

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

FRIDAY, THE 2ND DAY OF JUNE 2023 / 12TH JYAISHTA, 1945

WP (CRL.) NO. 225 OF 2023

PETITIONER:

ASHRAF ALI,
AGED 37 YEARS, S/O AHAMMED,
PAROLI VEEDU, PANG- CHONDI, KADAMPUZHA PS.,
MALAPPURAM DISTRICT - 676533

BY ADVS.

RENJITH B.MARAR
LAKSHMI.N.KAIMAL
ARUN POOMULLI
PREETHA S CHANDRAN
ABHIJITH SREEKUMAR

RESPONDENTS:

- 1 THE STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT,
TRIVANDRUM, PIN - 685001
- 2 THE ADVISORY BOARD,
REPRESENTED BY THE SECRETARY, KERALA ANTI-SOCIAL
ACTIVITIES (PREVENTION) ACT, VIVEKANANDA NAGAR,
ELAMAKKARA, KOCHI, KERALA, PIN - 682026
- 3 DEPUTY INSPECTOR GENERAL OF POLICE,
RANGE OFFICE, VELIYANNUR THRISSUR - 680001
- 4 DISTRICT POLICE CHIEF,
MALAPPURAM, PIN - 676505
SRI.K.A.ANAS PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 02.06.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

W.P.(Crl) No.225 of 2023

2

P.B.SURESH KUMAR & C.S.SUDHA, JJ.

W.P.(Crl) No.225 of 2023

Dated this the 2nd day of June, 2023

JUDGMENT

P.B.Suresh Kumar, J.

This writ petition is instituted challenging Ext.P1 order issued under Section 15(1)(a) of the Kerala Anti-Social Activities (Prevention) Act, 2007 (the Act), restraining the petitioner from entering Malappuram Revenue District for a period of one year.

2. Heard the learned counsel for the petitioner as also the learned Government pleader.

3. Ext.P1 order refers to the various prejudicial activities allegedly committed by the petitioner. The last prejudicial activity referred to in Ext.P1 is the involvement of the petitioner in Crime No.244 of 2022 of Kolathur Police

Station. The occurrence which is the subject matter of the said crime took place on 06.05.2022 and the petitioner was granted bail in the said case on 20.05.2022. On 25.08.2022, the fourth respondent, the District Police Chief, Malappuram initiated proceedings for restraining the petitioner from entering Malappuram Revenue District in terms of Section 15(1)(a) of the Act by forwarding his recommendation for the said purpose to the competent authority under the Act. Ext.P1 order was passed on the basis of the said recommendation on 13.10.2022.

4. Although several grounds were raised in the writ petition, only two grounds were pressed by the learned counsel for the petitioner at the time of hearing. The first ground is that there was inordinate delay between the last prejudicial activity stated to have been committed by the petitioner and the date of initiation of proceedings; that the said delay has not been satisfactorily explained in the impugned order and the same is, therefore, vitiated by non application of mind on the question whether there exists a live link between the prejudicial activities and the externment. The second

ground is that the externment is for the maximum period permissible under Section 15(1)(a) of the Act and when an externment order is issued for the maximum period, the order should disclose the reason for doing so, and inasmuch as the impugned order does not disclose the said reason, the same is vitiated for want of due application of mind on that score as well. The learned counsel for the petitioner relied on the judgment of the Apex Court in **Deepak v. State of Maharashtra**, 2022 SCC OnLine SC 99, in support of the said argument.

5. The learned Government Pleader met the first ground, pointing out that the delay in initiating the proceedings has been satisfactorily explained in the externment order. He has brought to our notice the averments in paragraph 14 of the order, in support of the said argument. As regards the second ground, the argument advanced by the learned Government Pleader is that paragraph 15 of the impugned order discloses the reasons for imposing an externment order for the maximum period. As regards the argument raised by the learned counsel

for the petitioner based on the decision of the Apex Court in **Deepak**(*supra*), it was pointed out by the learned Government Pleader that the said decision cannot be understood as one laying down the proposition that every order of externment issued for the maximum period should contain the reason for doing so as well. According to the learned Government Pleader, it can only be understood as a decision on the facts of the said case.

