IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE ACTING CHIEF JUSTICE MR. A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 6TH DAY OF AUGUST 2024 / 15TH SRAVANA, 1946

WA NO. 931 OF 2024

AGAINST THE JUDGMENT DATED 06.06.2024 IN WP(C) NO.7463 OF 2024 OF HIGH COURT OF KERALA

APPELLANT/5TH RESPONDENT:

KICHU.K.RAVI, AGED 32 YEARS, KUZHPILLI HOUSE, NORTH MAZHUVANNOOR, VALAMBOOR.P.O., ERNAKULAM., PIN – 682 032

BY ADVS.
ALEX.M.SCARIA
SARITHA THOMAS
SAHL ABDUL KADER
GEORGE KAPPEN
JUSTIN J. THEKKEDAM
GEORGE POONTHOTTAM (SR.)(K/000570/1979)

RESPONDENTS/RESPONDENTS 1 TO 4, 6,7 & PETITIONER:

1 STATE ENVIRONMENTAL IMPACT ASSESSMENT AUTHORITY 4TH FLOOR, KSRTC BUS TERMINAL COMPLEX, THAMPANOOR, THIRUVANANATHAPURAM REPRESENTED BY ITS CHAIRMAN, PIN – 695 001

2 THE DIRECTOR, MINING AND GEOLOGY, DIRECTORATE OF MINING AND GEOLOGY, KESAVADASAPURAM, PATTOM PALACE.P.O., THIRUVANANTHAPURAM, PIN – 695 004

3 THE GEOLOGIST, DISTRICT OFFICE, DEPARTMENT OF MINING AND GEOLOGY, CHEMBUKAVU, THRISSUR, PIN – 680 020

4 THE TAHASILDAR, THALAPPALLY TALUK, WADAKKANCHERY, THRISSUR, PIN – 680 582

5 UNION OF INDIA, REPRESENTED BY SECRETARY, MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, INDIRA PARYAVARAN BHAVAN, JARBAGH ROAD, NEW DELHI, PIN – 110 003

6 SHAMSAD. P, W/O T A MAJEED, CLASSIC III, CHOICE PARK, POTTAKKUZHI, ERNAKULAM * IS IMPLEADED VIDE ORDER DATED 19.03.2024 IN IA NO. 2/2024., PIN – 682 026

7 JIMMY DOMINIC, AGED 56 YEARS, KARIPPAPARAMBIL HOUSE, PARAKKAD, VENGANELLUR.P.O., CHELKKARA, THRISSUR DISTRICT, PIN – 680 586

ADV. M.P. SREEKRISHNAN SC FOR R1
V. TEK CHAND SR GP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06.08.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

A. Muhamed Mustaque, Acg.C.J.

This appeal is filed at the instance of the fifth respondent in the writ petition. The appellant/fifth respondent is the holder of the Environment Clearance for the purpose of a Granite Building Stone Quarry in Thalappally Taluk, Thrissur District.

2. The writ petition was filed challenging the Environmental Clearance as early as on 22.02.2024. Thereafter, a representation which is marked as Ext.P14 in the writ petition was filed before the State Environmental Impact Assessment Authority. This representation was submitted, pending writ petition, on 12.05.2024. Thereafter, the learned Single Judge disposed of the writ petition directing the State Environmental Impact Assessment Authority to consider the representation. This is questioned before this Court in this writ appeal by the fifth respondent.

3. The learned Senior Counsel appearing for the appellant/fifth respondent submits that no Writ of Mandamus would lie in the matter where representation itself was submitted subsequent to the writ petition. It is submitted that the remedy of any aggrieved person to

challenge the Environmental Clearance lies before the National Green Tribunal invoking Section 16(h) of the National Green Tribunal Act. It is further submitted that under Clause 8(v) of EIA Notification 2006, on a limited ground alone, the State Environmental Impact Assessment Authority can revisit the issuance of Environmental Clearance.

4. Per contra, the learned counsel for the 7th respondent/writ petitioner would submit that there were material suppression of facts. The cluster certificate produced by the project proponent i.e., the appellant herein, disclosed that there are other quarries lying in the near vicinity and the factual aspects need to be addressed by the State Environmental Impact Assessment Authority and therefore, this representation would come within Clause 8(vi) of the EIA Notification, 2006.

