

(1994) 11 KL CK 0071
In the High Court Of Kerala
Case No : O.P. No. 16295 of 1993 M

Rajmohan Nair and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 23-11-1994

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 266
Explosives Act, 1884 — Section 5, 7
Explosives Rules, 1983 — Rule 144
Kerala Minor Minerals Concession Rules, 1967 — Rule 29, 8, 8(1), 9
Kerala Panchayat Act, 1960 — Section 120, 129, 96, 97, 98
Metalliferous Mines Regulations, 1961 — Regulation 10, 15(1), 153, 154, 155
Mines Act, 1952 — Section 16, 2, 3, 3(1), 40
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 3
Mines Rules, 1963 — Rule 146, 148, 149, 150, 151

Citation : (1994) 11 KL CK 0071

Hon'ble Judges : T.V. Ramakrishnan, J

Bench : Single Bench

Advocate : V. Santharam, for the Appellant; Augustine Joseph, Government Pleader for 1st Respondent, N.N. Sugunapalan, for 2nd Respondent, George C.P. Tharakan, CGSC for 7th Respondent, Siby Mathew, for 8th Respondent and George Varghese Kannanthanam, for 10th Respondent, for the Respondent

Judgement

T.V. Ramakrishnan, J.—The attempt made by a person to commercially exploit a granite rock stretch extending to 3.64 acres of land in Vadasserikkara Village in Pathanamthitta District lying at a high elevation from the public road beneath it, by extracting granite stones and crushing the same in a metal crusher (rock crusher) has given rise to this Original Petition filed as a Public Interest Litigation. The granite rock stretch lying as a hillock is commonly known by the name "Kompanoli paramada" (for short "the paramada").

2. Petitioners, three in number, have filed this O.P. alleging that the 10th Respondent has illegally established an industrial unit consisting of a quarry to extract and collect granite stones and a metal crusher unit (for short "the

crusher") in the paramada causing serious hazard to the life and property of the Petitioners and 400 other families residing in the nearby locality. It is the specific case of the Petitioners that the 10th Respondent has not obtained necessary permits, licences and no objection certificates which are mandatorily required under different enactments regulating the running of granite quarry and crusher. The Petitioners have prayed for a declaration that the blasting operations carried on in the quarry and running of the crusher by the 10th Respondent without proper and valid permits, licences and no objection certificates are illegal and violative of the fundamental rights under Articles 19(1)(d) and 21 of the Constitution of India of the Petitioners and Ors. living in the nearby locality as they cause serious hazard to their life and property. The Petitioners have also prayed for the issuance of a writ of mandamus or any other appropriate writ, direction or order to restrain the 10th Respondent from carrying on of the activities in question without obtaining all the required permits, licences and no objection certificates and without strictly complying with the terms and conditions contained in such permits and licences issued to him. Further directions have also been prayed for to compel Respondents 1 to 9 to take all steps necessary to ensure that all operations in the quarry and crusher by the 10th Respondent are carried on only on the basis of valid and proper permits and licences and to stop such activities immediately on violation of any of the requirements of law. On the conclusion of the arguments, the learned Counsel for the Petitioners has filed a statement in the concluding portion of which it has been stated thus:

In the said circumstances, the 10th Respondent may be directed to obtain the required licences/permits as stated above, before he is allowed to continue/re-open the blasting operation in the quarry and crusher functioning. It is also submitted that the authorities under different statutes, Respondents 1 to 8, may be directed to issue licences/ permits or renew the same, under the relevant provision/statutes after taking into consideration of all aspects especially, with regard to the ecology and air and water pollution, etc. and by applying their minds by considering the objections raised by the Petitioners and other poor people of the locality.

The prayer so made is in consonance with the stand taken by the Counsel throughout his arguments that the Petitioners are only interested in getting necessary orders restraining the 10th Respondent from carrying on the impugned activities illegally in violation of the requirements of law and to compel Respondents 1 to 9 to strictly comply with the provisions of the various Acts, Rules and Regulations while granting permits, licences and no objection certificates and to ensure that 10th Respondent carries on his activities in the quarry and crusher strictly in accordance with all the requirements of law as detailed in the O.P.

3. The facts and circumstances to the extent relevant as disclosed in the pleadings of the parties are thus: First Petitioner is the Pathanamthitta Mandalam

Secretary of the Rashtriya Swayamsevak Sangh and an active worker of the Bharathiya Janatha Party. He is also a resident of the Vadasserikkara Village. He is allegedly an active member of the Paristhithy Samrakshana Samithy and an active participant of the Pourasamithy stated to have been formed by the local people to agitate against the disastrous consequences of the quarry and crusher established by the 10th Respondent. Second Petitioner is a person belonging to a Scheduled Caste and is stated to be the Secretary of the Kerala Pulaya Mahasabha. He is alleged to be residing within 5 metres of the Paramada in a small plot of land assigned to him by the Government. Similarly the third Petitioner is also alleged to be residing within 30 metres from the paramada in question. While Petitioners 2 and 3 have filed the O.P. in the individual capacity, Petitioner No. 1 has filed this O.P. on his own behalf and on behalf of the people of the locality affected by the adverse consequences of running the quarry and crusher in violation of the legal requirements contained in the various enactments regulating the conduct of such quarries and crushers.

4. According to the Petitioners, the 10th Respondent who is an active worker of Kerala Congress (M) Group having political connections and money power has established a mining industry in the name and style "Modern Rock Mining Industries" after obtaining a quarry lease under the Kerala Minor Mineral Concession Rules, 1967 from the third Respondent for quarrying purposes in 3 acres and 64 cents of puramboke land in Sy. No. 702/1-1 of Vadasserikkara Village of Ranni Taluk, evidenced by Ext. P-1, dated 6th February 1993. Ext. P-1 is a quarrying permit issued from the Department of Mining and Geology, Regional Office, Alappuzha, for extracting and removing 250 Mts. of granite stones from an area of 3.64 acres of puramboke land in Sy. No. 702/1-1 of Vadasserikkara Village. The quarry unit of the 10th Respondent has been registered as a S.S.I. Unit. Ext. P-2 is the provisional registration certificate issued to the 10th Respondent and valid up to 20th May 1994. The 8th Respondent-Panchayat has passed Ext. P-3 resolution authorising its Executive Officer to grant licence to the 10th Respondent for using a 50 H.P. motor for the purpose of Modern Rock Mining Industries as and when the 10th Respondent produce consent letters from 7 officers whose names are mentioned in the resolution, namely District Medical Officer, Divisional Officer, Fire Force, Factories and Boilers Inspector, District Labour Officer, Secretary, Pollution Control Board, District Collector and Officer, Mining and Geology Department, Pathanamthitta. Thereafter the 10th Respondent has obtained Exts. P-4, P-5 and P-6 no objection certificates from the Pollution Control Board, District Medical Officer and the District Labour Officer respectively. Presumably on production of the above certificates the Panchayat has issued Ext. P-7 licence, dated 23rd March 1993 to the 10th Respondent for running a crusher using 50 H.P. motor and for making cement hollow bricks. Ext. P-8 is the no objection certificate issued by the 4th Respondent-District Collector, Pathanamthitta, dated 17th September 1992 in the matter of obtaining lease in respect of 36"4 acres of puramboke land in Sy. No. 702/1-1 of Vadasserikkara Village. In fact it is based upon Ext. P-8 certificate

that the 10th Respondent has obtained Ext. P-1 quarrying permit.

5. The crusher has been established in a plot of land belonging to the second Petitioner which lies very near the quarry on the basis of Ext. P-9 agreement dated 14th February 1992 entered into between the second Petitioner and the 10th Respondent. The Petitioners have a case that the second Petitioner has executed Ext. P-9 without fully realising the implications of the working of the crusher and the other connected activities in the property and that in fact the second Petitioner was cheated in the transaction by the 10th Respondent. Petitioners have stated that the second Petitioner has filed a suit, O.S. No. 439 of 1993 for appropriate reliefs in the matter against the 10th Respondent.

6. According to the Petitioners the 10th Respondent has commenced work in the quarry and crusher in 1992 and has continued the said work till July 1993, O.P. has been filed on 26th November 1993 alleging that the 10th Respondent is likely to re-commence the work in the quarry and crusher illegally without obtaining the required permits, licences and certificates shortly. If that is allowed it will cause serious hazard to the life and property of the people of the locality. As such the 10th Respondent is to be restrained from doing so is the request of the Petitioners in the O.P.

