

2009 (3) KHC 821
KERALA HIGH COURT

S. Siri Jagan, J.

Gokul Das v. Geologist and Others

W. P. (C) No. 9015 of 2007(W)

24 July, 2009

Constitution of India, Art.21, Art.226 - Environment -- Sand mining -- Regulation of mining -- Power of District Collector -- Even if powers are not specifically conferred by the Rules, the District Collector is an authority competent and empowered to issue orders regarding banning of sand mining in a district -- Ban cannot be imposed indefinitely, but for a specific period subject to periodic reviews -- Minor Mineral Concession Rules, 1967 (Kerala), R.8

Facts of the case

The petitioner is a Government Contractor and is aggrieved by the decision denying him permit for sand mining due to the ban order issued by the District Collector. Challenging the powers of the Collector to issue such ban orders, the writ petition was preferred.

Disposing the writ petition, the Court held:

The District Collector is the Executive Head of the District. By the Kerala Minor Mineral Concession (Amendment) Rules, the District Collector has a say in the matter of issue of mining permits, insofar as the Geologist can issue permits only if the applicant for permit produces a No Objection Certificate from the District Collector. This power has been vested with the District Collector, since persons, after having obtained permits under the Kerala Minor Mineral Concession Rules are misusing the same for mining river sand. If such powers have not been specifically conferred on the Collector under the Rules such powers have to be read into the Rules. When in the matter of mining of river sand, the District Collector is vested with powers of imposition of ban, there is no discernible reason as to why those powers should not be extended to ordinary sand also in the interests of ecology and environment invoking Art.21 of the Constitution of India. Therefore, I am of opinion that District Collector is certainly an authority who is competent and empowered to consider the question as to whether mining of sand from a particular property would cause damage to the ecology and therefore the District Collector can certainly issue orders regarding banning of mining of sand in particular areas in a district or in the district as a whole. The source of such power can be traced to Art.21 of the Constitution of India, even if such powers are not specifically conferred by the Rules, for ensuring sustainable development. However, I am of opinion that the District Collector cannot issue a blanket ban order without any restriction regarding time limit. The District Collector can impose ban only for a specified period at a time and should review the situation from time to time. If the situation warrants, period of the ban can be extended for further specified periods. If on review, the District Collector finds that on strict regulatory conditions, mining can be permitted the District Collector can lift the ban on such regulatory conditions. That being so, Ext. P11 order insofar as it does not restrict the ban to any specified period cannot be supported by law.

(Para 8, 9)

Minor Mineral Concession Rules, 1967 (Kerala), R.8 - Quarrying below 20 feet -- Imposition of condition -- Geologists in the State directed to impose a condition restricting quarrying below 20 feet while issuing quarrying permits -- Constitution of India, Art.21, Art.226

Held:

It is brought to my notice that formerly under R.8 of the Kerala Minor Mineral Concession Rules, the depth of the pit to be used for quarrying below the surface was not to exceed 20 feet. That condition has been deleted from the Rules now by amendment by SRO 270/2008. I am surprised that when Courts are trying their best to protect ecology by persuading the Government to bring in more regulatory measures, the Government has deleted the regulatory measures by altogether excluding the depth to which mining can be undertaken. If that is permitted, then it would have more deleterious effects on the ecology. Although this Court cannot interfere with the legislative powers of the State, I take this occasion to express my anguish over such relaxation of conditions, which has originally been incorporated with the object of protecting the ecology, insofar as, to my mind, the same does not make any perceivable sense. I am of opinion that the Government will do well to reconsider the matter and reintroduce the said condition also, which would only go to further protect the ecology of our State. I am of further opinion that such a condition should be incorporated in all quarrying permits deriving support from Soman's case (supra). Therefore, I direct all the Geologists in the State that quarrying permits issued under the Kerala Minor Mineral Concession Rules shall contain a condition restricting the depth of the pit to be used for quarrying below the surface to 20 feet and the additional 3rd respondent shall issue appropriate instructions to all Geologists in the State accordingly. The necessity of such a condition is well perceivable from the counter affidavit of the 3rd respondent itself.

