
(2009) 01 RAJ CK 0093
In the Rajasthan High Court

Lakha Ram

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:

Arms Act, 1959 — Section 25, 4
Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 120B, 143, 147, 148, 149
Prevention of Damage to Public Property Act, 1984 — Section 3

Citation : (2009) 4 RCR(Criminal) 128 : (2009) 3 RLW 1991

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—This writ petition has been filed by the petitioner for quashing the impugned orders dated 10.9.2008 (Annexu. 1) passed by the Collector & District Magistrate, Barmer and order dated 18.9.2008 (Annex. 2) and 27.10.2008 (Annex. 3).

2. Brief facts of the case are that, as per the petitioner, being active and vigilant in every sphere of life the petitioner developed friends but, with the passage of time, some enmity arose with his friends because the activities of the petitioner were in the direction of helping the needy and poor fellows who are struggling for their lawful rights and, thereby, serving the society through his activities; and, on account of such enmity, certain criminal cases were registered against him, for which, as per the petitioner, he cannot be treated as an anti-social element.

3. The contention of the petitioner, in the writ petition, is that he is contractor of various developmental projects run by the State Government, therefore, the activeness and boldness of the petitioner did not suit the persons of his anti groups and it has, ultimately, culminated into filing of various types of criminal cases against him.

4. As per the case set out in the petition, it is submitted that since 1993, in all,

as many as 26 criminal cases were registered against him. The detail of those cases which are registered against him since 1993 is as follows:

5. It is submitted by learned Counsel for the petitioner that the State Government has promulgated an Act known as Rajasthan Prevention of Anti Social Activities Act, 2006 (in short, referred to hereinafter as "the Act of 2006") and, according to Section 3 of the Act of 2006, there is power conferred upon the District Magistrate to pass order for detaining certain persons.

6. According to Section 3(1), there is power left to the State Government to pass detention order if the State Government is satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make order directing that such person be detained. Sub-section (2) provides that this power can be exercised by the District Magistrate also.

7. As per said section, if having regard to the circumstances prevailing or likely to prevail in any area within the local jurisdiction of the District Magistrate, the State Govt, is satisfied that it is necessary so to do, it may by order in writing, if satisfied as provided under Sub-section (1) of the said sub-sec, make an order directing that such person may be detained in custody.

8. In the case of the petitioner, the District Collector-cum-District Magistrate, Barmer passed order dated 10.9.2008 whereby he has ordered for detention of the petitioner u/s 3(2) of the Act of 2006 and sent the petitioner in custody to the Central Jail, Jodhpur and the said order was communicated to the petitioner vide communication dated 10.9.2008, in which, reasons and ground of detention are incorporated.

9. By order Annex. 2 dated 18.9.2008, the said detention order made by the District Magistrate, Barmer was also confirmed by the Deputy Secretary (Security), Government of Rajasthan, Jaipur. Thereafter, an order was passed on 27.10.2008 by the Deputy Secretary (Security), Government of Rajasthan, Jaipur whereby while exercising power u/s 12(1), he has passed order u/s 3 for detention of the petitioner for one year.

10. Learned Counsel for the petitioner while challenging the above orders submitted that the order of the petitioner for detention is totally baseless and against the spirit of the Act. It is also submitted that after detention on 25.9.2008, the petitioner made a detailed representation to the Advisory Board, Rajasthan Anti Social Activities, Jaipur through the Superintendent, Central Jail, Jodhpur. In the said representation, the petitioner replied each and every allegation/charge levelled against him and, accordingly, prayed for setting aside the order of detention dated 10.9.2008. It is contended by learned Counsel for the petitioner that the Advisory Board did not consider the reply and affidavits filed by the petitioner for proving his innocence and, straight away, passed order for detention which is totally against the material on record.

11. Learned Counsel for the petitioner vehemently argued that the detention order has been passed in utter disregard of the provisions of Section 2(b), (c), (f), (g), (h) and (i) of the Act of 2006. Further, it is argued that the entire material on record loudly speaks that it is nowhere borne out from the criminal cases registered against the petitioner that the petitioner has ever, in fact, committed the offence that comes within the purview of Anti Social activities and the detaining authority has passed the order of detention merely on the ground of pendency of criminal cases against the petitioner which is neither justified nor proper. The action of the respondents is against the spirit of the provisions of the Act of 2006. It is also argued that for passing the impugned order for detention of the petitioner there must exist reasonable and bona fide grounds, that too, in consonance with the provisions of the Act of 2006; but, the detail of the cases registered Against the petitioner since 1996 clearly shows that there is no case for disturbing public order registered against the petitioner;

12. It is vehemently contended by learned Counsel for the petitioner that the detail of the cases registered against the petitioner since 1993 clearly speaks that most of the cases were registered against the petitioner for bailable offences such as Sections 324 and 323, IPC and, further, the petitioner was falsely implicated in 4 cases in one day. According to learned Counsel for the petitioner, this fact itself proves that somehow the District Administration created circumstances for exercising power of detention against the petitioner. Learned Counsel for the petitioner while inviting attention of the Court towards the reply filed before the Advisory Board submits that on 9.8.2008, in a single day, Cases No. 211/2008, 214/2008, 216/2008, 219/2008 and 222/2008 were registered against the petitioner for offences under Sections 323, 341, 353, 336 and 379, IPC. If, out of 26 cases 5 cases were registered in a single day in the year 2008, then, obviously it can be said that only to create evidence for justification of passing the detention order, the district Administration has registered the cases against the petitioner for the said offences.