7. Petitioners have stated that initially blasting was done by using explosives embedded in manually drilled holes in the rocks using iron pins and hammers etc. Later for conducting quarrying activities on a large scale, the 10th Respondent has used heavy duty jack hammers for drilling deep holes in the rocks for blasting rocks using huge quantity of explosives and electrical energy. The result of powerful explosives, according to the Petitioners are: (i) heavy subterranean tremors and (ii) scattering of granite stone pieces and dust on a wide area in and around the quarry causing serious hazard to the life and property of the people residing in the nearby locality of quarry. It has been alleged in the petition that "explosives were so powerful that large chunks of granites with sharp edges were found hundreds of feet away from the quarry area and granite dust started settling on the vegetation in the paddy fields, rubber, tapioca and other plantations belonging to the second and third Petitioners and other 400 families residing nearby". The Petitioners have specifically alleged that as a result of the elevated position of the Paramada where the quarry is situated, blasting of rocks from the Paramada seriously endangers the life of the people residing in the vicinity of the quarry and the users of roads passing through the bottom of the Kompanoli hillock. Since blasting takes place at an elevated spot the granite pieces having sharp edges and large quantity of dust get scattered over distant places and extensive areas around the quarry. The granite pieces fall forcefully on the roofs of the nearby houses and fall inside the rooms breaking the tiles and piercing the thatching materials. As a result of scattering of granite stone pieces and dust forcefully on all sides wide spread damage has been caused to all kinds of trees and crops in the vicinity. Large quantities of dust emanating from the quarry and crusher used

to pollute the air and water in the nearby wells, paddy fields, the rivulet which passes through the area. Walls of the houses situated in and around the quarry within 400 metres of it majority of which are built of mud and stones have developed extensive cracks. Even the walls of the building belonging to the third Petitioner built of concrete have developed cracks. It is the case of the Petitioners that if the result of the large scale blasting operations conducted for a short period is so devastating as detailed in the O.P., the result of continuous blasting proposed to be conducted on a large scale would be considerably high and practically irreversible. The Petitioners have further alleged that continuous blasting of rocks on a large scale from the Paramada area would cause geological imbalance which may cause landslide on a large scale than the one occurred during October 1992 in the near vicinity of the Kompanoli hillock. Exposed to the disastrous consequences of the quarry and crusher, the people of the locality has formed a "Pourasamithy" to safeguard their life and property from the imminent danger. Agitations organised by the Samithy never evoked any response from the authorities. Pourasamithy has submitted Ext. P-12 representation detailing the serious hazards caused to the life and property of the people of the locality and requesting for appropriate actions to stop the functioning of the quarrying activities of the 10th Respondent. The Petitioners have alleged that so far none of the authorities to whom copies of Ext. P-12 representations have been forwarded have taken any action in the matter. In the circumstances, the Petitioners have submitted that they have no alternative remedy except to approach this Court.

8. Respondents 7, 8 and 10 alone have filed counter-affidavits in the O.P. On behalf of the Kerala State Pollution Control Board Regional Office an affidavit has been filed by the Environmental Engineer after a local inspection as directed by this Court.

9. Seventh Respondent, the Deputy Chief Controller, Explosives, Madras that he is an unnecessary party to the O.P. The activities carried on by the 10th Respondent do not come within the regulatory provisions of the Explosives Act, 1884 and the Explosives Rules, 1983. The quarry activities in question are activities regulated by the provisions of the Mines Act, 1952. It was also submitted that he has not issued any licence in Form 22 for possession and use of explosives.

10. In the counter-affidavit filed by the 8th Respondent-Panchayat-the Executive Officer of the Panchayat has denied the majority of the allegations in the O.P. According to the 8th Respondent only a very few families are residing in and around the Kompanoli hillock-Paramada at Vadasserikkara and they are not affected by the running of the quarry and crusher. It is the case of the 8th Respondent that by the running of the quarry and crusher about 250 people residing in and around are getting employment and that is the sole source of livelihood of the said employees. In fact the 8th Respondent has taken the stand that the 10th Respondent is carrying on the quarry and crusher in accordance

with law and there is no threat or danger to the life and property of anybody in the locality including the Petitioners.

11. Tenth Respondent has filed a detailed counter affidavit denying almost all the allegations in the O.P. regarding the adverse consequences resulting from the running of the quarry and the crusher. According to the 10th Respondent first Petitioner is not residing anywhere near the quarry. He is in fact residing 4 kms. away from the quarry and has joined in filing the O.P. only to wreak personal vengeance against the 10th Respondent as the 10th Respondent has alerted the authorities regarding the unauthorised quarry which the first Petitioner and his father were running for about 15 years in Kompanoli. Tenth Respondent has denied the existence of any Pourasamithy or Parishthithy Samrakshana Samithy at Kompanoli. Tenth Respondent has also denied the allegation that 400 families are residing in and around the quarry in question and that their life and property are exposed to serious hazards alleged to have been caused by the working of the quarry and crusher. Tenth Respondent has produced Ext. R-10 (a) plan showing the lie of the Kompanoli rock hill, sites of the quarry and crusher and the relative position of the houses in the immediate vicinity of the quarry in question etc. With reference to the details shown in the plan the 10th Respondent has submitted that there are only 5 houses in the immediate vicinity of the quarry and that the occupants have given their consent in writing on stamp paper before the Village Officer, Vadasserikkara stating that they have no objection in establishing the quarry and crusher. Ext. R-10 (b) is the consent letter issued by the second Petitioner who is one among the 5 persons owning land in the immediate vicinity of the quarry in question. Tenth Respondent has averred that in addition to the 5 families occupying the land in the immediate vicinity of the quarry, 95 other residents in the locality have expressed their consent and had in fact welcomed the establishment of the quarry and crusher at Kompanoli in Ext. R-10 (c) representation. As regards the second Petitioner the 10th Respondent has stated that he is actually residing 700 metres away from the quarry and that he has executed Ext. P-9 agreement dated 4th February 1992 with reference to 1.17 acres of land which he is having near the quarry. As per the agreement the 10th Respondent is entitled to construct a road through the property for transporting blasted rocks from the quarry for a period of 5 years. As per the agreement the second Petitioner has also agreed to give on lease 20 cents of land for a consideration of Rs. 4,000 per year for constructing a shed for installing machineries for the crusher. The agreement also contains a clause for extension of the lease period by mutual agreement. After the execution of Ext. P-9 agreement the second Petitioner has entered into Anr. agreement dated 16th April 1993 agreeing to sell the whole extent of 1.17 acres of land to the 10th Respondent for a total consideration of Rs. 1,46,250 receiving an amount of Rs. 17,000 as advance. The transaction was agreed to be completed within three months from the date of the agreement. But due to the influence of Petitioners 1 and 3 the second Petitioner has refused to complete the transaction. As a result, the 10th Respondent was constrained to file O.S. No. 197 of 1993 before the Sub

Court, Pathanamthitta for specific performance of the agreement for sale depositing an amount of Rs. 1,29,250 in the State Bank of Travancore, Pathanamthitta. The said suit is still pending. As regards the third Petitioner it was submitted that he is residing more than 1500 metres from to the quarry. His residence is on the western side of the Kompanoli- Thattamala road. The locus standi of the Petitioners and their bona fides in filing the O. P. have been challenged in the light of the various facts and circumstances detailed in the counter affidavit. The various allegations suggesting that the 10th Respondent is an active worker of the Kerala Congress(M) Group and the quarry licences, permits, obtained no objection certificates etc., were using political connections and money power have been specifically denied. It is asserted that all documents were obtained legally after complying with the requirements of law and cannot be found fault with on any ground whatsoever.

12. As regards the conduct of quarrying activities and working of the crusher it was submitted that all were done strictly in accordance with the requirements specified in the permits and licences issued by the authorities. As regards the explosives used for blasting operations it was submitted that the explosives were procured and stored in accordance with the Explosives Act and the Explosives Rules. It was also submitted that the explosives were stored and used under the guidance of one Shri P. R. Rajmohan Nair who possess a valid explosive storage licence. Shri Rajmohan Nair who has got a valid licence for storing explosives for conducting blasting operations has issued Ext. R-10 (d) letter dated 2nd December 1992 agreeing to make available the required quantity of explosives and to supervise the blasting operations carried on in the quarry. Tenth Respondent has submitted that the purpose of filing the O.P. is only to financially ruin him by stopping the functioning of the quarry and crusher established by him spending huge amounts taken on loan at high rate of interest and liability to repay the same in instalments. It was contended that but for the vengeance which the first Petitioner has against him there is no reason to file the O.P. There is neither any public interest nor even any private interest to be served or safeguarded in the matter. All the activities are being carried on strictly in accordance with the licences, permits, no objection certificates etc. obtained by the 10th Respondent and under the strict supervision of various authorities functioning under the various enactments regulating the activities of quarrying and crushing of granite rocks into granite stones.

