
(2012) 08 RAJ CK 0036

In the Rajasthan High Court

Case No : DB Civil Writ (Habeas Corpus) Petition No. 6123 of 2012

Kishan Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Rajasthan Prevention of Defacement of Property Act, 2006 — Section 2, 3, 3(1), 3(2), 3(4)

Citation : (2013) 1 CDR 202 : (2013) CriLJ 1928 : (2013) 1 RLW 732 : (2012) 4 WLN 15

Hon'ble Judges : R.S. Chauhan, J; Govind Mathur, J

Bench : Division Bench

Advocate : B.S. Deora and Mr. Pankaj Gupta, for the Appellant; Farzand Ali and Mr. K.R. Bishnoi, Government Advocate, for the Respondent

Judgement

1. These four petitions are before us to examine legality of the orders of detention passed by the District Magistrates of Jalore, Pali and Sriganganagar districts exercising powers u/s 3(2) of the Rajasthan Prevention of Antisocial Activities Act, 2006 (hereinafter referred to as "the Act of 2006"). Being founded on common grounds the petitions were heard together and are disposed of by this common order.

2. Before coming to the facts of each case and the grounds of challenge, it shall be appropriate to discuss relevant provisions of the Act of 2006 and the orders of delegation of powers made by the State Government in favour of the District Magistrates of the three districts referred above.

3. The Act of 2006 was enacted with an object to provide for preventive detention of the boot-leggers, dangerous person, drug offenders, immoral traffic offenders and property grabbers for preventing their antisocial and dangerous activities prejudicial to the maintenance of public order.

4. The terms "boot-legger", "dangerous person", "drug offender", "immoral traffic

offender" and "property grabber" are defined under clauses (b), (c), (f), (h) and (i) of Section 2 of the Act of 2006. As per clause (j) of Section 2 of the Act of 2006 the term "public order" shall have the same meaning as assigned to it u/s 3(4) of the Act of 2006. According to said Section 3(4) 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 any activities whether as a boot-legger 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.

5. As per Section 3 of the Act of 2006, the authority to make orders of detention is available to the State Government on being satisfied with respect to any person with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

6. The authority available to the State Government u/s 3(1) of the Act of 2006 can be delegated to a District Magistrate as per Section 3(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-sec.(1), exercise the powers conferred by the said sub-section.

7. Exercising the powers u/s 3(2) of the Act of 2006 the State Government by notification dated 18.8.2008 (No.F36(8)Home-9/95Pt.) directed the District Magistrates of all the districts in the State of Rajasthan to exercise the powers conferred by sub-section(1) of Section 3 of the said Act. The notification aforesaid reads as under:-

Whereas having regard to the circumstances prevailing i.e., the anti-social activities in various part of the State are still persisting and certain undesirable elements are acting prejudicial to the maintenance of the public order and continuation of supplies and services, it is necessary to prevent in effective manner the activities of anti-social elements and persons acting prejudicial to public order, supplies and services essential to community and to put a decisive step to curb boot-leggers, activities of dangerous persons, drug-offenders, immoral traffic offenders and property grabbers which are still prevailing in the State of Rajasthan.

Therefore, having regard to the circumstances prevailing in the State of Rajasthan the State Government is satisfied that it is necessary to authorise all the District Magistrates to exercise the powers under sub-section(1) of Section 3 of the Rajasthan Prevention of Anti-social Activities Act, 2006 within their respective jurisdiction.

Now, therefore, in exercise of the powers conferred under subsection(2) of Section 3 of the Rajasthan Prevention of Anti-social Activities Act, 2006 (Act No. 1 of 2008), the State Government hereby directs the District Magistrates of all

the districts to exercise the powers conferred by sub-section(1) of section 3 of the said Act.

8. This notification was subjected to challenge in several writ (Habeas Corpus) petitions and while examining legality of it in *Anil Nayak (Pilani) v. State & Ors.* (2010(1) CJ (Cr.) (Raj.) 379) a Division Bench of this Court discussed and held as under:-

11. As it clearly emerges from S.3(1) of PASA Act, power to make order of detention vests with State Government which on being satisfied and having regard to circumstances and for maintenance of public order, may order for detaining a person or it may direct the District Magistrate to exercise powers U/s 3(1) of PASA Act for passing an order of detention, so as to maintain public order against any person within its respective jurisdiction.

