



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. A.J.DESAI

&

THE HONOURABLE MR.JUSTICE V.G.ARUN

WEDNESDAY, THE 6<sup>TH</sup> DAY OF MARCH 2024 / 16<sup>TH</sup> PHALGUNA, 1945

WP(C) NO. 3097 OF 2016

PETITIONER/S:

ONE EARTH ONE LIFE  
AGED 57 YEARS  
REPRESENTED BY ITS LEGAL CELL DIRECTOR, SRI.TONY  
THOMAS K., IRUMBAKACHOLA, MANNARKAD P.O.,  
PALAKKAD DISTRICT.  
BY ADVS.  
SRI.RAJAN VISHNURAJ  
SRI.P.CHANDRASEKHAR  
SRI.V.HARISH  
RENJITH THAMPAN (SR.)

RESPONDENT/S:

- 1 MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE  
CHANGE  
FORESTS AND CLIMATE CHANGE, PARYAVARAN BHAVAN,  
CGO COMPLEX, LODHI ROAD, NEW DELHI - 110 003,  
REPRESENTED BY ITS SECRETARY.
- 2 STATE ENVIRONMENTAL IMPACT ASSESSMENT AUTHORITY  
DIRECTORATE OF ENVIRONMENT AND CLIMATE CHANGE,  
PALLIMUKKU, PETTAH P.O., THIRUVANANTHAPURAM - 695  
024.  
BY ADVS.  
SHRI.BABU P.L., CGC  
MANU S., DSG OF INDIA  
S. BIJU  
V. TEKCHAND, SR. GP.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 06.03.2024, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:



## J U D G M E N T

A. J. Desai, C. J.

The question involved in this public interest litigation is ‘whether a notification can be issued by the Government different than the draft notification issued for the purpose involved therein?’.

2. The petitioner, an organization registered under the Travancore-Cochin Scientific, Literary and Charitable Societies Registration Act, 1955, working with the sole intention to protect and improve the forests and safeguard the environment, challenged Ext. P1 notification dated 22.12.2014 issued by the Ministry of Environment, Forests and Climate Change on various grounds, but mainly on the ground that the notification is contrary to the draft notification issued on 11.09.2014 and the observation in the notification that no objections or suggestions were received by the Department in response to the draft notification is factually incorrect.

3. Though notice was issued by this Court, no counter



affidavit came to be filed on behalf of the respondents for a considerably long time. Thereafter, a Division Bench of this Court passed the following order on 08.09.2020:-

“Though orders were passed in the year 2018 directing the respondents to respond to the prayers sought for and though on several occasions, time was also granted by this court, no counter affidavit has been filed to the writ petition from 2016 onwards.

2. Mr.R.Prasanthkumar, learned Central Government Counsel for the respondents seeks some more time to file counter affidavit. Though considerable time has been granted for the above said purpose, even a statement/counter affidavit is not filed.

3. Mr.V.Harish, learned counsel for the petitioner submitted that on account of non-grant of stay of the impugned notification, several buildings have been constructed without any environmental clearance. It is also brought to the notice of this court that under similar circumstances, taking note of the failure in filing the counter affidavit despite considerable time being granted, High Court of Karnataka has granted interim stay of the impugned notification No.3252(E) dated 22.12.2014. Learned counsel for the petitioner also submitted that when the present writ



petition came up for hearing, after perusal of the files produced by the Ministry of Environment, Forest and Climate Change, New Delhi, a Hon'ble Division Bench of this court noticed that there was a letter of the Ministry of Environment, Forest and Climate Change, addressing the Law Ministry, accepting the mistake in the impugned notification and on the directions of the Division Bench, copy of the said letter was also furnished to the learned counsel for the petitioner.

4. On the above said aspect, learned counsel for the petitioner is directed to produce a copy of the letter of Ministry of Environment, Forest and Climate Change, New Delhi addressed to the Law Department. He is further directed to produce a copy of the order of stay granted by the High Court of Karnataka.”

