

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

Application No. 52 of 2015 (SZ)

IN THE MATTER OF:

Mr. Tony Thomas
S/o. Tomas
Kizhakkekkara House
Irumbakachola P.O
Mannarkkad (va)
Pakakkad District-67

...

Applicant(s)

AND

1.The Principal Secretary
State of Kerala
Department of Environment and Climate Change
Secretariat
Thiruvananthapuram-695 001

2.The Member Secretary
Kerala State Environment Impact
Assessment Authority
Pattom P.O
Thiruvananthapuram-695 004

3.The Director
Department of Environment and Climate Change
Pattom P.O
Thiruvananthapuram-695 001

4. The District Collector
Ernakulam
Civil Station, Kakannad
Ernakulam
Kerala-682 001

5. The District Collector
Palakkad
Civil Station, Palakkad
Kerala-682 001

6. The District Collector
Thrissur
Civil Station, Thrissur
Kerala-682 001

7. The District Collector
Malappuram
Kerala – 682 001

8. The District Collector
Kannur
Civil Satation
Malappuram
Kerala-682001



... Respondent(s)

Counsel appearing for the Applicant:

**M/s. Rajan Vishuraj and
Harish Vasudevan**

Counsel appearing for the Respondents:

**Mrs. Suvitha A.S for R-1, R-3 to R-8
Mr. Abdul Saleem and
Mrs. Vidyalakshmi for R-2**

ORDER

PRESENT:

HON'BLE SHRI JUSTICE Dr. P. JYOTHIMANI, JUDICIAL MEMBER

HON'BLE P.S. RAO, EXPERT MEMBER

Dated 20th May, 2015

This application is filed by the applicant to set aside the Government
Order dated 21.2.2014 and subsequent orders issued upto 15.11.2014 and also for
a direction against the 2nd and 3rd respondents not to process any application for

granting Environmental Clearance (EC) without having a valid EIA report prepared by an accredited EIA consultant.

This issue relates to mining and quarrying of minor minerals for construction activities. The Government of Kerala in the above said orders have permitted that in respect of areas less than 5 hectares, the procedure shall be simplified and the District Collector will designate the authorised officer in each District who will be approached by the owners of the lands or contractors having NOC received from the owners of the land and thereafter, the application will be forwarded to the Principal Secretary, SEIAA who in turn shall consider the application for granting EC. This procedure is as per the provisions of Kerala Protection of River Banks and Regulations of Removal of Sand Act, 2001.

In the meantime, the Hon'ble Principal Bench of National Green Tribunal has passed orders in August, 2013 restraining any person from removing sand from river beds anywhere in the country without obtaining EC from MoEF/SEIAA and licence from the competent authority. The aforesaid order came to be passed in consonance with the Judgment of the Hon'ble Apex Court in the case of ***Deepak Kumar and Ors Vs. State of Haryana and Ors.***

According to the Government of Kerala, the 1st G.O. i.e., the G.O..Ms. No. 02 dated 21.2.2014 issued in this regard, was also in accordance with the above said Judgment of the Hon'ble Supreme Court and also the orders issued by the Hon'ble Principal Bench. In spite of such order and the G.O. itself, the Government of Kerala has started issuing subsequent G.Os the latest being the

G.O. dated 15.11.2014 impugned in this application in which the Government taking note of the requirement of sand and to overcome its acute shortage for construction purposes and other developmental activities, has extended the period of granting sand mining from time to time. It was under the G.O dated 15.11.2014 the temporary permission was extended for such mining of river sand for a further period of three months.

According to the applicant, the Government has no authority whatsoever to issue such orders unless and until the directions given by the Hon'ble Supreme Court of India in the case of **Deepak Kumar and Ors Vs. State of Haryana and Ors** are fully complied with and necessary legislative measures are taken.

Now it is informed by the learned counsel appearing for the Government of Kerala that in fact the Government has issued the latest and the last G.O. dated 10.4.2015 extending the period for further three months time which has already expired on 14.5.2015. She has also submitted that the Government has no intention of extending the G.O any further. To substantiate her contention, an affidavit has been filed by the 1st respondent, the Principal Secretary, Department of Environment and Climate Change, State of Kerala dated 17th May, 2015 in which he has clearly stated in paragraph 9 which reads as follows:-

“9. It is respectfully submitted that presently a decision has been at the highest Government level that no further extension of time as issued in the impugned G.Os and the latest G.O dated 10.04.2015 shall be granted by the Government once the extended time under the latest G.O

