

Filed on: 05.09.2024

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI
MEMORANDUM OF APPEAL

(Under Section 18(1) read with Section 16 of the National Green
Tribunal Act, 2010)

APPEAL No. 43 of 2024

SHOUKKATH ALI

: APPELLANT

Versus

STATE ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY & ORS

: RESPONDENTS

REJOINDER AGAINST THE REPLY AFFIDAVIT FILED BY THE 5th RESPONDENT



HARISH VASUDEVAN (H-253) [K/779/2013]

RAJAN VISHNURAJ (R-1268) [K/653/2010]

Counsel for the appellant

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HARISH VASUDEVAN
Advocates
COUNSEL FOR THE APPELLANT

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RESPONDENT

I, Shoukkath Ali, aged 38 years, S/o Muhammed Ali. C, Charalil House, North Paloor, Pulamanthole P.O, Malappuram District, do hereby solemnly affirm and state as follows:

1. I am the appellant in the memorandum of appeal and as such I am conversant with the facts of the case. I am competent to swear this affidavit. This rejoinder is filed as a preliminary rejoinder against the reply affidavit filed by the 5th Respondent reserving right of this appellant to file a detailed rejoinder in future, if so warranted.
2. The Appellant vehemently denies all allegations and averments made by the 5th respondent in paragraphs 1-19 of their reply affidavit, as it is not true. The respondent's attempt to characterize the appeal as driven by



ulterior motives is an effort to divert attention from the real issues at stake. The core concern remains the legality of the approvals and the adherence to necessary environmental safeguards.

3. Appellant has approached this Hon'ble Court in earlier occasion also, against the EC granted to the 5th Respondent in the same village. The 5th Respondent has raised same and similar set of allegations while opposing Appeal No.75 of 2021 filed by the Appellant challenging an EC granted to the 5th Respondent, in the same village. All such contentions of the 5th Respondent were considered and rejected by the Hon'ble Tribunal and allowed the Appeal, setting aside the impugned EC therein. There is no challenge against the Judgment in Appeal No.75 of 2021(SZ) by the 5th Respondent till date, and therefore it has attained finality. Annexure A2 and A5 are other orders that attained finality, in between same parties. Appellant is a person aggrieved as per Sec.16 of the NGT Act for any EC issued in favor of the 5th Respondent in the said village. That fact is once settled in between the parties herein in earlier proceedings. On the principle of res-judicata, the 5th Respondent is barred from raising same set of factual contentions regarding the maintainability of this Appeal on the same ground that the appellant is not a person aggrieved.
4. It is pertinent to note that the 5th Respondent has not raised any such grounds against Annexure A2 order, on the maintainability of the said case. Whatever grounds ought to have been raised therein was not raised and now being raised. Therefore the 5th Respondent is barred by the principle of constructive res-judicata also, in raising such allegations on maintainability.



5. It is respectfully submitted that, the 5th respondent's claim that the petitioner resides 1.7 kilometers away from the quarry site is misleading and incorrect. Even otherwise, that is immaterial for adjudicating this Appeal. The 5th respondent's reference to Annexure R5 (B) to assert that the petitioner does not own or pay taxes for property in Pulamanthole Village is an attempt to mislead the Hon'ble Tribunal. This distortion of facts by the 5th respondent aims to undermine the appellant's legitimate grievances about the illegality in the impugned EC. The legal right of every citizen of India to challenge any EC granted anywhere in India as an appellant and an aggrieved person is well established in several judgments of the Hon'ble Tribunal including the one in Appeal No.6 of 2013. All the averments against the maintainability of this Appeal are unsustainable either on facts or on law, and all such contentions have to be rejected *in limine*.
6. It is pertinent to note that neither the 2nd Respondent nor the 5th Respondent have any specific argument that Annexure A3 notification is not applicable to them. It is more so, because Annexure A2 interim order is inter-parte. Annexure A6 application is for the same land in Annexure A5 order. That would clearly show that the 2nd Respondent has no jurisdiction to entertain an application of a violator, beyond the period prescribed in Annexure A3 Notification. That alone is a sufficient ground to allow this Appeal.
7. It is respectfully submitted that the heavy reliance placed on an outdated District Survey Reports (DSR) and preliminary field inspections does not guarantee a comprehensive environmental assessment as mandated in the EIA Notification. The 5th Respondent admitted one crucial fact, that he has not submitted any DSR prepared exclusively for



Granite Building Stone, as mandated in Annexure A11 and A12 notifications. Even the 2nd Respondent did not deny the fact that there is no DSR as mandated in Annexure A12 notification. The 5th Respondent has not specifically denied the said ground of this Appeal in his reply. This admission of fact alone is sufficient to set aside the impugned EC and allow this Appeal. The claim by the 5th respondent that the EC was granted after a thorough appraisal resembles the saying 'more loyal than the king'. It is not true and hence denied.

8. The reasons stated by the 5th Respondent in not preparing DSR by the DEIAA is at his own whims and fancies. He has no power or authority or logic to justify an illegal act of the State / SEIAA at his wildest imagination. The dissolution of DEIAA was a pan India event. Annexure A12 is also having pan India application. Only in the state of Kerala, ECs are being issued without preparing DSR as per Annexure A12. All DEIAAs were functional till 12.12.2018 and there was around 5 months to prepare DSR after Annexure A12. There is no exemption granted by any competent court in India from Annexure A12, for the 5th Respondent. Hence all attempts of the 5th Respondent against the non-compliance of Annexure A12 is absurd, untenable and illegal. All the averments in para 30 to 45 are false, misleading and hence denied.
9. It is pertinent to note that as per Gazette Notification No.S.O(3977) dated 14.08.2018, the scheme of EIA Notification was amended by the MoEF &CC and **DSR has been made an integral part of every application for EC**. A true copy of the Gazette Notification No. S.O(3977) dated 14.08.2018 is produced herewith and marked as **Annexure A13**. After Annexure A13, the SEIAA cannot even process an application without



having a separate DSR for laterite stone, prepared as per the P11 notification.

