

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI
O.A. No. 151 of 2020

Akhila Kerala Dheevara Sabha

...Applicant(s)

Vs.

State of Kerala and others

...Respondent(s)

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7TH RESPONDENT

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Certified that the above documents are true copies of the originals

Dated at Chennai on this the 25th day of January 2021



COUNSEL FOR THE 7th RESPONDENT

പുറക്കാട് ഗ്രാമ പഞ്ചായത്ത് കാര്യാലയം

പുറക്കാട്.പി.ഒ. ആലപ്പുഴ-688561 ഫോൺ 0477 2272031

13 NOV 2017 358

നമ്പർ:എ7-6224/17 പ്രേഷിതൻ

സെക്രട്ടറി പുറക്കാട് ഗ്രാമപഞ്ചായത്ത് സി.കെ.അബ്ദുൾ ഖാദർ ഐ.ആർ.ഇ ലിമിറ്റഡ് ചമ്പര

06/11/2017 HOD (Mining) / DGM (HRM) for Head 13/11/17

വിഷയം: - പുറക്കാട് ഗ്രാമപഞ്ചായത്ത് തോട്ടപ്പള്ളി ഹാർബർ പ്രദേശത്ത് അന്ധികൃതമായി ഐ.ആർ.ഇ ലിമിറ്റഡ് സ്ഥാപിച്ച കരിമണൽ വേർതിരിക്കുന്നതിനുള്ള യന്ത്ര സാമഗ്രികൾ നീക്കം ചെയ്യുന്നത് സംബന്ധിച്ച്.

- സൂചന :- 1).പുറക്കാട് ഗ്രാമപഞ്ചായത്ത് കമ്മറ്റിയുടെ 20/09/2017 ലെ 6(6) നമ്പർ തീരുമാനം 2).ഈ ആഫീസിലെ 04/10/2017,24/10/2017 തീയതികളിലെ ഇതേ നമ്പർ നോട്ടീസ് 3).പുറക്കാട് ഗ്രാമപഞ്ചായത്ത് കമ്മറ്റിയുടെ 01/11/2017 ലെ 4(3) നമ്പർ തീരുമാനം

പുറക്കാട് ഗ്രാമപഞ്ചായത്ത് തോട്ടപ്പള്ളി ഹാർബർ പ്രദേശത്ത് പഞ്ചായത്ത് അനുമതി ഇല്ലാതെ ഐ.ആർ.ഇ ലിമിറ്റഡ് സ്ഥാപിച്ചിട്ടുള്ള കരിമണൽ വേർതിരിക്കുന്നതിനുള്ള യന്ത്ര സാമഗ്രികൾ നീക്കം ചെയ്യണമെന്നും കാണിച്ചു മേൽ സൂചന(2) പ്രകാരം ബന്ധപ്പെട്ടവരെ അറിയിച്ചുവെങ്കിലും നാളിതുവരെ ടി പ്രവൃത്തി ചെയ്യാത്ത സാഹചര്യത്തിൽ ഈ അറിയിപ്പു കിട്ടി 3 ദിവസത്തിനകം ടി യന്ത്ര സാമഗ്രികളും ഷെഡുകളും നീക്കം ചെയ്ത് ടി വിവരം രേഖാമൂലം പഞ്ചായത്തിനെ അറിയിക്കുവാനും അല്ലാത്തപക്ഷം ഇനിയൊരറിയിപ്പു കൂടാതെ പഞ്ചായത്ത് നേരിട്ട് ടി പ്രവർത്തി ചെയ്യുന്നതാണെന്നും ആയതിൽ വെച്ച് പഞ്ചായത്തിന് ഉണ്ടാകുന്ന എല്ലാ കഷ്ട നഷ്ടങ്ങൾക്കും ഐ.ആർ.ഇ ലിമിറ്റഡ് മാത്രം ഉത്തരവാദികൾ ആയിരിക്കുമെന്നും ആയതിലേക്ക് ഉണ്ടാകുന്ന ചെലവുകൾ ഐ.ആർ.ഇ.എ ലിമിറ്റഡിൽ നിന്നും നിവഹനമായി ഈടാക്കുന്നതാണെന്നും അറിയിക്കുന്നു.

വിധാസ്മതയോടെ,

പകർപ്പ് i. HOD(Mining) IRE Limited

[Handwritten signature]

This is the true copy of the documents marked as Ext. P 9 referred in the above W.P.(C)

ADVOCATE

Subject: KERALA PANCHAYAT RAJ ACT

Presented On:
16/11/2017

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BEFORE THE HONOURABLE HIGH COURT OF KERALA AT
ERNAKULAM

W.P. (C) No. 36975 of 2017

M/s Indian Rare Earths Ltd. ... Petitioner
vs.
Purakkad Grama Panchayath & ... Respondents
Others.

MEMORANDUM OF WRIT PETITION (CIVIL)
FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

M. GOPIKRISHNAN NAMBIAR (K/39/85) G-200
P. GOPINATH MENON (K/295/96) G-222
JOHN MATHAI. K. (K/413/84) J-212
JOSON MANAVALAN (K/699/99) J-526
KURYAN THOMAS (K/131/03) K-312
PAULOSE C ABRAHAM (MAH/58/06) P-735

M/s. MENON & PAI
ADVOCATES
I.S. PRESS ROAD,
ERNAKULAM, COCHIN - 18
COUNSEL FOR THE PETITIONER

BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM

W.P. (C) No. of 2017

M/s Indian Rare Earths Ltd. ... Petitioner
vs.
Purakkad Grama Panchayath & Ors. ... Respondents

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Dated this the 16th day of November, 2017

Counsel for the Petitioner

was permitted by the Govt. of Kerala to carry out de-silting of the
harbour mouth area and transporting the mineral sand after
separating the de-silted sand.

4. Unfortunately, without giving the Petitioner an opportunity of
hearing and without even referring to its reply, let alone considering
it, the 1st Respondent issued an order on 06.11.2017 directing the
Petitioner to remove the unit and the sheds within three days from
its receipt. It is submitted that the order dated 06.11.2017 has been
issued in gross violation of principles of natural justice and ignoring
the fact that the Petitioner had been operating the spiral unit/
separator since 2014 with the knowledge and permission of the
Panchayat and the 3rd Respondent. the Order dated 06.11.2017 is
thus is patently arbitrary, against public interest, actuated by mala
fides and is perverse on the face of it. If the said order is allowed to
stand it would occasion a miscarriage of justice.

Hence, the present writ petition.

Dated this the 16th day of November, 2017.

COUNSEL FOR THE PETITIONER

BEFORE THE HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM
(Special Original Jurisdiction)

W.P.(C). No. 36975 of 2017

PETITIONER

M/s Indian Rare Earths Ltd.
Chavara Unit, Kollam - 691 583
Kerala, India
Represented by Deputy General Manager (Technical Services), Mr. R.V.
Viswanath

Vs.

RESPONDENTS

1. Purakkad Grama Panchayath
Purakkad P.O.
Alappuzha District - 690551
Kerala, India
Represented by its Secretary
2. Secretary,
Purakkad Grama Panchayath
Purakkad P.O.
Alappuzha District - 690551
Kerala, India
3. State of Kerala
Represented by the Secretary to the Government
Fisheries & Port Department, Secretariat
Thiruvananthapuram - 695001

Address for service of all notices and processes on the Petitioner is that of their Counsel M/S MENON & PAI, Advocates, I.S. Press Road, Ernakulam, Kochi - 18 and that of the Respondents are as shown above or on any counsel they may engage.

WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

Statement of Facts

1. The Petitioner Company is a public sector undertaking under the administrative control of the Department of Atomic Energy, Government of India ('DAE'). It is engaged in beach sand mining




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and extraction of rare minerals, which are of strategic importance. It caters to the raw material requirements of various industries in Kerala, as well as the strategic mineral requirements of the nation, primarily for atomic energy purposes. The Petitioner Company's premises have been declared as "Prohibited Area" by the DAE under the Atomic Energy Act, 1962. It has also been declared as a "Prohibited Place" under the Official Secrets Act, 1923 by the Government of Kerala.

2. The 1st Respondent is Purakkad Grama Panchayath represented by its Secretary. The 2nd Respondent is the Secretary of Purakkad Grama Panchayath. The 3rd Respondent is the State of Kerala. All the Respondents answer to the definition of 'State' under Article 226 of the Constitution of India and are amenable to the writ jurisdiction of this Hon'ble Court.
3. The State of Kerala is operating Thottapally fishing harbor in Alappuzha District since 2004. However, since its commission it was observed that the 'mouth' of the harbour would get blocked due to sand accumulation. Initially, the State itself would dredge and clear the mouth through contractors on contract basis and the sand would be heaped at the harbour side. In 2014 the State of Kerala decided to issue a tender for sale of the said dredged sand. The highest bid received was Rs. 520 per cubic meter which was raised to Rs. 621 pursuant to negotiations. At this juncture, the Petitioner wrote to the Government stating that it was on the verge of a crisis on account of dearth of raw materials and that the minerals mixed with the de-silted sand should be given to the Petitioner. Pursuant to negotiations, the Petitioner conveyed its willingness to purchase the



(Signature)

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sand for Rs. 660 per cubic meter. In the meanwhile, the 1st Respondent through its President demanded that waste sand should be made available to fill up the properties included in its land bank, rendering it habitable. The Petitioner conveyed its consent to the proposal if the sand was sold at Rs. 556 per cubic meter. The highest bidder in the tender floated by the Government approached this Hon'ble Court through writ petition (civil) no. 29652 of 2013 which was disposed of with a direction to the Government to finalize the proceedings within a period of six weeks. It was also directed that the resolution of the Panchayat need not be taken into account and that the waste sand can be given to the highest bidder after the Petitioner segregated the minerals therein. The 1st Respondent was also permitted re-tender. Pursuant to the directions of the Hon'ble Court the Fisheries & Port Department, Govt. of Kerala issued a GO dated 16.05.2014 recording the above and permitting the Petitioner to take out the de-silted sand from the fishing harbour at the rate of Rs. 556 per cubic meter within a period of eight weeks. The Petitioner was directed to deposit the waste sand in the premises of the Thottapally fishing harbour in the area demarcated by the Chief Engineer. A true copy of the GO dated 16.05.2014 is produced herewith and may be marked as **Exhibit P1** for identification.

4. Subsequent to the aforementioned GO, a meeting was convened in the chamber of the District Collector, Alappuzha. The representatives of the 1st Respondent and the Petitioner took part in the meeting along with other government officials. In the said meeting it was recorded, *inter alia*, that the spiral unit/ separator will be established by the Petitioner within three weeks. The District Collector also



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asked the Petitioner to commence and complete the process of segregation of minerals within a period of two months. A true copy of the minutes of the meeting dated 23.08.2014 convened by the District Collector is produced herewith and may be marked as Exhibit P2 for identification.

5. The Petitioner thereafter set up a spiral unit/ separator and a temporary shed for the purposes of segregating the minerals from the sand. The spiral separator is a device used to separate components on the basis of its density. The spiral separators used by the Petitioner is run on a generator. In order to fix the switch board and temporary storage of materials the Petitioner also set up a temporary tin shed next to the spiral separator. It is respectfully submitted that the shed are entirely temporary in nature and the same is evident that the said shed has no separate electricity or water connection.

6. The Fisheries & Port Department, Govt. of Kerala, later reconsidered Exhibit P1 GO to include the details regarding the quantum of sand to be taken by the Petitioner. It was reported by the Chief Engineer, Harbour Engineering Department, that the spiral separator will be constructed within the port itself and the necessary area was allotted by the Executed Engineer, Port Engineering Division, Alappuzha. It was further reported that the unit will be established by the Petitioner at its own cost to be removed at the end of the contract period. Accordingly, a clarificatory GO dated 12.11.2014 was issued. A true copy of the GO dated 12.11.2014 issued by the Fisheries & Port



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Department, Govt. of Kerala, is produced herewith and may be marked as Exhibit P3 for identification.

7. The Fisheries & Port Department, Govt. of Kerala, then issued another GO dated 10.08.2015 directing the Petitioner to deposit 20,000 cubic meter waste sand in the revenue *puramboke* land within the limits of the 1st Respondent Panchayat at its own cost. A true copy of the GO dated 10.08.2015 issued by the Fisheries & Port Department, Govt. of Kerala, is produced herewith and may be marked as Exhibit P4 for identification. Subsequently, by GO dated 25.04.2016, the Fisheries & Port Department, Govt. of Kerala, fixed a rate of Rs. 464.55 for taking out 85,000 cubic meter sand which the Petitioner had dredged and kept at its own cost. A true copy of the GO dated 25.04.2016 issued by Fisheries & Port Department, Govt. of Kerala is produced herewith and may be marked as Exhibit P5 for identification. The Petitioner had also obtained requisite permissions from the Industries Department, Govt. of Kerala for transporting the dredged out and collected sand from the Thottapally harbour area to their processing plant at Chavara, subject to payment of royalty etc. for the minerals extracted from the sand

8. Based on the aforementioned Govt. orders, the Petitioner is carrying out de-silting of the harbour mouth, physical separation of the minerals using spiral separator and transportation of the minerals to the Petitioner's Chavara plant. The sand obtained after separating is utilized for refiling of low lying areas in the 1st Respondent Panchayat for enabling rehabilitation of the homeless and displaced people. The entire cost of transportation of the said separated sand is borne by




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the Petitioner. The dredging work also ensures smooth functioning of the fishing harbour and fishing operations, directly benefitting more than 1000 fishermen in the surrounding areas. Apart from the above, the Petitioner is also paying significant monies to the Govt. of Kerala for the de-silted sand. Thus, the arrangement was a win-win model for all parties concerned.

9. While things stood such, to the Petitioner's utter surprise and dismay, the Petitioner was served with a notice issued by the 1st Respondent on 04.10.2017 bearing ref. no. A7/6224/2017 stating that the spiral separator and the shed set up by the Petitioner at the harbour were in violation of the following enactments:

- (a) Kerala Panchayat Raj (Taxation, Levy and Appeal) Rules 1996
- (b) Kerala Panchayat Building Rules 2011
- (c) CRZ Notification 2011
- (d) Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules 1996

10. The Petitioner was further directed to stop all activities within 24 hours and to report compliance of the same to the 1st Respondent. The Petitioner was also directed to show cause why further action should not be initiated against the Petitioner in respect of the alleged violations. It is pertinent that the said notice dated 04.10.2017 did not specify the purported violations of the aforementioned enactments apart from making a vague reference to the same. It is well settled that allegations in the notice must be specific with such particulars and details as are necessary to give a reasonable opportunity of defense, and a vague and imprecise notice which does



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not enable the party to effectively defend itself does not satisfy the requirements of natural justice. It is therefore essential for the notice to indicate the precise scope of the notice and also to indicate the specific allegations concerning the Petitioner. The notice dated 04.10.2017 issued by the 1st Respondent, however, is vague and ambiguous and did not give the Petitioner any real opportunity to defend itself. The notice itself is thus vitiated by a clear non-application of mind. A true copy of the notice dated 04.10.2017 bearing ref. no. A7/6224/2017 issued by the 1st Respondent to the Petitioner is produced herewith and may be marked as Exhibit P6 for identification. Another notice issued by the 1st Respondent dated 24.10.2017, reiterating the above, was affixed at the Petitioner's shed. A true copy of the notice dated 24.10.2017 issued by the 1st Respondent is produced herewith and may be marked as Exhibit P7 for identification.

11. Despite the vague nature of allegations, the Petitioner responded to the aforementioned notice dated 04.10.2017 vide its reply dated 27.10.2017. In its reply, the Petitioner clarified that it was permitted by the Govt. of Kerala to carry out de-silting of the harbour mouth area and transporting the mineral sand after separating the de-silted sand. It was specifically pointed out by the Petitioner that no mining activity was being carried out in the sea. The Petitioner also stated in no uncertain terms that it had not violated any laws and further that the temporary shed was set up only to facilitate the operations in the area. A true copy of reply sent by the Petitioner to the 1st Respondent is produced herewith and may be marked as Exhibit P8 for identification.



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hereinafter without prejudice to and in the alternative to one
another:-

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GROUNDS

A. The impugned notice dated 06.11.2017 is vague, arbitrary,
unreasonable, illegal and violative of the petitioners' rights under
Articles 14 and 19(1)(g) of the Constitution of India.

