

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE N. NAGARESH

THURSDAY, THE 16<sup>TH</sup> DAY OF SEPTEMBER 2021/25<sup>TH</sup> BHADRA, 1943

WP(C) NO. 25602 OF 2020

PETITIONER:

RAJAN K,  
AGED 45 YEARS,  
S/O KANNAN,  
RESIDING AT KANDATHIL HOUSE,  
PARAVOOR, PANAPUZHA P O,  
KANNUR-670306.

BY ADVS.

SRI.ALEX.M.SCARIA  
SRI.A.J.RIYAS  
SMT.SARITHA THOMAS  
KUM.PAVAN ROSE JOHNSON  
SMT.APARNA ANIL

RESPONDENTS:

- 1 THE ADDITIONAL DISTRICT MAGISTRATE (ADM)  
KASARAGOD, VIDYANAGAR,  
COURT COMPLEX,  
STADIUM ROAD, KASARAGOD,  
KERALA-671121.
- 2 THE DISTRICT POLICE CHIEF,  
PARAKATTA, VIDYANAGAR-ULIYATHADKA ROAD,  
KUDLU, KASARAGOD-671123.  
SMT.SURYA BINOY, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 16.09.2021, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

[CR]

**J U D G M E N T**

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

In this writ petition, the petitioner challenges Ext.P10 to the extent it denies Explosive Licence as prayed for in Ext.P4, seeks to quash Ext.P15 and to direct the respondents to consider and dispose of Ext.P4 application in accordance with law.

2. The Mining and Geology Department issued Ext.P1 Letter of Intent to the petitioner for conducting quarrying operations for extraction of granite stones from 0.7762 Hectares of land in Bheemanadi Village of Vellarikundy Taluk in Kasaragod District. Ext.P2 Environmental Clearance also has been issued to the petitioner. The Pollution Control Board has issued Ext.P3 Consent to Operate.

3. To operate quarry, the petitioner requires Explosive Licence and hence submitted Ext.P4 application for NOC from the District Magistrate under Rule 113 of the Explosive Rules, 2008. No public hearing is required for issuing NOC in view of Rule 103(3)(b). The 1<sup>st</sup> respondent-Additional District Magistrate sought reports from various authorities.

4. The Senior Geologist gave Ext.P6 Reply stating that the grant of NOC for issuing Explosive licence does not fall under his jurisdiction. The Regional Fire Officer gave Ext.P7 Report stating that NOC can be issued to the petitioner subject to conditions. The Secretary to Grama Panchayat sent Ext.P8 report stating that they have received a revised site plan and that one George Kuthukkalingal has filed complaint requesting not to issue NOC. After considering relevant aspects, the Sub Collector sent Ext.P9 letter to the District Collector recommending grant of NOC.

5. The District Police Chief, however, issued Ext.P10 letter to the effect that the proposed quarry may endanger the vehicles, travellers and pedestrians using the Cheemeni-

Odakolly PWD Road. In the Site Inspection Report at Ext.P12, the Additional District Magistrate, Kasaragod observed that the District Police Chief has reported that the quarry will be a threat to vehicles/passengers/pedestrians using the PWD Road, that it may affect the environment adversely and that there is Maoist-Terrorist threat in Chittarikkal Police Station area.

6. The Additional District Magistrate finally passed Ext.P15 order rejecting the application for NOC for Explosive licence on the ground that the proposed quarry will affect an Anganwadi and the Ambedkar Colony, that the Cheemeni-Odakolly PWD Road is precariously near to the site and that there is Maoist-Terrorists threat in the area.

7. The 1<sup>st</sup> respondent filed a statement dated 26.02.2021 and resisted the writ petition. The 1<sup>st</sup> respondent stated as follows:

“It is further submitted that site inspection was conducted on 06.03.2020. During the site inspection it is observed that objection petitioner's house is 200 meters away from the proposed site and house of one Sri. Ravi is seen 100 meters away from the proposed

quarry. Moreover one Anganwadi and Ambedkar colony consisting 50 families are situated 250 meters away from the proposed site. Cheemeni – Odakolli PWD road is passing south to the proposed quarry. Based on the observations made at the site inspection, a letter was sent to the State Environment Impact Assessment Authority, Thiruvananthapuram requesting to submit a detailed report on environmental impact. The State Environmental Impact Assessing Authority reported that they have no jurisdiction for issuing Environmental Clearance Certification. The District Magistrate and the Additional Magistrate are the authority for issuing No Objection Certificate for Explosive Licence. It was requested with the State Environment Impact Assessment Authority, Thiruvananthapuram for reporting environmental impact for considering the application. NOC cannot be issued without proper enquiry. In case the NOC is issued without properly assessing the environmental impact and the Law and Order situations it will affect the life and safety of public and the loss the Government may suffer might be far bigger. The first and foremost consideration is for the safety of the citizens both physical and environmental which cannot be compromised on any ground.