10. All the averments in para 20-29 of the reply affidavit are false, misleading and hence denied. As per the version of SEIAA, Annexure A5 is a temporary order. However, they have not passed any other 'final order' on that application. This argument is totally absurd, as there is no interim order or final order in an application under EIA Notification 2006. The scheme of the EIA Notification permits to pass only one order, either grant of EC or rejection of EC. Annexure A5 was a rejection order which was not challenged by the 5th Respondent.
11. It is pertinent to note that a new application was filed in March 2020 for the same area upon which Annexure A1 is issued. There is no dispute to any of the respondents on the fact that the homogenous mineral area covered by Annexure A5 order and Annexure A1 EC are one and the same, in Sy No.85/pt. There is no sub-division for any of the said land. It is clear from Annexure A5 that the 5th Respondent was enjoying mining permits and mining activity with fresh permits even after Deepak Kumar's Judgment of apex court on 27.02.2012 and also 18.05.2012, without obtaining EC. Judgment in **WPC 7781 of 2015** by the Hon'ble High Court made it clear that the permits issued after 18.05.2012 is illegal and mining is in violation of EIA Notification. On that basis, Annexure A2 order was passed. **The 2nd Respondent has no power or authority to override the specific time period prescribed in para 14 of Annexure A3 notification. Date of Annexure A6 application is beyond the window period prescribed by Annexure A3 notification.** On that reason alone, EC should have been rejected. If at all the 5th Respondent had filed application within the time stipulated in Annexure A3



notification, it must have been through the process mandated by the said notification, and not under EIA Notification. Issuance of ToR, Public hearing and other parameters were held mandatory. **No ToR is admittedly applied for or issued to this project.**

12. Para 37, 38, 40, 44 of Judgment in Appeal No.75 of 2021 by this Hon'ble Tribunal are squarely applicable to the Respondents herein. It is observed by this Hon'ble Tribunal that the illegal mining was going on in Survey No.85 part and it was illegal.
13. All the averments in para 46 is false and hence denied. illegal mining in same area is an admitted fact by the 5th Respondent through inter party Judgments / orders. It is evident from the Judgment dated 09.12.2016 of the Hon'ble High Court of Kerala in WPC No.7781 of 2015 that the 5th Respondent was running quarrying operations after 2013 till 2015 in Survey No.85 part, the same area in Annexure A1, without obtaining prior EC, in violation of EIA Notification. A true copy of the Judgment dated 09.12.2016 of the Hon'ble High Court of Kerala in WPC No.7781 of 2015 is produced herewith and marked as **Annexure A14**. Document marked as Exhibit R6(a) in the said Writ Petition was a mining permit dated 06.05.2015 renewed by the Geologist to the 5th Respondent in Sy No.85/ in Pulamanthole village. It is stated in the said order that the mining was going on from 26.05.2014 to 09.02.2015. A true copy of the order dated 06.05.2015 issued by the Geologist in favor of the 5th Respondent along with its English translation is produced herewith and marked as **Annexure A15**. This was marked as Exhibit R6(a) in Annexure A14 order.
14. The original quarrying permit was granted by the Geologist to the 5th Respondent on 26.05.2014 in Sy No.85/ of pulamanthole village. A true



photocopy of the Quarrying permit dated 26.05.2014 issued by the Geologist to the 5th Respondent is produced herewith and marked as **Annexure A16**. It is clear that the 5th Respondent was conducting mining after 2013 without obtaining prior EC and therefore invited Annexure A2 order.

15. In Annexure A6, Form-1M (page 70 in appeal) it is pertinent to note that the 5th Respondent has deliberately suppressed a material fact that the environment of the area is already damaged through illegal mining as declared by the Hon'ble Court in Annexure A14 order, and mined out through Annexure A15, A16 permits. False / misleading information was provided in Form-1M. Based on this false information, the name-sake appraisal was done. There is no remedial / mitigation plan as mandated in the

16. The respondent's reliance on interim orders and outdated procedures, and their denial of non-compliance with the EIA Notification, does not adequately address the factual or legal issues raised herein. The claim that no cluster situation exists and that the lease area is below the regulatory threshold is misleading and false. The proximity of the proposed quarry to the quarry unit which was subject matter of Appeal No.75 of 2021 (SZ) is less than 500 meters. The 2nd Respondent should have prompted a thorough cluster assessment to ensure compliance of statutory requirements. The deliberate attempt of the 5th Respondent is to continue misleading by submitting false data. On non-forming of cluster, EC should have been rejected.

17. Para 41 and 44 of the judgment of the Hon'ble NGT in Appeal No.75 of 2021 states as follows:



All the above aspects would go to show that not only the project proponent had suppressed certain vital facts while applying for Environmental Clearance, but also had suppressed that he was already mining in the very same survey numbers without an Environmental Clearance with the permit which was not valid after 2015.

The contention of the SEIAA – Kerala is completely unacceptable and it is their responsibility to examine whether the project involved attracts a violation category or not. It is also the bounden duty of the SEIAA – Kerala to examine whether the project proponent who has indulged in illegal activity can submit an application in a new subdivision as a new project for being considered for a grant of Environmental Clearance.

In the present case, the 5th Respondent was mining in the same survey number in which Annexure A1 is granted, with permits in the year 2015 without valid EC. SEIAA did not even discuss about violation or jurisdiction, despite knowing about all such facts as evident from Annexure A5 order. The 2nd Respondent was acting in collusion with the 5th Respondent to grant an EC in total violation of laws.

