

BEFORE THE KERALA STATE HUMAN RIGHTS COMMISSION, THIRUVANANTHAPURAM

**Present: Mr.Justice N.Dhinakar,
Hon'ble Chairperson**

Dated this the, 1st March 2008.

H.R.M.P.No.286/2008

Petitioner : Suo – Motu cased on the news paper report
in the New Indian Express daily
dated 19-1-2008.

Respondent :

ORDER

On seeing a news report in the New Indian Express daily dated 19-1-2008 under the caption “Quarry accident again: One killed, 3 injured” suo-motu action was taken by the Commission and registered HRMP No.286 of 2008.

The news report mentions that owing to the laxity on the part of both the authorities and the quarry owner in providing necessary safety measures, the quarry accident occurred at M/s G.K.Granites at Pookattupady of Ernakulam District and that Thankachan, Kudilipurath House, Kuttambuzha died and Biju, Ponnachan and Kodiyan suffered injuries in the accident. The tragedy occurred on 18-1-2008 around 10.30 a.m. The report also mentions that the workers are not aware of the actual number of employees present in the quarry at the time of accident but according to the police, there were only 11 workers at that time.

The daily further reports that at about 7.30 p.m. the police party led by the Deputy Superintendent of Police, Perumbavoor which includes police from Pattimattam and

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Thadiyitaparamb police stations lathicharged the people gathered around the quarry premises and about 15 people were taken into custody and they were beaten both on the way to the police station and in the police station.

Reports were called for from (1) the District Collector, Ernakulam, (2) The Superintendent of Police (Rural), Ernakulam, (3) The Geologist, Mining & Geology Department, Ernakulam, (4) The Environmental Engineer, Kerala State Pollution Control Board, Ernakulam, (5) The Deputy Labour Commissioner, Ernakulam and (6) the Secretary, Kizhakkambalam Grama Panchayat and in the meantime I decided to visit the place.

Accordingly I visited the quarry M/s.G.K.Granites, Pookattupady on 23-1-2008.

At the time of my visit the following officers were present:

1. Sri.P.K.Nalan, Revenue Divisional Officer, Muvattupuzha,
2. Smt. P. Indiradevi, Deputy Collector, Ernakulam,
3. Sri. K.J.Joseph, Tahsildar, Kunnathunad and
4. Sri.P.V.Anil, Village Officer, Kizhakkambalam.
5. Sub Inspector of Police, Thadiyittaparamb

Sri. George Antony, Licensee of the quarry was also present.

Though the Commission informed about my visit to the quarry to the competent authorities nobody was present representing the Mining & Geology Department and Kizhakkambalam Grama Panchayat.

Sri. George Antony, the owner and licensee of both the land and quarry stated that

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he owns 9.62 hectares of land there and quarrying operation is conducted in 8.27 hectares. His licence which was granted earlier was renewed by the Mining & Geology Department for 12 years from 7-7-2007 on which date his earlier licence for twenty years expired and the explosive licence is valid up to 31-3-2009. According to him, he obtained valid licence/consent from all the competent authorities and he has not violated any condition mentioned in the licences while quarrying. He stated that the accident occurred at about 10.25 a.m and there were 12 workers in the quarry at the time of accident. He also stated that at the time of accident he was in Orissa and immediately coming to know about the accident he gave necessary directions to his manager. He stated that he suspects involvement of anti social elements who might have put explosives under the earth in the top level to trigger the explosive for causing the accident. The Mines Manager (Blastman) in the unit admitted that the boulder which fell down and caused the death of one person and injuries to three others was protruding out and it was not removed or blasted to prevent it from falling from the top.

According to the Mines Manager, he expected the possibility of the falling of boulder at any time and hence he put wire fencing at the bottom of the quarry to prevent the rolling of small rock pieces. He (mines manager) also stated that he heard a noise like that of clapping two hands and that there must have been some blasts on the ground level near the quarry and that the said blast might have been triggered by some anti social elements after inserting the explosives by making a hole and later covering it with earth to prevent any one from seeing the concealed explosives in the earth.

With regard to the accident insurance, the Officer of the Oriental Insurance Company, who was present there, stated that the dependants of the deceased/injured will get the compensation from the Workmen Compensation Court if they approach the court. The owner stated that all the workers under him are having insurance coverage.

