

ALEXANDER THOMAS, J.

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W.P. (C) Nos. 16367, 15305, 15309, 15435, 15858,  
15962, 16153, 16455, 16762 & 16864 of 2020

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Dated this the 18<sup>th</sup> day of August, 2020

**ORDER**

These matters have been heard for quite some time. W.P.(C) No. 16367/2020 filed by the State of Kerala is taken as the lead case.

**W.P. (C) No. 16367/2020**

2. Notice before admission for R-1 in this case has been taken by Sri.M.Ajay, learned Standing Counsel for the Central Pollution Control Board and for R-2 has been taken by Sri.T.Naveen, learned Standing Counsel for the State Pollution Control Board. Notice before admission for contesting respondent No.3 (1<sup>st</sup> applicant before the National Green Tribunal) has been taken by Sri.Harish Vasudevan, learned Advocate.

3. Sri.Harish Vasudevan, learned Advocate submits that as of now he has no authorisation to appear for contesting respondents 4 to 115 in this case who are the other applicants in the O.A. filed before the National Green Tribunal. Many of the advocates appearing in the

connected writ petitions have brought to the notice of this Court that the abovesaid contesting respondents who are the applicants before the National Green Tribunal are signatories in the representation which was forwarded to the National Green Tribunal, and that it is reliably learnt that many of them are not traceable, and quite a few of them may also could have died, etc.

4. Sri.Harish Vasudevan, learned Advocate is requested to ascertain from R-3 whether arrangements can be made for the appearance of respondents 4 to 115, through counsel. In view of the orders now proposed to be passed in this petition and for the purpose of convenience for the time being, notice before admission to contesting respondents 4 to 115 need not be issued for the time being, and orders in that regard could be considered later.

5. This Court while considering the connected matters has passed an order dated 6.8.2020 in WP(C).Nos.15305, 15309, 15435, 15858 & 15962 of 2020, and the said common order dtd.6.8.2020 in those cases reads as follows:

*“This matter has been heard for quite some time and the learned Advocates appearing for the petitioners in these cases, the learned Addl. Advocate General appearing for the State authorities, the learned Advocates appearing for the respondent-Central Pollution Control Board,*

respondent-State Pollution Control Board and the learned Advocate appearing for contesting respondent No.5 have also been heard for some time.

2. Sri.Ranjith Thampan, learned Addl. Advocate General appearing for the respondent State authorities would submit that the impugned order of the National Green Tribunal dated 21.7.2020 [produced as Ext.P-8 in W.P.(C.) No.15309/2020] has been rendered without reasonable opportunity of being heard to the Government of Kerala in the Industries Department, Director of Mining & Geology etc. and that it is well settled by a series of rulings of the Apex Court that the power to regulate the functioning of mining activities in relation to minor minerals is vested exclusively with the State Government in terms of Sec.15 of the Mines & Minerals (Regulation and Development) Act, 1957 (MMDR Act) enacted by the Parliament. That Rule 10(f) and Rule 40(i) of the Kerala Minor Mineral Concession Rules, 2015 framed under the said MMDR Act stipulates that the distance criteria in question is 50 metres. That when the said statutory prescriptions have been made by the rule making authority in terms of the exclusive powers conferred in that regard by the Parliament on the basis of the abovesaid plenary law, the competent authorities of the State Government in the Industries Department (who is Administrative Department concerned in relation to the subject matter) as well as the Director of Mining & Geology, Government of Kerala should have been heard in order to enable them to give their versions and also to contest the matter on merits.

3. Further, various other submissions have been made by the learned Advocates appearing for the petitioners regarding the lack of jurisdiction of the Tribunal to pass an order in the nature of the impugned order, which, according to him, substantially has led to striking down of the said statutory Rule in the abovesaid KMMC Rules and making a new provision in lieu thereof, etc.

4. It has been held by the Apex Court in decisions as in **Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd. and Ors.** [2019 SCC Online 221] that under the National Green Tribunal Act, the Tribunal exercising jurisdiction under the Act cannot strike down the statutory Rules or Regulations and that it would be incorrect to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers of judicial review, under Article 226 of the Constitution of India and that the National Green Tribunal has no such general power of judicial review akin to that conferred in terms of Article 226 of the Constitution of India, etc.