4. Thereafter, the matter was again called by the Division Bench on 17.09.2020 and the following order passed by which a stay came to be granted against the modification to the definition of built up area brought about by Ext. P1 notification dated 22.12.2014;

“The writ petition is filed by a voluntary organisation challenging an amendment to the Environmental Impact



Assessment Notification dated 22.12.2014 produced as Ext. P1 issued by the Ministry of Environment, Forest and Climate Change, Government of India, New Delhi.

2. The grievance of the petitioner is that vide Ext.P1, the first respondent has modified the definition of 'built up area' providing exemptions to clause 8(a) and (b) from the application of general conditions contained under the Notification in question. It is also the case of the petitioner that the impugned order is in contravention of sub-Rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 ('Rules, 1986' for brevity). With the above backdrop, the petitioner seeks to quash Ext.P1 notification to the extent to which it inserts an amended Note that tinkers the impact and scheme of the amending Notification No. SO1533(E) dated 14.09.2006 issued under sub-Rule (3) of Rules, 1986, by inter alia modifying/diluting the definition of 'built up area' and thus, providing exemption to clause (8)(a) by way of Note 1 and further to the extent to which the amended Notification exempts the entries under clause 8(a) and (b) from the application of general conditions contained under the original EIA Notification, 2006, and for other consequential reliefs.

3. When the matter came up for admission on 27.01.2016, respondents were granted four weeks' time to file counter affidavit and thereafter, the case was being listed



periodically. On 05.10.2016, this court has granted three weeks' time as a last chance to file counter affidavit, if any, and further the Ministry of Environment was directed to place on record the files relating to the decision making process. Even though such a peremptory direction was issued, no counter was filed in spite of periodical postings of the case. On 14.06.2018, at the request of the respondents, four weeks' time was again granted by this court and in spite of the same, it was not filed. Thereupon, on 31.07.2018, when the matter was posted, the Standing Counsel sought further time for additional instructions for a period of three weeks and the same was granted as a last chance. On 27.05.2019, the learned Standing Counsel for the Government of India submitted before the Court that he has received instructions and had undertaken to file the counter affidavit within three weeks. Accordingly, the matter was adjourned for a further period of three weeks. Subsequently, when the matter was posted, there was no representation for the respondents and therefore, the case was adjourned. The case was posted before us on 29.05.2020 and it was adjourned to 16.06.2020 at the request of the respondents. On 16.06.2020, again time was sought for for filing counter affidavit and accordingly, two weeks' time was granted, on which day it was recorded that the counsel for the respondent submitted that counter affidavit has been sent for filing and due to Pandemic Covid -19, there is some delay.



Accordingly, time was extended by a further period of two weeks to file the counter affidavit and the case was posted to 14.08.2020. On 14.08.2020, time was again sought and posted the case to 08.09.2020. On 08.09.2020, a detailed order was passed by this Court expressing dissatisfaction due to the non-compliance of the directions to file counter affidavit. However, the matter was posted to this day. Today also, no counter affidavit is filed. However a statement is filed by the counsel and submitted that the statement filed is not authenticated by the concerned authority and the same was filed on telephonic instructions. Learned counsel for the petitioner has produced additional documents along with I.A. No. 2 of 2020, inter alia various orders passed by this Court, the National Green Tribunal, Principal Bench, New Delhi and other notifications/order issued by the Government of India etc..

4. We have heard the respective counsel for the purpose of interim orders since the interim orders was being pressed for the Counsel for the petitioner on the ground that in the guise of Ext. P1 notification, permits are granted in absolute violation of the Environment (Protection) Act, and the original EIA Notification issued in the year 2006. it is also pointed out that the drastic amendment to section 8(a) was brought without an appropriate draft notification, which is a mandatory requirement under the notification issued by the Government of India and therefore, Ext. P1 notification



to that extent cannot be sustained and so also, the same is in violation of the sub-Rule (3) of Rule 5 of the Rules, 1986. Learned counsel representing the central Government Counsel submitted that further time is required to place the counter affidavit and make submissions in respect of the contentions advanced by the petitioner

5. We have evaluated the rival submissions and is of the opinion that the subject matter requires serious consideration, since we find that there is some force prima facie in the contentions advanced by the petitioner. Therefore, the balance of convenience requires that undue advantage is not taken by the builders by carrying out constructions, in the guise of that part of Ext.P1 notification, which is seriously under challenge being violative of the Notification of the Government of India and the Rules, 1986. Therefore, we are of the opinion that in order to protect the environmental issues, an interim order is granted effective from today onwards. Therefore, there will be a stay of Ext. P1 notification to the extent of modification by the definition of built up area provided to clause 8(a) by way of Note 1 to the effect that the projects or activities shall not include industrial shed, school, college, hostel for Educational Institutions, but such buildings shall ensure environmental management, solid and liquid waste management, rain water harvesting and may use recycled materials, such as fly ash, bricks, for a period of two months.”





