
(2015) 05 RAJ CK 0048

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 4021 of 2015

Babu Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Electricity Act, 2003 — Section 136, 137
Penal Code, 1860 (IPC) — Section 323, 34, 341, 342, 365
Rajasthan Prevention of Anti-social Activities Act, 2006 — Section 2(g), 3, 3(1), 3(2), 3(3)

Citation : (2015) 05 RAJ CK 0048

Hon'ble Judges : Gopal Krishan Vyas, J; Banwari Lal Sharma, J

Bench : Division Bench

Advocate : Rakesh Aroara,, for the Appellant; S.K. Vyas, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. In this Habeas Corpus writ petition, the petitioner Babu Singh, resident of village Unda, Police Station Sangath, Tehsil Fatehgarh, District Jaisalmer is challenging the validity of impugned orders Annex.1, 2 and 3 passed by the District Collector and the State Government under the provisions of Rajasthan Prevention of Anti Social Activities Act, 2006 (hereinafter referred to as the Act of 2006 for short).

2. As per brief facts of the case, the District Magistrate, Jaisalmer while considering 14 criminal cases registered against the petitioner from Oct., 2012 to 7th Nov., 2014 under various Sections of IPC alongwith Section 136 of the Electricity Act passed an order of detention on 11th Nov., 2014 and communicated the same while incorporating the reasons to the petitioner. The case of the petitioner was placed before the Advisory Board in which while giving notice to the petitioner on 28th Nov., 2014 the petitioner was granted an opportunity to file representation against the order of detention.

3. The petitioner appeared before the Advisory Board and filed his representation but Advisory Board after hearing the petitioner gave its opinion that detention of the petitioner is necessary on the basis of entire evidence and held that there exist sufficient material for detention of the detainee, therefore, confirm the order of detention for the maximum period given under the Act of 2006.

4. The said opinion was given by the Advisory Board on 3.12.2014, thereafter, the State Government passed an order Annex.3 dated 23.12.2014 whereby the petitioner was detained for one year w.e.f. 12.11.2014 to 11.11.2015. In this petition, the petitioner has challenged the order of detention passed by the Collector as well as by the State Government on the ground that no reasons are incorporated in the order for recording satisfaction of the respondents that detention of the petitioner is necessary in public interest. It is submitted by the learned counsel for the petitioner that as per Section 3(2) of the Act of 2006, the District Magistrate after due satisfaction as provided under sub-Section (1) can exercise powers conferred under Section 3 so as to pass detention order but in the present case, the order dated 11th Nov., 2014 has been passed without recording reasons and recording finding of satisfaction by the District Magistrate as required under Section 3(1) of the Act of 2006, therefore, the order which is passed in mechanical manner deserves to be quashed.

5. The learned counsel for the petitioner further argued that in between 7th Oct., 2012 to 7th Nov., 2014 although 14 cases were registered against the petitioner but in none of the case, the petitioner has been convicted because all the cases are mostly registered under Electricity Act, therefore, the satisfaction recorded by the District Collector is totally illegal and have no foundation to stand in the eye of law. In support of his argument, the learned counsel for the petitioner invited attention of this court towards the judgment in the case of Kishan Singh Vs. State of Rajasthan and in the case of Bablu @ Jitendra v. State of Rajasthan and Ors. (DB Civil Habeas Corpus Petition No. 5630/2012), decided on 26.9.2012 whereby this Court has held that the order of detention passed under Section 3(2) of the Act of 2006 deserves to be quashed if it has been passed in mechanical and casual manner.

6. It is also argued that order of detention is violative of Article 14 and 21 of the Constitution of India because merits of the case are not properly considered by the District Magistrate, Jaisalmer so also by the State Government, therefore, the order impugned deserves to be quashed.