B. The activities being undertaken by the Petitioner were sanctioned by
the 3rd Respondent as is evidenced from the various GOs issued by
them. The impugned order dated 06.11.2017 fails to take into
consideration any of the said facts and amounts to an obvious
arbitrary exercise of power by the 1st and 2nd Respondents.

C. It is submitted that the notice dated 04.10.2017 issued by the 1st
Respondent did not specify the purported violations of the
aforementioned enactments apart from making a vague reference to
the same. It is well settled that allegations in any notice must be
specific with such particulars and details as are necessary to give a
reasonable opportunity of defense, and a vague and imprecise notice
which does not enable the party to effectively defend itself does not
satisfy the requirements of natural justice. It is therefore essential for
the notice to indicate the precise scope of the notice and also to
indicate the specific allegations concerning the Petitioner. The
notices dated 04.10.2017 and 24.10.2017 issued by the 1st
Respondent, however, is vague and ambiguous and did not give the
Petitioner any real opportunity to defend itself. The notices
themselves are thus vitiated by a clear non-application of mind.




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- D. It is respectfully submitted that the notice dated 04.10.2017 and the subsequent notice dated 24.10.2017 cannot be considered as proper notices inasmuch as they are exceptionally vague making it impossible for the Petitioner to effectively defend itself. Unspecific, vague, devoid of details or unintelligible allegation in the show cause notice implies denial of proper opportunity of hearing. In the absence of a proper notice, the impugned order dated 06.11.2017 would necessarily have to be found invalid for violation of principles of natural justice.
- E. It is submitted that the notices dated 04.10.2017 and 24.10.2017 are vague, ambiguous and do not highlight any specific violations of any of the statutes/ rules mentioned therein. They do not state how or in what manner the said statutes were violated. Had a proper show cause notice been served, the Petitioner could have demonstrated that none of the statutes mentioned in the notices have been violated.
- F. Without prejudice, it is submitted that the impugned order dated 06.11.2017 has been issued by the 1st Respondent without any application of mind in a purely mechanical and perfunctory way. There was no bona fide formation of opinion by the 1st and 2nd Respondents as required under law and none of the submissions made by the Petitioner in its reply dated 27.10.2017 were considered. Further, no hearing was granted to the Petitioner prior to the issuance of the impugned order dated 06.11.2017 in gross violation of principles of natural justice. The impugned order dated 06.11.2017 thus deserves to be quashed on this ground alone.



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आई आर ई एल, चवरा IRE LTD., CHAVARA.

G. The impugned order dated 06.11.2017 is a non-speaking order inasmuch as it directs the Petitioner to remove the unit and the sheds within three days from its receipt without considering any of the submissions made by the Petitioner in its reply dated 27.10.2017. It is submitted that the 1st Respondent was duty bound to give cogent reasons for passing the impugned order dated 06.11.2017 after complying with the principles of natural justice. Failure to do so would be sufficient to quash the impugned order.

H. The 1st and 2nd Respondents ought to have considered that the Petitioner has been operating the spiral unit/ separator since 2014 and the same was with the knowledge and permission of the Panchayat. In such circumstances, and when the operations are going for such a long time, issuance of multiple show cause notices, non-consideration of the reply submitted by the Petitioner and the subsequent issuance of the impugned order dated 06.11.2017 is reflective of an arbitrary action by the 1st Respondent. The Hon'ble Supreme Court has held that when a thing is done in a post-haste manner, mala fides would be presumed. The undue haste with which the 1st Respondent has acted smacks of mala fides and the impugned order dated 06.11.2017 deserves to be quashed.

I. The Petitioner is carrying out de-silting of the harbour mouth, physical separation of the minerals using spiral separator and transportation of the minerals to the Petitioner's Chavara plant. The sand obtained after separating is utilized for refiling of low lying areas in the 1st Respondent Panchayat for enabling rehabilitation of




 आर.वी. विश्वनाथ R.V. VISWANATH
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1 the homeless and displaced people. The entire cost of transportation
 of the said separated sand is borne by the Petitioner. The dredging
 work also ensure smooth functioning of the fishing harbour and
 fishing operations, directly benefitting more than 1000 fishermen in
 the surrounding areas. Apart from the above, the Petitioner is also
 5 paying significant monies to the Govt. of Kerala for the de-silted
 sand. The arrangement was a win-win model for all parties
 concerned. But by reason of the impugned order dated 06.11.2017
 public interest has been given a complete go-by.

10 J. In respect of the allegations made in the notice dated 04.10.2017, it is
 submitted that the 1st Respondent has no authority insofar as the
 applicability CRZ Notification 2011 is concerned. The impugned
 order dated 06.11.2017 thus has been issued without jurisdiction and
 15 is therefore liable to be set aside.

K. It is respectfully submitted that no specific violation of the Kerala
 Panchayat Raj (Taxation, Levy and Appeal) Rules 1996, Kerala
 Panchayat Building Rules 2011. Even the Kerala Panchayat Raj (Issue
 20 of Licence to Dangerous and Offensive Trades and Factories) Rules
 1996 or the Kerala Panchayat Building Rules have been alleged by
 the 1st Respondent. Kerala Panchayat Raj (Taxation, Levy and
 Appeal) Rules 1996 has no applicability to present case since it deals
 25 with the procedure for determining the levy of tax. Even the Kerala
 Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades
 and Factories) Rules 1996 would not be applicable in the present case
 since the activities undertaken by the Petitioner is neither part of the
 30



(Handwritten Signature)

आर.वी. विश्वनाथ R.V. VISWANATH
 उ म प्र (त से) DGM (T S)
 आई आर ई एल, चवरा IRE LTD., CHAVARA

First Schedule appended thereto nor would it fall within any of the provisions enumerated therein.

L. In the absence of a reasoned order and given the vague and ambiguous notices issued by the 1st Respondent, no real purpose would be served by approach the concerned authorities seeking a reconsideration of the matter.

For these and other grounds that may be submitted at the time of hearing, it is humbly prayed that this Hon'ble Court may be pleased to: -

(i) Call for the records leading up to the issuance of the impugned order dated 06.11.2017 issued by the 1st Respondent and quash the same by the issuance of a writ of certiorari or such other writ, order or direction.

(ii) Grant such other and incidental reliefs as this Hon'ble Court may deem just and necessary in the facts and circumstances of this case.

Dated this the 16th day of November, 2017



[Signature]
 आर.वी. विश्वनाथ R.V. VISWANATH
 उ म प्र (त से) DGM (TS)
 आई आर ई एल, चवरा IRE LTD., CHAVARA.
PETITIONER

INTERIM RELIEF

For the reasons stated in the memorandum of writ petition (civil) and the affidavit filed in support thereof, it is most humbly prayed that this Hon'ble Court may be pleased to stay the impugned order dated 06.11.2017 issued by the 1st Respondent, pending hearing and disposal of this writ petition.

Dated this the 16th day of November, 2017.

COUNSEL FOR THE PETITIONER

19

BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM

W.P. (C) No. Of 2017

M/s Indian Rare Earths Ltd. ... Petitioner

vs.

Purakkad Grama Panchayath & Ors. ... Respondents

AFFIDAVIT

I, R.V. Viswanath, aged 52 years, s/o R.M. Warriar, residing at C-5, Vaidya Bhawan Apartments, Manayil Kulangara, Thirumullavaram PO, Kollam - 12, do hereby solemnly affirm and state as follows: -

1. I am the Deputy General Manager (Technical Services) of the Petitioner Company in the above writ petition and I am swearing this affidavit on behalf of the Petitioner having been authorised to do so. I am acquainted with the facts and circumstances of the case as disclosed from the files.

2. All the averments made in the accompanying Writ Petition (Civil) are true to the best of my knowledge, information and belief and they may be read as part of this affidavit. The exhibits produced along with the Writ Petition (Civil) are the true copies of the original documents.

3. The Petitioner has not filed any earlier petition seeking similar and identical reliefs in respect of the same subject matter.

All the facts stated above are true to the best of my knowledge, information and belief.

Dated this the 16th day of November, 2017




आर.वी. विश्वनाथ R.V. VISWANATH
उ म प्र (त से) DGM (TS)
आई आर ई एल, चवरा IRE LTD., CHAVARA.

DEPONENT

Solemnly affirmed and signed before me by the deponent, who is personally known to me, on this the Dated this the 16th day of November, 2017 in my office at Ernakulam.

ADVOCATE

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

Thursday, the 16th day of November 2017/25th Karthika, 1939

WP(C).No.36975/2017(V)

PETITIONER

M/S INDIAN RARE EARTHS LTD.
 CHAVARA UNIT, KOLLAM-691583,
 KERALA, INDIA. REPRESENTED BY DEPUTY GENERAL MANAGER
 (TECHNICAL SERVICES), MR. R.V. VISWANATH.

RESPONDENT(S)

1. PURAKKAD GRAMA PANCHAYATH
 PURAKKAD P.O. ALAPPUZHA DISTRICT, 690551,
 KERALA, INDIA,
 REPRESENTED BY ITS SECRETARY.
2. SECRETARY, PURAKKAD GRAMA PANCHAYATH,
 PURAKKAD P.O. ALAPPUZHA DISTRICT-690551
 KERALA, INDIA.
3. STATE OF KERALA REPRESENTED BY THE
 SECRETARY TO THE GOVERNMENT, FISHERIES AND
 PORT DEPARTMENT, SECRETARIAT,
 THIRUVANATHAPURAM-695001.

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 the impugned order dated 06.11.2017 issued by the 1st Respondent, pending disposal of this 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 E.K.NANDAKUMAR (SR.), M.GOPIKRISHNAN NAMBIAR, P.GOPINATHA MENON, K.JOHN MATHAI, JOSON MANAVAN, KURYAN THOMAS and PAULOSE C. ABRAHAM Advocates for the petitioner and of GOVERNMENT PLEADER for R-3, the court passed the following

O R D E R

Admit.

Government Pleader takes notice for the third respondent. Issue notice by special messenger to respondents 1 and 2.

Exhibit P9 will remain stayed for a period of ten days.

16-11-2017

Sd/- P.B.SURESH KUMAR, JUDGE

/true copy/

Atm 16/11/17
 ASSISTANT REGISTRAR

Exhibit P19): A true copy of the order dated 06.11.2017 issued by the 1st respondent

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

Thursday, the 24th day of November 2017/2ND Agrahayana, 1939

WP(C).No.36975/2017(V)

PETITIONER

M/S INDIAN RARE EARTHS LTD.
 CHAVARA UNIT, KOLLAM-691583,
 KERALA, INDIA, REPRESENTED BY DEPUTY GENERAL MANAGER
 (TECHNICAL SERVICES), MR. R.V. VISWANATH.

RESPONDENTS

1. PURAKKAD GRAMA PANCHAYATH
 PURAKKAD P.O. ALAPPUZHA DISTRICT, 690551.
 KERALA, INDIA,
 REPRESENTED BY ITS SECRETARY.
2. SECRETARY, PURAKKAD GRAMA PANCHAYATH,
 PURAKKAD P.O. ALAPPUZHA DISTRICT-690551
 KERALA, INDIA.
3. STATE OF KERALA REPRESENTED BY THE
 SECRETARY TO THE GOVERNMENT, FISHERIES AND
 PORT DEPARTMENT, SECRETARIAT,
 THIRUVANATHAPURAM-695001.

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 the impugned order dated 06.11.2017 issued by the 1st Respondent, pending hearing and disposal of this Writ Petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and upon perusing this Courts order dated 16.11.2017 and upon hearing the arguments of M/S E.K.NANDAKUMAR (SR.), M.EOPIKRISHNAN NAMBIAR, P.GOPINATHA MENON, K.JOHN MATHAI, JOSON MANAVELAN, KURYAN THOMAS and PAULOSE C. ABRAHAM Advocates for the petitioner and of GOVERNMENT PLEADER for R-3, the court passed the following

O R D E R

Interim Order is extended by two weeks.
 Post along with the connected cases.

24-11-2017

Sd/- ANU SIVARAMAN, JUDGE

/true copy/

A/...
 27/11/17
 ASSISTANT REGISTRAR

27/11/17

Present:

THE HONOURABLE MR.JUSTICE SHAJI P.CHALY

Thursday, the 7th day of December 2017/16th Agrahayana, 1939

WP(C)No.36975/2017(V)

PETITIONER:-

M/S INDIAN RARE EARTHS LTD.,
CHAVARA UNIT, KOLLAM-691 583, KERALA, INDIA,
REPRESENTED BY DEPUTY GENERAL MANAGER
(TECHNICAL SERVICES), MR.R.V.VISWANATH.

RESPONDENTS:-

1. PURAKKAD GRAMA PANCHAYATH, PURAKKAD P.O.,
ALAPPUZHA DISTRICT-690 551, KERALA, INDIA,
REPRESENTED BY ITS SECRETARY.

AND OTHERS

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 the impugned order dated 06.11.2017 issued by the 1st respondent, pending hearing and disposal of this writ petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 24.11.2017 and upon hearing the arguments of SRI.E.K.NANDAKUMAR (SENIOR ADVOCATE) along with M/s. M.GOPIKRISHNAN NAMBIAR P.GOPINATH MENON, K.JOHN MATHAI, JOSOM MANAVALAN, KURYAN THOMAS & PAULOSE C.ABRAHAM, Advocates for the petitioner, M/s. K.S.HARIHARAPUTHRAN & GEORGE MATHEW, Advocates for R1 & R2 and of GOVERNMENT PLEADER for R3, the Court passed the following:

ORDER

Respondents seeks time for filing counter affidavit.
Interim order is extended for a period of one month.

07-12-2017

Sd/- SHAJI P.CHALY, JUDGE

/true copy/


ASSISTANT REGISTRAR

Sn/4

12-9
8/12/17

Present:

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

Friday, the 5th day of January 2018/15th Pousha, 1939

WP(C)No. 36975/2017(V)

PETITIONER: -

M/S INDIAN RARE EARTHS LTD.,
CHAVARA UNIT, KOLLAM-691 583, KERALA, INDIA,
REPRESENTED BY DEPUTY GENERAL MANAGER
(TECHNICAL SERVICES), MR. R. V. VISWANATH.

RESPONDENTS: -

1. PURAKKAD GRAMA PANCHAYATH, PURAKKAD P.O.,
ALAPPUZHA DISTRICT-690 551, KERALA, INDIA,
REPRESENTED BY ITS SECRETARY.

AND OTHERS

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 the impugned order dated 06.11.2017 issued by the 1st respondent, pending hearing and disposal of this writ petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 07-12-2017 and upon hearing the arguments of SRI. E. K. NANDAKUMAR (SENIOR ADVOCATE) along with M/s. M. GOPIKRISHNAN NAMBIAR, P. GOPINATH MENON, K. JOHN MATHAI, JOSON MANAVALAN, KURRYAN THOMAS & PAULOSE C. ABRAHAM, Advocates for the petitioner, M/s. K. S. HARIHARAPUTHRAN & GEORGE MATHEW, Advocates for R1 & R2 and of GOVERNMENT PLEADER for R3, the Court passed the following:

O R D E R

Respondents seek time to file counter. Interim order will stand extended for a period of three months.

05-01-2018

Sd/- SHAJI P. CHALY, JUDGE

/true copy/

M. M. M.
6/1/18
ASSISTANT REGISTRAR

Sr/4 *M*

6.1.18
6/1/18

HOD (Mining)

24

[Handwritten Signature]
01/2/18



കേരള സർക്കാർ
സംഗ്രഹം

മത്സ്യബന്ധന തുറമുഖ വകുപ്പ് - തോട്ടപ്പള്ളി ഫിഷറീ ഹാർബറിലെ പ്രഡ്ജ് ചെയ്റ്റ് ശേഖരിച്ച മണ്ണിൽ നിന്നും ധാതുമണൽ ഇന്ത്യൻ റെയർ എർത്ത് ലിമിറ്റഡിനു നൽകി ഉത്തരവ് പുറപ്പെടുവിക്കുന്നു.

മത്സ്യബന്ധന തുറമുഖ (ബി) വകുപ്പ്

സ.ഉ.(സാധാ)നം. 73/2018/മ.തു.വ. തീയതി, തിരുവനന്തപുരം, 31.01.2018.

