONER AND THE LOCAL INHABITANTS BEFORE THE RESPONDENTS 2 AND 3.
EXT.P3	TRUE COPY OF THE PERMIT ISSUED TO THE 11TH RESPONDENT.
EXT.P4	TRUE COPY OF THE PERMIT ISSUED TO THE 12TH RESPONDENT.
EXT.P5	TRUE COPY OF THE PERMIT ISSUED TO THE 13TH RESPONDENT.
EXT.P6	TRUE COPY OF THE PERMIT ISSUED TO THE 14TH RESPONDENT.
EXT.P7	TRUE COPY OF THE PERMIT ISSUED TO THE 15TH RESPONDENT.
EXT.P8	TRUE COPY OF THE PERMIT ISSUED TO THE 16TH RESPONDENT.
EXT.P9	TRUE COPY OF THE PERMIT ISSUED TO THE 17TH RESPONDENT.
EXT.P9 (A)	TRUE COPY OF THE ELEVANT PAGES OF THE LATEST PANCHAYATH LICENSE OF THE RESPONDENT NO.11 ALONG WITH ITS ENGLISH TRANSLATION.
EXT.P10	TRUE COPY OF THE COMPLAINT DATED 11.3.2015 SUBMITTED BY THE 1ST PETITIONER BEFORE THE RESPONDENTS 3,4,5,8 AND 10.
EXT.P11	TRUE COPY OF THE STOP ORDER DATED 12.3.2015 ISSUED BY THE VILLAGE OFFICER, PARAKKADAVU TO THE 11TH RESPONDENT WITH ENGLISH TRANSLATION.

- EXT.P12 TRUE COPY OF THE STOP ORDER DATED 12.3.2015
ISSUED BY THE VILLAGE OFFICER, PARAKKADAVU TO THE
12TH RESPONDENT WITH ENGLISH TRANSLATION.
- EXT.P13 TRUE COPY OF THE STOP ORDER DATED 12.3.2015
ISSUED BY THE VILLAGE OFFICER, PARAKKADAVU TO THE
13TH RESPONDENT WITH ENGLISH TRANSLATION.
- EXT.P14 TRUE COPY OF THE STOP ORDER DATED 12.3.2015
ISSUED BY THE VILLAGE OFFICER, PARAKKADAVU TO THE
14TH RESPONDENT WITH ENGLISH TRANSLATION.
- EXT.P15 TRUE COPY OF THE STOP ORDER DATED 12.3.2015
ISSUED BY THE VILLAGE OFFICER, PARAKKADAVU TO THE
15TH RESPONDENT WITH ENGLISH TRANSLATION.
- EXT.P16 TRUE COPY OF THE STOP ORDER DATED 12.3.2015
ISSUED BY THE VILLAGE OFFICER, PARAKKADAVU TO THE
16TH RESPONDENT WITH ENGLISH TRANSLATION.
- EXT.P17 TRUE COPY OF THE STOP ORDER DATED 12.3.2015
ISSUED BY THE VILLAGE OFFICER, PARAKKADAVU TO THE
17TH RESPONDENT WITH ENGLISH TRANSLATION.
- EXT.P17(A) TRUE COPY OF THE LETER OF THE 5TH RESPONDENT
DATED 20-3-2015, ADDRSED TO THE 1ST PETITIONER
WITH ENGLISH TRANSLATION.
- EXT.P18 TRUE COPY OF THE COMPLAINT DTD.18/3/15, SUBMITTD
BY 2ND PETITIONER BEFORE THE 8TH RESPONDENT WITH
ENGLISH TRANSLATION.
- EXT.P19 TRUE COPY OF THE RECEIPT DTD.19/3/15 ISSUED BY
THE 8TH RESPONDENT WITH ENGLISH TRANSLATION.
- EXT.P20 TRUE COPY OF REGISTRATION CERTIFICATE DATED
10.9.208 OF THE 1ST PETITIONER ASSOCIATION WITH
ENGLISH TRANSLATION.
- EXT.P21 TRUE COPY OF LIST OF OFFICE BEARERS OF THE 1ST
PETITIONER FURNISHED AT THE TIME OF REGISTRATION
WITH ITS ENGLISH TRANSLATION.
- EXT.P22 TRUE COPY OF RESOLUTION DATED 21.12.2014 WHEREBY
SHRI P.P.PHILIP IS AUTHORISED TO FILE THE PRESENT
WRIT PETITION WITH ITS ENGLISH TRANSLATION.

