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27 June 2024

To,

The Hon'ble Governor,  
State of Kerala,  
Kerala Raj Bhavan,  
Thiruvananthapuram – 695 099.

Sir,

**SUB:** Withdrawal of the pleasure of the Governor as regards the continuance of the Advocate General in office.

**REF:** (A) **Subversion of the Constitution and undermining the Authority of the Hon'ble Supreme Court as the Final Court of the Country:** The State of Kerala filed W.P (C) 13221 of 2021 in the Hon'ble High Court of Kerala that effectively challenged the order of the Hon'ble Supreme Court. This matter will expose the quarry lobby that seems to be hand in glove with certain State Law officers. As a direct consequence, the State Government incurred loss of hundreds of crores of revenue and the life and property of the people of Kerala was put to peril.

(B) **The inability of the Advocate General to perform his statutory duties that has resulted in the 'narcotics lobby' to cause havoc in the society:** 5 convicts in Narcotic cases were set free without a Judgment and the Prosecutor failed to take effective corrective steps. Certain Prosecutors handling

Narcotic cases have deliberately withheld the Precedents of the Hon'ble Supreme Court which resulted in several accused in Narcotic Cases free on bail.

- (C) **The inability of the Advocate General to look into cases where the government has lost Forest and Revenue land to private parties even when specific cases of collusion of Government pleaders with the 'land lobby' was brought to his notice:-** This has led to the creation of a 'land lobby' that primarily deals with forest lands as well as revenue lands belonging to the government. The continuation of Munnar Bench for over quarter of century clearly points out that certain state law officers have been unable to assist the court effectively even when several reports of the police, vigilance and revenue authorities clearly pins the blame on certain specific persons. The Munnar / Vagamon and forest land loss to the government has caused loss of over Rs.2000 crores to the government.

1. I am constrained to bring your immediate attention to the functioning of the Advocate General who is blatantly subverting the Constitution and undermining the Authority of the Hon'ble Supreme Court. The Advocate General also seemingly is in violation of his statutory duties and from the materials produced in this letter, it would be clear that he is unable to function and therefore should be removed from office. To specifically point out the failure of the Advocate General, the entire letter is divided in 3 sections in accordance with the issues referred above.

**(A) The ‘Quarry Lobby’: Subversion of the Constitution and undermining the Authority of the Hon’ble Supreme Court as the final Court.**

2. The Hon’ble National Green Tribunal, Southern Zone (hereinafter referred to as NGT, SZ) passed an order dated 27.5.2021 in O.A No. 244 of 2017 declaring the mining carried out after 15.06.2016 was illegal when carried out without obtaining Environmental Clearance. The affected party filed a civil appeal in the Hon’ble Supreme Court which was registered as Civil Appeal 4643 of 2021 and the State of Kerala were made respondents therein. On 16.8.2021, the Hon’ble Supreme Court dismissed C.A 4643 of 2021 affirming the decision of the Hon’ble NGT, SZ and holding that *there is no error of fact or law in the order of the National Green Tribunal dated 27 May 2021 in OA No 244 of 2017 (SZ)*. By doctrine of merger, the order of the Hon’ble NGT, SZ in O.A. 244 of 2017 merged with C.A. 4643 of 2021. The affected party filed a review petition in the Hon’ble Supreme Court which was registered as R.P (C) No. 1285 of 2021 in C.A 4643 of 2021. The Hon’ble Supreme Court dismissed Review Petition (C) No. 1285 of 2021 in C.A 4643 of 2021 stating that the Hon’ble Supreme Court *“has carefully gone through the review petition and the connected papers and we find no merit in the review petition”*.
3. In a shocking move, the State of Kerala filed a Writ Petition challenging the order of the Hon’ble NGT, SZ in O.A. No. 244 of 2017 which was registered as W.P (C) 13221 of 2022, a copy of which is annexed to this letter as **Annexure-A**. It may be seen that the Senior Government Pleader, **Adv. S. Kannan signed of the Writ Petition as ‘with AG’**. This clearly shows that the AG was fully aware of the draft and the contents of the Writ. The Senior Government Pleader and the AG were fully aware that the order

in O.A No.244 of 2017 did not exist as the same had merged with the order of the Hon'ble Supreme Court in the Civil Appeal as well as the Review.

4. The State of Kerala also annexed the order of the Hon'ble Supreme Court in C.A. 4643 of 2021 as well as Review Petition (C) No. 1285 of 2021 in C.A 4643 of 2021 in the Writ Petition, but willfully and deliberately withheld the description of it in the synopsis and the list of dates making its intention to play fraud upon the High Court. Unfortunately, the Hon'ble High Court of Kerala acted upon the submissions of the Senior Government Pleader and granted a 'stay', which effectively 'stayed' the order of the Hon'ble Supreme Court.
5. The most shocking averments in W.P (C) 13221 of 2021 filed from the office of Advocate General with his consent was to request the Hon'ble High Court of Kerala to invoke its extraordinary jurisdiction under Art. 226 of the Constitution of India by ignoring the orders of the Hon'ble Supreme Court. Para 26 of the W.P (C) 13221 of 2021 filed by the State of Kerala is reproduced as under:

*26. In so far as the State of Kerala is concerned, the State is aggrieved in the sense, by the direction of the learned Tribunal as contained in Ext.P.5 to realise the environmental compensation, which may require the Government to take similar action as against all similarly placed mineral concession holders during the period in question, if it is to be taken as a binding precedent. Therefore, **the petitioners may be permitted to invoke the extraordinary jurisdiction conferred on this Hon'ble Court under Article 226 of the Constitution of India, irrespective of Exts.P6, P6(a) and P9 judgments.***

6. By playing fraud on the Hon'ble High Court and obtaining a stay by suppressing material facts, the Senior Government Pleader acting along with the Advocate General subverted the Constitution of India and undermined the Authority of the Hon'ble Supreme Court as the final court in the territory of India.
7. I filed an application to implead myself to point out the doctrine of merger and also the maintainability of a Writ Petition against a Judicial order when the alternative remedy of Appeal was provided by the Statute. I specifically pointed out that that the order was obtained by playing fraud upon the Court. A copy of the impleading application filed by me is annexed as **Annexure-B**. Unfortunately, the Hon'ble High Court dismissed my application stating that it was aware of the Order of the Hon'ble Supreme Court. A copy of the order dismissing my application to implead is annexed as **Annexure-C**.
8. I immediately approached the Hon'ble Supreme Court and challenged the order of the Hon'ble High Court of Kerala in SLP (C) 5563 of 2023. The Hon'ble Supreme Court took strong notice of the manner in which its order was stayed and passed an interim order on 24 March 2023, a copy of which is annexed as **Annexure-D**.
9. Finally, the Hon'ble Supreme Court on 15 May 2024 disposed the SLP (C) 5563 of 2023 by disposing W.P (C) 13221 of 2023 as withdrawn. A copy of the order of the Hon'ble Supreme Court is annexed as **Annexure-E**.
10. The Hon'ble Supreme Court during the course of arguments had drawn my attention to the allegations made against the Advocate General and the State law officers in the absence of any statutory complaint filed by me and pointed out that it was an impropriety on my part of have made such allegations without having filed a statutory complaint. I conceded to the

impropriety and therefore, withdrew the allegations against the AG and State Law Officers made before the Hon'ble Court through the affidavits filed in that case.

11. However, my withdrawal of allegations made in affidavit due to an impropriety does not take away my right to raise a Statutory complaint with you because the actions of the Advocate General and the Senior Government Pleader mentioned is causing loss of revenue to the State of Kerala as well as puts the life and property of the people of Kerala in peril.

12. In Para 23 of the W.P (C) 13221 of 2021, the State of Kerala averred that *“As on today almost 90 mineral concession holders are working in the State of Kerala, who had obtained mineral concessions under the erstwhile Rules of 1967, prior to 18.05.2012”*. Even a simple calculation based on the averments made in W.P. (C) 13221 of 2021 will clearly show a loss of at least Rs.100 crore to the State of Kerala in revenues. What is even more concerning is that these quarry activities put the life and property of the life of people of Kerala in peril and these activities has already caused grave ‘climatic changes’ in Kerala and that is justified by the floods that Kerala has witnessed in the last few years. Therefore, the persons responsible for such situation need to be held accountable and this Statutory complaint is the first step towards it.

13. I humbly point out that the Senior Government Pleader and the Advocate General were aware of the gross and blatant illegalities of their act when they filed W.P. 13221 of 2022. They have willfully and deliberately withheld the fact that the Hon'ble Supreme Court found no error on the facts or law and affirmed the order of the NGT not just in the Civil Appeal but also on review. The Senior Government Pleader and the Advocate General could have withdrawn the Writ Petition on several occasions but

they continued to waste precious judicial time only because they could afford it. The State had several occasions to withdraw the Writ on:

- (i) 10.02.23 when I filed the Impleading Application in the Hon'ble High Court of Kerala
- (ii) 13.02.2023 when the matter was argued before the Hon'ble High Court of Kerala when the law officers of the State 'shouted me down' as I argued my matter.
- (ii) 15.02.2023 when I had filed detailed written notes of arguments in the Hon'ble High Court of Kerala.
- (iii) 17.02.2023 when the Hon'ble High Court of Kerala pronounced the order dismissing my application to implead while admitting that it was fully aware of the orders of the Hon'ble Supreme Court.
- (iv) 24.03.2023 when the Hon'ble Supreme Court passed 'interim order' clearly stating that the Stay order was in the teeth of the order of the Hon'ble Supreme Court.
- (v) 31.03.2023 when the matter came up for hearing in the Hon'ble High Court of Kerala and the interim order of this Hon'ble Court was placed before the Bench in accordance with the directions of this Hon'ble Court. The interim order of the Hon'ble Supreme Court was known to the Senior Government Pleader as well as the AG and the order clearly gave notice to the AG.
- (vi) After 31.03.2023, W.P (C) 13221 of 2022 was listed 34 times and the Senior Government Pleader and the Advocate General did not find it necessary to withdraw the Writ Petition and not just

continued with the Writ but allowed the Quarries to operate in violation of the order of this Hon'ble Court.

14. What is shocking is that even after the interim order of the Hon'ble Supreme Court dated 24 March 2023, the Hon'ble High Court of Kerala continued to pass orders that protected the quarries and this happened only because the Senior Government Pleader and the Advocate General continued to play Fraud on the Hon'ble Court with impunity. The details of the cases are as under:

- i. In W.P (C) 35120 of 2022, stay was extended by the Hon'ble High Court of Kerala on 13 April 2023. It may be noted that this matter was listed along with W.P (C) 13221 of 2022 on 31 March 2023 on which date the Hon'ble Court refused to extend the stay in W.P (C) 13221 of 2022 and W.P.(C) 17340 of 2022. However, W.P (C) 35120 of 2022 was listed on 13 April 2023 and the Stay was extended for a further period of 2 months.
- ii. In W.P (C) 21395 of 2023, Stay was granted by its order dated 21 July 2023 by the Hon'ble High Court of Kerala. The Stay was granted by the Hon'ble Court on the ground that W.P.(C) 13221 of 2022 was pending before the Court.
- iii. In W.P (C) 29474 of 2022, final order dated 12 April 2024 was passed which resulted in the modification of the order of the Hon'ble Supreme Court by the High Court of Kerala.

15. I humbly point out that even after the withdrawal of the Writ Petition from the Hon'ble High Court of Kerala because of the nudge given by the Hon'ble Supreme Court, the five Writ Petitions, i.e W.P (C) 13221 of 2022, W.P.(C) 17340 of 2022, W.P (C) 35120 of 2022, W.P (C) 21395 of 2023 and W.P (C) 29474 of 2023 represent only the tip of the iceberg. In addition



to these 5 quarries that approached the Hon'ble High Court of Kerala, going by the admission of the State, there are still about 85 more quarries operating illegally in the State.

**(B)The Narcotic Lobby: The failure of the Advocate General to supervise and control the actions of Public Prosecutors which has resulted in the narcotics lobby to thrive in the State of Kerala**

16. I have already addressed a specific complaint to the Hon'ble Chief Justice of India against Justice (Retd) Mary Joseph who set free 5 convicts in Narcotics cases without writing a judgment. A copy of my complaint made to the Chief Justice of India is annexed as **Annexure-F**.
17. The Criminal Appeals filed by all 5 convicts were allowed on 31.07.23 and they were released on the strength of a 'release order' and not a Judgment. The AG office applied for a certified copy for all these Judgments on 1.8.2023. However, even after the retirement of Justice Mary Joseph when the Judgments were not available with them, they remained silent which clearly indicates that the prosecutors too colluded with these convicts. These convicts were convicted for terms of 10-15 years for dealing with commercial quantities of narcotics. In fact, the letter I wrote to the Hon'ble Chief Justice of India ought to have been written by the Advocate General. The concerned prosecutor or the AG was not least bothered by the fact that such offenders were roaming free in the society that was already grappling with Narcotic abuse.
18. The Advocate General's office and the prosecutors have not even filed an appeal in *Gangadharan Vs. State* [Neutral Citation: 2023:KER: 82349] which would cause havoc to the State as regards prosecuting narcotics cases. Though the order is a judicially sound order, the effect of 'vitiating

investigation' would lead to the acquittal of a majority of offenders facing trial in Narcotic Cases.

19. After my complaint to the Hon'ble Chief Justice, Justice (Retd) Mary Joseph colluded with the Registry officials and uploaded the Judgments in the 5 cases. These Judgements were transmitted to the AG office online. However, the AG office did not seem to take urgent steps to approach the Hon'ble Supreme Court.

20. There are several cases where certain Prosecutors have colluded with the Narcotic offenders and deliberately misled the Hon'ble High Court in granting bails to accused in Narcotic offences.

