

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR. ASHOK BHUSHAN
&

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WA.No. 1514 of 2015 () IN WP(C). 7781/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 7781/2015 of HIGH COURT OF KERALA
DATED 7/7/2015
APPELLANT(S)/8TH RESPONDENT IN WPC:

M.K. NAJEEB,
S/O. HASSAINAR, MANNEGAL KANNANTHODI HOUSE, PALOOR
PULAMANTHOLE P.O., MALAPPURAM DISTRICT - 679 323.

BY ADVS. SRI. DEVAN RAMACHANDRAN
SRI. SIRAJ KAROLY
SRI. K.M. ANEESH
SRI. K. SANTHOSH KUMAR (KALIYANAM)
SRI. LADARSH KUMAR
SRI. BIJU VARGHESE ABRAHAM
SRI. DILEEP CHANDRAN

RESPONDENT(S)/PETITIONER IN WPC/RESPONDENTS 1 TO 5 IN WPC:

1. SHOUKATH ALI
S/O. MOHAMMED ALI C., CHARALIL HOUSE, NORTH PALOOR
PULAMANTHOLE P.O., MALAPPURAM DISTRICT - 679 323.
2. MINISTRY OF ENVIRONMENT AND FORESTS
PARYAVARAN BHAVAN, CGO COMPLEX, LODHI ROAD
NEW DELHI - 110 003, REPRESENTED BY ITS SECRETARY.
3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF ENVIRONMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
4. THE GEOLOGIST,
DISTRICT OFFICE, MINI CIVIL STATION, MANJERI P.O.
MALAPPURAM - 676 121.
5. THE DISTRICT COLLECTOR,
CIVIL STATION, MALAPPURAM DISTRICT - 676 505.

6. THE ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD
DISTRICT OFFICE, MALAPPURAM - 676 505.

R2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R1 BY ADV. SRI.P.G.SURESH
R1 BY ADV. SRI.G.SUDHEER (THURAVOOR)
R1 BY ADV. SRI.RAJAN VISHNURAJ
R1 BY ADV. SRI.V.HARISH
R6 BY SRI. MAJAY, SC, KERALA STATE POLLUTION CONTROL BOARD
R3-R5 SR.GOV'T,PLEADER SRI.P.I.DAVIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 15-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, CJ

&

A.M. SHAFFIQUE, J.

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W.A. No. 1514 of 2015

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Dated this, the 15th day of July, 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard Sri.Devan Ramachandran, learned counsel appearing for the appellant.

2. This writ appeal has been filed against order dated 7th July, 2015 passed by the learned Single Judge refusing modification of the interim order dated 25th March, 2015.

3. The 6th respondent, who is the appellant before us, had filed an application seeking modification of an interim order by which learned Single Judge has restrained the 6th respondent from carrying on quarrying operation. The 6th respondent has filed the application for modification of the interim order on the strength of a renewed permit. 6th respondent's case is that the permit which was already granted to him was renewed by an order dated 6/5/2015. He submits that learned Single Judge committed error in refusing to modify the interim order. He submits that on the

strength of the proviso to Rule 12 of Kerala Minor Mineral Concession Rules, 2015, the appellant was entitled to carry on quarrying operation without there being any environmental clearance. He submits that the Division Bench judgment of this court in **All Kerala River Protection Council v. State of Kerala** (2015 (2) KLT 78), has not been correctly read by the learned Single Judge while rejecting the application. Learned counsel for the appellant submits that there being no challenge to Rule 12 or its proviso in the **All Kerala River Protection Council's case** (supra), the proviso entails and permits the appellant to carry out the quarrying operation. He submits that the Division Bench judgment in the aforesaid case of **All Kerala River Protection Council's case** (supra) cannot be read in other matters.

4. We have considered the submission of the learned counsel for the appellant and has perused the records. Rule 12 as was noticed in the Division Bench judgment provided as follows:-

"12. *Renewal of a quarrying permit: On receipt of an application in Form A, a quarrying permit may be renewed for a further period of two years but not exceeding one year at a time after complying with*

the procedure provided for grant of quarrying permit under Rule 9 and subject to the production of all other statutory licenses/clearances/No Objection Certificate, etc., from other statutory authorities concerned.

Provided that, the environmental clearance required under Rule 9 shall not be insisted, in the case of renewal of quarrying permits, in respect of quarries which had a valid permit as on 9th day of January, 2015

Provided further that the approved mining plan required under Rule 9 shall not be insisted till 1st April, 2016 for renewal of a quarrying permit".

5. Learned counsel for the appellant submits that the first proviso to Rule 12 has now been further amended w.e.f. 23rd May, 2015, which is to the following effect;

"Provided that, the environmental clearance required under Rule 9 shall not be insisted, in the case of renewal of quarrying permits, in respect of granite (building stone) quarries which had a valid permit during the financial year 2014-15".

