

## IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present:

THE HONOURABLE MR. JUSTICE A.V. RAMAKRISHNA PILLAI

Thursday, the 18th day of June 2015/28th Jyaishta, 1937

WP(C).No.16757/2015(T)PETITIONER

M/S. MARTHOMA GRANITES, MEENMUTTY, EDAVATTY.P.O., THODUPUZHA,  
 IDUKKI DISTRICT, PIN-685588,  
 REPRESENTED BY THE MANAGING PARTNER, U.I. JOHN.

RESPONDENTS

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY  
 GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT  
 THIRUVANANTHAPURAM-695001.

AND OTHERS

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 Exhibits P-14 order, pending disposal  
 of the Writ Petition.

This petition again coming on for <sup>order</sup>admission upon perusing  
 the petition and the affidavit filed in support of WP(C) and this  
 Court's order dated 5-06-2015 and upon hearing the arguments of  
 M/S. N.JAMES KOSHY and T.SANJAY Advocates for the petitioner,  
 GOVERNMENT PLEADER for R1 to R4, STANDING COUNSEL for R5 and of  
 STANDING COUNSEL for R6, the court passed the following:-

ORDER

Respondents seek time to file counter. Counter if any, shall be  
 filed within 2 months. Post after 2 months.

Interim order is extended until further orders.

18-06-2015

Sd/- A.V.RAMAKRISHNA PILLAI, JUDGE

/true copy/

ASSISTANT REGISTRAR

18/6/15

18/6/15

## IN THE HIGH COURT OF KERALA AT ERNAKULAM

Present.  
THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

Wednesday, the 8th day of April 2015/16th Chithira, 1937

I.A. NO. 4625/2015 IN W.P.(C) NO. 27520/2014 (L)

PETITIONER/PETITIONER:

JOHN JOSEPH, AGED 55, S/O. JOSEPH,  
KALLUMADATHIL HOUSE, ATTANI P.O. THODUPUZHA TALUK.

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.
2. DISTRICT COLLECTOR, IDUKKI, COLLECTORATE PYNAMU, IDUKKI.
3. ASSISTANT ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD, THODUPUZHA BRANCH, KERALA STATE POLLUTION CONTROL BOARD.
4. CHIEF CONTROLLER, EXPLOSIVES DEPARTMENT, KASAKANADU, ERNAKULAM.
5. SECRETARY, ALAKKODU PANCHAYATH, KALAKKODU P.O., THODUPUZHA.
6. THASILDAR, THODUPUZHA, OFFICE OF THASILDAR, THODUPUZHA.
7. VILLAGE OFFICER, ALAKKODU VILLAGE, MANNATTUPUZHA TALUK.
8. GEOLOGIST, DISTRICT OFFICE, MINING AND GEOLOGY DEPARTMENT, CIVIL STATION, THODUPUZHA.
9. RANJITH JACOB, S/O. JACOB, AGED NOT KNOWN, CHOLIAMADATHIL HOUSE, UDUMANNUR PO, THODUPUZHA.

Application praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to pass appropriate orders prohibiting the illegal quarry operations in the Government lands and private lands at Mannuttipara hillock, comprised Sy.No. 8/1, 8/9, 8/22 and 9/19 and private lands in 9/1, 9/2, 9/3, 9/7, 9/8 etc., of Alacode village, Alacode Panchayath and direct the 2nd respondent District Collector, Idukki to enforce (Ext. 914) the same forth with.

This application coming on for orders upon perusing the application and the affidavit filed in support thereof and this Court's order dated 1.4.15 in W.P.(C) and upon hearing the arguments of M/S.S. VIDYASAGAR & K.J. SONIA, Advocates for the petitioner in I.A/W.P.(C), and of SRI.N. NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA, for R4 in I.A/W.P.(C), the court passed the following:-

ORDER

After hearing both the sides, there will be an interim order as prayed for in this I.A.

It is open for the concerned respondents to file counter affidavit, if any, and bring the matter after vacation.

08-04-2015

Sd/- P.R. RAMACHANDRA MENON, JUDGE

/true copy/

ASSISTANT REGISTRAR

2rv/2.

Pat. P. - The order dated 13/11/2014  
the court order dated 13/11/2014

Presented on : 26-3-2015

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM

I.A. No. 4695 of 2015  
In

WP (c) No. 27520 of 2014

John Joseph

State of Kerala and others

: Petitioner/Petitioner

: Respondents/Respondents

PETITION FILED UNDER SECTION 151 OF CODE OF CIVIL PROCEDURE CODE

S. VIDYASAGAR

Counsel of the petitioners

(V-114)

WP (C) No. 72520 of 2014

John Joseph

Petitioner

State of Kerala and others

Respondents

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By *[Signature]*

Dated this the 26<sup>th</sup> day of October 2015

Advocate

S. Vidyasagar

28.