21. The apprehension of Narcotic offenders itself is an onerous task and when the state law officers collude to set them free it brings down the morale of the officers working hard to control the menace of narcotics in the society. Today most people living in the State of Kerala are finding it difficult to grapple with addicts. Thousands of families are ruined because of narcotic abuse and when the legal system cannot supplement the law enforcers, the Narcotic lobby will only thrive in the State of Kerala.

**(C) The Land Lobby: The loss of forest and revenue lands belonging to State of Kerala to private holders**

22. If the data as regards the loss of forest and revenue land to the State of Kerala is taken, it would be appalling. The Hon'ble High Court of Kerala has constituted a special bench called the 'Munnar Bench' to just deal with the fake and forged pattayams infamously called as the 'raveendran pattayams'. Similar cases of land grab are also reported in Vagamon. In addition to this, there are several forest lands that have been taken over by private parties through Judicial proceedings.

23. The Government Pleaders appearing in these matters seem to collude with the land grabbers and intentionally mislead the Hon'ble Court from the facts. There are already several reports of the Revenue, Police and the Vigilance departments which could nail the offenders and the land grabbers. However, I was present in the Hon'ble Court when I heard the Advocate General submitting that 'Raveendran Pattayams' are only irregular.
24. There were specific complaints made against certain Government Pleaders with the office of the Advocate General and for reasons best known to him, no action has been taken against such government pleaders nor have they been removed from handling those matters. This clearly shows that the actions of those government pleaders have the tacit support of the Advocate General.
25. There were specific complaints made against Adv. Jaffar Khan, government pleader by Ms. Sherly Albert on 20.03.23 and thereafter on 12.06.24. Yet, the same Government Pleader continues to handle those matters and continues to mislead the Hon'ble Court. The orders passed by the Hon'ble High Court of Kerala in Con. Cas (C) 481 of 2024 alone will show the manner in which Adv. Jaffar Khan acted against the interests of the State and when the Judge recorded his submission, he made further statement to water down the recording of the finding. Further in this case, Adv. Jaffar Khan did not file the report of the Tahsildar. However, the Tahsildar sent his report to all the respondents because he was certain that Adv. Jaffar Khan would not file this report. In W.P.(C) 18996 of 2024, the Hon'ble High Court on 11.06.2024 directed the District Police Chief, Idukki to inquire and file an interim report on 25.06.2024. The District Police Chief transmitted the interim report to the AG office, but Adv. Jaffar Khan did not produce the report and wanted the District Police Chief to change

certain parts of the report. In my submissions on 25.06.2024, I had specifically pointed this to the Hon'ble Court and Adv.Jaffar Khan admitted to have withheld the report. Ever since the wrongful accusation of Justice (Retd) Mary Joseph, I audio-video record all my appearances in the Court and I have the audio video record of the proceedings before the Munnar Bench on 25.06.2024. I had specifically requested the Hon'ble Court to record my submissions which was denied and I will take up the issue related to the Hon'ble Court with the Hon'ble Chief Justice.

26.I am watching the acts of the office of the Advocate General and the Government Pleaders closely and any attempt to mislead the Hon'ble Court and cause loss to the State of Kerala will be exposed. Since these matters have been pending in the Hon'ble Court for over a decade, there are enough and more reports of officials that would prevent any act of the State Government to dole out lands belonging to the State and its people into private hands.

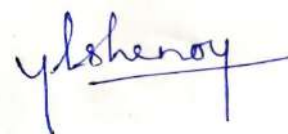
27.Recently, on 19 June 2024, Justice D.K.Singh recorded in his order the casual and the callous attitude of the State Government to the Court Proceedings. A copy of the said order is annexed as **Annexure-G**.

28.The revenue and finances of the State Government is being managed and misappropriated by the State Government with the full support from its law officers. State of Kerala is on the verge of bankruptcy but in the issues taken up in (A) & (C) it is clear that the State is losing hundreds and thousands of crores of State Revenue. The issue at (B) is contaminating the social fabric of the State of Kerala and the people of Kerala are suffering the menace of narcotic abuse and cases of narcotic abuse are on the rise. Similarly, quarrying is also causing loss of lives and properties of the people of Kerala.

29.I have presented clear evidence of the various lobbies that seem to entrenched into the office of the Advocate General. There is clear evidence that the Advocate General is aware of these issues and has refused to act in accordance with the Constitution. The Advocate General seemed to have placed himself as an agent of the State rather than assert his position as a Constitutional Authority. In the circumstances pointed out, I would request your goodself to withdraw your pleasure and remove the Advocate General from his office.

30.I fully understand the limitation that might be effected by Article 163(1) and Article 165(3) of the Constitution of India. However, it raises substantial questions of law as to interpretation of the Constitution because the law cannot be remediless. The people of Kerala are entitled to a remedy when certain officials of the State Government collude with the Advocate General and some State Law officers who remain mute spectators to daylight robbery of State Resources. Through the orders of the Hon'ble Supreme Court on 16.08.2021, the State was entitled to claim revenues from 90 mineral concessionaires. Yet, the State did everything to ensure that these revenues are not accepted to benefit the people of Kerala. The State has lost so much of forest and revenue lands and yet instead of getting them back, the State is considering doling out those land to private parties. When the Advocate General has obtained a stay against the orders of the Hon'ble Supreme Court he violated his oath of office and no constitutional authority who violated his oath of office is entitled to continue occupying a constitutional post.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read 'yshenoy', with a horizontal line underneath.

Adv.Yeshwanth Shenoy



E-FILING NO - EF-HCK-2022-014363

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

WP(C) No ..... Of Year 2022

97.00 MINES & MINERALS ACT

PETITIONER

1. STATE OF KERALA, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT
2. THE GEOLOGIST, ERNAKULAM
3. THE PRINCIPAL SECRETARY TO GOVERNMENT, INDUSTRIES (A) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM

VS

RESPONDENT

1. SHEFY JOSEPH, D/O LATE M.P.JOSEPH
2. GOVERNMENT OF INDIA, REP. BY ITS SECRETARY
3. M.D.KURIAKOSE



MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

FILING NATURE : URGENT

FEES PAID & STATUS - 0 (SUCCESS)

FILED BY

1. ADVOCATE GENERAL OFFICE KERALA
2. SHRI.S.KANNAN, SENIOR G.P.

Sd/-  
E-VERIFIED  
ADVOCATE GENERAL OFFICE KERALA



BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM

WP(C) No ..... Of Year 2022

PETITIONER : STATE OF KERALA, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT & OTHERS

V/S

RESPONDENT : SHEFY JOSEPH, D/O LATE M.P.JOSEPH & OTHERS

INDEX

SL Title	Description	Page Nos
1 Synopsis	Synopsis	1-4
2 Memorandum	Memorandum of Writ Petition (Civil)	5-25
3 Affidavit	Affidavit	26-27
4 Exhibit P1	True copy of the Memorandum of Application in OA No. 244/2017 of NGT, Southern Zone, Chennai	28-171
5 Exhibit P2	True copy of the Counter Statement filed by the 1st Petitioner, in OA No.244/2017.	172-176
6 Exhibit P3	True copy of the Counter Affidavit filed by the 3rd Respondent, in OA No. 244/2017.	177-185
7 Exhibit P4	True copy of the Reply Affidavit filed by the 2nd Respondent, in OA No.244/2017.	186-192
8 Exhibit P4(a)	True copy of the Notification dated 15.01.2016 issued by the 2nd Respondent	193-202
9 Exhibit P5	True copy of the Order and Judgment dated 27.05.2021 passed by the Tribunal in OA No. 244/2017.	203-235
10 Exhibit P6	True copy of the Order dated 16.08.2021 passed by the Hon'ble Supreme Court in Civil Appeal No. 4643/2021.	236-237
11 Exhibit P6(a)	True copy of the Order dated 14.12.2021 passed by the Hon'ble Supreme Court in Review Petition (Civil) No.1285/2021.	238-239
12 Exhibit P7	True copy of the Judgment dated 30.06.2020 passed by the Tribunal in OA No. 136/2017.	240-321
13 Exhibit P8	True copy of the Judgment dated 18.08.2020 passed by the learned Tribunal in Review Application No. 7/2020.	322-327
14 Exhibit P9	True copy of the Judgment dated 23.07.2021 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 1789-1790/2021	328-329
15 Exhibit P10	True copy of the Judgment dated 31.03.16 in WP(C) No. 14265/2015	330-337
16 Exhibit P11	True copy of the letter of clarification dated 19.12.2016.	338-339
17 Exhibit P12	True copy of the Order dated 18.09.17 in WP(C) No. 29606/2017.	340-342
18 Vakalatnama1	Memo of Appearance	343-344

Sd/-

E-VERIFIED

ADVOCATE GENERAL OFFICE KERALA

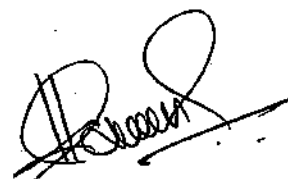
**BEFORE THE  
HON'BLE HIGH COURT OF KERALA AT ERNAKULAM  
(Special Original Jurisdiction)**

**Writ Petition (Civil) No. \_\_\_\_\_ Of 2022**

The State of Kerala & Others	>>>	Petitioners
-Vs-		
Shefy Joseph and Others	>>>	Respondents

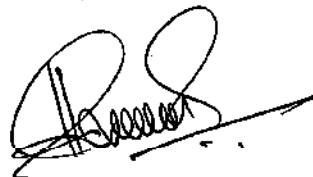
**SYNOPSIS**

- A mineral concessionaire who has been granted with a mining lease prior to 18.05.2012 and whose leasehold right does not exceed 5 hectares of land, need not obtain Environmental Clearance (hereinafter referred as EC, for short and convenience), for continuation of the said lease and only require EC, statutorily, at the time of renewal of the said lease.
- Such a mineral concession holder, at any rate cannot be treated as a violator for want of EC and is protected by the judicial pronouncement of this Hon'ble Court, as contained in **All Kerala River Protection Council, Aluva Vs. State of Kerala and others**, reported in **2015 (2) KLT 78** and in **Nature Lovers' Forum and others Vs. State of Kerala and others**, reported in **2016 (1) KLT 75**.
- In the interregnum, Ext. P1 OA has been preferred by the 1<sup>st</sup> respondent herein before the National Green Tribunal, Southern Zone, Chennai (hereinafter referred as Tribunal, for short and convenience), *inter alia* contending that since, the 3<sup>rd</sup> respondent herein, a mineral concessionaire is carrying out quarrying operations therein based on a quarrying lease, without obtaining EC, as contemplated under the EIA Notification of 2006, his operations are liable to be restrained.





- Ext. P2 counter statement was placed on record by the 1<sup>st</sup> petitioner contending that since the quarrying lease was issued prior to 18.05.2012 and that the 3<sup>rd</sup> respondent being an existing lessee, he need not obtain EC and that he has to procure EC either at the time of renewal or at the time of expansion of the project.
- However, overlooking the judicial exclusion and protection granted by this Hon'ble Court, the learned Tribunal by Ext. P5 order and judgment speciously found that all existing mining lease holders, of both minor and major mineral, including the 3<sup>rd</sup> respondent, irrespective of the area of leasehold has to obtain EC, for continuance of their operation. It was further declared therein that mining operations carried out by the 3<sup>rd</sup> respondent after 15.01.2016, on the basis of the lease issued under the Rules of 1967, till they stopped mining is illegal and is unauthorized and therefore is liable to pay environmental compensation.
- Along with ancillary directions, the Director of Mining and Geology, Thiruvananthapuram and that the Administrative Department, the Industries Department, though not parties in the above OA, were further directed by the learned Tribunal to assess the environmental compensation, penalty for excess mining and royalty lost to the exchequer, consequent to the acts of the 3<sup>rd</sup> respondent and to recover the same in accordance with law.
- Ext. P5 order and judgment passed by the learned Tribunal on the face of it is erroneous, illegal, perfunctory, arbitrary and runs contrary to the law laid down by this Hon'ble Court. Ext. P5 order and judgment passed by the learned Tribunal is vitiated by inherent lack of jurisdiction and is vitiated by non application of mind, as well. Hence this Writ Petition (Civil).



### **CHRONOLOGY OF DATES AND EVENTS**

- 14.09.2006 – Environment Impact Assessment (EIA) Notification of 2006 was issued by the Central Government in exercise of its powers conferred under Rule 5 (3) of the Environment (Protection) Rules of 1986
- 18.05.2012 – OM issued by the Union of India in consonance with the judgment of the Hon'ble Supreme Court in **Deepak Kumar and others Vs. State of Haryana and others**, reported in **2012 (4) SCC 629**
- 15.09.2006 – Quarrying lease granted to the 3<sup>rd</sup> respondent under the erstwhile Kerala Minor Mineral Concession Rules of 1967
- 27/05/2021 – Ext. P5 order and judgment dated 27/05/2021, passed by the learned Tribunal in OA No. 244 of 2017

### **AUTHORITIES TO BE REFERRED**

1. Constitution of India of 1950.
2. National Green Tribunal Act of 2010.
3. Kerala Minor Mineral Concession Rules of 1967.
4. Kerala Minor Mineral Concession Rules of 2015.
5. Environment Impact Assessment Notification of 2006.
6. **Deepak Kumar and others Vs. State of Haryana and others**, reported in **2012 (4) SCC 629**
7. **All Kerala River Protection Council, Aluva Vs. State of Kerala and others**, reported in **2015 (2) KLT 78**
8. **Nature Lovers' Forum and others Vs. State of Kerala and others**, reported in **2016 (1) KLT 75**.
9. **Paristhithy Samrakshana Janakeeya Samithi and another Vs. State of Kerala**, reported in **2015 (4) KLT 278**
10. **Aaramam Rock Private Limited Vs. State of Kerala** judgment dated 31.03.2016 in Writ Petition (C) No. 14265/2015



11. **Society of Indian Automobile Manufacturers, New Delhi Vs. State of Kerala and Others**, reported in **2016 (3) KLT 285**.
12. **Tamil Nadu Pollution Control Board Vs. Sterlite Industries (I) Ltd.**, reported in **2019 SCC On Line SC 221 : 2019 (1) KLT 726**
13. **K. K. Rocks and Granites (P) Ltd. (M/s.) Vs. Latha S and Others**, reported in **2016 (4) KLT 560**
14. **Union of India Vs. Charanjit S. Gill**, reported in **2000 (5) SCC 742**
15. **Dr. A.R. Sicar Vs. State of UP**, reported in **1993 Supp (2) SCC 734**

Dated this the 02<sup>nd</sup> day of April, 2022



  
**S. KANNAN (GP 49)**  
**SENIOR GOVERNMENT PLEADER WITH AG**

**BEFORE THE  
HON'BLE HIGH COURT OF KERALA AT ERNAKULAM  
(Special Original Jurisdiction)**

**Writ Petition (Civil) No. \_\_\_\_\_ Of 2022**

**Petitioners:**

1. The State of Kerala, represented by its Principal Secretary to Government, Department of Environment, Government Secretariat, Thiruvananthapuram – 695001
2. The Geologist, Department of Mining and Geology, Civil Station, Kakkanad, Ernakulam – 682030
3. The Principal Secretary to Government, Industries (A) Department, Government Secretariat, Thiruvananthapuram – 695001.