7. Per contra while filing reply to the writ petition, it is contended by the learned Government Advocate that detention order passed by the District Magistrate Jaisalmer dated 11th Nov., 2014 while exercising powers under Section 3(2) of the Act of 2006 is perfectly in accordance with law because the District Magistrate, Jaisalmer considered the fact of registration of various criminal cases registered against the petitioner under the Indian Penal Code as well as under the Electricity Act. The District Collector, Jaisalmer further recorded satisfaction that petitioner become dangerous person so as to destroy the peace of the area,

therefore, the detention under the Act of 2006 is necessary. It is also observed in the order that petitioner is history-sheeter and involved in the criminal activities continuously, which cause eminent danger to the public order, therefore, to stop the criminal activities it is necessary to exercise powers under Section 3 of the Act of 2006. In the reply it is further submitted that the conduct of the detenu and existence of material information were considered and thereafter satisfaction was recorded by the District Magistrate on the basis of following facts, details of that are as follows:

"(a) That FIR No. 63 dated 7.10.2012 was registered against detenu and others under Section 447, 323, 504 IPC and Section 136 of the Electricity Act, Police Station Sangad in which detenu and others were guilty of stealing cable wire from the wind mills plants. In the said case recovery of theft articles was made. After investigation challan was filed under Section 447, 323, 504 IPC read with Section 136 of the Electricity Act and the matter is under trial in the court of District and Sessions Judge, Jaisalmer. However, this did not put an end to his criminal activities affecting the public order adversely.

(b) That FIR No. 14 dated 24.2.2013 written statement registered at Police Station Sangad under Section 136 of the Electricity Act as the detenu and others had stolen away 300 mm cable. In this case 24 kg of cable was recovered. After investigation challan was filed and trial is pending in the court of District and Sessions Judge, Jaisalmer.

(c) The FIR No. 38 dated 31.5.2013 for the offence under Section 136 of the Electricity Act was registered. At the instance of accused persons 34 kg of cable was recovered. After investigation challan was filed and trial is pending in the court of District and Sessions Judge, Jaisalmer.

(d) That a case No. 39 dated 31.5.2013 under Section 136 of the Electricity Act was registered. At the instance of accused persons 22 kg of cable was recovered. After investigation challan was filed and trial is pending in the court of District and Sessions Judge, Jaisalmer.

(e) That a case No. 253 dated 6.7.2013 under Section 136 of Electricity Act was registered. At the instance of accused persons copper wire was recovered. After investigation challan was filed and trial is pending in the court of District and Sessions Judge, Jaisalmer.

(f) That a case No. 62 dated 20.7.2013 was registered under Section 382, 365, 341, 342/323/34 IPC. The allegation was that the detenu and other accomplice had abducted the Driver who was carrying commissioning containers containing goods in a Trolley. During the course of investigation, accused persons were arrested and at their instance cutter, generator, cylinders, keys of location were recovered. After investigation challan was filed and trial is pending in the court of District and Sessions Judge, Jaisalmer.

(g) That a case No. 38 dated 25.7.2013 was registered under Section 136 and

137 of the Electricity Act. The cables were removed from the wind mill plants. During the course of investigation at the instance of accused persons, copper wire cables were recovered. After investigation challan was filed and trial is pending in the court of District and Sessions Judge, Jaisalmer.

(h) That a case No. 67 dated 1.8.2013 was registered under Section 136 of the Electricity Act. The cables were removed from the wind mill plants and stolen away. During the course of investigation at the instance of accused persons, copper wire cable were recovered. After investigation challan was filed and trial is pending in the court of District and Sessions Judge, Jaisalmer.

(i) That a case No. 43 dated 14.8.2013 was registered under Section 136 of the Electricity Act at Police Station Khuhdi. The cables were removed from the wind will plants. During the course of investigation at the instance of accused persons, copper wire cables were recovered. After investigation challan was filed and trial is pending in the court of District and Sessions Judge, Jaisalmer.

(j) That a case No. 63 dated 21.10.2013 was registered under Section 136 of the Electricity Act at police station Ramgarh. The cables were removed from the wind mill plants. During the course of investigation at the instance of accused persons, copper wire cables were recovered. After investigation challan was filed and trial is pending in the court of District and Sessions Judge, Jaisalmer.

(k) That a case No. 75 dated 4.12.2013 was registered under Section 136 and of the Electricity Act at Police Station Ramgarh. The cables were removed from the wind mill plants. During the course of investigation at the instance of accused persons, copper wire cables were recovered. After investigation challan was filed and trial is pending in the court of District and Sessions Judge, Jaisalmer.