- പരാമർശം :
- 1) സ.ഉ(സാധാ) നം. 348/14/മതുവ തീയതി 16.05.2014.
 - 2) സ.ഉ(സാധാ) നം. 657/15/മതുവ തീയതി 10.08.2015.
 - 3) സ.ഉ(സാധാ)നം. 296/16/മതുവ തീയതി 25.04.2016
 - 4) ശ്രീ എ.ജെ. ജനാർദ്ദനൻ, ഹെഡ്. ഇന്ത്യൻ റെയർ എർത്ത് ലിമിറ്റഡിന്റെ 02.06.2017 ലെ CH/MNG/TP Harbour നം. കത്ത്.
 - 5) ഹാർബർ എഞ്ചിനീയറിംഗ് വകുപ്പ് ചീഫ് എഞ്ചിനീയറുടെ 18.11.2017 ലെ ഡി3/6605/14/സി.ഇ നം. കത്ത്.

ഉത്തരവ്

തോട്ടപ്പള്ളി ഫിഷിംഗ് ഹാർബറിൽ പ്രഡ്ജ് ചെയ്റ്റ് കൂട്ടിയിട്ടുള്ള ധാതുക്കലർന്ന 46000 ക്യൂ.മീ. മണ്ണ് പൊതുമേഖലാ സ്ഥാപനമായ IREL ന് ക്യൂബിക് മീറ്ററിന് 556/- രൂപ നിരക്കിൽ അനുവദിച്ചു നൽകി പരാമർശം (1) പ്രകാരം ഉത്തരവ് പുറപ്പെടുവിച്ചിരുന്നു. 72,000/- ക്യൂ മീ കരിമണൽ കൂടി വേണമെന്ന് IREL സർക്കാരിനോട് ആവശ്യപ്പെട്ടതനുസരിച്ച് തോട്ടപ്പള്ളി ഫിഷറീസ് ഹാർബറിൽ നിന്നും പ്രഡ്ജ് ചെയ്റ്റ് 72000 ക്യൂ.മീ. മണൽ എടുക്കുന്നതിന് ചീഫ് എഞ്ചിനീയർ സമർപ്പിച്ച വ്യവസ്ഥകൾക്കു വിധേയമായി IREL ന് അനുമതി നൽകി പരാമർശം (2) പ്രകാരം ഉത്തരവായിരുന്നു. പരാമർശം (3) പ്രകാരം IREL സ്വന്തം ചെലവിൽ പ്രഡ്ജിംഗ് നടത്തി സൂക്ഷിച്ചിട്ടുള്ള 85000 ക്യൂ മീറ്റർ മണൽ പ്രഡ്ജിംഗിന് ഉണ്ടാകുന്ന ചെലവ് കഴിച്ച് ക്യൂ മീറ്ററിന് 464.55 നിരക്കിന് IREL ന് നൽകി പരാമർശം (3) പ്രകാരം ഉത്തരവായിരുന്നു.

2. തുടർന്ന് തോട്ടപ്പള്ളി മത്സ്യബന്ധന തുറമുഖത്തിലെ മണൽ ഉൾപ്പെടെ 1 ലക്ഷം ഘന മീറ്റർ മണ്ണ് ധാതുക്കൾ വേർതിരിച്ച് ഉപയോഗിക്കുന്നതിനായി IREL ന് നൽകണമെന്ന് സൂചന (4) പ്രകാരം IREL ആവശ്യപ്പെടുകയുണ്ടായി.

3. ധാതുക്കൾ വേർതിരിക്കുമ്പോൾ ഉണ്ടാകുന്ന മലിനജലം പ്രദേശവാസികൾക്ക് ബുദ്ധിമുട്ടുകൾ ഉണ്ടാക്കുന്നതായും ഹാർബറിലെ സ്ഥലപരിമിതി മൂലം വേസ്റ്റ് മണൽ ശേഖരിച്ചു സൂക്ഷിക്കുന്നതിനും കഴിയാത്ത സാഹചര്യമാണ് നിലവിലുള്ളത്.

ആയതിനാൽ ഹാർബറിൽ നിന്നും സ്റ്റൈറൽ യൂണിറ്റ് ഒഴിവാക്കിയിട്ട് ഡ്രഡ്ജ് ചെയ്ത ശേഖരിച്ചിരിക്കുന്ന മുഴുവൻ മണ്ണും കൊണ്ടുപോകുന്നതിന് IREL ന് അനുമതി നൽകാവുന്നതാണെന്നും ചീഫ് എഞ്ചിനീയർ പരാമർശം (4) പ്രകാരം അറിയിച്ചു.

4. സർക്കാർ ഈ വിഷയം വിശദമായി പരിശോധിച്ചു. ചീഫ് എഞ്ചിനീയറുടെ ശുപാർശയും Mines and Minerals (Development and Regulation) Act 1957 ലെയും Atomic Energy (Working of the Mines, Minerals and Handling of Prescribed Substances) Rules 1984 ലെയും വ്യവസ്ഥകളും കണക്കിലെടുത്ത്, ഹാർബറിൽ നിന്നും സ്റ്റൈറൽ യൂണിറ്റ് ഒഴിവാക്കിയിട്ട് ഡ്രഡ്ജ് ചെയ്ത ശേഖരിച്ചിരിക്കുന്ന മുഴുവൻ മണ്ണും സ്വന്തം ചെലവിൽ കൊണ്ടുപോകുന്നതിന് (ഡ്രഡ്ജിംഗിന് ഉണ്ടാകുന്ന ചെലവ് കഴിച്ച് ക്യൂബിക് മീറ്ററിന് 464.55 നിരക്കിന്) IREL, ചവറക്ക് അനുമതി നൽകി ഉത്തരവാകുന്നു.

5. ടി നടപടിക്രമം സമയബന്ധിതമായി പൂർത്തിയാകുന്നുവെന്ന് ചീഫ് എഞ്ചിനീയർ ഉറപ്പ് വരുത്തേണ്ടതാണ്.

ഗവർണ്ണറുടെ ഉത്തരവിൻ പ്രകാരം.
മുഹമ്മദ് അൻസാരി
ജോയിന്റ് സെക്രട്ടറി

ചീഫ് എഞ്ചിനീയർ, ഹാർബർ എഞ്ചിനീയറിംഗ് വകുപ്പ്, തിരുവനന്തപുരം.
ടി ഹെഡ്, ഇന്ത്യൻ റെയർ എർത്ത് ലിമിറ്റഡ്, ചവറ, കൊല്ലം - 691 583.
പ്രിൻസിപ്പൽ അക്കൗണ്ടന്റ് ജനറൽ (ആഡിറ്റ്), കേരളം, തിരുവനന്തപുരം.
അക്കൗണ്ടന്റ് ജനറൽ (എ&ഇ), കേരളം, തിരുവനന്തപുരം.
ഡയറക്ടർ വിവര പൊതുജനസമ്പർക്ക വകുപ്പ് (സർക്കാർ വെബ്സൈറ്റിൽ പ്രസിദ്ധീകരിക്കുന്നതിന്)
കരുതൽ ഫയൽ / ഓഫീസ് കോപ്പി.

ഉത്തരവിൻ പ്രകാരം.

സെക്ഷൻ ഓഫീസർ

Translation of GO from Malayalam

GOVERNMENT OF KERALA

Abstract

Fisheries & Ports Department – Dredging and transportation of collected mineral sand from Thottappally Harbour to Indian Rare Earths Limited – Sanction accorded – Orders issued.

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FISHERIES & PORTS (B) DEPARTMENT

G.O. (Ordinary) No. 73/2018/F.P.D. Dated, Thiruvananthapuram, 31.01.2018

- Read :
- 1) G.O (Ordinary) No.348/14/FPD dated 16.05.2014.
 - 2) G.O (Ordinary) No.657/15/FPD dated 10.08.2015.
 - 3) G.O (Ordinary) No.296/16/FPD dated 25.04.2016
 - 4) Letter No.CH/MNG/TP Harbour dated 02.06.2017 of Sri.A.J.Janarthanam, Head, Indian Rare Earths Limited.
 - 5) Letter No.D3/6605/14/C.E dated 18.11.2017 of Chief Engineer, Harbour Engineering Department.

ORDER

As per G.O. read as (1) above, it had been sanctioned to give the mineral contained sand collected and heaped by dredging the Thottappally Fishing Harbour to the Public Sector Company IREL @ Rs.556/- per cubic metre. Vide G.O. read as (2) above, in consideration of the request of IREL for another 72,000 cubic metre of mineral sand, permission was granted to IREL to take the 72,000 cubic metre dredged sand in Thottappally Fishing Harbour subject to the conditions submitted by the Chief Engineer for taking the sand. Vide G.O read as (3) above, permission was granted to IREL to take the 85,000 cubic metre sand dredged and kept at its own expenses, at the reduced rate of Rs.464.55 per cubic metre after reducing the dredging expenses.

2. IREL vide its letter read as (4) above, requested permission for separating 1.0 lakh cubic metre mineral sand by establishing Spiral Plant in Thottappally Fishing Harbour.

3. The waste water generated during the mineral sand separation causes difficulties to the nearby residents and there is a space constraint in the Harbour to

keep the waste sand generated from the mineral sand separation process. The Chief Engineer vide his letter read as (5) above opined that the entire dredged out sand may be given to IREL by avoiding physical separation at the Harbour site.

4. The Government examined the issue in detail. In view of the recommendation of the Chief Engineer and the conditions laid down in Mines and Minerals (Development and Regulation) Act 1957, Atomic Energy (Working of the Mines, Minerals and Handling of Prescribed Substances) Rules 1984, IREL, Chavara is permitted to transport the entire dredged out sand @ Rs.464.55 per cubic metre after reducing the dredging expenses incurred by IREL.

5. The Chief Engineer shall ensure that the above actions are completed within the time frame.

By Order of the Governor

Muhammed Anzari
Joint Secretary

To

Chief Engineer, Harbour Engineering Department, Thiruvananthapuram.

The Head, Indian Rare Earths Ltd, Chavara, Kollam – 691583.

Principal Accountant General (Audit), Kerala, Thiruvananthapuram.

Accountant General (A&E), Kerala, Thiruvananthapuram.

Director, Information Public Relation Dept – For publishing in Govt website.

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By Order

Section Officer

GOVERNMENT OF KERALA

Abstract

Matter - Orders issued authorizing Indian Rare Earth Limited., to dredge by establishing Spiral Unit at Thottappally Harbour.

FISHERIES HARBOUR (B) DEPARTMENT

G.O. (Ordinary) No.645/2018/
Fisheries Harbour Dept.

Dated, Thiruvananthapuram, 06/08/2018

Read 1) G.O. (MS) No. 73/2018/Fisheries Harbour Dept. dated 31.01.2018

- 2) Letter No. CH/MNG/GOK/TPLY/2018 dated 5.2.2018 of Sri. A. Janardhanan, Chief General Manager & Head, Indian Rare Earth Ltd.
- 3) Letter No. D3/6605/2014 dated 4.5.2018 of the Chief Engineer, Harbour Engineering Department.

ORDER

As per Ref.(1) cited above, the Indian Rare Earth Ltd., was authorized to remove the Spiral Unit and transport the complete sand which was dredged in their own expense (except the cost of dredging Rs. 464.55 per/M³) from the Thottappally Fisheries Harbour.

2. As per Ref.(2) cited above, it was requested by Indian Rare Earths Ltd., that as the removal of Spiral Unit from Harbour and transporting of the complete sand dredged will cause extra expense to the Company, the Company requested grant permission to continue the present way of removing the Minerals by using Spiral Unit and transport the same.

3. As per Ref.(3) cited above, for the smooth functioning of the harbor the sand deposited in the Entry Gate as well as in Channel is required to be dredged and removed. As it is difficult for dredging by the Department and as the Indian Rare Earth Ltd., was ready for the dredging the Chief Engineer, Harbour Engineering Department recommended to establish Spiral Unit in the Harbour and remove the sand.

3: The Government deeply examined the matter and decided that for the smooth functioning of the Thottappalli harbor, the sand deposited in the Entry Gate and Channel is to be removed by dredging as requested by Indian Rare Earth Ltd., it is permitted to establish Spiral Unit in the harbor for dredging.

(By Order of the Governor)

GIRIJA KUMARI.G

JOINT SECRETARY

Chief Engineer, Harbour Engineering Department, Thiruvananthapuram

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR.JUSTICE SHAJI P.CHALY

Tuesday, the 4th day of September 2018/13th Bhadra, 1940

WP(C)No.36975/2017(V)PETITIONER

M/S INDIAN RARE EARTHS LTD.,
 CHAVARA UNIT, KOLLAM-691 583, KERALA, INDIA,
 REPRESENTED BY DEPUTY GENERAL MANAGER (TECHNICAL SERVICES),
 MR.R.V.VISWANATH.

RESPONDENTS

1. PURAKKAD GRAMA PANCHAYATH, PURAKKAD P.O.,
 ALAPPUZHA DISTRICT-690 551, KERALA, INDIA,
 REPRESENTED BY ITS SECRETARY.

AND OTHERS

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 the impugned order dated 06.11.2017 issued by the 1st respondent, pending hearing and disposal of this writ petition.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this Court's order dated 04-06-2018 and upon hearing the arguments of SRI.E.K.NANDAKUMAR (SENIOR ADVOCATE) along with M/s. M.GOPIKRISHNAN NAMBIAR, P.GOPINATH MENON, K.JOHN MATHAI, JOSON MANAVALAN, KURYAN THOMAS & PAULOSE C.ABRAHAM, Advocates for the petitioner, M/s. K.S.HARIHARAPUTHRAN & GEORGE MATHEW, Advocates for R1 & R2 and of GOVERNMENT PLEADER for R3, the Court passed the following:-

O R D E R

Interim order will stand extended until further orders.

04-09-2018

Sd/- SHAJI P.CHALY, JUDGE

/true copy/



ASSISTANT REGISTRAR

vc/4

2/9/18
 2/9/18



GOVERNMENT OF KERALA

Abstract

Fisheries & Ports Department - Dredging and transportation of sand from Azheekkal Pozhi in Kayamkulam through IREL - Sanction accorded - Orders issued.

FISHERIES & PORTS (B) DEPARTMENT

G.O.(Rt)No. 793/2018/F&PD

Dated, Thiruvananthapuram, 08/10/2018

- Read:- 1) Letter No: CH/MNG/Azk/01/07 dated 26.07.2017 from A.J.Janarthanan, GM & Head of IREL.
 2) Letter No: CH/MIN/AZL/2018/1 dated 09.05.2018 from S.Suryakumar, CGM & Head addressed to Chief Engineer, Harbour Engineering Department.
 3) Letter No: D3/6605/14/CE dated 01.12.2017, 25.05.2018, 20.06.2018 from Chief Engineer, Harbour Engineering Department.

ORDER

As per letter read as 1st paper, IREL has requested to accord sanction for dredging and collecting the sand deposited in the Azheekkal Pozhi area and also for installing a separation plant at the site for processing the dredged out sand and to separate the mineral sand for transporting. As per letter read as 2nd paper, reported that in Azheekkal Pozhi area, the dredging cost will be more because higher capacity dredger is to be arranged to carry out dredging in the turbulent sea waves area and also considering the present diesel price and other cost, IREL requested to fix the rate of dredged out sand as ₹ 392/- per cubic metre.

2) The Chief Engineer, Harbour Engineering Department as per the letter read as 3rd paper above has recommended to approve the rate of dredged out sand submitted by IREL @ 392/-per cubic metre.

3) Government have examined the matter in detail and are pleased to accord sanction to IREL for dredging and collecting the sand deposited in the Azheekkal Pozhi in Kayamkulam at the rate of Rs.392/- per cubic metre subject to the conditions that the Chief Engineer, Harbour Engineering Department, should ensure the cost is inclusive of other revenues in the form of royalty due to the Government, taking into account the mineral content in the sand, applicable as per Mines and Minerals (Development & Regulation) Act, 1957.

4) Sanction is also accorded to IREL for installing a separation plant at the site for processing the dredged sand and to separate the mineral sand.

(By Order of the Governor)

GIRIJA KUMARI. G

Joint Secretary to Government

To

The Chief Engineer, Harbour Engineering D

32

The District Collector, Kollam/Alappuzha.

The District Geologist, Kollam/Alappuzha.

The Controller, Indian Bureau of Mines, Nagpur

The Principal Accountant General (A&E/Audit) Kerala, Thiruvananthapuram

Fisheries and Ports (B) Department

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Section Officer



33
Anil (ms) 11/1/19
10/6/2019

MMML	MD/No. 227/19	Date 6/6/19
HOU (TPHR)	HOU (FMX)	HOU (SPMS)
HOD (P&A)	HOU (F)	HOD (MS)

001871



GOVERNMENT OF KERALA

Abstract



MSB716 12019
10/6/19

Water Resources Department - Removal of Mineral sand from Thottappally Spillway Pozhmouth - Permission accorded to M/s Kerala Minerals & Metals Ltd (KMML) - Rate fixed - orders issued.

