

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 8TH DAY OF SEPTEMBER 2015/17TH BHADRA, 1937

WP(C).No. 26494 of 2015 (J)

PETITIONER(S):

- 1. SREEJITH, S/O.LAKSHMANAN,
AGED 40 YEARS, GOURISHAM, PARIPPALLY P.O.,
PARIPPALLY VILLAGE, KOLLAM TALUK, KOLLAM DISTRICT,
(OWNER OF JCB HEARING REGISTRATION NO.KL.02.AK.1353).**
- 2. AMALA, W/O.LATE RAJESH ANTONY,
AGED 38 YEARS, THANNUVILA VEEDU,
PULLICHIRA P.O., MAYYANAD VILLAGE,
KOLLAM TALUK, KOLLAM DISTRICT,
(OWNER OF LORRY BEARING REGISTRATION NO.KL.02.AE.1500).**

BY ADV. SRI.P.M.ZIRAJ.

RESPONDENT(S):

**THE SUB INSPECTOR OF POLICE,
PARIPPALLY POLICE STATION,
KOLLAM DISTRICT- 688 864.**

BY GOVT. PLEADER SMT.C.K. SHERIN.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 04-09-2015, ALONG WITH WP(C).NO.26540 OF 2015 AND
CONNECTED CASES, THE COURT ON 08/09/2015 DELIVERED
THE FOLLOWING:**

rs.

WP(C).No. 26494 of 2015 (J)

APPENDIX

PETITIONER'S EXHIBITS:-

**EXHIBIT P1. COPY OF THE FIRST INFORMATION REPORT DATED 24.08.2015
NO.1467 OF PARIPPALLY POLICE STATION.**

**EXHIBIT P2. COPY OF THE APPLICATION DATED 24.08.2015 SUBMITTED BY
THE PETITIONER BEFORE THE RESPONDENT.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

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26577 of 2015

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Dated this the 4th day of September, 2015

J U D G M E N T

The batch of these petitions are filed for release of the vehicle seized by the Authorities for contravening provisions of Kerala Minor Mineral Concession Rules 2015 (hereinafter referred to as 'KMMC Rule' or Kerala Minerals (Prevention of Transportation) Rule 2015 (hereinafter referred to as Transportation Rules).

2. The petitioners in all these writ petitions seek an opportunity for compounding the offence.

3. The petitioners urge that there must be uniformity in fixing the compounding fee and they are all prepared to compound the offence.

4. The Rule 111 of the KMMC Rules provides compounding offence. The offence can be compounded by person authorized to file a complaint under Rule 110. Similarly Rule 32 of Transportation Rules also provides for compounding offence. It is

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also stipulates that the offence can be compounded by an authority who is authorized to file a complaint before the court in terms of Sec.22 of Kerala Mines and Minerals (Development and Regulation) Act 1957 (MMDR Act) or sub clause (ii) of Rule 2 of the Transportation Rules.

4. Sec.22 of the Mines and Minerals (Development and Regulation) Act 1957 provides that no court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central or the State Government. The State Government issued a notification dated 5.6.2015 (G.O. (P) No.77/2015/ID whereby the State Government designated the following officers u/s 22 of the MMDR Act.

Sl.No.	Designation of officers	Area of jurisdiction
1.	The Director/Additional Director/Deputy Directors of the Department of Mining and Geology	Entire State of Kerala
2.	All District Collectors in the State	Within the District concerned
3.	Senior Geologists/Geologists/Assistant Geologists of the District Offices of the Department of Mining and Geology	Within the District concerned
4.	Senior Geologist/ Geologists/Assistant Geologists of the Kerala Mineral Squad (Northern Region)	In the revenue Districts of Kasaragod, Kannur, Wayanad, Kozhikode and Malappuram

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| 5. | Senior Geologist/Geologist/Assistant Geologist of the Kerala Mineral Squad (Central Region) | In the revenue Districts of Thrissur, Palakkad, Ernakulam and Idukki |
| 6. | Senior Geologist/Geologist/Assistant Geologist of the Kerala Mineral Squad (Southern Region) | In the revenue Districts of Tvm, Kollam, Alappuzha Pathanamthitta and Kottayam. |
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In view of the above, the only officers referred as above are alone competent to file a complaint and compound the offence.

5. The question is whether this Court can order release of the vehicle on payment of compounding fee. The learned Government Pleader relied upon the judgment of this Court in Kuriakose v. Sub Inspector of Police [2015 (3) KLT 288] and submitted that since Rules do not provide for any clear guidelines, as to how the compounded fee should be determined, the directions in the above judgment shall be followed. No doubt, judgement of the above case, may require a consideration by the Government in the manner in which compounding fee has to be collected for compounding the offences.

7. However, in view of the notification of the Government referred as above, the officers authorised to file a complaint to compound the offence has no less significance in the matter to

exercise discretion for fixing the rate of fee for compounding the offence. In the above notification, it can be seen that power can be exercised by the Director/Additional Director/Deputy Directors of the Mining and Geology/Senior Geologist/Geologist including District Collector. This Court is of the view that those officers can take appropriate decision taking into account of the gravity of the offence of the cases. When primary authority is conferred the power that authority can decide upon the manner in which compounding fee can be fixed. The judicial review is limited to examine the exercise of the power. It is for the authority to decide what is the rate that would be applicable in each cases for fixing the compounding fee, taking into account of the penalty provisions referred in the Rules.

In that view of the matter, this writ petition is disposed of by directing that if the petitioners approach the Geologist of the Revenue District concerned, the Geologist shall permit the petitioners to compound the offence, in accordance with relevant Rules on payment of the compounding fee fixed by him within one week from the receipt of the request of compounding being submitted by the petitioners. The Seizing Authority in each cases

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shall report the matter along with seizure mahazar before the Geologist within three days. It is made clear that the directions in this judgment, would be applicable only if the petitioners have contravened the provisions of the Kerala Mines and Kerala Mines and Minerals (Development and Regulation) Act 1957 or Transportation Rules alone.

sd/-

sab

A.MUHAMED MUSTAQUE, JUDGE