

Filed on: 30.03.2021

**BEFORE THE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONAL BENCH, CHENNAI
Original Application No. 76/2021**

K.G. Anilkumar

....Applicant

Vs.

The State Environment Impact Assessment
Authority (SEIAA) Kerala & Others.

....Respondents

**REPLY STATEMENT FILED BY RESPONDENT NO. 3 IN THE ABOVE
ORIGINAL APPLICATION**

JOBİ JOSE KONDODY (J-493) (K-666/96)
Counsel for Respondent No. 3

**BEFORE THE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONAL BENCH, CHENNAI**

Original Application No. 76/2021

K.G. Anilkumar

....Applicant

Vs.

The State Environment Impact Assessment

Authority (SEIAA) Kerala & Others.

....Respondents

INDEX

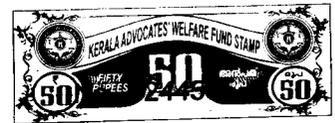
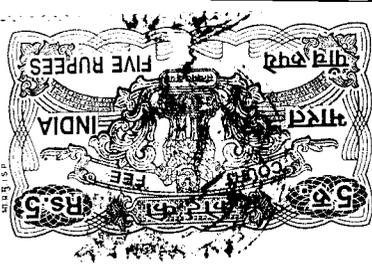
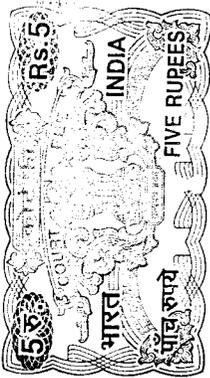
Sl. No.	Particulars	Page No.
1	Vakkalath	1 - 2
2	Reply Statement	3 - 13
3	Annexure R3(a) :- A true copy of the order dated 22.09.2016 issued by the 1 st respondent to the 3 rd respondent	14 - 15
4	Annexure R3(b) :- A true copy of the Full Bench Judgment reported in 2019(3) KLT 987(FB) (Tomy Thomas v. State of Kerala) decided on 30.08.2019	16 - 41
5	Annexure R3(c) :- A true copy of the common judgment dated 04.10.2019 passed by the learned Single Judge of the Hon'ble High Court of Kerala in W.P(C) No. 15505/2016, WP(C) No. 31684/2016 and W.P(C) No. 25529/2019	42 - 57
6	Annexure R3(d) :- The true copy of the judgment dated 08.01.2020 passed by the Division Bench of the Hon'ble High Court of Kerala in W.A. No. 2566/2019	58 - 62
7	Annexure R3(e) :- A true copy of the judgment dated 27.05.2020 passed by the Learned Single Judge of the Hon'ble High Court of Kerala in W.P(C) No. 5897/2020	63 - 83
8	Annexure R3(f) :- A true copy of the letter dated 30.06.2020 issued by the 1 st respondent to the 3 rd respondent	84 - 85
9	Annexure R3(g) :- A true copy of the common judgment dated 22.10.2020 passed by the Division Bench of the Hon'ble High Court of Kerala in W.A No. 1392/2020 and 1393/2020	86 - 105
10	Annexure R3(h) :- A true copy of the order dated 29.09.2020 passed by this Hon'ble Forum in Appeal No. 87/2017	106 - 109
11	Annexure R3(i) :- A true copy of the statement dated 24.03.2021 prepared by Mrs. Selin Joseph for producing before this Hon'ble Forum	110 - 116



12	Annexure R3(j):- A True copy of the report dated 04.10.2016 filed by the Village Officer, Erattupetta before the Additional District Magistrate, Kottayam	117 - 121
----	--	-----------

Dated this the 29th day of March, 2021


Jobi Jose Kondody
Advocate



**BEFORE THE HONOURABLE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONAL BENCH, CHENNAI**

O.A No: 76 OF 2021

K.G. AnilkumarApplicant

Vs.

The State Environment Impact Assessment
Authority (SEIAA) Kerala & OthersRespondents

I, the 3rd respondent Tomy Thomas, aged 54 years, S/o. Thomas, Pulickal House,
Kalathukadavu (PO), Erattupetta, Kottayam District-686 579, Kerala Stae

in the above petition do hereby appoint and retain M/s **JOBI JOSE KONDODY (J-493)**
(K/666/99)

Advocates of the High Court of Kerala to appear for me/us in the above appeal/ petition and to
conduct and prosecute (or defend) the same and all proceedings that may be taken in respect of
any application connected with the same or any decree or order passed therein including all
applications for return of documents and applications for review in appeals under Section 5 of the
High Court Act and in applications for leave to appeal to the Supreme Court and to draw any
monies payable to me in the said Appeal/ Petition.

Dated this the 29th day of March 2021

Witness:
1. K. Sudheer
2. Adv. denta

am
ap
R.S. Tomy Thomas

Executant/Executants is/are personally known to me and he/she/they signed this in my
presence.

Attested

Accepted
Jobi Jose Kondody Adv. K 666/99

Accepted
Jobi Jose Kondody Adv. K 666/99

Kerala Advocates Welfare Fund Stamp
No.: 4627589

Prerog. 30/03/2021

BEFORE THE HONOURABLE
NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONAL BENCH,
CHENNAI

O.A No: 76 OF 2021

VAKKALATH FOR 3rd RESPONDENT

ADDRESS FOR SERVICE

JOBI JOSE KONDODY,

(J-493) (K/666/96),

Advocate,

M/s. Kondody Associates,

B7,42/2166, Chundanai Monarch,

K.K. Padmanabhan Road,

KOCHI-682018.

Mobile : 9447061161

Email:

kondodyassociates@gmail.com

**BEFORE THE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONAL BENCH, CHENNAI
Original Application No. 76/2021**

K.G. Anilkumar

....Applicant

Vs.

The State Environment Impact Assessment
Authority (SEIAA) Kerala & Others.

....Respondents

**REPLY STATEMENT FILED BY THE 3rd RESPONDENT IN THE ABOVE
ORIGINAL APPLICATION**

I, Tomy Thomas, aged 54 years, S/o. Thomas, Pulickal House, Kalathukadavu (PO), Erattupetta, Kottayam District-686 579, Kerala, do hereby solemnly affirm and state as follows.

1. I am the 3rd respondent in the above original application. I know the facts of the case and as such I am duly competent to swear this affidavit.
2. All the averments contained in the original application and the grounds stated therein save those that which are specifically admitted hereunder are denied.
3. At the outset, it is humbly submitted that the applicant herein had approached this Hon'ble Forum with unclean hands and by suppressing material facts in order to play fraud upon this Hon'ble Tribunal and to obtain illegal orders when he failed to secure favourable orders from the Hon'ble High Court of Kerala in several of the Writ Petitions filed by him before the Hon'ble High Court of Kerala. On that sole ground the above original application which is filed by the applicant suppressing material facts has to be dismissed with



compensatory costs to me. Further it is humbly submitted that the Original Applicant herein is residing more than 4 kilometers away from my quarry on the back side of the quarry. Even if areal distance is taken he resides at a distance of more than 1.5 kilometers from my quarry. So also it is submitted that the face of my quarry is not to the side of the residence of the original applicant herein and therefore he is not at all in any way aggrieved by the functioning of my quarry.

4. The averments contained in paragraph 2 of the original application are absolutely false and hence denied. Annexure A1 Environmental Clearance granted to be was never revoked by the 1st respondent on 22.09.2016 whereas based on an illegal report issued by the local police sub inspector to the 1st respondent, upon the influence of my business rival, the 1st respondent without ascertaining the correctness of the report of the Sub Inspector of Police, Erattupetta and the complaint of the applicant herein stating that the conditions in Annexure A1 is not being complied with while carrying out quarrying operation directed to stop the operation of the quarry. A true copy of the order dated 22.09.2016 issued by the 1st respondent to the 3rd respondent is produced herewith and may be marked as **Annexure R3(a)**. The said stop memo was issued immediately when I started forming road leading to my quarry and within 20 days of such operation based on Annexure A1 and on the strength of the quarrying lease granted to me by the Geologist, Kottayam. Even though the applicant was having a copy of the same, he cleverly did not produce the same before this Hon'ble Forum in the above Original Application with malicious intentions. I had challenge Annexure R3 (a) before the Hon'ble High Court of Kerala in W.P.(c) No. 31684/2016.
5. Even though I was granted with Annexure A1 Environmental Clearance as early as on 04.03.2016, the concerned Grama Panchayat under whose territorial limits, I proposed to start my quarry did not grant me a trade license under the provisions of the Kerala Panchayat Raj Act, 1994 and Rules thereunder, I approached the



Hon'ble High Court of Kerala by filing W.P.(c) No. 15505/2016 on the ground that once the technically competent authority issues environmental clearance after conducting all studies, the panchayat do not have any authority to deny trade license to an entrepreneur raising environmental issues. The learned Single Judge of the Hon'ble High Court of Kerala though originally granted an Interim Order later referred the issue to a Division Bench on the ground that different views in the grant of license was taken by the Division Bench of the Hon'ble High Court of Kerala even after the applicant obtained Environmental Clearance. The Division Bench thereafter referred the issue to a Full Bench of the Hon'ble High Court of Kerala to decide the issue since there were contrary findings with respect to grant of license in the light of Environmental Clearance. Since W.P.(c) No. 31684/2016 also pertains to the same quarry, the Learned Single Judge referred the said case also along with W.P.(c) No. 15505/2016 to the Division Bench later on referred to the Full Bench. The applicant herein was also heard by the Learned Single Judge, the Division Bench and the Full Bench when the matter was considered by the Single Judge, the Division Bench and the Full Bench. During the course of hearing by the Full Bench, the Panchayat Raj Act, 1994 got amended by the Government, and the Panchayat was mandated to issue license if other technically competent statutory authorities issue permission to operate the unit. The Division Bench decision relied on by me before the Learned Single Judge, the Division Bench and the Full Bench was hold good by the Full Bench and answered the reference accordingly and send back the Writ Petitions to the Learned Single Judge for consideration in the light of the Full Bench judgment in the matter. A true copy of the Full Bench Judgment reported in 2019(3) KLT 987(FB) (Tomy Thomas v. State of Kerala) decided on 30.08.2019 is produced herewith and may be marked as **Annexure R3(b)**.

6. Thereafter the Learned Single Judge in the light of Annexure R3(b) judgment considered W.P.(c) No. 15505/2016, W.P(c) No.



31684/2016 and W.P(c) No. 25529/2019, the one filed by applicant herein together and pass the common order that the petitioner therein, the 3rd respondent herein, if files fresh application for trade license, the application should be considered in accordance with law and independently, taking into account the amended provisions of law and the principles of law laid down by the Full Bench in Annexure R3(b) Judgment within 2 months from the date of receipt of the copy of judgment.

7. W.P.(c) No. 31684/2016 and W.P.(c) No. 25529/2019 were disposed of with direction to the 1st respondent herein to finalize the proceedings pertaining to Exhibit P11 Stop Memo dated 22.09.2016 (Annexure R3(a) herein) after providing an opportunity of hearing to the applicant herein, myself and all other stake holders including Center for Earth Science Studies (CESS), the report drawn by the said organization in respect of the area in which the quarry is situated, the plans prepared under the Disaster Management Act and all other inputs available and produced by myself, the interested persons, and attain finality at the earliest, at any rate within three months from the date of receipt of a copy of the judgment. A true copy of the common judgment dated 04.10.2019 passed by the learned Single Judge of the Hon'ble High Court of Kerala in W.P(c) No. 15505/2016, WP(c) No. 31684/2016 and W.P(c) No. 25529/2019 is produced herewith and may be marked as Annexure R3(c).

8. The original applicant herein upon receipt of Annexure R3(c) judgment understood that the 1st respondent will conduct enquiry as stipulated by the Hon'ble High Court of Kerala and certainly will find that Annexure R3(a) was issued illegally and also that there is every probability of myself starting the unit, preferred a Writ Appeal against Annexure R3(c) judgment before the Division Bench of the Hon'ble High Court of Kerala on altogether different ground that Environmental Clearances are granted by the 1st respondent in violation of the dictum laid down by the Hon'ble Apex Court in Deepak



7

Kumar's case and accordingly all Environmental Clearances granted by the 1st respondent is bad in law including Annexure A1 Environmental Clearance granted to me by the 1st respondent and therefore I be restricted from enjoying the benefit of Annexure A1. The Division Bench of the Hon'ble High Court of Kerala dismissed Writ Appeal No. 2566/2019 filed by the Original Applicant herein against Annexure R3(c) judgment reserving the right of the appellant therein to challenge the validity of the amendment brought out by the Ministry of Environment, Forest and Climate Change to EIA Notification, 2006. The true copy of the judgment dated 08.01.2020 passed by the Division Bench of the Hon'ble High Court of Kerala in W.A. No. 2566/2019 is produced herewith and may be marked as **Annexure R3(d)**.

9. Even after Annexure R3(c) judgment, the concerned Grama Panchayat who was a party to all the proceedings on the files of the Hon'ble High Court of Kerala, failed to grant trade license to my quarry. Therefore, I approached Hon'ble High Court of Kerala by filing W.P(c) No. 5897/2020. The Panchayat appeared the said Writ Petition and took a contention that Annexure R3 (a) Stop Memo issued by the 1st respondent has no so far recalled and that was the reason why the Panchayat not issued the trade license. The 1st respondent herein appeared before the Hon'ble High Court of Kerala in W.P(c) No. 5897/2020 and submitted that incompliance of Annexure R3(c) Common Judgment, all the parties concerned including myself, the District Geologist, the Panchayat Authorities have already been afforded reasonable opportunity of being heard in the prior sittings of the committee of the 1st respondent herein and on account of the present lockdown issues, the meeting of the competent committee of the 1st respondent is scheduled to be held on 2nd 3rd and 4th of June 2020 in which the decision as the complaints of the objectors which led to the temporary issuance of stop memo will be rendered by the competent authority of the 1st respondent herein without much delay. The Panchayat was directed to issue trade



license in case the 1st respondent herein vacates Annexure R3 (a) stop memo. A true copy of the judgment dated 27.05.2020 passed by the Learned Single Judge of the Hon'ble High Court of Kerala in W.P(C) No. 5897/2020 is produced herewith and may be marked as Annexure R3 (e).

10. Subsequently the 1st respondent intimated me to carry out the impact assessment on all the buildings and constructed structures within the radius of 500 meters and the impact due to proposed blasting, air quality and noise level of the impact zone due to blasting and transportation and social aspects including employment, income and involuntary land acquisition. The study should cover an area of three kilometer radius of proposed mining spot. A detailed land use and land cover map of an area covering 500 meters radius of the proposed mining spot also to be submitted. The above study report was directed to be submitted at the earliest for processing the application for vacating Annexure R3 (a) stop memo. A true copy of the letter dated 30.06.2020 issued by the 1st respondent to the 3rd respondent is produced herewith and may be marked as Annexure R3 (f).

11. Annexure R3(f) was challenged by myself in W.P(C) No. 14072/2020 before the Hon'ble High Court of Kerala which led to Annexure A2 judgment. The main challenge on Annexure R3 (f) was that the studies proposed to be conducted therein can be done only if Annexure R3 (a) is vacated and permitted to operate my quarry. It was in such circumstances the Hon'ble High Court of Kerala after hearing the 1st respondent herein as well, vacated Annexure R3 (a) and temporarily permitted myself to function the quarry to comply with the studies contemplated in Annexure R3(f). I was temporarily permitted functioning of my quarry until final orders are passed in the matter as directed in Annexure A2 judgment as well as Annexure R3(c) common judgment passed by the Learned Single Judge of the Hon'ble High Court of Kerala.



12. Aggrieved by Annexure A2 judgment, the original applicant herein obtained leave from the Division bench of the Hon'ble High Court of Kerala and preferred W.A No. 1392/2020 before the Division Bench. The Panchayat also came up with another W.A. 1393/2020 against Annexure A2 Judgement. The Division Bench passed a common Judgment in W.A No. 1392/2020 and 1393/2020 declaring that the permission granted for temporary functioning is with the object of enabling the SEIAA, the 1st respondent herein to evaluate and take a decision in respect of Environmental Clearance (Annexure R3(a)) in accordance with law. A true copy of the common judgment dated 22.10.2020 passed by the Division Bench of the Hon'ble High Court of Kerala in W.A No. 1392/2020 and 1393/2020 is produced herewith and may be marked as **Annexure R3 (g)**. Annexure A3 produced by the original applicant is also referred to in Annexure R3 (g) judgment.
13. In this connection it is also humbly submitted that another resident residing nearby planted by my rival quarry operator had challenged Annexure A1 Environmental Clearance before this Hon'ble Forum in Appeal No. 87/2017. In the said appeal I produced the judgment passed by the Hon'ble High Court of Kerala in the matter. This Hon'ble Forum found that since entire issue has now left open to be decided by the SEIAA afresh, in view of the directions given by the Hon'ble High Court of Kerala nothing survives in the appeal. A true copy of the order dated 29.09.2020 passed by this Hon'ble Forum in Appeal No. 87/2017 is produced herewith and may be marked as **Annexure R3(h)**.
14. Even though the original applicant herein is a party to majority of the proceedings on the files of the Hon'ble High Court of Kerala had purposefully not produced the above referred judgments before this Hon'ble Court in order to obtain favourable orders by him suppressing the material facts.



15. The averments contained in paragraphs 4, 5 and 6 of the original application are absolutely false and hence denied. All the complainants and the nearby residents of the petitioners quarry were heard by the 1st respondents and the technical committee of the 1st respondent, SEAC, when they visited the site. No buildings were damaged on account of the functioning of my quarry. As regards the house of Sri. Thomas P.C referred to in Annexure A4, the same belongs to one Mrs. Selin Joseph, Aduppukallungal House, Vettipparambu, Kalathukadavu P.O., Erattupetta. On receipt of the copy the above original application, I approached Smt. Selin Joseph in order to ascertain whether any damages were caused to her house on account of functioning of my quarry. She even went to the extent of swearing an affidavit for filing before this Hon'ble Forum stating that house No. 203 of Ward No. 4 of Thalappalam Grama Panchayat belongs to her and the same as been rented out to Thomas P.C and no damages were caused to her house situated at a distance of more than 500 meters from the quarry of Tomy Thomas and the damages caused to her house was due to the age of the house. A true copy of the statement dated 24.03.2021 prepared by Mrs. Selin Joseph for producing before this Hon'ble Forum is produced herewith and may be marked as Annexure R3 (i). The allegation that cracks have been developed at the residential buildings of Chellamma Sreedharan, Mary Scaria, Varkey Joseph and Sivaraman are absolutely false and hence denied. If at all any cracks and there in their houses, it was due to the poor quality of construction of the houses and no due to the blasting operation conducted by me. Right from the beginning, in the matters on the files of the Hon'ble High Court of Kerala, these were the allegations against my quarry and that was a reason that in Exhibit R3(c) judgment, the Hon'ble High Court of Kerala directed the 1st respondent to hear all affected parties while finalizing Annexure R3(a). Further it is humbly submitted that on an earlier occasion when the original applicant herein along with the others when preferred complaint before the Additional District Magistrate, Kottayam against the functioning of the quarry, the



//

Additional District Magistrate Kottayam directed the Village Officer to conduct enquiries and to furnish a report regarding the distance between the residence of the objectors to my quarry. Accordingly the Village Officer, Erattupetta on 04.10.2016 conducted enquiries and submitted his report before the Additional District Magistrate, Kottayam stating that all the objectors to my quarry are residing more than 200 meters away. A True copy of the report dated 04.10.2016 filed by the Village Officer, Erattupetta before the Additional District Magistrate, Kottayam is produced herewith and may be marked as Annexure R3(j). Therefore going by Annexure R3(j) report there is no chance for any building getting damaged on account of functioning of my quarry. Annexures A4, A5 and A6 photographs produced does not reveal as to whether those cracks occurred on account of functioning of the quarry. Annexure A6 photographs is relating to abandoned quarry in the property conducted during early 2000 and at present the quarrying operations are started from the top as seen in the photograph and when it reaches the abandoned quarry it will be in perfect shape.

16. The averments contained in Paragraphs 7 and 8 of the original application are absolutely false and hence denied. If the 1st respondent was supporting me to operate my quarry, then they would have vacated Annexure R3(a) and permitted me to operate the quarry full-fledged. As already submitted the quarry will be operated from the top by providing benches and as of now the formation of the road leading to the top of the quarry is undertaken.
17. The averments contained in Paragraph 9 of the original application are not fully correct. The petitioner's quarry is not functioning at Kizhakkemala. The Center for Earth Science Studies (CESS) had appeared before the Hon'ble High Court of Kerala and submitted that there is no authority for them to prepare Annexure A7. Right from the beginning in all Writ Petitions referred to above on the files of the High Court of Kerala, the original applicant herein as well as other



objectors contended there that based on Annexure A7, my quarry has to be stopped. It was in such circumstances, I had to implead CESS in one of the Writ Petition and they appeared before the Hon'ble High Court and disowned Annexure A7. Further when the original applicant herein contended before the Learned Single Judge of Annexure A7, the Hon'ble High Court of Kerala in Annexure R3(c) judgment directed the 1st respondent to hear CESS on the correctness of Annexure A7 while passing final orders pertaining to Annexure R3(a) Stop Memo. Further it humbly submitted that if at all the CESS had conducted a study as Annexure A7, it is in the quarry of Ozhakkal Granites and not in my quarry.

18. The averments contained in Paragraph 10 of the original application are absolutely false and hence denied. These statements are made only with the intention to preclude the 1st respondent from passing final orders on Annexure R3(a) Stop Memo in compliance of the various judgment of the Hon'ble High Court produced above. The grounds raised in the Original Application are all to that effect and therefore denied. True that the national Green Tribunal in O.A. No. 304/2019 had enhanced the distance criteria from 50 meters to 200 meters when blasting is involved in the quarry. There are no residences within 200 meters of my quarry as its evident from Annexure R3(j).
19. The original applicant is not entitled for any of the reliefs sought for the above original application for the reason that I had not caused any damages to the environment and the operations now carried out is only on the strength of the judgments passed by the Hon'ble High Court of Kerala in order to carry out the studies stipulated by the 1st respondent. The original applicant has filed the above O.A with an intention to deny the proposed studies sought to be conducted by the 1st respondent. He is very much sure that if the studies directed by the 1st respondent is conducted, it will result in vacating Annexure R3 (a) and thereby I will start operating my quarry which will be against



the adverse interest of my business rival who had planted the original applicant herein.

In these circumstances it is humbly prayed that this Hon'ble Forum may be pleased to dismiss the above original application with compensatory costs to me.

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


3rd RESPONDENT

Solemnly affirmed and signed before me by the deponent who is personally known to me in my office at Ernakulam, on this the 29th day of March, 2021


Jobi Jose Kondody
Advocate

Dated this the 29th day of March, 2021


Jobi Jose Kondody
Advocate



ANNEXURE R3(a)

**Proceedings of the State Environment Impact Assessment Authority
Kerala**

*Present: Prof. (Dr.) K.P. Joy, Chairman, Dr. J. Subhashini, Member and Sri. V.S. Senthil I.A.S Member
Secretary.*

Sub: Complaint against the E.C granted to quarry project of Sri. Tomy Thomas in Sy.Nos 247/2, 247/2/1, 247/2/2, 247/2/3, 249/1, 249/2, 249/3, 249/4, 439/1-1, 248/4, 248/3PT of Erattupetta Village, Thalappalam Grama Panchayat, Meenachil Taluk, Kottayam District- Stop Memo- issued

STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY

No. 1255/EC4/2016/ SEIAA

dated, Thiruvananthapuram 22-09-2016

- Read:-**
1. E.C. Proceedings No.806/SEIAA/EC4/2237/2015 dated 04-03-2016
 2. Proceedings No.A6-1093/16 dated 15-04-2016 of the Secretary, Thalappalam Grama Panchayat, Kottayam district.
 3. Letter No.317/TDR/16-PSD dated 16-07-2016 from Sub Inspector of Police, Erattupetta.
 4. Minutes of the 56th meeting of SEIAA held on 23-07-2016.

ORDER

WHEREAS Environmental Clearance under the Environmental (Protection) Act, 1986 has been granted to Sri. Tomy Thomas, Pulickal House, Kalathukadavu.P.O., Erattupetta, Kottayam District for quarrying of 1, 20,000 MTA Building Stone from 1.5742 ha comprised in Sy.Nos 247/2,247/2/1,247/2/2,247/2/3,249/1,249/2,249/3,249/4,439/1-1,248/4,248/3PT of Erattupetta Village, Thalappalam Grama Panchayat, Meenachil Taluk, Kottayam District, as per the proceedings read above, under the specific conditions mentioned therein and general conditions annexed thereto;

AND WHEREAS, Sri. K.G. Anil Kumar, Convenor, Kizhakkemala Protection Council, has petitioned the Authority that none of the conditions in the Environmental Clearance has been complied with, whereby the operation of the quarry may be stopped;

AND WHEREAS the Thalappalam Grama Panchayat in its proceedings read above declined to renew the D&O licence, to the quarry for the years 2015-16' and 2016-'17;



15

ANNEXURE R3 (A) 2

AND WHEREAS, the Sub Inspector of Police, Erattupetta as per his letter read above, has reported to the Authority that, the quarry is working violating the conditions in the Environmental Clearance;

AND WHEREAS, the Authority in its 56th meeting held on 23.7.2016 has examined the reports and decided to issue stop memo in view of the violation of Environment Clearance conditions;

NOW THEREFORE, for exercise of the power under Section 19 of the Environment (Protection) Act, 1986, the State Environment Impact Assessment Authority, hereby direct that the operation of the quarry be stopped forthwith;

The Tahasildar, Meenachil, will implement the decision and report.