6. We have considered the arguments advanced by the learned counsel for the parties on either side.

7. No doubt, there has to be a live link between the prejudicial activities and the decision of the competent authority. The petitioner is right in contending that if there is inordinate delay between the last prejudicial activity and the order of externment and if the said delay is not explained in the order, the order would be vitiated for want of due application of mind. The question whether the delay has been satisfactorily explained is a question to be examined on the facts of each case. Reverting to the facts of the present case, as noted, the

last prejudicial activity, namely involvement of the petitioner in Crime No.244 of 2022 of Kolathur Police Station is one that took place on 06.05.2022. He was granted bail in the said case on 20.05.2022. Proceedings have been initiated only on 25.08.2022. There is therefore a delay of 3 months and 5 days in initiating proceedings under the Act. Paragraph 14 of the Ext.P1 order dealing with the delay reads thus:

"അപ്പീലിന്റെ 2007 ലെ കേരള സാമൂഹ്യ വിരുദ്ധപ്രവർത്തനങ്ങൾ (തടയൽ) നിയമത്തിലെ വകുപ്പ് 15(1)(a) പ്രകാരം നടപടി സ്വീകരിക്കുന്നതിനായി അപ്പീലിന്റെ ഉൾപ്പെട്ട കേസുകളുടെ വിവരങ്ങളും രേഖകളും ശേഖരിച്ച് പ്രാഥമിക റിപ്പോർട്ട് തയ്യാറാക്കി സമർപ്പിക്കുന്നതിൽ മലപ്പുറം ജില്ലാ പോലീസ് മേധാവിയുടെ ഭാഗത്തുനിന്നും നീതീകരിക്കുന്നവർക്കെതിരെ കഠിനമായ നടപടിയെടുക്കുന്നതിനുള്ള അനുമതി നൽകിയിട്ടില്ലെന്നും അതുകൊണ്ട് തീർപ്പാക്കിയിട്ടില്ലെന്നും ഉണ്ടായിട്ടില്ലെന്നും അന്വേഷിച്ചിട്ടുള്ളതാണ്."

Even though we are unable to give our stamp of approval to the manner in which the competent authority has dealt with the aspects relating to the delay in the order, having regard to the totality of the facts and circumstances of this case, we are unable to accept the argument that the order is vitiated for want of due application of mind on the aspect of the live link to be maintained between the prejudicial activity and the externment of the petitioner.

8. As Section 15(1)(a) of the Act makes a serious inroad on the personal liberty of citizens guaranteed under Article 19(1)(d) of the Constitution, it is an extraordinary power, to be exercised under extra ordinary circumstances. An externment order would certainly deprive a citizen concerned of his fundamental right of free movement throughout the territory of India. At times, it would also prevent a citizen from residing in his house with his family during the subsistence of the order. In the context of a similar provision contained in Section 58 of the Maharashtra Police Act, 1951, the Apex Court has held in **Deepak** (*supra*) that there has to be due application of mind on the part of the competent authority for deciding the duration of the externment, and the subjective satisfaction of the competent authority on that aspect shall also be recorded in the order. Paragraph 13 of the judgment in **Deepak** reads thus:

“13. Section 58 of the 1951 Act reads thus:

“58. Period of operation of orders under section 55, 56, 57 and 57A - A direction made under section 55, 56,57 and 57A not to enter any particular area or such area and any District or Districts, or any part thereof,

contiguous thereto, or any specified area or areas as the case maybe, shall be for such period as may be specified therein and shall in no case exceed a period of two years from the date on which the person removes himself or is removed from the area, District or Districts or part aforesaid or from the specified area or areas as the case may be".

