

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(SOUTHERN ZONE BENCH, CHENNAI)
IN
ORIGINAL APPLICATION NO. 124 OF 2021 (SZ)**

**REPORT SUBMITTED BY 3RD RESPONDENT / THE DIRECTOR OF MINING
AND GEOLOGY**

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Dated at Chennai on this the 5th day of October 2021.

M/s. E.K.KUMARESAN

Standing Counsel for State Government of Kerala - NGT(SZ) Chennai Bench

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

(SOUTHERN ZONE), CHENNAI

Original Application No. 124 of 2021 (SZ)

IN THE MATTER OF
Sibi Joseph, Kerala.

...Applicant(s)

Versus

Union of India and others.

...Respondent(s)

**REPORT SUBMITTED BY 3RD RESPONDENT / THE DIRECTOR OF MINING
AND GEOLOGY**

It is respectfully submitted that this Hon'ble Tribunal vide its order dated 10.06.2021 in OA No.124/2021 has directed the Respondents to submit the Independent report.

Therefore it is most humbly prayed that this Hon'ble Tribunal may be pleased to record the said Report filed by The Director of Mining and Geology/3rd Respondent on Record and thus render justice.

Dated at Chennai on this the 5th day of October, 2021



(E.K.Kumaresan)

Counsel for R3

Standing Counsel for State
Government of Kerala

NGT(SZ), Chennai Bench

**BEFORE THE HON'BLE NATIONAL
GREEN TRIBUNAL
(SOUTHERN ZONE BENCH, CHENNAI)**

OA No. 124 of 2021 (SZ)

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**REPORT SUBMITTED BY 3RD
RESPONDENT / THE DIRECTOR OF
MINING AND GEOLOGY**

M/s. E.K.KUMARESAN
Standing counsel for Kerala(SZ)
Counsel for R3 to R5

REPORT SUBMITTED BY THE DIRECTOR OF MINING AND GEOLOGY (3rd RESPONDENT) BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL IN O.A. No. 124/2021(SZ) FILED BY SRI. SIBI JOSEPH

1. The Honourable National Green Tribunal in order dated 10.06.2021 in O.A. No. 124/2021 appointed a Joint Committee comprising of (1) The District Collector, Palakkad or a Senior Officer not below the rank of Assistant Collector, (2) a Senior Officer from the Integrated Regional Office, Ministry of Environment, Forest and Climate Change (MoEF& CC), Bangalore, (3) a Senior Officer from State Environment Impact Assessment Authority (SEIAA), Kerala, (4) a Senior Officer from the Director of Mining and Geology, State of Kerala, (5) a Senior Officer from the Kerala State Pollution Control Board (KSPCB) and (6) a Senior Officer from Central Pollution Control Board (CPCB), Integrated Regional Office, Bangalore, in order to ascertain the violations, if any, committed by the authorities or the respondent quarry owners, viz. M/s. Royal Sands & Gravels Pvt. Ltd. (8th respondent) and M/s. Mary Matha Granites (9th respondent), in procuring quarrying permit, environmental clearance, etc., and the consequential damage caused to the environment on account of the same. The Mining and Geology Department, Government of Kerala, was made the Nodal Agency for coordination and for providing necessary logistics for this purpose.
2. Accordingly vide proceedings order no. 131/2021-22/5884/M2/2021 dated 29.07.2021, the Director of Mining and Geology constituted a Joint Committee to inspect the quarries in question and submit a factual as well as action taken report, if violation is found. The District Geologist, Palakkad has been nominated as the Joint Committee member representing the Department of Mining and Geology, State of Kerala.
3. This respondent had issued a quarrying lease to M/s. Royal Sands & Gravels (P) Limited, Plaza Junction, Dhoni. P. O., Palakkad vide Proceedings Order No. 281/2014-15/8473/M3/2014, dated 02/08/2014 executed on 22/08/2014 and valid up to 21/08/2026 to extract and remove 1,00,000 Metric Tonnes of Granite Building Stone per year from an area of 7.0655 Hectares in Survey No. 2/P, 14/P, 15/P, 16/P, in Block No.25 of Akathethara Village of Palakkad Taluk, Palakkad District, on submission of mandatory documents like Environmental Clearance, Consent from Kerala State Pollution Control Board, Explosive License and D& O License issued by Secretary, Akathethara Grama Panchayath.
4. This respondent had issued a quarrying lease to Sri.Sajimon Abraham, Palakkattu house, Kidangoor. P. O., Kottayam vide Proceedings Order No. 120/2010-2011/3355/M3/2010, dated 26/05/2010 and executed on 11/08/2010 valid upto 10/08/2022 to extract and remove 40,000 Metric Tonnes of Granite Building Stone per year from an area of 2.7721 Hectares in Survey No.110/3, 110/1 in Akathethara Village of Palakkad Taluk, Palakkad District on submission of mandatory documents like Consent from Kerala State Pollution Control Board, Explosive License and D& O License issued by Secretary, Akathethara Grama Panchayath. Later the quarrying lease was transferred to M/s Mary Matha Granites, Dhoni, P.O., Palakkad vide Proceedings Order No. 599/2016-17/9853/M3/2016 dated 17/12/2016 of the Director of Mining and Geology. M/s. Mary Matha Granites Pvt. Ltd. has not procured Environmental Clearance.

5. The quarrying lease to M/s. Mary Matha Granites Pvt. Ltd. was granted on 26/05/2010, that is, prior to the judgment dated 27.02.2012 of the Honourable Supreme Court of India in Deepak Kumar vs. State of Haryana [(2012) 4 SCC 629] and hence the quarry can operate without Environmental Clearance. The requirement of Environmental Clearance would arise only while seeking renewal of mineral concession. The Division Bench of the Honourable High Court of Kerala in WP© No. 31148/2014(S) (All Kerala River Protection Council vs. State of Kerala) (copy enclosed), has stated in Paragraph 82(i) of the judgment dated 23.03.2015 that

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

6. The above said observation of the Honourable Court was reiterated by the Honourable High Court of Kerala while considering the writ petitions no. 14265/2015, 28616/2016 & 39947/2016, 11491/2017, 30543/2017, 29606/2017 (copies enclosed) and similar cases and affirmed that insistence of Environmental Clearance does not apply to the leases granted prior to Deepak Kumar vs. State of Haryana. Government of India brought out Office memorandum No. L-11011/47/2011-IA.II (M) dated 18.05.2012 in tune with the decision of the Honourable Supreme Court in Deepak Kumar v.State of Haryana [(2012) 4 SCC 629] making it mandatory to obtain a prior environmental clearance during the time of grant/renewal of the mining/quarrying leases having area less than or equal to 5 hectares irrespective of the size of the lease. Accordingly for quarrying leases that were granted before 18.05.2012, environmental clearance is mandatory only at the time of their renewal.

Also it is relevant to point out paragraph 4 of the judgment of the Honourable Supreme Court in Arjan Singh and another v. State of Punjab and others (AIR 1970SC 703)which is quoted below:

'4. It is a well-settled rule of construction that no provision in a statute should be given retrospective effect unless the legislature by express terms or by necessary implication has made it retrospective and that were a provision is made retrospective, case should be taken not to extend its retrospective effect beyond what was intended.'

7. While delivering the order in WP© No. 14265/2015, the Honourable High Court of Kerala stated that

This court is of the view that the law declared by the High court cannot be ignored even by the Tribunal in deciding the matter in relation to the issue which has arisen from a cause of action which is otherwise bound by such declaration.

Thus the dictum laid down by the Honourable High Court of Kerala in WP© No. 31148/2014(S) is the last word that prevails in issues related to quarrying in the State of Kerala.

8. It is humbly submitted before the Honourable National Green Tribunal that the quarries of the 8th and 9th respondents are operational. Only two quarries are functional in Akathethara

Panchayat in Palakkad Taluk and the aerial distance between the two quarries is more than 1 KM. Hence there is no quarry cluster situation in the area.

Sd/-

**S. HARIKISHORE IAS
DIRECTOR**

DIRECTOR OF MINING AND GEOLOGY

Approved for Issue



Geologist

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A. MURUGU MURUGU

THISDAY, THE 31ST DAY OF MARCH 2016/11TH BHADRA, 1938

WP(C) No. 14268 of 2015 (G)

PETITIONER(S):

ASBHAM ROCK PVT. LTD.,
MELIANADU P.O., KERALAYIKONAM, VENJARAMOODU,
TRIVYAMANTHAPURAM-695 606,
REPRESENTED BY ITS MANAGING DIRECTOR SRI ABDOUL SALAM.

BY ADVS. SRI ARCHIE MURIAN THOMAS
SRI PAUL JACOB (P)
SRI MOOZ DEVID SIMON CORI
SRI A. SURESH
SRI ROMY JOSE
SRI GEORGE A. CHRRIAN

RESPONDENT(S):

1. STATE OF KERALA, REPRESENTED BY THE SECRETARY,
DEPARTMENT OF MINING AND GEOLOGY, GOVERNMENT
SECRETARIAT, TRIVYAMANTHAPURAM-695 601.
2. SURESH KUMAR F.F.,
S/O. SURESHKUMAR NADAR, ANJALATHARA HOUSE,
KERALAYIKONAM, VENJARAMOODU P.O.,
TRIVYANDRUM DISTRICT, PIN-695 607.
3. RAJAMANI,
VELLAKKUNYAL MANICKAL VERDU, KOTTUKUNNAM P.O.,
VANNAPURAM, TRIVYANDRUM DISTRICT, PIN-695 607.
4. G. PUNISHOTHAMAN PILLAI,
KERALAYIKONAM, MELIANADU P.O., VENJARAMOODU,
TRIVYANDRUM DISTRICT, PIN-695 606.
5. R. RAJENDRAN
RAJESHA VILASAM, KOTTUKUNNAM P.O.,
VANNAPURAM, PIN-695 607.

R1 BY GOVERNMENT BILASER SMT. C.K. SHERIN
R2 BY ADVS. SRI P.G. SURESH
SRI G. SUDHEER (THIRAVOOR)
SRI RAJAN VISHNORAJ
SRI V. HARISH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31-03-2016, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Msd.

A.MUHAMED MUSTAQUE, J.

WP.(C) No.14265 of 2015

Dated this the 31st day of March, 2016

JUDGMENT

An interim order issued by the National Green Tribunal Southern Zone, Chennai, is challenged before this Court invoking under Article 226 of the Constitution. The challenge is on the ground that the Tribunal overlooked the declaration of law by this Court in **All Kerala River Protection Council v. State of Kerala [2015 (2) KLT 78]**, wherein it is held as follows:

2/8



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

- (1) 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 14.9.2006 required environmental clearance for new projects/ new activities.
- (vi) The Notification dated 14.09.2006 having been applied vide order dated 18.5.2012 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 18.5.2012 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."

2. The petitioner is having quarrying lease dated 18.5.2006. The petitioner's quarrying operation has been interdicted by the interim order of the Tribunal. The law declared by this Court as above would indicate that the petitioner would be entitled to carryout quarrying operations

without environmental clearance.

3 The arguments have been raised on the side of the party respondents that the court cannot interfere with interim orders by the Tribunal in the light of the various judgments relied by him.

4. This Court is of the view that the law declared by the High Court cannot be ignored even by the Tribunal in deciding a matter in relation to the issue which has arisen from a cause of action which is otherwise bound by such declaration. In the light of the above, this Court is of the view that the interim order has to be set aside.

5. However, the learned counsel for the party respondents fervently urged if the petitioner extend or expand the quarrying operation, same has to be restrained. As has been noted above, this Court has not expressed anything on the

W.P.(C) 12442/2023

factual issue involved. Certainly, it is open for the Tribunal to pass any fresh orders in the matter after hearing the petitioner and party respondents in relation to any matter not protected by the judgment of this Court. Therefore, the impugned order is set aside.

The writ petition is disposed of as above.

Sd/-

A. MUHAMMED MUSTAQUE, JUDGE

In

4

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

SATURDAY, THE 17TH DAY OF DECEMBER 2016/26TH AGRAHAYANA, 1938

WP(C).No. 28616 of 2016 (B)

PETITIONER(S)/PETITIONERS :

1. SHONE JOSEPH,
S/O. JOSEPH, AGED 55 YEARS,
PALLIYAN HOUSE, KARUKUTTY P.O., ANGAMALY.
2. SIVADASAN,
S/O. GANGADHARAN, AGED 60 YEARS,
KURULYATHU HOUSE, KURUMASSERY P.O., PARAKKADAVU.

BY ADV. SRI. PRATHAP PILLAI

RESPONDENT(S)/RESPONDENTS:-:

1. PARAKKADAVU GRAMA PANCHAYATH,
MOOZHIKULAM, KURUMASSERY P.O.,
ERNAKULAM DISTRICT - 683 572,
REPRESENTED BY ITS SECRETARY.
2. THE SENIOR GEOLOGIST,
DISTRICT OFFICE, DEPT. OF MINING & GEOLOGY,
CIVIL STATION, ERNAKULAM, KOCHI - 682 530.
3. THE DISTRICT COLLECTOR, ERNAKULAM DISTRICT-682 030.
4. T.M. JOY,
S/O. T.P. MATHAI, AGED 47 YEARS,
THELAPPILLY HOUSE, PULIYANAM P.O.,
ANGAMALY, ERNAKULAM DISTRICT - 683 572.
5. P. C. JOSE,
PALLIYAN HOUSE, PULIYANAM P.O.,
ERNAKULAM DISTRICT - 683 576.
6. K.D. VARKY KALLOOKKARAN,
KARUKUTTY P.O., ANGAMALY,
ERNAKULAM DISTRICT - 683 576.

R1 BY ADVS. SRI. S. GOPINATHAN

SRI. JOHNSON ABRAHAM

SRI. S. SUDHISH KUMAR

R2 & R3 BY GOVERNMENT PLEADER SMT. VINEETHA HARIRAJ

R4 BY ADVS. SRI. PHILIP J. VETTICKATTU

SRI. VINEETH KURIAKOSE

R5-R6 BY ADV. SRI. JOSE KURIAKOSE (VILANGATTIL)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17-12-2016 ALONG WITH WPC.39947/2016 THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:

msv/

APPENDIX

PETITIONER(S) ' EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE SAID GOVERNMENT ORDER
DATED 08.02.2012.
- EXHIBIT P2. THE TRUE COPY OF QUARRYING LEASE DATED 15.02.2012.
- EXHIBIT P3. TRUE COPY OF THE LICENSE DATED 31.03.2016.
- EXHIBIT P4. TRUE COPY OF THE ORDER DATED 30.06.2016 IN
W.P. (C) 9745/2016 OF THIS HON'BLE COURT.
- EXHIBIT P5. THE TRUE COPY OF THE COMPLAINT DATED 30.06.2016
SUBMITTED BY THE PETITIONERS.

RESPONDENT(S) ' EXHIBITS

- EXT.R5 (a) : TRUE COPY OF THE JUDGMENT IN CONTEMPT CASE
NO.142/2016.
- EXT.R5 (b) : TRUE COPY OF THE ORDER OF THE HON'BLE SUPREME COURT IN
CLARIFICATION.
- EXT.R5 (c) : TRUE COPY OF THE QUARRYING PERMIT OBTAINED FROM THE
DEPARTMENT OF MINING & GEOLOGY VALID TILL 5.6.2017 OF
RESPONDENT NO.5.
- EXT.R5 (d) : TRUE COPY OF THE QUARRYING PERMIT OBTAINED FROM THE
DEPARTMENT OF MINING & GEOLOGY VALID TILL 5.6.2017 OF
RESPONDENT NO.6.
- EXT.R5 (e) : TRUE COPY OF CLEARANCE CERTIFICATE ISSUED BY THE
POLLUTION CONTROL BOARD OF RESPONDENT NO.5.
- EXT.R5 (f) : TRUE COPY OF THE CLEARANCE CERTIFICATE ISSUED BY THE
POLLUTION CONTROL BOARD OF RESPONDENT NO.6.
- EXT.R4 (a) : TRUE COPY OF VOTER ID DETAIL TAKEN FROM THE WEB SITE
OF KERALA STATE ELECTION COMMISSION REGARDING THE 1ST
PETITIONER.
- EXT.R4 (b) : TRUE COPY OF SALE DEED NO.3451/1992 EXECUTED IN FAVOUR
OF 4TH RESPONDENT'S BROTHER SRI.VARGHESE.
- EXT.R4 (c) : TRUE COPY OF SALE DEED NO.3452/1992 EXECUTED IN FAVOUR
OF 4TH RESPONDENT'S BROTHER SRI.VARGHESE.
- EXT.R4 (d) : TRUE COPY OF SALE DEED NO.6542/2005 EXECUTED IN FAVOUR
OF 4TH RESPONDENT'S BROTHER SRI.VARGHESE.
- EXT R4 (e) : TRUE COPY OF SALE DEED NC.3105/2006 EXECUTED IN FAVOUR
OF 4TH RESPONDENT.

Msv/

WP(C).No. 28616 of 2016 (B)

EXT.R4(f) : TRUE COPY OF SALE DEED NO.5385/2006 EXECUTED IN FAVOUR
OF 4TH RESPONDENT.

EXT.R4(g) : TRUE COPY OF CONSENT GIVEN BY SRI.VARGHESE TO THE
PETITIONER TO QUARRY IN THE PROPERTY OWN BY HIM.

EXT.R4(h) : TRUE COPY OF INTEGRATED CONSENT TO OPERATE ISSUED BY
THE POLLUTION CONTROL BOARD.

EXT.R4(i) : TRUE COPY OF EXPLOSIVE LICENSE RENEWED BY THE
EXPLOSIVE DEPARTMENT.

EXT.R4(j) : TRUE COPY OF AUTHORIZATION APPROVED BY THE DIRECTORATE
GENERAL OF MINES SAFETY.

//TRUE COPY//

P.S.TO JUDGE

msv/

K. Vinod Chandran, J

W.P.(C) Nos.28616 of 2016-B & 39947 of 2016-P

Dated this the 17th day of December, 2016

JUDGMENT

W.P.(C) No.28616 of 2016 was filed against the quarrying operations carried on by respondents 4 to 6. The complaint raised was that the respondents 4 to 6 did not have an Environmental Clearance [for brevity "EC"] as insisted upon by the Environmental Impact Assessment Notification dated 14.09.2006 as amended on 14.09.2016.

2. Special Messenger was taken out and all the respondents were served.

3. The learned Standing Counsel for the 1st respondent Sri.Gopinathan appears and submits that the 5th and 6th respondent have stopped the quarrying operations. W.P.(C) No.28229 of 2016 filed against the quarrying operations of respondents 5 and 6, was allowed and the writ appeal filed [W.A.No.2262 of 2016] was dismissed as not pressed. In such circumstances, the respondents 5

and 6 cannot carry on any quarrying operations as of now. The Panchayat has also issued stop memo and it is submitted that there is no quarrying operations carried on by respondents 5 and 6.

4. With respect to the 4th respondent, the learned Counsel appears and has filed a counter affidavit in the writ petition. W.P.(C) No.39947 of 2016 is also filed by the 4th respondent. The 4th respondent in his writ petition challenge Exhibit P9 order issued by the respondent-Panchayat. Exhibit P9 order is a refusal to renew the D&O Licence for reason of the 4th respondent having no EC and also the pendency of W.P.(C) No.28616 of 2016. The petitioner has produced Exhibit P1 order dated 08.02.2012 granting quarrying lease and Exhibit P2 lease deed dated 15.02.2012 in his writ petition, which, according to him, permits him to carry on the quarry without an EC.

