
(2015) 03 RAJ CK 0026

In the Rajasthan High Court

Case No : Civil Writ Petition (Habeas Corpus) No. 1162/2015

Kisturi Devi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 22(5)
Criminal Procedure Code, 1973 (CrPC) — Section 110
Information Technology Act, 2000 — Section 67
Rajasthan Prevention of Anti-social Activities Act, 2006 — Section 10, 10(2), 12, 12(3), 12(4)
Wild Life (Protection) Act, 1972 — Section 51

Citation : (2015) 03 RAJ CK 0026

Hon'ble Judges : Anupinder Singh Grewal, J.;Gopal Krishan Vyas, J.

Bench : Division Bench

Advocate : C.S. Kotwani, for the Appellant; S.K. Vyas, Advocates for the Respondent

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—The instant Habeas Corpus Petition has been filed by the petitioner Kisturi Devi W/o. Mohan Lal, resident of Hanuman Hatta, Bikaner for quashing the detention order of her son Anand Mehra and made the following prayers in this writ petition:

"(i) the impugned order of detention dated 24.8.2014 (Ann. 3) and dated 13.1.2015 (Ann. 5) passed by respondent No. 1 as well as order dated 14.8.2014 (Ann. 2) passed by the respondent No. 2 in pursuant to notification dated 16.5.2014 and complaint dated 23.7.2014 (Ann. 1) passed by respondent No. 3 may kindly be quashed and set aside.

(ii) The notifications which empowered to the respondents to pass detention orders may kindly be quashed and set aside.

(iii) The respondents may kindly be directed to release to the son of the

petitioner Anand Mehra forthwith from the detention.

(iv) The respondents may kindly be directed not to interfere in peaceful life and liberty of the son of the petitioner Anand Mehra.

(v) Any other appropriate writ, order or direction which this Hon"ble Court deems just and proper may kindly be passed in favour of the petitioner."

2. Brief facts as stated in the writ petition are that petitioner is belonging to a poor family of other backward class and her family is residing in the vicinity where 20% people of Mehra community and 80% people of high community are living. As per petitioner her husband was actively participated in the election of Ward, Counselor, general elections and other social activities and her son Anand Mehra who is physically handicapped was also agitating grievances of his community and society before the District Administration so also contested the election of counselor in the year 2009. Due to his participation in the election, the members of powerful community are keeping political rivalry against him, therefore, the police under the pressure of politically motivated persons lodged 24 false cases against her son since 1995, out those cases, his son Anand Mehra has been acquitted in 12 cases and 6 cases are pending against him and in remaining cases, he was punished by the learned trial court since 1995.

3. The Superintendent of Police, Bikaner respondent No. 3 filed a complaint before the District Magistrate -the respondent No. 2 on 23.7.2014 for initiating proceedings against the son of the petitioner Anand Mehra under Section 3(1) of the Rajasthan Prevention of Anti Social Activities Act, 2006 (hereinafter referred to as the Act of 2006 for short) alleging therein that son of the petitioner is a "dangerous person" for public order because several criminal cases are registered against him.

4. The District Magistrate, Bikaner - respondent No. 2 while exercising its power conferred under Section 3(1) of the Act of 2006 passed an order for detention of petitioner's son Anand Mehra for a period of one year on 14.8.2014. The order passed by the District Magistrate, Bikaner was further approved by the Secretary, Department of Home, Government of Rajasthan, Jaipur vide order dated 28.8.2014 and case of petitioner's son was referred for opinion to the Advisory Board constituted by the State Government under Section 10 of the Act of 2006.

5. The son of the petitioner submitted a representation before the Advisory Board constituted under the Act of 2006 and raise following grounds:

"(i) That as per the definition of "dangerous person" means a person, who either by himself or as a member or leader of a gang, habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, 1860 (Central Act No. 45 of 1860) or any of the offence punishable under Chapter V of the Arms Act, 1959 (Central Act No. 54 of 1959) or any of the offence punishable under first provision of sub-section (1) and sub-section (1-A) of section 51 of the Wild

Life (Protection) Act, 1972 (Central Act of 53 of 1972) or any offence punishable under section 67 of the Information Technology Act, 2000 (Central Act No. 21 of 2000) but till today not a single case under Wild Life Protection Act, 1972 or Information Technology Act is registered against the son of the petitioner.

