

**BEFORE THE NATIONAL GREEN TRIBUNAL**

**SOUTHERN ZONAL BENCH**

**CHENNAI**

**Application No. 82 of 2015(SZ)**

Thulaseedharan Pillai  
S/o. Thankappan Pillai  
Thushara Bhavan (H)  
Ulakkod, Vakkanadu (PO),  
Kottarakara Taluk  
Kollam District-691509  
Kerala



**.....Applicant**

**Vs.**

1. Ministry of Environment, Forest and Climate Change  
Represented by its Secretary  
Paryavaran Bhavan, CGO complex, Lodhi Road  
New Delhi-110 003
2. State Environment Impact Assessment Authority  
Represented by its Member Secretary  
Directorate of Environment and Climate Change  
Petta, Pallimukku P. O, Thiruvananthapuram
3. State of Kerala  
Represented by the additional Chief Secretary  
Department of Environment  
Secretariat, Thiruvananthapuram
4. The Geologist  
District Office  
Keshavanikethan  
Asramam, Kollam District-691 002
5. The District Collector  
Civil Station  
Kollam District-691 001

6. The Environmental Engineer  
Kerala State Pollution Control Board  
District Office  
Kollam-691 001

7. Superintendent of Police  
Office of Superintendent of Police  
Kollam-691 001

8. Village Officer  
Veliyam Village  
Kottarakara Taluk  
Kollam-691 540

9. Jyothikumar V. Nariyida Charuvila Veedu  
Kudavattoor P.O, Odanavattom  
Kollam-691 512

.....Respondents

**Counsel for the Applicant**

Mr. Rajan Vishnu Raj and Mr. Harish Vasudevan

**Counsel for the Respondents**

- |                            |   |
|----------------------------|---|
| 1. Mrs. C. Sangamithrai    | - Counsel for Respondent No.1               |
| 2. Mrs. Vidyalakshmi Vipin | - Counsel for Respondent No. 2              |
| 3. Mrs. Suvitha A.S        | - Counsel for Respondent No.3, 4 ,5,7 and 8 |
| 4. Mrs. Rema Smrithi       | - Counsel for Respondent No. 6              |
| 5. Mr. A. Selvendran       | - Counsel for Respondent No. 9              |

**ORDER**

**QUORAM**

**Hon'ble Justice Dr. P. Jyothimani (Judicial Member)**

**Hon'ble Professor Dr. R. Nagendran (Expert Member)**

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**Delivered by Justice Dr.P. Jyothimani dated 14<sup>th</sup> January, 2016**

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- 1) Whether the judgement is allowed to be published on the internet ----- yes / no
- 2) Whether the judgement is to be published in the All India NGT Report -----yes/ no

1. The above application is filed by the applicant who is a resident owning a house situated in Resurvey No. 498/9-7 of Veliyam village, challenging the alleged illegal quarrying

carried on by the 9<sup>th</sup> respondent in the name and style of Ulakkode Rock Quarry in more than 1 acre of land in Block No. 32 Resurvey No. 2/2 and 2/6 of Veliyam village, Kottarakara Taluk. It is stated that the 9<sup>th</sup> respondent has started conducting quarrying in the year 2011 based on a license issued by the Panchayat and the explosive license issued by the Joint Chief Controller of Explosives. It is the case of the applicant that the 9<sup>th</sup> respondent was granted short term permit to conduct quarrying in Resurvey No.2/2 in Block No. 32 of Veliyam village in an extent of 10.43 ares and in Resurvey No. 2/6 in Block No. 32 in an extent of 17 ares which are annually renewed. It is stated that the said respondent has obtained quarry permit in respect of Resurvey No. 2/2 in Block No. 32 of Veliyam village in the years 2011-12, 2013-14 and 2014-15. In respect of the land comprised in Resurvey No. 2/6 of Veliyam village quarry permit was granted to 9<sup>th</sup>respondent in the years 2009-10, 2011-12, 2012-13 and 2014-15 and it has been renewed.

