

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

Friday, the 31st day of March 2023 / 10th Chaithra, 1945

WP(C) NO. 13221 OF 2022(C)

PETITIONERS:

1. THE STATE OF KERALA, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, DEPARTMENT OF ENVIRONMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001
2. THE GEOLOGIST, DEPARTMENT OF MINING AND GEOLOGY, CIVIL STATION, KAKKANAD, ERNAKULAM - 682030
3. THE PRINCIPAL SECRETARY TO GOVERNMENT, INDUSTRIES (A) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001

RESPONDENTS:

1. SHEFY JOSEPH, D/O LATE M.P.JOSEPH, PUTHANPURACKAL HOUSE, CHEMBARAKKI, SOUTH VAZHAKULAM P.O., PERUMBAVOOR - VIA, ERNAKULAM - 683556
2. GOVERNMENT OF INDIA, REP. BY ITS SECRETARY, MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, PARIYAVARAN BHAVAN, CGO COMPLEX, LODHI ROAD, NEW DELHI - 110003
3. M.D.KURIAKOSE, MADAPPILLIL HOUSE, PAZHANGANAD P.O., KIZHAKKAMBALAM VIA, ERNAKULAM - 683562
4. ADDL R4, SIBI JOSEPH, AGED 39 YEARS, SON OF K.S.JOSEPH, KALLAMACKAL HOUSE, DHONI P.O., PALAKKAD- 678 009 ADDL R4 IS IMPEADED AS PER ORDER DATED 23-09-2022 IN IA 1/2022 IN WP(C)13221/2022.

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay the operation and implementation of Exhibit P5 order and judgment dated 27/05/2021 passed by the National Green Tribunal, Southern Zone, Chennai in OA No.244 of 2017 and all proceedings leading to that and arising there from, pending disposal of this Writ Petition(Civil).

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 17-02-2023 in WP(C) and upon hearing the arguments of SRI.S.KANNAN, SENIOR GOVERNMENT PLEADER, along with PUBLIC PROSECUTOR for the petitioners, M/S.BABU JOSEPH KURUVATHAZHA, K.S.ARCHANA & MOHAMMED SHAFI K., Advocates for R1, ASSISTANT SOLICITOR GENERAL OF INDIA for R2, SRI.GEORGE POONTHOTTAM (SENIOR ADVOCATE), SARITHA THOMAS & V.USHA NANDINI, Advocates for R3 and of M/S.SAHASRANAMAN, T.S.HARIKUMAR & G.N.DEEPA, Advocates for ADDL R4, the court passed the following:

VIJU ABRAHAM, J.

.....
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&
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.....

Dated this the 31st day of March, 2023

ORDER

These matters have come up before this Court for extension of stay. In both the writ petitions, interim order was initially granted on 15.06.2022 which was also extended thereafter.

2. W.P(C) No.17340 of 2022 is filed for a declaration that Ext.P17 order dated 27.05.2021 in O.A. No.244 of 2017 by the National Green Tribunal, South Zone Chennai is not binding on the petitioner and also sought to quash Ext.P24 notice which was issued as a consequence to Ext.P17 order passed by the National Green Tribunal.

3. W.P(C) No.13221 of 2022 is filed challenging the very same order dated 27.05.2021 in O.A. No.244 of 2017 by the National Green Tribunal, South Zone Chennai, which is produced as Ext.P5 in the said writ petition.