6. All aspects of the matter pertaining to the quarrying operation by leases and permits came for consideration in the batch of writ petitions before the Division Bench in **All Kerala River Protection Council's case** (supra). Rule 2015, which had

been in force by that time, as well as the provisions of Environmental Protection Act, 1986, the notification dated 14/9/2006 and orders issued by the Central Government came for consideration. The conclusion of the Division Bench has also been recorded in para 82 of the judgment, which is to the following effect.

"82. In view of the foregoing discussion, we come to the following conclusions.

(i) In case where quarrying/mining/lease which were existing on the date of issuance of Notification dated 14.09.2006 or on the date of issue of the order dated 18.05.2012 by the Government of India, Ministry of Environment and Forests with regard to area less than 5 hectares no environmental clearance with regard to extraction of minor mineral is required. Notification dated 14.09.2006 contemplated obtaining environmental clearance only with regard to new projects/new activities.

(ii) Government Order dated 10.01.2014 cannot be relied on by the parties in view of the restraint order issued by the National Green Tribunal dated 27.09.2013 till such time the restraint order continues.

(iii) By amendment of Section 14 by Act 37 of 1986 making Section 4 applicable to minor minerals also the provision contained in Section 4

shall be applicable to mining operations by a person holding mining lease or any other kind of mineral concession. It cannot be accepted that mining operation with effect from 10.02.1987 cannot be continued by a person holding any other mineral concession apart from mining lease.

(iv) Judgment of the Apex Court in **Deepak Kumar's case (supra)** did not contemplate environmental clearance for an area less than 5 hectares with regard to existing mining lease/mining permits on the date of judgment. Paragraph 29 of the judgment clearly directed that leases of minor minerals including their renewal for an area of less than five hectares be granted by the State/Union Territories only after getting environmental clearance.

(v) Environmental clearance as contemplated by Notification dated 14.09.2006 required environmental clearance for new projects/new activities.

(vi) The Notification dated 14.09.2006 having been applied vide order dated 18.05.2012 of the Government of India, Ministry of Environment and Forests all mining operations for new project and new activities for an area less than 5 hectares after 18.05.2012 required environmental clearance carried through either a mining lease or mining permit.

(vii) Interim order passed by the Apex Court on 27.01.2012 was intended by the Supreme Court to operate till the Rules have been framed

by the States taking into consideration the guidelines and recommendations of the Ministry of Environment and Forests.

(viii) As per Rule 68 no mining/quarrying operations can be permitted without there being an approved mining plan. But such rule is subject to exception as engrafted in Rule 66, i.e., for existing lease holders, time has been allowed to submit mining plan".

7. The Division Bench has already held that after the judgment of **Deepak Kumar & Ors. v. State of Haryana & Ors [(2012) 4 SCC 629]** and the Government notification issued on 18/5/2012, no mining operation either by mining lease or mining permit is permissible without obtaining environmental clearance. Division Bench however has held that in so far as mining leases which were existing at the relevant time is concerned, environmental clearance was not required till the leases come for renewal. In so far as first proviso to Rule 12, the said proviso was considered in para 71, in which following was observed by this Court.

"71. One submission which has been pressed by the learned counsel for the intervenors is that proviso has been engrafted in Rule 12 to the effect that environmental clearance required under rule 9

-7:-

shall not be insisted, in the case of renewal of quarrying permits, in respect of quarries which had a valid permit as on 9th day of January 2015. Whether the permit was valid as on 09.01.2015 is the question which has to be examined with regard to the facts of each case/each permit. We having held that after the judgment of the Apex Court in Deepak Kumar's case and the order of the Government of India, Ministry of Environment and Forests dated 18.05.2012 all mining operations required environmental clearance with regard to area less than 5 hectares for obtaining permit thereafter or renewal environmental clearance is required. We thus are of the view that the concept of valid permit as on 09.01.2015 under the proviso to Rule 12 has to be read accordingly. There being no challenge before us with regard to any of the 2015 Rules, it is not necessary for us to say anything more. Issue Nos.II and VII are answered accordingly."

8. Division Bench has held that the proviso to Rule 12 in respect of quarries which has valid permit as on January, 2015 have to be read in accordance with the law as has been noticed and laid down in the judgment. When it has been held by the Division Bench that no mining operation can be undertaken without obtaining environmental clearance subsequent to the dates as mentioned above, no mining operation can be carried

out by any permit holder without obtaining environmental clearance. The word 'valid permit' used in the proviso to Rule 12 has to be read accordingly. The word 'valid permit' means permit which may entail a permit holder to carry on mining operation and mining operation can only be carried out along with environmental clearance. Those permit holders who does not have environmental clearance cannot be said to have valid permit on the relevant date. We, thus, are of the view that no error has been committed by the learned Single Judge in refusing to modify the interim order.

Writ appeal is dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

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PS to Judge