13. Tenth Respondent has filed a supplementary counter affidavit, additional supplementary counter affidavit, additional counter affidavit and a further counter affidavit on different dates. Supplementary counter affidavit has been filed mainly to produce and explain the relevancy of the 11 documents produced along with the supplementary counter affidavit marked as Exts. R-10 (g) to R-10 (q). The additional supplementary counter affidavit has been filed only to contend for the position that in the light of the documents produced as Exts. R-10 (g) to R-10 (q) the contentions raised in the O.P. are without any merit and the O.P. is liable to be dismissed. Along with the additional counter affidavit the

10th Respondent has produced four more documents marked as Exts. R-10 (r) to R-10 (v). In the additional counter affidavit the 10th Respondent has specifically contended that rock from where the blasting is done is situated at a great height from the ground level and the Respondent is intending to blast only those rocks up till the ground level and has no idea to extract rock from below the ground level. It has also been specifically averred that electrical energy is not being used for blasting operations in any form whatsoever and the same is used only for working the motors attached to the crusher. It has also been stated that the road passing by the side of the crusher is at least 28 metres away from the same. The relevancy of the additional documents produced along with the counter affidavit has also been explained in detail in the additional counter affidavit. In the further counter affidavit filed by the 10th Respondent the 10th Respondent has explained the relevancy of the two more additional documents produced along with it as Exts. R-10 (v) to R-10 (w). It was also submitted that though the puramboke land in which the quarry in question is situated measures 3.64 acres in extent, to ensure the protection of those residing around the puramboke land permit has been issued authorising the removal of rock only from 30 cents of land. Grant of permit restricting the area of operation to 30 cents ensures that the houses ar to the 3.64 acres of land are away from the prohibited distance of 50 metres from the quarry. On the basis of above circumstances, it has been contended that there cannot be any objection in allowing the 10th Respondent to conduct the quarry and crusher in the place where they are now established.

14. After filing the additional supplementary counter affidavit and before filing the additional counter affidavit by the 10th Respondent the Petitioners on 15th July 1994 have filed a reply affidavit producing three more documents marked as Exts. P-14 to P-16. In the reply affidavit the Petitioners have elaborately attempted to make out in great detail that the licences and permits produced by the 10th Respondent along with the supplementary counter affidavit are totally insufficient to satisfy the requirements of law for conducting the quarry and crusher established by the 10th Respondent. The additional documents produced are copies of three representations submitted by the Petitioners and the people of the locality on 18th April 1994, 8th July 1994 and 11th April 1994. Petitioners have also averred that in spite of the fact that the people of the locality have repeatedly represented their grievances to the authorities, no step has been taken so far to remedy the legitimate grievances against the hazards resulting from the functioning of the quarry and crusher. Petitioners have also pointed out that in spite of such representations permits and licences have been issued successively by the various authorities without properly applying their mind to any of the objections raised by the affected parties as a result of the political pressure and monetary influence exerted by the 10th Respondent.

15. On 8th April 1994 this Court has in C.M.P. No. 29634 of 1993 passed an order after hearing all the parties restraining the 10th Respondent from carrying (sic) in the blasting operations in the quarry in Sy. No. 702/1-1 in Vadasserikkara Village covering an area of 3.64 acres pending disposal of the O.P. It is after

passing the above order that the 10th Respondent has filed (sic) additional and supplementary counter affidavits producing additional documents. In the light of the additional documents produced 10th Respondent has repeatedly requested for vacating the order of injunction passed by this Court on 8th April 1994.

16. On 17th August 1994 during the course of the arguments as directed by this Court, the Environmental Engineer, Kerala State Pollution Control Board has filed an affidavit after conducting a local inspection on 13th August 1994 giving the following details: The deponent has stated that the inspection was conducted by him in the presence of Petitioners 1 and 2, their Counsel Shri Madhusoodanan Nair and the 10th Respondent. The deponent has noted that the blasting is conducted very near the crusher and that except two conditions all other conditions contained in the no objection certificate issued by the Pollution Control Board were being substantially complied with. The two conditions which were not complied with relate to the construction of a metalled road in the premises and the planting of trees around the quarry premises. The deponent has also noted that the control measures already arranged in the premises to prevent spreading of dust have been damaged as no work was carried on at the time of inspection. The deponent was also able to note that some arrangements have been made for sprinkling water to prevent spreading of dust from the crusher. After noting the representations made by the people of the locality who have assembled at the time of inspection that during the functioning of the crusher lot of dust and sound are created, the deponent has stated that functioning of the crusher may create air and sound pollution and that he was not in a position to (sic)asure the extent of the pollution since the crusher was not functioning at the time of inspection. The deponent has also stated categorically that if jack hammer is used, the neighbouring houses will be affected. He has also .added that if conventional method (mild blasting) of pasting is conducted there will not be any serious problem.

17. As already indicated, if the Petitioners are found to be having locus standi for filing the O.P., the main question to be decided is whether the 10th Respondent has obtained all the required licences, permits and no objection certificates for conducting the industrial unit consisting of the quarry and crusher and if so whether any further directions to any of the Respondents is called for to ensure that the 10th Respondent conducts the industry strictly in accordance with the terms and conditions of the licences, permits and certificates and also the relevant provision of law. As such I may consider the question of locus standi of the Petitioners and one or two other incidental questions before going to the main question to be decided in the O.P.

18. Though the Petitioners have made several serious allegations regarding the health hazards caused and likely to be caused hereafter as a result of the illegal functioning of the quarry and crusher to the people living in the vicinity of the quarry and crusher no evidence has been adduced by the Petitioners to establish such allegations. Similarly the Petitioners have not adduced any evidence to

establish their allegations that functioning of the quarry and crusher has caused damage to the nearby houses, trees and crops in spite of the fact that such allegations were denied emphatically by the 10th Respondent as totally baseless and opposed to real facts.

19. The only material produced by the Respondents which has some relevance regarding the matter under consideration is Ext. R-10 (q) report submitted by the Advocate Commissioner who inspected the properties in O. S. No. 439 of 1993, a suit filed by the second Petitioner against the 10th Respondent. The details noted by the Commissioner would help only to find that at the time when explosion takes place in the quarry area there used to be scattering of granite stone pieces to some distance and spreading of dust in the premises. The Commissioner has not given any details regarding the exact extent to which the scattering materials would reach in the vicinity at the time of explosion and to what extent the atmosphere will gets polluted. The Commissioner has also not given any useful details to come to a conclusion that there are residential houses very near the quarry and crusher as alleged by the Petitioners. The other relevant material is the report submitted by the Environmental Engineer after conducting an inspection of the site. In his report he has only stated that functioning of the crusher may create air and sound pollution. But he has also stated that since the crusher was not functioning he was not in a position to measure the actual extent of pollution. Similarly he was also not able to say anything about the scattering of granite stones and spreading of dust during explosion in the quarry. These materials are in my view totally insufficient to enter any definite findings on the above question. In the circumstances, it has to be found that the Petitioners have failed to establish satisfactorily the allegation that the functioning of the quarry and crusher is a serious hazard to the life and property of the people residing in the vicinity of the quarry and crusher including the Petitioners and that it causes pollution of air, water and sound in the locality so as to amount to actionable nuisance.

20. As regards the locus standi of the Petitioners it is an admitted fact that they are the residents of Vadasserikkara Village. Dispute is only regarding the question whether the Petitioners are residing in the immediate vicinity of the quarry as contended by the Petitioners or at a distance from it as contended by the 10th Respondent. Petitioners have filed the O.P. not only as representatives of the people of the locality but also in their individual capacity as residents of the village. The main purpose of filing the O.P., according to the learned Counsel for the Petitioners, is only to ensure that the activities carried on by the 10th Respondent in the industrial unit is in accordance with law and not in violation of any of the requirements of law to be complied with before commencing and continuing the activities in question. There cannot be any dispute about the necessity of obtaining various permits, licences and no objection certificates for running the industrial unit in question. In other words, the industry in question is one strictly regulated by the various provisions contained in different statutes and can be carried on legally only after complying with all the requirements