On being questioned, the authorities who were present there admitted that no official from any department concerned has visited the said quarry till the date of accident but the owner negated the said fact. According to the Sub Inspector of Police, Thadiyittaparamb crime was registered under the caption "unnatural death" and 10 persons were questioned. The Tahsildar stated that he verified all the records of the quarry and did not find anything irregular with the records.

In the report sent by the District Collector, Ernakulam dated 28-2-2008 it is stated that due to the tragedy, in the quarry G.K.Granites at Oorakkad of Kizhakkambalam, Ernakulam District, on 18-1-2008, one worker died and three others suffered injuries; that the said quarry is functioning for the last 25 years; that the quarry has about 200 mtrs depth and that a metal crusher unit is also functioning near the quarry. According to the report, the quarry obtained licence from the Panchayat which is valid up to 31-3-2008, consent from the Pollution Control Board up to 31-12-2008, Explosives licence for the period up to 31-12-2008 and quarry lease up to 10-7-2019. The report states that the following are the reasons for the accident:

(a) Though the quarry obtained various licences/consent from the authorities concerned the conditions in the licence/consent were not complied with which resulted in the accident.

(b) That quarrying was conducted vertically leading to the falling of a rock and the earth from the top level, and the earth was heaped very near to the quarrying area raising the danger to a very high level.

© As the quarrying operation was performed vertically the safety of the workers came under serious threat.

(d) The use of high power explosives for blasting and the resultant vibrations, unscientific mining, quarrying without adequate safety measures, etc; are also the reason for the accident.

(e) There was no proper escape route and other facilities in the quarry for the workers to escape in case of emergencies and accidents.

(f) The explosion was conducted without removing the heaped earth from the top leading for the accident.

The District Collector in his report further stated that the prohibition order was given to seven quarries stopping their operation, in the Kizhakkambalam Village. Report mentions that a meeting was convened under the Chairmanship of Additional District Magistrate including MLA, President & Vice President of the Kizhakkambalam Grama Panchayat, RDO Muvattupuzha, Geologist, Members of the Panchayat, President & Gen. Secretary of All Kerala Metal Crusher Owners' Association, District Secretary of All Kerala Quarry Owners' Association and Owners of the quarries and Metal Crusher units; that discussion was conducted with regard to the accident at the G.K.Granites; that a decision was taken to inspect all the quarries in the Kizhakkambalam Grama Panchayat

jointly by the District Geologist who is the Convener, RDO Muvattupuzha, President of Kizhakkambalam Grama Panchayat, President and Secretary of the Quarry owners' Association and to submit the report to District Collector who in turn will consider the report and then to decide whether to give consent to continue the operation of the lawful quarries and to prohibit the illegal quarries. The District Collector stated that on the basis of the report of the Geologist, prohibition order was issued to the quarries run by Yasodharan, Varghese Kutty Variyampuram, Rajappan and V.V.Varghese in the Kizhakkambalam Grama Panchayat and that consent was given to the other quarries to operate as per the conditions stipulated in the licence/consent issued to them by the competent authorities.

In the report sent by the Geologist, Mining and Geology Department, Ernakulam it is stated that the quarry in question is situated at Kizhakkambalam Village of Kunnathunad taluk; that a sub level caving of rock boulder and soil occurred at the quarry on 18-1-2008 at 10.30 a.m. which claimed the life of one worker and three workers sustained minor injuries and they were hospitalized and that the local enquiry revealed that at the time of accident four persons were engaged in the work at the quarry. According to the report, the accident occurred in such a way that rocky boulders and soil slipped from top to sublevel level of the quarry face and one person was trapped underneath the fallen masses of debris and died. The report further states that the Geologist and Assistant Geologist visited the spot around 3 p.m.

The report of the Geologist mentions that the quarry pit is about 25 m in depth

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and the subsidence occurred at the western side of the quarry where fresh rock faces were seen and on those spots extraction might have been progressing at the time of accident; that there are many criss-cross joints trending in different directions of very limited spacial extent and that the depth of weathering is about 1.3.m. According to the report, the owner of the unit got the following licences from the authorities concerned:

1. Quarrying lease No.230/07-08/5382/M3/07 dated 7-7-2007 for a period of 12 months issued by the Mining & Geology Department. The crusher unit installed by M/s G.K.Granites adjacent to the quarry has been registered as Registered Metal Crusher Unit vide order No.91/RMU/EKM/3554/M3/07 dated 13-9-2007 and 5-10-2007 and the firm has remitted Rs.4,00,000/- as compounding fee for the two cone crushers installed in the unit.
2. Explosive Licence No.E/SC/KL/22/156(E11331) dated 18-7-2007 in form No.22 issued by the Deputy Chief Controller of Explosives, Ernakulam which is valid up to 31-3-2009.
3. Panchayat Licence No.C2-71/07, C2-70/07, C2/69/07 dated 21-5-2007 issued by the Kizhakkambalam Grama panchayat valid up to 31-3-2008.
4. Licence No. PCB/RO-EKM/ICE(P)-CR88/07 issued by the Chief Environmental Engineer, Kerala State Pollution Control Board which is valid up to 11-12-2010 for running the crusher and Licence No.PCB/RO-EKM/ICO-QR9/F/2007 valid up to 31-12-2010 for conducting quarrying.

The report says that the quarrying operations in the quarry is managed by a

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person with Manager's Certificate of Competency to manage a metalliferous mine and he possess a Diploma in Mining Engineering.

The Geologist in his report states that the Government have decided to set up a seven member technical committee headed by the Principal Secretary in the Industries Department comprising members of senior officials in charge of mines, labour, safety and explosives in Central and State Government departments and that the Government order constituting the said committee will be issued shortly.

In the report sent by the Chief Environmental Engineer, Kerala State Pollution Control Board, Ernakulam it is stated that he has visited the said quarry on 25-1-2008 and it is observed that a metal crusher unit namely G.K.Granites was operating in the said compound. Report also states that the depth of quarrying is nearly 31 meters from the highest ground level to the bottom of quarry and seen provided necessary slope for excavation and that the collapsing occurred through a vertical joint in the rock from bottom to top. Report further states that the Board has issued the consent to the unit insisting to control dust, sound and to maintain a minimum clearance to the nearest residences from the place of blasting and subject to the clearance of Mining and Geology and Explosives department as per the provisions of the relevant statutes. The Chief Environmental Engineer, in his report, states that the cause of accident does not come under his purview and hence he has no more comments to offer.

Deputy Labour Commissioner, Ernakulam in his report states that the quarries come under the jurisdiction of Central Labour Ministry and hence the State Labour

department has no power to conduct any inspection and to take any action against them. Report adds that if any death, injury or disability occurs due to any accident they are entitled to compensation as per Workmen Compensation Act, 1923. Report mentions that applications were not received in the office of the Regional Joint Labour Commissioner, Ernakulam from the workers or the dependents of the worker who were employed in the quarry where the accident occurred. Report further states that on enquiry it is known that the operation of the quarry G.K.Granites stopped functioning from 21-1-2008. The report admits that other quarries in the district are functioning. Report mentions that the District Collector, Ernakulam has stopped the operation of all the quarries in the district consequent to the accident and deaths earlier in a quarry at Kuzhoor and that later the District Collector had given consent to restart the operation as the quarry owners assured in the conference that they will operate the quarries by providing all the safety measures.

The Secretary of the Kizhakkambalam Grama Panchayat, in his report, admits that on 18-1-2008 an accident occurred at the quarry owned by G.K.Granites situated at Oorakkad near Pookattupady in Ward No.XVII of Kizhakkambalam Grama Panchayat in which one worker died and three workers suffered injuries. Report states that the quarry started functioning about 30 years ago; that the quarry obtained licence from the Panchayat which is valid up to 31-3-2008 and that the Panchayat issued the licence to the quarry after properly verifying all the documents submitted by the quarry owner and also after inspection of the quarry site by the Panchayat officials. According to the report, the

Panchayat has not received any complaints from the local people against the functioning of the said quarry alleging violation of any conditions in the licence issued. The Secretary concludes his report by stating that there are no latches on the part of the Panchayat in issuing licence to the above quarry.

FINDINGS:

At this juncture I cannot but refer to the report of the District Collector, Ernakulam wherein he has stated that a conference was held and there was a discussion with regard to the accident at G.K.Granites and further a decision was taken at the conference for the inspection of all quarries in the Kizhakkambalam Grama Panchayat by the officers. The report, though does not give the date of conference in the office of the District Collector it is clear that the said conference might have been conducted after 18-1-2008, that is after the accident at G.K.Granites since in the report it is stated that the discussions were conducted with regard to the accident at G.K.Granites. The report is totally silent as to what action was taken against G.K.Granites since in the said report of the District Collector it is stated that three quarries run by Yashodharan, Varghese Kutty, Variyampuram, Rajappan and V.V.Varghese were given prohibition orders and but nothing is mentioned about the action taken against the G.K.Granites.