It is submitted that all necessary procedure were followed before issuing refusing order of refusing NOC in this case. There is no unlawful action taken by the 1<sup>st</sup> respondent in the process. The Additional District Magistrate has passed the order after careful examination and elaborate consideration of the report and connected record placed by the enquiry officers and conducting site inspection applying in mind and fully satisfied on it. The Additional District Magistrate has acted in accordance with law. The Additional District Magistrate strictly followed all the procedure before denying NOC to the Explosive licence to the petitioner. As the best interest of safety and security of public is priority over issuing a NOC to the Explosive license. The NOC refusing order issued is fair just and in accordance with law.”

8. The learned counsel for the petitioner argued that it is the duty of the Police to give protection from Maoist-Terrorist threats to the citizens. Such presumed Maoist threat cannot be a reason to deny NOC for Explosive Licence as the petitioner has a fundamental right to carry on an avocation. The reference to Police is intended to ascertain the antecedents of the applicant/petitioner and not to report on general law and order problems, which the Police is bound to resolve themselves. The 1<sup>st</sup> respondent has, in fact, made a rowing enquiry with the intention of declining NOC. The public road is not within the prohibited distance, contended the learned counsel for the petitioner. There are other quarries within the jurisdiction of the Chittarikkal Police Station. The petitioner is therefore subjected to discrimination, argued the counsel for the petitioner.

9. Heard the learned counsel for the petitioner and the learned Senior Government Pleader representing the respondents.

10. The NOC for Explosive Licence has been declined to the petitioner based on Ext.P10 report of the District Police Chief, as per Ext.P15 order. The reasons for declining the NOC as stated in Ext.P15 are:

- a. The proposed site for the magazine will badly affect the Anganwadi and Ambedkar Colony;
- b. Cheemeni-Odakolly PWD road is precariously near to the site and is passing through southern side of the proposed quarry;
- c. There is Maoist-Terrorist threat within the limits of Chittarikkal Police Station;
- d. Environmental issues in the locality and adjacent places.

The Procedure to be observed for issue of No Objection Certificate and for grant of licence, is contained in Rule 103 of the Explosives Rules.

11. Rule 103 of the Explosive Rules, 2008 reads as follows:

**“103. Procedure to be observed for issue of no objection certificate and for grant of licence —**

(1) The applicant desiring to obtain a licence from the Chief Controller or Controller, shall apply to the District Magistrate or the Director General of Mines Safety with copies of the site plan showing the location of the premises proposed to be licensed for issue of a certificate to the effect that there is no objection to the applicant receiving licence for the site proposed.

(2) The District Magistrate shall be the authority to issue the certificate referred to in sub-rule (1) if the area of the proposed site does not come under the Indian Mines Act, 1952 (35 of 1952) and the Director General of Mines Safety shall be such authority if the area of the proposed site is for ANFO, Liquid Oxygen Explosives or SME and comes under the Indian Mines Act, 1952.

(3) The District Magistrate on receipt of application referred in sub-rule (1), shall make verification of the antecedents of the applicant, lawful possession of the site, genuineness of the purpose, interest of public and any other verifications or enquiries as may be specifically required by the licensing authority to be carried out, if any, and on any other matter as deemed necessary.

(a) For verification of the interest of public, the District Magistrate shall forthwith cause a notice to be published calling upon the public to submit objections, if any, with reasons thereof, within a period of one month from the date of publication of the notice and specifying the date, time and place for consideration of objections by him. Where the site of the proposed premises lies within 1.5 kilometers of the limits of the jurisdiction of any town planning municipal authority or port or air port or satellite or space craft launching station or similar establishments of national importance, the District Magistrate shall cause the notice to be served to such authority or establishment. The day of hearing for consideration of objections shall be fixed as early as possible, after the expiration of the period of one month from the date of publication of notice. On receipt of objection, the District Magistrate shall call the person or persons raising objection and also the applicant, giving not less than seven clear days before the day fixed

for hearing for consideration of the objection. On the day fixed for the hearing or any day to which such hearing may be adjourned from time to time, the District Magistrate shall hear any objection relating to the purpose of no objection certificate and shall make such enquiry, as he may deem necessary to assess justification of such objection.