(l) That a case No. 50 dated 25.12.2013 was registered under Section 413 IPC and Section 136 and 137 of the Electricity Act at Police Station, Rajeev Gandhi Nagar, Jodhpur. The cables were removed from the wind mill plants. During the course of investigation at the instance of accused persons, copper wire cable were recovered. After investigation challan was filed and trial is pending in the court of Addl. District and Sessions Judge No. 1, Town, Jodhpur.

(m) That a case No. 123 dated 7.11.2014 was registered under Section 136 and of the Electricity Act at Police Station Sangad. The cables were stolen away by breaking open the locks of the Tower No. 57. During the course of investigation the detenu and others were arrested and presently they are in police custody. After investigation challan was filed and trial is pending in the court of District and Sessions Judge, Jaisalmer."

8. While inviting attention towards the aforesaid details of FIR it is submitted that wind mill projects was established for generation of electricity for the State, but due to terrorist activities in the Jaisalmer and Barmer area it is felt necessary to take action for detention under the Act of 2006. As per the respondents, number of complaints were filed that due to criminal activities of so many persons

including the petitioner, the criminals are visiting in the wind mill projects and take away valuable equipment forcibly from the plants and due to such criminal activities chaos has arisen to public peace, therefore, to protect the entire electricity generation work, the District Collector, after recording due satisfaction take action against the petitioner for detention in which there is no illegality. The activities of the detune for committing theft in the wind mill with the aid of other without fear has created big problem and system is completely paralyzed due to cases of the theft of cables. The whole purpose to supply electricity at the indo-pak border is disrupted and it gave rise to the terrorist activities and communication system of BSF, Air Force and Arm agency gets affected which ultimately creates danger to the safety of country. Therefore, looking to the number of cases registered against the petitioner the detention order was passed on the basis of material placed on record. According to the learned Government Advocate there is no error in the order of detention which is ultimately affirmed by the Advisory Board, therefore, the instant writ petition may kindly be dismissed.

9. After hearing the learned counsel for the parties, we have perused the entire writ petition, so also, the order of Advisory Board headed by 3 sitting judges of this Court. In the Act of 2006 there is definition of "dangerous person" due to number of criminal cases registered against the petitioner, the District Magistrate, Jaisalmer take action for detention against the petitioner vide order dated 11th Nov., 2014 and sent the case to the State Government for its approval under Section 3(3) of the Act of 2006 with the stipulation that if necessary approval is not given within a period of 12 days then this order will come to an end automatically. The State Government vide its order dated 11th Nov., 2014 approved the order of District Magistrate, Jaisalmer after satisfying itself that adverse material is in existence for detention. The State Government sent the matter to the Advisory Board for its approval. The petitioner was given notice to file his representation against the detention order before the Advisory Board, but no written reply was filed by the petitioner, but orally stated by him that he has been falsely implicated in criminal cases, one after another, therefore, the action taken by the District Magistrate under Section 3 of the Act of 2006, approved by the State Government is against the principles of natural justice. The Advisory Board while considering the definition of "dangerous person and habitual offender" under Section 2(g) of the Act gave its opinion that on the basis of number of criminal cases against him, the order of detention is justified. In our opinion, there is no illegality in the order of detention because in the communication (Annex.1) all the material which is taken into account by the District Magistrate, Jaisalmer was informed to the petitioner including the satisfaction recorded by the District Magistrate, therefore, it cannot be said that order of detention is in violation of Section 3(1) of the Act of 2006. More so, not only the District Magistrate, Jaisalmer but the Advisory Board considered the very important aspect of the matter that 14 criminal cases were registered against the petitioner under various Sections of IPC and Electricity Act, so also,

on the basis of recovery of huge quantity of cables relating to windmills at the instance of the petitioner, we are of the opinion that action taken against the petitioner under the Act of 2006 does not suffer from any illegality.

10. The judgments cited by the learned counsel for the petitioner are based upon altogether different facts whereas in this case, although petitioner has not been convicted in any criminal case but one after another 14 cases were registered against him under the IPC and Electricity Act, which shows that petitioner became dangerous person so as to disturb the public order. Therefore, no case is made out for interference because action taken by the District Magistrate, Jaisalmer which is further approved by the State Government is based upon due satisfaction on the basis of material evidence placed before the District Magistrate as well as before the State.

11. In view of the above, there is no force in this writ petition. Hence, this writ petition is hereby dismissed.