Sd/-
V.S. SENTHIL I.A.S
Member Secretary, SEIAA
&
Additional Chief Secretary
Environment & Forest Department
Government of Kerala

To,

1. The Tahasildar, Meenachil, Kottayam
2. Sri. Tomy Thomas,
Pulickal House,
Kulathukadavu (P.O),
Erattupetta, Kottayam - 686 579.
3. Sri. K. Anil Kumar,
Convenor,
Kizakkeumala Samrakshana Samathi
4. District Collector, Kottayam
5. Village Officer, Erattupetta, Erattupetta (P.O),
Kottayam.
6. Secretary,
Thalappalam Grama Panchayat, Kottayam - 686579.
7. District Geologist, Kottayam
8. O/C
9. S/F
10. Website.



Forwarded/ By Order

Administrator,
SEIAA

16
ANNEXURE R3 (6)

Tomy Thomas v. State of Kerala (C.K.Abdul Rehim, J.) (F.B.) 987

2019 (3) KLT 987 (F.B.)

*Hon'ble Mr. Justice C.K.Abdul Rehim, Hon'ble Mr. Justice Shaji P.Chaly &
Hon'ble Mr. Justice R. Narayana Pisharadi*

Tomy Thomas v. State of Kerala
W.P.(C) Nos.15505 & 31684 of 2016

Decided on 30th August, 2019

Panchayat Raj Act, 1994 (Kerala), Section 233 (As amended by Act 14 of 2018) – The omission of clause (b) of sub-section (3) of Section 233 gives a clear indication that the power of the Village Panchayat to refuse the permission has been taken away by the Legislature.

Held: Under the amended provisions of sub-section (3) of Section 233 of the Act, the Secretary or the officer authorised by him should conduct an enquiry and submit report to the Village Panchayat as to whether the establishment of the factory, workshop, workplace or other installation of machinery or manufacturing plant, for which the permission is applied for, is objectionable by reason of density of population in the neighbourhood and possibility to cause nuisance or pollution. The Village Panchayat on consideration of the application and the report of the Secretary and of such other authorities as specified in sub-section (4) may as expeditiously as possible, at any rate within thirty days grant the permission either absolutely or subject to such conditions as it thinks fit to impose. Sub-clause (a) and (b) of sub-section (3) contained in the un-amended provisions were omitted through the amendment. Sub-clause (b) of sub-section (3) which enabled the Village Panchayat to refuse the permission for reason to be recorded, was omitted from the statute book. It gives a clear indication that the power of the Village Panchayat to refuse the permission has been taken away by the legislature. (para.22)

Panchayat Raj (Issue of Licence to Factories, Trades, Entrepreneurship Activities and Other Services) Rules, 1996 (Kerala), Rule 12(3)(b) (As amended by S.R.O. No.674/2017 by Notn. G.O.(P) No.80/2017) – From the amendment incorporated under Rule 12(3) it is clear and evident that the power vested on the Village Panchayat 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.

The power vested on the Village Panchayat to refuse the permission as mentioned above contained under sub-clause (b) of sub-rule (3) of Rule 12, was amended drastically. Under the amended sub-clause (b) it is provided that, if the Village Panchayat 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, the Secretary shall as soon as may be after receipt of the application obtain an expert opinion of the department concerned with regard to determination of nuisance or its abatement, at the cost of the owner or person in-charge of the factory, workshop, workplace or machinery concerned and such report shall be furnished to the Village Panchayat as soon as possible not later than 30 days of reporting such nuisance. Further it is provided that, on furnishing of such report of the concerned department, the Village Panchayat shall issue permission subject to such

Ans

conditions as may be required for abatement of the nuisance if any, as recommended in the expert opinion of the concerned department. From the amendment incorporated under Rule 12(3) it is clear and evident that the power vested on the Village Panchayat 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. Through the amendment it is clarified that if the Village Panchayat 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 Secretary shall obtain an expert opinion of the department concerned and shall place such report for consideration of the Village Panchayat. There also the Village 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. 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. (para.23)

Panchayat Raj Act, 1994 (Kerala), Section 233 (As amended by Act 14 of 2018) – From the date of enforcement of the amendments from 20th October, 2017, it cannot be said that Village Panchayats have got primacy of power to take an independent decision to reject the applications for permission/licence under provisions of the Act and the Licensing Rules, for construction or for establishment of any factory, workshop or work place.

As mentioned in the foregoing paragraphs, the amendments specified above were introduced through the Kerala Investment Promotion and Facilitation (No.2) (Act 14/2018). The object of introducing such an Act, as specified therein, is intended to give effect to certain proposals of the Government of Kerala to avoid delay in granting various licences/permissions, approvals and clearances required under various enactments. Therefore the intention of the legislature to bring such drastic amendment is clear and explicit. Hence it is to be observed that, from the date of enforcement of the amendments from 20th October, 2017, it cannot be said that Village Panchayats have got primacy of power to take an independent decision to reject the applications for permission/licence under provisions of the Act and the Licensing Rules, for construction or for establishment of any factory workshop or work place. (para.24)

Panchayat Raj Act, 1994 (Kerala), Section 233 (As amended by Act 14 of 2018) – Panchayat Raj (Issue of Licence to Factories, Trades, Entrepreneurship Activities and Other Services) Rules, 1996 (Kerala), Rule 12 (As amended by S.R.O. No.674/2017 by Notn. G.O.(P) No.80/2017) – The Grama Panchayats (Village Panchayats) are obliged to grant permissions in cases where the authorities mentioned under Section 233 of the Act had issued such permissions or consents or no-objection certificates.

The Grama Panchayats (Village Panchayats) are obliged to grant permissions in cases where the authorities mentioned under Section 233 of the Act had issued such permissions or consents or no-objection certificates. (para.24)

Panchayat Raj Act, 1994 (Kerala), Section 233 (As amended by Act 14 of 2018) – Panchayat Raj (Issue of Licence to Factories, Trades, Entre-

Jm

18

ANNEXURE R3 (B) 3

Tomy Thomas v. State of Kerala (C.K.Abdul Rehim, J.) (F.B.) 989

preneurship Activities and Other Services) Rules, 1996 (Kerala), Rule 12 (As amended by S.R.O. No.674/2017 by Notn. G.O.(P) No.80/2017) – Even if the panchayat is of the opinion that the construction or establishment of the factory, workshop or workplace is objectionable by reason of high density of population in the neighbourhood and is likely to cause nuisance, then also the Panchayat can only obtain expert opinion from the department concerned and it is obliged to issue permission for such construction or establishment subject to such conditions as may be required for abatement of the nuisance, if any, as may be recommended in the expert opinion of the concerned department.

Even if the panchayat is of the opinion that the construction or establishment of the factory, workshop or workplace is objectionable by reason of high density of population in the neighbourhood and is likely to cause nuisance, then also the Panchayat can only obtain expert opinion from the department concerned and it is obliged to issue permission for such construction or establishment subject to such conditions as may be required for abatement of the nuisance, if any, as may be recommended in the expert opinion of the concerned department. (para.24)

Panchayat Raj Act, 1994 (Kerala), Section 233 – The decision in *Ramapuram Grama Panchayat* (2016 (2) KLT 219) has not in any manner negated the power vested on the Grama Panchayat to refuse the licence on the basis of the reason that it is objectionable due to the high density of population in the neighbourhood and that it is likely to cause pollution or nuisance.

The decision in *Ramapuram Grama Panchayat* (2016 (2) KLT 219), in our view, had only fortified the dictum that, for a refusal of the permission/licence the panchayat should be convinced that the unit in question is objectionable by reason of the density of population in the neighbourhood and possibility of causing nuisance or pollution and that such decision could be formed only on the basis of report of the Secretary which should contain the opinion of experts also. The premise on which the permission can be refused is reiterated in the provisions of sub-rule 3(b) of Rule 12, which say that if the panchayat is of the opinion that such construction is objectionable by reason of the high density of population in the neighbourhood or that it is likely to cause nuisance, it can refuse the permission. Therefore, it is evident that the decision in *Ramapuram Grama Panchayat* (2016 (2) KLT 219) has not in any manner negated the power vested on the Grama Panchayat to refuse the licence on the basis of the reason that it is objectionable due to the high density of population in the neighbourhood and that it is likely to cause pollution or nuisance. (para.15)

Explained

2016 (2) KLT 219

Panchayat Raj Act, 1994 (Kerala), Section 233 – It cannot be said that the decision in *Ramapuram Grama Panchayat* (2016 (2) KLT 219) had fully taken away the principle of primacy of powers of the panchayat, with respect to taking a decision either to grant or to refuse the licence – Nor it cannot be found that, the dictum contained in *Ramapuram Grama Panchayat* (2016 (2) KLT 219) will in any manner be held as a proposition that the Panchayat is bound to grant permission/licence, whenever the expert authorities have issued

day

clearance, subject to any conditions incorporated in their consents/permissions/no-objection certificates.

What was clarified is only that, such decision ought to have the support of proper materials collected by the Secretary in his report, which should have the basis of expert opinion also. Therefore it cannot be said that the decision in *Ramapuram Grama Panchayat* (2016 (2) KLT 219) had fully taken away the principle of primacy of powers of the panchayat, with respect to taking a decision either to grant or to refuse the licence. Nor it cannot be found that, the dictum contained in *Ramapuram Grama Panchayat* (2016 (2) KLT 219) will in any manner be held as a proposition that the panchayat is bound to grant permission/licence, whenever the expert authorities have issued clearance, subject to any conditions incorporated in their consents/permissions/no-objection certificates. (para.15)

2016 (2) KLT 219

Explained

2002 (2) KLT 228 (SC); 2008 (1) KLT 937; 2007 (4) KLT 526;

2016 (3) KLT 82; 1996 (2) KLT 719; 2001 (2) KLT 690;

1952 KLT OnLine 810 (SC) = AIR 1952 SC 16 & 2013 (3) KLT 1053

Referred to

George Poonthottam (Sr. Advocate), T.R. Rajan & Jobi Jose Kondody

For Petitioners

Georgekutty Mathew, Shaji Thomas, P.B.Sahasranaman,

B.Rajesh Kottayam, T.S.Harikumar, Surya Binoy,
Raajesh S.Subrahmanian & Government Pleader

For Respondents

ORDER

C.K.Abdul Rehim, J.

When one among the above Writ Petitions, W.P.(C) No.15505/2016, came up for consideration before a learned Judge of this court, an important legal question arose as to whether the Grama Panchayats (Village Panchayats) are obliged to grant permission for construction or for establishment of any factory, workshop, work place or machinery, under S.233 of the Kerala Panchayat Raj Act, 1994 (hereinafter referred as 'the Act' for short) read with Rule 12 of the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996 (hereinafter referred as 'the Licensing Rules' for short), in cases where all the authorities had issued permissions/consents/no-objections certifying that such factory, workshop or work place will not cause any environmental problems, if it is permitted to function as per the conditions and restrictions imposed by the said authorities and when such units had also obtained environmental clearance from the State Environmental Impact Assessment Authority (SEIAA). In other words, the issue confronted was, whether the panchayats have got primacy in their powers to take an independent decision to reject such applications seeking permission/licence in cases where permissions/consents/no-objections were issued by all the authorities concerned.

2. The learned Single Judge noticed that a Division Bench of this court in *Ramapuram Grama Panchayat v. St.Basil Industries India (P) Ltd. & Ors.* (2016 (2) KLT 219 = 2016 (3) KHC 118) had distinguished the decision of the Hon'ble Supreme Court

in *Action Council v. Benny Abraham* (2002 (2) KLT 228 (SC) = 2002 KHC 416) as well as the decision of a Division Bench of this court in *M/s. Gem Granites v. Deputy Superintendent of Police & Ors.* (2008 (1) KLT 937 = 2008 (1) KHC 909) in order to hold that the panchayat has no authority to decline the licence. But it was noticed that in *Gem Granites* (supra) as well as in another Division Bench ruling in *Bosco Antony v. State of Kerala & Ors.* (2007 (4) KLT 526 = 2007 (4) KHC 116) this court had in fact upheld the primacy of the power enjoyed by the panchayats. It was noticed that a similar view was taken in the decision in *Nagaroor Grama Panchayat v. Vijayakumar & Ors.* (2016 (3) KLT 82 = 2016 (3) KHC 602) also. Therefore the learned Single Judge observed that, there exists a difference in the opinion with respect to the legal position settled in the rulings in *Ramapuram Grama Panchayat* (supra) on one side and the rulings in *Action Council* (supra), *Gem Granites* (supra), *Bosco Antony* (supra) and *Nagaroor Grama Panchayat* (supra) on the other side. Based on the conflict noticed, the matter was referred for decision of a Division Bench. Accordingly, W.P.(C) No.15505/2016 was referred for consideration to a Division Bench through an order passed on 20th September 2016.

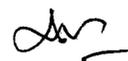
3. When W.P.(C) No.15505/2016 came up for consideration before a Division Bench, W.P.(C) No.31684/2016 was also tagged on to that case. A common order of reference was passed by the Division Bench observing that, there exists conflict of opinion in the Division Bench rulings between *Ramapuram Grama Panchayat* (supra) and the rulings in *Nagaroor Grama Panchayat* (supra), *Gem Granites* (supra) and *Bosco Antony* (supra). Therefore it was found that the question of law requires settlement by a Full Bench. Hence the above cases were referred to the Full Bench through an order of reference passed on 3rd July 2018. Accordingly the above cases are posted for consideration before this court.

4. Before entering into discussions on the issue referred, it will be beneficial to have a scanning of the relevant provisions of the Act and the Rules. Ss.232 and 233 of the Act, as they stood prior to the amendment introduced in the year 2017, is as follows:

"232. Purpose for which places may not be used without a licence.—(1) The Village Panchayat may notify that no place in the Panchayat area shall be used for any of the purposes specified in the rules made in this behalf being purposes which in the opinion of Government, are likely to be offensive or dangerous to human life or health or property without a licence issued by the (Secretary) and except in accordance with the conditions specified in such licence:

Provided that no such notification shall take effect until the expiry of thirty days from the date of its publication.

[(2)] Notwithstanding anything contained in the Abkari Act 1077(1 of 1077) or in any other law for the time being in force, no person shall without previous permission in writing of a Village Panchayat and otherwise than in accordance with the conditions specified in the permission, establish an Abkari shop within a Village Panchayat area;



(3) While granting permission to establish an Abkari shop near an educational institution or place of worship, the distance limit prescribed in the Abkari Act for the time being in force or the rules framed thereunder shall be complied with and the Village Panchayat shall not grant permission to establish an Abkari shop within the said distance limit.

(4) A Village Panchayat shall be competent, in the interest of public peace or morality or on the grounds of convenience or nuisance, to order the shifting of an Abkari shop from the place where it is situated to another or its closing within a period not exceeding fifteen days, as may be directed in this behalf.

(5) Notwithstanding anything contained in this section, the provisions of sub-sections (2) to (4) shall not be applicable to any Abkari shop existing on 25th November, 2012, the date of commencement of the Kerala Panchayat Raj (Fourth Amendment) Ordinance, 2012(63 of 2012) or, subject to all existing legal provisions, for re-establishing the toddy shops existing on the said date, in the area within the boundaries allotted for establishing them.

Explanation:- "Abkari shop" means a toddy shop or a foreign liquor shop or a foreign liquor retail shop or an establishment having FL-9 licence or a bar hotel, under the Abkari Act, 1077 and the rules made thereunder]

233. Permission for the construction of factories and the installation of machinery:- [(1)] No person shall without the permission of the Village Panchayat and except in accordance with the conditions specified in such permission, -

(a) construct or establish any factory, workshop or workplace in which it is proposed to employ steam power, water power or other mechanical power, or electrical power, or

(b) install in any premises any machinery or manufacturing plant driven by any power as aforesaid, not being machinery or manufacturing plant exempted by the (provisions of this Act or the rules made thereunder).

[(2)] An application for permission under sub-section (1) shall be submitted to the village panchayat addressed to the Secretary in such form and with such details as prescribed.

(3) The secretary shall, as soon as may be after the receipt of the application, enquire and report to the Village panchayat as to whether the establishment of the factory, workshop or workplace or other installation of machinery or manufacturing plant for which permission is applied for is objectionable by reason of density of population in the neighbourhood and the possibility to cause nuisance or pollution and the village Panchayat after having considered the application and the reports of the secretary, and of such other authorities as specified in sub-section (4) may as expeditiously as possible, at any rate within sixty days, -

(a) grant the permission either absolutely or subject to such conditions as it thinks fit to impose; or

(b) refuse the permission for the reasons to be recorded.

(4) Before granting or refusing permission under sub-section (3), the Village Panchayat, shall obtain and consider.

(a) a report of the Inspector of Factories appointed under the Factories Act 1948 (Central Act 63 of 1948) or of an officer of the Industries Department not below the rank of an Industries Extension Officer having jurisdiction over the area regarding the adequacy of ventilation, light etc., and sufficiency of the height and size of the rooms and doors and the

Tomy Thomas v. State of Kerala (C.K.Abdul Rehim, J.) (F.B.) 993

suitability of exits to be used in case of fire in the plan of factories, workshop, workplace or premises if they came within the purview of the Factories Act, 1948 (Central Act 63 of 1948) and such other matters as may be prescribed;

(b) a report of the District Medical Officer regarding the possibility of nuisance or pollution if the connected load of the machinery proposed to be installed exceeds 25 HP or if the nature of the machinery and installation are such that it may cause nuisance or pollution; and

(c) a report of the Divisional Fire Officer or any other officer authorised by him regarding the adequacy of fire prevention and fire fighting measures planned if the proposed industry involves the use of high tension power or inflammable or explosive materials:

Provided that, no report under clause (b) shall be called for in respect of any industry if the applicant produces a declaration recommended by an officer of the Industries Department authorised in this behalf or by the Kerala State Pollution Control Board to the effect that such industry would not cause pollution.

(5) The grant of permission under this section, -

(a) Shall be subject to the conditions to be observed in respect of the replacement of machinery the levy of fees and to such restrictions and conditions as may be prescribed;

(b) Shall not be deemed as exempted from observing the provisions contained in section 235 (F) and 235 (H) or 235 (P) and 235 (Q)]."

Rules 5, 6 & 12 of the Licensing Rules as they stood prior to the amendment brought in through the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Amendment Rules, 2017, were as follows:

"5. Application for licence.—The owner or occupier of every place used for the purposes specified in Schedule I shall within thirty days of the publication of the notification, submit to the Secretary application for licence for the use of such place for such purpose.

6. In the case of application, decision has to be taken by the President.—The President may by order in writing and subject to such restrictions and regulations as he thinks fit, issue such licence or in public interest refuse to issue the same. In the case of refusal of licence the reasons for such refusal shall be mentioned in such order.

12. Application to be made for constructing or establishing factory, workshop or workplace wherein steam power or other power is to be used. —(1) Every person intending,—

(a) to construct or establish any factory, workshop or workplace wherein it is proposed to use steam power, water power or other mechanical power or electricity; or

(b) to install, on any land a machinery or manufacturing plant operated by steam power, water power or other power as aforesaid, not being machinery or manufacturing plant exempted under Rule 16, shall submit an application in writing before the Village Panchayat for permission to undertake such work before so constructing or establishing.

(2) The application shall specify the maximum number of workers proposed to be employed on a day in the factory, workshop, workplace or on the land and shall be accompanied by.—

(i) the plan of the factory, workshop, workplace or the land prepared in such manner as directed by the officer authorised by Government; and

(ii) the details in respect of power, machinery, plant or land that the Village Panchayat may call for in this behalf.

(3) The Village Panchayat shall, as soon as maybe after the receipt of the application, within 45 days in the case of obtaining no objection certificate from other establishments and within 30 days in other cases,—

(a) grant the permission applied for either absolutely or subject to such condition as it thinks fit to impose, or

(b) refuse permission, if it is of the opinion that such construction or establishment is objectionable by reason of high density of population in the neighborhood or that it is likely to cause nuisance; or

(c) where the application has not been disposed of within the specified time, licence shall be deemed to have been issued; or

(d) the Secretary shall, in the case of factories, industrial establishments etc, with machinery having capacity of less than 5 horse power and not causing pollution after accepting the fee for licence, without the no objection certificate of another establishments or the special permission of the Village Panchayat, issue licence.

(4) Appeal against the decision of the Village Panchayat may be submitted before the Green Channel Counter and the Village Panchayat is liable to implement the decision thereon.

5. A brief narration with respect to the developments in the case law on the point, will be beneficial to have a correct appreciation of the question referred for decision. In one among the earliest decisions of this court, *Manjapra Grama Panchayat v. State of Kerala* (1996 (2) KLT 719 = 1996 KHC 388) a learned Judge, after referring to the history and development of law based on 73rd Amendment of the Constitution as well as the consequent enactment of the Kerala Panchayat Raj Act, 1994, observed that, the legislative intent was to endow the panchayats with such powers and authority to enable them to function as institutions of self government. The learned Judge emphasised the duties cast upon the panchayats by virtue of S.166 of the Act, on matters which are enumerated in the IIIrd Schedule of the Act. On the facts, it was a case where the applicant before the panchayat had obtained certificates issued from the Pollution Control Board and District Medical Officer of Health. But the court observed that, even if a no-objection certificate is obtained from the Pollution Control Board and/or from the District Medical Officer of Health, it does not mean that the panchayat should automatically give licence to the applicant. Under the Licensing Rules, while entertaining an application seeking permission for establishment of any factory, work place etc., the panchayat need only to consult and shall have due regard to the opinion of the District Medical Officer of Health or any other authority authorised by him, as per Rule 12 of the Licensing Rules. That does not mean that the panchayat should give licence automatically, as soon as the no-objection certificate is obtained. It was found that, over and above the powers vested on the Pollution Control Board under the pollution control laws, as well as the powers vested on the District Medical

Tomy Thomas v. State of Kerala (C.K.Abdul Rehim, J.) (F.B.) 995

Officer of Health under the Travancore-Cochin Public Health Act, the Panchayat itself has got statutory duty and obligation under the Act. The mere fact that the District Medical Officer of Health and the Pollution Control Board had issued no-objection certificates, it does not mean that the panchayat should give licence to an applicant. In other words, the panchayat itself could independently consider as to whether by setting up of the unit within its area it would affect the people of the locality. The panchayat has got such powers and duties to enable them to function as institutions of self government. Therefore the mere fact that the District Medical Officer has issued certificate stating that he has no objection, it does not mean that the panchayat is bound to give licence. On the basis of the above said findings, the appellate order issued by the Deputy Director of Panchayats and also the order in revision passed by the State Government directing the Grama Panchayat to issue licence to the applicant, were quashed in the said case.

6. A Division Bench of this court in *Action Council v. Benny Abraham* (2001 (2) KLT 690 = 2001 KHC 485) had clarified the decision in *Manjapra Grama Panchayat* (supra) by holding that, it has to be seen that the scope of the enquiry by the District Medical Officer, the Pollution Control Board and by the other statutory authorities is only to see whether an industrial unit, if established, would be offensive or dangerous to human life, health or property. Once the competent experts give their clearances with regard to those aspects, the panchayat has certainly to rely on those materials. Based on such opinions it is open to the panchayat to insist upon to satisfy appropriate conditions included in the licence. It was found that the power vested on the panchayat under Ss.232 and 233 of the Act is coupled with corresponding duties and any authority vested with power has a corresponding duty too. Reliance was placed on a decision of the Hon'ble Supreme Court in *Commissioner of Police v. Gordhandas* (1952 KLT OnLine 810 (SC) = AIR 1952 SC 16), wherein it was held that the public authorities cannot play fast and loose with the powers vested in them. The persons to whose detriment orders are made are entitled to know with exactness of precision as to what they are expecting to do or forebear from doing and exactly what the authority is making the order. The Division Bench observed that, under the Act there is no prohibition in setting up of an industry unless otherwise notified or decided. Therefore a person of ordinary intelligence has a right to get his application for a new industry considered in accordance with the law. The exercise of powers is not discretionary but imperative in such circumstances. Being public authorities, there is no absolute discretion vested on the panchayat in the matter of issue of permission/licence to an industry. Unless the power on the panchayat is thus understood, it would amount to infringement of the fundamental freedom guaranteed under Article 19(1)(g) of the Constitution of India, is the finding. It is held that, the provisions under Ss.232 and 233 of the Act read with the relevant provisions in the Licensing Rules are not too vague to be understood by an ordinary man. Having understood from the statute what is prohibited and what is permitted and

having taken steps in furtherance of what is permitted, and what is not permitted, the authority cannot arbitrarily deny the permission/licence. That would amount to violation of Article 19(1)(g) of the Constitution, which is subject only to reasonable restrictions. That reasonable restriction, which in fact is enjoyment of a right, shall not be arbitrary or excessive and beyond what is required in the interest of the public. The statutory indication under the Act and the Rules in the matter of permission/licence is only that, it shall not be offensive or dangerous to human life to health or property. Hence if an entrepreneur produces sufficient positive clarification from the competent authorities, then the panchayat is liable to act on the same and to issue the permission/licence, unless bound by valid policy reasons. It was also found that, the case in *Manjapra Grama Panchayat* (supra) was rendered based on the Licensing Rules of 1963, where the panchayat was required only to consult and to have due regard to the opinion of the District Medical Officer and other authorities. That is not the situation in the Rules issued in 1996. Viewed from that angle also, the decision in *Manjapra Grama Panchayat* (supra) requires clarification as stated above, is the finding.

