







pertaining to the person who submitted the application seeking the consent/permission.

4. Therefore, the very first submission of the appellant is that the said period of 30 days prescribed under Section 16 applies to the applicant, who sought the permission, licence etc., from the competent authority and the said provision has no application, as far as the appeal is preferred by a third party, who was not a party before the permit issuing/licensing authority, but aggrieved by the issuance of the order in favour of the applicant.

5. The proviso provided to Section 16 of Act 19/2010 reads as follows:-

*"Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed under this section **within a further period not exceeding sixty days**"*

Therefore, the time limit to prefer an appeal against the order impugned, is 90 days.

6. The orders of the 3<sup>rd</sup> respondent are communicated by uploading the orders in its website. The Annexure-A3 EC was dated 31.10.2016, but it was published in the website of the 3<sup>rd</sup> respondent only on 15.11.2016, that is on the 15<sup>th</sup> day of issuing Annexure-A3 order.

7. Since the communication of orders of the 3<sup>rd</sup> respondent are through website, the date of Annexure-A3 can be treated only on the date of its publication in the website on 15.11.2016, since it was on that day, the order of the 3<sup>rd</sup> respondent was communicated.

8. The above appeal was preferred on 27.1.2017, that is on the 43<sup>rd</sup> day of communicating Annexure-A3 order on 15.11.2016.

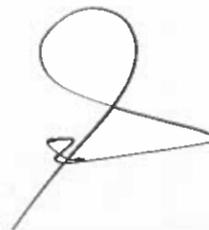
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9. However, the Registry of this Hon'ble Tribunal noticed certain defects in the above appeal and hence the appeal was returned, for curing the defects.

10. On curing all the defects noticed by the Registry, the appeal was re-presented on 15.2.2017. Therefore, it is reliably clear that the above appeal was filed within the condonable delay, permitted under the proviso attached to Section 16 of the Act, that is within 90 days from the date of publishing Annexure-A3 order in the website of the 3<sup>rd</sup> respondent on 15.11.2016.

11. This Hon'ble Tribunal condoned the delay in filing the appeal as per the order dated 16.2.2017 in M.A. No.31/2017, and the said order was become final. If the respondents were aggrieved by the said order dated 16.2.2017 in M.A.31/2017 in the above appeal, the said order would have been challenged before the Hon'ble Supreme Court of India. But, such an eventually was not taken place so far.

12. As stated above, the appellant was not a party to Annexure-A3 order. However, it was without following the statutory/mandatory provisions of Annexure-A1 notification that Annexure-A3 order was issued by the 3<sup>rd</sup> respondent. When an illegal order was issued by the 3<sup>rd</sup> respondent, either in favour of the 4<sup>th</sup> respondent or in favour of anybody else or an order was issued by the 3<sup>rd</sup> respondent, ignoring the provisions of Annexure-A1, the said order can be challenged only before this Hon'ble Tribunal, and if the said appeal is rejected, on the alleged reason of not having appealed within 30 days or within the extended condonable period of limitation, that is within further 60 days (total 90 days), it would become the privilege of every entrepreneur, who procured/purchased the order, colluding with the 3<sup>rd</sup> respondent, discarding the relevant provisions



of the statute, get an absolute licence/privilege/authority, to make use of the illegal order issued by the 3<sup>rd</sup> respondent, by ignoring/neglecting the provisions of law, to run the quarry.

13. As stated above, the provisions of Section 16, to file the appeal within 30 days from the date of communication of the order "to him" applies to the entrepreneur, to challenge the order of the regulatory authority, if the said order issued against him, by rejecting the application submitted and the said provision has no application, as far as when the fraud was committed by the 3<sup>rd</sup> respondent, the regulatory authority, in collusion with the 4<sup>th</sup> respondent, the licensee/entrepreneur.