5. Further, Sri.Ranjith Thamban, learned Addl.Advocate General appearing for the respondent-State would submit that he has been instructed to submit by the respondent-State authorities that the State would be moving a writ petition (civil) under Articles 226 and/or 227 of the Constitution of India to challenge the abovesaid order dated 21.7.2020 rendered by the National Green Tribunal and that it is expected that the said petition would be filed within a day or two. This Court had also made certain suggestions to the learned Addl.Advocate General appearing for the State to seriously consider the appointment of expert

*committee to examine serious ways and means to substantially reduce the demand and consumption of granite metal etc., especially in the construction sector and for tarred road maintenance work, etc.*

6. *The learned Addl. Advocate General assured that the respondent–State would positively consider those suggestions and that he would require two days time to get specific instructions and then make submissions on those matters also. Both sides have made their respective rival pleas regarding the issue of maintainability of these petitions under Article 226 of the Constitution of India. Therein the contesting respondent (applicant in the OA on the file of the NGT) would contend that the remedy of the petitioners in such cases could only be to approach the Apex Court by filing statutory appeal in terms of Sec.22 of **National Green Tribunal** Act. The learned Advocates appearing for the petitioners and the learned Addl. Advocate General appearing for the respondent-State would submit that the legal principles laid down by this Court in decisions as in **K.K.Rocks & Granites India (P) Ltd. v. Latha S. & Ors.** [2016 (5) KHC 456], **Society of Indian Automobile Manufactures, New Delhi v. State of Kerala and others** [2016 KHC 645], etc. would be a complete answer to the abovesaid objections and that since the impugned order has been passed in derogation of principles of natural justice and fairness and since the impugned order would also amount to striking down the statutory rule and making a new provision in lieu thereof etc., this is a fit case where this Court can exercise its powers of judicial review and superintendence in terms of Article 226 and/or 227 of the Constitution of India to examine those issues and that therefore, the objection raised by the petitioners should be relegated to the statutory appellate remedy, is not sustainable etc.*

7. *Since the State of Kerala is also proposing to file a writ petition (civil), it will be only in the fitness of things that the matter is adjourned so that the matter could be listed along with the said petition to be filed by the State, which could be treated as lead case. Now, there are hardly 15 working days prior to the Onam Holidays and in view of the serious containment issues in Kochi, listing and consideration of cases, other than a limited number also causes serious logistical problems to this Court. From the submissions made by the petitioners, it appears that there are about more than 720 quarries functioning within the State, with valid quarrying permits or quarrying leases etc. and that many such permit holders/lease holders are likely to file writ petitions challenging the very same order. Moreover, it is apprised to this Court that the respondent-Central Pollution Control Board and respondent-State Pollution Control Board are taking steps for enforcing the impugned order and will even issue stop memos in that regard.*

8. *According to the averments in W.P.(C.) No.15309/2020, it is stated that the said writ petitioner is having a valid quarrying lease granted on 6.4.2011 and is current and valid till 5.4.2023. This Court is not now going into the factual details in the other cases. Before taking a decision on admitting the writ petitions and for consideration of the plea made for interim stay, this Court is of the view that the subject matter of the lis will have to be preserved in the meanwhile, as the cases are to be*

*adjourned now, to tag the cases along with the Writ Petition to be filed by the State.*

9. *Accordingly, it is ordered that in cases where a quarrying permit/quarrying lease issued under the provisions of the Kerala Minor Mineral Concession Rules, 2015 is valid and current as on 21.7.2020 (date of the impugned order rendered by the Tribunal), which do not fulfill the new distance norms stipulated by the NGT order, then it shall be ensured that status quo regarding the distance criteria based on Rule 10(f) and Rule 40(i) of the Kerala Minor Mineral Concession Rules may be maintained by the respondent authorities concerned during validity period of such current permits/lease. Needless to say, in such cases, the competent authorities concerned can insist for strict compliance of the other applicable norms, guidelines, orders, etc. However, it is made clear that in the case of the applications of fresh grant of quarrying permits/quarrying leases or applications for renewal of quarrying permits/leases, which do not fulfill the abovesaid impugned distance criteria stipulated in the order of the Tribunal, then such requests need not be granted for the time being. But at the same time, in those cases, such fresh or renewal application, including that for EC, PCB consent, explosive licence, local body licences, etc. in that regard may be processed and such applications need not be rejected solely on the ground of non-fulfillment of the new distance norms stipulated in the impugned order dated 21.7.2020 of the NGT. This order will be in force for a period of 2 weeks."*

6. Sri.Renjith Thampan, learned Additional Advocate General appearing for the State would submit that, some more time is required to get instructions from competent higher authorities of the State Government to submit before this Court on the suggestion to constitute an expert committee to find out ways and means of reducing the demand and consumption of granite building stone in the State.

