

(2013) 06 KL CK 0025

In the High Court Of Kerala

Case No : Writ Petition (C) No. 13362 of 2013

Vineesh O.K.

APPELLANT

Vs

Inspector General of Police

RESPONDENT

Date of Decision : 11-06-2013

Acts Referred:

Citation : (2013) 2 KHC 882

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

Bench : Division Bench

Advocate : K.K. Ravindranath, for the Appellant; T. Asaf Ali, Director General of Prosecution, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Sankaran, J.—Ext. P1 show-cause notice dated 10/05/2013 was issued to the petitioner by the Inspector General of Police, Kannur Range, directing the petitioner to show-cause as to why a restraint order u/s 15(1) of the Kerala Anti-Social Activities Prevention Act (hereinafter referred to as the (KAAPA) should not be passed against him. In Ext. P1, it is stated that the Inspector General of Police was prima facie satisfied that the petitioner is a "known rowdy" as defined under the KAAPA. It is stated that the petitioner submitted reply to the show-cause notice, after filing the writ petition, and within the time granted. The prayer in the Writ Petition is to quash Ext. P1 show-cause notice by the issue of a writ of certiorari. It is alleged that the petitioner does not satisfy the definition of "known rowdy" and therefore, no action could be taken against him u/s 15(1) of the KAAPA.

2. In the counter-affidavit filed by the respondent, a preliminary objection is raised that the Writ Petition is premature and that it is not maintainable. It is submitted that no final decision was taken on Ext. P1 show-cause notice. It is stated that the reply submitted by the petitioner would be considered along with the facts and circumstances of the case and a final order will be passed u/s 15(1) of the KAAPA on the merits. It is also pointed out that against the order passed u/

s 15(1) of the KAAPA, the petitioner has a statutory remedy of filing a representation before the Advisory Board u/s 15(2) of the KAAPA.

3. In Shibu Vs. State of Kerala, a Division Bench of this Court held that the right to file representation to the Advisory Board u/s 15(2) of the KAAPA is an effective alternative remedy and therefore, a Writ Petition challenging the order u/s 15(1) of the KAAPA cannot be maintained, unless there are compelling or exceptional reasons. The Division Bench held thus: 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.

It is well settled that normally a Writ will not issue to quash a show-cause notice, unless the very issue of show-cause notice is wholly without jurisdiction. We do not find any such ground in the present case. It is for the authority concerned to look into the reply submitted by the petitioner, to consider all the relevant facts and circumstances of the case and to arrive at a conclusion and record the subjective satisfaction that an order u/s 15(1) of the KAAPA is necessary or not in the case. We are of the view that We would not be justified in interfering at this stage. There are no grounds for exercising the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Writ Petition fails and it is accordingly dismissed.