7. But the Division Bench decision in *Action Council* (supra) was challenged before the Hon'ble Supreme Court. In the decision of the Hon'ble Supreme Court in *Action Council v. Benny Abraham* (2002 (2) KLT 228 (SC) = 2002 (2) KHC 416) it was held that, the panchayat had refused the permission/licence for installation of the metal crusher machine on ascribing four specific reasons as to why it came to the conclusion that it would not be in public interest to grant such licence. All those reasons, in the opinion of the Hon'ble Apex Court, were found to be germane to the issue and cannot be held to be arbitrary or fictitious. Therefore it was found that, the Division Bench of this court had seriously erred in issuing the impugned direction in exercise of the powers vested under Article 226 of the Constitution of India, against an order of a statutory authority. Since the Apex Court had set aside the judgment of the Division Bench, the clarifications made to the decision in *Manjapra Grama Panchayat* (supra) cannot be considered as a precedent having any binding force.

8. Next in the series is another Division Bench ruling of this court, *Bosco Antony* (supra). It was a Writ Petition filed seeking police protection for running of an Abkari shop. While discussing the question regarding entitlement to get police protection, the Division Bench also considered about the powers of the panchayat to refuse the licence for establishing an Abkari shop within its limit. The shop owner contended that the earlier provisions contained in sub-section (2), (3) and (4) to S.232 governing the grant of permissions for running of toddy shops, stand deleted from the statute with effect from 24-03-1999. Therefore the provisions in the Licensing Rules have no efficacy as far as the toddy shops are concerned, was the contention. The Division Bench held that, even in the absence of sub-section (2), (3) and (4) of S.232, the remaining provisions contained in sub-section (1) of S.232 will support inclusion of Abkari shops in the schedule to the Rules. Therefore the contention of the petitioner



26.

ANNEXURE R₃ (5) 11

Tomy Thomas v. State of Kerala (C.K.Abdul Rehim, J.) (F.B.) 997

was held untenable. It is held that, even if the petitioner gets the Abkari licence, he can run the shop in the panchayat area only after getting licence under the Licensing Rules, from the Panchayat. We are of the opinion that the ruling in *Bosco Antony* (supra) has no direct bearing on the issue involved in the case at hand.

9. *M/s. Gem Granites* (supra) is also another Division Bench decision on the subject. There also the case was one for police protection for operating a granite quarry, for which requisite permissions were obtained under the Mines and Minerals (Regulation and Development) Act, 1957 and under the Minor Mineral Concession Rules, 1967 (Kerala). Question arose as to whether the activity further requires permission/licence from the Grama Panchayat under Ss.232 and 233 of the Act, read with relevant provisions of the Licensing Rules. This court found that, the provisions of the Act and the Licensing Rules and the provisions of the Mines and Minerals (Regulation and Development) Act and the Rules framed thereunder, operate in different fields and they occupy different areas. One, *inter alia*, is concerned with the well being of the people of the Grama Panchayat by regulating the dangerous and offensive trades. If a dangerous and offensive trade takes place at a mine or a quarry, permit or licence is required, notwithstanding a lease granted under provisions of the Minor Minerals (Regulation and Development) Act and under the Rules framed thereunder. Therefore it was held that, the license or permission under the above said Act or Rules is not a substitute for the licence/permission required under the Act and the Licensing Rules. This decision is also not exactly on the issue under consideration in the cases at hand.

10. In a still later decision, in *Kadaplammattom Grama Panchayat & Anr. v. Johnny Roy* (2013 (3) KLT 1053 = 2013 (3) KHC 857) a Division Bench of this court held that, where an application is submitted seeking permission to establish a factory, workshop or work place, it cannot be summarily rejected stating that the panchayat has taken a policy decision not to permit any such establishments within its limits, under provisions of Ss.166(1), 232 and 233 of the Act or under the Licensing Rules. Such decisions will affect the constitutional rights of individuals to carry on business or trade and to put their property to its best advantages. On the other hand, it was held that, the panchayat will have to consider each application on its own merit and to decide whether permission could be granted or not.

11. The decisions in *Action Council* (supra), *Gem Granites* (supra) and various other decisions of this court and the Hon'ble Supreme Court were elaborately considered in a relatively recent decision, in *Ramapuram Grama Panchayat* (supra). It was held that the Division Bench ruling of the High Court in *Action Council* (supra) cannot be treated as a binding precedent to form an opinion because the Hon'ble Supreme Court had set aside the judgment on the finding that the four conditions ascribed by the panchayat need not be interfered with. But the decision of the Hon'ble

Supreme Court was distinguished and the same was found to be only on its own facts and context, which is also clear from the judgment of the Hon'ble Supreme Court.

12. In *Ramapuram Grama Panchayat* (supra), the panchayat had filed Writ Appeal challenging the judgment of the Single Judge directing the panchayat to grant licence for quarrying operations, for which the entrepreneur has obtained environmental clearance from SEIAA, consent to operate from Pollution Control Board, permit from the Controller of Explosives and no-objection from the District Medical Officer etc. But the Panchayat refused to grant the licence considering a report submitted by its Secretary. It was held by the Division Bench that the panchayat cannot take a view that they have a right to prevent any activity in the property for public purposes. A permit/licence can be rejected only if there is possibility of pollution and if it affects the neighbourhood in any manner due to the density of population. When substantial provisions are made for ensuring that the mining activities are being done in an environment friendly manner, it is not open for the panchayat to take a different view from what has been taken by the expert authorities. The Division Bench found that, in the light of the expert view, the reasons stated by the panchayat are not justified, nor can it be said that the panchayat can obtain other expert opinion to deny such permission. On the facts, the Division Bench observed that, the panchayat was evaluating upon the clearance granted by the Department of Environment and Climatic Change. The question is as to whether the panchayat can take a different view from what was taken by the competent authorities. The court, after extracting and analysing the report submitted to the panchayat by the members in the Sub Committee, held that, the provisions of S.232, 233 and 234 of the Act as well as the relevant Rules in the Licensing Rules would clearly show that the Act and the Licensing Rules stand by themselves and those provisions are not dependent upon any decision to be rendered based on any other statute. The view taken by the Single Judge that the panchayat authorities are bound by provisions of the Act and the Licensing Rules, was affirmed.

13. Analysis of the legal precedents narrated above would make it clear that, the issue with respect to the primacy of the powers of the panchayats was under direct consideration only in the decisions in *Manjapra Grama Panchayat* (supra), *Action Council* (supra) (both the High Court and Supreme Court decisions) and in *Ramapuram Grama Panchayat* (supra). Of course, *Gem Granites* (supra) and *Nagaroor Grama Panchayat* (supra) are also decisions on incidental issues. It is pertinent to note that, in the reference order passed by the learned Single Judge it was observed that, the decision in *Ramapuram Grama Panchayat* (supra) had distinguished the decision of the Hon'ble Supreme Court in *Action Council* (supra), as the same was found to be rendered only in the context that the four grounds projected by the panchayat to decline the licence are sustainable. It is mentioned that, the ruling in *Gem Granites* (supra) was also distinguished on the basis that it was dealing only with the question as to whether permission was required from the panchayat for establishing a quarrying unit,



Tomy Thomas v. State of Kerala (C.K.Abdul Rehim, J.) (F.B.)

999

when licence was obtained under Minor Mineral Concession Rules. The learned Judge observed that, *Gem Granites* (supra), *Bosco Antony* (supra) and *Nagaroor Grama Panchayat* (supra) have taken a view which is different from *Ramapuram Grama Panchayat* (supra). The same view was expressed in the reference order passed by the Division Bench also. But it is to be noted that, the view that the panchayat is vested with primacy in its powers to decline the licence/permission, was actually evolved for the first time through the decision of the Single Judge in *Manjapra Grama Panchayat* (supra). When the Division Bench held in *Gem Granites* (supra) that permission of the panchayat is necessary, despite the licence obtained under the Mines and Minerals Act, it only fortified such a view. So also, when it is held in *Bosco Antony* (supra) that despite issuance of Abkari licence the panchayat has got powers under sub-rule (1) of Rule 232, the primacy of the power of the panchayat was again reiterated. In *Nagaroor Grama Panchayat* (supra) also it was held that, provisions of the Act and the Licensing Rules are independent and they stand by themselves and that those provisions are not dependent on any decision to be rendered on the basis of any other statute. So all three decisions mentioned above are in the nature of supporting the view taken in *Manjapra Grama Panchayat* (supra).

14. The question to be examined is as to whether there is any contrary view taken in *Ramapuram Grama Panchayat* (supra). The Division Bench in that case, after extracting all the 20 reasons pointed out by the Sub Committee of the Grama Panchayat, found that the reasons 1 to 4 relate to environmental clearance granted by SEIAA, which were apparently not within the jurisdiction of the panchayat. With reference to reasons 5 to 8 noted therein, it was found that no expert opinion of any competent authority was relied upon by the panchayat and they themselves have formed such an opinion. It was found that, the sub committee had not consulted any expert body nor they had taken assistance of any experts in the field. With reference to the reasons stated in 9 to 17 and 20 it was observed that they also relate to environmental issues. Therefore it was observed that, whether the reasons 5 to 8, 18 & 19 will come within the area of consideration of the panchayat, in terms of S.233 has to be considered. Referring to sub-section (3) of S.233, it was observed that, the secretary has to enquire and report as to whether the establishment of the factory, workshop or workplace is objectionable by reason of the density of population in the neighbourhood and possibility to cause nuisance or pollution. The village panchayat has to consider the report of the Secretary and such other authorities under sub-section (4). Finding is that, the very fact that the village panchayat has to call for a report of the Secretary and also the opinion of the experts specified in sub-section (4), is to enable the village panchayat to arrive at a proper decision. Therefore the question is as to whether any other materials were available with the panchayat to reject a valid application. The Division Bench found that, in the case at hand, there was no material available to indicate that the rejection was on account of the fact

dy

29

ANNEXURE R₂ (5) 12

1000

2019 (3) Kerala Law Times

that it is objectionable by reason of the density of population in the neighbourhood and possibility of causing nuisance or pollution, as envisaged under S.233 of the Act. Specific conclusion in the decision in *Ramapuram Grama Panchayat* (supra) is that, the panchayat cannot take a view that it has a right to prevent any activity in the property for public purposes. It was found that, a permission/licence can be rejected only if there is possibility of pollution and if it affects the neighbourhood in any manner due to the density of population. The said observation can only be considered as one upholding sub-section (3) of S.233. Sub-section (3)(b) provides about the specific power of the panchayat to refuse the permission for reasons to be recorded. Finding is that the reason for rejection should be the reasons contained in sub-section (3), that it is objectionable by reason of the density of population in the neighbourhood and possibility to cause nuisance or pollution.

15. In short, the decision in *Ramapuram Grama Panchayat* (supra), in our view, had only fortified the dictum that, for a refusal of the permission/licence the panchayat should be convinced that the unit in question is objectionable by reason of the density of population in the neighbourhood and possibility of causing nuisance or pollution and that such decision could be formed only on the basis of report of the Secretary which should contain the opinion of experts also. The premise on which the permission can be refused is reiterated in the provisions of Sub-rule (3)(b) of Rule 12, which say that if the panchayat is of the opinion that such construction is objectionable by reason of the high density of population in the neighbourhood or that it is likely to cause nuisance, it can refuse the permission. Therefore, it is evident that the decision in *Ramapuram Grama Panchayat* (supra) has not in any manner negated the power vested on the Grama Panchayat to refuse the licence on the basis of the reason that it is objectionable due to the high density of population in the neighbourhood and that it is likely to cause pollution or nuisance. What was clarified is only that, such decision ought to have the support of proper materials collected by the Secretary in his report, which should have the basis of expert opinion also. Therefore it cannot be said that the decision in *Ramapuram Grama Panchayat* (supra) had fully taken away the principle of primacy of powers of the panchayat, with respect to taking a decision either to grant or to refuse the licence. Nor it cannot be found that, the dictum contained in *Ramapuram Grama Panchayat* (supra) will in any manner be held as a proposition that the panchayat is bound to grant permission/licence, whenever the expert authorities have issued clearance, subject to any conditions incorporated in their consents/permissions/ no-objection certificates.

16. Under the above mentioned circumstances, we are of the opinion that the reference need to be answered only to the extent of clarifying that the power vested on the Grama Panchayat to grant or refuse an application for installation of a factory, workplace or machinery is not absolutely or fully dependent upon the clearances/permissions/no objections/ licences issued by other authorities or experts. But the

Tomy Thomas v. State of Kerala (C.K.Abdul Rehim, J.) (F.B.) 1001

panchayats will be well within its powers to refuse the permission if it is convinced that the establishment of such factory, workshop or work place or machinery is objectionable by reason of the density of population in the neighbourhood and on possibility of causing nuisance or pollution. But the exercise of such power should have a definite basis and support of the materials collected by the panchayat through report of the Secretary which should be based on the opinion of experts or expert bodies and which should not have been contrary to any of the expert opinion already procured by the panchayat on the basis of the mandatory requirement contained in the Act and in the Licensing Rules.

17. With the above narrated conclusions we could have answered the reference. But Sri.George Poonthottam, learned Senior Counsel appearing for the petitioner has brought to our notice that, the relevant provisions in the Act and in the Licensing Rules had undergone drastic changes. There occurred very vital changes in the entire scenario with respect to powers vested on the panchayats and its Secretaries in refusing the permission for construction or establishment of factories, workshop or workplace and for installation of machinery.

18. The Kerala Investment Promotion and Facilitation (No.2) Act, 2018 (Act 14/2018) which was notified by the Government in the Official Gazette on 7th April, 2018 (hereinafter referred to as Act 14/2018), was enacted for giving effect to certain proposals of the Government of Kerala to avoid delay in granting various licences, permissions, approvals, clearances required under various enactments and to provide for other matters connected therewith or incidental thereto. The preamble of the Act 14/2018 reads as follows:

"Whereas, it is expedient to give effect to certain proposals of the Government of Kerala to avoid delay in granting various licences, permissions, approvals, clearances required under various requirements and provide other matter connected therewith or incidental thereto:"

Act 14/2018 was brought into effect retrospectively from 20th October 2017, presumably with effect from the date of the ordinance promulgated in this regard which was repealed by Act 14/2018. By virtue of S.2 of Act 14/2018 amendments were brought into S.232, 233 and 233A of the Kerala Panchayat Raj Act, 1994. The heading of S.233 of the Act; "DANGEROUS AND OFFENSIVE TRADES AND FACTORIES" was substituted as, "INDUSTRIES, FACTORIES, TRADES, ENTERPRENEURSHIP ACTIVITIES AND OTHER SERVICES". In sub-section (1) of S.232 the words "being purposes in which the opinion of Government is likely to be offensive or dangerous to human life or health or property" were omitted. Sub-section (2) of S.233 of the Act was amended by inserting the words "or officer authorised by the Secretary" after the word "Secretary". After sub-section (2) of S.233, a new sub-section as (2A) was introduced, which reads as follows:

"(2A) The Secretary or officer authorised by him shall issue an acknowledgment to the applicant, on receipt of application along with the supporting documents in the form, as may

be prescribed, and shall verify the application and all supporting documents on the spot itself, and if any supporting document is not found attached along with the application, the Secretary or officer authorised by him shall, immediately inform the applicant in writing the list of missing documents and allow the applicant to submit the missing documents as early as possible, but not later than five days from the date of receipt of application".

Sub-section (3) of S.233 was totally substituted as follows:

"(3) the Secretary or officer authorised by him shall, as soon as may be, after receipt of the application enquire and report to the Village Panchayat as to whether the establishment of the factory, workshop or workplace or other installation of machinery or manufacturing plant for which permission is applied for is objectionable by reason of density of population in the neighbourhood and possibility to cause nuisance or pollution and the Village Panchayat, after having considered the application and the reports of the Secretary and of such other authorities as specified in sub-section (4) may, as expeditiously as possible, within thirty days, grant the permission either absolutely or subject to such conditions as it thinks fit to impose."

In sub-section (4) of S.233, the words "or refusing" contained after the words "before granting" were omitted. Likewise for the words "Village Panchayat" the word "Secretary" was substituted. So also in sub-clause (b) of sub-section (4) of S.233 after the words "the report of the District Medical Officer" the words "in case the applicant is a hospital, clinic, paramedical institution, clinical laboratories or other health care institution" were inserted. After sub-section (5) of S.233 a new sub-section (6) was introduced as follows:

"(6) if any order, on an application for permission under this section is not communicated to the applicant within thirty days from the date of receipt of application by the Secretary, the application shall be deemed to have been allowed for the period required in the application subject to the Act, rules and bye laws and all conditions which would have been imposed and if any violation is noticed later, the Secretary shall have the power to cancel the licence after giving a show cause notice to the applicant stating the reason for such cancellation and after examining the submission if any, made within the time specified in the said notice and on such cancellation the Secretary may impose a penalty on the applicant for an amount not exceeding rupees five lakhs."

19. Consequent to the amendment of Ss.232 and 233 of the Kerala Panchayat Raj Act, 1994, the Government of Kerala had amended the Licensing Rules with drastic changes through a notification, S.R.O. 674/17 (G.O.(P) N.80/2017/LSGD) dated 31st October 2017. The title of the Rule itself was amended as the Kerala Panchayat Raj (Issue of License to Factories, Trades, Entrepreneurship, Activities and other Services) Rules. The most relevant amendments effected in Rule 12 of the Licensing Rules are enumerated hereunder. In sub-rule (1) of Rule 12 instead of the word "Village Panchayat" the word "Secretary" was substituted. The power to refuse permission contained under sub-clause (b) of sub-rule (3) of Rule 12 was substituted as follows;

"(b) if it is of the opinion that such construction or establishment is objectionable by reason of high density of population in the neighbourhood and is likely to cause nuisance the Secretary shall as soon as may be after the receipt of application obtain an expert opinion of



32

ANNEXURE 3 (B) 12

Tomy Thomas v. State of Kerala (C.K.Abdul Rehim, J.) (F.B.) 1003

department concerned with regard to the determination of the nuisance or its abatement, at the cost of the owner or person in charge of the factory, workshop, workplace or machinery concerned and such report shall be furnished as soon as possible but not later than fifteen days of reporting of such nuisance and the village panchayat shall issue permission subject to such conditions as may be required for abatement of nuisance, if any as recommended in the expert opinion of the concerned department or".

Sub clause (c) and (d) of sub-rule (3) of Rule 12 was also substituted as follows:

"if any order on an application for permission under this Act or rule is not communicated to the applicant within fifteen days from the date of receipt of application by the Secretary the permission shall be deemed to have been issued for the period required in the application subject to the Act, rules and bye laws and all conditions which would have been imposed; or

(d) in the proviso to clause (b) of sub-rule (7) after the words "or functioning with the recognition of Industries Department" the words "or declared by Kerala State Pollution Control Board as Green and white category industries" shall be inserted."

For a better appreciation of the amendments brought into effect with respect to S.233 of the Act as well as to Rule 12 of the Licensing Rules, a comparative chart of those provisions is attached below:

Original provision	Amended provision
<u>DANGEROUS AND OFFENSIVE TRADES AND FRACORIES</u>	<u>INDUSTRIES, FACTORIES TRADES, ENTREPRENEURSHIP ACTIVITIES AND OTHER SERVICES.</u>
232.....	232.....
233. Permission for the construction of factories and the installation of machinery-- (1) No person shall, without the permission of the village panchayat and except in accordance with the conditions specified in such permission,-	233. Permission for the construction of factories and the installation of machinery--(1) No person shall, without the permission of the village panchayat and except in accordance with the conditions specified in such permission,-
(a) construct or establish any factory, workshop or workplace in which it is proposed to employ steam power, water power or other mechanical power, or electrical power; or	(a) construct or establish any factory, workshop or workplace in which it is proposed to employ steam power, water power or other mechanical power, or electrical power; or
(b) install in any premises any machinery or manufacturing plant driven by any power as aforesaid, not being machinery or manufacturing plant exempted by the (provisions of this Act or the rules made there under).	(b) install in any premises any machinery or manufacturing plant driven by any power as aforesaid, not being machinery or manufacturing plant exempted by the (provisions of this Act or the rules made there under).
[(2) An application for permission under sub-section (1) shall be submitted to the village panchayat addressed to the Secretary in such form and with such details as prescribed.	

Ans

[(2) An application for permission under sub-section (1) shall be submitted to the village panchayat addressed to the Secretary in such form and with such details as prescribed.

(3) The secretary shall, as soon as may be after the receipt of the application, enquire and report to the village panchayat as to whether the establishment of the factory, workshop or workplace or other installation of machinery or manufacturing plant for which permission is applied for is objectionable by reason of density of population in the neighbourhood and the possibility to cause nuisance or pollution and the village panchayat after having considered the application and the reports of the secretary, and of such other authorities as specified in sub-section (4) may as expeditiously as possible, at any rate within sixty days,-

(a) grant the permission either absolutely or subject to such conditions as it thinks fit to impose; or

(b) refuse the permission for the reasons to be recorded.

(4) Before granting or refusing permission under sub-section (3), the village panchayat, shall obtain and consider. -

[(2) An application for permission under sub-section (1) shall be submitted to the village panchayat addressed to the Secretary or officer authorised by the Secretary in such form and with such details as prescribed.

(2A) The Secretary or officer authorised by him shall issue an acknowledgement to the applicant, on receipt of application along with supporting documents in the form, as may be prescribed, and shall verify the application and all supporting documents on the spot itself, and if any supporting document is not found attached along with the application, the Secretary or Officer authorised by him shall, immediately inform the applicant, in writing the list of missing documents and allow the applicant to submit the missing documents, as early as possible, but not later than five days from the date of receipt of application.

(3) the Secretary or the Officer authorised by him shall, as soon as may be, after the receipt of the application enquire and report to the Village Panchayat as to whether the establishment of the factory, workshop, workplace or other installation of the machinery or manufacturing plant, for which permission is applied for, is objectionable by reason of density of population in the neighbourhood and possibility to cause nuisance or pollution and the village panchayat, after having considered the application and the report of the secretary and of such other authorities as specified in sub-section (4) may as expeditiously as possible, within thirty days, grant the permission either absolutely or subject to such conditions as it thinks fit to impose.

(4) Before granting permission under sub-section (3), the Secretary, shall obtain and consider. -

Tomy Thomas v. State of Kerala (C.K.Abdul Rehim, J.) (F.B.) 1005

(a) a report of the Inspector of Factories appointed under the Factories Act, 1948 (Central Act 63 of 1948) or of an officer of the Industries Department not below the rank of an Industries Extension Officer having jurisdiction over the area regarding the adequacy of ventilation, light etc, and sufficiency of the height and size of the rooms and doors and the suitability of exits to be used in case of fire in the plan of factories, workshop, workplace or premises if they came within the purview of the Factories Act, 1948 (Central Act 63 of 1948) and such other matters as may be prescribed;

(b) a report of the District Medical Officer regarding the possibility of nuisance or pollution if the connected load of the machinery proposed to be installed exceeds 25HP or if the nature of the machinery and installation are such that it may cause nuisance or pollution; and

(c) a report of the Divisional Fire Officer or any other officer authorised by him regarding the adequacy of fire prevention and fire fighting measures planned if the proposed industry involves the use of high tension power or inflammable or explosive materials;

Provided that, no report under clause (b) shall be called for in respect of any industry if the applicant produces a declaration recommended by an officer of the Industries Department authorised in this behalf or by the Kerala State Pollution Control Board to the effect that such industry would not cause pollution.

(5) The grant of permission under this section, -

(a) Shall be subject to the conditions to be observed in respect of the replacement of machinery the levy of fees and to such restrictions and conditions as may be prescribed;

(b) Shall not be deemed as exempted from observing the provisions contained in S.235 (F) and 235 (H) or 235 (P) and 235(Q).

(a) a report of the Inspector of Factories appointed under the Factories Act, 1948 (Central Act 63 of 1948) or of an officer of the Industries Department not below the rank of an Industries Extension Officer having jurisdiction over the area regarding the adequacy of ventilation, light etc. and sufficiency of the height and size of the rooms and doors and the suitability of exits to be used in case of fire in the plan of factories, workshop, workplace or premises if they came within the purview of the Factories Act, 1948 (Central Act 63 of 1948) and such other matters as may be prescribed;

(b) a report of the District Medical Officer in case the applicant is a hospital, clinic, paramedical institution or clinical laboratory or other healthcare institution regarding the possibility of nuisance or pollution if the connected load of the machinery proposed to be installed exceeds 25HP or if the nature of the machinery and installation are such that it may cause nuisance or pollution; and

(c) a report of the Divisional Fire Officer or any other officer authorised by him regarding the adequacy of the fire prevention and fire fighting measures planned if the proposed industry involves the use of high tension power or inflammable or explosive materials;

Provided that, no report under clause (b) shall be called for in respect of any industry if the applicant produces a declaration recommended by an officer of the Industries Department authorised in this behalf or by the Kerala State Pollution Control Board to the effect that such industry would not cause pollution.