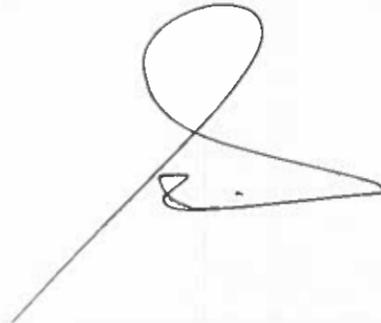
14. A mere noticing of internal page 2 of Annexure-A3, against the heading "Vegetation", it was stated as follows:-

<i>Vegetation</i>	<i>Part of the proposed area is an existing quarry and this area is devoid of any vegetation. The remaining land is sparsely vegetated having topsoil with an average thickness of 0.5m.</i>
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15. Similarly, under the head "Loss of native species and genetic diversity" at internal page 4 of Annexure-A3, it was stated as follows:-

<i>Loss of native species and genetic diversity</i>	<i>There will not be any loss of native species of genetic diversity as the <b>quarry already exists and continuation of the same will not affect or loss of native species in general.</b></i>
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16. Similarly, at internal page 5 of Annexure-A3, the reasoning behind the decision of the 3<sup>rd</sup> respondent was stated as follows:-

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"5. As per the decision of the Environment Impact Assessment Authority, held on 29/03/2016, Chairman and Member inspected the building stone quarry project in Sy.No.36/3(pt), 37/1(Pt), 37/2(Pt) 37/3(pt) at Morayoor village, Kondotty Taluk, Malappuram District, Kerala, owned by Sri. E.A. Abdul Karim, to report to the Authority the factual situation and also to ascertain whether it is a working quarry or new quarry since SEAC did not conduct site inspection. Accordingly site visit was conducted by SEIAA team on 30/5/2016.

**"This is a private land owned by Malabar aggregate Private Limited and the proposal is for the new quarry and mineral specific. It was a working quarry on permit for one year, but not working since one year. The topography of the lease area is hilly. The highest elevation of the lease area is 130 m MSL and lowest is 55 m MSL. Extent of area is 2.3732 Hectare. Ultimate depth of mining (in MSL) is 40 m above MSL. Distance from nearby quarry is beyond 500 meters"**

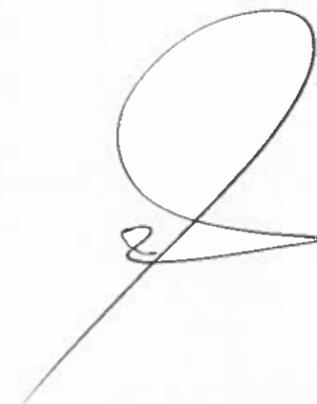
17. It is also necessary to notice internal page 6 of Annexure-A3 where the 2<sup>nd</sup> and 8<sup>th</sup> conditions for the issuance of EC, read as follows:-

**"2. Existing deep pits seen as a result of unscientific mining should be filled with overburden and displaced top soil.**

**8. The remaining deep pit must be maintained as RWH structure"**

Therefore, undoubtedly, the **Annexure-A3 EC was issued for a functioning quarry and not for commencing the functioning of a new quarry.**

18. In the above appeal, the 1<sup>st</sup> respondent filed reply affidavit dated 23.6.2017. Paragraphs 7, 8 and 9 of the said reply affidavit read as follows:-

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- "7. That it is further submitted that all projects or activities included as Category 'A' in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment, Forest and Climate Change (MoEFCC) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification.
8. That it is further submitted that all projects or activities included as Category 'B' in the Schedule, including expansion and modernization of existing projects or activities as specified in sub paragraph (ii) of paragraph 2, or change in product mix as specified in sub paragraph (iii) of paragraph 2, but excluding those which fulfill the General Conditions (GC) stipulated in the Schedule, will require prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA). The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification. In the absence of a duly constituted SEIAA or SEAC, a Category 'B' project shall be treated as a Category 'A' project.
9. That it is further submitted that 'B2' Category projects pertaining to mining of minor mineral of lease area less than or equal to five hectare shall require prior environmental clearance from DEIAA. The DEIAA shall base its decision on the recommendations of DEAC, as constituted for this notification"

19. The regulatory authority namely the 3<sup>rd</sup> respondent filed the reply affidavit dated 9.8.2017 in the above appeal, as in the manner how a private litigant, who purchased Annexure-A3, would have contested.