13. It is vehemently argued by learned Counsel for the petitioner that, in this case, there is no allegation against the petitioner for disturbing public order; more so, it is conspiracy hatched against the petitioner by the police to involve the petitioner in false cases so as to prepare ground for exercising the power u/s 3 of the Act of 2006 and pass the detention order which is totally illegal and against the provisions of Article 21 of the Constitution of India. Learned Counsel for the petitioner submitted that the petitioner being a contractor has taken some contracts from the Keyerns Energy Ltd. and further some important contracts were likely to be taken by him, therefore, certain persons do not want to see beneficial contracts coming in the hands of the petitioner and conspiracy has been hatched against him; and, ultimately, they have succeeded in their ill-ideas by getting the detention order for one year against the petitioner. Learned Counsel for the petitioner submits that the power of detention can be exercised for maintenance of public order; but, here in this case, admittedly 26 cases were registered against the petitioner since 1993, out of those cases, 14 cases are

pending; and out of 14 cases, 5 cases were registered against the petitioner in a single day on 9.9.2008. It is submitted that upon perusal of the above detail of the cases, it is revealed that no offence punishable with imprisonment for life or any heinous offence was ever committed by the petitioner and most of the cases are for offences under Sections 323, 323 and 341, IPC.

14. It is further contended by learned Counsel for the petitioner that in as many as 6 cases the petitioner was given benefit of probation since 1993 and in 5 cases the petitioner was acquitted from the charges and rest of the cases are pending; and, upon perusal of the sections of the pending cases, it is revealed that no case under Sections 302 or 307 or 376 or any other serious offence was ever registered against the petitioner; but, the District Collector illegally exercised the power under the garb of maintenance of public order which is totally contrary to Article 21 of the Constitution of India. Upon perusal of the detail of cases it can be said that without any material on record only to satisfy the desire of so many interested persons, first of all, 5 cases were registered in a single day against the petitioner and while giving the detail of all the cases registered against the petitioner since 1993 order of detention has been passed.

15. Learned Counsel for the petitioner submits that all the points raised in this writ petition were raised by the petitioner before the Advisory Board; but, without considering the reply of the petitioner, the order has been confirmed by the Advisory Board, which is not permissible under the law.

16. Learned Counsel for the petitioner invited my attention towards the judgments reported in 1992 RCC 83, Jai Shanker v. State of Rajasthan, passed by the Division Bench of this Court, in habeas corpus writ petition and the judgment of the Supreme Court reported in RLW 1998 (2) (SC) 190, Smt. Tarannum v. Union of India as well as 2006 (1) WLC 623, Suram Chand v. State of J. and K. It is submitted by learned Counsel for the petitioner that no order can be passed for detention on the ground of law and order problems. The order of detention of a person is required to be passed for maintenance of public order, if at all, such action is warranted in the facts and circumstances of the case.

17. On the other hand, by way of filing reply, it is pointed out by the respondents while accepting the contention of the petitioner that " he was acquitted in 5 cases while giving him benefit of doubt and was discharged in 6 cases on the ground of compromise, rest of the cases are under investigation and, so also, in 7 criminal cases, the petitioner was convicted, therefore, the petitioner was found to be man for disturbing public order; and, accordingly, the District Collector has exercised its power for detention of the petitioner under the provisions of the Act of 2006.

18. In para 2 of the reply, it is specifically replied that the petitioner is a history-sheeter of Police Station Sadar, Barmer where 20 criminal cases have been registered against him for various offences including violation of the provisions of the Arms Act. Further, it is submitted that the petitioner is active in order to

black-mail the managerial authorities of the Keyerns Energy Agency; meaning thereby, it is felt necessary by the district Administration to pass order to check the petitioner's activities and while exercising powers under the Act of 2006, the detention order has been passed, in which, there is no illegality. Further, it is submitted on behalf of the respondents that the State Government has promulgated the said Act in the interest of the society and public at large by way of providing for prevention of anti social activities of persons like the petitioner; so also, the representation submitted by the petitioner was considered in subjective manner and, therefore, it was considered appropriate to pass the detention order which is justified and does not suffer from any illegality. It is contended on behalf of the State that the petitioner became a hurdle for maintenance of public order, therefore, the impugned order was passed by the District Collector. It is, therefore, contended that no interference is warranted in this case and the writ petition deserves to be dismissed.

19. I have considered the rival submissions made by both the parties and perused the entire record of the case.

20. First of all, it is required to be observed that the State Government has enacted special Act to provide for 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. In these terms the object and aim of enacting the Act of 2006 is enshrined in the preamble of the Act.