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- EXT.P23 TRUE COPY OF REPORT DATED 24.2.2012 OF THE ASSISTANT COLLECTOR, ERNAKULAM.
- EXT.P24 TRUE COPY OF COMMISSION REPORT DATED 29.8.2013 FILED BY ADVOCATE COMMISSIONER IN W.P(C) NO.17029 OF 2013.
- EXT.P25 TRUE COPY OF THE OBJECTION WITH ITS RECEIPT AND TRANSMISSION.

RESPONDENT(S) ' EXHIBITS:

- EXT.R1(A) TRUE COPY OF THE AMENDED NOTIFICATION OF THE RULE DATED 19.05.2015.
- EXT.11(A) THE TRUE COPY OF QUARRYING PERMIT NO.208/10-11/MM/GS/CRPS/DOE/4240/E2/10 DATED 27.12.2010.
- EXT.R11(B) THE TRUE COPY OF QUARRYING PERMIT NO.194/11-12/MM/GS/CRPS/DOE/4040/E2/11 DATED 28.12.2011.
- EXT.R11(C) THE TRUE COPY OF QUARRYING PERMIT NO.155/12-13/MM/GS/CRPS/DOE/5105/E2/12 DATED 2.1.2013.
- EXT.R11(D) THE TRUE COPY OF QUARRYING PERMIT NO.55/08-09/MM/GS/CRPS/DOE/3244/E2/08 DATED 5.0.2008.
- EXT.R11(E) THE TRUE COPY OF QUARRYING PERMIT NO.78/09-10/MM/GS/CRPS/DOE/4121/E2/11 DATED 9.9.2009.
- EXT.R11(F) THE TRUE COPY OF QUARRYING PERMIT NO.214/10-11/MM/GS/CRPS/DOE/4241/E2/10 DATED 29.12.2010.
- EXT.R11(G) THE TRUE COPY OF QUARRYING PERMIT NO.181/11-12/MM/GS/CRPS/DOE/3770/E2/11 DATED 14.12.2011.
- EXT.R11(H) THE TRUE COPY OF QUARRYING PERMIT NO.145/12-13/MM/GS/CRPS/DOE/5070/E2/11 DATED 31.12.2012.
- EXT.R11(I) THE TRUE COPY OF THE G.O. (MS) NO.5/2014/ID DATED 10.1.2014.
- EXT.R11(J) THE NOTARIZED AFFIDAVIT DATED 15.6.2015 OF THE P.M.MATHAI.

EXT.R11(K) THE TRUE COPY OF THE BYE-LAWS.

EXT.R11(L) THE TRUE COPY OF THE APPLICATION DATED 13.7.2015
SUBMITTED BY THE PETITIONER.

EXT.R11(M) THE TRUE COPY OF THE REPLY DATED 15.7.2015 OF THE
STATE PUBLIC INFORMATION OFFICER, DISTRICT
REGISTRAR (GENERAL), ERNAKULAM.

EXT.R13(A) THE TRUE COPY OF QUARRYING PERMIT NO.213/10-
11/MM/GS/CRPS/DOE/5132/E2/10 DATED 29.12.2010.

EXT.R13(B) THE TRUE COPY OF QUARRYING PERMIT NO.186/11-
12/MM/GS/CRPS/DOE/3769/E2/10 DATED 22.12.2011.

EXT.R13(C) THE TRUE COPY OF QUARRYING PERMIT NO.74/08-
09/MM/GS/CRPS/DOE/3263/E2/11 DATED 6.10.2008

EXT.13(D) THE TRUE COPY OF QUARRYING PERMIT NO.108/09-
10/MM/GS/CRPS/DOE/4769/E2/09 DATED 28.10.2009.

EXT.R31(E) THE TRUE COPY OF QUARRYING PERMIT NO.212/10-
11/MM/GS/CRPS/DOE/4711/E2/10 DATED 29.12.2010

EXT.R13(F) THE TRUE COPY OF QUARRYING PERMIT NO.200/11-
12/MM/GS/CRPS/DOE/5132/E2/10 DATED 4.1.2012.