5. This Court has to accept the said submissions, since the requirement of EC even for properties below 5 hectares was insisted upon by the decision of the Hon'ble Supreme Court in ***Deepak Kumar v. State of Haryana*** [(2012) 4 SCC 629]. The

leases granted prior to the said decision rendered on 22.07.2012 were saved from such requirement. In such circumstance, the impugned order in W.P.(C) No.39947 of 2016 is not sustainable. Exhibit P9 is set aside, since the requirement of EC is not applicable to the petitioner who obtained the lease prior to the Supreme Court judgment in **Deepak Kumar** . W.P.(C) No.28616 of 2016 as against the 4th respondent is also dismissed on the very same reasoning.

Hence, W.P.(C) No.39947 of 2016 is disposed of, directing the Panchayat to reconsider the matter within a period of two weeks from the date of receipt of a certified copy of this judgment. W.P.(C) No.28616 of 2016 would stand dismissed as against the 4th respondent and disposed of as against respondents 5 and 6, with the above directions. Parties are left to suffer their respective costs.

Sd/-
K.Vinod Chandran
Judge

vku/-

[true copy]

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K. JAYASANKARAN NAMBIAR

MONDAY, THE 3RD DAY OF APRIL 2017/13TH CHAITHRA, 1939

WP(C) No. 11491 of 2017 (J)

PETITIONER(S):

J AND P SAND AND AGGREGATES
INTERNATIONAL PRIVATE LIMITED,
CHEMBERY P.O., PAYATTUCHAL, KANNUR,
REP. BY ITS MANAGING DIRECTOR PETER JOSEPH,
S/O. JOSEPH, AGED 44 YEARS,
PUNJAPUTHUSSERIL (H), KIZHAKKAMBALAM,
ERNAKULAM DISTRICT, PIN-683 562

BY ADV. SRI. PAUL K. VARGHESE

RESPONDENT(S):

1. THE DIRECTOR OF MINING AND GEOLOGY,
KESAVADASAPURAM, PATTOM PALACE. P.O.,
THIRUVANANTHAPURAM-4
2. THE DISTRICT GEOLOGIST, DISTRICT OFFICE,
DEPARTMENT OF MINING AND GEOLOGY,
CIVIL STATION,
KANNUR DISTRICT, PIN 670 631

BY GOVERNMENT PLEADER SRI. SURIN GEORGE IPE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-04-2017, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

SKG

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 A TRUE COPY OF THE QUARRYING LEASE EXECUTED IN FAVOUR OF THE PETITIONER DATED 14.6.2010
- P2 A TRUE COPY OF THE PERMISSION GIVEN BY TH POLLUTION CONTROL BOARD DATED 4.7.2015
- P3 A TRUE COPY OF THE PERMISSION TO PAY CONSOLIDATED ROYALTY BY 1ST RESPONDENT TO THE PETITIONER DATED 5/6/2015
- P4 A TRUE COPY OF THE PERMISSION ISSUED BY THE 1ST RESPONDENT TO PAY CONSOLIDATED ROYALTY TO THE PETITIONER DATED 6/4/201
- P5 A TRUE COPY OF THE APPLICATION FOR SUBMITTED BY THE PETITIONER DATED 18.3.2017
- P6 A TRUE COPY OF THE FEE RECEIPT ISSUED TO THE PETITIONER DATED 18.3.2017
- P7 A TRUE COPY OF THE ORDER DATED 2.12.2016 IN S.L.P. (CIVIL) NO.30103 OF 2015 AND CONNECTED CASES PASSED BY THE HONOURABLE SUPREME COURT.
- P8 A TRUE COPY OF THE JUDGMENT IN WPC.NO.5456/2017 OF THIS COURT DATED 28/2/2017

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

P.S.TO JUDGE

SKG

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.11491 OF 2017 (J)

Dated this the 3rd day of April, 2017

J U D G M E N T

The petitioner, who is stated to be holding a quarrying lease that was issued on 14.6.2010 and is valid up to 13.6.2020, is aggrieved by the insistence by the 1st and 2nd respondents, on the petitioner producing an Environmental Clearance Certificate as a pre-condition for considering Ext.P5 application, seeking permission to pay royalty on consolidated basis. It is the case of the petitioner that inasmuch as the quarrying lease was issued prior to 2012, and as per the decision of this Court in **All Kerala River Protection Council v. State of Kerala - [2015 (2) KLT 78]**, the requirement of obtaining an Environmental Clearance Certificate will come up only when the quarrying lease comes up for renewal, the respondents cannot insist on an Environmental Clearance Certificate.

2. I have heard the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, and by virtue of the decision of this Court in **All Kerala River Protection Council v. State of Kerala - [2015 (2) KLT 78]**, I direct the respondents to consider Ext.P5 application submitted by the petitioner, on merits, within a period of two weeks from the date of receipt of a copy of this judgment, and without insisting on an Environmental Clearance Certificate from the petitioner. The petitioner shall produce a copy of this judgment, together with a copy of the writ petition before the respondents, for further action.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

Monday, the 25th day of September 2017/3rd Aswina, 1939

WP(C).No.30543/2017(P)

PETITIONER:-

SAJI SEBASTIAN,
S/O. M.P DEVASSY, AGED 42 YEARS,
MADECKAL HOUSE, KIZHAKKAMBALAM, ERNAKULAM.

RESPONDENTS:-

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY, DEPARTMENT OF INDUSTRIES,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. THE DIRECTOR OF MINING AND GEOLOGY,
DIRECTORATE OF MINING AND GEOLOGY, THIRUVANANTHAPURAM - 695 004.
3. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY, CIVIL STATION,
SEAPORT AIRPORT ROAD, KAKKANADU, ERNAKULAM - 682 030.
4. KERALA STATE POLLUTION CONTROL BOARD,
DISTRICT OFFICE, MIG AND HIG COLONY, GANDHI NAGAR,
KADAVANTHARA, ERNAKULAM - 682 020.

Writ Petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay Exts.P3 and P6, pending disposal of the Writ Petition.

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of SRI.BECHU KURIAN THOMAS, Senior Advocate along with M/S.PAUL JACOB (P) & ENOCH DAVID SIMON JOEL, Advocates for the petitioner, GOVERNMENT PLEADER for R1-R3 and of STANDING COUNSEL for R4, the court passed the following:-

P.T.0

P.B. SURESH KUMAR, J.

W.P.(C) No. 30543 of 2017

Dated this, the 25th day of September, 2017.

ORDER

Admit. The learned Government Pleader takes notice for respondents 1 to 3. The learned Standing Counsel takes notice for the 4th respondent.

In the light of the decision reported in **All Kerala River Protection Council Vs. State of Kerala** [2015 (2) KLT 78], Ext.P6 stop memo will remain stayed until the expiry of the mining leases referred to in the writ petition.

Post along with W.P.(C).No.29606 of 2017.

Sd/- P.B. SURESH KUMAR, JUDGE

/true copy/


26/9/17
ASSISTANT REGISTRAR


26/9/17
Bb/25/9/2017

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:
THE HONOURABLE MR JUSTICE P.B. SURESH KUMAR

Monday, the 18th day of September 2017/27th Bhadra, 1939

WP(C) No. 28006/2017(A)

PETITIONER:

JOY T.M., PROPRIETOR, M/S. T.M.J. QUARRY, S/O. T.P. MATHAI,
THELAPPILLY HOUSE, PULIYANAM, ERNAKULAM-683572.

RESPONDENTS:

1. THE DISTRICT GEOLOGIST, ERNAKULAM, OFFICE OF THE DISTRICT GEOLOGIST,
CIVIL STATION, KAKKANAD-682030.
2. THE DIRECTOR, MINING & GEOLOGY DEPARTMENT,
KESAVADASAPURAM, PATTON P.O., TRIVANDRUM, PIN-695004.

Writ Petition (civil) praying inter alia that in the circumstances stated
in the affidavit filed along with the WP(C) the High Court be pleased to

1. direct the 1st respondent to issue necessary Transit Passes to the
petitioner, pending disposal of the above writ petition.
2. direct the respondents not to interfere with the functioning of the
petitioner's quarrying unit, pending disposal of the above writ petition.

This petition coming on for admission upon perusing the petition and
the affidavit filed in support of WP(C) and upon hearing the arguments of
M/S. PHILIP J. VETTICKATTU & VINEETH KURIAKOSE Advocates for the petitioner and
GOVERNMENT PLEADER for respondents, the court passed the following:

P.B.SURESH KUMAR, J.

W.P.(C).No.29606 of 2017

Dated this the 18th day of September, 2017

ORDER

The learned Government Pleader takes notice for the respondents.

In the light of the decision of this Court in *All Kerala River Protection Council v. State of Kerala [2015 (2) KLT 78]*, Ext.P7 stop memo will remain stayed Post on 25/09/2017 along with connected cases.

Sd/- P.B SURESH KUMAR,

True copy

Assistant Reg

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

THURSDAY, THE 18TH DAY OF AUGUST 2016/27TH SRAVANA, 1938

WP(C).No. 23812 of 2016 (B)

PETITIONER(S):

POULO @ PAPPACHAN
S/O. POULO, AGED 61 YEARS,
PULLAN HOUSE, AYYAMPUZHA P.O.,
AMALAPURAM, ERNAKULAM DISTRICT.

BY ADV. SRI. K. RAJESH SUKUMARAN

RESPONDENT(S):

1. THE STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE SENIOR GEOLOGIST,
MINING & GEOLOGY DEPARTMENT,
DISTRICT OFFICE, CIVIL STATION, KAKKANAD,
ERNAKULAM-682 030.
3. THE DISTRICT COLLECTOR,
ERNAKULAM CIVIL STATION,
KAKKANAD, ERNAKULAM DISTRICT-682 030.
4. THE DISTRICT POLICE CHIEF, ERNAKULAM (RURAL)
ALUVA, ERNAKULAM DISTRICT-683 101.
5. THE DIRECTOR,
MINING, GEOLOGY, OFFICE OF THE MINING & GEOLOGY,
KESAVADASAPURAM, PATTAM, THIRUVANANTHAPURAM-695 001.
6. THE STATE ENVIRONMENTAL IMPACT ASSESSMENT AUTHORITY
ENVIRONMENT DEPARTMENT, DIRECTORATE OF ENVIRONMENT &
CLIMATE CHANGE PALLIMUKKU, PETTA P.O.,
THIRUVANANTHAPURAM,
REP. BY ITS MEMBER SECRETARY-695 024.
7. THE AYYAMPUZHA GRAMA PANCHAYATH,
REP. BY ITS SECRETARY, AYYAMPUZHA P.O.,
ERNAKULAM DISTRICT, PIN-683581.

8. K.R JAYAN,
KOVATTU HOUSE,
KIDANGOOR P.O. ,
ANGAMALY, ERNAKULAM DISTRICT-683572.

R8 BY ADV. SRI.PHILIP J.VETTICKATTU

R8 BY ADV. SRI.VINEETH KURIAKOSE

R7 BY ADV. SRI.LAL K.JOSEPH

R7 BY ADV. SRI.A.A.ZIYAD RAHMAN

R7 BY ADV. SRI.V.S.SHIRAZ BAVA

R1 to 6 BY ADV.SUSIN GEORGE IYPE, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-08-2016,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 23812 of 2016 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1 TRUE COPY OF ORDER ISSUED BY THE SUB COLLECTOR, FORT
KOCHI DATED 15.02.2013.

EXT. P2 TRUE COPY OF ORDER ISSUE BY THE SUB COLLECTOR, FORT
KOCHI DATED 15.02.2013.

EXT. P3 TRUE COPY OF INTERIM ORDER IN W.P.C NO. 18313/2015
PASSED BY THIS HON'BLE COURT.

EXT. P4 TRUE COPY OF JUDGMENT DATED 11.12.2015. IN W.P.C
NO.33436/15.

EXT. P5 TRUE COPY OF COMPLAINTS DATED 10.10.2015 FILED BY THE
PETITIONER BEFORE THE 2ND RESPONDENT'S OFFICE.

EXT. P5(A) TRUE COPY OF REMINDER FILED BY THE PETITIONER BEFORE THE
2ND RESPONDENT'S OFFICE.

RESPONDENT(S)' EXHIBITS

EXT R8(A)-TRUE COPY OF INTERIM ORDER DATED 18.7.2016 IN WPC 23812/16 OF
THIS HON'BLE COURT

EXT R8(B)-TRUE COPY OF PROCEEDINGS OF THE DIRECTOR OF MINING AND
GEOLOGY DATED 15.10.2007

EXT R8(C)-TRUE COPY OF LICENCE ISSUED BY THE 7TH RESPONDENT PANCHAYAT
TO THE PETITIONER FOR THE CURRENT PERIOD DT 5.4.2016

EXT.R8(D)-TRUE COPY OF ORDER DATED 25.7.2016 ISSUED BY THE 7TH
RESPONDENT PANACHAYAT.

TRUE COPY

SKS

P.A TO JUDGE

K.VINOD CHANDRAN, J.

.....
W.P. (C) No. 23812 of 2016
.....

Dated this the 18th day of August, 2016

JUDGMENT

The petitioner has filed this writ petition contending that the quarry carried on by the eighth respondent is without environmental clearance and is carried on in a private property and not in Government land. This Court had also granted interim direction directing the official respondents to stop the quarry if the same is carried on without sanction and environmental clearance.

2. The eighth respondent has filed a petition to vacate the interim order producing the documents to controvert the averments made in the writ petition. The eighth respondent has produced Ext.R8(b) which is a lease granted to the eighth respondent to quarry granite building stone, over an area of 2.7391 Hectares of land comprised in R.S.Nos.297/2-1 pt, 297/2-3 pt, 297/3-2 pt, 297/3-3 pt and 297/3-5 pt of Ayyampuzha Village, Aluva Taluk, Ernakulam District. The lease period is for twelve years. The eighth

W.P. (C) No. 23812 of 2016

respondent was also issued with a D & O licence as is seen from Ext.R8(c). The eighth respondent has now been interdicted from operation by Ext.R8 (d) as per the interim order of this Court based on which the Panchayat has also withdrawn the licence granted.

3. The petitioner is a lease holder from the Government that too for a period of twelve years. The lease is one granted in 2007 prior to the judgment of the Hon'ble Supreme Court in **Deepak Kumar & Ors vs. State of Harayana & Ors ((2012) 4 SCC 629)** and the E.I.A notification dated 18.5.2012; when there was no requirement for environmental clearance to quarries carried on in an area less than 5 Hectares. In such circumstances, there can be no interdiction of quarry operation carried on by the petitioner. The interim order would stand vacated and Ext.R8 (d) would be of no consequence. The withdrawal of licence as per Ext.R8(d) being based only on the interim order on the disposal of the

W.P. (C) No. 23812 of 2016

writ petition, necessarily the same has to be declared to have no effect.

4. The petitioner also has a contention that the quarrying operations caused hardships to the property of the petitioner which is said to be situated very near to the quarry. If such contention is raised before the appropriate authority, the appropriate authority shall consider the same after issuing notice to the eighth respondent and act in accordance with law. Leaving open such remedy going by the documents produced along with I.A.No.12643 of 2016, the writ petition is found to be devoid of merit. The writ petition is accordingly dismissed.

sks/18.8.2016

K.VINOD CHANDRAN
Judge

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:
THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFIQU

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WP(C).No. 31148 of 2014 (S)

PETITIONER:

**ALL KERALA RIVER PROTECTION COUNCIL,
REGD NO.1052/98/EKM
REPRESENTED BY ITS GENERAL SECRETARY
PROF.S.SEETHARAMAN, AGED 69 YEARS, S/O. VAIDYANATHAN
HIGH ROAD, ALUVA - 1.**

**BY ADVS.SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR
SRI.K.JAGADEESH**

RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY, SECRETARIAT
INDUSTRIES (A) DEPARTMENT
THIRUVANANTHAPURAM - 695 001.**
- 2. THE DIRECTOR
DIRECTORATE OF MINING AND GEOLOGY
KESAVADASAPURAM, PATTOM P.O.
THIRUVANANTHAPURAM - 695 004.**

ADDITIONAL RESPONDENTS IMPLEADED

- Addl.3. REGISTERED METAL CRUSHER UNIT OWNERS ASSOCIATION
REG.NO.E.R.NO.2370/06, BUILDING NO.357A
VIIIITH DIVISION, 191A, MAVELIPURAM
KAKKANAD, COCHIN, THRIKKAKARA PO.
PIN - 682 030, REPRESENTED BY ITS GENERAL SECRETARY
DAVIS PATHADAN, S/O.KURIAKOSE, AGED 54
GENERAL SECRETARY.**

ADDL.R3 IMPLEADED AS PER ORDER DATED 11.12.2014 IN IA 17015/14.

Addl.4. ROY MATHEW

**GOVERNMENT CONTRACTOR, PAMPLANIYIL HOUSE
BHARANANGANAM PO., PALA VIA, KOTTAYAM DISTRICT.**

ADDL.R4 IMPEADED AS PER ORDER DATED 27.01.2015 IN IA 57/14.

Addl.5. N.C.ABDUL MAJEED, AGED 42 YEARS

**S/O.KUNHAMED HAJI, NEERILAKKAL CHERUTHODIKA HOUSE
KUMARANELLOR PO., MUKKOM-VIA, KOZHIKODE DISTRICT
PIN - 673 602 (MANAGING PARTNER, M/S.MUKKOM GRANITES
DOOR NO.KP.3/301-A, CHOORANI, POOTHAMPARA PO.
THOTTILPALAM, KOZHIKODE DISTRICT, PIN - 673 531.**

Addl.6. C.P.MUHAMMED ABDUL BHASHEER, AGED 56 YEARS

**S/O.KUNHARAMMU HAJI, CHERUPADIKKAL HOUSE
PETTITHARA VILLAGE, THALAKKASSERY PO.
PALAKKAD DISTRICT, PIN - 679 538(PARTNER
M/S.MUKKOM GRANITES, DOOR NO.KP.3/301-A, CHOORANI
POOTHAMPARA PO., THOTTILPALAM, KOZHIKODE DISTRICT
PIN - 673 531.**

Addl.7. C.P.ABDULLA KOYA THANGAL, AGED 52 YEARS

**S/O.POOKOYA THANGAL, MANAGING PARTNER
M/S.RUBY STONE CRUSHER, P.M.P.ESTATE, POOLODE
P.O.CHAMAL, KOZHIKODE DISTRICT - 673 573.**

Addl.8. O.D.THOMAS, AGED 44 YEARS

**S/O.DEVASSY, OLICKAL HOUSE, MANIYANKODE PO.
KALPETTA VIA., WAYANAD DISTRICT.**

Addl.9. SHERRY JOSEPH, AGED 40 YEARS

**S/O.JOSEPH, PAZHAYAPARAMBIL HOUSE, CHEMBANODA PO.
PERUVANNAMUZHI - VIA, KOYILANDY TALUK
KOZHIKODE DISTRICT.**

Addl.10. T.T.KOMUKUTTY AGED 54 YEARS

**S/O.MOIDEENKUTTY, MANAGING PARTNER
JASIM'S HOLLOW BRICKS & STONE CRUSHER, VALAMTHODE
MATILAYAM POST, MANANTHAVADY -VIA, WAYANAD DISTRICT
PIN - 670 731(THACHERUPADIKKAL THAZHATH HOUSE
KANNAMANGALAM PO., THIROORANGADI TALUK
MALAPPURAM DISTRICT)**

Addl.11. ABDUL NAZAR M.P, AGED 54 YEARS

**S/O.MOOSA KOYA, THOUFEEC, MANZIL HOUSE, POTTAMMEL
KOZHIKODE (MANAGING PARTNER, M/S.KALLADI QUARRY
VELLARIMALA, MEPPADI, WAYANAD DISTRICT)**

- Addl.12. O.C.SADANANDAN, AGED 64 YEARS**
S/O.PAITHAL, DAYANANDAPURI ESTATE HOUSE
ACHURANAM VILLAGE, VYTHIRI TALUK, WAYANAD DISTRICT
PIN - 673 576 (MANAGING PARTNER, M/S.MOOVATTI QUARRY
CHUNDALE, POZHUTHANA, WAYANAD DISTRICT.
- Addl.13. T.MOHANDAS, AGED 48 YEARS**
S/O.VELAYUDHAN, THACHAMVALLI HOUSE, CHATHAMANGALAM PO.
KOZHIKODE DISTRICT, PIN - 673 601.
- Addl.14. SUDHEESH A.T., AGED 29 YEARS**
S/O.THANKACHAN, ADACKATHOTTATHIL HOUSE, AMBALAVAYAL
SULTHAN BATHERY VIA., WAYANAD DISTRICT.
- Addl.15. MOIDEEN KOYA V.P**
S/O.HASSAN, SHAD MAHAL, MARAKKAMPOYIL
KARAPARAMBA PO., VEGERI VILLAGE
NEDUNGOTTOR AMSOM DESOM, KOZHIKODE - 673 010.
- Addl.16. C.ABDUL SALEEM, AGED 42 YEARS,**
S/O.ALAVI HAJI, CHENGOT HOUSE, PUTHIYARA PO.
KOZHIKODE DISTRICT, PIN - 673 004.

