

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WP(C).No.30846 of 2014 (E)

PETITIONER:

**MUHAMMED BASHEER,S/O.MUHAMMED,
AGED 54 YEARS,MELOTTIL HOUSE,
VELIMUKKU SOUTH POST,
THIRURANGADI,MALAPPURAM.**

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.N.SHAMSUL HUDA**

RESPONDENT'S:

- 1. UNION OF INDIA,REPRESENTED BY ITS SECRETARY,
MINISTRY OF ENVIRONMENT AND FOREST,
PARIYARAM BHAVAN,CGO COMPLEX,
LODHI ROAD, NEW DELHI-110003.**
- 2. GOVERNMENT OF KERALA,REPRESENTED BY ITS
SECRETARY,DEPARTMENT OF ENVIRONMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.**
- 3. KERALA STATE BIODIVERSITY BOARD,L-14,
JAI NAGAR, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM-695011,
REPRESENTED BY ITS MEMBER SECRETARY.**
- 4. GEOLIGIST, MINING AND GEOLOGY DEPARTMENT,
DISTRICT OFFICE, CIVIL STATION,KOZHIKODE,PIN-673020.**
- 5. VILLAGE OFFICER, KAVILUMPARA VILLAGE,
KUTTIADY VIA, KOZHIKODE DISTRICT,PIN-673513.**

**R1 BY SRI.N.NAGARESH,ASGI
R2 TO R5 BY SENIOR GOVT. PLEADER SRI.M.MUHAMMED SHAFI.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 10-04-2015, ALONG WITH WPC.30847/2014, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THE QUARRYING PERMIT DATED 27.5.2013 VALID UP TO 26.5.2014 ISSUED BY THE 4TH RESPONDENT.

EXT.P2:TRUE COPY OF THE PROCEEDING DATED 6.5.2014 OF THE ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD, KOZHIKODE.

EXT.P3:TRUE COPY OF THE PROCEEDING DATED 27.11.2013 OF THE DEPUTY CHIEF CONTROLLER OF EXPLOSIVES, ERNAKULAM TO POSSESS EXPLOSIVES VALID UP TO 31.3.2018.

EXT.P4:TRUE COPY OF THE PROCEEDING DATED 4.10.2013 OF THE JOINT CHIEF CONTROLLER OF EXPLOSIVES,SOUTH CIRCLE,CHENNAI TO POSSESS EXPLOSIVES VALID UP TO 31.3.2018.

EXT.P5:TRUE COPY OF THE SHORT FIRER'S CERTIFICATE DATED 24.7.2013 ISSUED TO MR.RAINSON P.BY THE DEPUTY CHIEF CONTROLLER OF EXPLOSIVES,ERNAKULAM.

EXT.P6:TRUE COPY OF THE CONSENT DATED 12.11.2014 ISSUED BY MR.RAINSON P, THE BLASTSMAN OF THE PETITIONER TO CONDUCT QUARRYING OPERATIONS.

EXT.P7:TRUE COPY OF THE DIRECTION DATED 13.11.2013 ISSUED BY THE 1ST RESPONDENT,EXCEPT THE LIST OF VILLAGES ENUMERATED THEREIN.

EXT.P8:TRUE COPY OF THE OFFICE MEMORANDUM DATED 4.3.2014 ISSUED BY THE 1ST RESPONDENT.

EXT.P8(a):TRUE COPY OF THE DRAFT NOTIFICATION DATED 10.3.2014 ISSUED BY THE 1ST RESPONDENT.

EXT.P9:TRUE COPY OF THE SKETCH DETAILING THE BOUNDARIES OF ESA OF KAVILUMPARA ISSUED BY THE 5TH RESPONDENT.

EXT.P10:TRUE COPY OF THE PROCEEDING DATED 4.11.2014 OF THE 4TH RESPONDENT.

EXT.P11:TRUE COPY OF G.O (RT) NO.883/2014/ID DATED 14.8.2014 ISSUED BY THE 2ND RESPONDENT.

EXT.P12:TRUE COPY OF THE JUDGMENT DATED 18.9.2014 IN W.P(C) NO.24180/2014 OF THIS HONOURABLE COURT.

EXT.P13:TRUE COPY OF THE JUDGMENT DATED 1.10.2014 IN W.P(C) NO.21524/2014 OF THIS HONOURABLE COURT.

W.P(C) NO.30846/2014

**EXT.P14:TRUE COPY OF THE ORDER DATED 24.10.2014 OF THIS HONOURABLE
COURT IN W.P(C) NO.26729/2014 AND CONNECTED CASES.**

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

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P.R. RAMACHANDRA MENON, J.

**W.P(C). Nos. 30846, 30847, 30848, 31093,
32857, 32898, 32910, 32918 of 2014**

Dated this the 10th day of April, 2015

J U D G M E N T

Grievance involved in all these cases is with regard to the non-consideration of the applications for renewal of permits for conducting quarrying operations.

2. Similar writ petitions had come up for consideration before this Court on 24.10.2014, wherein a common interim order was passed in the following terms.

“These writ petitions are filed by the existing quarry operators whose permits have been expired and the Department have refused to renew the quarrying permit for the reason that final notification in terms of Section 5 of the Environmental (Protection) Rules, 1986 is yet to be notified. The exclusion and inclusion of these areas cannot be decided in praesenti. The Government has also taken a stand before the National Green Tribunal in OA.No.26 of 2012 that existing mining licence will not be renewed until the final notification is issued. The apprehension of the Government is that even though this area will not form part of the draft notification dated 10.03.2014, by renewal of quarrying permit, it is likely to fall within the ecologically sensitive area while issuing a final notification of ecologically sensitive area.