5. We find that there is no scope for issuing a Writ of Mandamus in a matter like this when the Environmental Clearance has been issued. If there exists any grievance, the aggrieved can very well move to the National Green Tribunal invoking alternative remedy. The Environmental Clearance was issued based on the cluster certificate. There is no concealment alleged against the project proponent i.e. the appellant herein. In such situation, the representation as such cannot be considered by the State Environmental Impact Assessment Authority.

We, therefore, of the view that in a case where the Writ of Mandamus would not lie, the impugned judgment can be set aside and we do so. However, we give liberty to the 7th respondent/ writ petitioner to approach the National Green Tribunal. The 7th respondent/writ petitioner is permitted to canvass the period involved in this litigation for exclusion from the period of limitation before the National Green Tribunal.

This writ appeal stands allowed as above.

Sd/-

A.MUHAMED MUSTAQUE
ACTING CHIEF JUSTICE

Sd/-
S.MANU
JUDGE

PR

APPENDIX OF WA 931/2024

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF THE EC DATED 18/06/2018 ISSUED BY THE THEN DEIAA, THRISSUR.
Annexure A2	TRUE COPY OF THE THE MINING LEASE, DATED 03/07/2019.
Annexure A3	THE RELEVANT PAGES OF THE APPROVED MINING PLAN OF THE APPELLANT.
Annexure A4	TRUE COPY OF THE REPORTED JUDGMENT IN T. MATHEW ABRAHAM V. SEIAA (2020 6 KHC 596) DATED 02/11/2020.
Annexure A5	TRUE COPY OF THE JUDGMENT DATED 24/11/2020 IN WPC NO. 25848/2020.
Annexure A6	TRUE COPY OF THE EIA AMENDMENT NOTIFICATION DATED 12/04/2022 BEARING NO. S.O. 1807 (E) ISSUED BY THE MOEF.
Annexure A7	TRUE COPY OF THE JUDGMENT IN ALEX AGUSTINE V. DISTRICT GEOLOGIST, DATED 20/12/2022, IN WPC 35855/2022 PASSED BY THIS HONBLE COURT.
Annexure A8	TRUE COPY OF THE CIRCULAR, DATED 04/05/2022 ISSUED BY KSPCB.
Annexure A9	TRUE COPY OF THE ORDER DATED 13/09/2018 IN O.A. NO. 186/2016 ON THE FILES OF THE NGT PRINCIPAL BENCH, NEW DELHI.
Annexure A10	TRUE COPY OF THE ORDER DATED 31/01/2020, THE HON’BLE APEX COURT
Annexure A11	TRUE COPY OF THE O.M. DATED 28/04/2023 ISSUED BY THE 5TH RESPONDENT.
Annexure A12	TRUE COPY OF THE O.M. DATED 03/11/2023 ISSUED BY THE 5TH RESPODENT.

Annexure A13	TRUE COPY OF THE O.M. DATED 19/04/2021 ISSUED BY THE 5TH RESPODENT.
Annexure A14	TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES OF THE 127TH MEETING HELD ON 30TH AND 31ST MAY, 2023 BY SEIAA KERALA.
Annexure A15	TRUE COPY OF THE RELEVANT PAGES OF THE MINUTES OF THE 153TH MEETING HELD ON 14TH AND 15TH NOVEMBER, 2023.
Annexure A16	TRUE COPY OF THE O.M. DATED 15/1/2024 ISSUED BY THE 5TH RESPONDENT.
Annexure A17	TRUE COPY OF THE EIA NOTIFICATION BEARING NO. S.O. 2269(E), DATED 01/07/2016.
Annexure A18	TRUE COPY OF CLUSTER CERTIFICATE, DATED 25/11/2019 ISSUED BY THE DISTRICT GEOLOGIST TO SRI. SANJU MUHAMMED.
Annexure A19	TRUE COPY OF THE ENVIRONMENTAL CLEARANCE BEARING NO. 63/Q/2021, DATED 08/10/2021 OF SRI. SANJU MUHAMMED.
Annexure A20	TRUE COPY OF CLUSTER CERTIFICATE DATED 25/11/2019 ISSUED BY THE DISTRICT GEOLOGIST TO M/S MANGALATH GRANITES.
Annexure A21	TRUE COPY OF THE ENVIRONMENTAL CLEARANCE BEARING NO. 33/Q/2021, DATED 30/07/2021 OF M/S. MANGALATH GRANITES.
Annexure A22	TRUE COPY OF CLUSTER CERTIFICATE, DATED 25/11/2019 ISSUED BY THE DISTRICT GEOLOGIST TO SRI. M.H. ABDUL NOUSHAD