Addl.17. JAISAL M.P
S/O.HAMSA, MATHILAKATH PARAMBAIL HOUSE, MAVOOR PO.
KOZHIKODE DISTRICT, PIN - 673 661.

**ADDL.R5 TO R17 ARE IMPEADED AS PER ORDER DATED 27.01.2015
IN IA 524/15.**

Addl.18 N.P.PADMANABHAN, AGED 62 YEARS, S/O. KELAPPAN,
MANAGING PARTNER, M/S. KUTTIADI JELLY MAKING INDUSTRIES,
KAVILUMPARA P.O., KOZHIKODE DISTRICT.

Addl.19 M.K. BABU, AGED 40 YEARS, S/O. KANNAN, MARUTHULLA PARAMBIL,
KUNDUTHODU P.O., KAVILUMPPARA VIA., KOZHIKODE DISTRICT, 673 513
(GENERAL SECRETARY, MALABAR MEKHALA CHERUKIDA QUARRY & CRUSHER
OWNEERS' ASSOCIATION, KMO BUILDING, CIVIL STATION, KOZHIKODE -2)

**ADDL.R18 & R19 ARE IMPEADED AS PER ORDER DATED 27.01.2015 IN
I.A. NO.1202/2015**

Addl.20 M/S.P.J. ASSOCIATES, ANTHYALAM, PAYAPPAR P.O., PALA 686 651.
REPRESENTED BY MANAGING PARTNER PIUS ANTONY

ADDL.R20 IS IMPEADED AS PER ORDER DATED 27.01.2015 IN I.A. NO.1203/2015

**AddL.21 JOYCE SEBASTIAN, S/O. K.V. DEVASSIA,
RESIDING AT KOCHUMURIYIL, MANIMALA P.O., KOTTAYAM DISTRICT**

ADDL.R21 IS IMPEADED AS PER ORDER DATED 27.01.2015 IN I.A.NO.1207/2015

**Addl.22 ROSAMMA P.A., AGED 64 YEARS, W/O. M.K. GEORGE,
MOOPPATTIL HOUSE, EDAVAKA P.O., KALLODY, MANANTHAWADY,
WAYANAD DISTRICT.**

ADDL.R22 IS IMPEADED AS PER ORDER DATED 27.01.2015 IN I.A.NO.1211/2015

**R1 & R2 BY ADVOCATE GENERAL SRI.K.P. DANDAPANI
SENIOR GOVERNMENT PLEADER SRI.C.S. MANILAL**

**ADDL-R3 BY ADVS. SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH**

**SRI.THOMAS P.KURUVILLA
R4 TO 19, 26&27 BY ADV. SRI.BABU JOSEPH KURUVATHAZHA
ADDL.R20 BY ADVS. SRI.PHILIP J.VETTICKATTU
SRI.B.PREMNATH (E)**

**ADDL.R21 BY ADVS. SRI.GEORGE POONTHOTTAM
SMT.SARITHA THOMAS**

**ADDL.R22 BY ADV. SRI.JOBI JOSE KONDODY
ADDL.R BY ADVS. SRI.P.HARIDAS
SMT.S.SIKKY
SRI.P.C.SHIJIN**

**ADDL.R BY ADV. SRI.P.RAVINDRAN (SR.)
SRI.SREEDHAR RAVINDRAN
SRI.K.RAMAKUMAR (SR.)**

**ADDL.R BY ADVS. SRI.S.M.PRASANTH
SRI.C.DINESH
SMT.ASHA BABU
SRI.G.RENJITH
SMTAMMU CHARLES
SMT.JINNU SARA GEORGE**

ADDL.R BY ADV. SRI.BECHU KURIAN THOMAS

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-03-2015
ALONG WITH W.P.(C) 31148/2014, THE COURT ON 23.03.2015 DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P-1:** TRUE PHOTOSTAT COPY OF THE CIRCULAR, L-11011/47/2011-IA.II(M), DATED 18TH MAY 2012 ISSUED BY THE MINISTRY OF ENVIRONMENT AND FORESTS, GOVERNMENT OF INDIA, NEW DELHI.
- EXT.P-2:** TRUE PHOTOSTAT COPY OF THE ORDER IN WPC NO.1291 OF 2012, DATED 28TH JUNE, 2012.
- EXT.P-3:** TRUE PHOTOSTAT COPY OF THE G.O(MS) NO.140/2012/D, DATED 23.11.2012 ISSUED BY THE 1ST RESPONDENT
- EXT.P-4:** TRUE PHOTOSTAT COPY OF THE G.O(MS) NO.144/2012/ID DATED 11.12.2012 ISSUED BY THE 1ST RESPONDENT
- EXT.P-5:** TRUE PHOTOSTAT COPY OF THE G.O(P) NO.93/2014/ID, DATED 30.6.2014 PUBLISHED IN THE KERALA GAZETTE, VOL.III, DATED 1ST JULY, 2014.
- EXT. P-6** TRUE TYPED COPY OF THE CIRCULAR NO.14583/M3/2014 DATED 07.01.2015 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS

- EXT.R5(a)** COPY OF THE JUDGMENT OF THE HON'BLE SUPREME COURT OF INDIAN IN D.K. TRIVEDI AND SONS V. STATE OF GUJARAT, REPORTED IN AIR 1986 SC 1323.
- EXT.R3(a)** COPY OF NOTIFICATION DATED 14.09.2006 ISSUED BY THE CENTRAL GOVERNMENT
- EXT.R3(b)** COPY OF NOTIFICATION S.O. NO.2731(E) DATED 9.12.2013 ISSUED BY THE CENTRAL GOVERNMENT.
- EXT.R21(a)** COPY OF THE PERMIT NO.38/GBS/CRPS/2014-15/1327/DOY/2014 DATED 29.9.2014
- EXT.R21(b)** COPY OF THE REPLY NO.17/M3/2015 DATED 7.1.2014 ALONG WITH APPLICATION FILED UNDER RIGHT TO INFORMATION ACT DATED 30.12.2014 AND ENGLISH TRANSLATION.

- EXT.R21(c) COPY OF THE E-MAIL COMMUNICATION WHICH THE APPLICANT COULD ACCESS AND MADE AVAILABLE IN THE MEETING HELD ON 20.01.2015
- EXT.R22(a) COPY OF THE QUARRYING PERMIT DATED 12.02.2014 VALID UPTO 09.01.2015 ISSUED BY THE GEOLOGIST TO THE APPLICANT
- EXT.R22(b) COPY OF THE REPLY WITH ITS ENGLISH TRANSLATION
- EXT.R22(c) COPY OF THE MINUTES OF THE 15TH MEETING OF STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY HELD ON 22.02.2013

/TRUE COPY/

PA TO JUDGE

JJJ

'C.R.'

ASHOK BHUSHAN, Ag. C.J.
and
A.M. SHAFFIQUE, J.

=====

W.P(C) No.31148 of 2014, W.P(C) No.20601 of 2014,
W.P(C) No.4471 of 2015, W.P(C) No.6338 of 2014,
W.P(C) No.6361 of 2014, W.P(C) No.33413 of 2014,
W.P(C) No.4434 of 2014, W.P(C) No.34989 of 2014,
W.P(C) No.7632 of 2014, W.P(C) No.12076 of 2014,
W.P(C) No.7109 of 2014, W.P(C) No.15442 of 2014,
W.P(C) No.4783 of 2014, W.P(C) No.10738 of 2014,
W.P(C) No.26453 of 2014, W.P(C) No.27827 of 2014,
W.P(C) No.27532 of 2014, W.P(C) No.28557 of 2014,
W.P(C) No.33984 of 2014, W.P(C) No.19663 of 2013,
W.P(C) No.11488 of 2013, W.P(C) No.34940 of 2014,
W.P(C) No.30857 of 2014 W.P(C) No.1046 of 2015,
W.P(C) No.34754 of 2014, W.P(C) No.23843 of 2014,
W.P(C) No.3731 of 2015, W.P(C) No.1055 of 2015,
W.P(C) No.4821 of 2015, W.P(C) No.4662 of 2014,
W.P(C) No.2636 of 2015 & W.A No.1566 of 2014

=====

Dated this the 23rd day of March, 2015

J U D G M E N T

Ashok Bhushan, Ag. C.J.

This bunch of Writ Petitions raises important issues relating to mining/quarrying in the State of Kerala. The issues have assumed more importance due to competing claim between the development by over

exploitation of natural resources and protection of natural resources. Saving the environment and ecology is not only the fundamental duty of every citizen but it is also the obligation of every State. Writ Petitions listed before us consist of Writ Petitions filed as Public Interest Litigations, Police Protection Cases and Writ Petitions filed by and against quarry owners. Learned Single Judges while hearing a few of these Writ Petitions have also made reference to Division Bench for authoritative pronouncement on different environmental issues.

2. All the Writ Petitions and one Writ Appeal can be divided into the following five groups:

(I) Writ Petitions filed as Public Interest Litigations raising issues of unauthorised functioning of quarries in violation of the decision in Deepak Kumar and Others v. State of Haryana and Others ([2012] 4 SCC 629) and in violation of

the Notifications issued by the Government of India, Ministry of Environment and Forests under the Environment (Protection) Act, 1986.

(II) Different Writ Petitions questioning the quarrying operations being conducted by the respondents to the Writ Petitions in violation of the decision in Deepak Kumar's case (supra) and in violation of the Notifications issued by the Government of India, Ministry of Environment and Forests.

(III) Writ petitions filed by different quarry owners/permit owners who have been granted mining/quarrying lease/permit challenging different actions of individuals and State due to which they are unable to smoothly conduct the quarrying/mining operations.

(IV) Writ Petitions which have been filed seeking police protection to conduct

quarrying/mining.

(V) Two miscellaneous Writ Petitions and one Writ Appeal.

3. The first group of Writ Petitions consists of 3 Public Interest Litigations, being W.P(C) Nos.31148 of 2014, 20601 of 2014 and 4471 of 2015. Writ Petition No.31148 of 2014 (**All Kerala River Protection Council, Aluva v. State of Kerala and Others**) is being treated as the leading Writ Petition among this group. It is necessary to note the pleadings and reliefs in the leading Writ Petition for considering and deciding the various issues raised in this bunch of Writ Petitions. Petitioner is an organisation registered with the main purpose of saving the environment of the State including all natural resources. This Public Interest Litigation claims to have been filed to protect the resources of the State from excessive mining operations being carried out in violation of the statutory provisions.

It is pleaded that the excessive mining operations cause serious threat to the ecology. Reference to the judgment of Apex Court in **Deepak Kumar's case** (supra) has been made wherein the Apex Court had laid down that for grant of mining lease of minor minerals, environmental clearance is essential which is a pre-condition for grant or renewal of the mining lease. It is stated that the Government of India, Ministry of Environment and Forests has issued various directions under the Environment Protection Act, 1986 (hereinafter after referred to as "the 1986 Act") making it mandatory to obtain environmental clearance for all mining operations. Reference has been made to order dated 18.05.2012. It is pleaded that mining of minor minerals is being carried out from lands and 44 rivers in the State. Referring to Section 4 of the Mines and Mineral (Development and Regulation) Act, 1957 (hereinafter referred to as "the 1957 Act) it is pleaded that no mining

operation can be carried out except in accordance with the mining lease under Section 4 of the 1957 Act. It is pleaded that issuance of mining permit for mining operations is not permissible under law. Amendment made in Section 14 by Amendment Act 1986 has been referred to. It is stated that permits issued by respondents 1 and 2 for mining operation after 20.12.1999 are contrary to Section 4 of the 1957 Act. It is pleaded that the directions issued by the Apex Court in **Deepak Kumar's case** (supra) are being subverted by issuing mining permits by the State Government. Reference has been made to Government Order dated 23.11.2012 issued by the State which ordered that short term permits can be granted for the existing quarries for extraction of minor minerals from private holdings for a period not exceeding one year, if the applicant concerned had complied with all other conditions for issuance of the

permit as well the conditions regarding environmental clearance stipulated in the order of the Supreme Court. Government order dated 23.11.2012 was modified by a subsequent Government order dated 11.12.2012 by which it was clarified that short term permits can be granted in respect of minor minerals in private holdings which are not on leases on Government lands subject to satisfaction of the various requirements specified under the Kerala Minor Mineral Concession Rules, 1967 (hereinafter referred to as "the 1967 Rules"). Amendment made to Rule 8 of the 1967 Rules by Notification dated 01.07.2014 has also been referred to which provided that quarrying permit can be obtained for extraction of ordinary earth used for filling or leveling purposes in construction of embankments, roads, railways or buildings. Petitioner pleaded that if mining operations are carried out without conducting environment impact assessment, it will cause serious

threat to the ecology of this God's own country. It is pleaded that present mining activities are being done causing severe damage to the ecology of the area. With the aforesaid pleadings, petitioner prayed for the following reliefs:

(i) *To issue a writ, direction or order in the nature of mandamus commanding respondents 1 and 2 to see that all quarrying operations in the Kerala State shall be permitted by lease by scrupulously following Exhibit P1 order in its letter and spirit.*

(ii) *To issue a writ, direction or order in the nature of prohibition or such other appropriate writ, direction or order restraining respondents 1 and 2 and its subordinate officers from issuing permits and licences invoking the provisions of Kerala Minor Mineral Concession Rules, 1967 for the purpose of mining operations of minor minerals in the State.*

(iii) *To issue a writ of certiorari calling for the records leading to Exhibits P3, P4 and P5 amendments and quash the same.*

(iv) *Such other reliefs which this Hon'ble Court deems fit and necessary in the circumstances of the case and the costs of this case so as to protect the excessive mining activities being carried out in the State of Kerala without conducting the environment impact assessment as contemplated in Exhibit P1 order."*

4. In the Writ Petition, Registered Metal Crusher Unit Owners Association and various individuals who have been granted mining permit/lease have been impleaded as additional respondents. Counter affidavits have been filed by additional respondents taking the stand that grant of mining permit is fully permissible in accordance with the 1957 Act and no environmental clearance is necessary for grant of mining permit.

5. Learned Senior Government Pleader has filed an adoption memo to adopt the counter affidavit filed by the State in W.P(C) No.6338 of 2014 which has been taken on record. The State in its counter affidavit has stated that as per the directions of the Apex Court in **Deepak Kumar's case** (supra), the Government has framed Rules, namely, the Kerala Minor Mineral Concession Rules, 2015. It is averred in the counter affidavit that recommendations made by the Apex Court

in **Deepak Kumar's case** (supra) had been incorporated in the Rules. It is stated that in view of the subsequent developments, i.e., framing of the 2015 Rules there is no necessity to consider the questions which have been referred by the learned Single Judge by his order dated 12.03.2014.

6. Another Public Interest Litigation is W.P(C) No.20601 of 2014 (**V.K. Murali and Another v. Kizakkancherry Grama Panchayat and Others**) which petition has been filed by two residents of the aforesaid Panchayat. Grievance has been regarding unauthorised functioning of granite quarrying units conducted by respondents 7 and 8 ignoring the various environmental enactments and provisions of the 1957 Act and 1967 Rules. Petitioners claim to have submitted a complaint to the Deputy Director of Panchayats, Palakkad dated 26.02.2014. It is pleaded that a decision was taken by the Grama Panchayat on

29.04.2014 not to renew the licence of the 7th respondent. However, subsequently, the Panchayat has renewed the licence of the 7th respondent against which the 1st petitioner has filed a statutory appeal under the Panchayat Raj Act vide Memorandum of Appeal dated 28.07.2014. Petitioners have prayed in the Writ Petition to quash Ext.P2 decision taken by the Panchayat to renew the licence for quarrying unit and further to command the 1st respondent Panchayat to stop functioning of the quarrying units of respondents 7 and 8.

7. The third Public Interest Litigation is W.P(C) No.4471 of 2015 (**Andrews K.J. v. State of Kerala and Others**). Petitioner in this Writ Petition has referred to the 2015 Rules gazetted on 07.02.2015. Referring to the directions issued by the Apex Court in **Deepak Kumar's case** (supra) it is pleaded that environmental clearance can be obtained only on

production of mining plan. Reference has been made to Office Memorandum dated 24.12.2013 issued by the Government of India, Ministry of Environment and Forests wherein it is made mandatory to obtain environmental clearance for all quarrying lease, irrespective of the extent of the lease area. Reply received under the Right to Information Act has been filed (Ext.P2) by which it was informed by the Deputy Director of Mining and Geology that no mining plan has been approved from the office. It has been further pleaded that by reply dated 03.02.2015 it was informed by the Department of Environment and Climate Change, Thiruvananthapuram that environmental clearance has been issued to 64 quarries upto 03.11.2014 by the State Level Environment Impact Assessment Authority. Reference to the proceeding dated 22.02.2013 has also been made which is filed as Exhibit P4. It is pleaded that the decision taken by the SEiAA to issue environmental

clearance is vitiated since the applications do not follow the pre-requisite, i.e., mining plan. Decision taken to grant environmental clearance for mining operations have no legal sanctity which is liable to be interfered with. It has been pleaded that in 2015 Rules persons who are having the mining permit are required to take environmental clearance only after expiry of the lease period which is an attempt to overreach the specific direction contained in the judgment of the Apex Court in **Deepak Kumar's case** (supra) and Ext.P1, Office Memorandum dated 24.12.2013. The 2015 Rules further provided that persons who are having the mining permit should submit mining plan within a period of one year till 01.04.2016 which is an ingenious method resorted to facilitate the lease holders to continue their operation without possessing a valid environmental clearance. Rule 66 of the 2015 Rules is attacked alleging it to be colourable exercise of power. It is

contended that Rules have not been issued in this regard in accordance with the directions issued by the Apex Court in **Deepak Kumar's case** (supra). In the Writ Petition although there was challenge to Rule 33 read with Rules 66, 10(f) and 40(i) of the 2015 Rules learned counsel for the petitioners, Shri P.B.Krishnan submitted that he confines his prayers in the Writ Petition only to the effect that Rule 68 be interpreted to mean that for carrying out all mining operations, a mining plan is mandatory and Rule 68 be read to the effect that no lessee is to carry out mining operations without approved plan. It is submitted that he confines his prayer in the Writ Petition to interpretation of Rule 68 in the above manner.