**PROCEEDINGS OF THE DISTRICT COLLECTOR & DISTRICT MAGISTRATE IDUKKI**

(Present Sri.V.Ratheesan I.A.S)

No. E2-46167/2014

Collectorate, Idukki

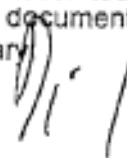
Dated : 27.05.2015

Sub : Illegal quarrying operations in Alakode Village of Thodupuzha Taluk  
Stop Memo issued – Regarding ..

Ref: Report No G3- 20732/2015 dated 15.05.2015 of the Deputy Director  
of Survey Idukki

The Deputy Director of Survey and Land Records Idukki vide reference read above has reported that a Quarry is being functioning in Alakode Panchayath, in the land comprised in Survey Number 8 / 9 ( Block 32 ) of Alakode Village in Thodupuzha Taluk on the basis of a D&O License issued by the Edavetty Grama Panchayath. Further, on verification of the reports furnished by the Deputy Director of Survey and Land Records Idukki and from the personal inspection of the land in question, I am satisfied that the operation of the quarry and related works is in such a way endangering the lives and property of the residents of the locality. The functioning of the quarry is found to be illegal and hazardous to the life and property of the people of the area.

In the above circumstances I hereby ordered to prohibit the functioning of the said quarry and related works with immediate effect. The Tahsildar Thodupuzha and the Deputy Superintendent of Police Thodupuzha are strictly directed to take urgent necessary action to implement the order today itself. The operators may be directed, if they desire so, to produce documents before the undersigned within 15 days, proving any facts to the contrary.

  
**DISTRICT COLLECTOR  
IDUKKI**

To,

Sri. U.I. John, Managing Partner, Marthoma Granites, Edavetty

Copies:- (1) The Deputy Superintendent of Police Thodupuzha  
(2) Tahsildar Thodupuzha  
(3) Village officer Alakode

(For the enforcement of the order)

BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE, Chennai

Application No.168 of 2015

and

M.A.315 of 2015

In the matter of

Mathew Thomas

Karikode Village, Thodupuzha Tk

Idukki Dt, Kerala

.. Applicant

Vs.

1.The State of Kerala

Rep. by the Additional Chief Secretary

Department of Environment and Climate Change

Thiruvananthapuram

2. Ministry of Environment Forests and Climate Change

New Delhi, rep. by its Secretary

3. The District Collector, Idukki

4. The Geologist, Idukki

5. Kerala State Pollution Control Board

Thiruvananthapuram, rep. by its Chairman

6. The Environmental Engineer

Kerala State Pollution Control Board, Idukki Dt

7. M/s. Marthoma Granites

Rep. by its Managing Partner U.I. John, Edavetty

8. State Environment Impact Assessment Authority

Thiruvananthapuram, rep. by its

Member Secretary

.. Respondents

Counsel appearing for the applicant

Mr.Rajan Vishnuraj, Mr. Harish Vasudevan

Counsel appearing for the respondents

Smt.Suvitha A.S for R1, R3 & R4



Smt. M. Sumathi for R2

Smt. Rema Smrithi for R5 & R6

M/s.P.B. Sahasranaman, Kamalesh Kannan &

Sai Sathya Jith for R7

Smt. Vidyalakshmi for R8

## ORDER

Present

Hon'ble Shri Justice Dr.P. Jyothimani, Judicial Member

Hon'ble Prof.Dr.R. Nagendran, Expert Member

21st December, 2015

1.Whether the judgment is allowed to be published on the internet .. Yes/No

2.Whether the judgment is to be published in the All India NGT Report .. Yes/No

This application is filed by the applicant who is a resident of the area in which the 7th respondent project proponent is carrying on its mining activities.

2. The prayer in the application is for a direction against the official respondents to stop mining operation being conducted by the 7th respondent in Survey No.8/9 of Alakode Village in Idukki District, apart from directing the 3rd respondent to take appropriate criminal action against the 7th respondent and for a direction against the 8th respondent not to process the application filed by the 7th respondent for Environmental Clearance (EC).