WATER RESOURCES (IR) DEPARTMENT

G.O.(Rt)No.385/2019/WRD Dated, Thiruvananthapuram, 31/05/2019

- Read 1 Letter No.W3 -31299/2018/R/DB-2 dated 01/11/2018 and 09/05/2019 from Chief Engineer, Irrigation & Administration, Thiruvananthapuram.
- 2 Minutes of the meeting held by Hon'ble Minister for Water Resources on 02/05/2019.
- 3 Letter No.MS/Mines/TPLY/05 dated 02/05/2019 from MD, KMML.
- 4 Minutes of the meeting held by the Secretary, Water Resources Department on 14/05/2019.
- 5 Letter No.D8-4661/2019/ISC dated 29/05/2019 from the Superintending Engineer, Irrigation South Circle, Thiruvananthapuram.

Hon/MS
for ms a pe
URGENT
A

To D (ms)
7/6/19

ORDER

The accumulation of sand in the Thottappally Spillway in Alappuzha District has affected the free flow of flood water to the sea, risking the Kuttanad area by flooding during the impending Monsoon season. 2018 witnessed severe flooding in the area. The M.S. Swaminathan Research Foundation (MSSRF) & the IIT, Madras upon consultation have recommended clearance of sand bar at the mouth of spillway and deepening and widening of the leading channel for further derisking the flood problem in Kuttanad.

2) Since the sand deposit are noted to contain regulated minerals, the disposal of the sand can be entrusted only to the appropriate licensees in the public sector.

3) M/S Indian Rare Earths Ltd., Chavara & The Kerala Minerals & Metals Ltd, Chavara have approached Government for the sand and based on the decision in the meeting held by Hon'ble Minister on 24/01/2019, Superintending Engineer, Irrigation South Circle, Thiruvananthapuram invited Expression of Interest (EoI) on 26/02/2019. M/s KMML submitted their EoI and their quotation for removal of sand quoting a rate of Rs.290/M³. The firms upon negotiation by the Superintending Engineer proposed that the order for removal of mineral sand may be made in favour of M/s KMML by suitable conveyance clauses. As per the report of the Chief Engineer, (I&A) dated 09/05/2019, M/s KMML has agreed that all financial and legal obligations with the department shall be met by M/s KMML.

4) As per the proposal dated 01/11/2018 of Chief Engineer (I&A) for the removal of mineral sand from Thottappally Spillway, the amount fixed for the mineral sand was Rs.464.55/M³ (excluding the cost of dredging) with reference to the G.O.(Rt)No.645/2018/F&PD dated 06/08/2018 granting sanction to dredge sand at Thottappally Harbour by Fisheries & Port Department. As per G.O.(Rt) No.571/ 2012/WRD dated 14/05/2012 permission was granted to IREL for dredging of sand bar at Thottappally Spillway (TSW) mouth at the rate of Rs.450/M³. However, as per the G.O.(Rt) No.112/19/F&PD dated 12/02/2019, the rate fixed for the dredged spoil at Neendakara Port is Rs.306.54/M³ including all taxes and the bidder M/s KMML had to pay the cost of dredging to the Fisheries Department. Essentially all these were within a range, comparable rates.

5) Since the rates proposed by the IREL & KMML based on above G.O. dated 12/02/2019 was quite below the previous rates (Rs.464.55/M³, Rs.450/M³) especially considering that the sand contains regulated atomic minerals, Government had entrusted Mining & Geology Department as well as the NCESS to assess and evaluate the contents of the mineral sand. But both institutions have not replied till date conclusively recommending a different rate. Further, in response to Government letter dated 30/04/2019, M/s KMML informed that they are

ready to accept the rate of Rs.464.55/M³ for the sand. In the meantime a high level meeting was convened on 02/05/2019, under the Chairmanship of the Hon'ble Minister for Water Resources Department, in which Hon'ble Ministers for Finance, Public Works Department, Food & Civil Supplies and Agriculture were also present, to decide on the removal of sand from Thottappally Spillway. The meeting assessed that the then rate quoted by IREL & KMML appeared to be low (ie. Rs. 290/M³) and therefore the Additional Chief Secretary, Water Resources Department was entrusted to have discussions with the Secretary, Industries Department and to take a decision in the matter. Also decided that the Chief Engineer(I&A) shall realize the proceeds of sale to Government heads.

6)Based on the above decision, a meeting was convened by Secretary, WRD on 14/05/2019 with officials of IREL, KMML, and representative of MD, KSIDC & Secretary to Industries Department. In the meeting it was found that sand is to be removed before the onset of current monsoon (June 2019). The KMML and Industries Department(KSIDC) refused to increase the offered rate. But agreed to review it later if necessary. The only practically feasible option before the Government is therefore to accept the highest rate offered by KMML and IREL on the date ie. Rs. 464.55/M³ excluding the excavation/ dredging charges as per the terms and conditions of agreement and EoI floated. The KMML has also to bear the GST expenses such as income tax, welfare tax, royalty etc.

7) Government have examined the matter in detail and are pleased to accord sanction to Chief Engineer, (I&A) to accept the highest offered rate on date of Rs.464.55/M³ for the sand excluding GST and excavations/ dredging charges offered by M/s KMML as per letter read 3rd paper above in accordance with the terms and conditions of EoI floated subject to the condition that the above rate will be in force only for three (3) months which is to be revisited at that point on recommendations of Chief Engineer (I&A).

8)The Chief Engineer (I&A) is directed to take urgent action to execute necessary agreement with the PSU mentioned above and move forward to avoid the loss of sand during the impending monsoon, so as to allow free flow of water through the pozhi mouth.

(By order of the Governor)
Dr. B. ASHOK
Secretary to Government

To:

The Chief Engineer (I&A), Thiruvananthapuram.
The Chief Engineer Kuttanad Package & Inland Navigation,
Alappuzha
The Chief General Manager & Head, IREL, Chavara, Kollam
Managing Director, KMML, Chavara, Kollam
Managing Director, Kerala State Industrial Development
Corporation (KSIDC), Thiruvananthapuram.
The Principal Accountant General (A&E / Audit), Kerala,
Thiruvananthapuram.
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Shri S.

Section Officer



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असाधारण
EXTRAORDINARY
भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)
प्राधिकार से प्रकाशित
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नई दिल्ली, शनिवार, मार्च 28, 2020/चैत्र 8, 1942

No. 1088]

NEW DELHI SATURDAY, MARCH 28, 2020/CHAITRA 8, 1942

पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय

अधिसूचना

नई दिल्ली, 28 मार्च, 2020

का.आ. 1224(अ).—खनिज विधि (संशोधन) अधिनियम 2020 (2020 का 2), खान और खनिज (विकास और विनियमन) अधिनियम, 1957 (1957 का 67) (जिसे इसमें इसके पश्चात् एमएमडीआर अधिनियम कहा गया है) द्वारा 10 जनवरी, 2020 से प्रभावी संशोधन किया गया है और अन्य बातों के साथ कानूनी निर्वाधन के अंतरण के लिए उपबंधों से संबंधित नई धारा 8ख का अंतःस्थापन किया गया है;

और, एमएमडीआर अधिनियम की धारा 8ख की उप-धारा (2) यह उपबंध करता है कि इस अधिनियम में या तत्समय प्रवृत्त किसी अन्य विधि में अंतर्विष्ट किसी बात के होते हुए भी, धारा 8क की उप-धारा (5) और उप-धारा (6) के उपबंधों के अधीन अवसान होने वाले खनन पट्टे का सफल बोली लगाने वाला और उस अधिनियम के अधीन या तद्दीन बनाए गए नियमों के अधीन उपबंधित प्रक्रिया के अनुसार नीलामी के माध्यम से अर्जित सभी विधिमान्य अधिकार, अनुमोदन, निकासी, अनुज्ञप्ति और इसी प्रकार दो वर्ष की अवधि के लिए पूर्ववर्ती पट्टेदार पर निहित होना समझा जाएगा;

और, एमएमडीआर अधिनियम की धारा 8ख की उप-धारा (3) यह उपबंध करता है कि तत्समय प्रवृत्त अन्य विधि में अंतर्विष्ट किसी बात के होते हुए भी, यह उस भूमि पर जिसमें नया पट्टा के प्रारंभ से दो वर्ष की अवधि के लिए पूर्ववर्ती पट्टेदार द्वारा खनन संक्रियाएं कार्यान्वित किए जा रहे थे, निरंतर खनन संक्रियाओं को नए पट्टेदार के लिए विधिपूर्ण किया जाएगा;

और, एमएमडीआर अधिनियम को पूर्वोक्त संशोधन के प्रयोजन के लिए केंद्रीय सरकार, भारत सरकार के तत्कालीन पर्यावरण और वन मंत्रालय की अधिसूचना सं. का. आ. 1533 (अ), तारीख 14 सितंबर, 2006 (जिसे इसमें इसके पश्चात् ईआईए अधिसूचना, 2006 कहा गया है) के सुसंगत उपबंधों को सम्मिलित करने के लिए आवश्यक समझती है।

और, पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय में सड़कों के लिए साधारण पृथ्वी का उपयोग करने के लिए पूर्व पर्यावरणीय अनापत्ति की अपेक्षा के अधित्याग के लिए अभ्यावेदनों की प्राप्ति पर; और पारंपरिक समुदाय द्वारा अंतर ज्वारीय क्षेत्र के भीतर चूने के गोले (मृत भू-पटल), पवित्र स्थानों, आदि के मैनुअल निकासी;

अतः, अब; केन्द्रीय सरकार, पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप-नियम (4) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उप-धारा (1) और उप-धारा (2) के खंड (v) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, लोकहित में, उक्त नियमों के नियम 5 के उप-नियम (3) के खंड (क) के अधीन सूचना की अपेक्षा से अभिमुक्ति के पश्चात् और अधिसूचना सं. का. आ. 4307 (अ), तारीख 29 नवंबर, 2019 को अधिक्रांत करते हुए, ईआईए अधिसूचना, 2006 में निम्नलिखित संशोधन करती है, अर्थात् :-

उक्त अधिसूचना में, -

(i) पैरा 11 में, उप-पैरा (2) के पश्चात् निम्नलिखित उप-पैरा अंतःस्थापित किया जाएगा, अर्थात् :-

“(3) खान और खनिज (विकास और विनियमन) अधिनियम, 1957 (1957 का 67) की धारा 8क की उप-धारा (5) और उप-धारा (6) के उपबंधों के अधीन अवसान होने वाले खनन पट्टे का सफल बोली लगाने वाला और उस अधिनियम के अधीन और तद्दीन बनाए गए नियमों के अधीन उपबंधित प्रक्रिया के अनुसार नीलामी के माध्यम से चयनित नया पट्टा के प्रारंभ की तारीख से दो वर्ष की अवधि के लिए पूर्ववर्ती पट्टेदार पर निहित पूर्व पर्यावरणीय अनापत्ति विधिमान्य अर्जित किया गया समझा जाएगा और यह नया पट्टा प्रारंभ की तारीख से दो वर्ष की अवधि के लिए या उसमें उल्लिखित निबंधनों शर्तों के अनुसार नया पर्यावरणीय अनापत्ति, नया निकासी अभिप्राप्त होने तक, इसमें से जो भी पूर्वतर हो, उक्त पट्टा क्षेत्र पर पूर्ववर्ती पट्टेदार का स्वीकृत पर्यावरणीय अनापत्ति के निबंधनों और शर्तों के अनुसार निरंतर खनन संक्रिया नया पट्टेदार के लिए विधिपूर्ण होंगी;

परन्तु, सफल बोली लगाने वाला नया पट्टा मंजूर करने की तारीख से दो वर्ष की अवधि के भीतर विनिबामक प्राधिकरण से पूर्व पर्यावरणीय अनापत्ति के लिए आवेदन करेगा और अभिप्राप्त करेगा।”;

(ii) अनुसूची के मद 1 (क) के सामने, स्तंभ (5) के खंड (2) के टिप्पण के पश्चात् निम्नलिखित खंड अंतःस्थापित किया जाएगा, अर्थात् :-

“(3) उक्त पट्टा के अवसान के पश्चात् पूर्ववर्ती पट्टेदार द्वारा खनन और खनिज (विकास और विनिबामन) अधिनियम, 1957 (1957 का 67) के उपबंधों के अधीन खनन पट्टे के अवसान होने तक भीतर पड़ी पहले से ही खनिज वाह्य सामग्री का निष्क्रमण या निष्कासन और परिवहन उस अधिनियम के अधीन और तद्दीन बनाए गए नियमों के अधीन उपबंधित प्रक्रिया के अनुसार नीलामी के माध्यम से चयनित सफल बोली लगाने की इस प्रकार अनुज्ञात खनन हैसियत के भाग के रूप में नहीं होगा।”

(iii) परिशिष्ट - IX के लिए, निम्नलिखित परिशिष्ट प्रतिस्थापित किया जाएगा, अर्थात् :-

“परिशिष्ट - 9

कतिपय मामलों के पर्यावरणीय अनापत्ति की अपेक्षा से छूट

निम्नलिखित मामलों को पूर्व पर्यावरणीय अनापत्ति की अपेक्षा नहीं होगी, अर्थात् :-

1. मैनुअल खनन द्वारा साधारण मिट्टी या बालू की कुम्हारों द्वारा मिट्टी के घड़े, लैम्प, खिलौने, आदि बनाने के लिए उनकी प्रथाओं के अनुसार निकासी।
2. मैनुअल खनन द्वारा मिट्टी की टाइलें बनाने द्वारा जो मिट्टी की टाइलें बनाते हैं, के लिए साधारण मिट्टी या बालू की निकासी।
3. किसानों द्वारा बाढ़ के पश्चात् कृषि भूमि से बालू के जमाव को हटाना।

4. ग्राम पंचायत में अवस्थित स्रोतों से बालू और साधारण मिट्टी को वैयक्तिक उपयोग या ग्राम में समुदाय कार्य के लिए प्रथा के अनुसार खनन।
5. सामुदायिक कार्य जैसे ग्रामीण तालाबों या टैंकों से गाद हटाना, महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार और गारंटी स्कीमों, अन्य सरकारी स्कीमों, प्रायोजित तथा सामुदायिक प्रयासों द्वारा ग्रामीण सड़कों, तालाबों या बांधों का संनिर्माण।
6. सड़क, पाइपलाइन, आदि जैसे रेखीय परियोजनाओं के लिए साधारण मिट्टी की निकासी, निष्कासन या प्रयोग करना।
7. बांधों, तालाबों, मेड़ों, बैराजों, नदी और नहरों की उनके अनुरक्षित तथा आपदा प्रबंधन के प्रयोजन के लिए तलमार्जन और गाद निकालना।
8. गुजरात में गुजरात सरकार की तारीख 14 फरवरी, 1990 की अधिसूचना सं. जीयू / 90 (16)/ एमसीअर-2189 (68) / 5 - सीएचएच द्वारा बंजारा और ओड द्वारा बालू के पारंपरिक उपजीविका कार्य।
9. पारंपरिक समुदाय द्वारा अंतर ज्वारीय क्षेत्र के भीतर चूने के गोलों (मृत भू-पटल), पवित्र स्थानों, आदि के मैनुअल निकासी।
10. सिंचाई या पेयजल के लिए कुओं की खुदाई।
11. यथास्थिति, ऐसे भवनों की नींव के लिए खुदाई जिनके लिए पूर्व पर्यावरणीय अनापत्ति अपेक्षित नहीं है।
12. जिला कलेक्टर या जिला मजिस्ट्रेट या किसी अन्य सक्षम प्राधिकारी के आदेश पर किसी नहर, नाला, ड्रेन, जल निकाय, आदि में होने वाली दरार को भरने के लिए साधारण मिट्टी या बालू का उत्खनन ताकि किसी आपदा या बाढ़ जैसी स्थिति से निपटा जा सके।
13. ऐसे क्रियाकलाप, जिन्हें राज्य सरकार द्वारा विधान या नियमों के अधीन गैर खननकारी क्रियाकलाप के रूप में घोषित किया गया है।"

[फा. सं. जेड-11013 / 47 / 2018-आई. ए. II (एन)]

गीता मेनन, संयुक्त सचिव

टिप्पण : मूल अधिसूचना भारत के राजपत्र, असाधारण, भाग II, खंड 3, उप-खंड (ii) में सं. का. आ. 1533 (अ), तारीख 14 सितंबर 2006 द्वारा प्रकाशित की गई थी और निम्नलिखित सं. द्वारा पश्चात्कर्ती संशोधन किया गया :-