(Para 10)

Rural Litigation and Entitlement Kendra v. State of U.P., 1989 KHC 719 : AIR 1988 SC 2187 : 1989 Supp (1) SCC 504; Soman v. Geologist, 2004 KHC 1173 : 2004 (3) KLT 577; Velloore Citizens' Welfare Forum v. Union of India and Others, 1996 KHC 940 : AIR 1996 SC 2715 : 1996 (5) SCC 647; Referred to

Jobi Jose Kondody; For Petitioner
Sudha Devi; For Respondents

JUDGMENT

1 . The petitioner claims to be a Government contractor. According to him, for the purpose of executing contracts for the Government, he needs large quantities of sand. He has large extent of property in Avanavancherry Village in Thiruvananthapuram District by the side of Vamanapuram river which has large deposits of sand, which can be used for construction of buildings, which is his avocation. He wanted to obtain a permit under the Kerala Minor Mineral Concession Rules for the purpose of mining sand from his property. He approached the 1st respondent. The 1st respondent refused to issue him an application for applying for licence. Aggrieved by the same, he approached this Court by filing WP (C) No. 31262/2006, in which this Court directed the 1st respondent to issue an application form to the petitioner on his producing a copy of the judgment. There was also a direction to consider petitioner's application and to pass orders thereon in accordance with law. The petitioner filed an application for permit. By Ext. P10 order, his application was refused to be considered on the ground that there was a ban order issued by the District Collector, by which the District Collector had banned mining of sand in Thiruvananthapuram district. Alleging that Ext. P10 order amounts to violation of the judgment of this Court in WP (C) No. 31262/2006, the petitioner filed Cont. Case (C) No. 125/2007 in which a counter affidavit was filed, producing the ban order of the District Collector. In view of that order, the contempt case was closed without prejudice to the right of the petitioner to challenge Ext. P10 and the order of the District Collector. The petitioner has produced the order of the District Collector as Ext. P11 in the writ petition. The petitioner is now challenging Exts. P10 and P11 orders seeking the following reliefs:

“I. Call for the records relating to Ext. P10 and Ext. P11 and issue a writ of certiorari and quash the same.

II. Issue a writ of mandamus directing the 1st respondent to issue quarrying permit to mine ordinary sand from 1.23 acres of his property comprised in Survey Nos. 73/3, 73/4, 73/4-1, 73/5 and 73/6 of Avanavancherry village if he eligible for the same under the Kerala Minor Mineral Concession Rules, 1967.

III. Issue a writ of mandamus directing the 1st respondent not to go by the dictation of the 2nd respondent while he exercises his powers as competent authority under Kerala Minor Mineral Concession Rules, 1967.

IV. Declare that the 2nd respondent has no powers to regulate mining of ordinary sand under the MKKC Rules, 1967 as stated by the Government in Ext. P7.”

2 . The contention of the petitioner is that the District Collector is not vested with any powers under the Kerala Minor Mineral Concession Rules to issue a ban order like Ext. P11. The powers of the District Collector to issue such orders are referable only to the Kerala Protection of River Banks and Regulation of Mining of Sand Act. As far as mining of ordinary sand is concerned, the same is regulated by the Kerala Minor Mineral Concession Rules, which do not contain any provisions empowering the District Collector to pass an order like Ext. P11, is the contention of the petitioner. The petitioner also relies on Ext. P7 order of the Principal Secretary to the Government, Industries Department, in which the Principal Secretary informed the District Collector that the power of the District Collector is restricted to cases of removal of river sand under the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 and that he has neither any power to regulate the removal of sand from private properties, nor to

stay operation of permits issued by the Geologist to remove sand from private properties by invoking the provisions of the said Act. The petitioner would also submit that even assuming that the District Collector has such a power, that cannot be for issuing a blanket order banning sand mining without limitation of time. Therefore, according to the petitioner, the 1st respondent is bound to consider the application of the petitioner in accordance with the Kerala Minor Mineral Concession Rules and pass orders thereon as earlier directed by this Court in Ext. P8 judgment.

