
(2014) 02 KL CK 0114
In the High Court Of Kerala
Case No : WP (C). No. 2336 of 2014 (N)

Tomy Mathew

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

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

Citation : (2014) 02 KL CK 0114

Hon'ble Judges : P. Ubaid, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : S. Sachithananda Pai, Advocate for the Appellant; P. Vijayaraghavan, by State Attorney, Advocate for the Respondent

Judgement

K.T. Sankaran, J.—The petitioner is aggrieved by Ext.P3 order dated 23.10.2013 issued by the Inspector General of Police, Kochi Range u/s 15(1) of the Kerala Anti-Social Activities (Prevention) Act. Before issuing Ext.P3 order, a show cause notice was issued to the petitioner. The petitioner submitted a reply to the show cause notice. Thereafter, without affording an opportunity of being heard to the petitioner, Ext.P3 order was passed against him, restraining him from entering into Idukki District for a period of one year.

2. After issuing show cause notice, evidently no opportunity of being heard was afforded to the petitioner. No date of hearing was fixed. Section 15(1) of the KAAPA provides for an opportunity of being heard by issuing a notice served on the person concerned.

3. In Julias Nikhithas Vs. Inspector General of Police, it was held thus:

8. 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.

4. It is stated in paragraph 6 of Ext.P3 that after the receipt of the show cause notice, the petitioner did not seek an opportunity to examine the documents nor did he appear in person and explain his stand. Admittedly, no date was fixed for hearing. Therefore, the petitioner cannot be expected to appear before any authority at any time he pleases. The principles laid down in *Julias Nikhithas Vs. Inspector General of Police*, squarely apply to the present case as well.

For the aforesaid reasons Ext.P3 order No.09/BU/CAMP/13KOR dated 23.10.2013 issued by the Inspector General of Police, Kochi Range is quashed. The Inspector General of Police shall fix a date for hearing and afford an opportunity of being heard to the petitioner and shall pass fresh orders.