EXT.R13(G) THE TRUE COPY OF G.O. (MS) NO.5/2014/ID DATED
10.1.2014.

EXT.R15(A) THE TRUE COPY OF QUARRYING PERMIT NO.88/08-
09/MM/GS/CRPS/DOE/3851/E2/08 DATED 13.10.2008.

EXT.15(B) THE TRUE COPY OF QUARRYING PERMIT NO.220/10-
11/MM/GS/CRPS/DOE/5284/E2/10 DATED 3.1.2011.

EXT.R15(C) THE TRUE COPY OF QUARRYING PERMIT NO.200/11-
12/MM/GS/CRPS/DOE/312/E2/12 DATED 4.12.2012.

EXT.R15(D) THE TRUE COPY OF QUARRYING PERMIT NO.152/12-
13/MM/GS/CRPS/DOE/5066/E2/12 DATED 2.1.2013.

EXT.R15(E) THE TRUE COPY OF QUARRYING PERMIT NO.207/10-
11/MM/GS/CRPS/DOE/4675/E2/10 DATED 27.10.2010.

EXT.R15(F) THE TRUE COPY OF QUARRYING PERMIT NO.193/11-
12/MM/GS/CRPS/DOE/4039/E2/11 DATED 28.11.2011.

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EXT.R15 (G) THE TRUE COPY OF QUARRYING PERMIT NO.150/12-
13/MM/GS/CRPS/DOE/5067/E2/12 DATED 2.1.2013.

EXT.R15 (H) THE TRUE COPY OF THE G.O(MS) NO.5/2014/ID DATED
10.1.2014.

EXT.R18 THE TRUE COPY OF THE JUDGMENT DATED 12.8.2015 IN
W.P(C) NO.24481 OF 2015

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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W.P(C) No.10694 of 2015

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Dated this the 30th day of September, 2015

J U D G M E N T

Ashok Bhushan, C.J.

This Writ Petition filed as a public interest litigation prays for stopping of illegal mining operations being conducted by respondents 11 to 17, who without there being any valid permits are continuing with the mining operations affecting environment and ecology.

2. The first petitioner is a registered association registered under the Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955. The 2nd petitioner is a member of the 1st petitioner and a local resident. Petitioners' case in the Writ Petition is that unauthorised and illegal mining operations are being conducted by the private respondents causing rampant damage to environment, houses and properties of the local residents. Mambra area in

Parakkadavu Panchayat in Ernakulam District is a thickly populated area where unauthorised mining operations are being done for years in blatant violation of law. The statutory authorities turned blind eyes to this illegality. Referring to the judgment of the Apex Court in **Deepak Kumar and Others v. State of Haryana & Others** ([2012] 4 SCC 629) and the order issued by the Government of India on 18.05.2012 it is stated that no mining activities after the aforesaid judgment and order are permissible without obtaining environmental clearance. State Government has issued an illegal Government Order on 10.01.2014 exempting certain quarries from the requirement of environmental clearance till 09.01.2015. The 5th respondent issued permits in the year 2014 to respondents 11 to 17 to carry on mining operations without securing environmental clearance and without there being any approved mining plan. It is submitted that provisions of the Mines Act, 1952 and Metalliferous Mines Regulations, 1961 (hereinafter referred to as "the 1961 Regulations") are also required to be followed by the private respondents and other persons who are

carrying on mining operations. Detailed representations have been submitted by the petitioners. An earlier Writ Petition No.12942 of 2012 was filed by the petitioners challenging the illegal conduct of mining operations which petition was disposed of. After the judgment of this Court, the 5th respondent considered the issue and finding that no further quarrying is possible directed the respondents to stop all the operations in Sy.Nos.168/3, 4, 5 of Parakkadavu Village. However, the 11th respondent again managed to secure an order from the Government and fresh permit was given in the year 2014. Private respondents are also violating the provisions of the Mines Act and the 1961 Regulations. Huge pits about 500 ft depth without Benches are being created which causes perpetual threat to human life. The private respondents have not secured permission to use machinery under Section 233 of the Panchayat Raj Act, 1994. Blasting and firing are done within the dangerous zone of 300 metres. Without obtaining environmental clearance on the basis of the permits granted in the year 2014 the private respondents are carrying mining operations. Petitioners have also

challenged the first proviso to Rule 12 of Kerala Minor Mineral Concession Rules, 2015 (hereinafter referred to as “the 2015 Rules”) as it being unconstitutional and ultra vires in so far as it exempt operations of quarry from 09.01.2015 from the requirement of environmental clearance on renewal of permits. Petitioners also rely on the Division Bench judgment in **All Kerala River Protection Council v. State of Kerala** (2015 (3) KLT 78) where law was laid down that without environmental clearance no mining operations can be carried on after 18.05.2012. Petitioners on the aforesaid pleadings have prayed for the following reliefs:

“i) To issue a writ of mandamus declaring that Exts.P3 to P9 are not valid permits issued in terms of law and that they are not conferring any rights on respondent Nos.11 to 17 either to do mining or to get them renewed, without securing Environmental Clearance.

ii) To issue a writ, order or direction commanding respondent Nos.2 to 5 and 8 to 10 to take all appropriate steps to stop and close down forthwith the entire mining activities done by respondents 11 to 17 in their respective land, covered by Exts.P3 to P9.

iii) To declare that the 1st and 2nd proviso to Rule 12 and the 2nd proviso to clause ‘f’ of Rule 10 of the Kerala Minor Mineral Concession Rules are unconstitutional and ultra vires and hence are struck down.

iv) To issue a direction to respondent Nos.1 to t and 8 to 10 to take all possible steps to undo the damages caused by respondent No.11 to 17 to the environment including the filling up of the huge pits formed due to illegal mining and damages caused to the residential buildings of the local inhabitants and to realise the respective costs from respective mine operators.

v) To direct respondents 1 to 3 and 9 to take prosecution against the party respondents under the provisions of the relevant statutes for damaging the environment by doing unauthorised and illegal mining operations.

vi) Issue such other writ, direction or order that this Honourable Court may deem fit, just and necessary in the facts and circumstances of the case.”

3. Counter affidavit has been filed by respondents 13 and 14 pleading that petitioners have no locus standi to maintain the Writ Petition. First petitioner though claims to be a registered association, no document has been produced to establish that it is a registered association. No document has been produced to prove that P.P.Philip who claims to be the Patron of the 1st petitioner is actually the Patron of the 1st petitioner and he is authorised to file the Writ Petition. P.P.Philip is a resident of Thrissur and the petition has been filed with ulterior motives. Petitioners having not come with clean hands, the Writ Petition deserves

to be dismissed. The 11th respondent was issued permit on 27.12.2010 and respondents 12, 13 and 14 were also issued quarrying permits till 2014-15. Directions issued in **Deepak Kumar and Others v. State of Haryana & Others** (supra) have been incorporated in the 2015 Rules, hence the directions in **Deepak Kumar and Others v. State of Haryana & Others** (supra) are no longer operative. The 14th respondent was also conducting quarrying operations since 2010. Permits granted in favour of respondents 11 to 14 were further renewed till 26.01.2015. It is stated that respondents have stopped quarrying operations since 26.01.2015. Allegation that the private respondents are violating provisions of the Mines Act and the 1961 Regulations are incorrect. Respondents 11, 12 and 17 stopped quarrying operations on 09.02.2015, respondents 13 and 14 stopped the quarrying operations on 26.01.2015, the 15th respondent stopped the quarrying operations on 25.01.2015 and the 16th respondent stopped quarrying operations on 02.12.2014. There is no illegality in the first proviso to Rule 12 of the 2015 Rules. Respondents are facing

so many difficulties due to the unhealthy competition and the action of the State Government to grant exemption for obtaining environmental clearance to those mining permits which were operating till 09.01.2015 is based on valid reasons. Private respondents have right to carry out the operations for their own livelihood which is guaranteed under Articles 19(1)(g) and 21 of the Constitution of India. There is acute shortage of raw materials in the construction field of the State and due to standstill of construction, Government have pleased to extend the operation of the Government Order dated 09.01.2014 for a further period of one year. Private respondents have filed copy of their mining permits along with the counter affidavit. A separate counter affidavit has been filed by respondents 11, 12 and 17 reiterating the same pleadings as has been noticed above. Respondents 15 and 16 have also filed separate counter affidavit almost on the same lines.