2. According to the applicant, the 9<sup>th</sup>respondent has been quarrying in an unscientific manner in large quantities resulting in dust and sound pollution apart from heavy vibrations caused by explosions. The quarry is being conducted continuously with blasting and quarrying in the said area day and night. It was in those circumstance that the applicant approached the 7<sup>th</sup> respondent by a representation for protection to their life and property from the illegal quarrying by the 9<sup>th</sup> respondent and on the representation, the 7<sup>th</sup> respondent conducted an enquiry and found that the 9<sup>th</sup> respondent was conducting quarrying illegally and the 7<sup>th</sup> respondent also communicated to 5<sup>th</sup> respondent District Collector recommending immediate closure of 9<sup>th</sup> respondent unit but in spite of the same, no action has been taken. Subsequently, in the year 2013, the 9<sup>th</sup> respondent has obtained consent from the 6<sup>th</sup> respondent, the State Pollution Control Board (the Board) which according to the applicant is in violation of Environment (Protection) Act 1986 (EP Act)and based on that large scale quarrying operations are being carried on. The complaint made by the applicant has not been considered on the ground that the 9<sup>th</sup> respondent has got clearance. Even though the 9<sup>th</sup> respondent started quarrying operation in 2011 he got clearance only in the year 2013. The 6<sup>th</sup> respondent has issued Integrated Consent to Operate for the 9<sup>th</sup> respondent in respect of Resurvey Nos. 2/2 and 2/6 in Block No.32 of Veliyam village.

3. It is also the case of the applicant that the 9<sup>th</sup> respondent has started encroaching beyond the survey number in which he was initially conducting quarrying. As a result of blasting, huge chunks of rock pieces are landing on the property of applicant placing the applicant at a constant risk to life of all his family members. The 3<sup>rd</sup> respondent State of Kerala, Department of Environment has issued an order on 21-02- 2014 that in respect of the quarries functioning on short time permits, they have to give an undertaking that Environmental Clearance (EC) as required will be obtained from State Environment Impact Assessment Authority (SEIAA) and it is stated that 9<sup>th</sup> respondent has also submitted an affidavit that he will obtain the EC. The Consent to Operate granted to the 9<sup>th</sup> respondent on 17-01-2012 and 09-07-2014 has also expired and the same has not been renewed till date and in spite of it the 9<sup>th</sup> respondent is carrying on its quarrying activity. It is also stated that the 9<sup>th</sup> respondent submitted an affidavit dated 06-12-2014 to the 4<sup>th</sup> respondent that he will not conduct quarrying exceeding a depth of 6 m and in cases where a depth of 6 m has exceeded, the quarrying will be done in step or slope method. In spite of the affidavit of undertaking given by the 9<sup>th</sup> respondent, illegal quarrying is being done by the 9<sup>th</sup> respondent and therefore he has filed the above application on various grounds for restraining the said respondent from conducting quarrying operation without obtaining EC and for a direction against 1<sup>st</sup> and 2<sup>nd</sup> respondents to take effective penal action against 9<sup>th</sup> respondent for violation of provisions of EP Act, 1986, issue direction to the 9<sup>th</sup> respondent to restore ecology in Resurvey No. 2/2 and 2/6 of Block No. 32, Veliyam village and for a direction to respondent Nos. 1 and 2 to take appropriate action against the 9<sup>th</sup> respondent under Air (Prevention and Control of Pollution) Act, 1981.
4. The 9<sup>th</sup> respondent in its reply, while questioning the maintainability of application, denied all the allegations as false and it is stated that the applicant has moved various Courts through different persons for the same cause of action and filing of this application is a matter of forum shopping. It is stated that one of the close relatives of the applicant, one Mr. C. S. Binu is a Police Constable and at the instigation of the said Police Constable who has certain animosity against 9<sup>th</sup> respondent the present application is filed, and therefore it is liable to be dismissed as *malafide*. While admittedly the 9<sup>th</sup> respondent is carrying on quarrying in 2 quarries, it is stated by the 9<sup>th</sup> respondent that due to the pendency of various writ petitions on environmental pollution ground and due

