

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN
&
THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

Friday, the 10th day of October 2025 / 18th Aswina, 1947
ICR (WP(C)) NO. 25 OF 2025(V)

PETITIONER:

ANIRUDH KARTHIKEYAN AGED 48 YEARS S/O G. KARTHIKEYAN, SREEGOVINDAM,
AYYAPPANKAVU, KOCHI, PIN - 682018

BY ADVS. S. SREEKUMAR (SR.)., K.R.ARUN KRISHNAN, DEEPA K.RADHAKRISHNAN,
SANAL C.S, VISHAK K.V., ANU T.H., RENJITH K.R. & S.RAJEEV

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT, HOME DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
2. DISTRICT POLICE CHIEF PATHANAMTHITTA DISTRICT, THAZHEVETIPRAM, PATHANAMTHITTA, KERALA, PIN - 689645
3. STATION HOUSE OFFICER PANDALAM POLICE STATION, OPP. POST OFFICE, PANDALAM, KERALA, PIN - 689501
4. NATIONAL HIGHWAY AUTHORITY OF INDIA REPRESENTED BY ITS DEPUTY GENERAL MANAGER AND PROJECT DIRECTOR HAVING OFFICE AT PROJECT IMPLEMENTATION UNIT NH-66 PUTHENTHERUVU, KULASHEKHARAPURAM P.O, KARUNAGAPPALLY, KOLLAM, PIN - 690544
5. G. REGHUKUMAR CHAITHRAM, KURAMPALA THEKKU, KURAMPALA VILLAGE, PATHANAMTHITTA DISTRICT, PIN - 689501
6. C. ANU, KUDIYANVILAYIL, KURAMPALA THEKKU, KURAMPALA VILAGE, PATHANAMTHITTA DISTRICT, PIN - 689501
7. VIKRAMAN VIVEK BHAVANAM, KURAMPALA THEKKU, KURAMPALA VILAGE, PATHANAMTHITTA DISTRICT, PIN - 689501
8. VIMAL PRASAD MALAUDE VADAKKETHIL, KURAMPALA P.O, PANDALAM, PIN - 689501
9. K. MURALEEDHARAN VALUTHUNDIL, PANDALAM, PATTANAMTHITTA DISTRICT, PIN - 689501
10. DEEPU MAVINAPADIKKAL, KURUMPALA, PATTANAMTHITTA DISTRICT, PIN - 689501
11. RAJESH IRIKKALAIYYATH, KURAMPALA THEKKU, KURAMPALA VILLAGE, PATHANAMTHITTA DISTRICT, PIN - 689501
12. RAMESAN MANGALYAM, KURAMPALA, PATHANAMTHITTA DISTRICT, PIN - 689501
13. RAJENDRA PRASAD MANGALYAM, KURUMPALA, PATHANAMTHITTA DISTRICT, PIN - 689501
14. KUMAR @ PODIYAN ANEESH BHAVAN, KURAMBALA, PATHANAMTHITTA DISTRICT, PIN - 689501
15. VIMAL PRASAD MALAYUDE VADAKKETHIL KURUMPALA, PATHANAMTHITTA DISTRICT, PIN - 689501
16. NOUSHAD KIZHAKKECHERUVIL, PAZHAKULAM, PAZHAKULAM P.O, PATHANAMTHITTA DISTRICT, PIN - 691554
17. DISTRICT GEOLOGIST PATHANAMTHITTA DISTRICT, HAVING OFFICE AT

DISTRICT OFFICE OF MINING AND GEOLOGY, PIN - 689645

BY GOVERNMENT PLEADER for R1 to R3, BY B.G.BIDAN CHANDRAN for R4, BY ADV P. M RAFAEK (PATTAM) for R5 and R9

This Intra court reference (writ petition (civil)) having come up for orders on 10.10.2025, the court on the same day passed the following:



'C.R.'

DEVAN RAMACHANDRAN & M.B. SNEHALATHA, JJ.

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ICR (WP (C) No.25/2025 in WP (C) No.14775/2025
&
WP (C) No.16710/2025
=====

Dated this the 10th day of October, 2025

ORDER

Devan Ramachandran, J.

Our consideration is catalyzed by an order of reference made by a learned Judge of this Court dated 23.07.2025, impelling the question whether, in spite of the judgment of the Hon'ble Supreme Court in *Noble M.Paikada v. Union of India* [Civil Appeal Nos.1628-1629/2021] dated 21.03.2024, the concessionaires enjoying valid Work Orders from the National Highways Authority of India ('NHAI'), issued prior to the date of the said judgment, would stand outside the rigour of having to obtain Environmental Clearance ('EC') for the purpose of extraction, or

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sourcing, or borrowing of ordinary earth, to complete linear projects such as roads, pipelines, etc.