(ii) That in accordance to the provisions of the Act of 2006 no such FIR has been lodged against the son of the petitioner for the offence prejudicial to the maintenance of public order.

(iii) That physically handicapped son of the petitioner was arrested on 17.7.2014 from the house of lodging two false cases on 14.7.2014 to 17.7.2014. The son of the petitioner remained in judicial custody from 17.7.2014 to 30.10.2014 for 107 days and on releasing on bail on 30.10.2014 from the gate of the jail the son of the petitioner was detained and kept her whole night at police station and on 31.10.2014 he has been detained for one year under the order dated 14.8.2014. The Superintendent of Police, Bikaner sent the proposal to the District Magistrate, Bikaner on 23.7.2014 under PASA and order of detention has been passed on 14.8.2014 but the son of the petitioner was detained under PASA on 31.10.2014 despite the fact that the son of the petitioner was in jail, which clearly shows that whole proceedings have been initiated to wreak the political vengeance.

(iv) That the proceedings under the Act of 2006 has been initiated against the son of the petitioner on the basis of 24 cases, out of the said 24 cases in 12 cases the son of the petitioner has been acquitted, 9 cases have been registered by the police at its own, in three cases charge sheet has yet not been filed and in one FIR the name of the son of the petitioner has not been figured."

6. The respondent No. 1 upon receiving report of Advisory Board dated 26.11.2014 passed an order dated 13.1.2015 (Annex. 5) for detention of the son of petitioner for the period commencing from 31.10.2014 to 31.10.2015 filed alongwith the writ petition. The petitioner being mother of detune Anand Mehra challenging the validity of the proceedings initiated under the Act of 2006 for detention of her son Anand Mehra and against the action of detention by the State of Rajasthan in this writ petition.

7. The learned counsel for the petitioner vehemently argued that the impugned orders for detention and confirmation of detention passed against the son of the petitioner Anand Mehra under the Act of 2006 are ex facie illegal and have been passed without application of mind on the basis of false complaint submitted by the Superintendent of Police, Bikaner, therefore, the order dated 14.8.2014 passed by the District Magistrate, Bikaner and order dated 13.5.2015 passed by the Home Department, Government of Rajasthan (Annex. 5) deserves to be quashed. The learned counsel for the Sh. C.S. Kotawani submits that out of 24 cases were registered against the son of the petitioner since 1995 but in 12 cases the trial court acquitted him and 9 cases were lodged by the police at its own. In 3 cases charge-sheet have not been filed till today. It is also pointed out

that in one of the case, the name of the petitioner's son has not been figured, therefore, an error has been committed by the respondents to treat the petitioner's son as "dangerous person" so as to take action against him under the Act of 2006. It is also argued that as per the provisions of the Act, the District Magistrate, Bikaner passed the order of detention dated 14.8.2014 while recording his satisfaction upon record that detenue Anand Mehra is acting to disturb the public order, but it is very unfortunate part of the case that the said order has been passed by the District Magistrate, Bikaner without application of mind and the State Government approved the same without considering the record of the case in right perspective. It is true that if any person becomes dangerous person to disturb the public order, action can be taken under the Act of 2006, but at the same time, no innocent person should be detained in illegal manner but in this case it is abundantly clear from the record that only to satisfy the political motive of certain person, the order of detention has been passed by the District Magistrate, Bikaner without application of mind on the basis of complaint submitted by the respondent Superintendent of Police, Bikaner. The District Magistrate, Bikaner did not grant any opportunity of hearing before passing such an order, therefore, the action of the District Magistrate, Bikaner is contrary to law and in violation of the fundamental right of the petitioner's son granted under Article 21 and 22(5) of the Constitution of India.

8. The learned counsel for the petitioner lastly argued that that copy of the report of the Advisory Board is not supplied to the petitioner, therefore, it is not possible for him to challenge the finding of the Advisory Board upon which detention order has been passed against the petitioner's son under the Act of 2006.

9. In the reply filed by the respondents it is categorically stated by the respondents that after due consideration upon the complaints filed by the Superintendent of Police, Bikaner, the District Magistrate, Bikaner exercised its power under Section 3(1) of the Act of 2006 and passed the order on 14.8.2014 for one year detention against the petitioner's son under the Act of 2006. The allegation of the petitioner that detenue Anand Mehra contested the election in the year 2009 for municipal counselor therefore, the members of powerful community started political rivalry with him is totally without substance because as per the record in between 1995 to 2014 number of criminal cases were registered against him for the offences under IPC and other Acts and due to criminal activities of Anand Mehra immediate danger was caused to the public order because Anand Mehra became habitual offender, therefore, all the allegations leveled by the petitioner against the respondent authorities are baseless and have not foundation to stand.

