

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYASHTA, 1937

W.P.(C).No.14405 of 2015 (A)

PETITIONER(S):-

SYBY, AGED 44 YEARS, W/O.RAJENDRAPRASAD,
KOORKAPADAVAL, EDAVATTOM,
KULASEKHARAMANGALAM VILLAGE, VAIKOM TALUK,
KOTTAYAM DISTRICT.

BY ADV. SRI.P.M.ZIRAJ.

RESPONDENT(S):-

1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
KOTTAYAM DISTRICT - 686609
2. THE DIRECTOR,
MINING AND GEOLOGY, OFFICE OF THE MINING AND GEOLOGY,
KESAVADASAPURAM, PATTAM, THIRUVANANTHPURAM 695001
3. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001.

R1 TO R3 BY GOVERNMENT PLEADER SMT.C.K.SHERIN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26-05-2015, ALONG WITH W.P.(C).NO.14428 OF 2015-C, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:-

WP(C).No.14405 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXT.P1: TRUE COPY OF THE MINING PERMIT DATED 09.10.2014 ISSUED BY
THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P2: TRUE COPY OF THE APPLICATION DATED 05.12.2014 SUBMITTED
BY THE PETITIONER BEFORE THE FIRST RESPONDENT.

EXT.P3: TRUE COPY OF THE INTERIM ORDER OF THIS HONOURABLE
COURT DATED 16.12.2014 IN WPC.NO.4783/2014.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.14405 of 2015-A & 14428 of 2015-C

Dated this the 26th day of May, 2015

JUDGMENT

The petitioners in the above writ petitions seek renewal of quarrying permit without insistence for an environmental clearance as provided under the Kerala Minor Mineral Concession Rules, 2015 [for brevity “the Rules”]. The petitioners admittedly had been holding mining permits, which expired. The mining permits of both the petitioners expired in December, 2014. The order produced at Exhibit P1 in the respective writ petitions are said to have been renewal of earlier permits issued; without insisting for a environmental clearance, since the Government orders issued by the State in that respect permitted issuance of short-term mining permits even without any environmental clearance. In any event, when a further renewal was sought for, of Exhibit P1, the same was not considered in view of Exhibit P2 order passed in a batch of writ petitions

2. In that batch of writ petitions the questions raised *inter alia* dealt with the insistence for environmental clearance certificates to existing permits/licenses/concessions. The interim order, based on the decision of the Hon'ble Supreme Court in ***Deepak Kumar and***

Others v. State of Haryana and Others [(2012) 4 SCC 629], restrained the State Government from issuing any fresh permits till the matter is heard, on the concession made by the learned Advocate General before the Division Bench. The said batch of writ petitions have now been disposed of by a Division Bench of this Court in the decision reported in ***All Kerala River Protection Council v. State of Kerala [2015 (2) KLT 78]***.

3. The learned counsel for the petitioner submits that as per the Division Bench judgment, the environmental clearance certificate is to be insisted only for new permits/licenses. The specific case put forward by the petitioners is that even the Rules, brought into force in February 2015, by a proviso to Rule 12 exempts environmental clearance required under Rule 9 in the case of renewal of quarrying permits in respect of quarries which had a valid permit as on 09.01.2015. The petitioners' contentions are two-fold. One, that, if the petitioner's renewal application was considered at the proper time, i.e., in December, 2014, then the petitioner would have had an existing permit as on 09.01.2015, which he would have been entitled to renew without environmental clearance. An alternative plea has also been raised, with a challenge to the proviso

to Rule 12 insofar as the date prescribed being arbitrary and discriminatory and devoid of any nexus with the intention sought to be achieved.

4. The controversy can be settled on a correct understanding of the Division Bench judgment in ***All Kerala River Protection Council*** (*supra*). The operative portion of the judgment lists out the conclusions of the Division Bench in the following manner:

(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”.

5. It is also to be noticed that the Division Bench has in paragraphs 54 and 56 found that the notification of the Government of India brought out on 18.05.2012, extracted in its entirety in the judgment, provided for an environmental clearance for lease area less than five hectares. The said notification was brought out on the basis of the judgment of the Hon'ble Supreme Court in **Deepak Kumar** (*supra*). It was categorically held by the Division Bench that:

“**54.** ... Thus there remains no doubt that even for lease area less than 5 hectares, after the judgment of the Apex Court in *Deepak Kumar's case* (*supra*) environmental clearance is required for **grant/renewal** of mining lease.