7. After hearing the parties it is seen that the Kerala Minor Mineral Concession Rules, 1967, ('KMMC Rules' for short) framed under the Mines and Minerals (Development and

Regulation) Act, 1954, (*MMDR Act for short*) has been repealed and replaced by the Kerala Minor Mineral Concession Rules, 2015, (*KMMC Rules for short*) notified as per S.R.O. No. 72/2015 by the Government of Kerala in the Industries Department published in Gazette dated 7.2.2015. Rule 10(f) as well as Rule 40(1)(i) of the said KMMC Rules, 2015, notified on 7.2.2015 have stipulated that, the permit holder/lease holder as the case may be shall not carry on or allowed to be carried on any quarrying operations at any points within a distance of 100 metres from any railway line except with the previous written permission from the Railway Administration concerned and any bridge on National Highway or 50 metres from any reservoir tanks, canals, rivers, bridges, other public works, residential buildings, boundary walls of places of worship, burial grounds, burning ghats, village roads or 1 kilometer from the boundaries of National Park, Wildlife Sanctuaries, except with the previous sanction or permission of the authorities concerned or the Government or the competent authority. However, the 2<sup>nd</sup> proviso to the abovesaid rules would further stipulate that, in cases where explosives are used for quarrying, the permit holder shall not carry on or allowed to be

carried on any quarrying operations at or to any points within a distance of 100 metres from any railway line, any bridge, reservoir tanks, residential buildings, monuments protected by the Government, canals, rivers, public roads having vehicular traffic, other public work or boundary walls of places of worship, or 50 metres from any burial grounds or burning ghats or village roads or forest lands.

8. Further it is seen that, the abovesaid provisions contained in the KMMC Rules, 2015, has been subsequently amended as per notification in S.R.O.No.335/2015 published in Kerala Gazette dated 23.5.2015 whereby in the abovesaid provisions as per Rules 10 & 40, the 2<sup>nd</sup> proviso thereto for the words and figures “*within a distance of 100 metres*”, the words “*within a distance as specified by the Kerala State Pollution Control Board from time to time for granting consent to operate such quarrying as approved by the Government*” shall be substituted. Pursuant to the said amendment made effective from 23.5.2015 when the matter was left within the prescription of Kerala State Pollution Control Board, the criteria came to be slightly changed in view of the earlier circular dated 6.8.2014

issued by the Kerala State Pollution Control Board, wherein it was stipulated that for those existing quarry operators who have valid licenses/permissions from 1.7.2011 would need to satisfy only prior norm of 50 metres distance criteria. But the general prescription in that regard is considered to be 100 meters.

9. In that regard it is brought to the notice of this Court by Sri.T.Naveen, learned Standing Counsel for the Kerala State Pollution Control Board that for all other categories of quarry operators, even then the new distance criteria of 100 metres was insisted which was changed only later, and the said distance norm of 100 metres was reduced to 50 metres only later as per S.R.O. No.346/2017 published as per Gazette dated 23.6.2017, consequent to which the respondent State Pollution Control Board had also issued Circular dated 10.10.2017 (Ext.P-3 in W.P.(C) No. 16367/2020).

10. Further it is seen that the abovesaid distance rules as per the KMMC Rules, 2015, has again been amended by the State Government as per S.R.O. No.346/2017 published as per Gazette dated 23.6.2017, and the above said corresponding provisions contained in Rules 10(f) and 40(1)(i) has again been amended



and substituted as follows: (See *Ext.P-1 Gazette notification in WP(C).No.16367/2020*)

*“10(f) 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 100 metres from any railway line except with the previous written permission of the Railway Administration concerned and any bridge on National Highway or 50 metres from any reservoir tanks, canals, rivers, bridges, other public works, residential buildings, the boundary walls of places of worship, burial grounds, burning ghats or village roads or one kilometre from the boundaries of National Park or Wildlife Sanctuaries, except with the previous permission of the authorities concerned or the Government or the competent authority;*

*Provided that the Railway Administration of the State Government or any other authority in this behalf may in granting such permission impose other such conditions as may be found proper and necessary.*

*40(i) the lessee shall not carry on or allow to be carried on any quarrying operations at or to any points within a distance of 100 metres from any railway line except with the previous written permission of the railway administration concerned and any bridge on National Highway or 50 metres from any reservoir tanks, canals, rivers, bridges, public works, residential buildings, the boundary walls of places of worship, burial grounds, burning ghats or one kilometre from the boundaries of National Park or Wildlife Sanctuaries, except with the previous permission of the authorities concerned or the Government or competent authority;*