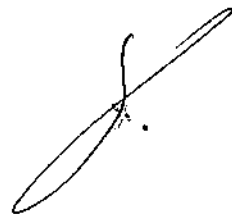
-Vs-

**Respondents:**

1. Shefy Joseph, D/o. Late M. P. Joseph, Puthanpurackal House, Chembarakki, South Vazhakulam P.O., Perumbavoor – via, Ernakulam – 683556
2. Government of India, represented by its Secretary, Ministry of Environment, Forest and Climate Change, Pariyavaran Bhavan, CGO Complex, Lodhi Road, New Delhi – 110003
3. M. D. Kuriakose, Madappillil House, Pazhanganad P. O., Kizhakkambalam – via, Ernakulam - 683562

Address of service of notice to the petitioners is in the name of the Advocate General, Kerala, Ernakulam and that of the respondents are as shown above.

**MEMORANDUM OF WRIT PETITION (CIVIL)**  
**FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, 1950**



**STATEMENT OF FACTS**

1. The above Writ Petition (Civil) has been filed by petitioners, primarily assailing order and judgment dated 27/05/2021 passed by the National Green Tribunal, Southern Zone, Chennai (hereinafter referred as Tribunal, for short and convenience) in OA No. 244 of 2017. Petitioners herein were respondents 2 and 3 in the above OA, on the files of the learned Tribunal, whereas respondents herein were the applicant and respondents 1 and 4 therein, respectively. The 3<sup>rd</sup> petitioner though was not a party in the above OA is substantially aggrieved and affected by order and judgment dated 27.05.2021 passed by the learned Tribunal in the above OA. Being the Administrative Department, the 3<sup>rd</sup> petitioner, though not a party in the above OA has been speciously saddled with the responsibility to comply with the directions now stands issued by the learned Tribunal. The Department of Mining and Geology is a line department, falling under the 3<sup>rd</sup> petitioner, in its capacity as the Administrative Department, who is the licensing and regulatory authority insofar as quarrying in the State of Kerala is concerned. Petitioners are substantially aggrieved and affected by order and judgment dated 27/05/2021, passed by the learned Tribunal in OA No. 244 of 2017.
2. The Environment Impact Assessment (EIA) Notification of 2006 (hereinafter referred as Notification, for short and convenience) dated 14.09.2006 was issued by the Central Government in exercise of its powers conferred under Rule 5 (3) of the Environment (Protection) Rules of 1986. By virtue of the Notification of 2006, certain restrictions were imposed on construction of new projects or activities or on the expansion or modernization of existing projects or activities, which were to be undertaken, only after obtaining prior environmental clearance (hereinafter referred as EC, for short and convenience), from the authorities, concerned, as the case may be.



3. The Notification of 2006, contemplates for imposition of restriction over mining of major as well as minor minerals. As is revealed from the scheme of notification of 2006, the same do not prohibit functioning of the existing projects or activities, perse, as the case may be. While matters stood thus, at the instance of Federation of Mining Associations, Rajasthan, the Union of India by way of circular dated 02.07.2007 clarified Notification of 2006 to the extent that all mining projects which do not require EC under EIA Notification of 1994 would continue to operate, without obtaining environmental clearance, till the mining lease falls due for renewal.
4. In the interregnum, considering the ambit, scope and spirit of Notification of 2006 coupled with Article 21, 48A and 51A (g) of the Constitution of India 1950, the Hon'ble Apex Court in **Deepak Kumar and others Vs. State of Haryana and others**, reported in **2012 (4) SCC 629** passed interim order dated 27.01.2012, whereby it was found that 'We, in the meanwhile, order that leases of minor mineral including their renewal for an area of less than 5 hectares be granted by the States/Union Territories only after getting environmental clearance from the Ministry of Environment and Forests'. In pursuance to the said directions, the Union of India has issued OM dated 18.05.2012, as well.
5. The ambit and impact of judgment of the Hon'ble Supreme Court in **Deepak Kumar (Supra)** and consequential OM dated 18.05.2012 was considered by a learned Division Bench of this Hon'ble Court in **All Kerala River Protection Council, Aluva Vs. State of Kerala and others**, reported in **2015 (2) KLT 78**. After meticulous surveillance of the binding ratios cited therein, this Hon'ble Court In Paragraph 56 held as thus;

*'Order of the Apex Court in Deepak Kumar's case (Supra) is in the nature of an interim order which is clear by the words used 'in the*



*meanwhile'. The order directed that leases of minor minerals including their renewal for an area of less than 5 hectares be granted by the State/Union Territories only after getting environmental clearance from MoEF. The order thus used the words 'be granted' which clearly meant that it referred to the leases to be granted, after the Government of India's order dated 18.05.2012. Paragraph 3 of the order used the word 'henceforth' which clearly meant that the order was to be operated with regard to leases and renewals which were to be granted for an area less than 5 hectares after the issue of the order'.*

Pursuant to the directions issued by the Hon'ble Supreme Court in **Deepak Kumar** (*Supra*) as contained in paragraph 27 therein, the State of Kerala has also formulated the Rules of 2015, which came in to force with effect from 07.02.2015 and therefore the interim order passed by the Apex Court in **Deepak Kumar** (*Supra*) has served its purpose, more so when requirement of obtaining EC has been Incorporated in the Rules of 2015.

6. After elaborate discussion and on consideration of the contentions pressed before it, this Hon'ble Court in paragraph 82 of the judgment in **All Kerala River Protection Council** (*Supra*), came to the following conclusions;

*1. 'In case where quarrying / mining / lease which were existing on the date of Issuance of Notification dated 14/09/2006 or on the date of Issue of the order dated 18/05/2012 by the Government of India, Ministry of Environment and Forests with regard to area less than 5 hectares no environmental clearance with regard to extraction of minor mineral is required. Notification dated 14/09/2006 contemplated obtaining environmental clearance only with regard to new projects / new activities.'*



- ii. *Government Order dated 10/01/2014 cannot be relied on by the parties in view of the restraint order issued by the National Green Tribunal dated 27/09/2013 till such time the restraint order continues.*
- iii. *By amendment of S.14 by Act 37 of 1986 making S.4 applicable to minor minerals also the provision contained in S.4 shall be applicable to mining operations by a person holding mining lease or any other kind of mineral concession. It cannot be accepted that mining operation with effect from 10/02/1987 cannot be continued by a person holding any other mineral concession apart from mining lease.*
- iv. *Judgment of the Apex Court in Deepak Kumar's case (supra) did not contemplate environmental clearance for an area less than 5 hectares with regard to existing mining lease / mining permits on the date of judgment. Paragraph 29 of the judgment clearly directed that leases of minor minerals including their renewal for an area of less than five hectares be granted by the State / Union Territories only after getting environmental clearance.*
- v. *Environmental clearance as contemplated by Notification dated 14/09/2006 required environmental clearance for new projects / new activities.*
- vi. *The Notification dated 14/09/2006 having been applied vide order dated 18/05/2012 of the Government of India, Ministry of Environment and Forests all mining operations for new project and new activities for an area less than 5 hectares after 18/05/2012 required environmental clearance carried through either a mining lease or mining permit.*
- vii. *Interim order passed by the Apex Court on 27/01/2012 was intended by the Supreme Court to operate till the Rules have been framed by the States*

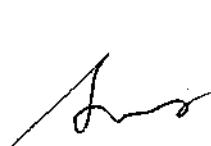




taking into consideration the guidelines and recommendations of the Ministry of Environment and Forests.

viii. As per R.68 no mining/quarrying operations can be permitted without there being an approved mining plan. But such rule is subject to exception as engrafted in R.66, i.e., for existing lease holders, time has been allowed to submit mining plan.'

7. Thereafter, this Hon'ble Court, placing reliance on **All Kerala River Protection Council** (*Supra*), again in **Nature Lovers' Forum and others Vs. State of Kerala and others**, reported in **2016 (1) KLT 75** held that those mining leases which were in operation as on the date of OM dated 18.05.2012 do not require EC. It was further held that the requirement of EC is only prospective in nature after the judgment of Apex Court in Deepak Kumar (*Supra*) as well as from OM dated 18.05.2012. As of now, the said judgments (*Supra*) passed by this Hon'ble Court have become final and is binding on the parties, concerned.
8. Be that as it may, obtainment of EC is a precondition, for renewal/grant of all those leases/mineral concessions after the date of **Deepak Kumar** (*Supra*) or after the date of consequential OM dated 18.05.2012. Such a view is fortified by the dictum laid down by this Hon'ble Court in the judgments reported in **All Kerala River Protection Council** (*Supra*) and in **Nature Lovers' Forum** (*Supra*).
9. In the interregnum, by virtue of GO's dated 23.11.2012 and 11.12.2012, the State of Kerala in conformity with the directions issued by the Hon'ble Apex Court in **Deepak Kumar** (*Supra*), ordered to grant short term permits to the existing quarries for the purpose of extraction of minor mineral from private holdings. Thereafter, by GO dated 10.04.2014, the Government of Kerala, considering the dearth of raw materials in the construction field was pleased to extent the tenure



of the operation of the aforesaid Government Orders, with respect to grant of short term permits, without insisting for EC.

10. Moreover, in SLP No. 30103/2015 and connected matters, wherein judgment dated 30.09.2015 in Writ Petition (Civil) No. 10694/2015 (**Paristhithy Samrakshana Janakeeya Samithi and another Vs. State of Kerala**, reported in **2015 (4) KLT 278**) passed by this Hon'ble Court was assailed, the Hon'ble Supreme Court on appreciation of the submissions made on behalf of the State that pending further orders from the Hon'ble Apex Court, the Government shall renew all existing permits for a period of one year, directed the parties to maintain status quo. The order of status quo remained as such, till the final disposal of the above SLP's, which was on 02.12.2016.

11. Be that as it may, in view of the express stand taken by the State of Kerala, insofar as the State is concerned, any person who has indulged in extraction of minor minerals, with valid permission and lease from the Department of Mining and Geology, cannot be considered as a violator for want of EC and that value of minerals cannot be realized from him, more so, when he had indulged in extraction of minor minerals with sufficient concessions and on remittance of royalty and other amounts attached thereto.


12. As on today, the dictum laid down by this Hon'ble Court in the judgments referred hereinabove holds the field and therefore a mineral concessionaire who has been granted with a lease prior to 18.05.2012 and whose leasehold right does not exceed 5 hectares of land, need not obtain EC for continuation of the said lease and only require EC, statutorily, at the time of renewal of the said lease. Such a mineral concession holder, at any rate cannot be treated as a violator and is protected by the judicial pronouncement of this Hon'ble Court, as contained in **All Kerala River Protection Council (Supra)** and in **Nature Lovers' Forum (Supra)**.



13. So much so, in the interregnum, the 1<sup>st</sup> respondent herein had preferred the above OA before the learned Tribunal *inter alia* contending that the 3<sup>rd</sup> respondent herein, the mineral concession holder was granted with a quarrying lease, even though he has not obtained EC, as contemplated under the Notification of 2006 and that he is carrying out quarrying operations therein in the absence of EC. Therefore, the above OA has been filed by the 1<sup>st</sup> respondent *inter alia* seeking for a direction to restrain the 3<sup>rd</sup> respondent from conducting quarrying operations, therein, without obtaining EC. A true copy of the memorandum of application in OA No. 244 of 2017 on the files of the learned Tribunal is produced herewith and marked as **Exhibit P1**.

14. A quarrying lease was granted to the 3<sup>rd</sup> respondent under the erstwhile Kerala Minor Mineral Concession Rules of 1967 (hereinafter referred as Rules of 1967, for short and convenience), as early as in the year 2006 (as per order dated 15.09.2006), which was valid till 12.12.2018. The leasehold area covered by the aforesaid lease was of less than 5 hectares and that since the lease was granted prior to 18.05.2012, the mineral concession holder, being an existing lessee, need only take EC, either at the time of renewal or at the time of expansion of the project, as the case may be.

15. In the interregnum, the 3<sup>rd</sup> respondent had obtained EC from the District Environment Impact Assessment Authority (hereinafter referred as DEIAA, for short and convenience), Ernakulam, by proceedings dated 19.03.2018. Since the 3<sup>rd</sup> respondent obtained all necessary statutory prescriptions/ licenses, new quarrying lease was granted to him under the Kerala Minor Mineral Concession Rules of 2015 (hereinafter referred as Rules of 2015, for short and convenience) as per order dated 05.05.2018 of the Director of Mining and Geology, Thiruvananthapuram. Consequent thereto, on the wake of issuance of new



quarrying lease, the earlier quarrying lease granted by order dated 15.09.2006 was cancelled by the Director of Mining and Geology, Thiruvananthapuram.