18. In light of the gross lack of jurisdiction, procedural deficiencies, inadequate environmental assessments, and lack of transparency, the petitioner respectfully requests that this Hon'ble Tribunal take necessary steps to set aside the Environmental Clearance granted to the 5th respondent. The appeal challenges fundamental regulatory and procedural aspects that merit thorough consideration. The petitioner seeks not only the rectification of these issues but also the awarding of costs to the petitioner as a necessary measure to address the considerable effort and resources expended in seeking justice.
19. All the averments in para 47 to 58 are absolutely false and hence denied. non-preparation of DSR as per Annexure AA11, 12 and A13 cannot be



disputed without challenging the same. As on the date of issuance of Annexure A1, these notifications were in force. Annexure A13 is not even produced by the 5th Respondent before any court of law. Annexure R5(L) does not take away any of the powers of this Hon'ble Tribunal to consider the validity of Annexure A1 on its merits including the absence of a proper DSR. The legal maxim in para 54 has no relevance or applicability in this case as there was no impossibility for the 5th Respondent to act based on Annexure A3 notification within the time prescribed. Since DSR was not prepared at the time of filing of Annexure A6, the 5th Respondent should have exercised his rights to get it prepared properly by seeking a mandamus. Non-exercise of a right and duty cannot be pleaded as a ground for violation of EIA Notification.

20. All the averments in para 59 to 71 are false and hence denied. Para 69 in the reply affidavit is blanket denial without any logic or reason. The violations done in Sy No.85, environmental damage done in the said area, landslide proneness as stated in Annexure A5 order, time expiry of the period prescribed in para 14 of Annexure A3 notification, non obtaining of a cluster certificate, deliberate suppression of material facts and submission of false data... none of these vital points were addressed by the SEAC. Recommendation was purely mechanical, without any power or authority and hence illegal. Attempt of the 5th Respondent is to conduct mining operations as violation of EIA Notification, as he has done the same till 2015.

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



Dated this the 3rd day of September, 2024


DEPONENT

Solemnly affirmed and signed before me by the deponent whom I know on this the 3rd day of September, 2024 in my office.


Harish Vasudevan
ADVOCATE

VERIFICATION

I, Shoukkath Ali, aged 38 years, S/o Muhammed Ali. C, Charalil House, North Paloor, Pulamanthole P.O, Malappuram District, do hereby verifies that the contents of the above paragraphs 1 to 12 are true to the best of my knowledge and I have not suppressed any material facts.


SIGNATURE OF THE APPELLANT

DATE: 03.09.2024

PLACE: Ernakulam.

21. का.आ. 1142(अ), तारीख 17 अप्रैल, 2015 ;
22. का.आ. 1141(अ), तारीख 29 अप्रैल, 2015 ;
23. का.आ. 1834(अ), तारीख 6 जुलाई, 2015 ;
24. का.आ. 2571(अ), तारीख 31 अगस्त, 2015,
25. का.आ. 2572(अ), तारीख 14 सितंबर, 2015,
26. का.आ. 141(अ) 15 जनवरी, 2016,
27. का.आ. 648(अ) तारीख 3 मार्च, 2016 ;
28. का.आ. 2269(अ) तारीख 1 जुलाई, 2016 ;
29. का.आ. 2944(अ), तारीख 14 सितम्बर, 2016;
30. का.आ. 3518(अ), तारीख 23 नवंबर, 2016 ;
31. का.आ. 3999(अ), तारीख 9 दिसंबर, 2016;
32. का.आ. 4241(अ), तारीख 30 दिसम्बर, 2016; और
33. का.आ. 3611(अ), तारीख 25 जुलाई, 2018 ।

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 14th August, 2018

S.O. 3977(E).— Whereas, by notification of the Government of India in the erstwhile Ministry of Environment and Forests vide number S.O.1533 (E), dated the 14th September, 2006 issued under sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government directed that on and from the date of its publication, the required construction of new projects or activities or the expansion or modernisation of existing projects or activities listed in the Schedule to the said notification entailing capacity addition with change in process or technology or product mix shall be undertaken in any part of India only after prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified therein;

And whereas, the said Ministry has received requests, for delegation of more powers to State Environment Impact Assessment Authority (SEIAA) and District Environment Impact Assessment Authority (DEIAA) with respect to grant of Environment Clearances;

And whereas clause (a) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 provides that, whenever the Central Government considers that prohibition or restrictions of any industry or carrying on any processes or operation in any area should be imposed, it shall give notice of its intention to do so;

And whereas, a draft notification for making amendments in the Environment Impact Assessment Notification, 2006 in exercise of the powers conferred under sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 was published, vide number S.O.3933 (E) dated the 18th December 2017, inviting objections and suggestions from all the persons likely to be affected thereby, within a period of sixty days from the date of publication of said notification in the Gazette of India;

And whereas, copies of the said notification were made available to the public on 18th December 2017;

And whereas, all objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government;

Now, therefore, in exercise of powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following further amendments in the Environment Impact Assessment Notification, 2006 namely:-

In the said Notification, in the SCHEDULE, for item 1(a), 1(c), and the Schematic Presentation of Requirements on Environmental Clearance of Minor Minerals including cluster situation in Appendix-XI and entries relating thereto, the following item and entries shall be substituted, namely:

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
1		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	(2)	(3)	(4)	(5)
1 (a)	(i) Mining of minerals (ii) Slurry pipelines (coal, lignite and other ores) passing through national parks / sanctuaries / coral reefs, ecologically sensitive areas.	> 100 ha. of mining lease area in respect of non-coal mine lease. > 150 ha of mining lease area in respect of coal mine lease Asbestos mining irrespective of mining area. All projects.	≤ 100 ha of mining lease area in respect of non-coal mine lease. ≤ 150 ha of mining lease area in respect of coal mine lease.	General Conditions shall apply except: (i) for project or activity of mining of minor minerals of Category 'B2' (up to 25 ha of mining lease area); (ii) for project or activity of mining of minor minerals of Category 'B1' in case of cluster of mining lease area; and (iii) River bed mining projects on account of inter-state boundary. Note: (1) Mineral prospecting is exempted; (2) The prescribed procedure for environmental clearance for mining of minor minerals including cluster situation is given in Appendix XI;
1(c)	(i) River Valley projects (ii) Irrigation projects	(i) ≥ 50 MW hydroelectric power generation; (ii) ≥ 50,000 ha. of culturable command area	(i) ≥ 25 MW and < 50 MW hydroelectric power generation; (ii) > 2000 ha. and < 50,000 ha. of culturable command area.	General Condition shall apply. Note:- (i) Category 'B' river valley projects falling in more than one state shall be appraised at the central Government Level. (ii) Change in irrigation technology having environmental benefits (eg. From flood irrigation to Drip irrigation etc.) by an existing project, leading to increase in Culturable Command Area but without increase in dam height and submergence, will not require amendment/ revision of EC.
			Irrigation system	Requirement of EC
			(a) Minor Irrigation system (≤ 2000 Ha)	Exempted
			(b) Medium irrigation system (> 2000 and < 10,000 ha.)	Required to prepare EMP and to be dealt at State Level (B ₂ category).