5. Thereafter, the matter was listed for final hearing. Ultimately, on 10.01.2024, a counter affidavit was filed by the respondents to which there is no rejoinder.

6. The case put forth by the petitioner is that the 1<sup>st</sup> respondent Ministry of Environment, Forests and Climate Change, by issuing a draft notification dated 11.09.2014, had called upon the persons interested in making any objection or suggestion to the proposed amendment to the original notification dated 14.09.2006 issued by the Central Government with respect to the requirement of getting environment clearance for different types of construction. It is the case of the petitioner that, in spite of receiving several suggestions and objections to the draft notification, the respondent Department issued final notification under Rule 5 of the Environment (Protection) Rules, 1986, stating that no objections or suggestions were received by the Department.

7. Learned Senior Counsel appearing for the petitioner would submit that, for the first time, by filing a counter affidavit in



the month of January 2024, the respondents tried to clarify that there was a typographical error in issuing the notification dated 22.12.2014, stating that no objections or suggestions were received. He would submit that, even though suggestions or objections were received, as admitted by the respondent Department, there is no discussion about the same in the final notification. He would further submit that, even otherwise, the final notification is totally different from the draft notification earlier issued on 11.09.2014. He would submit that, in the draft notification, it is specifically mentioned that the project or activities covered under the notification will be residential buildings, commercial buildings, hotels, hospitals, hostels, office blocks, Information Technology / Software Development Units / Parks, whereas by the final notification, certain buildings like industrial sheds, schools, colleges and hostel for educational institutions are excluded, which was not the intention of the Department while issuing the draft notification. He therefore would submit that, on both these grounds, the notification dated



22.12.2014 is required to be quashed and set aside.

8. He would further submit that, under Section 23 of the General Clauses Act, 1897, if any changes are to be made after previous publication of rules or bye-laws, certain conditions are required to be followed and the most important condition is to invite objections from the public at large. He would submit that, publishing a draft notification inviting objections or suggestions and thereafter, issuing final notification totally different from the draft notification, would vitiate the process, since there was no occasion for the public to know about the changes made to the final notification. It is submitted that, even in the absence of any objections or suggestions to the draft notification, the Government cannot issue a different final notification.

9. Relying upon a decision of the Bombay High Court in **Avinash Ramakrishna Kashiwar and Others v. State of Maharashtra and Others [AIR 2015 NOC 535]** in PIL No. 72 of 2013 dated 10.12.2014, learned Senior Counsel would submit that the Bombay High Court, on a similar set of facts, quashed and



set aside a final notification which was different from the draft notification. Reliance is also placed upon a decision of this Court in **Kerala State Road Transport Corporation v. Saju Varkey and Others [2018 (4) KHC 617]**. He therefore would submit that the writ petition requires to be allowed on these grounds.

10. On the other hand, learned Central Government Counsel would submit that, since there was a mistake on the part of the authority while issuing the final notification dated 22.12.2014, in stating that no objections or suggestions were received to the draft notification, they tried to correct the same by informing the Ministry of Law and Justice. However, the Legislative Department of the Ministry of Law and Justice by communication dated 29.09.2016, informed that it is not possible to amend the notification. By taking us through the counter affidavit, he would submit that the objections received by the Department have been considered and thereafter, the notification has been issued. In answer to the contention regarding the change in the final notification, he would submit that, earlier, almost all the buildings



having specified built up area were required to obtain environmental clearance certificate. However, buildings like industrial sheds, schools, colleges and hostel for educational institutions have been exempted by final notification. He would submit that, the change was brought about considering the nature of activity carried out in these buildings. Therefore, there is no adverse effect on the public at large as far as the environment is concerned. He would submit that, under Rule 5 of the Environment (Protection) Rules, 1986, the Government is empowered to modify the Rules and therefore, the petition may be dismissed.

