

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 14438 of 2015 (D)

PETITIONER:

**P.P.POLY,
S/O.PAULO,
AGED 55 YEARS,
PALIMATTOM HOUSE, KARUKUTTY P.O.
KARUKUTTY VILLAGE,
ALUVA TALUK, ERNAKULAM DISTRICT.**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

- 1. MOOKKANNOOR GRAMA PANCHAYATH
MOOKKANNUR P.O., PIN-683577
ERNAKULAM DISTRICT REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY
MOOKKANNOOR GRAMA PANCHAYATH, MOOKKANNUR P.O.
PIN-683577, ERNAKULAM DISTRICT.**
- 3. THE DISTRICT GEOLOGIST
DEPARTMENT OF MINING AND GEOLOGY
ERNAKULAM DISTRICT-682030.**

**R1-R2 BY ADVS. SRI.M.RAJAGOPALAN NAIR
SRI.G.BIJU**

R3 BY GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 06/07/2015 THE COURT ON 10-07-2015 DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 : TRUE COPY OF THE MINING PERMIT DT.19-6-2014 ISSUED BY R3 TO THE PETITIONER.

EXT.P2 : TRUE COPY OF THE CONSENT TO OPERATE DT.11-9-2014 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD TO THE PETITIONER.

EXT.P3 : TRUE COPY OF THE CERTIFICATE FOR POSSESSION FOR USE OF EXPLOSIVES ISSUED BY THE DEPUTY CONTROLLER OF EXPLOSIVES, ERNAKULAM DT.7-5-2013.

EXT.P4 : TRUE COPY OF THE LICENCE ISSUED BY THE JOINT CHIEF CONTROLLER OF EXPLOSIVES, SOUTH CIRCLE, CHENNAI DT.13-3-2013 TO THE PETITIONER.

EXT.P5 : TRUE COPY OF THE LAST PANCHAYATH LICENCE DT.4-10-2014 ISSUED BY R2 TO THE PETITIONER.

EXT.P6 : TRUE COPY OF THE APPLICATION DT.1-4-2015 SUBMITTED BY THE PETITIONER BEFORE R1.

EXT.P7 : TRUE COPY OF THE COMMUNICATION DT.7-4-2015 ISSUED BY R2.

EXT.P8 : TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT DT.8-4-2015.

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.S.TO JUDGE

vmr.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.14438 of 2015

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Dated this the 10th day of July, 2015

JUDGMENT

Aggrieved by the non-consideration of the petitioner's application for renewal of licence of his quarry, the petitioner has come up before this Court.

2. The petitioner is conducting a quarry with all licenses and permits from the concerned authorities. On expiry of Ext.P5 licence, he submitted Ext.P6 application before the first respondent dated 1.4.2015 requesting to renew Ext.P5. After receipt of Ext.P6, the second respondent directed the petitioner to remit the licence fee and accordingly, the petitioner remitted the same. Thereafter instead of granting licence to the petitioner, the first respondent issued Ext.P7 communication informing that there is no objection to renew/grant permit to the quarry owners whom the quarry situated in an area less than 5 hectors. In Ext.P7, the second respondent stated that there is

no bar for renewal of petitioner's licence. However, he would issue the licence only after obtaining environmental clearance certificate since there is a Government order regarding the above subject matter.

3. After receipt of the said communication, the petitioner submitted Ext.P8 reply to the second respondent stating that there is no bar for renewing the licence as per the specific provisions of the Kerala Minor Mineral Concession Rules, 2015 (for short, the Rules) and also as per the judgment of this Court dated 23.3.2015 in W.P(C) No.31148 of 2014. However, the first respondent is not renewing the permit of the petitioner. It is with this background, the petitioner has approached this Court.

4. In the counter affidavit filed by the respondent panchayat, it was contended that the petitioner was insisted for production of environmental clearance for renewal of his licence as he was not holding any valid permit on 9.1.2015.

5. Arguments have been heard.

6. The learned counsel for the petitioner would submit that as per Rule 12 of the Rules environmental clearance required under Rule 9 shall not be insisted in the case of renewal of quarrying permit in respect of quarry which had a valid permit as on 9.1.2015. The learned counsel for the petitioner would point out that he is holding licence as on 9.1.2015 and the same is valid upto 19.6.2015. Therefore, according to the learned counsel for the petitioner, the insistence of environmental clearance by the second respondent is illegal arbitrary and beyond jurisdiction.

7. The learned standing counsel for the respondent panchayat, *per contra*, would submit that the petitioner has not obtained environmental clearance certificate even though the Kerala Pollution Control Board had required him to obtain necessary environmental clearance as per clause 4.9 of Ext.P3 consent to operate issued for operating the quarry. Therefore, it was pointed out that the petitioner cannot contend that he was having a valid permit as on 9.1.2015 to avail the concession provided in the proviso to Rule 12 of the Rules.

8. The position is no longer *res integra* after the decision of this Court in All Kerala River Protection Council v. State of Kerala [2015 (2) KLT 79] following the decision of the Apex Court in Deepak Kumar v. State of Haryana [(2012) 4 SCC 629]. Environmental clearance can be dispensed with only in cases of quarries which are functioning on the basis of a valid permit as on 9.1.2015. As it cannot be said that the petitioner's quarry was having valid permit on the aforesaid date, the allegation now raised by the petitioner cannot stand. Therefore, the petitioner is not entitled for the renewal as prayed for.

In the result, the writ petition fails and accordingly, it is dismissed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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