to the Government orders relating to the sanctioning of temporary short time permits, the quarrying association decided to stop all quarrying operations in Kerala from 09-02-2015 and according to 9<sup>th</sup> respondent it has also stopped quarry operation from 09-02-2015. Recently, the concerned authorities have passed an order that the permit holders having permit below 1 ha can apply for renewal and accordingly the 9<sup>th</sup> respondent has filed an application for renewal which has expired on 07-04-2015. Therefore, it is false to say that 9<sup>th</sup> respondent is carrying illegal quarrying activity and conducting crusher units. It is also denied that the 9<sup>th</sup> respondent was conducting quarrying in an unscientific manner and that the blasting operation is being conducted during day and night. It is reiterated by the 9<sup>th</sup> respondent that all quarrying operations have been stopped from 09-02-2015. It is also stated that the consent was given by the 6<sup>th</sup> respondent only after visiting site and the 9<sup>th</sup> respondent conducted quarrying only with valid consent and clearance. It is also denied that the quarrying was done near the property of the applicant. According to 9<sup>th</sup> respondent, these are the tactics played by the applicant to stop the 9<sup>th</sup> respondent from quarrying and therefore false allegations are made as if rock pieces are falling on the property of the applicant. It is also denied that the 9<sup>th</sup> respondent has been quarrying till 09-02-2015 without valid consent from the Board. It is stated that the 9<sup>th</sup> respondent has filed an affidavit to the 4<sup>th</sup> respondent and the 9<sup>th</sup> respondent has not committed any violation of the terms of the said affidavit. The photographs filed by the applicant are denied as the same belong to some other quarry. The documents are fabricated with the aid of the said Police Constable and even after stopping the operation from 09-02-2015 a stop memo notice was issued which was objected to by the 9<sup>th</sup> respondent by writing to the village Officer by way of a notice dated 23-02-2015.

5. It is stated that the 9<sup>th</sup> respondent is carrying on quarrying operation from 2002 onwards with lawful permits, explosive license, blasting license, pollution clearance, panchayat license etc., and those clearances were issued only after the visit made by the concerned authorities to the site. It is stated that about 30 quarries are functioning in the Ulakkode quarry and the said Police Constable Mr. C. S. Binu is in the habit of receiving bribes from the quarry permit holders and he has been illegally conducting quarrying in the name of a Singapore quarry by using his binamies. It was because the 9<sup>th</sup> respondent refused to give the demanded share to the said Police Constable, he has filed a suit

initially against the 9<sup>th</sup> respondent in the name of one Mr. Kunjuraman as his binami in O.S. No.67/2007 before the Munsiff Court, Kottarakara and the same was dismissed on merit on 04-08-2008. It was when the said Binu caused obstruction to the pathway which leads to the quarry of 9<sup>th</sup> respondent through the above said Kunjuraman, the 9<sup>th</sup> respondent filed a suit for injunction before the Munsiff Court, Kottarakara in O.S.No. 75 of 2007 and thereafter the said Binu filed another suit against the 9<sup>th</sup> respondent through Smt. Subhadra as binami for injunction from quarry operation in O.S.No. 219 of 2007 and that suit was also dismissed. Thereafter, the said Binu by using his friends namely Santhosh, Anil, Kunjuraman etc., caused obstructions to the smooth functioning of the quarry of 9<sup>th</sup> respondent and the 9<sup>th</sup> respondent filed a police complaint in which no action was taken and it was then the 9<sup>th</sup> respondent filed a suit for injunction against the obstruction in O.S.No. 296 of 2007 before the Munsiff Court of Kottarakara and it was decreed with cost. It is the case of the 9<sup>th</sup> respondent that Mr.Binu has filed false petitions before various authorities against the renewal of permit to the 9<sup>th</sup> respondent and therefore the 9<sup>th</sup> respondent had to approach Hon'ble High Court of Kerala filing writ petitions in the year 2007, 2008 and 2009 for suitable directions.

6. It is stated that in the year 2008 the said Mr. Binu by using Smt. Kunjpennu, a close relative of Kunjuraman filed a writ petition in W.P(c).No.21823 of 2007 before the Hon'ble High Court and the High Court has directed the renewal application to be considered. Thereafter, Mr. Binu filed petition before the Pollution Control Board in the year 2011-12 and the Board officials visited the site and no further action was taken by the Board against the 9<sup>th</sup> respondent. A complaint was filed before Kollam Rural Superintendent of Police and was enquired and a report was made against 9<sup>th</sup> respondent. In the year 2012, the 9<sup>th</sup> respondent filed a petition before the Kerala Vigilance DGP against Mr.Binu and an enquiry was conducted and as certain Police Officers have threatened to withdraw the petition, no proper enquiry was conducted. It is stated that nearly 30 quarries are functioning adjoining the 9<sup>th</sup> respondent's quarry and the complaint was made only against the 9<sup>th</sup> respondent. It is stated that Mr.Binu has filed a suit by using his brother as binami in O.S.No.225of 2012 which is pending. In addition to that, false criminal cases were filed against 9<sup>th</sup> respondent and ultimately through one Usha Kumari, his relative, filed a petition before the Hon'ble High Court in W.P.(C). No.10337/2105

for the same relief and there was no stay granted and having failed to get interim order, the present application has been filed.

