

**Rajan K. vs the Additional District Magistrate (Adm)**

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**SooperKanoon Citation :** [sooperkanoon.com/1444325](https://sooperkanoon.com/1444325)

**Court :** Kerala

**Decided On :** Mar-28-2022

**Judge :** Honourable the Chief Justice Mr.S.Manikumar,Honourable Mr. Justice Shaji P.Chaly

**Appeal No. :** WA/111/2022

**Appellant :** Rajan K.

**Respondent :** The Additional District Magistrate (Adm)

**Judgement :**

W.A. No. 111/2022 :1:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR. JUSTICE SHAJI P.CHALY MONDAY, THE 28TH DAY OF MARCH 2022 / 7TH CHAITHRA, 1944 WA NO. 111 OF 2022 AGAINST THE JUDGMENT DATED 16.09.2021 IN WP(C) 25602/2020 OF HIGH COURT OF KERALA APPELLANT/PETITIONER IN WP(C): RAJAN K. AGED 46 YEARS S/O.KANNAN, RESIDING AT KANDATHIL HOUSE, PARAVOOR, PANAPUZHA P.O., KANNUR - 670 306. BY ADVS.

GEORGE POONTHOTTAM (SR.) NISHA GEORGE  
RESPONDENTS/RESPONDENTS IN W.P.(C):

1 THE ADDITIONAL DISTRICT MAGISTRATE (ADM) KASARGOD, VIDYANAGAR, COURT COMPLEX, STADIUM ROAD, KASARGOD, KANNUR - 671 121. 2 THE DISTRICT POLICE CHIEF PARAKATTA, VIDYANAGAR, ULIYATHADKA ROAD, KUDLU, KASARGOD - 671 123. SRI. TEK CHAND, SR. GOVERNMENT PLEADER THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28.03.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.A. No. 111/2022 :2:  
Dated this the 28th day of March, 2022.

## **JUDGMENT**

**SHAJI P. CHALY, J.**

The appeal is filed by the petitioner in W.P.(C) No. 25602 of 2020 challenging the judgment dated 16.09.2021, whereby the learned single Judge dismissed the writ petition upholding Ext. P10 communication dated 09.07.2018 addressed by the District Police

### **Chief, Kasaragod to the District Collector, Kasargod and Ext. P15 order**

passed by the Additional District Magistrate, Kasargod dated 23.09.2020 declining NOC for conducting a quarry, as per the provisions of the Explosives Rules.

2. Brief material facts for the disposal of the appeal are as follows: The petitioner has secured Ext. P1 letter of intent dated 15.02.2018 for a quarrying permit, for the extraction of granite building stone for an area of 0.7762 hectares in Survey Nos. 504/1, District.

3. The petitioner has also secured Ext. P2 environmental clearance dated 31.07.2018 from the District Environment Impact Assessment Authority (DEIAA), Kasargod for a period of 5 years by W.A. No. 111/2022 :3:

imposing various conditions including that; explosives should be stored in magazines in isolated place specified and approved by the Explosives Department; a minimum buffer distance of 50 metres from the boundary of the quarry to the nearest dwelling unit or other structures, not being any facility for mining, shall be provided; that

100 meters buffer distance should be maintained from forest boundaries; that consent from Kerala State Pollution Control Board under Water and Air Acts should be obtained before initiating mining activity; that all other statutory clearances should be obtained as applicable from the respective competent authorities, including that for blasting and storage of explosives; and that the stipulations by the statutory authorities under different Acts and Notifications should be complied with, including the provisions of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. Apart from the same, various other general conditions are also prescribed. Anyway, it is clear from Ext. P3 that the Pollution Control Board has issued a consent to operate dated 04.11.2019 valid upto 31.08.2024.