16. Be that as it may, necessary counter pleadings were placed on record in the above OA, on behalf of the party respondent as well as for and on behalf of the 1<sup>st</sup> petitioner, resisting the prayers made therein, *inter alia* contending that since the earlier lease was issued prior to 18.05.2012 and that the 3<sup>rd</sup> respondent being an existing lessee, he need not obtain EC and that he has to procure EC either at the time of renewal or at the time of expansion of the project. It was further pointed out there in that subsequent thereto, the 3<sup>rd</sup> respondent had obtained EC and that consequential quarrying lease has been granted to him, afresh, based on the same. Reliance was also placed on the dictum laid down by this Hon'ble Court in **All Kerala River Protection Council (Supra)** and in **Paristhithy Samrakshana Janakeeya Samithi and another Vs. State of Kerala (Supra)**. A true copy of the counter statement filed by the 1<sup>st</sup> petitioner, in OA No. 244 of 2017 on the files of the learned Tribunal is produced herewith and marked as **Exhibit P2**. A true copy of the counter affidavit filed by the 3<sup>rd</sup> respondent, in OA No. 244 of 2017 on the files of the learned Tribunal is produced herewith and marked as **Exhibit P3**.

17. Overlooking the judicial exclusion and protection granted by this Hon'ble Court, as averred hereinabove, the 2<sup>nd</sup> respondent herein has placed on record a reply affidavit in the above OA, *inter alia* contending that on the face of notification dated 15/01/2016, whereby Notification of 2006 was amended, it mandated EC for all mining projects pertaining to minor mineral, including existing projects, such that category B2 projects of lease areas less than or equal to five hectares shall require prior EC from DEIAA. A true copy of the reply affidavit filed by the 2<sup>nd</sup> respondent, in OA No. 244 of 2017 on the files of the learned Tribunal is produced herewith and marked as **Exhibit P4**. A true copy of the notification



dated 15.01.2016 issued by the 2<sup>nd</sup> respondent is produced herewith and marked as **Exhibit P4 (a)**. However, in Ext. P4 (a) Notification dated 15.01.2016, there is no specific or express prohibition stipulated therein which mandates that irrespective of the area of holding and the date of issuance of lease, every mineral concession holder should obtain EC.

18. Nevertheless, taking cue of Ext. P4 (a) Notification dated 15.01.2016 issued by the MoEF and that of the judgment dated 30.06.2020 of the learned Tribunal in Tamil Nadu Small Mine Owners Federation Vs. the Secretary, MoEF and CC, New Delhi and others, in O.A. No. 136/2017, the learned Tribunal by virtue of judgment dated 27.05.2021 in the above OA, speciously found that all existing mining lease holders, of both minor and major mineral, including the 3<sup>rd</sup> respondent, irrespective of the area of leasehold has to obtain EC, for continuance of their operation.

19. The learned Tribunal by judgment dated 27.05.2021 declared that mining operations carried out by the 3<sup>rd</sup> respondent after 15.01.2016, on the basis of the lease issued under the Rules of 1967, till they stopped mining is illegal and is unauthorized and therefore is liable to pay environmental compensation. Along with ancillary directions, the Director of Mining and Geology, Thiruvananthapuram and that the Administrative Department, the Industries Department, the 3<sup>rd</sup> petitioner herein, though not parties in the above OA, were further directed by the learned Tribunal to assess the environmental compensation, penalty for excess mining and royalty lost to the exchequer, consequent to the acts of the 3<sup>rd</sup> respondent and to recover the same in accordance with law. A true copy of the order and judgment dated 27/05/2021, passed by the learned Tribunal in OA No. 244 of 2017 is produced herewith and marked as **Exhibit P5**.



20. Of late, on enquiry, it is learnt that the 3<sup>rd</sup> respondent herein has challenged order and judgment dated 27.05.2021 in OA No. 244/2017 before the Hon'ble Supreme Court in Civil Appeal No. 4643/2021, invoking Section 22 of the National Green Tribunal Act of 2010 (hereinafter referred as Act, for short and convenience). However, by order dated 16.08.2021, the Hon'ble Supreme Court found that there is no error of fact or law in the judgment dated 27.05.2021 passed by the learned Tribunal and thereby dismissed the above Civil Appeal. A true copy of order dated 16.08.2021 passed by the Hon'ble Supreme Court in Civil Appeal No. 4643/2021 is produced herewith and marked as **Exhibit P6**. Though Review Petition (Civil) No. 1285 of 2021 was preferred, seeking to review Ext.P6 the same was also dismissed by the Hon'ble Supreme Court by judgment dated 14.12.2021. A true copy of the order dated 14.12.2021 passed by the Hon'ble Supreme Court in Review Petition (Civil) No. 1285 of 2021 is produced herewith and marked as **Exhibit P6 (a)**.

21. Further on enquiry, it is also learnt that Review Application No. 7/2020 was filed before the learned Tribunal in OA No. 136/2017 to review judgment dated 30.06.2020, which was relied up on by the learned Tribunal to decide the above OA. The said application for review was also dismissed by the learned Tribunal by virtue of judgment dated 18.08.2020. Assailing the same, the review applicant therein had preferred Civil Appeal No's. 1789-1790/2021 before the Hon'ble Supreme Court, which was also dismissed by judgment dated 23.07.2021, holding that there is no error in the orders of the learned Tribunal, which was impugned therein. A true copy of the judgment dated 30.06.2020 passed by the learned Tribunal in OA No. 136/2017 is produced herewith and marked as **Exhibit P7**. A true copy of the judgment dated 18.08.2020 passed by the learned Tribunal in Review Application No. 7/2020 is produced herewith and marked as **Exhibit P8**. A true copy of the judgment dated 23.07.2021 passed by



the Hon'ble Supreme Court in Civil Appeal No's. 1789-1790/2021 is produced herewith and marked as **Exhibit P9**.

22. As is seen from Exts. P7 and P8, the learned Tribunal has not properly appreciated the law laid down by this Hon'ble Court in **All Kerala River Protection Council (Supra)**, in **Paristhithy Samrakshana Janakeeya Samithi and another Vs. State of Kerala (Supra)** and in **Nature Lovers' Forum (Supra)**. Petitioners were not parties to Exts. P7 to P9. No notice has been issued to the petitioners prior to issuance of Ext. P6 judgment, as well. Merely for the fact that the 3<sup>rd</sup> respondent herein had invoked his statutory remedy under the Act of 2010 and that he had suffered Ext. P6 judgment by itself will not preclude the petitioners from approaching this Hon'ble Court invoking Article 226 of the Constitution of India, 1950. Ext. P5 order and judgment passed by the learned Tribunal on the face of it is erroneous, illegal, perfunctory, arbitrary and runs contrary to the law laid down by this Hon'ble Court. Ext. P5 is vitiated by inherent lack of jurisdiction. Moreover, since Ext. P6 has been issued by the Hon'ble Supreme Court invoking the appellate jurisdiction conferred under Section 22 of the Act of 2010, Ext. P5 cannot be considered to have been merged with Ext. P6.

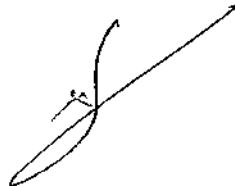
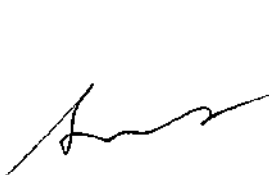
23. Substantial prejudice and hardship has been caused and is continuing to be caused on the petitioners and to the public, at large, consequent to issuance of Ext. P5. As on today, almost 90 mineral concession holders are working in the State of Kerala, who had obtained mineral concessions under the erstwhile Rules of 1967, prior to 18.05.2012. They were permitted to continue their operation without obtaining EC, based on the judgments passed by this Hon'ble Court, as referred hereinabove. The directions now stands issued by the learned Tribunal as contained in Ext. P5 is against the consistent stand taken by this Hon'ble Court, as contained in the authoritative judicial pronouncements, as is stated



hereinabove and is also against the consequent stand taken by the State of Kerala, in the issue, concerned.

24. The mineral concession holders, who were functioning on the orders of this Hon'ble Court and consequent permissions issued by the Writ Petitioners, cannot be treated as violators, on any score and cannot be proceeded against. At this length of time, it is not practically possible rather plausible to proceed against the mineral concession holders, including the 3<sup>rd</sup> respondent herein, alleging violation, for not obtaining EC. Now that consequent to Ext. P5, steps have to be initiated against those mineral concession holders to realize compensation, who were operating on the basis of valid mineral concessions, without obtaining EC, as is permitted by this Hon'ble Court.

25. The State of Kerala is facing acute dearth of construction materials, because of which several prestigious projects are being stalled. If Ext. P5 judgment of the learned Tribunal is to be accepted and acted upon, then necessarily functioning of various quarries, which were functioning as per law, similar to that of the 3<sup>rd</sup> respondent herein has to be interfered with. Such recourse, without considering the ground realities existing thereon, will virtually stall the sustainable development of the State, as the construction field, among other, will be adversely affected. It is respectfully submitted common people are finding it difficult to commensurate with the price hike of the materials, which is an aftermath of the aforesaid dearth. The statutory remedy available as against Ext. P5 as contemplated under the Act of 2010 is neither effective nor efficacious in the facts and circumstances of the ibid case in hand. Since exceptional circumstances have been carved out by the petitioners, for the reasons stated hereinabove and to be stated hereunder, the above Writ Petition (Civil) is maintainable before this Hon'ble Court. Bering the stake holders, the learned Tribunal ought to have heard the Director of Mining and Geology,






Thiruvananthapuram and the administrative department, the Industries Department, prior to issuance of Ext. P5.

26. Insofar as the State of Kerala is concerned, the State is aggrieved in the sense, by the direction of the learned Tribunal as contained in Ext. P5 to realize the environmental compensation, which may require the Government to take similar action as against all similarly placed mineral concession holders during the period in question, if it is to be taken as a binding precedent. Therefore, the petitioners may be permitted to invoke the extraordinary jurisdiction conferred on this Hon'ble Court under Article 226 of the Constitution of India, irrespective of Exts. P6, P6 (a) and P9 judgments.

27. Deeply aggrieved over Ext. P5, petitioners are left with no other effective and efficacious remedy other than to approach this Hon'ble Court by preferring the *ibid* Writ Petition (Civil), invoking the extra ordinary jurisdiction under Article 226 of the Constitution of India on the following among other;

**GROUNDS**

- A. The pleadings, averments and contentions in the preceding paragraphs may be read as part of these grounds.
- B. Acting on the authoritative pronouncements of this Hon'ble Court that the State had permitted the existing mineral concession holders to operate without EC. The said judgments of this Hon'ble Court are binding on the State of Kerala, insofar as permitting the mineral concession holders to operate, without obtaining EC. The learned Tribunal ought not to have sat in appeal over the authoritative pronouncements passed by this Hon'ble Court, in the issue, concerned. The learned tribunal has no jurisdiction to the said effect and has therefore overstepped and has gone in error. Ext. P5 passed by the learned Tribunal



Insofar as it directs to realize environmental compensation from the mineral concession holder is improper and is vitiated by non application of mind. The learned Tribunal had exceeded in its jurisdiction, while issuing Ext.P5

- C. The learned Tribunal has been established by the Central Government, invoking Section 3 of the Act of 2010. Whereas, the Hon'ble High Court of Kerala has been established in the State of Kerala under Article 214 of the Constitution of India of 1950, which has prominence over the Act of 2010, despite the notwithstanding clause, contained therein. This Hon'ble Court in exercise of the powers conferred under the Special Original Jurisdiction emanating from Article 226 of the Constitution of India has pronounced the judgments in **All Kerala River Protection Council (Supra)**, in **Paristhithy Samrakshana Janakeeya Samithi and another Vs. State of Kerala (Supra)** and in **Nature Lovers' Forum (Supra)**, which at this length of time has become final. The observations of the learned Tribunal have only persuasive effect over this Hon'ble Court and have no precedential value. To be more precise, the learned Tribunal cannot go beyond the law laid down by this Hon'ble Court, as is held by this Hon'ble Court in **Aaramam Rock Private Limited Vs. State of Kerala** by judgment dated 31.03.2016 in Writ Petition (Civil) No. 14265/2015. A true copy of the judgment dated 31.03.2016 issued in Writ Petition (C) No. 14265/2015 is produced herewith and marked as **Exhibit P10**.
- D. As is seen from Exts. P7 and P8, the issue considered by the learned Tribunal therein is distinct on facts as well as on law from the facts and circumstances of the ibid case in hand.
- E. While issuing Ext. P5, the learned Tribunal had excessively and erroneously relied on Ext. P4 (a) Notification dated 15.01.2016 issued by the 1<sup>st</sup> respondent, whereby amendment was carried out to the Notification of 2006. So much so, the amendment carried out to the Notification of 2006, by virtue of Ext. P4 (a)



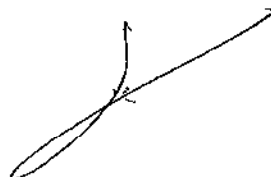
Notification dated 15.01.2016, is concerned, the learned Tribunal by order dated 23.09.2018 in OA No. 186/2016 and in connected matters took judicial notice of issuance of Notification dated 15.01.2016 and thereby required the Central Government to take appropriate steps to revise the procedure laid down as per the Notification dated 15.01.2016. Facts being thus, reliance placed on by the learned Tribunal on Ext. P4 (a) Notification dated 15.01.2016 is highly misplaced.