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4. It is contended in W.P.(C) No.17340 of 2022 that by Ext.P17 order, the National Green Tribunal declared that the mining operation done by the 4th respondent under the name and style of M/s.Cochin Granites in the disputed area after 15.01.2016 till they stopped their mining operation on the basis of the old lease of 2006, is illegal and unauthorized and they are liable to pay environmental compensation for the quantity of mined articles, which has to be assessed by the Mining and Geology Department and also issued other consequential directions. It is further contended that the petitioner is a partnership firm engaged in the business of conducting a granite quarry in Vengola Village of Kunnathunadu Taluk and was conducting the quarry since 1992. By Ext.P1 notification issued by the Ministry of Environment and Forest (MoEF) it is mandated that environmental clearance from MoEF should be secured for mining activities in an area beyond 5 hectares. It was further contended that Ext.P2 lease was for an area less than 5 hectares, and there is no requirement for the petitioner to secure environmental clearance. While so, in **Deepak Kumar v. State of Haryana, (2012) 4 SCC 629**, the Hon'ble Apex Court issued an interim order dated 27.02.2012 wherein it was ordered that leases of minor minerals including their renewal for an area of less than 5 hectares be granted by the State/Union Territories only after getting environmental clearance from the MoEF. The issue as to whether the said interim order

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is applicable to existing leases was considered by the Division Bench of this Court in **All Kerala River Protection Council v. State of Kerala and others, 2015 (2) KLT 78** (Ext P4) wherein it was held that in cases where quarry/mining/lease which was existing on the date of issuance of the notification dated 14.09.2006 or on the date of issue of the order dated 18.05.2012 by the Govt. of India, Ministry of Environment and Forest with regard to an area less than 5 hectares, no environmental clearance with regard to the extraction of minor mineral is required and that the notification dated 14.09.2006 contemplated obtaining environmental clearance only with regard to new project/activities. Thereafter, Ext.P5, new rules came into force, i.e., Kerala Minor Mineral Concession Rules, 2015. Petitioner also contended that Ext.P4 judgment was followed in **Paristhithi Samrakshana Janakeeya Samithy v. State of Kerala and others, 2015 (4) KLT 278** and the said judgment was challenged before the Hon'ble Apex Court and the Special Leave Petition was dismissed as per Ext.P7 order. While so, Ext.P11 O.A. No. 244 of 2017 was filed by the 5th respondent before the National Green Tribunal seeking a direction commanding respondents 1 to 3 therein, to restrain the 4th respondent from conducting the quarrying operation without environmental clearance and for a direction to assess the damage caused by the 4th respondent to the environment, consequent to the quarrying done without environmental clearance and

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to recover the loss from the 4th respondent. Petitioner contended that the petitioner's firm was not made a party and one of the partners alone was arrayed as a party (4th respondent in W.P(C) No.17340 of 2022) in the said proceedings and the said partner has filed a counter affidavit pointing out the defect of nonjoinder of necessary party. In the meanwhile, the petitioner secured Ext.P13 environmental clearance based on which Ext.P14 fresh lease was also granted. The petitioner contended that without affording an opportunity of being heard, National Green Tribunal passed Ext.P17 order, and the appeal filed by the 4th respondent was dismissed by the Hon'ble Apex Court as per Ext.P19 order. Though a review petition was filed, the same was also dismissed as per Ext.P23. Thereafter, Ext.P24 notice was issued by the 3rd respondent for assessment of environmental damages. Petitioner relying on Ext.P27 judgment of the Hon'ble Apex Court in **Municipal Corporation of Greater Mumbai v. Ankitha Sinha, 2021 (6) KLT 133** contended that a party likely to be affected by the order should be afforded due opportunity by the National Green Tribunal to present their case before suffering adverse order.

5. In W.P(C) No.13221 of 2022 filed by the State, similar contentions were raised and it was mainly contended that the direction in **Deepak Kumar** case supra was considered in **All Kerala River Protection Council** case supra and other subsequent cases including