3 . Originally, the 1st respondent filed a counter affidavit, in which he has submitted that without producing a no objection certificate from the District Collector, the application of the petitioner cannot be considered in view of the prohibitory order passed by the District Collector. When the matter came up for hearing on 09/06/2009, this Court felt that it is necessary to ascertain the views of the Government also in this regard. Accordingly, this Court suo motu impleaded the Chief Secretary to the Government as additional 3rd respondent in the writ petition and the additional 3rd respondent was directed to file a detailed counter affidavit in the matter. Pursuant thereto, a counter affidavit has been filed by the additional 3rd respondent. From the counter affidavit, I find that the Government has taken up the matter very seriously and considered the entire issue in depth. I deem it appropriate to extract the major portions of the counter affidavit, disregarding the virtue of brevity since the same would throw light on very many technical aspects of environmental degradation caused by indiscriminate sand mining. They have stated thus in their counter affidavit:

“4. It is submitted that the District Collector is a competent authority to grant mineral concession up to a royalty of Rs.10,000/- under the KMMC Rules as per notification No. 32010/L2/93/ID dated 22/06/1995 published as SRO 860/95. R.8(2)(c) stipulates that every quarrying permit granted under R.4 shall be subject to restrictions of surface operations in any area prohibited by any authority. The District Collector is a competent authority to restrict the surface operation in any area under his jurisdiction for several reasons. Being a District Magistrate, he can impose the restrictions under the provisions of Criminal Procedure Code. Under Kerala Land Utilization Order also, the District Collector can deny permission for conversion of land to any other form.

5. In this case, the petitioner’s land is a flood plain area which is ideal for agricultural purposes. Hence any conversion of that land necessarily needs a permission from the District Collector under KLU Order. The removal of sand from the area in dispute inevitably leads to deep pits and it is a conversion as envisaged under KLU Order. For that reason also, the NOC from the District Collector is very much necessary.

6. Section 13(2) of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (Act 18 of 2001) empowers the District Collector to notify the ban on sand removal from any river or river bank during any period if dredging of sand disturbs the biophysical environment system of the river. But the order of the ban shall not extend beyond a period of two weeks. Here the area applied for mining of ordinary sand by the petitioner is very close to the Vamanapuram River, and the above area comes within the biophysical environment system of the Vamanapuram River. The environment degradation occurred to a biophysical system can never be restored to its original state within a period of two weeks. It may take years to restore to the original State. Though the Act 18 of 2001 does not empower the District Collector to notify a ban for a longer

period, the action of the District Collector is scientifically substantiated. Beginning with “Vellore Citizen’s Welfare Forum v. Union of India”, the Hon’ble Supreme Court has explicitly recognized the precautionary principle as a principle of Indian Environmental law (AIR 1996 SC 2715 : 1996 (5) SCC 647)

7. It is submitted that Kerala Minor Mineral Concession Rules, 1967 also confer the power on the District Collector to regulate the mining of ordinary sand. Recently the Kerala Minor Mineral Concession Rules, 1967 have been amended. Sub-rule 5 of R.5 of KMMC Rules, 1967 stipulates that every application for grant / renewal of quarrying permit in respect of minor minerals mentioned in item 2 of Schedule I appended to the above Rules for any type of lands should be accompanied by a No Objection Certificate from the District Collector concerned. A true copy of the SRO 256/2009 published in extra ordinary Gazette No. 610 Vol. LIV dated 18/03/09 is produced herewith and marked as Ext. R3(a). Thus it can be seen that it is mandatory to produce the No Objection Certificate issued by the District Collector concerned while applying for grant of quarrying permit in respect of ordinary sand. Another provision included by the same notification is sub-r.(6) of R.5 which stipulates that application for the grant / renewal of quarrying permits in respect of minor minerals of item 2 of Schedule I shall be accompanied by a financial assurance in the form of bank guarantee from any nationalized / schedule bank at the rate fixed by PWD for the proposed area.

