

പതിമൂന്നാം കേരള നിയമസഭ
എട്ടാം സമ്മേളനം

നക്ഷത്ര ചിഹ്നമിടാത്ത
ചോദ്യം നമ്പർ. 3367

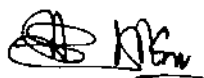
09.04.2013ൽ
മറുപടിക്ക്

മണൽ-വാരൽ നിരോധനം

ചോദ്യം
(ശ്രീ.രാജു എബ്രഹാം :

ഉത്തരം
ശ്രീ.അടൂർ പ്രകാശ്
(റവന്യൂവും കയറും വകുപ്പു മന്ത്രി)

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| <p>(എ) പത്തനംതിട്ട ജില്ലയിലെ നദികളിൽ മണൽ വാരൽ നിരോധിച്ചുകൊണ്ട് ഏതെങ്കിലും സർക്കാർ ഉത്തരവുകൾ ഉണ്ടോ കോടതി വിധികളോ ഉണ്ടായിട്ടുണ്ടോ ; രേഖകൾ സഹിതം വിശദാംശങ്ങൾ വ്യക്തമാക്കുമോ ; ബന്ധപ്പെട്ട രേഖകളുടെ പകർപ്പ് ഹാജരാക്കുമോ ;</p> | <p>(എ) 22-02-2011 -ന് ശേഷം പത്തനംതിട്ട ജില്ലയിലെ നദികളിൽ സാൻറ് ഓഡിറ്റ് നടത്തി റിപ്പോർട്ടിന്റെ അടിസ്ഥാനത്തിൽ മണൽ ഖനനം നടത്തിയാൽ മതിയെന്ന് ബഹു.ഹൈക്കോടതിയുടെ WP(C) 37940/10 നമ്പർ വിധിന്യായം ഉണ്ടായിട്ടുണ്ട്. ടി വിധി പകർപ്പ് അനുബന്ധമായി ചേർത്തിരിക്കുന്നു.</p> |
| <p>(ബി) ഇത്തരത്തിലുള്ള നിരോധനം തൊഴിലാളികൾക്ക് തൊഴിൽ-നഷ്ടവും, സർക്കാരിന് സാമ്പത്തിക നഷ്ടവും നിർമ്മാണ മേഖലയ്ക്ക് വൻ പ്രതിസന്ധിയുമാണ് സൃഷ്ടിച്ചിട്ടുള്ളതെന്ന് ശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ടോ ;</p> | <p>(ബി) ശ്രദ്ധയിൽപ്പെട്ടിട്ടുണ്ട്.</p> |
| <p>(സി) ഈ നിരോധനം നീക്കുന്നതിന് സ്വീകരിച്ച നടപടികൾ എന്തൊക്കെ എന്ന് വിശദമാക്കുമോ ?</p> | <p>(സി) ബഹു.ഹൈക്കോടതിയുടെ WP(C) 30874/11 ഉത്തരവ് പ്രകാരം പമ്പാ നദിയിലും സാൻറ് ഓഡിറ്റ് പൂർത്തിയാക്കിയ മണിമല, അച്ചൻകോവിൽ എന്നീ നദികളിലും State Environment Impact Assessment Agency (SEIAA) റിപ്പോർട്ടിന്റെ അടിസ്ഥാനത്തിൽ മണൽ ഖനനം നടത്തുന്നതിന് 16-10-12 ന് ജില്ലാ കളക്ടർ തദ്ദേശ സ്വയംഭരണ സ്ഥാപനങ്ങൾക്ക് അനുമതി നൽകിയിട്ടുണ്ട്.</p> |



സെക്ഷൻ ഓഫീസർ

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 Attention Review P3

J.Chelameswar, C.J. & Antony Dominic, J.

W.P.(C) No. 37940 OF 2010

Dated this the 22nd day of February, 2011

JUDGMENT

J.Chelameswar, C.J.

