
(2009) 11 KL CK 0137

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 34025 of 2009

Shibu

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 1 ILR (Ker) 594 : (2009) 4 KLT 872

Hon'ble Judges : R. Basant, J;M.C. Hari Rani, J

Bench : Division Bench

Advocate : P. Vijaya Bhanu and M.M. Deepa, for the Appellant; Smiths Sukumaran, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—Against the petitioner an order u/s 15(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007 (hereinafter referred to as the "KAAPA") has been passed by the 2nd respondent. Ext.P3 is the said order of restraint passed u/s 15(1) of the KAAPA. That reveals that show cause notice was issued to the petitioner. He was given opportunity to make his representation. He was heard and it was thereafter that the impugned order Ext.P3 was passed.

2. The petitioner claims to be aggrieved by Ext.P3 order. He has rushed to this Court with this Writ Petition under Article 226 of the Constitution of India. It is a well recognised self imposed rule of orderly procedure consistently followed by Constitutional Courts that though the sweep of the powers under Article 226 of the Constitution is wide, such powers, in the absence of exceptional and compelling reasons, shall not be invoked when an equally efficacious and alternative remedy is available to the aggrieved party. We see that the petitioner has an equally efficacious alternative remedy to challenge the impugned order u/s 15(2) of the KAAPA. Of course Section 15(2) of the KAAPA does not use the expression "appeal". But only states that a representation can be made to the Advisory Board duly constituted u/s 8 of the KAAPA. We extract Section 15(2) of

the KAAPA below:

Section 15:

(1)....

(2) Any person aggrieved by an order issued under Sub-section (1) may represent before the Advisory Board within fifteen days of the date of service of the order and the Board on receipt of such representation, consider the same, and after enquiring into the facts and circumstances in such manner as it may deem fit shall, within thirty days of the date of receipt of such representation, annul, amend or confirm the order, either in part or in full.

3. Though the right to challenge is couched in the expression "representation", it is evident that the Advisory Board constituted u/s 8 of the KAAPA is obliged to consider such representation in challenge and has the legal competence to "annul, amend or confirm" the order. In these circumstances, we take the view that though the expression "appeal" is not employed in Section 15(2) of the KAAPA, there is an effective right for the aggrieved to challenge an order of restraint passed u/s 15(1), before a duly constituted Advisory Board u/s 8 of the Kerala Anti-Social Activities (Prevention) Act, 2007 (hereinafter referred to as the (KAAPA")), u/s 15(2) of the KAAPA, The Legislature in its anxiety to ensure expedition has also stipulated that the Advisory Board is obliged to dispose of such challenge within a period of 30 days from the receipt thereof. By no stretch of imagination can it be held that Section 15(2) of the KAAPA does not offer to the aggrieved an effective, efficacious and alternative remedy.

4. No compelling or exceptional reasons are shown to exist which can persuade us to ignore the self imposed rule of caution and circumspection and entertain the challenge raised by the petitioner against the impugned order by invoking our jurisdiction under Article 226 of the Constitution.

5. In the result, this Writ Petition is dismissed. We may hasten to observe that the dismissal of this Writ Petition will not in any way fetter the right of the petitioner to make appropriate representation u/s 15(2) of the KAAPA to challenge the impugned order, Ext.P3.