

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON

MONDAY, THE 30TH DAY OF SEPTEMBER 2013/8TH ASWINA, 1935

WP(C). No. 22448 of 2013 (E)

PETITIONER:

**MOHAMMED ASHIK, AGED 36 YEARS
S/O. MOHAMMED, MAMVEETIL HOUSE, KONNACHAL P.O.
NILGIRI DISTRICT.**

BY ADV. SRI. A.V. JAMES

RESPONDENTS:

- 1. THE STATE OF KERALA
REP. BY THE SECRETARY, REVENUE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM, PIN-695 001.**
- 2. THE DISTRICT COLLECTOR,
WAYANAD DISTRICT, KALPETTA, PIN-678 001.**
- 3. THE DEPUTY COMMISSIONER
COMMERCIAL SALES TAX, COMMERCIAL SALES TAX OFFICE
KALPETTA, WAYANAD DISTRICT, PIN-678 001.**
- 4. THE COMMERCIAL TAX INSPECTOR
COMMERCIAL TAX CHECK POST, VADUVANCHAL POST
WAYANAD DISTRICT, PIN-678 002.**

BY GOVERNMENT PLEADER SMT. K.T. LILLY

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30-09-2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 22448 of 2013 (E)

APPENDIX

PETITIONER'S' EXHIBITS:-

**EXHIBIT P1 - COPY OF THE NOTICE GIVEN BY THE 4TH RESPONDENT TO
 THE PEITIONER DATED 27.8.2013.**

**EXHIBIT P2 - COPY OF THE ORDER OF THE GOVERNMENT OF KERALA,
 REVENUE DEPARTMENT DATED 11.11.2010.**

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

sp

P.R. RAMACHANDRA MENON, J.

W.P.C.No.22448 OF 2013

Dated this the 30th day of September, 2013.

JUDGMENT

The petitioner has approached this Court with the following prayers:-

i) Issue writ of mandamus or any other writ order or direction to the respondents to comply the Exhibit P-2 order and permit the petitioner to transport sand to the state out of the state boundary.

ii) Issue writ of mandamus or any other writ order or direction to the respondents to keep away from insisting the petitioner to produce geology pass to transport sand to the state.

iii) Grant such other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, including costs."

2. The learned counsel for the petitioner points out that, the respondents are arbitrarily intercepting the transportation of sand from other States to this State, referring to the contents of Ext.P1 dated 27.08.2013, as to the doubt expressed by the concerned authorities.

3. The learned counsel submits that, by virtue of Ext.P2 Government Order bearing No.58289/P3/2010/Revenue dated 11.11.2010, the vehicles transporting sand are not liable to be intercepted, otherwise than in the manner as specified therein.

4. Heard the learned Government Pleader as well.

5. Going by the contents of the writ petition and also the materials produced, the interception sought to be made as clarified by the Government as per Ext.P2, is with regard to the course being pursued by the officers concerned as to the transportation of sand without any valid document. The particular type/nature nature of the goods being transported, is not clearly dealt with, even in Ext.P2, ie. whether it is river sand or ordinary earth or weathered sand etc. That apart, the Rules, particularly the Kerala Miner Mineral Concession Rules have been amended by the State in 2012 as to the requirements to be satisfied for excavation and transportation of even ordinary earth and such other materials, which come within the purview of the said Act/ Rules. Depending upon the factual position prevailing, there is prohibition in some other States like Karnataka, from where, the particular type of sand cannot be transported to other States. These are all facts, which are to be ascertained depending upon the circumstances of each case and as such, there cannot be a blanket order to be issued by this Court, in the manner as desired

by the petitioner in this writ petition. The pleadings and proceedings are vague, as no specific instance of any detention has been pointed out in the writ petition.

In the said circumstances, interference is declined and the writ petition is dismissed, however without prejudice to the rights and liberties of the petitioner to transport the goods in accordance with the relevant provisions of law and if any intervention is made, contrary to law, it will be open for the petitioner to approach this Court as and when the cause of action arises.

**P.R. RAMACHANDRA MENON,
JUDGE**

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