2. *The Director of Mining and Geology have filed a detailed statement opposing the prayers*

of the petitioners. Considering the stand taken before the National Green Tribunal, it is submitted by the Director that the petitioners' permit cannot be renewed. The learned Government Pleader also sought time for filing a detailed statement by the Government. The learned Government Pleader submits that a detailed statement on the side of the Government is necessary as this a larger issue affecting the people in the surrounding area and it is not a mere issue of mining alone. It is further submitted that, if any renewal is granted, that will jeopardize the final notification and also will be against the public interest.

3. I have perused the order passed by the National Green Tribunal dated 25.9.2014 and specifically adverted to paragraph 9, wherein the affidavit filed by the Secretary of MoEF is referred. In the affidavit, it seems that the MoEF has stated that the ecologically sensitive area, as stated in the draft notification dated 10.3.2014, forms the basis for demarcation of ESA by physical verification by the State Governments of Western Ghats region. It is also stated that the State Governments of Western Ghats region, may after undertaking demarcation of ESA by physical verification, propose the exclusion/inclusion of certain areas from/in the Ecologically Sensitive Area as stated in the draft notification S.O.No.733(E) dated 10.3.2014. Such proposals of the State Governments received after physical verification, would be examined by the Ministry before taking a view on further appropriate action including inter-alia issuing a fresh draft notification, if required, to seek objections from the public on the proposals received from the State

Governments of Western Ghats.

4. *The learned counsel for the petitioners points out at Ext.R2(c), the Office Memorandum of Ministry of Environment and Forests, dated 20-12-2013. In clause 5 of the memorandum it is stated as follows:*

"It is also reiterated that the prohibition of identified categories of projects/activities as stated under para 2(vii) above, in the ESA shall apply to new and/or expansion of these activities from the date specified therein. The existing projects/activities under these categories may continue, according to law, except for existing mines which should be phased out within the next 5 years or expiry of their mine lease, whichever is earlier."

And submits that even existing mining activities within these areas are permitted for five years or the expiry of the mining period. Therefore, the area which is excluded by draft notification unless and until it falls within this area is notified, the authority cannot refuse consideration of renewal of licence. The learned counsel for the petitioners also points out Rule 5(c) of the Environment (Protection) Rules and states that once it is excluded, it cannot be included in a final notification.

5. *I am not venturing on a decision regarding inclusion or exclusion of any area in the final notification. However, for the purpose of granting a renewal, I am of the view, since the area is not notified so far and the area is not form part of draft notification, the renewal shall be granted provisionally subject to final notification. However, it is necessary to ascertain the views of the Government, because of larger question of public*

interest is also involved. Considering the facts as above, all existing quarry operators whose permits have been expired and have approached the Court by these writ petitions, the permit shall be renewed for a period of three weeks. The Government shall file a detailed statement in the matter.

*6. Post these matters on 10.11.2014. In the matters where the interim order granted against canceling the permit, that order will continue till 10.11.2014. The renewal shall be granted within three days from the date of receipt of a copy of this order.
(Hand over)”*

3. The said order was extended and later, on 24.03.2014, the following order was passed:

“The learned Government Pleader submits that, a detailed Counter Affidavit will be filed with regard to the factual position, particularly whether the properties involved in these cases are within the ecologically sensitive area or not and also showing such other particulars, to have the issues finalised.

2. The learned Assistant Solicitor General also seeks for time to file a Counter Affidavit as to the factual particulars.

List the matter for further consideration on 07.04.2015.”

4. It was pointed out before this Court that, all the petitioners herein were having valid permits as on 09.01.2015 and as such, they are entitled to have renewal of their permits without production of Environmental Clearance Certificate, by

virtue of the mandate under the new Rules (KMMC Rules 2015). However, the matters were not considered because of the issue pending consideration before a Division Bench of this Court in WP(C) No. 31148 of 2014 and connected cases including W.A No. 1566 of 2014, wherein an interim order was passed by the Division Bench on 16.12.2014 intercepting granting or renewal of sanction. It was in the said circumstances, that these matters were being adjourned awaiting the final verdict.

5. Heard the learned Government Pleader as well.

6. During the course of hearing, it is brought to the notice of this Court that, the matter which was pending consideration before the Division Bench has already been finalized and the law stands declared as per the decision reported in **All Kerala River Protection council V. State of Kerala (2015 (2) KLT 78)**. The rights and liberties of the persons like the petitioner who were having the valid permit as on the date ie. on 09.01.2015, have been protected and they are permitted to have renewed the permits in the light of the new Rules, subject to the observations made therein.

6. In the said circumstances, the competent authority ie, Geologist concerned, is directed to consider the applications preferred by the petitioners herein for renewal of the permits

and pass appropriate orders, in accordance with law, also in the light of the observations made by the Division Bench of this Court as per the decision cited supra and also after affording an opportunity of hearing to the petitioners. It shall be done, at the earliest, at any rate, within 'one month' from the date of receipt of a copy of this judgment.

All the writ petitions stand disposed of. The petitioners shall produce a copy of the judgment along with a copy of the concerned writ petition before the competent authority for further steps.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE

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