4. Petitioners have filed a reply to the counter affidavit. Along with the reply affidavit petitioners have brought on record copy of the registration certificate issued

under the 1955 Act dated 10.09.2008 to support their contention that the 1st petitioner is a registered Society. Petitioners further plead in the reply affidavit that they have filed the Writ Petition for exposing the cause of environment and the petition has been bona fide filed for the welfare of the residents. It is further pleaded that P.P.Philip is a resident of Mambra which is the border Village of Ernakulam and Thrissur. Residence of P.P.Philip is hardly one km from the quarries in question. Petitioners have also referred to the earlier Writ Petition filed by them. It is stated that the private respondents did not stop the mining operations even after the expiry of the period of mining permit and stopped illegal mining only after this Court passed an interim order on 01.04.2015. It is pleaded that the 1st proviso to Rule 12 is ultra vires and liable to be struck down. It is pleaded that permits of respondents on 09.01.2015 were invalid since they were issued without environmental clearance and mining plan.

5. Counter affidavit has also been filed on behalf of the State. It is stated that the 1st proviso to Rule 12 as well

as clause (f) of Rule 10(1) have already been amended, hence the challenge to the 1st proviso of Rule 12 cannot be sustained. It is pleaded that the State being the Rule making authority has framed the 2015 Rules. Distance of 100 metres fixed by Rule 10 cannot be held to be illegal or ultra vires. The argument that the distance rule is repugnant to the 1961 Regulation is purely untenable. It is further pleaded that if environmental clearance is insisted for all quarrying operations whether lease or permit, entire quarrying operations in the State will come to a standstill which in turn slide down the entire ongoing developmental activities and other related matters affecting the socio-economic structure of the State. Government had adopted and accepted the principles propounded by the Apex Court in **Deepak Kumar and Others v. State of Haryana & Others** (supra), namely restricted regulatory regime. The date fixed as 09.01.2015 in Rule 12 has valid reason. State had earlier issued Government Orders dated 23.11.2012 and 10.01.2014 whereby short term permits were allowed to be renewed without insisting environmental clearance. Those persons

having valid permit as on 09.01.2015 were treated as existing permit holders and for the purpose of renewal no environmental clearance is required for that. More than 2000 quarries are functioning as of now requiring mining plans to be submitted. Therefore it is not practicable to obtain mining plans all of a sudden. The total stoppage due to want of mining plan will result in standstill of the entire quarrying operations which may affect the ongoing developmental projects. It is submitted that the Writ Petition deserves to be dismissed.

6. We have heard Shri K. Abdul Jawad, learned counsel for the petitioners, Shri C.S. Manilal, learned Senior Government Pleader, Shri V.K.Beeran, learned Senior Advocate, Shri V.P.Reghuraj, Shri Prathap Pillai, Shri K.A.Hassan, learned counsel for the party respondents and Shri A.Ajay, learned Standing Counsel for the Pollution Control Board.

7. Learned counsel for the parties have placed reliance on various judgments of the Apex Court and this Court which shall be considered in detail while referring to

the submissions.

8. As noted above, the main concern shown in this public interest litigation is carrying on quarrying operations without there being valid permits by the private respondents. Permits which were even claimed by the private respondents on the basis of which they were carrying mining operations have already come to an end as noted above. Petitioners have a grievance that permits of the private respondents were renewed without they having obtained or submitted any environmental clearance. Petitioners have relied on the Division Bench judgment of this Court in **All Kerala River Protection Council v. State of Kerala** (supra). The Division Bench had occasion to consider all aspects of the mining operations in the State by lease or mining permit as well as the consequences of the Rules 2015. The Division Bench after relying on the judgment in **Deepak Kumar and Others v. State of Haryana & Others** (supra) as well as the orders issued by the Central Government which were referable to Environment Protection Act, 1986 recorded its conclusion in paragraph 82 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.”

9. In view of the law laid down by the Division Bench as above, no mining operations by mining permit is permissible without obtaining environmental clearance as required by notification dated 14.09.2006 read with the order of the Central Government dated 18.05.2012.