10. In the reply it is specifically pleaded by the respondent State that order dated 14.8.2014 passed by the District Magistrate, Bikaner was further approved by the State Government vide order dated 24.8.2014 in consonance with the provisions of the Act of 2006 and the case of the petitioner's son was referred to

the Advisory Board for seeking opinion for confirmation and the Advisory Board considered the case of the petitioner's son and after examining the entire material and providing opportunity of hearing gave its report that detention of the detenu Anand Mehra by the respondent No. 2 is based upon due satisfaction upon the record placed before him. Meaning thereby, an opportunity of hearing was given to the petitioner's son by the Advisory Board, thereafter, upon opinion given by the Advisory Board the order passed by the District Magistrate, Bikaner dated 14.8.2014 the State Government confirmed the order of detention under the Act of 2006.

11. The instant writ petition was listed in the court on 26.2.2015 and on that date, the record of the case was produced before us alongwith the copy of the report of the Advisory Board dated 26.11.2014 and after perusing the report dated 26.11.2014 of the Advisory Board it is found that report has been given by the 2 members of the Advisory Board, therefore, the explanation was sought from the Principal Secretary, Department of Home, Government of Rajasthan, Jaipur how the State Government accepted the report of Advisory Board dated 26.11.2014 in which matter was heard by 2 members only whereas State Government constituted the Advisory Board as per Section 10 of the Act of 2006 and appointed two members including Chairamn and as to why the copy of the report is not being supplied to the detenu.

12. In pursuance of the aforesaid directions, the Government Advocate submit his explanation in which it is stated that as per Section 10(2) of the Act of 2006 the Board was constituted vide notification dated 13.2.2013 and as per Section 12 of the Act of 2006 the Advisory Board considered the case of the petitioner's son and sent its report, although the report was given by 2 members only, but as per respondents' explanation, the said report was in consonance with law because as per Section 12(3) of the Act of 2006 when there is difference of opinion among the members forming the Advisory Board, the opinion of majority of such members shall be deemed to be the opinion of the Board. Further, it is explained that there is no provisions in the Act of 2006 which places any bar on the State Government from accepting the report of Advisory Board even where the matter has been heard by only 2 members and report is sent to the State Government because no prejudice is caused to the rights of the detenu in the eventuality of the matter being heard by 2 members only. What is required is that if considered essential the Board may provide opportunity of hearing to the detenu and after hearing him to submits its report to the State Government, therefore, in this case, the State Government accepted the report as per the provisions of the Act of 2006.

13. With regard to the question for non-supplying the copy of the Advisory Board report it is submitted that as per Section 12(4) of the Act of 2006 the proceedings of the Advisory Board and accepting that part of the report in which the opinion of the Advisory Board is specified shall be confidential, therefore, the State Government vide order dated 13.1.2015 extended the period of detention

of detainee Anand Mehra after accepting the report of Advisory Board. The order dated 13.1.2015 was also received by detainee Anand Mehra, therefore, there is no illegality whatsoever. The main explanation of the respondents is that there is no provisions in the Act to give the copy of the report of the Advisory Board to the detainee and so far as requirement of informing the confirmation of the detention order is concerned, it has already been informed to the petitioner's son Anand Mehra, therefore, no illegality has been committed by the respondent in passing the detention order. Lastly it is argued by the learned Government Advocate that orders under challenge are in conformity of law because due to the registration of the number of cases against the petitioner's son Anand Mehra it was felt necessary by the District Magistrate, Bikaner to pass detention order against Anand Mehra, therefore, it cannot be said that petitioner's son is in illegal detention.

14. After hearing the learned counsel for the parties we have considered the arguments advanced by the learned counsel for the petitioner as well as the learned Government Advocate.