7. The 6<sup>th</sup> respondent Board in the reply has stated that the 9<sup>th</sup> respondent has applied for Integrated Consent to Operate a quarry in S.R.No 2/6 of Block No.32 of Veliyam village on 15-03-2010 and was granted on 19-03-2010 up to 28-02-2013. An application for renewal of consent was received on 26-12-2012 and an enquiry was conducted on 04-03-2013 and found no residential buildings within 100 m from the quarry site and the Integrated Consent to Operate was renewed on 06-03-2013 valid up to 03-07-2013 and later it was renewed up to 09-02-2015. As per the circular issued by the Board, the distance criteria to residences is 50m.
8. It is stated by the 6<sup>th</sup> respondent that the 9<sup>th</sup> respondent applied for Integrated Consent to Operate the quarry in Survey No.2/2 Veliyam village on 12-12-2011 and after enquiry and having found no residential building within 100 m radius from the proposed site, consent was issued on 17-01-2012 with validity period up to 31-12-2014 and later the 9<sup>th</sup> respondent had applied for renewal on 15-12-2014. In the meantime when a complaint was received from the residents at Ulakkode against the quarrying in Survey No.2/2 & 2/6 of Veliyam village, an enquiry was conducted on 09-02-2015 and found that there are many individual quarries operating in a single hillock extending to a vast area, but the complaint is only against the 9<sup>th</sup> respondent and the complaint was dust emanation from the quarry during blasting at the top. During enquiry on 09-02-2015 it was found that residential buildings are situated within 100 m radius from the area in S.R.No 2/2 of Veliyam village. The garden nets provided at the boundary facing the complainant's residences were torn and adequate dust control measures were not provided in the quarrying area and therefore suitable directions were issued on 18-02-2015 to the 9<sup>th</sup> respondent to provide control measures for dust from quarry in Survey No.2/6 and a show cause notice was issued on 26-02-2015 regarding quarry in Survey No.2/2 on the ground that the distance criteria was violated.
9. Based on the direction issued by this Tribunal dated 22-04-2015, the Board has directed to the 9<sup>th</sup> respondent on 07-05-2015 not to conduct any quarrying in Survey No. 2/2 and 2/6 of Veliyam village. It is stated that as per the prevailing norms, quarrying shall be

done keeping a safe distance of 100 m from residences and by providing the required measures suggested after obtaining clearance from the departments concerned.

10. The 4<sup>th</sup> respondent the District Geologist in the reply has stated that the 9<sup>th</sup> respondent is a holder of 2 quarrying permits from 4<sup>th</sup> respondent to extract granite building stone. Accordingly, in respect of Survey No.2/ 2 in an extent of 10.43 ares permit was granted which is valid up to 07-04-2015 and in respect of Survey No.2/6 in an extent of 7 ares permit was given which is valid up to 24-06-2015.

11. As per the records of the 4<sup>th</sup> respondent, the 9<sup>th</sup> respondent has started obtaining quarrying permits way back from 2006 and till 2009-10 he was issued short term permit and since 2009-10 he was granted permit as per the Kerala Minor Mineral Concession Rules, 1967. It is also stated that the quarry operation has started long back and several quarries are functioning in a single hillock and this quarry area is subject to extraction of granite building stone for the last 25 to 30 years. To the knowledge of 4<sup>th</sup> respondent, the 9<sup>th</sup> respondent possesses valid Consent to Operate from the Board, Panchayat and D&O license, explosive license etc. The 4<sup>th</sup> respondent has granted permits as per Kerala Minor Mineral Concession Rules, 1967 to 9<sup>th</sup> respondent and the rule permits a minimum distance of 50 m to be maintained from a house to quarry site and in this case the applicant's house is situated more than 200 m from the quarry. It is also stated that the quarry is facing east and applicant's house is on the west of the quarry and the applicant's house is not on the direction of the quarry but on the back side of the quarry. Therefore, the averment that huge chunks of rock pieces are landing on the property of the applicant is denied as false. The 4<sup>th</sup> respondent already informed the Director of Mines and Safety about the depth of the quarry and precautionary measures to be taken from the said office. In accordance with order passed by the Hon'ble Supreme Court dated 27-02-2012 in *Deepak Kumar v. State of Haryana*, (2012) 4 SCC 629, the Government of Kerala has redrafted Kerala Minor Mineral Concession Rules, 1967 and the Kerala Minor Mineral Concession Rules, 2015 came into force from 07-02-2015. According to the said amended rule, two mineral concessions are given, one quarrying permit and another quarrying lease. Quarrying permit is for maximum 1 year and can be renewed for a further period of 2 years. As per the Kerala Minor Mineral Concession Rules, 2015 prior EC has been made mandatory for all minor mineral concessions including short term