8. Group-II Writ Petitions consists of W.P(C) No.6338 of 2014, W.P(C) No.6361 of 2014, W.P(C) No.33413 of 2014, W.P(C) No.4434 of 2014 and W.P(C) No.34989 of 2014. All the Writ Petitions of this group

have been filed by petitioners who pray for stopping quarry/mining operations by the respondents. Petitioners who are residents of different localities have raised objection regarding running of quarries which according to the petitioners are in violation of the directions of the Apex Court in **Deepak Kumar's case** (supra) and the directions issued by the Central Government. It was pleaded that no mining/quarrying operations can be continued without there being any environmental clearance. Learned Single Judge while hearing Writ Petition Nos.4783, 6338 and 6361 of 2014 made a reference by order dated 12.03.2014 for hearing the said Writ Petitions by a Division Bench. It is sufficient to note the facts and pleadings in W.P(C) No.6338 of 2014 to understand the nature of pleadings and prayers made in all the Writ Petitions of this group.

9. W.P(C) No.6338 of 2014 (**A.Abdul Kabeer and Another v. State of Kerala and Others**) has

been filed by the petitioners who claim to be the local residents of Arkannur desom who feel aggrieved by the illegal and unauthorised quarrying activities of building granite stones by respondents 9 and 10. It is pleaded that respondents 9 and 10 have encroached upon Government land and they are conducting illegal quarrying activities in Government as well as private lands. Petitioners claim to have submitted representation on 03.10.2013 to the Land Revenue Commissioner as well as to the Government. Member of Elamad Grama Panchayat of Ward No.XII preferred a complaint to the Director of Environment and Climate Change, Thiruvananthapuram requesting that no environment clearance should be given to respondents 9 and 10 for conducting quarrying operations. Resolution dated 29.03.2012 has also been claimed to have passed by the Grama Panchayat requesting the Government to stop quarrying activities of respondents

9 and 10. It is submitted that respondents 9 and 10 are causing grave environmental problems and causing injury, both physical as well as to the properties of the residents of the locality and petitioners. Reference to Crime No.1958 of 2013 against respondents 9 and 10 has also been made which was registered for illegal mining activities in the Government land. Order dated 28.09.2012 of the Revenue Divisional Officer, Kollam has also been referred to wherein the RDO has held that respondents 9 and 10 had conducted illegal quarrying encroaching Government lands. It is pleaded that as per Section 4 of the 1957 Act, quarrying is permissible only on the strength of quarry/mining lease whereas respondents 9 and 10 have been allowed to conduct quarrying of granite stones without a quarrying or mining lease. Reference to National Mineral Policy, 2008 has also been made. Petitioners prayed for the following reliefs in the Writ Petition:

(i) Issue a Writ of mandamus or any other writ order or direction directing respondents 2 to 5, 7 and 8 to stop the illegal quarrying activities of respondents 9 and 10 in government lands in Sy. Nos.127/6, 127/7, 120, 272/3, 272/4, 263/1, 118, 127/8 and 119 in Block No.27 of Elamad Village, Kollam District and private lands in 127/5-2, 127/5-3, 126/2-2, 126/1-1, 126/3-3, 129/4, 265/1-3 109/3, 117/5-1, 117/5-2, 117/2, 261/1, 264/1, 264/2-1, 264/2-2, 264/5, 264/5-2, 264/6, 264/7, 265/1, 265/1-2, 119, 19/1 and 262/1 in Block 27 of Elamad Village, Kollam District forthwith and take action against 9th and 10th respondents for their illegal quarrying operations.

(ii) Issue a writ of mandamus or any other writ order or direction directing respondents 1 to 5 and 7 and 8 not to allow respondents 9 and 10 to conduct quarrying operations in government lands in Sy. Nos.127/6, 127/7, 120, 272/3, 272/4, 263/1, 118, 127/8 and 119 in Block No.27 of Elamad Village, Kollam District and private lands in 127/5-2, 127/5-3, 126/2-2, 126/1-1, 126/3-3, 129/4, 265/1-3 109/3, 117/5-1, 117/5-2, 117/2, 261/1, 264/1, 264/2-1, 264/2-2, 264/5, 264/5-2, 264/6, 264/7, 265/1, 265/1-2, 119, 19/1 and 262/1 in Block 27 of Elamad Village, Kollam District except under valid quarrying lease and permit issued after approval of Mining Plan and Environmental Management Plan and after obtaining clearance from Ministry of Environment and Forests, as directed by the Honourable Supreme Court.

(iii) Direct respondents 9 and 10 to stop illegal quarrying operations in Government land in Sy. Nos.127/6, 127/7, 120, 272/3, 272/4, 263/1, 118, 127/8 and 119 in Block No.27 of Elamad Village, Kollam District and private lands in 127/5-2, 127/5-3, 126/2-2, 126/1-1, 126/3-3, 129/4, 265/1-3, 109/3, 117/5-1, 117/5-2, 117/2, 261/1, 264/1, 264/2-1, 264/2-2, 264/5, 264/5-2, 264/6, 264/7, 265/1, 265/1-2, 119, 19/1 and 262/1 in Block 27 of Elamad Village, Kollam District forthwith."

10. In the counter affidavit filed by respondents 9 and 10 they claimed that they have been issued mining permit on 15.05.2014 under consolidated royalty payment system for extraction of building granite stones for a period of one year from the date of issue. Panchayat licence has also been claimed. It is averred that all five quarries covered by Exts.R9(d) to R9(h) are situate separate and distinct. It has been further averred that respondents 9 and 10 have already submitted application for required clearance from Ministry of Environment and Forests as well as State Environmental Impact Assessment Authority and they

expect to receive environmental clearance within a short time.

11. Counter affidavit has also been filed by Grama Panchayat where it has been averred that quarrying operation is being conducted by respondents 9 and 10 in accordance with the licence issued by the Panchayat. Copy of the Government Order dated 21.02.2014 has also been brought on record where certain directions were issued by the State Government regarding rock quarrying, river mining and quarrying of ordinary earth. Reply was filed by the petitioners.

12. Counter affidavit has been filed by the 5th respondent, Senior Geologist, Department of Mining and Geology. In paragraph 3 of the counter affidavit details of the quarrying permits issued to respondents 8 and 9 have been mentioned. Validity period of the said permit has been mentioned as 01.05.2015 (for one permit) and 12.05.2015 (for other permits). Reference to

Government Order dated 21.02.2014 has also been mentioned. An adoption memo has been filed by the learned Senior Government Pleader to adopt the counter affidavit filed by the State in W.P(C) No.6338 of 2014. In the counter affidavit filed in W.P(C) No.6338 the State has averred that it has framed the 2015 Rules in which directions issued by the Apex Court in **Deepak Kumar's case** (supra) have been complied with. Learned Single Judge while hearing the Writ Petition noted the contentions raised by the learned counsel for the parties and has noted the various directions issued by the Apex Court in **Deepak Kumar's case** (supra) as well as Government orders dated 10.01.2014 and 22.02.2014. The learned Single Judge after noticing the contentions of the parties by order dated 12.03.2014 referred the matter to Division Bench. The issue on which the learned Single Judge sought authoritative pronouncement has been stated in paragraph 13 of the

reference order. It is useful to quote paragraph 13 of the reference order:

"13. In such circumstances, I am of the opinion that an authoritative pronouncement on the question whether even in the case of existing quarrying/mining permits environmental clearance from the competent authority, namely the Ministry of Environment and Forests, in respect of lands having an extent of more than 5 hectares and from the State Environmental Impact Assessment Authority in the case of lands having an area of less than 5 hectares should be obtained before exploiting the quarrying permit is called for. Incidentally the question whether the Government order dated 10.1.2014 can be relied on by the petitioner in view of the interim order passed by the National Green Tribunal also arises for consideration. The impact of the amendment to section 14 of the Mines and Minerals(Development and Regulation) Act, 1957 by Act 37 of 1986 with effect from 10.2.1987 also arises for consideration. By virtue of the said amendment, section 14 of the Act applies to quarrying leases and mining leases and other mineral concessions granted in respect of minor minerals. Therefore, for that reason also I am of the opinion that an authoritative pronouncement on the issue is called for."

13. Other Writ Petitions in this group also raised grievance against illegal quarrying by private

respondents and prayed for stopping the quarrying operations which are being conducted without obtaining environmental clearance from SEIAA.

14. Third group of Writ Petitions are the Writ Petitions filed by quarry/lease/mining permit owners praying for various reliefs. This group consists of W.P(C). Nos.7632, 12706, 7109, 15442, 4783 and 10738 of 2014. In W.P(C).No.4783 of 2014, reference order dated 12.03.2014 of the learned Single Judge as noted above has also been passed, referring the matter to be heard by a Division Bench. Following the reference order dated 12.03.2014, various subsequent reference orders have been passed in other Writ Petitions of this group also. It is sufficient to refer to the pleadings in W.P(C).No.12706 of 2014, in which reference order dated 26.05.2014 has been passed for comprehending various issues raised in the Writ Petitions of this group.

15. W.P(C).No.12706 of 2014 has been filed by the

petitioners, who claim to be in possession of 30 cents of dry land in Sy.No.50/11. The petitioners submitted an application to issue no objection certificate for removing ordinary earth and the District Collector issued no objection certificate dated 28.11.2012. By Exhibit P3, permit dated 07.12.2013 has been issued by the Geologist allowing removal of ordinary earth from the property of the first petitioner. The Village Officer had issued a stop memo, Exhibit P5 dated 27.02.2014, which was challenged by the petitioner in W.P(C).No.6290 of 2014, wherein this Court stayed the stop memo. The petitioner's case is that no orders have been issued for issuing new permit or revalidating the time limit in the permit. The petitioner has referred to Exhibit P9 Government order dated 21.02.2014, by which the State Government issued various directions with regard to rock quarrying, river sand mining and mining/excavation of brick earth and ordinary earth. The petitioner also

referred to the Government order dated 23.11.2012, Exhibit P12, by which the State Government directed that short term permits can be granted for extraction of minor minerals from private holdings, for a period not exceeding one year, if the applicant concerned had complied with all the other conditions for issuing of such permit as well as the conditions regarding environmental clearance stipulated in the Supreme Court order. On 11.12.2012, another order was issued by the State of Kerala, wherein it was clarified that short term temporary permits can be granted for those persons, who are eligible if all other legal requirements for doing mining operations are complied with. Reference to order dated 10.01.2014 of the State Government has also been made, wherein the State Government observed that after considering the situation of acute shortage of raw materials in the construction field of the State due to standstill of

operations in the sector, operation of the short term permits is extended for a period of one year without insisting on the environmental clearance. The petitioner has prayed for quashing Exhibit P9 Government order dated 21.02.2014. The petitioner has also prayed for a declaration that the petitioner has right to get the 'P' form revalidated or a new 'P' form in pursuance of the Government orders dated 10.01.2014 and 11.12.2012.

16. W.P(C).No.7632 of 2014 has been filed by the petitioner, who was granted mining lease dated 10.03.2010 for a period of 12 years for mining building stones. Various Departments of the State raised objection regarding grant of lease and hence pointed out that no objection from various Departments has not been obtained. It was further pointed out that the Forest Department raised objection that the distance between Shenthurni Wild Life Protection Centre and the proposed area to mine building stones by the petitioner is only 2.5

kilometers. The Forest Department prayed for cancellation of lease of the petitioner and the State Government by Exhibit P6 order dated 10.06.2013 cancelled the lease. The State Government while cancelling the lease also relied on the judgment of the Apex Court in **Deepak Kumar's case** (supra). The State Government held that mining projects with less area than five hectares would be treated as category 'B' project as defined in the environmental impact assessment notification dated 14.09.2006 and is to be considered by respective State Level Environmental Impact Assessment Authority. It held that allowing mining operation without the environmental clearance from the State Level Environmental Impact Assessment Authority is violation of the order of the Supreme Court. On the said ground, the lease was cancelled. W.P(C). No.16940 of 2013 was filed by the petitioner in which the High Court vide judgment dated 25.07.2013 set

aside the order of the State Government, Exhibit P6, on the ground that it was passed in violation of the principles of natural justice and the State Government was directed to pass a fresh order. The State Government again by Exhibit P9 order dated 19.02.2014 held that quarrying lease will stand cancelled. It is useful to note the following observation of the State Government while cancelling the lease:

"In view of these facts, Forest Department reported that they are not in favour of allowing quarrying activities in that area as the same is detrimental to the forest and wildlife. Government have also considered the fact that the averred land in this case is in Aryankavu Village, which is one of the 123 Villages notified as EFA in the Kasthurirangan Report.

Government have examined the matter in detail on the basis of the aforesaid facts and are pleased to order that the quarrying lease in the area will stand cancelled and no quarrying operations will be permitted in the area. The order of the Hon'ble High Court read as 10th paper above is complied with, accordingly."

The petitioner has filed the Writ Petition praying for quashing the order, Exhibit P9. The Special Government

Pleader has filed adoption memo to adopt the counter affidavit filed in W.P(C).No.6338 of 2014.

17. W.P(C).No.4783 of 2014 has been filed by the petitioner seeking a mandamus to third respondent to issue quarrying permit to remove the ordinary soil from his property. The petitioner claims that no objection certificate dated 06.05.2013 has been issued by the District Collector and the Geologist has also given consent, but quarrying permit has not been issued. Reference order dated 12.03.2014 was made by the learned Single Judge in the Writ Petition.

18. W.P(C).No.12706 of 2014 has been filed by the petitioners for quashing Exhibit P9 Government order dated 21.02.2014 and seeking a declaration that the petitioners have right to get 'P' form revalidated issued on 07.12.2013. The petitioners' case is that the Geologist granted permission to remove ordinary earth by order dated 07.12.2013. The petitioners' further case

is that the Government order dated 21.02.2014 is not applicable. It is pleaded that environmental clearance is necessary only for mining lease and not for short term permit. In the above Writ Petition reference order dated 26.05.2014 has also been made by the learned Single Judge for hearing the matter by a Division Bench.

19. W.P(C).No.7109 of 2014 has been filed by the petitioner seeking a mandamus directing the respondents not to interfere in the business of the petitioner in mining sand with the help of mechanised devices.

20. W.P(C) No.15442 of 2014 has been filed for quashing Exhibit P12 order of the District Collector by which order the District Collector informed the petitioner that obtaining environmental clearance is obligatory. The petitioner was granted quarrying permit dated 07.05.2014 to remove granite building stone. Stop memo was issued to the petitioner, against which the

petitioner filed a Writ Petition and this Court directed the District Collector to consider the petitioner's application after obtaining environmental clearance from SEIAA. A counter affidavit has been filed by the District Collector stating that quarrying shall affect the wild life and human population.

21. W.P(C).No.10738 of 2014 has been filed to quash the time limit in Exhibits P2 and P3 and to quash Exhibit P8 refusing extension of time. The petitioner was granted mining permit on 28.03.2014 for a period upto 10.04.2014 to extract ordinary earth. The petitioner submitted representation to extend the period mentioned in Exhibits P2 and P3. The District Collector passed order on 04.04.2014 that quarrying permit cannot be granted, since environmental clearance is required. A counter affidavit has been filed by the Geologist, wherein it has been stated that as per Government Order dated 21.02.2014 environmental

clearance is obligatory for granting quarrying permit.

22. The fourth group of Writ Petitions consist of Writ Petitions, which have been filed by the quarry owners/mining permit holders/mining lease holders seeking police protection. In all the Writ Petitions, the petitioners have claimed that they are carrying on quarrying operations under the mining permit/mining lease granted by the State and the private respondents are causing hindrance and obstruction in running their quarry. Consequently, police protection be allowed to them to carry on their mining operation. For deciding this group of Writ Petitions, it shall be sufficient to note the facts in W.P(C).No.26453 of 2014.

23. The petitioner in W.P(C).No.26453 of 2014 claims to have been granted quarry permit on 30.10.2013 in 6 acres and 20 cents of land. The petitioner was granted quarrying permit to extract laterite building stone. The petitioner's case is that when

the petitioner started quarrying activities, respondents 4 to 10 began to create obstruction. They stopped the lorries carrying the mining stones and demanded payment of Rs.500/- per lorry. The petitioner also filed a suit, O.S.No.843 of 2011, in which permanent prohibitory injunction was granted. The Special Government Pleader has filed adoption memo to adopt the counter affidavit filed in W.P(C).No.6338 of 2014. In the Writ Petition the learned Single Judge has made a reference dated 12.03.2014 as noted above.

24. Group-V Writ Petitions consist of three miscellaneous matters, being W.P(C) Nos.4662 of 2014, 2636 of 2015 and W.A. No.1566 of 2014. In W.P(C) No.4662 of 2014 the petitioners have prayed for writ of certiorari quashing Exhibit P8 order dated 26.06.2013 of the District Collector rejecting the application of the petitioner for no objection certificate to manufacture bricks. The petitioner claims to be owner of 1.52 cents of

garden land and carrying on business of manufacture of bricks. The Tahsildar directed stoppage of the unit. The petitioner made an application for no objection certificate, which was rejected. The District Collector filed a counter affidavit. The Special Government Pleader has filed adoption memo to adopt the counter affidavit filed in W.P(C).No.6338 of 2014.

25. W.P(C).No.2636 of 2014 has been filed by the petitioners seeking mandamus directing the second respondent to consider and dispose of Exhibits P7, P8 and P9, i.e., objections/suggestions about the draft notification of Kerala Minor Mineral Concession Rules after giving an opportunity to the petitioners. The petitioner has prayed for a writ of prohibition prohibiting the respondents from publishing the final notification in pursuance of the draft Rule, Exhibit P5 before considering the objection.

26. W.A.No.1566 of 2014 has been filed by the



appellant against the judgment dated 23.01.2014 passed in W.P(C).No.11478 of 2013. The Writ Petition was filed by the petitioner challenging the decision of the Panchayat dated 07.03.2014, Exhibit P18 rejecting the petitioner's application for issuance of licence to conduct the quarry. The learned Single Judge dismissed the Writ Petition. The Panchayat had filed a counter affidavit in the Writ Petition, where it referred to the decision dated 07.03.2013 of the Panchayat that granting quarry licence shall be disturbance to the public and shall cause danger to the residents and people.

27. In some of the Writ Petitions application for impleadment has been filed by various quarrying/lease/mining permit holders as well as associations. Some of the applicants were allowed to be impleaded, whereas others have been permitted to intervene in the matter. We have also heard the learned



counsel appearing for the additional respondents in different Writ Petitions as well as the intervenors.