2. We discern from the Reference Order that the reason why it came to be was because, an argument was porpoised that, even if the various notifications in question allowed the 'NHAI' to extract, source or borrow ordinary earth for the purpose of its works without having to obtain an 'EC', the same benefit would not extend to the concessionaires acting under 'Work Orders'.

3. Our path, in offering the answer to the reference, is illuminated substantially and to a significant extent by the judgment of the Hon'ble Supreme Court in **Noble M.Paikada** (supra).

4. The essential facts involved in this case are available in the judgment of the Hon'ble Supreme Court; but, as an aperçu, we

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record that its attention was drawn onto the validity or otherwise of two notifications of the Government of India, Ministry of Environment, Forest and Climate Change (MOEF and CC), dated 28.03.2020 and 30.03.2023, *qua* Item 6 of Appendix-IX thereof.

5. The controversy, which reached the Hon'ble Supreme Court, has its genesis in a challenge to the afore notifications before the National Green Tribunal (NGT), which quashed the notifications to the extent impugned; and the Hon'ble Supreme Court then considered the entire *umbra*, advertng to the Statutory Scheme and the Statutes covering the field, to hold "*Therefore, we have no hesitation in striking down item 6 of the substituted Appendix-IX forming part of the impugned notification dated 28th March 2020 and item 6 of the amended impugned notification dated 30th August 2023. Accordingly, we quash*

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item 6 in the two notifications above."

6. To understand the holdings of the Hon'ble Supreme Court, one certainly will have to have a glance through the notifications in question. As per the first of the two notifications, dated 28.03.2020, Item No.6 of Appendix-IX thereof provided that "extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc." would enjoy exemption from the requirement of the 'EC'. In fact, the second of the notifications dated 30.08.2023 was one issued when the matter was seized by the Hon'ble Supreme Court; and again, in Appendix-IX thereof, Item No.6 was substituted in the following manner:

5. Before we go into the challenge to the impugned notification, we must note here that items 6 and 7 were substituted by further notification dated 30th August 2023 (for short, 'amended impugned notification')

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issued during the pendency of these appeals. Substituted items 6 and 7 in the amended impugned notification read thus:

"6. Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc. shall be subject to the compliance of standard operating procedures and environmental safeguards issued in this regard from time to time.

7. Dredging and de-silting of dams, reservoirs, weirs, barrages, river and canals for the purpose of their maintenance, upkeep and disaster management shall be subject to the compliance of environmental safeguards issued in this regard from time to time."

7. The Hon'ble Supreme Court, however, held that the blanket exemption granted in the afore manner - in both the notifications referred above - stand contrary to the imperative requirements of law; thus striking it down, as mentioned above.

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8. However, the matter did not end there.

9. The Hon'ble Supreme Court appears to have been approached again, to then issue an order on 15.05.2024 - a copy of which is on record as Ext.P8, along with W.P(C)No. 16710/2025 - clarifying in the manner *ut infra*:

We clarify that the work orders which were issued prior to 28th March, 2020 required Environment Clearance and therefore, the clarification which we have issued under this order will not apply to such work orders.

We make it again clear that we are not permitting the work of all projects which are listed at Annexure A-3 to continue. Only those works will continue where work orders have been issued prior to 21st March, 2024.

10. It is thus rendered apodictic that, even while the Hon'ble Supreme Court struck down Item No.6 in Appendix-IX of the aforementioned two notifications, it allowed

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all works, for which Work Orders were issued by the 'NHAI' prior to 21.03.2024 (being the date of the original judgment), to continue unaffected by its declarations.

11. It is, therefore, ineluctable and beyond any possible contest that, with respect to works that are continuing based on Work Orders issued prior to 21.03.2024, the original notifications, including the portions of which have been struck down by the Hon'ble Supreme Court, would still apply.

12. The corollary questions, impelled for our consideration at the Bar, by Sri.P.M.Rafeek, learned counsel for the petitioner in W.P(C)No.16710/2025, are two: (a) whether the clarification of the Hon'ble Supreme Court would apply even to concessionaires who are engaged in extracting, sourcing or borrowing ordinary earth for linear projects; and (b) whether such

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permission to the concessionaires, even assuming that they do not require the rigour of obtaining an 'EC', can be applicable only if the Work Orders contain specific provisions for the same.

13. As far as the first of the afore issues is concerned, it does not require much thought to conclude that the above extracted clarification by the Hon'ble Supreme Court cover not merely the 'NHAI', but the concessionaires also, because otherwise, it would not have stated with precision that all projects for which Work Orders by the 'NHAI' was issued before 21.03.2024 can continue and will remain unaffected by its declarations. If the intent of the Hon'ble Supreme Court was to allow only the 'NHAI' to conduct the extraction, sourcing and borrowing of ordinary earth directly, then it would not have offered the clarification with respect to the Work

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Orders issued by it in favour of the concessionaires.