quarrying permit. In the case of quarry permits, the existing granite/building stone quarries are granted a further period of 2 years for producing EC as per Rule 12 of Kerala Minor Mineral Concession Rules, 2015 and that has been challenged before the Hon'ble High Court of Kerala and some writ petitions are still pending.

12. It is further stated that at present 9<sup>th</sup> respondent is in possession of 2 quarrying permits one in Survey No.2/2 of Veliyam village which expired on 07-04-2015 and the other in respect of Survey No.2/6 of Veliyam village expire on 24-06-2015 and so far as the said 2 quarries, as per the amended Kerala Minor Mineral Concession Rules, 2015 their renewal application are to be considered by the Government based on the impact of decision of the Hon'ble High Court of Kerala as to whether obtaining EC in terms of Rule 12 of Kerala Minor Mineral Concession Rules, 2015 is exempted.

13. The 1<sup>st</sup> respondent MoEF and CC has filed its reply in which it is stated that the Ministry has notified EIA Notification, 2006 as per Environment (Protection) Act, 1986 which makes the prior EC as mandatory in respect of the mining of minerals. 'A' category projects are handled by MoEF &CC while 'B' Category projects are by SEIAA notified by the Ministry. As per the Notification, the projects of minor mineral including sand mining with mining lease area equal to or greater than 50 ha are to be handled by MoEF & CC for grant of EC while projects with mining lease area less than 50 ha are to be handled by SEIAA. It is also stated that in accordance with direction of the Hon'ble Supreme Court in *Deepak Kumar Case* dated 27-02-2012 the amended rules contemplate that EC will be required to be obtained from SEIAA even in respect of lease area less than 5 ha and an amended notification has been issued by MoEF and CC on 09-09-2013 by which the the State Governments have to ensure that the sand/stone mining is allowed in the State only after the required statutory clearances are obtained.

14. Mr. Harish Vasudevan learned Counsel appearing for the applicant has relied upon a Judgement of the Hon'ble Kerala High Court rendered in W.P(C).No. 10694 of 2015 dated 30-09-2015 wherein a Division Bench of Kerala High Court has considered the amended Kerala Minor Mineral Concession Rules of 2015 formulated by the Kerala Government and issued direction that the mining shall be permitted only after obtaining valid permit along with EC. He has also submitted that as against the decision of the Hon'ble first Bench of Kerala High Court, a Special Leave Petition has been filed in

which Supreme Court has issued notice on 13-04-2105 and directed that until further orders, *status quo* as of today shall be maintained by the parties. Therefore, according to the learned Counsel, in as much as permit issued to the 9<sup>th</sup> respondent expired even in June 2015, the 9<sup>th</sup> respondent shall not be permitted to carry on his quarrying operation. He has also submitted that as per amended Kerala Minor Mineral Concession Rules, 2015 prior EC is required and the Government of Kerala has also clarified that in the event of mining lease area less than 5 ha sufficient time to be given for obtaining EC and therefore obtaining EC is a mandatory condition precedent.

15. The learned Counsel appearing for the 9<sup>th</sup> respondent has submitted that as stated in the reply by the 9<sup>th</sup> respondent, the mining operation has been stopped from 09-02-2015 and therefore the application as such is not maintainable as on date. He has also referred to various of incidents to show that there has been animosity between 9<sup>th</sup> respondent and a Police Constable on whose instigation the application is filed. It was due to the said conduct, the 9<sup>th</sup> respondent who has got valid permit was compelled not to carry on the quarry operation in spite of the fact that the permit was still valid up to June 2015. He has also submitted that it has been confirmed by the 4<sup>th</sup> respondent as well as by the 6<sup>th</sup> respondent that 9<sup>th</sup> respondent has been carrying on mining operation with all necessary consents and there is no question of any action to be initiated against the 9<sup>th</sup> respondent.