10. Rules 2015 now also do prescribe obtaining of environmental clearance before grant of mining permit or renewal of mining permit. One of the issues which has been raised in this Writ Petition is regarding the validity of the 1st

proviso to Rule 12. Rule 12 for ready reference is quoted below:

"12. Renewal of a quarrying permit.-- On receipt of an application in Form - A, a quarrying permit may be renewed for a further period of two years but not exceeding one year at a time after complying with the procedure provided for grant of quarrying permit under R.9 and subject to the production of all other statutory licenses / clearances / No Objection Certificate, etc. from other statutory authorities concerned:

Provided that, the environmental clearance required under R.9 shall not be insisted, in the case of renewal of quarrying permits, in respect of quarries which had a valid permit as on 9th day of January, 2015.

Provided further that the approved mining plan required under R.9 shall not be insisted till 1st April, 2016 for renewal of a quarrying permit."

The Division Bench of this Court in **All Kerala River Protection Council v. State of Kerala** (supra) had occasion to consider Rule 12, 1st proviso. The Division Bench in the context of Rule 12 held thus:

"71. One submission which has been pressed by the learned counsel for the intervenors is that proviso has been engrafted in R.12 to the effect that environmental clearance required under R.9 shall not be insisted, in the case of renewal of quarrying permits, in respect of quarries which had a valid permit as on 9th day of January, 2015. Whether the permit was valid as on 09/01/2015 is the question which has to be examined with

regard to the facts of each case / each permit. We having held that after the judgment of the Apex Court in Deepak Kumar's case and the order of the Government of India, Ministry of Environment and Forests dated 18/05/2012 all mining operations required environmental clearance with regard to area less than 5 hectares for obtaining permit thereafter or renewal environmental clearance is required. We thus are of the view that the concept of valid permit as on 09/01/2015 under the proviso to R.12 has to be read accordingly. There being no challenge before us with regard to any of the 2015 Rules, it is not necessary for us to say anything more. Issue Nos. II and VII are answered accordingly."

The Division Bench held that the proviso to Rule 12 refers to valid permit. Thus while renewing permit under Rule 12, environmental clearance need not be insisted only when the applicant had valid permit on 09.01.2015. The Division Bench had occasion to further consider and interpret the proviso to Rule 12 in **Najeeb v. Shoukath Ali** (2015 (3) KLT 396). Referring to the judgment of the Apex Court in **Deepak Kumar and Others v. State of Haryana & Others** (supra), the Division Bench in its judgment dated 15.07.2015 has laid down the following in paragraph 8:

"8. Division Bench has held that the proviso to Rule 12 in respect of quarries which has valid permit as on January, 2015 have to be read in accordance with the law as has been noticed and laid down in the judgment. When it has been held by the

Division Bench that no mining operation can be undertaken without obtaining environmental clearance subsequent to the date as mentioned above, no mining operation can be carried out by any permit holder without obtaining environmental clearance. The word 'valid permit' used in the proviso to Rule 12 has to be read accordingly. The word 'valid permit' means permit which may entail a permit holder to carry on mining operation and mining operation can only be carried out along with environmental clearance. Those permit holders who does not have environmental clearance cannot be said to have valid permit on the relevant date. We, thus, are of the view that no error has been committed by the learned Single Judge in refusing to modify the interim order."

From the above discussion it is clear that while granting renewal of permit under Rule 12, obtaining environmental clearance need not be insisted only when the applicant had valid permit as on 09.01.2015. On 09.01.2015 for a valid permit for carrying on mining operations, obtaining environmental clearance is a precondition. Thus only those permits can take benefit of Rule 12, 1st proviso which were permits having valid permit as on 09.01.2015.

11. Although, petitioners in the Writ Petition prayed that proviso to Rule 12 be declared ultra vires and struck down, but in view of the interpretation which we have put

on the proviso to Rule 12 as above there is no need or necessity to declare the proviso ultra vires. However, the proviso to Rule 12 has to be construed in the manner as indicated above.

12. Statutory authorities are under statutory obligation to ensure that no mining operation is carried out in disregard to the statutory provisions and requirement of law. Under Article 48A, the State is obliged to protect and improve the environment.

13. Protection of environment is possible only when all regulatory regimes are followed. The State which is enjoined to protect the rights of individuals and to provide environment for protection of the rights guaranteed under Article 21 cannot negate its duty or close its eyes to illegal mining operations being carried out by certain persons whose only interest is to earn by exploiting natural resources. Petitioners by this Writ Petition has rightly raised the issues in public interest and we are of the considered opinion that petitioners have made out a case for issuing appropriate directions to the appropriate authority.