28. We have heard Sri.P.B.Sahashranaman, Sri.P.Chandrasekhar, Sri.Bechu Kurian Thomas, Sri.P.Chandrasekhar, Sri.George Varghese Perumpallikuttiyil, Sri.P.B.Krishnan, Sri.Paul K.Varghese, Sri.H.Badaruddin and Sri.Abraham Mathew Vettoor learned counsel appearing for the petitioners in different Writ Petitions. We have also heard Sri.George Poonthottom, Shri P.K.Suresh Kumar, Senior Counsel Sri.Babu Joseph Kuruvathazha, Sri.Joby Jose Kondody, Sri.Jacob P.Alex and Sri.Mathew Kuzhalanadanand Sri.P.Viswanathan, learned counsel appearing for the respondents and also learned counsel for the intervenors.

29. Shri P.B.Sahashranaman, learned counsel appearing for the petitioner in the leading Writ Petition (public interest litigation), W.P(C).No.31148 of 2014,

contended that existing mining operations being conducted in the State of Kerala have caused a serious threat to the ecology and environment in the State. He submitted that the Apex Court, finding that excessive minings are done by showing small extent of land, which cause severe damage to the environment, has issued several directions in **Deepak Kumar's case** (supra). The Apex Court directed in the said judgment that no mining lease or renewal be granted without obtaining environmental clearance. It is submitted that in view of the amendments made in Section 14 of 1957 Act by 1986 Amendment, mining operations can be carried out only by mining lease. Section 4 of the 1957 Act contemplates mining by lease only and permits are contemplated for reconnaissance operations. The 1967 Rules contain provisions for issuance of permit for mining, which practice is now continued even after amendment of the 1957 Act. All permits issued under

the 1957 Act are contrary to Section 4 of the 1957 Act. The issuance of permit or licence for mining operations are prohibited by law. The directions issued by the Supreme Court in **Deepak Kumar's case** (supra) are being subverted in granting permits for mining operations by the State of Kerala. The Government orders dated 23.11.2012 and 11.12.2012 issued by the State of Kerala are in violation of the judgment of the Apex Court in **Deepak Kumar's case** (supra). The Government of India, Ministry of Environment and Forest has issued order dated 18.05.2012, Exhibit P1 invoking power under Section 5 of the 1986 Act, which directions require environmental clearance for mining operations even for an area less than 5 hectares. The State Government is bound to follow the notifications made in the 1986 Act and the orders issued by the Government India. The Government Orders issued by the State from time to time are violating the rights guaranteed under

Articles 21, 48 and 51A of the Constitution of India. It is the duty of the State to protect the environment from excessive mining, which will destroy the natural resources. The submission further is that the judgment of the Apex Court in **Deepak Kumar's case** (supra) prohibited all kinds of mining operations after issuance of the judgment without issuing environmental clearance and the said judgment is fully applicable to the mining lease granted even prior to the judgment of the Apex Court regarding the area less than 5 hectares. Other learned counsel appearing for the petitioners in the Writ Petitions challenging the quarrying operations by lease holders/permit holders have also raised similar submissions.

30. Shri P.B.Krishnan, learned counsel appearing for the petitioner in the public interest litigation, W.P(C). No.4471 of 2015 has contended that the 2015 Rules dated 07.02.2015 are not in accordance with the

directions issued by the Supreme Court in **Deepak Kumar's case** (supra). He submits that the prescription as contained in Rule 33 when read along with Rule 66 is that quarry lease holders may take environmental clearance only on the expiry of the existing lease period is defeating the very objectives sought to be achieved through the orders issued by the Government of India, Ministry of Environment and Forests. It is submitted that under Rule 68, mining operations are to be undertaken only in accordance with the mining plan, hence the mining plan is a condition precedent for carrying out any mining operation. He submitted that the period of two years granted for submission of the mining plan by the existing lease holders/permit holders is violative of the provisions of the 1986 Act and the direction of the Apex Court in **Deepak Kumar's case** (supra). The learned counsel submitted that although he does not press for striking

down the 2015 Rules, but Rule 68 has to be given overriding effect on other provisions of the Rule and it may be declared that no quarrying/mining operations be undertaken without there being duly approved mining plan. He submitted that interpretation of Rule 68 in the above manner shall protect the environment and ecology.

31. Learned counsel for the lease holders/permit holders refuted the above submission. It is submitted that the judgment of the Apex Court in **Deepak Kumar's case** (supra) cannot be made applicable with regard to the existing leases/permits. It is submitted that the directions in the above judgment are only with regard to mining leases to be granted/renewed after the judgment. It is further submitted that the Apex Court in the said judgment directed the State Government to frame requisite Rules as per the directions and the Rules having been framed, namely,

2015 Rules, the direction has come to an end and further steps regarding grant of mining lease/mining permit are to be undertaken in accordance with the 2015 Rules. It is submitted that Section 15, apart from mining lease, contemplates other “mineral concessions”. Mineral concessions include mining permits also. Hence, the State Government was fully entitled to grant mining permits in accordance with the 1957 Act and no exception can be taken to the right of the State to grant mining permit in accordance with the 1957 Act. It is further submitted that the judgment of the Apex Court in **Deepak Kumar's case** (supra) was only with regard to mining leases and the Apex Court did not intend that environmental clearance be obtained with regard to short term permits, which are issued only for short period. It is submitted that mining operations by leases/permits be permitted to continue as per the 2015 Rules.

32. Shri Bechu Kurian, learned counsel for the petitioners/quarry owners submitted that the notification dated 14.09.2006 is applicable only with regard to new activities. It is submitted that the notification dated 14.09.2006 was not applicable to existing leases/permits and the existing mining activities. It is submitted that since the notification dated 14.09.2006 envisages obtaining prior environmental clearance, which clearly means that environmental clearance is to be obtained before starting mining operations. Thus, the notification was applicable only with regard to new activities, which were to come after the issuance of the notification.

33. The learned Advocate General Sri.K.P.Dandapani and the Senior learned Government Pleader Sri.C.S.Manilal, appearing for the State, placing reliance on the 2015 Rules, submit that the 2015 Rules comply the conditions contained in **Deepak Kumar's**

case (supra) regarding different aspects. They b refers to the counter affidavit filed in W.P(C).No.6338 of 2014, which has been filed in the leading Writ Petition also, wherein it is pleaded that various directions regarding the size of the mining lease area, minimum period of mining lease, requirement of mining plan, formation of corpus fund for requirement and rehabilitation of mined areas, depth of mining and other conditions have been fully complied with. He submitted that under the 2015 Rules, now the State has provided for mining lease/quarrying permit. It is submitted that both for quarrying permit and mining lease the requirement of obtaining environmental clearance as per notification dated 14.09.2006 has been provided for, which fully complies with the requirement of law. For renewal of quarrying lease environmental clearance is also insisted in the Rules. It is submitted that the 2015 Rules fully comply with the directions of the Apex Court and Rules

are comprehensive including of environmental aspects. He submitted that in view of framing of 2015 Rules, the direction of the Apex Court in **Deepak Kumar's case** (supra) has come to an end, since all directions are only for the interregnum period till the Rules are framed by the State. He further submitted that in view of the 2015 Rules, the questions, which have been referred by the learned Single Judge vide order dated 12.03.2014 have become academic only. It is not necessary to consider those issues for the purpose of these Writ Petitions.

34. Shri P.Raveendran, learned Senior Counsel appearing for the Association contended that since the notification dated 14.09.2006, environmental clearance is contemplated for area more than 5 hectares, the leases or mining permits for an area less than 5 hectares are statutorily excluded and the notification is not applicable with regard to an area less than 5

hectares. The notification dated 14.09.2006 can be modified only by a similar notification and no notification having been issued by the Central Government under the 1986 Act modifying or amending the notification dated 14.09.2006, including an area less than 5 hectares, there is no statutory requirement of obtaining environmental clearance for the area less than 5 hectares.

35. Shri George Poonthottam, learned counsel for the permit holders/intervenors submitted that the prescription in the proviso to Rule 12 of the 2015 Rules that environmental clearance required under Rule 9 shall not be insisted in the case of renewal of quarrying permits in respect of quarrying which had a valid permit as on 09.01.2015 causes prejudice to those permit holders, whose permits had come to an end prior to 2015. He submitted that mining permits are fully permissible by virtue of Section 15 of the 1957 Act. He

also submitted that permits are given for a small area and only for a period of one year, for which no environmental clearance is contemplated under notification dated 14.09.2006 or in the judgment of the Apex Court in **Deepak Kumar's case** (supra). Persons having less than 5 hectares area are disabled to make any application for environmental clearance.

36. Shri P.K.Suresh Kumar, learned counsel appearing for the existing lease holders submitted that the notification dated 14.09.2006 applies only to existing projects/activities for modernization and expansion and has no application on existing leases/permits. He submitted that all laws are to be presumed to be prospective unless there is something to indicate to the contrary.

37. Shri Bhagavat Singh, learned counsel appearing for respondents 9 and 10 in W.P(C).No.6338 of 2014 submitted that the State Level Environmental

Impact Assessment Authority has been absolved in the State with effect from 02.11.2014 and till date no authority has been created by the Central Government. He referred to various paragraphs of the notification dated 14.09.2006 and submitted that the said notification is not applicable to the existing permits and mining leases.

38. Learned counsel for the parties have also referred to various orders passed by the National Green Tribunal and various judgments of the Apex Court as well as this Court, which shall be referred to while considering the submissions in detail.

39. We have considered the submissions of learned counsel for the parties and perused the records.

40. From the submissions made by learned counsel for the parties and pleadings on record, following are the issues which arise for consideration in this bunch of cases:



Issues referred by learned Single Judge
by reference order dated 12.03.2014:

- I. **Whether even in the case of existing quarrying/mining permits environmental clearance from the competent authority, viz., the Ministry of Environment and Forests in respect of lands having an extent of more than five hectares and from the State Environmental Impact Assessment Authority in respect of lands having an extent of less than five hectares be obtained before exploiting the quarrying permit?**

- II. **Whether the Government order dated 10.01.2014 can be relied on by the petitioners, in view of the interim order passed by the National Green Tribunal dated 27.09.2013?**



III. What is the impact of the amendment to Section 14 of the Mines and Minerals (Development and Regulation) Act, 1957 by Act 37/1986 with effect from 10.02.1987, by which amendment Section 4 of the Act has been made applicable to minor minerals?

(Other issues)

IV. Whether the judgment of the Apex Court in Deepak Kumar's case (supra) contemplated environmental clearance for an area of less than five hectares with regard to the existing mining leases and mining permits on the date of the judgment or the judgment mandated obtaining of environmental clearance before grant of fresh mining lease/mining permit/renewal of lease?

V. Whether environmental clearance as contemplated by Notification dated 14.09.2006 issued under the Environmental Protection Act, 1986 requires environmental clearance for new projects/new activities or shall also govern the existing projects/activities?

VI. Whether environmental clearance as per Notification dated 14.09.2006 and the order dated 18.05.2012 issued by the Government of India, Ministry of Environment and Forests, is required for grant of short term mining permit also?

VII. Whether the interim directions issued by the Apex Court in Deepak Kumar's case (supra) dated 27.02.2012 were limited to the event of framing of

appropriate Rules by the State Government under Section 15 of the 1957 Act?

VIII. Whether as per Rule 68 of 2015 Rules no quarrying operations can be carried out without there being an approved mining plan and Rule 68 did not contemplate any exception and has to be interpreted to the effect that after enforcement of the Rule with effect from 07.02.2015 all quarrying operations have to be done under approved mining plan?

IX. To what reliefs the petitioners of different groups in this bunch of Writ Petitions are entitled?

41. Issue Nos.I and IV to VI being interconnected are taken together:

Before we enter into the rival submissions of the parties it is useful to refer to the relevant statutory provisions. The Parliament enacted the Mines and Minerals (Development and Regulation) Act, 1957 to provide for the development and Regulations of mines under the control of the Union. Section 3 is the definition clause. Section 3(e) defines minor minerals. Section 4 of the Act provides for prospecting or mining operations to be under licence or lease. Section 4(1) is quoted as below:

"4. *Prospecting or mining operations to be under licence or lease.*-(1) No person shall undertake any reconnaissance, prospecting or mining operations in any are, except under an in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in

any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

.....”

Section 4A was inserted in the 1957 Act providing for termination of prospecting licences or mining leases where the Central Government is of the opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment it is necessary for premature termination of a prospecting licence or mining lease. Section 14 of the 1957 Act prior to 10.02.1987 provided that provisions of Sections 4 to 13 shall not apply to minor minerals which Section was amended by Act 37 of 1986 with effect from 10.02.1987. Amended Section 14 is as follows:

“14. Sections 5 to 13 not to apply to minor minerals.-The provisions of sections 5 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals.”

Section 15 of the 1957 Act empowered the State Government to frame Rules in respect of minor minerals. Section 15(1) provided that the State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. Section 15(1) was amended by Act 56 of 1972. Section 15(1) as amended provided as follows:

"15. Power of State Governments to make rules in respect of minor minerals.-(1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith."

Section 15(1A) was inserted by Act 37 of 1986. Relevant provisions for the purpose of this case are quoted below:

"(1A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the person by whom and the manner in which, applications for quarry leases, mining leases or

other mineral concessions may be made and the fees to be paid therefor.

(d) the terms on which and the conditions subject to which quarry leases, mining leases or other mineral concessions may be granted or renewed.

(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions.”

The State of Kerala in exercise of the powers under Section 15 of the 1957 Act framed the Kerala Minor Mineral Concession Rules, 1967. Rules were framed for regulating extraction of minor minerals in the State of Kerala.

42. Although by amendment made in 1972 by insertion of Section 4A, the Central Government took power to take action for termination of mining lease for preservation of natural environment but the said provisions were not sufficient to keeping check on mining operations and consequent adverse impact on environment and ecology. The Central Government noticed that there has been substantive decline in

environment quality due to increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals etc. India was signatory to the United Nations Conference in the Human Environment held in Stockholm in June, 1972 where decisions were taken based on the world community's resolve to protect and enhance the environmental quality. The Parliament enacted the Environment (Protection) Act, 1986 to provide for protection and improvement of environment and matters connected therewith. Section 3 of the 1986 Act empowered the Central Government to take measures to protect and improve environment. Section 3(1) is quoted as below:

"3.Power of Central Government to take measures to protect and improve environment.-(1)
Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the

environment and preventing controlling and abating environmental pollution."

Section 5 empowered the Central Government to give directions. Section 5 of the 1986 Act is quoted as below:

"5. Power to give directions.- Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions."

In exercise of the powers under Sections 6 and 25 of the 1986 Act, Environment (Protection) Rules, 1986 have been framed by the Central Government. Rule 5 provided for prohibition and restriction on the location of industries and the carrying on processes and operations in different areas. In exercise of the power under clause (a) of Rule 5(3), Notification was issued by the Central Government inviting objections from the public with the intention to impose prohibitions and restrictions on the expansion and modernization of any

activity or new projects. After considering the objections in exercise of the power under Section 3(1) and (2) of the 1986 Act as well as Rule 5(3) of the 1986 Rules, the Central Government issued Notification dated 27.01.1994 prohibiting expansion or modernization of any activity or new project listed in the Schedule unless it has been accorded environmental clearance by the Central Government. Schedule I of the Notification mentioned list of project requiring environmental clearance from the Central Government. Item No.20 is Mining Projects which was to the following effect:

"20. Mining projects (major minerals) with leases more than 5 hectares"

43. Another Notification dated 14.09.2006 was issued by the Central Government in exercise of the power under Rule 5(3) the 1986 Rules in supersession of Notification dated 27.01.1994 where restriction was imposed on construction of new projects or activities or the expansion or modernization of existing projects or

activities which were to be undertaken only after prior environmental clearance from the Central Government or State Government as the case may be by the State Level Environment Impact Assessment Authority. Paragraph 2 of the Notification required for prior environmental clearance. Schedule to the Notification included at Item No.1(a) "mining of minerals". Properties were categorized into A and B and mining of minerals of an area of less than 50 hectares and more than 5 hectares were included in category B.

44. Then came the judgment of the Apex Court in **Deepak Kumar and Others v. State of Haryana and Others** ([2012] 4 SCC 629) where the Apex Court considering the Notification dated 14.09.2006 and considering Articles 21, 48A and 51A(g) of the Constitution of India and other relevant law issued directions that "leases of minor mineral including their renewal for an area of less than five hectares be granted

by the States/Union Territories only after getting environmental clearance from the Ministry of Environment and Forests". Various issues arose in different States regarding the effect of judgment of the Apex Court in **Deepak Kumar's case** (supra) and the consequence of Notification dated 14.09.2006. Various issues arising in this bunch of Writ Petitions as noted above centres around the Notification dated 14.09.2006 and the directions issued by the Apex Court in **Deepak Kumar's case (supra)** which shall be hereinafter noted in detail.

45. The first issue which is to be considered is as to whether Notification of dated 14.09.2006 contemplated obtaining environmental clearance even for existing projects and activities or it only confined to new projects or activities which were to be undertaken after the issuance of the Notification.

46. Answer to the issue is to be found out from the

Notification itself. What was the legislative intent has to be reflected in the statutory scheme and the court is to find out the statutory intendment therefrom.

47. As noted above, Section 3(1) of the 1986 Act empowered the Central Government to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and controlling the environmental pollution. Rule 5 of the 1986 Rules empowered the Central Government to prohibit and restrict location of industries and the carrying on process and operations in different areas. Rule 5(3) and (4) which are relevant are quoted below:

"5(3)(a) Whenever it appears to the Central Government that it is expedient to impose prohibition or restrictions on the location of an industry or the carrying on the processes and operations in an area, it may, by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, given notice of its intention to do so.

(b) Every notification under clause (a) shall give

a brief description of the area, the industries, operations processes in that area about which such notification or restrictions on the location of the industries and carrying on of processes or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restriction on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d) The Central Government shall, within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette, consider all the objections received against such notification and may within five hundred and forty five days from such date of publication impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.

(4) Notwithstanding anything contained in sub-rule 93), wherever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3)".

Statutory provisions thus fully empowered the Government to prohibit carrying on of any process or operation after issuance of notification. As noted above in exercise of the said power notification dated

27.01.1994 was issued which provided that mining projects (major minerals) more than 5 hectares requires environmental clearance from the Central Government. The said notification did not cover the mining of minor minerals. Then came the 2006 Notification by which mining of minor minerals has been taken within the Notification irrespective of whether the mineral is minor or major. It is useful to extract the following portion of the Notification containing directions of the Central Government:

"Now, therefore, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1987 and in supersession of the notification S.O. 60 (E) dated the 27th January, 1994, except in respect of things done or omitted to be done before such supersession, the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the schedule to this notification entailing capacity addition with change in

process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section 3) of Section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification.

Paragraph 2 of the Notification which is relevant is also quoted hereunder:

"2. Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category B in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this notification;

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or

activities which cross the threshold limits given in the Schedule, after expansion or modernization.

(iii) Any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range.

However, modernization or expansion proposals without any increase in pollution load, and without any additional water and/or land requirement are exempted from the provisions of this notification:

Provided that, a self certification, stating that the proposal shall not involve any additional pollution load, waste generation or water requirement, be submitted to the regulatory authority by the project proponent."