			(c) Major irrigation system (≥10,000 to < 50,000 ha.)	Required to prepare EIA/EMP and to be dealt at State Level (B ₁ category).	
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Schematic Presentation of Requirements on Environmental Clearance of Minor Minerals including cluster situation in Appendix-XI:

Area of Lease (Hectare)	Category of Project	Requirement of EIA / EMP/ DSR	Requirement of Public Hearing	Requirement of EC	Who can prepare EIA/ EMP	Who will apply for EC	Authority to appraise/ grant EC	Authority to monitor EC compliance
EC Proposal of Sand Mining and other Minor Mineral Mining on the basis of individual mine lease								
0 – 5ha	'B2'	Form –IM, PFR, DSR and Approved Mine Plan	No	Yes	Project Proponent	Project Proponent	DEAC/ DEIAA	DEIAA SEIAA SPCB CPCB MoEFCC Agency nominated by MoEFCC
> 5 ha and < 25 ha	'B2'	Form –I, PFR, DSR and Approved Mine Plan and EMP	No	Yes	Project Proponent	Project Proponent	SEAC / SEIAA	
≥ 25ha and ≤ 100ha	'B1'	Form –I, PFR, DSR and Approved Mine Plan and EIA and EMP	Yes	Yes	Project Proponent	Project Proponent	SEAC / SEIAA	
> 100 ha	'A'	Form –I, PFR, DSR and Approved Mine Plan and EIA and EMP	Yes	Yes	Project Proponent	Project Proponent	EAC/ MoEFCC	
EC Proposal of Sand Mining and other Minor Mineral Mining in cluster situation								
Cluster area of mine leases up to 5 ha	'B2'	Form –IM, PFR, DSR and Approved Mine Plan	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	DEAC/ DEIAA/	DEIAA SEIAA SPCB CPCB MoEFCC Agency nominated by MoEFCC
Cluster area of Mine leases > 5 ha and < 25 ha with no individual lease > 5 ha	'B2'	Form –I, PFR, DSR and Approved Mine Plan and one EMP for all leases in the Cluster	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	DEAC/ DEIAA/	
Cluster area of Mine leases > 5 ha and < 25 ha with any individual lease > 5 ha	'B2'	Form –I, PFR, DSR and Approved Mine Plan and one EMP for all leases in the Cluster	No	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	SEAC/ SEIAA	

Cluster of mine leases of area ≥ 25 hectares with individual lease size ≤ 100 ha	'B1'	Form -I, PFR, DSR and Approved Mine Plan and one EIA/EMP for all leases in the Cluster	Yes	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	SEAC/SEIAA	
Cluster of any size with any of the individual lease > 100 ha	'A'	Form -I, PFR, DSR and Approved Mine Plan and one EIA/EMP for all leases in the Cluster	Yes	Yes	State, State Agency, Group of Project Proponents, Project Proponent	Project Proponent	EAC/MoEFCC	

[F. No. 19-2/2013-IA.III (Pt.II)]

GYANESH BHARTI, Jt. Secy.

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

1. S.O. 1949 (E) dated the 13th November, 2006
2. S.O. 1737 (E) dated the 11th October, 2007;
3. S.O. 3067 (E) dated the 1st December, 2009;
4. S.O. 695 (E) dated the 4th April, 2011;
5. S.O. 156 (E) dated the 25th January, 2012;
6. S.O. 2896 (E) dated the 13th December, 2012;
7. S.O. 674 (E) dated the 13th March, 2013;
8. S.O. 2204 (E) dated the 19th July 2013;
9. S.O. 2555 (E) dated the 21st August, 2013;
10. S.O. 2559 (E) dated the 22nd August, 2013;
11. S.O. 2731 (E) dated the 9th September, 2013;
12. S.O. 562 (E) dated the 26th February, 2014;
13. S.O. 637 (E) dated the 28th February, 2014;
14. S.O. 1599 (E) dated the 25th June, 2014;
15. S.O. 2601 (E) dated the 7th October, 2014;
16. S.O. 2600 (E) dated the 9th October, 2014
17. S.O. 3252 (E) dated the 22nd December, 2014;
18. S.O. 382 (E) dated the 3rd February, 2015;
19. S.O. 811 (E) dated the 23rd March, 2015;
20. S.O. 996 (E) dated the 10th April, 2015;
21. S.O. 1142 (E) dated the 17th April, 2015;
22. S.O. 1141 (E) dated the 29th April, 2015;
23. S.O. 1834 (E) dated the 6th July, 2015;
24. S.O. 2571 (E) dated the 31st August, 2015;
25. S.O. 2572 (E) dated the 14th September, 2015;
26. S.O. 141 (E) dated the 15th January, 2016;
27. S.O. 648 (E) dated the 3rd March, 2016;
28. S.O. 2269(E) dated the 1st July, 2016;
29. S.O. 2944(E) dated the 14th September, 2016;

30. S.O. 3518 (E) dated 23rd November 2016;
31. S.O. 3999 (E) dated the 9th December, 2016;
32. S.O. 4241(E) dated the 30th December, 2016; and
33. S.O. 3611(E) dated the 25th July, 2018.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

FRIDAY, THE 9TH DAY OF DECEMBER 2016/18TH AGRAHAYANA, 1938

WP(C).No. 7781 of 2015 (W)

PETITIONER:

SHOUKKATH ALI, AGED 32 YEARS,
S/O. MOHAMMED ALI C., CHARALIL HOUSE, NORTH PALOOR,
PULAMANTHOLE P.O., MALAPPURAM DISTRICT - 679 323.