14. One more submission which has been emphasised by the learned counsel for the petitioners is that the private respondents while carrying on mining operations are not following the provisions of the Mines Act or the 1961 Regulations. It is submitted that provisions of the Mines Act and 1961 Regulations provide for safety of mines and the work. It is submitted that Mines and Mineral (Development and Regulations) Act, 1957 and the Rules framed thereunder are basically concerned with extraction of the minerals and methods of safety are provided elsewhere. It is submitted that the private respondents who had been carrying on mining operations are engaged in open cast mining and hence various restrictions as contained in the Mines Act are also attracted. Referring to Section 3 of the Mines Act learned counsel for the petitioners submitted that although Section 3(1) provides exemption with regard to mining of murrum, laterite, boulder, gravel, shingle, ordinary sand, etc. but where the depth of excavation exceeds six metres or persons employed are more than 50 and explosives are used, Regulation under the Mines Act comes into play and

exemption is taken away.

15. Shri C.S. Manilal, learned Government Pleader replying to the above submission contended that for taking out mine from exemption all the conditions mentioned in Section 3(1) proviso (ii) has to be simultaneously existed. It is submitted that the word 'and' used in Section 3(1)(ii) clearly indicate that all the conditions have to be existed in conjunction. Learned counsel for the petitioners refuting the above submissions contended that the said issue is no more res-integra. He submitted that the Apex Court had already interpreted Section 3(1)(ii) in **Joint Director of Mines, Safety v. Tandur and Nayandgi Stones Quarries (P) Ltd.** ([1987] 3 SCC 208). It is submitted that in the aforesaid case the High Court accepted the said argument that all the conditions mentioned in conditions in Section 3(1)(b)(ii) (a) (b) and (c) have to exist to deny exemption which view was over turned by the Apex Court. It is useful to refer to paragraphs 3 and 4 of the judgment where the Apex Court had held that the word 'and' has to be read disjunctively and exemption provided under Section 3(1) shall come into

effect if any of the conditions (a), (b) or (c) exists. The following was laid down by the Apex Court in paragraph 4:

“4. According to the plain meaning, the exclusionary clause in sub-s. (1) of S.3 of the Act read with the two provisos beneath clauses (a) and (b), the word 'and' at the end of paragraph (b) of sub cl. (ii) of the proviso to cl. (b) of S.3(1) must in the context in which it appears be construed as 'or' and if so construed, the existence of any one of the three conditions stipulated in paragraphs (a), (b) and (c) would at once attract the proviso to clauses (a) and (b) of sub-s. (1) of S.3 and thereby make the mine subject to the provisions of the Act. The High Court overlooked the fact that the use of the negative language in each of the three clauses implied that the word 'and' used at the end of cl. (b) had to be read disjunctively. That construction of ours is in keeping with the legislative intent manifested by the scheme of the Act which is primarily meant for ensuring the safety of workmen employed in the mines.”

In view of the above it is clear that if the depth is more than six metres or explosives are being used in extraction of minor minerals exemption under Section 3(1) shall come to an end and all stipulations as provided in the Mines Act shall be applicable. Learned Government Pleader further submits that the 2015 Rules itself incorporate various provisions of the Mines Act and the 1961 Regulations. In this context it is relevant to note that the mining permits which have been

issued itself contains a condition that the permit is subject to the provisions of Mines Act and the 1961 Regulations. It is useful to quote the conditions mentioned in one of the permits:

“This permit is subject to the provisions in the Mines Act, 1952 and the Metalliferous Mines Regulations, 1961 and to the decision of W.A. No.1714 of 2013, 1715/2013 against judgment dated 24.7.2009 in W.P(C) 9015/2007 permission is granted as per the pro.order No.122/13-14/DOE/6221/E2/13 dated 27/01/14.”

16. We thus have no doubt that if any of the conditions in the second proviso to Section 3(1) exists all regulatory regime of the Mines Act come into operation and further more the mining permit itself is made subject to the aforesaid provisions. Thus the said issue is answered accordingly.