21. As per definition Clauses 2(b) boot-legger, (c) dangerous person, (f) drug offender, (g) habitual, (h) immoral traffic offender, and (i) property grabbers have been defined, however, none of such cases are registered against the petitioner. More so, the detail of the cases given in the detention order itself reveals that no cases of the above categories were registered against the petitioner. Most of the cases were registered against the petitioner for offences punishable under the Indian Penal Code and triable by a Magistrate; meaning thereby, how the petitioner is to be treated a habitual offender because all the cases were registered against him since 1993 upto 2008; and, in 2008, in a single day, 5 cases were registered for offence inter alia u/s 323, IPC for which investigation is pending; and admittedly, in 5 cases the petitioner was acquitted and in 6 cases Se was discharged by the trial Court. Thereby meaning that except the definition of habitual offender, no case under any of the other categories enumerated and defined in the definition Clauses is made out against the petitioner for which the detention order could be passed. Upon perusal of the list of cases mentioned above it cannot be said that the petitioner is habitual offender because the list of cases speak that all these cases were registered against the petitioner since 1993 up to 2008 and, out of the cases already decided, in 3 cases he was acquitted and in 4 cases he was given benefit of probation. In these circumstances, the petitioner does not fall in the category of habitual offender.

22. Now, upon perusal of Section 3, under which, order of detention has been passed, it is abundantly clear that the order of detention can be passed for maintenance of public order. In whole of the reply, it is nowhere stated by the respondents that how it was felt necessary by the District Collector to pass order for detention on the ground of maintenance of public order. The only reason is mentioned in para 2 that the petitioner is active in order to black-i mail the management of the Keyerns" Energy Ltd. This fact itself speaks that only to satisfy the management of the said company which is established five years ago in the State, the detention order has been passed which cannot be treated to be for the maintenance of public order; more so, it is for the satisfaction of the management of the company.

23. The petitioner is facing trial for the remaining cases and in some of the cases investigation is pending and challan has not yet been filed. Pendency of criminal cases by itself does not justify passing of the impugned order nor this fact is sufficient to libel the petitioner as dangerous to maintenance of public order. In such fashion, liberty of a citizen cannot be permitted to be snatched nor the State functionaries can be permitted to act in arbitrariness and unscrupulously and throw anyone behind bars in the garb of acting under the provisions of the Act of 2006. More so, no cogent reasons have been assigned by the respondents in the reply to substantiate or establish the order passed by the District Collector under the Act of 2006. In the reply filed by the petitioner before the Advisory Board, he has specifically stated all the above facts and took the ground for quashing the order of detention; but, without considering the reply filed by the petitioner, the Advisory Board confirmed the order passed by the District Collector. In my opinion, the order of confirmation is also not in consonance with the material available on record.

24. Upon above discussion of the facts and circumstances of the case, I am of the opinion that at the time of adjudicating the detention order, the Court is required to see whether the activities of the detenu have any import upon the public order. The offences alleged against the petitioner and forming subject-matter of criminal cases registered against him do not affect the community at large and, in view of the meaning of expression "public order" the same cannot constitute so as to mean disturbance to public order. At most, it can affect law and order. In the present case, no criminal case or report against the detenu by a class of persons is reported. The detention order appears to have been passed apparently on the ground that the petitioner is blackmailing the management of the Keyerns" Energy Ltd. In my opinion, such an order against the individual is illegal and patently arbitrary because such order deprives the person of his liberty granted by the Constitution of India.

25. In the case of Smt. Tarannum v. Union of India and Ors. (supra), the apex Court held that detention order cannot be passed on the ground of law and order problem. In this case also, it is nowhere stated by the respondents in the reply that order of detention was necessary for maintenance of public order. Likewise,

in the case of Suram Chand v. State of J. and K, in that case also, it has been held that registration of number of cases cannot be a ground for passing the order of detention. In this view of the matter, it is true that there is power left to the District Collector to pass order u/s 3 of the Act of 2006 but, at the same time, the District Collector is required to pass order on the basis of application of mind to the material available on record. So also, if he is satisfied in respect of any person, that with a view to preventing him from acting in any manner prejudicial to the public order, it is necessary to pass order for detention, such detention order may be passed; but in this case, only on the basis of registration of number of cases against the petitioner since 1993 the order of detention has been passed. Further, it is specifically stated that the petitioner is blackmailing the management of the Keyerns" Energy Ltd. engaged in the exploration of mineral oil in the area of Barmer district, therefore, the order of detention has been passed. In my opinion, the District Collector has passed order of detention against the spirit of the Act of 2006. So also, without proper material on record, the Advisory Board also confirmed the order in mechanical manner without considering the reply filed by the petitioner is its right perspective. Therefore, the orders impugned dated 10.9.2008 and so also dated 18.9.2008 and 27.10.2008 are held illegal and arbitrary and against the constitutional mandates.

26. Consequently, this writ petition is allowed. Orders impugned dated 10.9.2008 (Annex. 1) passed by the Collector & District Magistrate, Barmer and others dated 18.9.2008 (Annex. 2) and 27.10.2008 (Annex. 3) are hereby quashed and set aside. The petitioner shall be released forthwith as a sequel to setting aside the impugned orders.