4. Apparently, the appellant/writ petitioner has submitted Ext. P4 application before the District Collector, Kasaragod seeking a 'No Objection Certificate' for possession and use of explosives as per the W.A. No. 111/2022 :4: provisions of the Explosives Act, 1884 and the Explosives Rules, 2008 ('Rules, 2008' for short). From the documents produced by the appellant, it is apparent that on receipt of the application, the District

Collector has issued communications to the Senior Geologist, Kasaragod, Fire and Rescue Services, Regional Office, Kozhikode, Sub Collector, Kanhangad and the District Police Chief, Kasaragod for making due enquiries.

5. The Senior Geologist, as per Ext. P6, has replied that on inspection it is found that permission can be granted for conducting quarrying operation as per the Kerala Minor Mineral Concession Rules,

2015. However, it is further stated that the issuance of explosive licence and control of the same will not come within the purview of the office of the Geologist.

#### 6. The Fire and Rescue Services has issued Ext. P7 No Objection

Certificate incorporating various conditions and specifically imposing a condition that all the conditions in the Explosives Act should be followed and that legally prescribed distance should be maintained from the boundary of the property and the nearby buildings.

#### 7. The West Eleri Grama Panchayat has issued Ext. P8

communication to the District Collector dated 10.10.2018 pointing out that against the starting of the quarry, a complaint was received from Sri. George Kathunkallil, Thenoor, Kadumeni P.O. The Sub Collector, W.A. No. 111/2022 :5:

Kanhangad, as per Ext. P9 letter dated 06.03.2019, recommended for granting permission to the appellant. However, the District Police Chief has submitted Ext. P10 report dated 09.07.2018 stating that on an enquiry conducted by the police, it is found that Odakkolli-Cheemeni PWD road is lying on the northern side of the property, wherein the quarry is proposed to be commenced and on the northern side, around 60 metres away, the parents of Sri. Tomy Goerge is residing. It is also reported that since the Chemmeni-Odakolli PWD road is lying on the southern side of the proposed quarry area and if permission is granted to commence a quarry, it would be a danger to vehicles and pedestrians and that the Chittarikkal police station limit is under

Maoist threat; and considering the fact that it may create environmental problems, it was also reported that the licence shall not be granted to conduct quarrying and magazines.

#### 8. Later, the District Collector, Kasaragod, as per Ext. P13 letter

dated 18.03.2020, addressed the State Environment Impact Assessment Authority stating all the aforesaid reasons and requested for a report as to whether the issuance of NOC to quarry would create environmental issues. The said letter was

replied as per Ext. P14 by the State Environment Impact Assessment Authority stating that it has nothing to do with the grant of NOC under the Explosives Rules.

9. Anyhow, after assimilating various factual and legal W.A. No. 111/2022 :6:

circumstances and taking into account the complaint filed before the Grama Panchayat by one George Kathunkallil, the NOC was declined. It was, thus, challenging the legality and correctness of Ext. P10 report of the District Police Chief and the order declining NOC by the District Collector, the writ petition was filed.

10. The learned single Judge, after assimilating the factual and legal situations, has arrived at the conclusion that the Additional District Magistrate was right in declining the NOC to the appellant.

11. The paramount contention advanced in the writ appeal is

that the appellant having secured all necessary clearances from the statutory authorities, the Additional District Magistrate was not right in declining NOC on the basis of Maoist threat; complaint filed by a third person; and also for the reason that a PWD road is passing by the side of the proposed quarry. It is also submitted that the Senior Geologist and the District Environment Impact Assessment Authority have conducted various studies in respect of the safety aspects as to the conduct of the quarry and therefore, the Additional District Magistrate did not have any power to encroach into the said area and decline NOC.

12. We have heard, learned Senior Counsel Sri. George Poonthottam assisted by Smt. Nisha Goerge for the appellant and the learned Senior Government Pleader Sri. Tek Chand for the State and W.A. No. 111/2022 :7: its officials, and perused the pleadings and materials on record.

13. The learned Senior Counsel for the appellant addressed

arguments on the basis of the deliberations made above. The learned Senior Government Pleader advanced arguments supporting the stand adopted by the learned single Judge as well as the District Police Chief and the District

Magistrate.