- F. On an earlier instance, the learned Tribunal by Annexure A7 judgment dated 13.01.2015 produced in Ext. P1 OA, viz., in **Himmat Singh Shekhawat Vs. State of Rajasthan and others** (OA No. 123/2014 and MA No. 419/2014) had issued certain guidelines and directions, whereby it was held that all OM's and Notifications issued by the MoEF till then are operative and would apply to those mining lease holders, irrespective of the fact that whether the area involved is more or less than 5 hectares and further that the existing mineral concession holders would also have to comply with the requirement of obtaining EC, from the competent authorities, concerned. Since, the State of Kerala was not a party in the said proceedings and that since the aforesaid direction are running contrary to the authoritative pronouncements of this Hon'ble Court in **All Kerala River Protection Council** (*Supra*) and in **Nature Lovers' Forum** (*Supra*), the Director of Mining and Geology, Thiruvananthapuram by a letter of clarification dated 19.12.2016, clarified that the existing lease holders who are issued with leases prior to 18.05.2012 and those who have leasehold area of less than 5 hectares need only obtain EC at the time of renewal or expansion of their respective projects/mineral concessions. A true copy of the letter of clarification dated 19.12.2016 issued by the Director of Mining and Geology, Thiruvananthapuram is produced herewith and marked as **Exhibit P11**. Ext. P11 letter of clarification dated 19.12.2016 was initially stayed by the learned Tribunal by order dated 17.08.2017 in **A. K. Devision Vs. Directorate of Mining and Geology, Kerala and others** (OA No. 475/2017 and MA No. 909/2017).



Consequent to the order of stay dated 17.08.2017 issued by the learned Tribunal, the statutory authorities, concerned had issued notice dated 02.09.2017 inconsonance with the directions in **Himmat Singh Shekhawat** (*Supra*). However, in a series of Writ Petitions (Writ Petition (Civil) No's. 29606/2017 and 29529/2017 and connected cases) where notice dated 02.09.2017 and similar notices, referred above has been assailed, this Hon'ble Court has stayed the operation of the same by interim order dated 18.09.2017 and similar interim orders. The said interim orders are still in force and that the said Writ Petitions are pending consideration of the Hon'ble High Court of Kerala. A true copy of interim order dated 18/09/2017 in Writ Petition (Civil) No. 29606/2017 is produced herewith and marked as **Exhibit P12**. So much so, the excessive reliance placed on by the learned Tribunal on Ann. A7 in Ext. P1 OA, while issuing Ext. P5 is *per se* illegal, improper and is highly misplaced.

- G. The mineral concession holders, including the 3<sup>rd</sup> respondent herein who was permitted to operate without EC, at any rate cannot be considered as a violator, for want of obtaining prior EC. So much so, the directions of the learned Tribunal in OA No. 244/2017 as contained in Ext. P5 is against the consistent stand of this Hon'ble Court, as contained in the authoritative judicial pronouncements (*Supra*), and is also against the consequent stand taken by the State of Kerala, in the issue, concerned.
- H. The Tribunal exceeded its jurisdiction while issuing directions as contained in Ext.P5 which in effect nullifies the earlier Division Bench judgments of this Hon'ble Court, permitting the existing mineral concession holders to operate their respective quarries, without EC, during the currency of the said permissions.
- I. The direction to levy environmental compensation with effect from an anterior date from the holders of valid mineral concessions, ending on the strength of directions issued by this Hon'ble Court is also illegal.



- J. The acts of the learned Tribunal insofar as taking cognizance on Exhibit P1 Original Application and issuing Exhibit P5 are *per se* illegal, improper, perfunctory, arbitrary, *ultra vires* and are against the provisions of the Act of 2010. Ext. P5 order and judgment passed by the learned Tribunal is vitiated by inherent lack of jurisdiction and is vitiated by non application of mind, as well. The learned Tribunal is not clothed with jurisdiction under the Act of 2010 to interpret and widen or narrow the scope of judicial pronouncement passed by this Hon'ble Court. As held by this Hon'ble Court in **Society of Indian Automobile Manufacturers, New Delhi Vs. State of Kerala and Others**, reported in **2016 (3) KLT 285** (paragraph 9), the National Green Tribunal is neither a Tribunal, one falling under Article 323A, nor under Article 323B of the Constitution of India of 1950 and therefore, the power of judicial review, analogous to that of Constitutional Courts are alien to the learned Tribunal.
- K. The learned Tribunal ought not to have exercised its powers to overreach the law settled by a Constitutional Court and to take a decision totally contrary to the settled legal proposition. The Hon'ble Apex Court in **Tamil Nadu Pollution Control Board Vs. Sterlite Industries (I) Ltd.**, reported in **2019 SCC On Line SC 221** (paragraphs 51 to 53) has categorically held that the National Green Tribunal has no power of judicial review akin to that of a High Court, exercising constitutional power under Article 226 of Constitution of India. The National Green Tribunal is created under the National Green Tribunal Act of 2010 and is therefore a creature of statute, with limited powers. Ext. P5 is *ultra vires* to the Act of 2010
- L. The learned Tribunal ought to have called for the views of all stake holders, including the Director of Mining and Geology, Thiruvananthapuram and the administrative department, viz., the Industries Department, prior to issuance of Ext. P5, as it has widespread ramifications. The learned Tribunal ought to have



appreciated the fact that the Director of Mining and Geology, Thiruvananthapuram and the administrative department, viz., the Industries Department were necessary and proper parties in Ext. P1 OA. As held by this Hon'ble Court in **K. K. Rocks and Granites (P) Ltd. (M/s.) Vs. Latha S and Others**, reported in **2016 (4) KLT 560**, (paragraphs 6 and 7) the learned Tribunal as contemplated under Section 19 of the Act of 2010 shall be guided by the principles of natural justice and that no ex parte interim orders be passed, without issuing notice to the affected parties. In the ibid case, the learned Tribunal has not issued notice to the stake holders, including the Director of Mining and Geology, Thiruvananthapuram and to the Secretary to Government, Industries Department and therefore has not complied with the procedure prescribed. The learned Tribunal ought not to have issued Ext. P5, since Ext. P1 OA was bad for *non joinder* of necessary and proper parties. Since, the 3<sup>rd</sup> petitioner is substantially affected by the impugned judgment passed by the learned Tribunal in the above OA has been arrayed in the above Writ Petition, along with petitioners 1 and 2, though not a party in the above OA.

- M. Section 14 and Section 19 of the National Green Tribunal Act of 2010 do not permit/authorize the learned Tribunal to issue sweeping and unilateral directions, as done in the ibid case. The learned Tribunal has no jurisdiction or competency whatsoever to issue Ext. P5 order.
- N. Without appreciating the facts and circumstances of the case in hand, the learned Tribunal has gone in error. The learned Tribunal has erroneously assumed jurisdiction and took cognizance on Ext P1. Ext. P5 is vitiated by inherent lack of jurisdiction. Reasons have been supplemented to by the learned Tribunal to issue Ext. P5, which is impermissible in law.
- O. The learned Tribunal has lost sight of the statutory prescriptions as contemplated under the Notification of 2006. The learned Tribunal has issued Ext. P5 solely on

assumptions and surmises. Ext. P5 ought not to have been issued for all or any of the reasons stated therein. The findings and observations of the Learned Tribunal in OA No. 244/2017 insofar as it is against the petitioners are against facts, baseless and are unsustainable in law.

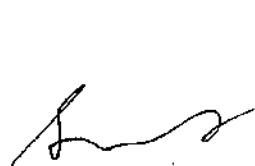
P. Such other grounds that may be urged at the time of hearing.

Q. Without prejudice to the contentions and grounds raised hereinabove, it is respectfully submitted that even if the 3<sup>rd</sup> respondent has to be considered as a violator for not obtaining EC, as is found by the learned Tribunal, even then the acts of the 3<sup>rd</sup> respondent and that of the petitioners are saved by the settled principles of defacto doctrine, as approved by this Hon'ble Supreme Court in **Union of India Vs. Charanjit S. Gill**, reported in **2000 (5) SCC 742** (Paragraph No. 27) and in **Dr. A.R. Sicar Vs. State of UP**, reported in **1993 Supp (2) SCC 734** (paragraph 9). While issuing Ext. P5, the learned Tribunal has not considered the said settled legal proposition and has gone in error.

For these and other grounds that may be urged at the time of hearing, it is most humbly prayed that this Hon'ble Court may be pleased to call for the records leading to Exhibits P1 to P12 and grant the following

**RELIEFS:**

- (i) to call for the records leading to Exhibit P5 order and judgment dated 27/05/2021 passed by the National Green Tribunal, Southern Zone, Chennai in OA No. 244 of 2017 and all proceedings leading to that and pursuant thereto and to issue writ in the nature of certiorari to quash the same;



25

(ii) to mould and issue any other writ or direction appropriate in the circumstances of this case, which this Hon'ble Court deems just, fit, proper and necessary and to grant cost of this proceedings to the petitioners.

**PRAYER FOR INTERIM RELIEF:**

It is most humbly prayed that this Hon'ble Court may be pleased to stay the operation and implementation of Exhibit P5 order and judgment dated 27/05/2021 passed by the National Green Tribunal, Southern Zone, Chennai in OA No. 244 of 2017 and all proceedings leading to that and arising there from, pending disposal of this Writ Petition (Civil).

Dated this the 2<sup>nd</sup> day of ~~March~~ April, 2022

1<sup>st</sup> Petitioner:

Dr. V.L. ... AS  
Additional Ch ... ry

Higher Education, ... onment  
... Archives & Museum Departments

3<sup>rd</sup> Petitioner:

2<sup>nd</sup> Petitioner:

**PRIYA MOHAN**  
Geologist  
Dept. of Mining & Geology  
Dist. Office Ernakulam  
Civil Station, Kakkanad  
Kochi- 682 030

**APM MOHAMMED HANISH IAS**  
Principal Secretary to Govt.  
Industries, General Education &  
Revenue (F) Department  
Govt. Secretariat, Thiruvananthapuram

**S. KANNAN (GP 49) (K/788/2007)**  
**SENIOR GOVERNMENT PLEADER WITH AG**



26

**BEFORE THE  
HON'BLE HIGH COURT OF KERALA AT ERNAKULAM  
(Special Original Jurisdiction)**

**Writ Petition (Civil) No. \_\_\_\_\_ Of 2022**

The State of Kerala & Others >>> Petitioners

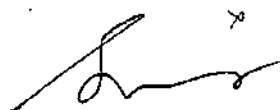
-Vs-

Shefy Joseph and Others >>> Respondents

**AFFIDAVIT**

I, Dr. V. Venu IAS, aged 57 years, S/o. Vasudeva Panicker, residing at Government Quarter No. 6, Jawahar Nagar, Kowdiar P.O., Thiruvananthapuram, do hereby solemnly affirm and state as follows;

1. I am the Additional Chief Secretary to Government, Environment (A) Department, Government Secretariat, Thiruvananthapuram. I know the facts of the case as disclosed from the relevant records. I am authorised and competent to swear this affidavit in my official capacity, for and on behalf of the petitioners.
2. The submissions made in the Writ Petition are based on my personal knowledge, information and belief and on the instructions received by me. Exhibits produced in the Writ Petition are true copies of the originals handed over by me at the O/o. The Advocate General. Petitioners have not filed any other petition earlier, seeking similar reliefs, in respect of the above subject matter, other than as stated in the accompanying Writ Petition. The accompanying Writ Petition has been preferred under my instructions, directions and legal grounds are taken on the advice of my counsel. I have read and understood the contents of the same.



27

3. For the reasons stated in the Writ Petition, it is most humbly prayed that this Hon'ble Court may be pleased to grant the reliefs as well as the interim relief, as sought for, as otherwise this petitioners will be put to irreparable injury, prejudice and loss. It is accordingly humbly prayed for.

All the facts stated above are true to the best of my knowledge, information and belief.

