

(2013) 06 KL CK 0083
In the High Court Of Kerala
Case No : W.P. (C). No. 14471 of 2013

Sukumaran

APPELLANT

Vs

Inspector General of Police

RESPONDENT

Date of Decision : 07-06-2013

Acts Referred:

Citation : (2014) 1 KLJ 745 : (2014) 1 KLT 213

Hon'ble Judges : K.T. Sankaran, J;B. Kemal Pasha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

K.T. Sankaran, J.—The Inspector General of Police, Kannur Range, passed Exhibit P1 order dated 2.4.2013 u/s 15(1) of the Kerala Anti-Social Activities (Prevention) Act (hereinafter referred to as the KAAPA), restraining the petitioner from entering into the Kozhikode Rural Police District for a period of one year except for specified events and that too with the previous permission of the District Rural Police Chief. The petitioner filed a representation u/s 15(2) of the KAAPA before the Advisory Board, challenging Exhibit P1 order. As per Exhibit P4 order, the Advisory Board rejected the representation as time barred. The Advisory Board held that it has no jurisdiction to condone the delay in filing the representation u/s 15(2).

2. The petitioner filed this Writ Petition challenging Exhibit P4 order dated 25th May 2013, passed by the Advisory Board as well as Exhibit P1 order dated 2.4.2013 passed by the Inspector General of Police u/s 15(1) of the KAAPA.

3. In W.P.(C) No. 2288 of 2013, we have held, by a detailed judgment that the Advisory Board has no jurisdiction to condone the delay in filing the representation u/s 15(2) of the KAAPA. Therefore, we are not inclined to entertain the challenge made by the petitioner against Exhibit P4 order passed by the Advisory Board.

4. As regards the challenge against Exhibit P1 order u/s 15(1) of the Act, we are

of the view that the petitioner is entitled to succeed. In W.P.(C) No. 2288 of 2013, we have held that the order of restraint u/s 15(1) of the KAAPA should reflect the subjective satisfaction of the authority as to whether the person concerned is a "known goonda" or a "known rowdy". KAAPA defines "goonda", "known goonda", "rowdy" and "known rowdy". To justify a restraint order u/s 15(1) of the KAAPA, the person concerned must be either a "known goonda" or a "known rowdy" and the authority should be satisfied that he is indulging in or is likely to indulge in or is about to indulge in anti-social activities. In the present case, the Inspector General of Police stated in Exhibit P1 order that he has confirmed his earlier decision. The earlier decision referred to in Exhibit P1 is the prima facie satisfaction arrived at by the authority. A show cause notice was issued based on that prima facie satisfaction that the petitioner is a "known rowdy". He replied and challenged the prima facie satisfaction. In Exhibit P1 order, the Inspector General of Police has not recorded the satisfaction as to whether the petitioner is a "known goonda" or a "known rowdy". Moreover, by Exhibit PI, Inspector General of Police has confirmed the earlier decision. It would mean that he had taken a decision earlier. There was no such decision. Therefore, there is no question of confirmation of the earlier order. There is no provision in the KAAPA for confirmation of an order u/s 15(1) of the KAAPA.

5. We have also held in W.P. (C) No. 2288 of 2013 that even if the Advisory Board decides the case against the person concerned or if the Advisory Board rejects the representation on the ground of limitation, the person concerned will be entitled to challenge the order passed by the authority u/s 15(1) of the KAAPA in a Writ Petition under Article 226 of the Constitution of India.

For the aforesaid reasons, we allow the Writ Petition and quash Exhibit P1 order dated 2.4.2013 passed by the Inspector General of Police, Kannur Range. However, it is made clear that this judgment would not preclude the Inspector General of Police from passing a fresh order in accordance with law.