3. The case of the applicant is that the 7th respondent is carrying on quarrying operation in Survey No.8/9 in an area of over 7 hectares. The 7th respondent has obtained quarrying lease from the 4th respondent for conducting quarrying operation for a period of 12 years commencing from 12.11.2008 to 13.7.2020. The mining area being more than 5 hectares of land, as per EIA Notification 2006 it requires prior Environmental Clearance (EC). The 6th respondent Pollution Control Board has given "Consent to Operate" which is valid upto 31.3.2016. According to the applicant, the mere granting of "Consent to Operate" by the Board or the grant of lease by the District

Collector are not sufficient for the 7th respondent to enable him to proceed with the quarrying operation which can be done only after EC granted by the authority contemplated under EIA Notification, 2006. By virtue of the illegal quarrying, according to the applicant, Meenmutty Paara in Idukki District which is a breeding ground for several marine fishes are being destroyed and posed serious threats to Meenmutty Paara Hills. It is also stated by the applicant that by the blasting activities which are conducted as incidental to quarrying, the noise level created goes beyond the permissible level prescribed by the Board. It is stated that the 3rd respondent has conducted a survey of the area and has stated that the operation of the 7th respondent endangers the life and property of the residents in the locality. The 7th respondent is said to have destroyed the trees, plants and removed huge amount of top soil from the hill. It is the case of the applicant that even if the 7th respondent has applied to the 8th respondent SEIAA for granting EC, the 8th respondent has no power to grant ex-post facto clearance and in cases where it is found that the 7th respondent is a polluter and not followed the provisions of law the application has to be delisted as it was held by the Principal Bench of the National Green Tribunal, New Delhi in S.P. MUTHURAMAN's case (O.A.No.37 of 2015 dated 1.9.2015). He has also referred to the judgment of the Hon'ble Supreme Court in VELLORE CITIZENS' WELFARE FORUM V. UNION OF INDIA (1996 (5) SCC 647) wherein the Supreme Court has held that the precautionary principles are to be followed even in the Municipal Law. With the above averments the applicant has filed the application with the above prayers.

4. The 7th respondent project proponent has filed a reply. In the reply the main issue the said respondent has raised is that the applicant is not having any property in the village concerned and therefore the applicant has no *locus standi* to maintain this application. It is also denied that the 7th respondent has not obtained prior Environmental Clearance (EC). According to the 7th respondent, when once the 1st respondent has granted mining lease for 12 years period, there is no necessity for him to approach any authority for prior Environmental Clearance (EC) since according to him it is only a minor mineral and EIA Notification is not applicable. The averments regarding Meenmutty Paara is also denied as incorrect stating that Idukki District itself is located in a high altitude of 6,600 feet above sea level and therefore there is no



question of any marine fish in the areas. It is also stated that the 7th respondent has already approached the Hon'ble High Court of Kerala by filing W.P.(C).16757 of 2015 challenging the order dated 27.5.2015 issued by the District Collector prohibiting the functioning of the quarry on the ground that the operation of the quarry and related work are endangering the life and property of the residents of the locality and quarrying is being carried on illegally which is hazardous to the life and property of the people in the area. According to the 7th respondent the Hon'ble Kerala High Court has granted stay and it is also reiterated that prior Environmental Clearance (EC) is not required for the said project and therefore any observation made by the Hon'ble Supreme Court in DEEPAK KUMAR v. STATE OF HARYANA (2012 (4) SCC 629) has no application to the factual matrix of this case.

5. This Tribunal by order dated 13.10.2015 has granted an order of interim injunction against the 7th respondent from carrying on quarrying operation. Thereafter the 7th respondent filed M.A.315 of 2015 to vacate the said order of interim injunction.

6. According to the 6th respondent Board in its reply the quarrying operation by the 7th respondent is being carried on from 3.5.2010 based on "Consent to Operate" order granted by the Board. The Board has specifically stated that the extent of land in which quarrying operation is carried on by the 7th respondent is 7.45 hectares in Survey No.8/9 of Block No.32 of Alakode Village of Thodupuzha Taluk and the quarrying lease is valid from 12.11.2008 to 13.7.2020. According to the 6th respondent Board, "Consent to Operate" was granted after consideration of the issues and there are residential houses found located within 100 meters radius of the quarrying site. It is also stated that by virtue subsequent order of "Stop Memo" issued by the Department of Mining and Geology as the 7th respondent has not obtained prior Environmental Clearance (EC), as on date the quarrying operation is not being carried on.

