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**(2015) 03 RAJ CK 0126**

**In the Rajasthan High Court**

**Case No :** Civil Writ (Habeas Corpus) Petition No. 7824/2014

Dinu Khan

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

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**Date of Decision :** 20-03-2015

**Acts Referred:**

Rajasthan Prevention of Anti-social Activities Act, 2006 — Section 11, 2, 3, 3(1), 3(2)

**Citation :** (2015) 03 RAJ CK 0126

**Hon'ble Judges :** Jaishree Thakur, J.; Govind Mathur, J.

**Bench :** Division Bench

**Advocate :** Sushil Solanki, for the Appellant; S.K. Vyas, Government Advocate, Advocates for the Respondent

**Final Decision :** Dismissed

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## Judgement

1. On being satisfied that the petitioner may cause serious injury to the "public order" being a "dangerous person", the District Magistrate, Jaisalmer, with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, passed an order of detention dated 9.9.2014 as per provisions of Section 3(2) of the Rajasthan Prevention of Anti Social Activities Act, 2006 (hereinafter referred to as "the Act of 2006"). The order aforesaid came to be approved by the Government of Rajasthan on 17.9.2014. Being aggrieved, the petitioner submitted a representation to the Advisory Board as per Section 11 of the Act of 2006 but that came to be rejected under an order dated 24.9.2014. Alleging the detention illegal, this petition is preferred to have a writ in the nature of Habeas Corpus to declare the detention illegal and to release the detainee.

2. The argument advanced by learned counsel is that as per sub-section (1) of Section 3 of the Act of 2006, the State Government may, if satisfied with respect to any person that with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person to be detained. This power of the State

Government may be delegated to the District Magistrate, if the State Government is satisfied that it is necessary so to do, but in the case in hand delegation of power has been made without recording adequate satisfaction for delegation of such power. It is also stated that instant one is a case where there may be some problem of law and order but not of "public order", as such, the detention is bad.

3. This Court by an order dated 9.12.2014 directed learned Government Advocate to make available the notings and consideration to arrive at a satisfaction to authorise District Magistrate, Jaisalmer to have powers as per Section 3(1) of the Act of 2006. In pursuance thereto learned Government Advocate has produced relevant record before us. From perusal of the record it reveals that the District Magistrate, Jaisalmer under a letter dated 28.5.2014 by referring several incidents made a request to the State Government to initiate process for detention of the petitioner as a dangerous person who may cause injury to public order. The request made by the District Magistrate at the first instance was considered by Special Secretary to the Government of Rajasthan (Home)-cum-Joint Legal Remembrance in following terms:-

4. The matter then was placed before the Additional Chief Secretary (Home), who too considered entire issue in detail and arrived at a conclusion to delegate powers to the District Magistrate as per sub-section (2) of Section 3 of the Act of 2006. The view taken by the Additional Chief Secretary was also approved by Hon"ble the Chief Minister on 23.7.2014.

5. From perusal of the record we are satisfied that the State Government considered entire issue objectively and recorded its satisfaction to exercise authority under sub-section (2) of Section 3 of the Act of 2006. Looking to the record we do not find any merit in the argument advanced by learned counsel that the State Government delegated its powers to the District Magistrate without recording adequate satisfaction to do so.

6. The other argument advanced by learned counsel is that instant one is a problem of law and order and not of "public order", therefore, detention of bad.

7. We do not find any merit in this argument too. As per clause (j) of Section 2 of the Act of 2006 "public order" shall have the same meaning as assigned to it under sub-section (4) of Section 3. Sub-section (4) provides that a person shall be deemed to be acting in any manner prejudicial to the maintenance of public order when such person is engaged in or is making preparation for engaging in the activities whether as boot-legger or dangerous person or drugs offender or immoral traffic offender or property grabber which effect adversely or are likely to effect adversely the maintenance of public order.

8. In the case in hand the petitioner was found indulged in theft activities of batteries, wires and other equipments with wind mills generating electricity. The District Magistrate while making request to the State Government for initiating process under the Act of 2006 and further while passing the order of detention,

in quite unambiguous terms stated that the activities of the petitioner are prejudicial to the public order as much as that is creating disconnection of electricity making the entire fencing at border unsecured resulting into invasion in Indian territory by foreign nationals. The activities of the petitioner are creating problem for national security and also to the power generation system. The system is an important aid for maintaining public order in entire border area. As such, the details given by the District Magistrate are sufficient to arrive at the conclusion that instant one is a case where an action has been taken to prevent injury to the public order.

9. In view of whatever stated above, we do not find any merit in this petition for writ. Accordingly the same is dismissed.