BY ADVS. SRI. P. G. SURESH
SRI. G. SUDHEER (THURAVOOR)
SRI. RAJAN VISHNURAJ
SRI. V. HARISH

RESPONDENTS:-

1. MINISTRY OF ENVIRONMENT AND FOREST
PARYAVARAN BHAVAN, CGO COMPLEX, LODHI ROAD,
NEW DELHI - 110 003, REPRESENTED BY ITS SECRETARY.
2. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF ENVIRONMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
3. THE GEOLOGIST,
DISTRICT OFFICE, MINI CIVIL STATION, MANJERI P.O.,
MALAPPURAM - 676 121.
4. THE DISTRICT COLLECTOR,
CIVIL STATION, MALAPPURAM DISTRICT - 676 505.
5. THE ENVIRONMENTAL ENGINEER,
KERALA STATE POLLUTION CONTROL BOARD, DISTRICT OFFICE,
MALAPPURAM - 676 505.
6. M. K. NAJEEB,
S/O. HASSAINAR, MANNEGAL KANNANTHODI HOUSE, PALOOR,
PULAMANTHOLE P.O., MALAPPURAM DISTRICT - 679 323.

R1 BY ADV. SRI. N. NAGARESH, ASSISTANT SOLICITOR GENERAL
R6 BY ADV. SRI. S. SREEKUMAR (SR.)
R6 BY ADV. SRI. P. MARTIN JOSE
R6 BY ADV. SRI. P. PRIJITH
R6 BY ADV. SRI. THOMAS P. KURUVILLA
R5 BY ADV. SRI. T. NAVEEN SC, KERALA STATE POLLUTION
CONTROL BOARD,
R2 -R 4 BY SR. GOVERNMENT PLEADER SRI. RENIL ANTO

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
09-12-2016, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



K. VINOD CHANDRAN, J.

W.P.(C) No. 7781 of 2015 (W)

Dated: 09th December, 2016

J U D G M E N T

Read order dated 07.07.2015:

“The 6th respondent seeks modification of the interim order, insofar as the 6th respondent has been interdicted from carrying on the quarrying operation on the basis of renewed permits issued, produced as Exhibits R6(a) and R6(aa).

2. The brief facts to be noticed are that, the 6th respondent had valid permits, which were extended till 09.02.2015, which are produced as Exhibits R6(a) and R6(aa). The writ petition was filed on the ground that there was no renewal of those permits. On 25.03.2015, there was an interim order granted in the above writ petition, restraining the 6th respondent from carrying on quarrying operations illegally. The 6th respondent was in appeal before the Division

Bench, in which by judgment dated 25.05.2015 it was directed that the 6th respondent would have liberty to approach the Geologist for renewal of the permit and then seek modification or vacation of the interim order dated 25.03.2015. In the meanwhile, 6th respondent moved an Interlocutory Application in the writ petition, which was allowed on 17.04.2015 directing the Geologist to consider the application for renewal.

3. The 6th respondent now asserts his claim to carry on the quarrying operation on the basis of Exhibits R6(a) and R6(aa). The 6th respondent also would take me through the proviso to Rule 12 of the Kerala Minor Mineral Concession Rules, 2015 [for brevity "KMMC Rules of 2015"], which specifically indicates that any person having a valid permit on 09.01.2015 shall be granted the permit without an Environmental Clearance Certificate. However, what assumes for consideration is the decision of the Division Bench of this Court in *All Kerala River*

Protection Council v. State of Kerala
[2015 (2) KLT 78].

4. The learned counsel for the 6th respondent would in fact rely on the pronouncement of the Division Bench, in paragraph 74, wherein it is stated that the Government Orders issued by the State had to be read in accordance with the decision in ***Deepak Kumar and others v. State of Haryana and others [(2012) 3 SCC 629]*** and the notification dated 14.09.2006 issued by the Central Government. In the context of the Rules of 2015 having come into force; also in accordance with the said Rules. On the basis of the authoritative pronouncement as to the licence being eligible for renewal on the basis of the Rules of 2015, the 6th respondent would contend that he is entitled to the renewal, which has already been granted, since he had a valid permit as on 09.01.2015, as per Exhibits R6(a) and R6(aa).

5. What is relevant for consideration is paragraph 67 and 68 of the judgment of the Division Bench, which is extracted

hereunder:

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

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

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

6. Hence, as on 24.06.2013, the Ministry of Environment and Forest had issued a notification, by which no activities of quarrying could be carried out in any part of the country without obtaining Environmental Clearance from the competent authority as per the notification, also to quarries having less than 5 Hectares. This Court has on the basis of the Division Bench judgment also held so in judgment dated 26.05.2015 in WP (C) No.14405 of 2015 relying on the following declaration of the Division Bench:

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

mineral is required. Notification dated 14.09.2006 contemplated obtaining environmental clearance only with regard to new projects/new activities.”

7. The Division Bench categorically found that in view of the specific orders issued by the National Green Tribunal, no quarrying permits could have been granted by the State based on the Government Notifications issued by the State without an Environmental Clearance Certificate. The 6th respondent does not have a case that, he has an Environmental Clearance Certificate. He places his entire case on Rule 12, which permits renewals of the permits, which were in existence as 09.01.2015. Since the said permits, which were relied on, being Exhibits R6(a) and R6(aa), are one without obtaining Environmental Clearance Certificate, going by the authoritative pronouncement of the Division Bench, the 6th respondent cannot be permitted to carry on the quarrying operations.

In the above circumstances, this Court is not inclined to grant any modification of the interim order dated 25.03.2015."