contained in such regulatory enactments. It is also clear that such statutory requirements or conditions have been prescribed or imposed taking note of the various hazards involved in carrying on the activities connected with the industry to the people of the locality and the environment as such. Petitioners have specifically alleged that the 10th Respondent has not obtained all the licences, permits and no objection certificates required under the various enactments for the purpose of running the quarry and the crusher and is carrying on the activities in question without observing the requirements of the provisions in various enactments regulating such activities in furtherance of the object of safeguarding the interest of the public in general. Though the 10th Respondent has denied such allegations and attempted to establish that he has obtained all the required permits, licences and no objection certificates, this Court in the interim order passed and referred to above, I feel that it may not be just or proper to take a very strict view on the question of locus standi and to dismiss the O.P. on that ground alone. A legal scrutiny into the controversy at this stage would only advance the cause of justice in as much as interference by this Court is only sought for to ensure compliance with the requirements of law before the impugned activities are commenced again and continued so as to safeguard the interest of the public and the parties to the proceedings. This is especially so in view of the contentions raised by the 10th Respondent that he has already complied with all the requirements of law and is not intending to carry on the quarrying activities in violation of any of the provisions of law. Further the specific case of oblique motive alleged against the first Petitioner that he has reason to wreak vengeance against the 10th Respondent has not been established by any reliable material. Having regard to the nature of the grievances highlighted in the O.P. and the actual relief prayed for in the statement filed by the Petitioners at the conclusion of the arguments, I find it difficult to hold that the Petitioners are only mere busybodies or meddlesome interlopers, wayfarers or officious intervenors. In this view, keeping in mind the principles laid down by the Supreme Court in the decisions commencing from the one reported in *The Mumbai Kamgar Sabha, Bombay Vs. Abdulbhai Faizullabhai and Others*, where according to Retnaveil Pandian, J. "the seed of concept of Public Interest Litigation was initially sown in India by Krishna Iyer, J. to one of the latest decision reported in *Janata Dal Vs. H.S. Chowdhary and Others*, where the same Judge has discussed almost all decisions on locus standi, I would reject the contention of the 10th Respondent that the O.P. is liable to be dismissed solely on the ground that the Petitioners have no locus standi to file the O.P. as they have not established by positive evidence that the impugned activities of the 10th Respondent has caused any legal injury to them or to the public at large directly or indirectly by polluting air and water as a result of the activities in question.

21. The only other questions which require detailed consideration are: (1) What are all the legal requirements to be complied with by the 10th Respondent before conducting the quarry and the metal crusher in question and (2) Whether the

10th Respondent has complied with all such requirements. While considering the first question the legal requirements may have to be ascertained with reference to the two units separately as the legal requirements of both are different.

Quarry:

22. It has been contended by the learned Counsel for the Petitioners that the quarry in question is a mine within the purview of the Mines Act and can be operated only after complying with the requirements of all the relevant provisions contained in the following Acts, Rules and Regulations:

1. The Mines Act, 1952 and the Metalliferous Mines Regulations, 1961 issued in exercise of the powers conferred by Section 57 of the Mines Act.

2. The Mines and Minerals (Regulation and Development) Act, 1957 (for short "the Mines and Minerals Act") and the Kerala Minor Mineral Concession Rules, 1967 issued in exercise of the powers conferred by Sub-section (1) of Section 15 of the Mines and Minerals Act.

3. The Explosives Act, 1884 and the Explosives Rules, 1983 issued in exercise of the powers conferred by Sections 5 and 7 of the Explosives Act, 1884.

4. The Kerala Panchayat Act and the Kerala Panchayats (Licensing of Dangerous And Offensive Trades And Factories) Rules, 1963 issued in exercise of the powers conferred by Sections 96, 97, 98 and 129 of the Kerala Panchayat Act, 1960.

23. On the other hand it has been contended by the learned Counsel for the 10th Respondent that of the above Acts, Rules and Regulations the Mines Act and the Metalliferous Mines Regulations may not have any application to the quarry in question. As regards the other Acts and Rules, the 10th Respondent has no case that they do not have application to the quarry in question. However, there is serious dispute raised regarding the extent to which the provisions of the Act and Rules may apply to the quarry in question. The 10th Respondent has also contended that he has substantially complied with the legal requirements under other Acts and Rules.

24. I may first consider how far the Mines Act and Metalliferous Mines Regulations would apply to the quarry in question. The answer will depend upon the question whether the quarry in question is a "mine" as defined under the Mines Act.

25. Three contentions have been raised in this connection by the learned Counsel for the 10th Respondent. First of all it was contended that the quarry in question will not come within the meaning of the term "mine" as defined in the Mines Act. Mines Act and Metalliferous Mines Regulations would apply only to the mines as defined in the Mines Act and to the extent provided in the Act and Regulations. Secondly it was contended that even assuming that the quarry in question is a mine as defined in the Act, the provisions contained in Section 3 of the Act itself excludes the applications of all other sections of the Mines Act except Sections 7,

8, 9, 40, 45 and 46 to a mine like the one in question. Lastly it was contended that the quarry in question is specifically governed by the provisions contained in the Mines and Minerals (Regulations and Development) Act, 1957 and the Kerala Minor Mineral Concession Rules, 1967 framed under that Act and as such the more general Act, namely the Mines Act and the Metalliferous Mines Regulations may not apply to the quarry in question. The three contentions can be examined in seriatum.

Contention No. 1:

26. Section 2(j) of the Mines Act defines mine as "any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes the various things enumerated in Sub-clauses (i) to (xi) of the clause. The only item of work included in the different Sub-clauses deserves to be noticed specifically is the one contained in Sub-clause (iv) and it reads thus:

all open cast workings.

Open cast workings is defined in Section 2(kk) to mean "a quarry, that is to say, an excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, not being a shaft or an excavation which extends below superjacent ground". Learned Counsel for the 10th Respondent has submitted that as far as the quarry in question is concerned there is no underground excavation carried out by him in the quarry. Mining work normally involves underground work. But the entire work in the quarry in question is carried out on the surface of the earth or above the ground level and as such it cannot be called a mine as defined in the Mines Act. Learned Counsel in this connection has relied heavily upon the meaning of the word "excavation" to indicate that some underground activity is essential to constitute a mine as defined in the Act.

27. In the decision reported in *Bhagwan Dass Vs. State of U.P. and Others*, the Supreme Court had occasion to consider more or less a similar contention that any operation by which sand and gravel deposited on the surface of the land are collected or gathered cannot properly be called a mining operation. Chandrachud, J. speaking for the Bench has explained the legal position in the following words:

... It is in the first place wrong to assume that mines and minerals must always be sub-soil and that there can be no minerals on the surface of the earth. Such an assumption is contrary to informed experience. In any case, the definition of mining operations and minor minerals in Section 3(d) and (e) of the Act of 1957 and Rule 2(5) and (7) of the Rules of 1963 shows that minerals need not be subterranean and that mining operations cover every operation undertaken for the purpose of "winning" any mineral. "Winning" does not imply a hazardous or perilous activity. The word simply means "extracting a mineral" and is used generally to indicate any activity by which a mineral is secured. "Extracting", in turn, means drawing out or obtaining. A tooth is "extracted" as much as is fruit

juice and as much as a mineral. Only, that the effort varies from tooth to tooth, from fruit to fruit and from mineral to mineral.

Supreme Court had again occasion to consider the scope of the word "mine" as defined in the Mines Act with specific reference to the word "excavation" used in the definition of the word "mine" in the decision reported in *Sri Tarkeshwar Sio Thakur Jiu Vs. Dar Dass Dey and Co. and Others*, . The question that was considered by the Supreme Court was whether the removal of sand would amount to a mining operation. Sarkaria, J. speaking for the Bench while dealing with the point has observed thus:

It is true that in the definition of "mine" the term "excavation" in the ordinary dictionary sense, means "hole" "hollow" or "cavity" made by digging out. But the word "any" prefixed to "excavation" in the context of the phrase "for the purpose of searching for or obtaining mineral" gives it a much more extensive connotation, so that every "excavation" be it in the shape of an open-cast cavity or a subterranean tunnelling, will fall within the definition of "mine". Similarly, it is not a requirement of the definition of "mining operation" that the activity for winning the mineral must necessarily be an underground activity. The essence of "mining operations" is that it must be an activity for winning a mineral, whether on the surface or beneath the surface of earth....

Though the above two decisions were decisions rendered under the Mines and Minerals (Regulations and Development) Act, the Supreme Court was considering the scope and amplitude of the word "mine" as defined in the Mines Act itself since as per Section 3(i) of the Regulation Act the expression "mine" is to have the same meaning assigned to the word "mine" in the Mines Act. In view of what is stated above by the Supreme Court regarding the scope of the very same word "mine" contained in the Mines Act, the contention of the 10th Respondents that the quarry conducted by him will, not fall within the definition of the word "mine" since the entire work carried on by him is on the surface of the earth and not beneath it and that the Respondent is not doing any mining operation therein.

Contention No. 2:

28. Turning to the second submission, Sub-section (1) of Section 3 of the Mines Act is in the following terms:

3. Act not to apply in certain cases.-(1) The provisions of the Act, except those contained in Sections 7, 8, 9, 40, 45, and 46 shall not apply to-

clause (a) omitted.

(b) any mine engaged in the extraction of kankar, murrum, letezite boulder, gravel, shingle, ordinary sand (excluding moulding sand, glass sand and other mineral sands), ordinary clay excluding kaolin, china clay, white clay or fire clay) building stone, slate, road metal, earth, fullers earth, marl chalk and limestone.