Paragraph 7 of the Notification deals with Stages in the Prior Environmental Clearance (EC) Process for New Projects. It is useful to quote paragraph 7(i):

"7. Stages in the Prior Environmental Clearance (EC) Process for New Projects:- 7(i) *The environmental clearance process for new projects will comprise of a maximum of four stages, all of which may not apply to particular cases as set forth below in this notification. These four stages in sequential order are:-*

Stage (1) Screening (Only for Category 'B' projects and activities)

Stage (2) Scooping

Stage (3) Public Consultation

Stage (4) Appraisal"

The Schedule of Notification dated 14.09.2006 contains various headings. The first heading provided for Mining, extraction of natural resources and power generation (for a specified production capacity). Item 1(a) which relates to mining of minerals relevant for the present case is quoted as below:

<i>"1(A) Mining of minerals</i>	<i>>50 ha of mining instead of non-coal mine</i>	<i><50ha> 5ha of mining leases area in respect of non-coal mine lease"</i>
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Schedule of the Notification was amended from time to time. The Schedule as amended vide SO 2896(E) dated 13.12.2012 against column No.5 of item 1(a) to the following effect:

"General Conditions shall apply. Note: (i) Prior environmental clearance is required at the stage of renewal of mine lease for which application shall be made upto two years prior to the date due for renewal. Further, a period of two years with effect from the 4th April, 2011 is provided for obtaining environmental clearance for all those mine leases, which were operating as on the 4th April, 2011 which requisite valid

environmental clearance and which have fallen due for renewal or after the 4th November, 2011. (ii) Mineral prospecting is exempted.”

Relevant provisions of Notification dated 14.09.2006 as extracted above contained the following directions:

“....the Central Government hereby directs that on and from the date of its publication the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance.....”

Although the Notification used two words “construction of new projects or activities” before the word 'projects', the word 'new' is added but whether the word 'activities' was also be read in the conjunction with new is the issue to be answered. Clarification of the above issue is contained in paragraph 2 of the Notification which contains heading “Requirements of prior Environmental Clearance”. Paragraph 2 begins with the words “the following projects or activities shall require

prior environmental clearance. The word 'project' or 'activity' is not suffixed with the word 'new'. However, projects have been detailed in paragraph 2(i) to (iii). Paragraph 2(i) refers to 'all new projects or activities listed in the Schedule to this notification and paragraph 2(ii) relates to "Expansion and modernization of existing projects or activities". Thus paragraph 2(i) relates to all projects or activities and paragraph 2(ii) relates to expansion or modernization of existing projects or activities. Thus new projects or activities or existing projects or activities have been differently dealt with whereas for existing projects or activities environmental clearance is contemplated in the event of expansion and modernization whereas for new projects or activities environmental clearance is contemplated before carrying out mining operations.

48. There are no words in the Notification which may indicate that the Notification intend to stop all

existing projects or activities.

49. On the statutory interpretation, learned counsel for the parties cited various judgments on Interpretation of Statutes which are relevant to be referred to. In **M.K.Ranganathan and another v. Govt. of Madras and others** (AIR 1955 SC 604) the following was laid down in paragraph 21:

21. It is a well-recognised rule of construction that "when two or more words which are susceptible of analogous meaning are coupled together noscuntur a sociis. They are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general" (Maxwell on Interpretation of Statutes-Edn. 10. p. 332). The Judicial Committee of the Privy Council also expressed itself in similar terms in -'Angus Robertson v. George Day', (1879) 5 AC 63 at p 69 (E):

"It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them'. Having regard therefore to the context in which these words "any sale held without leave of the Court of any of the properties" have been used in juxtaposition with "any attachment, distress or execution put into force without leave of the Court against the estate or effects " it would be a legitimate construction to be put upon them that they refer only to sales held through the intervention of the

Court and not to sales effected by the secured creditor outside the winding up and without the intervention of the Court."

Here the two words "projects and activities" are used together with prefix 'new'. The above statutory interpretation laid down by the Apex Court is fully attracted while interpreting the above notification. To the similar effect is the judgment of the Apex Court in **The State of Bombay and others v. The Hospital Mazdoor Sabha and others** (AIR 1960 SC 610) wherein the following was laid down in paragraph 9:

"9. It is, however, contended that, in construing the definition, we must adopt the rule of construction noscuntur a sociis. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in "words and Phrases" (Vol. XIV, p. 207):

"Associated words take their meaning from one another under the doctrine of noscuntur a sociis, the philosophy of which is that the meaning of a doubtful word may be

ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim Ejustdem Generis." In fact the latter maxim "is only an illustration or specific application of the broader maxim noscuntur a sociis". The argument is that certain essential features or attributes are invariably associated with the words "business and trade" as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that noscuntur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the Legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service. As has been observed by Earl of Halsbury, L. C, in Corporation of Glasgow v. Glasgow Tramway and Omnibus Co. Ltd., 1898 AC 631 at p. 634, in dealing with the wider words used in S. 6 of Valuation of Lands (Scotland) Act, 1854,

"the words 'free from all expenses whatever in

connection with the said tramways' appear to me to be so wide in their application that I should have thought it impossible to qualify or cut them down by their being associated with other words on the principle of their being ejusdem generis with the previous words enumerated".

If the object and scope of the statute are considered there would be no difficulty in holding that the relevant words of wide import have been deliberately used by the Legislature in defining "industry" in S. 2(j). The object of the Act was to make provision for the investigation and settlement of industrial disputes, and the extent and scope of its provisions would be realised if we bear in mind the definition of "industrial dispute" give by S. 2(k), of "wages" by S. 2(rr), "workman" by S. 2(s), and of "employer" by S. 2(g). Besides, the definition of public utility service prescribed by S. 2(m) is very significant. One has merely to glance at the six categories of public utility service mentioned by S. 2(m) to realise that the rule of construction on which the appellant relies is inapplicable in interpreting the definition prescribed by S. 2(j)."

Learned counsel appearing for the quarry owners further contended that the provisions of Notification dated 14.09.2006 cannot be held to have any retrospective operation. It is contended that all

provisions have to be read as prospective unless there is any indication in the statute to give it retrospective operation. Paragraph 4 of the Judgment of the Apex Court in **Arjan Singh and another v. State of Punjab and others** (AIR 1970 SC 703) has been relied on which is quoted as below:

"4. It is a well-settled rule of construction that no provision in a statute should be given retrospective effect unless the legislature by express terms or by necessary implication has made it retrospective and that were a provision is made retrospective, case should be taken not to extend its retrospective effect beyond what was intended."

To the similar effect is the judgment of the Apex Court in **Zile Singh v. State of Haryana** ([2004] 8 SCC 1) and **Shanker Raju v. Union of India** ([2011] 2 SCC 132) where the following has been laid down in paragraph 35:

"35. We may also add that where the Legislature clearly declares its intent in the scheme of a language of Statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy and without engrafting, adding or implying anything which is not

congenial to or consistent with such express intent of legislature. Hardship or inconvenience cannot alter the meaning employed by the Legislature if such meaning is clear on the face of the Statute. If the Statutory provisions do not go far enough to relieve the hardship of the member, the remedy lies with the Legislature and not in the hands of the Court."

A clarification issued by the Government of India on 02.07.2007 with regard to Notification dated 14.09.2006 throws considerable light over the intendment of the Notification. Federation of Mining Associations of Rajasthan and others have raised concerns regarding application of Notification dated 14.09.2006 to mining leases of 5 hectares for major minerals and mining leases of minor minerals which have been in operation before the Notification. The matter was examined by the Government of India, Ministry of Environment & Forests (IA Division) and Circular dated 2nd July, 2007 was issued which is relevant to quote:

"No.J-15012/25/2007-IA.II(M)-Part
Government of Indian
Ministry of Environment & Forests
(IA Division)

Paryavaran Bhavan
C.G.O. Complex, Lodi Road,
New Delhi-110003
Telefax: 24362434
Dated the 2nd July, 2007

CIRCULAR

Sub: Clarification regarding applicability of EIA Notification, 2006 on mining leases of 5 hectare (major minerals) and mining leases of minor minerals which have been operating before 14.9.2006 - Regarding.

Federation of Mining Associations of Rajasthan and others have raised concerns regarding applicability of EIA Notification dated 14th September, 2006 to mining leases of 5 ha for major minerals and mining leases of minor minerals which have been in operation before the said Notification coming into force. The matter has been examined in the Ministry.

It is clarified that all such mining projects which did not require environmental clearance under the EIA Notification, 1994 would continue to operate without obtaining environmental clearance till the mining lease falls due for renewal, if there is no increase in lease area and/or there is no enhancement of production. In the event of any increase in lease area and or production, such projects would need to obtain prior environmental

clearance. Further, all such projects which have been operating without any environmental clearance would obtain environmental clearance at the time of their lease renewal even if there is no increase either in terms of lease area or production.

(S.K. Aggarwal)

Director"

50. Government of India, Ministry of Environment and Forests clarified that all such mining projects which did not require environmental clearance under the EIA Notification, 1994 would continue to operate without obtaining environmental clearance till the mining lease falls due for renewal. As noted above, in the 1994 Notification mining of minor mineral was not included. Thus for mining activity regarding minor mineral no environmental clearance was required under the 1994 Notification. Hence by clarification existing minor leases were to continue till renewal of mining lease falls due. Thus for existing leases, the Central Government clarified that environmental clearance has to be

obtained when renewal falls due. In view of the aforesaid discussion, we accept the argument of the learned counsel appearing for the quarry owners that Notification dated 14.09.2006 was not applicable with regard to lease of minor minerals which were in existence on the date of issuance of the Notification dated 14.09.2006.

51. In the above context, judgment of the Apex Court in **Deepak Kumar's case** (supra) has also to be referred to. As noted above, the EIA Notification only covered lease areas of 5 hectares or more. The Apex Court considered the action of the State of Haryana which issued auction notice on 03.06.2011 proposing to auction the extraction of minor minerals of an area not exceeding 4.5 hectares in different districts. The Apex Court noted the serious environmental impact of quarrying, mining and removal of sand from instream and upstream of several rivers. The Apex Court noted

that it is without conducting any study on the possible environmental impact auction notices were issued. The following was laid down in paragraphs 10 and 11:

"10. We are expressing our deep concern since we are faced with a situation where the auction notices dated 3.6.2011 and 8.8.2011 have permitted quarrying mining and removal of sand from in - stream and upstream of several rivers, which may have serious environmental impact on ephemeral, seasonal and perennial rivers and river beds and sand extraction may have an adverse effect on bio - diversity as well. Further it may also lead to bed degradation and sedimentation having a negative effect on the aquatic life. Rivers mentioned in the auction notices are on the foothills of the fragile Shivalik hills. Shivalik hills are the source of rivers like Ghaggar, Tangri, Markanda etc. River Ghaggar is a seasonal river which rises up in the outer Himalayas between Yamuna and Satluj and enters Haryana near Pinjore, District Panchkula, which passes through Ambala and Hissar and reaches Bikaner in Rajasthan. River Markanda is also a seasonal river like Ghaggar, which also originates from the lower Shivalik hills and enters Haryana near Ambala. During monsoon, this stream swells up into a raging torrent, notorious for its devastating power, as also, river Yamuna.

11. We find that it is without conducting any study on the possible environmental impact on / in the river

beds and else - where the auction notices have been issued. We are of the considered view that when we are faced with a situation where extraction of alluvial material within or near a river bed has an impact on the rivers physical habitat characteristics, like river stability, flood risk, environmental degradation, loss of habitat, decline in biodiversity, it is not an answer to say that the extraction is in blocks of less than 5 hectares, separated by 1 kilometre, because their collective impact may be significant, hence the necessity of a proper environmental assessment plan."

The Apex Court noted that the Ministry of Environment and Forests came across several instances across the country regarding damage to lakes, riverbeds and groundwater leading to drying up of waterbeds and causing water scarcity on account of quarrying/mining leases and mineral concessions granted by the State Governments. The Ministry of Environment and Forests, taking note of those aspects constituted a Core Group to look into the environmental aspects which Core Group submitted its recommendations to the Ministry of Environment and Forests. The recommendations given

by the Core Group have been extracted by the Apex Court in paragraph 19 of the judgment conclusion of which is to the following effect:

19. *For an easy reference, we may extract the issues and recommendations made by the MoEF, which are as follows:*

"4.0 ISSUES AND RECOMMENDATIONS

.....

5.0 Conclusion:

Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals. However, the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments "location of any eco - fragile zone(s) within the impact zone of the proposed mining area, the linked Rules / Notifications governing such zones and the judicial pronouncements, if any, need be duly noted. The Union Ministry of Mines along with Indian Bureau of Mines and respective State Governments should therefore make necessary provisions in this regard under the Mines and

Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States. " (emphasis supplied)"

The Apex Court noted the recommendation that the State/Union Territories have to ensure that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved mining plan. The following was observed in paragraphs 21 and 24:

"21. Further, it was also recommended that States, Union Territories would see that mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of mined out areas. Mining Plan should take note of the level of production, level of mechanisation, type of machinery used in the mining of minor minerals, quantity of diesel consumption, number of trees uprooted, export and import of mining minerals, environmental impact, restoration of flora and host of other matters referred to in 2010 rules. A proper

framework has also to be evolved on cluster of mining of minor mineral for which there must be a Regional Environmental Management Plan. Another important decision taken was that while granting of mining leases by the respective State Governments, location of any eco - fragile zone(s) within the impact zone of the proposed mining area, the linked Rules / Notifications governing such zones and the judicial pronouncements, if any, need to be duly noted.

24. We are of the view that all State Governments / Union Territories have to give due weight to the above mentioned recommendations of the MoEF which are made in consultation with all the State Governments and Union Territories. Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and bio - diversity point of view and therefore the State Governments have to frame proper rules in accordance with the recommendations, under S.15 of the Mines and Minerals (Development and Regulation) Act, 1957."

The Apex Court emphasised about an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resources. The Apex Court further noted that the State of Haryana and

other States have not so far implemented the above recommendations of the Ministry of Environment and Forests and the guidelines issued by the Ministry of Mines before issuing the auction notices. The Apex Court directed all states/Union Territories to give effect to the recommendations of the Ministry of Environment and Forests in its report of March, 2010. The following was laid down by the Apex Court in paragraphs 26 and 27:

"26. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also evolve a long term rational and sustainable use of natural resource base and also the bio - assessment protocol. Sand mining, it may be noted, may have an adverse effect on bio - diversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, taking note of those technical, scientific and environmental matters, MoEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of

Art.48A, Art.51A(g) read with Art.21 of the Constitution.

27. The State of Haryana and various other States have not so far implemented the above recommendations of the MoEF or the guidelines issued by the Ministry of Mines before issuing auction notices granting short term permits by way of auction of minor mineral boulders, gravel, sand etc., in the river beds and elsewhere of less than 5 hectares. We, therefore, direct to all the States, Union Territories, MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March 2010 and the model guidelines framed by the Ministry of Mines, within a period of six months from today and submit their compliance reports."

The Apex Court in the last paragraph of the judgment issued an interim order which is to the following effect:

"We, in the meanwhile, order that leases of minor mineral including their renewal for an area of less than five hectares be granted by the States / Union Territories only after getting environmental clearance from the MoEF."

52. Much of the submissions were also raised before us that whether judgment of the Apex Court in **Deepak Kumar's case** (supra) directed for

obtaining environmental clearance for lease to be granted and renewal to be obtained for areas less than 5 hectares or the said direction also contemplated obtaining environmental clearance for ongoing leases.

53. After the judgment of the Apex Court dated 27.02.2012 in **Deepak Kumar's case** (supra) Government of India, Ministry of Environment and Forests came up with office memorandum dated 18.05.2012. By direction dated 18.05.2012, the Government of India included mining areas of less than 5 hectares under the environment regime as contemplated by Notification dated 14.09.2006. Government of India directed that mining projects with lease area upto less than 50 hectares including projects of minor mineral with lease area less than 5 hectares would be treated as category B. It is useful to quote the entire order of the Government of India dated 18.05.2012:

"No.L-11011/47/2011-IA.II(M)
Government of India
Ministry of Environment & Forests

Paryavaran Bhavan
C.G.O. Complex, Lodi Road,
New Delhi-110003
Telefax: 24362434

Dated the 18th May, 2012

OFFICE MEMORANDUM

Sub: Order of Hon'ble Supreme Court dated 27.2.2012 in I.A. no.12-13 of 2011 in SLP (C) no.19628-19629 of 2009 in the matter of Deepak Kumar etc. Vs State of Haryana and Ors. - Implementation thereof - Regarding.

Reference is invited to the above mentioned order of the Hon'ble Supreme Court directing inter-alia as under:

"We in the meanwhile, order that leases of minor mineral including their renewal for an area of less than 5 ha be granted by the States/UTs only after getting environmental clearance from the MoEF."

2. *The Environment Impact Assessment (EIA) Notification, 2006, as amended, requires mining projects (new projects, expansion or modernization of existing projects as also at the stage of renewal of mine lease) with lease area of 5 ha and above, irrespective of the mineral (major and minor) to obtain prior environment*

clearance under the provisions thereof. Mining projects with lease area of 5 ha and above and less than 50 ha are categorized as category 'B' whereas projects with lease area of 50 ha and above are categorized as category 'A'. The category 'A' projects are considered at the central level in the Ministry of Environment & Forests while category 'B' projects are considered by the respective State/UT Level Environment Impact Assessment Authority, notified by MoEF under the EIA Notification, 2006.

3. *In order to ensure compliance of the above referred order of the Hon'ble Supreme Court dated 27.2.2012, it has now been decided that all mining projects of minor minerals including their renewal, irrespective of the size of the lease would henceforth require prior environment clearance. Mining projects with lease area up to less than 50 ha including projects of minor mineral with lease area less than 5 ha would be treated as category 'B' as defined in the EIA Notification, 2006 and will be considered by the respective SEIAAs notified by MoEF and following the procedure prescribed under EIA Notification, 2006.*

4. *Further, the Hon'ble Supreme Court in its order dated 16.4.2012 in the above mentioned matter and the linked applications has observed as under:*

"All the same, liberty is granted to the applicants before us to approach the Ministry of Environment and Forests for permission to carry on mining below five hectares and in the event of which Ministry will dispose of all the

applications within ten days from the date of receipt of the applications in accordance with law."

Accordingly, the respective SEIAs in dealing with the applications of the applicants referred to in the above mentioned order shall ensure that the directions of the Hon'ble Supreme Court are effectively complied with and the applications of such applicants are disposed of within the time limit prescribed by the Hon'ble Court in accordance with law.

This issues with the approval of the Competent Authority.

Sd/-
(Dr. S.K. Aggarwal)
Director"

54. The above direction of Government of India is clearly referred to its power under Section 5 of the 1986 Act providing for environmental clearance for lease area less than 5 hectares. Thus there remains no doubt that even for lease area less than 5 hectares, after the judgment of the Apex Court in **Deepak Kumar's case** (supra) environmental clearance is required for grant/renewal of mining lease.

55. Question as to whether mining lease for areas

less than 5 hectares which were continuing on the date of the Apex Court Judgment in **Deepak Kumar's case** (supra) required environmental clearance has to be examined looking into the directions issued by the Apex Court as well as the order of the Government of India dated 18.05.2012.

56. Order of the Apex Court in **Deepak Kumar's case** (supra) is in the nature of an interim order which is clear by the words used "in the meanwhile". The order 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 from MoEF. The order thus used the words "be granted" which clearly meant that it referred to the leases to be granted, after the Government of India's order dated 18.05.2012. Paragraph 3 of the order used the word "henceforth" which clearly meant that the order was to

be operated with regard to leases and renewals which were to be granted for an area less than 5 hectares after the issue of the order.