*Provided that the railway administration of the State Government or any other authority in this behalf may in granting such permission impose other such conditions as may be found proper and necessary.”*

11. It appears that, on and from the commencement of the KMMC Rules, 2015, with effect from 7.2.2015 (notified originally as per Gazette dated 7.2.2015) and till the enforcement of the amended rules as per S.R.O. No.346/2017 with effect from 23.6.2017, the distance rule for permitted quarrying operations involving blasting happened to be 100 metres, subject to various nuances in the above referred provisions. It was after the commencement of abovesaid amended notification made effective

from 23.6.2017, the distance rule in question reduced to 50 metres, and the distinction between quarrying involving blasting activities and quarrying involving non blasting activities was also generally obliterated. There is yet another aspect of significant differential distance criteria in relation to National Parks and Wild Life Sanctuaries (NPWS) on the one hand and Forest lands, other than NPWS, which will be dealt with briefly hereunder.

12. In the explanatory note appended to S.R.O. No.346/2017 the main reason stated therein is that in the Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2016, for major minerals, the distance criteria adopted for mining activities were retained as stipulated earlier in the Central Mineral Concession Rules, 1960, which is 50 metres, etc and that in order to make it in tune with the abovesaid central rules relating to Minerals (Other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2016, it has been decided by the State Government to incorporate the same distance criteria of 50 metres in the abovesaid Rules 10 and 40 as well as Form H of the abovesaid KMMC Rules, 2015.

13. The order under challenge in this case is the one

rendered by the National Green Tribunal on 21.7.2020 in O.A. No.304/2019, copy of which has been produced as Ext.P-12 in WP(C).No.16367/2020 filed by the State. Various contentions have been urged by the learned Advocates appearing for the petitioners on one hand and Sri.Harish Vasudevan, learned counsel appearing for the contesting respondent (1<sup>st</sup> applicant in O.A. filed before the National Green Tribunal) either to critique the said order or to sustain the same as the case may be. Some of the main judicial rulings relied on by the petitioners have already been referred to in the earlier order rendered by this Court on 6.8.2020 extracted herein above, and therefore there is no necessity to reiterate those aspects. However, the fact of the matter that has to be crucially kept in mind is that, the impugned order has been rendered by the National Green Tribunal, which is a high powered tribunal and the mere fact that it may not be a Tribunal as envisaged in Articles 323A or 323B of the Constitution of India, and that it is a tribunal established by a Statute will not in any manner retract one of the considerations of this Court that institutional deference has to be duly given by this Court. The distinction between Constitutional Courts and Non Constitutional

Courts etc may not have really any bearing while keeping in mind the legal principles relating to judicial comity. The National Green Tribunal is regulated by the scheme framed by the Parliament and the National Green Tribunal is headed by a former Judge of the Apex Court and not only judicial members but also technical expert members are also envisaged for discharging duties and functions of the Tribunal, etc. The said observations made by this Court does not in any manner imply that the orders of the Tribunal are not judicial reviewable under Article 226 and/or Article 227 of the Constitution of India, as the principles on that score have been delineated by the Apex Court and by this Court in the decisions already referred by this Court in the earlier order dated 6.8.2020.

14. It is by now well established that principles emanating from environmental jurisprudence like precautionary principles, polluter pays principles, sustainable development, inter generation equity principles, etc would form the core of our environmental jurisprudence, and this would in turn be an integral part of the right to good environment, which is envisaged in terms of Article 21 of the Constitution of India.

Environmentalism and ecological considerations are no longer to be viewed as fads or “fashionable ideology”. This is especially so, since this State has seen a great tumultuous flood in August, 2018, and a mini flood in August, 2019, and quite heavy rainfalls occurred even in this year in August, 2020. This State has witnessed not only great floods in August, 2018, but has also seen the terrible calamities and tragedies in the land slides that have occurred both in August, 2019 and this year in August, 2020.

15. After hearing both sides it may not be far off the mark to at least provisionally hold that, many or quite a few of the quarries now being operated in the State or proposed to be operated would be within the vicinity or within the significant proximity of the Western Ghats in the State. Therefore, having regard to these hard core realities, the adjudication of environmental and ecology issues cannot be seen in mere abstract terms, and has to be seen in concrete realities of the tragic incidents that have been experienced in the State consecutively for the last 3 years. It is also by now well established by a series of rulings of the Apex Court and various High Courts including this Court that, where the issues involve affecting or infringement of

Fundamental Rights guaranteed in the Constitution of India including Article 21 thereof are made out, then depending upon the subject matter of the case, the principles of proportionality would also come into play in such scenarios, and depending upon the nature of subject matter of the case, judicial review of the impugned State action by constitutional courts may not be merely secondary review as may ordinarily occur in administrative law adjudication, but may also involve primary review so as to test as to whether the impugned action would satisfy the requirements of proportionality, based on strict judicial scrutiny.