The above order was challenged before the Division Bench and the same was dismissed on 03.08.2016 in W.A. No.1514/2015 **Najeeb V. Shoukath Ali - 2015 (3) KLT 396**. The issue even now agitated is with respect to whether the 6th respondent could carry on quarrying operations without an Environmental Clearance based on the *status quo* order issued by the Hon'ble Supreme Court in a challenge from **All Kerala River Protection Council v. State of Kerala - 2015 (2) KLT 78**.

2. This Court has in **Joseph Mathew v. State of Kerala - 2016 (3) KLT 102** held that the interim order of the Hon'ble Supreme Court in S.L.P.(C) No. 30103/2005 granting *status quo* is of no consequence with respect to the issuance of quarrying permit

✓

without an EC. The SLP, in which the *status quo* order was issued, was against the judgment in **All Kerala River Protection Council**; which SLP has now been dismissed by the Hon'ble Supreme Court. The requirement for Environmental Clearance emanates from **Deepak Kumar v. State of Haryana - (2012) 4 SCC 629** and has been incorporated in the Environmental Impact Assessment Notification No. 2006 (S.O. 1533(E)) dated 14.09.2006 issued by the Ministry of Environment and Forests and Climate Change by S.O No. 141 (E) dated 15.01.2016. Hence, no quarrying can be carried out without an Environmental Clearance.

3. In the context of the above facts, subsequent to the order passed, there could be no quarry operations carried on by the 6th respondent without an Environmental Clearance, and hence the writ petition

has to be allowed. The learned Counsel for the petitioner, however, submits that despite the interim order the quarry was carried on. The further contention is based on the affidavit, now directed to be placed on record as per the directions of this Court, which states about the Geologist having noticed the functioning of the quarry and the closure made on such inspection. It is also submitted that the Geologist has been permitting such violations and then compounding the offences. It is also submitted that, despite the order of this Court, Ext.P5 permit dated 17.02.2016 has been issued by the Geologist, District Office of Mining & Geology, Mini Civil Station, Manjeri, Malappuram District. Separate proceedings are taken *suo motu* for contempt against the said officer.

4. The writ petition would stand allowed, directing the official respondents to ensure that no

quarrying operations are carried on by the 6th respondent without an Environmental Clearance and without proper permits issued under the the Mines and Mineral (Development and Regulation) Act, 1957 (for short 'MMDR Act') Kerala Minor Mineral Concession Rules 2015 (for short 'KMMC Rules') and the D&O license by the local authority, as also the 'Consent to Establish and Operate' issued by the Kerala State Pollution Control Board.

The matter shall be posted on 09.01.2017 to decide on the contempt proposed to be initiated and the files are retained only for the said purpose.

Sd/-
K.VINOD CHANDRAN,
JUDGE

WP(C) .No. 7781 of 2015 (W)

APPENDIX

PETITIONER(S) ' EXHIBITS

P1. A TRUE PHOTOCOPY OF THE COMPLAINT DATED 03.08.2013 PREFERRED BY THE PETITIONER AS WELL AS THE LOCALITIES BEFORE THE VILLAGE OFFICER, PULAMANTHOLE.

P2. A TRUE PHOTOCOPY OF THE REPORT OF THE TAHSILDAR DATED 01.08.2013.

P3. A TRUE PHOTOCOPY OF THE INTERIM ORDER DATED 16.12.2014 IN WPC NO.6361/2014 AND CONNECTED CASES BY THE HON'BLE HIGH COURT OF KERALA.

P4. A TRUE PHOTOCOPY OF THE REPRESENTATION PREFERRED BEFORE THE 3RD RESPONDENT.

P5: A TRUE PHOTOCOPY OF THE QUARRYING PERMIT DATED 17.02.2016 ISSUED BY THE 3RD RESPONDENT

P6: TRUE PHOTOCOPY OF THE REPORT OF THE VILLAGE OFFICER, PULAMANTHOLE DATED 23.02.2016

RESPONDENT(S) ' EXHIBITS

R6(A) TRUE COPY OF THE RENEWED PERMIT ISSUED BY THE 3RD RESPONDENT FOR CONDUCTING THE QUARRY IN SY. NO.1/1B

R6(AA) TRUE COPY OF THE RENEWED PERMIT FOR THE QUARRY SITUATED IN SY.NO.85

R6(B) TRUE COPY OF THE LICENSE ISSUED BY THE LOCAL PANCHAYAT

R6(BB) TRUE COPY OF THE LICENSE ISSUED BY THE LOCAL PANCHAYAT

R6(C) TRUE COPY OF THE EXPLOSIVE LICENSE DATED 30.04.2015

R6(D) TRUE COPY OF THE CERTIFICATE CUM AGREEMENT OF THE LICENSED BLAST MAN.

R6(E) TRUE COPY OF THE LICENSE ISSUED BY THE PANCHAYAT EXTENDING ITS VALIDITY UPTO 31.12.2015

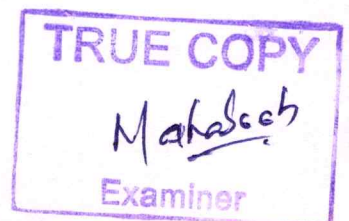
ANNEXURE R5(A) A TRUE COPY OF INTEGRATED CONSENT TO OPERATE RENEWAL DATED 29.06.2015

ANNEXURE R5(B) A TRUE COPY OF CONSENT VARIATION ORDER DATED 08.02.2016

//TRUE COPY//

P. A. TO JUDGE

JJJ



മൈനിംഗ് & ജിയോളജി വകുപ്പ് മലപ്പുറം ജില്ലാ ജിയോളജിസ്റ്റിന്റെ
നടപടി ക്രമങ്ങൾ

വിഷയം :- മൈനിംഗ് & മിനറൽസ് - മൈനർ മിനറൽസ് -
കരികല്ല് ഖനനാനുമതി കാലാവധി ദീർഘിപ്പിച്ചു
നൽകുന്നത് - സംബന്ധിച്ച്.