14. Issuance of NOC and grant of licence is guided by Rule 103

of the Rules, 2008. Sub-Rule (1) thereto prescribes that the applicant desiring to obtain a licence from the Chief Controller or Controller, shall apply to the District Magistrate or the Director General of Mines Safety with copies of the site plan showing the location of the premises proposed to be licensed for issue of a certificate to the effect that there is no objection to the applicant receiving licence for the site proposed.

15. Sub-Rule (2) specifies that the District Magistrate shall be

the authority to issue the certificate referred to in sub-Rule (1), if the area of the proposed site does not come under the Indian Mines Act, 1952 and the Director General of Mines Safety shall be such authority if the area of the proposed site is for ANFO, Liquid Oxygen Explosives or SME and comes under the Indian Mines Act, 1952.

16. In the instant case, the authority to issue NOC is the District Magistrate. As per sub-Rule (3), the District Magistrate, on receipt of application referred in sub-Rule (1), shall make verification of the W.A. No. 111/2022 :8:

antecedents of the applicant, lawful possession of the site, genuineness of the purpose, interest of public and any other verifications or enquiries as may be specifically required by the licensing authority to be carried out, if any, and on any other matter as deemed necessary. Clause (a) of Rule 103(3), which is relevant to the context, reads thus:

(a) For verification of the interest of public, the District Magistrate shall forthwith cause a notice to be published calling upon the public to submit objections, if any, with reasons thereof, within a period of one month from the date of publication of the notice and specifying the date, time and place for consideration of objections by him. Where the site of the proposed premises lies within 1.5 kilometers of the limits of the

jurisdiction of any town planning municipal authority or port or air port or satellite or space craft launching station or similar establishments of national importance, the District Magistrate shall cause the notice to be served to such authority or establishment. The day of hearing for consideration of objections shall be fixed as early as possible, after the expiration of the period of one month from the date of publication of notice. On receipt of objection, the District Magistrate shall call the person or persons raising objection and also the applicant, giving not less than seven clear days before the day fixed for hearing for consideration of the objection. On the day fixed for the hearing or any day to which such hearing may be adjourned from time to time, the District Magistrate shall hear any objection relating to the purpose of no objection certificate and shall make such enquiry, as he may deem necessary to assess justification of such objection.

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17. Therefore, it is clear that the power vested with the District

Magistrate in the matter of grant of NOC under the Rules is to be exercised by the District Magistrate, taking into account various aspects, including the interest of public and conducting any other enquiries as may be specifically required by the licensing authority. This is a case where the District Police Chief has filed a report before

the District Collector assigning various reasons, including threat of Maoist and the danger remaining due to the PWD road passing by the side of the proposed quarry.

18. The District Collector has also taken into account the complaint filed by a third person before the Grama Panchayat, which

was forwarded by the Grama Panchayat on enquiry raised by the District Collector, and it was taking into account the pros and cons and the interest of the public that the District Collector analysed the situation and declined to grant NOC

to the appellant. The appellant has no case that there is any mala fides or other prejudicial acts or personal predilection on the part of the District Police Chief or the Additional District Magistrate to draw an adverse report against the appellant.

19. In fact, the learned single Judge has dismissed the writ petition assimilating the factual and legal circumstances, and taking into account the manner in which the District Magistrate exercised W.A. No. 111/2022 : 10 :

power in the matter of considering an application for NOC. The factual and legal circumstances discussed above take us to the conclusion that the learned single Judge has exercised the discretion conferred under Article 226 of the Constitution of India rightly and in accordance with law, and therefore we do not find any jurisdictional error or other legal infirmities in the impugned judgment persuading us to interfere, exercising the power conferred under Section 5 of the Kerala High Court Act, 1958.

Needless to say, appeal fails and accordingly, it is dismissed. sd/- S. MANIKUMAR, CHIEF JUSTICE. sd/- SHAJI P. CHALY, JUDGE. Rv

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