The Writ Petition is filed with the prayers as follows:

1. Issue a writ of certiorari to quash Ext.P1 order passed by the 2nd respondent and declare that the sand mining ordered by the 2nd respondent without the decision of the District Expert Committee and without complying Rule 30 of the rules appended to the Act 18 of 2001 is illegal.
2. Issue a writ of mandamus or any appropriate writ, order or direction to the third respondent to conduct a study under rule 30 of the rules appended to the Act 18 of 2001, in the river in the Pathanamthitta District and report to respondents 1 & 2.
3. Grant such other relief as this Hon'ble Court deems fit and proper to grant in the facts and circumstances of the case."

2. There are various restrictions under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 on the activity of removing sand from the river beds/river banks. One of the restrictions is that an Expert Committee contemplated under Section 7 of the Act shall identify the "Madavu" or river bank in a district in which the

W.P.(C) No. 37943 OF 2010

-2:-

sand removal may be permitted. Further the said Committee is also required to "fix the total quantity of sand that can be removed from a kadavu or river bank giving due regard to the guidelines of expert agencies like the Centre for Earth Science Studies and Centre for Water Resources Development and Management. The fixation of the quantity of the sand that can be removed from a kadavu or river bank is required to be done in due regard to the guidelines of an expert agency. Section 29 of the Act also obligates the Government to make periodic measurement of the quantity of sand available for removal.

Section 29 of the Act reads as follows:

"29. Sand auditing.- The Government may, with a view to ensure protection of every river, provide for periodical measurement of the quantity of sand available for removal by such method and in such manner as may be prescribed."

3. The State of Kerala in exercise of the power under Section 26 of the Act made rules known as the Kerala Protection of river Banks and Regulation of Removal of Sand Rules, 2002.

4. Under rule 30 of the said Rules, it is stipulated as follows:

13/11
4/6
W.P.(C) No. 37940 OF 2010

-3-

"30. Sand Audit.- The Government shall conduct, every three years Sand Audit through Expert Committee such as Centre for Earth Science Studies, Centre for Water Resources Development and Management so as to ensure protection of rivers in each district and to assess the quantity of available sand.

(2) The expense required for Sand Audit shall be met from the River Management Fund.

(3) The Government shall, as soon as may be after the receipt of the report of sand audit under sub-rule(1) lay the same on the table of Legislative Assembly with an action taken statement thereof."

5. ~~The grievance in the instant writ petition is that~~ notwithstanding the declaration by a Division Bench of this Court earlier in a judgment which is now reported in *Paristhithi Samrakshana Sangham v. State of Kerala and others* [2009 (2) KHC 319], that the compliance with the procedure prescribed under Rule 30 is mandatory, the State of Kerala is permitting the removal of sand in violation of the abovementioned provisions of the Act in Pathanamthitta District.

6. All the respondents are served and represented by various counsel. On behalf of the 2nd respondent a counter

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W.P.(C) No. 37940 OF 2010

-4-

affidavit is filed stating that the sand audit contemplated under Rule 30 of the Rules referred to above in so far as the Pathanamthitta District is concerned, was entrusted to the 3rd respondent herein. Though there were periodical audit reports submitted by the 3rd respondent earlier, the latest report of the 3rd respondent with regard to the 'Manimala river' was submitted on 22.07.2010. In so far as the other sand bearing areas of the Pathanamthitta District are concerned, the 3rd respondent is yet to submit a report.

7. In the circumstances, we deem it appropriate to dispose of the writ petition directing the respondents not to permit the sand mining except in accordance with the decision taken by the District Expert Committee constituted under the abovementioned Act which decision must itself be in the light of the sand audit report submitted by the 3rd respondent.

In view of the specific statement made by the learned Government Pleader that in so far as the Manimala river banks are concerned, audit report is already submitted, we direct the State to cause an assessment by the concerned District Audit

15
6/6
W.P.(C) No. 37940 OF 2010

-5:-

Committee regarding the quantity, and places from where such sand could be removed and permit the removal of the sand in accordance with such a decision to be taken by the Expert Committee. In so far as the other sand bearing areas in the Pathanamthitta District are concerned, which are not yet audited by the 3rd respondent, no removal of sand would be permitted by the respondents until the procedure contemplated under the abovementioned Act and Rules is complete. The Writ Petition is accordingly disposed of.

sdl-
J.Chelameswar,
Chief Justice.

sdl-
Antony Dominic,
Judge.

ttb

ABM
SO