11. We have heard the learned Advocates appearing for the respective parties.

12. The draft notification issued on 11.09.2014 reads as under:-

**“MINISTRY OF ENVIRONMENT, FORESTS AND  
CLIMATE CHANGE**



## NOTIFICATION

New Delhi, the 11<sup>th</sup> September, 2014

**S.O. 2319(E).** The following draft notification further to amend the notification of the Government of India in the erstwhile Ministry of Environment and Forests number S.O. 1553(E), dated 14<sup>th</sup> September, 2006 which the Central Government proposes to issue, in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), is hereby published, as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 for the information of the public likely to be affected thereby, and notice is hereby given that the said notification will be taken into consideration by the Central Government on or after the expiry of sixty days from the date on which copies of the Gazette of India containing this notification are made available to the public;

Any person interested in making any objection or suggestion on the proposals contained in the draft notification may do so in writing within the period so specified through post to the Secretary, Ministry of Environment, Forests and Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, Aliganj, New Delhi-110 003 or electronically at email address: [ad.raju@nic.in](mailto:ad.raju@nic.in)



## Draft Notification

In the Schedule to the said notification, for items 8(a) and 8(b), and the entries relating thereto, the following items and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"8		<b>Building / Construction projects / Area Development projects and Townships</b>		
8(a)	Building and Construction Projects	≥20000 sq.mtrs and <1,50,000 sq.mtrs of built-up area#		<p><b>The built up area for the purpose of this Notification is defined as 'the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects.</b></p> <p><b>Note:</b></p> <p><b>(i) The projects or activities covered are residential buildings, commercial buildings, hotels, hospitals, hostels, office blocks and information technology / software development units / Parks</b></p> <p><b>(ii) "General Condition" is not applicable.</b></p>
8(b)	Townships	Covering	an	++All projects under



and Area  
Development  
projects

area  $\geq$  50 ha  
and or built up  
area  $\geq$ 1,50,000  
sq.mtrs++

Item 8(b) shall be  
appraised as Category  
B1

Note:

“General Condition” is  
not applicable.”

[F. No. 19-2/2013-IA.III]

AJAY TYAGI, Jt. Secy.”

13. In the said notification, in the second paragraph, the public at large was invited to raise objections or suggestions. Accordingly, the Department had received many objections and suggestions from various institutions or individuals throughout the country, evident from the counter filed by the respondents. However, if we see the language of the final notification dated 22.12.2014, it has been specifically stated that no objections or suggestions were received in response to the earlier notification dated 11.09.2014. Final notification dated 22.12.2014 reads as under:-

**“MINISTRY OF ENVIRONMENT, FORESTS AND  
CLIMATE CHANGE**





## NOTIFICATION

New Delhi, the 22<sup>nd</sup> December, 2014

**S.O. 3252(E).**-Whereas, a draft notification further to amend the notification number S.O 1555(E), dated the 14<sup>th</sup> September, 2006 (hereinafter referred to as the principal notification), was published, as required under sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) vide number S.O. 2319, (E) dated the 11<sup>th</sup> September, 2014 (hereinafter referred to as the said notification), inviting objections and suggestions from all persons likely to be affected thereby within a period of sixty days from the date on which copies of Gazette containing the said notification were made available to the public;

And whereas, copies of the said notification were made available to the public on 11<sup>th</sup> September, 2014;

And whereas, no objections or suggestions have been received in response to the said notification within the specified period of sixty days;

Now, therefore, in exercise of the powers conferred by Sub-section (1) and clause (v) of Sub-section (2) of Section 3 of the said Environment (Protection) Act, 1986 (29 of 1986) read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central



Government hereby makes the following amendments in the said notification, namely:-

In the principal notification, in the Schedule, under Column (1), for item 8 relating to Building / Construction Projects / Area Development Projects and Townships and sub-items 8 (a) and 8 (b) and the entries relating thereto, specified there under, the following item, sub-items and entries shall be substituted, namely:-

(1)	(2)	(3)	(4)	(5)
"8		<b>Building or Construction projects or Area Development projects and Townships</b>		
8(a)	Building and Construction Projects		≥20000 sq.mtrs and <1,50,000 sq.mtrs of built-up area	<b>The term "built up area" for the purpose of this notification the built up or covered area on all floors put together including its basement and other service areas, which are proposed in the building or construction projects.</b>

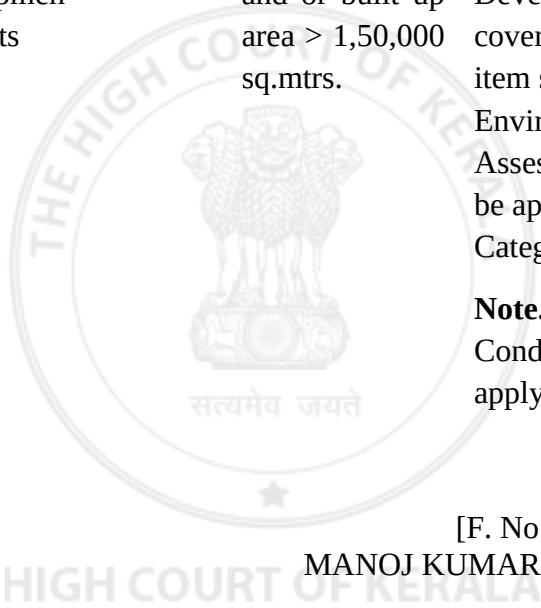
**Note 1:- The projects or activities shall not include industrial shed, school, college, hostel for educational institution, but such buildings shall ensure sustainable environmental management, solid and liquid waste**



management, rain water harvesting and may use recycled materials such as fly ash bricks.

(ii) “General Conditions” shall not apply.

8	Townships and Area Development projects	Covering an area of >50ha and or built up area > 1,50,000 sq.mtrs.	A project of Township and Area Development Projects covered under this item shall require an Environment Assessment report and be appraised as Category ‘B1’ Project. <b>Note.-</b> “General Conditions” shall not apply.
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[F. No. 19-2/2013-IA-III]  
MANOJ KUMAR SINGH, Jt. Secy.”

In the above notification, it is specifically stated in paragraph 3 that no objections or suggestions were received.

14. It is true that the authority had requested the Ministry of Law and Justice to permit them to amend the notification, however, the same was refused by Ext. P11 communication dated 29.09.2016. If the authority had received such communication, instead of amending the notification, the authority should have



considered the objections and suggestions in detail and could have issued a fresh notification which is not the case on hand.

15. As far as the proposal made in column 5 of both notifications is compared, there is a vast difference in the final notification, by which certain buildings are exempted from getting environmental clearance certificates. People at large were not aware about the intention of the authority to modify the draft notification and therefore, in our considered opinion, there is a breach of Section 23 of the General Clauses Act, 1897, which reads as under:-

**“23. Provisions applicable to making of rules or bye-laws after previous publication.—**

Where, by any [Central Act] or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—

(1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons



likely to be affected thereby;

(2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the [Government concerned] prescribes;

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;

(5) the publication in the [Official Gazette] of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.”

16. Sub-sections (1) to (4) of Section 23 makes it clear that the public should be aware about the changes in the Rules, bye-



laws etc. In the present case, the public was not aware about the difference between the draft and the final notifications.

17. Rule 5 of the Environment (Protection) Rules, 1986 is relevant to the case on hand, wherein also there is a requirement of public notice. The said Rule, as it then stood, reads as under:-

**“5. Prohibitions and restrictions on the location of industries and the carrying on processes and operations in different areas.-** (1) The Central government may take into consideration the following factors while prohibiting or restricting the location of industries and carrying on of processes and operations in different areas:-

(i) Standards for quality of environment in its various aspects laid down for an area.

(ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for an area.

(iii) The likely emission or discharge of environmental pollutants from an industry, process or operation proposed to be prohibited or restricted.

(iv) The topographic and climatic features of an area.

(v) The biological diversity of the area which, in the



opinion of the Central Government needs to be preserved.

(vi) Environmentally compatible land use.

(vii) Net adverse environmental impact likely to be caused by an industry, process or operation proposed to be prohibited or restricted.

(viii) Proximity to a protected area under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 or a sanctuary, National Park, game reserve or closed area notified as such under the Wild Life (Protection) Act, 1972 or places protected under any treaty, agreement or convention with any other country or countries or in pursuance of any decision made in any international conference, association or other body.

(ix) Proximity to human settlements.

(x) Any other factor as may be considered by the Central Government to be relevant to the protection of the environment in an area.

(2) While prohibiting or restricting the location of industries and carrying on of processes and operations in an area, the Central Government shall follow the procedure hereinafter laid down.

(3) (a) Whenever it appears to the Central Government that it is expedient to impose prohibition or



restrictions on the locations of an industry or the carrying on of processes and operations in an area, it may by notification in the Official Gazette and in such other manner as the Central Government may deem necessary from time to time, give notice of its intention to do so.

(b) Every notification under clause (a) shall give a brief description of the area, the industries, operations, processes in that area about which such notification pertains and also specify the reasons for the imposition of prohibition or restrictions on the locations of the industries and carrying on of process or operations in that area.

(c) Any person interested in filing an objection against the imposition of prohibition or restrictions on carrying on of processes or operations as notified under clause (a) may do so in writing to the Central Government within sixty days from the date of publication of the notification in the Official Gazette.

(d) The Central Government shall within a period of one hundred and twenty days from the date of publication of the notification in the Official Gazette consider all the objections received against such notification and may within five hundred forty five days from such day of publication impose prohibition or restrictions on location of such industries and the carrying on of any process or operation in an area.





(4) Notwithstanding anything contained in sub-rule (3), whenever it appears to the Central Government that it is in public interest to do so, it may dispense with the requirement of notice under clause (a) of sub-rule (3).”

18. Considering the above aspect, we are of the considered opinion that the decisions relied upon by the learned Senior Counsel appearing for the petitioner in **Avinash** (supra) and **Kerala State Road Transport Corporation** (supra) are applicable.

19. Paragraphs 16 and 17 of the decision in **Avinash**'s case are relevant for our consideration, which are reproduced hereunder:-

“16. It will also be relevant to refer to the observations of the Apex Court in the case of the Municipal Corporation Bhopal, M.P. v. Misbahul Hasan and Others reported in (1972) 1 Supreme Court Cases 696. The Apex Court while construing the provisions of Section 24 of the M.P. General Clauses Act, 1955 which is pari materia with Section 24 of the Bombay General Clauses Act, has observed thus:-



“13. The legislative procedure envisaged by Section 24, set out above, is in consonance with notions of justice and fair-play as it would enable persons likely to be affected to be informed so that they may take such steps as may be open to them to have the wisdom of a proposal duly debated and considered before it becomes law. This mandatory procedure was not shown to have been complied with area.”

17. It could thus be seen that it appears to be settled position of law that the requirement of previous publication inviting objections and suggestions is not an empty formality. It is with an intention to enable persons likely to be affected, to be informed, so that they may take steps as may be open to them and the objections/suggestions made would be required to be taken into consideration by the authorities before issuing a final notification. In the present case, the draft notification provided for establishment of headquarter of the sub-division at Sadak-Arjuni. However, the final notification provides for establishment of the headquarter at Morgaon-Arjuni. It could thus be seen that insofar as the establishment of headquarter is concerned, the final notification is totally different from the draft notification.”

20. Paragraph 14 of the decision in **Kerala State Road**



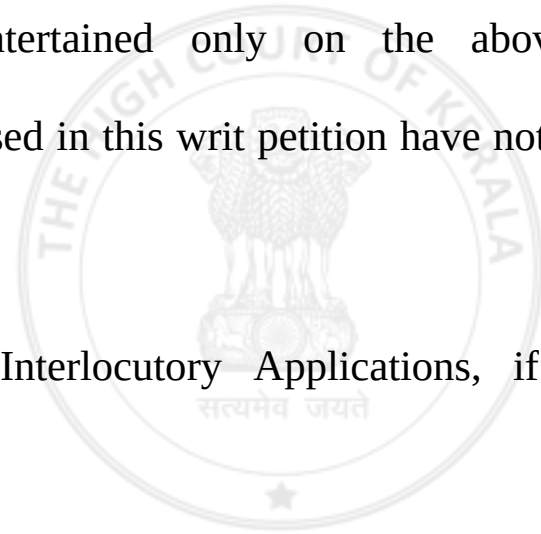
**Transport Corporation's** case is also relevant to the case on hand, which is reproduced hereunder:-

“14. The provisions of Sections 99, 100 and 102 indicate that the procedure to be followed, while introducing a scheme, or modifying an existing one, is one that is designed to ensure transparency and fairness in a matter involving pre-existing rights of private transport operators. It follows, therefore, that there cannot be any finalization of a scheme, which is different from the one that was proposed, and in respect of which objections were invited. The introduction of a restrictive element (in the instant case, the stipulation that the maximum distance limit would apply to the saved permits), while finalising a draft that did not contain such a stipulation has, therefore, to be seen as breaching the aforesaid statutory safeguard. A question arises, however, as to whether, in these cases, the petitioners had a pre-existing right, relating to Ext.P5 scheme, to operate ordinary and OLS services without any restriction as regards distance? Although the learned counsel for the respondent KSRTC would vehemently contend that the said rights accrued to the private operators, not through Ext.P5 scheme, but only through Ext.P9 G.O., we are of the view that the rights/privileges granted to the petitioners through Ext.P9 G.O. cannot be seen as divorced from Ext.P5.”



In such circumstances, we are of the considered opinion that the writ petition requires consideration. Accordingly, the same is allowed. Notification dated 22.12.2014 is hereby quashed and set aside. Needless to say, the respondent authority may issue fresh notification, in accordance with law. It is made clear that the petition is entertained only on the above ground. Other contentions raised in this writ petition have not been examined on merits.

Pending Interlocutory Applications, if any, shall stand closed.



HIGH COURT OF KERALA  
CERTIFIED COPY

**Sd/-**  
**A. J. DESAI**  
**CHIEF JUSTICE**

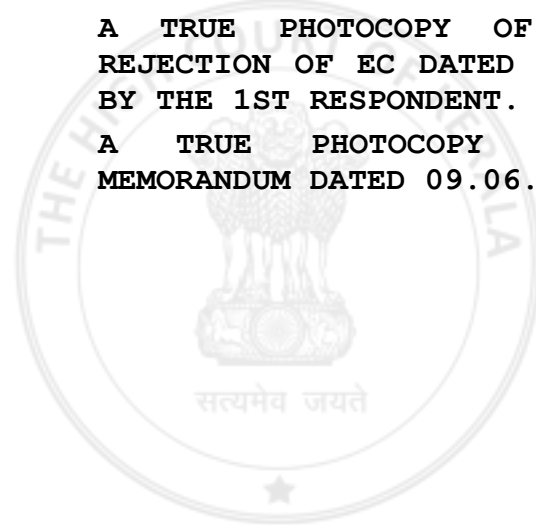
**Sd/-**  
**V. G. ARUN**  
**JUDGE**



APPENDIX OF WP(C) 3097/2016

**PETITIONER EXHIBITS**

- EXHIBIT P1. A TRUE PHOTCOPY OF THE GAZETTE NOTIFICATION NO.3252 (E) DATED 22.12.2014.
- EXHIBIT P2. A TRUE PHOTOCOPY OF THE DRAFT NOTIFICATION NO.S.O.2319 (E) DATED 11.09.2014.
- EXHIBIT P3. A TRUE PHOTOCOPY OF THE MINUTES OF THE 39TH MEETING OF THE 2ND RESPONDENT HELD ON 18.06.2015.
- EXHIBIT P4. A TRUE PHOTOCOPY OF THE LETTER OF REJECTION OF EC DATED 16.10.2007 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P5. A TRUE PHOTOCOPY OF THE OFFICE MEMORANDUM DATED 09.06.2015.



HIGH COURT OF KERALA  
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