15. It emerges from the facts that the State Government promulgated the Act of 2006 for which the assent of His Excellency the President of India was received on 25.2.2008 and the said Act was promulgated to provide preventive detention of boot-leggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers for preventing their anti-social and dangerous activities prejudicial to the maintenance of public order, but in this case the detention order dated 14.8.2014 was passed by the District Magistrate, Bikaner upon complaint submitted by the Superintendent of Police, Bikaner in which reference of 24 cases were given for the purpose of taking for the detention against the petitioner's son Anand Mehra. The details of those case are as under:

16. Upon perusal of aforesaid details it is abundantly clear that in between 2.9.1995 to 17.6.2014, 24 cases were registered against the petitioner's son, out of which in 12 cases, the petitioner's son was already acquitted by the learned trial court on the date of passing order for detention. It is evident from the details given in the reply that 9 cases were lodged by the police at its own and in 3 cases charge-sheet has not been filed till today and in the order of the District Magistrate, Bikaner made assertion that:

17. Meaning thereby on 14.8.2014 only 8 cases were pending against the detainee Anand Mehra out of which one complaint filed under Section 110 Cr.P.C. by the police. Upon perusal of details of criminal cases, we are of the opinion that out of the 24 cases, 21 cases were registered in 19 years against the detainee in the Police Station, Sadar, Bikaner in which the petitioner and his family including the detainee Anand Mehra are residing, therefore, the allegation of petitioner with regard to political rivalry of powerful community of the area have substance, therefore, the finding recorded by the District Magistrate that detainee Anand Mehra became dangerous person for public order is totally without application of mind. The State Government although approved the order

of the District Magistrate vide its order dated 24.8.2014 but later on an opportunity of hearing was granted upon the representation filed by the petitioner's son before the Advisory Board. We have examined the procedure prescribed under the Act of 2006 for considering the case of detainee by the Advisory Board.

18. As per Section 10 of the Act of 2006 there is provision for constitution of the Advisory Board, which reads as under:

"10. Constitution of Advisory Board.--(1) The State Government shall constitute one or more Advisory boards for the purpose of this Act.

(2) Every such board shall consist of a chairman and two other members who are, or have been judges of any high court."

19. Further, there is procedure which is required to be undertaken by the Advisory Board is provided under Section 12 of the Act of 2006, which reads as under:

"12. Procedure of Advisory Board.--(1) The Advisory Board, shall after considering the materials placed before it and, after calling for such further information as it may deem necessary from the State Government or from any person called for the purpose through the State Government or from the detainee and if, in any particular case, the Advisory Board considers it essential so to do or if the detainee desires to be heard, after hearing in person, submit its report to the State Government, within fifty days from the date of detention of the detainee.

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the detainee.

(3) When there is difference of opinion among the members forming the Advisory Board the opinion of the majority of such members shall be deemed to be the opinion of the board.

(4) The proceeding of the Advisory Board and its report excepting that part of the report in which the opinion of the Advisory Board is specified shall be confidential.

(5) Nothing in this section shall entitle any person against whom a detention order has been made to appear any legal practitioner in any matter connected with the reference to the Advisory Board."

20. Upon perusal of Section 10 it is abundantly clear that every Advisory Board shall consist of a Chairman and 2 other members who are or have been judges of any High Court and in pursuance of that the following notification dated 13.2.2013 was issued by the State Government, while exercising powers under Section 10 of the Act whereby the Advisory Board was constituted, which reads as under:--

"Government of Rajasthan Home (Gr. IX) Department

No. F.36(8) Home-IX/95 Pt. Jaipur, Dated 13.02.2013

In exercise of the powers conferred by Section 10 of the Rajasthan Prevention of Anti Social Activities Act, 2006 (Act No. 1 of 2008) and in supersession of this Department Notification No. F.36 (8) Home-IX/95 Pt. Dated 29.04.2010 the State Government hereby constitutes an Advisory Board and appoints Hon"ble Mr. Justice Ajay Rastogi, Judge, Rajasthan High Court Bench, Jaipur as Chairman and the following as members of the said Board:--

1. Hon"ble Mr. Justice M.C. Sharma, Judge, Rajasthan High Court Bench, Jaipur.
2. Hon"ble Mr. Justice M.N. Bhandari, Judge, Rajasthan High Court Bench, Jaipur.