16. It has to be borne in mind that we are living in a State which is a narrow strip of land sandwiched between the Arabian sea and the western ghats. It may not be far off the mark to observe that the land and the people of this State are what we are now, be it from the point of view of geography, topography, geology, culture, climate, weather, various aspects of way of life emanating therefrom, etc. mainly on account of the blessings that Mother Earth have given us bountifully in abundance on account of this land being sandwiched between the Arabian sea and the western ghats. Hence this sandwiched strip of land has been thus

fathered by western ghats (*Sahyaparvatham*, viz., benevolent mountain) and mothered by the Arabian sea.

17. The learned Additional Advocate General and the learned Senior Advocates and the learned Advocates appearing for various writ petitioners have made elaborate submissions that the impugned order of the National Green Tribunal would substantially lead to striking down of statutory rule contained in Rules 10(f) and 41(i) of the KMMC Rules, 2015, as amended in 2017, and that it is now well established by decisions of the Apex Court and this Court, that the National Green Tribunal being a creature of a statute and which is not a tribunal as envisaged under Article 323A and 323B of the Constitution of India, may not have the powers of judicial review so as to strike down a statutory rule or regulations. Further, the State has made a strong contention that in the instant case the rule making authority, viz, Government of Kerala in the Industries Department as well as the Directorate of Mining and Geology of the Government of Kerala, were not even heard by the Tribunal before the impugned order was passed, and it has also to be pointed out that some of the vital factual inputs given by the Central Pollution Control Board to the

Tribunal as per Ext.P-11 report does not reflect the correct factual position in the State of Kerala, etc.

18. Since some of the contentions urged by the petitioners including the State though technical are strong in nature, and if the said submissions are ultimately accepted by this Court, it may lead to quashment of impugned order. But, in a case like this where environmental concerns and ecological issues are predominant, it may not be right and proper for this Court that in such a situation the matter should be left there. After hearing all the parties concerned this Court would *prima facie* take the view that, the reasonableness and constitutional validity of the amended provisions of the KMMC Rules as per Rules 10(f) and 40(1)(i) made as per S.R.O. No.346/2017 to the extent it reduces the earlier distance rule from 100 metres to 50 metres and various related aspects arising out of the said amended notification may have to be seriously examined in depth. This Court is of the considered view that in such a case, the technical approach of examining the technical submissions and if accepted quashing the impugned order alone might not suffice, and indeed it should be the constitutional responsibility of this Court as a Constitutional



Court exercising powers of judicial review and superintendence to have a holistic view and to examine whether the said amended provisions made as per S.R.O. No.346/2017 to the limited extent it reduces the distance rule from 100 metres to 50 metres in the scenarios enumerated therein will have to be considered.

19. The learned Additional Advocate General and the learned Senior Advocates and the learned Advocates appearing for various writ petitioners have cautioned this Court that, such a prayer has not been made by the applicants before the National Green Tribunal and not even before this Court now, and that such an approach may not be juristically and legally correct and tenable.

20. In that regard, this Court would draw its strength from the view rendered by a very eminent Judge of this Court, viz. Hon'ble Sri.Justice Chettur Sankaran Nair, in para 22 of the judgment dated 22.3.1991 in O.P.No.9711/1989 in the case ***Environmental & Ecological Protection Samithy v. Executive Engineer*** [1991 (2) KLT 493], wherein it has been held that matters deeply concerning the environment and ecology may not necessarily be in the domain of policy matters alone and the

rights in these regions have been upgraded to constitutional protection under Art.21 and that the directive principles of state policy contained in Part IV of the Constitution, more particularly provisions as in Art.48A and the magnificent Art.51A provide changing perspectives and that changing times and a materialistic society would throw up new challenges and the courts have to meet them to protect the rights of the citizens under Art.21. Therein, this Court had also placed reliance on the observations of Justice Benjamin Cardozo that “*The inn that shelters for the night, is not the end of the journey. Law – like the traveller, must be ready for tomorrow*”. It will be profitable to refer to paragraph No.22 of the abovesaid judgment of this Court in ***Environmental & Ecological Protection Samithy's case*** supra [1991 (2) KLT 493], which reads as follows:

“22. Whether these are matters of policy for the Executive Government, is also a question to be considered. I am not unaware of the caution administered by Justice Burroughs, that public policy is like an unruly horse that is apt to run away with the rider, or the counsel of Lord Denning, that it is for the rider to harness the wild horse. Matters such as these, are longer matters of policy alone committed to the Executive Government. Rights in these regions have been upgraded to constitutional protections, under Art.21. The directive principles contained in Art. 48-A, and that magnificent Article - Art. 51-A - provide perspectives. Changing times and a materialistic society throw up new challenges. The Courts must meet them, to protect the rights of the citizens under Art.21. ‘The Inn that shelters for the night, is not the end of the journey. Law - like the traveller, must be ready for tomorrow’. (Benjamin Cardozo). That is the core thought in Rural

*Litigation & Entitlement Kendera v. State of U.P. (AIR 1987 SC 2187)*  
also.”

21. This Court would certainly welcome such critiques and criticisms of the petitioners including the State. For this Court is not the sole repository of knowledge in the areas of jurisprudence and law, and all what this Court has now observed is that the abovesaid aspects may have to be seriously considered by this Court. The issue as to whether such an examination is maintainable, proper and appropriate in the given factual matrix would also be taken into consideration as a preliminary issue. Apart from technical submissions regarding the correctness or otherwise of the impugned order passed by the National Green Tribunal, the judicial response of the NGT to the issues, which intimately affects the people and the environment, will have to be borne in mind by this Court to ensure that the constitutional responsibilities of this Court are also duly discharged. This is not to say that, the said issue will have to be finally decided in these matters, but atleast an endeavour should be made by this Court to examine those issues, and certainly the critiques and criticisms made by the petitioners regarding the maintainability and

propriety of such an approach would also be certainly considered by this Court before entering into the merits of such aspects.

22. Further, Sri.Harish Vasudevan, learned counsel appearing for the 1<sup>st</sup> applicant before the National Green Tribunal has submitted that, in very many cases the Kerala State Environment Impact Assessment Authority has placed conditions in the Environment Clearance granted by them that the quarrying operations involving blasting operations shall not be conducted within 100 metres from the residential buildings notwithstanding the 2017 amended provisions of the KMMC Rules, 2015, which stipulates only 50 metres.

23. To a specific query in that regard Sri.Renjith Thampan, learned Additional Advocate General appearing for the State would submit on the basis of instructions that, it is reliably learnt that the State Environment Impact Assessment Authority does not place such conditions in all cases and makes a case to case analysis and that in quite a few cases such conditions regarding minimum distance of 100 metres from the residential building are also seen incorporated by the said authority. However, the learned Additional Advocate General would also

fairly submit on the basis of instructions that the stand of State of Kerala is that, such powers are available to be exercised by the State Environment Impact Assessment Authority in terms of Section 3(3) of the Environment Protection Act, 1986.

24. Certain submissions have been made by some of the learned Advocates appearing for other writ petitioners that the State Environment Impact Assessment Authority may not have the unilateral power to do so, unless the procedure prescribed under Rule 5(3) of the Environment Protection Rules, 1986, are also strictly observed, and that in the absence of such notification issued under Rule 5(3) of the Environment Protection Rules, the State Environment Impact Assessment Authority may not have any unilateral power to impose such restrictions even if it is assumed that such restrictions may be called for in a given case. This Court need not enter into the correctness of these aspects and suffice to hold that these vital aspects flowing from Section 3(3) of the Environment Protection Act, 1986 and the powers if any, that may be available with the State Environment Impact Assessment Authority to insist for more strict conditions of distance rule should also be examined by this Court. It is also

relevant to bear in mind that, the Government of Kerala in exercise of its statutory rule making power conferred as per the Kerala Municipality Act, 1994, has framed the statutory rules for regulating the grant of Trade/D & O License by municipal authorities, wherein as per Rule 18(v) thereof, the distance rule for the operation of crusher units from public roads etc, is 500 metres. So also, the distance criteria as regards Forest lands other than National Parks and wild life sanctuaries, would also require strict judicial scrutiny. It is thus ordered that the Principal Secretary to Govt. in the Forest & Wild Life Department and the Head of the Forest Force of the State will furnish detailed instructions and clarifications as to whether there are vital and substantial differences between National Parks and Wild Life Sanctuaries (“NPWS” for short) on the one hand and Forest Land (other than NPWS) to justify the vast difference in the distance criteria in the KMMC Rules and also as to their considered stand on such short distance restrictions vis-a-vis Forest lands (other than NPWS) compared to NPWS from the stand point of environmental, ecological and physical safety considerations. So also, the State Expert Appraisal Committee of the respondent State Environment

Impact Assessment Authority should also furnish instructions on the considered stand of the Expert Appraisal Committee whether the reduction of distance criteria from 100 meters to 50 meters, as aforesaid and also on the justifiability of the vast difference in distance norm for Forest lands (other than NPWS) vis-a-vis NPWS from the stand point of environmental, ecological and physical safety concerns.