1. का. आ. 1949 (अ), तारीख 13 नवंबर, 2006;
2. का. आ. 1737 (अ), तारीख 11 अक्टूबर, 2007;
3. का. आ. 3067 (अ), तारीख 1 दिसंबर, 2009;
4. का. आ. 695 (अ), तारीख 4 अप्रैल, 2011;
5. का. आ. 156 (अ), तारीख 25 जनवरी, 2012;
6. का. आ. 2896 (अ), तारीख 13 दिसंबर, 2012;
7. का. आ. 674 (अ), तारीख 13 मार्च, 2013;
8. का. आ. 2204 (अ), तारीख 19 जुलाई, 2013;
9. का. आ. 2555 (अ), तारीख 21 अगस्त, 2013;
10. का. आ. 2559 (अ), तारीख 22 अगस्त, 2013;
11. का. आ. 2731 (अ), तारीख 9 सितंबर, 2013;

12. का. आ. 562 (अ), तारीख 26 फरवरी, 2014;
13. का. आ. 637 (अ), तारीख 28 फरवरी, 2014;
14. का. आ. 1599 (अ), तारीख 25 जून, 2014;
15. का. आ. 2601 (अ), तारीख 7 अक्टूबर, 2014;
16. का. आ. 2600 (अ), तारीख 9 अक्टूबर, 2014;
17. का. आ. 3252 (अ), तारीख 22 दिसंबर, 2014;
18. का. आ. 382 (अ), तारीख 3 फरवरी, 2015;
19. का. आ. 811 (अ), तारीख 23 मार्च, 2015;
20. का. आ. 996 (अ), तारीख 10 अप्रैल, 2015;
21. का. आ. 1142 (अ), तारीख 17 अप्रैल, 2015;
22. का. आ. 1141 (अ) तारीख 29 अप्रैल, 2015;
23. का. आ. 1834 (अ) तारीख 6 जुलाई, 2015;
24. का. आ. 2571 (अ) तारीख 31 अगस्त, 2015;
25. का. आ. 2572 (अ) तारीख 14 सितंबर, 2015;
26. का. आ. 141 (अ), तारीख 15 जनवरी, 2016;
27. का. आ. 648 (अ); तारीख 3 मार्च, 2016;
28. का. आ. 2269 (अ), तारीख 1 जुलाई, 2016;
29. का. आ. 2944 (अ), तारीख 14 सितंबर, 2016;
30. का. आ. 3518 (अ), तारीख 23 नवंबर, 2016;
31. का. आ. 3999 (अ), तारीख 9 दिसंबर, 2016;
32. का. आ. 4241 (अ), तारीख 30 दिसंबर, 2016;
33. का. आ. 3611 (अ), तारीख 25 जुलाई, 2018;
34. का. आ. 3977 (अ), तारीख 14 अगस्त, 2018;
35. का. आ. 5733 (अ), तारीख 14 नवंबर, 2018;
36. का. आ. 5736 (अ), तारीख 15 नवंबर, 2018;
37. का. आ. 5845 (अ), तारीख 26 नवंबर, 2018;
38. का. आ. 345 (अ), तारीख 17 जनवरी, 2019;
39. का. आ. 1960 (अ), तारीख 13 जून, 2019;
40. का. आ. 236 (अ), तारीख 16 जनवरी, 2020;
41. का. आ. 751 (अ), तारीख 17 फरवरी, 2020; और
42. का. आ. 1223 (अ), तारीख 27 मार्च, 2020।

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MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 28th March, 2020

S.O. 1224(E).—WHEREAS, *vide* the Mineral Laws (Amendment) Act, 2020 (2 of 2020), the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) (hereinafter referred to as MMDR Act) has been amended with effect from the 10th day of January, 2020 and, *inter alia*, new section 8B relating to the provisions for transfer of statutory clearances has been inserted;

AND WHEREAS, sub-section (2) of section 8B of the MMDR Act provides that notwithstanding anything contained in this Act or any other law for the time being in force, the successful bidder of mining leases expiring under the provisions of sub-sections (5) and (6) of section 8A and selected through auction as per the procedure provided under this Act and the rules made thereunder, shall be deemed to have acquired all valid rights, approvals, clearances, licences and the like vested with the previous lessee for a period of two years;

AND WHEREAS, sub-section (3) of section 8B of the MMDR Act provides that notwithstanding anything contained in any other law for the time being in force, it shall be lawful for the new lessee to continue mining operations on the land, in which mining operations were being carried out by the previous lessee, for a period of two years from the date of commencement of the new lease;

AND WHEREAS, in pursuance of the aforesaid amendment to the MMDR Act, the Central Government deems it necessary to align the relevant provisions of the notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O. 1533 (E), dated the 14th September, 2006 (hereinafter referred to as the EIA Notification, 2006);

AND WHEREAS, the Ministry of Environment, Forest and Climate Change is in the receipt of representations for waiver of requirement of prior environmental clearance for borrowing of ordinary earth for roads; and manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community;

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 (29 of 1986), read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government, after having dispensed with the requirement of notice under clause (a) of sub-rule (2) of the rule 5 of the said rules, in public interest, and in supersession of the notification number S.O. 4307(E), dated the 29th November, 2019, hereby makes the following further amendments in the EIA Notification, 2006, namely:-

In the said notification,-

(i) in paragraph 11, after sub-paragraph (2), the following sub-paragraph shall be inserted, namely:-

“(3) The successful bidder of the mining leases, expiring under the provisions of sub-sections (5) and (6) of section 8A of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) and selected through auction as per the procedure provided under that Act and the rules made thereunder, shall be deemed to have acquired valid prior environmental clearance vested with the previous lessee for a period of two years, from the date of commencement of new lease and it shall be lawful for the new lessee to continue mining operations as per the same terms and conditions of environmental clearance granted to the previous lessee on the said lease area for a period of two years from the date of commencement of new lease or till the new lessee obtains a fresh environmental clearance with the terms and conditions mentioned therein, whichever is earlier:

Provided that the successful bidder shall apply and obtain prior environmental clearance from the regulatory authority within a period of two years from the date of grant of new lease.”;

(ii) in the Schedule, against the item 1(a), in the column (5), after clause (2) of the Note, the following clause shall be inserted, namely:-

“(3) The evacuation or removal and transportation of already mined out material lying within the mining leases expiring under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957), by the previous lessee, after the expiry of the said lease, shall not form the part of the mining capacity so permitted to the successful bidder, selected through auction as per the procedure provided under that Act and the rules made thereunder.”;

(iii) for Appendix-IX, the following Appendix shall be substituted, namely:-

“APPENDIX-IX

EXEMPTION OF CERTAIN CASES FROM REQUIREMENT OF ENVIRONMENTAL CLEARANCE

The following cases shall not require Prior Environmental Clearance, namely:-

1. Extraction of ordinary clay or sand by manual mining, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs.
2. Extraction of ordinary clay or sand by manual mining, by earthen tile makers who prepare earthen tiles.
3. Removal of sand deposits on agricultural field after flood by farmers.
4. Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village.
5. Community works, like, de-silting of village ponds or tanks, construction of village roads, ponds or bunds undertaken in Mahatma Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes and community efforts.
6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc.
7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management.
8. Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(1E)/MCR-2189(68)/5-CHH, dated the 14th February, 1990 of the Government of Gujarat.
9. Manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community.
10. Digging of wells for irrigation or drinking water purpose.
11. Digging of foundation for buildings, not requiring prior environmental clearance, as the case may be.
12. Excavation of ordinary earth or clay for plugging of any breach caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon orders of the District Collector or District Magistrate or any other Competent Authority.
13. Activities declared by the State Government under legislations or rules as non-mining activity.”

[F. No. Z-11013/47/2018-IA.II (M)]

GEETA MENON, Jt. Secy.

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) *vide* number S.O. 1533 (E), dated the 14th September, 2006 and subsequently amended *vide* the following numbers:-

1. S.O. 1949 (E), dated the 13th November, 2006;
2. S.O. 1737 (E), dated the 11th October, 2007;
3. S.O. 3067 (E), dated the 1st December, 2009;
4. S.O. 695 (E), dated the 4th April, 2011;
5. S.O. 156 (E), dated the 25th January, 2012;
6. S.O. 2896 (E), dated the 13th December, 2012;
7. S.O. 674 (E), dated the 13th March, 2013;
8. S.O. 2204 (E), dated the 19th July, 2013;
9. S.O. 2555 (E), dated the 21st August, 2013;
10. S.O. 2559 (E), dated the 22nd August, 2013;
11. S.O. 2731 (E), dated the 9th September, 2013;
12. S.O. 562 (E), dated the 26th February, 2014;
13. S.O. 637 (E), dated the 28th February, 2014;

14. S.O. 1599 (E), dated the 25th June, 2014;
15. S.O. 2601 (E), dated the 7th October, 2014;
16. S.O. 2600 (E), dated the 9th October, 2014;
17. S.O. 3252 (E), dated the 22nd December, 2014;
18. S.O. 382 (E), dated the 3rd February, 2015;
19. S.O. 811 (E), dated the 23rd March, 2015;
20. S.O. 996 (E), dated the 10th April, 2015;
21. S.O. 1142 (E), dated the 17th April, 2015;
22. S.O. 1141 (E), dated the 29th April, 2015;
23. S.O. 1834 (E), dated the 6th July, 2015;
24. S.O. 2571 (E), dated the 31st August, 2015;
25. S.O. 2572 (E), dated the 14th September, 2015;
26. S.O. 141 (E), dated the 15th January, 2016;
27. S.O. 648 (E), dated the 3rd March, 2016;
28. S.O. 2269(E), dated the 1st July, 2016;
29. S.O. 2944(E), dated the 14th September, 2016;
30. S.O. 3518 (E), dated 23rd November 2016;
31. S.O. 3999 (E), dated the 9th December, 2016;
32. S.O. 4241(E), dated the 30th December, 2016;
33. S.O. 3611(E), dated the 25th July, 2018;
34. S.O. 3977 (E), dated the 14th August, 2018;
35. S.O. 5733 (E), dated the 14th November, 2018;
36. S.O. 5736 (E), dated the 15th November, 2018;
37. S.O. 5845(E), dated the 26th November, 2018;
38. S.O. 345(E), dated the 17th January, 2019;
39. S.O. 1960(E), dated the 13th June, 2019;
40. S.O. 236(E), dated the 16th January, 2020;
41. S.O. 751(E), dated the 17th February, 2020; and
42. S.O. 1223(E), dated the 27th March, 2020.

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ALEXANDER THOMAS, J.

I.A. No. 1 of 2020 in
W.P. © No. 11060 of 2020
&
W.P. © No. 11060 of 2020

Dated this the 19th day of June, 2020

ORDER

I.A. No. 1 of 2020 in W.P. © No. 11060 of 2020

This is an application to implead respondents 9 to 11 in the above I.A. (The Secretary, Department of Atomic Energy as well as the Director Southern Region, Regional Centre for Atomic Minerals Exploration and Research (RCER), and the Kerala State Environment Impact Assessment Authority).

2. Heard Dr.Mathew Kuzhalsadan, learned counsel for the writ petitioner, Sri.K.V.Sohan, learned State Attorney instructed by Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondent State authorities, Sri.K.Anand, learned Senior counsel instructed by Smt.Latha Anand, learned Standing Counsel for the respondent Kerala Minerals and Metals Ltd. (KMML), Sri.P.Vijayakumar, learned Assistant Solicitor General of India instructed by Sri.Suvin R.Menon, learned Central Government Counsel appearing for respondents 9 & 10 in the above I.A., Sri.Jacob P.Alex,

..2..

learned counsel appearing for the Purakkad Grama Panchayath, Sri.E.K.Nandakumar, learned Senior. counsel instructed by Sri.M.Gopikrishnan Nambiar, learned Standing Counsel for the Indian Rare Earths Limited (IREL) and Sri.M.P.Sreekrishnan, learned Standing Counsel for the Kerala State Environment Impact Assessment Authority, appearing for the 11th respondent in the above I.A.

3. Sri.Suvin R.Menon, learned Central Government Counsel, is requested to ascertain whether the description and addresses of respondents 9 & 10 in the above I.A. are correct and proper, and whether the description of the 9th respondent should be "Union of India represented by the Secretary to Government of India, Department of Atomic Energy" etc. So also, from a reading of the Atomic Minerals Concession Rules, 2016, it appears that the Atomic Energy Regulatory Board (AERB) and the Atomic Minerals Directorate for Exploration and Research (AMD) under the Department of Atomic Energy, Government of India, may also be necessary or proper parties. Sri.Suvin R.Menon, learned Central Government Counsel, will get clarifications and apprise this Court as to whether those authorities are also necessary or

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proper parties, and if so, the correct address^{es} of the Atomic Energy Regulatory Board (AERB) and the Atomic Minerals Directorate for Exploration and Research (AMD) as well as that of Department of Atomic Energy, Government of India, may be apprised to this Court by a memo filed by the learned Central Government Counsel.

4. So also, the learned Assistant Solicitor General of India and the learned Central Government Counsel are requested to ascertain as to whether the activity of mining covered by the Atomic Minerals Concession Rules (AMCR), 2016, would be covered by the Environment Impact Assessment Notification, 2006, issued under the Environment Protection Rules framed under the Environment Protection Act, and if so, who is the competent authority to grant Environmental Clearance in cases involving mining of atomic minerals, and whether the said authority is the State Environment Impact Assessment Authority, which is dealing with activities like quarrying etc.

5. Sri.K.V.Sohan, learned State Attorney instructed by Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondent State authorities, should also

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apprise this Court as to whether the Director of Mining and Geology, Government of Kerala, Thiruvananthapuram, and the District Geologist, Department of Mining and Geology, Kollam, are necessary or proper parties to this proceedings.

List the I.A. on 13.7.2020.

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6. Dr.Mathew Kuzhalnadan, learned counsel appearing for the writ petitioner would primarily urge that the 2nd respondent Kerala Minerals and Metals Ltd., is involved in the activity of winning of atomic minerals as defined in terms of Part B of the First Schedule to the Mines and Minerals (Development and Regulation) Act (MMDR Act), and as defined in terms of the Atomic Minerals Concession Rules, 2016, framed under the MMDR Act, and that the said activity is being done by the 2nd respondent the Kerala Minerals and Metals Ltd., without the necessary license or permission from the Atomic Energy Regulatory Board in terms of the mandatory provisions contained in the Atomic Minerals Concession Rules, 2016, etc.

7. Further, the counsel for the petitioner would also submit that the 4th respondent Purakkad Grama Panchayath has

already issued Ext.P-4 stop memo dated 1.6.2020 directing the 2nd respondent KMML to stop the abovesaid mining activity, etc.

8. Per contra, Sri.K.V.Sohan, learned State Attorney instructed by Sri.Saigi Jacob Palatty, learned Senior Government Pleader appearing for the respondents 1, 5 & 6 (State authorities), would submit that the 2nd respondent KMML has duly secured license issued by the Atomic Energy Regulatory Board. Copy of letter dated 27.11.2019 issued by the Atomic Energy Regulatory Board, Government of India, Mumbai, addressed to the Managing Director of the 2nd respondent KMML has been made available for the perusal of this Court, wherein it has been stated that the competent authority of the Atomic Energy Regulatory Board has accorded concurrence for renewal of license for operation of Beach Sand Minerals facilities of M/s.KMML, Chavara. So also, proceedings dated 27.11.2019 issued by the Atomic Energy Regulatory Board, Government of India, granting license to the KMML has also been made available for the perusal of this Court, and it is stated that the said license issued by the Atomic Energy Regulatory Board on 27.11.2019 is valid for a period from 1.12.2019 to 31.8.2024.