(5) The grant of permission under this section, -

(a) Shall be subject to the conditions to be observed in respect of the replacement of machinery the levy of fees and to such restrictions and conditions as may be prescribed;

(b) Shall not be deemed as exempted from observing the provisions contained in S.235 (F) and 235 (H) or 235 (P) and 235 (Q);]

Ar

35

ANNEXURE R3 (b) 20

1006

2019 (3) Kerala Law Times

	(6) If any order, on an application for permission under this section is not communicated to the applicant within thirty days from the date of receipt of application by the secretary, the application shall be deemed to have been allowed for the period required in the application subject to the Act, rules and byelaws and all conditions which would have been imposed, and if any violation is noticed later, the secretary shall have the power to cancel the license after giving a show cause notice to the applicant stating the reason for such cancellation and after examining the submission if any, made within the time specified in the said notice, and on such cancellation, the secretary may impose a penalty on the applicant for an amount not exceeding rupees five lakh.
--	--

Original provision	Amended provision
THE KERALA PANCHAYAT RAJ (ISSUE OF LICENCE TO DANGEROUS AND OFFENSIVE TRADES AND FACTORIES) RULES, 1996	THE KERALA PANCHAYAT RAJ (ISSUE OF LICENCE TO FACTORIES, TRADES, ENTREPRENEURSHIP, ACTIVITIES AND OTHER SERVICES) RULES, 1996
12. Application to be made for constructing or establishing factory, workshop or workplace wherein steam power or other power is to be used.- (1) Every person intending,- (a) to construct or establish any factory workshop or workplace wherein it is proposed to use steam power, water power or other mechanical power or electricity; or (b) to install, on any land a machinery or manufacturing plant operated by steam power, water power or other power as aforesaid, not being machinery or manufacturing plant exempted under rule 16, shall submit an application in writing before the Village Panchayat for permission to undertake such work before so constructing or establishing.	12. Application to be made for constructing or establishing factory, workshop or workplace wherein steam power or other power is to be used.- (1) Every person intending,- (a) to construct or establish any factory, workshop or workplace wherein it is proposed to use steam power, water power or other mechanical power or electricity; or (b) to install, on any land a machinery or manufacturing plant operated by steam power, water power or other power as aforesaid, not being machinery or manufacturing plant exempted under rule 16, shall submit an application in writing before the Secretary for permission to undertake such work before so constructing or establishing.

Tomy Thomas v. State of Kerala (C.K.Abdul Rehim, J.) (F.B.) 1007

(2) The application shall specify the maximum number of workers proposed to be employed on a day in the factory workshop, workplace or on the land and shall be accompanied by-

(i) the plan of the factory, workshop, workplace or the land prepared in such manner as directed by the officer authorised by Government; and

(ii) the details in respect of power, machinery, plant or land that the village panchayat may call for in this behalf.

(3) The village panchayat shall, as soon as may be after the receipt of the application within 45 days in the case of obtaining no objection certificate from other establishments and within 30 days in other cases,-

(a) grant the permission applied for either absolutely or subject to such condition as it thinks fit to impose, or

(b) refuse permission, if it is of the opinion that such construction or establishment is objectionable by reason of high density of population in the neighbourhood or that it is likely to cause nuisance; or

(c) where the application has not been disposed of within the specified time, licence shall be deemed to have been issued; or

(2) The application shall specify the maximum number of workers proposed to be employed on a day in the factory workshop, workplace or on the land and shall be accompanied by-

(i) the plan of the factory, workshop, workplace or the land prepared in such manner as directed by the officer authorised by Government; and

(ii) the details in respect of power, machinery, plant or land that the village panchayat may call for in this behalf.

(3) The village panchayat shall, as soon as may be after the receipt of the application and within 30 days in all cases,-

(a) grant the permission applied for either absolutely or subject to such condition as it thinks fit to impose, or

(b) if it is of the opinion that such construction or establishment is objectionable by reason of high density of population in the neighbourhood and is likely to cause nuisance the Secretary shall as soon as may be after receipt of application obtain an expert opinion of Department concerned with regard to the determination of the nuisance or its abatement, at the cost of the owner or person in charge of the factory, workshop, workplace or machinery concerned and such report shall be furnished as soon as possible but not later than 30 days of reporting of such nuisance and the village panchayat shall issue permission subject to such condition as may be required for abatement of nuisance, if any as recommended in the expert opinion of the concerned department; or

(c) if any order on an application for permission under this Act or rule is not communicated to the applicant within 30 days from the date of receipt of application by the Secretary, the permission shall be deemed to have been issued for the period required in the application subject to the Act, rules and byelaws and all conditions which would have been imposed; or

<p>(d) the Secretary shall, in the case of factories, industrial establishments etc, with machinery having capacity of less than 5 horse power and not causing pollution after accepting the fee for licence, without the no objection certificate of another establishments or the special permission of the village panchayat, issue licence.</p> <p>(4) Appeal against the decision of the village panchayat may be submitted before the Green Channel Counter and the village panchayat is liable to implement the decision thereon</p> <p>(5) Before granting permission under sub-rule (3), the village panchayat shall, -</p> <p>(a) If the factory, workshop, workplace, or the land comes within the purview of the Factories Act, 1948, obtain the approval of the Inspector of Factories appointed under the said Act, having jurisdiction over the village panchayat area or if there is more than one such inspector, of the inspector, designated by the Government in this behalf by general or special order as regards the plan of the factory, workshop, workplace or premises with reference to,-</p> <p>(i) the adequacy of the provision for ventilation and light;</p> <p>(ii) the sufficiency of the height and dimensions of the rooms and doors;</p> <p>(iii) the suitability of the exits to be used in case of fire; and (iv) such other matters as may be prescribed by the Government.</p> <p>Provided that no approval of the Inspector of Factories is necessary if there is the approval of the Green Channel Counter in respect of the light structure of the room and the utility thereof.</p> <p>(b) consult and take into consideration, the opinion of the Officer authorised in this behalf, as regards the suitability of the site of the factory, workplace or the land for the purpose specified in the application; and</p>	<p>(d) the Secretary shall, in the case of factories, industrial establishments etc, with machinery having capacity of less than 5 horse power and not causing pollution after accepting the fee for licence, without the no objection certificate of another establishments or the special permission of the village panchayat, issue licence.</p> <p>(4) Appeal against the decision of the village panchayat may be submitted before the Green Channel Counter and the village panchayat is liable to implement the decision thereon.</p> <p>(5) Before granting permission under sub-rule (3), the village panchayat shall,-</p> <p>(a) if the factory, workshop, workplace or the land comes within the purview of the Factories Act, 1948, obtain the approval of the Inspector of Factories appointed under the said Act, having jurisdiction over the village panchayat area or if there is more than one such inspector, of the inspector, designated by the Government in this behalf by general or special order as regards the plan of the factory, workshop, workplace or premises with reference to,-</p> <p>(i) the adequacy of the provision for ventilation and light;</p> <p>(ii) the sufficiency of the height and dimensions of the rooms and doors;</p> <p>(iii) the suitability of the exits to be used in case of fire; and (iv) such other matters as may be prescribed by the Government.</p> <p>Provided that no approval of the Inspector of Factories is necessary if there is approval of the Green Channel Counter in respect of the light structure of the room and the utility thereof.</p> <p>(b) consult and take into consideration, the opinion of the Officer authorised in this behalf, as regards the suitability of the site of the factory, workplace or the land for the purpose specified in the application; and</p>
---	--

Jan

<p>(c) in respect of matters that may be specified by the Government by general or special order consult with the Divisional Fire Officer the precautionary measures to be taken against out break of fire.</p> <p>(6) A worker may be employed on any day in a factory workshop, workplace or on land coming under the purview of the Factories Act, 1948 only after obtaining the permission granted under sub-rule (3) authorising such employment or after submitting application before the village panchayat for fresh permission authorising such employment. Before granting such permission the panchayat shall obtain the approval of the Inspector of Factors mentioned in clause (a) of sub-rule (5), in respect of the matters specified therein as regards the plan of the factory workshop, workplace or the land.</p> <p>(7) The grant of permission under this section, -</p> <p>(a) shall be subject to such restrictions and conditions as may be specified by the Government in respect of replacing machinery; levying fees, the conditions that shall be followed etc; and</p> <p>(b) if any rules exist in respect of constructing buildings in the panchayat areas, it shall not be considered not necessary to follow such rules:</p> <p>Provided that the industrial units constructed within an industrial estate under the Industries Department or functioning with the recognition of the Industries Department, may be granted permission for construction, considering them as a single unit if the same has the approval of the Industries Department.</p> <p>Similarly, no prior licence shall be necessary for the installation of industrial establishments in the industrial estates, industrial growth centres, industrial development plots, industrial development areas and other sites approved by the Industries Department and such establishments may, after remitting the</p>	<p>(c) in respect of matters that may be specified by the Government by general or special order consult with the Divisional Fire Officer the precautionary measures to be taken against outbreak of fire.</p> <p>(6) A worker may be employed on any day in a factory, workshop, workplace or on land coming under the purview of the Factories Act, 1948 only after obtaining the permission granted under sub-rule (3) authorising such employment or after submitting application before the village panchayat for fresh permission authorising such employment. Before granting such permission the panchayat shall obtain the approval of the Inspector of Factories mentioned in clause (a) of sub-rule (5), in respect of the matters specified therein as regards the plan of the factory, workshop, workplace or the land.</p> <p>(7) The grant of permission under this section, -</p> <p>(a) shall be subject to such restrictions and conditions as may be specified by the Government in respect of replacing machinery, levying fees, the conditions that shall be followed etc; and</p> <p>(b) if any rules exist in respect of constructing buildings in the panchayat areas, it shall not be considered not necessary to follow such rules.</p> <p>Provided that the industrial units, constructed within an industrial estate under the Industries Department or functioning with the recognition of the Industries Department or declared by Kerala State Pollution Control Board as Green and White category industries may be granted permission for construction, considering them as a single unit if the same has the approval of the Industries Department.</p> <p>Similarly, no prior licence shall be necessary for the installation of industrial establishments in the industrial estates, industrial growth centres, industrial development plots, industrial development areas and other sites approved by the Industries Department and such establishments may, after remitting the</p>
---	---

Handwritten signature

38

ANNEXURE R3 (L) 22

39

ANNEXURE R₃ (B) 24

1010

2019 (3) Kerala Law Times

<p>prescribed fee for licence, construct the building and may install machineries and start functioning.</p> <p>Explanation.- The word 'worker' in sub-rules (2) and (6) of this rule shall, in relation to any factory, workshop, workplace or land, has the same meaning as in the Factories Act, 1948.</p>	<p>prescribed fee for licence, construct the building and may install machineries and start functioning.</p> <p>Explanation.- The word 'worker' in sub-rules (2) and (6) of this rule shall, in relation to any factory, workshop, workplace or land, has the same meaning as in the Factories Act, 1948.</p>
---	---

From the comparative chart given above it is clear and evident that sub-section (3) of S.233 has undergone drastic changes. Under the unamended provisions, when an application for permission is received by the Secretary, he was obliged to enquire and submit a report to the Village Panchayat as to whether the establishment of the factory, workshop, workplace or other installation of machinery or manufacturing plant, for which the permission is applied for, is objectionable by reason of density of population in the neighbourhood and possibility to cause nuisance or pollution. The Village Panchayat after having considered the application and the report of the Secretary, and of such other authorities as specified in sub-section (4) was bound to take a decision as expeditiously as possible, at any rate within sixty days. Sub-clause (a) of sub-section (3) provided that the Village Panchayat can grant the permission either absolutely or subject to such conditions as it thinks fit to impose. Sub-clause (b) of sub-section (3) enabled the Village Panchayat to refuse the permission for the reasons to be recorded.

22. Under the amended provisions of sub-section (3) of S.233 of the Act, the Secretary or the officer authorised by him should conduct an enquiry and submit report to the Village Panchayat as to whether the establishment of the factory, workshop, workplace or other installation of machinery or manufacturing plant, for which the permission is applied for, is objectionable by reason of density of population in the neighbourhood and possibility to cause nuisance or pollution. The Village Panchayat on consideration of the application and the report of the Secretary and of such other authorities as specified in sub-section (4) may as expeditiously as possible, at any rate within thirty days grant the permission either absolutely or subject to such conditions as it thinks fit to impose. Sub-clause (a) and (b) of sub-section (3) contained in the unamended provisions were omitted through the amendment. Sub-clause (b) of sub-section (3) which enabled the Village Panchayat to refuse the permission for reason to be recorded, was omitted from the statute book. It gives a clear indication that the power of the Village Panchayat to refuse the permission has been taken away by the legislature.

23. Consequent to the above noted amendments to S.233 of the Act, the Licensing Rules were also amended. From the chart given as above it is evident that Rule 12 had undergone drastic changes. Under the unamended provision of sub-rule (3) of Rule 12 the Village Panchayats were obliged to consider the application for permission within 45 days in case of obtaining no objection certificates from other establishments and within 30 days in other cases either to grant permission applied

Tomy Thomas v. State of Kerala (C.K.Abdul Rehman, J.) (F.B.) 1011

for, absolutely or subject to conditions or to refuse permission if it is of the opinion that such construction or establishment is objectionable by reason of high density of population in the neighbourhood or that it is likely to cause nuisance. The power vested on the Village Panchayat to refuse the permission as mentioned above contained under sub-clause (b) of sub-rule (3) of Rule 12, was amended drastically. Under the amended sub-clause (b) it is provided that, if the Village Panchayat 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, the Secretary shall as soon as may be after receipt of the application obtain an expert opinion of the department concerned with regard to determination of nuisance or its abatement, at the cost of the owner or person in-charge of the factory, workshop, workplace or machinery concerned and such report shall be furnished to the Village Panchayat as soon as possible not later than 30 days of reporting such nuisance. Further it is provided that, on furnishing of such report of the concerned department, the Village Panchayat shall issue permission subject to such conditions as may be required for abatement of the nuisance if any, as recommended in the expert opinion of the concerned department. From the amendment incorporated under Rule 12(3) it is clear and evident that the power vested on the Village Panchayat 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. Through the amendment it is clarified that if the Village Panchayat 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 Secretary shall obtain an expert opinion of the department concerned and shall place such report for consideration of the Village Panchayat. There also the Village 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. 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.

24. As mentioned in the foregoing paragraphs, the amendments specified above were introduced through the Kerala Investment Promotion and Facilitation(No.2) (Act 14/2018). The object of introducing such an Act, as specified therein, is intended to give effect to certain proposals of the Government of Kerala to avoid delay in granting various licences/permissions, approvals and clearances required under-various enactments. Therefore the intention of the legislature to bring such drastic amendment is clear and explicit. Hence it is to be observed that, from the date of enforcement of the amendments from 20th October, 2017, it cannot be said that Village Panchayats have got primacy of power to take an independent decision to reject the applications for permission/licence under provisions of the Act and the Licensing Rules, for construction



or for establishment of any factory workshop or work place. On the other hand, the Grama Panchayats (Village Panchayats) are obliged to grant permissions in cases where the authorities mentioned under S.233 of the Act had issued such permissions or consents or no-objection certificates. Even if the panchayat is of the opinion that the construction or establishment of the factory, workshop or workplace is objectionable by reason of high density of population in the neighbourhood and is likely to cause nuisance, then also the panchayat can only obtain expert opinion from the department concerned and it is obliged to issue permission for such construction or establishment subject to such conditions as may be required for abatement of the nuisance, if any, as may be recommended in the expert opinion of the concerned department.

25. Under the above mentioned circumstances the reference is answered by upholding the view taken in *Ramapuram Grama Panchayat* (supra) as the correct law. But we make it clear that the legal position has been changed by virtue of the amendments as mentioned above and the Village Panchayats do not enjoy any primacy of their power to refuse the applications seeking permission for construction or establishment of any factory workshop or workplace, under S.233 of the Kerala Panchayat Raj Act, on and from the date of enforcement of the amendments.

26. Hence the reference is answered as above. The Writ Petitions are sent back to the Single Judge dealing with the subject matter as per roster, for disposal on merits by taking note of the reference answered as above.

.....



42

ANNEXURE R3 (C)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 04TH DAY OF OCTOBER 2019 / 12TH ASWINA, 1941

WP(C).No.15505 OF 2016(K)

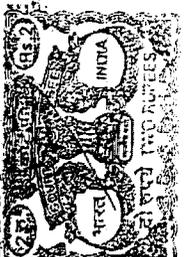
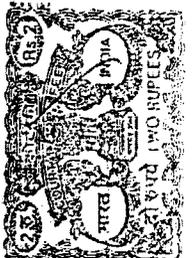
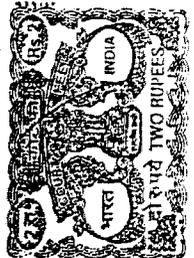
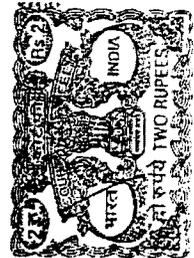
PETITIONER/S:

TOMY THOMAS,
AGED 50 YEARS, S/O. THOMAS,
PULICAKL HOUSE, KALATHUKADAVU (PO),
ERATTUPETTA, KOTTAYAM DIST.

BY ADVS.
SRI. GEORGE POONTHOTTAM (SR.)
SRI. JOBI JOSE KONDODY
SRI. T.R. RAJAN

RESPONDENT/S:

- 1 THE STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
ENVIRONMENT (A) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 THE KERALA STATE ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY,
REPRESENTED BY ITS MEMBER SECRETARY,
DIRECTORATE OF ENVIRONMENT AND CLIMATIC CHANGE,
PALLIMUKKU, PETTA (PO), THIRUVANANTHAPURAM-695 024.
- 3 THE DIRECTOR,
DIRECTORATE OF MINING AND GEOLOGY,
PATTOM PALACE (PO), KESAVADASAPURAM,
THIRUVANANTHAPURAM-695 004.
- 4 THALAPPALAM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
THALAPPALAM GRAMA PANCHAYAT OFFICE,
PLASSANAL (PO), KOTTAYAM DISTRICT-686 579.
- 5 THE SECRETARY,
THALAPPALAM GRAMA PANCHAYAT,
THALAPPALAM GRAMA PANCHAYAT OFFICE,
PLASSANAL (PO), KOTTAYAM DISTRICT-686 579.



R

6 THE PRESIDENT,
THALAPPALAM GRAMA PANCHAYAT,
THALAPPALAM GRAMA PANCHAYAT OFFICE,
PLASSANAL(PO), KOTTAYAM DISTRICT-686 579.

*ADDL. P. CHANDRASHEKARAN NAIR,
R7 KONDATTUKUNNEL HOUSE, KALATHUKADAVU P.O.,
KOTTAYAM DISTRICT.

*ADDL. K.M. BIJU,
R8 KOTTUKAPALLIL HOUSE, KALATHUKADAVU P.O.,
KOTTAYAM DISTRICT.
(*ARE IMPEADED AS PER ORDER DATED 08-06-2016 IN
I.A. 6984/2016).

*ADDL. THE CENTRE FOR EARTH SCIENCE STUDIES,
R9 REPRESENTED BY ITS DIRECTOR,
P.B.NO.7250, AKKULAM,
THIRUVANANTHAPURAM - 695 031.

*ADDL. SHAJI JOSEPH, AGED 42 YEARS, S/O. JOSEPH V.J.,
R10 VALIYAPARAMBIL HOUSE, KALATHUKADAVU, VETTIPARAMBU,
ERATTUPETTA, KOTTAYAM DISTRICT, PIN - 686 579.

*ADDL. PRABHAKARAN NAIR, AGED 76 YEARS,
R11 S/O. PARAMESWARAN NAIR, CHERUVATHIL HOUSE,
KALATHUKADAVU, VETTIPARAMBU, ERATTUPETTA,
KOTTAYAM DISTRICT, PIN - 686 579.

*ADDL. VARKEY JOSEPH, AGED 78 YEARS, S/O.VARKEY,
R12 OLICKAL HOUSE, KALATHUKADAVU, VETTIPARAMBU,
ERATTUPETTA, KOTTAYAM DISTRICT, PIN - 686 579.

* ADDL.R9 TO R12 ARE IMPEADED AS PER ORDER DATED
04.10.2019 IN I.A.NOS.11109/16 & 16221/16 IN W.P.
(C)NO.15505/16.

BY ADVS.

R1 & R3 - SRI.M.F. HANILKUMAR, SPECIAL GOVERNMENT
PLEADER

R2 - SRI.M.P. SREEKRISHNAN, SC FOR SEIAA

R4 TO R6 - SRI.GEORGEKUTTY MATHW, SC

ADDL.R7 & R8 - SRI. SHAJI THOMAS

ADDL.R10 TO R12 - SRI. P.B. SAHASRANAMAN

SMT. SURYA BINOY, ADVOCATE COMMISSIONER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04.10.2019, ALONG WITH WP(C).31684/2016(I), WP(C).25529/2019(M),
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PL

Arz

44

ANNEXURE 3 (C) 3

WP(C) Nos 15505 & 31684/16 & 25529/19

3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

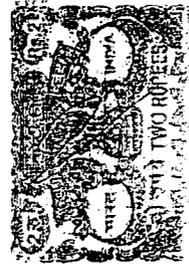
FRIDAY, THE 04TH DAY OF OCTOBER 2019 / 12TH ASWINA, 1941

WP(C) No. 31684 OF 2016

PETITIONER/S:

TOMY THOMAS,
AGED 50 YEARS, S/O. THOMAS, PULICKAL HOUSE,
KALATHUKADAVU (PO), ERATTUPETTA,
KOTTAYAM DISTRICT.

BY ADVS.
SRI. GEORGE POONTHOTTAM (SR.)
SRI. JOBI JOSE KONDODY
SRI. T. R. RAJAN



RESPONDENT/S:

- 1 THE STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
ENVIRONMENT (A) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 THE KERALA STATE ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY,
REPRESENTED BY ITS MEMBER SECRETARY,
DIRECTORATE OF ENVIRONMENT AND CLIMATIC CHANGE,
PALLIMUKKU, PATTI (PO), THIRUVANANTHAPURAM-695 024.
- 3 THE DIRECTOR,
DIRECTORATE OF MINING AND GEOLOGY,
PATTOM PALACE (PO), KESAVADASPURAM,
THIRUVANANTHAPURAM-695 004.
- 4 THE DISTRICT COLLECTOR,
COLLECTORATE, COLLECTORATE (PO),
KOTTAYAM-686 002.
- 5 THE TAHSILDAR,
MEENACHIL TALUK OFFICE, MINI CIVIL STATION,
PALA, KOTTAYAM DISTRICT-686 575



Approved by
J. Kondody
District Educational Officer
Kaduthuray



sh

45

ANNEXURE R3 (2) 4

WP(C) Nos 15505 & 31684/16 & 25529/19 4

- 6 THE SUB INSPECTOR OF POLICE,
ERATTUPETTA POLICE STATION, ERATTUPETTA (PO),
KOTTAYAM DISTRICT-686 121.
- 7 THE SECRETARY,
THALAPPALAM GRAMA PANCHAYAT,
THALAPPALAM GRAMA PANCHAYAT OFFICE, PLASSANAL (PO),
KOTTAYAM DISTRICT-686 579.
- 8 K.G. ANILKUMAR,
CONVENER, KIZHAKKEMALA PROTECTION COUNCIL,
KALLARAYATHU HOUSE, PLASSANAL (PO),
KOTTAYAM -686 579.

BY ADVS.

R1 & R3 TO R6 - SRI. M.H. ANILKUMAR, SPECIAL
GOVERNMENT PLEADER

R2 - SRI. M.P. SREEKRISHNAN, SC

R7 - SRI. GEORGEKUTTY MATHEW, SC

R8 - SRI.P.B. SAHASRANAMAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04.10.2019, ALONG WITH WP(C).15505/2016(K), WP(C).25529/2019(M),
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



Attested by

Jorochu

District Educational Officer
Kaduthuruthy

dh

4b

ANNEXURE R3 (C) 5

W.P.(C) Nos.15505 & 31684/16 & 25529/19

5

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

FRIDAY, THE 04TH DAY OF OCTOBER 2019 / 12TH ASWINA, 1941

WP(C) No.25529 OF 2019(M)

PETITIONER/S:

- 1 ANIL KUMAR K.G.,
AGED 52 YEARS,
SON OF GOPINATHAN NAIR, KALLARAYATHU,
THALAPPALAM, PLASSANAL P.O., KOTTAYAM-686 579.
- 2 SYAMALLAKUMARI M.S.,
AGED 58 YEARS,
WIFE OF LATE C.R.UNNIKRISHNAN NAIR,
MOOZHIKUZHIIYIL HOUSE, KALATHOOKADAVU P.O.,
KOTTAYAM-686 579.

BY ADVS.
SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR

RESPONDENT/S:

- 1 STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
MINING AND GEOLOGY DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 THE GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
COLLECTORATE P.O., KOTTAYAM-686 002.
- 3 STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
KERALA,
DIRECTORATE OF ENVIRONMENT AND CLIMATE CHANGE,
K.S.R.T.C. BUS TERMINAL COMPLEX, 4TH FLOOR,
THAMPANOR, THIRUVANANTHAPURAM-695 001,
REPRESENTED BY ITS CHAIRMAN.
- 4 UNION OF INDIA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE,
PARYAVARAN BHAVAN, CGO COMPLEX, LODHI ROAD,
NEW DELHI-110 003.

R

[Handwritten signature]



47.

ANNEXURE R3(C) 6

W.P.(C) Nos.15505 & 31684/16 & 25529/19

5

5 THALAPPALAM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
THALAPALAM GRAMA PANCHAYAT OFFICE,
PLASSNAL P.O., KOTTAYAM-686 579.

6 TOMY THOMAS,
SON OF THOMAS, PULICKAL HOUSE, KALATHUKADAVU,
VETTIPARAMBU, ERATTUPETTAH, KOTTAYAM-686 579.

BY ADVS.