സൂചന:- 1) കേരള മൈനർ മിനറൽ കൺസഷൻ ചട്ടങ്ങൾ.

2) മൈനിംഗ് ആന്റ് ജിയോളജി ഡയറക്ടറുടെ സർക്കുലർ
നം.896/എം.3/2015, തീയതി; 28/04/2015.

3) ശ്രീ.എം.കെ.നജീബ്, പുലാമന്തോൾ എന്നയാൾക്ക് അനുവദിച്ച
80/2014-15 ജി.ആർ/ഡി.ഒ.എം/എം-151/2014, തീയതി.26/5/2014.

പ്രൊ. ഓർഡർ നം: 16/2015-16/ഡി.ഒ.എം/ എം-151/2014, മഞ്ചേരി, തീയതി : 06.05.2015

ഉത്തരവ്

മലപ്പുറം ജില്ലയിൽ ചെറുകുന്ന് താലൂക്കിൽ പൂലാമന്തോൾ വില്ലേജ്
സർവ്വേ നമ്പർ: 85/ ൽ പെട്ട 24 ഹെക്ടർ സ്ഥലത്തേക്ക് 26/05/2014 തീയതിയിൽ
കരികല്ല് ഖനനത്തിന് ഖനനാനുമതി നൽകിയതാണ്. എന്നാൽ ഖനനാനുമതിക്ക്
09/02/2015 വരെ കാലാവധിയുണ്ടായിരുന്നു. സൂചന (2) ലെ സർക്കുലർ പ്രകാരം
ഖനനാനുമതിയുടെ കാലാവധി ഖനനാനുമതി നൽകിയ തീയതി മുതൽ ഒരു
വർഷമാക്കി നീളപ്പെടുത്തുവാൻ മൈനിംഗ് ആന്റ് ജിയോളജി ഡയറക്ടർ
നിർദ്ദേശിച്ചിട്ടുണ്ട്. ഈ സാഹചര്യത്തിൽ സൂചന (3) പ്രകാരം ശ്രീ.എം.കെ.നജീബ്,
എന്നയാൾക്ക് അനുവദിച്ച ഖനനാനുമതിയുടെ കാലാവധി 25/05/2015 തീയതി വരെ
ദീർഘിപ്പിച്ച് ഉത്തരവ് പുറപ്പെടുവിക്കുന്നു.

[Handwritten Signature]
6.5.15
ജഗദീശൻ.കെ.ആർ
ജിയോളജിസ്റ്റ്

പകർപ്പ്;
ശ്രീ.എം.കെ.നജീബ്,
മണ്ണെടുപ്പ് കണ്ണംതൊടി ഹൗസ്,
പുലാമന്തോൾ.പി.ഒ., മലപ്പുറം ജില്ല.

മലപ്പുറം ജില്ലാ ജിയോളജിസ്റ്റ്
മൈനിംഗ് & ജിയോളജി വകുപ്പ്
മലപ്പുറം ജില്ലാ മന്ത്രിയുടെ
മുദ്രാലയം, മലപ്പുറം



The proceedings of the Geologist, Malappuram

Sub; renewal of the Petmission

Ref: Kerala Minor Mineral Rules

2, Circular of the Director Mining and Geology No. 896/M3/2015. Dated 28/04/2015.

3. The permit granted to Mr. Najeeb 136/2014-15/GR/DOM/M-2140/2015, dated 01/10/2014.

Order No. 17/2015-16/DMO/M-2140/2014, DATED 06/05/2015

ORDER

The quarrying permit had granted to Mr. Najeeb, Mammangel on ^{26/05/2015} in the landed property ^{having the extent of 24 cents} comprising in Sy. No. 35 of the Pulamanthol Village, Printhalmanna Taluk, Malappuram District and the permit granted only up to 09/02/2015. The Director, Mining and Geology directed to extent the permit as one year from the date, the permit was granted as per the reference 2. In this circumstance, the permits granted to Mr. Najeeb, Pulamanthol has been extended till 30/09/2015 as per reference 3.

Copy to: m. K. Najeeb, Mammangel
Kannanthodi House, Pulamanthol P.O.,
Malappuram.

Jagadheesan K.R

Geologist

FORM - U

GOVERNMENT OF KERALA
DEPARTMENT OF MINING AND GEOLOGY, MALAPPURAM

QUARRYING PERMIT FOR EXTRACTION OF GRANITE BUILDING STONE
GRANTED UNDER SUB-RULE (1) AND (1 A) OF RULE 4 OF THE
KERALA MINOR MINERAL CONCESSION RULES, 1967.

(See clause (IV A.) of rule 3, sub-rules (1) and (1A) of rule 4)

No: 80/2014-15/GR/DOM/M- 151/2014 Dated: 26.05.2014

Sri/Smt./M/s. M.K.Najeeb S/o Hassainar,

Mannengal Kannamthodi House, P.O.Pulamanthole is hereby permitted to

extract and remove Granite Building Stone (Name of mineral) from an area of 10 Hect/Are in

Sy No. 85/ of Pulamanthole village of Perinthalmanna Taluk of Malappuram

District, Kerala State under Sub rule (1) and (1A) of rule 4 of the Kerala Minor Mineral Concession

Rules, 1967 subject to the conditions mentioned below:

A. Quantity of extraction of mineral permitted

CRP System MT/CBM

(Not applicable in the case of CRP System)

B. Number of passes (Form-P) to be issued

600

C. Name and address of the owner of the land

Sri.M.K.Hassainar, Pulamanthole

under mineral concession/particulars of consent

/NOC received from the occupier of the land

(if applicable)

C. Date of expiry of permit

09.01.2015

Validity extended
09-2-15 vide no
1523/MS/14/150

CONDITIONS

1. Quarrying shall be strictly confined to the area allotted for the purpose.
2. The permit shall be in force for the period from 26.05.2014 to 09.01.2015.
3. The permit holder shall not carry on or allow to be carried on any quarrying operations at or to any points within a distance of 75 meters from any railway line except with the previous written permission of the Railway Administration concerned or any bridge on National Highway or 50 meters from any reservoir, tanks, canals, rivers, bridges, other public works, any residential buildings, the boundary walls of places of worship, burial grounds, burning ghats except with the previous permission of the authorities concerned or State Government or competent authority or any other officer authorized by the State Government in this behalf.
4. The permit holder shall not win and dispose of any type of mineral other than the mineral specified in this permit.
5. The permit holder shall report to the State Government or the undersigned the discovery of any mineral not specified in this permit within a period of seven days from the date of such discovery and shall not undertake any quarrying operations in respect of such mineral unless such mineral is included in the permit.