8. The Mines and Minerals (Development and Regulations) Act, 1957 defines minor mineral as building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may by notification in the Official Gazette, declare to be a minor mineral. There is nothing termed as “Karamanal”. There is only one sand i.e. ordinary sand which covers both the river sand and sand seen in the flood plain area and Paleo Channels. It is also pertinent to submit that sand is not available in any other parts of the land than flood plains and Paleo Channels.

9. The petitioner is bound to submit the survey map of the area vide sub-r.(2) of R.5 of KMMC Rules. Instead, the petitioner provided a location sketch, that too without having any distance measurements. From the location sketch it appears that the area applied for, is very close to the Vamanapuram River. The petitioner himself admits that the area applied for is a paleo deposit of ordinary sand. Technically, petitioner’s land can be designated as flood plain area.

10. This Hon’ble Court in Soman v. Geologist, 2004 (3) KLT 577 reiterated that the principle of sustainable development and the doctrines of “precautionary principle” and ‘pollute pays’ Principle are part of our environmental law which is built around Art.21 of the Constitution of India. This Hon’ble Court also held that the conditions and restrictions imposed in the quarrying permit were very much necessary to protect our environment. The above judgment was a common judgment delivered in a number of writ petitions.

11. It is submitted that one of the petitioners therein preferred Writ Appeal 1693/04 against the above judgment in Soman v. Geologist. Since the issue was related to the protection of environment and Ecology, the Government wanted the Department of Mining and Geology to conduct a thorough study in the matter. The Senior Geologist, Thiruvananthapuram was deputed to conduct a study in “environmental appraisal of flood plain mining sites in Vaikom and Kottayam Taluk,” in 2005. The Senior Geologist submitted the exhaustive report based on which a detailed counter affidavit had been filed

on behalf of the Government in the Writ Appeal. Subsequently the above Writ Appeal was withdrawn by the appellant with liberty to file appeal before the appropriate forum.

12. It is submitted that since some of the technical aspects regarding mining of sand are to be mentioned in this case also, the findings of the Senior Geologist are very much relevant to be narrated. Paleo Channels are the older river courses which were buried due to sedimentation. They belong to the past riverine environment which are today found in the form of geomorphic signature in a location representing drainage, streams, rivers, which were flowing either ephemeral or perennial during the past time and now stand either buried or lost and shifted due to Tectonic, geomorphic as well as anthropogenic activities and climatic vicissitudes. Paleo Channels are source of ground water, in general of good quality and they were possible locates for rain water harvesting.

13. Flood plains on the other hand are depositional and erosional areas adjacent to rivers where active channel spills during flood events (bank full events). Flood plain are formed either by lateral accretion or vertical accretion. The main functions of the flood plain in supporting ecology are the following:

- i) Sediment storage
- ii) Flood water storage / Peak flow moderation
- iii) Ground water Re charge
- iv) Channel stability / Erosion prevention
- v) Water quality
- vi) Habitat

14. For getting more profit, gravel miners commonly choose to excavate large, deep pits adjacent to active river channels. These pits have the potential to significantly change the physical and ecological function for the flood plain. Depending on the geologic and geomorphic setting, flood plain mining can cause serious environmental consequences, in the long run. Mining of sand changes the physical characteristics of the river basin, disturbs the closely linked flora and fauna, alters the local hydrology, soil structure as well as socio economic conditions of the basin in general. One of the long term impacts of flood plain mining is the drainage avulsion. River avulsion is a global phenomenon due to flood plain mining. It is reported in (Washington Division of Geology and Earth Resources Open file Report 2004-08, 270 P) that flood plain mining in Yakima River severely disrupted river channels and riparian communities.

15. The sand in the flood plain area are good acquifers. Acquifer means the stratum which holds water for a very long time. The destruction of acquifers lead to acute shortage of water in the area. Hence indiscriminate mining of sand from flood plain areas and Paleo Channels are to be controlled in a stringent manner. One of the adverse effects of sand mining is the lowering of water table. This is the reason for drying up of wells in the neighbourhood of mining areas. When sand is extracted at an exorbitant rate several times higher than the rate at which it is deposited, the major portion of the rain water is wasted because the water cannot be stored on the flood plains and even in the riverbed.