R1 & R2 - SRI. M.H. HANILKUMAR, SPECIAL GOVERNMENT
PLEADER

R3 - SRI. M.P. SREEKRISHNAN, SC

R4 - SRI. P. VIJAYAKUMAR, ASG OF INDIA

R5 - SRI. GEORGEKUTTY MATHEW, SC, THALAPPALAM GRAMA
PANCHAYAT

R6 - SRI. JOBI JOSE KONDODY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04.10.2019, ALONG WITH WP(C).15505/2016(K), WP(C).31684/2016(I),
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



R /

JUDGMENT

The captioned writ petitions are materially connected in respect of a quarry operated by the petitioner in W.P.(C) Nos.15505 and 31684 of 2016, while W.P.(C) No.25529 of 2019 is filed by third persons, challenging the Environmental Clearance No.24/2016 dated 04.03.2016, granted to the petitioner in the other writ petitions vis-a-vis the stop memo issued by the State Environment Impact Assessment Authority, Kerala (for brevity, 'the SEIAA') and declining of D&O licence by the Thalappalam Grama Panchayat. Therefore, I heard them together and propose to deliver this common judgment.

2. I have heard Sri. George Poonthottam, learned Senior Counsel for the petitioner, assisted by Advocate Jobi Jose Kondody, Sri. P.B.Sahasranaman, learned counsel for the petitioners in W.P.(C) No.25529/2019, Sri. M.H. Hanil Kumar, learned Special Government Pleader, Sri. M.P. Sreekrishnan, learned Standing Counsel appearing for SEIAA, Sri. P. Vijayakumar, learned ASGI, Sri. Georgekutty Mathew, learned Standing Counsel appearing for the Panchayat, and Sri. Shaji Thomas, Porkkattil, learned counsel appearing for additional 7th & 8th respondents in W.P.(C)

R



49

ANNEXURE R3 (C) 8

W.P.(C) Nos.15505 & 31684/16 & 25529/19

8

No.15505/2016. Perused the pleadings and the documents on record.

3. So far as W.P.(C) No.15505 of 2016 is concerned, it is filed challenging Ext.P11 order dated 15.04.2016 issued by the Secretary of the Grama Panchayat and Ext.P12 decision of the Thalappalam Grama Panchayat dated 11.04.2016, declining renewal of licence to the quarry operator. There, the case projected by learned Senior Counsel for the petitioner is that, consequent to the Reference Order rendered by the Full Bench of this Court in '**Tomy Thomas v. State of Kerala and Others**' [2019 (4) KHC 553 (FB)], the legal position has changed by virtue of the amendments in the Kerala Panchayat Raj Act, 1994 and the Rules thereto and the Village Panchayats do not enjoy any primacy in the power, to refuse applications seeking permission for construction or establishment of any factory, workshop or workplace under Sec.233 of the Kerala Panchayat Raj Act, on and from the date of enforcement of the amendments.

4. To make it clear, the application submitted by the petitioner seeking renewal of the licence was prior to the Amendment Act came into force, i.e., with effect from 20.10.2017, and there is no dispute that the

R



50

ANNEXURE R 3 (C) 9

W.P.(C) Nos.15505 & 31684/16 & 25529/19

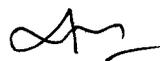
9

application of the quarry operator was considered taking into account the law stood prior to the amendment. Therefore, learned counsel for the petitioner submitted that, petitioner may be permitted to submit a fresh application before the Secretary of the Panchayat, seeking D&O licence for establishment of the workplace and it would suffice, if a direction is issued to consider the same in accordance with the amended provisions of law and the law laid down by this Court in the afore-quoted order of the Full Bench.

5. So far as W.P.(C) No.31684 of 2016 is concerned, the same is filed by the quarry operator challenging Exts.P9 and P11, notice issued by the Inspector of Police, Erattupetta dated 16.07.2016 and the stop memo issued by SEIAA dated 22.09.2016 respectively, whereby the respective officials have directed the petitioner to stop the quarrying activities, since the petitioner is not abiding the conditions contained in the Environmental Clearance and for other related and consequential reliefs.

6. In my considered opinion, Ext.P11 is only a stop memo issued by the SEIAA, apparently, based on the action taken by the Inspector of Police, Erattupetta as per Ext.P9 dated 16.07.2016, and it has not attained

B



any finality. I am also informed that the quarry operator has filed objection to Ext.P11 stop memo. Therefore, learned counsel on either side submitted that, it would suffice if a direction is issued to finalize the proceedings pertaining to Ext.P11 stop memo by providing notice of hearing to all concerned.

7. Incidentally, one of the petitioner in W.P.(C) No.25529 of 2019 is the complainant before SEIAA and has raised contention that the Environmental Clearance was given by SEIAA, overlooking the provisions of law and without securing a report from the Environment Impact Assessment Authority and without due application of mind. Therein, learned counsel appearing for the petitioner submitted that, the entire issues that are put forth by the petitioners in the said writ petition can also be considered by the Authority, while finalizing the proceedings pertaining to Ext.P11 stop memo dated 22.09.2016 produced along with W.P.(C) No.31684 of 2016.

8. In that view of the matter, I am of the considered opinion that, the writ petitions can be disposed of with appropriate directions. In W.P.(C) No.15505 of 2016, petitioner is at liberty to file

R

As

52

ANNEXURE 3 (C) 11

W.P.(C) Nos.15505 & 31684/16 & 25529/19

11

suitable application seeking permits/licence from the Thalappalam Grama Panchayat, and if any such application(s) are filed by the quarry operator, it shall be considered in accordance with law and independently and dispassionately without taking into account the findings rendered in Ext.P11 order passed by the Secretary dated 15.04.2016 and the decision of the Thalappalam Grama Panchayat dated 11.04.2016, and also taking into account the amended provisions of law and the principles of law laid down by the Full Bench of this Court in the afore-quoted Reference order, at the earliest, and at any rate, within two months from the date of receipt of a copy of this judgment.

9. W.P.(C) Nos.31684 of 2016 and 25529 of 2019 are disposed of, with direction to the Kerala State Environment Impact Assessment Authority, Thiruvananthapuram i.e., the 2nd respondent to finalize the proceedings pertaining to Ext.P11 stop memo dated 22.09.2016, after providing opportunity of hearing to the petitioner, petitioners in W.P.(C) No.25529 of 2019, 8th respondent in W.P.(C) No.31684/2016, i.e., K.G. Anilkumar, Convenor, Kizhakkemala Protection Council, Secretary of the Grama Panchayat and all other stakeholders including Centre for Earth Science Studies

B



53

ANNEXURE R3 (C) 12

W.P.(C) Nos.15505 & 31684/16 & 25529/19

12

(CESS), the report drawn by the said organization in respect of the area in which the quarry is situated, the plans prepared under the Disaster Management Act, i.e., National Plan, State Plan and the District Plan and all other inputs available and produced by the petitioners and the interested persons, and attain finality at the earliest, and at any rate, within three months from the date of receipt of a copy of this judgment.

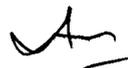
The writ petitions are disposed of accordingly.

sd/-

SHAJI P. CHALY

JUDGE

SV-
05.10.2019



B ✓

54

ANNEXURE R3 (C) 13

APPENDIX OF WP(C) 15505/2016

PETITIONER'S/S EXHIBITS:

- P1 A TRUE COPY OF THE QUARRYING LEASE EXECUTED BY THE PETITIONER AND THE STATE GOVERNMENT DT. 11/10/2007.
- P2 A TRUE COPY OF THE CONSENT TO OPERATE-RENEWAL ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD ON 23/3/2016 VALID UPTO 30/06/2018.
- P3 A TRUE COPY OF THE FORM LE-3 LICENSE ISSUED BY THE EXPLOSIVES DEPARTMENT ON 12/1/2003 WHICH IS RENEWED AND EXTENDED TILL 31/3/2019.
- P4 A TRUE COPY OF TE D&O LICENSE DT. 11/2/2004 ISSUED BY THE FIFTH RESPONDENT TO THE PETITIONER TO OPERATE THE QUARRY COVERED VIDE EXT.P1.
- P5 A TRUE COPY OF THE D & O LICENSE DT. 20/4/2011 ISSUED BY THE FIFTH RESPONDENT TO THE PETITIONER.
- P6 A TRUE COPY OF THE LETTER OF INTENT DT. 21/3/2016 ISSUED BY THE GEOLOGIST, KOTTAYAM TO THE PETITIONER.
- P7 A TRUE COPY OF THE ENVIRONMENTAL CLEARANCE ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DT. 4/3/16 VALID UPTO 3/3/2021.
- P8 A TRUE COPY OF THE ORDER DT. 11/3/16 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS IN R.P. NO. 154/2014.
- P9 A TRUE COPY OF THE APPLICATION FOR D & O LICENSE DT. 28/3/2016 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.
- P10 A TRUE COPY OF THE COVERING LETTER DT. 28/3/2016 SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT.
- P11 A TRUE COPY OF THE PROCEEDINGS OF THE 5TH RESPONDENT DT. 15/4/2016 ISSUED TO THE PETITIONER.

B ✓

55

ANNEXURE R 3 (C) 14

- P12 A TRUE COPY OF THE DECISION OF THE PANCHAYAT COMMITTEE MEETING DT. 11/4/2016 HEADED BY THE 6TH RESPONDENT.
- P13 A TRUE COPY OF THE DECISION OF THE PANCHAYAT COMMITTEE MEETING HELD ON 10/2/2004 GRANTING PERMISSION UNDER SECTION 233 OF THE KERALA PANCHAYAT RAJ ACT TO START THE QUARRY OF THE PETITIONER.
- P14 A TRUE COPY OF THE PLAINT IN O.S.NO.120 OF 2012 ON THE FILES OF THE MUNSIF COURT, ERATTUPETTA.
- P15 A TRUE COPY OF THE COMMISSION REPORT DATED 19.06.2012 SUBMITTED BY THE ADVOCATE COMMISSIONER IN O.S.NO.120 OF 2012 BEFORE THE MUNSIF COURT, ERATTUPETTA.
- P16 A TRUE COPY OF THE QUARRYING LEASE DATED 27.05.2016 EXECUTED BETWEEN THE PETITIONER AND THE STATE OF KERALA VALID UPTO 26.05.2028.
- P17 A TRUE COPY OF THE JUDGMENT DATED 22.09.2014 PASSED BY THIS HONOURABLE COURT IN W.P. (C) NO.19430 OF 2014.
- P18 A TRUE COPY OF THE QUARRYING PERMIT DATED 18.08.2014 ISSUED BY THE GEOLOGIST, KOTTAYAM.
- P19 A TRUE COPY OF THE LETTER DATED 16.11.2012 ISSUED BY THE DIRECTOR, CENTRE FOR EARTH SCIENCE AND STUDIES TO THE PETITIONER.
- P20 A TRUE COPY OF THE JOINT INSPECTION REPORT DATED 30.01.2012 CONDUCTED BY THE ENVIRONMENTAL ENGINEER, DISTRICT HEALTH OFFICER AND SCIENTIST, KERALA FOREST RESEARCH INSTITUTE IN THE PROPERTY OF OZHAKKAL GRANITES.
- P21 A TRUE COPY OF THE QUARRYING LEASE DATED 27.05.2016 VALID UPTO 26.05.2028 EXECUTED BETWEEN THE PETITIONER AND THE STATE GOVERNMENT.
- P22 A TRUE COPY OF THE WORK MEMO DATED 01.08.2016 FILED BY THE RESPONDENTS 4 TO 6 BEFORE THE ADVOCATE COMMISSIONER.

B ✓

AT

56

ANNEXURE R3(C)15

TRUE COPY OF THE APPLICATION SUBMITTED BY MR. JOHN CHERIAN UNDER THE RIGHT TO INFORMATION ACT BEFORE THE CESS DATED 18.04.2018.

P23

A TRUE COPY OF THE INTERIM ORDER DATED 05.08.2016 PASSED BY THE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE, CHENNAI IN APPEAL NO.26 OF 2016.

(TRUE COPY OF THE INFORMATION/COMMUNICATION DATED 04.05.2018 ISSUED BY NCESS TO MR. JOHN CHERIAN DATED 04.05.2018).

RESPONDENTS' EXHIBITS:

EXHIBIT R7(A)

TRUE PHOTOCOPY OF THE ENVIRONMENTAL ASSESSMENT REPORT BY THE SCIENTIST OF CESS.

(TRUE PHOTOCOPY OF THE COMMUNICATION DATED 20.06.2014 RECEIVED BY THE ADDL.8TH RESPONDENT FROM THE DIRECTOR OF MINE SAFETY, BENGALURU).

EXHIBIT R7(B)

TRUE PHOTOCOPY OF THE ENVIRONMENTAL ASSESSMENT REPORT BY THE SCIENTIST OF CESS.

EXHIBIT R7(C)

LIST OF NAME, ADDRESS, WARD NO. AND HOUSE NO. OF PERSONS RESIDING WITHIN A DISTANCE OF 50-100 METRES, 100-200 METRES AND 200-300 METRES FROM THE QUARRY SITE.

EXHIBIT R7(D)

TRUE PHOTOGRAPHS SHOWING THE CRACKS THAT DEVELOPED IN THE WALL OF THE HOUSE OF MR. JOSEPH OLICKAL, (HOUSE NO.3/2012) DUE TO THE EXPLOSIONS FROM THE QUARRY.

EXHIBIT R7(E)

TRUE PHOTOGRAPHS SHOWING THE CRACK THAT DEVELOPED IN THE WALLS OF THE RESIDENTIAL HOUSE NO.4/317 OF MR. SHAJI, VALIYAVEETIL SITUATED WITHIN 100 METRES DISTANCE FROM THE QUARRY.

EXHIBIT R7(F)

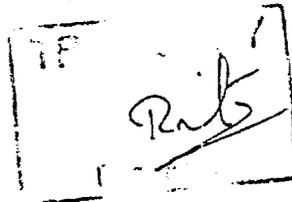
SIMILARLY THE CRACK THAT DEVELOPED ON THE WALL OF THE RESIDENTIAL HOUSE OF THE ADDL.7TH RESPONDENT SRI. CHANDRASEKHARAN.

R.

57

ANNEXURE R3(C) 16

- EXHIBIT R7 (G) TRUE PHOTOCOPY OF THE ORDER DATED 17.03.2014 ISSUED BY THE THALAPALAM GRAMA PANCHAYATH.
- EXHIBIT R7 (H) DRAFT SITE PLAN OF QUARRY SHOWING THE LAY OF THE QUARRY, RESIDENTIAL BUILDINGS AND THE PUBLIC ROAD THAT PASS NEAR TO THE QUARRY SITE.
- ADVOCATE
COMMISSIONER'S
EXHIBITS:
- EXHIBIT C1 TECHNICAL REPORT SUBMITTED BY ASSISTANT EXECUTIVE ENGINEER.
- EXHIBIT C2 PHOTOGRAPH SHOWING THE BOARDS DISPLAYED AT THE QUARRY.
- EXHIBIT C3 PHOTOGRAPH SHOWING THE EXPOSED ROCK FACE OF THE QUARRY.
- EXHIBIT C4 PHOTOGRAPH SHOWING THE ROAD BEING CONSTRUCTED AT THE SECOND LEVEL OF QUARRY.
- EXHIBIT C5 PHOTOGRAPH SHOWING THE CRACKS ON THE HOUSE OF THE ADDL. 7TH RESPONDENT.
- EXHIBIT C6 PHOTOGRAPH SHOWING THE RUBBER PLANTATION OF ADDL. 8TH RESPONDENT.
- EXHIBIT C7 PHOTOGRAPH SHOWING THE ROAD LEADING TO THE QUARRY.
- EXHIBIT C8 PHOTOGRAPH SHOWING THE MILK FACTORY IN FRONT OF THE QUARRY.
- EXHIBIT C9 PHOTOGRAPH SHOWING THE JALANIDHI TANK.
- EXHIBIT C10 PHOTOGRAPHS SHOWING THE STREAMS IN THE QUARRY SITE.
- EXHIBIT C11 PHOTOGRAPH SHOWING THE SURFACE SOIL AND METAL HEAP IN AND NEAR THE QUARRY.
- EXHIBIT C12 PHOTOGRAPH SHOWING THE HOSE PIPE SAID TO BE USED AT THE QUARRY.



ds

58

ANNEXURE R3 (2)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MR. JUSTICE T.V.ANILKUMAR

WEDNESDAY, THE 08TH DAY OF JANUARY 2020 / 18TH POUSHA, 1941

WA.No.2566 OF 2019

AGAINST THE JUDGMENT IN WPC 25529 OF 2019 DATED 4.10.2019 OF
HIGH COURT OF KERALA

APPELLANTS/PETITIONERS:

- 1 ANIL KUMAR.K.G
AGED 52 YEARS
SON OF GOPINATHAN NAIR, KALLARAYATHU,
THALAPPALAM, PLASSANAL P.O., KOTTAYAM-686 579
- 2 SYAMALAKUMARI.M.S.,
AGED 58 YEARS
WIFE OF LATE C.R.UNNIKRISHNAN NAIR,
MOOZHUKUZHYYIL HOUSE, KALATHOOKADAVU P.O.,
KOTTAYAM-686 579

BY ADVS.
SRI.P.B.SAHASRANAMAN
SRI.T.S.HARIKUMAR

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY, MINING
AND GEOLOGY DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001
- 2 THE GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
COLLECTORATE P.O., KOTTAYAM-686 002



3

59

ANNEXURE R3 (d) 2

W.A.No.2566 of 2019

: -2- :

- 3 STATE ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY KERALA,
DIRECTORATE OF ENVIRONMENT AND CLIMATE CHANGE,
K.S.R.T.C. BUS TERMINAL COMPLEX, 4TH FLOOR,
THAMPANOOR, THIRUVANANTHAPURAM-695 001,
REPRESENTED BY ITS CHAIRMAN
- 4 UNION OF INDIA,
REPRESENTED BY ITS PRINCIPAL SECRETARY, MINISTRY
OF ENVIRONMENT, FOREST AND CLIMATE CHANGE,
PARYAVARAN BHAVAN, CGO COMPLEX,
LODHI ROAD, NEW DELHI-110 003
- 5 THALAPPALAM GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY, THALAPPALAM GRAMA
PANCHAYAT OFFICE, PLASSNAL P.O., KOTTAYAM-686 579
- 6 TOMY THOMAS,
SON OF THOMAS, PULLICKAL HOUSE, KALATHUKADAVU,
VETTIPARAMBU, ERATTUPETTAH, KOTTAYAM-686 579

OTHER PRESENT:

SRI.SYAMJIRAM, GP
SRI.M.P.SREEKRISHNAN, SC FOR R3
SRI.JOBY JOSE KONDODY FOR R6

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
08.01.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



4

60

W.A.No.2566 of 2019

ANNEXURE R3(d) 3

: -3- :

C.K.ABDUL REHIM & T.V.ANILKUMAR, JJ.

W.A.No.2566 of 2019

Dated this the 8th day of January, 2020

J U D G M E N T

C.K.ABDUL REHIM, J.

The appellants are the writ petitioners in W.P. (C)No.25529 of 2019 and the respondents are the respondents therein.

2. The writ petition was disposed of with two other connected cases filed by the 6th respondent herein, by directing the 'Kerala State Environment Impact Assessment Authority' (SEIAA) to finalise the proceedings pertaining to Ext.P11 'Stop Memo' (produced in W.P.(C)No.31684 of 2016) issued, after providing an opportunity of hearing to all the parties concerned, including the appellants/writ petitioners and other stake holders, including the 'Center for Earth Science Studies' (CESS). It was observed by the learned



y

61

W.A.No.2566 of 2019

ANNEXURE R₃ (d) 4

: -4- :

single Judge that, before the SEIAA the appellants will be at liberty to take a contention that the environment clearance given earlier was by overlooking provisions of the law and was without securing a report from the SEIAA. It was observed by the learned Single Judge that, the entire issue that are put forth in the writ petition can be considered by the Authority (SEIAA), while finalising the proceedings. But this writ appeal is filed mainly contending that the challenge raised by the appellants against validity of Ext.P3 amendment to the Environment Impact Assessment Notification, 2006, was omitted to be taken into consideration while disposing the writ petition.

3. On a perusal of the grounds and the reliefs enumerated in the writ petition, we do not find any specific challenge against Ext.P3 amendment. Therefore, we do not think that there occurred any illegality, error or impropriety in disposal of the writ petition, in the manner as mentioned above. However, we make it clear that the appellants will be



3

W.A.No.2566 of 2019

62
:-5-:

ANNEXURE R2 (d) 5

at liberty to challenge validity of Ext.P3 amendment in appropriate separate proceedings, *dehors* the decision which will be taken by the SEIAA in accordance with the directions contained in the impugned judgment.

Therefore, the above writ appeal is hereby dismissed, with liberty reserved to the appellants as mentioned above to challenge validity of the amendments brought in to the Environment Impact Assessment Notification, 2006, through the Notification issued by the Ministry of Environment, Forest and Climate Change, dated 15.1.2016, before appropriate forum, to the extent permissible under law.

Sd/-

**C.K.ABDUL REHIM
JUDGE**

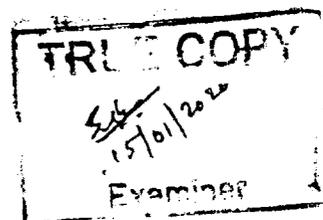
Sd/-

**T.V.ANILKUMAR
JUDGE**

ami/

5

[Handwritten signature]



63

ANNEXURE R3 (C)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 27TH DAY OF MAY 2020 / 6TH JYAISHTA, 1942

WP(C).No.5897 OF 2020(J)

PETITIONER:

TOMY THOMAS,
AGED 54 YEARS,
S/O. THOMAS, PULICKAL HOUSE, KALATHUKADAVU P.O,
ERATTUPETTA, KOTTAYAM - 686 579.

BY ADV. SRI.JOBI JOSE KONDODY

RESPONDENTS:

1 THE THALAPPALAM GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,
OFFICE OF THE THALAPPALAM GRAMA PANCHAYATH,
PLASSANAL P.O, KOTTAYAM - 686 579.

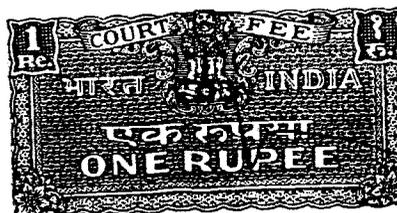
2 THE SECRETARY,
THALAPPALAM GRAMA PANCHAYATH,
OFFICE OF THE THALAPPALAM GRAMA PANCHAYATH,
PLASSANAL P.O, KOTTAYAM - 686 579.

*ADDL. THE STATE ENVIRONMENT IMPACT ASSESSMENT
R3 AUTHORITY (SEIAA, KERALA)
REPRESENTED BY ITS MEMBER SECRETARY, KSRTC BUS
TERMINAL COMPLEX, 4TH FLOOR, THAMPANOR,
THIRUVANANTHAPURAM - 695 001.

*ADDL.R3 IMPEADED AS PER ORDER IN IA.1/2020 DATED
09-03-2020.

R1 & R2 - SRI. GEORGEKUTTY MATHEW
R3 - SRI. M.P. SREEKRISHNAN, SC
SRI. P.B. SAHASRANAMAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27.05.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



ALEXANDER THOMAS, J.

W.P.(C) No.5897 of 2020

Dated this the 27th day of May, 2020

JUDGMENT

The case set up in this Writ Petition (Civil) is as follows:

The petitioner was operating a quarry for mining building stones in his property comprised in Survey No. 284/pt of Erattupetta Village in Meenachil Taluk of Kottayam District from 2004 onwards upon obtaining all statutory licenses including permit under Section 233 of the Kerala Panchayat Raj Act, 1994 from the respondents as well as the D & O License obtained from the respondents under the provisions of Section 232 of the Kerala Panchayat Raj Act, 1994. From the year 2012, the second respondent failed to renew the D & O License of the petitioner for operating his quarry for want of Environmental Clearance stipulated under EIA Notification, 2006. Accordingly petitioner



obtained Exhibit P1 Environmental Clearance and produced the same before the respondents. But they neither renewed the existing D & O License for the subsequent years nor had granted a fresh D & O License. Therefore the petitioner was forced to approach this Court by filing W.P.(C) No.15505 of 2016. Later the Mining and Geology Department based on Exhibit P1 granted Exhibit P2 quarrying lease under the provisions of the Kerala Minor Mineral Concession Rules, 2015. The Panchayat appeared in the above writ petition and contested that they are not bound to go by Exhibit P1 while considering the application for trade license. The Learned Single Judge referred the matter to the Division Bench and later to the Full Bench which culminated in the decision of this Court reported in 2019 (3) KLT 987 (Tomy Thomas v. State of Kerala). Based on the Full Bench decision this Court considered W.P.(C) No. 15505 of 2016 and passed Exhibit P5 judgment directing the petitioner to apply afresh to the trade license by virtue of the amendment brought out to the Kerala Panchayat Raj Act, 1994. Accordingly the petitioner submitted Exhibit P6 application and the second respondent under the



guise of Section 233(2A) started issuing Exhibits P7, P14, P20 and 22 notices stating that more and more documents are required for consideration of Exhibit P6 application. When the petitioner satisfied the demands made in Exhibit P7, he issued Exhibit P14 and when those directions are satisfied he issued Exhibit P20 and later Exhibit P22 only to harass the petitioner and to delay consideration of Exhibit P6. This is highly illegal, arbitrary and malafide and the issuance of notices under the guise of Section 233(2A) of the Kerala Panchayat Raj Act, 1994 by the second respondent seems to be an ongoing process as in the case of the petitioner. Aggrieved by Exhibits P7, P14, P20 and 22 notices as well as non-consideration of Exhibit P6 application in accordance with the provisions contained in Sections 232 and 233 of the Kerala Panchayat Raj Act, 1994, the petitioner begs to prefer this writ petition. It is in the light of the above factual averments and contentions that the petitioner has filed instant Writ Petition (Civil) with the following prayers:-

"I) Call for the records relating to Exhibits P7, P14, P20 and 22 notices issued by the second respondent and issue a writ of certiorari and quash the same;



II) Issue a writ of mandamus directing the respondents to consider Exhibit P6 application and grant the same in the light of the documents produced by the petitioner vide Exhibits P8 to P13 and Exhibits P15 to P19 along with Exhibit P21 in accordance with Section 232 and 233 of the Kerala Panchayat Raj Act, 1994; and

III) Issue such other reliefs which this Honourable Court may deem fit and appropriate in the facts and circumstances of the case."