12. Before issuance of notification, delegating powers upon district Magistrates, the State Government has to record its satisfaction that there are "circumstances prevailing or likely to prevail" in the area within local limits of jurisdiction of a district magistrate; and if the State Govt. is satisfied that it is necessary to do so it may, by order in writing, direct District Magistrate to exercise the powers conferred U/s 3(1) of PASA Act.

13. It goes without saying that such satisfaction on the part of the State Govt. is solely dependent upon "circumstances prevailing or likely to prevail" in local area of district Magistrate, which is sine qua non for exercise of the said powers.

14. Words, "circumstances prevailing or likely to prevail" in an area of local limits of its jurisdiction of district magistrate, cast legal obligation upon the State Govt. to record its satisfaction particularly about an area of a district where "circumstances are prevailing or likely to prevail", calling for conferment of powers upon the District Magistrate of that area, which can certainly be in the entire district or the State but there must exist material on record to show the satisfaction having been arrived at or recorded by State Government for conferring powers upon a district Magistrates U/s 3(2) for entire State or a particular district or wherever necessary.

15. Almost same analogous provisions where (sic) notification was issued by State Government on 06/12/2001 conferring powers of upon district magistrate or Commissioner of Police U/s 3(2) of National Security Act, 1980, came up for consideration before Division Bench of this Court in *Aruna Bano v. State* (2003(3) RCC 1226, *ibid*) and taking note whereof, it was observed *ad infra*:

5. It is evident that the power to pass an order of detention primarily rests with the Central or State Government. The State Government, however, being satisfied that in any area within the local limits of the jurisdiction of District Magistrate or Commissioner of Police, there exists certain circumstances prevailing or likely to prevail confer power on such district Magistrate or Commissioner of Police under sub-section (2) of Section 3 of NSA. Such

satisfaction of the State Government when solely depends on the circumstances prevailing or likely to prevail, in future date, in a local area in the district is a sine-qua non for the exercise of powers. Since very drastic powers of detention without trial are to be conferred on an officer of district level i.e. District Magistrate of the Commissioner of Police, the State Government is expected to apply its mind on the material available on record. The use of word, "any area within the local limits of the jurisdiction of the district Magistrate" is of great significance. It enjoys a duty on the State Government to specify the particular areas in a district wherein circumstances prevailing or likely to prevail which calls for conferment of power on an officer at the district level under subsection (3) of Section 3 of NSA. No doubt, limits can be the entire district and even the entire State but there must exist material to show that situation, has arisen where the conferment of power on district magistrate or commissioner of police under subsection (3) for entire State or a particular district or part of district has become necessary.

In the cases at hand, the record placed before this Court does not depict that there were circumstances prevailing or likely to prevail in entire State, which made it necessary to confer powers under subsection(2) of S. 3 of PASA Act, upon all the District Magistrates of the State. No material has been placed on record which may satisfy that there were circumstances prevailing in districts- Jaipur, Jhunjhunu, Kota, Alwar & Sawai Madhopur, necessitating to call upon the State Government U/s 3(2) to confer/delegate powers upon District Magistrates to exercise the powers for passing order of detention U/s 3(1) of PASA Act. There cannot be any dispute that subjective satisfaction is always of the State Government but where it is based on no material, then that can always be examined by this Court within limited scope of judicial review U/Art. 226 of the Constitution.

16. Based on record, this Court can observe that subjective satisfaction of State Government conferring powers upon all the District magistrates of Rajasthan in general was without examining as to whether there were circumstances prevailing or likely to prevail in local limits of their jurisdiction. There is no material on record to satisfy such circumstances prevailing or likely to prevail in future calling upon State Government to confer/delegate its powers U/s 3(2) of the Act vide notification DT. 18/08/08 to all District Magistrates - in absence whereof notification impugned is in clear violation of sub-section (2) of S. 3 of PASA Act.

17. We are therefore of the opinion that the very authorisation under the notification DT. 18/08/08 is illegal and invalid - on the basis whereof, District Magistrates of Jaipur, Kota, Jhunjhunu, Sawai Madhopur & Alwar had no jurisdiction and could not have exercised powers of detaining authority U/s 3 (1) of PASA Act. In consequence whereof, the very orders of detention impugned herein passed against the detenu, to whom present habeas corpus petitions relate, cannot be said to be legally sustainable and deserves to be set aside.