25. If as a matter of fact, there are no compelling reasons based on public interest for the State to engraft the impugned amendment in 2017 for the KMMC Rules, to reduce the distance criteria from 100 metres to 50 metres, then subject to the maintainability of examination of those matters, those aspects will have to be considered in depth.

26. Now notices before admission to contesting respondents 4 to 115 are not being issued. The matter will have to be decided without much delay and this Court has broadly indicated to learned Advocates appearing on both sides that all parties concerned should be ready for the disposal of the matter atleast by the 2<sup>nd</sup> or 3<sup>rd</sup> week of September, 2020, pursuant to the reopening of Court on 7.10.2020 after Onam Holidays.

27. Since the abovesaid issues relating to the reduction of distance rule as well as the other aspects mentioned herein above, may require consideration and as notices before admission have not been issued to contesting respondents 4 to 115, this Court is of the view that it may be apt to order for notices before admission to be issued in terms of Rule 148 of the Kerala High Court Rules, by resort to public advertisement in a newspaper as envisaged therein. Accordingly it is ordered that the petitioner in W.P.(C) No.16367/2020 should take immediate steps to seek addition of parties in terms of Rule 148 of the Kerala High Court Rules by resort to public advertisement in one issue of all editions within the State of Kerala of “*Mathrubhoomi*” daily. In the said advertisement, the State should clearly indicate that the issues that may be considered in W.P. (C) No. 16367/2020 and the connected matters would be not only in relation to the legality and correctness of impugned order dated 21.7.2020 rendered by the National Green Tribunal in O.A. No.304/2019, but also relating to the issues regarding the reasonableness and constitutional validity of provisions of KMMC Rules, 2015, as amended as per S.R.O. No.346/2017 to the extent it reduces the distance criteria



for quarrying operations involving blasting activities from 100 metres to 50 metres, the differential criteria for forest lands and various other related aspects as per the above rules and also relating to the scope and ambit of powers of the State Environment Impact Assessment Authority in terms of Section 3(3) of the Environment Protection Act and the Rules framed there under, to impose distance criteria conditions which are stricter than the 50 metres rule now being followed in the State of Kerala as per the amended KMMC Rules, 2017.

28. The State of Kerala and other writ petitioners may file their affidavits along with supporting materials to deal with the maintainability and merits of the various aspects proposed to be examined by this Court regarding the reasonableness and Constitutional validity of the KMMC Rules, 2015 as brought out by SRO No.346/2017 and regarding the powers of the State Environmental Impact Assessment Authority to stipulate more stricter conditions than covered by the above KMMC Rules. Time is given upto 18.9.2020 for filing of such Affidavits and materials by the State of Kerala, other writ petitioners and the contesting respondent (applicant before the NGT).

29. Since the rights and interests of the quarrying operators will also be involved, it will be better in the fitness of things that one such quarrying operator is impleaded as an additional respondent in the WP(C) as envisaged in the operative portion of Rule 148 of the Kerala High Court Rules. In that regard it is noted that the the petitioner in WP(C).No.15305/2020 is a party who was had obtained Trade/D & O License from the Panchayat concerned as well as Environmental Clearance, and the main complaint of the applicants before the National Green Tribunal was regarding the proposed quarrying activities of the said party. Hence it is ordered that the petitioner in WP(C). No.15305/2020 will stand impleaded as an additional respondent in this WP(C) as envisaged in Rule 148 of the Kerala High Court Rules to broadly represent the cause of such affected persons.

30. Sri.Alex M.Scaria, learned Advocate appearing for that party in WP(C). No.15305/2020 would submit that he would take notice for the said additional party in W.P. (C) No. 16367/2020 filed by the State. Accordingly it is ordered that Sri.Alex M.Scaria, learned Advocate has taken notice for the said party (petitioner in

WP(C). No.15305/2020) who has now been impleaded as additional respondent in W.P. (C) No. 16367/2020 filed by the State and the learned Government pleader is requested to ensure that two copies of memorandum of W.P. (C) No. 16367/2020 filed by the State should be given to Sri.Alex M.Scaria, learned Advocate appearing for the said additional party. Further it is ordered that, contesting respondent No.3 in W.P.(C) No. 16367/2020 (who is the 1<sup>st</sup> applicant before the National Green Tribunal) will represent the cause of such objectors to the quarry operations. Sri.Harish Vasudevan, learned Advocate submits that he is authorised to take notice for contesting respondent No.3 in the said WP(C) and that the learned Government Pleader may be directed to give copies of memorandum of this W.P. © to him as he has not so far been served.