6. i) The permit holder shall erect a notice board to the knowledge of the public near to the entrance of the quarry to the effect that it shall contain the name and address of the permit holder, the mineral to be extracted, permit number and date, date of expiry of permit, quantity of extraction permitted (if applicable), area of extraction permitted, explosives used (if any), etc..
- ii) The permit holder shall erect a sign board (written in both Malayalam and English languages) indicating the mineral to be quarried, along the side of the road leading to the quarry at a distance of 100 metres away from the quarry.
7. The permit holder shall allow any officer authorized by the Central or the State Government in this behalf to enter upon any building, place of excavation or land comprised in this permit for the purpose of inspection of the same.
8. The permit holder shall carry on the operations hereby permitted in a fair, orderly, skillful and workman-like manner and shall not cause any damage to life or property in nearby areas and also not cause any serious environmental hazard.
9. i) The permit holder shall at all times during the term of this permit keep or cause to be kept correct and intelligible records of accounts which shall contain accurate entries showing from time to time the quantity of mineral extracted and if sold, to whom sold, place, number of pass (Form-P) etc. and it shall be open for inspection by the competent authority/ authorized officer in this regard, during all reasonable time.
- ii) The permit holder shall submit a return of production and sale of minor mineral effected by him in Form-F of the Kerala Minor Mineral Concession Rules, 1967 to the undersigned.
10. The permit holder shall give on demand any information pertaining to the quarrying that may be called for by the undersigned or the officer duly authorized by him in that behalf and comply with the provisions contained in the Kerala Minor Mineral Concession Rules, 1967 and the amendments made to it from time to time.
11. (i) The permit holder shall not be eligible for refund of any amount paid by way of application fee, rent, royalty or tax as the case may be,
- (ii) In cases where the land under mineral concession is Government land, the permit holder shall pay any tax, if applicable to Government, in addition to royalty and surface rent.
12. This permit is subject to all rules and regulations which may from time to time to be issued relating to the working of the quarries and other matters affecting the safety, health and convenience of the permit holders, employees or of the public whether under the mines Act, 1952 (Central Act 35 of 1952) or otherwise.
13. The permit holder shall without delay send to the District Collector, Deputy Director General, Directorate General of Mines Safety, Bengaluru and the undersigned a report of any accident causing death or serious bodily injury or serious damage to property which may occur during the course of the quarrying operation.
14. The permit holder shall make and pay such reasonable satisfaction and compensation as may be assessed by lawful authority in accordance with the law in force on the subject for all damage, injury or disturbance which may be done by him in exercise of the powers granted by this permit and shall indemnify and be kept indemnified fully and completely the State Government against all claims which may be made by any person or persons in respect of any such damage, injury or disturbance and all costs and expenses in connection therewith.
15. i) In the case of granite and laterite building stone quarries where a pit has been formed as a result of any mining operation, the permit holder shall provide retention wall/barricade/fencing/compound wall surrounding the quarrying area in order to prevent accidents by falling of human beings, animals or vehicles or any other things into the quarry.
- ii) The permit holder shall sufficiently fence and secure all pits that may be seen or made in the permitted area, whether abandoned or not.
- iii) The permit holder shall also provide all effective preventive measures for the safety of labourers as well as the public in general.

iv) In the case of granite and laterite building stone quarries, the permit holder shall give a notice in writing in Form 'E' of the Kerala Minor Mineral Concession Rules, 1967 to the Deputy Director General, Directorate General of Mines Safety, Southern Zone, Bengaluru-560 029; The Regional Controller of Mines, Yeshwantpur, Bengaluru-560 022 and the District Magistrate of the District as soon as:-

- (a) The depth of any open cast excavation measured from its highest to the lowest point reaches 6 meters or
- (b) The number of persons employed on any day is more than 50; or
- (c) Any explosives are used.

16. The permit holder shall obtain seal and signature of the competent authority or authorized officer concerned in the original of the P-Forms under the Kerala Minor Mineral Concession Rules, 1967 and shall prepare these Forms in duplicate as stipulated under these rules and shall issue the original while he sells or transports or cause to transport each consignment of minor mineral from the place of extraction and the duplicate shall be retained.
17. The permit holder shall not win and dispose of any excess quantity of mineral than permitted.
18. In order to extract minerals on the strength of this permit, the permit holder shall obtain necessary licences, if any, from other statutory authorities concerned.
19. If the holder of this permit fails to act upon the above said conditions or any relevant provisions of the Kerala Minor Mineral Concession Rules, 1967, or any provisions of any Act and Rules which is applicable to the permit holder, the permit is liable to be cancelled and appropriate action shall be taken as provided for in the such Act or Rules.

Details of fee remitted:

Item	Chalan No & Date	Amount in Rs.	Name of Treasury
Application fee	21- 17/1/2014	200/-	S.T.Manjeri
Royalty	41 - 26/5/2014	25000/-	- do
Surface Rent	- do-	10/-	Nil
Addl.Royalty remitted, if any	NIL	Nil	Nil



(Office Seal)

26.05.14
SENIOR GEOLOGIST

To
Sri. M.K.Najeeb.

Copy to

- 1) The District Collector, Malappuram. (with C/L)
- 2) Sri.M.K.Hassainar.

Revised up to 25/05/15 as per
Circular No. 896/m3/15 of DMG,
16.5.15