

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

WP(C).No. 22430 of 2015 (C)

PETITIONER(S):

**ALEX P.CYRIAC,
PERUMALIL HOUSE, ARUNNOOTTIMANGALAM.P.O.,
KADUTHURUTHY,
KOTTAYAM-686 604.**

**BY ADVS.SRI.ROY CHACKO
SRI.P.S.GEORGE**

RESPONDENT(S):

- 1. THE SENIOR GEOLOGIST
DEPARTMENT OF MINING & GEOLOGY, DISTRICT OFFICE,
KOTTAYAM.686 001.**
- 2. THE JOINT SECRETARY TO GOVERNMENT,
(APPELLATE AUTHORITY), DEPARTMENT OF INDUSTRIES,
SECRETARIAT, THIRUVANANTHAPURAM.695 001.**
- 3. THE PRINCIPAL SECRETARY,
DEPARTMENT OF INDUSTRIES, SECRETARIAT,
THIRUVANANTHAPURAM.695 001.**
- 4. THE DEPUTY TAHSILDAR (R.R), ,
VAIKOM.686 141.**

BY SENIOR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 31-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF QUARRYING PERMIT DATED 17.2.2012 ISSUED BY THE GEOLOGIST.**
- P2- TRUE COPY OF COMMUNICATION DATED 31.8.2013 ISSUED BY THE GEOLOGIST.**
- P3- TRUE COPY OF THE REPLY DATED 1.10.2013 SUBMITTED BY THE PETITIONER.**
- P4- TRUE COPY OF THE DEMAND NOTICE DATED 26.10.2013 ISSUED BY THE GEOLOGIST.**
- P5- TRUE COPY OF THE APPEAL MEMORANDUM DT. 14.12.2013 BEFORE 2ND RESPONDENT.**
- P6- TRUE COPY OF THE JUDGMENT DATED 12.6.2014 IN WPC NO.14943/2014.**
- P7- TRUE COPY OF NOTICE 5.11.2014 ISSUED BY THE 1ST RESPONDENT.**
- P8- TRUE COPY OF THE COVERING LETTER DT. 9.1.2015.**
- P9- TRUE COPY OF THE ORDER DT. 28.1.2015 ISSUED BY THE DY SECRETARY, IND. DEPARTMENT.**
- P10- TRUE COPY OF JUDGMENT DT. 26.2.2015 IN WPC NO.5684/2015.**
- P11 TRUE COPY OF THE PERMITS DT. 17.6.2008, 10.2.2010 AND 14.2.2011 ISSUED BY THE 1ST RESPONDENT.**
- P12- TRUE COPY OF THE ORDER DT. 24.6.2015 ISSUED BY THE DY. SECRETARY, IND. DEPARTMENT.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY

P.S. TO JUDGE

PJ

K. VINOD CHANDRAN, J.

W.P(C). No.22430 of 2015

Dated this the 31st day of July, 2015.

JUDGMENT

The petitioner is aggrieved with the fact that Ext.P12 order has been passed, restricting his right to a Second Appeal as provided under Rule 49(1)(b) of the Kerala Minor Mineral Concession Rules, 1967 [for brevity, the Rules of 1967]. Admittedly, the Kerala Minor Mineral Concession Rules of 2015 has been passed in supersession of the Rules of 1967. However, the offence alleged against the petitioner is when the provisions of the Rules of 1967 were applicable.

2. The short contention raised by the petitioner is that, Rule 49 provides for two appeals, one to the designated Appellate Authority as per sub-clause (a) of Clause 1 and a final Authority notified as per sub-clause (b) of Clause 1. The petitioner also relies on notification No.20944/G3/69/ID dated 16.11.1978

published as SRO 8/79 dated 02.01.1978, notifying the Deputy Secretary as the designated First Appellate Authority and the Principal Secretary as the Second Appellate Authority. In fact, earlier the petitioner was before this Court on the very same ground and this Court had specifically directed by Ext.P10 judgment; that an order would be passed by the 2nd respondent/ designated authority, who is the Joint Secretary to the Government, Department of Industries, Secretariat. Ext.P12 order has been passed by the Deputy Secretary in the name of the Governor, making it an order passed by the State Government under Article 166(1) of the Constitution of India. Hence, there could be no Second Appeal filed by the petitioner and the petitioner is so prejudiced by the remedy available under the Rules being frustrated by reason of jurisdiction wrongly assumed by the Deputy Secretary.

3. It is to be noticed that, when the notification constitutes the Appellate Authority, the Appellate Authority derives its power from the notification as permitted under the Rules framed by the executive Government, by virtue of the powers conferred under

the Act, herein the Mines and Minerals (Development and Regulations) Act, 1957. Hence, the Deputy Secretary is not acting for and on behalf of the Government, but as an Appellate Authority constituted under the Rules of 1967.

In such circumstances, Ext.P12 is set aside, not on merits, but on defect in jurisdiction and the 2nd respondent/Appellant Authority is directed to consider the matter afresh, after looking into the materials produced by the petitioner. The demand, if any, shall be kept in abeyance till such orders are passed. The orders shall be passed assuming the jurisdiction of the Appellate Authority as conferred by the aforecited notification.

The petitioner shall appear before the Joint Secretary to Government on 10.08.2015, on which date the Office of the 2nd respondent shall give a date of hearing and dispose of the matter as expeditiously as possible, in accordance with law.

The writ petition is disposed of.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

sp