16. The learned Counsel appearing for the Board as well as State of Kerala have also reiterated the stand taken by the 9<sup>th</sup> respondent in the undertaking in the form of affidavit and stated that so far as the 9<sup>th</sup> respondent has been carrying on the quarrying activity apart from many other persons numbering more than 30 and by virtue of amendment made in the Minor Mineral Concession Rules in 2015 which requires EC, further consent and permit are issued only in respect of the projects where EC obtained by the Project Proponent.

17. We have heard the learned Counsel appearing for the applicant as well as respondents, referred to the pleadings and Judgements produced by the learned Counsel and carefully considered the issue involved in this case. On an analysis of entire factual matrix we are of the view that the issues to be decided in this case are as to:

1. Whether the 9<sup>th</sup> respondent should be restrained from carrying on the mining operation in S.R.No. 2/2 and S.R.No.2/6 in Block No.32 of Veliyam village, Kottarakara Taluk till he obtains EC
2. Whether the 9<sup>th</sup> respondent is liable for any action for the acts alleged to have been done earlier in accordance with provisions of Environment (Protection) Act, 1986

Since both the issues are interconnected we have decided to answer both the issues together.

18. At the outset, it is clear from the record as well as from the stand taken by the official respondents especially the 4<sup>th</sup> and 6<sup>th</sup> respondents that in the said single hillock region more than 30 quarry operators have been carrying on quarrying operation for the last 25-30 years. Concedingly, in this application the applicant has restricted his complaint only against the 9<sup>th</sup> respondent on the ground that the 9<sup>th</sup> respondent's quarry site is situated near the residence of the applicant. On the contrary, the 4<sup>th</sup> respondent has stated that while under the Kerala Minor Mineral Concession Rules, 1967 a minimum distance from a house to quarry site to be maintained is at a distance of 50 m, the applicant's house is situated 200 m from the quarry site of 9<sup>th</sup> respondent. Moreover, it is stated in the reply that the applicant's house is on the west of the quarry and therefore the applicant's house is situated at the back side of quarry. Therefore the 4<sup>th</sup> respondent has taken the stand that the averment of huge chunks of rock pieces are landing on the property of the applicant can only be false. While admittedly no steps have been taken by the applicant in respect of other quarries numbering 30, for taking penal action under the EP Act, 1986, the applicant has not specifically stated as to why he has singled out 9<sup>th</sup> respondent for such action. In the light of the stand taken by the official respondents and taking note of the fact that the 9<sup>th</sup> respondent obtained valid permit under law existing at the time in Kerala and also Consent to Operate obtained from the Board we are of the considered view that there exist no special circumstance to single out the 9<sup>th</sup> respondent for taking penal action. It is true that in respect of mining activities whether major or minor mineral, as per the EIA Notification 2006 prior EC is required. But we do not understand when the legal position is clear, as to why the Board which is expected to verify as to whether such EC was obtained has been granting Consent to Operate to so many persons in the hillock

region including 9<sup>th</sup> respondent who have admittedly not obtained prior EC. In such circumstance there is every possibility for the 9<sup>th</sup> respondent to believe that on the basis of the valid Consent to Operate issued by the Board he is entitled to go ahead with quarrying operation as he has also got valid permit. We are not able to understand the meaning of the consolidated consent granted by the Board. The contention of the Board is that Consent to Establish or Consent to Operate can be considered under Water and Air Acts in the same order. If that is so, in our view the same may result in non application of mind. The Air Act as well as Water Act are operating totally in different fields based on different criteria. Even though under both the Acts, the Board is the concerned authority to grant Consent to Establish or Consent to Operate they have to be considered separately in respect of each Acts and separate application of mind. Therefore, it is certainly not open to the Board to consider both application made under Air and Water Acts together in the name of Consolidated Consent. The law expects the authority under each of the Act to apply its mind independently and pass separate orders. Therefore, there is no question of issuing Consolidated Consent. We expect that in future, the Board will consider the said application under the Acts individually and independently and pass order and dispense with the practise of issuing consolidated order. Due to the above said reasons, as we find that there are some contributions by the Board in not insisting for the prior EC from concerned authority as a condition precedent to obtain Consent to Establish or Consent to Operate under the Air and Water Acts, we are of the view that in the factual matrix of this case there is no need to take penal action against the 9<sup>th</sup> respondent under EP Act, 1986. We make it very clear that the above said finding of ours is restricted to the facts of the present case and not be treated as a guiding principle for any other case.