2. Heard Sri. Joby Jose Kondody, learned Counsel appearing for the petitioner, Sri. Georgekutty Mathew learned Counsel appearing for the respondents 1 and 2, Sri. M.P. Sreekrishnan, learned Standing Counsel for the 3rd respondent Kerala State Environmental Impact Assessment Authority and Sri. P. B. Sahasranaman, learned Counsel who was permitted to make submissions for the intervenor party.

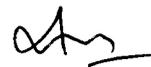
3. It is the specific case of the petitioner that his unit has duly secured all the statutory permit, licence, clearance etc. from the competent Statutory Authorities concerned who are primarily concerned with the activity of quarrying, except the establishment and trade licences to be issued by respondents 1 and 2 (Thalappalam Grama Panchayat).

4. It is pointed out that a series of documents have been



produced before this Court. Ext.P1 is the Environmental Clearance newly issued by the 3rd respondent Kerala State Environmental Impact Assessment Authority, Ext.P2 is the quarrying lease issued by the District Geologist concerned and Ext.P3 is the licence issued by the Deputy Chief Controller of Explosives and Ext.P4 is the integrated consent to operate the unit and its renewal issued by the Kerala State Pollution Control Board. It appears that after the issuance of Ext.P1 Environmental Clearance, the 3rd respondent Kerala State Environmental Impact Assessment Authority has issued a stop memo directing the petitioner to stop the functioning of his unit in view of certain complaints raised by certain objectors.

5. A series of notices has been consistently issued by respondents 1 and 2 as can be seen from Exts.P7, P14, P20 and P22 directing the petitioner at various points of time to clarify and remedy certain aspects which accordingly to them are defects noted in the application submitted by the petitioner for the grant of the said establishment and trade licences. It will be relevant to note the averments in paragraphs 13 to 19 of the WP(C) which



deals with those issues. After hearing all the parties concerned it appears that a series of notices like Exts.P7, P14, P20 and P22 has been issued by the 2nd respondent on rather hypotechnical grounds which has resulted in the delay in consideration of Ext.P6 application which is an application for the joint consideration of the grant of establishment licence and the trade licence as per the provisions contained in the Kerala Panchayat Raj Act and Rules framed thereunder.

6. The matter in issue is fully covered in favour of the petitioner by the judgment of the Full Bench of this Court rendered in *Tomy Thomas V. State of Kerala and others* (as per judgment dated 30.08.2019 in WP(C) No.15505 of 2016 and connected cases reported in 2019 (3) KLT 987 (F.B)). As a matter of fact the successful petitioner in the Full Bench decision in *Tomy Thomas's case* (supra) is none other than the present writ petitioner. Learned Counsel for the petitioner would point out that after the authoritative pronouncement by the Full Bench in the above said *Tomy Thomas's case* (supra), a series of cases has been disposed of by this Court following the findings



and directions made by the Full Bench in the said judgment. The petitioner's matter in relation to the case considered by the Full Bench was remitted to the learned single Judge and Ext.P5 is the judgment rendered in the petitioner's case wherein it was ordered that the application of the petitioner should be duly considered and acted upon by the respondent Panchayat Authorities strictly in terms of the legal principles laid down by the Full Bench of this Court in *Tommy Thomas's case* (supra). It would be profitable to refer the paragraphs 22, 23 and 24 of the Full Bench judgment in *Tommy Thomas's case* (supra) which reads thus follows:-

"22. Under the amended provisions of sub-section (3) of S.233 of the Act, the Secretary or the officer authorised by him should conduct an enquiry and submit report to the Village Panchayat as to whether the establishment of the factory, workshop, workplace or other installation of machinery or manufacturing plant, for which the permission is applied for, is objectionable by reason of density of population in the neighbourhood and possibility to cause nuisance or pollution. The Village Panchayat on consideration of the application and the report of the Secretary and of such other authorities as specified in sub-section (4) may as expeditiously as possible, at any rate within thirty days grant the permission either absolutely or subject to such conditions as it thinks fit to impose. Sub-clause (a) and (b) of sub-section (3) contained in the unamended provisions were omitted through the amendment. Sub-clause (b) of sub-section (3) which enabled the Village



Panchayat to refuse the permission for reason to be recorded, was omitted from the statute book. It gives a clear indication that the power of the Village Panchayat to refuse the permission has been taken away by the legislature.

23. Consequent to the above noted amendments to S.233 of the Act, the Licensing Rules were also amended. From the chart given as above it is evident that Rule 12 had undergone drastic changes. Under the unamended provision of sub-rule (3) of Rule 12 the Village Panchayats were obliged to consider the application for permission within 45 days in case of obtaining no objection certificates from other establishments and within 30 days in other cases either to grant permission applied for, absolutely or subject to conditions or to refuse permission if it is of the opinion that such construction or establishment is objectionable by reason of high density of population in the neighbourhood or that it is likely to cause nuisance. The power vested on the Village Panchayat to refuse the permission as mentioned above contained under sub-clause (b) of sub-rule (3) of Rule 12, was amended drastically. Under the amended sub-clause (b) it is provided that, if the Village Panchayat 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, the Secretary shall as soon as may be after receipt of the application obtain an expert opinion of the department concerned with regard to determination of nuisance or its abatement, at the cost of the owner or person in-charge of the factory, workshop, workplace or machinery concerned and such report shall be furnished to the Village Panchayat as soon as possible not later than 30 days of reporting such nuisance. Further it is provided that, on furnishing of such report of the concerned department, the Village Panchayat shall issue permission subject to such conditions as may be required for abatement of the nuisance if any, as recommended in the expert opinion of the concerned department. From the amendment incorporated under Rule 12(3) it is clear and evident that the power vested on the Village Panchayat 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. Through the amendment it is clarified that if the Village Panchayat 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 Secretary shall obtain an expert opinion of the department concerned and shall place such report for consideration of the Village Panchayat. There also the Village 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. 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.

24. As mentioned in the foregoing paragraphs, the amendments specified above were introduced through the Kerala Investment Promotion and Facilitation(No.2) (Act 14/2018). The object of introducing such an Act, as specified therein, is intended to give effect to certain proposals of the Government of Kerala to avoid delay in granting various licences/permissions, approvals and clearances required under-various enactments. Therefore the intention of the legislature to bring such drastic amendment is clear and explicit. Hence it is to be observed that, from the date of enforcement of the amendments from 20th October, 2017, it cannot be said that Village Panchayats have got primacy of power to take an independent decision to reject the applications for permission/licence under provisions of the Act and the Licensing Rules, for construction or for establishment of any factory workshop or work place. On the other hand, the Grama Panchayats (Village Panchayats) are obliged to grant permissions in cases where the authorities mentioned under S.233 of the Act had issued such permissions or consents or no-objection certificates. Even if the panchayat is of the



opinion that the construction or establishment of the factory, workshop or workplace is objectionable by reason of high density of population in the neighbourhood and is likely to cause nuisance, then also the panchayat can only obtain expert opinion from the department concerned and it is obliged to issue permission for such construction or establishment subject to such conditions as may be required for abatement of the nuisance, if any, as may be recommended in the expert opinion of the concerned department."

7. In those paragraphs more particularly in paragraph 24, the Full Bench has categorically held that after the amendment to the abovesaid Rules framed under the Panchayat Raj Act, the discretion of the Secretary of the Grama Panchayat to refuse such a licence is almost nil and such discretion has been taken away and if all the competent Statutory Authorities as mentioned above has granted their necessary permissions, clearances, licences etc. then the Panchayat Committee or the Panchayat Secretary as the case may be, is bound to grant the licence. Reference may be made to paragraph 24 of the Full Bench judgment wherein it has been held that the Grama Panchayats are obliged to grant permissions in cases where the authorities mentioned under Section 233 of the Act had issued such permissions or consents or No Objection Certificates.



Moreover if any complaints come to the notice of the Panchayat, a specific statutory procedure has been devised by the legislature in Section 233 for dealing with such complaints. Therefore the competent Authority of the Panchayat is bound to grant such licences, but at the same time they will be at liberty to invoke the special procedure contemplated under Section 233A of the Kerala Panchayat Raj Act to deal with such complaints.

8. That apart the objectors concerned can also place their complaints and objections before the competent Statutory Regulatory Bodies concerned if the licensee has violated the terms and conditions of such clearances and licences and such statutory competent Authority may after the due process of inspection etc. and after affording opportunity of hearing to all the parties concerned may render the decision on such issues and in such case the Panchayat can even insist that they should also be heard by the competent Authority concerned.

9. Petitioner's counsel would submit fairly that he would insist for consideration of the establishment and trade licences by the Panchayat Committee and the Panchayat Secretary, as the



case may be, only if the 3rd respondent Kerala State Environmental Impact Assessment Authority vacates the stop memo issued in relation to the matters in Ext.P1 Environmental Clearance.

10. To the specific query as to the action proposed by the 1st and 2nd respondents, Sri. Georgekutty Mathew, learned Counsel appearing for respondents 1 and 2 would fairly submit on the basis of specific instructions that the Panchayat Authorities that is respondents 1 and 2 are bound and obliged in law to strictly comply with the legal principles and directives laid down by the Full Bench of this Court in *Tommy Thomas's case* (supra) and that the discretion of the said Authorities to reject the said licences is almost taken away if all the other statutory Authorities has granted permission, on account of the amended provision. Learned counsel for respondents 1 and 2 would vehemently contend that the amended provisions taking away the discretion of the local self Governmental body is unreasonable and arbitrary, as the local body has to be sensitive to the complaints of the people of the locality. It is for the



respondent Panchayat Authorities to seek redressal of their grievances, if any, as against the amended Rules, in the manner known to law. But so long as the amended Rules remain in the statute book and so long as the Rules are not interdicted and so long as the above dictum laid down by the Full Bench is not interfered with by a larger Bench or by the Apex Court, a statutory Authority like the respondent Panchayat has to strictly discharge their functions within the parameters of those Rules and in strict consonance with those legal principles. No local body can be permitted to act against those Rules and well settled legal principles. It is also pointed out by learned counsel for respondents 1 and 2 would submit that the above said Panchayat Authorities have already moved a separate writ petition as WP(C) No.7445 of 2020 challenging the enactment of the abovesaid amended Rules taking away the discretion of the Panchayat Authorities to reject the grant of licence and that the said writ petition is pending. Learned Counsel for the petitioner would point out that the petitioner herein has not been impleaded as a party therein and it is learned that no interim order has been



passed by this Court in the abovesaid WP(C) No.7445 of 2020.

11. Sri. M. P. Sreekrishnan, learned Standing Counsel for the Kerala State Environmental Impact Assessment Authority appearing for 3rd respondent would submit that earlier a stop memo was issued by the said authority in view of the complaints raised against the petitioner's quarry for which Ext.P1 Environmental Clearance was granted and now pursuant to Ext.P5 judgment of this Court, all the parties concerned including the petitioner, the District Geologist, the respondent Panchayat Authorities etc. have already been afforded reasonable opportunity of being heard in the prior sittings of the Committee of the 3rd respondent Authority and on account of the present lock down issues, though site inspection and personal hearing process have been duly completed, orders could not be passed on account of the lock down issues and now the meeting of the competent Committee of the 3rd respondent is scheduled to be held on the 2nd, 3rd and 4th of June 2020 in which the decision as the complaints of the objectors which led to the temporary issuance of the stop memo will be rendered by the competent



Authority to the 3rd respondent without much delay. Therefore it is for the 3rd respondent to ensure that decision is rendered in the abovesaid matter without any further delay and the proceedings in that regard is duly issued and communicated not only to the petitioner but also to the respondents 1 and 2 (Panchayat Authorities), District Geologist, Kerala State Pollution Control Board.

(12. After hearing all the parties concerned and taking note of the legal principles laid down by the Full Bench of this Court in *Tommy Thomas's case* (supra), thus Court is of the considered view that respondents 1 and 2 has to consider and grant the requisite establishment and trade licences as the case may be as submitted in Ext.P6 joint application without any further delay, provided that the 3rd respondent Kerala State Environmental Impact Assessment Authority vacates or revokes the stop memo. Accordingly it is ordered that the 1st respondent Committee of the Thalappalam Grama Panchayat as well as the 2nd respondent Secretary of the said Panchayat will consider the issue relating to the plea made by the petitioner for grant of the



establishment licence as well as the trade licence as made out in Ext.P6 and to grant such licences after affording reasonable opportunity of being heard to the petitioner and to grant the same within two weeks from the date of receipt of the communication from the 3rd respondent subject to the condition that those licences need be granted only if 3rd respondent vacates the stop memo issued in relation to Ext.P1 environmental clearance. In case there is any delay on the part of the 3rd respondent to communicate a copy of the proceedings of the 3rd respondent, it is open to the petitioner to produce a copy of such proceedings so passed by the 3rd respondent before the 2nd respondent to avoid any further delay. Ext.P6 joint application seeking such licences is for a period of five years. It is hoped and expected that respondents 1 and 2 will rise up to the occasion and will fully adhere to the Rule of law and should show due reference and respect to the legal principles laid down by the Full Bench of this Court in *Tommy Thomas's case* (supra) so that the petitioner herein who happens to be the litigant therein is not unnecessarily harassed and driven for further litigation.)



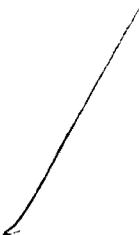
13. Petitioner will produce a certified copy of the judgment before the 2nd respondent as well as the 3rd respondent for necessary action.

With these observations and directions, the Writ Petition (Civil) will stand finally disposed of.

Sd/-

**ALEXANDER THOMAS
JUDGE**

SPR



APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 A TRUE COPY OF THE ENVIRONMENTAL CLARANCE DATED 04.03.2016 ISSUED BY THE SEIAA, KERALA TO THE PETITIONER.
- EXHIBIT P2 A TRUE COPY OF THE QUARRYING LEASE DATED 27.05.2016 VALID UPTO 26.05.2028 EXECUTED BETWEEN THE PETITIONER AND THE STATE GOVERNMENT.
- EXHIBIT P3 A TRUE COPY OF THE FORM LE-3 LICENSE RENEWED ON 30.01.2019 VALID UPTO 31.03.2004 ISSUED BY THE DEPUTY CHIEF CONTROLLER OF EXPLOSIVES, ERNAKULAM TO THE PETITIONER.
- EXHIBIT P4 A TRUE COPY OF THE INTEGRATED CONSENT TO OPERATE-RENEWAL DATED 13.12.2019 VALID UPTO 31.03.2021 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD TO THE PETITIONER TO OPERATE THE QUARRY COVERED VIDE EXHIBIT P1.
- EXHIBIT P5 A TRUE COPY OF THE JUDGMENT DATED 04.10.2019 PASSED BY THE LEARNED SINGLE JUDGE OF THIS HONOURABLE COURT IN WP(C) NO.15505 OF 2016.
- EXHIBIT P6 A TRUE COPY OF THE APPLICATION DATED 03.12.2019 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.
- EXHIBIT P7 A TRUE COPY OF THE NOTICE DATED 05.12.2019 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

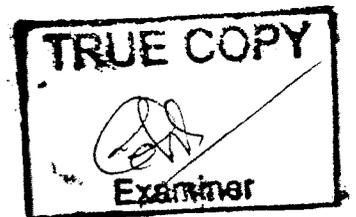


- EXHIBIT P8 A TRUE COPY OF THE BUILDING TAX RECEIPTS DATED 11.12.2019 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER EVIDENCING PAYMENT OF BUILDING TAX FOR THE YEAR 2019-2020.
- EXHIBIT P9 A TRUE COPY OF THE PROPERTY TAX RECEIPTS DATED 26.04.2019 ISSUED BY THE VILLAGE OFFICE, ERATTUPETTA TO THE PETITIONER.
- EXHIBIT P10 A TRUE COPY OF THE POSSESSION CERTIFICATE DATED 10.12.2019 ISSUED BY THE VILLAGE OFFICER, ERATTUPETTA TO THE PETITIONER.
- EXHIBIT P11 A TRUE COPY OF THE MINE MATE CERTIFICATE DATED 21.10.2014 ISSUED BY THE CHAIRMAN, BOARD OF MINING EXAMINATION TO THE MINE FOREMAN APPOINTED AS BLAST MAN IN THE PETITIONERS PROPOSED QUARRY.
- EXHIBIT P12 A TRUE COPY OF THE SKETCH AND PLAN SHOWING THE PROPOSED QUARRY AND THE MAGAZINE, ISSUED BY THE VILLAGE OFFICER, ERATTUPETTA DATED 28.11.2015.
- EXHIBIT P13 A TRUE COPY OF THE COVERING LETTER DATED 13.12.2019 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.
- EXHIBIT P14 A TRUE COPY OF THE NOTICE DATED 18.12.2019 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.
- EXHIBIT P15 A TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 26.12.2019 ISSUED BY JOLLY GEORGE IN FAVOUR OF THE PETITIONER.



- EXHIBIT P16 A TRUE COPY OF THE NO OBJECTION CERTIFICATE DATED 26.12.2019 ISSUED BY MRS.ELSAMMA TOMY IN FAVOUR OF THE PETITIONER.
- EXHIBIT P17 A TRUE COPY OF THE SURVEY SKETCH DATED 03.01.2020 ISSUED BY THE VILLAGE OFFICER, ERATTUPETTA SHOWING SURVEY NO.248/3 WHEREIN THE MAGAZINE OF THE PETITIONER SITUATES.
- EXHIBIT P18 A TRUE COPY OF THE CERTIFICATE DATED 03.01.2020 ISSUED BY THE VILLAGE OFFICER, ERATTUPETTA TO THE PETITIONER.
- EXHIBIT P19 A TRUE COPY OF THE COVERING LETTER DATED 03.01.2020 ISSUED BY THE PETITIONER TO THE SECOND RESPONDENT.
- EXHIBIT P20 A TRUE COPY OF THE NOTICE DATED 06.01.2020 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.
- EXHIBIT P21 A TRUE COPY OF THE REPRESENTATION DATED 15.01.2020 SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT.
- EXHIBIT P22 A TRUE COPY OF THE NOTICE DATED 11.02.2020 ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER.

RESPONDENT'S/S EXHIBITS: NIL.



[Handwritten signature]

84

ANNEXURE R₃(F)

**State Environment Impact Assessment Authority
(SEIAA) Kerala**

K.S.R.T.C Bus Terminal Complex, 4th Floor, Thampanoor,

Thiruvananthapuram - 695 001

Ph: +91471-2334262 (Off) +91471-2334265 (Fax)

e-mail: seacseiaakerala@gmail.com

web: www.seiaakerala.in

No. 1255/EC4/2016/SEIAA

Date: 30-06-2020

From

The Administrator
State Environment Impact Assessment Authority

To,

Shri. Tomy Thomas
Pulickal
Kalathukadavu (P.O.)
Erattupetta, Kottayam - 686 579

Sir,

Sub: - SEIAA - Judgment dated 04-10-2019 in (Common Judgment in WP (C)
31684/2016, WP (C) 15505/2016 & WP (C) 25529/2019) - reg:-

Ref :- Minutes of the 111th meeting of SEAC held on 02nd to 04th June 2020

Attention is invited to the reference cited. It is informed that your proposal was placed in the 111th meeting of SEAC. The Committee accepted the observations in the Field Inspection Report and decided that the environmental and social safeguard of the building stone quarry has to be evolved through a detailed Environmental Impact Assessment study and precise Environmental Management Plan for the proposed project. The EIA should cover the impact of the activities of the proposed project in and around the site within an impact zone of 3km radius. The impact assessment should specifically cover the impacts on:

- (i) All the buildings and constructed structures within the radius of 500m and the impact due to the proposed blasting;



85

ANNEXURE R.3(f) 2

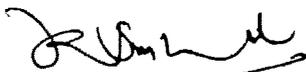
- (ii) Different types of buildings and constructed structures within the impact zone of 3km radius and the impact due to the proposed blasting;
- (iii) Air quality and noise level of the impact zone due to blasting and transportation;
- (iv) Surface drainage;
- (v) Groundwater levels due to blasting and consequent vibration;
- (vi) Sloping terrain with special reference to the possibility of inducing landslides;
- (vii) Biodiversity and
- (viii) Social aspects including employment, income and involuntary land acquisition. The study should cover an area of 3km radius of the proposed mining spot. A detailed land use and land cover map of an area covering 500m radius of the proposed mining spot should also be submitted. The Committee decided to direct the proponent to submit the above details/documents so that a studied decision can be taken on the matter.

Hence you are requested to submit the above documents at the earliest for further processing of the application.

Yours faithfully,

Sd/-
Anil P. Antony
Administrator, SEIAA

Approved for issue

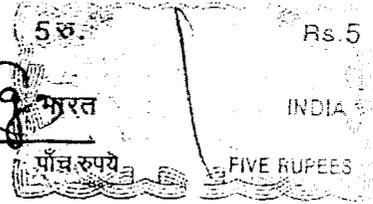


Section Officer



86

ANNEXURE R 29



w. A. Nos. 1392 & 1393 of 2020

-1-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. S. MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 22ND DAY OF OCTOBER 2020 / 30TH ASWINA, 1942

WA.No.1392 OF 2020

AGAINST THE JUDGMENT IN WP(C) 14072/2020 (H) OF HIGH COURT OF KERALA

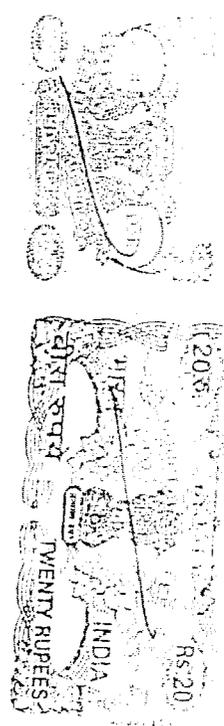
APPELLANT/S:

K.G. ANILKUMAR,
AGED 56 YEARS, SON OF GOPINATHAN
NAIR, CONVENER, KIZHAKKEMALA PROTECTION
COUNCIL, KALLARAYATHU
HOUSE, THALAPPALAM, PLASSANAL (PO),
KOTTAYAM-686 579.

BY ADVS.
SRI. P. B. SAHASRANAMAN
SRI. T. S. HARIKUMAR

RESPONDENT/S:

- 1 TOMY THOMAS
AGED 54 YEARS, S/O. THOMAS,
PULICKAL HOUSE, KALTHUKADAVU (P.O.),
ERATTUPETTA, KOTTAYAM-686 579.
- 2 THE STATE ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY (SIEAA) KERALA,
REPRESENTED BY ITS MEMBER SECRETARY,
KSRTC BUS TERMINAL COMPLEX,
4TH FLOOR, THAMPANUR,
THIRUVANANTHAPURAM-695 001.
- 3 THE MEMBER SECRETARY,
STATE ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY (SEIAA) KERALA, KSRTC BUS TERMINAL
COMPLEX, 4TH FLOOR, THAMPANUR,
THIRUVANANTHAPURAM-695 001.



[Handwritten signature]

87

w. A. Nos. 1392 & 1393 of 2020

-2-

ANNEXURE R3 (g) 2

4 THE KERALA STATE LEVEL EXPERT APPRAISAL
COMMITTEE (SEAC),
REPRESENTED BY ITS CHAIRMAN, THE STATE ENVIRONMENT
IMPACT ASSESSMENT AUTHORITY (SEIAA) KERALA), KSRTC
BUS TERMINAL COMPLEX, 4TH FLOOR, THAMPANUR,
THIRUVANANTHAPURAM-695 001.

R1 BY ADV. SRI. JOBI JOSE KONDODY

OTHER PRESENT:

SRI. JOBI JOSE KONDODY FOR R1,
SRI. M.P. SREEKRISHNAN FOR R2 TO R4

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
22.10.2020, ALONG WITH WA.1393/2020, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



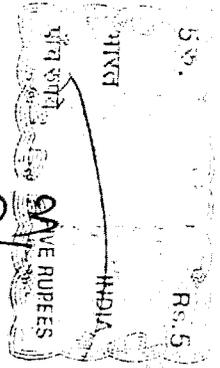
7

88

W. A. Nos. 1392 & 1393 of 2020

-3-

ANNEXURE 3 (g)



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. S. MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 22ND DAY OF OCTOBER 2020 / 30TH ASWINA, 1942

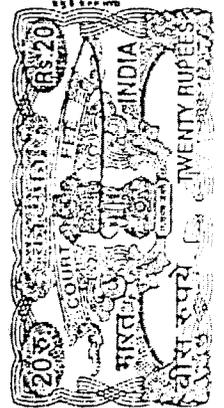
WA.No.1393 OF 2020

AGAINST THE JUDGMENT IN WP(C) 14072/2020 (H) OF HIGH COURT OF KERALA

APPELLANT/S:

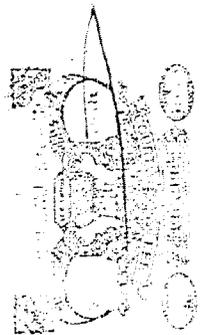
THE PRESIDENT
THALAPALAM GRAMA PANCHAYAT,
PLASANAL P.O., KOTTAYAM DISTRICT,
PIN-686 579.