14. Irrefutably hence, the argument that the benefit granted by the clarification of the Hon'ble Supreme Court would apply only if the extraction, sourcing and borrowing of ordinary earth for linear projects is being carried out by the 'NHAI' alone, would hold no water; and we do not think we will have to strain any further to conclude on such lines.

15. Coming to the second of the afore issues, technically, this is not one that we require to answer because, the question whether a Work Order is defined or prepared in a particular manner is one in the realm of facts, which will have to be projected and argued within the matrix of the facts of the cases pending, or to be filed. However, going by the afore said clarification of the Hon'ble Supreme Court, when it comes to a 'linear

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project', for which a Work Order was issued by the 'NHAI' in favour of the concessionaires, the exemption offered through the same should normatively apply.

16. Sri.S.Sreekumar, learned Senior Counsel, instructed by Sri.K.R.Arunkrishnan, appearing for some of the concessionaires in these matters, argued, aligning with our view above, contending that, if any other interpretation is given to the clarification made by the Hon'ble Supreme Court, it would become otiose. He predicated that, if the intention of the Hon'ble Supreme Court was to burden the concessionaires with the requirement of obtaining 'EC', notwithstanding that the Work Order has been issued by the 'NHAI', it would have been so specifically mentioned; and that the absence of such stipulation can only concede to mean that such benefit applies also to the concessionaires

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acting under valid Work Orders issued by the 'NHAI' before 21.03.2024.

17. That said, we are also aware that a learned Division Bench of this Court, in *Pradeep Kumar P. v. State of Kerala* [2025 KHC OnLine 834], considered the argument that, if a concessionaire is allowed to act without any guidelines or safeguards, it would cause deleterious ecological consequences. The judgment concluded otherwise, referring to the Kerala Minor Mineral Concession Rules, 2015 (Rules of 2015); and then accepted the statement of the 'NHAI', that it will issue necessary instructions to the concessionaires - either by way of separate communication, or by incorporating such into the Agreement. The observation of the learned Bench to this effect is available in paragraph 10 of the judgment, which is as below:

10. Proceeding on the suggestions made

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by the learned counsel for the Petitioners, the learned Senior Government Pleader, and the learned counsel for the National Highway Authority of India, and the requirement of R.10(i) of the Rules of 2015, we dispose of this petition accepting the statement of the National Highway Authority of India that it will issue necessary instructions to the concessionaire, either by way of a separate communication or by incorporating the stipulation into the agreement, to erect metallic boards at regular intervals as specified along the stretch of road where quarrying activities are being carried out. These boards will display the details required under R.10(i) of the Rules of 2015, as well as the contact information of the officer in - charge of the Project Implementation Unit of the National Highway Authority of India for the relevant area and steps will be taken as per law to incorporate this stipulation in its future agreements where the contract is of a similar nature.

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18. At this juncture and apparently in answer to the above apprehensions voiced, Sri.B.G.Bidan Chandran - learned Standing Counsel for the 'NHAI', brought to our notice that, in fact, in full compliance with the directions of the Hon'ble Supreme Court in the judgment dated 21.03.2024, a new notification dated 17.03.2025 has been issued, substituting Item No.6 in Appendix-IX of the notification dated 28.03.2020 (later substituted by the notification dated 30.08.2023), wherein, the phrase 'linear works' had been specifically enumerated; with the Standard Operating Procedure (SOP) and the safeguards for the same having been delineated. He argued that, therefore, with this notification, even the judgment of the Hon'ble Supreme Court has been fully complied with; further affirming that this notification would now apply to works both before and after 21.03.2024.

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19. Though it is beyond our brief to address or answer the apprehension projected afore, we record the submissions of Sri.B.G.Bidan Chandran, that the directions in *Pradeep Kumar P.* (supra) and the requisites in the notification dated 17.03.2025 will be fully implemented in future.

20. In rundown, it is luculent that the express intent of the Hon'ble Supreme Court is to allow even concessionaires, who are enjoying a Work Order issued by the 'NHAI' prior to 21.03.2024, to engage in extraction, sourcing, and borrowing of ordinary earth for linear projects, without having to apply for or obtain an 'EC'. However, this inextricably ought to be as per the safeguards stipulated, or to be stipulated by the 'NHAI', and those which have been given approval by the learned Division Bench of this Court in *Pradeep Kumar P.* (supra).

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We answer this reference in such manner
and leave every other issue open.

Sd/-

DEVAN RAMACHANDRAN
JUDGE

Sd/-

M.B.SNEHALATHA
JUDGE

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