

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WP(C).No. 34748 of 2015 (P)

PETITIONER(S) :

**A.ABDUL KABEER,
S/O.ABDUL HAMEED RAWUTHER, HILAL MANZIL, KARALIKONAM,
ARKANNUR P.O., AYUR, PIN - 691 533, KOLLAM DISTRICT.**

**BY ADVS.SRI.P.CHANDRASEKHAR
SRI.P.SREEKUMAR
SRI.S.PRASANTH
SRI.SOORAJ T.ELENJICKAL
SRI.P.A.MOHAMMED SHAH
SMT.UMA
SRI.K.NANDAKUMAR
SMT.V.A.HARITHA
SMT.MARY RESHMA GEORGE
SMT.P.M.MAZNA MANSOOR**

RESPONDENT(S) :

- 1. THE STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.**
- 2. LAND REVENUE COMMISSIONER,
THIRUVANANTHAPURAM, PIN - 695 033.**
- 3. THE DISTRICT COLLECTOR,
KOLLAM, PIN- 691 001.**
- 4. THE REVENUE DIVISIONAL OFFICER,
KOLLAM, PIN - 691 001.**
- 5. THE GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
KOLLAM, PIN- 691 001.**
- 6. ELAMAD GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
ELAMAD P.O., PIN- 691 539, KOLLAM DISTRICT.**

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**7. THE DISTRICT POLICE CHIEF,
KOLLAM, PIN - 691 001.**

**8. THE TAHSILDAR,
KOTTARAKKARA, KOLLAM, PIN - 691 506.**

**9. SHRI.A.N.CHACKOCHAN, MANAGING PARTNER,
AISWARYA GRANITES, ELAVINNOODU, ELEMAD,
ARKANNUR P.O, PIN - 691 533, KOLLAM DISTRICT.**

**10. SHRI.TINSON JOHN,
MANAGING DIRECTOR, AISWARYA GRANITES, ELAVINNOODU,
ELEMAD, ARKANNUR P.O., PIN - 691 533, KOLLAM DISTRICT.**

**R1 TO R5, R7 & R8 BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR
R9 & R10 BY ADV. SRI.G.BHAGAVAT SINGH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-12-2015, ALONG WITH W.P.(C).NO. 35290 OF 2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P-1: A TRUE COPY OF THE REGISTERED SALE DEED DATED 24.09.2004 IN FAVOUR OF THE PETITIONER.
- EXT.P-2: A TRUE COPY OF THE BASIC TAX RECEIPT DATED 22.04.2013 ISSUED TO THE PETITIONER BY THE VILLAGE OFFICER, ELAMAD.
- EXT.P-3: A TRUE COPY OF THE RATION CARD DATED 20.04.2010 ISSUED BY TALUK SUPPLY OFFICER, KOTTARAKKARA.
- EXT.P-4: A TRUE COPY OF THE REPRESENTATION DATED 03.10.2013 SUBMITTED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXT.P-5: A TRUE COPY OF THE REPRESENTATION DATED 29.11.2015 SUBMITTED BY THE PETITIONER TO THE CHIEF SECRETARY TO GOVERNMENT OF KERALA.
- EXT.P-6: A TRUE COPY OF THE RESOLUTION DATED 29.03.2012 PASSED BY THE ELAMAD GRAMA PANCHAYAT.
- EXT.P-7: A TRUE COPY OF THE F.I.R IN CRIME NO.1958/2013 AGAINST THE RESPONDENTS 9 AND 10 REGISTERED BY CHADAYAMANGALAM POLICE STATION.
- EXT.P-8: A TRUE COPY OF THE F.I.R IN CRIME NO.2218 OF 2013 AGAINST THE RESPONDENTS 9 AND 10 REGISTERED BY CHADAYAMANGALAM POLICE STATION.
- EXT.P-9: A TRUE COPY OF THE ORDER DATED 04.07.2011 ISSUED BY THE SUB DIVISIONAL MAGISTRATE, KOLLAM.
- EXT.P-10: A TRUE COPY OF THE JUDGEMENT DATED 21.12.2011 IN W.P.(C).NO.25412/2011.
- EXT.P-11: A TRUE COPY OF THE ORDER DATED 28.09.2012 PASSED BY THE REVENUE DIVISIONAL OFFICER, KOLLAM.
- EXT.P-12: A TRUE COPY OF THE REPORT SUBMITTED BY ASSISTANT SECRETARY, STATE LAND BOARD NO.B-B11-3979 TO THE 2ND RESPONDENT
- EXT.P-13: A TRUE COPY OF THE REPORT SUBMITTED BY THE DIRECTOR, DEPARTMENT OF ENVIRONMENT AND CLIMATE CHANGE TO THE PRINCIPAL SECRETARY TO GOVERNMENT OF KERALA DATED 06.02.2014.

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- EXT.P-14: A TRUE COPY OF THE ORDER DATED 01.11.2013 ISSUED BY THE INSPECTOR GENERAL OF POLICE, THIRUVANANTHAPURAM RANGES, FOR REINVESTIGATION IN ALL THE CASES BY DEPUTY SUPERINTENDENT OF POLICE, PUNALUR.
- EXT.P-15: TRUE COPIES OF THE PERMITS ISSUED BY THE 5TH RESPONDENT FOR A SHORT TERM QUARRYING PERMIT ON 22.06.2015 TILL 21.09.2015.
- EXT.P-16: A TRUE COPY OF THE LETTER DATED 26.06.2015 ADDRESSED TO THE 3RD RESPONDENT.
- EXT.P-17: A TRUE COPY OF THE JUDGEMENT DATED 12.06.2015 IN W.P.(C).NO.15645/2015.