(b) If the quantity of explosives does not exceed one hundred kilograms or in case of ANFO or Liquid Oxygen Explosives or SME or transport of explosives in a road van, the notice for public for objection as stated in clause (a) shall not be necessary.

(4) The Director General of Mines Safety, on receipt of application referred to in sub-rule (1), shall make verification of lawful possession of the site, genuineness of the purpose, any other verifications or enquiries as may be specifically required by the licensing authority to be carried out, if any, and on any other matter as deemed necessary.

(5) The authority referred to in sub-rule (3) or sub-rule (4) shall complete the enquiry within a period of three months and such authority shall after being satisfied, grant no objection certificate along with site plan duly signed and sealed by such authority.

(6) If the authority referred to in sub-rule (3) or sub-rule (4) objects to the grant of the no objection certificate on any of the grounds relating to the purpose of no objection certificate, no licence shall be granted by the licensing authority except with the sanction of the Central Government.

(7) The authority referred to in sub-rule (3) or sub-rule (4) shall grant the no objection certificate in the format specified in Part 2 of Schedule V or convey his refusal for granting no objection certificate with reasons thereof in writing to the applicant as expeditiously as possible but not later than six months from the date of receipt of application from the applicant.

(8) No licence for manufacture of explosives other than Liquid Oxygen Explosives shall be granted or renewed to a person for his factory or mine not covered under the Factories Act, 1948 (63 of 1948) or the Mines Act, 1952 (35 of 1957), as the case may be, unless he executes a bond in Form CE-3 indemnifying person injured or dependants of deceased workers in the event of an accident in the factory or mine for an amount of Rs.10,000

for factories manufacturing up to 15 kilograms of gunpowder or fireworks at any one time, an amount of Rs.25,000 for factories manufacturing up to 200 kilograms of gunpowder or fire works at any one time and Rs.50,000 in every other case in respect of factory or mines.”

Sub-rule (3) of Rule 103 deals with the mode of processing the applications for NOC by District Magistrates. The District Magistrate while processing application for NOC under Rule 103 has to verify:

1. Antecedents of the applicant.
2. Lawful possession of the Site.
3. Genuineness of the purpose.
4. Interest of public.
5. Any other verification/enquiry specifically required by the Licensing Authority.
6. Any other matter as deemed necessary.

Sub-rule (3) further proceeds to provide that for verification of the interest of the public, the District Magistrate shall forthwith cause a notice to be published. Sub-rule (b) to Rule 103(3) grants an exemption from such publication, if the quantity of explosives does not exceed 100 Kg. or in case of ANFO or

Liquid Oxygen Explosives or SME or transport of explosives in a road van.

12. Examining the rejection of NOC as per Ext.P15, the reason of “Environmental issues in the locality and adjacent places” cannot be sustained because the District Environment Impact Assessment Authority, which is an expert body on environmental issues, has granted Environmental Clearance to the project of the petitioner. When a competent expert body like the District Environment Impact Assessment Authority has cleared the project after assessing the adverse environmental impact of the project, it will not be open to the Additional District Magistrate to take a contrary view, unless there are compelling reasons which render the Clearance given by such Authority legally unacceptable.

13. However, all the other reasons given by the Additional District Magistrate, namely, the proposed site for the magazine will badly affect the Anganwadi and Ambedkar Colony; the Cheemeni-Odakolly PWD Road is precariously near to the site and is passing through southern side of the

proposed quarry; and the Maoist-Terrorist threat within the limits of Chittarikkal Police Station, are good and sufficient reasons for the District Magistrate to decline NOC. The Additional District Magistrate, after causing site inspection, has found that the Cheemeni-Odakolly PWD Road is passing precariously through the southern side of the site and a quarry will be a grave threat to the Vehicles, Passengers and Pedestrians passing through the road.

14. The presence of Maoist-Terrorists and the perceived threat posed by terrorists within the Chittarikkal Police station is also a very relevant factor in the context of public interest. When an Anganwadi and Ambedkar Colony are nearby, maintaining an Explosive Magazine in the area would be inviting a disaster in a Maoist-prone area. Security of individual is a basic human right and the protection of individual is a fundamental obligation of the State in view of Article 21 of the Constitution of India. The State has an obligation to ensure the human rights of citizens by taking positive measures to protect them against the threat of

terrorist acts. Counter terrorism measures taken by the State therefore should be viewed in the context of protection of Human Rights and right to life guaranteed under Article 21.

15. The counsel for the petitioner would contend that there are other quarries functioning in the area. It is not known whether such quarries were sanctioned prior to or subsequent to the Maoist-terrorist threat perception. Therefore, this Court is not inclined to interfere with the decision contained in Ext.P15 on that ground.