Dated this the <sup>April</sup> 2<sup>nd</sup> day of ~~March~~, 2022



*[Signature]*

(Dr. V. Venu IAS)  
DEPONENT

Solemnly affirmed and signed before me by the literate deponent, who have read and understood the contents of the above affidavit, whom I know, on this the <sup>April</sup> 2<sup>nd</sup> day of ~~March~~, 2022 at the office of the 1<sup>st</sup> respondent, at Government Secretariat, Thiruvananthapuram. सत्यमेव जयते

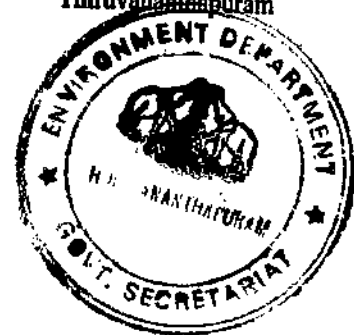
Higher Education, Environment  
Archaeology, Archives & Museum Departments

*[Signature]*

*[Signature]*

S. KANNAN (GP 49) (K/788/2007)  
SENIOR GOVERNMENT PLEADER WITH AG

Dr. C.R. PREETHA  
Section Officer  
Environment ~~Water Resources (A) Department~~  
Govt. Secretariat  
Thiruvananthapuram





E-IA NO : IA-202304680

E-FILING NO : EF-HCK-2022-014363

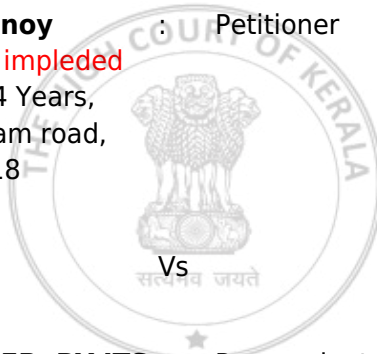
BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM

IA No \_\_\_\_\_ Of Year 2023

In

WP(C) No 13221 Of Year 2022

**Shri. Yeshwanth Shenoy** : Petitioner  
Party has chosen to be impleded  
as respondent, Aged 44 Years,  
Priyadarshini, veekshnam road,  
Ernakulam, PIN - 682018



Vs

**STATE OF KERALA, REP. BY ITS** : Respondent  
**PRINCIPAL SECRETARY TO  
GOVERNMENT  
THE GEOLOGIST, ERNAKULAM  
THE PRINCIPAL SECRETARY TO  
GOVERNMENT  
SHEFY JOSEPH, D/O LATE  
M.P.JOSEPH  
GOVERNMENT OF INDIA, REP.  
BY ITS SECRETARY  
M.D.KURIAKOSE  
ADDL R4, SIBI JOSEPH**

**IMPLEADMENT/DELETION/SUBSTITUTION/TRANSPOSITION OF PARTIES/LRS/REMOVING**

FEES PAID & STATUS - 10 (Success)

Sd/-  
E-VERIFIED  
YESHWANTH SHENOY  
K/1011/2001





BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM

IA No \_\_\_\_\_ Of Year 2023

In

WP(C) No 13221 Of Year 2022

**Shri. Yeshwanth Shenoy Party** : Petitioner  
has chosen to be impleaded as  
respondent, Aged 44 Years,  
Priyadarshini, veekshnam road,  
Ernakulam, PIN - 682018

V/S  
**STATE OF KERALA, REP. BY ITS** : Respondent  
**PRINCIPAL SECRETARY TO**  
**GOVERNMENT THE GEOLOGIST,**  
**ERNAKULAM THE PRINCIPAL**  
**SECRETARY TO GOVERNMENT**  
**SHEFY JOSEPH, D/O LATE**  
**M.P.JOSEPH GOVERNMENT OF**  
**INDIA, REP. BY ITS SECRETARY**  
**M.D.KURIAKOSE ADDL R4, SIBI**  
**JOSEPH**

INDEX

SL	Contents	Page Nos
1	Affidavit1 - Affidavit of the Petitioner	1-5
2	IMPLEADMENT/DELETION/SUBSTITUTION/TRANSPOSITION OF PARTIES/LRS/REMOVING	6-7

Sd/-  
E-VERIFIED  
YESHWANTH SHENOY  
K/1011/2001

**BEFORE THE HONOURABLE HIGH COURT OF KERALA**

**AT ERNAKULAM**

I.A. No.                      of 2023

IN

W.P.(C) No. 13221 of 2022

State of Kerala & Others                      -                      Petitioners

**Vs.**

Shefy Joseph & Others                      -                      Respondents

**A F F I D A V I T**

I, Yeshwanth Shenoy aged 44 years, S/o V.L.Shenoy, 'Priyadarshini', Veekshnam Road, Ernakulam – 682018 do hereby solemnly affirm and state as follows:-

1. I am an advocate enrolled in the Bar Council of Kerala. I am aware of the facts of the case and hence competent to make this Affidavit.
2. I had written an article on the issue surrounding the 'bribery allegations against the President of the KHCAA' on my social media post and I received a call from an advocate stating that these allegations are pale when compared to the larger 'games' played in the High Court of Kerala. I was sent a copy of the Writ Petition W.P.(C) 13221 of 2022.
3. I was in a state of shock and was checking again and again the website of the High Court of Kerala, the Supreme Court of India and reading the Writ Petition repeatedly so as to make sure that I was not missing any details because the Writ Petition filed by the State of Kerala through the Advocate General's Office was a wilful,

deliberate, direct and a blatant violation of Article 141 of the Constitution of India.

4. The Judicial order passed by the National Green Tribunal, Southern Zone in O.A 244/2017 was challenged in a Writ Petition before this Hon'ble Court through senior government pleader, Adv. S.Kannan, who was well aware that the order had attained finality as the same was appealed by the Respondent No.3 in this Writ Petition before the Hon'ble Supreme Court in Civil Appeal 4643/2021 and in Review Petition (C) 1285/2021 and the Hon'ble Supreme Court found no merit in the same either on facts or law. The orders of the Hon'ble Supreme Court was even annexed to this Writ Petition as Ex.P6.
5. Once O.A 244/2017 attained finality under Article 141 of the Constitution of India, it could not have been challenged before a High Court. By challenging the same in the High Court, the State and the advocate committed criminal contempt as defined in Sec.2(c) of the Contempt of Courts Act, 1971.
6. The act of the senior government pleader is wilful and deliberate because the fact of the order attaining finality through the orders of the Hon'ble Supreme Court was concealed in the synopsis as well as list of dates but was disclosed in the pleadings. It is obvious that the fact of the finality of the order through the orders of the Hon'ble Supreme Court was also kept back from the court during the oral presentation of the arguments as this court granted an 'interim stay' on the operation of the order in O.A 244/2017 which had attained finality. Had this fact known to this Hon'ble Court, this Hon'ble Court would not even have entertained the Writ Petition.

7. The Act of the Senior Government pleader is professional dishonesty of the Highest Order. The Advocate General of the State cannot escape the consequences of the acts of the senior government pleader. The senior government pleader would not have filed this Writ Petition without the express consent of the Advocate General and assuming no such consent was taken, then the Advocate General has failed in his duty of supervising and controlling the affairs from his office. The Advocate General is duty bound to uphold the Constitution of India and the filing of this Writ Petition and the grant of interim stay and the extension granted from time to time scandalises the authority of the Hon'ble Supreme Court, Prejudices and interferes with the Judicial Proceeding in OA 244/2017 and obstructed the administration of Justice.
8. The Writ Petition was signed by the senior civil servants who are well aware of the Constitution of India and are under oath to uphold the Constitution of India. The senior civil servants seem to be 'working' for the 'quarry lobby' and helped them loot the resources of the State in broad daylight and that too in gross violation of Constitutional Principles and undermining the authority of the Hon'ble Supreme Court through the Advocate General's Office.
9. The State cannot escape liability because the Writ itself was filed by the State itself against a Judicial Order. A Writ cannot lie against a Judicial Order. The State cannot be an aggrieved person by any stretch of imagination on the basis of a Judicial order. The Courts acting on administrative side is a 'State', but a court performing its Judicial duties cannot be included in the definition of a 'State'. The State has to be fastened with exemplary damages as the State not just caused loss to the State, but also cast doubts on the functioning of



the High Court Judges. For the people who knew about the quarrying felt vulnerable and exposed when the State itself violated the orders of the Hon'ble Supreme Court and that too on the strength of the High Court orders which gave these people a reason to believe that the Judges too were involved in the illegal act.

10. I point out the fact that the advocates who were aware of this gross violation kept silent when it was their duty to speak up. These advocates attributed their silence to the fear of victimisation by the State, the law officers of the State and even the Judges, because many had reason to believe that the Judges were involved too.

11. I say that 'victimisation' is almost a 'certainty' for the people who are involved are politically powerful and are the top officers of the State as well as top law officer of the State combined with Senior members of the Bar who did not bring the attention of the Court to such serious 'usurping' of the Constitution of India. My principles would not allow me to remain silent to such gross violation of Constitutional principles and my professional commitment is always to the institution of Judiciary than on the individuals who form a part of it.

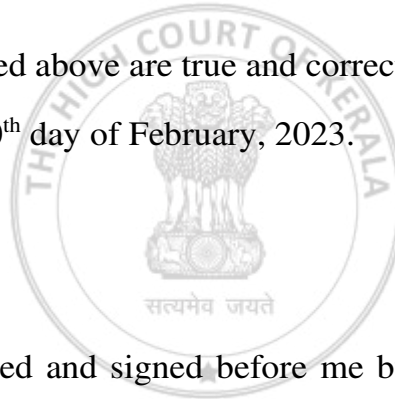
12. I humbly pray that this Hon'ble Court may allow me to be impleaded in this Writ Petition. The presence of the counsel for the Parties is no ground to deny this application because in spite of the presence of these counsels, the Stay order is being extended in spite of the Additional 4<sup>th</sup> Respondent having been impleaded and an IA for vacating of the stay was filed on 27 September 2022. Such travesty of Justice cannot be allowed to continue when the same challenges the constitutional scheme of hierarchy as regards the Judicial institutions.

13. This Writ Petition ought not to be kept open even for a minute and this Hon'ble Court should only decide what penalty has to be fastened on the State for conspiring and planning a constitutional coup. The officers of the State have to face disciplinary action for filing this Writ Petition and the law officers of the State involved have to be proceeded against for criminal contempt under the Contempt of Courts Act, 1971.

14. In the circumstances pointed out, I may be allowed to intervene in this matter and my prayer to be impleaded as the 5<sup>th</sup> Additional Respondent be allowed.

All the facts stated above are true and correct.

Dated this the 10<sup>th</sup> day of February, 2023.



Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me this the 10<sup>th</sup> day of February, 2023 at Ernakulam.

ADV. AYSHA ABRAHAM

K-973/93

**BEFORE THE HONOURABLE HIGH COURT OF KERALA  
AT ERNAKULAM**



I.A. No. of 2023

IN

W.P.(C) No. 13221 of 2020

**Petitioner/Additional 4<sup>th</sup> Respondent sought to be impleaded**

Yeshwanth Shenoy aged 44, S/o V. L. Shenoy,  
'Priyadarshini', Veekshnam Road, Ernakulam – 682018

Vs.

**Respondents/Petitioner & Respondents**

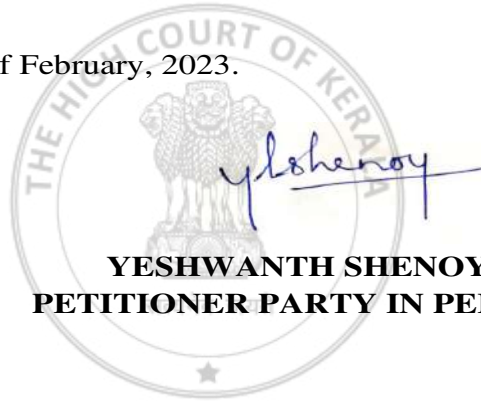
1. State of Kerala represented by its Principal Secretary to Government, Department of Environment, Government Secretariat, Thiruvananthapuram - 695 001.
2. The Geologist, Department of Mining and Geology, Civil Station, Kakkanad, Ernakulam - 682 030.
3. The Principal Secretary to Government, Industries (A) Department, Government Secretariat, Thiruvananthapuram - 695 001.
4. Shefy Joseph, D/o Late M.P. Joseph, Puthanpurackal House, Chembarakki, South Vazhakulam P.P, Perumbavoor - via, Ernakulam - 683556
5. Government of India, represented by its Secretary, Ministry of Environment, Forest and Climate Change, Pariyavaran Bhavan, CGO Complex, Lodhi Road, New Delhi – 110003

6. M.D.Kuriakose, Madapllill House, Pazhanganad P.O., Kizhakkambalam-  
via, Ernakulam – 683562
7. Sibi Joseph, aged 39 yrs S/o K.S.Joseph, Kallamackal House, Dhoni P.O,  
Palakkad – 678009.

**PETITION FOR IMPLEADING FILED BY THE PETITIONER**  
**UNDER 152 OF THE HIGH COURT RULES PRAYS AS**  
**FOLLOWS:**

For the reasons stated in the accompanying affidavit of the petitioner herein, it is humbly prayed that this Honorable Court be pleased to implead the Petitioner herein as the additional Respondent No.5, to protect the interest of justice.

Dated this the 10<sup>th</sup> day of February, 2023.

  
The seal of The High Court of Kerala is circular, featuring the text "THE HIGH COURT OF KERALA" around the perimeter and a star at the bottom. In the center, there is a depiction of the Lion Capital of Ashoka. Overlaid on the seal is a handwritten signature in blue ink that reads "Yeshwanth Shenoy".

**YESHWANTH SHENOY**  
**PETITIONER PARTY IN PERSON**

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE MR.JUSTICE VIJU ABRAHAM

Friday, the 17<sup>th</sup> day of February 2023 / 28th Magha, 1944

IA.NO.1/2023 IN WP(C) NO. 13221 OF 2022(C)

PETITIONER/ADDITIONAL 4TH RESPONDENT SOUGHT TO BE IMPLEADED:

YESHWANTH SHENOY, AGED 44, S/O.V.L.SHENOY, 'PRIYADARSHINI',  
VEEKSHNAM ROAD, ERNAKULAM-682018

RESPONDENTS/PETITIONER & RESPONDENTS:

1. STATE OF KERALA, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, DEPARTMENT OF ENVIRONMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001
2. THE GEOLOGIST, DEPARTMENT OF MINING AND GEOLOGY, CIVIL STATION, KAKKANAD, ERNAKULAM - 682 030
3. THE PRINCIPAL SECRETARY TO GOVERNMENT, INDUSTRIES (A) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001
4. SHEFY JOSEPH, D/O LATE M.P.JOSEPH, PUTHANPURACKAL HOUSE, CHEMBARAKKI, SOUTH VAZHAKULAM P.O., PERUMBAVOOR VIA, ERNAKULAM - 683 556
5. GOVERNMENT OF INDIA, REP. BY ITS SECRETARY, MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE, PARIYAVARAN BHAVAN, CGO COMPLEX, LODHI ROAD, NEW DELHI, PIN - 110 003
6. M.D.KURIAKOSE, MADAPPILLIL HOUSE, PAZHANGANAD P.O., KIZHAKKAMBALAM VIA, ERNAKULAM - 683 562
7. SIBI JOSEPH, SON OF K.S.JOSEPH, KALLAMACKAL HOUSE, DHONI P.O., PALAKKAD- 678 009

Application praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to implead the Petitioner herein as the additional Respondent No.5, to protect the interest of justice.