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Nature Lover's Forum v. State of Kerala, 2016 (1) KLT 75 and held that mining lease which is in operation as on the date of the O.M. dated 18.05.2012 does not require an environmental clearance and that these aspects were not properly considered while the impugned order was passed by the National Green Tribunal. It is also contended that the judgment in **All Kerala River Protection Council Case** supra was challenged before the Hon'ble Apex Court in S.L.P. (Civil) Diary No. 38313 of 2019 and the same was dismissed as withdrawn on 16.12.2022. It is further contended by the learned Senior Govt. Pleader relying on the judgment of the Hon'ble Apex Court in **State of Andhra Pradesh v. Reghu Ramakrishna Raju Kanumuru, (2022) 8 SCC 156**, that there is primacy of orders of High Court over those of the statutory Tribunals and in case of conflicting orders passed by the National Green Tribunal and the High Court, it is the order passed by the Constitutional Court which would prevail over the orders passed by the Statutory Tribunals. Learned Senior Govt. Pleader also relied on the judgment of the Hon'ble Apex Court in **Madhya Pradesh High Court Advocates Bar Association and another v. Union of India and another, 2022 (3) KLT 474** to contend for the position that the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India and the power of judicial review remain intact and unaffected by the National Green Tribunal Act and contended that this Court can entertain a challenge

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against the orders passed by the National Green Tribunal. It is also contended that as on the date of filing of the writ petition, there were almost 90 mineral concession holders in the State of Kerala who had obtained mineral concession under the erstwhile Rules of 1967, i.e., prior to 18.05.2012 and they were permitted to continue their operation without obtaining environmental clearance based on the judgment in **All Kerala River Protection Council** case supra and subsequent cases. Based on the order by the Tribunal, now action has to be taken against those quarry owners also which will put various developmental activities undertaken in the State to serious difficulties and therefore they have approached this Court challenging the order passed by the National Green Tribunal.

6. The matter has come up before this Court for extension of the interim orders in both the writ petitions, which were initially granted on 15.06.2022. The additional 4th respondent, who was later impleaded in W.P.(C) No.13221 of 2022, objected to the extension of the interim order mainly contending that the order impugned in these proceedings was taken up in appeal by the 4th respondent before the Hon'ble Apex Court in Civil Appeal No.4643 of 2021 and was dismissed as per order dated 16.08.2021.

I have considered the rival contentions of the parties. It is pertinent to note that the Registry of this Court has placed before me

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the order dated 24.03.2023 passed by the Hon'ble Apex Court in SLP No.5563 of 2023 challenging an order in I.A. No.1 of 2023 whereby the petition seeking impleadment of the petitioner in the Interlocutory Application as additional 5th respondent in W.P(C) No.13221 of 2022 was rejected by this Court. The Hon'ble Apex Court in the said order has directed this Court to take into consideration the order dated 24.03.2023 while hearing these matters and while considering the extension of the stay granted earlier staying the order passed by the National Green Tribunal dated 27.05.2021, against which Civil Appeal was preferred before the Hon'ble Apex Court which came to be dismissed, and also the Review Petition. The order under challenge in these proceedings passed by the National Green Tribunal was appealed before the Hon'ble Apex Court by the 4th respondent in W.P(C) No.17340 of 2022 in Civil Appeal No.4643 of 2021 which was dismissed as per order dated 16.08.2021, which is produced as Ext.P19 in W.P(C) No.17340 of 2022. Though a review petition was filed as R.P No.1285 of 2021, the same was also dismissed as per order dated 14.12.2021, which is produced as Ext.P23 in W.P(C) No.17340 of 2022. Though it is contended by the petitioners that in view of the decisions cited supra this Court is well within its powers to adjudicate a challenge against the orders passed by the National Green Tribunal, by Exts.P19 and P23 produced in W.P(C) No.17340 of 2022 the Apex Court has dismissed the appeal and review

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petition challenging the order of the National Green Tribunal. In view of the fact that the order impugned in these writ petitions has been challenged unsuccessfully by filing an appeal and a review petition before the Hon'ble Apex Court, I am of the opinion that the interim order granted in both the writ petitions i.e., W.P(C) No.13221 of 2022 and W.P(C) No.17340 of 2022 on 15.06.2022 and subsequently extended, is not liable to be extended further and the request for extending the interim order in both the writ petitions is accordingly declined.



Sd/-

VIJU ABRAHAM
JUDGE

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APPENDIX OF WP(C) 13221/2022

Exhibit P5

**TRUE COPY OF THE ORDER AND JUDGMENT DATED 27.05.2021
PASSED BY THE TRIBUNAL IN OA NO. 244/2017.**