31. The learned Senior Government Pleader will ensure that steps are taken to place a draft copy of the notice to be published as public advertisement in the newspaper as envisaged in Rule 148 of the Kerala High Court Rules before the Registry of this Court, and after due approval it shall be ensured that such notice is duly published as a public advertisement in all editions of

aforesaid newspaper as directed herein above.

32. Since the matter is now being adjourned for further consideration and as the Court would remain closed for Onam Holidays for the period from 27.8.2020 upto 6.9.2020, it is ordered in the interest of justice that the interim directions passed by this Court as per para No.9 of the order dated 6.8.2020 in WP(C).No.15305/2020 and connected cases, shall stand extended and will be in force till 28.9.2020.

33. The learned Additional Advocate General has submitted that the Union of India represented by Secretary to Government of India, Ministry of Environment, Forest and Climate Change, New Delhi, as well as the Kerala State Environment Impact Assessment Authority represented by its Member Secretary may be impleaded as additional respondents, and that to obviate any further delay, this Court may consider Suo Motu implead those parties.

34. With the consent of all the parties concerned it is ordered in the interest of justice that “*The Union of India, Represented by Secretary to Government of India, Ministry of Environment, Forest and Climate Change, New Delhi*”, and *The*

*Kerala State Environment Impact Assessment Authority, Represented by its Member Secretary, Thiruvananthapuram*” will stand impleaded as additional respondents in this WP(C). The Registry will assign appropriate additional respondents status to all the above additional parties and make necessary changes in the cause title.

35. Sri.P.Vijayakumar, learned Assistant Solicitor General of India, has taken notice for the respondent Union of India, and Sri.M.P.Sreekrishnan, learned Standing Counsel for the Kerala State Environment Impact Assessment Authority, has taken notice for the said respondent. The learned Senior Government Pleader will ensure that additional copies of memorandum of W.P.(C).No. 16367/ 2020 are duly served on Sri.P.Vijayakumar, learned Assistant Solicitor General of India and Sri.M.P.Sreekrishnan, learned Standing Counsel for the Kerala State Environment Impact Assessment Authority.

36. The Registry of this Court will request the Registry of the NGT Principal Bench to make available attested photocopies of all the papers in relation to the above proceedings in O.A.No. 304 of 2019 from its initiation onwards for the perusal of this

Court and also should ascertain from the Registry of NGT whether the applicants concerned had filed Original Application in the prescribed proforma and if not, the rules under which the case was registered as an OA and whether suo motu powers are conferred as per the rules, etc.

List this case along with the connected W.P.(C)s. on 23.9.2020 in the Admission List.

WP(C).Nos.15305, 15309, 15435, 15858, 15962, 16153, 16455 & 16864 of 2020

37. This Court has already passed a separate order today in W.P. (C) No. 16367/2020 filed by the State of Kerala, and therefore no separate order is required in these cases. Notices before admission in all these cases for the respondent State of Kerala and the respondent Director of Mining and Geology in the cases concerned has been taken by the learned Senior Government Pleader. The respective Standing Counsel for the Central Pollution Control Board has taken notice for the said party and Sri.T.Naveen, learned Standing Counsel has taken notice for the respondent State Pollution Control Board in all these cases. For contesting respondent No.3 (1<sup>st</sup> applicant before the National

Green Tribunal) has been taken by Sri.Harish Vasudevan, learned Advocate. Registry will show the names of abovesaid advocates in the cause list.

38. This Court as per para 32 of the supra order rendered today (viz., 18.8.2020) in W.P.(C).No. 16367 of 2020 filed by the State of Kerala, has already extended the interim directions rendered in para 9 of the order dt.6.8.2020 in W.P.(C).No. 15305 of 2020 and connected matters, upto 28.9.2020. So no separate interim directions are necessary in these cases.

39. The learned Advocates of the petitioners concerned will ensure that copies of memorandum of these WP(C)s are duly served on Sri.Harish Vasudevan, learned Advocate appearing for contesting respondent No.3.

List these cases along with WP(C).No.16367/2020 and other connected cases if any, in the Admission List on 23.9.2020.

H/O.

Sd/-

ALEXANDER THOMAS,  
JUDGE

MMG