9. So also, the learned State Attorney has brought to the notice of this Court that the competent authority of the Government of India in exercise of its statutory powers under the MMDR Act and the AMCR, 2016, has amended Schedule A of the AMCR, 2016, vide G.S.R 126(E) dated 19.2.2019, whereby all existing mineral concessions of the Beach Sand Minerals are notified to be above the threshold. A copy of the statutory notification dated 1.3.2019 bearing No.F.1/1/2019-M.VI issued by the Government of India in the Ministry of Mines has been made available for the perusal of this Court. The said notification is called the Atomic Minerals Concession (Amendment) Rules, 2019. Paragraph No.9 of the said notification refers to the amendments made to the Schedule A of the AMCR, 2016, under G.S.R.134(E) notification dated 20.2.2019. Paragraph No.10 of the said notification orders the termination of all existing mineral concessions of Beach Sand Minerals held by private person/company in the country. Paragraph No.11 thereof orders that Beach Sand Minerals concessions held by a Government company or corporation owned or controlled by the Government and which are not in contravention of any of the provisions of the

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MMDR Act and the Rules framed thereunder shall continue. Paragraph No.12 thereof further orders that any mineral concession of Beach Sand Minerals shall be granted to a Government company or corporation owned or controlled by the Government under the provisions of the AMCR, 2016.

10. The learned State Attorney would also submit that, it is reliably learned that as of now there are only two government companies which have been given licenses, one is the 2nd respondent KMML which is an undertaking fully owned by the Government of Kerala, and the latter is the Indian Rare Earths Ltd.(IREL) which is an undertaking fully owned by the Government of India. Further it is also submitted that, the accumulation of sand in the Thottappally Spillway in Alappuzha District has affected the free flow of flood water to the sea, risking the Kuttanad area by flooding during the impending monsoon season. 2018 witnessed severe flooding in the area, and that the M.S.Swaminathan Research Foundation and the IIT, Madras, have recommended clearance of sand bar at the mouth of the spillway, and deepening and widening of the leading channel for further de-risking the flood problem in Kuttanad. That, taking

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into consideration these aspects, the Government of Kerala in the Water Resources (IR) Department has issued G.O.(Rt) No.385/2019/WRD dated 31.5.2019 that action be taken immediately to effectuate the abovesaid purpose of removing accumulation of sand in the Thottappally Spillway so as to prevent the impediment of free flow of water to the sea as otherwise the Kuttanad area might be facing severe flooding. The authorities of the State Government has ordered as per the said G.O. dated 31.5.2019 that right to take the said materials after the dredging is given to the 2nd respondent KMML and the IREL, as they have offered the higher rates. It is only for this main purpose for ensuring that accumulation of sand in the Thottappally Spillway is removed, that the present activities are undertaking. It is thus urged that, an activity can be said to be mining as understood in the MMDR Act and the Rules framed thereunder, only if the primary objective in that activity is for winning and exploiting the mineral.

11. In the instant case, what is done is removal of accumulated sand so as to effectuate the free flow of water to the sea in order to avoid flooding in the Kuttanad area, and therefore the present activity cannot be said to be an activity involving

mining or quarrying as understood in the MMDR Act and the Rules framed thereunder. Further that, both the 2nd respondent KMML and the IREL have valid license in that regard to deal with such minerals, issued by the competent authority of the AERB, and therefore it cannot be even contended for a moment that the action in entrusting the dredged materials is illegal or unlawful, even if such dredged materials may contain Atomic Minerals.

12. Sri.Jacob P.Alex, learned counsel appearing for the 4th respondent Purakkad Grama Panchayath, would submit that he has been instructed to submit by the President of the said Panchayath that Ext.P-4 stop memo is still in force, and that there are serious environmental issues.

13. Per contra, Sri.K.V.Sohan, learned State Attorney would submit that he has instructions that Ext.P-4 stop memo may have been withdrawn or cancelled, and that the Secretary of the 4th respondent Grama Panchayath has informed the 5th respondent District Collector that Ext.P-4 stop memo has already been withdrawn etc. This Court need not get into that controversy, at this juncture.

14. In that regard, Dr.Mathew Kuzhalnadan, learned

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counsel appearing for the petitioner would submit that, even if it is assumed that the 2nd respondent KMML has got license from the AERB, such mining activity would also require license or permission from the 4th respondent Purakkad Grama Panchayath in view of the provisions contained in the Kerala Panchayath Raj Act and the Rules framed thereunder. Further, learned counsel appearing for the petitioner would submit that, the petitioner is residing very close to the mining site, and that since the 2nd respondent has not secured valid license from the 4th respondent Panchayath, they may not be permitted to remove the accumulated sand.

15. In that regard, Sri.K.V.Sohan, learned State Attorney would submit that it will not be right and proper if the dredged materials are kept in the site itself as those materials may contain Atomic Minerals and as there is high possibility that the accumulated materials may be stolen, especially in view of the impending heavy monsoons, and that the materials should be transported only after taking due inventory of the same regarding the quantity, etc, and then the same shall be kept in the premises of the 2nd respondent KMML, and that an inventory of the

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quantity of materials so transported and kept in the premises of the 2nd respondent should be meticulously maintained by the 2nd respondent, which is an undertaking fully owned by the Government of Kerala.

16. After hearing both sides, this Court is not now inclined to pass any stay order to interdict abovesaid activities of the 1st respondent State and the 2nd respondent. The counsel for the petitioner had assured that he would file a comprehensive affidavit stating various factual aspects of this case based on certain materials which he had relied on but which has not been produced in this WP(C), and also to comprehensively deal with various legal aspects of the matter flowing out from the provisions of the MMDR Act and the AMCR, 2016. Permission is granted to the petitioner to file such affidavit.

17. Sri.K.V.Sohan, learned State Attorney submits that two weeks time may be granted to respondents 1 & 5 to file affidavit in this case.

18. Sri.E.K.Nandakumar, learned Senior counsel instructed by Sri.M.Gopikrishnan Nambiar, learned Standing Counsel for the IREL would submit that, the Indian Rare Earths

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Limited (IREL) is also a necessary party in this proceedings and that the writ petitioner has not cared to implead the said party.

19. It is for the petitioner to take into account the said submission so made, and it is also made clear that it will be open to the abovesaid IREL to file an application for impleadment, if they are so advised in that regard.

20. After filing the affidavit of respondents 1 & 5, the petitioner may file a reply thereto within one week thereafter.

21. Sri.Suvin R.Menon, learned Central Government Counsel, will also get instructions in the matter as stated herein above.

22. Further, with regard to the environmental degradation issues raised by the counsel for the petitioner and the counsel for the 4th respondent Panchayath, the 5th respondent District Collector will ensure that a site inspection is conducted by him, with due prior notice to the petitioner, the 2nd respondent KMML and the Secretary of the 4th respondent Panchayath. The inspecting officer should give a detailed report regarding the issues of environmental degradation as well as the correctness or otherwise of the allegations of the petitioner, etc and whether any

I.A. No. 1/2020 in W.P. © No. 11060/2020 &
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remedial action is to be taken and if so, its details. Report in this regard should be duly filed by the 5th respondent District Collector before this Court through the learned Government Pleader within 3 weeks.

23. Registry will show the names of all counsels appearing in this WP(C) in the cause list.

List on 13.7.2020.

H/O.

sd/-

ALEXANDER THOMAS, JUDGE

MMG

/True COPY/

ASSISTANT REGISTRAR.

BEFORE THE HON'BLE HIGH COURT OF KERALA AT
ERNAKULAM

WP (C) No. 11060/2020

M.H. Vijayan : Petitioner

Vs

State of Kerala & others : Respondents

COUNTER AFFIDAVIT FILED BY THE 2ND RESPONDENT

I, Anilkumar N.K. S/o Narayanan aged 55 years, residing at Nikarthil House, Pallipuram P.O., Cherthala, Alappuzha do hereby solemnly affirm and state as follows:-

1. I am the Head of the Department (P&A- Legal) of the respondent 2nd respondent Kerala Minerals and Metals Ltd and I know the facts of the case. I am competent to swear to this affidavit on behalf of the respondent as I am duly authorised to do so.
2. It is respectfully submitted that the writ petition is not maintainable and the petitioner has no locus standi to file the above writ petition. The petitioner has not established the grievance of the petitioner or has not detailed how he is aggrieved except a bald statement in the Writ Petition. The further statement in the writ petition that the removal of the sand from the pozhi mouth will have direct deleterious effect on the surrounding habitat and the area where the petitioner resides, is also totally without any basis. Admittedly the petitioner does not intend to interfere in the activity of widening the pozhi mouth but the petitioner is starkly opposing the 'removal of mineral sand under the grab of widening the pozhi mouth'. From the above statement in the paragraph 1 of the Writ Petition it can be seen that the petitioner has not approached this

honourable court with clean hands. The petitioner admits that sand can be excavated and the petitioner is aggrieved only by the transportation. In other words the various statements in paragraph 1 are contradictory to each other. Petitioner cannot be aggrieved by the alleged mining operations as stated in the Writ Petition. The act of widening the pozhi mouth and transporting the same in the premises of the 2nd respondent is as per the permissions and directions of the Government of Kerala which are produced with this counter affidavit

3. It is respectfully submitted that the flood water in Kuttandu area is to be drained through the Thottapally Spillway to the Arabian Sea. A spillway is a regulatory mechanism to control the flow of water and is constructed based on engineering designs. During the time of high tide water level in the sea increases and it is pushed to the river. This can be controlled by the spillway whereby water from the sea is blocked at the spillway without being permitted to enter the agriculture fields. Similarly water from the river side can also be regulated by opening the spillway gates, so that flooding in that area can be averted and the water course will have a free flow towards the sea. The Thottapally spillway is constructed for the above purpose.
4. After 2018 floods in Kerala, which substantially affected the state as a whole, there was a study jointly by MS Swaminathan Research Foundation and IIT Madras who recommended clearance of sand bar at the western side of the spillway and deepening and widening of the leading channel for further de-risking the flood problem in Kuttanad area. The original width of the spillway was 360 meters for ensuring the free flow of water in to the sea, so that there will never have a chance of flood in Kuttanadu area. But due to the deposit of sand on the sides of the channel for decades the width has reduced to 260 meters, thus there is

substantial reduction in the water flow to the sea at times. The spillway is 360 meter wide and the block due to the sand deposition in the spillway area is to be removed as otherwise there will be flooding due to blockade of the water course. Based on the recommendation study of the expert committee mentioned above, the irrigation department authorised the second respondent to remove the sand as per Government order dated 31.05.2019 and agreement dated 11.10.2019. A copy of the G.O. mentioned above is produced herewith and marked as **Exhibit R2 (a)**. Copy of the agreement dated 11.10.2019 is produced herewith and marked as **Exhibit R2 (b)**. Based on the above agreement, an amount of Rs. 11.61 Lakhs was deposited in the month of September, 2019 with the Irrigation Department. It is submitted that due to various reasons, the Irrigation Department did not permit KMML to start the work, citing local issues. Being so, on 18/05/2020, the Executive Engineer of the Irrigation Department, issued a communication to KMML, to start the work on war-footing, in the light of the expected calamities of flood in Kuttanad region due to the impending Cyclone Umphoon along with the South-west monsoon. A true copy of the above communication is produced herewith and marked as **Exhibit R2(c)**.

5. It is further submitted that the District Disaster Management Authority, Alappuzha in its meeting held on 19/05/2020, had decided to remove the obstacles in the thottappally spill-way to ensure the smooth flow of water through the spill-way, in order to avoid a flood situation in 'Kuttanad' area. A true copy of the proceedings of the above meeting is produced herewith and marked as **Exhibit R2(d)**. Subsequently, the Chairman of the District Disaster Management Authority (District Collector), vide order dated 22/05/2020, directed that immediate steps be taken by the Executive Engineer, Irrigation Department, to remove the sand in order to ensure the smooth flow of water through the spillway. A true copy of the

aforesaid order is produced herewith and marked as Exhibit R2(e). Pursuant to the above, the Executive Engineer, Irrigation Department, directed KMML to complete the work on a war-footing, vide letter dated 23/05/2020, a true copy of which is produced herewith and marked as Exhibit R1(f).

6. Pursuant to the above, a meeting was convened in The District Collector, issued a further order dated 24/06/2020, directing that the Executive Engineer, Irrigation Department to ensure the width of the spillway (down stream) by removing the sand. It was further directed that steps can be taken (in accordance with the directions of this Honourable Court) to take steps to remove the sand as per the agreement with KMML. A true copy of the order dated 24/06/2020 of the District Collector, Alappuzha is produced herewith and marked as Exhibit R1(g).
7. It is submitted that originally, the work was envisaged to be carried out by dredging and to concentrate sand at Thottaoppally and transport only heavy minerals to KMML/IREL and simultaneously dump the tailing sand at Thottappally Beach itself. However due to the emergency situation, the District Administration and the Irrigation Department arranged excavators and equipment on behalf of KMML and the work started on war footing on 20/05/2020. The sand is entirely being transported to KMML/IREL, as the time requirement for setting up a Sand Concentration Plant is more than 2 months which was no way affordable due to the impending disaster situation.
8. It is thus that the 2nd respondent is excavating the sand solely for the purpose of removing the blockade of the waterway and is transporting the same to the site of 2nd respondent. Incidentally the sand contains minerals which can be used as a raw materials for their products by the 2nd respondent and IREL.

9. It is respectfully submitted in this contest that the sand contains atomic minerals like Ilmenite, Rutile, Monosite which as per the statute can be handled and processed only by two companies in the whole country which are the second respondent and other is Indian Rare Earths Ltd (IREL), a Central Government PSU. Therefore the sand which is taken from the Thottapally area can only be handled by the 2nd respondent and IREL. Copy of the license by Atomic Energy Regulatory Body (AERB) is produced herewith and marked as **Exhibit R2 (h)**. No other agency is authorised to handle these atomic minerals in the country. The allegation in the writ petition that the petitioners do not intend to initiate the activity of mining the pozhi mouth but is opposing the removal of mineral sand is therefore is without any basis.
10. It is evident from the above facts that KMML has acted on behalf of the Irrigation Department, as contractors, being a licensed agency by the Department of Atomic Energy, Government of India for processing of "Beach Sand Minerals" containing Minerals like Ilmenite, Rutile, Zircon, Sillimanite, Monazite etc., for clearing of the Spillway to avoid possible flood in Kuttanad based on the Government Order dated 31.03.2019 and agreement dated 11.10.2019, the directions of the District Collector and the Irrigation Department dated 18.05.2020 and declaration of the activity as a Disaster Management Activity on 22.05.2020 and the direction of the Chairman, Disaster Management Authority on 24.06.2020.
11. The allegation in the Writ Petition that the 2nd and 3rd respondent invited tenders for mechanised loading and transportation of mineral sand from Thottapally pozhi mouth without any valid permits is not correct and hereby denied. The excavation of the sand and the removal thereof is as permitted by the Government. It is also submitted that the work is executed with technical guidance and supervision of the competent engineers of the irrigation department and transportation is carried on

based on the permit issued by the government for transportation. Transportation permit is issued to each lorry load clearly specifying the quantity of sand in cubic meter, date, time etc copy of the one such permit is produced herewith and marked as **Exhibit R2 (i)**.

12. The allegation in paragraph 4 is not correct and it is hereby denied. This respondent is not aware of any decision taken to give the mineral sand to the second and 3rd respondent as alleged in the writ petition. The allegation that the same was proposed to be carried out without necessary action from the competent authorities is also hereby denied.
13. The allegations contained in the paragraph 5 of the Writ Petition are totally incorrect and are hereby denied. It is submitted that Section 2 (j) of the Mines Act 1952 defines mine and section 3(d) of the Mine and Mineral Development and Regulations Act defines mining operations. Mine under the Mines Act, 1952 means any '*excavation where any operations for the purpose of searching for or obtaining minerals has been or is being carried on and includes... (emphasis supplied)*'. As defined in the 1957 Act under Section 3 (d) "mining operations" means *any operations undertaken for the purpose of winning any mineral*. In the present case the primary and the only purpose of collecting sand is for the purpose of desilting the spillway channel for the purpose of free flow of water. Going by the above definitions, the activity will not come in any of the provisions contained in the atomic minerals rules. Therefore the allegation in paragraph 5 of the Writ Petition is totally without any basis and therefore Rules 5 and 6 are not at all applicable. There is no need of any mining lease or mining plan in the present case and the allegations to the contrary are not at all correct and hereby denied. The allegations in paragraph 6 of the Writ Petition are incorrect and hereby denied.
14. As regards to the allegation contained in paragraph 7 it is respectfully submitted that the same are totally devoid of any merit. The allegation

that the 2nd and 3rd respondent, without taking permission from any of the authorities, invited tender for the work of mechanised loading and transportation is totally incorrect and hereby denied. It is submitted that as already mentioned above, necessary permissions and directions are granted by the Government of Kerala for taking steps for removal and transportation of sand from the spillway. In fact, the government has issued an order directing that the work should start immediately in view of the fact that there was a depression 'Umphoon' between 15th to 20th May, 2020 and there was an alarming increase of water level in the spillway. It is accordingly the work was issued in war footing. The allegation that on earlier occasions respondents 1 to 3 had withdrawn from similar operations of the similar kind is not correct and hereby denied. In fact clearing of spillway by removal of sand by second respondent is for the first time in the Thottapally spillway area. As regard to Exhibit P4 memo it is respectfully submitted that the same does not prohibit excavation of the sand but only prohibits transportation. In fact, a detailed reply was given to exhibit p4 a copy of the same is produced herewith and marked as Exhibit R2 (j). The environmental clearance is not required since the spillway was constructed in 1952. The Environment Protection Act came into effect only in 1986. For older projects EC is not required for maintenance activity. Further even going by Exhibit P4 itself permits deepening and widening of the channel and therefore it cannot be contended that mining permit should be produced. The order therefore on its own will not stand in the eye of law.