20. In paragraph 3 of the reply affidavit of the 3<sup>rd</sup> respondent, it was

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conceded that Annexure-A3 order was **uploaded in the website of the 3<sup>rd</sup> respondent on 15.11.2016**. It is necessary to notice paragraph 5 of the reply affidavit filed by the 3<sup>rd</sup> respondent, which is extracted below.

*"It is humbly submitted that the 4<sup>th</sup> respondent project is an existing project. The projects of 69 units mentioned in Annexure-A4 are also existing projects. For such projects or activities prior Environmental Clearance is not necessary. Such cases the prior Environmental Clearance cannot be given. However, when they change their activities prior Environmental Clearance is required. Therefore when projects and activities are changed, they applied for Environmental Clearance as per Annexure-A1. In the said case the 3<sup>rd</sup> respondent can issue prior Environmental Clearance only with respect to the new projects or activities initiated by the applicants subsequent to the notification. The averment that prior Environmental Clearance is necessary in respect of the existing projects and activities is therefore absolutely baseless and impossible to enforce. The prior Environmental Clearance for new projects and activities including the changes effected in the old projects is required"*

A mere reading of the above paragraph would establish the dual stand of the 3<sup>rd</sup> respondent. According to the 3<sup>rd</sup> respondent, the quarry of the 3<sup>rd</sup> respondent was an existing quarry, but the date of its existence, as to whether prior to the issuance of OM No.L-11011/47/2011-1A-11(M) dated 18.5.2012, which was issued in pursuance to the judgment of the Hon'ble Supreme Court of India in Deepak Kumar's case dated 27.2.2012 or not, was not mentioned. However, it is the admitted case of the 3<sup>rd</sup> respondent that the quarry of the 3<sup>rd</sup> respondent was in existence. **When an application for EC is submitted for an existing quarry, it can be either for modernization or for expansion. For both modernization of the existing quarry or its expansion, requires preparation of Environment Impact Assessment and Public Consultation, as**



contemplated under Clause 7 (ii) of Annexure-A1, which is extracted below:-

**"7(ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:**

**All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product -mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance"**

21. Since it was duly admitted by the 4<sup>th</sup> respondent, the applicant for EC as well as the 3<sup>rd</sup> respondent that the property proposed for issuance of EC was an existing quarry, I can never be termed as a new quarry whereas the EC applied was for the expansion of the existing quarry or modernization of the existing quarry. Therefore, the exemption provided from Public Consultation for new projects under B2 category as per Clause 7.III.Stage (3), from Public Consultation applies for new projects and not for the expansion of the existing project or modernization of the existing project.

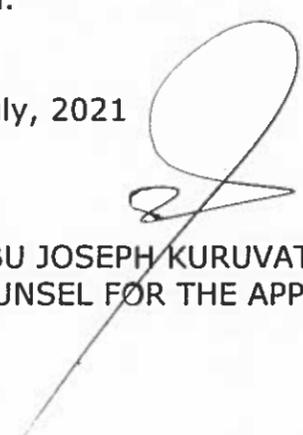
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22. Hence, the Annexure-A3 EC issued by the 3<sup>rd</sup> respondent, ignoring and neglecting Public Consultation and EIA as contemplated under Section 7 (ii) of Annexure-A1, is void ab-initio and hence unsustainable.

23. As stated above, the regulatory authority to issue EC is the 3<sup>rd</sup> respondent and in the reply affidavit filed by the 3<sup>rd</sup> respondent, it was categorically admitted that the quarry was an existing project and the said fact was duly admitted even by the applicant, in the contents of the application, extracted above. **Therefore, the exemption from public consultation as contemplated under Clause 7.III.Stage (3) (e) of Annexure-A1 notification, has the application only for new projects and not for the existing projects, either for expansion or modernization.**

24. Since Annexure-A3 was void ab-initio, it is reliably clear that the 4<sup>th</sup> respondent was conducting quarrying operations illegally, without having obtained the valid EC. When the quarrying operations are done without obtaining the valid EC, the proprietor/entrepreneur of the quarry is liable to pay penalty/compensation, as ordered by the Hon'ble Supreme Court of India in Common Cause v. Union of India & others (2017 (4) KHC SN 8 (Page No.37) (SC), which is appended herewith.

Dated this the 16<sup>th</sup> day of July, 2021



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