16. The counsel for the petitioner further contended that the Additional District Magistrate ought not to have relied on public complaints against the proposed quarry since public hearing is not warranted under Rule 103(3)(b) when the quantity of explosives does not exceed 100 Kg. or in case of ANFO or Liquid Oxygen Explosives or SME or transport of explosives in a road van. The fact that Rule 103(3)(b) of the Explosive Rules, 2008 has dispensed with public notice and hearing, would not oust the power of the authority to examine public complaints received against the grant of NOC. For the

said reason also, this Court do not find any illegality in the action of the Additional Magistrate in adverting to such complaints in EXt.P15 proceedings.

For all the aforementioned reasons, this Court does not find any reason to interfere with Ext.P10 or Ext.P15 proceedings. The writ petition therefore fails and is hence dismissed.

Sd/-

**N. NAGARESH, JUDGE**

aks/15.09.2021

APPENDIX OF WP(C) 25602/2020

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE LETTER OF INTENT DATED 15/02/2018 BEARING NO DOK/4432/M/2017 FROM THE SENIOR GEOLOGIST, KASARGOD UNDER THE KERALA MINOR MINERAL CONCESSION RULES, 2016.
- EXHIBIT P2 TRUE COPY OF THE ENVIRONMENTAL CLEARANCE DATED 31.07.2018 BEARING NO.A/4005/18/DEIAA.
- EXHIBIT P3 TRUE COPY OF THE CONSENT ISSUED BY THE POLLUTION CONTROL BOARD BEARING NO PCK.KSRD/ICO/2596/2017 DATED 04.11.2013.
- EXHIBIT P4 TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER DATED 07/03/2018 ISSUED BY THE DISTRICT COLLECTOR, KASARGOD.
- EXHIBIT P5 TRUE COPY OF THE REVISED LOCATION PLAN SUBMITTED TO THE ADDITIONAL DISTRICT MAGISTRATE.
- EXHIBIT P6 TRUE COPY OF THE REPORT DATED 05/06/2018 BEARING NO. DOK/1460/M/2018 ISSUED BY THE SENIOR GEOLOGIST, KASARGOD TO THE DISTRICT COLLECTOR, KASARGOD.
- EXHIBIT P7 TRUE COPY OF THE NOC BEARING NO E-3657/2018 DATED 30.08.2018 ISSUED BY THE REGIONAL FIRE OFFICER, KOZHIKODE.
- EXHIBIT P8 TRUE COPY OF THE REPORT DATED 10/10/20 BEARING NO JC 3/1947/2018 SUBMITTED BY THE SECRETARY OF THE WEST ELERI GRAMA PANCHAYATH.
- EXHIBIT P9 TRUE COPY OF THE REPORT DATED 06.03.2018 BEARING NO. E 8690/2018 ISSUED BY THE SUB COLLECTOR, KANHANGAD.
- EXHIBIT P10 TRUE COPY OF THE REPORT DATED 09.07.2018 BEARING NO.D4-20835/2018/G.

- EXHIBIT P11 TRUE COPY OF THE LETTER DATED 15/01/2010 BEARING NO. DOK/54/M/2020 ISSUED BY THE DISTRICT GEOLOGIST, KASARGOD TO DISTRICT COLLECTOR, KARARAGOD.
- EXHIBIT P12 TRUE COPY OF THE PHYSICAL VERIFICATION REPORT DATED 06.03.2020 AND SIGNED ON 09.03.2020 BEARING NO DCK SGD/4254/2018/D5 ISSUED TO THE ADDITIONAL DISTRICT MAGISTRATE.
- EXHIBIT P13 TRUE COPY OF THE LETTER DATED 18/03/2020 BEARING NO.D5/4254/2018 BY THE ADDITIONAL DISTRICT MAGISTRATE TO THE SEIAA.
- EXHIBIT P14 TRUE COPY OF THE LETTER DATED 07/09/2020 BEARING NO.1815/A2/2020/SEIAA
- EXHIBIT P15 TRUE COPY OF THE PROCEEDINGS DATED 23/09/2020 BEARING NO. K.Dis/DCK/SGD/4252/2018-D5 WAS ISSUED BY THE 1ST RESPONDENT REFUSING NOC TO THE PETITIONER.
- EXHIBIT P16 TRUE COPY OF THE EXACT LOCATION OF THE SURVEY MAP SIGNED BY THE REVENUE AUTHORITY AND APPROVED BY THE COMPETENT AUTHORITY.