15. It is respectfully submitted that Exhibit P5 might have been submitted in a different contest and is for a different area. However according to this respondent no such application is necessitated by law for the activity in question. It is respectfully submitted that the decisions referred by the

petitioner is not applicable to this case, more so when the activity in question does not amount to mining defined in various statutes.

16. As regards paragraph 10 it is respectfully submitted that allegation that extraction of mineral sand is an endangering issue prevailing in the locality is not correct and denied. Further, it is submitted that based on expert studies the Government of Kerala has taken a decision and the 2nd respondent is only a contractor to execute the orders of the government. It is further submitted that Exhibit P6 and P7 does not relate to this activity of widening deepening and clearing of the spillway channel and its mouth. Expression of interest was called for by the government for the purpose of deepening and widening of the spillway and the 2nd respondent was one of the parties responded and the 2nd respondent was awarded the work.
17. It is submitted that the 2nd respondent is acting diligently and responsibly and the allegations to the contrary are wrong and hereby denied. There is no arbitrariness or any violation of Article 14 in any of the actions of the respondent as alleged by the petitioner. Exhibit P8 and P9 are not at all relevant for the issue in question. In the present case this respondent has acted legally and with all permissions from the government.
18. It is submitted that since the entire work is in view of the orders passed under the Disaster Management Act, 2005 the same is protected by the overriding effect of the said Act, as envisaged under Section 72 of the Act. The same would override the Exhibit P4 communication of the 4th respondent. None of the grounds raised in the writ petition are tenable either in law or on facts. The writ petition is bad for non-joinder of parties.
19. It is also submitted that heaping of the sand in large quantities, which contains heavy minerals, is a potential threat for the flora and fauna and the nearby residential as well, unless it is shifted and processed safely.

In the above facts and circumstances it is humbly submitted that the above Writ Petition is devoid of any merit and is liable to be dismissed and is accordingly prayed for.

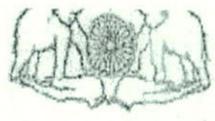
All facts stated above are true and correct.

Dated this the day of July 2020

Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me on this day of July 2020 in my office at Ernakulam.

Advocate



ആരാട്ടുപുഴ ഗ്രാമപഞ്ചായത്ത്

ആരാട്ടുപുഴ പി.ഒ , പിൻ 690535, ആലപ്പുഴ
ഫോൺ.04792488240email-Arattupuzhagp@gmail.com

നമ്പർ - എ.2-3393/19

തീയതി-14/08/2020

പ്രേക്ഷിതൻ,
സെക്രട്ടറി,
ആരാട്ടുപുഴ ഗ്രാമപഞ്ചായത്ത്.

സ്വീകർത്താവ്,
ചീഫ് ജനറൽ മാനേജർ & ഹെഡ്
ഐ.ആർ.ഇ.എൽ (ഇന്ത്യ) ലിമിറ്റഡ്
ചവറ

സർ,

വിഷയം : അനധികൃതമായി സ്ഥാപിച്ച സ്പൈറൽ യൂണിറ്റ് നീക്കം ചെയ്യുന്നത്- സംബന്ധിച്ച്

- സൂചന : 1. താങ്കൾ 21/08/2019 തീയതിയിൽ ലൈസൻസിന് സമർപ്പിച്ച അപേക്ഷ
 2. 07/09/2019 തീയതിയിലെ 1-ാം നമ്പർ തീരുമാനം
 3. 23/09/2019 തീയതിയിലെ 12-ാം നമ്പർ തീരുമാനം
 4. ഈ ഓഫീസിൽ നിന്നുള്ള 07/09/2019 ലെ ഇതേ നമ്പർ കത്ത്
 5. ഈ ഓഫീസിൽ നിന്നുള്ള 24/09/2019 ലെ ഇതേ നമ്പർ കത്ത്
 6. ഈ ഓഫീസിൽ നിന്നുള്ള 28/05/2020 തീയതിയിലെ ഇതേ നമ്പർ കത്ത്
 7. താങ്കൾ 18/06/2020 തീയതിയിൽ ലൈസൻസിന് സമർപ്പിച്ച അപേക്ഷ
 8. 22/06/2020 തീയതിയിലെ 1-ാം നമ്പർ തീരുമാനം
 9. 22/05/2020 തീയതിയിലെ 2-ാം നമ്പർ തീരുമാനം
 10. 01/07/2020 തീയതിയിലെ ഇതേ നമ്പർ കത്ത്

ആരാട്ടുപുഴ ഗ്രാമപഞ്ചായത്തിലെ അഴീക്കൽ പൊഴിയിൽ നിന്നും മണ്ണ് ഡ്രഡ്ജ് ചെയ്യുന്നതിനും, സ്പൈറൽ യൂണിറ്റ് സ്ഥാപിച്ച്, ധാതുമണൽ. വേർതിരിച്ച് കൊണ്ടുപോകുന്നതിനും ഉള്ള അനുമതി ലഭിക്കുന്നതിന് മേൽ സൂചന-1, 7 പ്രകാരം താങ്കൾ സമർപ്പിച്ച അപേക്ഷകൾ മേൽ സൂചന-2, 3 തീരുമാനങ്ങൾ പ്രകാരം ഗ്രാമപഞ്ചായത്ത് നിരസിച്ചിട്ടുള്ള വിവരം മേൽ സൂചന-4, 5 കത്തുകളിലൂടെ താങ്കളെ അറിയിക്കുകയും, അനധികൃതമായി സ്ഥാപിച്ച സ്പൈറൽ യൂണിറ്റിന്റെ പ്രവർത്തനം നിർത്തിവെക്കുന്നതിന് സൂചന-6 കത്ത് പ്രകാരവും, അനധികൃതമായി സ്ഥാപിച്ച സ്പൈറൽ യൂണിറ്റ് നീക്കം ചെയ്യുന്നതിന് സൂചന-10 കത്ത് പ്രകാരവും താങ്കൾക്ക് നിർദ്ദേശം നൽകിയിരുന്നതുമാണ്. എന്നാൽ നാളിതുവരെ പ്രസ്തുത കത്തുകൾക്ക് ഒന്നും തന്നെ മറുപടി നൽകുകയോ നിർദ്ദേശിച്ചത് പ്രകാരം, അനധികൃതമായി സ്ഥാപിച്ച സ്പൈറൽ യൂണിറ്റ് നീക്കം ചെയ്യുകയോ ചെയ്തിട്ടില്ല. ആയതിനാൽ പ്രസ്തുത സ്പൈറൽ യൂണിറ്റ് 7 ദിവസത്തിനകം നീക്കം ചെയ്ത് ഗ്രാമപഞ്ചായത്ത് ഓഫീസിൽ രേഖാമൂലം റിപ്പോർട്ട് ചെയ്യേണ്ടതാണ്. അല്ലാത്തപക്ഷം 1994 ലെ കേരള പഞ്ചായത്ത് രാജ് ആക്ട് സെക്ഷൻ 233 ന് വിരുദ്ധമായി ഗ്രാമപഞ്ചായത്തിന്റെ അനുമതി കൂടാതെ അനധികൃതമായി സ്പൈറൽ യൂണിറ്റ് സ്ഥാപിച്ച താങ്കളുടെ നടപടിക്കെതിരെ മറ്റൊരു അറിയിപ്പ് കൂടാതെ നിയമാനുസൃത തുടർ നടപടികൾ സ്വീകരിക്കുന്നതാണെന്ന വിവരം അറിയിക്കുന്നു.

വിശ്വസ്തതയോടെ

സെക്രട്ടറി
ആരാട്ടുപുഴ ഗ്രാമപഞ്ചായത്ത്



BEFORE THE HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM

(Special Original Jurisdiction)

Writ Petition (Civil) No. 16765 of 2020

PETITIONER

IREL (India) Ltd.
Chavara Unit, Kollam - 691583
Kerala, India
Represented by S.Surya Kumar
Chief General Manager & Head

Vs.

RESPONDENTS

- 1. State of Kerala
Represented by the Secretary to the Government
Fisheries & Ports Department
Thiruvananthapuram - 695001
- 2. Arattupuzha Grama Panchayat
Arattupuzha PO,
Alappuzha, Pin - 690535
Represented by its Secretary
- 3. Secretary
Arattupuzha Grama Panchayat
Arattupuzha PO,
Alappuzha, Pin - 690535

Address for service of all notices and processes on the Petitioner is that of their Counsel M/S MENON & PAI, Advocates, I.S. Press Road, Ernakulam, Kochi - 18 and that of the Respondents are as shown above or on any counsel they may engage.

WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

Statement of Facts

- 1. The Petitioner Company ('Petitioner/ IREL') is a public sector undertaking under the administrative control of the Department of Atomic Energy ('DAE'), Government of India. It is engaged in beach sand mining and extraction of rare earth minerals, which are of



Handwritten signature and typed name: S. Surya Kumar
CHIEF GENERAL MANAGER & HEAD
IREL (INDIA) LIMITED
Chavara, Kollam - 691583

strategic importance. It caters to the raw material requirements of various industries in Kerala, as well as the strategic mineral requirements of the nation, primarily for atomic energy purposes. The Petitioner Company's premises have been declared as "prohibited area" by the DAE under the Atomic Energy Act, 1962. It has also been declared as a "Prohibited Place" under the Official Secrets Act, 1923 by the Government of Kerala.

2. The 1st Respondent is the State of Kerala, represented by the Secretary, Fisheries and Ports Department. The 2nd Respondent is Arattupuzha Grama Panchayat represented by its Secretary and the 3rd Respondent is the Secretary of Arattupuzha Grama Panchayath. All the Respondents answer to the definition of 'State' under Article 226 of the Constitution of India and are amenable to the writ jurisdiction of this Hon'ble Court.
3. By way of background, it is submitted that the Govt. of Kerala entrusted IREL for de-silting/ dredging in the mouth of Azheekal Pozhi area for smooth navigation of fishing boats in and out of the Pozhi area. The de-silted out sand contains heavy/ atomic minerals and such materials can only be handled by authorized public sector undertakings. The Petitioner is one of the two government companies that have been issued licenses by the Atomic Energy Regulatory Board, Govt. of India for operation of beach sand minerals facilities. A true copy of the license dated 02.08.2019 issued by the Atomic Energy Regulatory Board (AERB) to the Petitioner is produced herewith as Exhibit P1.




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 मुख्य महा प्रबन्धक / CEO
 CHIEF GENERAL MANAGER / CEO
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 IREL (INDIA) LIMITED, CHAVARA
 चवरा, कोल्लम KOLLAM - 691 583

4. Accordingly, the 1st Respondent issued a GO dated 08.10.2018 granting sanction to IREL for dredging and collecting sand deposited in Azhikkal Pozhi in Kayamkulam. The Govt. also granted sanction to IREL for installing a separation plant at the site for processing the dredged sand and to separate the mineral sand. A true copy of the GO(Rt) No. 793/2018/F7PD dated 08.10.2018 issued by the Fisheries & Ports Department, Govt. of Kerala is produced herewith as **Exhibit P1(a)**.
5. It is pertinent to mention that the above GO dated 08.10.2018 was issued pursuant to initial discussions between the Petitioner and the State Government on removal of sand deposited in the Azheekal Pozhi area which was causing obstruction to the free movements of the fishing boats operating in and out of the Azheekal fishing harbour. A true copy of the Petitioner's letter dated 26.07.2017 to the Hon'ble Minister for Fisheries, Government of Kerala is produced herewith as **Exhibit P1(b)**.
6. Pursuant to the aforesaid GO, the Petitioner requested the District Collector, Alappuzha on 11.06.2019 for allotment of land for stacking the de-silted sand in Arattupuzha village. A true copy of the Petitioner's letter dated 11.06.2019 issued to the District Collector, Alappuzha is produced herewith as **Exhibit P2**.
7. It is pertinent to mention that activities pertaining to establishing the spiral plant are not activities notified under Schedule I of the Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996. However, as abundant caution, and in order to allay the fears of the residents, the Petitioner made an




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 ऑफिसर इन चार्ज (सहाय) निदेशक
 IREL (INDIA) LIMITED, CHAWARA
 चवरा, कोल्लम - 691 583

application for D&O/ trade license for establishing the spiral plant. On 21.08.2019, the Petitioner submitted an application for grant of D&O/ trade license for 2019-2020 for setting up the spiral separation unit to the 2nd Respondent. The 2nd Respondent in turn forwarded the application for discussion in the Panchayat Committee.

8. Meanwhile, on 22.08.2019 the Petitioner wrote to the Environment Engineer, Kerala State Pollution Control Board, seeking the issuance of an NOC for commencing the operation of the spiral unit. The consent was granted by Kerala State Pollution Control Board to IREL for establishing spiral plant unit vide file no. PCB/ALP/UCE-1922/2020 dated 29.01.2020 valid till 31.12.2024. A true copy of the consent to establish issued by the Kerala State Pollution Control Board is produced herewith as Exhibit P3.

9. On 29.08.2019 the 3rd Respondent wrote to the Petitioner stating that its application can be placed on the agenda of the Panchayath Committee only after taking public into confidence in view of environmental concerns. A true copy of the letter dated 29.08.2019 issued by the 3rd Respondent to the Petitioner is produced herewith as Exhibit P4. On 07.09.2019 the 3rd Respondent communicated to the Petitioner that its application for D&O/ trade license has been rejected by the 2nd Respondent Panchayat on the basis of the resolution passed by it. The reasons stated in the resolution were that (a) the activity would cause environmental damage and (b) because it would change the geological structure of the Panchayat which is 500m wide with 17 kms of coastline. The proposed activity is only removal of sand / silt in the harbor berth and the leading channel for the safe movement of the fishing vessels and thus it would not cause any environmental damage.


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 आर.एस.पी.सी. (के.एस.पी.सी.) किरियल

धरम, ... 003

A true copy of the letter dated 07.09.2019 issued by the 3rd Respondent Secretary along with the enclosed resolution of the 2nd Respondent Panchayat is produced herewith as **Exhibit P4(a)**. Indeed, vide its notification dated 28.03.2020, the Ministry of Environment, Forests & Climate Change, Govt. of India, has amended the EIA Notification 2006 to exempt 'dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management' from the requirement of Environmental Clearance (EC). A true copy of the notification dated 28.03.2020 issued by the Ministry of Environment, Forests & Climate Change, Govt. of India, is produced herewith as **Exhibit P5**. The activity is to be carried out in the limited area of Azheekkal and Valiyazheekkal harbour and the leading channels to the harbor as per the direction of the Harbour Engineering Department. Hence it does not have any effect anywhere in the Panchayath.

10. Even though the rejection was illegal, the Petitioner did not challenge the rejection of the license but sought to take it up at governmental levels. That the decision was illegal is evident from the fact that the 3rd Respondent Secretary referred it to the Government. On 24.09.2019 the 3rd Respondent wrote to the Petitioner stating that the decision of the Panchayat had been referred to the Govt. under Rule 4(3) of the Kerala Panchayat Raj (Procedure to be Adopted on Illegal Resolutions) Rules 2003 and that any further action would only be taken after receipt of orders from the Govt. A true copy of the letter dated 24.09.2019 bearing no. A2-3393/19 issued by the 3rd Respondent to the Petitioner is produced herewith as **Exhibit P6**. No further communication was issued by either the 2nd or 3rd Respondent to the




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 अर्थशास्त्रज्ञ (अ.म.) विभाग
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 चवरा, कोल्लम KOLLAM - 691 583

Petitioner. The Petitioner again took up the issue of non-issuance of the D&O/ trade license on governmental levels but to no avail.

