

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

W.P.(C).No.14074 of 2015 (H)

PETITIONER(S):-

K.T.VARGHESE, AGED 66 YEARS, S/O. THOMAS,
PWD CONTRACTOR, MANAKUNNATH HOUSE,
PIRAVOM P.O., PIRAVOM VILLAGE, MUVATTUPUZHA TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.P.M.ZIRAJ.

RESPONDENT(S):-

1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
ERNAKULAM DISTRICT-682030.
 2. THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT-682030.
 3. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
 4. KERALA STATE RURAL ROADS DEVELOPMENT AGENCY,
THIRUVANANTHAPURAM-695001,
REPRESENTED BY ITS SUPERINTENDING ENGINEER.
 5. THE EXECUTIVE ENGINEER,
PROGRAM IMPLEMENTATION UNIT, ERNAKULAM, 3RD FLOOR,
CIVIL STATION, KAKKANADU, PIN-682030.
- R1 TO R5 BY SENIOR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.14074 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXHIBIT P1- TRUE COPY OF THE LETTER OF ACCEPTANCE ISSUED BY
THE FOURTH RESPONDENT TO THE PETITIONER
DATED 27-12-2013.

EXHIBIT P2- TRUE COPY OF THE APPLICATION SUBMITTED BY THE
PETITIONER DATED 26-4-2015 BEFORE THE FIRST RESPONDENT.

EXHIBIT P3- TRUE COPY OF COMMUNICATION DATED 9-7-2014 ISSUED BY THE
FIFTH RESPONDENT TO THE SECOND RESPONDENT.

EXHIBIT P4- TRUE PHOTOGRAPHS OF EARTH REMOVED BY THE PETITIONER
FOR THE PURPOSE OF CONSTRUCTION OF ROAD AND STORED
ON THE SIDE OF THE PROPOSED ROAD.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/

[true copy]

K. Vinod Chandran, J

W.P.(C).No.14074 of 2015-H

Dated this the 21st day of May, 2015

JUDGMENT

The petitioner is a contractor, who is engaged in the construction of Sivaly-Chettikandom road in Pampakuda Block Panchayat, as awarded by the Public Works Department. The petitioner having been entrusted with the work, requires a permit for transporting the soil excavated in pursuance of the work. The Executive Engineer of the Programme Implementation Unit of the Pradhan Mantri Gram Sadak Yojna [PMGSY] had issued Exhibit P3 letter, in which it has been stated that a quantity of 1000 m³ of earth is to be removed from the site. The Executive Engineer, by Exhibit P3, requested that the removal of earth may be permitted by the contractor, the petitioner herein, and transportation permit also be issued to the contractor.

2. Sub-rule (3) of Rule 106 of the Kerala Minor Mineral Concession Rules, 2015 [for brevity "Minor Mineral Rules of 2015"], reads as under:

"Rule 106(3) Where in the construction of public works like roads, canals, irrigation projects, railways, as a part of the work, if extraction of minor mineral is inevitable, the department/authority may do so without obtaining quarrying permit under these rules. If the extracted mineral is to be transported out of the work site, competent authority shall issue mineral transit passes on an application made by the authority concerned, after collecting the royalty".

In the present case, the construction is of a road, which is under a specific scheme of the Union Government. The Department which has awarded the contract, has also sought for removal of a specific quantity of ordinary earth from the work site and transportation of the same as per the Minor Mineral Rules of 2015. The petitioner, who is the contractor, is, hence, removing the earth only for the purpose of the work to be carried out by the Department, the contract of which is awarded to the petitioner.

3. The learned Government Pleader, however, points out that Exhibit P3 is filed before the District Collector and as of now there is no notification issued, designating the "Competent Authority" under the Minor Mineral Rules of 2015.

4. What is relevant is, the bringing into force of the Minor Mineral Rules of 2015 on 07.02.2015. In the context of the above Rules having come into force, the quarrying, as is the case in the present writ petition, is exempted under Rule 106 of the Minor Mineral Rules of 2015. But, however, a person intending to carry on such construction activity has to inform the Competent Authority under the Rules as to the construction to be carried on in the land and also satisfy the royalty as determined under the Rules. There is an obvious stalemate as of now, since the competent authority under the Minor Mineral Rules of 2015 has not been notified by the State. In such circumstance, prejudice would be caused to the individuals who intend to carry on such quarrying operations, since no officer is designated to whom prior intention of quarrying can be given. Prejudice is also caused to the State, insofar as no machinery is available for determination of the royalty as per the Rules.

5. Considering the entire circumstances as also the fact that the Rules were introduced only on 07.02.2015, this Court would direct the 1st respondent, Geologist, who was the notified authority as per the Minor Mineral Rules of 1967 to conduct a site

inspection and fix royalty; on satisfaction of which the department shall be granted exemption under the Minor Mineral Rules of 2015 as also transit pass issued in Form O(A) under the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015, the latter, if a separate application is made to that effect by the Department before the 1st respondent. It is also made clear that since the exemption is available to the department, there can be no insistence for a clearance certificate from the State Environmental Impact Assessment Authority (Kerala). The exemption available to the department shall enure to the benefit of the petitioner, who is the contractor, and the petitioner shall also be permitted to transport the sand under the Form O(A) issued to the department.

The writ petition is disposed of as above.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]