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56. Order of the Apex Court in *Depak Kumar's case* (*supra*) is in the nature of an interim order which is clear by the words used “in the meanwhile”. The order 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 from

MoEF. The order thus used the words “be granted” which clearly meant that it referred to the leases to be granted, after the Government of India's order dated 18.05.2012. Paragraph 3 of the order used the word “henceforth” which clearly meant that the order was to be operated with regard to leases and renewals which were to be granted for an area less than 5 hectares after the issue of the order”.

6. Hence, the petitioner's contention that the petitioner's licence if had been considered in December, 2014, would have been eligible for renewal without an environmental clearance cannot be sustained. What was held by the Division Bench was that an existing grantee of a permit/concession/lease shall be allowed to continue the mining operations in the term for which the permit/concession/lease has been granted. But, when renewal is sought, necessarily environmental clearance would have to be obtained. The continuance of existing permit could have been permitted only till the expiry of the same.

7. True, the State Government had been renewing licence, especially for short-term periods, without environmental clearance on the basis of Government orders issued by the State Government under the Rules. The Division Bench in ***All Kerala***

River Protection Council (*supra*) specifically noticed those Government Orders issued by the Government of Kerala, wherein leases on lands for a period not exceeding one year was allowed without any environmental clearance from the Ministry of Environment and Forests. However, the order of the National Green Tribunal dated 27.09.2013 was noticed in paragraph 67, in which there was a categorical direction to all the Chief Secretaries of all the States/Union Territories to ensure strict adherence to the order of the Ministry of Environment and Forests dated 24.06.2013 not to carry out any digging activities without obtaining environmental clearance certificates. It was so found in paragraph 68:

“Interim order of the Tribunal having been issued to all Chief Secretaries of the State who were directed to ensure strict adherence of the order. Unless the said order is varied or modified, the State was under an obligation to comply with the said direction”.

8. Despite the fact that there were Government Orders issued by the State of Kerala permitting grant of short-term leases without environmental clearance certificate, the Division Bench, in the later judgment, has found that the same was not possible. The petitioners hence, cannot take a contention that if their licences were

considered in December, 2014, the same had to be renewed without environmental clearance certificate. The mere fact that, based on the said Government Orders the short-term leases were granted to other permit holders cannot clothe the petitioners with any right to seek for a similar grant, since the grant itself has now been found to be illegal. No valid claim of discrimination could be sustained.

9. Further, the Government Order of 2012 issued pursuant to **Depak Kumar** (*supra*) would prevail insofar as the same being issued by the Central Government in pursuance of the power conferred under the Environmental Protection Act of 1986. Though on a wrong interpretation, the State Government had been issuing short-term permits without environmental clearance, the same was a mandate even at that point of time and the Division Bench also found so. This Court definitely would not take into account such renewals made by the State Government against the Central Government notification and direct consideration of the petitioner's case as one deemed to be existing on 09.01.2015. The question of discrimination is of no consequence, since discrimination is claimed on the illegal grant made with respect to renewal of permits/licences/concessions.

10. The further contention is with respect to the date prescribed in Rule 12 having no nexus with the intention sought to be achieved. Such a contention could be raised only in the context of the petitioners being entitled to a renewal without the production of an environmental clearance certificate prior to 09.01.2015. The said contention with respect to the petitioners have already been negated by this Court. In the teeth of such finding, the date prescribed in Rule 12 is of no consequence. Even the Division Bench has drawn a clear distinction in continuing the existing permits and the renewals being effected. If an existing permit has been granted validly, the Division Bench opined that it could be continued for the period of its validity without an environmental clearance certificate, which was insisted only by the later notification of the year 2013. However, with respect to renewals, an environmental clearance certificate had to be obtained as per the Supreme Court judgment in **Deepak Kumar** (*supra*) as also the notification issued pursuant to the same. The State Government's notifications to grant short-term leases were found to be of no consequence, especially in the context of the order passed by the National Green Tribunal. Of course, none of the short-term leases

granted as per the notifications are challenged herein. But, the petitioners cannot claim discrimination on such grants; nor is the ground raised as to the date prescribed being arbitrary, sustainable. The petitioners, hence, would have to definitely get an environmental clearance certificate before a renewal is sought for. The petitioners would be left to their remedies to make a proper application in accordance with the provisions of the Act and Rules.

The writ petitions are dismissed with the above observation.

Sd/-

K.Vinod Chandran
Judge.

vkul/-

[true copy]