16. The extraction of sand from flood plain is a massive geomorphic alteration of river form and process in the State of Kerala. Sand and gravel are removed from channels and flood plain at rates exceeding the rates of deposition by the river flow. Vast areas of flood plain are being transformed from agricultural to open water pits mostly without hydrologically or ecologically based planning or design. The reclamation / restoration of the pits have to be done by environmentally benign materials. The pits shall not be filled

by using toxic materials, non biodegradable wastes etc. otherwise, the filling material will contaminate the ground water.

17. Stream channel instability and severe changes in morphology are a particular concern near flood plain mines. Stream migration across flood plain is a gradual change that typically occurs slowly. However, the potential for sudden channel shifts or braiding during major flood events increases considerably where flood plain mining has removed riparian vegetation and lowered the flood plain.

18. Land is an important resource as it supports majority of the human activities. Also land is a finite resource and its importance is further on increase with the increase in the human population and human activities. Since decades man has been trying to bring more and more land area in his use for various activities. Land is degraded where mining activities are carried out. The sand mining creates open pits which change the land scenario unless the land reclamation measures are adopted. The main impacts of sand mining on land environment are the following:

- i) complete deforestation in and around mining site
- ii) gross modification of topography
- iii) loss of top soil and sub soil
- iv) reduction in agriculture areas
- v) shifting of habitats
- vi) beheading of aquifers
- vii) damage to surface water resources
- viii) water logging.

19. The United Nations Environment Programme (UNEP) has formulated a programme for “Capacity building” for the people in the developing nations. It emphasize the need for equipping the people to address the environmental issues and to protect the environment by formulating precautionary measures UNEP mainly project the following facts in their programme.

20. The three pillars of sustainable development - social progress, economic growth and environmental protection are inextricably linked. Each depends on the others to support a sustainable future for humankind. Over the past three decades, understanding of the role of the environment in our future and its fragility under the growing pressure from human activity, has grown immensely. Yet the environment is still by no means an equal partner in the development debate. Long term environmental considerations are still subjugated to the short term demands of economic growth and social progress. What is too frequently over looked is how today’s apparent socio economic advances can become tomorrow’s disasters when their environmental impact is not taken into account. Increased climate variability, the growing global water crisis, the diminishing productivity of our soils etc. are just few examples of how the environment on which we all depend is coming under unprecedented strain.

21. In *Soman v. Geologist* this Hon’ble Court laid emphasis on the principle of sustainable development and the doctrines of “polluter pays” and “precautionary principle” as laid down by the Supreme Court in a series of decisions.

22. It is submitted that when an attempt was made to divert flow of a river for augmenting facilities at a motel, it was held by the Hon’ble Supreme Court that the State and its instrumentalities as trustees have a duty to protect and preserve natural resources.

23. It is submitted that the Centre for Earth Science Studies (CESS) and Centre for Water Resources Development and Management (CWRDM) have been conducting studies regarding the impact of sand mining in the rivers of the State. This Hon'ble Court also had directed on previous occasions to conduct such studies for permitting extraction of sand from Kadavu in the rivers. CESS has conducted studies in the rivers of South and Central Kerala and the reports are alarming. Offsite and on site impact of sand mining has been described in the report of CESS. The above reports also point towards the serious repercussion caused on the environment and ecosystem by the excessive mining of sand. It is submitted that the study conducted by CESS in 1999 in the Greater Kochi Region revealed that at the then prevailing rate of sand mining the estimated river sand resources of this region would be exhausted within a decade lowering the river channel further by about 4-5 mtr. from the bed level at that time.

In view of what is stated above, it is very much necessary that there should be some restrictions on the sand mining in order to protect the bio physical environment system of the state. Hence it is submitted that the Government and the District Collector who is the administrative head of the District are empowered to impost stringent conditions and even ban on sand mining whenever it is necessary. Hence, it is submitted that the above writ petition is devoid of any merit and the same is liable to be dismissed.”