BY ADV. SRI. GEORGEKUTTY MATHEW



RESPONDENT/S:

- 1 TOMY THOMAS,
AGED 54 YEARS, S/O. THOMAS,
PULICKAL HOUSE, KALTHUKADAVU P.O.,
ERATTUPETTA, KOTTAYAM DISTRICT,
PIN-686 579.
- 2 THE STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
(SEIAA), KERALA,
REPRESENTED BY ITS MEMBER SECRETARY,
KSRTC BUS TERMINAL COMPLEX,
FOURTH FLOOR, THAMPANUR,
THIRUVANANTHAPURAM-695 001.
- 3 THE MEMBER SECRETARY,
THE STATE ENVIRONMENT IMPACT ASSESSMENT
AUTHORITY (SEIAA) KERALA, KSRTC BUS TERMINAL
COMPLEX, FOURTH FLOOR, THAMPANUR, THIRUVANANTHAPURAM-
695 001.



Handwritten signature

89

ANNEXURE R₃ (9) 4

W. A. Nos. 1392 & 1393 of 2020

-4-

4 THE KERALA STATE LEVEL EXPERT APPRAISAL
COMMITTEE (SEIAC),
REPRESENTED BY ITS CHAIRMAN, THE STATE ENVIRONMENT
IMPACT ASSESSMENT AUTHORITY (SEIAA) KERALA, KSRTC BUS
TERMINAL COMPLEX, FOURTH
FLOOR, THAMPANUR, THIRUVANANTHAPURAM-695 001.

R1 BY ADV. SRI. JOBI JOSE KONDODY
SRI. M.P. SREEKRISHNAN FOR R2 TO R4

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
22.10.2020, ALONG WITH WA.1392/2020, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



7

JUDGMENT

[W.A. Nos. 1392 of 2020 & 1393 of 2020]

Dated this the 22nd day of October, 2020

Shaji P. Chaly, J.

The appeals are preferred by third parties to the judgment in W. P. (C) No. 14072 of 2020 dated 10.08.2020, after securing leave to prefer appeal from this Court.

2. Appellant in writ appeal No. 1392 of 2020, Sri. K. G. Anil Kumar was the petitioner in earlier round of litigation by and between the parties and the writ petitioner namely Tomy Thomas and appellant in writ appeal No. 1393 of 2020 is the President of Thalapalam Grama Panchayat, Kottayam District, was also a party in the earlier round of litigation by and between the parties, but they were not arrayed as parties in the W. P. (C) No. 14072 of 2020. However, we found that they ought to have been made parties in the writ petition and it was accordingly that the leave petitions were allowed and permission was granted to prefer the writ appeals.

7



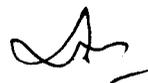
91

W. A. Nos. 1392 & 1393 of 2020

-6-

ANNEXURE R3 (9) 6

3. The subject issue relates to conduct of a quarry by the writ petitioner, who is the 1st respondent in the appeals, within the limits of Thalapalam Grama Panchayat. Various writ petitions were pending before this Court in respect of the quarry conducted by the writ petitioner for and against and the first among them were W. P. (C) Nos. 15505 of 2016, 31684 of 2016 and 25529 of 2019. The writ petitions were disposed of by common judgment dated 04.10.2019, directing the Grama Panchayat as well as the State Environment Impact Assessment Authority (SEIAA) Kerala, to consider and dispose of license / consent applications pending before them, taking into account the respective plans and other documents required for consideration. Even though writ appeal No. 2566 of 2019 was filed against the common judgment of this Court in W. P. (C) No. 25529 of 2019, it was dismissed as per Ext. P11 judgment, with liberty to the appellants to challenge the validity of Ext. P3 amendment in appropriate proceedings, de hors the decision taken by SEIAA in accordance with the directions contained in the judgment of the learned Single Judge. However, consequent to the decision taken by the Panchayat, Sri. Tomy Thomas approached this Court by filing W. P. (C) No. 5897 of 2020, which was disposed of as per Ext. P15



7

judgment dated 27.05.2020, in the following manner:-

"12. After hearing all the parties concerned and taking note of the legal principles laid down by the Full Bench of this Court in Tommy Thomas's case (supra), thus Court is of the considered view that respondents 1 and 2 has to consider and grant the requisite establishment and trade licences as the case may be as submitted in Ext.P6 joint application without any further delay, provided that the 3rd respondent Kerala State Environmental Impact Assessment Authority vacates or revokes the stop memo. Accordingly it is ordered that the 1st respondent Committee of the Thalappalam Grama Panchayat as well as the 2nd respondent Secretary of the said Panchayat will consider the issue relating to the plea made by the petitioner for grant of the establishment licence as well as the trade licence as made out in Ext.P6 and to grant such licences after affording reasonable opportunity of being heard to the petitioner and to grant the same within two weeks from the date of receipt of the communication from the 3rd respondent subject to the condition that those licences need be granted only if 3rd respondent vacates the stop memo issued in relation to Ext.P1 environmental clearance. In case there is any delay on the part of the 3rd respondent to communicate a copy of the proceedings of the 3rd respondent, it is open to the petitioner to produce a copy of such proceedings so passed by the 3rd respondent before the 2nd respondent to avoid any further delay. Ext.P6 joint application seeking such licences is for a period of five years. It is hoped and expected that respondents 1 and 2 will rise up to the occasion and will fully adhere to the Rule of law and should show due reference and respect to the legal principles

7

dm

93

W. A. Nos. 1392 & 1393 of 2020

-8-

ANNEXURE 3 (8) 8

laid down by the Full Bench of this Court in **Tommy Thomas's** case (supra) so that the petitioner herein who happens to be the litigant therein is not unnecessarily harassed and driven for further litigation."

4. Anyhow, in accordance with the directions contained in the common judgment namely Ext. P10, State Expert Appraisal Committee (SEAC) has considered the issue in its meeting held from 2nd to 4th June, 2020 and has taken the following decision:-

"Item No. 111.59 Judgment dated 4.10.2019 in WP (C) No. 31684/2016 filed by Tomy Thomas (File No. 1255/EC4/2016/SEIAA) (Common Judgment in WP (C). 31684/2016, WP (C). 15505/2016 & WP (C) 25529/2019)

Decision:

The Committee accepted the observations in the Field Inspection Report and decided that the environmental and social safeguards of the building stone quarry has to be evolved through a detailed Environmental Impact Assessment study and precise Environmental Management Plan for the proposed project. The EIA should cover the impact of the activities of the proposed project in and around the site within an impact zone of 3km radius. The impact assessment should specifically cover the impacts on:

7



94

ANNEXURE R 3(8)9

- i. All the buildings and corrected structure within the radius of 500m and the impact due to the proposed blasting;
- ii. Different types of buildings and constructed structures within the impact of 3km radius and the impact due to the proposed blasting;
- iii. Air quality and noise level of the impact zone due to blasting and transportation;
- iv. Surface drainage;
- v. Groundwater levels due to blasting and consequent vibration;
- vi. Sloping terrain with special reference to the possibility of inducing landslides;
- vii. Biodiversity and
- viii. Social aspects including employment, income and involuntary land acquisition.

The study should cover an area of 3km radius of the proposed mining spot. A detailed land use and land cover map of an area covering 500m radius of the proposed mining spot should also be submitted. The Committee decided to direct the proponent to submit the above details/documents so that a studied decision can be taken on the matter."

5. Thereafter, the SEIAA has passed an order dated 30.06.2020,



7

95

ANNEXURE R3 (g) 10

W. A. Nos. 1392 & 1393 of 2020

-10-

namely Ext. P17 in the writ petition, which reads thus:-

“Attention is invited to the reference cited. It is informed that your proposal was placed in the 111th meeting of SEAC. The Committee accepted the observations in the Field Inspection Report and decided that the environmental and social safeguard of the building stone quarry has to be evolved through a detailed Environmental Impact Assessment study and precise Environmental Management Plan for the proposed project. The EIA should cover the impact of the activities of the proposed project in and around the site within an impact zone of 3km radius. The impact assessment should specifically cover the impacts on:

- i. All the buildings and constructed structures within the radius of 500m and the impact due to the proposed blasting;
- ii. Different types of buildings and constructed structures within the impact zone of 3km radius and the impact due to the proposed blasting;
- iii. Air quality and noise level of the impact zone due to blasting and transportation;
- iv. Surface drainage;
- v. Groundwater levels due to blasting and consequent vibration;
- vi. Sloping terrain with special reference to the possibility of inducing landslides;
- vii. Biodiversity and
- viii. Social aspects including employment, income and involuntary land acquisition. The study should cover an

7

area of 3km radius of the proposed mining spot. A detailed land use and land cover map of an area covering 500m radius of the proposed mining spot should also be submitted. The Committee decided to direct the proponent to submit the above details/documents so that a studied decision can be taken on the matter."

6. It was basically challenging Ext. P16 decision of the SEAC in the meeting held on 2nd to 4th June 2020 and Ext. P17, W. P. (C) No. 14072 of 2020 was filed. A writ of mandamus was also sought to finalize the proceedings pertaining to Ext. P9 order of SEIAA dated 22.09.2016, whereby orders were passed to stop the operation of the quarry on the basis of complaint submitted by Sri. K. G. Anil Kumar, appellant in writ appeal No. 1392 of 2020.

7. The learned Single Judge after considering the entire issues and taking note of the facts and circumstances on the basis of the judgments rendered by this Court, namely Exts. P10 and P15, has disposed of the writ petition with the following directions:-

"(i) Exts. P-16 & P-17 to the limited extent, it has not ordered for vacating or revoking Ext.P-9 stop memo dated 22.9.2016 will stand quashed and set aside. It is made clear that Exts.P-16 & P-17 in all other aspects are not interdicted by this Court and the respondents will be at liberty to assess various

97

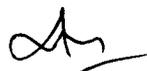
ANNEXURE R3 (9) 12

aspects mentioned in Exts.P-16 & P-17 and the respondents will also be at liberty to take a final decision on the matters ordered in Ext.P-10 judgment, though the time limit has expired long ago.

(ii) In view of the above limited interdiction made to Exts.P-16 & P-17 it is further consequently ordered that the impugned Ext.P-9 stop memo dated 22.9.2016 will stand quashed and set aside. The petitioner is temporarily permitted to function the quarry, but he can do so strictly in accordance with the terms and conditions of quarrying lease, explosives licence, statutory consent of the State Pollution Control Board and Ext.P-5 EC granted by the respondents.

(ii) The respondents will be at liberty to monitor the functioning of the petitioner's quarry and if it is found on the basis of objective materials that the petitioner has violated the terms and conditions of Exts.P-5 EC then the respondents will be at liberty to take necessary action in that regard. So also if the petitioner violates quarrying licence, explosive licence, statutory consent of the State PCB, etc., then also the appropriate authorities are at liberty to take appropriate action in that regard in accordance with law but subject to a fair procedure.

(iv) The respondents will immediately take steps to ensure that various parameters mentioned in Exts.P-16 & P-17 are duly assessed, if necessary on the basis of further inspection, such inspection should be done with prior notice to the petitioner and a copy of the inspection report should also be given to the petitioner.



7

98

ANNEXURE R3 (g) L3

W. A. Nos. 1392 & 1393 of 2020

-13-

(v) Thereafter the competent authority among the respondents should consider the various aspects in the matter including the parameters to be assessed as per Exts.P-16 & P-17 as well as in accordance with the observations made by this Court in para 9 of Ext.P-10 judgment, after hearing the petitioner as well as the objector concerned without any further delay, at any rate, within 2-3 months from the date of production of a certified copy of this judgment.

(vi) Needless to say, in view of the abovesaid directions, the petitioner may temporarily function his quarry until final orders are passed in the matter as aforesaid and in accordance with Ext.P-10 judgment and care should be taken by the respondents to ensure that assessment of the various parameters mentioned in Exts.P-16 & P-17 is done preferably when the quarry is in operation so that real impact could be duly assessed by the respondents.

Further, needless to say, if the final decision as aforesaid, taken by the 1st respondent is in favour of the petitioner then proceedings in that regard may be issued so that the petitioner can produce a copy of the said proceedings before the Panchayath Secretary concerned for consideration of the matter as already directed by this Court in Ext.P-15 judgment dated 27.5.2020 in W.P.(C).No.5897/2020."

8. It is thus challenging the legality and correctness of the direction so issued, the writ appeals are preferred by the complainant Sri. K. G. Anil Kumar and the Thalapalam Grama Panchayat. The

7



99

ANNEXURE R3 (8) 14

W. A. Nos. 1392 & 1393 of 2020

-14-

paramount contention advanced by the appellants is that the judgment was rendered by the learned Single Judge without hearing the affected parties, who are necessary parties in view of the complaint filed and the directions issued in Exts. P10 and P15 judgments. It is also submitted that the learned Single Judge has directed to operate the quarry, without obtaining an Environmental Clearance mandated by the Hon'ble Apex Court in **Deepak Kumar v. State of Haryana and Others [(2012) 4 SCC 629]**. Other contentions are also raised relying upon Article 21 of the Constitution of India and submitted that, if the quarry is allowed to be permitted, it would interfere with the fundamental rights guaranteed to the citizens under Article 21 of the Constitution of India.

9. The Panchayat in its appeal has also addressed almost similar arguments, apart from contending that the learned Single Judge was misdirected by the writ petitioner by placing before the learned Single Judge, incorrect facts and circumstances, which lead to the issuance of the directions and it happened since the Panchayat as well as the affected persons were not made parties in the writ petition. It is also submitted by the learned counsel for the Panchayat that the findings rendered by the learned Single Judge based on the Full Bench

7



judgment of this Court in **Tomy Thomas v. State of Kerala [2019 (3) KLT 987 (FB)]** has no legal or factual foundations and the permission granted to the writ petitioner to temporarily function the quarry without securing necessary license from the Panchayat cannot be sustained under law.

10. We have heard Sri. P. B. Sahasranaman and Sri. Georgekutty Mathew, learned counsel appearing for the appellants, Sri. Joby Jose Kondody, learned counsel appearing for the writ petitioner and Sri. M. P. Sreekrishnan, learned counsel appearing for the SEIAA and perused the pleadings and materials on record.

11. The discussion of facts made above make it clear that the paramount contention advanced by the appellants is that the impugned judgment was rendered by the learned Single Judge, without hearing appropriate and necessary parties and taking into account the material facts and circumstances involved in the subject matter. Anyhow, we find that on the basis of the directions contained in the impugned judgment, the SEAC in its 114th meeting from 6th to 8th October, 2020 has taken up the matter as item No. 114.02 and has taken a decision after hearing the writ petitioner, the Secretary of Thalapalam Grama



7

101

ANNEXURE R3 (9) 16

Panchayat as well as the complainant Sri. K. G. Anil Kumar, directing the project proponent, i.e. the writ petitioner, to intimate SEIAA while the quarry functions, so that the SEAC can conduct the field inspection, in accordance with the directions contained in Ext. P10 judgment.

12. Therefore, it can be seen that the paramount contention advanced by the appellants that a decision was taken by the learned Single Judge without hearing them and therefore there could be likelihood of decision taken by the SEIAA without hearing them no more survives.

13. In that view of the matter, it can also be seen that the judgment is already acted upon and appropriate action is being taken by SEIAA and we have no reasons to think that the SEIAA would take any decision otherwise than in accordance with law and the directions contained in the judgments referred to above.

14. However, learned counsel for the appellants have a case that the learned Single Judge has permitted the writ petitioner to conduct the quarry without securing license from the Panchayat as well as the Environment Authority. However, as per Ext. P15 judgment,



102

ANNEXURE R3 (8) 17

W. A. Nos. 1392 & 1393 of 2020

-17-

directions were issued to the Panchayat to consider the application of the project proponent and to take appropriate decision in accordance with law, if the project proponent was able to produce the necessary clearance from the SEIAA, since at that point of time, the stop memo issued by the said authority was in force.

15. Therefore, according to the learned counsel for the Panchayat, the Panchayat was not bound to consider the application submitted by the writ petitioner, since he has not produced any clearance from SEIAA and therefore the directions presently issued in the impugned judgment, permitting the writ petitioner to temporarily conduct the quarry, is not in accordance with law.

16. On evaluating the findings contained in the impugned judgment, we are of the clear opinion that the learned Single Judge has taken into account the judgment of the Full Bench in Tomy Thomas supra on this account alone, because it was in that judgment the issue with respect to the power of the Panchayat to take independent decision on the application submitted by any project proponent was adjudicated and decided and it was held after taking into account the provisions of law, the respective amendments made to



103

ANNEXURE R₃(9)18

the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996 that the Panchayat is vested with powers to take independent decision in respect of the application submitted for license, irrespective of production of any consent / clearances issued by other statutory authorities.

17. Therefore, we are of the opinion that since the Panchayat has not taken any decision consequent to directions contained in Ext. P15 judgment and in order to have a practical way out to the issue only, the learned Single Judge permitted the writ petitioner to temporarily function the quarry.

18. According to us, the judgment of the Full Bench in Tomy Thomas supra was not brought to the notice of the learned Single Judge while rendering Ext. P15 judgment on 27.05.2020, because the judgment of the Full Bench in Tomy Thomas supra was dated 30.09.2019, which thus means the direction contained in Ext. P15 judgment in W. P. (C) No. 5897 of 2020, directing the Thalapalam Grama Panchayat to consider the application on production of the clearance from the SEIAA, was not in terms of the judgment of the Full Bench in Tomy Thomas supra. We are also of the view that the



104

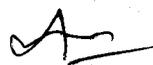
ANNEXURE R 3 (8) 19

W. A. Nos. 1392 & 1393 of 2020

-19-

said aspect was realized by the learned Single Judge while rendering the impugned judgment and it was accordingly that, reference is made to the judgment in Tomy Thomas supra in the impugned judgment. Therefore, we do not find much force in the contentions advanced by learned counsel for the Panchayat in that regard.

19. Taking into account all the above aspects and the subsequent development consequent to the decision taken by the SEAC in its 114th meeting held from 6th to 8th October 2020, we are of the considered opinion that there is no requirement for adjudicating the issues raised in the writ appeals on their merit. We are also of the view that specific directions are issued by the learned Single Judge in the impugned judgment, with respect to the consideration of the issue by the SEIAA and time period is also fixed to take a decision. We are also of the further opinion that the temporary functioning of the quarry was permitted in order to assess the impact that can occur while the quarry is physically functioned and the said direction was also issued after hearing SEIAA. Therefore, the permission granted for temporary functioning is with the object of enabling the SEIAA to evaluate and take a decision in respect of the Environmental Clearance, in accordance with law.



105

ANNEXURE R3 (8) 20

W. A. Nos. 1392 & 1393 of 2020

-20-

In that view of the matter, the writ appeals are disposed of without any interference to the directions made by the learned Single Judge, however, recording the abovesaid aspects and the developments that have taken place consequent to the decision taken in the 114th meeting of SEAC, as specified above.

Sd/-

S. MANIKUMAR
CHIEF JUSTICE

Sd/-

SHAJI P. CHALY
JUDGE

Eb

Sh

////TRUE COPY////

F.A. TO JUDGE

[Handwritten signature]

106¹

ANNEXURE R3 (b)

Item No.13 BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, CHENNAI

Appeal No. 87 of 2017 (SZ)

(Through Video Conference)

IN THE MATTER OF:

1.P. Chandrashekar Nair

Kalathukadavu P.O

Kottayam District.

2. K.M. Biju,

Kalathukadavu P.O

Kottayam District.

.. Appellants

Vs.

1.Tomy Thomas,

Kalathukadavu P.O

Kottayam District.

2. Thalappalam Grama Panchayath,

Rep. by its Secretary,

Plassana P.O,

Kottayam District -686579

3. SEIAA

(R3 is impleaded as per order dt.23.5.2016)

... Respondent(s)

Date of hearing: 29.9.2020

CORAM: HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER

HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For appellant : Nil

For Respondent(s) : Mr. Joby Jose Kondody for R1

Mrs. Vidyalakshmi Vipin for R3

1072

ANNEXURE R3 (6) 2

ORDER

The above appeal has been filed challenging the Annexure A-2 Environment Clearance granted by SEIAA, Kerala to the first respondent as per proceedings No.806/SEIAA/EC4/2237/2015 dated 4.3.2016. The ground on which the Environment Clearance was challenged was siting criteria alleging that the quarry is situated within 100 meters from the quarry and this aspect has not been properly considered by the Expert Appraisal Committee and also SEIAA.

2. This Tribunal had directed the SEIAA to consider the question as to whether there was any violation of EC condition. If there is any violation, direct the SEIAA to initiate appropriate steps to cancel the Environment Clearance.

3. As per order dated 7.1.2020, even in the absence of the applicants, this Tribunal had condoned the delay in filing the appeal and admitted the appeal on the ground that there was a direction by the Hon'ble High Court to consider the matter on merits if any appeal is filed within a particular time before this Tribunal. Thereafter, it was posted on several occasions and unfortunately, there was no representation for the appellants.

4. When the matter came up for hearing on 24.8.2020, Mr. Joby Jose Kondody, learned counsel appearing for the first respondent submitted that the matter has been considered by the Hon'ble High Court of Kerala and certain directions have been given. On the basis of the directions given, the SEIAA, Kerala is considering the matter afresh and wanted some time to produce the copy of the judgment. Accordingly, the matter was adjourned to today for that purpose.

5. When the matter came up for hearing today through Video Conference, there was no representation for the appellants even today. Mr. Joby Jose Kondody



represented the first respondent and Mrs. Vidyalakshmi represented the third respondent.

6. The learned counsel appearing for the first respondent has produced the order of the Hon'ble High Court reported in TOMY THOMAS V. STATE OF KERALA 2019 (3) KLT 987 (F.B) (W.P.(C) Nos.15505 & 31684 of 2016) and also the common order passed by the High Court of Kerala in ANIL KUMR & ANR VS. STATE OF KERALA & ORS (W.P.(C).No25529 OF 2019 dated 4.10.2019). In W.P.(C) No.15505 of 2016, the present appellants were arrayed as additional respondents 7 and 8. The Hon'ble High Court disposed of the three writ petitions mentioned above by common judgment dated 4.10.2019, the relevant operative portion of the judgment reads as follows:

" In that view of the matter, I am of the considered opinion that the writ petitions can be disposed of with appropriate directions. In W.P.(C) No.15505 of 2016 petitioner is at liberty to file suitable application seeking permits/licence from the Thalappalam Grama Panchayat and if any such application(s) are filed by the quarry operator, it shall be considered in accordance with law and independently and dispassionately without taking into account the findings rendered in Ext.P11 order passed by the Secretary dated 15.4.2016 and the decision of the Thalappalam Grama Panchayat dated 11.4.2016 and also taking into account the amended provisions of law and the principles of law laid down by the Full Bench of this court in the afore quoted reference order at the earliest and at any rate within two months from the date of receipt of a copy of this judgment.

W.P.(C).Nos.31684 of 2016 and 25529 of 2019 are disposed of with direction to the Kerala State Environment Impact Assessment Authority, Thiruvananthapuram i.e., the 2nd respondent to finalize the proceedings pertaining to Ext.P11 stop memo dated 22.9.2016 after providing opportunity of hearing to the petitioner petitioners in W.P.(C) No.25529 of 2019, 8th respondent in W.P.(C) No.31684/2016 i.e., K.G. Anilkumar, Convenor, Kizhakkemala Protection Council, Secretary of the Grama



Panchayat and all other stakeholders including Centre for Earth Science Studies the report drawn by the said organization in respect of the area in which the quarry is situated, the plans prepared under the Disaster Management Act, i.e, National Plan, State Plan and the District Plan and all other inputs available and produced by the petitioners and the interested persons and attain finality at the earliest and at any rate within three months from the date of receipt of a copy of this judgment.

The writ petitions are disposed of accordingly."

7. So it is clear from this that the entire matter has been now left to the consideration of SEIAA to be considered afresh, after considering the objections raised by the residents, including the appellants herein and also the issue regarding stop memo issued by SEIAA to the project proponent viz, first respondent herein.

8. Since the entire issue has been now left open to be decided by SEIAA afresh, in view of the directions given by the Hon'ble High Court of Kerala in the writ petitions mentioned above, there is nothing survives in this appeal. So the above facts are recorded and the appeal is disposed of accordingly with liberty for the appellants or the first respondent to challenge the order if any passed by SEIAA in this regard before the appropriate forum in accordance with law.