There is a proviso to Clause (d) which is to the following effect:

- (i) the working does not extend below the superjacent ground; or
- (ii) where it is an open cast working.

subclauses (a) and (b) omitted.

- (c) explosives are not used in connection with the excavations.

29. Learned Counsel has submitted that there is no excavation in the quarry extending beyond the superjacent ground and that it is not even an open cast working and as such the provisions in the proviso would take the quarry of the 10th Respondent out of the purview of the provisions of the Act except Section, 7, 8, 9, 40, 45 and 46 of the Mines Act. In this connection it was submitted that the quarry in question cannot be considered as an "open cast working" as defined in the Mines Act since the 10th Respondent is not carrying on any operation in the quarry for the purpose of Searching for or obtaining minerals which extends below superjacent ground. 10th Respondent has denied the allegations of the Petitioners that the depth of the excavation is more 45 metres from the ground level and the number of persons employed on a day exceeds 50. Elaborating his contentions learned Counsel has submitted that the granite rocks lies as a hillock from the ground level and as such while extracting granite pieces from the granite rock 10th Respondent is not conducting any operation for the purpose of searching for or obtaining minerals. No operation for the purpose of searching for or obtaining mineral has been or is being carried on in the quarry in question. The 10th Respondent is only collecting or gathering metal without doing any work for the purpose of searching for or obtaining metal. In this connection the learned Counsel has relied upon the meaning of the word "obtaining" given in Webster's Dictionary as "to gain or attain by planning". So long as the granite rocks are exposed well above the surface of the earth, there is no question of searching for or obtaining any mineral out of it. As such he is not conducting any mine or mining operation while conducting the quarry and quarrying operation for the purpose of collecting granite stones.

30. It is difficult to accept the above contention of the learned Counsel for the 10th Respondent. I have already held that to be a mine an excavation or work need not always be subterranean or beneath the earth. It is relevant in this connection to refer to the following observations of the Supreme Court in Gujarat Pottery Works Vs. B.P. Sood, Controller of Mining Leases for India and Others,

It is significant to notice that the expression "mine" according to Clause (b) of Section 3, means any excavation for the purpose of searching for or obtaining minerals. Here the word obtain" is used to cover the various processes necessary to get the mineral and would include the processes covered by the expressions "winning", "working", getting etc.

In the light of the views expressed by the Supreme Court as indicated above regarding the scope of the words "winning" and "obtaining" it is difficult to accept the above contention of the learned Counsel for the 10th Respondent.

Even assuming that the granite rock is lying entirely above the ground level and the 10th Respondent is only extracting and removing granite rock pieces from such exposed rock hill without searching for it, the quarry or working in this case will certainly fall within the words "open cast working" since the activity carried on by the 10th Respondent in the quarry was to get a minor mineral, namely granite pieces for being used as building stone or road metal. 10th Respondent is admittedly using explosives also in the course of extraction of rock pieces from the granite hill-rock. In the circumstances, it is difficult to hold that the quarry in question is a working or mine excluded from the purview of the provisions of the Mines Act as per Section 3 of the said Act.

Contention No. 3:

31. Regarding the third contention, it has to be pointed out that the two enactments, namely Mines Act and Mines and Minerals (Regulation and Development) Act, 1957 are enactments intended to achieve different objects and to govern different aspects regarding the administration of mines. While Mines Act has been intended to amend and consolidate the law relating to regulation of labour and safety in mines, the other Act has been enacted to provide regulation of mines and development of minerals under the control of the Union. In fact they are complementary or supplementary enactments and are not mutually exclusive. As such the contention that the quarry in question is one governed by the provisions of the Mines and Mineral (Regulations and Development) Act and as such the more general enactment, namely the Mines Act may not apply to the quarry in question cannot be accepted as sustainable in law. Taking note of the object and scheme of the two enactments referred to above they cannot be treated as a general and special enactment made with reference to the same subject matter so that the application of one enactment can be excluded treating the same as general while applying the provisions of the other treating it as a special enactment. As such I would reject that contention also.

32. In this connection it is relevant to note that in the counter affidavit filed on behalf of the 7th Respondent, the Controller of Explosives, Ernakulam has taken up the stand that the quarrying of stone with the help of explosives does not come under the purview of the Explosives Act, 1884 and the Explosive Rules, 1983 and that the quarry in question would come under the Mines Act, 1952 which is not administered by the Department of Explosives. He has also contended that matters relating to using of explosives in the quarry is administered by the Director General of Mines safety and not by the authorities functioning under the Explosives Act and the Rules framed thereunder.

33. Faced with the situation that the quarry in question may fall within the word "mine" as defined under the Mines Act, the learned Counsel for the 10th Respondent has advanced a further contention relying upon Section 82 of the Mines Act to the effect that when there is a dispute as to whether an excavation or working or premises in or adjacent to and belonging to a mine, is a mine

within the meaning of the Mines Act, such a dispute can be determined only by the Central Government and not by this Court. It was submitted that there is an exclusion of jurisdiction of all Courts from deciding the disputes referred to in Section 82. At any rate, it was submitted that since there is a dispute as to whether the quarry in question is a mine or not this Court may not be justified in going into that dispute in these proceedings initiated as a public interest litigation under Article 226 of the Constitution of India.

34. Section 82 of the Mines Act reads thus:

Decision of question whether a mine is under this Act.-If any question arises to whether any excavation or working or premises in or adjacent to and belonging to a mine, on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on is a mine within the meaning of this Act, the Central Government may decide the question, and a certificate signed by a Secretary to the Central Government shall be conclusive on the point.

35. In his attempt to substantiate his contention, the learned Counsel has submitted that the section must be understood as a provision conferring exclusive jurisdiction on the Central Government to decide 3 types of disputes, namely (a) whether any excavation is a mine within the meaning of the Mines Act; (b) whether any working is a mine within the meaning of the Mines Act and (c) whether any premises in or adjacent to and belonging to a mine is a mine within the Mines Act. In other words, according to the learned Counsel the words and phrases "in or adjacent to and belonging to a mine, on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on" used immediately after the words "premises" would qualify only the word "premises" and not the two words "working and excavation" preceding the word "premises" in the section. According to the learned Counsel there is no justification to proceed on the basis that those words and phrases would apply to excavations and workings also.

36. Though the contention is ingenious, to me it appears to be totally unsustainable in law. The word "mine" as already noticed is defined in the Mines Act in Section 2(j). It is an inclusive definition. The main part of the definition is to the effect that mine is an excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried out. The inclusive part of the definition running into 9 Sub-clauses includes various types of excavations, workings, premises and even machineries and other equipments connected with mining operations enumerated in the subclauses as mines for the purposes of the Mines Act. Taking note of the wide terms in which the word "mine" is defined under the Mines Act, the only reasonable and harmonious manner in which Section 82 can be interpreted and understood is to hold that the words and phrases "in or adjacent to and belonging to a mine, on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on" would apply to each of the words excavation, working and premises. Understood in that manner Section 82 will have application only

when the question is whether any excavation, working or premises in or adjacent to and belonging to a mine is also liable to be treated as mine within the meaning of the Act when the operations carried on in such excavation, working or premises are processes ancillary to the getting, dressing or preparation for sale of minerals or of coke. It will be unreasonable to hold that after defining the word "mine" in such wide terms even in cases where a dispute arises as to whether an excavation or working where operations are carried on solely or mainly for the purpose of obtaining any mineral or oil in contrast to ancillary processes such as referred to in Section 82, such disputes also can be decided only by the Central Government to the exclusion of the jurisdiction of all the Courts. Therefore, in my view, Section 82 will have application only in cases where the dispute is as to whether a particular excavation in or adjacent to and belonging to a mine is a mine on the ground that some processes ancillary to the getting, dressing or preparation for sale of minerals or of coke obtained is being carried on. When the main operation carried on in an excavation or working or premises is itself a mining operation as defined in the Mines Act, Section 82 may not have any operation and such - a dispute can always be decided by applying the meaning given to the term in the Act. Thus it is only when an excavation or working or premises is not actually used for the purpose of carrying on mining operations as defined under the Act and is used only for carrying on any processes ancillary to the getting, dressing or preparation for sale of minerals or of coke that a question as contemplated by Section 82 and Liable to be decided exclusively by the Central Government would arise. In such cases, the question really to be decided may be as to whether an excavation, working or premises though not coming strictly within the definition of the word "mine" as defined in the Mines Act should also be treated as mine within the meaning of the Act. The provision can thus be considered only as a provision giving a special power to the Central Government to decide whether an excavation, working or premises where only operations ancillary to the getting, dressing or preparation for sale of minerals or of coke take place should also be treated as a mine. Strictly speaking they do not come within the meaning of the word "mine" in Section 2(i) of the Act. It is a power given to the Central Government to treat certain excavations, workings and premises as mines in appropriate cases though no mining operations as such are carried on there. The provision actually enables the Central Government to rope in certain excavations, workings and premises as mines which cannot strictly be considered as mines going by the definition contained in the Act.