7. Mr. Harish Vasudevan, learned counsel appearing for the applicant has raised a point that the act of the 7th respondent in carrying on mining operation in Survey No 8/9 without obtaining EC is totally illegal and against the provisions of EIA Notification 2006 which contemplates that for mining operation prior Environmental Clearance is a condition precedent. His further contention is that as per EIA Notification if the extent is more than 5 hectares prior Environmental Clearance has to be granted and the

authority competent is SEIAA and in this case the 7th respondent has made the application to SEIAA for Environmental Clearance (EC) only on 30 June, 2015 and it cannot be construed as an application at all.

8. He has also relied upon a judgement of the Hon'ble Principle Bench of the National Green Tribunal Delhi wherein under similar circumstances the Principal Bench has held that application made by a violator of law cannot be considered by the authority concerned and the same has to be delisted which cannot be brought within the purview of the authorities consideration at all. He has also submitted that the Government of India has issued a notification in accordance with the powers conferred under Section 19 of the Environment Protection Act 1986 authorising the officers who are entitle to take cognizance offence of the complaint regarding the violation.

9. *Per contra* it is the contention of Mr. Sahasranaman the learned counsel appearing for the 7th respondent that the authority competent under Mines and Minerals Regulation has granted lease from 12.11.2008 which is valid up to 13.07.2020 and therefore as a lessee he has got every right to proceed as per the lease deed which authorised him to carrying on quarrying operation and therefore according to him DEEPAK KUMAR's case (2012 4 SCC 629) is not applicable. In any event, according to the learned counsel, the 7th respondent has infact applied for EC in 2015 and there can not be any hindrance on the part of the authority to consider the application in the manner know to law.

10. He has also relied upon an order of the District Collector dated 27.5.2015 who has directed the 7th respondent to stop carrying on the quarrying operation and in as much as prima facie the Kerala High Court has found that the District Collector has no jurisdiction the order has been stayed and therefore actually the order of the High Court of Kerala is to the effect that the 7th respondent is entitled to carry on the quarrying operation.

11. We have considered the contentions raised by the learned counsel appearing for the applicant as well as the respondents apart from referring to various documents and pleadings filed by the parties.

12. At the outset, under the EIA Notification 2006 it is made clear that mining of minerals are also covered within the list of projects or activities requiring prior Environmental Clearance. As per the Schedule to the EIA Notification mining of lease beyond 50 hectares are covered as 'A' category while less than 50 hectares are covered as 'B' category and the said mining operations were in the list of the Schedule ever since the date of the previous EIA Notification 1994 which of course contained only in respect of major minerals and the same was continued in 2006 Notification which apparently covers both major and minor minerals.

13. In view of the above said legal position, it is clear that either minor or major mineral, the mining activity requires prior Environmental Clearance under the EIA Notification 2006. A reading of the Notification makes it clear that the prior Environmental Clearance is in addition to the other requirements contemplated under the Water (Prevention and Control of Pollution) act 1974 and Air (Prevention and Control of Pollution) Act 1981 which may include "Consent to Establish" or "Consent to operate" granted by the Board.

14. Therefore one cannot presume that simply because a project proponent is having a "Consent to operate" from the Board, he need not obtain Environmental Clearance as required under the EIA Notification 2006. That is the reason why the law contemplates the project proponent to obtain EC at the first instance and thereafter approach along with the documents to the Board for "Consent" as per the Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act, 1981. It is unfortunate that neither the State nor the Board has taken any care to find out whether the project proponent has obtained prior EC as per EIA Notification 2006, before "lease" or "consent" as the case may be, is granted.

15. In so far as it relates to the 7th respondent is concerned on the admitted fact that his mining operation is in the extent of 7.45 hectares of land, under the EIA Notification the authority contemplated to issue prior Environmental Clearance is SEIAA and it is not even the case of the 7th respondent that the said project proponent has made any application to SEIAA in the year 2008 when it proposed to start the mining operation based on the mining lease granted by the Government. Admittedly such

application came to be filed only in the year 2015. In so far as it relates to the order of the District Collector dated 27.5.2015, it is true that the Hon'ble High Court of Kerala having prima facie satisfied that the District Collector has no jurisdiction to issue "stop work" order has granted stay. In any event, the said stay order has nothing to do with the Environmental Protection Act and therefore the jurisdiction of this Tribunal cannot be said to be taken away.

16. Whether the order of the District Collector is within his jurisdiction or not is for the Hon'ble High Court to decide. In as much as the prior Environmental Clearance is a condition precedent for the 7th respondent to start its mining operations, we are of the considered view that the function of the mining operations by the 7th respondent from 2008 is totally against law and the same has to be branded as illegal. The filing of the application for Environmental Clearance before SEIAA in 2015 cannot legalise such illegal activities at all.