9. After the judgment in the case of Anil Nayak (supra) the District Magistrates of several districts in the State of Rajasthan appear to have communicated certain facts and by taking into consideration the facts so communicated the State Government issued notifications exercising powers u/s 3(2) of the Act of 2006 empowering the District Magistrates of such districts to exercise powers u/s 3(1) of the said Act. The District Magistrates on being empowered to do so passed the orders of detention, which are under challenge in these petitions. The details of the impugned detention orders are as follows:-

Being authorised by the notification dated 20.1.2012, the District Magistrate, Jalore passed an order of detention against Mahendra Singh son of petitioner Shri Kishan Singh on 3.2.2012. The District Magistrate considered certain alleged criminal acts and arrived at the conclusion that Mahendra Singh is a "dangerous person", as such his detention is in public interest.

Shri Ismail Khan, husband of the petitioner has been detained under an order dated 3.2.2012 passed by the District Magistrate, Jalore being considered as a "dangerous person". The District Magistrate, Jalore exercised powers u/s 3 (1) of the Act of 2006 being authorised to do so under a notification dated 20.1.2012.

This petition for writ is preferred by wife of the detenu to challenge the order of detention dated 3.1.2012 passed by the District Magistrate, Sriganganagar on being satisfied that detenu Mana Singh was acting in the manner that is adversely affecting public order. The order of detention was passed by the District Magistrate on acquiring authority under a notification dated 21.12.2011 issued by the State Government exercising powers u/s 3(2) of the Act of 2006.

10. This petition for writ is preferred to assail the order of detention passed by the Collector, Pali to detain Shri Surendra Singh, brother of the petitioner. The order of detention was passed on arriving at a conclusion that Surendra Singh is a "dangerous person". The District Magistrate exercised the powers to detain a person as per Section 3(1) of the Act of 2006 having authority to do so as per notification dated 9.1.2012 issued by the State Government

11. The argument advanced by counsel for the petitioners is that the authority to pass an order of detention as per Section 3(1) of the Act of 2006 could have been given to the District Magistrates by the State Government only after getting satisfied that the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of such District Magistrates demand to confer him with the powers u/s 3(1). The State Government without having any material to satisfy itself with regard to the circumstances prevailing and likely to prevail to exercise the powers u/s 3(2) of the Act, delegated its authority to the District Magistrates concerned. The notifications issued by the State delegating powers to the District Magistrates, thus, are not in consonance with the spirit and thrust of the provisions of Section 3(2) of the Act of 2006, therefore, are bad and inoperative. The orders of detention passed under the authority of an illegal order, therefore, are also bad.

12. On the other hand, the stand of the State Government is that looking to the antisocial activities in various parts of the districts concerned the State Government empowered the concerned District Magistrates to exercise powers u/s 3(1) of the Act of 2006 and such empowerment was made only after getting adequately satisfied about overall scenario of the prevailing circumstances of the area concerned.

13. Looking to the issue involved, this Court on 14.8.2012 directed the respondents to make available all notings regarding satisfaction arrived by the State necessary to exercise powers u/s 3(2) of the Act of 2006. Accordingly, the original notings are made available by learned Government Advocate for our perusal.

14. We have examined the record in light of the issue advanced before us.

15. As already noticed, the object of the Act of 2006 is to provide for preventive detention of the boot-leggers, dangerous person, drug offenders, immoral traffic offenders and property grabbers for preventing their antisocial and dangerous activities prejudicial to the maintenance of public order. As per the scheme of the Act of 2006 the State is empowered to detain a person on being satisfied that the detention of such person is necessary with a view to prevent him from acting in any manner prejudicial to the maintenance of public order.

16. This authority of the State may be delegated to a District Magistrates, if the State Government is satisfied that the circumstances prevailing or likely to prevail in any area within the jurisdiction of any District Magistrate demand so. Meaning thereby, as per Section 3(1) of the Act of 2006 the State Government is required to satisfy itself with regard to the activities of an individual which are prejudicial to maintenance of public order and this power can be further delegated to a District Magistrate, if circumstances prevailing or likely to prevail in any area within his jurisdiction are of such grave nature that local consideration of individual activities is necessary. This power of delegation appears to have been given by the legislature to the State Government to meet extraordinary circumstances existing or apprehended in any specific area or region of the State. There may be serious threat in any part of the State in maintenance of the public order due to the activities of boot-leggers, dangerous person, drug offenders, immoral traffic offenders and property grabbers at large and to meet such serious threat the power of the State as per Section 3(1) of the Act of 2006 can be delegated to the District Magistrates concerned, but not otherwise. Such delegation can be made as postulated u/s 3(2) of the Act of 2006 by considering the circumstances prevailing or likely to prevail in the area concerned. For passing of its authority to a District Magistrate, the State is not supposed to consider the activities of any individual, but the objective circumstances prevailing or likely to prevail. There may be a boot-legger, dangerous person, drug offender, immoral traffic offender and property grabber in a district or a part thereof, but that in itself is not sufficient to make delegation of powers to a District Magistrate. The stray incidents of an individual may be of

cases pertaining to the issue of law and order, but not of public order. The State Government has to satisfy itself with the material available regarding the situation arisen in the area concerned that the public order is in endanger and that is sufficient for delegation of the powers of Section 3(1) of the Act of 2006 to the District Magistrate.

17. In the cases in hand, what we find from the record, is that the District Magistrates of District Jalore in the cases of detention of Mahendra Singh and Ismail Khan; the District Magistrate of district Pali in the case of Surendra Singh and the District Magistrate of district Sriganganagar in the case of Mana Singh, on receiving certain details from the respective Superintendents of Police about the activities of individuals made reports of the activities of such individuals and forwarded the same to the State Government. On basis of the reports so received the Assistant Legal Remembrance of the State in each case made a note of facts communicated and advised to delegate the powers of detentions to the District Magistrates concerned. The notes made by the Assistant Legal Remembrance are quite cryptic and are not having even the mention of circumstances prevailing or likely to prevail in the area concerned. These notes deal with the acts of single or few individuals. One of such notes deserves to be quoted:-

Words, "circumstances prevailing or likely to prevail" in an area of local limits of its jurisdiction of district magistrate, cast legal obligation upon the state Govt. to record its satisfaction particularly about an area of a district where "circumstances are prevailing or likely to prevail", calling for conferment of powers upon the district magistrate of that area, which can certainly be in the entire district or the state but there must exist material on record to show the satisfaction having been arrived at or recorded by State Government for conferring powers upon a district magistrates u/s 3(2) for entire State or a particular district or wherever necessary.

18. Suffice to mention here that the notes made in other cases are also similarly worded. On such note, the higher executive authorities of the State, in each case, put their signatures of approval without writing a single word about requirements of law to make delegation of powers in favour of the District Magistrates as per Section 3(2) of the Act of 2006. The consideration of the circumstances prevailing or likely to prevail in the area concerned is conspicuously absent in entire process. As a matter of fact no consideration is made by the State regarding the circumstances prevailing or likely to prevail in the area concerned. As such, we are having no hesitation in arriving at the conclusions that the notifications giving authority to the District Magistrates of districts Jalore, Pali and Sriganganagar were issued by the State Government without getting itself satisfied necessary to confer the powers u/s 3(1) of the Act of 2006 to the District Magistrates of the districts referred above.

19. No Indian citizen can be arrested and detained without being told the grounds for such arrest. It is only under preventive detention laws the State can

imprison a person without a criminal charge on being satisfied that the liberty of such a person may be a threat to the public order or to the unity and integrity of the nation. By such detention a possible harm to the nation or the society at large may be prevented, but in any case such a power being an exception to a democratic system must be exercised with great care and caution. The State must understand that a little casualness on its part in exercising powers under preventive detention laws, such as the Act of 2006 may cause a huge casualty to a citizen as well as to the democratic and human values enshrined in our Constitution. In the instant matters the State failed to act in accordance with the law to exercise powers u/s 3(2) of the Act of 2006 No.s, the mechanical and casual exercise of power by it is apparent. The natural consequence of the non-application of mind as noticed and discussed is acceptance of these habeas corpus petitions, hence the same are allowed, without adjudicating the other grounds taken in the petitions. The notifications dated 20.1.2012 No. F.36(3)Home-9/2012; dated 9.1.2012 No. F.36(12)Home-9/2012 and dated 21.12.2011 No. F.36(9)Home-9/2012, issued by the State Government exercising powers u/s 3(2) of the Act of 2006 are quashed. The orders of detention dated 3.2.2012 bearing No. Vidhi/2012/779 dated 3.2.2012 and No. Vidhi/2012/785, both passed by the District Magistrate, Jalore; the order of detention dated 15.2.2012 bearing No. F.20(1)(1)Nyay/2012/1571 passed by the District Magistrate, Pali and the order dated 3.1.2012 bearing No. F.17(1)()PASA Act/Nyay/2011/36, passed by the District Magistrate, Sriganganagar are also quashed. The detenus Surendra Singh, Mahendra Singh, Ismail Khan and Mana Singh detained under the orders aforesaid be released forthwith, if not required to be detained in connection with any other case.