By order and in the name of the Governor (O.P. Yadav) Jt. Secretary, Home (DM)"

21. Upon query made by this Court whether the report of Advisory Board consisting of 2 members how the State Government has accepted the report of Advisory Board dated 26.11.2014 an explanation has been given that the case of detainee Anand Mehra heard by the two members only and report is sent to the State Government and State Government accepted the report because as per Section 12(3) of the Act if the Advisory Board considers it essential or if the detainee desires to be heard it may hear the detainee and, thereafter, shall submits its report to the State Government and there is no provision in the Act of 2006 which places any bar upon the State Government from accepting the report of the Advisory Board even where the matter has been heard by only 2 members and the report sent to the State Government under the signatures of 2 members only. According to the respondents no prejudice can be said to be caused to the rights of the detainee in the eventuality of the matter being heard by 2 members only. More so, the requirement is that if considered essential the Board may provide the opportunity of being heard to the detainee and after hearing him to submit its report to the State Government, therefore, the State Government has accepted the report as per the provisions of the Act of 2006.

22. To adjudicate above point, we have examined Section 10 of the Act and the notification issued by the State Government for constitution of Board. Under Section 10 of the Act there is provision that State Government shall constitute one or more Advisory Boards for the purpose in this Act and every such Board shall consist of a Chairman and two other members who are and have been judges of any court. In view of the mandatory provision for constituting the Advisory Board of 3 members, the State Government constituted the Advisory Board vide notification dated 13.2.2013. Meaning thereby, the matter was to be heard by 3 members not by 2 members only because the purpose of incorporating the provision under Section 10 for constituting Advisory Board of 3 members including Chairman and 2 other members is to examine the order of detention by the sitting and retired judges because the question of liberty of citizen involved in the order of detention, but here in this case, admittedly the

State Government accepted the report of Advisory Board dated 26.11.2014 which is heard by only 2 members of the Advisory Board. The detention of any person while declaring him "dangerous person" is required to be examined thoroughly, therefore, the Legislature has purposely included 3 members including Chairman and 2 members in the Advisory Board. Therefore, in our opinion, the report of the Advisory Board was not to be accepted by the State Government because the said report is in violation of Section 10 of the Act of 2006, which is mandatory in nature.

23. We have examined the cases registered against the petitioner's son. On our opinion, on the basis of the details given by the State Government alongwith the reply, the petitioner's son cannot be declared as dangerous person because as per the reply itself the proceedings under Section 110 of the Cr.P.C. is still pending against the son of the petitioner Anand Mehra and detenu is belonging to other backward category so also contested the election of municipal counselor in the year 2009. Meaning thereby it can be said that petitioner's son was agitating the grievance of public, therefore, it is possible that in particular area, which fall in the Police Station Sadar, the cases were registered against him due to political rivalry and this aspect has not been considered by the District Magistrate, Bikaner while recording satisfaction to declare the petitioner's son as dangerous person, therefore, the order of detention is not sustainable in law.

24. We have also considered the prayer of the petitioner with regard to the non-supply of the copy of the Advisory Board report. In our opinion, after enactment of Right to Information Act by the Parliament in our country, nothing is confidential which is use against the person for snatching the right of liberty of citizen. In this case an opinion is expressed by the Advisory Board has been considered by the State Government so as to pass the detention order for one year against the petitioner's son Anand Mehra but copy of the report has not supplied while saying that as per Section 12(3), the said report is confidential. In our opinion, if any adverse opinion is expressed after providing an opportunity of hearing to the detenu then obviously that report is required to be given to the detenu because as per the principles of natural justice no material can be used against the person without supply of the copy. Therefore, we hold that in the event of passing order of detention under the Act of 2006 by the District Magistrate, when matter is referred to the Advisory Board then after hearing the detune the copy of the Advisory Board should be given to the detenu so as to know whether the grounds raised by him are considered or not so as to challenge the same in the court of law as per the fundamental right to avail remedy available to the citizen under the Constitution of India.

25. In view of the above discussion, the instant habeas corpus petition is hereby allowed and:

"(i) The orders of detention dated 24.8.2014 (Annex. 3) dated 13.1.2015 (Annex. 5) passed by the respondent No. 1 as well as the order dated 14.8.2014 (Annex. 2) passed by the respondent No. 2 in pursuance of notification dated

16.5.2014 are hereby declared contrary to law and the same are quashed and set aside and it is ordered that petitioner's son Anand Mehra who is detained under the aforesaid orders shall be released forthwith;

(ii) The respondent State is directed that in future copy of the Advisory Board report shall be given to the detainee so as to know whether the grounds raised by him/her have been considered or not by the Advisory Board to confirm the detention order."