37. In the light of the above discussion, I am inclined to hold that the quarry of the 10th Respondent will come under the definition of the word "mine" as defined in the Mines Act and the provisions contained in the Mines Act and the Metalliferous Mines Regulations, 1961 would apply to the quarry conducted by the 10th Respondent.

38. Turning to the requirements to be complied with before commencing the quarry operations, I may consider the questions under each enactments.

Mines Act and the Metalliferous Mines Regulations:

39. Now since I have held that the quarry in question will fall under the definition of the word "mine" contained in the Mines Act, all the provisions of the Act, and the provisions of the Metalliferous Mines Regulations would apply except to the extent their application is excluded by any of the provisions in the Act and Rules to mines like the one in question. Section 16 of the Mines Act enjoins upon the owner, agent or manager of a mine to give a notice before commencement of any mining operation to the Chief Inspector, the (Controller) Indian Bureau of Mines and the District Magistrate of the District in which the mine is situated notice in writing in the prescribed form containing such particulars relating to the mine. As per Regulation 3 of the Regulations, Section 16 notice shall be submitted in Form No. 1 of first schedule attached to the Regulations and a copy thereof shall also be submitted to the Regional Inspector. Notice shall be accompanied by a plan showing the boundaries of the mine and other details mentioned in Regulation 3. Sub-regulation (2) of Regulation 3 mandates that when a mine is opened, the owner, agent or manager shall forthwith communicate the actual date of opening of the mine to the Chief Inspector and to the Regional Inspector. Regulation 4 directs quarterly returns to be submitted in Form No. 2 of the first Schedule to the Chief Inspector and to the Regional Inspector. Regulation 5 provides for submission of annual returns containing the details prescribed in the said regulation within the time mentioned therein. Regulations 6 to 10 contained in Chapter II of the Regulations prescribe various obligations of the owner, agent or manager of a mine. Chapter XV contains detailed provisions regarding the use of explosives and shot firings in the mines. Regulation 160 directs that preparation of charges and the charging and stemming of holes shall be carried out by or under the personal supervision of a competent person, in these regulations referred to as Blaster. Blaster shall fire the shots himself. It also states that no person shall be appointed to be a Blaster unless he is holder of a Manager's, Foreman's, Mate's or Blaster's certificate. A Blaster as per the definition must be "a person possessing a Manager's, Foreman's, Mate's or Blaster's certificate and appointed by the Manager in writing to perform the duties of a Blaster under these regulations and includes a shot firer. Various regulations contained in Chapter XV commencing from Regulations 153 to 170 prescribe detailed procedure as to how the activities in a mine especially dealing with explosives should be carried Out to maintain safety in the mines. As the stand taken by the 10th Respondent that the quarry in question is not a mine and the Mines Act and the Metalliferous Mines Regulations have no application to his quarry, there is no contention that he has complied with any .of the provisions contained in the Act or in the Regulations. So also there is no case that he has obtained specific exemption for his quarry from any of the authorities functioning under the Act and Regulations.

Explosives Act, 1884 and Explosives Rules, 1983:

40. 10th Respondent has admittedly obtained a licence in Form 23 for the use of

5 kgs. gun powder from the district authority for blasting rock from the quarry. He has also secured the service of a shot firer who has no authority to conduct blasting operations in areas coming within the Indian Mines Act. It is the case of the 10th Respondent that since the quarry permit issued to him is only for the purpose of extraction of a quantity of 250 tonnes of granite stones he need only have explosives of a small quantity and has in fact obtained licence to possess and use only 5 kgs. of explosives at a time. On the basis of the licence so obtained by him, he is entitled to carry on the blasting operations on a small scale under the supervision of the shot firer engaged by him within a small area of 30 cents for the purpose of extracting granite stones. There is a clear distinction made as per the provisions in the Rules itself regarding the issue of licence in respect of smaller quantity and larger quantity of explosives. If that distinction is borne in mind it will be clear that the 10th Respondent's action in using the explosives obtained on the basis of Form 23 licence for blasting purposes on a small scale may not at all be an objectionable one. The fact that the 10th Respondent has obtained patta in respect of 3.64 acres of puramboke land or that he has obtained no objection certificate for quarrying lease may not be a circumstance to hold that he is bound to take licence in Form 22 which is needed only when a person wants to use explosives of larger quantity than 5 kgs.

41. In regard to the above contention also, it has to be mentioned even at the out set that such a contention was advanced on the basis that the quarry in question is not a mine as defined under the Mines Act. As such in the light of the finding already entered by me that the quarry in question is a mine within the meaning of the Mines Act, it has to be examined whether Ext. R-10 (t) licence issued in Form 23 under Article 5(a)(c) of Schedule IV of the Explosives Rules, 1983 will entitle the 10th Respondent to use explosives obtained on the basis of such a licence for blasting purposes in the quarry in question and that too under the supervision of a person having Ext. R-10 (a) certificate which authorises him only to conduct blasting operations using explosives in areas other than mines coming under the purview of the Indian Mines Act, 1952. It was submitted that a careful analysis of the provisions contained in the Explosives Rules and the terms and conditions contained in Forms 22 and 23 would clearly indicate that explosives obtained on the basis of Form 23 licence cannot be utilised for blasting purposes in mines. It was also submitted that such use without the help of a competent shot firer or blaster who is competent to use explosives in mines would be totally illegal and in violation of the various mandatory provisions contained in the Mines Act and Metalliferous Mines Regulations.

42. Rule 144 of the Explosives Rules specifically states that no person shall use explosives for blasting purposes unless he employs a qualified shot firer holding a shot firer's permit under the rules. Proviso to the said rule specifically provides that for blasting operations in mines coming under the purview of the Mines Act, 1952 such shot firer shall have qualifications prescribed in the Regulations framed under the said Act. Rule 153 is to the effect that nothing in Rules 146, 148 to 151 shall apply for blasting operations in mines under the purview of the

Mines Act and such operations shall be carried out according to regulations framed under that Regulations, namely Metalliferous Mines Regulations. In the light of the above provisions, it is clear that the shot firer who has been engaged by the 10th Respondent is not a competent person to conduct blasting operations in the quarry in question. Ext. R-10 (u) licence authorises him only to conduct blasting operations using explosives in areas other than mines coming under the purview of the Indian Mines Act, 1952. The limited authorisation granted as per Ext. R-10 (u) licence issued under the Explosives Act and Rules may not qualify him to act as a shot firer areas coming under the purview of the Indian Mines Act, 1952. Only a person who is a "blaster" as defined under Rule 2(6) of the Metalliferous Mines Regulations, 1961 will be competent to use explosives in an area coming within the purview of the Mines Act for blasting purposes.

43. The next question to be considered is whether Form 23 licence would entitle the 10th Respondent to use the explosives secured on the basis of the said licence for blasting purposes in the quarry in question which is held to ..be a Mine. Chapter VII of the Explosives Rules contains the relevant provisions regarding the grant of various licences under the Act and Rules. A scrutiny of the detailed provisions contained in Chapter VII of the Rules would clearly indicate that a very detailed and in fact a very cumbersome procedure is prescribed for the issuance of the licence in Forms 20, 21 or 22 in contrast to the comparatively simpler procedure prescribed in the case of licence in Form 23. Rule 155 specifies specifically that no licence in Forms 20, 21 or 22 can be granted unless the provisions of Rule 156 have been complied with. Of course, the proviso would show that the licensing authority may waive all or any of the provisions of Rule 156 in certain cases. The authorities to grant licence in Form 22 is either the Chief Controller himself or a Controller duly authorised by the Chief Controller. But in the case of Form 23 licence a district authority can grant the same. There are material differences in the terms and conditions contained in the two forms of licences, namely 22 and 23, relevant for the purpose of this case. In fact it was relying upon these differences that the learned Counsel for the Petitioners has submitted that whenever explosives are intended to be used for blasting operations in mines coming within the purview of the Mines Act it is necessary to obtain a licence in Form 22 and not in Form 23.

44. Condition No. 24 of Form 23 licence is to the following effect:

24. The explosives shall not be used for blasting purposes in the areas not coming within the purview of Mines Act, unless the licensee employs a qualified shot firer holding a shot firer's permit granted under the Explosives Rules or the person having equivalent qualifications as recognised by the Chief Controller.