4 . The learned Government Pleader brought to my attention the fact that of late, Courts have repeatedly stressed the necessity to protect the environment by imposing appropriate restrictions on the indiscriminate over exploitation of natural resources, which would seriously harm the ecology and the environment and to encourage the necessity to have sustainable development. She has taken me through the earliest decision of the Supreme Court on the subject, namely, Rural Litigation and Entitlement Kendra v. State of U.P., 1989 KHC 719 : AIR 1988 SC 2187 : 1989 Supp (1) SCC 504. She also takes me through the subsequent decision of the Supreme Court in Velloore Citizens' Welfare Forum v. Union of India and Others, 1996 KHC 940 : AIR 1996 SC 2715 : 1996 (5) SCC 647. The learned Government Pleader points out that those sentiments expressed by the Supreme Court have been echoed by this Court also in the decision of Soman v. Geologist, 2004 KHC 1173 : 2004 (3) KLT 577. Therefore, according to the learned Government Pleader, it is the bounden duty of the Government to protect the environment by appropriately regulating the exploitation of natural wealth to preserve the earth as a habitable place for posterity. In that view, according to the learned Government Pleader, the District Collector, as the executive head of the district and the competent officer of the Government in the district, should be invested with sufficient powers to regulate the exploitation of the natural wealth, which would include mining of sand as well. She also points out that the Kerala Minor Mineral Concession Rules also contain appropriate provisions which indicate such a power with the District Collector. She refers to Ext. R3(a) amendment to the Kerala Minor Mineral Concession Rules effected by the Government as per the Kerala Minor Mineral Concession (Amendment) Rules, 2009 wherein, the following amendment has been made to the said Rules:

“2. Amendment of the rules. -- In the Kerala Minor Mineral Concession Rules, 1967. -- (i) after sub-r.(4) of R.5, the following sentence shall be inserted, namely --

“(5)Every application for grant / renewal of quarrying permit in respect of minor minerals, mentioned in item 2 of Schedule I appended to these rules for any type of lands

should be accompanied by a No Objection Certificate from the District Collector concerned.

(6) Every application for grant / renewal of quarrying permit in respect of minor minerals of item 2 of Schedule I, appended to these rules shall be accompanied by a financial assurance in the form of Bank guarantee from any nationalized scheduled bank at the rate fixed by Public Works Department for the proposed area.”

(ii) For clause (1) of R.57 the following rule shall be substituted, namely. --

“In case of levelling of ground for construction of residential building, creation of play ground for public purpose, construction of canals, wells, roads or for agricultural and such other purposes where extraction of minor mineral is inevitable, the State Government may grant special permit on terms and conditions, that it may specify, other than those prescribed in these rules on the basis of an application by interested parties along with a sworn affidavit in this regard in stamp paper worth Rs.50. They shall be exempted from obtaining quarrying permit or quarrying lease and payment of royalty for removing of minor minerals. This concession shall be limited to a quantity of mineral, the royalty for which according to item No. 4 of Scheduled I rate does not exceed Rs.5,000/-. For quantities exceeding this limit royalty at the scheduled rates should be paid.” ”

According to the learned Government Pleader, in view of the said amendment to the Rules, it cannot be contended by the petitioner that the District Collector does not have powers to issue an order like Ext. P11. On these contentions, the learned Government Pleader supports the impugned orders.

5 . I have considered the contentions of the parties with the anxiety the situation demands in view of the over exploitation of natural wealth perceived around us, degrading the environment, which is a matter of grave concern.

6 . It is true that by Ext. P6 judgment, I had held that under the Kerala Minor Mineral Concession Rules, the District Collector does not have powers to pass orders of ban of ordinary sand covered by the Kerala Minor Mineral Concession Rules. However, after considering the counter affidavit of the additional 3rd respondent in this case and after hearing the enlightening arguments of the learned Government Pleader, I have become wiser and am not inclined to follow that judgment. Even otherwise, that judgment was rendered at a time when Ext. R3(a) amendment was not in the statute book. In view of Ext. R3(a) amendment to the Kerala Minor Mineral Concession Rules, the finding in my said judgment cannot hold good any longer.