57. One more issue incidental to the above issues need to be considered. One of the submissions which has been raised before us is that both the Notification dated 14.09.2006 and the judgment of the Apex Court in **Deepak Kumar's case** (supra) used the word 'lease', hence neither the Notification dated 14.09.2006 nor the judgment of the Apex Court in **Deepak Kumar's case** (supra) was applicable with regard to mining permits/quarry permits which are granted under the 1967 Rules. As noted above, 1967 Rules have been framed in exercise of the powers under Section 15 of the 1957 Act. Section 15 of the 1957 Act uses the words "quarry leases, mining leases or other mineral concessions" which words were substituted by Act 56 of 1972 with effect from 12.09.1972. Section 15 is thus

clear that the State Government is empowered to make Rules for regulating grant of leases or other mineral concessions. Mining permit is nothing but a mineral concession and included in the words "other mineral concessions". The State was thus fully empowered to grant mining leases of minor minerals including mining permit. Mining operations has been defined in Section 3 (d) as any operations undertaken for the purpose of winning any mineral. Notification dated 14.09.2006 uses the words "mining of minerals". Heading 1 provides "mining, extraction of natural resources....". The Notification cannot be held confined only to mining operation by a mining lease. Mining operation is a wider term which shall include mining operation by any means, i.e., mining lease/quarrying lease/mining permit etc. We thus are of the view that Notification dated 14.09.2006 clearly covered mining operation by mining lease/mining permit/quarry permit. Government of India

by order dated 18.05.2012 having made, obtaining prior environmental clearance mandatory for an area of less than 5 hectares the same shall apply to any kind of mining activity including a mining permit.

58. The Apex Court in **State of T.N. v. M/s.Hind Stone etc.** (AIR 1981 SC 711) has sounded a note of caution that rivers, forests, minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. It was held that every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation. The following was laid down in paragraph 6:

6. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way.

It is in the interest of mankind. It is in the interest of the Nation."

Justice M.N.Venkatachaliah, in *State of Bihar v. Murad Ali Khan & Others* ([1988] SCC 655) has stated that the ecological imbalances and consequent environmental damage have reached to such an alarming state that unless immediate, determined and effective steps are not taken the damage might become irreexisable. It is useful to note the observations made in paragraphs 8 and 9 which are to the following effect:

"8. On a careful consideration of the matter, we are afraid, the approach of and the conclusion reached by the High Court is unsupportable. In regard to the first ground, presumably, certain provisions of the "Act" in regard to cognizability and investigation of offences against the Act, relevant to the matter, had not been placed before the High Court. The policy and object of the Wild Life laws have a long history and are the result of an increasing awareness of the compelling need to restore the serious ecological imbalances introduced by the depradations inflicted on nature by man. The state to which the ecological imbalances and the consequent environmental damage have reached is so alarming that

unless immediate, determined and effective steps were taken, the damage might become irreversible. The preservation of the fauna and flora, some species of which are getting extinct at an alarming rate, has been a great and urgent necessity for the survival of humanity and these laws reflect a last - ditch battle for the restoration, in part at least, a grave situation emerging from a long history of callous insensitiveness to the enormity of the risks to mankind that go with the deterioration of environment. The tragedy of the predicament of the civilised man is that "Every source from which man has increased his power on earth has been used to diminish the prospects of his successors. All his progress is being made at the expense of damage to the environment which he can not repair and cannot foresee." In his foreword to 'International Wild Life Law', H. R. H. Prince Philip. The Duck of Edinburgh said:

"..... Many people seem to think that the conservation of nature is simply a matter of being kind to animals and enjoying walks in the countryside. Sadly, perhaps, it is a great deal more complicated than that"

".....As usual with all legal systems, the crucial requirement is for the terms of the conventions to be widely accepted and rapidly implemented. Regretfully progress in this direction is proving disastrously slow"

(See International Wildlife Law by Simon Lyster, Cambridge - Grotuis Publications Limited, 1985 Edn.)

There have been a series of international conventions for the preservation and protection of the environment. The United Nations General Assembly adopted on 29-10-1982. "The world charter for nature." The charter

declares the Awareness that:

(a) Mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients.

(b) Civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation."

To the similar effect is the judgment of the Apex Court in **Indian Council for Enviro-legal Action v. Union of India and Others** ([1996] 5 SCC 281) where the following observations are made in paragraphs 41 and 42 which are quoted below:

"41. With rapid industrialisation taking place, there is an increasing threat to the maintenance of the ecological balance. The general public is becoming aware of the need to protect environment. Even though, laws have been passed for the protection of environment, the enforcement of the same has been tardy, to say the least. With the governmental authorities not showing any concern with the enforcement of the said Acts, and with the development taking place for personal gains at the expense of environment and with disregard to the mandatory provisions of law, some public spirited persons have been initiating public interest litigations. The legal

position relating to the exercise of jurisdiction by the Courts for preventing environmental degradation and thereby, seeking to protect the fundamental rights of the citizens, is now well settled by various decisions of this Court. The primary effort of the Court, while dealing with the environmental related issues, is to see that the enforcement agencies, whether it be the State or any other authority, take effective steps for the enforcement of the laws. The Courts, in a way, act as the guardian of the people's fundamental rights but in regard to many technical matters, the Courts may not be fully equipped. Perforce, it has to rely on outside agencies for reports and recommendations whereupon orders have been passed from time to time. Even though, it is not the function of the Court to see the day to day enforcement of the law, that being the function of the Executive, but because of the non functioning of the enforcement agencies, the Courts as of necessity have had to pass orders directing the enforcement - agencies to implement the law.

42. *As far as this Court is concerned, being conscious of its constitutional obligation to protect the fundamental rights of the people, it has issued directions in various types of cases relating to the protection of environment and preventing pollution. For effective orders to be passed, so as to ensure that there can be protection of environment along with development, it becomes necessary for the Court dealing with such issues to know about the local conditions. Such conditions in*

different parts of the Country are supposed to be better known to the High Courts. The High Courts would be in a better position to ascertain facts and to ensure and examine the implementation of the anti pollution laws where the allegations relate to the spreading of pollution or non compliance of other legal provisions leading to the infringement of the anti pollution laws. For a more effective control and monitoring of such laws, the High Courts have to shoulder greater responsibilities in tackling such issues which arise or pertain to the geographical areas within their respective States. Even in cases which have ramifications all over India, where general directions are issued by this Court, more effective implementation of the same can, in a number of cases, be affected, if the concerned High Courts assume the responsibility of seeing to the enforcement of the laws and examine the complaints, mostly made by the local inhabitants, about the infringement of the laws and spreading of pollution or degradation of ecology."

The Apex Court in **T.N. Godavarman v.Union of India ([2002] 10 SCC 606)** had emphasised that it is the duty and constitutional obligation of the Government to protect the environment enshrined in Articles, 21, 48A and 51A(g) of the Constitution. Following was laid down in paragraphs 17 and 24:

"17. Article 48-A in Part IV (Directive Principles) of the Constitution of India, 1950 brought by the Constitution (Forty-second Amendment) Act, 1976, enjoins that "State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country". Article 47 further imposes the duty on the State to improve public health as its primary duty. Article 51-A(g) imposes "a fundamental duty" on every citizen of India to protect and improve the natural "environment" including forests, lakes, rivers and wildlife and to have compassion for living creatures. The word "environment" is of broad spectrum which brings within its ambit "hygienic atmosphere and ecological balance". It is, therefore, not only the duty of the State but also the duty of every citizen to maintain hygienic environment. The State, in particular has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including the right to life with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment.

Environmental protection, therefore, has now become a matter of grave concern for human existence. Promoting environmental protection implies maintenance of the environment as a whole comprising the man-made and the natural environment. Therefore, there is constitutional imperative on the Central Government, State Governments and bodies like municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve the man-made environment and natural environment.

24. *The tide of judicial considerations in environmental litigation in India symbolizes the anxiety of courts in finding out appropriate remedies for environmental maladies. At global level, the right to live is now recognized as a fundamental right to an environment adequate for health and well-being of human beings. [See World Commission on Environment and Development -- Our Common Future (1987).] To commemorate the tenth anniversary of the Stockholm Conference, the world community of States assembled in Nairobi (May 10-18, 1982) to review the action taken on to implement the Stockholm Declaration. It expressed serious concern about the state of environment worldwide and recognized the urgent need of intensifying the effort at the global, regional and national levels to protect and improve it.*

The above view was again reiterated by the Apex Court

in **T.N.Godavarman v. Union of India [(2006) 1 SCC 1]** where the Apex Court noted the following in paragraphs 1 and 3:

"1. Natural resources are the assets of the entire nation. It is the obligation of all concerned, including the Union Government and State Governments to conserve and not waste these resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Under Article 51-A, it is the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

3. Forests are a vital component to sustain the life support system on the earth. Forests in India have been dwindling over the years for a number of reasons, one of it being the need to use forest area for development activities including economic development. Undoubtedly, in any nation development is also necessary but it has to be consistent with protection of environments and not at the cost of degradation of environments. Any programme, policy or vision for overall development has to evolve a systemic approach so as to balance economic development and environmental protection. Both have to go hand in hand. In the ultimate analysis, economic development at the cost of degradation of environments and depletion of forest cover would not be long-lasting.

Such development would be counterproductive. Therefore, there is an absolute need to take all precautionary measures when forest lands are sought to be directed for non-forest use".

59. Learned counsel for the quarry owners as well as the learned Government Pleader have made much emphasis on the fact that on account of requirement of environmental clearance development in the State has come to a standstill. It is submitted that even the Metro Rail is suffering from material crunch.

60. Development and protection of environment both have to be given due importance. The theory of sustainable development has been propounded to strike a balance between development and protection of environment. Protection of environment being constitutional obligation, the State cannot sacrifice the same in the name of development. The Apex Court in **M. C. Mehta v. Union of India and others** (AIR 2004 SC 4016) has said that in case of doubt of conflict

between development and protection of environment, protection of environment has precedence over economic interest.

"48.The development and the protection of environments are not enemies. If without degrading the environment or minimising adverse effects thereupon by applying stringent safeguards, it is possible to carry on development activity applying the principles of sustainable development, in that eventuality, the development has to go on because one cannot lose sight of the need for development of industries, irrigation resources and power projects etc. including the need to improve employment opportunities and the generation of revenue. A balance has to be struck. We may note that to stall fast the depletion of forest, series of orders have been passed by this Court in T. N. Godavarman's case regulating the felling of trees in all the forests in the country. Principle 15 of Rio Conference of 1992 relating to the applicability of precautionary principle which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing effective measures to prevent environmental degradation is also required to be kept in view. In such matters, many a times, the option to be adopted is not very easy or in a strait-jacket. If an activity is allowed to go ahead, there may be irreparable damage to the environment and if it is

stopped, there maybe irreparable damage to economic interest. In case of doubt, however, protection of environment would have precedence over the economic interest. Precautionary principle requires anticipatory action to be taken to prevent harm. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment."

Much emphasis has been laid by the learned counsel for the quarry owners that short term permit are out of the regime of Notification dated 14.09.2006 and the Apex Court fully knew about other mineral concessions but in Deepak Kumar's case the Apex Court confined the direction only to mining lease. To accept the submission of the learned counsel for the quarry owners that the Notification dated 14.09.2006 is not attracted on the mining permit, permitting the environment to be adversely affected damage by continuous exploitation of natural resources under the mining permit which runs counter to the very object and purpose of issuance of Notification dated 14.09.2006. The concept of strict

regulatory regime for minor mineral shall explode if one category of mineral concession, i.e., mining permits are permitted to excavate to deplete natural resources without there being any environmental regulatory measures. Notification dated 14.09.2006 never intended that mining concession by mining permit should be kept out of regulatory measure. Neither the said Notification can be interpreted in the above manner nor the same shall advance the object of protection of environment which is the spirit of the enactment and judgment of the Apex Court in **Deepak Kumar's case** (supra). Issue Nos.I and IV to VI are answered accordingly.

61. One more aspect need to be considered in this regard. Notification dated 14.09.2006 has suffered various amendments. One of the amendments made in the Schedule to the Notification dated 14.09.2006 is Notification dated 09.09.2013 by which with regard to

item No.1(a) column 4. Amendment made for item No.1
(a) is as follows:

**“MINISTRY OF ENVIRONMENT AND FORESTS
NOTIFICATION**

New Delhi, the 9th September, 2013.

S.O.2731(E).-In exercise of the powers conferred by sub-section(1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection)Act, 1986 (29 of 1986) read with sub-rule (4) of rule 5 of the Environment (Protection Rules), 1986, the Central Government hereby makes the following further amendment to the notification of the Government of India, in the Ministry of Environment and Forests number S.O.1553(E) dated 14th September, 2006 after having dispensed with the requirement of notice under clause (a) of sub-rule (3) of the said rule 5 in public interest, namely:-

In the said notification, in the Schedule, for item 1 (a) and entries relating thereto, the following item and entries shall be substituted, namely:-



1	2	3	4	5
1(a) (i)	Mining minerals	of >50 ha mining lease area in respect of non-coal mine lease	of <50 ha mining lease area in respect of minor minerals mine lease; and <50 ha>5 ha of mining lease area in respect of other non- coal mine lease.	General Conditions shall apply except for project or activity of less than 5 ha of mining lease area for minor minerals: Provided that the above exception shall not apply for project or activity if the sum total of the mining lease area of the said project or activity and that of existing operating mines and mining projects which were accorded environment clearance and are located within 500 metres from the periphery of such project or activity equals or exceeds 5ha.
		>50 ha of mining lease in respect of coal mine	<50 ha>5 ha of mining lease area in respect of coal mine lease	
		Asbestos mining irrespective of mining area		
				Note: (1) Prior environmental clearance is required at the stage of renewal of mining lease for which an



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application shall be made up to two years prior to the date due for renewal. Further, a period of two years with effect from the 4th April, 2011 is provided for obtaining environmental clearance for all those mine leases which were operating as on the 4th April, 2011 with requisite valid environmental clearance and which have fallen due for renewal on or after 4th November, 2011

1	2	3	4	5
		All projects		Provided that no fresh environment clearance shall be required for a mining project or activity at the time of renewal of mining lease, which has already obtained environmental clearance under this notification
	(ii) Slurry pipelines (coal lignite and other ores) passing through national parks or sanctuaries or coral reefs ecologically sensitive areas			(ii) Mineral prospecting is exempted"

62. In view of the Notification dated 09.09.2013, now all mining leases in respect of all minor minerals having an area of less than 50 hectares required environmental clearance. This obviously include the lease areas less than 5 hectares. However, in the context of the aforesaid Notification, learned counsel

appearing for different quarry owners has relied on order of the National Green Tribunal dated 13.01.2015 in O.A. No.123 of 2014 and M.A. No.419 of 2014 in the matter of **Himmath Singh Shekhawat v. State of Rajasthan and Others**. The National Green Tribunal in the said order has held and declared that Notification dated 14.09.2013 is invalid and inoperative for non-compliance of the statutorily prescribed procedure under the 1986 Rules. The following is the direction issued by the National Green Tribunal.

"For the reasons afore recorded, we hold and declare that the Notification datd 9th September, 2013 invalid and inoperative for non-compliance of the statutorily prescribed procedure under thef Environment (Protection) Rules, 1986 and for absence of any reason for absence of any justifiable reason for dispensation of such procedure."

Learned counsel appearing for the petitioners in the Public Interest Litigations contended that the National Green Tribunal has no jurisdiction to quash a notification

issued under the 1986 Act. It is submitted that the order of the National Green Tribunal is inoperative and has no effect on continuance of the notification dated 09.09.2013. For the purpose of this case it is not necessary for us to enter into the issue as to whether direction of the National Green Tribunal in its order dated 13.01.2015 is inoperative or invalid, since we have already held that in view of the direction of the Government of India, Ministry of Environment and Forests dated 18.05.2012 read with the Judgment of the Apex Court in Deepak Kumar's case (supra) now it is mandatory to obtain environmental clearance of mining lease for an area less than 5 hectares.

63. Now we take Issue No.III which relates to impact of the amendment to Section 14 of the 1957 Act. Shri P.B.Sahasranaman, learned counsel appearing for the leading Writ Petition has contended that by amendment made Section 14 having been made

applicable to minor mineral, no mining operations can be permitted except by mining lease and mining operations by mining permit/quarry leases are all against the provisions of Section 4. It is submitted that permits are contemplated only for reconnaissance. Section 4(1) contains an injunction that "no person shall undertake any reconnaissance, prospecting or mining operations in any area". Thus the predominant object of Section 4 is to prohibit undertaking of any mining operation in any area except by a mining lease. When Section 4 has been made applicable to the minor minerals, Section 15 of the 1957 Act has also to be given due weight. Under Section 15, the State is empowered to make rules in respect of minor minerals, i.e., quarry leases, mining leases or other mineral concessions. Provisions of Sections 4, 14 and 15 have to be given harmonious construction to advance the object of the 1957 Act. Section 4 cannot be read in a manner

that although there is prohibition in undertaking of mining operation by mining lease there is no prohibition of mining by mining permit. Any such interpretation shall be destructive of the very object of Section. We thus are of the view that the submission that after amendment to Section 14, no mining operations can be allowed by a mining permit and mining operation is to be done only except under a mining lease has to be rejected. Restriction under the Section thus has to be read as a prohibition of all mining operations whether under a mining lease or by any other kind of mineral concession. The issue is answered accordingly.

64. Now we come to Issue Nos.II & VII. One of the issues referred to by the learned Single Judge is whether Government Order dated 10.01.2014 can be relied on by the petitioners in view of the interim order passed by the National Green Tribunal dated 27.09.2013. Government Order dated 10.01.2014 has

been quoted in the referring order which is to the following effect:

"GOVERNMENT OF KERALA

Abstract

Industries Department-Mining and Geology-Short term permits for extraction of Minor Minerals-pending Environment clearance-Extension of time granted-orders issued

INDUSTRIES (A) DEPARTMENT

*G.O.(Ms) No.5/2014/ID Dated,
Thiruvananthapuram, 10th January, 2014*

*Read:- 1) G.O.(Ms).No.140/2012/ID dated 23.11.2012
2) G.O.(Ms). No.144/2012/ID dated 11.12.2012*

ORDER

Government as per the orders read above have ordered that short term permits can be granted for the existing quarries for extraction of minor minerals from private holdings of less than five hectares which are not on leases on Government lands for a period not exceeding one year, without insisting Environment Clearance from the Ministry of Forest and Environment, if the applicant concerned had complied with all other conditions for issuance of such permits specified under the Kerala Minor Mineral Concessions Rules 1967. This order was subject to further orders, if any that would be

passed by the Supreme Court of India on the clarification petition proposed to be moved by the Government of Kerala in the Supreme Court on the order dated 27.2.2012 in SLP © No:19628/2009. Government after having considered the situation of acute shortage of raw materials in the construction field of the state due to standstill of operations in the sector are pleased to extend the tenure of operation of the aforesaid orders with respect to grant of short term permits without insisting the Environment clearance for a further period of one year.

By order of the Governor,

P.H.Kurian

Principal Secretary to Government.

By order dated 04.01.2014 the State Government has extended the Government Order dated 11.12.2012.

65. After the judgment of the Apex Court in Deepak Kumar's case (supra) and the Government of India Order dated 18.05.2012, by order dated 23.11.2012, the following has been directed.

"Government have examined all the aspects of the issue in detail and are pleased to order that, in the light of the legal opinion furnished by the Advocate General short term permits can be granted for the existing

quarries for extraction of minor minerals from private holdings, for a period not exceeding one year, if the applicant concerned had complied with all other conditions for issuance of such permit, as well as the conditions regarding environmental clearance stipulated in the Supreme Court Order read as 1st paper above, wherever applicable.

