
(2013) 07 KL CK 0022

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15202 of 2013

Julias Nikhithas

APPELLANT

Vs

Inspector General of Police

RESPONDENT

Date of Decision : 30-07-2013

Acts Referred:

Kerala Anti-Social Activities (Prevention) Act, 2007 — Section 15(1), 15(2)

Citation : (2013) 3 ILR (Ker) 708 : (2013) 3 KHC 420 : (2013) 3 KLT 623

Hon'ble Judges : M.L. Joseph Francis, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : K.S. Arun Kumar, M.S. Dileep and T.V. Anitha, for the Appellant;
Kochumol Koduvath, Government Pleader, for the Respondent

Judgement

K.T. Sankaran, J.—The petitioner challenges Exhibit P2 order dated 30.4.2013 passed by the Inspector General of Police, Kannur, under S. 15(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as the "KAAPA") as well as Exhibit P5 order passed by the Advisory Board in O.P. No. 18 of 2013. The Inspector General of Police issued Exhibit P1 show cause notice dated 5.2.2013 to the petitioner under S. 15(1) of the KAAPA. In Exhibit P1, it was mentioned that the petitioner was involved in five crimes registered at Kuttiady Police Station and that he was involving in anti-social activities. In Exhibit P1, it was proposed to pass an order under S. 15(1) of the KAAPA, restraining the petitioner from entering into the territorial limits of the District Police Chief, Kozhikode Rural for a period of one year.

2. The petitioner filed a reply to the show cause notice. Copy of the reply is not produced in the Writ Petition. We had directed the learned Government Pleader to make available the original records. In the objections to the show cause notice, apart from raising various contentions, the petitioner stated that for the grounds mentioned in the objections and "other submissions that are to be made at the time of hearing", the proceedings are liable to be dropped.

3. After receipt of the objections to the show cause notice, the Inspector General

of Police, Kannur, passed Exhibit P2 final order dated 30.4.2013 under S. 15(1) of the KAAPA, restraining the petitioner from entering into the jurisdictional limits as mentioned in Exhibit P1 show cause notice for a period of one year.

4. The petitioner submitted a representation to the Advisory Board under S. 15(2) of the KAAPA. The Advisory Board, by Exhibit P5 order dated 12th June, 2013, confirmed Exhibit P2 order. The Advisory Board held that out of the five crimes mentioned in Exhibit P1 show cause notice and Exhibit P2 order, Crime No. 408. of 2011 of Kuttiady Police Station ended in acquittal of the petitioner. The rest of the four cases were taken into account by the Advisory Board and it was held that the petitioner satisfies the definition of known rowdy under the KAAPA.

5. The learned counsel for the petitioner submitted that before passing Exhibit P2 order, the petitioner was not given an opportunity of being heard. The learned counsel for the petitioner also submitted that on that short ground, Exhibit P2 order is liable to be quashed.

6. Section 15(1) of the KAAPA reads as follows:

15. Power to make orders restricting the movements of certain persons:

(1) The District Magistrate or a Police Officer of and above the rank of Deputy Inspector General having jurisdiction, if satisfied on information received in respect of a known goonda or known rowdy, after having given him an opportunity to be heard by notice served on him or pasted at his ordinary place of residence, if any in Kerala, that he is indulging in or about to indulge in or likely to indulge in anti-social activities and with a view to prevent him from so acting at any place within the jurisdiction of such Magistrate or Officer, may make an order,-

(a) directing that, except in so far as he may be permitted by the conditions made in the order, he shall not visit any such area or place as may be specified in the order, for a period not exceeding one year;

(b) requiring him to report his movements within the State, in such manner, at such times, and to such authority or person as may be specified in the order, for a period not exceeding one year:

Provided that a copy of the order along with the grounds for issuing such order shall be communicated to the Government through the Director General of Police.

It is mandatory that the authority passing an order under S. 15(1) of the KAAPA should provide an opportunity to be heard to the person concerned. We have perused the files and it is seen that no notice fixing a date of hearing was issued and no opportunity of being heard was afforded to the petitioner. The learned Government Pleader submitted that within 15 days from the date of show cause notice, at any time, the petitioner could have approached the Inspector General of Police and offered his explanation. We are not impressed with this argument.

The petitioner cannot wander in the office of the Inspector General of Police on all days and find out whether he is available and whether he is prepared to hear the petitioner. The legal requirement is that a notice should be issued to the petitioner and he should be heard if he appears. From the reply to the show cause notice, it is clear that the petitioner wanted to be heard, but no opportunity of being heard was afforded to him. On that ground, Exhibit P2 order passed by the Inspector General of Police and Exhibit P5 confirmation order passed by the Advisory Board are liable to be quashed.

For the aforesaid reasons, the Writ Petition is allowed and Exhibit P2 order passed by the Inspector General of Police and Exhibit P5 confirmation order passed by the Advisory Board are quashed. The Inspector General of Police, Kannur, shall hear the petitioner and pass appropriate orders. The petitioner shall appear before the Inspector General of Police on 19th August, 2013, at 10 A.M.