This Application coming on for orders upon perusing the application and the affidavit filed in support thereof, and upon hearing the arguments of SRI.YESHWANTH SHENOY, PARTY IN PERSON for PETITIONER in IA, SHRI.S.KANNAN, SENIOR GOVERNMENT PLEADER for Petitioner in WP(C) and R1 in IA, M/S. BABU JOSEPH KURUVATHAZHA, K.S.ARCHANA & MOHAMED SHAFI K., Advocates for R1 in WP(C)/R4 in I.A., ASSISTANT SOLICITOR GENERAL OF INDIA for R2 in WPC/R5 in I.A, M/S. GEORGE POONTHOTTAM (SENIOR ADVOCATE), SARITHA THOMAS & V. USHA NANDINI, Advocates for R3 in WP(C)/R6 in I.A, and of M/S. SAHASRANAMAN, T.S.HARIKUMAR & G.N.DEEPA, Advocates for addl.R4 in WP(C)/R7 in I.A., the court passed the following:

**VIJU ABRAHAM, J.**

.....  
**I.A.No.1 of 2023 in W.P.(C) No.13221 of 2022**

.....  
Dated this the 17<sup>th</sup> day of February, 2023

**ORDER**

This is a petition filed by a third party seeking impleadment in the above writ petition as additional 5<sup>th</sup> respondent. The petitioner herein is an advocate enrolled in the Bar Council of Kerala. The contention of the petitioner is that the present writ petition filed by the State and others challenging the order passed by the National Green Tribunal, Southern Zone in O.A. No.244/2017 is suppressing the fact in the synopsis that the said order has attained finality as per the orders of the Hon'ble Apex Court in C.A. No.4643/2021 and R.P (C) No.1285/2021. The petitioner herein had named the learned Senior Government pleader in the present petition through whom the State had filed the writ petition and the contention of the petitioner is that by filing such a writ petition, the state as well as the advocate concerned has committed criminal contempt and the act of the Senior Government Pleader is professional dishonesty and further that the Advocate General of the State cannot escape from the consequences of the act of the Senior Government Pleader. The

I.A.No.1 of 2023 in W.P.(C) No.13221 of 2022

2

further allegations in the said affidavit filed in support of the petition for impleadment reads as follows:

*“9. the State cannot escape liability because the Writ itself was filed by the State itself against a Judicial Order. A Writ cannot lie against a Judicial Order. The State cannot be an aggrieved person by any stretch of imagination on the basis of a Judicial order. The Courts acting on administrative side is a 'State', but a court performing its Judicial duties cannot be included in the definition of a 'State'. The State has to be fastened with exemplary damages as the State not just caused loss to the State, but also cast doubts on the functioning of the High Court Judges. For the people who knew about the quarrying felt vulnerable and exposed when the State itself violated the orders of the Hon'ble Supreme Court and that too on the strength of the High Court Orders which gave these people a reason to believe that the Judges too were involved in the illegal act.*

*10. I point out the fact that the advocates who were aware of this gross violation kept silent when it was their duty to speak up. These advocates attributed their silence to the fear of victimisation by the State, the law officers of the State and even the Judges, because many had reason to believe that the Judges were involved too.”*

Based on this the petitioner seeks impleadment in this writ petition as his principles does not permit him to remain silent to such gross violation of constitutional principles and therefore he seeks for impleadment in this writ petition.

2. A perusal of the writ petition would reveal that the order passed by the Green Tribunal is produced as Exhibit P5 whereas the order passed by the Hon'ble Apex Court in the Civil Appeal as well as in the Review petition are produced as Exhibits P6 and P6(a) in the

I.A.No.1 of 2023 in W.P.(C) No.13221 of 2022

3

present writ petition. Allegations have been raised against the law officer who has filed the present writ petition and also on the learned Advocate General without any materials to support the same. The merits of the contentions in the writ petition is to be decided at the time of the final disposal of the same. Other than making such allegations without any materials to support, petitioner has not stated as to why he is a necessary party in this proceedings. Admittedly, he was not a party before the National Green Tribunal, the order of which is under challenge in this proceedings. I am of the opinion that the petitioner is neither a proper or necessary party in the present proceedings in as much as his impleadment is not necessary for the effective and complete adjudication and settlement of all questions involved in the above writ petition. The petitioner who himself is a practicing lawyer has raised various allegations without any materials to support the same.

Taking all these aspects into consideration, I am not inclined to allow the petition seeking impleadment of the petitioner as additional 5<sup>th</sup> respondent and the petition is accordingly dismissed.

Sd/-

**VIJU ABRAHAM  
JUDGE**

cks



**APPENDIX OF WP(C) 13221/2022**

- Exhibit P5** TRUE COPY OF THE ORDER AND JUDGMENT DATED 27.05.2021 PASSED BY THE TRUBUNAL IN OA NO. 244/2017.
- Exhibit P6** TRUE COPY OF THE ORDER DATED 16.08.2021 PASSED BY THE HON'BLE SUPREME COURT IN CIVIL APPEAL NO. 4643/2021.
- Exhibit P6(a)** TRUE COPY OF THE ORDER DATED 14.12.2021 PASSED BY THE HON'BLE SUPREME COURT IN REVIEW PETITION (CIVIL) NO.1285/2021.



ITEM NO.57

COURT NO.4

SECTION XI-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 5563/2023

(Arising out of impugned final judgment and order dated 17-02-2023 in IA No. 1/2023 passed by the High Court Of Kerala At Ernakulam)

YESHWANTH SHENOY

Petitioner(s)

VERSUS

THE STATE OF KERALA & ORS.

Respondent(s)

(IA No.58002/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.58003/2023-PERMISSION TO APPEAR AND ARGUE IN PERSON )

Date : 24-03-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.R. SHAH  
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s)

Petitioner-in-person

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

It is pointed out that the order passed by the National Green Tribunal (NGT) dated 27.05.2021 against which the Civil Appeal No.4643/2021 was preferred which came to be dismissed by this Court and though it was pointed out the High Court has granted the stay of the very order against which the appeal and the review have

## VERDICTUM.IN

2

been dismissed by this Court. It is submitted that when it was pointed out to High Court, the High Court has dismissed the impleadment application of the petitioner by observing that there was no suppression by the writ petitioner before the High Court/State Government. It is submitted however that the High Court ought not to have granted the stay of the order dated 27.05.2021 of the NGT against which the appeal was dismissed by this Court.

Issue notice, returnable on 17.04.2023.

Dasti, in addition, is permitted.

In addition, notice upon the State be served through the Office of Advocate General of the State as well as on the Standing Counsel of the State of Kerala.

It is reported that the proceedings before the High Court are conducted on day to day basis and the interim order passed by the High Court staying the order passed by the NGT dated 27.05.2021 has been issued which shall be in the teeth of the order passed by this Court dismissing the appeal as well as the review.

Therefore, the Registry is directed to communicate these orders to the Registrar General of the High Court to place the present order before the High Court in the pending proceedings which may be taken into consideration by the High Court while hearing the proceedings before it and while extending the stay granted earlier staying the

## VERDICTUM.IN

3

order passed by the NGT dated 27.05.2021 against which the Civil Appeal was preferred before this Court which came to be dismissed and subsequently the review application also came to be dismissed.

(DEEPAK JOSHI)  
COURT MASTER (SH)

(NISHA TRIPATHI)  
ASSISTANT REGISTRAR

**S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS**

**Petition(s) for Special Leave to Appeal (C) No(s). 5563/2023**

**(Arising out of impugned final judgment and order dated 17-02-2023 in IA No. 1/2023 in W.P.(C)No.13221/2022 passed by the High Court of Kerala at Ernakulam)**

**YESHWANTH SHENOY**

**Petitioner(s)**

**VERSUS**

**STATE OF KERALA & ORS.**

**Respondent(s)**

**(IA No. 122080/2023 - APPLICATION FOR PERMISSION  
IA No. 58002/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT  
IA No. 58003/2023 - PERMISSION TO APPEAR AND ARGUE IN PERSON  
IA No. 101912/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS)**

**Date : 15-05-2024 This matter was called on for hearing today.**

**CORAM :**

**HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE UJJAL BHUYAN**

**For Petitioner(s)**

**Mr. Yeshwanth Shenoy, in-person**

**For Respondent(s)**

**Mr. R. Basant, Sr. Adv.  
Mr. Nishe Rajen Shonker, AOR  
Mrs. Anu K Joy, Adv.  
Mr. Alim Anvar, Adv.**

**Ms. Usha Nandini V., AOR  
Mr. Alex M Scaria, Adv.  
Ms. Saritha Thomas, Adv.  
Mr. John Thomas Arakal, Adv.**

**Mr. Sanand Ramakrishnan, Adv.  
Mr. Rajeev Mishra, Adv.  
Mr. Sunil Narayanan S, Adv.  
For M/S. Axxess Legal Corp, AOR**

UPON hearing the counsel the Court made the following  
O R D E R

Heard The learned senior counsel appearing for the first respondent-State of Kerala states that the first respondent will withdraw Writ Petition (Civil)No.13221 of 2022 and will file a statutory appeal before this Court.

It is true that the petitioner who is a member of the Bar and the President of the High Court Bar Association had made very serious allegations not only against the State but also against the Law Officers of the State including the Advocate General, the members of the Bar and the Judges.

An affidavit dated 10<sup>th</sup> May, 2024 has been filed by the petitioner. Paragraph 1 of the said affidavit reads thus:

"I say that in terms of the directions of this Hon'ble Court dated 10.05.2024 I withdraw all statements and averments made in the Affidavits and Application that is even remotely interpreted to insinuate the State, the Advocate General, the Law Officers of the State or the Judges."

We accept the statements made in the said affidavit as unconditional withdrawal by the petitioner of all the allegations which he has made against the Advocate General, the Law Officers, the members of the Bar and the Judges of the High Court.

As the respondent-State is withdrawing the Writ Petition, obviously all interim orders passed on the Writ Petition by the High Court will come to an end.

Accordingly, we dispose of the Special Leave Petition by passing the following order:

1. Writ Petition (C)No.13221 of 2022 filed by the first respondent before the High Court of Kerala is disposed of as withdrawn;
2. It will be open for the first respondent to prefer a statutory appeal against the order which was impugned before the High Court. As far as the appeal which may be preferred by the first respondent is concerned, we leave open all the contentions/objections of the parties which will be gone into as and when such appeal is filed.
3. We accept the statements made in paragraph 1 of the affidavit dated 10<sup>th</sup> May, 2024 filed by the petitioner and take the statements therein on record of this Court; and
4. As a consequence of withdrawal of the Writ Petition by the first respondent, the interim orders passed on the Writ Petition stand vacated.  
Pending applications also stand disposed of.

(ANITA MALHOTRA)  
AR-CUM-PS

(AVGV RAMU)  
COURT MASTER

**YESHWANTH SHENOY**  
**Advocate**

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KHCAA Chamber Complex,  
High Court of Kerala Campus,  
Ernakulam, Kerala – 682 031.

Mobile: 9967642195  
E-mail: yshenoy@gmail.com

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11 June 2024

To,

The Hon'ble Chief Justice,  
Supreme Court of India,  
New-Delhi – 110 001

Sir,

**SUB:** Involvement of Justice (Retd) Mary Joseph with the  
'Narcotics Lobby'.

**REF:** Release of convicts in NDPS cases without Judgment.

1. I am constrained to bring your immediate attention to one of the most disturbing acts of a High Court Judge who allowed convicts in NDPS cases released from prison without writing judgments. Convicts under the NDPS Act should not be equated with convicts under heinous crimes under IPC. NDPS convicts cause havoc in the society and the State of Kerala is reeling under abuse of narcotics making it a social issue changing the very fabric of a peaceful society.
2. The facts stated in this letter is disturbing to say the least and will make it clear that the entire act is planned. Unfortunately, the system failed to take corrective actions even when the same was pointed out. I will first get to the facts first so that the manipulation is first clear and thereafter point out the modus operandi and then point out how the system failed itself and let Justice Mary Joseph get into the High Court of Kerala.



**The cases where NDPS Convicts were let out without a Judgment**

3. The Trial Court had convicted 4 persons in an NDPS case with commercial quantities of narcotics. All four filed separate appeals. The number of the four cases are CrI.A 162/2021, CrI.A 99/2021, CrI.A 130/2021 & CrI.A 714/2021. Once Justice Mary Joseph got the assignment, 3 of these cases gets a 'special' treatment. It is called out of turn and the speed with which it moved was different from other cases. A copy of the status of these three cases from the website of High Court of Kerala is annexed as **Annexure-A Colly**. From the status of the cases, it can be noted that CrI.A 162 & 130 is on fast forward mode and on the date on which Judgment is reserved, CrI.A 99/2021 is pulled in. Judgment was reserved on 22.10.2021. Then there was a complete lull for a little over 21 months. Then on 31.07.2023, all three CrI.A are allowed. The convicts are released from prison on the base of release order. Till the date of retirement of Justice Mary Joseph, i.e 2 June 2024 no Judgment was passed. In short, even after 2 years and 7 months of reserving a Judgment, no order is passed but criminal convicts were released.
4. What is shocking is that CrI.A 714/2021 arising out of the same Trial Court Judgment was not heard and the same is still pending. A copy of the status of CrI.A 714/2021 along with the release of the convict on bail is annexed as **Annexure-B colly**. The order releasing the convict makes it clear that the Judgment is 'not uploaded and hence not available'. Justice Mary Joseph occupied the chair of a District Judge for almost 15 years and if she had heard the case properly, she would know that there were four convicts and the least she could have roped in the 4<sup>th</sup> case in the same manner she had roped in CrI.A 99/2021.
5. The trial Court in another case had convicted two persons in an NDPS case. Both filed separate appeals viz. CrI.A 322/2021 and CrI.A 545/2021. The

status of these cases is annexed as **Annexure-C colly**. This also got special treatment but what is strange is that even when both these cases arose from the same judgment, the matters were heard separately and order was reserved on 31.07.2023. The convicts were released on 1.08.2023 itself on release order without Judgment. Till the date of retirement of Justice Mary Joseph, i.e 2 June 2024 no Judgment was passed.