On going through the entire reports and hearing the licensee and the mines manager during my visit to the quarry it is crystal clear that no official from any department concerned visited the quarry before the accident and in fact it is to be noticed that the officials present at the quarry site during my visit admitted that no one visited the

quarry till the date of accident though the licensee took a different stand; but he could not produce any material to substantiate his claims. In my view the accident is only on account of rashness and negligence on the part of the persons who are running the quarry.

The report of the District Collector, Ernakulam shows that though the unit has obtained consent/licence from the concerned authorities the quarrying operation was not conducted as per the conditions mentioned in the said consent/licence.

The report of the Deputy Labour Commissioner, Ernakulam shows that District Collector, Ernakulam has stopped the operation of all the quarries in the District consequent to the accident and deaths at a quarry at Kuzhoor in Ernakulam District and that later the District Collector given consent to restart the operation as the quarry owners assured in the conference that they will operate the quarries by providing all the safety measures.

The Mines Manager, during my visit, informed me that he expected the possibility of the falling of rocks from the top level at any time and hence he put a wire fence at the ground level in the quarry. His explanation that the blast might have been triggered by some anti social elements after inserting the explosives by making a hole and later covering it with earth to prevent any one from seeing the concealed explosives in the earth is, on the face of it, unbelievable and too tall a story even for a layman to accept. If there had been a blast as claimed by him, the persons who later gathered would have noticed the tell tale signs like the formation of a crater at that place. It is to be

remembered at this stage that the police reached the scene and also conducted enquiries. The Sub Inspector of Police, Thadiyittaparamb, who was present at the site during my inspection, informed that a crime was registered u/s 174 CrPC under the caption “unnatural death” and the investigation is pending. To the specific question put by me he admitted that he examined number of witnesses before the date of my visit and also conducted the inquest. If there had been a blast, as claimed by the mines manager of the unit, the investigating officer would have certainly noticed the tell tale signs at the place of blast on the ground near the quarry. He did not support the explanation of the mines manager which was dished out to me. It is also surprising that the investigating officer did not consider it necessary to alter the crime from one u/s 174 CrPC to one u/s 304 (A) as death of a person at the blast was the result of the rash and negligence on the part of the quarry owner and his other employees like mines manager. The officer could not give any explanation for not altering the crime from one u/s 174 CrPC to one u/s 304 (A) since in my view the investigating officer must have had sufficient material to alter the crime and he ought to have proceed with the investigation in a proper and just manner. More over, though the quarry authorities noticed the said danger they did not take any effective steps to prevent the expected accident which shows severe lapse and negligence on their part in safeguarding the life of the human beings working in the quarry.

At the time of my visit the officials from several Government departments were present at the quarry and they admitted that no official inspected the quarry in question before the accident to verify whether the quarrying operations are bring conducted by

complying with the conditions stipulated in the consent/licence issued by the authorities concerned. This shows dereliction of duty on the part of the responsible officers who are bound to make periodical inspections of the quarries in their jurisdiction to find out if there are any violations and also to take proper steps on such violations. In fact the action of the District Collector, Ernakulam in issuing prohibitory orders to certain quarry owners, as could be seen from his report, after all the quarries in the Kizhakkambalam Grama Panchayat were inspected by concerned officials indicate that several quarries were functioning illegally and there was no proper mechanism to prevent such illegal operation.

Though my visit was intimated to the concerned Government departments well in advance nobody was present from the Mining & Geology Department who has a major role to play in the quarry matters.

Though a report was also called for from the Superintendent of Police (Rural), Ernakulam, in the matter by 30-1-2008 and as the said report was not received within the said date a reminder was also sent to him to submit the report by 25-2-2008 the Commission has not received the report till date which shows the indifference of the police to such grave matters and I have decided to forward this report without waiting indefinitely for the response from the police as action is to be taken by the Government without any delay on the suggestions made in this report.

Consequent to the death of five workers and injuries to two workers on account of an accident in a quarry at Kuzhoor of Ernakulam District I already gave a report with

thirteen recommendations to the State Government in HRMP No.5037/07 and the said recommendations should be taken up seriously for follow up action along with the recommendations made in this report.

Before I conclude this report, I had to advert to a petition handed over to me by Vackachan Augustine at the quarry. In the said petition he has stated that some local goondas have violated his human rights by not allowing him to do duty in the quarry. According to him, he is a supervisor in the G.K.Granites, a partnership firm and a reputed company, and has more than 25 years of experience in the industry. According to him, there was not a single accident in the quarry and that after the accident some hooligans under the guise of the public entered the mine, assaulted him as well as the other employees and also threatened them with dire consequences. He has alleged that employees were obstructed from carrying out rescue operations and that on account of the threat by the goondas the workers did not venture to come to the site and the casual workers left the place. According to him, these atrocities were conducted in the presence of the police force. In the said petition he has also made allegation against the media by stating that the reports lacks truth and substance. According to him, the hooligans attempted to destroy a diesel tank having a capacity of 18000 litres and they were prevented by local police who resorted to lathicharge. He has further alleged that the accident in the site is not a mere accident but a planned action by some anti-social elements with a view to destroy G.K.Granites. He has also alleged about an incident which took place two weeks ago before the accident. According to him, one motor cycle

belonging to the hooligans which was taken custody by the police and parked at Thadiyittaparamb Police Station were later damaged by a group of goondas and sand was also thrown to the diesel tank of the lorry belongs to G.K.Granites which was also parked at the police station. He has also stated in the petition that on account of the order issued to stop the quarrying operation the workers have become jobless and that the medias and political parties do not recognize their poor condition.

The above petition handed over to me at the site contains allegations against some anti-social elements and according to the petitioner, the anti-social elements were time and again trying to interrupt the functioning of G.K.Granites and that even on the date of accident they prevented rescue operations. In the petition the petitioner has nowhere whispered that a complaint was given to the police with regard to the disruptive activities indulged in by the anti-social elements prior to the date of accident and in the petition it is also not mentioned that the petitioner had given any complaint with regard to the alleged activities of the goondas on 18-1-2008. The said petition was given to me on 23-1-2008 at the site which shows that till my visit the petitioner did not consider it necessary to give any complaint to any one and I suspect that the averments contained in the petition which was handed over to me, must have been at the behest of the quarry operator on coming to know that I will be visiting the quarry on 23-1-2008 with a view to escape from the consequences of the accident by making allegations against unknown persons by calling them goondas.

In any event I have already noticed in my report that the accident at the quarry

was not on account of blasting conducted by anti-social elements but was on account of rashness and negligence on the part of the quarry operators and therefore I do not accept the explanations given in the petition for the accident.

I also make the following recommendations to the State Government in this HRMP.

RECOMMENDATIONS:

- 1. As the officials of the licensing authorities have shown total negligence in performing their duties and responsibilities by not inspecting and assuring the lawful functioning of the quarry, disciplinary action should be taken against them after conducting proper enquiry.**
- 2. From the statement of the Mines Manager (Blastman) appointed in the unit, it is clear that he expected possibility of falling of rock from the top and he put wire fencing at the ground level but it is seen that no effective, fruitful and adequate precautionary or preventive steps were taken by the quarry owner to protect the life of the workers in the quarry. Hence the police shall be directed to conduct investigation in the crime registered in a proper and just manner and prosecute those who are responsible for the accident at the said quarry.**
- 3. Though the Sub Inspector of Police, Thadiyittaparamb, the investigating officer investigating the crime stated that he has**

registered case under 174 Cr.P.C he has not altered the section in spite of the fact that he has questioned number of witnesses in the matter, the investigation in the case shall be entrusted to an officer who is holding a senior rank in the police department.

4. The Superintendent of Police (Rural), Ernakulam shall be strictly instructed to send the reports whenever they are called for by this Commission.
5. As nobody was present from the Mining & Geology Dept, Ernakulam, at the quarry site at the time of my visit, though the visit was intimated well in advance, the officer concerned shall be strictly warned to avoid such practices in future.
6. As the report of the Geologist, Mining & Geology Department shows that the Government have decided to set up a seven member technical committee under the head of the Principal Secretary, Industries Department with an intention to prevent accidents at quarries and mines immediate action may be taken to set up the said committee to safeguard the lives of the workers working in the quarries and mines.

7. **Immediate action may be taken to implement the recommendations made by me in H R M P No.5037/07, vide my order dated 15-1-2008, after the visit to the quarry at Kuzhoor, Ernakulam District on 26-12-2007.**

**Justice N.Dhinakar
Chairperson.**