11. It is pertinent to mention that at this juncture IREL had not yet undertaken any dredging activity in as much as the 1st Respondent has not allotted any land where IREL could stack the dredged sand. This issues was only resolved in December 2019 when the District Collector, Alappuzha, granted a plot of land to IREL to set up the spiral unit and store the dredged sand. A true copy of the letter dated 07.12.2019 issued by the District Collector, Alappuzha to the Petitioner is produced herewith as Exhibit P7.

12. Meanwhile, vide GO dated 10.12.2019, the Industries Department, Govt. of Kerala granted permission to transport dredged out sand from Azheekkal Pozhi, Kayamkulam to Chavara. A true copy of the GO dated 10.12.2019 bearing no. GO(Rt) No. 1238/2019/ID issued by the Industries Department, Govt. of Kerala, is produced herewith as Exhibit P8.

13. IREL brought the dredge to the site, assembled, floated, connected the pipelines and started dredging by 1st week of January 2020. Parallely preparatory work for the installation and commissioning of spiral plant commenced but was stalled due to the covid-19 pandemic.

14. While so, the Petitioner received a notice from the 3rd Respondent Secretary on 28.05.2020 directing it to stop the operations of the spiral unit immediately. A true copy of the letter dated 28.05.2020 issued by the 3rd Respondent to the Petitioner is produced herewith as





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चवारा, कोल्लम KOLLAM - 691 583

Exhibit P9. It is clarified that the Petitioner was not operating the spiral unit as alleged.

15 On 17.06.2020 the petitioner made another application for D&O/ trade license for the year 2020-2021. True copy of Petitioner's application dated 15.06.2020 application for license for setting up the spiral plant is produced herewith as Exhibit P10.

16. To the Petitioner's surprise and dismay, this application was also rejected by the 2nd Respondent Panchayat on 01.07.2020 without any application of mind by way of an unreasoned order. The decision to reject the application was purportedly based on a decision of the 2nd Respondent Panchayat dated 22.06.2020. However, the copy of the said decision was not enclosed. A true copy of the order dated 01.07.2020 issued by the 3rd Respondent bearing no. A.5-2796/19 is produced herewith as Exhibit P11. Vide another order the 3rd Respondent directed the Petitioner to remove the spiral unit and report to the 2nd Respondent. A true copy of the order dated 01.07.2020 bearing no. A.2-3393/19 issued by the 3rd Respondent to the Petitioner is produced herewith as Exhibit P12.

17. The petitioner submits that the rejection of the Petitioner's application for D&O/ trade license is blatantly illegal and cannot be sustained for numerous reasons. By virtue of the enactment of Kerala Investment Promotion and Facilitation (No. 2) Act, 2018 (Act 14/2018) and the consequent amendments brought about to Sections 232, 233 and 233A of the Kerala Panchayat Raj Act, 1994 and Kerala Panchayat Raj (Issue of License to Factories, Trades, Entrepreneurship, Activities and other





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आयोजनाएं (सि. एम. ए. ए. ए.)
IREL (INDIA) EMPLOYEES UNION
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Services) Rules 1996 [erstwhile Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996], the power of the Village Panchayat to refuse permission has been taken away by the legislature. Even otherwise, the order rejecting the Petitioner's application is vague and ambiguous and does not state the reasons for rejection. Thus, the rejection is vitiated by a clear non-application of mind. There has been no *bona fide* formation of opinion by the 2nd and 3rd Respondents as required under law. The 2nd and 3rd Respondents, thus, have acted mala fide, arbitrarily, without jurisdiction and without the authority of law in rejecting the Petitioner's application for D&O/ trade license. The impugned Exhibits P11 and P12 orders have been issued without jurisdiction and deserve to be quashed.

In the circumstances, the Petitioner is left with no efficacious alternate remedy than to approach this Hon'ble Court under Article 226 of the Constitution of India, and pray for reliefs on the following mainly among other grounds which are set out hereinafter without prejudice to and in the alternative to one another:-

GROUNDS

- A. Exhibits P11 and P12 orders are illegal and violative of the Petitioners' rights under Articles 14 and 19(1)(g) of the Constitution of India.
- B. It is submitted that the activities pertaining to establishing the spiral plant are not activities notified under Schedule I of the Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996. However, as abundant caution, and in order to allay the



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fears of the residents, the Petitioner made an application for D&O/ trade license for establishing the spiral plant. On 21.08.2019, the Petitioner submitted an application for grant of D&O/ trade license for 2019-2020 for setting up the spiral separation unit to the 2nd Respondent Secretary

- C. By virtue of the enactment of Kerala Investment Promotion and Facilitation (No. 2) Act, 2018 (Act 14/2018) and the consequent amendments brought about to Sections 232, 233 and 233A of the Kerala Panchayat Raj Act, 1994 and Kerala Panchayat Raj (Issue of License to Factories, Trades, Entrepreneurship, Activities and other Services) Rules 1996 [erstwhile Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996], the power of the 2nd and 3rd Respondents to refuse the permission has been taken away by the legislature.
- D. From the amendment incorporated under Rule 12(3) to the Kerala Panchayat Raj (Issue of License to Factories, Trades, Entrepreneurship, Activities and other Services) Rules 1996 [erstwhile Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996], it is clear and evident that the power vested on the 2nd and 3rd Respondents to refuse the permission based on the opinion that the construction or establishment is objectionable by reason of high density of population in the neighbourhood or that itself likely to cause nuisance, has been taken away by the legislature. In fact, the amended provisions mandate that if the 2nd Respondent is of the opinion that the construction or establishment is objectionable by reason of high density of population in the neighbourhood and is likely to cause nuisance, then the 3rd Respondent Secretary shall obtain an expert opinion of the department concerned and shall place such report for consideration of the Panchayat. There also the Panchayat is only authorised to issue permission *subject to such conditions as may be required for abatement of the nuisance*, as recommended in the expert opinion of the concerned department. The object of introducing such an Act and the amendments, as specified therein, is intended to give effect to certain proposals of the




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 PANCHAYAT, KOLETTUR (MADURAI) DISTRICT - 625 153

Government of Kerala to avoid delay in granting various licences/ permissions, approvals and clearances required under-various enactments. The intention of the legislature to bring such drastic amendment is clear and explicit. **Therefore it is clear and evident that the power vested on the Village Panchayat to refuse the permission has been taken away by virtue of the amendments.** Hence, impugned Exhibits P11 and P12 orders have been issued without jurisdiction and deserve to be quashed.

- E. From the amendment made to Section 232 and 233 of the Panchayat Raj Act, 1994 it is clear that the 2nd and 3rd Respondents do not have the authority to reject an application for D&O/ trade license. The amended Section 233 clearly stipulates that the 3rd Respondent has to mandatorily grant permission '*either absolutely or subject to such conditions as it thinks fit to impose*'. The rejection of the Petitioner's application vide Exhibits P11 and P12 orders is therefore patently and manifestly illegal.
- F. The 2nd Respondent Panchayat has absolutely no authority to reject the Petitioner's application for D&O/ trade license.
- G. In the present case the impugned Exhibits P11 and P12 orders issued by the 3rd Respondent does not even state that the establishment of the spiral plant is objectionable by reason of high density of population in the neighbourhood or that it is likely to cause nuisance. In such circumstances, the 2nd and 3rd Respondents have absolutely no power or authority to reject the Petitioner's Exhibit P10 application for D&O/ trade license.
- H. The activities being undertaken by the Petitioner, including dredging and setting up the spiral plant, have been sanctioned by the 1st Respondent as is evidenced from Exhibit P1 and P8 GOs issued in its favour. The impugned rejection fails to take into consideration any of the said facts and amounts to an obvious arbitrary exercise of power by the 2nd and 3rd Respondents.





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चवरा, कोल्लम KOLLAM - 691 583

- I. Activities pertaining to dredging and collecting sand is not an activity notified under Schedule I of the Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996.
- J. It is submitted that the impugned orders have been issued by the 2nd and 3rd Respondents without any application of mind in a purely mechanical and perfunctory way. There was no bona fide formation of opinion by the 2nd and 3rd Respondents as required under law. The orders rejecting the Petitioner's applications, which do not state the reasons for rejection, is in gross violation of principles of natural justice as no hearing was granted to the Petitioner prior to the rejection. The impugned orders thus deserve to be quashed on this ground alone.
- K. The Hon'ble Supreme Court has held that when a thing is done in a post-haste manner, mala fides would be presumed. The undue haste with which the 2nd and 3rd Respondents have acted smacks of mala fides and the impugned orders deserves to be quashed.
- L. The Govt. of Kerala has entrusted IREL for de-silting/ dredging in the mouth of Azheekal Pozhi area for smooth navigation of fishing boats in and out of the Pozhi area. The dredged out sand contains heavy/ atomic minerals, and under the Atomic Mineral Concession Rules 2016 such materials can only be handled by authorized public sector undertakings. The Petitioner is one of the two government companies that have been issued licenses by the Atomic Energy Regulatory Board, Govt. of India for operation of beach sand minerals facilities. The Petitioner is carrying out de-silting of the harbour mouth, physical separation of the minerals using spiral separator and transportation of the minerals to the Petitioner's Chavara plant. The sand obtained after separation will be handed over to the Harbour Engineering Department for their use, and also will be used for the Govt's various projects. The entire cost of dredging, separation and transportation of the said separated sand is borne by the Petitioner. The dredging work also ensures smooth functioning of the fishing harbour and fishing operations, directly benefitting more than 1000 fishermen in the surrounding areas.



S. Surya Kumar
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 CHIEF OFFICE PROMOTION OFFICE
 ऑफिस ऑफ एटॉमिक एनर्जी रेगुलटरी बोर्ड
 ऑफिस ऑफ एटॉमिक एनर्जी रेगुलटरी बोर्ड
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Apart from the above, the Petitioner is also paying significant monies to the Govt. of Kerala for the de-silted sand. The arrangement was a win-win model for all parties concerned. But by reason of the impugned order dated 01.07.2020 public interest has been given a complete go-by.

M. It is verily believed that the decision to reject the Petitioner's application for D&O/ trade license is based on decisions of the Panchayat committee even though no communication to that effect has been issued to the Petitioner. Quite apart from being violative of principles of natural justice, no purpose will be served by the Petitioner preferring an appeal against the very same authority challenging its own decision. Therefore, the alternative remedy available to the petitioner under Section 276 of the Kerala Panchayat Raj Act, 1994, is not efficacious, and the petitioner is constrained to approach this Hon'ble Court under Art. 226 of the Constitution of India.

For these and other grounds that may be submitted at the time of hearing, it is humbly prayed that this Hon'ble Court may be pleased to call for the records leading to Exhibits P11 to P12 and: -

- (i) Call for the records leading up to the issuance of Exhibit P11 order dated 01.07.2020 issued by the 3rd Respondent and Exhibit P12 order dated 01.07.2020 issued by the 3rd Respondent and quash the same by the issuance of a writ of certiorari or such other writ, order or direction.
- (ii) Issue a Writ of Mandamus or such other appropriate writ, order or direction commanding the 2nd and 3rd Respondents to grant the D&O/ trade licence as applied for by the Petitioner vide Exhibit P10 application.




 एम. सूर्य कुमार S. SURYAKUMAR
 मुख्य मंत्री परियोजना प्रमुख
 CHIEF CLERK & HEAD
 शाखा
 IREL (INDIA), LINGOLE, CHAYARA
 रावरी, कोल्लम - 691 583

- (iii) Grant such other and incidental reliefs as this Hon'ble Court may deem just and necessary in the facts and circumstances of this case.

Dated this the day of August, 2020.

COUNSEL FOR THE PETITIONER



INTERIM RELIEF

PETITIONER

एम. सुर्य कुमार S. SURYA KUMAR
मुख्य महा प्रबंधक एवं प्रभार
CHIEF GENERAL MANAGER & HEAD
ऑफिसिंग (ईडिया) इन्डिया
IREL (INDIA) LIMITED, CHAVARA
चवरा, कोल्लम KOLLAM - 691 583

For the reasons stated in the memorandum of writ petition (civil) and the affidavit filed in support thereof, it is most humbly prayed that this Hon'ble Court may be pleased to direct the 2nd and 3rd Respondents to grant the D&O/ trade licence as requested for by the Petitioner vide Exhibit P10 application, pending hearing and disposal of this writ petition.

Dated this the day of August, 2020.

COUNSEL FOR THE PETITIONER



PETITIONER

एम. सुर्य कुमार S. SURYA KUMAR
मुख्य महा प्रबंधक एवं प्रभार
CHIEF GENERAL MANAGER & HEAD
ऑफिसिंग (ईडिया) इन्डिया
IREL (INDIA) LIMITED, CHAVARA
चवरा, कोल्लम KOLLAM - 691 583

BEFORE THE HONOURABLE HIGH COURT OF KERALA
AT ERNAKULAM

Writ Petition (Civil) No. of 2020

IREL (India) Ltd. ... Petitioner

vs.

State of Kerala & Ors. ... Respondents

AFFIDAVIT

I, S. Surya Kumar, aged 57 years, son of S. Srirama Moorthi, residing at 10B, Vaidya Homes, Anchukallumoodu, Kaval Road, Thankaserry, Kollam - 691012 do hereby solemnly affirm and state as follows:-

1. I am the Chief General Manager & Head of IREL (India) Ltd., the Petitioner in the above writ petition and I am swearing this affidavit on behalf of the Petitioner having been authorised to do so. I am acquainted with the facts and circumstances of the case as disclosed from the files.

2. All the averments made in the accompanying writ petition (civil) are true to the best of my knowledge, information and belief and they may be read as part of this affidavit. The exhibits produced along with the writ petition (civil) are the true copies of the original documents.

3. The Petitioner has not filed any earlier petition seeking similar and identical reliefs in respect of the same subject matter.

All the facts stated above are true to the best of my knowledge, information and belief.

Dated this the day of August, 2020.



DEPONENT

Solemnly affirmed and signed before me by the deponent, who is personally known to me, on this the Dated this the 30th day of July, 2020 in my office at Ernakulam.

एम. सुर्य कुमार S. SURYA KUMAR
CHIEF GENERAL MANAGER
IREL (INDIA) LIMITED ERNAKULAM
भारतीय, कल्लम कोल्ल - 691012



ADVOCATE 30

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

Monday, the 19th day of October 2020/27th Aswina, 1942

WP(C) No.16765/2020(U)

PETITIONER

IREL (INDIA) LTD
CHAVARA UNIT, KOLLAM-691583, KERALA, INDIA, REPRESENTED BY S.SURYA
KUMAR, CHIEF GENERAL MANAGER AND HEAD.

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
FISHERIES AND PORTS DEPARTMENT, THIRUVANANTHAPURAM-695001.
2. ARATTUPUZHA GRAMA PANCHAYAT,
ARATTUPUZHA PO, ALAPPUZHA, PIN-690535,
REPRESENTED BY ITS SECRETARY.
3. SECRETARY, ARATTUPUZHA GRAMA PANCHAYAT,
ARATTUPUZHA PO, ALAPPUZHA, PIN-690535.

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 direct the 2nd and 3rd Respondents to grant the D&O trade licence as requested for by the Petitioner vide Exhibit P10 application, pending hearing and disposal of this writ petition.

This petition coming on for ^{admission} ~~orders~~ upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S M.GOPIKRISHNAN NAMBIAR, JOSON MANAVANAN, K.JOHN MATHAI, KURRYAN THOMAS, PAULOSE C. ABRAHAM & RAJA KANNAN, Advocates for the petitioner and of GOVERNMENT PLEADER for R1, the court passed the following:

P.B.SURESH KUMAR, J.

W.P.(C) No.16765 of 2020

Dated this the 19th day of October, 2020

ORDER

Despite notice by speed post, there is no appearance for respondents 2 and 3.

Having regard to the specific case pleaded by the petitioner that licence of the Panchayat is not required for the activity referred to in the writ petition, I deem it appropriate to stay all further proceedings pursuant to Ext.P12 communication. Ordered accordingly.

Post on 21.10.2020.

PV

Sd/-
P.B. SURESH KUMAR, (JUDGE)

/TRUE COPY/

Jayesh
20-10-2020
ASSISTANT REGISTRAR

LS
20/10/2020

LS
20/10/2020

WP(C) No.16765/2020(U)

EXHIBIT P10 - TRUE COPY OF PETITIONER'S APPLICATION DATED 15.6.2020
APPLICATION FOR LICENSE FOR SETTING UP THE SPIRAL PLANT

EXHIBIT P12 - TRUE COPY OF THE ORDER DATED 1.7.2020 BEARING NO.A2-3393/19
ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER