
(2015) 07 RAJ CK 0063

In the Rajasthan High Court

Case No : Civil Writ Petition (Habeas Corpus) No. 5525 of 2015

Hari Singh

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 2003 — Section 136
Penal Code, 1860 (IPC) — Section 143, 307, 336, 341, 355
Rajasthan Prevention of Anti-social Activities Act, 2006 — Section 2(b), 3, 3(1), 3(2), 3(3)

Citation : (2015) 07 RAJ CK 0063

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

Bench : Division Bench

Advocate : L.D. Khatri and Prateek Surana, for the Appellant; P.R. Singh, A.A.G assisted by Dinesh Kumar Ojha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Jaishree Thakur, J.—A writ in the nature of Habeas Corpus under Article 226 of the Constitution Of India has been filed seeking to challenge the order dated 27.1.2015 passed by the District Magistrate, Jaisalmer ordering detention of the petitioner and subsequent order dated 12.3.2015 affirming the said detention order.

2. The present writ petition has been filed on behalf of the petitioner Hari Singh through his brother Shri Bhom Singh. It is contended that the petitioner has been detained in District Jail, Jaisalmer on the basis of an order dated 27.1.2015 issued by the District Magistrate, Jaisalmer while exercising powers under Section 3(2) of the Rajasthan Prevention of Anti-social Activities Act, 2006 (Act No. 1/2008) (for short "the Act of 2006"). Along with letter dated 27.1.2015, the petitioner was also supplied the reasons/grounds of detention. Subsequent to that, the petitioner was served with a letter dated 12.3.2015 issued by respondent nos. 1 and 2 affirming the detention order dated 27.1.2015.

Aggrieved against the said order of detention dated 27.1.2015 and subsequent order affirming the detention order, the petitioner has filed the present writ petition submitting that he does not fall within the definition of Section 2(b),(c), (g),(h),(i) and (k) of the Act of 2006. It is contended that while exercising the powers under the Section, the respondent No. 3, namely, the District Magistrate has not applied his mind properly while issuing the order. It is further contended that there has been non-application of mind while passing the impugned order dated 12.3.2015 which is non-speaking order and in violation of the provisions of Section 3(3) of the Act of 2006.

3. Notice of the writ petition was issued and the reply has been filed on behalf of the respondents controverting the pleas therein. It is submitted that the petitioner has been detained as per the provisions prescribed in the Act of 2006, since it has been found that the petitioner was indulging in theft of electricity supply cables. It was further submitted that as many as 21 theft cases have been registered against the petitioner under Section 136 of the Electricity Act. It was further submitted that besides the cases mentioned, the petitioner was involved in several other offences defined under Sections 143, 341, 355, 336, 427, 506, 392 and 307 IPC. The Superintendent of Police, Jaisalmer, prepared a list of the number of cases pending against the petitioner Hari Singh and then requested the District Magistrate, Jaisalmer to take appropriate action against the petitioner. After having gone through the record and after being satisfied that the petitioner is involved in several antisocial activities, as a result thereof, there is every likelihood of threat to the national security and public order request was made by the District Magistrate for the delegation of power to institute proceedings under the Act of 2006. The State Government, thereafter, authorised the District Magistrate, Jaisalmer to exercise the powers conferred under sub-section (1) of Section 3 of the Act of 2006, vide Notification dated 30.7.2014 which is placed on record as Annex. R/3. Subsequently, order dated 27.1.2015 was passed by the District Magistrate, Jaisalmer. The State Government being satisfied that the order passed by the District Magistrate, Jaisalmer was in accordance, approved the order of detention on 7.2.2015. As such, there is no infirmity with the order passed.

4. We have heard the learned counsel for the parties and have perused the record of the case.

5. The main thrust of the argument advanced by the learned counsel for the petitioner is that while passing the order of detention dated 27.1.2015, there has been non-compliance of Section 3(1) of the Act of 2006 in so far as there has been no application of mind. Section 3 of the Act of 2006 reads as under:

"3. Power to make orders detaining certain persons.-(1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any matter prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained.

(2) If having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that the District Magistrate, may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said subsection.

(3) When any order is made under this section by an authorized officer he shall forthwith report the fact to the State Government together with the grounds on which the order has been made and such other particulars as; in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve; days after the making thereof, unless, in the meantime, it has been approved by the State Government.

(4) For the purpose of this section, a person shall be deemed to be "acting in any matter prejudicial to the maintenance of public order" when such person is engaged in or is making preparation for engaging in any activities whether as a bootlegger or dangerous person or drug offender or immoral traffic offender or property grabber, which affect adversely or are likely to affect adversely the maintenance of public order."

6. A perusal of the record shows that on 25.6.2014, the Superintendent of Police Jaisalmer addressed a letter to the District Magistrate wherein a request was made to take appropriate action under Section 3(2) of the Act of 2006 on account of the fact that the petitioner was disrupting public order and was indulging in antisocial activities. Details of the cases pending against the petitioner were also mentioned in the said letter. On being satisfied, the District Magistrate, thereafter addressed a letter on 1.7.2014 requesting for powers to be delegated to him to invoke the provisions of the Act of 2006. In response to the communication dated 1.7.2014, the State Government authorized the District Magistrate, Jaisalmer to exercise powers under sub-section (1) of Section 3 of the Act of 2006. After careful consideration of the matter, the District Magistrate, Jaisalmer vide the impugned order, ordered for detention of the petition. In a detailed order, the District Magistrate noted that:-

7. The order dated 27.1.2015 clearly noted that the public order was disrupted on account of the antisocial activities being conducted by the petitioner. It was also noted that the petitioner was continuously stealing electricity wires with great impunity and was also involved in case of causing grave inquires. On account of this behavior, the District Magistrate concluded that it would be appropriate to detain the petitioner under Section 3(2) of the Act of 2006. After approval of the order by the State Government, the matter was then placed before the Advisory Board of the State of Rajasthan and the Board after deliberating upon the matter, affirmed the order of detention period for one year. The argument advanced by learned counsel for the petitioner is that there has been no application of mind before passing of the impugned order dated 27.1.2015 is not maintainable as is evident from the record itself. The order dated 27.1.2015 shows that the District Magistrate took note of all facts and

came to the conclusion that the petitioner was indulging in anti-social elements with great impunity and was disrupting the public order.

8. It has been argued by learned counsel for the petitioner that the detention of the petitioner is illegal. He has relied upon various judgments reported as (1) Rivadeneyta Ricardo Agustin v. Government of the National Capital Territory of Delhi and ors., 1994 Supp(1) SCC 597 , (2) Amritlal and Others Vs. Union Govt. Through Secy. Ministry of Finance and Others, AIR 2000 SC 3675 : (2001) CriLJ 474 : (2001) 73 ECC 10 : (2000) 3 JT 178 Supp : (2000) 7 SCALE 597 : (2001) 1 SCC 341 : (2000) 4 SCR 450 Supp : (2001) 1 UJ 555 : (2000) AIRSCW 4203 : (2000) 7 Supreme 584 and (3) Rajesh Gulati Vs. Govt. of N.C.T. of Delhi and Another, AIR 2002 SC 3094 : (2002) CriLJ 4299 : (2002) 4 Crimes 86 : (2002) 83 ECC 281 : (2002) ECR 918 : (2002) 6 JT 331 : (2002) 6 SCALE 142 : (2002) 7 SCC 129 : (2002) 2 UJ 1292 : (2002) AIRSCW 3563 : (2002) 6 Supreme 37 to support his contention. This Court has perused the judgments relied upon by the petitioner and find that none of them are applicable to the facts and circumstances of the present case and they arise either out of the offences under the Customs Act or under the Narcotic Drugs and Psychotropic Substances Act and or under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act.

9. In the case in hand, the petitioner has been found indulging in theft activities of wires and other equipment pertaining to wind mills and generation of electricity. The District Magistrate, while making request to the State Government, stated that the activities of the petitioner are prejudicial to the public order. The details given by the Superintendent of Police, Jaisalmer and the District Magistrate are sufficient to arrive at a conclusion that the instant case is one where the provisions of Section 3 of the Act of 2006 had been rightly invoked. The petitioner has as many as 21 cases filed under Section 136 of the Electricity Act as well as other cases filed under the Indian Penal Code and as such is a person who indulges in anti-social activities and disrupts public order. The District Magistrate Jaisalmer has acted in accordance with law and the impugned order of detention and the subsequent order of the advisory Board do not suffer from any illegality to warrant interference by this court.

10. Resultantly, the petitioner is not entitled to any relief and therefore there is no merit in the writ petition and the same is dismissed.