It is relevant to note the restriction imposed regarding the use of explosives for "blasting purposes" even in areas not coming within the Mines Act. Conditions 25 to 33 deal specifically with the duties and responsibilities of the licensee and shot firer in the matter of conducting blasting operations. Condition No. 25 states that the licensee and the shot firer shall be responsible for preparation of charges, the

charging of holes and the firing of shots and shall take all precautions against fire and accident involving the explosives. Condition No. 30 is to the effect that before commencing the shot firing the licensee shall give sufficient warning to the public by an efficient system of signals and by putting up red flags in the danger zones. Condition No. 31 makes it mandatory on the part of the licensee to warn the public not to approach the site of blasting operation at least within an hour after explosion or in the case of an open quarry, not to approach such quarry within half an hour after explosion. Condition No. 32 makes it obligatory that the number of shots which explode shall be counted and unless it is certain that all the shots have been exploded no person shall approach or be permitted to approach the place until 30 minutes after the firing of shots. It is to be noted that there are no conditions similar to the above conditions in Form 23 licence. The absence of same or similar conditions in Form 23 would indicate that whenever explosives are intended to be used for blasting purposes either in mines or in areas not coming within the purview of the Mines Act, a licence in Form 22 is necessary. Condition No. 16 in Form 23 would more or less put the matter beyond doubt. Condition No. 16 is to the effect that the licensee for the purpose of blasting explosives shall employ a qualified person holding a shot firer's permit granted under these rules. The above condition would indicate the explosives obtained as per Form 23 licence is intended only to be exploded for purposes generally indicated in Rule 155(8) such as levelling of ground, sinking of well or removal of tree stumps etc. and cannot be used for blasting operations by charging or stemming shot holes as contemplated by the conditions contained in Form 22.

45. In this connection it is relevant to note that in O.P. No. 9579 of 1987 which was also a case of blasting operations carried on in a granite quarry, it was admitted by all the parties concerned therein that the licence that was required to carry on the blasting operations in that case was a licence in Form 22 under the Explosives Rules. Of course, it was a case where electric energy was used for blasting operations and the quantity of explosives obtained was also more than 5 kgs. whereas in this case there is dispute regarding the energy used for blasting operations and the quantity procured at a time is upto 5 kgs. Though the Petitioners have alleged that 10th Respondent is utilising electrical energy for blasting operations, the same has been strongly denied by the 10th Respondent. In my view, the dispute regarding the nature of the energy used may not make any difference on this aspect of the case. As such in my view the 10th Respondent ought to have secured a licence in Form 22 for obtaining explosives for conducting blasting operations in the quarry even though his requirement of explosives is only upto 5 kgs. and the quantity of granite which can be extracted is only 250 metric tonnes. The fact that blasting operations carried on is in a small area or the quantity of explosives is only small may not make any difference in the requirements of law to be complied with when blasting operations are carried on in the light of the conditions discernible from the different form of licences subject to which explosives can be obtained and used

for various purposes.

46. Thus in my view the very significant differences in the procedure to be followed while issuing licences in Forms 22 and 23 and the substantial differences in the terms and conditions contained in Forms 22 and 23 cannot be treated as differences introduced solely with reference to the difference in the quantity of explosives used but also with reference to the different purposes for which the explosives are liable to be used by the licensees. Conditions 24 to 33 in Form 22 specifically deal with in detail the various steps necessary to be taken for conducting blasting operations within Mines or outside Mines and such provisions are conspicuously absent in Form 23. It is also relevant to note in this connection the difference in the words used in condition No. 24 in Form 22, namely "blasting purposes" and the words "blasting explosives" in condition 16 of Form 23 and the different purposes for which blasting of explosives can be resorted to on a small scale by cultivators and Ors. indicated in Rule 155(8) of the Explosives Rules.

47. For all the above reasons, I am inclined to accept the contention of the learned Counsel for the Petitioners that whenever explosives are procured for blasting purposes either in areas coming within the purview of the Mines Act or outside, a licence in Form 22 of the Explosives Rules is necessary.

Mines and Minerals (Regulation and Development) Act, 1957 and The Mineral Concession Rules:

48. The 10th Respondent has contended that he has complied with the requirements of the Regulation Act and Concession Rules by obtaining Ext. R-10 (h) quarrying permit valid upto 1st August, 1994 and later Ext. R-10 (w) quarrying permit valid upto 31st October, 1994. The only question to be considered is whether Ext. R-10 (w) quarrying permit obtained during the pendency of the O.P. and which expired on 31st October 1994 was sufficient in law to conduct the quarrying operations in the quarry in question.

49. Learned Counsel for the Petitioners has contended that the 10th Respondent ought to have taken a quarrying lease/mining lease instead of quarrying permit since he was using explosives for conducting blasting operations in the quarry. Further it was pointed out that Ext. P-8 no objection certificate obtained was for a quarrying lease and the change over to permit was an unjustifiable attempt to evade the legal requirements to be complied with. Learned Counsel has a further contention that even if the quarrying permit produced is considered as valid for extraction of minor minerals using explosives, the conditions in quarrying lease especially condition 29 should apply to the quarry in question as explosives are being used for blasting purposes. Since condition 29 deals with the various precautionary steps to be taken to safeguard the life and property of the public in general the condition must apply even if it only a permit.

50. Exts. R-10 (h) and R-10 (w) are evidently quarrying permits issued in accordance with Rules contained in Chapter II of the Concession Rules issued in

exercise of the powers conferred by Sub-section (1) of Section 15 of the Regulation Act. Ext. R-10 (w) permit granted is for a period of three months and expired on 31st October 1994. Permit was for extracting and removing 250 tonnes of granite stones (building stones) from an area of 30 cents in Sy./R.S. No. 702/1-1. 14 conditions are mentioned in the permit. There is a special note added to the permit prohibiting the use of jack hammer for the extraction of granite stones. The note also directs that the quarrying operations should not cause any damage to life and property of the people in the nearby areas and should not also cause any kind of environmental hazard. There is no specific case for the Petitioners that Ext. R-10 (w) permit has been granted in violation of any of the provisions of the Regulation Act or the Concession Rules. The contention is only that in view of the use of explosives for extracting granite stones, the 10th Respondent ought to have obtained a quarrying lease/mining lease and not a quarrying permit. I do not think that there is any justification for accepting the above contention of the learned Counsel for the Petitioners.

51. It is to be noted that the Concession Rules specifically provide for issuing quarrying permits as well as quarrying lease/mining lease in two separate chapters as far as Government lands are concerned. "While the provisions in Chapter II deal with the grant of quarrying permits, the provisions in Chapter V deal with the grant of quarrying lease/mining lease in respect of Government lands. While quarrying permit can be issued only for a maximum period of 1 year, quarrying lease is granted normally for longer periods than one year extending upto a maximum period of 12 years except in the case of quarrying lease for mining clay in which case the maximum period may go upto 20 years. Quarrying lease may also be renewed for one or two times not exceeding the period for which the quarrying lease was originally granted unlike quarrying permit which cannot be renewed after the expiry of one year in the normal course. All quarrying leases granted are to be compulsorily registered in accordance with the Indian Registration Act, 1908. The leases may with the previous sanction of the State Government or the competent authority assign, sub-let or transfer his lease or any right, title and interest therein to any other person on payment of a fee to the State Government unlike in the case of quarrying permit. An analysis of the various provisions contained in Chapters II and V would clearly indicate that normally a person who intends to extract and remove only a limited quantity of minor minerals not exceeding 10000 tonnes under one permit is entitled to get and need get only a quarrying permit to extract and remove such quantity shown in such permit. It is only when a person intends to extract and remove minor minerals exceeding 10000 tonnes and that too for periods exceeding one year, he need obtain a quarrying lease. There is no justification to hold that even if a person who wants to extract or remove a very small quantity like 250 tonnes of granite stones from a limited area of 30 cents and that too within a period of 3 months is bound to take a quarrying lease as contemplated by the provisions contained in Chapter V of the Concession Rules. As the 10th. Respondent wanted only to extract and remove a small quantity of

250 tonnes of granite stones within a period of three months, in my view, there may not be any justification in holding that he was bound to take a quarrying lease/ mining lease for that purpose simply because he is using explosives in his quarry. Of course, the 10th Respondent cannot continue his quarrying activities by getting quarrying permits successively so as to avoid the requirement of taking a quarrying lease satisfying all legal requirements in that behalf if he wants to continue the process for longer periods than one year. The proviso to Rule 8(1) of the Concession Rules restricts the power of renewal of the quarrying permit issued to limited cases and renewal after one year can be obtained only after satisfying all the necessary conditions laid down in the Chapter dealing with the quarrying lease. If Rule 8 is strictly enforced in accordance with the spirit of the said rule, permit can be issued only for a maximum period of one year. Thereafter only a quarrying lease or permit after satisfying all the conditions prescribed for the grant of quarrying lease can be granted for conducting the quarry in question. Rule 9 also restricts the power of grant of a quarrying permit. Rule 9 further states that no quarrying permit shall be granted over any land over which a quarrying lease has been applied for. There is no provision in the Concession Rules to indicate that a quarrying permit holder cannot use explosives for blasting purposes in the quarry if he gets the required licences for use of explosives from the concerned authorities functioning under the Mines Act and the Explosives Act and the Rules framed under those Acts. In this view, I would hold that there is substantial compliance with the requirements of the provisions contained in the Concession Rules. There is nothing on record to show that the 10th Respondent while taking a quarrying permit has evaded any requirements of law. So also it is difficult to hold that even in cases where extraction is done on a small scale on the basis of a quarrying permit, all the conditions in Rule 29 statutorily required to be incorporated only in leases are to be added in such permit also. Even if it is found that inclusion of Rule 29 conditions even in permits would be of great advantage, I am not able to hold that it is a statutory requirement which the 10th Respondent is bound to comply with before commencing the blasting operations in the quarry in question on the basis of the permit issued to him as the rules now exist.