17. The next question is as to whether the SEIAA viz., the 8th respondent can be directed to consider said application made by the 7th respondent at all.

18. In S.P. MUTHURAMAN Vs. UNION OF INDIA in O.A. 37/15 the Principal Bench of the National Green Tribunal, New Delhi in the order dated 1.9.2015 has considered about the validity of ex post facto Environmental Clearance in the light of a OM issued by the MOEF authorising such consideration. Ultimately the Principal Bench has held that such ex post facto Environmental Clearance is not valid in law and the same is not authorised under the EIA Notification 2006 which contemplates prior Environmental Clearance. In fact in the said order the Principal Bench has directed that in respect the violators who have carried on operation without prior Environmental Clearance, their subsequent applications are to be delisted and they should not be considered within the purview of the authority granted under SEIAA at all. As against the said order of the Principal Bench of the National Green Tribunal, New Delhi appeals were filed before the Hon'ble Supreme Court and the Supreme Court has granted stay as it was subsequently clarified in the order dated 23.11.2015 that such order of stay are applicable only to the parties who are before the court. Therefore it is clear that the interim order granted by the Hon'ble Supreme Court are applicable only to the parties



before the Supreme Court and no other can take advantage of the same. It is also informed that the order of stay granted by the Hon'ble Supreme Court is also relating to imposition of penalty by the Principal Bench of this Tribunal and so far as the operation of the order of the Principal Bench regarding the direction to MOEF and SEIAA not to consider the application and delist the same, no stay has been granted by the Hon'ble Apex Court. By virtue of the clarification made by the Hon'ble Supreme Court it is clear that the order of the Principal Bench in respect of ex post facto Environmental Clearance stands.

19. Another aspect which has to be considered in this case is about the applicability of judgement of the Supreme Court in DEEPAK KUMAR Vs. STATE OF HARYANA (2012 (4) SCC 629). The Hon'ble Supreme Court held in that case that till the States make necessary amendment in the Mines and Minerals Rules as per the direction issued, even in respect of the activities carried on in less than 5 hectares of land, prior Environmental Clearance from MOEF is to be obtained, as it is seen in para 29 of the judgement which reads as follow:

*"We, in the meanwhile, order that leases of minor minerals including their renewal for an area of less than five hectares be granted by the States/Union Territories only after getting environmental clearance from MoEF."*

20. The Government of India, Ministry of Environment and Forest, has issued a clarification on 19<sup>th</sup> August, 2010 clarifying that no activity relating to any project covered under the Notification including civil construction can be under taken at site without obtaining prior Environmental Clearance except fencing of the site to protect it from encroachments and construction of temporary shed for the guard.

21. It was also the view taken by the Government of Kerala as it is seen in G.O..Ms.No. 04/2014/ Environment / dated 19.3.14 wherein the Government of Kerala has specifically stated that in all cases of violation stringent action including for demolition of the unauthorised construction if any or stopping the activity and legal action under the Environment Protection Act, 1986 shall be taken against the project proponent. The Government has also made it very clear that Environmental laws shall include Environment (Protection) Act, 1986 apart from all other Rules, Notifications,

Water (Prevention & Control of Pollution) Act and other Acts which are stated as follows:

“Environmental Laws shall include the Environment (Protection) Act 1986, all the rules, notifications, office memoranda and orders thereunder, the Water (Prevention & Control of Pollution) Act, 1974, The Air (Prevention & Control of Pollution) Act 1984, The Biological Diversity Act 2002, the Kerala River Bank (Protection and Regulation of removal of Sand) Act, 2001, The Kerala Conservation of Paddy land and Wet land Act 2008 and all the rules and notifications issued under these Acts.”

22. In view of the above discussion the application stands allowed and the 7th respondent is directed not to carry on any mining activities. The 8th respondent before whom the application for Environmental Clearance (EC) dated 30.06.2015 is stated to be pending shall not take such application for consideration and the application shall stand delisted as per the decision of the Principal Bench of the National Green Tribunal, New Delhi. The 3rd respondent District Collector who is authorised as per the Notification of the Government of India takes cognizance of the complaint shall take appropriate steps in initiating prosecution against the 7th respondent for violating Environment Protection Act and also EIA Notification 2006 in the manner known to law.

