

Johnson Vs. State of Kerala

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Court : Kerala

Decided On : Feb-25-2014

Judge : Honourable Mr.Justice K.T.Sankaran

Appellant : Johnson

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.T.SANKARAN & THE HONOURABLE MR. JUSTICE P.UBAID TUESDAY, THE25H DAY OF FEBRUARY20146TH PHALGUNA, 1935 WP(C).No. 5246 of 2014 (E) PETITIONER: JOHNSON, AGED28YEARS S/O.JOSE, VALLOORAN HOUSE, KARUKUTTY.P.O. ERNAKULAM DISTRICT. (REPRESENTED BY HIS FATHER JOSE AGED65YEARS, S/O.ESTHAPANU, VALLOORAN HOUSE KARUKUTTY.P.O., ERNAKULAM DISTRICT). BY ADVS.SRI.E.C.POULOSE SMT.BOBBOY RAPHEAL.C RESPONDENTS:

1. STATEOF KERALA REPRESENTED BY SECRETARY, DEPARTMENT OF HOME AFFAIRS SECRETARIAT, THIRUVANANTHAPURAM. 695 001.
2. THE ADVISORY BOARD REPRESENTED BY THE CHAIRMAN, ERNAKULAM. 682 026.

3. THE INSPECTOR GENERAL OF POLICE KOCHI RANGE, ERNAKULAM. 683 101.

4. THE SUPERINTENDENT OF POLICE (RURAL) ALUVA, ERNAKULAM. 683 101.

5. THE CIRCLE INSPECTOR OF POLICE ANGAMALY POLICE STATION, ERNAKULAM. 683 572.

6. THE SUB INSPECTOR OF POLICE ANGAMALY POLICE STATION, ERNAKULAM. 683 572. ADDITIONAL DIRECTOR GENERAL OF PROSECUTION SRI.K.I.ABDUL RASHEED THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-02-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 5246 of 2014 APPENDIX PETITIONER'S EXHIBITS ----- EXT.P1 TRUE COPY OF

ORDER

DATED 30.12.2013 ISSUED BY THE 3D RESPONDENT. EXT.P2 TRUE COPY OF THE REPLY DATED 31.7.2013 SUBMITTED BY THE PETITIONER BEFORE THE 3D RESPONDENT. EXT.P3 TRUE COPY OF THE

ORDER

DATED 27.9.2013 IN CRL.M.C.NO.4116/2013 OF THIS COURT. EXT.P4 TRUE COPY OF THE

ORDER

DATED 11.10.2013 IN C.C.NO.448/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT II, ALUVA. RESPONDENTS' EXHIBITS: NIL ----- //TRUE COPY// AHZ/ K.T.SANKARAN & P.UBAID, JJ.

----- W.P.(C) NO. 5246 OF 2014 E
----- Dated this the 25th day of February, 2014

JUDGMENT

K.T.Sankaran, J.

Ext.P1 order dated 30.12.2013 was passed by the Inspector General of Police, Kochi Range, under Section 15(1) of the Kerala Anti Social Activities (Prevention) Act, 2007 (hereinafter referred to as 'KAAPA'), against the petitioner. As per Ext.P1 order, the petitioner was directed not to visit any place within the jurisdiction of the District Police Chief, Ernakulam Rural, for a period of one year. The petitioner did not approach the Advisory Board, as provided under Section 15(2) of KAAPA. It is submitted that the time for filing representation before the Advisory Board was over and, therefore, the petitioner did not make a representation to the Advisory Board, as provided under Section 15(2) of KAAPA. It is settled by the decision of this Court that even without filing a representation before the Advisory Board under Section 15(2) of KAAPA, the original order can be challenged in a Writ Petition. [See Vineesh v. Inspector General of Police :

2013. (3) KLT SN109(C.No.116)] W.P.(C) NO. 5246 OF2014E ::

2. ::

2. Before issuing Ext,P1 order, a show cause notice was issued to the petitioner. The petitioner submitted a reply to the show cause notice. Thereafter, no date was fixed for hearing before passing Ext.P1 order. A Division Bench of this Court in Julias Nikhithas v. Inspector General of Police :

2013. (3) KLT623 held thus: "8. It is mandatory that the authority passing an order under Section 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...." W.P.(C) NO. 5246 OF2014E ::

3. ::

3. From Ext.P1 order itself, it is clear that no opportunity of being heard was afforded to the petitioner, after he submitted reply to the show cause notice. In paragraph 6 of Ext.P1 order, it is stated that though an opportunity was afforded to inspect the documents, the petitioner did not turn up.

4. The learned Government Pleader, on instructions, submitted that after issuing the show cause notice no date was fixed for hearing and the petitioner was not heard in person. Thus it is clear that the legal requirement of Section 15(1) of KAAPA was not complied with. The learned counsel for the petitioner submitted that Crime No.421 of 2014 of Angamaly Police Station was registered against the petitioner for the alleged violation of Ext.P1 order and the petitioner was detained. Though an application for bail was submitted, the Bail Application was also rejected.

5. In the light of the decision in *Julias Nikhithas v. Inspector General of Police* :

2013. (3) KLT623 Ext.P1 order is liable to be quashed. Accordingly, the Writ Petition is allowed and Ext.P1 order W.P.(C) NO. 5246 OF2014E ::

4. :: No.44(AM)/Camp/12.K.O.R. Dated 30.12.2013, issued by the Inspector General of Police, Kochi Range, is quashed. If the petitioner is undergoing detention only on the ground that he has violated Ext.P1 order, he shall be released forthwith, unless his detention is required for any other purpose. Issue certified copy of the judgment today itself. (K.T.SANKARAN) Judge (P.UBAID) Judge ahz/

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