17. Shri V.K. Beeran, learned Senior Advocate appearing for the private respondents submitted that the proviso to Rule 12 is intra vires. He submitted that there is a presumption for validity of statute and burden is on the person who challenges the statute to substantiate the same. In this context he has referred to the judgment of the Apex Court in **Charanjit Lal v. Union of India** (AIR 1951 SC 41)

and **Board of Trustees v. State of Delhi** (AIR 1962 SC 458). In **Charanjit Lal v. Union of India** (supra), the Apex Court has laid down the following in paragraphs 10 and 65 thus:

“10.that it is the accepted doctrine of the American Courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A clear enunciation of this latter doctrine is to be found in *Middleton v. Texas Power and L. Company*, (248 U. S. 152 and 157), in which the relevant passage runs as follows:

"It must be presumed that a legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds."

“65.....It is an accepted doctrine of the American Courts and which seems to me to be well founded on principle, that the presumption is in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a transgression of, constitutional principles. As was said by the Supreme Court of America in *Middleton v. Texas Power and L. Company* 249 U. S. 152 at p. 157,

"it must be presumed that a Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based upon adequate grounds."

This being the position, it is for the petitioner to establish facts which would prove that the selection of this particular subject by the Legislature is unreasonable and based upon arbitrary grounds....."

To the same effect is the judgment of the Apex Court in **Board of Trustees v. State of Delhi** (supra). There cannot be any dispute to the above proposition laid down by the Apex Court. Rule 12, first proviso has already been considered and interpreted by us as above. Hence the issue needs no further consideration.

18. Shri V.K. Beeran, learned Senior Advocate strenuously contended that this Writ Petition be not entertained as public interest litigation since petitioners are neither raising any public cause nor have come up with clean hands. We have already noticed that petitioners have filed their Certificate of Registration under the 1955 Act along with their reply which proves that the association was registered in the year 1978. The petitioners had also filed a writ petition earlier raising issue of illegal mining which was disposed of.

19. There are no materials brought on record by the party respondents on the basis of which we can say that the petition has not been bona fide filed. The Writ Petition does raise cause of environment which is a public cause. In so

far as reliance on the judgment of the Apex Court in **Guruvayoor Devaswom Managing Committee & another v. C.K.Rajan & others** (AIR 2004 SC 561) is concerned, there cannot be any dispute regarding the principles evolved with regard to entertaining of public interest litigation is concerned. The present Writ Petition fulfills the criterion to treat this petition as PIL as per law laid down in the above case.

20. Submission is made by the learned counsel for the private respondents as well as the learned Government Pleader that there is acute shortage of minor minerals in the State and insistence for environmental clearance in all cases for carrying on mining operations will make the development in the State standstill. Environmental protection cannot be sacrificed in the name of development. Development has to be carried out taking due care of environment. It needs no emphasis that it is the obligation of all the State Governments, all generations to protect the natural resources. Natural resources cannot be allowed to be over exploited contrary to the statutory regulatory regime which

is imposed by various statutes. As noted above all aspects of the mining operations in the State of Kerala have been considered in detail by the Division Bench of this Court in **All Kerala River Protection Council v. State of Kerala** (supra) and the ratio of the said judgment has already been extracted above. To permit carrying on mining operations contrary to the statutory regulations and contrary to the law declared by this Court shall be disastrous for the natural resources which belong not only to the present generation but also to the future generations. Thus the submission of the learned counsel for the private respondents as well as the learned Government Pleader that since development will come to halt if environmental clearance is insisted on every mining permit does not appeal to us and cannot be accepted. There is no impediment in carrying on mining operations after obtaining environmental clearance as per the 2015 Rules. It is not the case of any one that environmental clearance has not been granted to several persons who have made applications and complied with all the necessary requirements. When others have obtained environmental

clearance and are carrying on mining operations, no exception can be made with reference to private respondents in the present case.

In view of the forgoing discussion, we dispose of the Writ Petition with the following directions:

(1) Respondents 1 and 3 to 5 are directed to ensure that private respondents 11 to 17 do not carry on any mining operation unless they obtain valid permit along with environmental clearance.

(2) The 2nd respondent shall also ensure that relevant provisions of the Mines Act, 1952 and Metalliferous Mines Regulations, 1961 as far as applicable to a mining operation is followed in its letter and spirit and in event the aforesaid provisions are violated, appropriate action under the said provisions be promptly taken.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**