By Order of the Governor,

*K.S.SRINIVAS,
Special Secretary to Government"*

66. Subsequent to Government Order dated 23.11.2012, another Government Order was issued on 11.12.2012 by the State Government by which certain directions are issued in response to letter dated 28.11.2012 sent by the Director of Mining and Geology. Government Order dated 11.12.2012 is as follows:

"GOVERNMENT OF KERALA

Abstract

Industries Department - Mining & Geology - Order dated 27.2.2012 of Honourable Supreme Court in I.A. Nos.12-13 of 2011 in SLP No.19268-19629 of 2009 on the grant of Mineral Concessions to minor minerals - Issuance of permits for extraction of minor minerals in private holdings - Modified Orders issues.

*INDUSTRIES (A) DEPARTMENT
G.O.(Ms)no.144/2012/id dated, Thiruvananthapuram
11.12.2012*

Read:- 1) G.O(Ms) 140/12/ID dated 23.11.2012.
2) Letter No.3889/M2/2012 dated
28.11.2012 of the Director of Mining
and Geology, Thiruvananthapuram

ORDER

As per order read as 1st paper above, Government accorded permission to grant short term permits for existing quarries for extraction of minor minerals from private holdings, for a period not exceeding one year, if the applicant concerned complied with all other conditions for issuance of such permit, as well as other conditions regarding environmental clearance stipulated in the Supreme Court Order read as 1st paper above, wherever applicable.

2. But as per letter read as 2nd paper above Director of mining and Geology requests to clarify the following parts.

(i) Whether short term quarrying permit for a period of less than one year can be granted without obtaining environmental clearance stipulated in the order of the Supreme Court dated 27.02.2012, if the application is satisfactory in all other respects.

(2) What are the conditions/circumstances that invite environmental clearance in the case of issuance of short term quarrying permit for minor minerals?

(3) The matter has been examined in consultation with the law Department. The legal opinion received is that short term temporary permits can be granted to those persons who are eligible if all other legal requirements for doing mining operations are complied

with. It is therefore clarified that short term permits can be granted in respect of minor minerals in private holdings which are not on leases on Government lands subject to satisfaction of the various requirements specified under the Kerala Minor Mineral Concessions Rules, 1967.

4. *This order will be subject to further orders, if any that would be passed by the Supreme Court of India on the clarification petition proposed to be moved by the Government of Kerala in the Supreme Court on the order dated 27/02/2012 in SLP (C) No.19628/2009.*

5. *The G.O. read as 1st paper above, is revised to this extent.*

By order of the Governor,

Tom Jose,

Special Secretary (in charge)"

Consequence of Government Order dated 11.12.2012 as extended by Government Order dated 10.01.2014 is that the Government is entitled to grant short term temporary permits to those who are eligible and all other legal requirements of mining operations are complied with. The Government Order further stated that short term permits can be granted in respect of minor minerals of private holdings which are not lease

on Government holdings.

67. Now the order of the National Green Tribunal dated 27.09.2013 has been quoted in the referring order. The Tribunal vide its interim order issued the following directions:

“Accordingly, we restrain any person, Company and Authority to carry out any such digging activities of brick earth or ordinary earth against the directives issued by the MoEF dated 24.06.2013 in any part of the country without obtaining EC from the competent authority as per the Notification. The Chief Secretaries of all the States/UTs are to ensure strict adherence to this order. Dasti order allowed.”

68. Interim order of the Tribunal having been issued to all Chief Secretaries of the State who were directed to ensure strict adherence of the order. Unless the said order is varied or modified, the State was under an obligation to comply with the said direction.

69. Learned Advocate General has submitted that now since the State of Kerala has framed the 2015 Rules, the issue as to whether the State could have

been issued short term permit without obtaining environmental clearance has lost its relevancy. It is submitted that the said issue has become academic only.

70. The judgment of the Apex Court in Deepak Kumar's case has already been noted above wherein in paragraph 29 interim order was passed. In paragraph 27 of the judgment the Apex Court has directed all the States/Union Territories to give effect to the recommendations made by the Ministry of Environment and Forests in its Report of March 2010 and the model guidelines framed by the Ministry of Mines within a period of six months from that day and submit their compliance reports. Whereas in paragraph 29 by the words "in the meanwhile" it clearly meant the situation till the State amends its Rules as per the directions issued in paragraph 27. In the present case the State has framed the 2015 Rules which supersedes Rules

1967. It is relevant to refer to some Rules of the 2015 Rules relating to environmental clearance. Rule 9 contemplates disposal of application for the grant of quarrying permit to be when the applicant submits approved mining plan and environmental clearance for the precise area. Rule 9(2) contemplates issue of quarrying permit only on receipt of mining plan and environmental clearance. Rule 9 is quoted below:

9. Disposal of application for the grant of quarrying permit - (1) *On receipt of the application for grant of quarrying permit for undertaking quarrying operations, the competent authority shall make site inspection and take decision regarding the precise area to be granted for the said purpose and intimate the applicant to submit approved mining plan and Environmental Clearance for the precise area.*

Provided that, approved mining plan and environmental clearance shall not be insisted, for the issuance and renewal of permits in the case of Laterite Building Stone.

(2) *On receipt of an approved mining plan and Environmental Clearance for the precise area and on production of all other statutory licenses/clearances/No Objection Certificate etc. from other statutory authorities*

concerned, the competent authority shall issue a quarrying permit to the applicant within thirty days in Form N for ordinary earth and in Form M for all other minor minerals."

Rules 12 relates to renewal of a quarrying permit which is to the following effect:

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."

Rules 20 which deals with grant of quarrying permit also makes the conditions as specified in Chapter II applicable to grant of quarrying permit in respect of lands which vests in the Government. Chapter V

which deals with grant of quarrying leases in respect of lands in which the mineral or mineral right vests in the Government also contemplates issuance of quarrying lease only after receipt of mining plan and environmental clearance. Rule 33 (1) and (2) which are relevant are quoted below:

"33. Disposal of application for the grant or renewal of quarrying lease - (1) On receipt of the application for grant or renewal of quarrying lease for undertaking quarrying operations, the competent authority shall make site inspection and take decision regarding the precise area to be granted for the said purpose and intimate the applicant to submit approved mining plan and Environmental Clearance for the precise area,

(2) On receipt of an approved mining plan and Environmental Clearance for the precise area and on production of all other statutory licenses/clearances/No Objection Certificate etc. from other statutory authorities concerned, the competent authority shall grant a quarrying lease within thirty days.

From the 2015 Rules it is clear that now the State has specifically prescribed requirement of environmental clearance for grant of mining permit as well as mining

lease/quarrying lease. Rule having coming into from 07.02.2015 all subsequent acts by the State has to be conducted in accordance with the statutory Rules. Order of the Apex Court in **Deepak Kumar's case** (supra) which was issued as an interim measure has served its main purpose since requirement of obtaining environmental clearance has been engrafted in the 2015 Rules.

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 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.

72. Issue No.VIII relates to interpretation of Rule 68. Rule 68 forms part of Chapter VI which pertains to mining plan. We have noted that as per Rules 9 and 33 for grant of mining permit and grant of renewal of quarrying lease, submission of approved mining plan is mandatory. However, with regard to existing lease

holders a separate provision (Rule 66) is engrafted. Rule 66(1) grants one year time from the commencement of Rules for submission of mining plan where quarrying operations for minor minerals have been undertaken. As per Rule 66(2) the said period can be further extended for a period of one year. Rule 68 provides that quarrying operations to be in accordance with mining plan which is quoted below:

68. Quarrying operations to be in accordance with mining plan.- (1) *Every lessee shall carry out quarrying operations in accordance with the approved mining plan with such conditions as may be prescribed under these rules or with such modifications, if any, as permitted under these rules or the mining plan or the scheme approved under these rules, as the case may be.*

(2) *If the quarrying operations are not carried out in accordance with mining plan as prescribed under these rules, the competent authority may order suspension of all or any of the quarrying operations and permit continuance of only such operations as may be necessary to restore the conditions in the quarry as envisaged under the said mining plan.*

Rule 68 requires that every lessee shall carry out

quarrying operations in accordance with the approved mining plan. Rule 68, however, further requires carrying out of quarrying operations "with such conditions as may be prescribed under these rules or with such modifications, if any, permitted under these rules". Rule 68 thus clearly meant carrying out of the mining operations in accordance with the mining plan. Rule 66 thus has to be read along with Rule 68 and Rule 66 engraft an exception to the general Rule 68 which required that every quarrying operation be in accordance with the mining plan. If it is held that Rule 68 is to override any other Rule of the 2015 Rules pertaining to mining plan, the same shall not be in accordance with the intend and content of Rule 68. We thus are of the view of that Rules 66 and 68 have to be read together and Rule 66 is a category exempted from the mandatory requirement as provided in Rule 68. We thus are not persuaded to accept the interpretation

given by Shri P.B.Krishnan, learned counsel appearing for the petitioners in W.P(C) No.4471 of 2015. As observed above, the 2015 Rules have been framed keeping in view of the observations made by the Apex Court in Deepak Kumar's case and there being no challenge to the 2015 Rules, all the parties before us have to act in accordance with the 2015 Rules with regard to carrying out mining operations by means of mining permit/quarrying lease. The State authorities have also to act in accordance with the 2015 Rules and observations as made above.

73. In several Writ Petitions as noted above, petitioners who have quarry permits/mining permit/mining lease have come up seeking police protection. In most of the Writ Petitions validity of the mining permits granted to them have already come to an end. In some of the Writ Petitions validity of the mining permit is continuing. Looking into the fact that

the 2015 Rules has been enforced by the State only from 07.02.2015, we are of the view that in cases where quarrying permit/mining permit/mining lease claimed to carry mining operations are still in existence, they may approach the District Collector who after taking into consideration the 2015 Rules and the observations made by us in this Judgment may consider and take decision as to whether they are entitled to carry on mining operations. It is only on grant of appropriate clarifications/clearance from the District Collector, petitioners may carrying mining operations and submit application to the Circle Inspector/Sub Inspector concerned for providing police protection.

74. The issues having been considered in the foregoing discussion, now we come to the different groups of Writ Petitions details of which have already been noted. As noted above, the first three Writ Petitions consisting of Group-I, relate to Public Interest

Litigations. Prayers in the leading Writ Petition, W.P(C) No.31148 of 2014 are that a mandamus be issued to respondents 1 and 2, State of Kerala and the Director of Mining and Geology to see that all quarrying operations in the Kerala State are permitted by lease by scrupulously following Exhibit P1, i.e., the order of the Government of India Ministry of Environment and Forests dated 18.05.2012. The Second prayer is for restraining respondents 1 and 2 and its subordinate officers from issuing permits and licences invoking the provisions of Kerala Minor Mineral Concession Rules, 1967 for the purpose of mining operations of minor minerals. In view of our answer to the Issues, that mining operations are permissible both by grant of mining/quarry lease as well as by mining permit, prayer of the petitioner that direction to the State to permit mining only by lease, cannot be accepted. As noted above, the 2015 Rules have already enforced in the

State of Kerala, now all mining permits, mining lease and quarry lease and other mineral concessions have to be in accordance with the 2015 Rules. Thus all mining operations have to be conducted in accordance with the 2015 Rules as well as the observations made by us in this judgment. Exhibits P3 and P4, Government Orders dated 23.11.2012 and 11.12.2012 have been prayed to be quashed. We have already held that after the judgment of the Apex Court in Deepak Kumar's case (supra) and the order of the Government of India, Ministry of Environment and Forest dated 18.05.2012, all grant of mining lease/mining permit for less than 5 hectares have to be in accordance with the environmental clearance as envisaged by the Notification dated 14.09.2006. Thus both the aforesaid Government Orders have to be read accordingly and further the 2015 Rules having framed and enforced by the State, all actions regarding mining operations have

to be done in accordance with the 2015 Rules. Further prayer has been made to quash amendment dated 30.06.2014, i.e., Kerala Minor Mineral Concessions (Amendment) Rules, 2014 by which amendments were made in Rule 8 of the 1967 Rules. The 1967 Rules having already superseded by the 2015 Rules, there is no necessity to consider the aforesaid prayer.

75. With regard to other Public Interest Litigation, i.e. W.P(C) No.20601 of 2014, where petitioners are aggrieved by the unauthorised conduct of granite unit by respondents 7 and 8 we have already taken view that mining plan has to be submitted by all existing quarry owners in accordance with Rule 66 read with Rule 68. Petitioners have further prayed that the Grama Panchayat has decided not to renew of operation of quarry and metal crusher by its decision dated 29.04.2014. In the facts and circumstances of the case we are of the view that liberty can be given to the

petitioner to approach the District Collector who may examine the entitlement of respondents 7 and 8 to carry mining operations in accordance with the observations made by us in this judgment as well as all relevant law including the 2015 Rules. The third Writ Petition which has been filed with regard to the 2015 Rules is W.P(C) No.4471 of 2015. As noted above, learned counsel Shri P.B.Krishnan has confined his submission to interpretation of Rule 68 of the 2015 Rules. According to the learned counsel as per Rule 68 makes mining operations only by a mining plan which is a mandatory provision. We have already dealt with the question while deciding issue No.VIII and this Writ Petition thus has to be decided accordingly.

76. We come to Group-II Writ Petitions, which have been filed by various petitioners praying for stay of quarrying activities by different private respondents who had obtained quarrying permit/mining lease/mining

permits. In the Writ Petitions it has been pleaded that private individuals are carrying mining operations in violation of the judgment of the Apex Court in Deepak Kumar's case (case) as well as Government Order dated 14.09.2006 and the order passed by the Government of India, Ministry of Environment and Forests. We have considered all the issues as noted above and we are of the view that interest of justice would be served in giving liberty to all the petitioners and private respondents to approach the District Collector for appropriate clearance for carrying mining operations as per the 2015 Rules and the observations made by us in this judgment. The District Collector has to examine all aspects of the matter as per the law laid down by us in this judgment as well as Rule 2015. The mining operation, if any may be held only after such clearance by the District Collector.

77. Group-III and IV Writ Petitions are by quarry

owners/permit owners seeking different reliefs. Group-IV relates to the Writ Petitions filed by quarry owners/permit owners seeking police protection for carrying out their quarrying operation. We have already held that quarrying operation/mining operations by mining lease or mining permit is to be conducted in accordance with the 2015 Rules as well as the observations and directions made by us in this judgment. Interest of justice would be served by giving liberty to all petitioners of Group-III to approach the District Collector for necessary clarification/clearance order and the petitioners may act accordingly. For petitioners who are seeking police protection, liberty is given to them to approach the District Collector for seeking necessary clarification/clearance order regarding their entitlement to carry on mining operations as per the 2015 Rules and the observations made by us in this judgment.

78. Writ Petition No.7632 of 2014 which is included in Group-III needs a separate consideration since in the said Writ Petition petitioner has prayed for quashing Ext.P9 Government Order dated 19.02.2014 by which the State cancelled the quarry permit granted to the petitioner. Petitioner was granted quarrying lease on 10.03.2010 for ten years to extract building stones from one acre of land in Sy.No.577/1 part. Initially the application was rejected on 18.04.2009 against which appeal was filed which was allowed by the Joint Secretary of the State of Kerala. The Forest Department had preferred a Second Appeal before the 1st respondent where objection was taken that distance between Shenthurni Wild Life Protection Centre and the proposed site is only 2.5 kms. and no-objection from the Forest Department was never obtained. The Second Appeal was disposed on certain undertakings. The State Government has cancelled the mining lease on

10.06.2013. Petitioner filed a Writ Petition No.16940 of 2013 where this Court set aside the order the State Government and directed the Government to pass fresh order. Now the Government has passed a fresh order on 19.02.2014 whereby the Government held that quarrying lease would stand cancelled. The Government in its order noted that property is lying in the midst of reserved forest covered with variety of endemic flora and fauna. It was further held that land in this area is covered by Aryankavu Village, which is one of the 123 Villages notified as EFA in the Kasthurirangan Report. The Forest Department from the very beginning raised objection regarding running of the quarry. The Village having been included in one of the Villages of 123 Villages notified and the Forest Department of the State having not given no objection, the decision of the State Government in cancelling the lease cannot be faulted.

79. Group-V consists of two Writ Petitions and one Writ Appeal. Writ Petition No.4662 of 2014 was filed challenging the order dated 26.06.2013 passed by the District Collector rejecting the application of the petitioner for no-objection certificate to manufacture bricks. Petitioner claimed that he is entitled to mine clay as per permit dated 20.02.2010. Interest of justice will be served by giving liberty to the petitioner for making a fresh application in accordance with the 2015 Rules and the observations made by us in this judgment.

80. Writ Petition No.2636 of 2015 has been filed praying for a mandamus commanding the 2nd respondent to consider and dispose of Exts.P7 to P9 objections and suggestions against the draft 2015 Rules before publishing the final notification framing rules by the State Government. The 2015 Rules having been already published and enforced, this Writ Petition has become infructuous.

81. W.A. No.1566 of 2014 has been filed challenging the judgment of the learned Single Judge dated 23.01.2014 by which decision of the Panchayat rejecting the petitioner's application for issuance of licence to conduct quarry was upheld. No infirmity can be found out in the judgment of the learned Single Judge. However, there shall be liberty to the petitioner to make fresh application in accordance with the 2015 Rules as well as the observations made by us as noted above.

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 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.

83. Now we come to Issue No.IX, reliefs which the petitioners are entitled to.

84. In view of foregoing discussions, we dispose of all the Writ Petitions including one Writ Appeal in the following manner:

(i) Writ Petitions relating to Group - I, Public Interest Litigations are disposed of in accordance with our conclusions and directions contained in paragraph 82.

(ii) All the Writ Petitions relating to Group - II, challenging quarrying operations by private individuals are disposed of with a direction to the District Collector to examine the right of quarrying owners/mining permit owners (private respondents) to carry mining operations and to issue necessary clarifications/clearance only after being satisfied that such mining operations are in accordance with the 2015 Rules as well as the observations made by this Court in the present case.

(iii) Writ Petitions of Groups - III & IV (except WP(C).No.7632 of 2014), by quarry owners as well as quarry owners seeking police protection are disposed of giving liberty to the petitioners to approach the District Collector for carrying on mining operations which clearance shall be issued by the District Collector only after being satisfied that they are entitled to carry mining operations as per the 2015 Rules and

the observations made by this Court in the present case.

(iv) W.P(C).No.7632 of 2014 is dismissed upholding the order of State Government dated 19.2.2014 cancelling the quarry lease.

(v) All the three cases of miscellaneous Group are disposed of in the following manner:

(a) W.P(C) No.4462 of 2014 is disposed of giving liberty to the petitioner to submit appropriate application before the competent authority seeking permit of ordinary earth as per the 2015 Rules.

(b) Writ Appeal No.1566 of 2014 is dismissed giving liberty to the appellant to make fresh application before the Panchayat for obtaining licence under the Kerala Panchayat Raj Act after obtaining necessary permit for quarrying operations in accordance with the 2015 Rules.

(c) W.P(C) No.2636 of 2015 is

**dismissed having become infructuous
due to enforcement of 2015 Rules with
effect from 07.02.2015.**

All the above cases are disposed of accordingly.

Parties shall bear their own costs.

**ASHOK BHUSHAN,
ACTING CHIEF JUSTICE.**

**A.M.SHAFFIQUE,
JUDGE.**

vsv/vgs