7 . We are living at a time when indiscriminate and excessive exploitation of natural wealth is threatening the very existence of mankind. If such indiscriminate exploitation of natural wealth continues unabated, the posterity will not have a habitable earth to live in. It is often said that we are only trustees of the natural resources of the earth and we have no right to meddle with the same so as to make the earth inhabitable for future generations. It is with this sentiment in mind that the Supreme Court and the High Courts, including this Court, had vested the Government with powers to safeguard the environment by invoking Art.21 of the Constitution of India, wherever no specific powers are so conferred by statute. The Supreme Court has in those judgments appointed expert committees to study the ecological impact of such excessive exploitation of natural

wealth and based on the report of such expert committees issued orders regarding regulation of such exploitation of natural wealth. It may not always be possible for the Court to monitor such situations and therefore it is imperative that appropriate officers should be invested with adequate powers to monitor such situations by passing suitable orders whenever the situation demands.

8 . The lowering of the water table in many parts of the Kerala State is of great concern for everybody. It has been proved by scientific studies that the water table in the State is going down, which would ultimately result in scarcity of water in the State in the long run. The lowering of water table is one of the deleterious effects of excessive sand mining. Not only that, excessive sand mining would result in many other ecological imbalances, which is no longer an unproven fact. In fact, the same has been recognised by the judicial pronouncement in Soman's case (supra). In that decision the Division Bench has held that certain conditions in a quarrying permit even if not authorised by law, are authorised by Art.21 of the Constitution of India. In paragraph 13 thereof it has been held thus:

“13. In view of the above and other judgments, the principle of sustainable development and the doctrines “polluter pays” and “precautionary principle” are part of our environmental law, which is built around Art.21 of Constitution of India. The conditions impugned in this writ petition are necessary to protect the environment. If every land owner, driven by profit motive, is to dig his land to win sand, no land except pits will be left for the future generations. So, the petitioners should stop mining, when it reaches the ground water level and immediately, all the pits should be filled up, as provided in condition No. 16 which reads as follows:

“All excavations have to be immediately filled and reclaimed.

The principle of sustainable development now being part of the environmental jurisprudence, flowing from Art.21 of the Constitution of India, the State is bound to impose the impugned conditions, while granting the permit. Even if such conditions are omitted to be mentioned in the Kerala Minor Mineral Concession Rules, still the State can impose them, in view of Art.21 of the Constitution of India. In other words, even if condition Nos. 2 and 15 are unauthorised by the Rules, they are authorised by Art.21. Accordingly, the challenge against condition Nos. 2 and 15 in Ext. P1 is repelled.”

Therefore, it is imperative that appropriate powers are vested with the Government and their officers to effectively curb this menace, which would result in ecological imbalances in the State. This is particularly so in case of mining of sand from properties nearer to the rivers. While granting permits for mining sand in properties near rivers, even if the property is beyond the distance limit prescribed in the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001, there is a real likelihood of danger of unscrupulous persons misusing the permit to cause irreversible damage to the river beds. The necessity for appropriate regulatory control has been succinctly explained in the counter affidavit, with scientific backing, with which nobody can quarrel. Therefore, in every respect, appropriate regulatory powers should be vested with the authorities concerned. The District Collector is the Executive Head of the District. By the Kerala Minor Mineral Concession (Amendment) Rules, the District Collector has a say in the matter of issue of mining permits, insofar as the Geologist can issue permits only if the applicant for permit produces a No Objection Certificate from the District Collector.

This power has been vested with the District Collector, since persons, after having obtained permits under the Kerala Minor Mineral Concession Rules are misusing the same for mining river sand. If such powers have not been specifically conferred on the Collector under the Rules such powers have to be read into the Rules. When in the matter of mining of river sand, the District Collector is vested with powers of imposition of ban, there is no discernible reason as to why those powers should not be extended to ordinary sand also in the interests of ecology and environment invoking Art.21 of the Constitution of India. Therefore, I am of opinion that District Collector is certainly an authority who is competent and empowered to consider the question as to whether mining of sand from a particular property would cause damage to the ecology and therefore the District Collector can certainly issue orders regarding banning of mining of sand in particular areas in a district or in the district as a whole. The source of such power can be traced to Art.21 of the Constitution of India, even if such powers are not specifically conferred by the Rules, for ensuring sustainable development.