23. The conduct of the 7th respondent is a deliberate and clear violation which is revealed by the stand taken by it that the conferment of lease by the State Authorities is sufficient for him and he need not approach any other authorities as contemplated under the EIA Notification 2006. Admittedly, the 7th respondent is carrying on illegal activities of mining from 2008 till today for nearly seven years. By virtue of not obtaining EC from the authority concerned under the EIA Notification the precautionary measures which would have been taken by the authority have been thwarted by the 7th respondent resulting in environmental hazard.

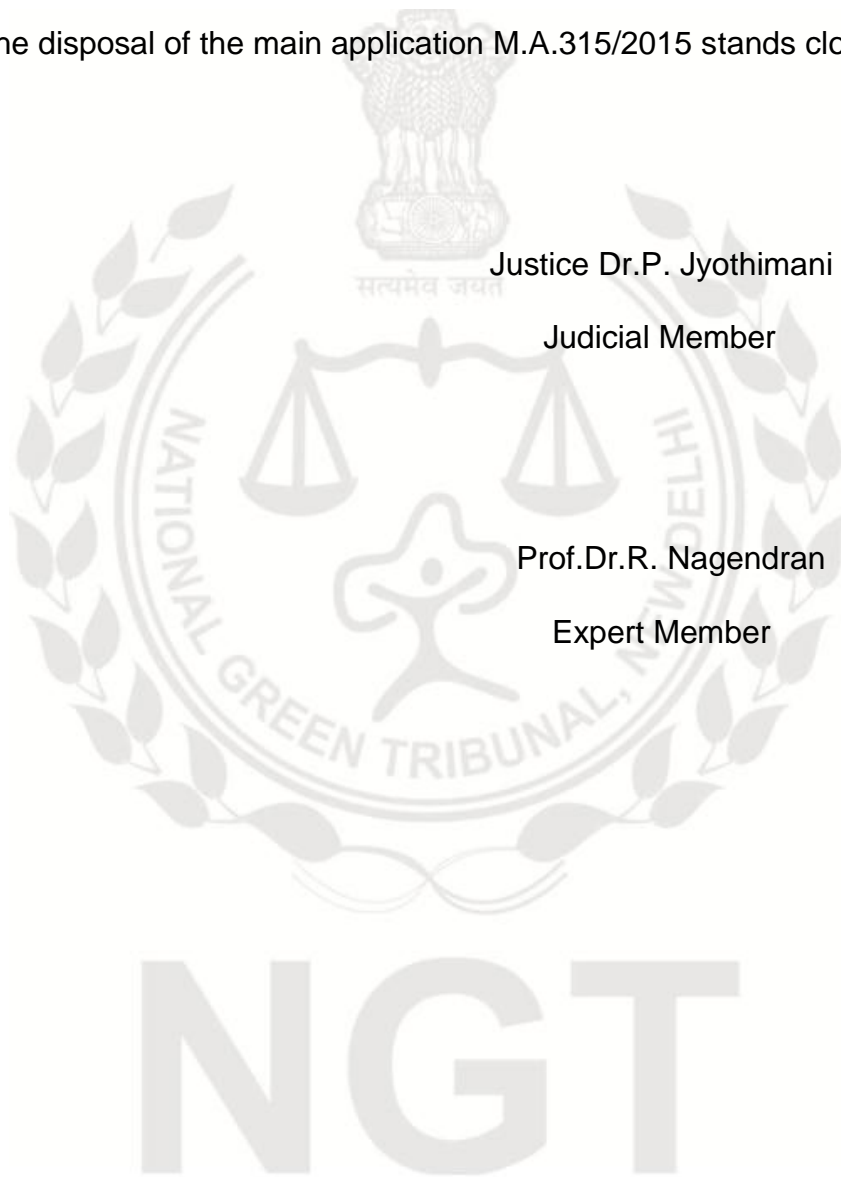
24. Accordingly we are of the considered view that the 7th respondent must be imposed with an obligation to pay compensation for the damage caused to the environment under “Polluter Pays” principle. We direct the 7th respondent to pay an



amount equivalent to 10% of the annual turn over for a period of eight years from 2008 to till date and the said amount shall be deposited with the Chairman of the Kerala State Pollution Control Board, who shall keep the said amount in a separate account called “Environmental Protection Fund, Idikki” which shall be used for the protection of environment to be decided by the Board.

The 7th respondent shall pay an amount of Rs. 25,000/- towards cost to be payable to the applicant.

In view of the disposal of the main application M.A.315/2015 stands closed.



Justice Dr.P. Jyothimani

Judicial Member

Prof.Dr.R. Nagendran

Expert Member