On a plain reading of Section 58, it is apparent that while passing an order under Section 56, the competent authority must mention the area or District or Districts in respect of which the order has been made. Moreover, the competent authority is required to specify the period for which the restriction will remain in force. The maximum period provided for is of two years. Therefore, an application of mind on the part of the competent authority is required for deciding the duration of the restraint order under Section 56. On the basis of objective assessment of the material on record, the authority has to record its subjective satisfaction that the restriction should be imposed for 16 a specific period. When the competent authority passes an order for the maximum permissible period of two years, the order of externment must disclose an application of mind by the competent authority and the order must record its subjective satisfaction about the necessity of passing an order of externment for the maximum period of two years which is based on material on record. Careful perusal of the impugned order of externment dated 15th December 2020 shows that it does not disclose any application of mind on this aspect. It does not record the subjective satisfaction of the respondent no.2 on the basis of

material on record that the order of externment should be for the maximum period of two years. If the order of externment for the maximum permissible period of two years is passed without recording subjective satisfaction regarding the necessity of extending the order of externment to the maximum permissible period, it will amount to imposing unreasonable restrictions on the fundamental right guaranteed under clause (d) of Article 19(1) of the Constitution of India.”

9. As noted, Section 15 of the Act, insofar as it relates to externment is similar to Section 58 of the Maharashtra Police Act, 1951. The relevant portion of Section 15 of the Act reads thus:

“15. Power to make orders restricting the movements of certain persons.- (1) The District Magistrate or a Police Officer of and above the rank of Deputy Inspector General having jurisdiction, if satisfied on information received in respect of a known goonda or known rowdy, after having given him an opportunity to be heard by notice served on him or pasted at his ordinary place of residence, if any in Kerala, that he is indulging in or about to indulge in or likely to indulge in anti-social activities and with a view to prevent him from so acting at any place within the jurisdiction of such Magistrate or officer, may make an order,-

(a) directing that, except insofar as he may be permitted by the conditions made in the order, he shall not visit any such area or place as may be specified in the order, for a period not exceeding one year;

(b) requiring him to report his movements within the State, in such manner, at such times, and to such authority or person as may be specified in the order, for a period not exceeding one year:

Provided that a copy of the order along with the grounds for issuing such order shall be communicated to the Government through the Director General of Police. ”

As evident from the extracted provision, the Statute confers power on the competent authority to pass an externment order for a period not exceeding one year. In other words, having regard to the facts and circumstances of each case, the competent authority is empowered to pass an order of externment for an appropriate period and the only restriction on the power, as regards the period, is that the same shall not exceed one year. Inasmuch as the Statute confers power on the competent authority to pass an order of externment for an appropriate period not exceeding one year, as held by the Apex Court in the decision referred to above, in a given case, when an order of externment is passed by the competent authority for the maximum period provided for under the provision, the reasons for passing such an order shall certainly be stated in

W.P.(Crl) No.225 of 2023

11

the order. It is conceded that Ext.P1 order does not disclose any reason for passing an order of externment for the maximum period of one year. In other words, as rightly argued by the learned counsel for the petitioner, the order is vitiated for want of application of mind on that aspect, especially when the same has to be done on an objective assessment of the materials on record. Needless to say, the impugned order is bad.

In the result, the writ petition is allowed and Ext.P1 order is quashed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

C.S.SUDHA, JUDGE.

YKB

APPENDIX

PETITIONER EXHIBITS

- Exhibit P1** **A TRUE COPY OF THE ORDER DATED
13.10.2022 PASSED BY THE 3RD RESPONDEDT**
- Exhibit P2** **A TRUE COPY OF THE DISABILITY
CERTIFICATE OF THE PETITIONER DATED
28.6.2010**
- Exhibit P3** **A TRUE COPY OF THE ORDER DATED
29.11.2022 PASSED BY THE ADVISORY BOARD
KAAPA**
- Exhibit P4** **A TRUE COPY OF THE JUDGEMENT DATED
24.01.2023 PASSED BY THIS HON'BLE COURT
IN WRIT PETITION(CRL) NO 6 OF 2023**