9 . However, I am of opinion that the District Collector cannot issue a blanket ban order without any restriction regarding time limit. The District Collector can impose ban only for a specified period at a time and should review the situation from time to time. If the situation warrants, period of the ban can be extended for further specified periods. If on review, the District Collector finds that on strict regulatory conditions, mining can be permitted the District Collector can lift the ban on such regulatory conditions. That being so, Ext. P11 order insofar as it does not restrict the ban to any specified period cannot be supported by law.

10 . It is brought to my notice that formerly under R.8 of the Kerala Minor Mineral Concession Rules, the depth of the pit to be used for quarrying below the surface was not to exceed 20 feet. That condition has been deleted from the Rules now by amendment by SRO 270/2008. I am surprised that when Courts are trying their best to protect ecology by persuading the Government to bring in more regulatory measures, the Government has deleted the regulatory measures by altogether excluding the depth to which mining can be undertaken. If that is permitted, then it would have more deleterious effects on the ecology. Although this Court cannot interfere with the legislative powers of the State, I take this occasion to express my anguish over such relaxation of conditions, which has originally been incorporated with the object of protecting the ecology, insofar as, to my mind, the same does not make any perceivable sense. I am of opinion that the Government will do well to reconsider the matter and reintroduce the said condition also, which would only go to further protect the ecology of our State. I am of further opinion that such a condition should be incorporated in all quarrying permits deriving support from Soman's case (supra). Therefore, I direct all the Geologists in the State that quarrying permits issued under the Kerala Minor Mineral Concession Rules shall contain a condition restricting the depth of the pit to be used for quarrying below the surface to 20 feet and the additional 3rd respondent shall issue appropriate instructions to all Geologists in the State accordingly. The necessity of such a condition is well perceivable from the counter affidavit of the 3rd respondent itself.

11 . Taking into account all the above facts and circumstances, I dispose of this writ petition with the following further directions in addition to the general findings and directions contained hereinbefore:

12 . The 2nd respondent shall make a review of the situation prevailing in areas covered by Ext. P11 and consider whether it is necessary to continue the ban on mining of sand in those areas. Thereafter, the 2nd respondent shall issue fresh orders. If the District Collector finds it necessary to continue the ban, that shall be for a specific period and the necessity to continue the same shall be reviewed from time to time. While doing so, the District Collector shall consult the expert authorities like the Geologist to come to a reasonable conclusion in the matter. It would also be open to the District Collector to constitute an expert committee as in the case of the Kerala Protection of River Banks and Regulation of Removal of Sand Act and seek their opinion in the matter. If the District Collector finds that presently mining can be permitted, the Geologist shall consider Ext. P5 application submitted by the petitioner and pass appropriate orders thereon, but, of course, after the petitioner complying with the conditions now prescribed by the Kerala Minor Mineral Concession (Amendment) Rules, 2009.

13 . I am also of the opinion that the Government should constitute an expert committee in the lines of the District Development Committee prescribed by the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 so as to consider the question of regulating mining of ordinary sand in specified areas. Such a committee shall be constituted for Thiruvananthapuram and that committee should consider the question as to whether on a long term basis there should be an appropriate regulation regarding mining of sand. The Government would also do well to incorporate appropriate amendments in the Kerala Minor Mineral Concession Rules in line with the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 in regard to appointment of committees to consider regulation of mining of ordinary sand.

14 . Before parting with the case, I wish to record my appreciation of the efforts put in by the learned Government Pleader appearing in this case, Smt. N. Sudhadevi, in assisting the Court, by conducting research and seeing that an appropriate counter affidavit is placed on record and relevant data is supplied for rendering this judgment. The writ petition is disposed of as above.