

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 24259 of 2013 (F)

PETITIONER:

**SUNILKUMAR, SON OF VELAPPANKUTTY,
AGED 43 YEARS, RESIDING AT KUNDAYIL HOUSE,
CHETTISSEY, MANALI DESOM, NENMENI VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT,
(OWNER OF A HITACHI FILTERING MACHINE,
TWO MOTOR AND PUMP SET).**

BY ADV. SRI.P.M.ZIRAJ.

RESPONDENT:

**THE ASSISTANT COLLECTOR,
PALAKKAD, CIVIL STATION, PALAKKAD-678 001.**

BY GOVT. PLEADER SMT.ANITHA RAVINDRAN.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

WP(C).No. 24259 of 2013 (F)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1: TRUE COPY OF THE MAHASAR DATED 16.09.2013 PREPARED BY THE RESPONDENT.

EXHIBIT P2: TRUE COPY OF THE LICENSE DATED 19.06.2013 ISSUED BY THE SECRETARY, KOLLANGODE GRAMA PANCHAYATH.

EXHIBIT P3: TRUE COPY OF REGISTRATION OF THE UNDER KERALA VALUE ADDED TAX RULES 2005 DATED 24.07.2013.

EXHIBIT P4: TRUE COPY OF THE INTERIM ORDER OF THIS HONOURABLE COURT DATED 23.07.2013 IN WPC NO.18247 OF 2013.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

PA. TO JUDGE

rs.

P.R.RAMACHANDRA MENON, J.

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W.P.(C) No.24259 of 2013

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Dated this the 2nd day of March, 2015

JUDGMENT

The Hitachi machine along with filtering machine and two motor and pump set of the petitioner were seized by the respondent alleging offence under the Mines and Mineral (Development and Regulation) Act and the Kerala Minor Mineral Concession Rules. The main ground of challenge is that, the respondent is not having the jurisdiction or authority to effect seizure.

2. Heard both the sides.

3. The authority of the respondent to effect seizure has already been considered by this Court and the power and competence has been upheld as per the decision reported in **Aloshias C. Antony Vs. Government of Kerala** [2014(1) KLT 536]. The said decision was rendered, also taking note of the nature of offence which is a 'cognizable' one (notwithstanding anything contained in the Cr.P.C) as stipulated in Section 21(6) of MMDR Act, 1957 and also placing reliance on the judgment rendered by a Division Bench of this Court in **Construction Materials Movers Association V. State of Kerala**

[2008 (4) KLT 909]. In the said circumstance, there is no tenable ground to call for interference.

4. When the matter came up for consideration on 04.10.2013, the Hitachi, filtering machine, two motor and pump set were caused to be released, on satisfaction of a sum Rs.25,000/- and on execution of a simple bond. In the said circumstance, the further course of action required is to surrender the Hitachi, filtering machine, two motor and pump set before the respondent, so as to enable the respondent to produce them before the concerned Magistrate having jurisdiction over the area and to proceed with steps for prosecution, unless the offence is sought to be compounded.

5. The petitioner expresses desire to compound the offence by virtue of the enabling provisions under the relevant provisions of law. This Court finds it fit and proper to permit the petitioner to have the offence compounded on satisfying the compounding fee of Rs.25,000/-. The amount ordered to be paid as per the interim order dated **04.10.2013** shall be treated as compounding fee and offence shall be treated as compounded. Once the offence is compounded, no prosecution proceedings will lie in view of the law declared by this Court in **Digil Vs. Sub Inspector of Police** [2013(1) KLT 600]. It shall be

reported to the concerned Magistrate, if the crime has already been reported. If there is any failure in satisfying the compounding fee, the respondent shall pursue further steps in connection with the prosecution before the concerned Magistrate having jurisdiction over the area.

The writ petition is disposed of.

Sd/-

P.R.RAMACHANDRA MENON, JUDGE

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