19. In so far as it relates to the direction to close the activity of the 9<sup>th</sup> respondent, there is no difficulty for this Tribunal to arrive at a conclusion that the Kerala Minor Mineral Concession Rules, 2015 makes it clear in the amended rule 9 that the authority competent to issue quarry permit shall before granting such permit take note of factual aspect as to whether the applicant has obtained EC apart from other statutory licence, no-objection certificate etc. This definitely safeguards the interest of environment. It is relevant to extract the rule 9 which reads as follows:

*“9. Disposal of application for the grant of quarrying permit - (1) On receipt of the application for grant of quarrying permit for undertaking quarrying operations, the competent authority shall make site inspection and take decision regarding the precise area to be granted for the said purpose and intimate the applicant to submit approved mining plan and Environmental Clearance for the precise area. Provided that, approved mining plan and environmental clearance shall not be insisted, for the issuance and renewal of permits in the case of Laterite Building Stone. (2) On receipt of an approved mining plan and Environmental Clearance for the precise area and on production of all other statutory licenses/clearances/No Objection Certificate etc., from other statutory authorities concerned, the competent authority shall issue a quarrying permit to the applicant within thirty days in Form N for ordinary earth and in Form M for all other minor minerals”.*

That is also the stand taken by the legislature of Kerala while framing rule No. 12 regarding the quarry of minerals which reads as follows:

*“12. Renewal of a quarrying permit - On receipt of an application in Form-A, a quarrying permit may be renewed for a further period of two years but not exceeding one year at a time after complying with the procedure provided for grant of quarrying permit under rule -9- 9 and subject to the production of all other statutory licenses/ clearances/ No Objection Certificate, etc., from other statutory authorities concerned:*

*Provided that, the environmental clearance required under rule 9 shall not be insisted, in the case of renewal of quarrying permits, in respect of quarries which had a valid permit as on 9th day of January 2015.*

*Provided further that the approved mining plan required under Rule 9 shall not be insisted till 1st April 2016 for renewal of a quarrying permit”.*

20. Even though we are of the considered view that this provision takes care of insisting of prior EC in respect of new units we make it clear that the Board when it is approached for consent shall also insist on the production of such prior EC before granting any consent under the relevant Acts.

21. In W.P. No.1514 of 2015 dated 15<sup>th</sup> July 2015 the Hon'ble first Bench of Kerala High Court while considering an appeal filed against an Interim Order passed by a Hon'ble Single Judge refusing to modify an earlier order dated 22<sup>nd</sup> March 2015 which is relating to the proviso to Rule 12 of the amended Minor Mineral Concession Rules, 2015 which states that EC is not required in respect of the quarry having valid permit as on 9<sup>th</sup> January 2015, has agreed with an earlier Division Bench Judgement rendered in *All Kerala River*

*Protection Council v. State of Kerala and Ors*, 2015 CJ(Ker)179 wherein it was observed that the Judgement of Apex Court in *Deepak Kumar's case* did not contemplate EC for an area less than 5 ha with regard to mining lease/mining on the date of judgement and accordingly dismissed the appeal. The Hon'ble first Bench of Kerala High Court in W.P. No 10694 of 2015 in the Judgement rendered on 30<sup>th</sup> September 2015 while not accepting to reconsider the earlier decision of the division Bench in *All Kerala River Protection Council v. State of Kerala and Ors*. relating to the renewal in respect of valid permit holder as on 09-01-2015 who are entitled to operate without obtaining EC but on and from 09-01-2015 even for renewal valid EC is a condition precedent has held as follows:

*“20. Submission is made by the learned counsel for the private respondents as well as the learned Government Pleader that there is acute shortage of minor minerals in the State and insistence for environmental clearance in all cases for carrying on mining operations will make the development in the State standstill. Environmental protection cannot be sacrificed in the name of development. Development has to be carried out taking due care of environment. It needs no emphasis that it is the obligation of all the State Governments all generations to protect the natural resources. Natural resources cannot be allowed to be over exploited contrary to the statutory regulatory regime which is imposed by various statutes. As noted above all aspects of the mining operations in the State of Kerala have been considered in detail by the Division Bench of this Court in All Kerala River Protection Council v. State of Kerala (supra) and the ratio of the said judgment has already been extracted above. To permit carrying on mining operations contrary to the statutory regulations and contrary to the law declared by this Court shall be disastrous for the natural resources which belong not only to the present generation but also to the future generations. Thus the submission of the learned counsel for the private respondents as well as the learned Government Pleader that since development will come to halt if environmental clearance is insisted on every mining permit does not appeal to us and cannot be accepted. There is no impediment in carrying on mining operations after obtaining environmental clearance as per the 2015 Rules. It is not the case of any one that environmental clearance has not been granted to several persons who have made applications and complied with all the necessary requirements. When others have obtained environmental clearance and are carrying on mining operations no exception can be made with reference to private respondents in the present case.*

*In view of the forgoing discussion we dispose of the Writ Petition with the following directions:*

*(1) Respondents 1 and 3 to 5 are directed to ensure that private respondents 11 to 17 do not carry on any mining operation unless they obtain valid permit along with environmental clearance.*

*(2) The 2nd respondent shall also ensure that relevant provisions of the Mines Act 1952 and Metalliferous Mines Regulations 1961 as far as applicable to a mining operation is followed in its letter and spirit and in event the aforesaid provisions are violated appropriate action under the said provisions be promptly taken”.*

22. It is as against the said Judgement dated 30<sup>th</sup> September 2015, the 11<sup>th</sup> respondent in said writ petition and others who are the private respondents have filed Special Leave to Appeal (C) 30103/2015 before the Hon’ble Supreme Court and in the order dated 30-10-2015 while issuing notice, the Hon’ble Supreme Court has passed following orders:

*“Notice.*

*Until further orders, status quo, as of today, shall be maintained by the parties from today”.*

23. It is now brought to the notice of this Tribunal that a Division Bench of Hon’ble High Court of Kerala in a judgement rendered in W.P No.(C).8531 of 2015 dated 2<sup>nd</sup> December 2015 has held that:

*“(1) The proviso to Rule 12 of the 2015 Rules inserted by Notification dated 05.10.2015 is declared as unconstitutional and imperative.*

*(2) Concerned authorities shall also ensure that relevant provisions of the mines Act, 1952 and Metalliferous Mine Regulations, 1961 as far as applicable to mining operations carried by, on the strength of mining permit is followed in its letter and spirit and in the event the aforesaid provisions are violated, appropriate action under the said provisions be taken by the concerned authorities.*

*(3) State respondents, including concerned District collectors and Geologists shall take steps to ensure that no mining operations be carried out by any person holding mining permit without obtaining environmental clearance as contemplated by the 2015 Rules”.*

24. Even if it means that the private respondents in the writ petition who are the applicants before Supreme Court who are having valid permit but not having EC on date of application of renewal have to maintain *status quo* on 30-10-2015, it is ultimately for the

Hon'ble Supreme Court to lay down the law in respect of above said issue about the validity of rule 12 *proviso* of Rules 2015. In any event, in the present case in so far as it relates to 9<sup>th</sup> respondent, on his admitted stand that the permit itself has expired in February and June, respectively in 2015, in both S.R.No. 2/2 and S.R.No.2/6 of Veliyam village and that 9<sup>th</sup> respondent is not carrying on any mining activity, certainly the 9<sup>th</sup> respondent cannot take advantage of the *status quo* order passed by the Hon'ble Supreme Court on 30-10-2015 for carry on mining activity for the simple reason that the permit itself has expired and it should be treated as new application which requires prior EC as per the amended State rules. Therefore, we make it clear that the 9<sup>th</sup> respondent shall not be permitted to carry on mining operation in Survey Nos.2/2 and 2/6 in Block No. 32 of Veliyam village in the extent of 10.43 ares and 17 ares, respectively until permit is renewed in accordance with law and as per the Judgement of the Hon'ble Supreme Court. The application stands partly allowed in terms of the findings given above.

There shall be no order as to cost.

Dated 14<sup>th</sup> January 2016

Chennai.

Justice Dr. P. Jyothimani

Judicial Member

Prof. Dr. R. Nagendran

Expert Member

NGT