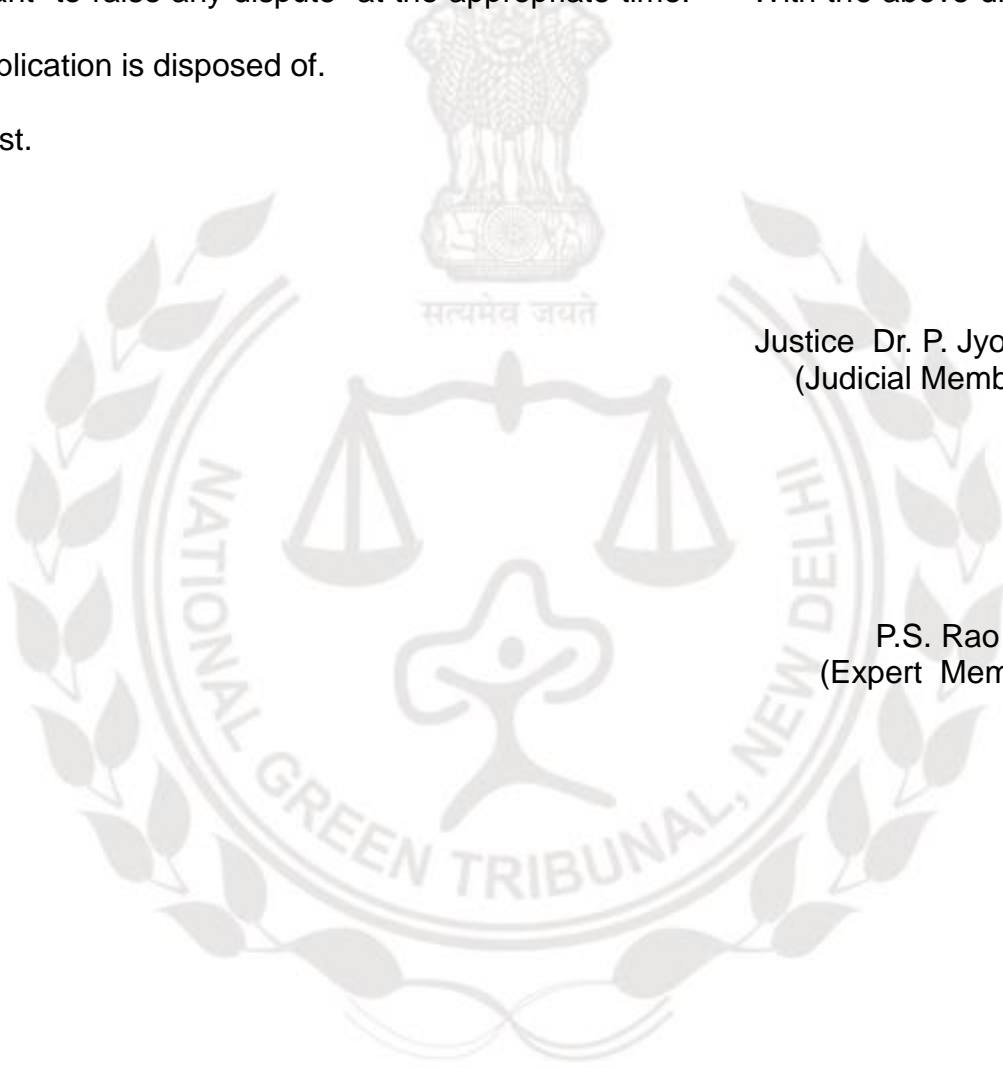
works itself out on 14.05.2015. It is respectfully submitted that this Hon'ble Tribunal may kindly take note of the development needs of the State and the general public and also the impact of the sudden stoppage of supply of sand, as it may lead to social unrest and other untoward situations causing hardships to the public at large in the entire State. The Petitioner may or may not be directly concerned of issues such as spiraling social, economic, developmental impacts and maintenance of public order and peace if the supply of sand is stopped overnight. However, it is prayed that this Hon'ble Tribunal should consider the plight of the State and take a holistic and view, whereby the Undertaking of the Government to not to issue any further G.Os extending the time for mining of river sand without EC after 14.05.2015, may kindly be accepted and the above application be disposed off accordingly recording the Undertaking of the Government.”

In view of the categorical statement made by the 1st respondent, we are of the view that as far as the first prayer of the applicant is concerned, nothing survives and except recording the aforesaid statement made by the 1st respondent in the form of an affidavit, there is no further order required to be issued.

Insofar as it relates to the second prayer of issuing a direction to the 2nd and 3rd respondents not to process any application for granting EC without having a valid EIA report prepared by an accredited EIA consultant, this also in our view is pre-

mature as the Government has already decided not to extend the period of granting permission for sand quarrying. However, the question of granting EC would arise only if such permission is granted in accordance with law. It is always open to the applicant to raise any dispute at the appropriate time. With the above direction, the application is disposed of.

No cost.



Justice Dr. P. Jyothimani
(Judicial Member)

P.S. Rao
(Expert Member)

NGT