Kerala Panchayats Act, 1960 and Kerala Panchayats (Licensing of Dangerous and Offensive Trades and Factories) Rules, 1967:

52. The 10th Respondent has obtained Ext. R-10 (i) certificate of permanent registration dated 25th February 1994 for his small scale industrial unit/small service establishment called "Modern Rock Mining Industries", Vadasserikkara. The certificate would show that he has been permitted to manufacture granite metal from granite rubbles. There is no case for the Petitioners that Ext. R-10 (i) is a certificate issued in violation of any of the Rules regulating the issue of such certificate. Apart from Ext. R-10 (i) certificate, the 10th Respondent has produced Ext. R-10 (n) licence No. 228/93 valid upto 31st March 1994 issued with reference to the stone crushing factory called "Modern Rock Mining Industries", Kompanoli, Ext. R-10 (o) is a similar licence issued by the

Vadasserikkara Panchayat in respect of the Modern Rock Mining Industries (Stone Crushing Factory) in R.S. No. 702/1-B (old Sy. No. 37) valid upto a period of 31st March 1995. Ext. R-10 (o) is dated 11th April 1994. The licence issued will show that the same has been issued under Sections 96, 97, 98 and 120 of the Panchayats Act. The question to be considered is whether Ext. R-10 (o) licence is sufficient in law to satisfy the requirements of the Licensing Rules framed under that Act for conducting the quarry and the Crusher Units of the 10th Respondent. The 10th Respondent has no case that he has taken any other permission or licence from the Panchayat in this regard.

53. Learned Counsel for the Petitioners has contended that Ext. R-10 (o) is not a licence issued legally. It was pointed out in this connection that Ext. R-10 (o) consent letter to operate industrial plant from the pollution control Board and Ext. R-10 (r) Fitness certificate issued by the District Medical Officer of Health are of dates subsequent to the date on which Ext. R-10 (o) licence was issued. Such a licence issued even before satisfying the conditions required to be satisfied prior to the issue of such licence cannot be treated as a valid licence. It was also submitted that it is a licence issued without applying the mind of the issuing authority and without taking into consideration the objection raised by the Petitioners and other people of the locality as per Exts. P-12 to P-16 representations.

54. As regards the stone crushing unit and the crushing machine installed in the factory, it is indisputable that the 10th Respondent has obtained licence from the Panchayat originally as per Ext. R-10 (n) and subsequently as per Ext. R-10 (o) dated 11th April 1994. Of course, Ext. R-10 (m) consent letter and Ext. R-10 (r) fitness certificate were obtained only subsequent to the issue of Ext. R-10 (n) licence. I do not think that I will be justified in saying that Ext. R-10 (n) and Ext. R-10 (o) are totally invalid licences issued in total violation of the relevant Rules. It may not also be possible to hold that there is total absence of application of mind while issuing the licence in question for the only reason that Exts. R-10(n) and (r) are documents which came into existence subsequent to the issue of licence. Of course, strictly speaking the said two documents ought to have been before the competent authorities prior to the issue itself. However, taking note of the fact that at least subsequently both the competent authorities have given their consent for issuing the licence, I do not think that I will be justified in declaring the licences issued for the industrial unit as bad in law. I would accordingly hold that Ext. R-10 (o) licence is sufficient for establishing and running the Crushing unit u/s 97 of the Panchayats Act.

55. A further question which requires to be considered is whether a separate licence u/s 96 of the Panchayats Act, is required apart from Ext. R-10 (o) licence for the quarrying activities carried on in the quarry treating the same as a separate unit.

56. In the judgment in O.P. No. 9579 of 1987 Varghese Kalliath, J. has after an elaborate consideration of the entire relevant provisions in the Panchayats Act

and licensing Rules held that the process of blasting in a granite quarry produces transportable rock stones and as such it requires a licence under item 84 of the schedule to the licensing Rules. It has further been held that the blasting operations will come also under entry 87 in the Schedule to the Licensing Rules. I am in respectful agreement with the interpretation placed on the relevant provisions in the Licensing Rules and the conclusion reached by the learned Judge in this regard in O. P. No. 9579 of 1987. As such I would hold that a separate licence is required for the quarry unit other than the licence contained for the stone crushing factory which has to be treated as a separate unit established nearby the quarry, in the facts and circumstances of the case.

57. Learned Counsel has a further contention that since explosives in the form of gun powder is intended to be stored near the quarry and is proposed to be used in the quarry, 10th Respondent ought to have take a separate licence from the Panchayat in the light of entries 40 and 63 contained in the schedule to the Licensing Rules. Since I have already found that the 10th Respondent is bound to take a licence for possessing and using explosives in form 22 under the Explosives Act and Rules, I do not think that the Petitioners are entitled to put forward the absence of a licence from the Panchayat as a ground to stop the quarrying activities of the 10th Respondent, if he obtains a Form 22 licence for the purpose. In that event if at all it is the look out of the Panchayat and Panchayat in this case has fully supported the stand of the 10th Respondent.

58. I may now summarise the conclusions reached by me as indicated below:

(1) The quarry in question is one coming within the Mines Act, 1952 and as such all the provisions of the Mines Act and the Metalliferous Mines Regulations (Except those specifically excluded) would apply to the quarry in question. (2) In the light of the above finding, the 10th Respondent is bound to take a licence in Form 22 for obtaining and using explosives for blasting purposes in the quarry. Ext. R-10(t) licence obtained by the 10th Respondent for possession of explosives for own use under form 23 licence is insufficient in law to use the same for blasting operations in the quarry. (3) Only a blaster as defined in the Metalliferous Mines Regulations is entitled to supervise the blasting operations in the quarry. The person engaged by the 10th Respondent who possesses only Ext. R-10 (u) shot firer's permit is not competent to conduct the blasting operations in the quarry. (4) The stone crushing factory of the 10th Respondent called "Modern Rock Mining Industries" is found to be one established after obtaining the required licence from the Panchayat, namely Ext. R-10 (o) treating the same as a separate unit from the quarry unit. (5) The 10th Respondent is legally bound to obtain a separate licence from the Panchayat for the quarry treating the same as a place within the panchayat where activities mentioned at entries 84 and 87 in the Schedule to the licensing Rules are carried on by the 10th Respondent.

59. In the light of the above findings, it is evident that the 10th Respondent has not satisfied all the legal requirements to be complied with before commencing

and carrying on the blasting operations using explosives in the quarry which has been found to be a "mine" coming within the purview of the Mines Act. The statutory requirements required to be complied with before carrying on the blasting operations in a mine as defined under the Mines Act using explosives are conditions incorporated in the relevant Acts and rules with the laudable object of safeguarding the life and property of the public who are likely to be affected by such activities and also the environment. Taking note of the above fact the 10th Respondent cannot be permitted to carry on the blasting operations using explosives in the quarry in question even though quantity of granite to be removed and explosives used is small. He is entitled in law to run only the stone crushing factory on the basis of the licence now issued and that too subject to the conditions mentioned in Ext. R-10 (j) no objection certificate issued by the Kerala State Pollution Control Board. As such I would hold that the 10th Respondent is not entitled to commence the blasting operations using explosives in the quarry in Sy. No. 702/1-1 of Vadasserikkara Village on the basis of the licences already obtained by him and produced in the case, until he obtains a licence in Form 22 of the Explosives Rules and a licence u/s 96 of the Panchayats Act read along with entries 84 and 87 of the Schedule to the Licensing Rules.

60. However, I must add that in case the 10th Respondent applies for licences required to be obtained as indicated above, the authorities concerned shall pass appropriate orders thereon in accordance with law promptly avoiding delay taking note of the huge investment already made by him for commencing the industry in question.

O. P. is disposed of accordingly. No. order as to costs.