RESPONDENT(S)' EXHIBITS :

EXHIBIT P10(A) & (B) IN I.A.NO.16816 OF 2015

- EXT.R10(A): COPY OF THE JUDGMENT IN W.P.(C).NO.10177/2015 DATED 07.04.2015 OF THIS HON'BLE COURT.
- EXT.R10(B): COPY OF THE MINUTES OF 43RD MEETING OF STATE LEVEL EXPERT APPRAISAL COMMITTEE DATED 12TH AUGUST, 2015.
- EXT.R10(A): COPY OF THE DEPOSITION OF SMT.OMANA BEFORE THE JFCM-KADAKKAL.
- EXT.R10(B): COPY OF THE PERMIT NO.16/15-16/MM/GBS/STP/DOQ/S2/2333/15 DATED 25.09.2015.
- EXT.R10(C): COPY OF THE PERMIT NO.17/15-16/MM/GBS/STP/DOQ/S2/2334/15 DATED 25.09.2015.
- EXT.R10(D): COPY OF THE PERMIT NO.18/15-16/MM/GBS/STP/DOQ/S2/2335/15 DATED 25.09.2015.
- EXT.R10(E): COPY OF THE PERMIT NO.19/15-16/MM/GBS/STP/DOQ/S2/2336/15 DATED 25.09.2015.
- EXT.R10(F): COPY OF THE PERMIT NO.20/15-16/MM/GBS/STP/DOQ/S2/2337/15 DATED 25.09.2015.
- EXT.R10(G): COPY OF THE PERMIT NO.21/15-16/MM/GBS/STP/DOQ/S2/2338/15 DATED 25.09.2015.

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

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**W.P.(C).Nos.34748/2015 & 35290/2015**  
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Dated this the 11th Day of December, 2015

J U D G M E N T

W.P.(C).No.35290 of 2015 is filed by the Managing Partner of M/s.Aiswarya Granites (hereinafter referred to as the “quarrying operator”), seeking a declaration as to the status of environmental clearance application filed by him. W.P.(C).No.34748/2015 is filed by a nearby resident of the above quarry, challenging quarrying operation being carried out by the quarrying operator without environmental clearance.

2. This Court in W.P.(C).No.34748/2015 restrained the quarrying operator from operating quarry without environmental clearance. Thereafter, taking note of the Government order No.144/2015 directed the Geologist to take a decision. Based on that direction, the Geologist has taken a decision to permit the quarrying

operator to operate the quarry giving benefit of Government Order No.144/2015.

3. The State Expert Appraisal Committee Kerala (SEAC Kerala) as per Ext.P1 produced in W.P.(C).No.35290/2015, recommended for issuance of environmental clearance subject to the conditions stipulated therein. The recommendation by the third respondent was made on 12/08/2015. Therefore, the quarrying operator's case is that in the light of the notification S.O.2731(E), dated 09/09/2013, issued by the Ministry of Environment and Forests, the quarrying operator deemed to have environmental clearance.

4. The learned Government Pleader submits that certain clarifications have been sought by the State Environment Impact Assessment Authority Kerala (SEIAA Kerala) from SEAC Kerala and based on the clarification, a decision will be taken soon.

5. The learned counsel for the writ petitioner in W.P.(C).

No.34748/2015 would submit that the quarrying operator is not entitled for environmental clearance and the Division Bench of this Court has already struck down Government Order No.144/2015 by judgment in W.P.(C).No.34463/2015 dated 07/12/2015 and therefore, the quarrying operator shall be restrained from operating the quarry.

6. Therefore, the question is whether the quarrying operator is entitled for a deemed clearance? The notification clearly states that the regulatory authority shall normally accept the recommendation of SEAC Kerala and if they have any disagreement with the recommendation, that has to be raised within 45 days. It is also stipulated that in the event the decision is not communicated within the specified time, the applicant may proceed with the activities as though environmental clearance has been granted.

5. This Court is of the view that deemed grant of environmental clearance would arise only when recommendations

are in absolute terms. Herein, in this case, recommendations are made with certain conditions. If the conditions have been fulfilled, certainly, the quarrying operator will be entitled for a deemed clearance. Further, as seen from the recommendation itself, the writ petitioner in W.P.(C).No.34748/2015 also has to be heard before granting environmental clearance. In such circumstances, this Court is of the view that deemed grant of clearance would arise only on fulfillment of the conditions in the recommendation made by the SEAC Kerala.

6. However, the quarrying operator cannot undertake quarrying activities without environmental clearance as the Government Order No.144/2015 has been strike down by the Division Bench. In such circumstances, the following directions are issued:

i. The SEAC Kerala shall forward the clarifications sought by the SEIAA Kerala within one week.

ii. The SEIAA Kerala has to find out whether the quarrying operator has fulfilled the conditions stipulated in the recommendations. If the quarrying operator has fulfilled the conditions, after hearing the writ petitioner in W.P.(C). No.34748/2015, the SEIAA Kerala shall pass final orders within a further period of two weeks.

iii. Till a decision by the SEIAA Kerala as above, quarrying operator shall not undertake quarrying operations as the benefit of Government Order No.144/2015 is not available to him in view of the judgment of the Division Bench.

The writ petitions are disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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