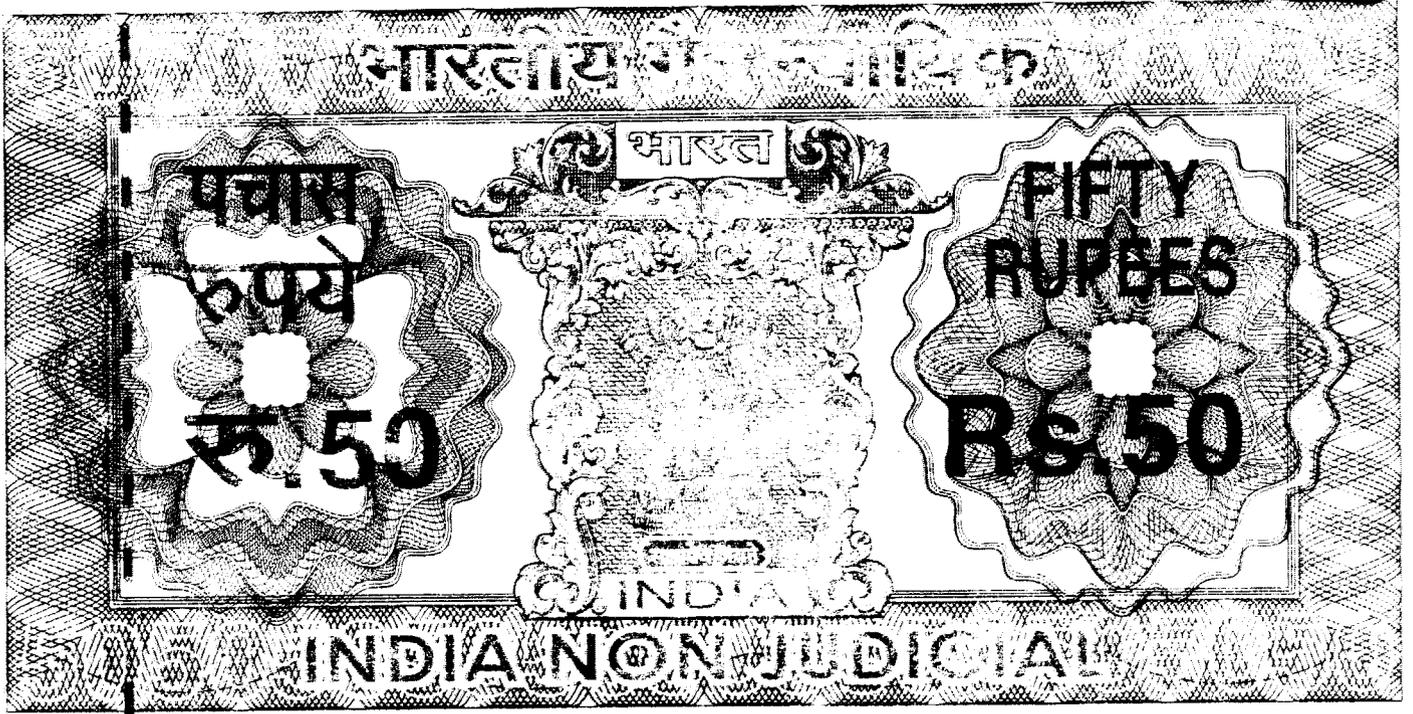
The parties are directed to bear their respective cost in this appeal.

.....J.M.
(Justice K. Ramakrishnan)

.....E.M.
(Shri. Saibal Dasgupta)

Apl.87/2017 -29.9.2020-kkr

ds



കേരളം കേരल KERALA

BZ 692444

From

Selin Joseph
 Aduppukallungal
 Vettiparambu, Kalathukadavu P.O.,
 Erattupetta, Kottayam (Dist)

To

The NGT
 Southern Zonal Bench,
 Chennai.

Respected Sir,

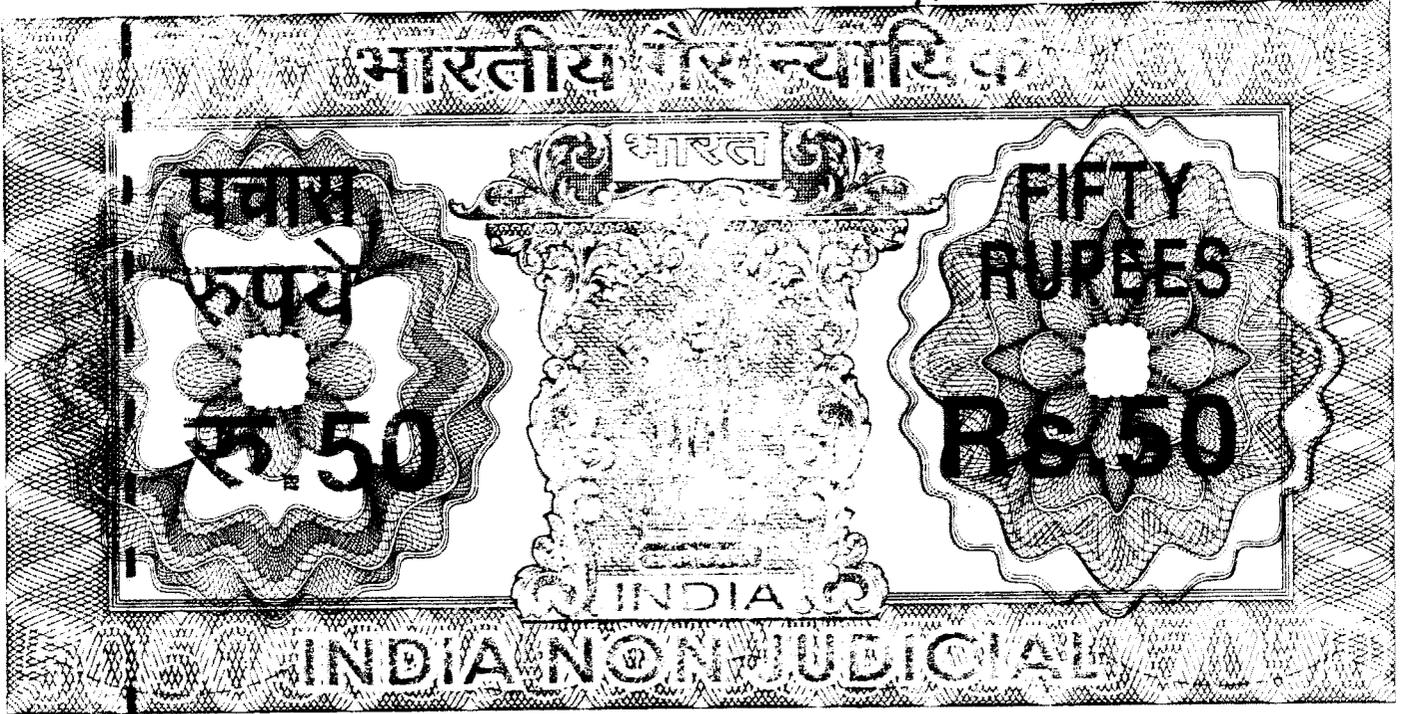
തലപ്പലം പഞ്ചായത്തിൽ 4-ാം വാർഡിൽ 203 -ാം നമ്പരായുള്ള വീട് എന്റെ ഉടമസ്ഥതയിൽ ഉള്ളതും ഏകദേശം


 Selin Joseph

No 22521/24. 3. 2021 250

ബെൻ്റിൽ രജിസ്ട്രേഷൻ, നിയമ ചുരുക്കങ്ങൾ കളക്ടറുടെ കാമറയിൽ
 ERATTUPETTA VENDOR T.E.GOPALAKRISHNAN NAIF



കേരളം കേരള KERALA

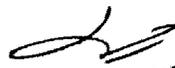
BZ 692445

60 വർഷത്തിലധികം പഴക്കമുള്ളതുമാണ്. കാലപ്പഴക്കത്താൽ ഈ കെട്ടിടത്തിന് വളരെയധികം കേടുപാടുകൾ സംഭവിച്ചിട്ടുണ്ട്. ഈ കെട്ടിടം തോമസ് പി.സി. എന്നയാൾക്ക് അദ്ദേഹത്തിന്റെ വീടുപണി നടക്കുന്നതിനാൽ താൽക്കാലികമായി

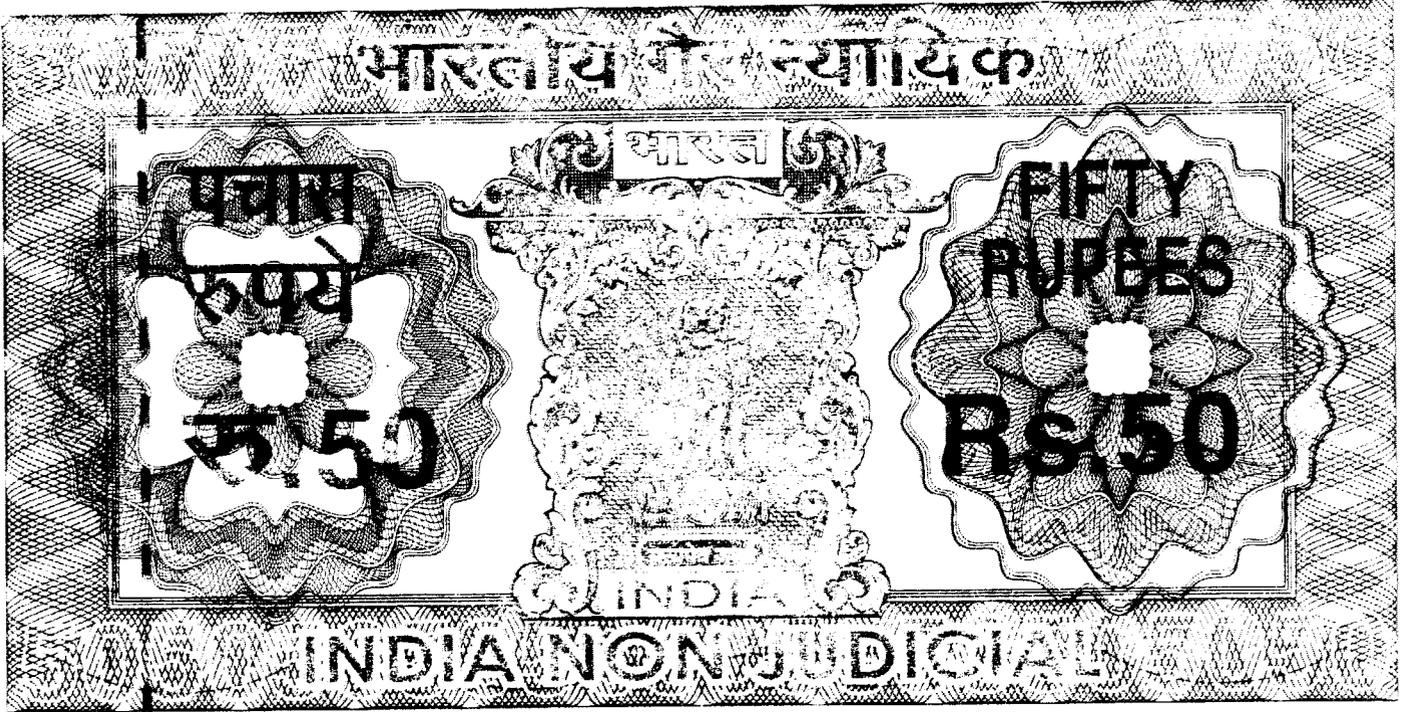
Selin Joseph 

No 22522/24-3-201280

മെലിൻ ഗോപാലകൃഷ്ണൻ
കൊച്ചി


ERAITUPETTA VENDOR
T.E.GOPALAKRISHNAN NAIF





കേരളം കേരള KERALA

BZ 692446

3

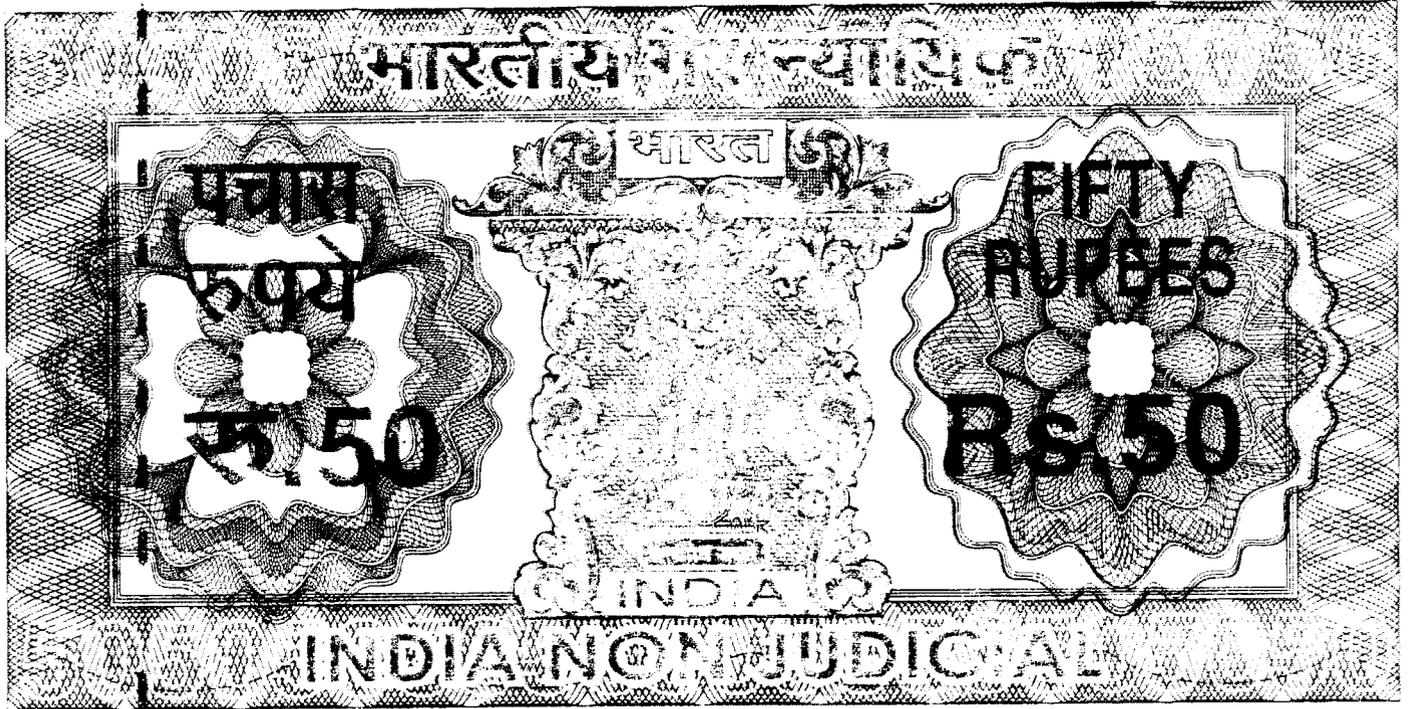
വാടകയ്ക്ക് കൊടുത്തിരിക്കുകയാണ്. ടി കെട്ടിത്തിൽ നിന്നും ഏകദേശം 500 മീറ്ററിൽ അധികം ദൂരത്തിൽ പ്രവർത്തിച്ചു കൊണ്ടിരുന്ന ടോമി തോമസ് എന്നയാളുടെ ഉടമസ്ഥതയിലുള്ള പാറമടമൂലം എന്റെ ടി കെട്ടിടത്തിന് യാതൊരു നാശ

Selin Joseph 

NO 22523/24.3.2021 EJS

സെലിൻ തോമസ് ആലുവ ജൂനിയർ എറട്ടുപേട്ട വേണ്ടർ
 തിരുവനന്തപുരം T.E.GOPALAKRISHNAN NAIR



കേരളം കേരള KERALA

BZ 692447

4

നഷ്ടവും ഉണ്ടായിട്ടില്ലാത്തതുകൊണ്ടും ഈ കെട്ടിടം എന്റെ ഉടമസ്ഥതയിൽ ആണെന്നതിനുള്ള തെളിവിലേക്ക് കൈമാറ്റം ചെയ്യാനുള്ളതും അടച്ച കോപ്പിയും ആധാരിന്റെ കോപ്പിയും സമർപ്പിക്കുന്നു.

എന്ന

Selin Joseph

Kalathukadavu

Date : 24.03.2021

NO 22524/24.3.2021ZS0

താഴെ പറയുന്നവർക്കു മുൻപേ
കൈമാറ്റം ചെയ്തിട്ടുണ്ട്.

ERA TUPETTA VENDOR
T.E.GOPALAKRISHNAN NAIR

Thalappalam Grama Panchayat
RECEIPT 120050101088 MTD;

Calicut Thamm
Adappakallanal

CASH RECEIPT

114 A 384021
07-10-2021

ANNEXURE R₃(i) 5

4/2021

(Property Tax)

1	Receivables for Property Tax on Residential Bu	2020-21/1HF	28.00
2	Government and Other Dues Payable - Library Ce	2020-21/1HF	2.00
3	Receivables for Property Tax on Residential Bu	2020-21/2HF	34.00
4	Government and Other Dues Payable - Library Ce	2020-21/2HF	2.00
5	Penalties and Fines - Penal Interest	2020-21/F	1.00

End.Off(0.00)
Total : 68.00

Sixty Eight Rupees Only

Remarks :

Authorised

Counter No. & Staff :



Secretary

Cheques are subject to realisation

KREWS (GLM, KANJIKODE) 2017



ആധാർ - സാധാരണക്കാരന്റെ അറുപതാം വയസ്സ്



6079 5917 0003



GOVERNMENT OF INDIA

സെല്ലിംഗ് നമ്പർ
SELIN

അർത്ഥം: സ്ത്രീ
Hubband: Joseph

ജനന തീയതി/Year of Birth: 1962
ലിംഗം / Female



UNIQUE IDENTIFICATION AUTHORITY OF INDIA

സെല്ലിംഗ് നമ്പർ: സെല്ലിംഗ് നമ്പർ
സെല്ലിംഗ് നമ്പർ: സെല്ലിംഗ് നമ്പർ
സെല്ലിംഗ് നമ്പർ: സെല്ലിംഗ് നമ്പർ
686579

Address:
ADUPPUKKUNGGALL,
VETTPARAMBU,
KILLATHUKKADAV,
Thalappalam,
Kalethukadavu, Kottayam,
Kerala, 686579

1800 180 1847

help@uidai.gov.in

www.uidai.gov.in

P.O. Box No.1947,
Bengaluru-560 001

at

True English Translation of Annexure R3(i)

From

Selin Joseph
Adippukallungal
Vettiparambu, Kalathukadavu P.O
Erattupetta, Kottayam (Dist)

To

The National Green Tribunal
Southern Zonal Bench,
Chennai.

Respected Sir,

The House No. 203 in Ward No. 4 of Thalappalam Panchayat which is owned by me is a 60 years old house. By passage of time, lot of damages has caused to the building. The said house has been rented to Thomas P.C temporarily on account of construction of his residential house. The operation of quarry of Mr. Tomy Thomas at a distance of 500 meters from my residential house had not caused any damages to my house. I am producing a copy of my Aadhaar Card and the Tax Receipt of Panachayat Acts for the building in order to prove my ownership of the building.

Truly,

Selin Joseph.

Kalathukadavu,
Date : 24.03.2021.



വിദ്യാലയ പ്രവർത്തനങ്ങൾക്ക് ആവശ്യമായ സൗകര്യങ്ങൾ
 ഉറപ്പുവരുത്തുന്നതിനായി വിവിധ സ്കൂളുകളിൽ
 പരിശോധനകൾ നടത്തിയതിനെക്കുറിച്ച് റിപ്പോർട്ട്
 സമർപ്പിച്ചിട്ടുണ്ട്.

4/10/16

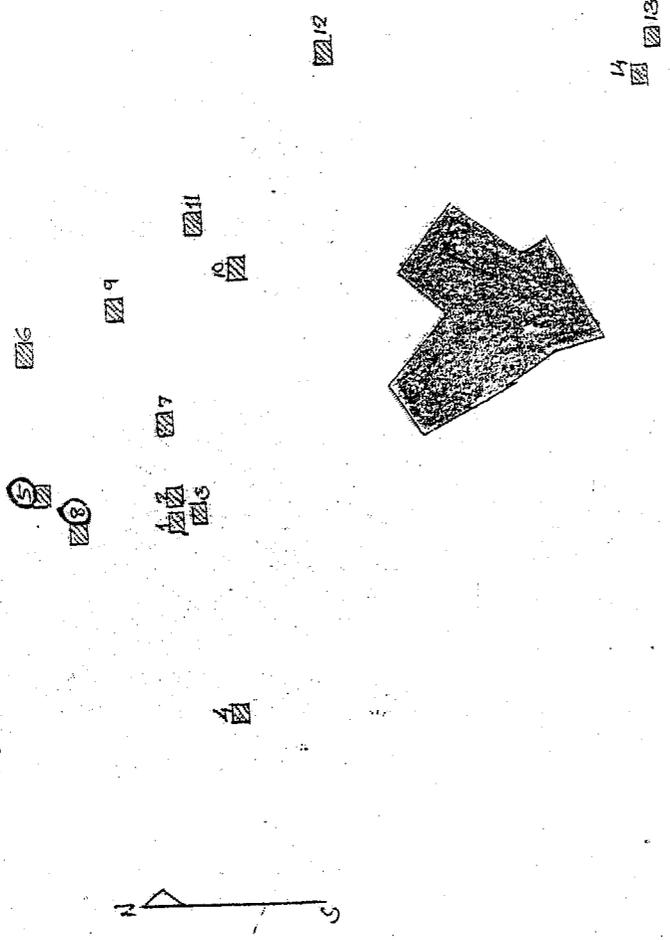
അസിസ്റ്റന്റ് കമ്മീഷണർ

STATE PUBLIC INFORMATION OFFICER
 & VILLAGE OFFICER, ERATTUPETTA
 ARUVITHURA P.O. 686 122

[Handwritten signature]

SITE PLAN

കെ: ഭാഗം
 നില: ഭവനം
 നില: ഭവനം



നവം കോമ്പൗണ്ട് ഗ്രീൻ
 - കോമ്പൗണ്ട് ഗ്രീൻ

കോമ്പൗണ്ട് ഗ്രീൻ
 - കോമ്പൗണ്ട് ഗ്രീൻ

119

കോമ്പൗണ്ട്: 50
 നവം കോമ്പൗണ്ട്: 2472, 2484, 2491, 2492, 2493, 2494, 4891-1

- കോമ്പൗണ്ട് നമ്പർ
- 1. നവം കോമ്പൗണ്ട് - 250 കി.മീ.
 - 2. കോമ്പൗണ്ട് നമ്പർ - 250 കി.മീ.
 - 3. കോമ്പൗണ്ട് നമ്പർ - 250 കി.മീ.
 - 4. കോമ്പൗണ്ട് നമ്പർ - 350 കി.മീ.
 - 5. കോമ്പൗണ്ട് നമ്പർ - 350 കി.മീ.
 - 6. കോമ്പൗണ്ട് നമ്പർ - 400 കി.മീ.
 - 7. കോമ്പൗണ്ട് നമ്പർ - 200 കി.മീ.
 - 8. കോമ്പൗണ്ട് നമ്പർ - 300 കി.മീ.
 - 9. കോമ്പൗണ്ട് നമ്പർ - 250 കി.മീ.
 - 10. കോമ്പൗണ്ട് നമ്പർ - 200 കി.മീ.
 - 11. കോമ്പൗണ്ട് നമ്പർ - 200 കി.മീ.
 - 12. കോമ്പൗണ്ട് നമ്പർ - 200 കി.മീ.
 - 13. കോമ്പൗണ്ട് നമ്പർ - 200 കി.മീ.
 - 14. കോമ്പൗണ്ട് നമ്പർ - 200 കി.മീ.
 - 15. കോമ്പൗണ്ട് നമ്പർ - 500 കി.മീ.

Handwritten signature or initials.

Handwritten text, possibly a date or reference number.

126

ANNEXURE R3(j) 4

True English Translation of Annexure R3(j)

Village Office, Erattupetta

No. 90/16

Dated 04.10.2016.

Village Officer,
Erattupetta.

Additional District Magistrate,
Kottayam.

Sir,

Sub:- Complaint against quarry-submitting report-reg.

Ref:- Your letter No. DCKTM-3176/2016/H4 dated 20.09.2016.

Your kind attention invited to the above reference enquiries were conducted against the functioning of quarry at Kalathukadavu within the territorial limits of Thalappalam Grama Panchayat based on the complaints filed by the near of residents. The distance between the houses of the complainants and the quarry cannot be ascertain practically. Hence based on the village block map, the distance between the survey number wherein the quarry situate and survey number of the complainants residence were ascertained and appropriate distance is calculated. A sketch showing the said distance is submitted for further action.

Sd/-

04.10.2016

Issued under RTI Act.



121

ANNEXURE R 2 (1) 5

District : Kottayam
Taluk : Meenachal
Village : Erattupetta

Site Plan

Block : 50
Survey No. 247/2, 248/3
248/4, 249/1, 249/2, 249/3,
248/4, 439/1-1.

Approximate	No.	Name of complainants	distance from the quarry
	1.	Sunil Vellapasakkal	250 meters
	2.	Hariharan Nair Paniyenkal	250 meters
	3.	Manoj Kalarikkal	250 meters
	4.	K.K. Gopi Kanjirakkatt	350 meters
	5.	P.N. Sivaraman Punnackal	350 Meters
	6.	Mathew T. Adhikaran	400 meters
	7.	Thomas Mathew Madakkal	200 meters
	8.	P. Chandrasekharan Nair Konttattukunnil	300 meters
	9.	Shaji Joseph Valiyaparambil	250 meters
	10.	Varkey Joseph Olikkal	200 meters
	11.	Aneesh Kaipanath	200 meters
	12.	Prabhakaran Nair Eruvallil	200 meters
	13.	Chellamma Sreedharan Nair Moozhikuzhiyil	200 meters
	14.	Narayanan Kottukappallil	200 meters
	15.	Thomas Devassia Poriyath	500 meters

Quarry

Residences of the complainants

The quarry is situated about 200 meters west of road leading to Plasanal from 250 meters from Vettiparambu Junction on Erattupetta Thodupuzha in Erattupetta Village.