**Modus Operandi and the failure of system to take notice**

6. I had given a complaint to the Registrar (Vigilance) on 1 June 2023 in which I had explained how ‘unnatural demand’ was created in the court of Justice Mary Joseph. A copy of my complaint is annexed as **Annexure-D**. The moment I got to know about these 5 cases, I started tracking them meticulously. I did not give specific information because I had an earlier experience where inhouse complaint filed with the Chief Justice was rejected even when prima facie case was made out in the order sheet itself.
7. Justice Mary Joseph after starting to sit in single Bench slowly started to curtail her list contrary to the orders of the Hon’ble Supreme Court in *State of Rajasthan Vs. Prakash Chand* [(1998) 1 SCC 1]. I had complained to the then Chief Justice that Judges cannot interfere with the listing process and when the Chief Justice failed to take any action, I had filed a Writ Petition which was numbered as W.P (C) 6912 of 2023. During my submissions, I specifically pointed out to the dangers of interfering with the ‘listing process’. Justice Mary Joseph has restricted her list to 20 matters. I had specifically submitted that when the list is curtailed to 20 matters, the issue is not just about curtailing the list, but ‘which 20 matters’ would be listed? I had in my complaint to the Registrar (Vigilance) pointed out to Adv.Prerith Philip, the son of Justice Mary Joseph who every day accessed the chambers of Justice Mary Joseph. In fact, Justice Mary Joseph had given an order in a matter where her son had filed a vakalath. Only when I

filed a Writ Petition did Justice Mary Joseph issue order to ‘avoid’ her son and his colleagues in her court. Unfortunately, even the learned single Judge ignored the decision of the Hon’ble Supreme Court and allowed curtailing of the list. What is unfortunate is that the Learned Single Judge used Judgment as a weapon and used 10 paras to personally attack me. I filed a Writ Appeal before the Division Bench which was numbered as W.A 1316 of 2023 and even that was dismissed on the basis of an Office Memorandum (which was withdrawn soon after passing of the order) with personal remarks against me.

8. The system failed thrice. First, the Registrar (Vigilance) did not even think it proper to call me and take my statement let alone inquire or investigate. The learned Single Judge after having understood the dangers failed to take corrective steps even when the issue was clearly covered by the order of the Hon’ble Supreme Court. The learned single judge used his judgment to personally attack me. When writ appeal was filed, the Division Bench after having understood the issue instead of correcting it used an office memorandum to justify their dismissal of the matter and again personally attacked me.

### **The Elevation of Justice Mary Joseph**

9. Justice Mary Joseph was elevated as a Judge of High Court of Kerala on 10.04.2015 when both her ‘integrity’ and ‘ability’ were questioned. I have been informed that Justice Mary Joseph dealt only with abkari matters and did not write a single judgment involving murder or a single contested civil appeal. Yet she made it to ‘selection grade’. There was a complaint with the Special Judge vigilance, Thrissur filed on 8 January 2015 that raises serious questions on her integrity. A copy of the complaint that was before the Vigilance Judge is annexed as **Annexure-E**. I am told that this complaint was also with the Registrar (Vigilance) of the High Court of

Kerala and one of the collegium members had raised the issue. Unfortunately, she made it through the system and was elevated as a High Court Judge.

### **The Role of the State Law Officers**

10. The role of State Law officers needs no explanation. The five cases pointed out alone is sufficient to point out their absolute failure. This failure is willful because they did not just fail in leading arguments, but what they failed is in bringing the attention of the court that there is a 4<sup>th</sup> accused who also need to be roped in while hearing only 3 appeals. They failed when the court heard the two appeals from the same judgment on different dates.
11. The role of State Law officers should not be brushed aside as negligence. I am analysing more orders and I am enough materials to point out the existence of a ‘narcotics lobby’ which is very powerful. I bring your attention to a judicially sound order in *Gangadharan Vs. State* [Neutral Citation: 2023:KER: 82349] which would cause havoc to the State as regards prosecuting narcotics cases. The order is based on sound judicial principles, but the State has failed to appeal the same because as a consequence of the order, a majority of narcotics cases will go untried because of ‘vitiating investigation’ and even convicted criminals could challenge their conviction based on this order. This Judgment alone has the ability of letting off the Narcotic offenders back to the society on technical grounds. There are a handful of Bail orders that I am analysing in which the role of the State Law Officers is doubtful.
12. I have already exposed a ‘quarry lobby’ that functions through the State Law officers who played a crucial role in staying a Judgment of the Hon’ble Supreme Court by the High Court of Kerala. The ‘quarry lobby’ and the ‘narcotics lobby’ are deeply entrenched in the system.

**The System continues to fail**

13. After the Retirement of Justice Mary Joseph, she continued to visit her chambers in the High Court of Kerala and continued writing Judgments. I addressed a letter to the Hon'ble Chief Justice on 7 June 2024 pointing out this fact. A copy of the said letter is annexed as **Annexure-F**. I have my doubts on what steps have been taken because Justice (Retd) Mary Joseph continues to write Judgments.
14. The five NDPS cases mentioned above was prepared by Justice Mary Joseph soon after the story of my letter became public. The AG Office and the Advocates had applied for certified copies of the orders in these cases. In CrI.A 99/2021 & 162/2021, applications were filed on 1.8.23 and 31.7.23. In CrI.A 545/2021 and 322/2021 applications were filed in 2023. Today, i.e 11 June 2024, the Registry has called for stamp to release the copies.
15. After having allowed the applications, Justice Mary Joseph did not write the Judgement for 10 months and finds time to write them after retirement. This has been held to be gross Judicial impropriety by the Hon'ble Supreme Court in *State Vs. Naresh Prasad Agarwal & otrs* [Order dated 13 Feb 2024 in SLP (criminal) No. 2210-2211 of 2024]. The Hon'ble Supreme Court was pleased to quash and set aside the order in that case.
16. I am told that Justice (Retd) Mary Joseph has applied for several post retirement jobs. In fact, on her last day in the Court, she has pronounced an order in an election Petition numbered as Ele.Petn 10/2021 in which she 'dismissed' the Petition and she is yet to write a Judgment on it. I am told that this is a 'quid pro quo' for a post retirement job.
17. I have only stated facts above and I leave it to your Lordship to assess whether it is a case of Judicial Indiscipline, Judicial Impropriety or Judicial

Corruption. However, these facts clearly point out how person with doubtful integrity made it into the system and caused havoc in the system that has its immediate effect on the society and the People. This also brings to the fore the inability of the system to churn out the blacksheeps. Justice Deepak Gupta in his farewell speech stated that Judicial Independence is not very difficult to achieve as long as we see the Judicial Institution different from the individuals. In this case, in the name of Judicial Independence, Reputation and integrity we failed to put a check on a Judge who blatantly violated all norms and the system failed to respond to correct a wrong. What is most damaging is that a person who raised the issue with evidence was attacked by the system by ‘framing him’ under Contempt law and ‘disciplinary proceedings’. A detailed letter will address that issue because to get the full picture, the involvement of another lobby, i.e the ‘Quarry lobby’ also needs to be understood. It is my unwavering belief in Rule of Law and its ability to deliver Justice that has made me stand up and fight for this cause. In the name of protecting the reputation of the Judicial Institution, the system was unleashing convicts under the NDPS Act on the very people on whose faith the very institution survives.

In the Light of the above facts, I humbly request your Lordship to:

- A. Suo Motu call for the judgments in these cases and quash and set aside the orders in the five NDPS criminal appeals.
- B. Refer the case of Justice Mary Joseph to the Central Bureau of Investigations to investigate the nexus between the Judge and the ‘Narcotic lobby’.
- C. Call for a report from the Chief Justice of the High Court of Kerala that would show when these judgments were prepared and signed (All computers will show when the document was prepared and

when the print outs were taken) and all officials responsible for the same and take disciplinary action against those registry officials.

D. Suo Motu call for the order in *Gangadharan Vs. State* [Neutral Citation: 2023:KER: 82349] and issue notice to the Advocate General so as to take effective measures to ensure that narcotic offenders and convicts are not let back to the society.

Yours Sincerely,

Yeshwanth Shenoy

ENCL:

All Annexures mentioned in the letter

COPY TO:

1. The Chief Justice, High Court of Kerala.
2. The Ministry of Law & Justice
3. The Director, Central Bureau of Investigations

# VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

Wednesday, the 19<sup>th</sup> day of June 2024 / 29th Jyaishta, 1946

IA.NO.1/2024 IN WP(C) NO. 3017 OF 2018

**APPLICANT/1ST RESPONDENT IN WPC:**

GOVERNMENT OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT,  
MINISTRY OF TRANSPORT, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM-695001.

**RESPONDENTS/PETITIONERS AND RESPONDENTS 2 TO 4 IN WPC:**

1. P.M.SURENDRAN, AGED 53 YEARS, PARAKKATTU VEEDU, PERUMPILLY P.O.,MULAMTHURUTHY, ERNAKULAM DISTRICT.
2. M.P.PRASAD, MANALIPARAMBIL HOUSE, ENATHY P.O., VAIKOM.
3. THE REGIONAL TRANSPORT AUTHORITY, ERNAKULAM - 682 030.
4. THE SECRETARY, REGIONAL TRANSPORT AUTHORITY,ERNAKULAM - 682 030.
5. THE KERALA STATE ROAD TRANSPORT CORPORATION, REPRESENTED BY ITS CHAIRMAN & MANAGING DIRECTOR,TRANSPORT BHAVAN, PATTOM, THIRUVANANTHAPURAM - 695001.

Application praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to to dispense with the personal appearance of the applicant on 19.06.2024 in the interest of justice.

This Application coming on for orders upon perusing the application and the affidavit filed in support thereof, and upon hearing the arguments of GOVERNMENT PLEADER for the petitioner, SRI.P.DEEPAK, Advocate for R1 & R2, SRI. SRI.P.C.CHACKO,STANDING COUNSEL & P.C.SASIDHARAN, Advocate for R4 the court passed the following:



**DINESH KUMAR SINGH, J.**

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W.P.(C) No. 29501 of 2017 and  
W.P.(C) No.3017 of 2018  
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Dated: 19<sup>th</sup> June 2024

**ORDER**

I.A. No.1/2024 in W.P.(C) No.3017/2018

This writ petition was filed way back in 2018. The challenge in this writ petition is the decision of the State Government taken under Section 102 of the Motor Vehicles Act 1988 approving the scheme of nationalization by Ext.P12 notification. The issue is whether the Government has followed the mandate of the law while nationalizing the route Ernakulam – Muvattupuzha by Ext.P12 notification. The writ petition has remained pending since 2018. The State Government has not cared to file a counter affidavit till date in this writ petition.

W.P.(C) Nos.29501/2017  
And 3017/2018

-2-

2. In the absence of a response from the State Government to the allegations, the Court is not in a position to adjudicate the matter. Looking at the casual and callous attitude of the State Government to the Court proceedings and utmost disrespect to the Court, this Court in its Order dated 11.06.2024 directed the Principal Secretary, Transport Department to remain present before this Court today along with the record of the proceedings for perusal by the Court itself, as no response/counter affidavit has been filed on behalf of the State Government till date.

2.1 This Court is at pains to note the pathetic casual approach in Court proceedings and disrespect of the State Government to the Court and Court proceedings. In no case is the counter affidavit filed on time. The Government Counsel representing the State Government takes one adjournment after another on one pretext or the other for filing the counter

W.P.(C) Nos.29501/2017  
And 3017/2018

-3-

affidavit in a matter, which results in a long pendency of the cases in the Court.

3. Instead of appearing in person with the record, an application, I.A. No.1/2024, has been filed seeking exemption from the personal appearance of the Principal Secretary, Dr K Vasuki IAS. The reasons for her non-appearance in the Court despite the Order dated 11.06.2024 have been stated in paragraphs 2, 3 and 4 of the affidavit accompanying the application I.A. 1/2024.

3.1 If the Principal Secretary was not available, somebody or the in-charge of the Transport Department should have appeared with the record of the proceedings. Instead of bringing the record to the Court, today again Sri Santhosh Kumar P, learned Special Government Pleader for the Transport Department has sought adjournment and time for filing the counter affidavit. This callous and casual

W.P.(C) Nos.29501/2017  
And 3017/2018

-4-

approach of the State Government does not augur well in the dispensation of justice and would only show disrespect to the High Court, the highest Court in the State. This Court deprecates in the strongest manner the conduct of the State Government in taking the Court proceedings too casually and callously.

4. Considering the reasons given in the affidavit filed in support of I.A. No.1/2024, the personal presence of Dr K Vasuki IAS today is exempted. However, on the next date of listing, the Officer-in-charge of the Transport Department, in the absence of the Principal Secretary, shall remain present before this Court with the record of the proceedings regarding the nationalization of the route Ernakulam-Muvattupuzha under Section 102 of the Motor Vehicle Act 1988. If, on the next posting, the record is not produced by the Officer-in-charge, this Court will be constrained to pass necessary orders

W.P.(C) Nos.29501/2017  
And 3017/2018

-5-

for drawing contempt proceedings against the said Officer. It is further provided that if before the next date of listing, the counter affidavit is not filed, the same shall be accepted with cost of Rs.50,000/-, to be recovered from the Officer responsible for not filing the counter affidavit.

W.P.(C) Nos.29501/2017 and 3017/2018

Post these matters on 04.07.2024.



Sd/-  
DINESH KUMAR SINGH  
JUDGE

jjj